

**Department of Legislative Services**  
Maryland General Assembly  
2002 Session

**FISCAL NOTE**  
**Revised**

Senate Bill 402

(Senator Conway, *et al.*)

Education, Health, and Environmental Affairs

Commerce and Government Matters

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**Procurement - Minority Business Participation**

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This bill prohibits a bidder or offeror on a State procurement contract that has identified minority business enterprise (MBE) subcontractors, and has been awarded a contract, from substituting a different subcontractor without the express written approval of the procurement officer. In determining whether to approve the substitution of a subcontractor, the procurement officer must consider the impact of the substitution on fulfilling the MBE goals established for the project.

The bill also requires a study by the certification agency on waivers and subcontractor substitution by December 1, 2002.

The bill is effective July 1, 2002.

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**Fiscal Summary**

**State Effect:** The bill codifies current regulations. Potential increase in Transportation Trust Fund expenditures in FY 2003 of \$250,000 for the study.

**Local Effect:** None.

**Small Business Effect:** Minimal.

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**Analysis**

**Current Law:** A bidder or offeror on a procurement contract must:

- identify work categories appropriate for subcontracting;
- solicit MBEs through written notice;
- attempt to make personal contact with the MBEs solicited;
- assist MBEs in fulfilling bonding requirements or in obtaining a waiver for the requirements;
- attend prebid or other meetings scheduled by the procurement unit; and
- if the bid is accepted, provide a list of MBEs the bidder or offeror negotiated with and price quotes from both minority and nonminority firms.

If the procurement unit finds that the contractor met these requirements, the procurement unit may not require the contractor to renegotiate with any subcontractor.

Because the information on MBE subcontractors is not required by the procurement unit until after the award of the contract, bidders and offerors have at least 30 days to obtain MBE subcontractors (the 20 day notice period before bids or proposals are due, and the period after the contract award to provide the information to the procurement unit which is normally 10 days).

There is no requirement that a contractor have the express written approval of the procurement officer to substitute a subcontractor.

**State Fiscal Effect:** The Department of Transportation (MDOT), as the certification agency, advises that to conduct the required study would increase special fund expenditures by \$250,000 for a contractor to perform the study. The estimate is based on a similar study on MBE availability by the National Economic Research Associates examining records at MDOT federally funded administrations, and the number of waivers granted in recent years. MDOT advises that the Governor's Office of Minority Affairs information shows that 150 waivers were granted in fiscal 1999 and 40 in fiscal 2000.

Legislative Services advises that as the certification agency, MDOT performs the certification of the individual MBE firms, and does not have an oversight role for the MBE program. Consequently, other State procurement units do not regularly report information on MBE contract participation to MDOT.

Legislative Services further advises that the Office of Legislative Audits (OLA) is currently conducting a performance audit of the MBE program for contracts completed during fiscal 2001. This audit covers several contracts at five large State agencies and has three components for review and evaluation:

- agency procedures for monitoring the meeting of MBE goals;
- current data reported by agencies on MBE participation; and

- oversight of the program by the Office of Minority Affairs.

The performance audit, with a report on findings and recommendations, will be completed during the next interim.

OLA advises that it could incorporate a review of the waiver process and the substitution of subcontractors within the scope of its current MBE performance audit. The report could be issued by the December 1, 2002 deadline.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of General Services, Department of Transportation, Department of Budget and Management, Department of Legislative Services

**Fiscal Note History:** First Reader - February 26, 2002  
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