

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 903

(The President)

(By Request – Administration)

Education, Health, and Environmental Affairs

Health and Government Operations

Office of Minority Affairs - Special Secretary - Minority Business Participation in Procurement Contracts

This Administration bill establishes the Office of the Special Secretary for Minority Affairs. The duties of the special secretary are identical to the current duties of the Director of the Office of Minority Affairs.

Fiscal Summary

State Effect: The provisions of this bill could be handled with existing resources.

Local Effect: Potential significant impact on local school construction procurements that use State funds. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: A small business impact statement was not provided by the Administration.

Analysis

Bill Summary: The bill also requires agencies to include a statement of the expected level of minority business participation in the specifications of invitations for bids and requests for proposals. Bidders and offerors are required to identify specific commitments of certified MBEs at the time of submission of bids or offers. The Board of Public Works (BPW) is required to adopt regulations that require identification of specific certified MBEs at the time of submissions of bids or proposals in which an expected level of MBE participation has been included.

Current Law: Chapter 339 of 2001 established the current overall goal of 25% for the total value of contracts being awarded to certified MBEs and separate goals of 7% for African-American businesses and 10% for women-owned businesses. Each procurement unit must: (1) implement a program enabling the unit to evaluate each contract to determine the appropriateness of the goal; and (2) meet the maximum feasible portion of the goals by using race neutral measures to facilitate MBE participation in the procurement process.

Socially and economically disadvantaged individuals are defined as citizens or lawfully admitted permanent residents of the U.S. who are: (1) African American; (2) American Indian/Native American; (3) Asian; (4) Hispanic; (5) physically or mentally disabled; (6) women; or (7) otherwise found by the certification agency to be a socially and economically disadvantaged individual. Socially disadvantaged individual is defined as an individual who has been subject to racial or ethnic prejudice or cultural bias within American society because of his/her membership in a group without regard to the individual's qualities. Also, the social disadvantage must stem from circumstances beyond the control of the individual. Economically disadvantaged individual is defined as a socially disadvantaged individual whose ability to compete in the free enterprise system has been impaired due to diminished credit and capital opportunities compared to other individuals in the same or similar line of business who are not socially disadvantaged.

An individual with a personal net worth of more than \$750,000 is not an economically disadvantaged individual. Personal net worth is defined as the net value of assets after total liabilities are deducted, and includes the individual's share of assets held jointly or as community property with the individual's spouse. Net worth does not include the individual's: (1) ownership interest in a minority business enterprise or the applicant for MBE certification; and (2) equity in his/her primary place of residence.

Procurement units must annually report to the certification agency (currently the Maryland Department of Transportation (MDOT)) and the Office of Minority Affairs. BPW may adopt regulations requiring a unit of State government to require bidders and offerors to submit information necessary for a study of the program. Data collected in this manner will be the basis for a report due to BPW on September 30, 2005. BPW may designate certain information received under the regulations as confidential. However, the certification agency may provide the information to any person under contract with the certification agency to assist in the study.

MDOT construction contracts less than \$50,000 are exempt from participation in the MBE program and procurement units may consider the practical severability of construction projects.

The sunset for the MBE program is June 30, 2006.

Background: The Governor’s Commission on Minority Business Reform has reviewed the State’s MBE program and issued its final report. The commission held four public hearings and received written and oral testimonies from over 200 people. The commission focused its review of the MBE program on (1) strengthening the Office of Minority Affairs to carry out its mandate including resources for enforcement of State law, training, and evaluation of the program; (2) assisting business development by creating a one-stop shop with which small and minority business could interact with the State, enforcing existing law, changing the procurement system, and providing more support for business development; (3) improving MBE access to capital; and (4) providing incentives for certification as an MBE.

The commission concluded that the greatest barriers to the current MBE program are a lack of accountability, uniformity, and consistency in executing the program. The commission’s report stressed that training of procurement professionals is a critical component of strengthening the program.

National Economic Research Associates (NERA) found in 2001 that MBEs are underutilized. On a percentage basis, MBEs are utilized less than their availability. In general, availability is a measure of the number or percentage of businesses that are MBEs, and utilization is a measure of the number or percentage of contract awards (value) to MBEs. Although the utilization and availability percentage varied by type of procurement, **Exhibit 1** shows the overall percentage found in the NERA study.

Exhibit 1
Availability and Utilization Percentages by MBE Classification

<u>Classification</u>	<u>Availability %</u>	<u>Utilization %</u>
African American	7.90	4.49
Hispanic	2.13	1.79
Asian	4.27	3.07
Native American	.66	.07
White Female	12.74	7.66
All MBEs	26.90	17.08

Source: *Utilization of Minority Business Enterprises by the State of Maryland*, National Economic Research Associates, January 8, 2001

Although NERA in its report did not make a recommendation for specific goals for the MBE program, the overall availability percentages found in their research are reflected in the current goals established by Chapter 339 of 2001.

Local Fiscal Effect: Local jurisdictions that use State funds for school construction projects would be required to include expected levels of MBE participation in IFBs and RFPs for school construction contracts. Local procurement offices could require additional personnel to develop MBE profiles for their jurisdictions and monitor compliance with IFB and RFP specifications.

Small Business Effect: The Department of Legislative Services advises that small MBEs may improve their ability to participate in State contracts with both (1) the added visibility of the program due to the elevation of the Office of Minority Affairs; and (2) the requirement that bidders and/or offerors include commitments from MBEs in submissions of bids and/or proposals.

Additional Comments: The bill refers to a responsible bid. Under State procurement law, a bidder or offeror (the individual or company) may be considered “responsible” or nonresponsible.” A bid or proposal may be considered “responsive” or “nonresponsive.”

Additional Information

Prior Introductions: None.

Cross File: HB 1488 (The Speaker and the Minority Leader (By Request – Administration) – Health and Government Operations.

Information Source(s): Department of General Services, Board of Public Works, Governor’s Office, University System of Maryland, Maryland Department of Transportation, Department of Budget and Management, Department of Legislative Services

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