

Department of Legislative Services  
Maryland General Assembly  
2004 Session

FISCAL AND POLICY NOTE

House Bill 724 (Delegate Morhaim, *et al.*)  
Health and Government Operations

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**Procurement - Minority Business Enterprises - Subcontracting Requirements**

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This bill exempts Minority Business Enterprise (MBE) prime contractors from MBE goals for procurements contracts valued below \$200,000. Units will not be required to make a finding whether the contractor complied in good faith with provisions of MBE subcontracting solicitation in current law.

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**Fiscal Summary**

**State Effect:** The bill would not materially affect State government operations.

**Local Effect:** None.

**Small Business Effect:** Potential meaningful.

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**Analysis**

**Current Law:** Prime contractors are required to: (1) identify specific work categories appropriate for subcontracting; (2) solicit MBEs through written notice at least 10 days before bid opening; (3) attempt to make personal contact with firms solicited in the above section; (4) assist MBEs in fulfilling bonding or financing arrangements or obtain a waiver of those requirements; (5) attend pre-bid meetings scheduled by the unit in order to publicize contracting opportunities to MBEs; and (6) upon acceptance of a bid, provide the unit with a list of minority businesses with whom the contractor negotiated, including price quotes from minority and nonminority firms.

The Board of Public Works (BPW) has delegated responsibility for certifying MBEs to the Maryland Department of Transportation (MDOT). Certification as an MBE requires

that the person, or majority owner of a business, be socially and economically disadvantaged. 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. 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 an MBE or the applicant for MBE certification; and (2) equity in his/her primary place of residence.

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.

**Background:** The Governor's Commission on Minority Business Reform reviewed this issue during the 2003 interim. The commission has completed its work but will not release its findings until the spring of 2004.

**Small Business Effect:** MBE small businesses that are currently unable to meet the goals of the MBE program when bidding as prime contractors would be able to bid on more contracts.

**Additional Comments:** The potential increase in MBE participation could assist State agencies in meeting MBE participation goals.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - February 24, 2004  
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