

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 1269 (Delegate Vaughn, *et al.*)
Health and Government Operations

Procurement - Minority Business Enterprise Program - Policy Statements

This bill provides that State procurement units and bidding contractors must take specific steps to ensure that Minority Business Enterprise (MBE) participation in the procurement process is being fully utilized.

Fiscal Summary

State Effect: Procurement costs may rise to the extent that the administrative requirements of the bill place costs on contractors who pass the costs through to the State.

Local Effect: None.

Small Business Effect: Meaningful. Small businesses will incur significant costs to complete the administrative requirements of the bill.

Analysis

Bill Summary: The major provisions of the bill are as follows:

- the Maryland Department of Transportation shall ensure that it is the policy of each procuring unit to maximize feasible opportunities for socially and economically disadvantaged individuals or MBE participation in its procurements;
- units of State government may only award a contract to a bidder who has made a good faith effort to meet the goals of the MBE program, and only after the bidder has documented these efforts;

- a good faith effort must include: (1) a list of socially and economically disadvantaged individuals and MBEs contacted; (2) a description of the information provided to socially and economically disadvantaged individuals and MBEs regarding plans, specifications, and time schedule for the procurement; (3) a detailed statement why the quotation submitted by a socially and economically disadvantaged individual or MBE was deemed unacceptable; and (4) a list of socially and economically disadvantaged individuals and MBEs found to be unavailable, and an affidavit from each one attesting to its unavailability;
- units of State government must consider the following factors in determining a good faith effort by the bidder:
 - whether the bidder provided socially and economically disadvantaged individuals and MBEs with information in sufficient time to assist the socially and economically disadvantaged individuals or MBE in responding to the solicitation;
 - whether the bidder negotiated in good faith with interested socially and economically disadvantaged individuals or MBEs;
 - whether the bidder rejected socially and economically disadvantaged individuals or MBEs as unqualified without sound reasons;
 - whether the bidder undertook efforts to assist socially and economically disadvantaged individuals or MBEs in obtaining bonding, lines of credit, or insurance as required by the bidder;
 - whether the bidder utilized the services of State or local government MBE assistance offices, and similar organizations to help recruit socially and economically disadvantaged individuals and MBEs;
 - whether the bidder has undertaken efforts to identify and assist socially and economically disadvantaged individuals or MBEs that are not certified but, if certified, could possibly serve on a contract and satisfy the minority business enterprise program goals specified under this subtitle; and
 - whether the bidder has a record of exceeding MBE program goals on prior contracts.

- For contracts over two years, any price modification of more than 35% of the original cost, the procuring unit must:
 - report and verify the contractor's actual payment to socially and economically disadvantaged individuals and MBEs to determine the contractor's level of compliance with MBE goals; and
 - apply administrative sanctions if a contractor has failed to comply with MBE program requirements.

Current Law: The MBE program aims for 25% of all State procurement dollars to go to certified MBEs, including a goal of 7% to African-American owned businesses and 10% to women-owned businesses.

Background: The Governor's Office for Minority Affairs has published statistics pertaining to MBE participation levels in State procurement spending. **Exhibit 1** shows participation levels for fiscal 1998 through 2003, the most recent data available.

Exhibit 1
MBE Participation Levels in Procurement Spending

| <u>FY</u> | <u>Total State Procurement Spending (\$)</u> | <u>Total Minority Business Participation (\$)</u> | <u>Total Minority Business Participation (%)</u> | <u>African-American-owned Business Participation (%)</u> | <u>Women-owned Business Participation (%)</u> |
|-----------|--|---|--|--|---|
| 1998 | \$2,813,739,071 | \$570,556,854 | 20.28% | 3.60% | 3.51% |
| 1999 | 3,398,761,724 | 686,848,909 | 20.21% | 5.52% | 3.96% |
| 2000 | 3,131,160,829 | 461,610,516 | 14.74% | Not Available | Not Available |
| 2001 | 4,350,069,637 | 833,072,071 | 19.15% | Not Available | Not Available |
| 2002 | 4,263,166,146 | 704,186,039 | 16.52% | 4.50% | 5.20% |
| 2003 | 3,690,826,714 | 576,863,620 | 15.63% | 5.36% | 4.95% |

Source: Governor's Office of Minority Affairs, Department of Legislative Services

State Fiscal Effect: Procurement spending will increase to the extent that the requirements of the bill impose financial burdens on bidding contractors, who in turn pass costs through to the State during the bid process. Additionally, the requirements may prompt contractors to not bid on State contracts, thereby limiting the market for competitive bidding.

Small Business Effect: The requirements of the bill place a significant burden on small business contractors to demonstrate adherence to MBE goals and procedures. Additionally, small businesses will be disadvantaged in comparison to large businesses that have significant resources to assist MBEs.

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

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