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FISCAL AND POLICY NOTE
Revised

House Bill 1087 (Prince George's County Delegation and Montgomery County Delegation)

Health and Government Operations

Education, Health, and Environmental Affairs

Washington Suburban Sanitary Commission - Minority and Local Small Business Enterprise Programs
PG/MC 119-06

This bill codifies the existing Office of Small, Local, and Minority Business Enterprise within the Washington Suburban Sanitary Commission (WSSC) and charges it with administering programs that promote the growth or participation of minority business enterprises. It also extends WSSC's minority business utilization programs from July 1, 2006 until July 1, 2010.

The bill takes effect July 1, 2006.

Fiscal Summary

State Effect: None.

Local Effect: None. The bill's provisions could be implemented with existing WSSC resources.

Small Business Effect: Meaningful. WSSC's minority business utilization programs foster MBE participation in WSSC procurements.

Analysis

Bill Summary: The Office of Small, Local, and Minority Business Enterprise (OSLMBE) is charged with:

- promoting and coordinating WSSC's plans, programs, and operations that promote or otherwise affect the establishment, preservation, and strengthening of minority business enterprises (MBEs);
- promoting activities and use of resources by WSSC, local governments, and private entities for the growth of MBEs;
- providing technical and managerial assistance to MBEs;
- scheduling seminars and workshops to educate MBEs about the how WSSC conducts business; and
- ensuring compliance with MBE subcontract participation goals.

The bill requires bids or proposals submitted in response to solicitations that include an expected degree of MBE participation to include specific proof of an MBE commitment at the time of submission. OSLMBE is charged with confirming that prime contractors honor their commitments to their MBEs and maintain the promised level of participation by MBE contractors, subject to corrective actions, contract termination, or other remedy identified in the contract.

OSLMBE will also administer WSSC's optional Local Small Business Enterprise Program. The bill also clarifies a requirement for being certified as a local small business under WSSC's program. It specifies that in order to be certified as having a significant employment presence in Montgomery or Prince George's counties, a firm must have at least 30% of its employees living in those counties.

Current Law: WSSC is required to operate an MBE program to facilitate the participation of certified MBEs in its construction projects. WSSC is also required to operate a similar program for goods and services contracts if it determines that:

- MBEs are underrepresented in those contract awards due to the effects of past discrimination; and
- a preference program could remedy the effects of past discrimination.

WSSC uses the same definition of MBE that is used in State procurement law, namely that an MBE is a legal entity, other than a joint venture, that is:

- organized to engage in commercial transactions;
- at least 51% owned and controlled by one or more individuals who are socially and economically disadvantaged; and

- managed by, and the daily business operations of which are controlled by, one or more of the socially and economically disadvantaged individuals who own it.

MBEs include not-for-profit entities organized to promote the interests of physically or mentally disabled individuals.

A socially and economically disadvantaged individual is defined as a citizen or legal U.S. resident who is African-American, Native American, Asian, Hispanic, physically or mentally disabled, a woman, or otherwise found by the State's MBE certification agency to be socially and economically disadvantaged.

A socially disadvantaged individual is someone who has been subject to racial or ethnic prejudice or cultural bias within American society because of their membership in a group and without regard to individual qualities. An economically disadvantaged individual is someone who is socially disadvantaged whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities compared with those who are not socially disadvantaged. An individual with a personal net worth in excess of \$1.5 million is not considered economically disadvantaged.

WSSC is required to establish rules that, at a minimum, recognize MBEs certified by the State. WSSC is also allowed to recognize other certifications that meet specific criteria and to establish its own rules for certification. WSSC is required to submit annual reports regarding the implementation and administration of its MBE programs by September 15.

Unlike WSSC's MBE program for construction contracts, the MBE program for goods and services contracts has certain minimum requirements for MBE contracting. First, it includes a specific price preference for MBEs of the lesser of 5% or \$50,000 for each contract. Second, it requires WSSC to establish a sheltered market program for MBEs if other efforts to increase their participation in goods and services contracting are not successful. Under a sheltered market program, when three or more MBEs bid on a contract, the contract is awarded to the lowest bid among the bidders. Another key difference is that the goods and services program establishes a goal of awarding 40% of contracts to businesses in Montgomery County and 40% to businesses in Prince George's County.

Both MBE programs operated by WSSC are scheduled to terminate on July 1, 2006.

WSSC is authorized to operate a local small business enterprise program. Businesses may qualify as a small business under the program if they have:

- a net worth less than \$250,000;

- an average net income after federal income taxes for the preceding two years of less than \$100,000; and
- a principal place of business or significant employment presence in Montgomery County or Prince George's County.

There are no statutory preferences for local small businesses under the optional program.

Background: WSSC was established as a bicounty commission in 1918 to manage water and sewage services for Montgomery and Prince George's counties. It has an annual operating budget of \$466 million and spent \$159 million on construction projects in fiscal 2005. Since the creation of OSLMBE, 212 firms have applied for MBE or small business status, and 139 have been accepted.

Although it is not required by statute to establish MBE contracting goals, WSSC has established MBE contracting goals for each of its contracting divisions; the construction division goal is voluntary. The goals are:

- Architectural and Engineering: 24%
- Procurement: 28%
- Professional Services: 20%
- Construction (voluntary): 20%

In fiscal 2005, 26% of all WSSC contracting, or \$37.6 million, was awarded to MBEs. All three mandatory goals were met, while the construction division fell short of its voluntary goal, achieving a 10.5% MBE share for its contracting.

Chapter 387 of 2002 extended the WSSC MBE programs from July 1, 2002 until July 1, 2005. Chapter 562 of 2005 extended the programs again until July 1, 2006.

Additional Information

Prior Introductions: HB 690 of 2005, a similar bill, never received a hearing before the House Health and Government Operations Committee.

Cross File: None.

Information Source(s): Montgomery County, Prince George's County, Department of Legislative Services

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