

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 990 (Senator Jones, *et al.*)

Education, Health, and Environmental Affairs

Minority Business Enterprise Program - Participation by Race or Gender

This bill specifically allows an African American woman-owned business that is certified as a minority business enterprise (MBE) to participate in an individual procurement contract as either a woman-owned business or an African American-owned business, regardless of its certification. The bill also repeals, for all women-owned businesses, the requirement that an MBE is certified as either woman-owned or owned by a racial or ethnic minority. The bill applies the State's MBE procurement goals for the Maryland Department of Transportation to all procurement contracts in excess of \$50,000.

Fiscal Summary

State Effect: Negligible increase in nonconstruction procurement costs for MDOT contracts valued at between \$50,000 and \$100,000. The provisions allowing greater flexibility for women-owned firms that are also owned by African Americans or other racial or ethnic minorities in State procurement has no fiscal impact.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Current Law: Except as discussed below, the State's MBE program establishes a goal that at least 25% of the total dollar value of each agency's procurement contracts be awarded to MBEs, including 7% to African American-owned businesses and 10% to women-owned businesses. There are no penalties for agencies that fail to reach these

targets. Instead, agencies are required to use race-neutral strategies to encourage greater MBE participation in State procurements.

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 woman-owned MBE is certified as either owned by a woman or owned by a racial or ethnic minority, but not both. The Maryland Department of Transportation is the State's MBE certification agency.

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.

The MBE program is scheduled to terminate July 1, 2012.

The State's MBE goals apply to MDOT construction contracts only if they exceed \$50,000. It is unclear in current law whether the MBE goals are intended to apply to MDOT's nonconstruction contracts. Although MDOT interprets current law as not applying the MBE program goals to nonconstruction contracts, it applies the goals to nonconstruction contracts if their value is greater than \$100,000.

State Fiscal Effect: Requiring all MDOT procurements greater than \$50,000 to be subject to MBE program goals would affect nonconstruction procurements valued at between \$50,000 and \$100,000 since under its existing practices MDOT applies MBE goals to procurements over \$100,000. Procurement costs for those contracts could

increase slightly by encouraging greater MBE participation, as prime contractors often add overhead costs to manage the work of MBE subcontractors. Legislative Services believes those increases would be negligible. The Maryland Aviation Administration and the Maryland Port Administration advise that the change will not affect their procurement practices or costs.

MDOT indicates that it can adjust its MBE certification process to allow a business to be certified as both an African American or other racial or ethnic minority-owned business and a woman-owned business with existing resources.

Small Business Effect: Small businesses that are MBEs could have greater access to nonconstruction MDOT contracts valued at between \$50,000 and \$100,000. Women-owned businesses that are also owned by a racial or ethnic minority would have greater flexibility in pursuing subcontracting opportunities on State procurement contracts.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): 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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