

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 326 (Delegate Weir, *et al.*)
Health and Government Operations

Procurement - Minority Business Enterprises - Retention of Certification and Status and Participation in the Minority Business Enterprise Program

This bill allows a minority business enterprise (MBE) that graduates from the State's MBE program to retain its MBE status for three years.

Fiscal Summary

State Effect: None. The Maryland Department of Transportation's (MDOT) Office of Minority Business Enterprises can carry out the bill's requirements with existing resources. No effect on revenues.

Local Effect: None.

Small Business Effect: Meaningful. A small business that graduates from the State's MBE program may continue to participate in State procurement as an MBE for three years.

Analysis

Current Law: The State's MBE program establishes a goal that at least 25% of the total dollar value of each agency's procurement contract be awarded to MBEs, including 7% to African American-owned businesses and 10% to woman-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 procurement.

An MBE must be at least at least 51% owned and controlled by one or more individuals who are socially and economically disadvantaged. It must also be managed 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. MDOT is designated as 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 for the purpose of being eligible for MBE certification. Personal net worth includes the individual's share of assets held jointly or as community property with a spouse, but does not include the individual's ownership interest in an MBE or equity in a primary place of residence.

In accordance with State regulations, MDOT decertifies an MBE if the owner's personal net worth exceeds the statutory limit of \$1.5 million or if the firm exceeds the federal definition of a small business, which varies by business sector. If, during the next three years, the firm again becomes qualified for MBE status, it is eligible for recertification. However, if the firm remains decertified for three consecutive years, it graduates from the program and may no longer be certified. An MBE that is decertified by MDOT is still eligible for credit towards an MBE goal for a contract entered into when the MBE was certified, and MBE decertification may not be the sole cause of a contract termination.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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