

**Department of Legislative Services**  
Maryland General Assembly  
2009 Session

**FISCAL AND POLICY NOTE**  
**Revised**

House Bill 1297

(Delegate Taylor, *et al.*)

Health and Government Operations

Education, Health, and Environmental Affairs

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**Procurement - Minority Business Enterprises - Prime Contractors**

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This bill requires the Board of Public Works (BPW) to include in its regulations for the minority business enterprise (MBE) program provisions that promote and provide for the counting and reporting of MBEs as prime contractors. The bill also adjusts annual MBE reporting requirements to reflect these changes.

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**Fiscal Summary**

**State Effect:** BPW can develop new regulations with existing resources, and the Governor's Office of Minority Affairs (GOMA) can carry out reporting requirements with existing resources.

**Local Effect:** None.

**Small Business Effect:** Minimal.

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**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 contracts 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 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. The Maryland Department of Transportation (MDOT) is designated as the MBE certification agency for the State.

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 each State procurement, the procurement unit must establish an expected degree of MBE participation based, in part, on the subcontract opportunities in the prime procurement contract and the availability of certified MBEs to respond competitively to those opportunities. The latter is determined largely by reviewing the number of firms that indicate they can do the required work that are listed in MDOT's directory of certified MBEs.

If a certified MBE is awarded a prime contract, the agency may not count the MBE's participation toward the contract's MBE goal. The prime contractor is still responsible for making a good faith effort to meet the contract's MBE goal through the use of MBE subcontractors, or obtaining a waiver. However, the prime contractor's participation does count toward the agency's overall MBE participation rate (and hence toward the attainment of the overall 25% MBE goal and subgoals).

Within 90 days after the end of each fiscal year, each State procurement unit must submit a report to GOMA and MDOT (which certifies MBEs on behalf of the State) that, for the prior fiscal year:

- provides the total number and value of procurement contracts between the unit and certified MBEs, by specific MBE category;
- indicates the percentage of total procurement contracts represented by MBE contracts, by MBE category; and
- contains any other information required by GOMA.

By December 31 of each year, GOMA submits a summary of the MBE reports it receives from procurement units to BPW and the General Assembly's Legislative Policy Committee.

**Background:** Exhibit 1 provides the level of MBE participation in State contracts for fiscal 2006 and 2007, the most recent data available. In fiscal 2007, approximately 70% of the total contract awards to MBEs were subcontracts and 30% were prime contracts.

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**Exhibit 1**  
**MBE Participation Rates as Percent of**  
**Total Value of Procurement Contracts**

	<u><b>MBE Goal</b></u>	<u><b>FY 2006</b></u>	<u><b>FY 2007</b></u>
Woman	10%	5.7%	5.7%
African American	7	4.3	3.6
Asian American		1.8	2.3
Hispanic American		1.0	1.1
Native American		0.2	0.3
Disabled		2.4	0.1
Nonprofit (certified)		3.5	3.4
Sheltered Workshop (certified)		3.3	3.4
<b>Total State</b>	25%	22.0%	20.0%

Note: Columns may not sum to total due to rounding.  
Source: Governor's Office of Minority Affairs

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## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - March 16, 2009  
mcp/rhh Revised - House Third Reader - April 6, 2009

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