

Department of Legislative Services

Maryland General Assembly

2009 Session

FISCAL AND POLICY NOTE

Senate Bill 978 (Senator Mooney)
Education, Health, and Environmental Affairs

Procurement - Minority Business Enterprises - Goal-Setting

This bill requires that a procurement unit, when establishing minority business enterprise (MBE) participation goals for a contract, consider the potential pool of certified MBEs that has the technical expertise, availability, and willingness to execute a procurement contract.

Fiscal Summary

State Effect: Potential increase in State procurement expenditures (all funds) to the extent that compliance with the bill's provisions delays procurement announcements and awards. Any increase cannot be reliably estimated. No effect on revenues.

Local Effect: Potential delays in completing procurements for cooperative purchasing agreements or public works projects that affect local governments, such as road construction, repair, and maintenance.

Small Business Effect: Potential minimal.

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 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.

The Maryland Department of Transportation (MDOT) is the designated MBE certification agency for the State. Its directory of certified MBEs currently contains more than 4,000 firms.

The Board of Public Works (BPW) is required to issue regulations to carry out MBE program requirements. Among other things, the regulations must require that the expected degree of MBE participation for each procurement be based, in part, on (1) the potential subcontract opportunities available in the prime contract; and (2) the availability of certified MBEs to respond competitively to those opportunities. Regulations issued by BPW under its statutory authority further specify that procurement units may use the following factors in determining the level of certified MBE participation in a procurement:

- the extent to which direct solicitation, subcontracting, or a combination of both is most likely to result in maximum MBE participation;
- the number of certified MBEs listed in MDOT's directory or otherwise identified for a particular supply, service, maintenance, construction, construction-related service, or architectural or engineering service;
- the geographical proximity, when relevant, of certified MBEs to location of the work to be performed;

- the feasibility of subcontracting opportunities given the nature and extent of the proposed contract; and
- specific statutory participation goals applicable to the procurement.

State Fiscal Effect: In accordance with these regulations, a procurement unit typically consults the MDOT directory to determine the number of certified MBEs qualified to perform the tasks in a particular procurement, and then bases the level of required MBE participation on its findings. The bill requires that a procurement unit also assess the availability and willingness of MBEs to perform the work. This cannot be ascertained from the directory because the availability and willingness of MBEs can vary by project size, scope, and timing, among other things.

To ascertain the availability and willingness of certified MBEs to perform the desired tasks, a procurement officer needs to contact MBEs directly prior to establishing the MBE goals. For certain contract types, hundreds of MBEs may be listed in the directory that indicate they perform the desired tasks. To comply with the bill's provisions, a procurement officer needs to contact all or a sufficient sample of the qualified MBEs to ascertain their availability and willingness. Legislative Services assumes this can be done with existing resources, but for some procurements, it may result in significant delays in issuing a procurement announcement. To the extent that such delays increase project costs, the bill may increase State procurement expenditures, but this effect cannot be estimated reliably.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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