

Department of Legislative Services  
Maryland General Assembly  
2009 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 389

(Delegate Taylor, *et al.*)

Health and Government Operations

Education, Health, and Environmental Affairs

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Minority Business Enterprise Program - Prohibitions

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This bill prohibits a prime contractor from falsely including a minority business enterprise (MBE) in a bid or proposal.

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Fiscal Summary

**State Effect:** None. The Governor's Office of Minority Affairs (GOMA) can handle the bill's requirements with existing resources. No effect on revenues.

**Local Effect:** None.

**Small Business Effect:** Potential meaningful.

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Analysis

**Bill Summary:** A contractor may not include a certified MBE in a bid or proposal without requesting, receiving, or obtaining the MBE's authorization to identify the MBE in the proposal or bid; notifying the MBE of its inclusion; and actually using the MBE's services to perform the contract. In addition, the contractor may not pay the MBE solely for the use of its name in the bid or proposal.

GOMA must operate a fraud hotline that may be used to report violations.

**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.

BPW must issue regulations consistent with State procurement law to carry out the purposes of the MBE program. Among other things, the regulations must require procurement units to verify that MBEs listed in successful bids actually participate to the extent listed in the bid, and that, upon project completion, payments received by MBEs match the amount of contract dollars awarded.

Procurement regulations issued under this authority require bidders and offerors to submit with each bid or proposal an MBE participation schedule that includes the name of each certified MBE that will participate in the project, the work that each MBE will perform, and the price or contract percentage to be paid to each MBE. Failure to include the participation schedule can result in a bid or proposal being deemed not responsive. The regulations also require that procurement units verify that MBEs listed on the participation schedule actually perform the work and receive compensation consistent with the schedule.

A bidder or offeror may request a waiver from an MBE contract or subcontract goal. A waiver may be granted only if the bidder or offeror reasonably demonstrates that certified MBE participation could not be obtained, or could not be obtained at reasonable price, and if the agency head determines that the public interest is served by a waiver.

Failure to comply with MBE contract provisions, or to secure a waiver, can result in contract termination, referral to the Attorney General for appropriate action, or initiation of any other specific remedy identified in the contract.

**State Fiscal Effect:** GOMA already investigates alleged violations of MBE program rules and regulations, so it can institute the required hotline with existing resources. Although it is not possible to project the bill's effect on the number of alleged violations requiring investigation, Legislative Services does not foresee a significant increase in the number of cases because the bill's prohibitions are not a significant departure from current law.

**Small Business Effect:** Most MBEs are small businesses. The bill may provide additional protection to MBEs who participate in State contracts but whose services are not used to the extent promised by prime contractors.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 611 (Senator Jones, *et al.*) - Education, Health, and Environmental Affairs.

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

**Fiscal Note History:** First Reader - February 17, 2009  
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