

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 1482 (Prince George's County Delegation and Montgomery
County Delegation)

Health and Government Operations

Washington Suburban Sanitary Commission - Minority Business Enterprise
Participation Goals
PG/MC 117-10

This bill requires the Washington Suburban Sanitary Commission (WSSC) to structure procurement procedures for specified contracts awarded by the commission to try to achieve specified participation levels of African American-owned and women-owned business enterprises.

Fiscal Summary

State Effect: None.

Local Effect: Potential increase in WSSC's procurement expenditures depending on minority participation levels. This bill may result in some contracts being awarded to businesses that are not the lowest bidder in order to meet participation standards. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Meaningful. WSSC's minority business utilization programs foster minority business enterprise (MBE) participation in WSSC procurements.

Analysis

Bill Summary: The bill requires WSSC to structure procurement procedures for contracts awarded in accordance with its competitive bidding or proposal procedures to try to achieve the following results: (1) a minimum of 7% of the total dollar value of contracts awarded is to be made directly or indirectly from certified minority business

enterprises classified as African American-owned businesses; (2) a minimum of 10% of the total dollar value of contracts awarded by the commission is to be made directly or indirectly from certified minority business enterprises classified as women-owned businesses; and (3) an overall minimum of 25% of the total dollar value of contracts awarded by the commission is to be made directly or indirectly from all certified minority business enterprises. Furthermore, the commission must structure procurement procedures for goods and services, that are not covered by the above requirements in a way that achieves similar results.

Current Law: Chapter 621 of 2007 reauthorized WSSC's minority business utilization program until July 2012 and codified the existence of the Office of Small, Local, and Minority Business Enterprise (OSLMBE).

The minority business utilization program within WSSC helps facilitate the participation of responsible certified MBEs for design/build construction contracts. Solicitations for design/build contracts must include the expected degree of participation by MBEs in the contract. Regulations establishing the minority business utilization program for design/build contracts must:

- recognize MBEs certified by the State and any other certification program that duplicates the requirements of State certification as an MBE;
- provide for an increase in MBE participation as prime contractors and subcontractors;
- allow some contracts to waive the program's requirements if they conflict with WSSC's overall objectives and responsibilities;
- allow for the graduation from the program of MBEs that no longer require special assistance;
- for solicitations that have an expected degree of MBE participation, require bids and proposals to include proof of involvement by an MBE;
- require contractors to adhere to certain reporting requirements.

WSSC is also authorized to operate a minority business utilization program for goods and services procurements if it determines that MBEs are underrepresented in those contracts and that such a program is necessary to remedy past discrimination against MBEs. In addition to including most of the requirements for the design/build MBE program, regulations for this program must:

- authorize MBE participation only through subcontracting;
- grant bidding preferences for MBEs of up to the lesser of 5% of the contract value or \$50,000;

- create a sheltered market program that restricts bidding on certain contracts only to MBEs; and
- establish targets that 40% of contracts be awarded to both Montgomery County-based and Prince George's County-based businesses.

OSLMBE is charged with:

- promoting and coordinating WSSC's plans, programs, and operations that promote or otherwise affect the establishment, preservation, and strengthening of MBEs;
- promoting activities and use of resources by WSSC, local governments, and private entities for the growth of MBEs;
- providing technical and managerial assistance to MBEs;
- scheduling seminars and workshops to educate MBEs about how WSSC conducts business; and
- ensuring compliance with MBE subcontract participation goals.

OSLMBE is charged with confirming that prime contractors honor their commitments to their MBEs and maintain the promised level of participation by MBE contractors, subject to corrective actions, contract termination, or other remedy identified in the contract. By September 15 of each year, WSSC is required to submit annual reports to the Montgomery County and Prince George's County legislative delegations regarding the implementation and administration of its MBE programs. OSLMBE also administers WSSC's optional Local Small Business Enterprise Program.

Background: On December 1, 2009, WSSC announced the extension of its interim MBE program until April 30, 2011. While this interim MBE program is in effect, WSSC will conduct a disparity study to establish a basis for a long-term MBE program.

MBE Performance Measures

In fiscal 2009, WSSC awarded total contracts of \$389.1 million in four contracting areas – architecture and engineering (A/E); construction; professional services; and goods and services. Of this amount, \$92.5 million or 23.8% was awarded to certified MBE firms. In fiscal 2009, WSSC's total contract payments were \$252.5 million, including \$72.2 million (28.6%) to MBE firms, which was in excess of the payment goal of 25%, as shown in **Exhibit 1**. WSSC indicates that SLMBE Program initiatives have resulted in 278 contracts being awarded to certified MBE firms and 17 contracts being awarded to approved SLBE firms.

Exhibit 1
WSSC MBE Performance Measures
Fiscal 2009

<u>Contracting Area</u>	<u>Goal</u>	<u>M/WBE¹</u>	<u>M/WBE¹ %</u>	<u>MBE</u>	<u>WBE</u>
A/E Services	24%	\$10,364,801	31%	\$8,287,634	\$2,077,167
Construction Services	20%	13,261,575	16%	13,019,857	241,718
Goods and Services	28%	46,274,968	40%	32,426,799	13,848,169
Professional Services	20%	2,266,415	41%	2,210,249	56,166
Total	25%	\$72,167,759	30%	\$55,944,539	\$16,223,220

¹Minority/Women Business Enterprise
Source: Washington Suburban Sanitary Commission

MBE Criteria

Under State procurement law, 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.

WSSC Service Area

WSSC is the eighth largest water and wastewater utilities in the country, providing water and sewer services to 1.8 million residents in Montgomery and Prince George's counties. It has over 460,000 customer accounts, serves an area of around 1,000 square miles, and currently employs more than 1,500 people. The agency operates four reservoirs, two water filtration plants, and six wastewater treatment plants. Additionally, the Blue Plains Water Pollution Control Plant handles as much as 169 million gallons per day under a cost sharing agreement with WSSC. The agency maintains nearly 5,500 miles of water main lines and over 5,300 miles of sewer main lines.

Local Fiscal Effect: In fiscal 2009, WSSC established an MBE contract payment objective of 25%. This contract payment objective includes all minority owned businesses, not just payments to African American-owned or women-owned businesses. Under the bill, 7% of payments must be made to African American-owned business and 10% to women-owned business. The bill could result in some contracts being awarded to businesses that are not the lowest bidder in order to meet participation standards. This in turn could increase WSSC's procurement costs.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Montgomery and Prince George's counties, Board of Public Works, Department of Budget and Management, Department of General Services, Maryland Department of Transportation, Washington Suburban Sanitary Commission, Department of Legislative Services

Fiscal Note History: First Reader - March 19, 2010
ncs/hlb

Analysis by: Michael Sanelli

Direct Inquiries to:
(410) 946-5510
(301) 970-5510