

Department of Legislative Services
 Maryland General Assembly
 2012 Session

FISCAL AND POLICY NOTE

House Bill 1314 (Delegate Holmes)
 Health and Government Operations

Procurement - Minority Business Enterprises - Reporting of Architectural Services and Engineering Services Contracts

This bill requires State procurement units to disaggregate data on minority business enterprise (MBE) procurements for architectural services and for engineering services that they report annually to the Governor’s Office of Minority Affairs (GOMA), the Maryland Department of Transportation (MDOT), and the Joint Committee on Fair Practices and Personnel Oversight.

The bill takes effect June 1, 2012.

Fiscal Summary

State Effect: Transportation Trust Fund expenditures by MDOT increase by \$50,000 in FY 2013 for contractual services to reprogram its procurement and financial management programs; general fund expenditures by the Department of Budget and Management also increase by \$50,000 in FY 2013 to reprogram the main State systems, which are separate from MDOT’s. No effect on revenues.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	50,000	0	0	0	0
SF Expenditure	50,000	0	0	0	0
Net Effect	(\$100,000)	\$0	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law:

Minority Business Enterprise Program

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to MBEs; long-standing subgoals of 7% for African American-owned businesses and 10% for woman-owned businesses were repealed by Chapters 252 and 253 of 2011. Instead, Chapters 252 and 253 authorize GOMA, in consultation with MDOT and the Office of the Attorney General, to establish guidelines for each unit to consider while determining whether to set subgoals for individual procurements based on existing categories for minority groups. There are no penalties for agencies that fail to reach the 25% target. Instead, agencies are required to use race-neutral strategies to encourage greater MBE participation in State procurements.

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. There are no restrictions on the size or management structure of not-for-profit entities that can be considered MBEs.

MDOT is the State's MBE certification agency. The MBE program is scheduled to terminate July 1, 2012.

MBE Reporting Requirements

Within 90 days of the end of the fiscal year, each procurement unit must report to GOMA, MDOT, and the joint committee on:

- the total number and value of procurement contracts between the unit and MBEs, by MBE category, including whether the MBE participated as a prime contractor or subcontractor;
- the percentage of total contracting, by number and value, represented by MBE contracts;

- the number and names of all MBEs who participated as prime contractors or as subcontractors, and the procurements awarded to each one; and
- any other information required by GOMA and MDOT.

By December 31 of each year, GOMA must submit a summary report based on the agency reports it receives to the Board of Public Works and the Legislative Policy Committee. As a matter of practice, GOMA reports MBE results by the following procurement categories:

- architectural/engineering (A/E);
- construction;
- construction-related services;
- maintenance;
- services;
- human/cultural/social/and educational services;
- supplies and equipment;
- information technology services;
- information technology supplies and equipment;
- corporate credit card; and
- direct vouchers.

Background: In fiscal 2010, the most recent data available from GOMA, the total value of State A/E contracts was \$381.7 million, of which 25.7% went to MBEs, mostly in the form of subcontracts.

In fiscal 2011, MDOT awarded over 60 A/E contracts, and currently has over 380 A/E contracts in effect.

State Fiscal Effect: Procurement units advise that existing procurement and financial tracking programs used by the State treat architectural and engineering contracts as a single category and, therefore, do not allow for disaggregated reporting. The volume of A/E contracts, as reflected by MDOT's experience, indicates that relying on manual processing is not efficient. Thus, the existing systems require reprogramming. Legislative Services estimates that the cost of modifying both the MDOT system and the State's main system, which are separate, is \$50,000 each; MDOT costs are special funds from the Transportation Trust Fund, and State costs are general funds. Despite the bill's June 1, 2012 effective date, it is assumed that these costs are incurred in fiscal 2013, and that the bill's reporting requirements may not be fully implemented until fiscal 2014 due to the delay in making the necessary programming changes.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Board of Public Works, Department of Budget and Management, Governor's Office of Minority Affairs, Department of General Services, Maryland Department of Transportation, Department of Legislative Services

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