

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 628 (Senator Conway)
Education, Health, and Environmental Affairs

Minority Business Enterprise Program - Participation Subgoals - Prime Contractors

This bill requires that the dollar value of a prime contract made directly or indirectly with a certified minority business enterprise (MBE) be counted as meeting one-half of the relevant MBE subgoal set by a procurement unit for the contract.

Fiscal Summary

State Effect: Assuming reauthorization of the MBE program, no effect on State procurement costs, or on State agencies' ability to meet the statewide MBE goal. However, allowing agencies to count at least a portion of MBE prime contractors' participation toward MBE subgoals may make it easier for State agencies to achieve MBE subgoal targets on individual contracts. Although the bill may result in fewer MBE waiver requests being processed by procurement units, the overall effect is not expected to affect their workload because the vast majority of MBE prime contractors are not owned and operated by economically and socially disadvantaged individuals who would have their participation count toward the subgoals.

Local Effect: None.

Small Business Effect: Minimal. MBEs who are prime contractors may be less likely to apply for MBE waivers for the contracts on which they are prime contractors.

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; 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subgoals of 7% for African American-owned businesses and 10% for woman-owned businesses were repealed by Chapters 252 and 253 of 2011.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 the Governor's Office of Minority Affairs, in consultation with the Maryland Department of Transportation (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.

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. An MBE owned by a woman who is also a member of an ethnic or racial minority group is certified as either owned by a woman or owned by a racial or ethnic minority, but not both. MDOT is the State's MBE certification agency and is responsible for conducting the mandated disparity study.

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, adjusted annually for inflation, is not considered economically disadvantaged. The inflation-adjusted limit for calendar 2012 is \$1,577,377.

The MBE program is scheduled to terminate July 1, 2012.

Background: The dollar value of prime contracts awarded to a certified MBE is counted toward the State's and individual agency's attainment of the overall 25% MBE goal for awarding contracts. However, it is not counted toward the MBE goals or subgoals established for each contract by the procurement unit. Achieving the specific contract goals must be done through subcontracting with certified MBEs, regardless of whether the prime contractor is a certified MBE.

In fiscal 2010, the dollar value of prime contracts awarded to MBEs was \$760 million, which represents a 24.7% increase over fiscal 2007. It also represents 54.7% of total MBE contract awards. However, of the total value of MBE prime contracts, almost two-thirds (60.9%), went to nonprofit organizations and community service providers, not businesses owned by racial and ethnic minorities.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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