



SENATE EDUCATION, HEALTH, AND ENVIRONMENTAL AFFAIRS COMMITTEE

PAUL G. PINSKY, CHAIR • COMMITTEE REPORT SYSTEM

DEPARTMENT OF LEGISLATIVE SERVICES • 2021 MARYLAND GENERAL ASSEMBLY

FLOOR REPORT

Senate Bill 649

Procurement – ~~Department of General Services~~ MBE Program Compliance
~~Officer~~ Review and Oversight

SPONSORS: Senator Griffith, et al.

COMMITTEE RECOMMENDATION: Favorable with amendments (3)

SUMMARY OF BILL:

Senate bill 649, as amended, strengthens the role and authority of the Governor's Office of Small, Minority, and Women Business Affairs in implementing the State's minority business enterprise (MBE) program. The bill requires the Office to review and make recommendations regarding proposed MBE participation goals and subgoals for specified procurement contracts with an estimated value of \$1 million or more *before* those contracts are awarded. The bill also enhances existing reporting requirements and makes other changes aimed at increasing MBE participation in various categories of State procurement.

COMMITTEE AMENDMENTS: There are three committee amendments.

AMENDMENT NO. 1: Is technical.

AMENDMENT NO. 2: Strikes language that would have required the Department of General Services to appoint an MBE Compliance Officer within the Office of State Procurement, and instead strengthens the current MBE oversight responsibilities of the Governor's Office of Small, Minority, and Women Business Affairs as specified.

AMENDMENT NO. 3: Requires the Department of Legislative Services to conduct a review of the implementation of statutory and regulatory requirements of the MBE Program and to report back to specified committees of the General Assembly on or before December 15, 2021.

FISCAL IMPACT:

The committee amendments substantially re-write the bill, so the fiscal impact is not known.

FULL SUMMARY OF BILL (AS AMENDED):

Review of Draft MBE Goals and Subgoals on High Value Contracts

Before awarding a certain contract with an estimated value of \$1 million or more, the bill would require a procurement unit to submit to the Governor's Office of Small, Minority, and Women Business Affairs (GOSBA) (1) a draft of any proposed MBE goals and subgoals for the contract, or (2) if the unit proposed to waive MBE participation requirements for the contract, the reason for the proposed waiver. No later than 10 business day after receiving the submission from a unit, GOSBA must (1) approve the MBE goals and subgoals proposed by the unit or the proposed waiver of MBE participation requirements, (2) establish alternative MBE goals and subgoals, or (3) require the unit to establish alternative MBE goals and subgoals based on GOSBA's recommendations. Additionally, if appropriate, GOSBA must make recommendations on how the procurement could be unbundled to facilitate participation by MBEs. A unit must consider GOSBA's recommendations and notify GOSBA regarding any changes to the MBE goals or subgoals for the contract or any unbundling of the procurement that results from GOSBA's review. If a unit unbundles a procurement based on GOSBA's recommendations, the unit must resubmit the resulting contracts to GOSBA for review regardless of the estimated value of the resulting contracts.

MBE Program Reporting Requirements

The bill adds the following to the list of information that units must report to GOSBA each year:

- The total number and value of procurement contracts entered into by the unit, including emergency, expedited, and sole source procurements, for which no minority business enterprise participation goals were established;
- a list of contractors that failed to meet minority business participation goals or subgoals established in a contract between the unit and the contractor;
- the total number and value of procurement contracts submitted by the unit to the GOSBA for review in accordance with the bill's requirements;
- for each contract reviewed by GOSBA, specified information on GOSBA's recommendations and any actions the unit took to implement those recommendations.

The bill also requires GOSBA to include in its annual report to BPW and LPC information regarding (1) MBE participation in emergency, expedited, and sole source procurements and the Small Business Reserve Program, and (2) each unit's attainment or nonattainment of the overall percentage goal and any subgoals established for the unit under certain provisions of law in each of the immediately preceding 5 fiscal years.

Small Procurements

For small procurements in Category II and Category III, as defined in the State Procurement Regulations, the bill requires units to make a good faith effort to solicit at least one bid from a certified MBE. (Under current regulations, this would apply to small procurements with values from \$5,000 to \$100,000).

Prebid and Preproposal Meetings

Under the bill, each unit must require prospective contractors to attend a prebid or preproposal meeting as a prerequisite to submitting a bid or proposal by the unit. The unit must share the contact information of prospective contractors with the other meeting attendees.

DLS Review

DLS must conduct a review of the implementation of statutory and regulatory requirements of the MBE Program, as specified. DLS must report the findings and recommendations of that review to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee on or before December 15, 2021.

Effective Dates

The provisions regarding the DLS review take effect July 1, 2021. All of the bill's other provisions take effect July 1, 2022, contingent on the enactment of legislation by MGA to extend the termination date of the MBE Program beyond July 1, 2022.

ADDITIONAL INFORMATION:

Prior Introductions: None.

Cross File: HB 1348 (Delegate Sample-Hughes) - Rules and Executive Nominations.

Analyst: April

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BY: Education, Health, and Environmental Affairs Committee

AMENDMENTS TO SENATE BILL 649
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, strike “**Department of General Services –**”; in line 3, strike “**Officer**” and substitute “**Review and Oversight**”; strike beginning with “requiring” in line 4 down through “Services” in line 13 and substitute “requiring certain regulations of a primary procurement unit to require the unit to make a good faith effort to solicit a certain minimum number of bids from a certified minority business enterprise for a certain small procurement; requiring certain units to require prospective contractors to attend a certain prebid or preproposal meeting under certain circumstances and to make the contact information of the prospective contractors available to the meeting attendees; requiring a unit to provide certain information to the Governor’s Office of Small, Minority, and Women Business Affairs before awarding a certain contract; requiring the Governor’s Office of Small, Minority, and Women Business Affairs to take certain actions within a certain number of business days after receiving a certain submission; requiring a unit to consider certain recommendations and provide a certain notice to the Governor’s Office of Small, Minority, and Women Business Affairs; requiring a unit that unbundles a procurement based on certain recommendations to resubmit the resulting contracts to the Governor’s Office of Small, Minority, and Women Business Affairs regardless of certain factors; requiring a certain report to state the total number and value of certain procurement contracts for which no minority business enterprise participation goals were established; requiring a certain report to provide a list of certain contractors that failed to meet certain minority business participation goals or subgoals; requiring a certain report to state the total number and value of certain contracts submitted to the Governor’s Office of Small, Minority, and Women Business Affairs under certain provisions of law and to include certain information related to those contracts; requiring a certain report to include information regarding participation by minority business enterprises in certain procurements and the Small Business Reserve Program and each unit’s attainment or”

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nonattainment of certain goals and subgoals in certain fiscal years; requiring the Department of Legislative Services to conduct a review of the implementation of statutory and regulatory requirements of the Minority Business Enterprise Program; requiring the review to examine certain factors; requiring the Department to report its findings and recommendations to certain committees of the General Assembly on or before a certain date; providing for the delayed effective date of certain provisions of this Act; making certain provisions of this Act subject to a certain contingency; and generally relating to the Minority Business Enterprise Program"; in line 21, strike "14-302(a)(9)" and substitute "13-109, 14-302(a)(3) and (9), and 14-305"; and in line 26, strike "14-306" and substitute "14-302(a)(16)".

AMENDMENT NO. 2

On page 2, after line 9, insert:

"13-109.

(a) In this section, "small procurement" means a procurement for which:

(1) a unit spends \$50,000 or less;

(2) a contractor provides services subject to § 11-202(3) of this article for expected annual revenues of \$50,000 or less;

(3) the Department of General Services or the Department of Transportation is seeking to award a procurement contract for a construction with a value that is \$100,000 or less; or

(4) for purposes of administering Title 29, Subtitle 1 of the State Personnel and Pensions Article, the State Retirement Agency spends \$50,000 or less during a fiscal year for:

(i) expenses related to independent medical evaluations by a physician; and

(ii) any expenses related to testimony by the physician at administrative hearings on behalf of the Agency.

(b) A unit may make small procurements in accordance with the regulations of primary procurement units.

(c) A primary procurement unit may not create a small procurement by artificial division of a procurement.

(d) Any regulation of a primary procurement unit to govern small procurements:

(1) shall provide for a simplified administrative procedure;

(2) shall be consistent with the basic intent of this Division II; [and]

(3) FOR SMALL PROCUREMENTS IN CATEGORY II AND CATEGORY III, AS DEFINED IN THE STATE PROCUREMENT REGULATIONS, SHALL REQUIRE THE UNIT TO MAKE A GOOD FAITH EFFORT TO SOLICIT AT LEAST ONE BID FROM A CERTIFIED MINORITY BUSINESS ENTERPRISE; AND

(4) may not be disadvantageous economically to the State.

(e) At least every 3 years, the Board shall:

(1) review the prevailing costs of labor and materials; and

(2) if warranted by changes in cost, recommend to the General Assembly appropriate adjustments in the ceiling for a small procurement.”;

after line 14, insert:

“(3) Each unit shall:

(i) consider the practical severability of all contracts and, in accordance with § 11-201 of this article, may not bundle contracts;

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(ii) 1. REQUIRE PROSPECTIVE CONTRACTORS TO ATTEND A PREBID OR PREPROPOSAL MEETING AS A PREREQUISITE TO SUBMITTING A BID OR PROPOSAL FOR A PROCUREMENT BY THE UNIT; AND

2. MAKE THE CONTACT INFORMATION OF THE PROSPECTIVE CONTRACTORS AVAILABLE TO THE MEETING ATTENDEES;

(III) implement a program that will enable the unit to evaluate each contract to determine the appropriate minority business enterprise participation goals, if any, for the contract based on:

1. the potential subcontract opportunities available in the prime procurement contract;

2. the availability of certified minority business enterprises to respond competitively to the potential subcontract opportunities;

3. the contract goal guidelines established under paragraph (2) of this subsection;

4. the subgoal guidelines established under paragraph (1)(iii) of this subsection; and

5. other factors that contribute to constitutional goal setting;

[(iii)] (IV) monitor and collect data with respect to prime contractor compliance with contract goals; and

[(iv)] (V) institute corrective action when prime contractors do not make good-faith efforts to comply with contract goals.”;

and in line 26, strike “The” and substitute “SUBJECT TO PARAGRAPH (16) OF THIS SUBSECTION, THE”.

On page 3, strike beginning with “AND” in line 5 down through “SERVICES” in line 6; in line 8, strike the brackets; in the same line, strike the first comma; strike

beginning with the comma in line 9 down through "SERVICES" in line 10; and after line 18, insert:

"(16) (I) 1. THIS PARAGRAPH APPLIES ONLY TO A PROCUREMENT CONTRACT WITH AN ESTIMATED VALUE OF \$1,000,000 OR MORE.

2. THIS PARAGRAPH DOES NOT APPLY TO AN EXPEDITED OR EMERGENCY PROCUREMENT, BUT DOES APPLY TO A SOLE SOURCE PROCUREMENT WITH AN ESTIMATED VALUE OF \$1,000,000 OR MORE FOR WHICH THE HEAD OF THE UNIT PROPOSES TO WAIVE ANY OF THE REQUIREMENTS OF THIS SUBSECTION RELATING TO THE ESTABLISHMENT, USE, AND WAIVER OF CONTRACT GOALS UNDER PARAGRAPH (9)(III) OF THIS SUBSECTION.

(II) BEFORE AWARDING A CONTRACT COVERED UNDER THIS PARAGRAPH, A UNIT SHALL PROVIDE TO THE GOVERNOR'S OFFICE OF SMALL, MINORITY, AND WOMEN BUSINESS AFFAIRS:

1. A DRAFT OF ANY PROPOSED MINORITY BUSINESS ENTERPRISE PARTICIPATION GOALS AND SUBGOALS FOR THE CONTRACT; OR

2. IF THE UNIT PROPOSES TO WAIVE ANY OF THE REQUIREMENTS OF THIS SUBSECTION RELATING TO THE ESTABLISHMENT, USE, AND WAIVER OF CONTRACT GOALS FOR A SOLE SOURCE PROCUREMENT UNDER PARAGRAPH (9)(III) OF THIS SUBSECTION, THE REASONS FOR THE PROPOSED WAIVER.

(III) NO LATER THAN 10 BUSINESS DAYS AFTER RECEIVING A SUBMISSION UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE GOVERNOR'S OFFICE OF SMALL, MINORITY, AND WOMEN BUSINESS AFFAIRS SHALL:

1. A. APPROVE THE MINORITY BUSINESS ENTERPRISE GOALS AND SUBGOALS PROPOSED BY THE UNIT OR, IN THE CASE OF A SOLE SOURCE PROCUREMENT, THE PROPOSED WAIVER OF THE REQUIREMENTS OF THIS SUBSECTION RELATING TO THE ESTABLISHMENT, USE, AND WAIVER OF

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CONTRACT GOALS FOR THE PROCUREMENT UNDER PARAGRAPH (9)(III) OF THIS SUBSECTION;

B. ESTABLISH ALTERNATIVE MINORITY BUSINESS ENTERPRISE GOALS AND SUBGOALS FOR THE CONTRACT; OR

C. REQUIRE THE UNIT TO ESTABLISH ALTERNATIVE MINORITY BUSINESS ENTERPRISE GOALS AND SUBGOALS FOR THE CONTRACT BASED ON THE RECOMMENDATIONS OF THE GOVERNOR'S OFFICE OF SMALL, MINORITY, AND WOMEN BUSINESS AFFAIRS; AND

2. IF APPROPRIATE, MAKE RECOMMENDATIONS ON HOW THE PROCUREMENT COULD BE UNBUNDLED TO FACILITATE PARTICIPATION BY MINORITY BUSINESS ENTERPRISES.

(IV) A UNIT SHALL:

1. CONSIDER THE RECOMMENDATION MADE BY THE GOVERNOR'S OFFICE OF SMALL, MINORITY, AND WOMEN BUSINESS AFFAIRS UNDER SUBPARAGRAPH (III) OF THIS PARAGRAPH; AND

2. NOTIFY THE GOVERNOR'S OFFICE OF SMALL, MINORITY, AND WOMEN BUSINESS AFFAIRS OF ANY CHANGES TO THE MINORITY BUSINESS ENTERPRISE GOALS AND SUBGOALS FOR THE CONTRACT OR ANY UNBUNDLING OF THE PROCUREMENT THAT RESULTS FROM THE OFFICE'S REVIEW.

(V) IF A UNIT UNBUNDLES A PROCUREMENT BASED ON THE RECOMMENDATIONS OF THE GOVERNOR'S OFFICE OF SMALL, MINORITY, AND WOMEN BUSINESS AFFAIRS, THE UNIT SHALL RESUBMIT THE RESULTING CONTRACTS TO THE OFFICE FOR REVIEW UNDER THIS PARAGRAPH REGARDLESS OF THE ESTIMATED VALUE OF THE RESULTING CONTRACTS. ”.

On pages 3 through 4, strike in their entirety the lines beginning with line 19 on page 3 through line 7 on page 4 and substitute:

"14-305.

(a) (1) Within 90 days after the end of the fiscal year, each unit shall report to the Governor's Office of Small, Minority, and Women Business Affairs, the certification agency, and, subject to § 2-1257 of the State Government Article, the Joint Committee on Fair Practices and Personnel Oversight.

(2) A report under this subsection shall for the preceding fiscal year:

(i) state the total number and value of procurement contracts between the unit and certified minority business enterprises, by specific category of minority business enterprise, including whether the minority business enterprise participated as a prime contractor or as a subcontractor;

(ii) indicate the percentage that those procurement contracts represent, by specific category of minority business enterprise, of the total number and value of procurement contracts;

(iii) state the total number and the names of certified minority business enterprises that participated as prime contractors or as subcontractors on procurement contracts awarded by a unit;

(iv) for each minority business included in the report under item (iii) of this paragraph, list all procurement contracts awarded by a unit to the minority business enterprise, including a description of the contract; [and]

(V) STATE THE TOTAL NUMBER AND VALUE OF PROCUREMENT CONTRACTS ENTERED INTO BY THE UNIT, INCLUDING EMERGENCY, EXPEDITED, AND SOLE SOURCE PROCUREMENTS, FOR WHICH NO MINORITY BUSINESS ENTERPRISE PARTICIPATION GOALS WERE ESTABLISHED;

(VI) PROVIDE A LIST OF CONTRACTORS THAT FAILED TO MEET MINORITY BUSINESS PARTICIPATION GOALS OR SUBGOALS ESTABLISHED IN A CONTRACT BETWEEN THE UNIT AND THE CONTRACTOR;

(VII) STATE THE TOTAL NUMBER AND VALUE OF PROCUREMENT CONTRACTS SUBMITTED BY THE UNIT TO THE GOVERNOR'S

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OFFICE OF SMALL, MINORITY, AND WOMEN BUSINESS AFFAIRS FOR REVIEW
UNDER § 14-302(A)(16) OF THIS SUBTITLE;

(VIII) FOR EACH CONTRACT INCLUDED IN THE REPORT UNDER
ITEM (VII) OF THIS PARAGRAPH, INDICATE:

1. WHETHER THE GOVERNOR'S OFFICE OF SMALL,
MINORITY, AND WOMEN BUSINESS AFFAIRS:

A. APPROVED THE MINORITY BUSINESS ENTERPRISE
GOALS AND SUBGOALS PROPOSED BY THE UNIT OR THE UNIT'S PROPOSED
WAIVER OF REQUIREMENTS OF § 14-302(A) RELATING TO THE ESTABLISHMENT,
USE, AND WAIVER OF CONTRACT GOALS FOR THE PROCUREMENT;

B. ESTABLISHED ALTERNATIVE MINORITY BUSINESS
ENTERPRISE GOALS AND SUBGOALS FOR THE CONTRACT;

C. REQUIRED THE UNIT TO ESTABLISH ALTERNATIVE
MINORITY BUSINESS ENTERPRISE GOALS AND SUBGOALS FOR THE CONTRACT
BASED ON THE RECOMMENDATIONS OF THE GOVERNOR'S OFFICE OF SMALL,
MINORITY, AND WOMEN BUSINESS AFFAIRS; OR

D. RECOMMENDED UNBUNDLING THE
PROCUREMENT TO FACILITATE PARTICIPATION BY MINORITY BUSINESS
ENTERPRISES; AND

2. WHAT ACTIONS, IF ANY, THE UNIT TOOK TO
IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S OFFICE OF SMALL,
MINORITY, AND WOMEN BUSINESS AFFAIRS; AND

[(v)] (IX) contain other such information as required by the
Governor's Office of Small, Minority, and Women Business Affairs and the certification
agency and approved by the Board.

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(3) As to procurement contracts for architectural services and engineering services reported under paragraph (2) of this subsection, the report shall identify by separate category of minority business enterprise procurements for:

(i) architectural services; and

(ii) engineering services.

(4) A report under this subsection shall be in a form prescribed by the Governor's Office of Small, Minority, and Women Business Affairs and the certification agency and approved by the Board.

(b) (1) On or before December 31 of each year, the Governor's Office of Small, Minority, and Women Business Affairs shall submit to the Board of Public Works and, subject to § 2-1257 of the State Government Article, to the Legislative Policy Committee a report summarizing the information the Office receives under subsection (a) of this section.

(2) IN ADDITION TO THE INFORMATION DESCRIBED IN SUBSECTION (A) OF THIS SECTION, THE REPORT SHALL INCLUDE INFORMATION REGARDING:

(I) PARTICIPATION BY MINORITY BUSINESS ENTERPRISES IN EMERGENCY, EXPEDITED, AND SOLE SOURCE PROCUREMENTS AND THE SMALL BUSINESS RESERVE PROGRAM; AND

(II) EACH UNIT'S ATTAINMENT OR NONATTAINMENT OF THE OVERALL PERCENTAGE GOAL AND ANY SUBGOALS ESTABLISHED FOR THE UNIT UNDER § 14-302(A)(1) OF THIS SUBTITLE IN EACH OF THE IMMEDIATELY PRECEDING 5 FISCAL YEARS.

[(2)] (3) This report may be prepared in conjunction with the annual report required under § 9-306 of the State Government Article."

AMENDMENT NO. 3

On page 4, before line 8, insert:

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"SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) The Department of Legislative Services shall conduct a review of the implementation of statutory and regulatory requirements of the Minority Business Enterprise Program.

(b) The review shall examine:

(1) the process for certifying businesses as minority business enterprises;

(2) the process for establishing minority business enterprise participation goals and subgoals for procurement contracts;

(3) outreach, training, and notification regarding the Minority Business Enterprise Program provided to candidates for minority business enterprise certification, certified minority business enterprises, and primary contractors that are not minority business enterprises;

(4) the application of minority business enterprise participation goals and program requirements to different types of contracts, including small procurements, sole source procurements, emergency and expedited procurements, and Small Business Reserve procurements;

(5) the experience of minority business enterprises that participate in State procurements with respect to their awareness of contracting opportunities with the State, prebid interactions with primary contractors that are not minority business enterprises, and participation as subcontractors on State procurement contracts; and

(6) tracking of actual minority business enterprise participation upon contract completion.

(c) On or before December 15, 2021, the Department of Legislative Services shall report its findings and recommendations to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee in accordance with § 2-1257 of the State Government Article.

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SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall take effect July 1, 2022, contingent on the enactment of legislation by the General Assembly to extend the termination date of the Minority Business Enterprise Program under § 14-309 of the State Finance and Procurement Article beyond July 1, 2022.”.

On page 4, in line 8, strike “2.” and substitute “4.”; in the same line, after “That” insert “, except as provided in Section 3 of this Act.”; and in line 9, strike “October” and substitute “July”.