



THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

**Testimony of Senator Melony G. Griffith in Support of Senate Bill 487**  
**Procurement – Minority Business Enterprises - Revisions**  
**Senate Budget and Taxation Committee**  
**Wednesday, February 16, 2022**

Chair Guzzone, Vice Chair Rosapepe, and members of the Senate Budget and Taxation Committee:

This bill, Senate Bill 487, is a list of policy changes that came as a result of the Evaluation of the Minority Business Program report. I am pleased to present Senate Bill 487.

Senate Bill 487 will:

**Create an MBE Ombudsman**

The MBE Ombudsman is appointed by the Special Secretary for GOSBA, who must, in accordance with the State budget, allocate staff and resources to the Ombudsman to fulfill his or her duties. The Ombudsman must (1) make reasonable attempts to resolve disputes between MBEs and prime contractors, including disputes over contract scope and payments and (2) serve as a resource to units of State government, prime contractors, and MBEs in resolving disputes on relevant contracts. In resolving disputes, the Ombudsman may:

- Compel prime contractors and MBEs to provide documentation related to contract performance and payments; and
- Order any relevant payments to be made in conjunction with a dispute resolution.

In general, the Ombudsman may not disclose information received during a dispute resolution without the written consent of the party that provided the information. However, the Ombudsman may disclose information to GOSBA's Assistant Attorney General.

**Enhance Reporting Requirements and Transparency**

Annually, each State agency must report to GOSBA the results of each compliance assessment required to be conducted under current law for each contract that is completed in that year. The report must include specified information, including the total dollar value of payments under the contract and the total dollar value of payments to each subcontractor.

Each solicitation for bids or proposals that includes an expected degree of MBE participation must include a summary of the factors used to determine the MBE participation goal, including subcontracting opportunities identified for the project, any applicable industry



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codes linked to those opportunities, and the number of certified MBEs identified for those opportunities.

Biennially, GOSBA, in consultation with the Attorney General and Maryland Department of Transportation, must establish statewide MBE participation goals by industry type. In establishing the goals by industry type, GOSBA must use the same methodology used to establish an overall statewide MBE participation goal in current law. In any year in which there is a delay establishing the goals by industry type, the previous year's goals apply. Agencies must annually report to GOSBA their contract awards and payments by industry type, and GOSBA must annually summarize data reported by agencies by industry type.

#### **Improve Vendor Accountability**

GOSBA must maintain and publish on its website a list of prime contractors who, based on the results of compliance assessments and in the absence of specified mitigating factors, persistently fail to meet MBE participation goals on their contracts. GOSBA may develop regulations to implement this requirement. Persons who persistently fail to meet MBE contract participation goals are not considered responsible bidders or offerors for the purpose of participating in State procurements.

The bill expands the requirement that prime contractors pay undisputed amounts to their subcontractors within 10 days to include all contractors, not just construction contractors. It also expands State agencies' authority to withhold progress payments from prime contractors that do not pay their subcontractors undisputed amounts in a timely fashion to include all prime contractors, not just those working on construction contracts.

The bill repeals authority for State agencies to assess liquidated damages against contractors that fail to comply in good faith with provisions of the MBE program.

#### **Codify Small Business Set Asides**

The bill codifies Executive Order 01.01.2021.01, which generally requires State procurements with a value between \$50,000 and \$500,000 to be automatically set aside for small businesses by designation to the Small Business Reserve (SBR) program. The set-aside requirement does not apply to (1) purchases from preferred providers; (2) specified procurements involving federal dollars; (3) procurement of human, social, cultural, or educational services; or (4) term and master contracts. GOSBA may waive this requirement when it is not practicable to reserve a procurement for small businesses.

#### **Authorize MBE Graduation**

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PRESIDENT PRO TEMPORE

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Budget and Taxation Committee



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In conjunction with the establishment of a mentoring program for MBEs, the Special Secretary for GOSBA may authorize an MBE that has graduated from the program and has been decertified to retain or regain its MBE certification for a limited period of time in exchange for serving as a mentor to MBEs.

Thank you for the opportunity to present Senate Bill 487, I respectfully request a favorable report.