



Wes Moore, Governor · Aruna Miller, Lt. Governor · Atif Chaudhry, Acting Secretary

BILL: **House Bill 646** - State Procurement - Minority Business Enterprises and Small Business Enterprises - Procurement Forecast, Employee Performance, and Outreach

COMMITTEE: House Health and Government Operations

DATE: March 1, 2023

POSITION: Letter of Information

Upon review of House Bill 646 - State Procurement - Minority Business Enterprises and Small Business Enterprises - Procurement Forecast, Employee Performance, and Outreach, the Maryland Department of General Services (DGS) provides these comments for your consideration.

House Bill 646 would require each procurement unit:

- publish a procurement forecast report of all known and anticipated procurements for the upcoming fiscal year annually by May 1.
- make meeting minority business enterprise (MBE) goals a required criterion for a procurement officer's consideration for a merit increase or performance-based promotion.
- make a procurement officer ineligible for any merit increase or promotion if the unit fails to meet MBE goals.
- terminate an employee or reassign them to a position that does not involve procurement if there is no improvement toward meeting MBE goals over three (3) consecutive years.

The reporting requirements of this bill are counter-productive and not in the best interest of small businesses. Currently, the Governor's Office of Small, Minority and Women Business Affairs (GOSBA) publishes the procurement forecast. Small businesses can find all the procurement forecast information in one central location on GOSBA's website. This bill proposes each procurement unit publish its own forecast which would force small businesses to search multiple locations for information. Additionally, requiring procurement units to publish the forecast by May 1 would not provide complete information. Changing the report date before the end of the fiscal year (June 30) would exclude high-value contracts with capital projects that are tied to the budget, thus omitting valuable information for vendors.

Currently, compliance with an **MBE participation goal established in State contracts falls directly on the prime contractor**. The State serves as a liaison to ensure all parties act in good faith. A procurement officer is responsible for **meeting the State's requirements for establishing MBE participation goals, not for complying to the goals.**

If the State is forced to terminate a procurement officer, it may significantly increase expenditures to hire new staff. Termination for failure to meet an MBE goal will likely **create high turnover** in a field where it is already difficult to hire experienced and quality procurement officers. Agencies would have to spend an exhaustive amount of time and resources recruiting, hiring, and training new procurement officers. The MBE goal achievement for procurement officers would need to be tracked to determine eligibility for promotion or termination. A better use of procurement resources would be to provide procurement officers with the tools and training to best establish MBE participation goals and to assess liquidated damages to prime contractors that do not meet the MBE participation goals without good reason.

For additional information, contact Ellen Robertson at 410-260-2908.