

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 906 (Delegates Robinson and Oaks)
Health and Government Operations

Minority Business Enterprises - Signing Bids or Proposals - Submitting
Subcontracts

This bill codifies and expands existing regulatory requirements involving bids or proposals submitted in response to a solicitation that includes an expected level of minority business enterprise (MBE) participation. It requires that any such bid or proposal be signed by the MBEs identified in the bid or proposal, and that prime contractors submit ratified subcontracts with each MBE to be counted toward the participation within 30 days of contract award.

Fiscal Summary

State Effect: State procurement units and the Board of Public Works (BPW) can handle the bill's requirements with existing budgeted resources. To the extent that the bill requires additional review or follow-up with contractors involved with affected procurements, it may occasionally delay some contract awards.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill requires each affected bid or proposal to include the specific commitment of each certified MBE identified in the proposal. The 30-day requirement for ratified subcontracts may be waived if the prime contractor, MBEs, and the procurement unit all agree.

Current Law: The State's MBE program establishes a goal that at least 25% of the total dollar value of each agency's procurement contract be awarded to MBEs, including 7% to African American-owned businesses and 10% to woman-owned businesses. There are no penalties for agencies that fail to reach these targets. Instead, agencies are required to use race-neutral strategies to encourage greater MBE participation in State procurement.

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.

BPW must issue regulations consistent with State procurement law to carry out the purposes of the MBE program. Procurement regulations issued under this authority require bidders and offerors to submit with each bid or proposal an MBE participation schedule that includes the name of each certified MBE that will participate in the project, the work that each MBE will perform, and the price or contract percentage to be paid to each MBE. Failure to include the participation schedule can result in a bid or proposal being deemed not responsive. The regulations also require that procurement units verify that MBEs listed on the participation schedule actually perform the work and receive compensation consistent with the schedule.

A bidder or offeror may request a waiver from an MBE contract or subcontract goal. A waiver may be granted only if the bidder or offeror reasonably demonstrates that certified MBE participation could not be obtained, or could not be obtained at reasonable price, and if the agency head determines that the public interest is served by a waiver.

Failure to comply with MBE contract provisions, or to secure a waiver, can result in contract termination, referral to the Attorney General for appropriate action, or initiation of any other specific remedy identified in the contract.

Small Business Effect: The bill makes it more difficult for prime contractors that receive State contracts to renege on commitments made to MBEs during the procurement process.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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mpc/rhh

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