



OFFICE OF DESIGN, CONSTRUCTION & ENERGY

BILL: Senate Bill 207
State Procurement – Minority Business Enterprise Participation Goals –
Performance of Unit Employees
COMMITTEE: Senate Education, Health & Environmental Affairs
DATE: February 3, 2021
POSITION: Oppose

Upon review of Senate Bill 207 – State Procurement – Minority Business Enterprise Participation Goals – Performance of Unit Employees, the Department of General Services (DGS) provides these comments in opposition to the bill.

Currently, compliance with MBE participation goals established in State contracts **falls directly to the prime contractor** and indirectly to the State Agency Contract Monitors and MBE Liaisons, **not the procurement officer**. An Agency MBE Liaison, along with the procurement officer, establish the MBE participation goal for each contract, based upon the subcontracting opportunities available and the number of Maryland certified MBEs within the database maintained by the Maryland Department of Transportation. Once an MBE participation goal has been established, it is up to the prime contractor to utilize their proposed MBE subcontractor(s) in order to meet the contracted MBE goal and to achieve MBE compliance on the contract. Should a prime contractor not exhibit a good faith effort to meet the MBE goal, liquidated damages would be assessed.

Senate Bill 207 aims to hold a procurement officer accountable for the MBE performance on a contract rather than the prime contractor. A procurement officer is responsible for meeting the State's requirements for establishing MBE participation goals, not for the compliance to meet those goals. **Compliance is the responsibility of the prime contractor, not the procurement officer**. State agency Contract Monitors and MBE liaisons work with contractors to ensure compliance while the procurement officer assists in modifying the contract, as deemed appropriate, to add or remove MBE's based on the subcontractor(s) ability to perform on behalf of the contractor. The contractual obligation is between the contractor and the subcontractor. The State serves as a liaison to ensure all parties act in good faith.

The fiscal impact of Senate Bill 207 would be significant if procurement officers were terminated due to non-fulfillment of MBE participation goals. Senate Bill 207 may also conflict with the State's personnel law, regulations, and policies.

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

