

**SMMCOC SB197 2021.pdf**

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**SOUTHERN MARYLAND  
MINORITY CHAMBER OF COMMERCE**

**TO MAKE A COMMUNITY A BETTER PLACE FOR ALL**



February 1, 2021

The Honorable Paul G. Pinsky  
Senate Education, Health, and Environmental Affairs Committee  
2 West  
Miller Senate Office Building  
Annapolis, Maryland 21401

Dear Chairman Pinsky,

I am writing on behalf of the Southern Maryland Minority Chamber of Commerce (SMMCOC) to voice our support for **SB197 – Procurement - Minority Business Participation Goals - Waiver**. As a regional voice for small, minority, women, and veteran owned businesses across Southern Maryland, we are very in tune with the struggles and hardships that many business owners in our communities face. For the last seven years, we have sought to protect the interests of these local businesses while promoting development and innovation across Calvert County, Charles County, St. Mary's County and Southern Prince George's County. As an all-volunteer foundation, the Covid-19 pandemic has been exceptionally hard on the SMMCOC and our members. Nevertheless, we have seen the promising growth our region has made in recent years, and we are hopeful that the State of Maryland will continue to protect small, minority, women, and veteran owned businesses.

This bill will assure the inclusion of MBE subcontracting goals on commodities contracts and on purchases that are made under the State's Emergency Procurement Act. This will result in the addition of millions of dollars to subcontracting opportunities for certified MBEs. While there were numerous certified MBEs listed in the MBE Directory who specialize in selling and distributing medical equipment and medical supplies, a very small percentage of MBEs were awarded PPE supply contracts by DGS Procurement Officers during the current pandemic because the state law, as it is currently written, does not mandate that MBE subcontracting goals be placed on purchases that are made under the Emergency Procurement Act. To protect the interest of MBEs and our members who wish to provide services and commodities during emergencies such as Covid-19, we are respectfully requesting the Committee's **FAVORABLE** consideration of the bill.

Sincerely,

Doris Cammack-Spencer  
President/CEO

**2021 SB197 MBE Waivers DGS OPP EHEA 2-3-21.pdf**

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Position: UNF

Larry Hogan  
Governor

Boyd K. Rutherford  
Lt Governor



Ellington E. Churchill, Jr.  
Secretary

Nelson E. Reichart  
Deputy Secretary

OFFICE OF THE SECRETARY

**BILL:** Senate Bill 197  
Procurement – Minority Business Participation Goals – Waiver

**COMMITTEE:** Senate Education, Health and Environmental Affairs

**DATE:** February 3, 2021

**POSITION:** Oppose

Upon review of Senate Bill 197 – Procurement – Minority Business Participation Goals – Waiver, the Department of General Services (DGS) provides these comments for your consideration and in opposition to the bill.

Under Senate Bill 197, DGS's Office of State Procurement (OSP) would be prohibited from waiving minority business enterprise goals for emergency or expedited procurement contracts or contracts for the purchase of commodities.

Senate Bill 197 would not only have significant operational and fiscal impacts on OSP, but it may also have adverse effects on the health, safety, and welfare of Maryland citizens. With every procurement, including an emergency procurement, a procurement officer examines subcontracting opportunities and available minority business enterprises that can provide goods or services needed. It is then determined if a Minority Business Enterprise (MBE) participation should be applied. If so, an MBE participation goal is established for that procurement. The following should also be considered:

- Under an emergency procurement, the threat to health, safety and welfare may diminish a procurement officer's ability to establish an MBE participation goal.
- Based on the timing of an emergency or expedited contract, a vendor's ability to find available MBEs to satisfy a goal may be diminished in order to mitigate the health, safety, and welfare issues.
- A best value or lowest bid contract that could be executed quickly could mean a vendor has requested a waiver of the MBE participation goal. Under current law, **if the vendor has provided evidence of a good faith effort to obtain MBE subcontractors**, but because of the nature of the emergency or expedited contract was unable to gain subcontractors, the procurement officer **may determine to grant a waiver, upon approval by the agency head.**
- **If a good faith effort is not demonstrated, the procurement officer would not grant a waiver and move on to the next bid or proposal, as with any procurement.**



Senate Bill 197 would have the following effects:

- A procurement officer would be prohibited from recommending a waiver request and would be required to immediately eliminate a bid or proposal, even if a good-faith effort to obtain MBE participation has been demonstrated. A procurement officer would then have to evaluate the next vendor, further delaying the award of an emergency contract.
- The next vendor may be able to provide the goods or services needed, but the result is a delay in award and potentially further endangering the health, safety, and welfare of the citizens of Maryland.
- Senate Bill 197 removes the procurement officer's independent ability to review and decide to request the agency head's approval of a waiver based on the threat to health, safety, and welfare.
- Senate Bill 197 may have the unintended effect of encouraging procurement officers to not apply MBE participation goals on emergency procurements so as to avoid the issue of waivers.
- Delays in procuring emergency goods and services may cost the State additional funds.

Concerning State commodities procurements, OSP seeks to have multiple contracts with MBEs serving as prime contractors rather than participating as subcontractors and spreading out contracts across the State. By prohibiting waivers on commodity procurements, MBE prime contractors may lose the ability to obtain a State contract on its own forcing it to share the work with other MBEs.

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