

SMMCOC SB207 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 **SB207 – State Procurement - Minority Business Enterprise Participation Goals - Performance of Unit Employees**. 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.

The federal government has, for many years now, implemented performance-based metrics to hold federal Contracting Officers accountable for meeting federally mandated minority contracting goals. We feel it is time that for State of Maryland Procurement Officers to be held accountable for achieving MBE goals. To assure that the state's mandated MBE subcontracting goals are achieved by state agencies, we are respectfully requesting the Committee's **FAVORABLE** consideration of the bill.

Sincerely,

Doris Cammack-Spencer
President/CEO

2021 SB 207 MBE Participation Goals-Performance of

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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 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.

