

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.