

O'Malley/Brown Transition

MBE/WBE Workgroup Transition Report

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O'Malley/Brown MBE/WBE Transition Workgroup Report Executive Summary

Maryland possesses one of the most ambitious regimes for the inclusion of minority and women-owned business in state government contracting. Yet for all of the bold goal setting, there has been little measurable progress in the level of MBE/WBE contracting inclusion during the past ten years.

During this period, there has been a significant amount of authoritative research that has sought to assess the shortcomings of Maryland's MBE/WBE initiatives and offered recommendations for their improvement. This winter, 35 concerned residents of Maryland came together, reviewed the existing literature, poured over thousands of pages of state documents, and conducted numerous interviews with MBE/WBE liaisons, procurement officials, senior management of state agencies, as well as key officials at the Governor's Office for Minority Affairs (GOMA).

The recommendations highlighted in this report largely represent an affirmation of what has been articulated previously – with one caveat. It is this workgroup's firm belief that the primary barrier to progress regarding MBE/WBE contracting inclusion is overcoming the institutional inertia that has developed across state government regarding this issue, where procurement officials and MBE/WBE liaisons operate in silos and very little communication, collaboration, or sharing of best practices occurs.

This barrier – while requiring a variety of specific administrative, legislative, and regulatory changes – can be fully overcome in large measure by the actions of an engaged governor that can promote widespread culture change through the use of executive orders, enhanced monitoring and tracking of MBE/WBE contracting inclusion, and by holding agency leadership accountable for failures to meet MBE/WBE goals.

To accomplish its work, the workgroup divided itself into three sub-committees – GOMA assessment, legislative/policy initiatives, agency procurement – whose findings are detailed in the following report.

O'Malley/Brown MBE/WBE Transition Workgroup Report GOMA Assessment Sub-committee

Overview

This sub-committee sought to assess the effectiveness of the Governor's Office of Minority Affairs (GOMA) and provide analysis on the role it plays in the promotion of full inclusion for minority and women-owned business enterprises (MBE/WBE) in state government contracting. The sub-committee conducted this assessment via detailed interviews with the leadership and staff of GOMA, consultation with stakeholder groups and local government officials, as well as through research into state agencies – including the Department of Business and Economic Development (DBED) and the Department of Human Resources (DHR) – that possess units with missions that parallel responsibilities held by GOMA.

GOMA has experienced a period of rapid growth in recent years. During its inception as a gubernatorial coordinating office in FY1995, GOMA was authorized three full time positions and a budget of a little more than \$175,000. This staff-to-budget ratio held until FY2005, when GOMA's budget nearly doubled to more than \$710,000 and its level of full-time staff increased from three positions to 9.5 and 11.5 positions in the succeeding fiscal years.

These funding increases were prompted by the recommendations of a study – commissioned by the prior administration – to identify areas of potential reform for the state's MBE/WBE program. The commission's recommendations largely echoed statements made in the extant literature on the subject – including a 2001 report by the National Economic Research Associates and a 2002 performance audit by the General Assembly's Department of Legislative Services. However, its findings served to underscore the severity of the staffing and budget shortfalls that inhibited GOMA from performing the most basic level of due diligence to analyze simply the MBE/WBE program reports submitted to them by state agencies.

According to a program description prepared by the Department of Budget & Management (DBM), here is GOMA's purpose:

“The Governor's Office for Minority Affairs (GOMA) is responsible for managing and overseeing the state's Minority Business Enterprise (MBE) program for all seventy-five State agencies. GOMA provides support to these agencies to ensure they can achieve their MBE program goals. GOMA is the principal advocate and ombudsman for Maryland's minority and women-owned businesses. GOMA promotes and coordinates the plans, programs, and operations of State government that promote or otherwise affect the establishment, preservation, and strengthening of minority business enterprises ... In addition, GOMA advises the governor on key issues affecting minority citizens, including employment, education, health, and other such matters.”

Yet in assessing GOMA's efforts to fulfill that purpose, the Department of Budget and Management (DBM) utilizes a litany of performance measures – including the, “number

of state agencies reporting accurate payment data,” “number of visitors to the [GOMA] web portal,” and, “number of agencies requesting GOMA’s support and advice” – that have little or nothing to do with GOMA realizing its stated objective of facilitating MBE/WBE program compliance.

In so many ways DBM’s watered down performance measures are indicative of a critical lack of mission clarity that pervades GOMA. At times, the office appears to be simultaneously responsible for (1) MBE/WBE program monitoring and compliance, (2) delivering business development training and technical assistance to MBE/WBEs, (3) providing ombudsman and advocacy services to MBE/WBEs involved in procurement disputes, (4) marketing and public relations regarding MBE/WBE development and minority concerns more generally in Maryland.

This dizzying array of roles and responsibilities – the result of both legislative mandate and administrative edict – in effect renders GOMA incapable of fulfilling its original purpose to ensure that state agencies meet the full inclusion of MBE/WBE firms in contracting by the state of Maryland.

Recommendations

The sub-committee believes that the following two actions are critically important first steps in the wider movement towards MBE/WBE program reform:

- Reassessment/Reorganization of GOMA
- Implementation of the Centralized Bidding Registry (CBR)

While specific recommendations regarding the reorganization of GOMA are outlined below, detailed suggestions pertaining to the implementation of the CBR – and the affects of such action on meeting MBE/WBE procurement goals – will follow this summary document.

Role & Future of GOMA

The sub-committee strongly submits that the role that suffers greatest from GOMA’s multiplicity of duties is its responsibility to conduct monitoring and compliance of MBE/WBE procurement levels throughout state government.

This practice has a pernicious effect in that the lack of oversight GOMA is able to lend to MBE/WBE procurement monitoring leads all parties – prime contractors/competing sub-contractors, policymakers, and even MBE/WBEs themselves – to question the veracity of individual agency procurement statistics, making it nearly impossible to create effective accountability measures.

In order for GOMA’s actions and requests to carry the proper legitimacy throughout state government and to ensure that the office possesses the budget and staffing levels necessary to perform its vital monitoring and compliance missions – among its myriad of other responsibilities – GOMA should be elevated to the status of a full cabinet department.

Other areas for revamping the office should include:

- Consolidate GOMA's Training/Technical Assistance, Ombudsman/Advocacy, and Public Relations Missions under DBED's Governor's Office of Business Advocacy and Small Business Assistance
 - Investigate Potential Further Collaboration and Consolidation Between the Governor's Office of Business Advocacy and the Maryland Small Business Development Center
- Formalize GOMA as a Permanent Gubernatorial Coordinating Office – that reports directly to one of the governor's deputy chiefs of staff – with the Charge to Oversee MBE/WBE Monitoring and Compliance
 - Affirm Current Statutory Requirements – delineated in volume 20, title 21 of state procurement regulations – by Instructing all Agency MBE/WBE Liaison Officers to Report Directly to GOMA
 - Authorizing GOMA – via executive order – with Inspector General Powers to Audit State Agencies & Impose Sanctions Regarding MBE/WBE Compliance

A reorganization of this nature would enable GOMA to focus on fulfilling its primary responsibilities – that of monitoring and compliance – while reassigning roles that mirror business development to other parts of state government that possess an expansive infrastructure for this kind of work, reducing unnecessary program duplication. Furthermore, designating that GOMA – in its new reincarnation as a gubernatorial coordinating office – would be led by or report to a gubernatorial deputy chief of staff allows for a much more streamlined process of integrating MBE/WBE procurement monitoring into the StateStat performance measurement system.

Minority Boards & Commissions

As a corollary to the sub-committee focus on GOMA, the sub-committee also analyzed other realms of state government that pertained to the topic of minority affairs – defined broadly. One issue that generated discussion and precipitated further review was the state's existing minority commissions – for women, Asian/Pacific Americans, seasonal and migrant workers, etc.

Given concerns that the breadth of commissions did not account for some emerging populations as well as other historically marginalized ones – for example, there is no commission on African-American affairs – and that the number of commissions relative to the low level of funding for the commissions as a whole diluted each group's individual impact, the sub-committee believes the Administration should consider consolidating at least all of the ethnic commissions into one umbrella entity, entitled the Maryland Multi-cultural Commission.

Recommendation #1 – Improvements to MBE/WBE Participation through Improved Reporting: Central Bidder’s Registration (CBR) Master Database

Problem Identification:

Maryland’s MBE/WBE contract awards continue to lag behind legislated award goals of 25 percent overall, 10 percent for women-owned Businesses and 7 percent for African-American businesses. Reporting of MBE/WBE participation is conducted on an annual basis, which means that sub-goal information is not available. Historically, the data generated from these reports has been inaccurate. Without accurate information, programs cannot be targeted to improve results in a meaningful manner.

Recommended Action:

- Fund the implementation of the Centralized Bidding Registry (CBR) internet procurement portal so that prime and sub-contractor reporting can be submitted online. Data would possess near real time accuracy and available for analysis and targeted improvement actions. We also recommend that the CBR be combined with eMaryland Marketplace to gain synergy between these systems. The Department of General Services (DGS) currently maintains eMaryland marketplace for the state. Hire an outside contractor to develop the design for the joint portal.
- Agency updates should be required monthly. If the portal’s design is kept simple, this could be up and running in a matter of months.
- Improve reporting on sub-goals, prime and sub-contractor participation.
- Develop statewide prime contractor compliance monitoring and publish those results.
- Fully Implement the 2005 CBR Governor’s Report

Classification:

Administrative

Functional/Operational Area:

GOMA, DGS [procurement and logistics office]

Estimated Annual Fiscal Impact:

Unknown

Estimated One-Time Implementation Cost:

We estimate the initial design and build out of the CBR incorporated with the eMaryland marketplace to cost \$1 million for design, development and hardware. We suggest a phased approach to development and rollout.

Barriers to Implementation:

DGS cites a lack of current funding to support the project.

Systems requirements would require input from multiple agencies including DGS, GOMA and DBED.

Recommended Implementation Date:

FY2008 [beginning]

Next Steps:

Assign responsibility for the CBR development to a specific agency. Fund the central bidder's registration project and develop procurements for the work.

Analysis:

Implementation of this recommendation will improve information about current MBE/WBE compliance levels so that targeted actions can be taken to improve sub-standard results. At the reported 2005 levels, more aggressive and interim monitoring of MBE/WBE procurements would result in \$181,586,000 of additional contract dollars awarded to MBE/WBE contractors.

Recommendation #2 – Standardize Central Bidders Registration (CBR) State Master Database and MBE/WBE Outreach Programs/Materials

Problem Identification:

There is no standard approach to procurement outreach. Each state agency conducts their own outreach and vendor fairs, resulting in duplication of efforts and personnel. Fragmentation occurs, as there are multiple distinct databases for vendor registration, procurement opportunities littered throughout state government.

State agencies claim they are not meeting legislatively mandated procurement goals due to a relative dearth of certified MBE/WBE applicants in certain geographic areas. This lack of qualified MBE/WBE vendors is highlighted particularly in Western Maryland and on the Eastern shore. State agencies need to increase their awareness of MBE/WBE vendors statewide in order to meet the 25percent goal that was set for the MBE/WBE program in 2002.

Recommended Action:

Create a one-stop digital portal to avoid the current fragmented approach to minority vendor outreach by integrating all databases related to procurement into a single Centralized Bidding Registry (CBR):

- Required listing of ALL state vendors [including SBR, MBE/WBE, out-of-state firms, etc.]
- Clearinghouse for all Agencies Receiving State Funds to Post Procurement Opportunities
- Digital Data Collection
 - Format to be set up with input from agency MBE/WBE liaisons
- Standardized Procurement Outreach Materials
- Updated Events Calendars
- Resource Information Links
 - e.g.: SBDC, Mentor Protégé program, Bonding, Access to Capital, COMAR
- Streaming Media for Training/Instructional Videos, Web Conferencing Capabilities
- Regional Business Success Stories

Aggressively addressing outreach initiatives to strengthen programs for promoting procurement opportunities among MBE/WBE firms.

- Consistent information is needed among state agencies:
 - Governor's Office of Business Advocacy and Small Business Assistance should undertake the development of standardized material for all agencies to present, including training of each agency's MBE/WBE liaison and procurement personnel.
- Marketing the state's services by conducting periodic multi-agency regional outreach events. The purpose of these forums is to ensure that MBE/WBEs are aware of the opportunities available to do business with the state and to

help them navigate through the state's complex certification and procurement processes.

- Outreach/vendor fairs serve as a conduit for recruiting as well as a forum for networking and educating the general public and regional agencies on issues such as new policies, incentives and penalties.
- Reserve time for relationship building. For example, based on SBA's Business Matchmaking model:
 - Opportunities for introduction and one-on-one dialogue with potential mentors and/or prime contractors.
 - Allowing firms of lesser experience to network in order to collaborate on projects with more experienced counterparts.
- Those invited could include state legislators and politicians, state employees, targeted minority organizations, other for-profit and non-profit organizations, as well as local community development corporations.
- Publicize Regional Business Success Stories
- More Events, Smaller Venues, Specific Target Audiences
 - Ensure cost for public to attend is minimal, and venue convenient.
 - Half-day events could take place at state office buildings' common rooms, thereby avoiding costly hotel rentals and catering facilities.

Classification

Administrative

Functional/Operational Area

DGS, GOMA, DBED and all other state agencies.

Estimated Annual Fiscal Impact

Unknown. One-time portal development and ongoing maintenance balanced with eliminating waste and redundancy caused by several agencies duplicating materials and services. Hosting more regional sessions targeting specific audiences, which utilize simpler venues and cost less.

Estimated One Time Implementation Cost

- Developing the CBR
- Assembling display materials and packets needed to serve as a conduit for disseminating information to potential applicants, both digitally on web portal and in traditional print material.
- Adding personnel to serve as webmasters to keep online content current.

Barriers to Implementation

Budget: Personnel is needed to develop and disseminate promotional materials, be trained and hold training sessions for MBE/WBE liaison officers, and update calendar on MBE/WBE web-based portals.

Administrative: Incentives are needed for prime contractors to attend regional outreach events and meet the MBE/WBE sub-contractors. Compensation and motivational programs need to be developed for state agencies who meet their MBE/WBE participation goals.

Recommended Implementation Date

FY2007 [end]

Next Steps

- Immediately establishing one statewide one-stop portal for a vendor database, data collection, and information dissemination to potential applicants.
- Governor's Office of Business Advocacy and Small Business Assistance needs to develop and collate existing materials from various agencies for standardized statewide distribution to all participating state agencies.
- GOMA needs to develop and train the MBE/WBE liaisons in innovative recruitment techniques to achieve a more diverse workforce.

Analysis

The goals are to strengthen programs that promote minority and women-owned as well as small business participation in state contracting and to establish more effective outreach programs to find qualified contractors in certain geographic parts of the state.

Periodically holding outreach forums on a rotating basis, with four locations statewide throughout the year, and distributing standardized outreach materials will increase the applicant pool of minority sub-contractors for prime contractors that conduct business with the state agencies and assist the agencies in meeting their MBE/WBE participation goals.

Appendix / Background Information

It appears that too many programs and databases are operating independently, so a task force (*Chapter 386 of 2006*) was created to study efficiency in procurement, and make recommendations as to the overall organization of the State system, the dispute resolution process, and the procurement of information technology. Separate multiple databases referenced above include:

- eMaryland Marketplace – found at www.ebidmarketplace.com, is the existing stand-alone procurement database run by DGS, established as a procurement-clearing house per 2004's House Bill 702.
<http://mlis.state.md.us/2004rs/billfile/hb0702.htm>
- Central Bidders Registration (CBR) – 2004's House Bill 721 called for the State to develop the master vendor database, which never took place.
<http://mlis.state.md.us/2004rs/billfile/hb0721.htm>
- www.mdminoritybusiness.com – the current information distribution portal administered by GOMA contains expired event information.
- www.choosemaryland.org – administered by DBED, is yet another information portal, with its Maryland with Pride program providing listings of local vendors, and many broken links.

- www.mdsbdc.umd.edu – Maryland’s Small Business Development Center Network (SBDC) offers small businesses consulting services to develop and refine business plans, find sources of capital and develop strategies to support growth and profitability. This service is funded through a partnership between DBED, the Small Business Administration (SBA) and the University System of Maryland.
- www.mdptap.umd.edu – the Maryland Procurement Technical Assistance Program, a sub-division of the SBDC, is designed to help small and minority businesses identify, bid and perform on government prime and sub-contracts. (DBED and the Defense Logistics Agency of the United States Department of Defense fund this program in cooperation with the SBDC and the University of Maryland College Park.)
- www.smallbusinessreserve.maryland.gov – known also as SBR, this self-certification website is run by DGS, and then falls under the GOMA umbrella.
- Minority Business Enterprise Program – Certification offered by The Maryland Department of Transportation, Office of Minority Business Enterprise; oversight of the MBE/WBE program falls within GOMA’s jurisdiction.
<http://www.mdot.state.md.us/>

Recommendation #3 – Consolidate Small Business Reserve (SBR) into the State’s Master Database

Problem Identification

The Small Business Reserve (SBR) procurement percentage fell short of the projected 10 percent, and stands at only 6.4 percent for FY2006. The Small Business Reserve program (SBR) was created by *Chapter 75 of the Acts of 2004* and requires the 22 eligible state agencies to award at least 10 percent of each agency’s total contract value to certified small businesses. This mandate is to be carried out beyond the 25percent MBE/WBE participation goal, allowing small businesses the opportunity to bid for state contracts without competing with larger, more established companies. SBR is currently a stand-alone database where the initial vendor self-certification is administrated by DGS, and GOMA provides oversight afterwards.

State agencies are required by *Chapter 342 of the Acts of 2006* to provide detailed reports on their planned and actual contracting with small businesses for the upcoming fiscal year, as well as for the prior year. There do not appear to be current plans to integrate SBR into the CBR master vendor digital files, nor is a portal for digital data collection and distribution imminent.

Problems reported with the new SBR system:

- Vendor Database Unfamiliarity, Affecting Functionality
 - Complaints of Limited Search Capabilities
 - State agency procurement officials claim to have to cross-reference manually the SBR with other databases.
 - Lack of SBR Training/Guidance
 - Data Collection/Reporting Challenges
 - All self-certifying data needs to be re-entered annually by small business vendors that wish to renew registration.
- Confusion regarding which agency is responsible for SBR program implementation.
 - SBR workgroup in August 2006 proposed DGS integrate existing database into eMarylandmarketplace pending DGS response (eMarylandmarketplace contract expired in March 2006, and DGS was negotiating extension).

Recommended Action

- Immediate development and implementation of a single web portal (*the aforementioned CBR*).

Classification

Administrative

Functional/Operational Area

DGS, GOMA

Estimated Annual Fiscal Impact

Unknown

Estimated One Time Implementation Cost

Unknown

Barriers to Implementation

Resistance to change. By not integrating the current SBR program's management structure and oversight into the MBE/WBE program, it might become devoid of value for the state's minority and women-owned business community.

MBE/WBE Liaison officers – as defined in volume 20, title 21 of the state procurement regulations – will need to report directly to GOMA to ensure that agencies come into and remain in compliance with Maryland's MBE/WBE laws and procurement regulations, which in the case of SBR involves a 10 percent set-aside.

Agencies must collect, analyze and report data from a number of internal sources, and will need training in accessing the one-stop web portal for efficiency.

Recommended Implementation Date

Immediately – FY2007 [end]

Next Steps

- Integrate SBR program database into the CBR to eliminate duplication across agencies by creating a one-stop shop approach, avoiding a fragmented approach to minority affairs.
- Adequately resource and staff GOMA to develop standardized procurement procedures and policies for all state agencies as well as conduct requisite MBE/WBE liaison training.
- Adequately resource and staff at the Governor's Office of Business Advocacy and Small Business Assistance to create and monitor centralized access to MBE/WBE services – which include, but are not limited to, marketing and training resources in a one-stop shop format.

Analysis

Integrating the SBR into the main procurement database reinforces the importance of the 10 percent set aside for small businesses in state contracting.

**O'Malley/Brown MBE/WBE Transition Workgroup Report
Legislative/Regulatory Initiatives Sub-committee**

The O'Malley/Brown campaign promised to expand state contracting opportunities for MBE/WBEs. Such commitment reflects the belief that equal opportunity for minorities and women in business has yet to be achieved. In order to expand contracting opportunities for minority and women-owned firms, two areas are critical, those being monitoring and enforcement.

This sub-committee report is guided by these two policy concerns. Both areas need substantial improvement and implementation of these recommendations should go a long way to ensuring such improvement.

1. As to improved monitoring, recommendations deal with reporting requirements, information gathering and analysis, and technology and personnel enhancement.
2. As to improved enforcement, recommendations deal with imposing real and substantial penalties for non-compliance, increasing and expanding coverage of goals, and closing loopholes.

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I. Monitoring

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2. MBE/WBE sub-contractor participation should be delineated by prime contractors at time of bid submission. Solicitation language should be consistent statewide to mandate the use of MBE/WBEs. Failure to comply with this provision should be deemed non-compliance with procurement rules.
3. Eliminate the designation of non-profit organizations as MBE/WBE entities.
4. Support the re-authorization of the small business reserve program and increase the size standard for qualifying business entities from \$2 million to \$7 million in annual revenue.

II. Enforcement

5. Prompt payment requirements should be enforced and should apply to all contracts – not just construction contracts.
6. Establish penalties for prime contractors regarding non-compliance with MBE/WBE requirements as well as incentives for prime contractors that exceed expectations for partnering with MBE/WBE sub-contractors. Penalties should include enforcing contract sanctions for default, withholding future payments, refusing future bids, and canceling current contracts. Incentives should include favorable treatment during award selection of prime contractors that partner with MBE/WBE sub-contractors.
7. Establish penalties for state agencies not meeting MBE/WBE goals.
8. Vigorously enforce the commercial non-discrimination statute passed in 2006 that makes it unlawful for any firm that is engaged in business with the state – or seeking to be engaged in such business – to discriminate on the basis of race or gender in solicitation, selection, or treatment of any of its contractors, vendors, suppliers, or commercial customers.

III. Topics Requiring Further Study

9. Some contracts with the state are awarded through a grant process rather than the normal procurement process. Contracts awarded through the grant process are not subject to MBE/WBE requirements. This area should be studied to determine how to encourage equitable MBE/WBE participation.
10. Many entities that conduct business with the state of Maryland do not have MBE/WBE policies. This area should be studied to determine how best the state might encourage these firms to adopt MBE/WBE policies.
11. Investigate the applicability of state MBE/WBE procurement goals to local and quasi-governmental entities – i.e. school boards, housing and redevelopment authorities, the Maryland National Capital Parks & Planning Commission – that are either chartered by or make significant use of state funds.

Recommendation # 1 – Create one MBE/WBE certification for all Maryland jurisdictions (standardize process between state, counties, and cities).

Problem Identification:

There is no standard MBE/WBE certification process within the state of Maryland. Many MBE/WBEs complain about the undue burden of having to qualify for certification in a number of jurisdictions within the state – which involves criticism about unnecessary duplication of efforts and the challenge of learning and preparing multiple certification documents with varying requirements, definitions, and rules. Due to such concerns, many minority and women-owned business entities do not apply for MBE/WBE certification even though they would qualify for such designation.

Recommended Action:

Create one statewide certification form that can be utilized by the state, counties, and municipalities. This can be achieved by negotiating a MOU between the state and individual jurisdictions, perhaps in concert with the Maryland Association of Counties and Maryland Municipal League.

Classification:

Administrative

Functional Operational Area:

All state, county, and local government entities that are involved in the MBE/WBE certification process.

Estimated Annual Fiscal Impact:

Negligible, but there may be some cost savings realized from an end to material duplication and the consolidation of multiple processing bureaucracies.

Estimated One Time Implementation Cost:

Personnel to develop the standardized form as well as costs associated with distributing the statewide form.

Barriers to Implementation:

Resistance on the part of some jurisdictions that might wish to preserve the status quo and remain independent from a statewide certification consortium.

Recommended Implementation Date:

FY2008 [end]

Next steps:

The Governor’s Office of Minority Affairs (GOMA), in conjunction with the governor’s legal counsel and the state attorney general’s office, should assign personnel to develop the standardized form.

Analysis:

By eliminating unnecessary duplication and the burdens of requirements in multiple jurisdictions, the MBE/WBE certification process is streamlined, thus encouraging more MBE/WBEs to register and participate in the program. State, county, and local governments have a shared interest in expanding MBE/WBE opportunities. Standardizing the certification process reflects that shared interest.

Recommendation #2

Prime contractors should delineate MBE/WBE sub-contractor participation at time of bid submission. Solicitation language should be consistent statewide to mandate the use of MBE/WBE firms. Failure to comply with this timely bidding requirement should be deemed as non-compliance.

Problem Identification:

Currently, MBE/WBE participation in a project awarded through the Maryland State Procurement process does not require MBE/WBE information to be submitted at the time the bid is made or awarded. There is a 10-day waiting period before prime contractors name MBE/WBE sub-contractors. Sometimes the information is provided at the time of the bid but – more often than not – the information is provided after the bid is awarded. As a result, there is little incentive for prime contractors to increase their MBE/WBE participation in order to secure the initial bid. Additionally, MBE/WBE participation suffers since once the bid is awarded other priorities – such as completing the job on time – take precedent over MBE/WBE inclusion.

Recommended Action:

Change the procedures for the bidding process to require MBE/WBE information to be submitted at the time of the initial bid. This can be achieved by legislation or perhaps through executive order. This way, MBE/WBE participation may be evaluated in the determination to award the bid to a particular prime contractor.

Classification:

Administrative/Legislative

Functional/Operational Area:

All state agencies.

Estimated Annual Fiscal Impact:

Negligible

Estimated One Time Implementation Cost:

Revisions to procurement materials and publicity regarding the change.

Barriers to Implementation:

Prime contractors may oppose this step as it alters the status quo and may require changes in the way they prepare for the bidding process.

Recommended Implementation Date:

Immediately by executive order or FY2007 [end]. FY2008 if this is accomplished via legislation in the General Assembly.

Next Steps:

GOMA should assign personnel to develop and prepare the materials to amend the bidding process and begin lobbying efforts with legislators.

Analysis:

The goal is to increase accountability through improved reporting and monitoring. By requiring MBE/WBE information to be included at the time of the initial bid submission, you elevate such information to a more important and central part of the bidding equation. Prime contractors will view it as such and the practice will aid enhanced monitoring of MBE/WBE inclusion.

Recommendation #3

Eliminate the designation of non-profit organizations as MBE/WBE entities.

Problem Identification:

Currently, the definition of MBE/WBE is rather vague and perhaps too broad. From the Maryland annotated code:

“An MBE is any legal business, except a joint venture, that is organized to engage in commercial transactions and at least 51% managed, owned and controlled by one or more individuals who are socially and economically disadvantaged, including African Americans, American Indians, Asians, Hispanics, Women or physically or mentally disabled individuals. Minority business enterprises may also include not-for-profit entities organized to promote the interest of physically or mentally disabled individuals.”

The reasons for this complex definition are historical, political, philosophical, and legal. Going as far back as the civil rights movement, issues of race and poverty were closely intertwined. Since the MBE/WBE program is mandated legislatively – and not judicially – it requires political support, including a standing majority of the state legislature to renew its provisions.

In order to ensure the requisite support, coalitions were built along racial, gender, and socio-economic lines. Based upon Supreme Court decisions in 1989 and 1996, all race-based classifications, even benevolent ones designed to facilitate racial equality, are presumptively suspect and subject to the most stringent scrutiny. As a result, most MBE programs are designed as race-neutral classifications.

In order for MBE/WBE programs to be characterized as race neutral, the definition of MBE/WBE should include entities other than those controlled by ethnic minorities. The problem created by such a broad definition of MBE/WBEs is that minority and women-owned firms lose contracting opportunities because state agencies will attempt to satisfy their MBE/WBE goals through procurements with non-profit organizations that serve the physically and mentally handicapped. During the last two years, 40 percent of MBE/WBE dollars from the state have gone to these non-profit entities.

Recommended Action:

Drop the designation of non-profit organizations that aid physically or mentally handicapped individuals as a MBE/WBE.

Classification:

Legislative

Functional/Operational Area:

All state, county, and local government entities involved in the MBE/WBE process.

Estimated Annual Fiscal Impact:

Negligible

Estimated One Time Implementation Cost:

Negligible

Barriers to Implementation:

Non-profits organizations that serve physically and mentally handicapped individuals – and perhaps the non-profit community as a whole – will oppose the change. Eliminating this designation also risks a shift in the characterization of the state’s MBE/WBE classification to race-based rather than race-neutral.

Recommended Implementation Date:

2008 General Assembly

Next Steps:

Begin lobbying efforts with non-profits to soften their opposition. Begin efforts to gather political support for the legislative change.

Analysis:

While non-profits that aid the handicapped provide a valuable service to society, lumping those entities together with minority and women-owned for-profit businesses is intellectually dishonest. The state should provide assistance to such non-profits, but not at the expense of minority and women-owned enterprises.

Recommendation #4

Support the re-authorization of the small business reserve program and increase the size standard for qualifying business entities from \$2 million dollars to \$7 million dollars annual revenue.

Problem Identification:

The law creating the small business reserve program will sunset in 2007. This reserve assists small businesses – including most MBE/WBEs – access 10 percent of procurement opportunities with the state of Maryland. Once a solicitation has been designated for the small business reserve, only bids or proposals from qualified small businesses will be accepted.

Failure to renew this law will result in the demise of the program. As a result, most small businesses that benefit from the capacity building dollars that this program generates for will no longer have access to such opportunities.

Recommended Action:

Begin lobbying efforts to re-authorize the law.

Classification:

Legislative

Functional/Operational Area:

N/A

Estimated Annual Fiscal Impact:

Negligible

Estimated One Time Implementation Cost:

Negligible

Barriers to Implementation:

None foreseen.

Recommended Implementation Date:

2007 General Assembly

Next steps:

Begin lobbying efforts with legislators.

Analysis:

The state’s overall goal is to increase opportunities for MBE/WBE firms. This law has helped to do just that. Its continuation is deserved.

Recommendation #5

Prompt payment requirements should be enforced and should apply to all contracts, not just construction contracts.

Problem Identification:

Current law – COMAR 21.07.02.05.2&21.10.08. – requires prompt payment on construction contracts. Failure to satisfy this requirement results in penalties for prime contractors. However, many MBE/WBE construction sub-contractors complain about a lack of enforcement of this provision. Moreover, state procurement involves more than just construction contracts. Much of state procurement involves service contracts that are presently not covered by prompt payment requirements.

For many MBE/WBE firms, meeting monthly payroll is an on-going problem. Failure to receive prompt payment for services can impose severe economic hardships on such businesses causing employee attrition, defaults on job commitments, and other burdens on daily business operations. Ensuring MBE/WBE firms get paid promptly will encourage more minority and women-owned firms to seek certification and will compete to conduct business with the State of Maryland.

Recommended Action:

Change the law so that all state contracts are subject to prompt payment requirements. This can be achieved through appropriate legislation. Vigorously enforce prompt payment provisions currently in effect.

Classification:

Legislative/Administrative

Functional/Operational Area:

All state agencies and entities that receive procurement awards from the state of Maryland.

Estimated Annual Fiscal Impact:

Unknown

Estimated One Time Implementation Cost:

Unknown

Barriers to Implementation:

Some prime contractors and state agencies may resist change.

Recommended Implementation Date:

2008 General Assembly

Next Steps:

Begin lobbying efforts with prime contractors and state agencies to soften their opposition. Begin efforts to garner political support for the legislative change.

Analysis:

Common sense suggests prompt payment should apply to all state contracts and that this provision should be vigorously enforced. Such enforcement would ensure that MBE/WBE sub-contractors would have less reason to fear reprisal from prime contractors in response to complaints about the procurement and payment process issued to the state by MBE/WBE firms.

Recommendation #6

Establish penalties for prime contractors deemed non-compliant with MBE/WBE requirements and incentives for prime contractors that exceed goals for partnering with MBE/WBE sub-contractors. Penalties should include enforcing contract sanctions for default, withholding future payments, refusing future bids, and canceling current contracts. Incentives should include favorable treatment during award selection of prime contractors that partner with MBE/WBE sub-contractors.

Problem Identification: National Economic Research Associates (NERA) conducted an assessment of Maryland's MBE/WBE program and developed a report that was submitted to the General Assembly on January 8, 2001. One of NERA's chief findings was that MBE/WBEs were underutilized. During the 2001 General Assembly, chapter 339 of the acts of 2001 extended the sunset of the MBE/WBE program and increased the MBE/WBE state contracting inclusion goal from 15 to 25 percent and increased the personal net worth limitation from \$750,000 to \$1.5 million.

NERA's subsequent study found that from 2000 through 2005, 14.8 percent of State contracting dollars went to MBE/WBEs, including 3.5 percent to African-American owned businesses and 6.4 percent to white-women owned businesses. This stood as a decrease in the utilization of MBE/WBEs of 2.29 percent between 2000 and 2005 as compared to the prior time period. This decrease occurred even though the overall availability of MBE/WBEs – as assessed by NERA – increased from 26.9 percent to 29.6 percent, led by a growth of white-female controlled companies. The availability of African-American MBE/WBE firms decreased in availability from 7.9 percent to 6.49 percent during the same time period.

One of the main reasons that the level of contracting inclusion is so far below state-mandated goals is that MBE/WBE requirements do not provide incentives or penalties to promote their realization. Without an effective carrot-and-stick apparatus in place, the enforcement of MBE/WBE provisions is difficult. While most prime contractors operate in good faith and make reasonable efforts to comply with MBE/WBE requirements, all prime contractors recognize that failure to meet MBE/WBE goals will not hinder their ability to successfully bid on future projects in the state of Maryland. Without this fear of future hindrance, most contractors treat MBE/WBE inclusion as a fleeting concern instead of a contractual obligation.

Recommended Action:

Create incentives and penalties that are economically significant and are directly tied to the amount of MBE/WBE utilization – or lack thereof – by prime contractors. Such penalties may be designated in legislation that changes COMAR 21.07.02.08 and empowers the governor to enforce by appropriate action or through executive order and regulatory decisions, where appropriate.

Classification:

Legislative/Administrative

Functional/Operational Areas:

All state agencies and entities that receive procurement awards from the state of Maryland.

Estimated Fiscal Impact:

Unknown

Estimated One Time Implementation Cost:

Negligible

Barriers to Implementation:

Heavy resistance from prime contractors due to the widespread perception that satisfying MBE/WBE goals will increase the costs of doing business in Maryland and the prospect of reduced profits as a result of the introduction of contract penalties.

Recommended Implementation Date:

FY2008

Next Steps:

Begin lobbying efforts with prime contractors to reduce their opposition and lobbying efforts with legislators to secure support.

Analysis:

Penalties may be difficult to generate political support for, but at this time the MBE/WBE procurement inclusion process has “no teeth.” Compliance suffers without enforcement and enforcement is problematic without the ability to impose real and substantial economic penalties.

Recommendation #7

Establish penalties for state agencies that do not meet MBE/WBE goals. Penalties should include precluding the issuance of MBE/WBE waivers by agencies that have consistently not met MBE/WBE goals.

Problem Identification:

The underutilization of MBE/WBE firms is partly the result of the failure of state agencies to meet their MBE/WBE goals through the normal procurement process. While some agencies have been better than others and the dedication of the agency secretary to MBE/WBE contracting inclusion has been instrumental in each department's success rate, there have been no definitive and consistent penalties imposed on individual secretaries and agency budgets for those who fail to meet MBE/WBE goals. Such failure results in MBE/WBE goals being subordinated to other concerns.

Recommended Action:

Create definitive and substantial penalties for agencies that fail to meet MBE/WBE goals. These penalties should be clear and mandatory and should include the potential reduction of an agency's budget. These penalties may be imposed through executive action.

Classification:

Administrative

Functional/Operational Area:

All state agencies.

Estimated Annual Fiscal Impact:

Negligible

Estimated One Time Implementation Cost:

Negligible

Barriers to Implementation:

Resistance by some agency secretaries and the overall state government bureaucracy due to individual perceptions that these penalties could result in budget and salary reductions or job losses.

Recommended Implementation Date:

Immediately [FY2007]

Next Steps:

Penalties should be outlined through internal administrative memoranda or executive order and monitored via StateStat performance assessments.

Analysis:

Creation and imposition of such penalties are at the sole discretion of the governor. Thus, it is something that can be done quickly and without the potential hurdles that confront legislative deliberations. Penalties may have a substantial and immediate impact in raising MBE/WBE participation in the state procurement process. With aggressive use of this tool, the current levels of six percent MBE/WBE inclusion could be doubled within a year or two.

Recommendation #8

Vigorously enforce the commercial non-discrimination statute that makes it unlawful for any firm that is engaged in business with the state – or seeking to be engaged in such business – to discriminate on the basis of race or gender in the solicitation, selection, or treatment of any of its contractors, vendors, suppliers, or commercial customers.

Problem Identification:

Ninety percent of procurement spending is done in the commercial market and not by government. This commercial non-discrimination statute provides a cost-effective means of curbing discrimination in the commercial marketplace.

Recommended Action:

Support enforcement of the “Economic Civil Rights Bill.”

Classification:

Administrative

Functional Operational Area:

All entities that engage in business with the state of Maryland.

Estimated Annual Fiscal Impact:

Unknown

Estimated One Time Implementation Cost:

Unknown

Barriers to Implementation:

Resistance on the part of some entities that wish to have the option of discriminating in private contracting while continuing to do business with the state of Maryland.

Recommended Implementation Date:

FY2008

Next Steps:

N/A

Analysis:

While there are various anti-discrimination statutes – both federal and state – this is the only provision that specifically deals with commercial activity and businesses that discriminate against minority and female-owned business entities. Discrimination is difficult to uncover and even more difficult to prove, so much of it goes undetected and unpunished. Moreover, the law does not constitute a wholesale ban on commercial discrimination in the state of Maryland.

However, this law mandates that state agencies should not do business with companies that practice discrimination. If these companies are hired by the state, these companies must change their practices and utilize MBE/WBE firms in their private contracting solicitations. This commercial anti-discrimination law encourages business entities to become equal opportunity contracting agents.

O'Malley/Brown MBE/WBE Transition Workgroup Report Agency Procurement Review Sub-committee

The following analysis is based upon a review of selected agencies' MBE/WBE procurement policies, practices, and results.

Overview

This sub-committee looked at a cross-section of state agencies to determine how and to what extent they achieved minority and women-business enterprise (MBE/WBE) participation in their procurement processes. The sub-committee was interested in learning if and how the agencies meet their legislatively mandated MBE/WBE goals.

If yes, what practices are employed that others agencies might replicate? If no, what are some of the obstacles that impede progress towards compliance and what assistance do individual agencies need to achieve the goals?

The sub-committee examined the agencies' level of commitment to achieving their MBE/WBE goals and how that commitment is communicated to agency staff. The sub-committee asked questions regarding the methods that are used to achieve MBE/WBE goals and what assistance is provided to MBE/WBEs that are interested and capable of participating in agency procurements.

This sub-committee brought together experts representing several stakeholder groups, including MBE/WBE and small business owners, heads of non-profit MBE/WBE advocacy groups, as well as government officials and MBE/WBE officers at private corporations to conduct the interviews. The sub-committee circulated a questionnaire to all state agencies and interviewed a sample of procurement directors, directors of offices of fair practice, MBE/WBE liaison officers, and equal employment opportunity officers from throughout state government. The sub-committee also interviewed a few agency heads and senior staff directors to whom the aforementioned mid-level managers reported.

The sub-committee found that, generally speaking, there is demonstrable concern for MBE/WBE procurement inclusion, but that there are inconsistent approaches to achieving results. Most of the agencies reported that they had not achieved their goals. Agencies were very forthcoming in discussing the reasons for not achieving their goals. And many agencies had already begun to take corrective action to realize heightened rates of MBE/WBE participation. Almost all had recommendations – if implemented – would help improve the state of this issue.

In the larger agencies, such as MDOT and DGS, proposed capital spending will increase by as much as 300% more than FY2007. Several procurement officers were concerned that the present list of state certified MBE/WBEs might not be large or strong enough to provide in order to meet the state's mandated goal of 25% MBE/WBE contracting inclusion.

The following agencies were reviewed by the sub-committee:

Maryland Aviation Administration (MAA)
Department of Budget and Management (DBM)
Department of Business and Economic Development (DBED)
Department of General Services (DGS)
Comptroller of the Treasurer (COMP)
Department of Health and Mental Hygiene (DHMH)
State Highway Administration (SHA)
Department of Housing and Community Development (DHCD)
Mass Transit Administration (MTA)
Maryland Port Administration (MPA)
Maryland Stadium Authority (MSA)
University of Maryland Systems (UMS)
Injured Workers Insurance Fund (IWIF)
Maryland State Pension Fund (MSPF)
Maryland Transportation Authority (MDTA)
Maryland Department of Transportation (MDOT)

The findings and recommendations within this report are based on the sub-committee's analysis of numerous official agency documents and interviews with high-ranking officials. Recommendations pertaining to specific agencies will follow this summary document.

Findings and Recommendations

As noted above, the sub-committee studied the agency performance relative to their commitment, goal setting and planning, communication and cooperation, and agency perception of the role of the Governor's Office of Minority Affairs (GOMA).

Commitment

FINDING ONE

While most persons interviewed indicated there was a "top level" commitment to MBE/WBE participation, almost all of the MBE/WBE liaison/compliance officers indicated that their offices were saddled with insufficient funds and depleted staff. Staffing shortages has resulted in less outreach, monitoring, and compliance enforcement. At MDOT, the position of director for the MBE/WBE certifying program has been open for nearly a year and there is only one compliance officer for 3,800 certified MBE/WBE firms.

RECOMMENDATION ONE

Cabinet secretaries or the agency's executive director should give procurement matters greater scrutiny and should monitor more closely the level of MBE/WBE participation in all procurements. Meeting MBE/WBE goals should be part of each cabinet secretary or executive director's annual performance evaluation.

Adequate staffing of the MBE/WBE mission is necessary to meet the legislatively-mandated goals. All staff associated with each agency's MBE/WBE

protocol – i.e., senior management, procurement officials, MBE/WBE liaisons – should be evaluated on their overall performance towards meeting said goals. This will create an urgency and staff consciousness that will ultimately increase MBE/WBE utilization.

FINDING TWO

The sub-committee found stark inconsistencies among the administrative chain of command that MBE/WBE officers must report to. For example, at DGS the MBE/WBE officer reports to the procurement director and to the department’s assistant secretary. While there is a need for the MBE/WBE officer to be in close communication with the procurement director, having two bosses can be problematic.

RECOMMENDATION TWO

The MBE/WBE officer or the director of the Office of Fair Practice should report directly to the agency head. Reporting to the agency head would ensure that appropriate attention is paid to setting MBE/WBE goals and meeting those goals. Further, all agency procurements should be coordinated in concert with the MBE/WBE officer to ensure compliance in achieving the legislatively mandated MBE/WBE goals.

Goal Setting and Planning

FINDINGS

Across all agencies, those who were interviewed expressed an awareness of the state’s 25% target goal for MBE/WBE sub-contracting in solicitations greater than \$25,000. However, the methods of planning and goal setting varied by agency. The majority of those interviewed stated that when planning to set goals, the MDOT master MBE/WBE certification list was the only resource they utilized. However, when setting some sub-contracting goals, they relied upon the geographic location of certified firms having the approved National Standard Industry Code (NSIC).

For example, for construction projects, officials at MDTA, SHA, DGS, and MSA would set lower MBE/WBE goals on projects located in far western and southern Maryland counties as well as on the Eastern Shore. Their rationale was that since fewer MBE/WBEs are located in those regions of the state, there was less of an obligation to meet the legislatively mandated goal.

When reviewing DHCD’s performance, the sub-committee was informed that their largest procurement was an \$11 million contract for loan servicing that had no MBE/WBE goal. According to the procurement officer, the basis for this practice was that there were no MBE/WBE firms certified to perform this type of work. DGS recently awarded a \$250 million energy contract – splitting the procurement between five different concerns with no MBE/WBE goals assigned. The MSA issued a solicitation for a new \$30 million electronic jumbo video screen at Oriole Park at Camden Yards that contained no MBE/WBE goals. The Maryland Pension Board released a solicitation for emerging managers without MBE/WBE goals. This \$250 million investment went to an out-of-state firm that not only excluded MBE/WBEs but also excluded capable, Maryland-based firms.

Finally, most agencies do not require MBE/WBE participation on commodity contracts, the reason being that there are no MBE/WBEs in a position to make bids on various commodities. DGS does not require MBE/WBE participation on state corporate card – credit card – purchases. For most agencies, commodities and credit card purchases make up the bulk of their procurement spending.

RECOMMENDATIONS

In addressing DHCD’s lack of goals in regards to their loan servicing program, if the solicitation was segmented to include financial reporting, depository safe keeping, loan default, counseling, and/or foreclosure services, a number of certified MBE/WBEs – from banks to certified public accountants to law offices – could have participated. The team that developed the goals for this solicitation lacked full understanding on how to include and cultivate MBE/WBE capacity.

A key point to consider is that MDOT’s list of MBE/WBE certified firms includes many businesses that presently provide – and have the capacity to develop – services for which they might not be certified. The solution is to upgrade the NSIC listings on each currently certified firm.

Also, the state can assist MBE/WBE firms increase capacity in areas where their numbers are not strong by requiring MBE/WBE participation in all solicitations regardless of whether or not a large number of firms are currently certified in those areas. If it’s required, it will happen. Requiring MBE/WBE participation will help facilitate the development of capacity.

In addressing the geographic location of eligible firms, those making the decision to set goals should not lower the percentage but keep it at the 25% maximum. In addressing agency concerns that there are not enough certified firms in certain parts of the state, consideration should be given to utilizing a statewide approach to meeting MBE/WBE goals – which would include sending solicitations to central Maryland MBE/WBE firms for construction contracts that would take place in western Maryland, southern Maryland, or the Eastern Shore.

Over time, this would help to build the capacity of MBE/WBEs statewide, while also providing a strong economic incentive – via the mere presence of an MBE/WBE solicitation – for the incorporation and development of MBE/WBE certified firms in more rural locales.

Requiring MBE/WBE participation on commodity procurements will force manufacturers to work with MBE/WBE distributors. Also, allowing MBE/WBEs that bid as primes to satisfy the required MBE/WBE sub-contracting requirement, and waiving the requirement for MBE/WBE primes to sub-contract to other MBE/WBEs, will greatly increase the level of MBE/WBE participation. Other states are doing this quite successfully.

Waivers for MBE/WBE participation should be granted in only extreme cases, not in the routine manner that is currently practiced. This should hold for commodity purchases

and specialty manufactured items. The private sector expects MBE/WBE participation in government procurement, especially in Maryland. The officials at MSA stated that the required video screen is only manufactured in Japan, which served as the sole justification for the absence of MBE/WBE contractual goals. What about parts and service? Japanese cars are now made in the United States and are sold by MBE/WBE distributors. Clearly MSA's decision to release the solicitation without an MBE/WBE requirement lacked imagination and inhibited the possibility of a Maryland-based MBE/WBE to benefit and potentially build capacity.

Communication and Cooperation

FINDINGS

The majority of the agencies interviewed indicated that they list their procurement solicitations on e-Maryland Market Place and some list them on their respective web sites. There is no uniformity to the marketing of procurement solicitations. MBE/WBEs that are interested in conducting business with Maryland state agencies must learn where to look in order to find contracting opportunities.

Most agencies report the amount of dollars awarded to MBE/WBEs but do not track or report the amount of dollars paid to MBE/WBEs. The latter is especially true of dollars paid to MBE/WBE sub-contractors. Most tracking and data gathering is done manually within agencies. Only SHA has developed electronic, web-based software.

It should be noted that GOMA issued a directive that statistical tracking should include an analysis of MBE/WBEs as both primes and sub-contractors, as well as participation via the Small Business Reserve Program. This might have accounted for the huge increase in MBE/WBE activity reported by the prior administration for FY2005 versus FY2004.

RECOMMENDATIONS

In regards to tracking performance and payments, the state should adopt a centralized electronic reporting system that can be used by all agencies. The system should be able to track and report awards and payments by contractor and agency. Reports should be completed quarterly, thus allowing time for appropriate review and corrective action. Furthermore, the system should include, but segregate data on MBE/WBE procurements versus Small Business Reserve procurements. GOMA should coordinate the purchase of electronic data gathering and reporting system and oversee the implementation of the system across state agencies.

Agency Perceptions of the Governor's Office of Minority Affairs (GOMA)

FINDINGS

The consensus from all officials interviewed is that GOMA has become their go to source for MBE/WBE inclusion know-how. Yet officials also reported that GOMA does not facilitate inter-agency communication relative to procurement and MBE/WBE inclusion. Agencies do not share best practices nor introduce successful MBE/WBE businesses to

one another. Various agencies – including MDOT’s nine divisions – operate independently when it comes to MBE/WBE matters.

RECOMMENDATIONS

GOMA should become the focal point for the State in terms of MBE/WBE policies and procedures. It should develop a state-wide electronic MBE/WBE tracking and data reporting system. GOMA should lead the way in assisting the agencies meet their MBE/WBE goals.

Agency Procurement Case Studies Sub-committee Departmental/Agency-Specific Recommendations Maryland Small Business Development Financing Administration (MSBDFA)

Problem Identification:

Minority and women-owned businesses do not have adequate financial resources to enable them to participate in large contract opportunities, engage larger clients, or acquire a substantive existing business.

Recommended Action:

Make multiple enhancements to the financing programs of the Maryland Small Business Development Financing Authority (MSBDFA) as follows:

- Increase the capital base of the MSBDFA programs to \$25 million during the term of the new administration – \$5 million of that total for fiscal year 2008, and \$6.2 million during each of the following 3 fiscal years.
- Increase the maximum financing for each of the following programs from \$1 million to \$2 million:
 - Contract Financing Program
 - Long-Term (Loan) Guarantee Program
 - Equity Participation Investment Program (“EPIP”)
- Create more flexibility among MSBDFA’s current capabilities by:
 - Removing the \$75K net worth/collateral requirements of the EPIP business acquisition component. This component is rarely used because of the onerous collateral requirement on top of the requirement for a substantial infusion of equity into the business.
 - Increasing the 25% limitation of EPIP participation in a business acquisition transaction to 50%. This limitation has proven to be onerous because obtaining the balance of the required financing from traditional sources continues to be extremely difficult for minorities, women and other persons who are economically disadvantaged.
- Permitting small businesses to also receive bonding under the Surety Bond Program for projects funded by private finances as well as finances from government agencies and regulated utilities.

Classification:

Legislative

Functional/Operational Area:

Department of Business & Economic Development (DBED)

Estimated Annual Impact:

\$20 million in State and Local Tax Revenue

Estimated One-Time Implementation Costs:

Nominal

Barriers to Implementation:

There is potential opposition from commercial surety firms.

Recommended Implementation Date:

FY2008 [start]

Next Steps:

Governor's office should express their support for legislative amendments sponsored by Senator Nathaniel Exum and Delegate Hattie Harrison to rectify said problems. Support from the governor's office for MSBDFFA budget bills and the consideration of providing a portion of the funds through the supplemental budget, if necessary.

Analysis:

These initiatives will make Maryland's core of small businesses the most diverse and productive in the country. The new adoption of the initiatives would signify a bold step towards its commitment to broaden the state's efforts to expand minority and women-owned businesses in ways that provide meaningful economic benefits to distressed communities throughout our fine state.

**Agency Procurement Case Studies Sub-committee
Departmental/Agency-Specific Recommendations
Maryland Transit Administration (MTA)**

Recommendation One

Problem Identification:

MTA by statute requires all contractors to carry \$5 million umbrella liability insurance coverage. The result is that the cost to purchase said insurance exceeds projected profit margins and many small firms simply don't qualify if they could find a way to afford it.

Recommended Action:

That prime contractors maintain the level of present coverage. However, for sub-contractors – which include all MBE/WBEs – lower such coverage to \$1 million or perhaps lower if history of claims loss justify.

Classification:

Legislative

Functional/Operational Area:

MTA Mobility and development constructional projects at MTA owned sites.

Estimated Annual Fiscal Impact:

No apparent reflection on State budget dollars. Tremendous savings to MBE and will allow more MBE/WBEs to compete.

Estimated One-Time Implementation Cost:

None

Barriers to Implementation:

Change is a legislature one with insurance industry interest probably protesting. Some legislators will oppose as well.

Recommended Implementation Date:

2007 General Assembly Session

Next Steps:

Governor's office can request statistics from state agencies that will illustrate the average claim amounts, and use that information as a basis for legislation addressing this issue.

Analysis:

Currently, MTA is the only state agency and only division of MDOT to require the \$5 million coverage. Some agencies have limits as low as \$250,000 for the same coverage. The excessive coverage limit makes it impossible to compete at a subcontractor level. Most of the sub-contract awards are less than \$200,000 and the profit margins are slim with no provision to pass the cost on to the prime or the state.

Recommendation Two

Problem Identification:

It was found with certain MTA contracts that language provisions within the contracts allow for benefits such as compensation for fuel cost escalation and the use of state-owned equipment to be granted to the prime but those same benefits are not passed on to the sub-contractor, therefore, increasing the prime's profit at the expense of the sub-contractor.

Recommended Action:

Amend contract language to enable sub-contractors, which are the predominance of MBE\WBEs, to read that any benefit the prime may receive most ultimately be passed down to the sub-contractor.

Classification:

Administrative

Functional/Operational Area:

MTA and any other agency that makes use of this contractual language.

Estimated Annual Fiscal Impact:

N/A

Estimated One-Time Implementation Cost:

N/A

Barriers to Implementation:

Legislative objections resulting from lobbying by prime contractors.

Recommended Implementation Date:

After a thorough review of all agencies to see how widespread the practice is, look to implement this change in 2008.

Analysis:

This is a logical move to help MBE/WBE firms remain profitable. Prime contractors request fixed price bids from subs and force them to adhere to it. However, primes take that action with full knowledge that profit windfalls can emerge simply because they can use state owned-equipment or office/storage space for free and are compensated for their fuel costs. We believe these same benefits should be available to sub-contractors as well.

**Agency Procurement Case Studies Sub-committee
Departmental/Agency-Specific Recommendations
Maryland Employee Retirement System**

Problem Identification:

- Lack of utilization of minority-owned firms to provide investment brokerage services for the Maryland Employee Retirement System.
- Lack of utilization of minority-owned firms to provide portfolio investment management services for the Maryland Employee Retirement System.
- The internal investment team/staff is underutilized, thereby denying retirement plan participants the ability to maximize the return on their assets.

Recommended Action:

- Establish specific and firm procurement goals for minority-owned brokerage and minority-owned investment management firm participation in the Maryland Employee Retirement System's investment activities.
- Provide the Maryland Employee Retirement System internal investment team/staff the opportunity to internally manage one percent (1%) of the state pension assets according to an agreed upon investment mandate.
- Establish a, "Maryland Company First" criteria for the procurement of investment management and brokerage services. This will increase state tax receipts by employing the services of qualified Maryland companies, while simultaneously encouraging companies to establish a presence in the state of Maryland.

Classification:

Administrative/Legislative

Functional/Operational Area:

The operational areas will be the Office of the Executive Director and Chief Investment Officer of the Maryland Employees Retirement System.

Prospective Benefits:

- **Organizational Savings:** Provides structure in meeting MBE goals and objectives. Saves time and resources, while meeting organizational objectives and statewide mandates.
- **Communication Savings:** Establishes firm procedure to communicate minority procurement results specifically in the areas of investment management and brokerage services. Saves valuable time and resources.
- **Cost Savings:** The state will save money by allocating a percentage of their assets to manage internally. This will facilitate a reduction in investment management fee output, i.e., save money.
- **Constituent Services:** Creates a transparent platform for qualified Maryland based companies to offer their services to the state of Maryland. Provides a system of documentation which helps to track the meeting of MBE procurement requirements. It saves time, resources and strain on workforce capacity.

- **State Revenue Increase:** By promoting “Maryland First”, the qualified businesses who work for the State of Maryland, must also pay state sales, income and potentially real estate taxes. Business may consider locating to Maryland to compete for statewide business opportunities, thereby increasing tax receipts.

Estimated Annual Fiscal Impact:

The annual fiscal impact can range from \$300,000 to \$1,000,000.

Estimated One-Time Implementation Cost:

The recommendations can be implemented without a one-time cost for implementation.

Barriers to Implementation:

The existing bureaucratic structure may be a barrier. From a technical standpoint, the agency may increase internal capacity.

Recommended Implementation Date:

FY2007 [end]

Next Steps:

- Recommend firm changes to the Maryland Pension Code to reflect the public policy of minority inclusion in the procurement of investment management and brokerage services.
- Promote a, “Maryland Company First” agenda in the evaluation of state procurement opportunities – thereby providing for the opportunity to increase state tax receipts and effectively promote local business development.
- Hire senior executive staff that reflects the stated desire for minority inclusion at every level of government service within the state of Maryland.

Analysis:

The Maryland Employee Retirement System should adopt a firm mandate for minority inclusion in the procurement of investment management and brokerage services. The state should also be commended for aggressively implementing an ‘emerging managers’ program, however this program falls far short of meeting the objective of minority inclusion in the procurement of investment management and brokerage services. An adjustment in the state pension code will remedy the statewide challenge for qualified minority-owned firm inclusion.

The Maryland Employee Retirement System generates hundreds of thousands of dollars in fee and commission payments to investment services vendors. Maryland should address the issue of how those dollars can remain in the state. One method is to consider the location of corporate offices in the evaluation criteria for procurement opportunities.

**Agency Procurement Case Studies Sub-committee
Departmental/Agency-Specific Recommendations
Tourism Office, Department of Business & Economic Development (DBED)**

Problem Identification:

The Office of Tourism Development and Maryland Tourism Development Board at DBED do not include minority business interests – specifically African Americans – in their procurement of services. Furthermore, minorities, especially African Americans, are under-represented on its staff.

Recommended Action:

- Increase Tourism Office’s Utilization of MBE/WBE Firms
- Appoint African-Americans to the Maryland Tourism Development Board
- Establish a Separate Grant Fund to Support African-American Tourism Ventures
- Hire more African-Americans on Staff for the Tourism Office

Classification:

Administrative

Functional/Operational Area:

DBED, Office of Tourism Development, and Maryland Tourism Development Board

Estimated Annual Fiscal Impact:

Requires further study

Estimated One-Time Implementation Cost:

Requires further study

Barriers to Implementation:

Funding Availability

Recommended Implementation Date:

FY2008 [start]

Next Steps:

Governor should commission an evaluation of the economic impact of African-American leisure/tourism in Maryland and study the impact these individuals have on state tax revenues.

Analysis:

The State’s tourism outreach under the Office of Tourism Development and the Maryland Tourism Development Board have a combined \$20 million annual budget yet perform poorly with regard to MBE/WBEs. The two groups also issue grants for tourism promotion without significant MBE/WBE inclusion. Our review found that there is little communication with the minority business community and no African-American staff or decision makers involved.

The prior administration issued a finding that Maryland enjoys a \$10 billion annual economic impact due to tourism. With so many tax dollars coming to the state by way of visiting African Americans via family reunions, church groups, conventions, festivals and bus tours, surely more can be spent with African American businesses to promote this growing enterprise.