

STATE OF MARYLAND

Board of Public Works

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Report to the General Assembly
on Public Procurement:

Improving Minority Business Enterprise Participation

In response to the Joint Chairmen's Report (2015)



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EXECUTIVE SUMMARY

The Budget Committees of the 2015 General Assembly “direct[ed] the Board of Public Works, in consultation with the Governor’s Office of Minority Affairs, to provide a report identifying the State’s plan for increasing the number of contracts that meet the State’s MBE participation goal.”¹ The committees requested this report out of a concern for “the fact that the *number of contracts* awarded by the Board of Public Works with 0% Minority Business Enterprise participation increased by 51%” from fiscal 2013 to fiscal 2014. (Emphasis added.)

However, our analysis revealed that the *percentage of Board-approved contracts* with 0% MBE participation has remained relatively unchanged for the last four years. (*See Figure 1*). More specifically, in fiscal 2014, the number of Board-approved contracts with 0% MBE participation increased only to the extent the overall number of contracts submitted for Board approval increased.

SCOPE OF REPORT

This report will: (1) provide an overview of the MBE program and review of contract goal-setting methodology; (2) clarify how the State measures MBE program overall goal achievement; (3) analyzes MBE participation in Board-approved contracts and in State contracts overall and demonstrates the statistics are more promising than represented; (4) recaps initiatives to increase MBE participation in State contracts.

1. MBE Program Overview

Maryland’s Minority Business Enterprise Program, established in 1978, is intended to remedy discrimination by increasing procurement opportunities for minority- and woman-owned firms within the State contracting marketplace.² Oversight of the MBE Program rests with the Special Secretary of the Governor’s Office of Minority Affairs,³ while the Board of Public Works is charged with “adopt[ing] regulations . . . to carry out the [MBE Law].”⁴ Additionally, because the Board of Public Works has overall “control of procurement by units,”⁵ the Board’s review of individual agency contract recommendations includes review of MBE participation, a key component of Maryland procurement.

¹ [Joint Chairmen’s Report – 2015 Session](#) at page 8.

² Section 14-301.1, State Finance and Procurement Article, Annotated Code of MD.

³ *Id.* at section 14-302.

⁴ *Id.* at section 14-303.

⁵ *Id.* at section 12-101.

Maryland's MBE program requires 70 State agencies to structure their procurements to reach a goal that 29% of the agency's total annual expenditures on procurement contracts are paid directly or indirectly to certified MBEs. Until three years ago, the MBE goal was set in statute; however, the 2012 General Assembly enacted legislation that authorized GOMA's Special Secretary, in consultation with the Maryland Department of Transportation and the Office of the Attorney General, to set the overall goal every two years.⁶ In fiscal 2014 – its first year under this legislation – GOMA established the annual agency goal at 29%,⁷ an increase from the previous statutorily-mandated 25%.

Agency Procurement Review Groups Set Goals When Appropriate

To reach their annual expenditure goal, State agencies must examine each procurement opportunity individually. The Board of Public Works requires each agency to accomplish that action through an agency procurement review group that reviews solicitations for new contracts, proposals to exercise contract options, and potential sole-source awards.⁸ The procurement review group includes the agency's chief procurement official or senior-level designee and the agency's MBE liaison officer; additionally the solicitation's lead procurement officer and agency legal counsel are included in the procurement review group.

The Board of Public Works advisory directs the procurement review group to assess each proposed procurement to establish the appropriate method to encourage MBE and small business participation. The group determines, on a case-by-case basis, to what extent direct solicitation, subcontracting, race-neutral measures, or a combination will most likely result in maximum MBE participation. Before an agency solicitation contains an MBE subcontract goal, the group must decide whether the contract has feasible subcontracting opportunities and, if so, whether MBE firms are available to perform the identified sub-contractable work. Not all contracts meet this initial criterion for goal-setting. Examples are contracts for which there is only a single element of work to be performed or contracts for which the work is proprietary in nature (not infrequently seen in information technology procurements).

The agency documents the procurement review group determination. If the procurement opportunity is expected to exceed \$25 million, the agency must submit the determination to GOMA for approval.

⁶ Chapter 154 (2012 MD Laws).

⁷ COMAR 21.11.03.01.

⁸ [BPW Advisory 2001-2](#)

2. *Measuring MBE Program Overall Goal Achievement*

In measuring whether the State has achieved its overall MBE goal, the critical benchmark is the legislative mandate that an agency's annual "spend" with MBE firms should be a set percentage of its overall annual "spend." Agencies receive legal advice that in keeping with constitutional requirements, MBE measures must be narrowly tailored to achieve the program goal. Individual solicitations should be reviewed individually for the maximum MBE goal achievable; this could be above or below the 29% aspirational goal. It is the agency's *total* annual dollar expenditure with MBEs that determines overall goal achievement, rather than a count of the absolute number of contracts for which a goal was or was not feasible.

Using this measurement, GOMA tracks the successes and challenges in the accomplishment of the State's overall goal for all procurement contracts.⁹ Fiscal 2014 marked the first time that Maryland's aspirational goal was raised to 29%. The State rose to the challenge, achieving the highest level of participation in the program's history – 27.3%.

MBE Program accomplishments in fiscal 2014 include:

- **27.3% MBE participation overall**
- \$2.1 billion in State procurement and contracts awarded to certified MBE firms
- \$2.1 billion paid to certified MBE firms
- Created or retained 33,077 jobs
- Stimulated \$3.4 billion in economic activity statewide
- 635 new firms granted MBE certification for a total 5,671 firms certified MBEs

Improvements in the MBE Program by fiscal year include:

- Awards to certified MBEs increased by 89%: from \$1.1 billion (2007) to \$2.1 billion (2014)
- Payments to certified MBEs increased by 181%: from \$752 million (2007) to \$2.1 billion (2014)
- Jobs (direct and secondary) increased 77%: from 18,639 (2008) to 33,077 (2014)
- Local and state tax revenue increased 148%: from \$42.1 million (2008) to \$104.5 million (2014)

Also noteworthy is an uptick in the number of prime contract awards made to MBE firms – an indicator that the MBE program is succeeding in identifying race-neutral measures that maximize the opportunity for women-owned and minority-owned businesses to perform in a meaningful way. In fiscal 2013, nearly \$327 million was awarded to MBE prime contractors, while in fiscal 2014, this number soared to \$567 million.

⁹ See [GOMA FY 2014 Annual Report](#).

3. MBE Participation in Contracts Presented to the Board of Public Works

As part of its annual “Managing for Results” submission to the General Assembly, the Board of Public Works reports the number of contract awards it approves each year and the MBE participation rate set for those contracts.

In evaluating this Board of Public Works-specific MFR information, it is important to note that the Board does not, in fact, review the award of many State procurement contracts. (For example, State Highway construction contracts and most contracts under \$200,000 as well as University projects less than \$1 million are excluded from Board of Public Works review.) For a more accurate assessment of the overall MBE program, GOMA’s comprehensive account of all State procurement contracts reveals the true success of the MBE program.¹⁰

The Board’s statistics reflect the MBE participation in those individual contracts for which Board approval is required. The Joint Chairmen’s Report expressed concern that: “the number of contracts [approved for award] by the Board of Public Works with 0% MBE participation *increased* by 51% in fiscal 2014.” However, this finding did not adjust for the fact that the overall number of contract awards the Board approved in fiscal 2014 was much greater than the overall number of contract awards the Board approved the previous year.

In fact, the percentage of contract awards approved by the Board with 0% MBE participation has not increased but is the same percentage it has been the last few years. Moreover, the portion of contract awards approved by the Board with MBE participation that exceeds the 29% goal is nearly one-fourth.

The table below shows both the number of contract awards (MFR statistics the General Assembly reviewed) and adds a highlighted column to reflect the percentage of contract awards that fall in each MFR category.

FY >	2012: #	2012: %	2013: #	2013: %	2014: #	2014: %	2015: #	2015: %
MBE Goal ^v	contracts	contracts	contracts	contracts	contracts	contracts	contracts	contracts
0%	338	53%	246	56%	371	55%	303	56%
1 to 10%	53	8%	36	8%	80	12%	56	10%
> 10 to 29%	53	8%	36	8%	80	12%	56	10%
> 29%	197	31%	122	28%	148	22%	122	23%
Total	641		440		679		537	

Figure 1

¹⁰ See part 2 *supra*.

4. Initiatives

In an effort to improve upon MBE goal achievement:

4.1 GOMA plans to focus on:

“Ready, Set, Grow” Workshop: This program is helping small, minority and women business owners compete for State contracting opportunities. The workshops include information about MBE certification, vendor enrollment in the Small Business Reserve Program, where to find procurement opportunities within the 70 participating agencies, and tips on how to navigate the procurement process. GOMA’s workshops include procurement officers discussing specific opportunities available at their agencies.

Developing procurement training programs. GOMA will continue to create training programs designed to help firms navigate the procurement process with confidence. The programs will be produced according to procurement category and offered across various platforms.

Heightening State agency MBE accountability. Building upon improved MBE reporting, GOMA will continue to hold agencies accountable on all areas of MBE compliance and best practices while seeking to improve access points and internal processes for gathering and reporting data.

Expanding GOMA’s outreach program. GOMA will continue to use technology and social media platforms to bring educational programs to small, minority, and women-owned businesses across the State while continuing to provide subject-matter expertise as hosts and participants in workshops, seminars and conferences.

Increasing capacity of MBEs to perform as prime contractors. GOMA will work with agency personnel and certified MBEs to implement the policy guidelines regarding counting a portion of the work performed by MBE primes toward the minority participation contract goals and subgoals.

Monitoring subgoal performance. GOMA will continue working with agency personnel to set subgoals when appropriate and will monitor subgoal performance. In addition, GOMA will seek stakeholder input on the existing subgoal policy in preparation for re-evaluating current subgoals and establishing new subgoals in FY2015.

Training State agency personnel on the goal-setting analysis. GOMA will continue to train agency personnel on key practices. Each solicitation must encourage minority businesses to respond. The MBE law directs agencies to evaluate each procurement contract to determine the appropriate MBE participation goal. Agencies are instructed to attempt to meet the maximum feasible portion of MBE goals by using race-neutral measures.¹¹ When appropriate, the solicitation may contain an MBE subcontract goal. MBE goals are set on a contract-by-contract basis.

4.2 Board of Public Works plans to focus on:

- Querying agencies concerning determinations about the appropriate MBE participation in each contract proposed for Board of Public Works approval.
- Querying agencies concerning MBE compliance when agencies return for Board approval of modifications or renewals of existing contracts.
- Disseminating instructions and advice to State agencies through the Procurement Advisory Committee and the Senior Procurement Advisors Group.
- Assigning the Board's Procurement Advisor to collaborate with the Special Secretary of Minority Affairs on State agency implementation, including employee training, of the MBE program.

CONCLUSION

In conclusion, State contracts are assessed on a case-by-case basis to determine the feasibility of establishing a MBE subcontract goal. Before a contract is submitted for Board of Public Works approval, the contract has received a rigorous MBE analysis and that analysis is documented. While the number of contracts in fiscal 2014 that were deemed not to have feasible MBE participation may have increased, so did the overall number of contracts approved for award. Thus, when examined in context, there was little to no change from fiscal 2013 to fiscal 2014 in the proportion of contracts approved without a MBE goal. Annual spend drives the State's MBE achievement; we respectfully suggest that a simple count of contracts without a goal gives little insight as to how much the State has expended with MBE subcontractors or MBE prime contractors. In fact, statistics suggest that annual spend with MBE subcontractors as well as with MBE prime contractors reached record highs in fiscal 2014. The Board of Public Works and GOMA pledge to continue the success of the State's MBE program.

¹¹ Race-neutral measures are methods that assist businesses without regard to race, for example: using the Small Business Preference; maintaining a database of qualified small businesses, including MBEs, in order to keep them informed of upcoming procurements; relaxing bonding requirements when permissible by law; and dividing a large procurement into several smaller procurements.