

Larry Hogan  
Governor  
Boyd K. Rutherford  
Lt. Governor



C. Gail Bassette  
Secretary

MARYLAND DEPARTMENT OF GENERAL SERVICES  
OFFICE OF THE SECRETARY

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December 31, 2015

The Honorable Larry Hogan  
State House  
100 State Circle  
Annapolis, Maryland 21401

The Honorable Thomas V. Miller, Jr.  
H-107 State House  
100 State Circle  
Annapolis, Maryland 21401

The Honorable Michael E. Busch  
H-101 State House  
100 State Circle  
Annapolis, MD 21401

Dear Governor Hogan, President Miller and Speaker Busch:

The Task Force to Study Small and Minority Design Firm Participation in State Procurement submits to you our report, as required per the 2015 Laws of Maryland, Chapter 12.

The Task Force was charged to determine specific measures to ensure equitable participation by small and minority design firms in State-funded projects and measures to avoid the application of liquidated damages on open-ended design contracts and to report its findings and recommendations by December 31, 2015.

Should you have any questions, do not hesitate to contact Mr. Fred Mason, Chair of the Task Force at 410-767-4378 or [Fred.Mason@maryland.gov](mailto:Fred.Mason@maryland.gov).



Small and Minority Design Firm Task Force  
December 31, 2015  
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Sincerely,

A handwritten signature in cursive script that reads "C. Gail Bassette". The signature is written in dark ink and is positioned above the printed name and title.

C. Gail Bassette  
Secretary

Enclosure

c: The Honorable Joan Carter Conway  
Members of the Task Force

**Task Force to Study Small and Minority Design  
Firm Participation  
In State Procurement**

Senate Bill 109, 2015 Laws of Maryland, Chapter 12

Report & Recommendations

December 31, 2015

## Legislative Mandate

There is a Task Force to Study Small and Minority Design Firm Participation in State Procurement. The Task Force shall determine specific measures to ensure equitable participation by small and minority design firms in State-funded projects and measures to avoid the application of liquidated damages on open-ended design contracts.

On or before December 31, 2015, the Task Force shall report its findings and recommendations to the Governor and the General Assembly. The Task Force shall remain in effect for a period of 1 year and, at the end of May 31, 2016, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.

## Task Force Membership List

**Fred Mason, R.A.**

Chair, Department of General Services

**Jane Bailey**

Staff, Department of General Services

**Jack Howard**

Department of General Services

**Matt Minson**

Office of the Comptroller

**Delegate L. Ereik Barron**

Legislative District 24

**Chantal Kai-Lewis**

Governor's Office of Minority Affairs

**Joe Evans**

University of Maryland System

**Bill Olen**

University of Maryland System

**David Bezanson**

Department of Public Safety & Correctional Services

**C. Gail Bassette**

Secretary, Department of General Services

**Herb Jordan**

Deputy Special Secretary

Governor's Office of Minority Affairs

**Christopher Costello**

American Council of Engineering Companies, Maryland

**Kathleen Sherrill, AIA**

Architect, Minority Business Enterprise

**James Louviere, AIA**

Architect, Small Firm

**Chris Parts, AIA**

Architect, Large Firm

**Cathy Ritter, P.E.**

Engineer, Minority Business Enterprise

**Jeff McBride, P.E.**

Engineer, Small Firm

**Sean McCone, P.E.**

Engineer, Large Firm

**Kathy Broadwater**

Maryland Port Administration

**Mike Haifley**

Maryland Department of Transportation

**Carmina Perez-Fowler**

Maryland Stadium Authority

## Contributors

**Ellen Robertson**

Department of General Services

**Therese Yewell**

Department of General Services

## **Findings of the Task Force**

The Task Force to Study Small and Minority Design Firm Participation in State Procurement (Task Force) met three times from August to October 2015 to discuss current practices and concerns with State procurement and to discuss a broad range of recommendations.

Through the course of discussions, and written materials presented by Task Force members, we present the following findings:

- There are impediments to equitable participation by small and minority design firms.
- These impediments are in the form of State agency practices, uneven application of current programs, resource intensive procurement processes, lack of effective communication of opportunities, and lack of efforts to build the capacity of small and minority design firms.
- There are significant concerns by prime contractors over the potential for the levying of liquidated damages.
- These concerns center on uncertainty about the criteria for a “good faith effort” by prime contractors in seeking minority participation, and prime contractors may take actions that prioritize the selection of multidisciplinary minority firms over more specialized minority firms.
- The specific measures to address equitable participation and liquidated damages include a range of approaches, involving potential legislation, improvements in State agency practices, improvements in State processes, and ongoing research into and implementation of best practices.
- It is likely that implementation of some of the recommendations will require additional personnel and financial resources at the agencies charged with implementing the recommendations.
- The members of the Task Force appreciate the opportunity to collaborate as design professionals and State officials to seek common ground to improve opportunity and inclusion in State procurement.

## **Recommendations of the Task Force**

The recommendations address the Task Force's charge to determine specific measures to ensure equitable participation by small and minority design firms in State-funded projects and measures to avoid the application of liquidated damages on open-ended design contracts. To that end, we present recommendations in the broad categories of legislative measures, standardization and procedural measures, outreach measures, and capacity building measures.

### ***Legislative Measures***

- Increase the threshold for small procurements from \$25,000 to \$100,000 by repealing and reenacting State Finance and Procurement Article §13-109, and promulgating appropriate regulations.
- Increase the threshold for competition for design services from \$200,000 to \$500,000 by repealing and reenacting State Finance and Procurement Article §13-304, and by having the professional services selection boards promulgate appropriate regulations.
- Make changes to the Small Business Reserve program to expand the A/E category to allow Joint Ventures to certify under special circumstances when the lead is a certified small business. (Responsible Parties – Requires Legislation, Department of General Services/Governor's Office of Minority Affairs)

### ***Standardization and Procedural Measures***

- Implement and/or increase the use of the Small Business Reserve program in design procurements in all agencies. (Responsible Parties – All State agencies that procure design services)
- Increase the use of open-ended contracts with responses only accepted from certified small businesses. (Responsible Parties – All State agencies that procure design services)
- Align the experience requirements in requests for proposals with recent projects completed by the State. (Responsible Parties – agency procurement offices)
- For certified small firms, allow the experience of the principals to count as the equivalent of firm experience in meeting some technical qualifications. (Responsible parties – agency procurement offices)
- For open ended contracts, review requests for proposals before issuance to make sure the range of capabilities sought is aligned with the performance requirements of the contract. (Responsible parties – agency procurement offices in consultation with project managers)
- Ensure that certified minority firms are certified accurately and comprehensively in all codes they are capable of providing services in. Use firm licenses and business registrations as an additional tool to identify firms with capability and capacity. (Responsible Parties – design firms, Maryland Department of Transportation – disparity study, agency business programs offices)
- Re-evaluate the Maryland Department of Transportation expansion of services process for minority firms (Responsible Parties – Maryland Department of Transportation)
- Review requests for proposals, with the goal of simplifying, reducing paperwork, to the extent practicable, maximizing standardization across agencies, and aligning the qualifications requested with the qualifications necessary for performance. (Responsible Parties – agency procurement offices, functioning as an inter-agency work group)

### *Standardization and Procedural Measures (continued)*

- Require the certified minority team members to be identified in the response to the request for proposals for open ended contracts and set general goals at that time. Allow the option to confirm or revise the participation goals at the time of task approval when each task in fact constitutes a separate contract. (Responsible Parties – agency procurement offices)
- Develop a centralized search portal for current and future design contracting opportunities with the State with links, at minimum, to e-Maryland marketplace, the State capital budget, and a procurement forecast. It should be expandable, after high function for State opportunities is established, to link to local governments, local boards of education, and community colleges. Improve the quality and user friendliness of eMaryland Marketplace, including the opportunity to enter and store repeatedly requested firm data. (Responsible Parties – Departments of General Services and Information Technology, procurement agencies, and user groups)
- Research and adapt best practices from other federal, state, and local government procurement policies and procedures to identify ways to insure equity for certified small and minority design firms. (Responsible Parties – agency procurement offices)
- Develop a standard operational definition to be used by procurement agencies of “good faith effort” for those seeking waivers from or adjustments to MBE/DBE goals. To the extent that such an operational definition, or examples, already exist, publish this information. (Responsible Parties – Governor’s Office of Minority Affairs)
- Develop and deliver liquidated damages training modules, both in-person and available online, for the vendor community on how to avoid application of liquidated damages and to clarify what constitutes a “good faith effort”. Include case studies in the training to provide actual examples. (Responsible Parties – Governor’s Office of Minority Affairs, design professional associations)
- Develop and deliver liquidated damages training modules, both in-person and available online, for the agencies administering design contracts on when liquidated damages provisions are triggered and how to apply them. Include case studies in the training to provide actual examples. (Responsible Parties – Governor’s Office of Minority Affairs, agency procurement offices)
- Apply liquidated damages clauses related to minority goals consistently across agencies. (Responsible Parties - Governor’s Office of Minority Affairs, agency procurement offices)
- Explore best practices that may also reward exceeding certified minority and small business goals in lieu of simply using the “stick” of liquidated damages.

### *Outreach Measures*

- Increase direct agency outreach to certified small and minority firms, with a goal of increasing competition and hiring of small and minority firms for prime contractor opportunities. (Responsible Parties – agency business programs offices)
- Conduct outreach events, however; when advertising outreach events, be specific as to what types of contracting opportunities will be highlighted. (Responsible Parties – agency business programs offices, Governor’s Office of Minority Affairs)
- Provide access to historical contracting information, to show a clearer picture of the range of firms getting State contracts and to promote team building opportunities in advance of actual solicitations. (Responsible Parties – agency procurement offices)

### *Capacity Building Measures*

- Encourage joint ventures, including joint ventures with certified small and minority businesses as the lead firm. (Responsible Parties – agency procurement offices, agency business programs offices)
- Develop/encourage mentor-protégé arrangements between large and small firms. (Responsible Parties – agency business programs offices, design community professional organizations, Maryland Department of Commerce)
- Determine the feasibility (i.e., challenges and benefits) of adopting an MBE program transition or graduation mandate. (Responsible Parties – Governor’s Office of Minority Affairs, Maryland Department of Transportation)
- Develop a Statewide small business development training program. (Responsible Parties – State agencies)