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August 13, 2018

The Honorable Thomas V. Mike Miller, Jr.  
The Honorable Michael E. Busch  
Legislative Policy Committee  
Legislative Services Building, Room 200B  
90 State Circle  
Annapolis, Maryland 21401-1991

Re: **State Procurement: *Small Business Preference Program Report (FY 2017)***

Dear Mr. President and Mr. Speaker:

State Law requires the Secretaries of General Services and Transportation and the University System of Maryland to each submit an annual report to the Board of Public Works on the operation and effectiveness of the Small Business Preference Program (State Finance and Procurement Article, §14-208). The Board of Public Works has compiled the information for FY 2017 and is reporting it to the Legislative Policy Committee.

Under Maryland's Small Business Preference Program, select agencies may designate individual procurements for a Small Business Preference.<sup>1</sup> When a procurement is so designated, certified small businesses compete for State contracts along with businesses that are not certified. If a non-certified business is low bidder, a certified small business is awarded the contract if its bid did not exceed the low bid by more than:

- ♦ Up to 5% if the certified small business is not veteran-owned;
- ♦ Up to 7% if the business is a certified veteran-owned small business; or
- ♦ Up to 8% if the business is a certified service-disabled veteran-owned small business.<sup>2</sup>

<sup>1</sup> Limited to the Departments of General Services and Transportation, the University System of Maryland, and Morgan State University for the procurement of supplies, services, and construction-related services, and the Department of Public Safety and Correctional Services in connection with State correctional facility construction (State Finance and Procurement Article, §14-202).

<sup>2</sup> Low bid is not the sole determining factor for award.

In contrast, the Small Business Reserve (SBR) Program allows State agencies to limit competition in SBR-designated procurements to only small businesses; i.e. only small businesses may submit bids or proposals and receive a contract award. The SBR Program was recently expanded to all State procurement units and its goal increased from 10% to 15% of an agency's procurement spend.<sup>3</sup>

### **Summary of Fiscal Year 2017 State Agency Reports**

**Department of General Services (DGS)** has limited this program to procurements of construction-related services and commodities. DGS has concluded that the Small Business Preference designation conflicts with Maryland regulations governing construction procurement and therefore did not apply the preference to that type of procurement in FY 2017. DGS reports that it finds the Small Business Reserve Program to be a better tool to increase small business participation and is strategizing to use the Small Business Reserve Program to provide greater small business participation in the future.

#### **Department of Transportation (MDOT) reports:**

- *The Secretary's Office* did not designate any Small Business Preference procurements in FY 2017. The Secretary's Office conducts most of its procurements through the Department of Information Technology master contracts and DGS Statewide contracts with limited opportunities for the Small Business Preference. The Secretary's Office will continue to evaluate all procurements for the Preference designation in FY 2018.
- *Maryland Aviation Administration (MAA)* designated three procurements for Small Business Preference in FY 2017. Federal requirements have an impact on the number of procurements that may be designated as a Small Business Preference, but MAA will continue its outreach to small, minority, and veteran-owned businesses.
- *Maryland Transit Administration (MTA)* did not designate any Small Business Preference procurements in FY 2017. In FY 2018, MTA will continue to attend and participate in outreach events to notify small, minority, and veteran-owned businesses of MTA procurement opportunities.
- *Maryland Transportation Authority (MdTA)* designated 23 procurements as Small Business Preference in FY 2017. MdTA will continue to attend outreach events to notify small, minority, and veteran-owned businesses of procurement opportunities.

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<sup>3</sup> Chapter 438 (Laws of 2017), effective October 1, 2017, significantly revised the Small Business Reserve Program law, §§14-501 – 14-505 of the State Finance & Procurement Article

- *Maryland Port Administration (MPA)* did not designate any contracts as Small Business Preference in FY 2017. The Port suggests that contract opportunities for small businesses are much greater under the Small Business Reserve Program. The Port adds that its unique requirements often result in limited-competition scenarios where the Small Business Preference is not appropriate.
- *Motor Vehicle Administration (MVA)* designated four procurements as Small Business Preference in FY 2017. To support the small business community, MVA advertises small procurements that are not designated as Small Business Reserve; are not expedited projects; and are not security-sensitive as Small Business Preference.
- *State Highway Administration (SHA)* designated 81 procurements as Small Business Preference. The SHA Office of Maintenance, District Offices and Maintenance Facilities will continue to specifically designate many of its State-funded operational and maintenance procurements for activities such as mowing, HVAC repair, towing, and landscape maintenance for small business participation.

**University System of Maryland (USM)** reports that the Small Business Reserve Program reaches more small businesses than the Preference Program. USM institutions occasionally test application for the procurements over \$100,000. These institutions report that the Preference Program has no impact on the overall responses and contract awards, and that the Small Business Reserve Program provides greater opportunities for small businesses. USM will continue to emphasize small business procurement opportunities, with a focus on the Small Business Reserve Program.

**Morgan State University (MSU)** reports the University had little success in FY 2017 using the Small Business Preference. MSU applied the preference to a number of procurements with the hope of small businesses being able to take advantage of the incentive. However, MSU has not executed a procurement award to a small business firm on the basis of the Preference Program. MSU has not encountered a small business that has provided a bid within the percentage point tolerance of the bid from a non-small business firm that qualifies for the incentive. MSU will seek in FY 2018 to apply the preference and see if better results will be achieved.

**Department of Public Safety and Correctional Services (DPSCS)** reports no contracts awarded using the Small Business Preference in FY 2017 (it did award two contracts under the Small Business Reserve Program). DPSCS evaluates all contracts as to the availability of certified small businesses for the work.

**The expansion, use, and popularity of the Small Business *Reserve* Program has led to the lack of use and efficaciousness of the Small Business *Preference* Program.**

In FY 2017, MDOT SHA and MdTA were able to designate 100 procurements as Small Business Preference. However, no State agencies reported significant contract awards in FY 2017 based on application of the preference. This pattern has been consistent over the last seven fiscal years even as agencies have extended outreach and encouragement of small business participation. A primary reason for this is that the Small Business Reserve Program is a much more effective program for soliciting and awarding contracts to small businesses. With the recent changes to the Small Business Reserve Program, the Small Business Preference Program – which may be used only by certain agencies – has been left by the wayside; the effectiveness of the Preference Program in State procurements has become questionable.

Sincerely,



Gabriel Gnall  
Procurement Advisor

cc: The Honorable Lawrence J. Hogan  
The Honorable Nancy K. Kopp  
The Honorable Peter Franchot  
Sheila McDonald, Executive Secretary  
Sarah Albert, Legislative Services  
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