

Know your rights and your responsibilities



ABOUT THE AUTHOR

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Every year Maryland spends roughly \$8 billion procuring the goods and services needed to keep our great State running. In this process, State government has recognized the critical role that small, minority and women-owned businesses play in the vitality of our economy. At the micro level, these businesses bolster healthy competition and provide valuable services to the State; at the macro level, they create jobs and opportunities in our communities and far beyond.

Socio-economic preference programs like the State's longstanding and nationally recognized Minority Business Enterprise (MBE) Program seek to ensure that small, minority and women-owned businesses have an entrée into State procurement and are afforded the opportunity to perform, build capacity and soar.

But creating and implementing the laws governing inclusion initiatives like the MBE program is only half the battle. Small, minority and women-owned businesses operating in the public contracting arena must, too, have an understanding of the legal rights and responsibilities that govern their relationship with large prime contractors and the State, respectively.

You know the old adage: knowledge is power? Well, the public contracting realm is no different. Having a sound understanding of the following top five rights and responsibilities will empower any small, minority, or woman-owned business to protect their interest while performing on a State contract.

5. Speak Early or Forever Hold Your Peace

Before a contract even begins, you should be considering ways to protect

your company's interest. A huge part of this is ensuring the bidding process is fair and equitable; and that the minimum qualification requirements are in line with standard industry practice. RFP and RFQs, much like "new job" postings can sometimes have unduly burdensome requirements that simply aren't necessary for the nature or scope of the job at hand. Unlike a lengthy online job posting, however, you can ask the designated procurement officer for an explanation of, or even to change provisions of, a solicitation that are not necessary. Procurement staff will examine your request and determine whether the requirement is absolutely necessary or can be amended. Note that post-award bid protests are void if the protest is with regard to an issue that was apparent prior to bid closing. Ultimately, when you have concerns about solicitation requirements, speak early or forever hold your peace.

4. Get It in Writing

Although the State goes through great lengths to ensure that clear and accurately completed MBE Forms are submitted at the inception of a contract, the fact of the matter is, these forms do not entirely govern the relationship between a prime and an MBE subcontractor. MBE Forms merely provide the State with an enforceable attestation from the prime to meet the MBE participation goal with their named subcontractors. MBE Subcontractors should always carefully review or craft an independent contracting agreement with the prime. These agreements should cover all the nitty gritty details regarding delivery of service expectations, payment schedules, what to do in the instance of default, delays, etc. This is unequivocally the most critical

instrument an MBE firm can use to protect their business.

3. You Cannot Be Removed Absent "Good Cause"

MBE subcontractors can sometimes receive threats of removal from a contract for trivial matters or even no reason at all. If you are working with a prime that has threatened your removal from a contract for which you are an officially named participant, you must know your right to stay put until a "good cause" determination is made by the State. By the State's definition, "good cause" is either: 1) a documented history of non-performance/under-performance or 2) if you, the MBE subcontractor yourself, has elected to be removed.

2. Learn How the Process Works

Maryland has a very unique procurement system – chalk full of nuances. For example, the Board of Public Works, a board comprised of the Governor, the Comptroller and the Treasurer,

is the only board like it in the nation. They meet bi-weekly to approve any state contract valued at over \$200,000. If you are awarded a contract over that value, it will go before the board as the final step for approval. You must also know who is procuring the services your business offers and on what kind of schedule. The best way to get a handle on this information is to attend technical training courses with the Governor's Office of Small, Minority & Women Business Affairs (GOSBA) as well as attend outreach sessions where you can meet state procurement officers and buyers, learn about tangible opportunities coming down the pipeline and share your capabilities statement.

1. Know When to Be Patient Versus When to Escalate Matters

Did you know the state of Maryland has a



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designated staff person at every agency whose primary role is to assist MBE subcontractors and monitor their participation on contracts with MBE goals? These individuals are known as MBE Liaisons. There is an updated listing of every agency's MBE Liaison on GOSBA's webpage. Do not wait until you are months behind in payment — or even worse — wait until the contract is completed before reaching out to your MBE Liaison to discuss issues with prompt payment or your scheduled utilization on a contract.

For more information on the MBE Program or a listing of our training course offerings, visit our website.

Baltimore County's Small Business Resource Center

Ready to start, grow or improve your small business? Contact us for expert assistance and advice...all at no cost. Services include:

- one-on-one counseling • financial assistance • trainings
- business plan development • marketing advice

PLUS, ask about our Boost Fund for small, minority, women and veteran owned businesses!




Small Business Resource Center
102 W. Pennsylvania Avenue, Ste 101 | Towson, MD 21204 | 410-825-6200 BaltimoreCountyMD.gov/smallbiz
Baltimore County Executive Johnny Olszewski and the Baltimore County Council
Department of Economic & Workforce Development



Harford County **GROWS** Opportunity

Harford County's Office of Community and Economic Development supports businesses big and small to find and grow opportunities to strengthen our business community. We are proud to support our small, minority, women, and veteran-owned businesses that make Harford County Maryland's New Center of Opportunity!



BARRY GLASSMAN, Harford County Executive
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