

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor

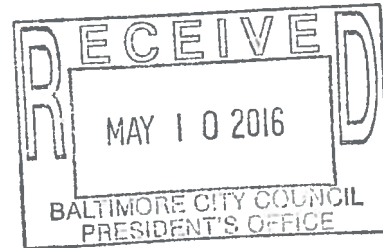


MINORITY AND WOMEN'S BUSINESS
OPPORTUNITY OFFICE

Room 101, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202
Phone: 410-396-4355
Fax: 410-396-1457

May 9, 2016

Honorable President and Members
of the City Council of Baltimore
Attn: Natawna Austin, Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202



Re: City Council Bill 16-0619 – Minority and Woman's Business Enterprises –
Small Local Business Enterprise Procurement Preferences

Dear President and City Council Members:

The Minority and Women's Business Opportunity Office (MWBOO) has been asked to comment on a Small Local Business Enterprise (SLBE) Program as contemplated by City Council Bill 16-0619, *Minority and Woman's Business Enterprise – Small Local Business Enterprise Procurement Preferences*. Many jurisdictions, similarly situated to Baltimore, have enacted such SLBE programs. In recent years, jurisdictions of various sizes and demographics have enacted similar programs. They have appeared to pass constitutional scrutiny on a number of grounds with the requisite factual predicate and a narrowly tailored approach in order to support the governmental interests in enacting such a program. It should be noted that the Department of Law has not approved the Council Bill 16-0619 for form and legal sufficiency.

MWBOO supports any and all opportunities to promote the growth of small, local and disadvantaged business enterprises in the Baltimore metropolitan statistical area. An SLBE Program could have several significant and tangible benefits. First, it would further strengthen the legal underpinnings of the City's Minority and Women's Business Enterprise (MBE/WBE) Program by providing a race and gender neutral tool for the City to use in its efforts to remedy past discrimination and to ensure that all segments of the local business community have an equal opportunity to participate in the City's procurement process. Secondly, it could enhance competition in City contracting by increasing the pool of available small and local contractors and vendors. Further, it could create additional local employment opportunities for City residents as local businesses tend to hire locally. Additionally, this type of program could ensure that the money the City of Baltimore spends on goods and services is distributed in a way that benefits its' local economy by allowing the City to immediately recapture some of their expenditures through taxes, and grow the local tax base. Finally, this type of program could result in increased economic impact as local companies tend to spend a greater portion of their



revenue back into the local economy. Local companies also tend to circulate more revenue to local labor, suppliers, owners, and charities. These dollars are in turn spent by local employees, suppliers and owners on goods and services within the local marketplace. An SLBE Program is intended to have the benefit of being an economic multiplier in the local economy.

The main considerations for MWBOO if such an SLBE ordinance were to be enacted relate to the implementation and administration of the program. City Council Bill 16-0619 places these responsibilities on MWBOO. The ordinance would require, in pertinent part, that MWBOO create Goal Setting Committees for certain specified industry categories; establish eligibility requirements for firms seeking to participate in the SLBE Program; establish graduation and suspension criteria for qualifying businesses; implement “affirmative procurement initiatives” to promote the award of City contracts to SLBEs; provide annual reports on the SLBE Program; conduct periodic hearings on and review of the SLBE Program; provide for an appeal process of certain adverse determinations by MWBOO, and; impose penalties for violations of the program. MWBOO currently does not have the requisite human and financial resources to administer such a program if enacted. MWBOO anticipates that in order to administer such a program would require a minimum of four (4) full-time employees and a minimum of \$250,000 for salaries alone. It may possible to have two (2) full-time employees and two (2) independent contractors thus saving on employee benefits.

Finally, the City’s MBE/WBE program is a separate and distinct program and serious consideration should be given as to whether or not a local small business preference program should be intertwined with the City’s MBE/WBE program from a practical and legal standpoint. Most cities that have enacted such programs have designated a small, local business enterprise official to administer the program and it is typically operated through the public works department, procurement department, a contract compliance entity or a separately created governmental unit.

MWBOO is generally supportive of an SLBE program. However, MWBOO remains reluctant to take on the responsibility of administering such a program at this time. Additional consideration should be given to the appropriate relationship of a SLBE Program, if any, to MWBOO and Article 5, Subtitle 28.

Sincerely,



Courtney M. Billups
Chief

cc: George Nilson, City Solicitor
Elena R. DiPietro, Chief Solicitor
Victor Tervalva, Chief Solicitor
The Honorable Helen Holton
Christine Bivens, Director, MWBD
Angela Gibson, City Council Liaison, Mayor’s Office