

---

CITY OF BALTIMORE

BRANDON M. SCOTT  
Mayor



DEPARTMENT OF LAW

JAMES L. SHEA  
100 N. HOLLIDAY STREET  
SUITE 101, CITY HALL  
BALTIMORE, MD 21202

---

June 21, 2021

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

Re: City Council Bill 21-0070 – Required Market Research

Dear President and City Council Members:

The Minority and Women’s Business Opportunity Office (MWBOO) has reviewed Council Bill 21-0070. The bill requires contracting agencies to conduct market research investigations before determining that no qualified certified business enterprises are available to enter into leases or concession contracts. It requires MWBOO to attempt to identify qualified certified business enterprises if contracting agencies state that no qualified certified business enterprises are available to enter into leases or concession contracts. MWBOO also is required to notify the contracting agency and the Board of Estimates if the Office identifies qualified certified business enterprises that are available to enter into leases or concession contracts. Contracting agencies that want to waive or reduce MBE/WBE contract goals to conduct market research and document the market research to demonstrate why is necessary to waive or reduce MBE/WBE contract goals. If MWBOO grants the waiver or reduction of contract goals, it must give the waiver or reduction of contract goals and the accompanying market research documentation to the Board of Estimates. The bill also requires contracting agencies that want to waive utilization requirements for a specific contract to conduct market research and document the market research to demonstrate that needed goods and services are only available from a sole source. If MWBOO grants the waiver of utilization requirements for a specific contract because the needed goods and services are only available from a sole source, MWBOO must give the waiver and the accompanying market research documentation to the Board of Estimates. The bill makes the Board of Estimates the ultimate arbiter regarding the reduction or waiver of MBE/WBE contract goals and utilization requirements.

There are no legal impediments to the passage of this bill. Nonetheless, the Law Department recognizes the bill presents operational challenges for both MWBOO and the agencies to fulfill these legislative obligations. Leaving aside policy matters, it is clear to us the bill’s definition of “market research” and its utilization in permitting the relaxation of certain legal standards is sufficiently vague to warrant clarification. Specifically, what set of criteria might be required of an agency to meet before MWBOO or the BOE can approve a relaxation?

How much research is sufficient? When the bill calls for “continuous” market research, does it really mean, an unbroken, uninterrupted search of the goods and services that could be the possibly be the object of a proposed procurement?

Article 5, § 28-11 provides MWBOO the authority to adopt rules and regulations. The Law Department concludes that, should this bill become law, it will be essential for MWBOO to provide interpretative guidance to the agencies in MWBOO rules and regulations. Moreover, given the significance of BOE’s involvement in MWBOO’s conclusions about waivers and utilization issues, it would prove useful if the BOE was required to approve the interpretative guidance given the provisions of this act. To this end, the Law Department would support the amendment offered by MWBOO involving the addition of a new section 3.

Sincerely,

*Victor K. Tervala*

Victor K. Tervala  
Chief Solicitor

cc: James L. Shea, City Solicitor  
Nina Themelis, Mayor’s Office of Government Relations  
Nikki Thompson, Director of Legislative Affairs  
Matthew Stegman, Director of Fiscal and Legislative Services  
Darrell Ingram, Deputy City Solicitor  
Elena DiPietro, Chief Solicitor, General Counsel Division  
Hilary Ruley, Chief Solicitor  
Ashlea Brown, Assistant Solicitor