

CITY OF BALTIMORE

CATHERINE E. PUGH, 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

March 10, 2017

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

Re: City Council Bill 17-0008R

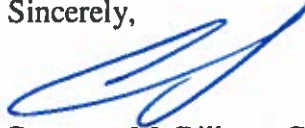
Dear President and City Council Members:

The Minority and Women's Business Enterprise Office (MWBOO) is responsible for administering the Minority and Women's Business Enterprise Program pursuant to Article V, Subtitle 28. Article V, Subtitle 28-55(a) states, "*a contractor must pay its subcontractors in a timely fashion for satisfactory work.*" Section 28-55(b) provides that "*A payment is timely if it is mailed, delivered, or transferred to a subcontractor no later than 7 calendar days after the contractor receives payment from the City.*" As with any other aspect of contract performance, the agencies are required to monitor MBE/WBE utilization and payments to all subcontractors on a regular basis. If MWBOO receives a complaint regarding non-payment, the matter is immediately referred to an investigator who contacts the MBE/WBE subcontractor, then the prime contractor, and finally the project manager/contract administrator or appropriate agency representative responsible for monitoring the contract. Once the known facts are ascertained, if the prime contractor has been paid for work performed by an MBE/WBE, he must remit payment within seven (7) days. In cases where the MBE/WBE subcontractor has performed work and the prime has not been paid by the City, it must be resolved at the agency level. If there is a good faith legal or performance dispute, that is a matter to be resolved between the prime contractor and MBE/WBE subcontractor as the City has no privity of contract with the MBE/WBE subcontractor. The City's agreement is with the prime contractor, and a material term of its agreement with the City is compliance with Article V, Subtitle 28. Failure to comply with MBE/WBE requirements is a material breach of the contract. If there is a good faith legal or performance dispute between the prime contractor and the MBE/WBE subcontractor, yet the prime contractor has been paid by the City based upon invoices submitted by the MBE/WBE subcontractor to the prime contractor for work is the basis of the dispute, the prime must still pay the MBE/WBE subcontractor within seven (7) days and any and all claims the prime may have against the MBE/WBE subcontractor, must be pursued through other remedies, not non-



payment. MWBOO supports this resolution and an investigative hearing into late payments to subcontractors on City contracts.

Sincerely,



Courtney M. Billups, Chief  
Minority & Women's Business Opportunity Office

CMB:smd

---

cc: David E. Ralph, Interim City Solicitor  
Elena R. DiPietro, Chief Solicitor