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SUMMARY OF THE 2012 MBE PROGRAM REAUTHORIZATION LEGISLATION

In 2011, Maryland's Minority Business Enterprise (MBE) Program statute, which typically sunsets every 5 years, was re-enacted for one year to give the State an opportunity to evaluate whether additional programmatic changes were warranted based on information in the 2011 Disparity Study. This one year extension also allowed the State to gather comments and recommendations for the MBE Program through an outreach and evaluation process spearheaded by the Governor's Office of Minority Affairs (GOMA) and the Maryland Department of Transportation (MDOT). As a result of those efforts, the 2012 General Assembly passed an MBE Program statute that extends the program for 4 more years and includes the following key components:

- Reaffirms the requirement for an overall aspirational statewide MBE goal, but allows increased flexibility by requiring that GOMA, in consultation with MDOT and the Office of the Attorney General (OAG), reevaluate, and set an overall goal every two years through the Code of Maryland Regulations (COMAR).
- Requires that GOMA, in consultation with MDOT and the OAG, reevaluate and update subgoal guidelines every two years.
- Requires that GOMA consult with MBE Program stakeholders in establishing overall goals and subgoal guidelines.
- Requires that for any year in which there is a delay in establishing an overall goal or subgoal guidelines, the previous year's overall goal or subgoal guidelines will apply.
- Emphasizes the existing prohibition against bundling contracts to inhibit MBE participation and adds a prohibition against quotas.
- Clarifies the requirement that State agencies monitor and collect data with respect to compliance and take corrective action when prime contractors do not make good faith efforts to comply with MBE contract goals.
- Authorizes GOMA, in consultation with MDOT and the OAG, to issue regulations to govern how the work of MBE prime contractors might be counted toward contract goals.

- Requires that prime contractors provide a satisfactory reason for submitting an ineligible or unavailable MBE subcontractor before they will be permitted to amend an MBE Participation Schedule.
- Requires that an MBE Participation Schedule be made a part of the executed contract and prohibits replacement of a listed MBE firm after contract execution unless there is good cause and the change is approved by the head of the agency with the written consent of the MBE liaison.

The 2012 MBE Program statute also directs the Board of Public Works (BPW) to issue regulations:

- Requiring bidders or offerors to complete a bid document that specifies the overall percentage of the contract they agree to achieve through MBEs.
- Clarifying that the documents the bidder or offeror submits for its MBE participation commitments be made part of the executed contract with the State.
- Requiring that every contract that includes MBE participation goals contain a liquidated damages provision in the event that the prime contractor does not comply in good faith with its MBE participation commitments.

The new MBE Program statute not only extended the program until July 1, 2016, it added several provisions to further strengthen the effectiveness of the program in an effort to provide equal access to opportunities and address longstanding and persistent disparities. Taken together, the measures will continue to ensure that Maryland's MBE program is fair, flexible, and constitutional.