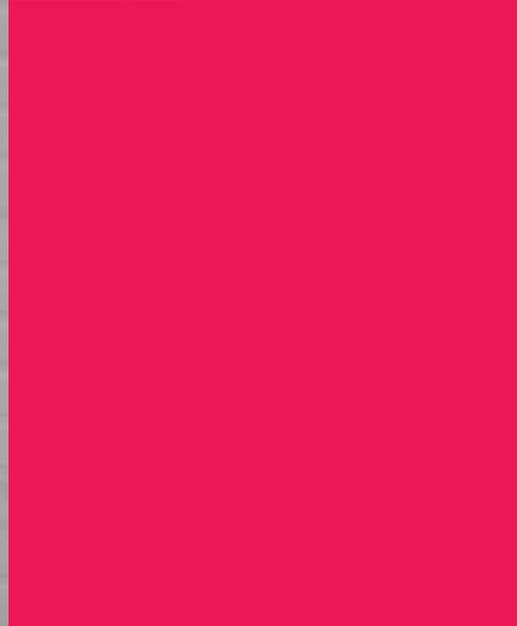


# MWBOO

Minority & Women's Business  
Opportunity Office



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# The Baltimore City Minority & Women's Business Opportunity Office FY 2022 Annual Report

Baltimore City Board of Estimates  
 100 Holliday St.  
 Baltimore, MD 21202

Dear Honorable Members of the Board:

Enclosed is the Minority and Women's Business Opportunity Office (MWBOO) Fiscal Year 2022 (FY22) Annual Report. This report encompasses Fiscal Year 2022, July 1, 2021-June 30, 2022. Pursuant to Baltimore City Code Article 5, Section 28-10, MWBOO is responsible for the administration of the Minority & Women's Business Program. City Code Article 5, Subtitle 28. MWBOO is required to annually "review MBE and WBE participation on all contracts and procurement to evaluate the effect of the Program and the City's progress towards meeting the annual goals" and report the findings to the Board of Estimates. City Code Article 5, § 28-25. Due to Workday implementation, Citywide B2G contract compliance has not yet been implemented. B2G will provide City and agency M/WBE utilization data that should be detailed, at least in part for Fiscal Year 2023, in the next MWBOO Annual Report.

MWBOO made substantial advancements by transitioning to a digital process for all office operations. The process improvements and work undertaken by the hard working and diligent MWBOO team is detailed herein. I look forward to continuing to work in partnership with the agencies, implementing process improvements for improved efficiency, identifying ways to better serve M/WBEs, continuing to expand development efforts, and advocating for greater emphasis on increasing both availability and capacity of M/WBEs. M/WBEs are the catalyst to an improved and thriving Baltimore City. Thank you for all of your assistance, support, and intentional action in increasing the capacity, utilization, and development of M/WBEs!

Regards,

Christopher R. Lundy, Esq.  
 Chief, Minority & Women's Business Opportunity Office (MWBOO)  
 100 N. Holliday Street  
 Suite 101, City Hall  
 Baltimore, MD 21202

## The Big Picture

# The Minority & Women's Business Program

### Background

The Minority and Women's Business Opportunity Office (MWBOO) was established in the Department of Law and is overseen by the Chief of MWBOO.<sup>1</sup> MWBOO is responsible for the administration of City Code Article 5, Subtitle 28 (the Minority & Women's Business Program) pursuant to City Code Article 5, § 28-10. As a result of being City Code based, MWBOO does not always possess the same latitude that some agencies are able to exercise via their discretion. MWBOO takes our role seriously in ensuring compliance with the City Code and all contractual terms.

### Our mission

MWBOO is premised upon communication and partnership with the agencies to effectuate their mission while ensuring that we are working to maximize opportunities for M/WBE utilization on contracts. MWBOO further investigates and conducts contract compliance reviews to ensure there is compliance with all contract and Code requirements. Our team meets with agencies regarding upcoming and ongoing procurements to ensure synergy as the contract moves through the review process on the way to BOE approval. MWBOO meets and discusses issues generally or specifically regarding a contract or bids with agencies and the public, to the extent that it appropriately

avoids an unfair advantage to that business in the procurement process.

### Our work

Our small office at MWBOO reviews City contracts in excess of \$50,000 for MBE/WBE participation and goal setting; pre-bid compliance; post-award or contract performance compliance; and reviews all City spending under \$50,000 (small spend) for M/WBE utilization.

MWBOO's work is integrally related to Mayor Scott's Action Plan, which is comprised of five core pillars: Building Public Safety, Prioritizing Youth, Clean and Healthy Communities, Equitable Neighborhood Development, and Responsible Stewardship of City Resources. MWBOO's work impacts all City operations, whether it be much-needed BPD ballistic vests, BCFD fire apparatus, DHCD Community Development Block Grants (CDBG), or Community Catalyst Grants to benefit neighborhood development. We also supported the building and maintenance of recreation centers, such as the new state-of-the-art Middlebranch Fitness and Wellness Center. Our ongoing compliance and investigative efforts are foundational to ensure that only eligible businesses are certified and that prime contractors utilize and timely pay M/WBE subcontractors.

<sup>1</sup>Baltimore City Code Article 5, § 28-9

# MWBOO Duties

The City Code specifically details the duties of MWBOO, stating: The Minority and Women's Business Opportunity Office is responsible for the administration of this subtitle.

The Office's duties include:

- 1** certification of business enterprises covered by this subtitle;
- 2** maintaining a directory of business enterprises certified under this subtitle;
- 3** providing information and needed assistance to business enterprises covered by this subtitle to increase their ability to compete effectively for the award of City contracts;
- 4** investigating alleged violations of this subtitle and, when appropriate, making written recommendations for remedial action;
- 5** developing and distributing all necessary forms, applications, and documents necessary to comply with this subtitle;
- 6** maintaining statistics on and reviewing regularly the progress of agencies towards achieving the annual goals for the utilization of minority business enterprises, women's business enterprises, small business enterprises, and local business enterprises;
- 7** recommending to appropriate City officials methods to further the policies and goals of this subtitle;
- 8** monitoring contractors throughout the duration of their contracts to ensure that all efforts are made to comply with this subtitle; and
- 9** certifying compliance with this subtitle before contracts are submitted to the Board of Estimates for award.

Contract Compliance is inclusive of City-funded private development like Baltimore Peninsula, formerly Port Covington. MWBOO's work also includes reviewing all agency small spending to ensure they are considering, obtaining quotes, and utilizing M/WBEs. These functions are critical to ensuring equitable opportunities in the procurement process for M/WBEs.



Md. Washington Minority Companies Association 19th Annual Spring Breakfast Meeting/Business Showcase Expo May 2022 at Martin's West. Pictured Left to Right: Casey Larkin, Shane Wojno Weller Development; MWBOO Chief Christopher Lundy; Joshua C. Matthews, Quiera Matthews-Henson, Larry Sydnor, unknown gentlemen, & Michael Williams.

**Our team**

The MWBOO team in FY22 was comprised of the Chief, Deputy Chief, (1) Investigator, (1) Program Assistant, (1) Program Manager, and four (4) compliance officers. Two compliance officers and the Deputy Chief are responsible for all contract compliance requests generated by contract administration at each of the agencies and the Bureau of Procurement; two compliance officers review new and renewal certification applications; and one investigator looks into potential violations of the City Code. Our additional staff provided administrative support and operations assistance.

We accomplished a tremendous amount of work due to the determination and dedication of the MWBOO team. The need for additional personnel to expand and realize this work has been recognized by the administration and

resulted in a \$500,000 budget enhancement for Fiscal Year 2023. This will allow us to add three compliance officers, an investigator, and an outreach coordinator.

We are thrilled to be moving into the next phase of MWBOO. MWBOO is currently in the process of merging with the Mayor's Office of Minority & Women's Business Development Office throughout FY2023. In merging our resources, we will be able to provide enhanced services to small, minority-owned, and women-owned businesses.

We applaud the intentional acts of both maintaining the Minority and Women's Business programs and undertaking the Disparity Study to determine the City's M/WBE utilization across the major procurement categories. ■

# The Big Picture

## MGT Disparity Study

The need for the Minority & Women's Business program to continue is grounded in data. The program works to remedy past discrimination in the City's contracting process by prime contractors against minority and women's business enterprises, which has resulted in the significant underutilization of minority and women's business enterprises in contracts awarded by the City in the major contracting markets: construction, commodities, architectural, engineering, and professional services.

The program is narrowly tailored to remedy this underutilization by setting participation goals on a contract-by-contract basis, seeking to utilize M/WBEs on small spends, limiting certification to the Baltimore City market area, and requiring regular reviews of the necessity of this subtitle via the Disparity Study.

The City retained MGT in June 2020 to conduct an availability and disparity study to determine if there are any disparities compared to the availability of firms in the City's marketplace who are ready, willing, and able to perform work. The firms considered were:

- the utilization of minority-owned business enterprises (MBE),
- women-owned business enterprises (WBE),
- veteran-owned business enterprises (VBE),
- disabled owned business enterprises (DOBE),
- and lesbian, gay, transgender, bisexual, queer-owned business enterprises (LGBTQ)

MGT analyzed data for July 1, 2015 (FY16) through June 30, 2019 (FY19) for Construction, Architecture and Engineering, Goods, and Other Services, including professional services.

The Study analyzed whether a disparity exists between the number of available MBEs, WBEs, VBEs, DOBEs, and LGBTQs providing goods or services in the above business categories (availability) and the number who are contracting with the City as a prime contractor or subcontractor (utilization). VBE, DOBE, and LGBTQ data was extremely limited. The Disparity Study revealed that the City must affirmatively track our spending with these business communities to begin to assess their utilization in the City. This has already begun and will allow for this data analysis to occur in the future.

The disparity in the Baltimore City Market Area has been determined by the most recent August 2022 MGT Disparity Study. This disparity has been persistent, pervasive, and statistically significant based on available vendor data.

The Disparity Study revealed that from 2015 through 2019 Baltimore spent \$3,376,926,631.54 billion, after exclusions, to procure goods

“Minority and women businesses that participated in the focus groups and in-depth interviews expressed that barriers they experience are pre-qualification requirements, bonding, and the informal network of prime vendors and subcontractors that exclude their firm from doing business... Feedback from many businesses had common themes regarding their experiences working or attempting to work with City or Housing Authority, such as competing with large firms, incumbent firms holding legacy contracts, and enforcement of the policies established to eliminate unfair treatment that prevents M/WBE firms from building their businesses.”

*August 2022 MGT Disparity Study*

and/or services. Of that 29.32% went to M/WBE businesses. The majority of City spending is being spent locally with Baltimore businesses. MWBOO will be utilizing the data for more particularized outreach, forecasting of City contracting opportunities, and to focus developmental efforts on areas where the City contracts frequently.

The Disparity Study details growth in overall City spending, specific growth in several contracting areas from the 2014 Report, and the positive steps that the City has undertaken to increase M/WBE participation and eliminate disparities. The Report is critical to the inclusive development of Baltimore City by providing an independent assessment of the City's progress toward eliminating all disparities within the process to procure goods and/or services. The Report makes several recommendations that serve as a roadmap to ensure that we are eliminating any barriers to entry for M/WBEs. This independent analytical analysis provides the Citywide data view needed to assess the

Minority and Women's Business Program.

Mayor Scott is committed, and MWBOO will be working diligently in partnership with City leadership and the agencies to ensure that the Disparity Study Report recommendations are adopted and implemented. These recommendations will require amendments to City Code Article 5, Subtitle 28. Mayor Scott is also taking steps to continue to improve services to the M/WBE community by combining the Mayor's Office of Minority and Women's Business Development with MWBOO. The need to combine the offices was recognized by the administration even prior to the release of MGT's recommendation to do so.

We believe this combined office will provide more developmental tools and resources to allow for additional availability and utilization of M/WBEs. We are working to grow a vast and diverse pool of businesses to partner with the City. Baltimore's success is dependent upon our small, minority, and women-owned businesses. ■

## The Big Picture

# M/WBE Certification

One of MWBOO's missions is to certify businesses as a minority and/or woman-owned business enterprises. We recently launched our new B2G Diversity Management System that is home to the M/WBE directory of certified businesses. The directory lists all current and actively City certified MBE and WBEs. The certified directory provides the needed visibility to ensure that M/WBE businesses are being contacted and contractually engaged to work on City contracts and City funded private development projects.

Thank you to our partners at Baltimore City Information Technology (BCIT) who were instrumental in supporting the successful deployment. The B2G Diversity Management System is a technological step forward for MWBOO and the City, and it shows our commitment to a diverse procurement process that is inclusive of minority and women-owned businesses.

### About the Directory

The new certification directory only includes businesses with an active M/WBE certification. As a result, MWBOO is able to provide clean certification data in the new B2G actively certified directory for the first time. This has, as expected, caused our reported certification numbers to drop significantly, but more importantly, these are accurate numbers. The previous database was not sophisticated and prevented MWBOO from identifying duplicate entries and the capability for businesses with expired certifications to not be visibly listed in the directory. The new system provides us with an accurate baseline assessment of our current M/WBE availability to expand and build upon and ensures that

there is a vibrant and diverse pool of M/WBE businesses to provide the City with the needed goods and/or services.

The acceptance of City M/WBE certification is instrumental in procurement throughout Maryland. Moreover, the Minority & Women's Business Program's scope of eligibility for certification is second only to State MDOT certification. Baltimore City MWBOO certification is accepted and relied upon by other jurisdictions, including Baltimore County, Anne Arundel County, Howard County, and Montgomery County.

### How to join the Directory

The Code provides the criteria for obtaining M/WBE certification:

- The minority and/or women must own at least 51% of the company and have operational and managerial control
- Be an independent, operating, small business
- Have been in operation for at least 12 months before applying for certification
- Have been minority or women-owned for at least 12 months before applying for certification
- Have an operating office in the Baltimore City Market Area, currently — City Code Art. 5, § 28-78.

Both the initial and renewal certification application is now in B2G. The entire application can be saved, completed, and submitted via the website. Even if denied certification, there is an ability to seek additional review if you follow the protest and/or appeal procedures detailed in the initial denial letter.

# FY 2022 MWBOO By the Numbers

## BoP and Agency Items Submitted to MWBOO

BoP and City Agencies submit items that require MWBOO review via a Smartsheet form. These items are broken down by the type of request. Compliance reviews and MBE & WBE Participation Commitment Forms can have multiple prime contractors or bidders, each requiring an individual review and MWBOO action.

Total dollars generated through contracts:

**\$19,843,457**  
dollars paid to MBE

**\$3,599,695**  
dollars paid to WBE\*

## Avg. Time to complete items under review

Submitted by Agencies  
**255 items**

41 days Total time | 28 days Assigned to completion



**117**  
Waiver

**65**  
Goal Setting

**40**  
Participation Forms/  
Compliance Review

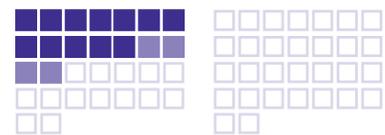
**26**  
Misc.

**7**  
Release of Retainage

0 50 100 120

Submitted from BoP  
**342 items**

16 days Total time | 12 days Assigned to completion



**104**  
Waiver

**83**  
Goal Setting

**155**  
Participation Forms/  
Compliance Review

0 50 100 150

Approved Denied Inactive  
No Action Needed No Outcome

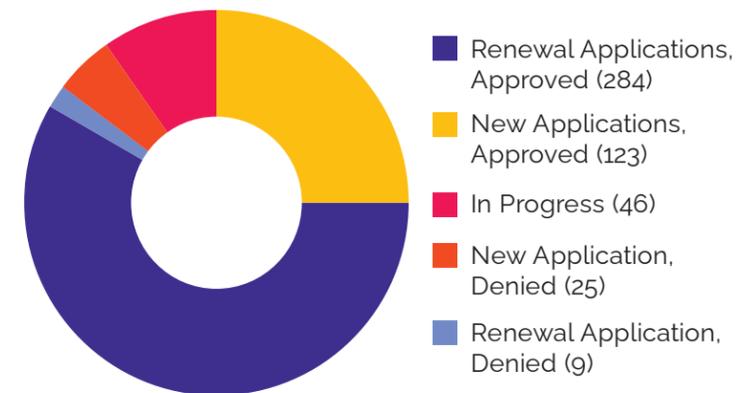
## MWBOO's Portfolio FY 2022

**1,090**  
Certified M/WBEs  
in the B2G Active  
Certified Directory\*\*

**487**  
New and renewal M/  
WBE applications  
submitted

**26**  
Investigations

### Application Breakdown | New and Renewal



Insight: New Applications made up **25 percent** of all applications processed by our team, showing the growing engagement with our services.

### Questions Submitted and Answered by MWBOO

- 127 Renewal Certification
- 80 New Certification
- 40 Misc. Items
- 14 Contract
- 11 Post-Award Statement of Intent
- 9 MDOT Certification App.
- 5 Post-Award Waiver
- 4 MWBOO Directory
- 3 Expansion of Services App
- 2 Update Contact Info

**295**  
Total questions submitted

All functions in FY22 were tracked via Smartsheet for the most comprehensive annual data to date. In 2021 MWBOO implemented Smartsheet to all business services: request to update contact information, expansion of certified services, and post-award statement of intent submission. Additionally, all Bureau of Procurement requests were tracked throughout the entire Fiscal Year 2022 and agency requests began being tracked mid-year in late December 2021.

\* based on Compliance Reviews and Release of Retainage Completed

\*\*FY21 directory listed 1,560 through June 2021. The B2G Active Certification Directory with clean data listed 1,090 businesses. The active certification directory only includes businesses with an active M/WBE certification. This provides us with an accurate baseline assessment of our current M/WBE availability. Nonetheless, we are happy to report that the number of certified M/WBEs has continued to increase.

# Performance Updates Process Improvements & Accomplishments

MWBOO's output far exceeds what you would expect from an office of seven at the end of the fiscal year. During FY22 MWBOO developed a strategic plan to guide us through budget FY22. This has provided an internal measure for the MWBOO team to gauge progress and performance throughout the year. This great work would not be possible without each member of the team.

The following are highlights of the work throughout FY22:

## Modernizing our work

Throughout the year, we digitized all office functions: certification, renewal, additions, substitutions, waivers, expansion of services, update to business contact information, contact MWBOO, post-award statement of intent for a M/WBE subcontractor being added to the contract for their utilization to count towards the contract goals. This has lessened MWBOO's environmental impact tremendously compared to when each certification application or letter to make the request was received in hard copy. It has additionally increased efficiency, allowed for greater tracking of office functions, and improved collaboration and communication regarding contracts, applications, or requests.

Additional Digital Updates:

- Revised the MWBOO website FAQs to better address common questions and concerns;
- Disabled the MWBOO general mailbox & MWBOO Compliance

mailbox to enable tracking of questions via Smartsheet;

- Post Award Waiver submission feature was added to "Contact MWBOO" on the website;
- Shortly into FY23 implemented B2G for certification, directory, outreach, and events.
- Provided agency resources for bidders/contractors/vendors: MWBOO MBE/WBE Bidder Participation form guide, MWBOO FAQ link, and contact MWBOO link;

## Standardizing forms and processes

We revised the M/WBE bid participation forms. In the past, these forms have led to confusion and non-compliant bidders. These revisions were undertaken to make the forms easier to complete and detail their M/WBE compliance. Additionally, we communicated to the agencies and BOP the M/WBE bid form revisions & form guide, which is now located on the website.

# Partnerships in FY22

MWBOO completed agency training of all primary contracting agencies regarding contract compliance & requirements to increase MBE/WBE participation. MWBOO is placing a heavy emphasis on communicating our process, policies, procedures, and partnering with the agencies to increase MBE/WBE participation.

The agencies trained from August through December 2021 included: DPW, DGS, DOT, BCRP, BCFD, BPD Contract Administration and Fiscal, BOP, DHCD, BCHD, PABC, BCIT, DHR, DHCD Affordable Housing Trust Fund Team, and OEM.

Additional partnerships which supported education and training of our work:

- Met with BCFD and expedited a review to enable the City to receive \$48m in reimbursements on ambulance transportation;
- Met with BPD to discuss MWBOO process and greater MBE/WBE participation on BPD contracts;
- Meet regularly with the DHCD development and grants team to follow-up regarding grant approvals and Office of Project Finance ongoing contracts that are projecting deficits;
- Worked in partnership with DHCD to develop a more efficient review and approval time for much needed Community Catalyst Grants and Community Development Block Grants;
- Met with Councilwoman Ramos regarding MWBOO, Procurement Preference Act, and the parameters

of the disparity study data analysis of LGBTQ+ contractor/vendor data;

- Met with Councilman Burnett to discuss M/WBE self-performance of goals on contracts and the ramifications of a change in the Code requirements;
- Took part in BPD Outside Counsel selection in collaboration with BPD Office of Legal Affairs;
- Filled a vacancy on the MWBOO Certification Appeals Board;
- Participated in the Semi-Annual Meeting between American Consulting Engineers Council and DPW/DGS/DOT; &
- Collaborated with the Office of the Inspector General (OIG) on investigations that raise elements of fraud.

## External Outreach, Development, & Collaboration

As we finalize the Mayor's Office of Minority & Women's Business Development's (MWBD) merger with MWBOO, we will continue to enhance the resources available to businesses to enhance resiliency during COVID-19 and as

we move forward. These efforts are focused upon local, small, minority, and women-owned businesses. These ongoing efforts include Sourcelink an online resource hub for small businesses and the Small Business Resource Center (SBRC). The SBRC offers a robust schedule of 70 webinars and workshops to assist small businesses including: 4 webinars every month on repairing your credit, growing your business, budgeting during crisis, becoming a homeowner and 2 monthly classes on developing a business plan and cashflow planning.

Additionally, the MWBOO Chief is working with a multi-institution research group seeking National Science Foundation Smart and Connected Communities funding for a proposal focused upon Business Resilience Infusion Communal Knowledge System (BRICKS) for Minority-Owned Small Businesses. The team is comprised of professors from Morgan State, Virginia Tech, and Old Dominion University. The proposal is a holistic approach to increasing business resiliency via an online interface, mentoring network, marketplace of resilience services, resilience solution and research enterprise, and communal repository. This proposal would be very beneficial to the M/WBE business community and Baltimore City market area.

- Besides the efforts detailed immediately above, MWBOO hosted or attended numerous external training or outreach events; including the following:
- We met with the Maryland Minority Contractors Association with DPW Dir. Mitchell. Mayor Dixon spoke on behalf of the organization and advised us of concerns of the MBE business community;
- We met with Motorola to regarding M/WBE participation on the 800MHz radio facilities contract. This is a vital contract for BPD and BCFD radio

communications. The prior contract did not contain any MBE/WBE participation goals. We met with Motorola to discuss the availability of MBE/WBEs and ways to ensure participation on the contract. The contract goals were successfully set to 15% MBE and 5% WBE;

- Baltimore City 0 to 100 Accelerator powered by M& T Bank class of approximately 30 business owners was given a certification presentation;
- Attended and MWBOO Chief spoke at the Maryland Washington Companies Association (MWMCA) Reception for DPW Dir. Jason Mitchell. There were approximately 70 business owners in attendance;
- Met with Whiting Turner to discuss their efforts to increase MBE/WBE participation and outreach seeking MBE/WBE subcontractors to partner with on contracts;
- Attended Hanlon Park and Ashburton Community Association meeting regarding DPW park renovation project and MBE/WBE participation questions and concerns;
- Met with Mayson-Dixon Companies to tour One North Charles Street and discuss their efforts in promoting MBE/WBE participation;
- MWBOO City Council hearing regarding Equity in the Procurement process took place in November 2022. MWBOO Chief provided an overview of MWBOO's MBE/WBE certification process, goal setting, waivers, bid MBE/WBE participation from review, training, and outreach;
- Conducted DHCD Community Catalyst Grant orientation presentations to operating and capital project recipients and met with recipients to ensure they



were aware of MWBOO requirements;

- Continuing to meet with contractors and vendors, such as the founder of the Small Developers Collective;
- MWBOO Chief participated in Dis. 14 Town Hall with Councilwoman Ramos;
- MWBOO Chief participated as a panelist in Information Technology Industry Council's Fireside Chat panel discussion regarding Procurement & Acquisition Innovation: Advancing MWBE Procurement Reform. ITI is a global technology trade association with members including: Amazon, Apple, Google, IBM, Microsoft, Motorola, Zoom, Visa, Mastercard, Twitter, Zerox, Samsung, Lenovo, Intel, Dropbox, Cisco, AMD, Adobe, Dell, HP, Oracle, Lexmark, Facebook, Iron Mountain. This fireside featured Ernst & Young and Baltimore based full stack digital services firm Fearless;

- Met with Baltimore Peninsula, formerly Port Covington, developer MAG Partners, formerly Weller, regarding the project, MBE/WBE utilization on the project, & how to partner to increase M/WBE utilization on large projects. The Baltimore Peninsula team are excellent partners and are undertaking significant efforts that evidence their commitment to diversity on the project;
- Attended the Maryland Washington Minority Companies Association Live! Casio & Hotel Minority Outreach Fair held on Friday, December 10, 2021, where MWBOO provided information about certification and FAQs to the over 1,100 MBE/WBEs in attendance. This was an excellent outreach event where we got to interact with many certified businesses and connect with hundreds more businesses who may be eligible for certification;
- Conducted certification presentation for South Baltimore Gateway Partnership;
- Baltimore City IT Contracting Open House for MBE/WBEs Virtual Event Joint IT Outreach Event: Doing Business with the City with Mayor's Office, BOP, & BCIT. Presented MWBOO presentation to the audience of IT MBE/WBEs;
- Participated in WBE certification roundtable with Commercial Construction;
- Attended Maryland Washington Minority Companies Association 19th Annual Spring Breakfast Meeting/Business Showcase Expo. The event honored local business leaders from Assured Partners Agency President (who partnered with MWBOO to present a surety and bonding webinar), AUI Power CEO, BGE President & CEO, Chesapeake Employers Insurance Co. President & CEO, Commercial Construction President

- (MWBOO held a joint WBE webinar with Commercial for Women's History Month), F. H. Paschen V.P. Mid-Atlantic, FirstEnergy Consultant Supplier Diversity, Howard Hughes Corporation President, BWI Thurgood International Airport CEO, Morgan State Associate V.P., P. Flanagan & Sons, Inc. President, PNC Bank Reginal President, Skanska Executive V.P., Tradepoint Atlantic Executive V.P., and UMMS CEO;
- Attended A Vibe Mixer business networking and showcase event by local WBE that participated in the Commercial Construction WBE Webinar referenced above;
- Finalized research agreement with professors from Loyola University Chicago and Auburn University to conduct research regarding best practices and improving supplier diversity. This is really exciting research to be undertaken in conjunction with the Disparity Study, ongoing Procurement Assessment and Transformation, and MWBOO's ongoing study of staffing and funding of diversity compliance programs. All of this data and analysis will provide greatly needed insight to the City's procurement practices and measurable outcomes;
- Attended Howard Hughes Corporation MBE Outreach Event in Columbia;
- MWBOO Chief was a speaker at Clark Construction's Baltimore Strategic Partnership Program Graduation. Clark is currently developing the Baltimore Arena with Oak View Group. This is a great program for businesses to obtain multi-week instruction from a leading national construction company. This program has been taking place throughout the country for ten years, but this was the inaugural year in Baltimore. The entire graduating class was comprised of MBE/WBEs, including several City certified M/WBE businesses;

- Attended the Clark Construction inaugural Small and Diverse Business Expo at the Walter E. Washington Convention Center in D.C. MWBOO Chief was a panelist in the Advancing Your Business Through State and Local Opportunities Panel and joined by the diverse supplier heads from Prince George's County, Virginia, and D.C. It truly was a regional event that provided an opportunity for MBE/WBEs to network and seek business in the forecasted opportunities. Clark Construction are excellent partners and are undertaking significant efforts that evidence their commitment to diversity on their projects;
- MWBOO Chief has been an instructor regarding M/WBE certification and contract performance with DPW's Small Business Development Program; &
- Surveyed certified businesses regarding utilization and their experience in seeking procurement opportunities with the City as part of the disparity study.

**Partnerships for Procurement**

- Partnered with BCIT to establish weekly procurement workflow meetings to increase participation opportunities on tech contracts;
- Partnered with DGS to establish weekly procurement workflow meetings to increase participation opportunities on facilities maintenance, fleet management, and capital contracts;
- Partnered with DPW to attend procurement workflow meetings to increase public works M/WBE participation opportunities;
- We regularly meet each BOE cycle as needed to brief the City Administrative Officer Shorter, Comptroller Henry, and Council President Mosby and/or their offices to ensure M/WBE utilization concerns were addressed

Waivers and Work

# M/WBE Contract Utilization/ Participation Goals & Waivers

Goals are the vehicle that MWBOO utilizes to eliminate the underutilization of M/WBEs in the City procurement process. The lack of M/WBE utilization is at the heart of the data that was analyzed in the Disparity Study. MWBOO often hears from prime contractors, Bureau of Procurement Buyers, and agency contract administration that the goals set on a specific procurement are too high. The Disparity Study conducted clearly refutes this position.

There remains a statistically significant disparity in the City's utilization M/WBEs. Additionally, the increased utilization and development of M/WBEs is in accordance with Mayor Scott's Action Plan for his administration. There are dozens of City Agencies, Offices, & The Bureau of Procurement that each have contract administrators and/or buyers that vastly outnumber MWBOO's small team.

The Agencies are to play a critical role in creating opportunities for M/WBES:

- **§ 28-70** requires that all contracting opportunities must be evaluated in an effort to divide/segment the total requirements of a contract to provide reasonable opportunities for participation by MBE/WBEs.
- **§ 28-68** requires that each agency head or designee must assume primary responsibility for achieving the goals of the program and on a continuing basis, review

all aspects of the program's operations to assure that the purpose is being attained.

- MWBOO will seek agencies to provide annual report "All City agencies must submit to the Office [MWBOO], on an annual basis, a written report on the efforts made under this subsection [Article 5, Subtitle 28 The Minority & Women's Business Program]."

**City Code Article 5, § 28-50(c)(1).**

The importance of the requirements of the Minority & Women's Business Program in the Code requires that City contracts:

1. incorporate this chapter by reference;
2. provide that the failure of any bidder, contractor, or subcontractor to comply with this chapter is a material breach of contract; and
3. require that, during its term,

the contractor will:

- fulfill the commitments submitted with the bids;
- continue to make good faith efforts to utilize minority and women's business enterprises; and
- maintain records reasonably necessary for monitoring compliance. § 28-54.

Contract compliance issues originate in the agencies due to them having project managers and daily inspectors on construction projects and contract administration to manage other types of contracts. MWBOO will be increasing compliance efforts via digital goal progress tracking in B2G and annually requesting that agencies report on their efforts to further opportunities for M/WBEs.

### Contract Goal Setting & Exclusions

The current annual participation goals are MBE 27% and WBE 10%. These goals are not universally applicable. Rather, the annual participation goals are to aid the City in its annual evaluation of the effectiveness of the Minority and Women's Business Enterprise Program.

Goals or waivers remain applicable and typically are not changed during the contract term. To change or impose goals upon a contract it must be resolicited. Nonetheless, goals can be negotiated on a contract with an existing waiver via the contractor/vendor voluntarily entering into a Commitment to Comply with contract participation goals. This has been done on several occasions notably for contracts that BCIT has identified can be segmented for M/WBE utilization, despite the contract previously being granted a waiver.

MBE/WBE goals, if applicable, must be set for each specific contract considering, but not limited to, the following factors:

- the availability in various industry classifications and professions of MBE/WBEs that are qualified and willing to provide goods, expertise, and services on the particular contract;
- the level of utilization of these firms in past contracts awarded by the City;
- the contract specifications;
- the adverse impact on non-MBEs and WBEs; &
- any other relevant factors. § 28-22.

MWBOO sets goals, absent a waiver, for all contracts, private developments, capital developments, special agreements that include City funding in excess of \$50,000. There is no City spending or procurement in excess of \$50,000 that is automatically excluded from MWBOO requirements, with the exception of procurements where there is only a sole source to provide the goods and/or services to the City. MWBOO currently consults the directory to determine the number of certified firms using the prequalification code service description. We utilize a spreadsheet containing a formula to calculate the goals by factoring the contract dollar amount, service codes, and total number of MBE/WBE certified in the program. If there are no applicable service codes available, goals

will be set based upon the dollar range of the contract.

Goals aim to take into the account the totality of the circumstances of available MBE/WBEs and the ability to segment the contract. The goal setting process will be substantially improved when the next phase of B2G is implemented to that will enable auto goal calculation based upon the NAICS code for the services and the availability in the market area detailed in the Disparity Study. MWBOO is in the process of working in partnership with the Office of Boards and Commissions to update the prequalification codes and transition to the NAICS codes. This will provide MWBOO with the most recent and accurate data to allow the goals to be calculated based upon the dollar amount of the NAICS codes within the scope of work. The auto goal calculation will provide an enhanced process to better reflect the actual availability to provide the services and/or goods.

Goals exclude aspects of the budget, such as:

- Salaries
- Profits (& Losses)
- Rent or Leases
- Travel
- Utilities
- Communications (Telephone/Internet/Cable)
- General Overhead
- Bonds
- Premiums
- Taxes and Interests

MWBOO Compliance Officers ensure compliance with contract goals. For each contract over \$50,000 with M/WBE goals, MWBOO contacts each prime for an accounting of all payments to M/WBE subcontractors. Thereafter, all named subcontractors are contacted to confirm payment in that amount. With the accounting of subcontractor payments, the compliance officer is able to calculate the money paid to all MBE and WBE contractors to measure compliance with the applicable

contract goal. The goal is applicable for the entire contract, not merely the period being evaluated in the individual compliance review. This is why it is crucial to review the MWBOO comments and whether the review indicates that one or both of the goals have been achieved or exceeded. If the goals have been achieved or exceeded for the contract, it would only be altered if additional funds are added to the contract that would result in a corresponding increase of the amount of money to be paid to the M/WBE subcontractors to achieve the goal.

### Waiver Guidance

MWBOO is working to set goals on all contracts to the extent applicable. Although we are undertaking substantial efforts to increase M/WBE contracting opportunities and utilization, there are numerous instances that may necessitate the need to seek a waiver of the M/WBE goals. Waivers are often vilified in large part to a lack of understanding of the particular circumstances that necessitate a waiver of the M/WBE goal requirements. It must be noted that there is no guarantee of a waiver, merely a request. As such, each request is being evaluated individually and is highly scrutinized. There is not always a blanket reason to grant a waiver, but is due to the actual circumstances encountered at the time that the contract is moving through the procurement process or emergency procurement process.

3/4 MWBOO is advising agencies to not request a waiver unless the contract is:

- a sole source,
- limited to salary and fringe benefits, or
- is limited to services that cannot be segmented to be subcontracted.

3/4 MWBOO is advising Contractors/Vendors to not request a waiver unless they first:

- conduct market research which is, at a minimum, searching the MWBOO active certification database for eligible MBE/WBEs to perform the contract services;

# A waiver may be requested due to:

## 1 A lack of M/WBE availability

- Goals cannot be set if we do not have at least 2 certified M/WBEs to provide the goods and/or services sought via the procurement. We are working to utilize the Disparity Study data to conduct targeted outreach and development to limit the need for availability waivers; or
- A business may be certified for a service, but lack the specific certification or equipment necessary to competently perform the services. In these cases, a waiver may be granted due to the specialization eliminating the available M/WBEs.

## 2 Change in Availability Post-Award

- There are times when a subcontractor due to changes in circumstance, the project site, or the cost of materials may seek price escalation. Any price escalation will be governed by the contract, but there are occasions when a subcontractor is unwilling to continue work on the project if their price escalation demands are not met; or
- There are instances where a M/WBE goes out of business or loses capacity and is no longer able to complete the project.

*You should not be seeking a waiver if there are available certified firms to provide the goods and/or perform the contract services.*

## 3 Dispute

There are times when the prime and M/WBE have a dispute grounded in the project, financial, or otherwise where their business relationship is irreparable and they no longer seek to work with one another. MWBOO does not control contractual relationships of the prime and subcontractors. All parties have their independent legal rights and should seek legal consult prior to stating that they are no longer and/or unable to work on a project.

## 4 State Funded

MWBOO does not set goals on majority State-funded contracts that have their own State MDOT DBE goals or waiver that is applicable. In those circumstances MWBOO does not set a second set of goals or monitor State governed contracts to avoid confusion regarding certification and what work is applicable to which goal for the project.

## 5 Unable to segment

- The contract is composed of just a commodity or good, a salary for an employee, or other services that the end user agency is mandating that the prime perform;
- It is proprietary technology that cannot be segmented since it was specifically developed by that company; or
- It is a subscription, such as software that has no opportunity to segment the work.

## 6 Sole Source

is automatically exempt per the code if (1) needed goods or services are available only from a sole source; and (2) the prospective contractor is not currently disqualified from doing business with the City. Art 5, § 28-64.

- exhaust all commercially useful functions that can be performed by MBE/WBEs on the contract (Code Article 5, 28-32(a) defined as performance of real and distinct work for which the business enterprise has the skill, expertise, and actual responsibility to perform, manage, and supervise);
- discuss the difficulties you are experiencing achieving compliance with the contracting agency.

3. For each MBE or WBE that placed a bid that you consider to be unacceptable, a statement that explains the basis for that conclusion.

Each waiver is reviewed individually, highly scrutinized, and will not be granted if the bidder's submission does not evidence that they undertook several steps to secure participation in good faith.

### "Good Faith Efforts" Waiver Requirement

MWBOO uses the term good faith efforts in several contexts including bid participation forms, waivers, and in evaluating efforts to meet contract participation goals by bidders. All efforts must begin with an evaluation of the availability of certified MBE/WBEs to perform the contract services by consulting the MWBOO certification directory: <https://baltimorecity.diversitycompliance.com/>

If there are certified MBE/WBEs that can provide the goods or services under the contract the contractor/vendor must undertake efforts to contact those businesses, secure price quotes, and exercise diligence in determining if they have the capabilities and expertise to perform. The availability of MBE/WBEs strongly undercuts any request for participation goals to be waived.

The following are additional examples of actions that can show that efforts were undertaken in good faith to meet the applicable contract goals, including but not limited to:

- The bidder should solicit interest as early in the acquisition process as practicable to allow the MBE/WBEs to respond to the solicitation and submit a timely offer for the subcontract. The bidder should determine with certainty if the MBE/WBEs are interested by taking appropriate steps to follow-up on initial solicitations.
- The bidder should identify portions of the work to be performed by MBE/WBEs in order to increase the likelihood that the MBE/WBE goals will be achieved.

### Waiver FAQ

It is important to note that each requestor will have to make efforts to establish the need for a waiver. Below is some guidance regarding frequently asked and/or encountered issues regarding waivers.

#### Can I get a waiver of the contract participation goals?

If a bidder is unable to comply with a contract goal, the bidder may submit a waiver request with the bid. The waiver request must be made on the MBE/WBE Participation Waiver Request Form. A waiver will not be granted unless the waiver request includes documentation that demonstrates good faith efforts to meet the goals. Art. 5, §28-62. The bidder should have previously consulted the MWBOO certification directory, <https://baltimorecity.diversitycompliance.com/>, and made attempts to secure MBE/WBE subcontractor participation.

Each waiver request **must include documentation of your good faith efforts to secure, contact and negotiate with MBEs and WBEs**, including:

1. The reasons your company is unable to secure sufficient MBE/WBE participation to meet the stated goals;
2. The efforts made by your company to select portions of the contract to be performed by MBEs and WBEs; &

This includes, where appropriate, breaking out contract work items into economically feasible units (for example, smaller tasks or quantities) to facilitate MBE/WBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates MBE/WBE participation.

- The bidder should provide interested MBE/WBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation with their offer for the subcontract.
- A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including MBE/WBEs subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using MBE/WBEs is not sufficient reason for a bidder's failure to meet the contract MBE/WBEs goal, as long as such costs are reasonable and not excessive.
- The bidder should engage in negotiations in good faith with interested MBE/WBEs. It is the bidder's responsibility to make a portion of the work available to MBE/WBEs subcontractors and suppliers and to select those portions of the work or material needed that is consistent with the available MBE/WBEs subcontractors and suppliers, so as to facilitate MBE/WBEs participation.
- Evidence of such negotiation includes: the names, addresses, and telephone numbers of MBE/WBEs

that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for MBE/WBEs to perform the work.

- Bidders should include detailed information regarding their attempts to secure participation. MWBOO cannot accept unsupported statements about efforts to secure MBE/WBE participation. All waivers must include documentation of those efforts. For example: you should include email correspondence with subcontractors to show their response or lack of response.
- It is insufficient to simply state that you contacted a business and provide their directory entry or contact information. It is insufficient to make arguments why you believe the goals should be waived and you should be permitted to perform the entire contract with no participation goals. It is insufficient to detail that the contract was previously granted a waiver or that you were previously awarded this contract. A promise to use MBE/WBEs after contract award is not considered to be responsive to the contract solicitation or to constitute good faith efforts. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts or to meet the contract MBE/WBE participation goals.
- It is the bidder's responsibility to establish and document the efforts that were undertaken to secure MBE/WBE participation. **Waivers are judged solely based upon the information provided and detailed to MWBOO in the bid submission.**
- There are numerous ways to identify

subcontractors to participate on the contract such as: the MWBOO certification directory <https://baltimorecity.diversitycompliance.com/>, attending pre-bid information sessions, business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, and/or written notices or emails to all MBE/WBEs listed in MWBOO's directory that specialize in the services or goods required to perform the contract.

- MBE/WBEs should not be rejected as unqualified without sound reasons based on a thorough investigation of their capabilities. Factors such as the contractor's standing within their industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

- Bidders should make reasonable efforts, if needed, to assist interested MBE/WBEs in obtaining bonding, lines of credit, insurance, or related assistance or services as required by the subcontractor.
- Contacting and utilizing the services of available minority/women community organizations; minority/women contractors' groups; local, State, and Federal minority/women business assistance offices (including MWBOO); and other organizations as allowed on a case-by-case basis to assist in the recruitment and placement of MBE/WBEs. When considering a waiver, you should contact MWBOO if you feel as though you have exhausted the ability to identify additional MBE/WBEs who could perform on the contract.
- MWBOO will evaluate all of the detailed efforts in determining if the bidder has exercised good faith efforts.

# Closing Remarks

MWBOO is striving to emphasize the needs of the M/WBE business community. I want to leave you with a phrase that is appropriate in thinking of the approach we need as we move forward—**intentional, purposeful investment.**

We must be deliberate and have a distinct purpose in our investments in the M/WBE business community. I intend to continue to talk to the entire business community in partnership to develop the mechanisms, resources, and programs that are most needed. One such need that will be addressed in the near future is Citywide contract compliance monitoring. MWBOO will be utilizing B2G to enable contract monitoring to ensure M/WBEs are being both utilized and paid on City contracts and City funded private development projects. This is of the utmost importance.

The Minority & Women's Business Program has improved and continues to provide opportunities for M/WBEs, but it is not enough. We need to establish and grow even more minority and women-owned businesses. This will be accomplished only by having a consistent intentionality in our approach to eradicating the significant underutilization of M/WBEs by segmenting contracts, seeking out minority and women-owned businesses for goods and services, ensuring prompt payment, compliance monitoring, investigating violations of the City Code, and providing mechanisms and structures to increase and encourage entrepreneurship.

We must further invest in MWBOO personnel to better serve the business community to ensure that it is representative of the citizens of Baltimore. Our investment and dedication of resources is pivotal to our recognition of the needs of the M/WBE business community. With intentional, purposeful investment in small M/WBEs we will see increased job opportunities and open the door of possibilities to our youth. MWBOO is here to support and advocate for your business. Please be sure to visit MWBOO for more information and resources. Thank you for taking time to read this report!

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