

MARYLAND  
BOARD OF PUBLIC WORKS

Governor Treasurer Comptroller

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March 14, 2014

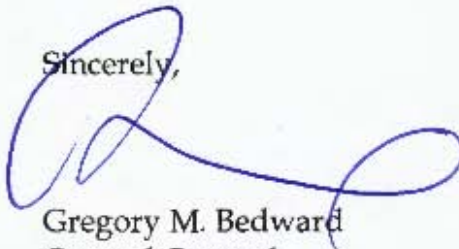
The Honorable Thomas V. Mike Miller, Jr.  
The Honorable Michael E. Busch  
Legislative Policy Committee  
Legislative Services Building, Room 200B  
90 State Circle  
Annapolis, Maryland 21401 - 1991

Dear Mr. President and Mr. Speaker:

As required by State Finance and Procurement Article, §14-505, the Board of Public Works is submitting the FY'13 Small Business Reserve Program Report.

Please feel free to contact me if you have any questions.

Sincerely,



Gregory M. Bedward  
General Counsel

cc: The Honorable Martin O'Malley  
The Honorable Nancy K. Kopp  
The Honorable Peter Franchot  
Sheila McDonald, Executive Secretary  
Sarah Albert, Legislative Services  
Enoch Pratt Free Library

STATE OF MARYLAND

# Board of Public Works

GOVERNOR • TREASURER • COMPTROLLER

Report to the Legislative Policy Committee  
on the Operations and Effectiveness of the

# Small Business Reserve Program



Treasury Bldg, Room 117  
80 Calvert Street  
Annapolis, Maryland 21401

## Fiscal Year 2013

# EXECUTIVE SUMMARY

The Small Business Reserve Program aims to increase participation in State procurements by small businesses. Currently, 6,150 small businesses are listed as qualified in *eMaryland Marketplace*. Under the Program, 23 designated State agencies must structure their procurement procedures to ensure that at least 10% of procurement dollars are expended directly with certified small businesses at the prime contract level. In FY 2013, the designated State agencies spent approximately 9% of their procurement dollars on small businesses.

## **I. SCOPE OF REPORT**

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Every designated agency must submit an annual report to the Board of Public Works concerning that agency's experience with the Small Business Reserve Program in the preceding fiscal year. The Board is tasked with compiling the annual information and submitting a report "on the operation and effectiveness of the entire Small Business Reserve Program" to the Legislative Policy Committee.

## **II. PROGRAM OPERATION**

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The Small Business Reserve Program became effective October 1, 2004. The primary goal of the Program is to facilitate the participation of small businesses in Maryland's procurement system. Procurements that are designated small business reserve are only open to certified small businesses. Each designated State agency must structure its procurement procedures to ensure that at least 10% of its procurement dollars are expended directly with certified small businesses at the prime contract level.

The designated State agencies are:

### **Cabinet Departments**

- Business & Economic Development
- Education
- Environment
- General Services
- Health & Mental Hygiene
- Housing & Community Development
- Human Resources
- Information Technology
- Juvenile Services
- Labor, Licensing, & Regulation
- Natural Resources
- Public Safety & Correctional Services
- State Police
- Transportation

### **Non-Cabinet Agencies**

- Maryland Port Commission
- Maryland Transportation Authority
- State Retirement
- Maryland Insurance Admin.
- Maryland Stadium Authority
- State Lottery & Gaming Control
- State Treasurer's Office

### **Universities**

- University System of Maryland
- Morgan State University

Other State agencies may award contracts to certified small businesses, but only the 23 designated agencies may restrict a solicitation to participation by certified small businesses.<sup>1</sup> When an agency restricts a solicitation in that manner, an eligible but uncertified small business may submit a bid/proposal, but that business must be certified before being awarded the contract.<sup>2</sup>

Minority Business Enterprises that meet the size criteria may be certified as small businesses.<sup>3</sup> Nonprofit organizations are not eligible for certification.<sup>4</sup> The law excludes procurements to preference providers such as Maryland Correctional Enterprises, Blind Industries and Services of Maryland, and Community Service Providers.<sup>5</sup>

### III. RECENT CHANGES

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Chapters 538 and 539, Laws of Maryland 2012 changed the criteria required to qualify as a certified small business in the Small Business Reserve Program. A business can now meet either size requirement – sales amounts or number of employees – instead of both to qualify as eligible. The less-restrictive criteria opened the Program to more and larger businesses.<sup>6</sup> This change is in effect until September 30, 2014.<sup>7</sup>

### IV. PROGRAM EFFECTIVENESS

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- In fiscal years 2009 – 2012, the percentage of agency procurement dollars going to certified small business enterprises averaged 6%.<sup>8</sup>
- In FY 2013, the percentage of agency procurement dollars going to certified small business enterprises averaged 9.02%.
- This increase represents an additional \$63 million in State small business spending: **\$218,575,802 FY 2012** to **\$281,637,271 FY 2013**.
- 6,150 entities are listed as certified Small Business Enterprises.<sup>9</sup>
  - 506 of these certified SBEs are also certified Minority Business Enterprises
  - 56 of these certified SBEs are also veteran-owned small businesses, of which five are certified MBEs.
  - Notably, 59 of the entities listed in *eMaryland Marketplace* as certified SBEs are nonprofits. This is inconsistent with State regulations.<sup>10</sup>

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<sup>1</sup> §14-504(a) of the State Finance and Procurement Article

<sup>2</sup> COMAR 21.11.01.06

<sup>3</sup> Section 14-501(c)(1) of the State Finance and Procurement Article

<sup>4</sup> COMAR 21.11.01.01B(1)

<sup>5</sup> Section 14-502(b) of the State Finance and Procurement Article

<sup>6</sup> Small Business Reserve Program Study 2013

<sup>7</sup> Chapters 538 and 539, Laws of Maryland

<sup>8</sup> FY 2011 Small Business Reserve Program Report

<sup>9</sup> These totals reflect *eMarylandMarketplace* data as of March 11, 2014.

<sup>10</sup> See note 4 *supra* and accompanying text.

## Percentage of Procurement Dollars Spent on Small Business Reserve Program – Fiscal Year 2013

Agency	Expenditures	Total Expenditures	Percentages
<b>Business &amp; Economic Development</b>	\$3,005,425	\$8,646,529	34.76%
<b>Education</b>	\$14,158,401	\$75,412,281	18.77%
<b>Environment</b>	\$2,284,867	\$8,676,202	26.33%
<b>General Services</b>	\$13,572,916	\$76,737,399	17.69%
<b>Health &amp; Mental Hygiene</b>	\$14,223,556	\$342,841,837	4.15%
<b>Housing &amp; Community Development</b>	\$1,494,117	\$15,606,058	9.57%
<b>Human Resources</b>	\$13,785,787	\$150,072,672	9.19%
<b>Information Technology</b>	\$5,140,226	\$34,212,254	15.02%
<b>Insurance Administration</b>	\$245,646	\$1,682,888	14.60%
<b>Juvenile Services</b>	\$4,956,837	\$103,304,691	4.80%
<b>Labor, Licensing &amp; Regulation</b>	\$2,777,472	\$25,524,794	10.88%
<b>Lottery &amp; Gaming Control</b>	\$7,690,138	\$66,544,124	11.56%
<b>Morgan State University</b>	\$3,167,915	\$31,851,463	9.95%
<b>Natural Resources</b>	\$3,531,083	\$31,061,620	11.37%
<b>Public Safety &amp; Correctional Services</b>	\$11,347,681	\$260,964,493	4.35%
<b>Retirement</b>	\$237,459	\$4,741,983	5.01%
<b>Stadium Authority</b>	\$2,611,559	\$12,911,861	20.23%
<b>State Police</b>	\$2,973,361	\$31,797,728	9.35%
<b>Treasurer's Office</b>	\$49,585	\$3,491,782	1.42%
<b>Transportation</b>	<b>\$94,140,597</b>	<b>\$1,082,451,316</b>	<b>8.70%</b>
<i>Maryland Aviation Administration</i>	<i>\$11,492,788</i>	<i>\$175,174,883</i>	<i>6.56%</i>
<i>MD Port Administration</i>	<i>\$8,512,349</i>	<i>\$52,600,438</i>	<i>16.18%</i>
<i>MD Transit Administration</i>	<i>\$22,215,737</i>	<i>\$300,440,792</i>	<i>7.39%</i>
<i>MD Transportation Authority</i>	<i>\$5,810,040</i>	<i>\$279,120,531</i>	<i>2.08%</i>
<i>Motor Vehicle Administration</i>	<i>\$12,170,922</i>	<i>\$47,403,007</i>	<i>25.68%</i>
<i>State Highway Administration</i>	<i>\$31,948,057</i>	<i>\$188,032,435</i>	<i>16.99%</i>
<i>Transportation Secretary's Office</i>	<i>\$1,990,704</i>	<i>\$39,679,230</i>	<i>5.02%</i>
<b>University System of Maryland</b>	<b>\$80,242,643</b>	<b>\$753,233,590</b>	<b>10.65%</b>
<i>Bowie State University</i>	<i>\$2,189,940</i>	<i>\$12,000,892</i>	<i>18.25%</i>
<i>Coppin State University</i>	<i>\$1,463,062</i>	<i>\$12,355,316</i>	<i>11.84%</i>
<i>Frostburg State University</i>	<i>\$4,087,072</i>	<i>\$12,433,400</i>	<i>32.87%</i>
<i>Salisbury State University</i>	<i>\$1,684,075</i>	<i>\$9,979,581</i>	<i>16.88%</i>
<i>Towson University</i>	<i>\$7,196,347</i>	<i>\$55,432,594</i>	<i>12.98%</i>
<i>University of Baltimore</i>	<i>\$1,839,383</i>	<i>\$13,471,363</i>	<i>13.65%</i>
<i>University of MD, Baltimore</i>	<i>\$11,358,125</i>	<i>\$153,638,467</i>	<i>7.39%</i>
<i>University of MD, Baltimore County</i>	<i>\$3,357,904</i>	<i>\$34,052,815</i>	<i>9.86%</i>
<i>University of MD, College Park</i>	<i>\$34,347,580</i>	<i>\$356,962,548</i>	<i>9.62%</i>
<i>University of MD, Eastern Shore</i>	<i>\$2,466,061</i>	<i>\$15,686,576</i>	<i>15.72%</i>
<i>University of MD, University College</i>	<i>\$10,253,094</i>	<i>\$77,220,038</i>	<i>13.28%</i>
<b>STATEWIDE TOTAL</b>	<b>\$281,637,271</b>	<b>\$3,121,767,565</b>	<b>9.02%</b>

## V. RECOMMENDATIONS FOR PROGRAM IMPROVEMENT

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### 1. Increase the Number and Type of Certified Small Businesses

#### A. Expand Scope Businesses in Directory

Even though there are more than 6,100 certified small businesses, certain types of businesses are underrepresented.<sup>11</sup> Designated agencies are in the best position to determine whether there are sufficient certified small businesses to compete for their goods and services contracts. We recommend designated agencies survey the small business directory and focus on recruitment of businesses that may be underrepresented. DGS and the Governor's Office of Minority Affairs should continue Statewide outreach efforts to recruit new small businesses.

#### B. Change Recertification Deadline

By regulation, small businesses are required to re-certify annually.<sup>12</sup> A common critique among the designated agencies is that businesses often fail to re-certify by the annual deadline resulting in otherwise-qualified small businesses losing their certification. We suggest that business cycles that may affect a business's certification eligibility are more appropriately measured in longer increments. We recommend Board of Public Works coordinate with the Department of General Services and the Governor's Office of Minority Affairs to amend the regulatory recertification period from annually to every two years.

### 2. Increase Audits of Certified Businesses

To encourage eligible businesses to participate in the Small Business Reserve program, the State has developed a simple self-certification process on *eMaryland Marketplace*. In exchange for the efficiencies of self-certification, the State must maintain a robust audit operation to ensure the integrity of the Program.

In FY 2013 less than 5% of certified businesses were audited.<sup>13</sup> Among the audited firms, almost 10% had their certification revoked.<sup>14</sup> The relative frequency of certification revocations and the number of ineligible businesses that remain certified in *eMarylandMarketplace* signal a need for greater State scrutiny of all certified small businesses.<sup>15</sup> We recommend augmenting DGS audit resources through additional PINs or lending of audit staff from each of the designated agencies.<sup>16</sup>

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<sup>11</sup> For example, there are fewer than 20 businesses designated as providers of family and social services. Only seven businesses are designated as property and casualty insurers.

<sup>12</sup> COMAR 21.11.01.04A

<sup>13</sup> DGS conducted 295 audits among the 6,126 certified small businesses listed on *eMarylandMarketplace* in FY2013.

<sup>14</sup> DGS revoked 28 certifications.

<sup>15</sup> DGS has been alerted to the presence of nonprofits identified as certified small businesses in *eMaryland Marketplace*. They are addressing the error and strategizing how to use *eMarylandMarketplace* technology to prevent ineligible businesses from self-certifying in the future.

<sup>16</sup> If designated agencies audit small businesses, an amendment to COMAR 21.11.01.04 is necessary.