Maryland
Hospital Association

March 9, 2021

To: The Honorable Guy Guzzone, Chair, Senate Budget & Taxation Committee

Re: Letter of Concern - Senate Bill 909 - Capital Projects - Minority Business Enterprise Goals

Dear Chair Guzzone:

On behalf of the Maryland Hospital Association's (MHA) 60 member hospitals and health systems, we appreciate the opportunity to comment on Senate Bill 909. Maryland hospitals constantly keep pace with advancements in medicine and technology. We witnessed just how dynamic and adaptable hospitals must be during the COVID-19 pandemic. In a matter of days, weeks, and months, hospitals transformed their physical infrastructure to meet the needs of their communities, adding capacity for roughly 6,000, transforming entire floors to COVID units, and much more. Although these examples were unique and fast-tracked to respond to the pandemic, hospitals must update their facilities on an ongoing basis. Whether to comply with new national standards for operating rooms, for example, or to modify procedure rooms so patients do not need to be transferred to receive a higher level of care, hospitals carefully consider the infrastructure changes they need to promote the health and safety of their communities.

Despite the importance of capital funding, hospitals' access to it declined over the years.[i] Maryland hospitals utilize state funding to assist with capital projects—sponsored by their local Delegation or through the Private Hospital Grant Program (PHGP). MHA has been a dedicated steward of the PHGP since its inception in 1994. On average, seven to eight projects are recommended annually. This year, eight projects totaling $6 million were included in the Governor's capital budget, with awards averaging $750,000 for hospitals across the state.

Senate Bill 909 would add a new requirement for projects receiving at least $500,000 in state funding in a single fiscal year. The bill requires the Governor's Office of Small, Minority, & Women Business Affairs (GOSBA), prior to the release of state funds, to review the project for subcontracting opportunities under the state's Minority Business Enterprise (MBE) Program. If practicable, GOSBA would establish MBE subgoals for the project. If goals are identified, then the grant recipient would certify that they expect to achieve the goal or request a waiver.

Conflict with Existing Processes, MBE Goals Established by Hospitals

We appreciate the intent of this legislation and support utilizing women and minority-owned businesses, as is recommended in our program criteria when applying for the PHGP. However, we are concerned with the lack of details in the bill regarding the process to determine subgoals. Through their own contracting, many hospitals have robust programs to increase the diversity of their contractors through MBE subgoals, recruitment in the community, and by including goals in their request for proposals with their general contractors. These goals and subgoals are monitored and evaluated on an ongoing basis. For example, the University of Maryland Medical System and Johns Hopkins Health System establish MBE goals for *every* construction

program—striving to ensure robust diversification of contractors. Since they have met or exceeded their overall goals for major construction projects for years, they are beginning to drill down to more specificity and inclusion for these MBE goals. Adding another layer of state oversight would slow projects down, resulting in delays that could increase costs and potentially deter MBE contractors from wanting to do business with hospitals.

Capital projects receiving funding through the PHGP must work with three state agencies: the Maryland Historical Trust to determine if their project impacts a historical property; The Department of General Services to determine if every contract meets state requirements; and the Comptroller's office to submit proof of expenditures and receive reimbursement from the state. Generally, projects funded through the PHGP are completed within the seven-year term. However, there are circumstances when extensions are needed due to unforeseen construction issues and even delays from the state agency tasked with reviewing the contracts. We are concerned that adding steps in this multi-agency process could increase extension requests and delay projects and disbursement of funding.

Lack of Detail in Guidelines, Concerns with Implementation

We are also concerned with the lack of detail regarding the guidelines that would be established to determine if a subgoal is practical, what would be permitted for a waiver, and what reporting requirements would be established. The state excels at setting goals for state procurement projects through the Minority Business Enterprise Program. However, there has not been an equivalent, data-driven framework developed for monitoring expenditures for grant awards to non-state entities.[1] Additionally, if a grantee has a pre-established subcontracting plan that is deemed unacceptable by GOSBA's review, as required by SB 909, it is unclear what the remedy would be. It is also unclear what the MBE certifications would be measured against, the Maryland Department of Transportation (MDOT) or, will city and county certifications be accepted? The MDOT certification process is structurally limited so that larger minority-owned businesses do not appear on the list. Many hospitals have good working relationships with contractors with local certifications. Jeopardizing these contracts could be detrimental to the businesses SB 909 seeks to assist. The bill delegates the development of guidelines to the Special Secretary for the Office of Small, Minority, and Women Business Affairs, in consultation with the Secretary of Transportation and the Attorney General to inform this process. We recommend further study and engaging grant recipients to help develop the guidelines. These steps would make the components of SB 909 feasible.

Maryland hospitals appreciate and support the intent of this bill and the recommendations from the Senate President Advisory Workgroup on Equity & Inclusion to address this topic. Incorporating racially equitable and inclusive approaches to purchasing and investment decisions is one of the components of MHA and Maryland hospitals' Commitment to Racial Equity. It is critical that any state-developed process complements the work hospitals are already undertaking to ensure diversity in their contracting opportunities.

For more information, please contact:
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[1] Maryland Department of General Services. "Innovations in Procurement: How to Achieve Real Diversity in State Contracting".

[i] Since 2014, as a condition of the Total Cost of Care Model, hospitals have operated under the Health Services Cost Review Commission's (HSCRC) set Global Budget Revenue. This change alters the financial incentives hospitals have, focusing on value over volume. This change is good for the Maryland Model, but limits access to capital funding since historically, hospitals financed capital projects using the revenue they received from increasing their patient volume combined with HSCRC rate increases. This combination of funding created an "inherent tension between the incentives of the Maryland Model and the ability to generate sufficient revenue to replace aging facilities." HSCRC developed a new capital policy in 2019 to provide predictable rate updates for new large scale capital projects. https://hscrc.maryland.gov/Pages/gbr-adjustments.aspx