
March 3, 2021

The Honorable Shane E. Pendergrass
Chair, House Health and Government Operations Committee
241 House Office Building
Annapolis Maryland 21401

Re: Letter of Information – House Bill 722 - Procurement – Disparity Studies – African American–Owned Business

Dear Chair Pendergrass and Committee Members:

The Maryland Department of Transportation (MDOT) takes no position on House Bill 722 but offers the following information for the Committee's consideration.

The Maryland General Assembly established the State's Minority Business Enterprise (MBE) Program in 1978. Periodically, the General Assembly has reenacted the law with amendments, but only after considering Disparity Studies in the utilization of minority and woman-owned firms in Maryland's marketplace. Findings of the Disparity Study assess data on the existence, extent, and impact of discrimination, if any, against minority and woman-owned firms on contracting opportunities within the public and private sectors within and/or in the proximity of the State.

House Bill 722 requires MDOT to complete potentially two studies. The first study requires MDOT to hire a consultant to evaluate the 2017 Disparity Study in order to determine whether there is a compelling interest to implement remedial measures to assist African American-owned businesses separately from the existing MBE Program; the evaluation is due by October 1, 2021. Historically, in evaluating whether the State's current Disparity Study covers activity outside of the current policies of the MBE Program, we only use the State's current Disparity Study consultant in an effort to maintain data integrity, confidentiality, and protect the State from potential litigation. These evaluations have included Offshore Wind, Video Lottery/Casinos, Medical Cannabis, and Sports Gaming. An evaluation of whether the State can create specific programming for African-Americans should also be handled in the same manner. Additionally, six – nine months would be needed to complete the evaluation, exceeding the October 1, 2021 due date.

If the initial analysis does not provide a compelling interest to implement separate remedial measures for African-Americans, MDOT, in consultation with the Office of the Attorney General, must then initiate a second study to determine whether there is a pattern of discrimination that supports separate remedial measures for African-Americans. This study would be due June 30, 2022. This second study would conflict with, and be duplicative of, the

State's current efforts to implement a new study, which is already being procured to cover all racial and ethnic groups included in the MBE Program. We believe that efforts to do a separate

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study would be counter to the State's next Disparity Study.

The Maryland Department of Transportation respectfully requests the Committee consider this information when deliberating House Bill 722.

Respectfully submitted,

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State Legislative Officer

Maryland Department of Transportation

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