

WarrenBuilds Testimony for SB996_MD_SBR_20220316.p

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Position: FAV

16 March 2022

Subject: Testimony in Favor of Maryland Senate Bill 996 (SB996): An Act Concerning State Procurement – Small Business Reserve Program

Good Afternoon:

I'd like to thank Senator Patterson and Prince George's County Councilman-at-Large Mel Franklin for the opportunity to speak in favor of this bill today.

I represent WarrenBuilds, a Prince George's County-Based Small Business (CBSB) and Minority Business Enterprise (MBE). WarrenBuilds is also an MDOT-certified Minority Business Enterprise (MBE). We provide general construction contracting, site development, and facility-related assessments and services for commercial and government clients.

Our vision is to grow to become a great, mid-sized or larger, regionally successful general construction prime contractor.

While not the only tool in the small business toolkit, the SBR program is an important one. It helps generate revenue, certainly, but more strategically, it helps small businesses build capability and capacity.

Maryland's four decades old Minority Business Enterprise (MBE) Program was created to reverse decades of discrimination and under-utilization of minority-owned businesses in state procurement. It was intended to use state contracts to help minority-owned businesses become more competitive overall, serving both government and commercial markets.

In 2004, the General Assembly created the SBR program for much the same reasons. Simply put, encouraging the growth of small businesses is, for Maryland, good business. And while the SBR program is race-neutral, it is a vital way to also address historic market disadvantages for minority-owned businesses.

Some 7 in 10 Maryland small businesses are minority-owned and women-owned firms. This is unsurprising in a state where more than half of the population is, by Census definition, a minority. It should be clear then, that in a state that is "majority minority", helping minority-owned and women-owned small businesses is also just good business.

One important issue here is the difference between being a prime contractor and a subcontractor. This is particularly significant in the construction sector, where WarrenBuilds competes. The data indicate that we still have a long way to go. According to the report of the Governor's Office on Small, Minority, and Women Business Affairs, in fiscal year 2020 just 7% of over \$1.2B in state construction prime contract awards went to minority prime contractors.¹

This is even more significant than the gross numbers indicate. Construction prime contractors tend to be much larger and more broadly capable firms than specialty subcontractors. They employ more people, generate more revenue, pay more taxes. They are better postured to withstand economic downturns.

There are significant structural barriers to winning awards as a prime contractor for small businesses, including factors such as bonding capacity and experience requirements. Time today will not permit a more in depth review, but these problems are real and they are daunting—and much greater for minority-owned and women-owned small businesses.

One powerful way to grow a larger community of prime contractor firms is to create opportunities where small businesses, particularly minority-owned and women-owned small businesses, can compete and win contracts as prime contractors.

“The SBR Program carves out prime contracting opportunities in an exclusive environment, where small businesses compete against other small businesses for state-funded contracts.”²

Expanding this program, as proposed in SB996, enhances opportunities for all Maryland small businesses to grow, to become successful prime contractors, to gain the experience, bonding capacity, and demonstrated capability to enable them to compete and win additional contracts.

We believe that expanding the Small Business Reserve Program is good for small business, and that it is also good business for Maryland.

Thank you.

¹ Annual Report Fiscal Year 2020 Exhibit D: FY2020 MBE Awards by Procurement Category.

² Ms. Lisa Mitchell Sennaar, The Daily Record, September 23, 2001 (<https://thedailyrecord.com/2021/09/23/a-message-to-marylands-small-business-community/>), retrieved March 15th, 2022.

CM Mel Franklin At-Large Testimony on SB996.pdf

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Position: FAV



Mel Franklin
Council Member
At-Large

PRINCE GEORGE'S COUNTY

Bringing the World to Prince George's County

SB 996 – Small Business Reserve Program

Written Testimony

MARYLAND SENATE BUDGET AND TAXATION COMMITTEE

March 16, 2022, 1:00 P.M.

Mel Franklin, Prince George's County Council, At-Large Member

Mister Chair and Members of the Committee, thank you for this opportunity to address the Senate Budget and Taxation Committee in my individual capacity as an at-large member of the Prince George's County Council, representing each of the nearly 1 million residents of Prince George's County. I am here to express my strong support for Senate Bill 996, legislation that would increase the State's Small Business Reserve requirement from 15% to 30% and require that it be met with Maryland-based small businesses. I especially want to thank Senator Obie Patterson for sponsoring this legislation in the Senate and for Delegate Darryl Barnes cross-filing it in the House.

Currently, the State's 15% small business reserve requirement for state agencies can be met with small businesses outside of Maryland, which means those businesses might not reflect Maryland's considerable diversity. According to information published by the Governor's Office on Small, Minority, and Women Business Affairs, about 70% of the state's small business population are minorities or women. So, when we empower small businesses in our state, we empower minority and women-owned businesses too. Thus, requiring the small business requirement to be met by Maryland-based small businesses will likely increase the diversity of the recipients.

Additionally, the State's 15% requirement for small businesses is woefully low. In fact, the state has a 29% goal for certified minority-owned businesses and every certified MBE in the state must also meet the state's small business size test. But, unlike the MBE goal, which can't be a hard set-aside due to it being a race-conscious standard, the small business reserve standard can be a hard set-aside since it is a race neutral classification. Thus, increasing and



Mel Franklin
Council
Member
At-Large

enforcing the small business reserve requirement could help the state reach its minority business enterprise goals.

Further, prior to 2017, the state had a 10% small business reserve requirement, resulting in 7.7% small business procurement in FY16 and 9.4% small business procurement in FY17. Since the state increased its requirement for the small business reserve requirement to 15% beginning for FY18, the state has seen a modest improvement in small business procurement performance, up to 11% in FY2020. Clearly, we can and should do better. By increasing the standard to 30%, near the state's MBE goal and by backing up the small business reserve requirement with strict enforcement, which should mean holding agencies more accountable for reserving 30% of their contract opportunities in advance solely for bidding by Maryland-based small businesses and requiring quarterly reporting by the agencies during the fiscal year to this committee on the agency's progress in meeting the state's small business reserve requirements and the MBE goals, we will have much better outcomes and stronger equity for Maryland's diverse business community. Currently, the state's reporting on reaching small and minority business requirements and goals can lag for more than a year, preventing any real ongoing enforcement.

Additionally, the analysts who produced the fiscal note attached to SB 996 do not mention the potential increase in the state's business tax base due to Maryland-based small businesses receiving more state contract awards. This is possibly due to insufficient state data collection. Nonetheless, it isn't rocket science to conclude that if Maryland-based small businesses experience a substantial increase in their revenues due to increased procurement spending, they will contribute significantly larger amounts to income taxes, sales taxes, and other tax revenues for the state.

The analysts who produced the fiscal note attached to SB 996 also indicate a concern that neighboring jurisdictions may also use similar advantages for their small businesses if Maryland enacts such incentives. That horse has already left the barn. The District of



Mel Franklin
Council
Member
At-Large

Columbia's Certified Business Enterprise (CBE) program is perhaps the most well-known and successful program in the nation for channeling its procurement opportunities to locally-based firms by enacting substantial District-based preferences, requirements, and incentives. In my conversations with District-based firms who also do business elsewhere in the region concerning whether they face correlating disadvantages in neighboring jurisdictions because of DC's CBE program, universally I am told that the advantages that the District provides DC-based businesses are so substantially beneficial that they outweigh any disadvantages that neighboring jurisdictions might impose. They also indicate that many procurement officers in neighboring jurisdictions, including Maryland, do not bother to follow-up on whether they come from a jurisdiction that provides local incentives and thus rarely apply those penalties.

In sum, SB 996 is pro-small business, pro-minority and woman-owned business, pro-jobs, and pro-Maryland. I respectfully ask for your favorable report and support for SB 996.

Thank you.

A handwritten signature in black ink that reads "Mel Franklin". The signature is written in a cursive, flowing style.

Mel Franklin
Council Member At-Large
Prince George's County Council

'22 SB 996 DGS LOC B&T 3-16-22.pdf

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Position: UNF

Larry Hogan
Governor

Boyd K. Rutherford
Lt Governor



OFFICE OF THE SECRETARY

Ellington E. Churchill, Jr.
Secretary

Nelson E. Reichart
Deputy Secretary

BILL: Senate Bill 996
State Procurement – Small Business Reserve Program

COMMITTEE: Budget and Taxation

DATE: March 16, 2022

POSITION: Letter of Concern

Upon review of Senate Bill 996 – State Procurement - Small Business Reserve Program, the Maryland Department of General Services (DGS), provides these comments for your consideration.

This bill adds to the requirements for businesses to be certified as a member of the Small Business Reserve program (SBR) and doubles the percentage requirement for a State unit's SBR procurements from 15% to 30 %. This poses both operational and fiscal burdens on the DGS Office of State Procurement (OSP).

Currently, DGS OSP would not be able to meet the 30 percent requirement that is proposed in this bill. One hurdle to achieving the 30% goal is that **there are not enough certified small businesses available to provide the required goods or services.** To meet the 30% goal the pool of SBR businesses would **need to grow substantially.**

DGS OSP would need to hire at least twice the number of current procurement officers to handle contracts for the increased SBR designations. This meticulous process entails reviewing Statewide and Master Contracts to see if there are opportunities to divide them into smaller contracts that would meet SBR designation requirements.

Dividing these larger contracts would also have unintended consequences on other programs. By dividing contracts into smaller contracts and making these small businesses Prime Contractors would **result in removing subcontracting opportunities available for Minority Business Enterprises (MBEs) and Veteran-Owned Small Business Enterprises (VSBES).** This is **because while MBEs and VSBES can be certified as small business enterprises, not all are.**



Furthermore, this bill poses a financial impact on the business climate in Maryland. This bill adds a requirement for the principal office of the small business to be located in Maryland. While this may promote economic development within the State, it unintentionally could limit businesses' ability to obtain contracts outside of Maryland. **If these restrictions are applied in Maryland, reciprocal preference statutes in neighboring jurisdictions** (District of Columbia, Virginian, Pennsylvania, Delaware, and West Virginia) would go into effect. This would significantly **impact Maryland small businesses, and in some cases could lead to layoffs and office closures in Maryland.**

For additional information, contact Ellen Robertson at 410-260-2908.

SB996_Letter of Information_GOSBA.pdf

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Position: INFO



GOVERNOR'S COORDINATING OFFICES

Community Initiatives • Service & Volunteerism • Deaf & Hard of Hearing
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Delivered Electronically
March 16, 2022

The Honorable Guy Guzzone
Chair, Senate Budget and Taxation Committee
3 West, Miller Senate Office Building
Annapolis, MD 21401

Re: Letter of Concern – Senate Bill 996 – State Procurement – Small Business Reserve Program

Chair Guzzone, Vice Chair Rosapepe, and Budget and Taxation Committee Members:

The Governor's Office of Small, Minority & Women Business Affairs (GOSBA) offers the following information with regard to Senate Bill 996 ("SB 996" or "the Bill") and the wide sweeping operational impact on the small business community at large and the Small Business Reserve (SBR) Program directly. The Bill proposes a 100% increase to the SBR Program set-aside as well as a limitation on SBR participants. We believe these two actions will have an adverse impact. Our specific concerns and considerations are addressed below.

Definition of a Small Business - Bill Text on Pg. 2, Lines 6 and 7 modifies the existing definition of a "small business" and requires the business's principal office be located in the State.

Many efforts to improve opportunities for Maryland's small business community are underway. In January 2021, [Executive Order 01.01.2021.01](#) carved out enhancements to the SBR Program, requiring all eligible purchases between \$50,000 and \$500,000 to be automatically designated as SBR. This year, legislation has been proposed (HB 389 – Procurement – Minority Business Enterprises – Revisions) to codify the executive order. HB 389 also attempts to create an easier on-ramp for firms certified in the Minority Business Enterprise Program to join the SBR Program. SB 996 could limit those efforts.

Currently, 85% of the firms certified in the SBR Program are registered in eMaryland Marketplace Advantage with a Maryland address. While the Bill's proposed action will result in all SBR awards being made to Maryland-based firms, we believe it has the potential to create significant negative consequences:

- (1) Competition is a critical element to Maryland's open and transparent procurement process. It generates better quality and lower costs for goods and services purchased by taxpayer dollars. Limiting the competitive market may result in higher costs and lower quality.
 - (2) Limiting competitors to Maryland firms may result in similar actions taken by our neighboring jurisdictions of Washington, D.C., Virginia, Delaware, Pennsylvania, and New York. This could result in reduced opportunities for Maryland-based firms to win work within those public procurement arenas. States outside our region could take the same action, compounding the impact.
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- (3) Removing out-of-state firms and preventing new out-of-state firms from participation in the SBR Program could lead to fewer SBR designations. In order to place an SBR designation on a specific scope of work, there must be evidence that qualified small businesses are available. Reducing the pool would likely result in reduced designations.

Expanding the Set-Aside - Bill Text on Pg. 3, Lines 12-15, modifies the set-aside from 15% to 30%, requiring, to the extent practicable, a unit to structure its procurement procedures to achieve a minimum of 30% of its total dollar value of goods, supplies, services, maintenance, construction, construction-related services, and architectural and engineering service contracts be made directly to small businesses.

In 2017, regulatory changes required that the 66 agencies/departments participating in the SBR Program modify payment dollars being counted toward the overall achievement goal. Previously, any payment to an SBR vendor could be counted; these are known as “incidental” payments. Today, only procurements designated as SBR at the onset of the procurement process may be applied toward the procurement unit’s overall small business reserve payment achievement (COMAR – 21.11.01.06 D(2)(b)). This transition has not been fully recognized, as is evidenced by the data. In FY2020, incidental and designated SBR payments combined, represented 10.6% of total SBR participation, while designated SBR payments achieved only 2.5%. While we are making progress, raising the SBR set-aside by 100% is too aggressive at this time, particularly as there is no evidence we can achieve this goal.

GOSBA appreciates the opportunity to share the aforementioned concerns with the Committee, and asks that these be taken into consideration during deliberations.

Respectfully submitted,

Pamela Gregory

Pamela Gregory
Chief of Staff

Governor’s Office of Small, Minority & Women Business Affairs
410-697-9603

SB0996 - PRCMT - Small Business Reserve Program -

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Position: INFO

March 16, 2022

The Honorable Guy Guzzone
Chairman, Budget and Taxation Committee
3 West Miller Senate Office Building
Annapolis, MD 21401

Re: Letter of Information – Senate Bill 996 – State Procurement – Small Business Reserve Program

Dear Chairman Guzzone and Committee Members:

The Maryland Department of Transportation (MDOT) takes no position on Senate Bill 996, but offers the following information for the Committee's consideration.

Senate Bill 996 increases the Small Business Reserve (SBR) goal from 15% to 30%. Once a solicitation has been designated as "SBR," an award can only be made to a certified SBR firm. If raising the goal does not result in a larger pool of small businesses registered as SBR, then eligible SBR companies could become over-saturated with work and decline to bid on additional contracts. This could lead to elevated bid prices or longer time periods for contract awards to be made as solicitations may need to be thrown out and established as open procurements without the SBR designation. Valuable time is lost and, product end users may be severely inconvenienced in the delivery of their intended products.

Senate Bill 996 also requires the principal office of the small business to be located in Maryland. Adding this criterion to the definition of "Small Business" could limit the number of available vendors since a small business that has an office in Maryland, but its principal office located outside of the State would not be able to respond to a solicitation that is designated as an SBR procurement. This requirement could result in fewer eligible companies, leading to reduced competition which could result in higher bid prices to the State over time. Limiting the pool to only Maryland domestic firms would also make it more difficult to meet the SBR goal.

The MDOT is also concerned that the principal office requirement would be considered a preference or set aside for Maryland small businesses, which could result in the imposition of similar restrictions against Maryland companies bidding in other jurisdictions under their reciprocal preference statutes, particularly in the District of Columbia, Virginia, Pennsylvania, Delaware, and West Virginia. This could unintentionally limit Maryland small businesses' ability to expand their businesses outside of the State.

The Honorable Guy Guzzone
Page Two

The Maryland Department of Transportation respectfully requests the Committee consider this information when deliberating Senate Bill 996 as implementation of the bill could interfere with the ability of Maryland's small business community to thrive in the State marketplace.

Respectfully submitted,

Pilar Helm
Director of Government Affairs
Maryland Department of Transportation
410-865-1090