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.

(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,

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