



February 12, 2024

The Honorable Wes Moore  
Governor, State of Maryland  
100 State Circle  
Annapolis, MD 21401

Dear Governor Moore:

During the 2023 legislative session, the General Assembly amended § 5-305 of the Public Utilities Article by enacting Chapter 336, Laws of 2023 (HB 513). As a group of Maryland-certified Minority Business Enterprises (“MBEs”) and other small businesses, we are writing to request your assistance to ensure that the implementation of this law is handled in a thoughtful manner that does not negatively impact your goal of supporting and growing small and minority owned businesses in Maryland or cause other unintended results.

HB 513 requires the Commissioner of Labor and Industry to provide prevailing wage rates to contractors and subcontractors working on certain investor-owned utility projects subject to the law. However, the law and the guidance issued by the Maryland Department of Labor (DOL) to date requires leadership from your office to implement properly. Specifically, we are requesting your consideration in two specific areas prior to March 1<sup>st</sup>, 2024, when HB 513 requires underground utility contractors to be fully compliant with the law or potentially face significant penalties.

1. DOL should not rush implementation but take the time necessary to accurately determine the industry specific skilled labor positions and prevailing wage rates for the utility industry to avoid costly mistakes that will financially damage small and minority utility contractors as well as hurt Maryland rate payers.

- a. The law directs MDL to enforce the requirement to pay at least the prevailing wage rate determined by the Commissioner of Labor and Industry. The bill requires that hand surveys be accomplished if the DOL “determines that no existing wage rates and classifications apply to the covered work.” By the statute, DOL must determine the initial prevailing wages on or before December 1, 2023. DOL’s recently issued undated guidance that does not explain whether DOL did an industry-specific analysis to determine if hand surveys were required or whether they met the December 1, 2023, deadline to publish their guidance.
- b. DOL’s guidance requires contractors “to select the highway informational wage rates for the county in which the work is performed”. At this time, we are not aware of any analysis DOL performed that would satisfy the requirements of HB 513 or would support the view that the prevailing wages among the different types of underground gas and electric infrastructure workers are the same as those prevailing wages in highway work. There is no basis in law or fact to assume that pay rates are equivalent across all industries.

- c. Based on extensive industry experience, DOL's guidance does not accurately or comprehensively reflect the prevailing wage for underground gas and electric contractor personnel. This disconnect could cost MBEs who do underground gas and electric infrastructure work millions of dollars, rendering them less competitive and ultimately driving them out of business.
  - d. The disconnect, as noted, may have been caused by insufficient data collection or by attempting to group all underground gas and electric workers together under the highway rates. There are a multitude of skilled labor positions with special occupational qualifications that are required to perform the work in underground gas and electric construction that are not included in highway rates. Due to this omission of skilled labor positions and their wage rates, it is currently impossible to accurately bid on projects.
  - e. At this time, we are not aware of any outreach to small and minority businesses to engage them in this process, solicit their input or to educate them on these new requirements. We would welcome the opportunity to be part of the process and support DOL with the implementation of this bill.
  - f. DOL's apparent position may also result in higher prices for rate payers, many of whom are already struggling with the effects of inflation.
2. Just as importantly, DOL's policy and guidance should state that rates do not "ratchet up" every year but instead follow long-standing State of Maryland procurement processes under which rates are established at the beginning of any agreement, so that parties can accurately price their work and estimate their future costs to complete the requirements of their contract.
- a. When a contractor submits a bid for a state procurement or has been awarded a state contract, the prevailing wage at the time of bid leading to an awarded contract is the guiding rate throughout the term of the contract. Thus, any existing contracts are not typically subject to prevailing wage updates.
  - b. This same principle clearly would apply under HB 513, but the DOL guidance does not mention it. Unless the DOL guidance is expanded to mention this established principle, MBEs will have less incentive to participate in the relevant types of work.
  - c. Without guidance from DOL that specifically recognizes this underlying principle, MBEs and other contractors may also bid much higher rates as a result (and thus will be far less competitive).
  - d. Most importantly, DOL's guidance has created a situation where MBEs and other companies are concerned that DOL feels rates should go up under existing bids / contracts, putting MBEs at risk of financial ruin without an DOL-endorsed mechanism to pass on increased costs due to higher wages now possibly required. DOL guidance needs to clearly state it will follow existing long standing state procurement processes and hence any existing contracts awarded prior to the March 1<sup>st</sup>, 2024, or possible extended deadline requested below, are not affected by this guidance.


Additionally, with the Maryland General Assembly currently engaged in the 2024 Legislative Session, legislation has been introduced to apply similar prevailing wage requirements for utility work performed underground. Senate Bill 583/House Bill 554, entitled Public Utilities – Investor-Owned Utilities – Prevailing Wage would expand the existing requirements established in HB 513 in 2023 to contractors

working on above ground infrastructure projects. Should this legislation pass, it would alter the same area of law impacted by SB 513 in 2023 and may result in changes to the underlying statute that DOL is currently implementing. A delay in the forthcoming guidance would give DOL and the impacted utilities and contractors the time and ability to implement standards and requirements consistently for both above and below ground utility work.

Unfortunately, this matter is time critical, due to March 1, 2024, compliance date mentioned in HB 513. We request that the DOL (1) delay implementation of its existing guidance on prevailing wage rates until they have engaged utility contractors, especially small and minority contractors, in this process, (2) accomplish the necessary analysis to ensure the prevailing wage rates are correctly set, and (3) be required to include all the industry specific skilled labor positions and wage rates so that companies can accurately price their work. Lastly, we ask that DOL immediately clarify their guidance to reflect that contracts follow long-standing state procurement processes detailed in section two (2) above.

Governor Moore, thank you for your steadfast support of small and minority companies. This is a significant issue for our small and minority business community, and we appreciate your help in quickly resolving these matters. As you will observe, the attached signatures are indicative of your constituents affected by HB 513. We appreciate your time and consideration of this matter.

Sincerely,



Harley E. Flack  
President / CEO



Christian Johansson  
Chairman



As a constituent affected by HB 513, please find our signature below in support of the letter to Governor Moore concerning the bill authored by Stella May Contracting, Inc., dated February 12, 2024.

Company Name: Mahogany, Inc.

Signature: 

Name: Jeffrey Hargrave

Title: CEO

Date: 02/14/2024