

November 13, 2003

To: Chairman and Members of the Governor's Commission For Minority Business Reform

From: Henry Bogdan, Public Policy Director

The Maryland Association of Nonprofit Organizations is a statewide organization comprised of over 1400 member nonprofit agencies, associations and institutions, and our purpose is to support and enhance the effectiveness of the State's more than 21,000 nonprofit groups in carrying out their missions of public and community service. We take this opportunity to express our concern with what appear to be unintended or unforeseen consequences of the application of the State's Minority Business Enterprise Program.

Our membership, and the nonprofit sector as a whole, is strongly supportive of the goals of the State's MBE program. Nonprofit organizations have traditionally played a major role in addressing the needs of the socially disadvantaged, both as the primary provider of direct human services, and as advocates, providing a public voice for their concerns. As government at both the national and state level began to devote significant resources to health, education and social programs over the last forty years, nonprofit organizations played a major role in shaping and implementing those programs.

Many of these nonprofit organizations are controlled and directed by individuals, their boards and staffs, who would qualify as owners of minority business enterprises if they owned their organizations for private profit rather than serving as managers and trustees of nonprofits organized to serve the public interest.

In the past several years members have brought to our attention numerous examples of situations where implementation of the MBE program has made it more difficult for nonprofits to deliver human services on behalf of state agencies. In response to language in the Joint Chairmen's Report in 2000, we participated with state agencies in a review of several issues that had been raised at that time. That report and our comments are being provided to the Commission.

The 2001 Joint Chairmen's Report directed that a study of the impact of the MBE/WBE program on the effectiveness and cost of services provided to the State by nonprofits, included in the recommendations of the 2000 interim study, be deferred until after implementation of the 2001 statutory changes in the MBE program. We believe that such a review or study is now badly needed.

Inappropriate expectations for sub-contracting, where the contract involves primarily direct staff service to clients, was an issue raised and addressed during the 2000 interim study. Rather than being resolved however, the problem appears to be spreading.

The nature of much of the State's social service contracting – where small to medium sized, community-based nonprofit organizations provide direct client service with their own staffs – are often not amenable to substantial sub-contracting 'goals'. We don't believe it was contemplated or intended that the MBE program would prevent the State from utilizing its existing nonprofit service delivery infrastructure. Yet in many situations it has become difficult for nonprofits to contract with the state without diminishing the intended level of client services or increasing program costs – at the same time the state's fiscal crisis is forcing the reduction of funding for these programs and the reduction of contract funding mid-year.

Another concern, not unique to nonprofit providers, but more significant in smaller service contracts than in major purchasing or construction, is the administrative process itself. Simply the level of paperwork that has been required of both providers and MBE subcontractors becomes a major administrative burden to small nonprofits and a disincentive to potential MBE partners.

An extreme, but real example is the case of an MBE sub-contractor who was paid \$400 (all in one month) for a one-time training. That subcontractor had to complete and submit to the state twelve monthly reports certifying how much they received in payment each month; and the nonprofit contractor had to submit 12 monthly reports certifying for each month how much they paid that sub-contractor. That reporting regime may be appropriate for subcontracts in the case of a multi-million dollar road-building contract.

We strongly urge you to review the application of the current statute as it is being applied to nonprofits and to contracts for the provision of health and social services.