

ACEC

American Council of Engineering Companies
Maryland

2018

LEGISLATIVE BUSINESS AGENDA

WHO ARE WE?

An organization of 90 engineering and professional service firms in the State of Maryland

CONTACT INFO

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WHO DO WE REPRESENT?

Over 7,000 employees including:

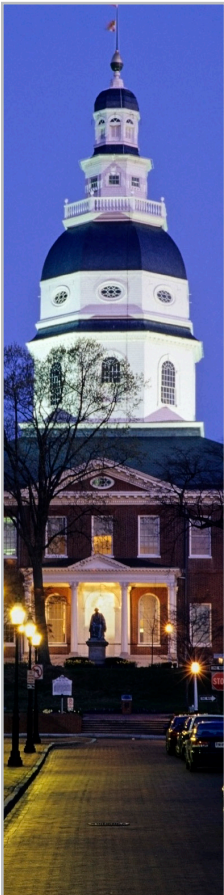
Engineers	Scientists
Architects	Technical Specialists
Land Surveyors	Planners

President
Jerry Jannetti, PE

Chair, CEPAC
James W. Blake PE, LS

Chair, Legislative Committee
Charles A. Phillips, RPLS

Executive Director
Jim Otradovec



LIQUIDATED DAMAGES - UNINTENDED CONSEQUENCES

Senate Bill 188 (Chapter 200) in 2013 amended Section 14-303, b, 5 of the State Finance and Procurement Law. The act included the requirement that liquidated damages be assessed in those cases where contractors (including professional service firms) fail to comply with Minority Business Enterprise (MBE) guidelines. Following the enactment of chapter 200, the Governor's Office of Minority Affairs (GOMA) authored guidelines requiring all state contracts containing certified MBE participation goals to include a liquidated damages provision. This provision applies if the professional service firm fails to comply in good faith with the provision of State MBE laws or the pertinent terms of the procurement contract.

WHAT IS THE ISSUE?

Liquidated damages are unprecedented in professional service contracts, but are now being included. The unintended consequence of the prime firms meeting the need to protect themselves from being assessed liquidated damages will hurt the smaller and specialty MBE firms.

WHY IS IT IMPORTANT ?

- Constitutes denial of a firm's due process under the law.
- Similar liquidated damage provisions will be passed through to MBE firms in subcontract agreements.
- Provision discourages the use of smaller or specialty MBE firms.
- MBE firms are concerned that they will only be given staff services type work because this provision places an emphasis on meeting the goals rather than providing these firms with the opportunity to perform meaningful assignments.
- A&E industry compliance with the MBE program on state contracts has been excellent and this provision discourages expanded use of MBE firms.
- Guidelines encourage firms to meet minimum participation only and limit MBE participation.

Legislative Action Required

Add guidelines into existing regulations under the State finance and procurements article division 2 subtitle 3 that exempt open end or task related agreements.