

# Exclusive Interview with Baltimore City's James Shea

## 1. As the incoming Solicitor, what are your top three priorities for the Law Department?

My priorities for the Baltimore City Law Department are to:

- a. Recruit a diverse team of effective lawyers building an inclusive environment, focusing on issues of equity, and enabling all the members of the department to flourish.
- b. Partner with policy makers to effectuate their enactments so that they are effective and enforceable.
- c. Advise the City – the Mayor, City Council and all the agencies - using sound legal analysis plainly communicated in a timely fashion.

## 2. What inspired you to accept this position at this point in your career?

I accepted the responsibilities and challenges of this opportunity because of my devotion to the City of Baltimore. I have spent my entire career (40 plus years) in Baltimore, leading my law firm for over 22 years, to become one of the top 100 law firms in the world, while always maintaining its center and core in Baltimore. I have served the City in various civic matters too. But now is the time for me to contribute more completely through this public service.

## 3. The Minority and Women Business Office (MWBOO) as it stands now, is the city's arm to minority business certification, goal setting, compliance, and dispute resolution assistance. Do you see maintaining those areas of service, adding or decreasing services?

I think that the certification of minority and women owned businesses (MBEs and WBEs), the setting of goals for City contracts, reviewing compliance with the agreed to goals, and helping to resolve any disputes about minority participation that arise during contract performance, are the right set of services for the Minority and Women Business Opportunity Office (MWBOO). To take any of these duties away would diminish the overall effort because they work in a complementary way. An option for growth might be to encompass the Mayor's Office on Minority and Women-Owned Business and the Small Business Resource Center, in order to increase the number of MBEs and WBEs, and to ensure that more are qualified in (generally more lucrative) specialties, areas where MBEs and WBEs are not now adequately represented. But these are enormous and crucially important tasks better pursued by agencies for which they are the focus. As of now, MWBOO has insufficient resources to perform the tasks effectively, and there could be an implicit conflict between the pursuit of these goals and MWBOO's certification role.

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The question posed about the adequacy of the current MWBOO staff to achieve greater results frames the question appropriately. MWBOO has sufficient staff now to discharge its duties adequately, but as the system is improved – adding more MBE's and WBE's, serving a broader area of specializations, and increasing MWBOO goals for contracts across the board - new and additional, qualified personnel will be needed.

### **4. Concerning the current Disparity Study that is going on now, when do you anticipate there being community testimony prior to its completion?**

The community forum is now scheduled for March 17, 2021. The first session will be from noon to 2 PM and a second session from 4 PM to 6 PM. A flyer has been posted on the MWBOO website and other Baltimore City web portals. I have attached a PDF of it in my transmission of these answers to you. The forum has been carefully planned and cooperation from all the parties needed to obtain community input has been forthcoming.

Overall, the Law Department recognizes that the study is important to preserve MWBOO's legal standing and to maintain the program's administrative success. There can be no doubt that minority and women owned businesses have been and continue to be marginalized with inadequate participation in contract opportunities.

I believe that due to the efforts of those who have come before me, MWBOO is working diligently and in a timely fashion on the planning, organization and logistics of the Disparity Study. I will continue to monitor it and press for its successful completion.

### **5. Disparity Studies are very data driven and some of us in the MBE community are concerned that the city may not have the best technology to accurately impact the study as well as daily compliance. How confident are you that the study will accurately reflect the various disparities in City contracting?**

I understand that the lead consultant overseeing the study is very experienced, knowledgeable and skilled. It appears to be capable of making certain that the data included in the study reflects the undeniable disparity in the City's contract program.

Nevertheless, the challenge cited in the question is real. My exposure to the City's ability to marshal technology effectively has been favorable. I believe that it can do the job. We will continue to work to ensure that there is the important data input needed for the study.

### **6. The retainage the City withholds from the prime contractor also extremely delays final payment to the small minority subcontractors despite the subcontractors not being in privity of contract with the city. Are there any plans for the Law Department to address this issue? There are hundreds of these scenarios now that are dragging down those small businesses.**

The question identifies a significant problem that needs to be addressed. There are at least two aspects to it. One is that the process of monitoring contract performance does

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not sufficiently focus on these particulars. The timing of actual payment to minority and women owned businesses must be tracked and assessed throughout contract performance.

The second aspect relates to the need for contract provisions that might alleviate the problem. It will be up to the policy makers – the Mayor and City Council – to enact the remedies, but the Law Department and MWBOO can contribute by identifying the problems and proposing contractual protections to MBE and WBE subcontractors, too often left last in line for payment.

### **7. What is your view on imposing penalties on non-compliant contractors in accordance with Article 5, subtitle 28 of Baltimore City Code?**

Broadly, Article 5, Subtitle 28 of the Baltimore City Code is the legislation that establishes the City of Baltimore law governing “Minority and Women’s Business Enterprises”. The portions of the legislation that provide for the imposition of penalties are found at Chapter 4, §28-122 and §28-124. Note that §28-123 is “reserved” as a placeholder for future legislation.

Section 28-122 provides for the imposition of administrative penalties if a contractor fails to comply with a provision of Article 5, Subtitle 28. The penalties include suspension of the contract at issue, withholding of funds, rescission of a contract based on a material breach, refusal to accept a bid, disqualification from eligibility to provide goods and services to the City for a period not to exceed two years and last, payment of liquidated damages. Specifically, that section reads:

§28-122. Administrative penalties. A contractor who fails to comply with any provision of this subtitle is subject to any and all of the following penalties: (1) suspension of contract; (2) withholding of funds; (3) rescission of contract based on material breach; (4) refusal to accept a bid; (5) disqualification of a bidder, contractor, or other business from eligibility for providing goods or services to the City for a period not to exceed 2 years; and (6) payment of liquidated damages.

Section 28-124 additionally provides for the imposition of criminal penalties against any person who fraudulently or willfully commits certain specified violations or, makes false statements regarding the certification status of another person or entity. This section is a strong tool that is intended to protect and preserve the integrity of Baltimore’s certification program. My view, and that of Mayor Scott and MWBOO Chief Lashella Miller, is that there will be no hesitation in ferreting out and stopping any fraud that imperils the program.

Effective enforcement must focus on enhancing the program’s goals. Properly designed and implemented, the system should maximize MBE and WBE participation in the City’s contracts. The goal is not to maximize the amount of penalties assessed, but to use enforcement to promote greater participation. Enforcement can play an important role in that regard by selecting the right number of sanctions, the best examples, and the optimal

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severity of the penalties. We will pursue penalties on all levels as part of an intentional effort to correct those we can counsel and to sanction (and publicize) those we can or should not.

**8. In the past, we have rarely seen Baltimore MWBOO enforce subtitle 29 of the code. Considering the Mayor's push for equity, will there be a push to also enforce this portion of the code?**

Article 5, Subtitle 29 of the Baltimore City Code is the City's "Commercial Non-Discrimination Policy". The policy applies to the business life of all city agencies. The operative language is found in §29-6 and makes clear that:

It is the policy of the City of Baltimore not to accept bids or proposals from, nor to engage in business with, any business firm that has discriminated on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, gender identity or expression, age, disability, or any other form of unlawful discrimination in its solicitation, selection, hiring, or treatment of another business.

And yes, this portion of the code will be enforced. Here, the enforcement process begins after "any adult person, business entity, association, organization or government agency" has filed an administrative complaint with the Chief of MWBOO. See §29-7. We need not only to educate agencies about this provision, but also create a clear pathway for receiving complaints, investigating them and providing due process for those who must respond to the complaints. The City's Chief Equity Officer and the Office of Equity and Civil Rights will be allies in this effort.

In enforcing subtitle 29, we will also look to the enforcement of discrimination laws by the federal and state agencies responsible for doing so. The capacities of the EEOC and the Maryland Commission on Civil Rights far exceed the capacity of MWBOO to investigate and prove cases of discrimination. We will therefore monitor the cases prosecuted by those agencies and cross check them against the City's data base of contractors, applying sanctions against companies proven to have discriminated.

**9. How best can the City achieve MBE participation on all Citywide procurement?**

The answer to this question calls for a multi-pronged approach. One aspect is the waiver of MWBOO requirements. Waivers will carefully be scrutinized and only granted when necessary.

Another aspect is increasing the number and industry expertise of MBEs and WBEs. As noted above in answer to question 3, MWBOO's partners, the Mayor's Office of Minority and Women Owned Business Development and the Small Business Resource Center, should expand the pool. MWBOO, of course, must then effectively and promptly provide those entities with certifications. Compliance monitoring, counseling and sanctions are also part of the solution, as described above.

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There could also be more general ways to promote awareness of and support to MBE and WBE participation. Executive Orders and provisions in all City contracts, exhorting MBE/WBE participation, are employed in other jurisdictions. MWBOO will look for the best practices employed by other jurisdictions, inside and outside of Maryland, and will use them liberally to advance its goals in Baltimore.

### **10. If real estate deals that earned TIF or other City subsidies don't achieve their community and MBE benefits requirements, will you enforce and stop funding?**

Yes, those provisions will be enforced. The ability to do so must be set up in the contractual provisions themselves. Specific measurable goals are required. The MOU for Port Covington provides a good set of examples. The right to intervene timely with practical corrective action is critical. Good compliance monitoring must be in place and properly executed. Audit rights and capacity are also helpful tools. With these things in place, powerful, productive penalties can then be effectively employed.