



STATE OF MARYLAND
VIDEO LOTTERY FACILITY LOCATION COMMISSION

August 24, 2011

Dr. Marvin Cheatham, Sr.
President
National Action Network
Greater Baltimore Chapter

Dear Dr. Cheatham:

Thank you for your inquiry about the State's video lottery terminal (VLT) facilities and Minority Business Enterprise (MBE) goals for the proposed Baltimore City VLT facility site. Recent media stories suggested that the goals would be eased or relaxed. I assure you that this is not the case. Maryland's overall goal of 25% MBE participation, and the city's overall goal of 37% MBE participation remain in place. The recent changes to the request for proposal (RFP) clarify the process for setting MBE goals specific to the VLT program.

Federal constitutional law, as established by the U.S. Supreme Court, requires evidence of racial and gender discrimination to run an MBE program. Understanding this requirement, the General Assembly, when it created the VLT program in 2007, ordered that a disparity study be conducted to "evaluate the continued compliance of the [MBE] requirements with any federal and constitutional requirements." That effort began in the spring and was recently completed.

On August 5, 2011, the expert that was hired by the State to conduct the study sent a letter to the State in which he explained his methodologies and findings. His analysis establishes that the findings of discrimination reported in an earlier 2011 *Disparity Study* apply to over 99% of the categories of work that are performed in the construction of and procurement for the VLT facilities. As a result of receiving this analysis, the Attorney General advised that the VLT MBE program may be implemented as the State moves forward to award licenses for VLT facilities in Baltimore City and Allegany County. The Attorney General further advised that to comply with established constitutional standards, "the Lottery Commission should set separate goals for each VLT facility and, where appropriate, for separate contracts of significant duration, scope and size entered into by awardees and licensees. These goals should be based on the work proposed ... and the availability of MBEs to perform that work, as is done for State contracts."

Moreover, in light of the recent analysis, the Attorney General advised the Video Lottery Facility Location Commission (Location Commission) to amend its RFPs consistent with the foregoing standard. The Location Commission's recent amendments to the RFPs for the

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Baltimore City and Allegany County VLT facilities are completely consistent with the State's goal of running a strong and vital MBE program consistent with federal constitutional standards.

To be clear, the State's overall goal of 25% MBE participation, and the city's overall goal of 37% MBE participation have not changed. Consistent with constitutional standards and the manner in which the State's overall MBE program is run, the Lottery Commission will now determine the appropriate MBE goals for all VLT facility licensees. These goals will be based on the actual work a VLT licensee proposes to do and the availability of certified MBE contractors to perform that work. The Governor's Office of Minority Affairs will support this goal setting process and will continue to monitor and report on MBE activity on all existing and future VLT facility licensees.

As has also been reported in the press, a lawsuit was filed on July 5, 2011, against the Location Commission by the previously unsuccessful applicant for the Baltimore City VLT license, seeking to strike the State's MBE laws and preclude any form of goals to be a part of the Video Lottery Facility Location Commission's decision. The State is committed to the MBE program and is vigorously defending against this lawsuit.

Sincerely,



Donald C. Fry
Chairman
Video Lottery Facility Location Commission

DCF/JRB/mrm

cc: Mr. Douglas F. Gansler, Attorney General
Senator Thomas V. Mike Miller, Jr., President of the Senate
Delegate Michael E. Busch, Speaker of the House
Mr. Matthew Gallagher, Chief of Staff, Governor's Office
Secretary Beverley Swaim-Staley, Maryland Department of Transportation
Ms. Luwanda Jenkins, Special Secretary, Governor's Office of Minority Affairs
Mr. Kirby Fowler, Chairman, Maryland Lottery Commission
Mr. Stephen L. Martino, Director, Maryland State Lottery Agency
Mr. George Nilson, Baltimore City Solicitor