

## **ATTACHMENT D – MINORITY BUSINESS ENTERPRISE FORMS**

### **PURPOSE**

The Contractor shall structure its procedures for the performance of the work required in this Contract to attempt to achieve the Minority Business Enterprise (MBE) subcontractor participation goal stated in this solicitation. MBE performance shall be in accordance with this Attachment and as set forth in COMAR 21.11.03. The Contractor agrees to exercise all good faith efforts to carry out the requirements set forth in this Attachment.

In order to attempt to meet the MBE subcontractor participation goal using MBE subcontractors, all Bidders/Offerors shall comply with the requirements of COMAR 21.11.03.09 and shall:

- ❑ Identify specific work categories within the scope of the solicitation appropriate for subcontracting;
- ❑ Solicit certified MBEs in writing at least 10 days before Bids or Proposals are due, describing the identified work categories and providing instructions on how to provide a quote on the subcontracts;
- ❑ Attempt to make personal contact with the certified MBEs solicited and to document those attempts;
- ❑ Assist certified MBEs in fulfilling, or seeking a waiver of any bonding requirements; and
- ❑ Attend Pre-Bid/Proposal Conferences or other meetings that the Department schedules to publicize contracting opportunities for certified MBEs.

### **MBE GOAL AND SUB GOALS**

An MBE subcontract participation goal of 15% of the total contract dollar amount has been established for this procurement, as set forth in RFP Section 1.33. The Contractor, including an MBE prime contractor, shall attempt to achieve the MBE subcontracting goal and any subgoals established for this Contract by subcontracting to one or more MDOT-certified MBEs a sufficient portion of the Bidder/Offeror's scope of work that results in total MBE payments that meet or exceed the MBE subcontractor participation goals and, if applicable, subgoals.

### **SOLICITATION AND CONTRACT FORMATION**

- ◆ A Bidder/Offeror must include with its Bid/Proposal a completed MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1**) whereby:
  - (1) the Bidder/Offeror acknowledges the certified MBE subcontractor participation goal and any subgoals, and commits to make a good faith effort to achieve the goal and any subgoals or requests a full or partial waiver, and affirms that MBE subcontractors were treated fairly in the solicitation process; and
  - (2) the Bidder/Offeror responds to the expected degree of MBE subcontractor participation as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of Bid/Proposal submission. The Bidder/Offeror shall specify the percentage of contract value associated with each MBE subcontractor identified on the MBE Participation Schedule (**Attachment D-1**).

If the Bidder/Offeror specifies a range for a proposed MBE subcontractor, only the lowest amount in the range can be considered for MBE commitment purposes. Ex: If a range of “5-15%” is proposed for a MBE subcontractor, only “5%” can be considered for purposes of totaling the actual MBE commitment for that particular MBE subcontractor. It is suggested that the Bidder/Offeror provide a specific percentage, and not a percentage range, for each MBE subcontractor proposed.

- ◆ *If a Bidder/Offeror fails to submit a completed **Attachment D-1** with the Bid/Proposal, the Procurement Officer shall deem the Bid non-responsive or shall determine that the Proposal is not reasonably susceptible of being selected for award.*
- ◆ Within 10 Working Days from notification that it is the apparent awardee or from the date of the actual award, whichever is earlier, the apparent awardee shall provide the following documentation to the Procurement Officer:
  - a) Outreach Efforts Compliance Statement (**Attachment D-2**)
  - b) Subcontractor Project Participation Certification (**Attachment D-3**)
  - c) If the recommended awardee has requested a waiver (in whole or in part) of the overall MBE goal, it shall submit a fully documented waiver request that complies with COMAR 21.11.03.11, and usually the Minority Contractor Unavailability Certificate (**Attachment D-6**).
  - d) Any other documentation required by the Procurement Officer to ascertain Bidder/Offeror responsibility in connection with the certified MBE participation goal.

**NOTE: If the apparent awardee fails to return each completed document within the required time, the Procurement Officer may determine that the apparent awardee is not responsible and therefore not eligible for Contract award. If the Contract has already been awarded, the award is voidable.**

Rev. 08/01/2013

## MBE REPORTING INSTRUCTIONS

### **The Contractor shall:**

1. Submit by the 10<sup>th</sup> of each month to the Department's Contract Monitor or designee a Prime Contractor Paid/Unpaid MBE Invoice Report (**Attachment D-4**) listing any unpaid invoices, over 30 days old, received from any certified MBE subcontractor, the amount of each invoice, and the reason payment has not been made.
2. Include in its agreements with its certified MBE subcontractors a requirement that those subcontractors shall submit by the 10<sup>th</sup> of each month to the Department's Contract Monitor or a designee a Subcontractor Paid/Unpaid MBE Invoice Report (**Attachment D-5**) that identifies the Contract and lists all payments received from the Contractor under this Contract in the preceding 30 days, as well as any outstanding invoices, and the amount of those invoices.
3. Maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority subcontractors employed on the Contract, the type of work performed by each subcontractor, and the actual dollar value of work performed. Subcontract agreements must be retained by the Contractor and furnished to the Procurement Officer upon request.
4. Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the MBE participation obligations. The Contractor must retain all records concerning MBE participation and make them available for State inspection for three years after final completion of the Contract.
5. At the sole option of the Department, upon completion of the Contract and before final payment and/or release of any retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

### ATTACHMENTS

- A. MDOT Certified MBE Utilization and Fair Solicitation Affidavit – Attachment D-1 (must be submitted with the Bid/Proposal)
- B. Outreach Efforts Compliance Statement – Attachment D-2 (must be submitted within 10 Working Days of notification of apparent award or actual award, whichever is earlier)
- C. Subcontractor Project Participation Certification – Attachment D-3 (must be submitted within 10 Working Days of notification of apparent award or actual award, whichever is earlier)
- D. Prime Contractor Paid/Unpaid MBE Invoice Report – Attachment D-4 (must be submitted by the 10<sup>th</sup> of each month by the Prime Contractor)
- E. Subcontractor Paid/Unpaid MBE Invoice Report – Attachment D-5 (must be submitted by the 10<sup>th</sup> of each month by the Subcontractor)

- F. Minority Contractor Unavailability Certificate – Attachment D-6 (if a waiver has been requested, Attachment D-6 usually must be submitted within 10 Working Days of notification of apparent award or actual award whichever is earlier)

## MDOT Certified MBE Utilization and Fair Solicitation Affidavit

(submit with Bid/Proposal)

This document **MUST BE** included with the Bid/Proposal. If the Bidder/Offeror fails to complete and submit this form with the Bid/Proposal, the Procurement Officer shall deem the Bid non-responsive or shall determine that the Proposal is not reasonably susceptible of being selected for award.

In conjunction with the Bid/Proposal submitted in response to Solicitation No. **PSC #12-01-13**, I affirm the following:

1.  I acknowledge and intend to meet the overall certified Minority Business Enterprise (MBE) participation goal of 15 percent and, if specified in the solicitation, the following subgoals (complete for only those subgoals that apply):
- |                                 |                              |
|---------------------------------|------------------------------|
| _____ percent African-American  | _____ percent Asian-American |
| _____ percent Hispanic-American | _____ percent Woman-Owned    |

Therefore, I will not be seeking a waiver pursuant to COMAR 21.11.03.11.

### OR

- I conclude that I am unable to achieve the MBE participation goal and/or subgoals. I hereby request a waiver in whole or in part of the overall goal and/or subgoals. Within 10 Working Days of receiving notice that our firm is the apparent awardee, I will submit all required waiver documentation in accordance with COMAR 21.11.03.11. If this request is for a partial waiver, I have identified the portion of the MBE goal that I intend to meet in this Attachment D-1.
2. I understand that if I am notified that I am the apparent awardee, I must submit the following additional documentation within 10 Working Days of receiving notice of the potential award or from the date of conditional award (per COMAR 21.11.03.10), whichever is earlier.
- (a) Outreach Efforts Compliance Statement (Attachment D2);
  - (b) Subcontractor Project Participation Certification (Attachment D3); and
  - (c) Any other documentation, including waiver documentation, if applicable, required by the Procurement Officer to ascertain Bidder/Offeror responsibility in connection with the certified MBE participation goal.

I understand that if I fail to return each completed document within the required time, the Procurement Officer may determine that I am not responsible and therefore not eligible for Contract award. If the Contract has already been awarded, the award is voidable.

3. In the solicitation of subcontract quotes, MBE subcontractors were provided not less than the same information and amount of time to respond as were non-MBE subcontractors.
4. Set forth below are the (i) certified MBEs I intend to use and (ii) the percentage of the total Contract amount allocated to each MBE for this project and the work activity(ies) each MBE will provide under the Contract. I hereby affirm that the MBE firms are only providing those work activities for which they are MDOT certified.

**MBE Subcontractor Participation Schedule**

Prime Contractor: (Firm Name, Address, Phone)	Project Description:
Solicitation Number: <b>PSC #12-01-13</b>	

List Information For Each Certified MBE Subcontractor On This Project

Minority Firm Name	MBE Certification Number
FEIN Identify the Applicable Certification Category (For Dually Certified Firms, Check Only One Category)	
<input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Woman-Owned <input type="checkbox"/> Other	
Percentage of Total Contract Value to be provided by this MBE _____%	
Description of Work to Be Performed:	
Minority Firm Name	MBE Certification Number
FEIN Identify the Applicable Certification Category (For Dually Certified Firms, Check Only One Category)	
<input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Woman-Owned <input type="checkbox"/> Other	
Percentage of Total Contract Value to be provided by this MBE _____%	
Description of Work to Be Performed:	
Minority Firm Name	MBE Certification Number
FEIN Identify the Applicable Certification Category (For Dually Certified Firms, Check Only One Category)	
<input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Woman-Owned <input type="checkbox"/> Other	
Percentage of Total Contract Value to be provided by this MBE _____%	
Description of Work to Be Performed:	
Minority Firm Name	MBE Certification Number
FEIN Identify the Applicable Certification Category (For Dually Certified Firms, Check Only One Category)	
<input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Woman-Owned <input type="checkbox"/> Other	
Percentage of Total Contract Value to be provided by this MBE _____%	
Description of Work to Be Performed:	

Continue on a separate page, if needed.

## ***SUMMARY***

Total <i>African-American</i> MBE Participation:	_____ % of total
Contract value	
Total <i>Asian American</i> MBE Participation:	_____ % of total
Contract value	
Total <i>Hispanic American</i> MBE Participation:	_____ % of total
Contract value	
Total <i>Woman-Owned</i> MBE Participation:	_____ % of total
Contract value	
Total <i>Other</i> Participation:	_____ % of total
Contract value	
<b>Total <i>All MBE</i> Participation:</b>	_____ % of total
Contract value	

**Note:** The percentages entered above must reflect the actual percentage of total Contract value committed to be paid to MBE subcontractor(s). (i.e., if the total MBE commitment is 25% of the total Contract value, the subgroup percentages listed above should total 25%).

I solemnly affirm under the penalties of perjury that the contents of this Affidavit are true to the best of my knowledge, information, and belief.

\_\_\_\_\_  
Bidder/Offeror Name

*(PLEASE PRINT OR TYPE)*

\_\_\_\_\_  
Signature of Affiant

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL**

Rev. 08/01/2013

## Outreach Efforts Compliance Statement

**Complete and submit this form within 10 working days of notification of apparent award or actual award, whichever is earlier.**

In conjunction with the Bid/Proposal submitted in response to Solicitation No. \_\_\_\_\_, the Bidder/Offeror states the following:

1. Bidder/Offeror identified opportunities to subcontract in these specific work categories.
2. Attached to this form are copies of written solicitations (with instructions) used to solicit MDOT certified MBEs for these subcontract opportunities.
3. Bidder/Offeror made the following attempts to contact personally the solicited MDOT certified MBEs.
4. Select ONE of the following:
  - a.  This project does not involve bonding requirements.

**OR**

  - b.  Bidder/Offeror assisted MDOT certified MBEs to fulfill or seek waiver of bonding requirements (*describe efforts*).

5. Select ONE of the following:
  - a.  Bidder/Offeror did/did not attend the Pre-Bid/Proposal Conference.

**OR**

  - b.  No Pre-Bid/Proposal Conference was held.

\_\_\_\_\_  
 Bidder/Offeror Printed Name

By: \_\_\_\_\_  
 Signature

Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_



## Subcontractor Project Participation Certification

*Please complete and submit one form for each MDOT certified MBE listed on Attachment D-1 within 10 Working Days of notification of apparent award.*

\_\_\_\_\_ (prime contractor) has entered into a Contract with \_\_\_\_\_ (subcontractor) to provide services in connection with the Solicitation described below.

Prime Contractor Address and Phone	Project Description
Project Number	Total Contract Amount \$
Minority Firm Name	MBE Certification Number
Work To Be Performed	
Percentage of Total Contract	
Total Subcontract Amount \$	

The undersigned Prime Contractor and Subcontractor hereby certify and agree that they have fully complied with the State Minority Business Enterprise law, State Finance and Procurement Article §14-308(a)(2), Annotated Code of Maryland which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a Bid/Proposal and:

- (1) fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified Minority Business Enterprise in its Bid/Proposal;
- (2) fail to notify the certified Minority Business Enterprise before execution of the Contract of its inclusion of the Bid/Proposal;
- (3) fail to use the certified Minority Business Enterprise in the performance of the Contract;  
or
- (4) pay the certified Minority Business Enterprise solely for the use of its name in the Bid/Proposal.

**PRIME CONTRACTOR SIGNATURE**

**SUBCONTRACTOR SIGNATURE**

By: \_\_\_\_\_  
Name, Title, Date

By: \_\_\_\_\_  
Name, Title, Date

Rev. 08/01/2013

This form is to be completed monthly by the prime contractor.

**Attachment D-4**

**PUBLIC SERVICE COMMISSION  
Minority Business Enterprise Participation  
Prime Contractor Paid/Unpaid MBE Invoice Report**

Report #: _____	Contract #: _____
Reporting Period (Month/Year): _____	Contracting Unit: _____
<b>Report is due to the MBE Liaison by the 10<sup>th</sup> of the month following the month the services were provided.</b>	Contract Amount: _____
	MBE Subcontract Amt: _____
	Project Begin Date: _____
	Project End Date: _____
	Services Provided: _____
<b>Note: Please number reports in sequence</b>	

Prime Contractor:		Contact Person:	
Address:			
City:		State:	ZIP:
Phone:	Fax:	E-mail:	
Subcontractor Name:		Contact Person:	
Phone:	Fax:		
Subcontractor Services Provided:			
<b>List all payments made to MBE subcontractor named above during this reporting period:</b>		<b>List dates and amounts of any outstanding invoices:</b>	
	<u>Invoice#</u>	<u>Amount</u>	
1.			1. <u>Invoice #</u>
2.			2. <u>Amount</u>
3.			3.
4.			4.
<b>Total Dollars Paid: \$</b> _____		<b>Total Dollars Unpaid: \$</b> _____	

\*\*If more than one MBE subcontractor is used for this contract, you must use separate D-4 forms for each subcontractor.

**\*\*Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

_____ Contract Monitor
_____ Contracting Unit
_____
_____

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
(Required)

Rev. 3/11/2013

This form must be completed  
monthly by all MBE subcontractors.

**ATTACHMENT D-5**

**Minority Business Enterprise Participation  
Subcontractor Paid/Unpaid MBE Invoice Report**

Report#: _____	Contract #
Reporting Period (Month/Year): _____	Contracting Unit:
<b>Report is due by the 10<sup>th</sup> of the month following the month the services were performed.</b>	MBE Subcontract Amount:
	Project Begin Date:
	Project End Date:
	Services Provided:

MBE Subcontractor Name:																																
MDOT Certification #:																																
Contact Person:		E-mail:																														
Address:																																
City:	State:	ZIP:																														
Phone:	Fax:																															
<b>Subcontractor Services Provided:</b>																																
<b>List all payments received from Prime Contractor during reporting period indicated above.</b> <table border="1"> <thead> <tr> <th></th> <th><u>Invoice Amt</u></th> <th><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr> <td><b>Total Dollars Paid: \$</b></td> <td colspan="2">_____</td> </tr> </tbody> </table>			<u>Invoice Amt</u>	<u>Date</u>	1.			2.			3.			<b>Total Dollars Paid: \$</b>	_____		<b>List dates and amounts of any unpaid invoices over 30 days old.</b> <table border="1"> <thead> <tr> <th></th> <th><u>Invoice Amt</u></th> <th><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr> <td><b>Total Dollars Unpaid: \$</b></td> <td colspan="2">_____</td> </tr> </tbody> </table>		<u>Invoice Amt</u>	<u>Date</u>	1.			2.			3.			<b>Total Dollars Unpaid: \$</b>	_____	
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<b>Total Dollars Unpaid: \$</b>	_____																															
Prime Contractor:		Contact Person:																														

**\*\*Return one copy of this form to the following address (electronic copy with signature & date is preferred):**

_____ Contract Monitor
_____ Contracting Unit
_____
_____
_____
_____

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
(Required)

Rev. 3/11/2013

**PUBLIC SERVICE COMMISSION**  
**Code of Maryland Regulations (COMAR)**  
**Title 21, State Procurement Regulations**

*(regarding a waiver to a Minority Business Enterprise subcontracting goal)*

**NOTE: Below is an excerpt only. Full text of COMAR Title 21 may be found at the website of the Secretary of State, Division of State Documents, at: <http://www.dsd.state.md.us/comar/>.**

**COMAR 21.11.03.11 - Waiver.**

A. If, for any reason, the apparent successful Bidder/Offeror is unable to achieve the contract goal for each certified MBE classification specified as having a subcontract goal or the overall MBE contract goal, the Bidder/Offeror may request, in writing, a waiver to include the following:

(1) A detailed statement of the efforts made to select portions of the work proposed to be performed by certified MBEs, including the work to be performed by each MBE classification if an MBE subgoal has been specified, in order to increase the likelihood of achieving the stated goal;

(2) A detailed statement of the efforts made to contact and negotiate with certified MBEs, and if appropriate, by certified MBE classification, including:

(a) The names, addresses, dates, telephone numbers, and classification of certified MBEs contacted, and

(b) A description of the information provided to certified MBEs regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed;

(3) As to each certified MBE that placed a subcontract quotation or offer that the apparent successful Bidder/Offeror considers not to be acceptable, a detailed statement of the reasons for this conclusion;

(4) A list of certified MBEs including, if applicable, certified MBEs in each MBE classification, found to be unavailable, which shall be accompanied by the Minority Contractor Unavailability Certificate (Attachment D-6) signed by the certified MBE, or a statement from the apparent successful Bidder/Offeror that the certified MBE refused to give the written verification;

(5) The record of the apparent successful Bidder/Offeror's compliance with the outreach efforts required under Regulation .09C(2)(a)—(e) of this chapter; and

(6) If the request for a waiver is for a certain MBE classification within an overall MBE goal, the Bidder/Offeror shall demonstrate reasonable efforts to meet the overall MBE goal with other MBE classification or classifications.

B. A waiver of a certified MBE contract goal may be granted only upon a reasonable demonstration by the Bidder/Offeror that certified MBE subcontract participation was unable to be obtained, or was unable to be obtained at a reasonable price or in the appropriate MBE classifications, and if the agency head or designee determines that the public interest is served by a waiver. In making a determination under this section, the agency head or designee may consider engineering estimates, catalogue prices, general market availability, and availability of certified MBEs in the area in which the work is to be performed, other Bids/Proposals and subcontract Bids/Proposal substantiating significant variances between certified MBE and non-MBE cost of participation, and their impact on the overall cost of the contract to the State and any other relevant factor.

C. An agency head may waive any of the provisions of Regulations .09—.10 of this chapter for a sole source, expedited, or emergency procurement in which the public interest cannot reasonably accommodate use of those procedures.

D. When a waiver is granted, except waivers under §C of this regulation, one copy of the waiver determination and the reasons for the determination shall be kept by the MBE liaison officer with another copy forwarded to the Office of Minority Affairs.

MINORITY CONTRACTOR UNAVAILABILITY CERTIFICATE

Section I (to be completed by PRIME CONTRACTOR)

I hereby certify that the firm of \_\_\_\_\_  
(Name of Prime Contractor)

located at \_\_\_\_\_,  
(Number) (Street) (City) (State) (Zip)

on \_\_\_\_\_ contacted certified minority business enterprise, \_\_\_\_\_  
(Date) (Name of Minority Business)

\_\_\_\_\_ located at \_\_\_\_\_,  
(Number) (Street) (City) (State) (Zip)

seeking to obtain a bid for work/service for project number \_\_\_\_\_, project name \_\_\_\_\_

List below the type of work/ service requested:

Indicate the type of bid sought, \_\_\_\_\_. The Minority Business Enterprise identified above is either unavailable for the work /service in relation to project number \_\_\_\_\_, or is unable to prepare a quote for the following reasons(s):

The statements contained above are, to the best of my knowledge and belief, true and accurate.

\_\_\_\_\_  
(Name) (Title)

\_\_\_\_\_  
(Number) (Street) (City) (State) (Zip)

\_\_\_\_\_  
(Signature) (Date)

Note: Certified Minority Business Enterprise must complete Section II below.

**ATTACHMENT D-6 (cont.)**

**Section II (to be completed by CERTIFIED MINORITY BUSINESS ENTERPRISE)**

I hereby certify that the firm of \_\_\_\_\_ MBE Cert.# \_\_\_\_\_  
(Name of MBE Firm)  
located at \_\_\_\_\_  
(Number) (Street) (City) (State) (Zip)  
was offered the opportunity to bid on project number \_\_\_\_\_, ON \_\_\_\_\_  
(Date)  
by \_\_\_\_\_  
(Prime Contractor's Name) (Prime Contractor Official's Name) (Title)

The statements contained in Section I and Section II of this document are, to the best of my knowledge and belief, true and accurate.

\_\_\_\_\_  
(Name) (Title) (Phone)  
\_\_\_\_\_  
(Signature) (Fax Number)