



MARYLAND
Department of
Juvenile Services

Successful Youth • Strong Leaders • Safer Communities

POLICY

SUBJECT: Minority Business Enterprise Program
NUMBER: MGT-630-15
APPLICABLE TO: DJS staff exercising procurement functions
EFFECTIVE: July 15, 2015

APPROVED: _____/signature on original/
Sam Abed, Secretary

I. POLICY

The Department of Juvenile Services (DJS) is wholly committed to maintaining, ensuring, and enhancing the involvement of women and members of minority groups in its procurement process. It is the policy of DJS to involve certified Minority Business Enterprises (“MBEs” or “MBE firms”) to the greatest extent feasible in the procurement of goods, health and human services, services, supplies, equipment, construction and construction-related services.

II. AUTHORITY

- A. MD. CODE ANN., HUM. SERVS. § 9-203, -204, -222(b).
- B. MD. CODE ANN., STATE FIN. & PROC. §14-301 to -309.
- C. MD. CODE REGS. 21.11.03.

III. DIRECTIVES/POLICIES RESCINDED

- A. None.

IV. FAILURE TO COMPLY

Failure to comply with the Department’s Policy and Procedures shall be grounds for disciplinary action up to and including termination of employment.

V. STANDARD OPERATING PROCEDURES

Procedures have been developed and are attached.

VI. REVISION HISTORY

DESCRIPTION OF REVISION	DATE OF REVISION
New policy and procedures issued.	



PROCEDURES

SUBJECT: Minority Business Enterprise Program
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APPROVED: _____/signature on original/
Lynette Holmes, Deputy Secretary

- I. PROCEDURES**
Procedures for the Minority Business Enterprise Program Policy are delineated in the attached Department of Juvenile Services Minority Business Enterprise Program Procedures.
- II. DIRECTIVES/POLICIES REFERENCED**
A. None.



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DJS POLICY AND STANDARD OPERATING PROCEDURES

Statement of Receipt and Acknowledgment of Review

SUBJECT: Minority Business Enterprise Program
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I have received and reviewed a copy (electronic or paper) of the above titled policy.

I understand that failure to sign this acknowledgment form within five working days of receipt of the policy shall be grounds for disciplinary action up to and including termination of employment.

I understand that I will be held accountable for implementing this policy even if I fail to sign this acknowledgment form.

SIGNATURE

PRINTED NAME

DATE

***THE ORIGINAL COPY MUST BE PLACED IN THE EMPLOYEE'S PERSONNEL FILE.
PLEASE RETURN THIS FORM TO THE OFFICE OF HUMAN RESOURCES.***

Department of Juvenile Services Minority Business Enterprise Program Procedures

I. Scope

These procedures apply to all DJS staff exercising procurement functions that are reasonably anticipated to result in a contract award of \$100,000 or more. DJS shall make an effort to structure solicitations of all goods and services so as to maximize contractual opportunities for MBE firms to the greatest extent feasible.

II. Definitions

The definitions set forth in Md. Code Regs. 21.11.03.03 are hereby incorporated by reference (and reproduced in part below). In the event of a conflict, the appropriate regulation shall prevail.

- A. Certification means a determination by the Maryland Department of Transportation, Office of Minority Business Enterprise, that an entity meets certain requirements, including subject matter expertise, personal net worth limitations, control and ownership of the entity and membership in a historically and socially disadvantaged group.
- B. Commercially Useful Function (CUF) means a distinct element or elements of work and contract responsibilities which an MBE firm is responsible for executing, including actual performance, management and supervision of the work.
- C. Procurement Review Group (PRG) means a group that reviews contract solicitations, proposed sole source contracts, contract renewal options, and waiver requests to determine the appropriateness of recommending an MBE participation goal. The group may include the MBE Liaison, Procurement Officer, Project Manager, and legal counsel where necessary.
- D. Joint Venture means an association of two or more persons to carry out a single business activity for a limited purpose or time. A joint venture may not be an MBE.
- E. MBE Liaison means a DJS employee appointed by the Secretary to administer the MBE Program and to provide guidance on MBE matters.
- F. MDOT means the Maryland Department of Transportation.
- G. Minority Business Enterprise or "MBE" means any legal entity, other than a joint venture organized to engage in commercial transactions as certified by the Maryland Department of Transportation.

- H. MBE Utilization and Fair Solicitation Schedule & MBE Participation Schedule means forms upon which a prime contractor identifies the MBE firm(s) with whom it commits to enter into a contract to perform specified items of work on a contract with DJS which has been assigned an MBE goal. The Participation Schedule indicates the dollar value and contract percentage the MBE is expected to earn as well as the nature of the work the MBE is expected to perform.
- I. North American Industry Code System or "NAICS" means a business classification system established by the U.S. government for the purpose of collecting, analyzing and publishing statistical data related to the U.S. business economy.
- J. Prime Contractor means a party who has primary responsibility for carrying out the performance of a contract with DJS.
- K. Race-Conscious Measures means activities and programs created to assist business entities based on the racial classification and composition of the business owner(s).
- L. Race-Neutral Measures means activities and programs, which may be used to assist all businesses, notwithstanding the social, economic, racial or sexual composition of those who own and control the business.
- M. Solicitation Notice means public notice of a solicitation for bids, offers, or expressions of interest, which contains the nature of the procurement, relevant dates, the availability of solicitation documents, if any, and other pertinent information. The notice may consist of, but is not limited to:
- Legal advertisement;
 - Newspaper notice;
 - Bid board notice;
 - Bid or proposal documents including the invitation for bids or request for proposals; or
 - eMaryland Marketplace notice.
- N. Subcontracting means entering into a legally binding contractual agreement to perform all or part of the obligation of the prime contractor's contract with DJS.

III. MBE Liaison

- A. The Department's MBE Liaison shall be appointed by the Secretary or his or her designee.
- B. The MBE Liaison is responsible for the following:
 - 1. Developing practices and policies for the effective and efficient administration of the MBE Program.
 - 2. Analyzing the effectiveness of program policies and the impact of proposed policy changes on existing program operations.
 - 3. Analyzing proposed solicitations to determine, on a case-by-case basis, the feasibility of MBE participation.
 - 4. Recommending an MBE participation goal stated as a percentage of the value of a (contract) where feasible.
 - 5. Recommending MBE participation sub-goals as a percentage of the overall goal.
 - 6. Presenting the recommended MBE participation goal to the Procurement Review Group for approval.
 - 7. Participating in pre-proposal and pre-bid meetings to inform vendors of the MBE policies and procedures.
 - 8. Reviewing and verifying MBE documentation provided by bidders/offerors and recommending approval of the same where appropriate. This review includes determining non-responsiveness where the documentation demonstrates that any MBE firm indicated in the documentation lacks MDOT certification specific to the North American Industry Code Service (NAICS) code appropriate for the scope of work identified in the solicitation notice.
 - 9. Monitoring prime contractor compliance with established MBE contract goals through payment verification and other appropriate means.
 - 10. Tracking and reporting prime contractor and MBE payment data based on information provided by the Financial Management Information Systems (FMIS), prime contractors and MBE subcontractors.
 - 11. Conducting compliance reviews to ensure MBE firms are performing a Commercially useful function (CUF).
 - 12. Assisting the Office of Procurement with managing contractor compliance under this policy.

13. Establishing and maintaining relationships with the local contractor community, including small businesses and MBE firms by attending external outreach events as well as hosting internal outreach activities for the purpose of raising awareness of the MBE Program and contract opportunities within DJS.
 14. Other related activities.
- C. The Office of Procurement will support the MBE Liaison in all MBE Program initiatives by providing staff for outreach activities and relevant information relating to upcoming procurement opportunities where practicable.

IV. Goal Assessment

- A. For every solicitation in the amount of \$100,000 or more, the MBE Liaison shall assess the scope of work for potential MBE participation and set an initial MBE participation goal recommendation if applicable before the solicitation is advertised.
- B. The Procurement Review Group (PRG) will meet with the MBE Liaison to discuss the initial MBE participation goal recommendation and make adjustments as needed. DJS will strive to meet an overall annual MBE participation goal of 29%.
- C. DJS shall meet the maximum feasible portion of the overall goal by using race-neutral measures to facilitate MBE participation in the procurement process.

V. MBE Forms

- A. A solicitation may contain an MBE contract participation goal, expressed as a percentage of the dollar value of the contract, which a bidder/offeror shall attempt to meet.
- B. When submitting a bid or proposal, the bidder/offeror must complete the State's MBE forms which consist of the following:
 1. MBE ATTACHMENT 1A MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule
 2. MBE ATTACHMENT 2A Outreach Efforts and Compliance Statement
 3. MBE ATTACHMENT 3A MBE Subcontractor Project Participation Certification
- C. MBE ATTACHMENTS 1A and 2A must be submitted with bids and/or proposals. Failure to submit the appropriate forms may result in a determination that the bidder/offeror is unresponsive. Note: if an MBE prime contractor uses its own forces to achieve any portion up to 50% of the

established MBE goal in accordance with § XI.A.1, below, it must list itself on the MBE ATTACHMENT 1A which must be submitted with the bid or proposal.

- D. MBE ATTACHMENTS 3A must be submitted upon request of the MBE office in writing within 10 business days from notification.

VI. Waiver

- A. If, for any reason, the bidder/offeror is unable to achieve the MBE participation goal established for the solicitation, the bidder/offeror may request, in writing, a waiver of the MBE participation goal, subgoal or a portion thereof. The request for a waiver shall include the following information:
1. A detailed statement of the good faith efforts made to identify portions of the work proposed to be performed by MBE firms in order to increase the likelihood of achieving the stated goal.
 2. A detailed statement of the good faith efforts made to contact and negotiate with MBE firms including:
 - (a) The names, addresses, dates, and telephone numbers of certified MBE firms contacted; and
 - (b) A description of the information provided to MBE firms regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed.
 3. For each MBE firm that submitted a subcontractor quote or offer that the bidder/offeror considers unacceptable, a detailed statement of the reasons for the bidder/offeror's conclusion.
 4. A list of MBE firms contacted but found to be unavailable accompanied by MBE Subcontractor Unavailability Certificate signed by the MBE and bidder/offeror or a statement from the bidder/offeror.
 5. The record of the apparent bidder/offeror's compliance with the outreach efforts.
- B. A waiver of an MBE contract goal or subgoal may be granted only upon a reasonable demonstration by the bidder/offeror that certified MBE participation was unattainable or was unattainable at a reasonable price and a determination by the Procurement Review Group members that the Department's interest is best served by granting a waiver.

- C. If a bidder/offeror indicates that it cannot achieve all or a part of the participation goal on a solicitation, the DJS (MBE Liaison) shall make a finding of whether the bidder/offeror has demonstrated that it took all necessary and reasonable steps to achieve the goals, indicated in § VI.A.1.-5., above.
- D. The MBE Liaison in consultation with the Director of the Procurement may waive any of the provisions of this section for a sole source, emergency procurement, or when a bidder/offeror's bid or proposal is so commercially unreasonable that the public interest cannot reasonably accommodate use of procedures identified herein.
- E. When a waiver is granted, except waivers granted under § VI.C., the waiver determination and the reasons for the determination shall be maintained by the MBE Liaison.

VII. Consequences of Non-Compliance (Pre Award)

- A. If the Director of Procurement determines, in consultation with the MBE Liaison, that the apparent successful bidder/offeror has not complied with the certified MBE participation goal and has not obtained a waiver in accordance with § VI of these procedures, or if the bidder/offeror fails to submit the MBE documentation required by the solicitation, or fails to comply in good faith with the outreach efforts, the Director of Procurement may reject the bid or offer or cancel the award of the contract. The reason for this action shall be specified in writing and mailed or otherwise delivered to the bidder/offeror.

VIII. Contractor and Subcontractor Roles and Responsibilities

- A. Reporting
 - 1. Throughout the life of a contract, prime contractors and MBE subcontractors must complete and submit a monthly payment report whether or not either received payment for the preceding month.
 - 2. Throughout the life of a contract, monthly payment reports must be sent electronically by the 15th of each month in Microsoft Excel format to DJScontracts@maryland.gov.
- B. Prompt Payment of Subcontractors
 - 1. The contractor shall promptly pay a subcontractor any undisputed amount to which the subcontractor is entitled for work under a contract within 10 days of receiving a progress or final payment from DJS.

- C. MBE subcontractors shall notify the MBE Liaison of any changes or proposed changes to their MDOT MBE certification status.

IX. Compliance

A. Payment Verification and Reconciliation

- 1. To ensure compliance with MBE subcontract participation goals, the MBE Liaison shall verify that the MBE firms listed on the Participation Schedule are actually performing work and receiving compensation as set forth in the Participation Schedule. The prime contractor shall:
 - (a) Enter into a valid written subcontract agreement with MBE firms performing any portion of a contract that the prime contractor has with DJS;
 - (b) Submit the subcontract agreement to the MBE Liaison;
 - (c) Permit the MBE Liaison or his or her designee to inspect any relevant matter, including records and the jobsite and to interview subcontractors and workers;
 - (d) Submit monthly to the MBE Liaison a report listing unpaid invoices over 30 days old received from an MBE subcontractor, and the reason payment has not been made; and
 - (e) Include in its written subcontracts with MBE firms, a requirement that the MBE firm performing a sub-contractual obligation on a DJS contract as an MBE firm, submit to the MBE Liaison a report identifying the prime contract, and listing:
 - i. Payments received from the prime contractor in the preceding 30 days; and
 - ii. Invoices for which the subcontractor has not been paid by said prime contractor.

B. Amendment of MBE Participation Schedule Before Award

- 1. If at any time after submission of a bid or proposal and before execution of a contract, a bidder/offeror determines that a certified MBE listed on the MBE Participation Schedule has become or will become unavailable or is ineligible to perform the work required under the contract, then the bidder/offeror shall:
 - (a) Within 72 hours of making the determination, provide written notice to the Director of Procurement with a copy to the MBE Liaison; and

- (b) Within 5 business days of making the determination, make a written request to the MBE Liaison to amend the MBE Participation Schedule.
 - (c) For purposes of this regulation, “ineligible” means an MBE certified by the certification agency that may not be counted toward meeting the MBE participation goal established for the procurement because:
 - i. The MBE is not certified by MDOT to provide the services, materials, or supplies the bidder/offeror has committed the MBE to provide on the MBE participation schedule;
 - ii. The MBE has graduated from the NAICS Code associated with the services, materials, or supplies the bidder/offeror has designated the MBE to provide; or
 - iii. The MBE no longer meets the personal net worth requirements established by MDOT.
2. The request to amend the MBE Participation Schedule shall include:
- (a) An explanation of the reason for inclusion of the unavailable or ineligible firm on the original MBE Participation Schedule;
 - (b) The name of each certified MBE subcontractor that will substitute for the unavailable or ineligible certified MBE subcontractor;
 - (c) A description of work to be performed by each certified MBE subcontractor;
 - (d) The percentage of the contract to be paid to the certified MBE subcontractor for the work or supply; and
 - (e) A full description of the bidder/offeror’s efforts to substitute another certified MBE subcontractor to perform the work that the unavailable or ineligible certified MBE subcontractor would have performed.
- C. Amendment of the MBE Participation Schedule After Award
- 1. After the date of award, an MBE Participation Schedule may only be amended for good cause and with the written approval of the MBE Liaison. Good cause does not include termination of an MBE from a contract for the convenience of the prime contractor. Where good cause is found for an amendment of the Participation Schedule, the prime contractor’s contract with DJS may be duly modified to reflect the amendment of the Participation Schedule.

- D. Where the MBE Liaison determines that a prime contractor has not met its contractual obligation to pay the MBE firm, the MBE Liaison shall notify the prime contractor in writing of its findings and shall specify what corrective actions are required. The prime contractor is required to initiate the corrective actions within 10 days and complete the corrective actions within the time specified by the MBE Liaison.
- E. Compliance Reviews
1. Administrative Reviews
 - (a) The MBE Liaison shall engage in regular, periodic payment verification to ensure that MBE firms are, in fact, receiving payment for work performed.
 2. Commercially Useful Function (“CUF”)
 - (a) The MBE Liaison shall engage in detailed reviews of MBE firm(s)’ work performance as detailed in their subcontracting agreement. Detailed reviews may involve inspecting various documents, including, but not limited to invoices, payroll, records, leasing agreements, vehicle titles and canceled checks, as well as interviewing employees of the MBE firm(s) to verify that the MBE firm is performing work required by the agreement. If the MBE firm is not performing a commercially useful function as required in the agreement, prompt and corrective action shall be taken.
 3. If an MBE prime contractor counts its own performance toward any portion of the MBE goal, in accordance with § XI(A)(1), below, the remaining MBE goal obligation must be performed by an MDOT certified MBE firm(s) which is performing a commercially useful function under a NAICS code(s) for which the MBE firm(s) is also certified.

X. Sanctions (Post Award) Check

- A. If the MBE Liaison/Office of Procurement determines that material noncompliance with MBE contract provisions exists and that the prime contractor refuses or fails to take the corrective action required by the MBE Liaison, then the following sanctions may be invoked:
1. Termination of the contract;
 2. Withholding of payment or a percentage thereof, pending correction; or
 3. Initiation of any other specific remedy identified by the contract or available by law.

XI. Close-Out & Annual Reporting (COMAR 21.11.03.17)

- A. Upon completion of the project, the MBE Liaison shall:
1. Conduct a close-out of the contract to ensure that the prime contractor has met its obligations to the MBE firm(s) involved on the contract. An MBE prime contractor may count its own participation on a contract with an MBE goal for up to 50% of the established MBE goal for that contract if they identified themselves on the MBE Schedule of Participation at time of submittal.
 2. Prepare a report that compares the dollar value of the payments actually received by the MBE firm(s) with the dollar value of the amount DJS has paid to the prime contractor to determine if the original MBE participation goal was met; and
 3. Include in the report an explanation of any discrepancy.
- B. The MBE Liaison shall submit a quarterly and annual report of MBE activity to the Governor's Office of Minority Affairs (GOMA) and StateStat (if required).
1. The report shall include the following:
 - (a) The total number and value of the Department's procurements from MBE firms as prime contractors, and separately as subcontractors, by specific ethnic category. The total number and value of all procurements awarded during the fiscal year should be noted in the report.
 - (b) The percentages, by specific procurement category, which reflect the total number and value of the Department's procurements for the preceding fiscal years; and
 - (c) The number of waivers granted in the preceding fiscal year.

XII. Fraudulent Actions

- A. A person may not:
1. Fraudulently obtain, hold or attempt to obtain or hold certification;
 2. Aid another person in performing an act prohibited under § XII(A)(1);
 3. Willfully obstruct, impede, or attempt to obstruct or impede a State official or employee investigating the qualifications of a business entity that has requested certification;

4. Fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain, public monies to which the person is not entitled under this policy; or
 5. In any MBE matter administered under this policy:
 - (a) Willfully falsify, conceal, or cover up a material fact by any scheme or device;
 - (b) Make a false or fraudulent statement or representation; or
 - (c) Use a false writing or document that the person knows to contain a false or fraudulent statement or entry.
- B. Except as otherwise provided by law, a contractor may not identify a certified MBE firm in a bid or proposal and:
1. Fail to request, receive or otherwise obtain authorization from the certified MBE firm to identify the certified MBE firm in its bid or proposal;
 2. Fail to notify the certified MBE firm before execution of the contract of its inclusion in the bid or proposal;
 3. Fail to use the certified MBE firm on the contract; or
 4. Pay the certified MBE solely for the use of its name in the bid or proposal.
- C. Violations
1. A person who violates any provision of this section may be subject to sanctions and/or referral to MDOT or other agency designated by the Maryland Board of Public Works to certify and decertify MBE firms. *See* State Fin. & Proc. Art. §14-303(b).