

EXHIBIT TO SOLICITATION
STATE OF MARYLAND
DEPARTMENT OF HUMAN RESOURCES
MINORITY BUSINESS ENTERPRISE PARTICIPATION

PURPOSE

Contractor shall structure its procedures for the performance of the work required in this contract to attempt to achieve the minority business enterprise (MBE) goal stated in the Invitation for Bids or Request for Proposals. MBE performance must be in accordance with this Exhibit, as authorized by Code of Maryland Regulations (COMAR) 21.11.03. Contractor agrees to exercise all good faith efforts to carry out the requirements set forth in this Exhibit.

Minority Business Enterprise Participation Requirements

A. Definitions

The following words have the meanings indicated.

1. "Certification" means a determination made by the Maryland Department of Transportation that a legal entity is a Minority Business Enterprise.
2. "MBE Liaison" is the employee designated to administer this Department's MBE Program.
3. "Minority Business Enterprise" or "MBE" means any legal entity, other than a joint venture, organized to engage in commercial transactions, that is:
 - a) at least 51-percent owned and controlled by one or more individuals who are socially and economically disadvantaged; and
 - b) managed by, and the daily business operations of which are controlled by one or more of the socially and economically disadvantaged individuals who own it. A Minority Business Enterprise also includes a not-for-profit entity organized to promote the interest of physically or mentally disabled individuals. A MBE must be certified in order to participate in the Department's MBE program.

MBE GOALS AND SUB GOALS

- An MBE subcontract participation goal of ____% of the total contract dollar amount has been established for this procurement. By submitting a response to this solicitation, the Bidder or Offeror agrees that this percentage of the total dollar amount of the contract will be performed by certified minority business enterprises.

OR

- An overall MBE subcontract participation goal of 25% of the total contract dollar amount has been established for this procurement. This percentage of the total dollar amount includes:

- A sub goal of 10% of the total contract dollar amount to be allocated to certified minority business enterprises classified as women-owned businesses.
- A sub goal of 7% of the total contract dollar amount to be allocated to certified minority business enterprises classified as African American-owned businesses.

By submitting a response to this solicitation, the Bidder or Offeror agrees that these percentage(s) of the total dollar amounts of the contract will be performed by certified minority business enterprises as specified.

- ◆ A Prime Contractor – including a MBE Prime Contractor – must accomplish an amount of work not less than the MBE subcontract goal with certified MBE subcontractors.
- ◆ A Prime Contractor comprising a joint venture that includes MBE partner(s) must accomplish the MBE subcontract goal with certified MBE subcontractors.

SOLICITATION AND CONTRACT FORMATION

A Bidder or Offeror must include with its bid or offer a completed *MDOT Certified MBE Utilization and Fair Solicitation Affidavit (Attachment G)* whereby:

- (1) the Bidder or Offeror acknowledges the certified MBE participation goal or requests a waiver, commits to make a good faith effort to achieve the goal, and affirms that MBE subcontractors were treated fairly in the solicitation process.
- (2) the Bidder or Offeror responds to the expected degree of Minority Business Enterprise participation as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of submission. The Bidder or Offeror shall specify the percentage of contract value associated with each MBE subcontractor identified on the *MDOT Certified MBE Utilization and Fair Solicitation Affidavit*.

If a Bidder or Offeror fails to submit Attachment G with the bid or offer as required, the Procurement Officer shall deem the bid non-responsive or shall determine that the offer 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 must provide the following documentation to the Procurement Officer.

- (1) *Outreach Efforts Compliance Statement (Attachment H)*
- (2) *Subcontractor Project Participation Certification (Attachment I)*
- (3) If the apparent awardee believes a waiver (in whole or in part) of the overall MBE goal or of any sub goal is necessary, it must submit a fully documented waiver request that complies with COMAR 21.11.03.11.
- (4) Any other documentation required by the Procurement Officer to ascertain Bidder or Offeror responsibility in connection with the certified MBE participation goal.

If the apparent awardee fails to return Attachment H and Attachment I 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.

WAIVER

Code of Maryland Regulations (COMAR) 21.11.03

If for any reason, a Bidder or Offeror is unable to achieve the Contract goal for certified MBE participation, the Bidder or Offeror may request, in writing a *Waiver Request Form (Attachment J)* 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 in order to increase the likelihood of achieving the stated goal;
2. A detailed state of the efforts made to contact and negotiate with certified MBEs including:
 - a) The names, addresses, dates and telephone numbers 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 a Bidder or Offeror considers not to be acceptable, a detailed statement of the reasons for this conclusion
4. A list of minority subcontractors found to be unavailable. This list should be accompanied by a *Minority Contractor Unavailability Certification (Attachment K)* signed by the minority business enterprise, or a statement from a Bidder or Offeror that the minority business refused to give the written certification.

CONTRACT ADMINISTRATION REQUIREMENTS

Contractor shall:

1. Submit monthly to the State's Project Manager and DHR MBE Liaison the *Prime Contractor Unpaid MBE Invoice Report (Attachment L)* 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 submit monthly to the State's Project Manager and DHR MBE Liaison the *Subcontractor Payment Invoice Report (Attachment M)* that identifies the prime contract and lists all payments received from Contractor in the preceding 30 days, as well as any outstanding invoices, and the amount of those invoices.
3. Submit quarterly to the State's Project Manager the *Quarterly MBE Compliance Report (Attachment N)* and 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, and the actual dollar value of work performed. Subcontract agreements documenting the work performed by all MBE participants must be retained by the Contractor and furnished to the Procurement Officer on 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. 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 option of the procurement agency, upon completion of the contract and before final payment and/or release of 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 (must be submitted with bid or offer)
- B. Outreach Efforts Compliance Statement (must be submitted within 10 working days of notification of apparent award or actual award, whichever is earlier)
- C. Subcontractor Project Participation Certification (must be submitted within 10 working days of notification of apparent award or actual award, whichever is earlier)

AMENDMENTS OF MBE DUE TO UNFORESEEN CIRCUMSTANCES

Any changes to the MDOT Certified MBE Utilization and Fair Solicitation Affidavit **prior to or after Contract execution** must receive approval in accordance with COMAR 21.11.03.12. The apparent awardee(s) shall immediately notify the Procurement Officer regarding MBE changes before execution of a Contract. Contractors shall immediately notify the State's Project Manager regarding MBE changes after execution of a Contract.

MDOT Certified MBE Utilization and Fair Solicitation Affidavit
(submit with bid or offer)

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

In conjunction with the bid or offer submitted in response to Solicitation No. _____, I affirm the following:

1. I acknowledge and intend to meet the overall certified Minority Business Enterprise (MBE) participation goal of _____% and, if specified in the solicitation, sub-goals of _____% for MBEs classified as African American-owned and _____% for MBEs classified as women-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 sub-goals. I hereby request a waiver, in whole or in part, of the overall goal and/or sub-goals. Within 10 business days of receiving notice that our firm is the apparent awardee, I will submit all required waiver documentation in accordance with COMAR 21.121.03.11.
2. I understand that if I am notified that I am the apparent awardee, I must submit the following 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 H**)
 - (b) Subcontractor Project Participation Statement (**Attachment I**)

- (c) MBE Waiver Request per COMAR 21.11.03.11 (if applicable)
- (d) Any other documentation, including waiver documentation, if applicable, required by the Procurement Officer to ascertain Bidder or 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 quotations or offers, 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 MBER for this project. I hereby affirm that the MBE firms are only providing those products and services for which they are MDOT certified.

Prime Contractor (Firm Name, Address, Phone)	Project Description <u>and</u> Jurisdiction
Project Number:	

List Information For Each Certified MBE Subcontractor On This Project

Minority Firm Name	MBE Certification Number
	FEIN Number or SSN
Certification Category for Dually Certified MBE Subcontractors (<i>Check Only 1 Certification Category</i>) <input type="checkbox"/> African-American Owned <input type="checkbox"/> Woman-Owned	

Percentage of Total Contract:

Minority Firm Name

MBE Certification Number

FEIN Number or SSN

Certification Category for Dually Certified MBE Subcontractors (*Check Only 1 Certification Category*)
 African-American Owned Woman-Owned

Percentage of Total Contract:

Minority Firm Name

MBE Certification Number

FEIN Number or SSN

Certification Category for Dually Certified MBE Subcontractors (*Check Only 1 Certification Category*)
 African-American Owned Woman-Owned

Percentage of Total Contract:

Minority Firm Name	MBE Certification Number
	FEIN Number or SSN
Certification Category for Dually Certified MBE Subcontractors (<i>Check Only 1 Certification Category</i>) <input type="checkbox"/> African-American Owned <input type="checkbox"/> Woman-Owned	
Percentage of Total Contract:	
Minority Firm Name	MBE Certification Number
	FEIN Number or SSN
Certification Category for Dually Certified MBE Subcontractors (<i>Check Only 1 Certification Category</i>) <input type="checkbox"/> African-American Owned <input type="checkbox"/> Woman-Owned	
Percentage of Total Contract:	

Continue on a separate page, if needed.

Summary

Total African-American MBE Participation _____%

Total Woman-Owned MBE Participation _____%

Total MBE Participation _____%

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

Signature of Affiant

(FOR ONLINE USE - PLEASE TYPE)

Name:

Title:

Date:
