

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 7% of the total contract dollar amount to be allocated to certified minority business enterprises classified as women-owned businesses.
- A sub goal of 10% 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 *Certified MBE Utilization and Fair Solicitation Affidavit (Attachment H)* 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 *Certified MBE Utilization and Fair Solicitation Affidavit*.

If a Bidder or Offeror fails to submit Attachment H 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 I)*
- (2) *Subcontractor Project Participation Certification (Attachment J)*
- (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 I and Attachment J 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* (Attachment K) 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 *MBE Unavailability Certification* (Attachment L) 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 Report (Attachment M)* 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 Report (Attachment N)* 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 O)* 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. 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 Statement (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 _____)
 - (b) Subcontractor Project Participation Statement (Attachment _____)
 - (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 (<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:	
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: _____

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 or offer submitted in response to Solicitation No. _____, 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 bidding 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

Signature

Date

Address: _____

Subcontractor Project Participation Certification

Please complete and submit one form for each MDOT certified MBE listed on Attachment A 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	

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 or 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 or proposal;

- (2) fail to notify the certified minority business enterprise before execution of the contract of its inclusion of the bid or 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 or proposal.

PRIME CONTRACTOR SIGNATURE

SUBCONTRACTOR SIGNATURE

By: _____

Name, Title

Date

By: _____

Name, Title

Date

**DEPARTMENT OF HUMAN RESOURCES
WAIVER REQUEST FORM**

**PLEASE FORWARD THIS INFORMATION WITH NECESSARY ATTACHMENTS TO THE
PROCUREMENT OFFICER**

IFB/RFGP/RFP # or AGENCY CONTROL NUMBER: _____

TITLE: _____

ADMINISTRATION/AGENCY: _____

PROCUREMENT/PROJECT OFFICER: _____

TELEPHONE NUMBER: _____

E-MAIL: _____

MBE SUBCONTRACT GOAL: _____

WAIVER DOLLAR AMOUNT REQUESTED: _____

WAIVER PERCENTAGE REQUESTED: _____

REASON FOR WAIVER REQUEST (USE ADDITIONAL PAGES IF NECESSARY):

ATTACH THE FOLLOWING DOCUMENTATION: CERTIFIED MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT, PRIME CONTRACTOR OUTREACH STATEMENT, MBE PARTICIPATION SCHEDULE, MINORITY CONTRACTOR UNAVAILABILITY CERTIFICATE, FINANCIAL STATEMENTS OF PRIME CONTRACTOR, ADDITIONAL SUPPORTING DOCUMENTATION NOT LISTED ABOVE.

REVIEW TEAM RECOMMENDATION AND COMMENTS

- ___ APPROVED AS SUBMITTED
- ___ APPROVED WITH RECOMMENDED CHANGES (SEE COMMENTS)
- ___ DENIED (SEE COMMENTS)
- ___ OTHER (SEE COMMENTS)

COMMENTS:

OEPE MBE LIAISON: _____ **DATE:** _____

OFFICE OF ATTORNEY GENERAL: _____ **DATE:** _____

PROCUREMENT DIRECTOR: _____ **DATE:** _____

FINAL AUTHORITY

OFFICE OF THE SECRETARY: _____

DATE: _____

MARYLAND DEPARTMENT OF HUMAN RESOURCES
MINORITY CONTRACTOR UNAVAILABILITY CERTIFICATE

SECTION I (TO BE COMPLETED BY PRIME CONTRACTOR)

I HEREBY CERTIFY THAT

(Name of Contractor)
CONTACTED _____ MDOT CERT # _____
(Name of MBE Subcontractor)
_____ ON _____
(Complete Address of MBE Subcontractor) (Date)

TYPE OF WORK/SERVICE REQUESTED:

To the best of my knowledge and belief, said Minority Business Enterprise is either unavailable to perform the work/services requested in relation to this contract or is unable to prepare a bid/quote for the following reason(s):

SIGNATURE OF PERSON COMPLETING THIS FORM: _____

PRINTED NAME _____ DATE _____

SECTION II (TO BE COMPLETED BY CERTIFIED MINORITY BUSINESS ENTERPRISE)

IT IS HEREBY CERTIFIED THAT _____ MDOT CERT # _____
(Name of Certified MBE Subcontractor)

(Complete Address of Certified MBE Subcontractor)

WAS OFFERED THE OPPORTUNITY TO BID/PREPARE A QUOTE ON THE ABOVE REFERENCED CONTRACT. THE ABOVE STATEMENT(S) ARE TRUE AND ACCURATE ACCOUNTS OF WHY A BID OR QUOTE WAS NOT SUBMITTED ON THIS CONTRACT.

SIGNATURE OF PERSON REPRESENTING THE MBE:

PRINTED NAME _____ DATE _____

TELEPHONE NUMBER: _____ FAX NUMBER: _____

RETURN THIS FORM TO THE PROCUREMENT OFFICER ALONG WITH THE WAIVER REQUEST

MARYLAND DEPARTMENT OF HUMAN RESOURCES
MINORITY BUSINESS ENTERPRISE PARTICIPATION

Prime Contractor Unpaid MBE Invoice Report
To be completed Monthly by Prime Contractor

Report/Month/Year _____ (Report due by 15th of following month) Contract No.: _____

Prime Contractor Name:			
Contact Person:			
Address:			
City:	State:	Zip:	
Phone:	Fax:		

Subcontractor Name:		
Contact Person:		
Address:		
City:	State:	Zip:
Phone:	Fax:	
Subcontractor Services Provided:		
List any unpaid invoices over 30 days old received from this vendor and reason for non-payment:		
1.		
2.		
3.		
Total Amount Unpaid\$:		

PLEASE COMPLETE A SEPARATE REPORT FOR EACH SUBCONTRACTOR PARTICIPATING IN THIS CONTRACT

Return one (1) copy of this form to the DHR
Contract Monitor and one (1) copy to the following
Address:

MBE Liaison Department of Human Resources
311 West Saratoga Street, 1st Floor
Baltimore, MD 21201

OFFICIAL USE ONLY

Contract No.: _____
Contracting Unit: _____
MBE Subcontract Amount: _____
Contract Begin Date: _____
Contract End Date: _____

Signature

Date

Title

MARYLAND DEPARTMENT OF HUMAN RESOURCES
MINORITY BUSINESS ENTERPRISE PARTICIPATION

Subcontract Payment Invoice Report
To be completed Monthly by MBE Subcontractor

Report/Month/Year _____ (Report due by 15th of following month) Contract No.: _____

MBE Subcontractor Name:		
Contact Person	MDOT Cert. #:	Fed I.D. #:
Address:		
City:	State:	Zip:
Phone:	Fax:	
Subcontractor Services Provided:		
List all payments received from Prime Contractor during the reporting month	List dates and amounts of any outstanding invoices	
1.	1.	
2.	2.	
3.	3.	
Total Payments \$:	Total Unpaid \$:	

Prime Contractor Name:		
Contact Person		
Address:		
City:	State:	Zip:
Phone:	Fax:	

**Return one (1) copy of this form to the DHR
Contract Monitor and one (1) copy to the
Following address:**

**MBE Liaison Department of Human Resources
311 West Saratoga Street, 1st Floor
Baltimore, MD 21201**

<u>OFFICIAL USE ONLY</u>	
Contract No.:	_____
Contracting Unit:	_____
Contract Amount:	_____
MBE Subcontract Amount:	_____
Contract Begin Date:	_____
Contract End Date:	_____

Signature

Date

Title

Quarterly MBE Compliance Report

	A	B	C	D
1	Prime Contractor's Name:	_____		
2	Contract Number:	_____		
3	Report Quarter (Month/Year):	_____		
4	Payment Amount Received from DHR To-date:	_____		
5	Total MBE Participation Dollars (Goal):	_____		
6	<u>Name of Subcontractor(s)</u>	<u>% of Total MBE Goal</u>	<u>Payment</u>	<u>% of Compliance (Pay Received/Payment)</u>
7				
8				
9				
10				
11				
12				
13				
14				

INSTRUCTIONS FOR COMPLETING THIS FORM

This report is completed quarterly and submitted by the Prime Contractor

Row 1, Column B – Fill in your Company’s Legal name

Row 2, Column B – Fill in your Contract Number

Row 3, Column B – Fill in the Report Quarter (Month and Year)

Row 4, Column B – Fill in the year-to-date Payment Amount Received from DHR for this Contract

Row 5, Column B – Fill in the Total MBE Participation Dollars committed (MBE goal x Row 4, Column B)

Rows 7 – 14, Column A – Fill in the name(s) of each MBE listed on the MDOT Utilization Affidavit (Attachment H)

Rows 7 – 14, Column B – Fill in the percentage of the Total MBE Goal for each subcontractor in Column A

Rows 7 – 14, Column C – Fill in the dollar amount actually paid to-date to each subcontractor in Column A

Rows 7 – 14, Column D – Fill in the percentage of the total MBE goal met to-date (y-t-d payment received from DHR divided by the y-t-d payment to the MBE)

AMENDMENT OF MBE DUE TO UNFORSEEN CIRCUMSTANCES

Any changes to the MDOT Certified MBE Utilization and Fair Solicitation Affidavit (Attachment H) 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.

Signature

Date