

INCLUDED IN THIS PACKAGE ARE:

- **INSTRUCTIONS FOR COMPLETING THE CERTIFIED MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT**

- **COMAR 21.11.03.09**

- **INSTRUCTIONS FOR COMPLETING THE MBE PARTICIPATION SCHEDULE**

INSTRUCTIONS FOR COMPLETING THE MBE UTILIZATION AFFIDAVIT

OFFERORS PLEASE MAKE SURE THIS DOCUMENT IS COMPLETED CORRECTLY AND SUBMITTED WITH THE TECHNICAL PROPOSAL. IF YOU DO NOT COMPLETE THIS DOCUMENT CORRECTLY AND SUBMIT IT WITH THE TECHNICAL PROPOSAL YOUR ENTIRE PROPOSAL WILL BE DETERMINED TO NOT BE SUSCEPTIBLE FOR AWARD BASED ON COMAR 21.11.03.09 (see below)

1. ENTER THE **AGENCY CONTROL NUMBER** FOUND **ON THE SOLICITATION COVER PAGE AND IN THE TOP RIGHT HAND CORNER OF THIS AFFIDAVIT – FOR EXAMPLE: DHR/CSU-10-001-S.**
2. **COMPLETING SECTION 1 - 1ST PARAGRAPH** – BY INSERTING THE STATED MBE GOAL THE OFFEROR IS ACKNOWLEDGING THE MBE GOAL AND/OR SUB-GOALS AND **AFFIRMING** THAT THE OFFEROR INTENDS TO MAKE A GOOD FAITH EFFORT TO MEET THE **ENTIRE** MBE GOAL AND/OR MBE SUB-GOALS THAT HAVE BEEN ESTABLISHED IN SECTION 2.31 IN THIS SOLICITATION. IF NO SUB-GOALS HAVE BEEN ESTABLISHED BY THE DEPARTMENT, DO NOT PUT ANY PERCENTAGE IN THESE BLOCKS. **ONLY COMPLETE THIS SECTION IF YOU INTEND TO MEET THE ENTIRE MBE GOAL.**

THE TOTAL PERCENTAGE ON THE MBE PARTICIPATION SCHEDULE BELOW MUST BE THE SAME PERCENTAGE ON THE MBE UTILIZATION AFFIDAVIT

OR

3. **COMPLETING SECTION 1 – 2ND PARAGRAPH** – COMPLETE THIS SECTION IF THE OFFEROR DOES NOT INTEND TO MEET ALL OF THE MBE GOAL. THE OFFEROR MUST INDICATE THE PERCENTAGE OF THE MBE GOAL FOR WHICH A WAIVER WILL BE REQUESTED.

IF A WAIVER WILL BE REQUESTED FOR THE **ENTIRE** MBE GOAL, NO MBE PARTICIPATION SCHEDULE IS NEEDED.

IF A WAIVER WILL BE REQUESTED FOR A **PORTION** OF THE MBE GOAL, A MBE PARTICIPATION SCHEDULE MUST BE CORRECTLY COMPLETED AND SUBMITTED WITH THE PROPOSAL

REQUESTING A WAIVER FOR THE ENTIRE MBE GOAL **OR** A PORTION OF THE MBE GOAL REQUIRES THE OFFEROR – IF RECOMMENDED FOR AWARD OF A CONTRACT RESULTING FROM THIS SOLICITATION – **TO PRESENT ALL DOCUMENTATION** REQUIRED IN RFP SECTION 2.32 F. WAIVER, (dated from the due date of the proposal or prior) **WITHIN 10 CALENDAR DAYS** AFTER NOTIFICATION OF AWARD RECOMMENDATION. FAILURE TO PRESENT THE REQUIRED DOCUMENTATION WITHIN THE SPECIFIED TIME PERIOD CAN RESULT IN THE RECOMMENDATION FOR AWARD BEING VOIDED.

21.11.03.09 - COMAR

TO ALL OFFERORS - IT IS IMPERATIVE THAT YOU CAREFULLY READ THE HIGHLIGHTED SECTIONS OF THIS COMAR CITATION

.09 Procurement Solicitations.

A. General.

(1) A procurement agency shall assess the potential for certified MBE participation in each contract, and estimate the amount of participation if any before initiating the procurement. The procurement agency shall use the MBE strategies decided most appropriate for the particular contract.

(2) The following factors may be used to anticipate the degree of certified MBE participation, to decide the certified MBE subcontract participation goal, when used, and the MBE procurement strategy to be used:

(a) The extent to which direct solicitation, subcontracting, or a combination of both is determined most likely to result in maximum certified MBE participation in the contract;

(b) The number of certified MBEs listed in the Central Directory or otherwise identified for a particular supply, service, maintenance, construction, construction-related service, architectural service, or engineering service;

(c) The geographical proximity, when relevant, of certified MBEs identified under §A(2)(b) of this regulation to the location of the work to be performed;

(d) The feasibility of subcontracting opportunities given the nature and extent of the proposed contract; and

(e) Specific statutory participation goals applicable to the procurement.

B. Construction Contracts—MBE Goals.

To attain the overall and specific MBE goals under Regulation .01A of this chapter, every construction contract solicitation having an estimated value of \$50,000 or more shall contain an overall certified MBE subcontract participation goal, expressed as a percentage of the dollar value of the contract, and may contain subgoals to facilitate the African-American and woman-owned business participation prescribed under Regulation .01A(1) and (2) of this chapter.

C. MBE Subcontracting Provisions.

(1) Any contract may contain certified MBE subcontract participation goals, expressed as a percentage of the dollar value of the contract, that the contractor shall attempt to subcontract to certified MBEs. A procurement agency may establish certified MBE subcontract goals for a

particular construction contract of \$50,000 or less, or any supply, maintenance, service, construction-related service, architectural service, or engineering service contract, notwithstanding the contract's estimated value.

(2) Solicitation Content. Each solicitation identified by a procurement agency as having subcontract opportunities shall contain the clauses required by COMAR 21.05.08.03 and .04. The solicitation shall also contain provisions requiring bidders or offerors including those bidders or offerors that are certified MBEs to:

(a) Identify specific work categories within the scope of the procurement appropriate for subcontracting;

(b) 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 bid on the subcontracts;

(c) Attempt to make personal contact with the certified MBEs solicited and to document these attempts;

(d) Assist certified MBEs to fulfill, or to seek waiver of, bonding requirements; and

(e) Attend pre-bid or other meetings the procurement agency schedules to publicize contracting opportunities to certified MBEs.

(3) On forms provided by the procurement agency, a bidder or offeror shall submit with its bid or proposal:

(a) A completed MBE utilization and fair solicitation affidavit including an agreement to meet the certified MBE participation goal or a request for a waiver; and

(b) A completed MBE participation schedule that identifies the certified minority businesses that the bidder or offeror agrees to utilize in the performance of the contract and the dollar amount or percentage of contract value attributed to each MBE.

(4) The MBE participation schedule shall:

(a) Include the name of each certified MBE that will participate in the project including its respective MBE classification; and

(b) Include the items of work to be performed or furnished and the committed price or the percentage of the contract to be paid to each MBE for the work or supply.

(5) The failure of a bidder to complete and submit the MBE utilization affidavit and the MBE participation schedule shall result in a determination that the bid is not responsive.

(6) The failure of an offeror to complete and submit the MBE utilization affidavit and the MBE participation schedule shall result in a determination that the proposal is not susceptible of being selected for award.

(7) The names of prime contractors requesting or purchasing solicitation documents for construction contracts shall be made available on request to any certified MBEs whose specialty suggests an interest in subcontracting.

(8) Each prime contractor given solicitation documents as part of a procurement shall be given the web address for the electronic version of the MBE directory for purposes of soliciting subcontract quotations, bids, or offers from certified MBEs.

D. Direct Solicitation. As part of the solicitation process being employed for the business community in general, and in addition to the public notice requirements of COMAR 21.05.02.04 and 21.05.03.02B, a procurement agency shall send a copy of the solicitation or notice of the solicitation, or both, to a sufficient number of certified MBEs listed in the central directory as is likely to result in certified MBE responses to the solicitation.

E. Notification—Organizations and Trade Groups.

(1) Except for sole source, small, and emergency procurements, a copy of the solicitation notice for each procurement shall be sent in an electronic format to the:

(a) Office of Minority Affairs for distribution to the appropriate minority business associations, minority business assistance agencies, and trade organizations identified by the Office of Minority Affairs; and

(b) Governor's Office of Business Advocacy and Small Business Assistance.

(2) If the solicitation notice does not indicate availability of the solicitation documents by a publicly accessible internet site, the procurement agency shall send one copy of the solicitation documents for those procurements to the Office of Minority Affairs and the Governor's Office of Business Advocacy and Small Business Assistance, which shall make them conveniently available for review by certified MBEs and small businesses.

F. Prebid and Preproposal Conferences. When prebid or preproposal conferences are held, the procurement agency shall explain the certified MBE subcontracting goal if applicable, the MBE provisions of the solicitation, the documentation required, and its relationship to the determinations that will be made in connection with the evaluation process.

G. Federal Requirements. To the extent required by federal assistance instruments applicable to contracts let by the State under a federal assistance program, only those MBEs meeting federal requirements and criteria shall be used.

INSTRUCTIONS FOR COMPLETING THE MBE PARTICIPATION SCHEDULE

WHEN RESPONDING TO A SOLICITATION:

WHEN COMPLETING THE MBE PARTICIPATION SCHEDULE IN RESPONSE TO A SOLICITATION, THE TOTAL CONTRACT DOLLAR AMOUNT (located on the first page, upper right hand side - underneath Project Description **and** Jurisdiction), **AND** THE DOLLAR AMOUNT (located underneath Work to Be Performed) IS TO BE **LEFT BLANK**. ALL OTHER FIELDS **MUST** BE COMPLETED AND COMPLETED CORRECTLY (read COMAR 21.11.03.09 yellow highlighted areas above) OR ELSE THE PROPOSAL CAN BE DETERMINED TO BE NOT SUSCEPTIBLE OF AWARD.

IN THE TOP SECTION: PLEASE ENTER YOUR COMPANY'S NAME, ADDRESS, AND TELEPHONE NUMBER. IN THE PROJECT DESCRIPTION & JURISDICTION SECTION, ENTER THE TITLE OF THE SOLICITATION (LOCATED ON THE COVER PAGE OF THE SOLICITATION) **AND** THE JURISDICTION THIS PROPOSAL IS REPRESENTING. IN THE PROJECT NUMBER FIELD, ENTER THE AGENCY CONTROL NUMBER, LOCATED IN THE TOP RIGHT-HAND CORNER OF THE PARTICIPATION SCHEDULE. **DO NOT FILL IN THE SECTION FOR TOTAL CONTRACT AMOUNT.**

FOR EACH MBE SUBCONTRACTOR LISTED:

LIST THE NAME OF THE MBE FIRM, ADDRESS, AND TELEPHONE NUMBER. INCLUDE THE MBE SUBCONTRACTOR'S FEIN NUMBER **AND** MBE CERTIFICATION NUMBER IN THE APPROPRIATE FIELDS.

WORK TO BE PERFORMED - MUST BE DIRECTLY ASSOCIATED WITH THE SCOPE OF SERVICES FOR THIS SOLICITATION.

DO NOT FILL IN THE SECTION FOR DOLLAR AMOUNT.

PERCENTAGE OF TOTAL CONTRACT – MUST BE FEASIBLE (ACHIEVABLE) WITH REGARD TO THE OFFEROR'S **ANTICIPATED** CONTRACT DOLLAR AMOUNT. FAILURE TO CONSIDER THE FEASIBILITY OF THE STATED PERCENTAGE IN LIGHT OF THE TOTAL CONTRACT AMOUNT MAY RESULT IN A DETERMINATION THAT THE PROPOSAL IS NOT SUSCEPTIBLE OF BEING SELECTED FOR AWARD.

INCLUDE THE PROJECT COMMITMENT AND COMPLETION DATES FOR EACH SUBCONTRACTOR.

THE FORM MUST ALSO BE SIGNED BY A REPRESENTATIVE OF THE CONTRACTOR ABLE TO BIND THE COMPANY TO THE SERVICES AND PRICES LISTED IN THE MBE PARTICIPATION SCHEDULE.

WHEN RESPONDING TO A NOTICE FOR RECOMMENDATION OF AWARD:

WHEN COMPLETING THE MBE PARTICIPATION SCHEDULE IN RESPONSE TO A NOTICE FOR RECOMMENDATION OF AWARD, **ALL** FIELDS MUST BE COMPLETED AND COMPLETED CORRECTLY FOR EACH MBE SUBCONTRACTOR **INCLUDING THE OFFEROR'S INDIVIDUAL PROJECT NUMBER** (Agency Control Number - the Offeror's individual contract number as noted on the recommendation for award letter from the Procurement Officer), **TOTAL CONTRACT DOLLAR AMOUNT AND DOLLAR AMOUNT for each individual MBE subcontractor.**

AT THE TIME OF AWARD RECOMMENDATION YOU CANNOT CHANGE MBE SUBCONTRACTORS FROM THOSE LISTED ON THE MBE PARTICIPATION SCHEDULE SUBMITTED WITH THE PROPOSAL **UNLESS** WRITTEN JUSTIFICATION IS PROVIDED TO THE PROCUREMENT OFFICER WITH THE MBE PARTICIPATION SCHEDULE. EXAMPLES OF JUSTIFICATION FOR MBE SUBCONTRACTOR CHANGE INCLUDE: (1) proposed subcontractor failed to respond timely to signing the Offeror's MBE Participation Statement (see form below); (2) proposed subcontractor refuses to sign the MBE Participation Statement at the point of award recommendation; or (3) proposed subcontractor can no longer provide the required service(s).