

**MINORITY BUSINESS ENTERPRISE
PROCEDURES
FOR
STATE FUNDED
PUBLIC SCHOOL CONSTRUCTION PROJECTS**

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BACKGROUND

In 1978, the Maryland General Assembly passed legislation, which was signed into law to establish the State's Minority Business Enterprise Program. This new law set as a goal that at least 10 percent of each unit of State government's total dollar value of procurement contracts for purchases and/or contracts be awarded to minority business enterprises. This law was subsequently modified and the goal was increased to 14 percent. More recently, in 2001, the goal was increased to 25 percent with subcontracting sub-goals of 8 percent for certified African American-Owned businesses and 11 percent for certified Women-owned businesses.

In 1979, the Rules, Regulations, and Procedures for the Administration of the School Construction Program were revised by the Board of Public Works to require each local Board of Education (BOE) to adopt procedures to attempt to include minority business enterprises in State funded school construction projects. The State law was revised and now states: "The Interagency Committee on Public School Construction (IAC) shall require each local Board of Education (BOE) to adopt procedures consistent with this chapter before obtaining funds for public school construction projects".

In May 2007, The Rules, Regulations and Procedures were replaced by Regulations. The regulations concerning project procurement (COMAR 23.03.03) indicate that the State's Minority Business Enterprise goals and procedures apply to all State funded projects, irrespective of procurement method.

OVERVIEW

This Minority Business Enterprise (MBE) procedure document was originally developed in response to a requirement set forth in the Rules, Regulations, and Procedures for the Administration of the School Construction Program. The MBE requirement was originally established under HB 64, which was passed in the 1978 session of the Maryland General Assembly and signed into law as Chapter 575 of the Acts of 1978.

Since the Board adopted its original Minority Business Enterprise Procedures, there have been changes in State statutes, regulations adopted by the Board of Public Works, procedural requirements, project eligibility requirements and the level of State participation in school construction projects. This revised procedure is consistent with current legislation and the changes to the Code of Maryland Regulations (COMAR) requirements, effective November 7, 2005 and May 21, 2007.

1.0 PURPOSE

To fulfill the intent of the law by setting goals for Minority Business Enterprise participation in every contract that includes State funding through the Public School Construction Program. Local Educational Agencies (LEAs) shall attempt to achieve the result that a minimum of 29 percent of the total dollar value of all construction contracts is made directly or indirectly with certified minority business enterprises when State Public School Construction Program (PSCP) funds are utilized, with a minimum of 8 percent from certified African American-owned businesses, a minimum of 11 percent from certified Women-owned businesses, and the balance from any certified minority business enterprises. All general contractors, including certified MBE firms, when bidding as general or prime contractors are required to attempt to achieve the MBE subcontracting goals from certified MBE firms.

2.0 EFFECTIVE DATE

These procedures have been adopted for use in Anne Arundel County Public Schools Board of Education procedures, and will take effect on or after September 3, 2008.

3.0 DEFINITIONS

1. **Certification** means the determination that a legal entity is a minority business enterprise consistent with the intent of Subtitle 3 of the State Finance and Procurement Article.

2. **Certified Minority Business Enterprise** means a minority business that holds a certification issued by the Maryland State Department of Transportation (MDOT).
3. **Corporation**, as defined by MDOT, is an artificial person or legal entity created by or under the authority of the laws of any state of the United States, the District of Columbia or a territory or commonwealth of the United States and formed for the purpose of transacting business in the widest sense of that term, including not only trade and commerce, but also manufacturing, mining, banking, insurance, transportation and other forms of commercial or industry activity where the purpose of the organization is profit. For eligibility for certification, disadvantaged and/or minority individuals must own at least 51 percent of the voting stock and at least 51 percent of the aggregate of all classes of stock that have been issued by the corporation. (Note: stock held in trust is not considered as stock held by the disadvantaged businesspersons when computing the business person(s) ownership.)
4. **Managerial Control**, as defined by MDOT, means that a disadvantaged or minority owner(s) has the demonstrable ability to make independent and unilateral business decisions needed to guide the future and destiny of a business.

Control may be demonstrated in many ways. For a minority owner to demonstrate control, the following examples are put forth, but are not intended to be all inclusive:

- a. Articles of Incorporation, Corporate Bylaws, Partnership Agreements and other agreements shall be free of restrictive language which would dilute the minority owner's control thereby preventing the minority owner from making those decisions which affect the destiny of a business;
 - b. The minority owner shall be able to show clearly through production of documents the areas of the disadvantaged business owner's control, such as, but not limited to:
 - 1) Authority to sign payroll checks and letters of credit;
 - 2) Authority to negotiate and sign for insurance and/or bonds;
 - 3) Authority to negotiate for banking services, such as establishing lines of credit; and
 - 4) Authority to negotiate and sign for contracts.
 - c. Agreements for support services that do not lessen the minority owner's control of the company are permitted as long as the disadvantaged or minority business owner's authority to manage the company is not restricted or impaired.
5. **Minority Business Enterprise (MBE)** means any legal entity, except a joint venture, that is (a) organized to engage in commercial transactions, and (b) at least 51 percent owned and controlled by one or more individuals who are socially and economically disadvantaged including:

African Americans;
American Indian/Native Americans;
Alaskan Native
Asians;
Hispanics;
Physically or mentally disabled individuals;
Women; or
A non-profit entity organized to promote the interests of physically or mentally disabled individuals.

6. **Minority Business Enterprise Liaison** means the employee of the school system designated to administer the Minority Business Enterprise Procedures for State funded public school construction projects.
7. **Operational Control**, as defined by MDOT, means that the disadvantaged or minority owner(s) must possess knowledge necessary to evaluate technical aspects of the business entity. The primary consideration in determining operational control and the extent to which the disadvantaged or minority owner(s) actually operates a business will rest upon the specialties of the industry of which the business is a part. The minority owner should have a working knowledge of the technical requirements needed to operate in his/her industry. Specifically, in the construction industry and especially among small (one to five person firms) contractors, it is reasonable to expect the disadvantaged or minority owner(s) to be knowledgeable of all aspects of the business. Accordingly, in order to clarify the level of operational involvement which a minority owner must have in a business for it to be considered eligible, the following examples are put forth, but are not intended to be all inclusive:
 - a. The minority owner should have experience in the industry for which certification is being sought; and

- b. The minority owner should demonstrate that basic decisions pertaining to the daily operations of the business are independently made. This does not necessarily preclude the disadvantaged or minority owner(s) from seeking paid or unpaid advice and assistance. It does mean that the minority owner currently must possess the knowledge to weigh all advice given and to make an independent determination.
8. **Ownership**, as defined by MDOT, means that:
 - a. The minority owner(s) of the firm shall not be subject to any formal or informal restrictions, which limit the customary discretion of the owner(s). There shall be no restrictions through, for example, charter requirements, by-law provisions, partnership agreements, franchise or distributor agreements or any other agreements that prevent the minority owner(s), without the cooperation or vote of any non-minority, from making a business decision of the firm.
 - b. This means that the disadvantaged or minority persons, in order to acquire their ownership interests in the firm, have made real and substantial contributions of capital, expertise or other tangible personal assets derived from independently owned holdings without benefit of a transfer of assets, gift or inheritance from non-minority persons. Examples of insufficient contributions include a promise to contribute capital, a note payable to the firm or its owners who are not minority persons or the mere participation as an employee rather than as a manager. If the ownership interest held by a disadvantaged or minority person is subject to formal or informal restrictions, such as options, security interests, agreements, etc., held by a non-minority person or business entity, the options, security interests, agreements, etc., held by the non-minority person or business entity must not significantly impair the disadvantaged or minority person's ownership interest.
9. **Partnership** means an unincorporated association of two or more persons to carry on as co-owners of a business for profit. For a partnership to be deemed eligible for certification under the MDOT Program, the disadvantaged or minority person's interest must be at least 51 percent of the partnership capital.
10. **Socially and Economically Disadvantaged** means, a citizen or lawfully admitted permanent resident of the United States who is socially disadvantaged and economically disadvantaged. The law establishes the level of personal net worth at \$1,500,000, above which an individual may not be found to be socially and economically disadvantaged.
11. **Sole Proprietorship**, as defined by MDOT, is a for profit business owned and operated by a disadvantaged or minority person in his or her individual capacity. For a sole proprietorship to be deemed eligible for certification under the DBE/MBE Program, the disadvantaged or minority person must be the sole proprietor.

4.0 MBE GOAL SETTING PROCEDURES

1. The MBE program requires that all race-neutral measures be considered before making use of race-based measures. Using a combination of race-neutral and race-based measures for each specific school construction project will help ensure that certified MBE firms are afforded the opportunity to submit bids and be utilized to the greatest extent possible.
2. Race-neutral measures include any action taken by the LEA to make it easier for all contractors, including MBEs, to compete successfully for public school construction project contracts.
3. Race-based measures include setting an overall MBE goal and MBE subgoals, if applicable, based upon race, gender, ethnicity, etc., for a specific project.
4. The overall MBE goal and the subgoals, if applicable, should be set for each specific project, considering but not limited to, the following factors:
 - a. The extent to which the work to be performed can reasonably be segmented to allow for MBEs to participate in the project;
 - b. A determination of the number of certified MBEs that potentially could perform the identified work;
 - c. The geographic location of the project in relationship to the identified certified MBEs;

- d. Information obtained from other State departments/agencies related to establishing a MBE goal and/or subgoals for similar construction projects or work in the jurisdiction;
 - e. Information obtained from other State departments/agencies related to MBE participation in similar construction projects or work in the jurisdiction; and
 - f. Any other activities or information that may be identified as useful and productive.
5. The Superintendent or Designee shall establish one or more Procurement Review Groups (PRG). The PRG must include at a minimum the MBE Liaison and the Procurement Officer (PO) or a representative from the procurement office. The PRG could also include a Capital Improvement Project Manager, the Project Architect, the Cost Estimator, the Construction Manager, and/or other individuals selected by the Superintendent or Designee.
- a. The PRG should communicate and/or meet as needed to consider the MBE subcontracting goal and subgoals, if applicable, for individual projects or groups of projects.
 - b. The PRG should consider the factors cited in 4 above when establishing the MBE goal and subgoals, if applicable, for each project or segmented piece of a project that are reasonable and attainable.
 - c. The PRG must complete and submit a written analysis for each State funded school construction project with an estimated cost that is expected to exceed \$200,000.
 - i. For State-funded projects that require review of Construction Documents (CD), the written analysis shall be submitted with the CD to the Department of General Services (DGS), and will be reviewed by DGS for submission. Appropriate signatures and correspondence between the goal and subgoals, if applicable, indicated in the analysis and those of the procurement documents.
 - ii. For State-funded projects that do not require review of CD, the written analysis shall be submitted to the PSCP, and will be reviewed by the PSCP for submission and appropriate signatures.
 - iii. For Locally funded projects that are anticipated to be requested for State approval of planning and funding, the written analysis shall be submitted with the CD to the Maryland State Department of Education (MSDE), and will be reviewed by MSDE for submission, appropriate signatures and correspondence between the goal and subgoals, if applicable, indicated in the analysis and those of the procurement documents. Submission of this document is a pre-condition for recommendation for State approval of planning and funding when submitted in an annual Capital Improvements Program (CIP).
 - d. For projects estimated to cost between \$50,000 and \$200,000 the same analysis form is to be completed and submitted. This could be a responsibility of the PRG, but could be performed by others as well.
 - i. For State-funded projects that require review of Construction Documents (CD), the written analysis shall be submitted with the CD document to the DGS, and will be reviewed by DGS for submission, appropriate signatures, and correspondence between the goal and subgoals, if applicable, indicated in the analysis and those of the PD.
 - ii. For State-funded projects that do not require review of the CD's, the written analysis shall be submitted to the PSCP, and will be reviewed by the PSCP for submission and appropriate signatures.
 - e. If the project cost is estimated to exceed \$200,000 then a copy of the written analysis shall also be sent to GOMA at the same time that the written analysis is submitted to the DGS or the PSCP.
 - f. The PRG should consult with local counsel for the BOE as needed.
6. It is recognized that by utilizing the factors cited in 4 above, the MBE goal and/or subgoals, if applicable, for a specific project or portion thereof may be significantly higher than the overall goals of the program (29% overall, with 8% from African American-owned businesses and 11% from Women-owned businesses). It is also recognized and possible that there will be MBE goals set that are lower than those stated above or even that no MBE goal and/or subgoals will be set for a specific project or the segmented piece of the project.
7. Assistance in reviewing the factors cited in 4 above and setting a goal and/or subgoals, if applicable, for specific projects or a segmented piece of a project can be obtained by contacting the Public School Construction Program and/or the Governor's Office of Minority Affairs.

5.0 IMPLEMENTING PROCEDURES - \$50,000 OR LESS

For construction projects estimated to cost \$50,000 or less, the following procedures will be utilized:

1. A MBE goal and/or MBE subgoals are not required to be set for contracts that are anticipated to be for \$50,000 or less.
2. All advertisements, solicitations, and solicitation documents shall include the following statements:
 - a. "Certified Minority Business Enterprises are encouraged to respond to this solicitation."
 - b. "The contractor or supplier who provides materials, supplies, equipment, and/or services for this construction shall attempt to achieve the result that a minimum of 29 percent of the total contract value is made directly or indirectly from certified minority business enterprises, with a minimum of 8 percent from certified African American-owned businesses, a minimum of 11 percent from certified Women-owned businesses, and the balance from all certified minority business enterprises. All general contractors and subcontractors, including certified MBE firms, when bidding as general or prime contractors are required to attempt to achieve the MBE subcontracting goals from certified MBE firms approved by the MDOT."
3. To encourage greater MBE participation the staff of the school system should send out notices of potential projects and a specific project to MBEs to solicit bids or proposals directly from MBE contractors that are certified.
4. A copy of the solicitation notice, preferably electronically, shall be sent to the Governor's Office of Minority Affairs (GOMA) at the same time the advertisement for the solicitation is released.
5. When a pre-bid or pre-proposal conference or meeting is held, the MBE Liaison or designated representative shall explain that all bidders or Offerors are encouraged to utilize Certified MBEs for this project or segments of the project.
6. Upon request for a specific project, the school system shall provide one set of drawings and specifications (and addenda when issued) to MBE associations recognized by the GOMA. They will be available free of charge to be picked up at a location designated by the LEA. A review of the bid or proposal activity submitted by an association's members may be initiated to justify continuation of this service.
7. Minority Business Enterprise forms identified in Section 6.0 of this procedure for projects over \$50,000, are not required to be submitted for these projects (\$50,000 or less).
8. The names of prime contractors obtaining drawings and specifications will be shared with certified MBEs and MBE associations, upon request.
9. At the time of the contract award, the MBE Liaison or a designated person, will record any anticipated certified minority business enterprise participation data made available from the successful contractor.
10. A business that presents itself as a minority business may participate in a project but may not be counted toward MBE participation until it is a certified minority business enterprise. If the MBE is not certified at the time of contract award, it may not be counted at that time. Only the funds paid after MDOT certification can be counted as MBE participation in the project. If a certified MBE fails to meet the standards specified in State Finance and Procurement Article 14-301 (G) and (I), Annotated Code of Maryland, the payments made to the MBE can be recorded and counted under a contract entered into when the MBE was eligible and certified. Ineligibility of an MBE to participate in the MBE program may not be the sole cause of the termination of the MBE contractual relationship for the remainder of the term of the contract.
11. The contractor will complete the Standard Monthly Contractor's Requisition for Payment (IAC/PSCP Form 306.4), specifically page 3 of 16, Minority Business Enterprise Participation, with each requisition submitted for payment. If certified MBE firms are known at the time of the contract award, their names and other appropriate information should be entered on Page 3 of the first and all subsequent requisitions for payment. Any MBEs identified during the life of the project should be added as soon as the Contractor engages them.

12. Upon completion of the project the contractor will provide a summary of the total of all funds paid to certified MBE firms. This should be within the contractor's final requisition for payment.

6.0 IMPLEMENTING PROCEDURES - Over \$50,000

For construction projects estimated to cost in excess of \$50,000, the following procedures will be utilized:

1. All advertisements, solicitation, and solicitations documents shall include the following statements:
 - a. "Certified Minority Business Enterprises are encouraged to respond to this solicitation notice."
 - b. "The Contractor or Supplier who provides materials, supplies, equipment and/or services for this construction project shall attempt to achieve the specific overall MBE goal of ___ percent established for this project. All Prime Contractors, including certified MBE firms, when submitting bids or proposals as general or prime contractors, are required to attempt to achieve this goal from certified MBE firms."
 - c. If subgoals have been established for this project, then one of the following should be included:
 - 1) "The subgoals established for this project are ___ percent from African American-Owned businesses and ___ percent from Women-Owned businesses."
 - 2) "The subgoal established for this project is ___ percent from African American-Owned businesses."
 - 3) "The subgoal established for this project is ___ percent from Women-Owned businesses."
 - d. "The Bidder or Offeror is required to submit with its bid or proposal a completed Attachment A - "Certified MBE Utilization and Fair Solicitation Affidavit" and Attachment B - "MBE Participation Schedule", as described in the solicitation documents that identifies the Bidder or Offeror's specific commitment of certified minority business and certifies it made a good faith effort to achieve the goal established in the solicitation. The MBE Participation Schedule (Attachment B) shall include the name of each certified MBE that will participate in the project including its respective MBE classification, and shall include the items of work to be performed or furnished and the committed price and the percentage of the contract to be paid to each MBE for the work or supply."
 - e. If there is no overall MBE goal or MBE subgoals established for the project, then only 1.A. above is to be included.

2. OTHER ADVERTISEMENT AND OUTREACH REQUIREMENTS

- a. To encourage greater MBE participation the staff of the school system should send out notices of potential projects to MBEs or solicit bids or proposals directly from minority business enterprise contractors that are certified.
- b. A copy of the solicitation notice, preferably electronically, shall be sent to the Governor's Office of Minority Affairs at the same time the advertisement for the solicitation is released.
- c. Upon request for a specific project, the school system shall provide one set of drawings and specifications (and addenda when issued) to minority business enterprise associations recognized by the Governor's Office of Minority Affairs. They will be available free of charge to be picked up at a location designated by the LEA. A review of the bid or proposal activity by an association's members may be initiated to justify continuation of this service.
- d. When a pre-bid or pre-proposal conference is held, the MBE Liaison or designated representative shall explain the MBE goal and subgoals, if applicable; the MBE provisions of the solicitation; the documentation required at the time of the submission; its relationship to the responsiveness of the Bidder or Offeror; how to complete the required attachments, particularly A, B, and C; and additional information and supporting documentation that may be required after the bid or proposal opening. All contractors who attend the Pre-bid or Pre-proposal conference should receive a list or information explaining how to obtain a listing of Certified MBE firms who could perform the work or have expressed an interest in performing the school construction work required for the specific project in the jurisdiction.

- e. The names of prime contractors obtaining drawings and specifications will be shared with Certified MBEs and MBE associations, upon request.
- f. The MBE Liaison, in conjunctions with the Procurement Officer or Project Staff, should respond to all applicable questions and concerns relating to the project's MBE requirements completely and in a timely fashion to ensure that all potential contractors and subcontractors can compete effectively.

3. ALL SOLICITATION DOCUMENTS SHALL INCLUDE THE FOLLOWING:

- a. "Certified Minority Business Enterprises are encouraged to respond to this solicitation notice."
- b. "The contractor or supplier who provides materials, supplies, equipment and/or services for this construction project shall attempt to achieve the result that a minimum of ____ percent of the total contract value is with Certified Minority Business Enterprises, with a minimum of ____ percent from Certified African American-Owned businesses, a minimum of ____ percent from Certified Women-Owned businesses, and the balance from any certified Minority Business Enterprises. All contractors, including Certified MBE firms, when submitting bids or proposals as Prime Contractors, are required to attempt to achieve the MBE goal and subgoals, if applicable, from Certified MBEs". NOTE: See 6.1.C. above for variations that may be required.
- c. Each bid or offer submitted, including a submittal from a Certified MBE in response to this solicitation, shall be accompanied by a completed Attachment A- Certified MBE Utilization and Fair Solicitation Affidavit and a completed Attachment B - MBE Participation Schedule. These two attachments must be accurate and consistent with each other.
 - 1) Attachment A and Attachment B shall be submitted with the sealed bid price or proposal at a place, date, and time specified in the solicitation document.
 - 2) As an alternative, and at the discretion of the school system, Attachment A could be submitted with the sealed bid price or proposal the sealed bid price or proposal at a place, date, and time specified in the solicitation document. The sealed bids or proposals received by the time specified could be held, unopened, for a maximum of 30 minutes. Within that time (30 minutes) each Bidder or Offeror must submit Attachment B, in a separate sealed envelope. The sealed price envelopes from each Bidder or Offeror who submits both the sealed bid or proposal and the envelope with Attachment B will then be opened and recorded as a viable submission. Any contractor that fails to submit the second envelope, with Attachment B, prior to the specified time allowed (30 minutes) after the submittal of the sealed bid or proposal will be deemed non-responsive and the sealed bid or proposal will not be opened or considered.
- d. The submittal of a completed and signed Attachment A – Certified MBE Utilization and Fair Solicitation Affidavit and a completed and signed Attachment B - MBE Participation Schedule indicates the Bidder's or Offeror's recognition and commitment to attempt to achieve the MBE goal and/or MBE subgoals, if applicable, for the specific project.
 - 1) The Bidder or Offeror recognizes that their efforts made to initiate contact, to solicit, and to include MBE firms in this project will be reviewed carefully and evaluated based upon the actions taken by them prior to and up to Ten (10) days before the bid or proposal opening. Follow up actions taken by the Bidder or Offeror within the ten (10) days prior to the bid opening will also be considered.
 - 2) Based upon this review and evaluation it will be determined, by the MBE Liaison, Procurement Officer, or a Designated Person, if a good faith effort was made by the apparent low Bidder or apparent successful Offeror
- e. The Bidder or Offeror must check one of the three boxes on Attachment A, which relates to the level of MBE participation achieved for the project. The Bidder's or Offeror's signature indicates that in the event that they did not meet the MBE goal or subgoals, if applicable, that
 - 1) They are therefore requesting a waiver, and

- 2) Documentation of their good faith efforts will be provided to the school system staff within Ten (10) day of being notified that they are the apparent low Bidder or apparent successful Offeror.
- f. The Bidder or Offeror must submit Attachment B (as and when described above), which lists and provides information related to each Certified MBE firm that the Bidder or Offeror will utilize on this project. A completed and accurate Attachment B is required. All of the work specified to be performed by each MBE firm, the Contract Information, MDOT Certification Number, Minority Code, the Dollar Values, and Percentages must be correct.
 - g. Attachment B should be completed and submitted with all calculation utilizing the base bid or offer only. A revised Attachment B should be submitted by the successful Bidder or Offeror once a determination is made as to the acceptance and/or rejection of any alternates.
 - h. If a request for a Waiver has been made, the appropriate box on Attachment A has been checked and the Attachment signed, then the LEA should obtain and review the apparent low Bidder's or successful Offeror's supporting documentation of the good faith efforts to justify the granting of the waiver, prior to submitting the contract award for approval to the Board of Education.
 - i. The following documentation shall be considered as part of the contract, and shall be furnished by the apparent low Bidder or successful Offeror to the MBE Liaison or designated person, within ten (10) working days from notification that the firm is the apparent low Bidder or successful Offeror:
 - 1) A completed Attachment D - Minority Business Enterprise Subcontractor Project Participation Statement shall be completed and signed by the prime contractor and each MBE firm listed on Attachment B - MBE Participation Schedule and Attachment C - Outreach Efforts Compliance Statement shall be signed and completed by the Bidder or Offeror.
 - 2) Notification for purposes of this procedure means the earliest of the following methods of communication: orally in person, orally by telephone, orally by a telephone message, a faxed communication, a letter by date received or an electronic communication.
 - 3) The ten (10) working days do not include the day the notification is received, weekends or holidays (State or Federal), but the material submitted must be received by the close of business on the tenth day.
 - 4) The requirement to submit the above-listed documentation within the time frame specified will be considered by the IAC in its review of the request for Contract Award for the project. Failure to submit the required documentation within the time frame specified may result in a delay of the approval of the award of the contract, or the materials being returned without the approval of the Award of the Contract.

4. WAIVER PROCEDURES

- a. If the apparent low Bidder or successful Offeror has determined that they are unable to meet the overall MBE goal or subgoals, if applicable, for the project at the time of submission of a bid or offer, they must check either of the two boxes on Attachment A. The signature recognizes and acknowledges that a request for a Waiver is being made. The apparent low Bidder or successful Offeror will therefore be required to submit information and substantiating documentation that will be reviewed to justify the granting of a Waiver.
- b. If the apparent low Bidder or successful Offeror is unable to achieve the overall MBE contract goal and/or the MBE subgoals, if applicable, from certified African American-Owned businesses and/or from certified Women-Owned businesses, the apparent low Bidder or successful Offeror shall submit, within 10 working days from notification that the firm is the apparent low Bidder or successful Offeror, completed Attachment C - Outreach Efforts Compliance Statement, Attachment E – Minority Subcontractors Unavailability Certificate and Attachment F - MBE Waiver documentation which shall include the following:
 - 1) A detailed statement of the efforts made by the Bidder or Offeror to identify and select portions of the work proposed to be performed by subcontractors in order to increase the likelihood of achieving the stated goal;
 - 2) A detailed statement of the efforts made by the Bidder or Offeror prior to and up to at least ten (10) days before the bid or proposal opening to solicit minority business enterprises through written notices that describe the categories of work for which subcontracting is being solicited, the type of work to be performed and specific instructions on how to submit a bid or proposal;

- 3) Follow-up actions taken by the Bidder or Offeror within the ten (10) days prior to the bid or proposal opening will also be considered.
 - 4) A detailed statement of the Bidder's or Offeror's efforts to make personal contact with MBE firms identified for item (2) above;
 - 5) A record of the name, address, telephone number and dates contacted for each MBE identified under items (2) and (3) above;
 - 6) A description of the information provided to MBEs regarding the drawings, specifications and the anticipated time schedule for portions of the work to be performed;
 - 7) Information on activities to assist minority business enterprises to fulfill bonding requirements or to obtain a waiver of these requirements;
 - 8) Information on activities to publicize contracting opportunities to minority business enterprises, attendance at pre-bid or pre-proposal meetings or other meetings scheduled by the MBE Liaison or designated representative; and
 - 9) As to each MBE that placed a subcontract quotation or offer which the apparent low Bidder or successful Offeror considers not to be acceptable, a detailed statement of reasons for this conclusion.
- c. In addition to any Waiver documentation at the apparent low Bidder of successful Offeror shall be submit one completed Attachment D – Minority Business Enterprise Subcontractor Project Participation Statement for each MBE firm that will participate in the project consistent with the information previously provided at the time of the submission of Attachment B or the revised Attachment B.
- d. A waiver of an MBE contract goal or subgoal, if applicable, may be granted by the school system only upon receipt of Attachment C - Outreach Efforts Compliance Statement, Attachment E - Minority Subcontractors Unavailability Certificate, and Attachment F – MBE Waiver documentation as described above in items 1) through 9)
- 1) The MBE Liaison will review and accept or reject the minority business enterprise material that is submitted, and could obtain legal advice or assistance from their attorney.
 - 2) The MBE waiver request may not be considered unless all of the documentation specified above has not been submitted in a timely fashion by the apparent low Bidder or successful Offeror. Waiver request may not be considered unless all of the documentation specified above has been submitted in a timely fashion by the apparent low Bidder of successful Offeror.
 - 3) Assistance in the review of a request for a waiver (the documentation and justifications) may be requested from the Public School Construction Program and/or the Governor's Office of Minority Affairs.
 - 4) If a determination is made that the apparent low Bidder of successful Offeror did make a good faith effort, based upon a review of the documentation submitted, then the Waiver must be granted. The Award of Contract shall then be made. The material and information submitted, including the LEA's review and analysis notes and conclusion shall be retained in the project file.
 - 5) If a determination is made that the apparent low Bidder or successful Offeror did not make a good faith effort, based upon a review of the documentation submitted, then the Waiver should not be granted. The material and information submitted, including the LEA's review and analysis notes and conclusion, shall be retained in the project file. The Award of Contract shall then be made to the next lowest Bidder or Offeror, who meets the contractual requirements, including the MBE requirements.
 - 6) When a Waiver is granted, a copy of Attachment F – MBE Waiver documentation, accepted and signed by a school system representative and the reasons for the determination, shall be forwarded to the *Governor's Office of Minority Affairs and the Public School Construction Program* within ten (10) days after approval of the contract award by the Board of Education. Failure to submit the required documentation within the time frame specified may result in delayed approval of the Award of Contract by the IAC.

5. ALL CONTRACTS SHALL INCLUDE THE FOLLOWING:

- a. "The contractor shall perform the contract in accordance with the representations made in Attachment A - Certified Minority Business Enterprise Utilization and Fair Solicitation Affidavit and Attachment B - MBE Participation Schedule, submitted as part of the bid or proposal".
- b. "Failure to perform the contract as specified and presented in the bid or proposal submission without prior written consent of the owner shall constitute a violation of a material term of the contract".
- c. All contracts shall contain the following:
 - 1) The contractor shall structure his/her operations for the performance of the contract to attempt to achieve the MBE goals as stated in the solicitation document.
 - 2) The contractor agrees to use his/her best efforts to carry out these requirements consistent with the efficient and effective performance of the contract.
 - 3) The contractor must ensure that all Certified MBEs shall have the maximum practical opportunity to compete for additional subcontract work under the contract, even after the award of the contract.
 - 4) The contractor shall submit monthly to the MBE Liaison or the school system's designated representative a report 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.
 - 5) The contractor shall include in its agreements with its certified MBE subcontractors, a requirement that those subcontractors submit monthly to the MBE Liaison or appropriate representative a report that identifies the prime contract and lists all payments received from the contractor in the preceding 30 days, as well as any outstanding invoices, and the amount of those invoices.
 - 6) The contractor shall cooperate in any reviews of the contractor's procedures and practices with respect to minority business enterprises, which the MBE Liaison, the Public School Construction Program, and/or the Governor's Office of Minority Affairs may, from time to time, conduct.
 - 7) The contractor shall 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 MBE Liaison and or appropriate representative on request.
 - 8) All records concerning MBE participation must be retained by the contractor for a period of five years after final completion of the contract, and will be available for inspection by the MBE Liaison, representatives from the Public School Construction Program and/or other designated official entities.
 - 9) At the option of the MBE Liaison or appropriate agency representative, upon completion of the contract and before final payment and/or release of retainage, the contractor shall submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.
 - 10) If at any time after submission of a bid or proposal and before execution of a contract, the apparent successful Bidder or Offeror determines that a certified MBE listed on Attachment B - MBE Participation Schedule has become or will become unavailable, then the apparent successful Bidder or Offeror ***shall immediately notify the procurement officer and provide such officer with a reason(s) why the change has occurred.*** Any desired change in Attachment B - MBE Participation Schedule shall be approved in advance by the procurement officer and shall indicate the contractor's efforts to substitute another certified MBE subcontractor to perform the work. Desired changes occurring after the date of contract execution may occur only upon written approval by the LEA.
 - 11) A business that presents itself as a minority business may participate in a project but the contract value may not be counted toward the MBE goal or subgoals, if applicable, until the business is certified by MDOT. If it is not certified at the time of contract award it may not be counted toward the goal or subgoals, if applicable, at that time. Only the funds paid after MDOT certification can be counted toward meeting the MBE goal or subgoals, if applicable. If a certified MBE fails to meet the standards specified in State Finance and Procurement Article.14-301, Annotated Code of Maryland, the payments made to the MBE

can be recorded and counted under a contract entered into when the MBE was eligible and certified. Ineligibility of an MBE to participate in the MBE program may not be the sole cause of the termination of the MBE contractual relationship for the remainder of the term of the contract.

- 12) Contractors are encourage to seek additional MBE participation in their contract during the life of the project. Any additional MBE participation from Certified MBEs should be reported to the MBE liaison and should be included in subsequent monthly Requisitions for Payment.
- 13) The contractor shall complete the Standard Monthly Contractor's Requisition for Payment (IAC/PSCP Form 306.4), specifically page 3 of 16, *Minority Business Enterprise Participation*, with each requisition submitted for payment. This submittal should accurately reflect the payments to be made that month to MBE s, and the cumulative total for the period specified. Any and all MBE firms that are identified on Attachment B – MBE Participation Schedule, should be included on Page 3 of the first and all subsequent Requisitions for Payment. Any MBEs identified during the life of the project should be added as soon as the contractor engages them.
- 14) At the completion of the project the contractor shall prepare a written summary of the final certified MBE participation in the contract as compared to the proposed participation at the time of contract award. This should include the name of each certified MBE, the amount that was anticipated to be paid at the time of contract award, the amount actually paid, and an explanation of any differences that have occurred. Special attention should be given to any situations where the final payments to any MBE was below the level of commitment at the time of contract award.

6. PROJECTS UTILIZING A CONSTRUCTION MANAGER DELIVERY METHOD

This Section of the procedure has been prepared based upon the utilization of Construction Manager Agency method of delivery. If another alternative method of project delivery is being considered, then these procedures would need to be adapted in consultation with the PSCP before proceeding.

- a. For projects that are being designed and solicited utilizing a Construction Manager Agency delivery method with multiple prime contracts, the school system can structure its procedures to attain the overall MBE goal and subgoals, if applicable, for the project as presented below:
- b. The MBE Liaison and other school system staff should work with the project's construction manager, cost estimator, and architect, along with any other individuals that could provide assistance, to determine the overall MBE utilization strategy for the work required, appropriate bid packages, and an appropriate overall MBE goal and subgoals, if applicable, for each specific bid or proposal package.
- c. The overall MBE goal of 29 percent with 8 percent for Certified African American-Owned businesses and 11 percent for Certified Women-Owned businesses and subgoals, if applicable, for the project shall represent the aggregate of the individual goals and subgoals, if applicable, set for each bid or proposal package.
- d. In setting the specific goals and subgoals, if applicable, for each solicitation package consideration should be given to the potential for MBE participation to the maximum extent possible. The information and procedures provided in Section 4.0 MBE goal setting procedures should be consulted and followed for these types of projects.
- e. There may be some bid packages where there is no MBE goal established since there are no known certified MBE firms that could reasonably be expected to submit bids as prime contractors or price proposals to the primes as subcontractors or suppliers. This does not relieve the school system from the obligation to attempt to attain the goals as set forth above. Some bid packages may include an MBE goal or subcontracting goal that is higher than cited in (b) above. The goals should be based upon a review and analysis of the potential known certified MBE firms capable of performing the work as prime contractors, subcontractors and/or suppliers for each specific bid package.
- f. Prior to submitting the construction documents for State review and authorization to solicit bids or proposals, the school system's representative will prepare a complete list of the individual solicitation packages and indicate the MBE goal and subgoals, if applicable, for each solicitation package. This would include the overall MBE goals and subgoals, if applicable, established in the solicitation documents, the estimated cost for each solicitation package, and the estimated MBE dollar amounts for each solicitation. A copy of this list should be submitted with the construction documents. The list should be retained as a record by the school system for

comparison to the actual contracts awarded with MBE participation, and the final actual MBE participation at the completion of the project.

- g. Contractors submitting bids or proposals for solicitation packages that do not include a MBE goal and subgoals, if applicable, would not be required to submit any of the MBE attachments that are otherwise required nor would they be required to indicate that they are requesting a Waiver. The school system representative would however request information from the contractor at the completion of the project to determine if any certified MBE firms had participated in the contract.
- h. All other submittals of MBE materials and reporting requirements are applicable for the project, including submittal of all Attachments A and B, as described above in Section 6.0. This includes the documentation for a request for a Waiver, if applicable and appropriate.

7. PROJECTS UTILIZING AN INDEFINITE DELIVERY/INDEFINITE QUANTITY (IDIQ) OR JOB ORDER CONTRACTING (JOC) METHOD OF DELIVERY

- a. The solicitation should be prepared and the overall MBE goal and subgoals, if applicable, established based upon the type of work that is anticipated to be specified or performed under the contract and the availability of Certified MBEs. This could include an analysis of the percentages of the different types of work, the estimated dollar value in the entire contract, and the availability of MBEs.
- b. If an overall goal and subgoals, if applicable, are set, the Bidders or Offerors would be required to submit Attachment A – Certified Minority Business Enterprise Utilization and Fair Solicitation Affidavit in which they could indicate their anticipated MBE participation based upon the entire contract amount and the types of work specified. The award of contract can be made based upon their estimate of MBE participation since there is no specific task order or description of work to be performed and subcontractors have not been identified or engaged through any type of commitment or subcontract.
- c. Since MBE participation is only anticipated in a general sense as an objective and specific contracts to MBEs have not been signed, then the contract award would not be included in any reporting to the PSCP or subsequent reporting to GOMA.
- d. However, as the contract proceeds and individual task orders and/or purchase orders are issued, the contractor should submit Attachment B - MBE Participation Schedule for any and all projects or work where MBE subcontractors and/or suppliers might reasonably be utilized. Discussions between the Contractor or Offeror and the LEA as the task orders and/or purchase orders are being developed should address this aspect of the contract requirements.
- e. Any MBE participation should be recorded by the MBE Liaison and report to the PSCP MBE Liaison as the task orders and/or purchase orders are approved.
- f. The Contractor shall complete the Standard Monthly Contractor's Requisition for Payment (IAC/PSCP FORM 306.4), specifically Page 3 of 16, *MINORITY BUSINESS ENTERPRISE PARTICIPATION*, with each requisition submitted for payment. This submittal should accurately reflect the payments to be made that month to MBEs, and the cumulative total for the period specified. Any and all MBE firms that are identified on Attachment B – MBE Participation Schedule should be included on Page 3 of the first and all subsequent Requisitions for Payment. Any MBEs identified during the life of the project should be added as soon as the Contractor engages them.
- g. At the completion of the contract period or the full utilization of the contract's value, a report should be prepared by the LEA MBE Liaison and submitted to the PSCP MBE Liaison summarizing the MBE participation in each and all of the task orders or purchase orders issued under the contract. This should include the anticipated MBE participation prior to the issuance of the solicitation, the MBE participation anticipated at the time of Contract Award and the actual MBE participation at the completion of the contract.

8. PROJECTS UTILIZING THE DESIGN/BUILD DELIVERY METHOD

- a. The solicitation is for both A/E Services and the actual construction of a Public School project. The solicitation should be prepared and the MBE goal and subgoals, if applicable, established for the construction work that is

anticipated for the project. The goal setting procedures described in Section 4.0 above should be utilized for these types of projects.

- b. The Bidders or Offerors should be required to submit Attachment A – Certified Minority Business Enterprise Utilization and Fair Solicitation Affidavit on which they would indicate their anticipated MBE participation based upon the construction work anticipated and their understanding of the MBE goal and subgoals, if applicable, the types of work involved and the availability of Certified MBEs for the project. Since there are no detailed plans or designs for the project and there are no contracts or subcontracts for the actual construction work, there is no need to submit any other MBE attachments at this time.
- c. If the Bidder or Offeror, who is to be awarded this contract has indicated that they do not anticipate achieving the overall MBE participation goal and subgoals, if applicable, for this project on Attachment A, then they are in effect requesting a Waiver. They will be required to submit documentation at a later date to justify this request.
- d. As the project proceeds through the design phase and the project is nearing the completion of the construction documents for submission to the State to review, the Design/Build Team (Team) in consultation with LEA representatives should discuss the opportunities and potential for Certified MBEs to participate in the project.
- e. The Team should begin to identify potential contractors and subcontractors, opportunities to segment the project, and identify MBE that could participate in the project.
- f. At a point in time that is approximately 30 days prior to the anticipated CD Submission to the State, the Team should complete and submit Attachment B - MBE Participation Schedule to the LEA for their review and approval.
- g. If the Team had indicated on Attachment A that they would meet the goals and the information of Attachment B indicates that they did meet the goal, then the Team should proceed with the construction of the project.
- h. If the Team had indicated on Attachment A that they did not anticipate meeting the overall MBE goal and subgoals, if applicable, or only a portion of the goal and subgoals, if applicable, then Attachment B should be reviewed by the LEA. The Team should, at this time, submit their documentation in support of the Waiver requested.
- i. The proposed MBE participation should be reviewed and determination made as whether the Team has made a good faith effort to meet the MBE goals and subgoals, if applicable, established for the project and as stated on Attachment A, previously submitted.
- j. If a request for a Waiver is made and approved, Attachment F – MBE Waiver documentation should be signed by a school system representative and submitted to the PSCP and the Governor’s Office of Minority Affairs.
- k. Since there was no MBE participation reported at the time of the award of the Design/Build contract, the LEA would submit the entire package of information, including all of the MBE related Attachments to the PSCP within ten (10) days of the team being directed to proceed with the actual construction work.
- l. All other submittals of MBE materials and reporting requirements are applicable for the project, as described above in Section 6.0.

7.0 RECORDS AND REPORTS

1. The MBE Liaison shall maintain such records as are necessary to confirm compliance with its minority business enterprise procedures and activities. The records shall be maintained until the project is audited by the Public School Construction Program. These records shall include by project:
 - a. the contractor report submitted at the completion of the project;
 - b. the identity of the minority contractors employed on the project;
 - c. the type of work performed;
 - d. the actual dollar value of the work, services, supplies or equipment; and
 - e. their percentage of the total contract.

2. The MBE Liaison will maintain a record of all waivers approved for each project or solicitation package where the prime contractor was unable to achieve the established overall goal or subgoals, if applicable. The MBE Liaison will, however, report to the PSCP all MBE participation by MDOT certified firms who are prime contractors, subcontractors, suppliers, or otherwise making an economically viable contribution to each project. This information shall be reported to PSCP within Ten (10) days after approval of the award of the contract by the Board of Education.
3. The LEA shall submit the “Certified Minority Business Enterprise Participation Standard Monthly Contractor’s Requisition for Payment” (IAC/PSCP Form 306.4 page 3 of 16, located in the Administrative Procedures Guide), which is Attachment G in this Procedure to the PSCP Director of Fiscal Services as part of the regular monthly Request for Payment for the project.
4. The LEA shall submit the “Close-Out Cost Summary” (IAC/PSCP Form 306.6 located in the Administrative Procedures Guide), which is Attachment H of this Procedure along with the “Certified Minority Business Enterprise Participation Standard Monthly Contractor’s Requisition for Payment” (IAC/PSCP Form 306.4), Attachment G, to the PSCP Director of Fiscal Services within 180 days of completion of the project.
5. Each fiscal year end, PSCP Fiscal Services will create a report “Payments Made To Contractors During The Fiscal Year” and maintain such records as are necessary to confirm compliance with its minority business enterprise procedures and activities.
6. Each fiscal year end, PSCP Fiscal Services will create a report “Projects Completed During The Fiscal Year” and maintain such records as are necessary to confirm compliance with its minority business enterprise procedures and activities. This report will compare the overall MBE goal and subgoals, if applicable, for each specific project with the MBE participation anticipated at the time of contract award and the actual MBE participation at the completion of the project.

8.0 MONITORING

- 1) The LEA’s procurement personnel or project staff shall verify that the certified MBE’s listed in the MBE participation schedule are actually performing the work.
- 2) The LEA’s procurement personnel shall ensure that MBE subcontractors are receiving compensation as set forth in the MBE participation schedule by ensuring that the contractor submits monthly reports, 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.
- 3) The MBE Liaison and/or the Public School Construction Program will conduct reviews as deemed necessary to confirm compliance with the minority business enterprise participation requirements.
- 4) The MBE Liaison will maintain appropriate records, and shall assist the Public School Construction Program in on-site or post-audit reviews upon request.
- 5) Auditors from the Public School Construction Program will have access to and the ability to audit MBE participation for specific projects, information retained by the LEA, and/or submitted to the IAC in reports/forms filed by the LEA as referenced above.

9.0 LIQUIDATED DAMAGES

This contract requires the contractor to make good faith efforts to comply with the Minority Business Enterprise (“MBE”) and contract provisions. AACPS and the Contractor acknowledge and agree that AACPS will incur damages, including but not limited to loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not make good faith efforts to comply with the requirements of the MBE contract provisions. The parties further acknowledge and agree that the damages that AACPS might reasonably be anticipated to accrue as a result of such lack of compliance are difficult to ascertain with precision.

Therefore, upon a determination by AACPS that the Contractor failed to make good faith efforts to comply with one or more of the specified MBE Program requirements or contract provisions, the Contractor agrees to pay liquidated damages to AACPS at the rates set forth below. The Contractor expressly agrees that AACPS may withhold payment on any invoices as a set-off against liquidated damages owed. The Contractor further agrees that for each specified

violation, the agreed upon liquidated damages are reasonably proximate to the loss AACPS is anticipated to incur as a result of such violation.

- a) Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): \$100.00 per day until the monthly report is submitted as required.
This may be exacerbated by Contractor's failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B (4).
- b) Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and/or amendment of the MBE participation schedule: \$100.00 per day until the approved consent from the AACPS MBE Liaison is approved as required.
- c) In the absence of the approved consent of the AACPS MBE Liaison in "b" above, Failure to meet the Contractor's total MBE participation goal and sub-goal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.
- d) Failure to promptly pay all undisputed amounts to an MBE subcontractor in full compliance with the prompt payment provisions of this contract \$100.00 per day until the undisputed amount due to the MBE subcontractor is paid.
Notwithstanding the use of liquidated damages, AACPS reserves the right to terminate the contract and exercise all other rights and remedies provided in the contract or by law.

10.0 MINORITY BUSINESS ENTERPRISE LIAISON

- 1) The Superintendent shall designate an individual to be identified as the MBE Liaison for the school system.
- 2) The MBE Liaison will be the contact person who will work with the Public School Construction Program and the Governor's Office of Minority Affairs to implement the Minority Business Enterprise Program for the school system and the State of Maryland.
- 3) The Superintendent will immediately notify the Public School Construction Program if there is a change in the MBE Liaison for the school system.

AMENDMENTS:

August 20, 2013 – Maryland has increased the overall participation goal of its Minority Business Enterprise (MBE) Program from 25% to 29%. Long considered one of the country's foremost programs for minority inclusion, Maryland's new aspirational goal will offer more opportunities for minority- and women-owned businesses to engage in state contracting.

June 9, 2014 - Maryland is enhancing opportunities for small minority- and women-owned businesses to perform as prime contractors on State-funded procurements by adopting new regulations in the Minority Business Enterprise (MBE) Program. MBE prime contractors may count their participation on contracts with MBE goals for up to 50% of the established MBE contract goal and 100% of any one contract subgoal. Prior to this regulation change, MBE prime contractors were prohibited from self-performing any portion of the MBE contract goal.

August 1, 2020 – MBE goals are part of an ongoing effort to: remedy discrimination for minority and women-owned businesses, ensure that various racial, ethnic and gender subgroups participate in contracting at levels that would be expected in the absence of discrimination, foster the overarching policy of diversity in contracting for the State; and promote further compliance with the State's MBE program. Maryland recommended a change in MBE subgoals for construction projects from 7% African American-owned businesses and 4% Asian American-owned businesses to 8% African American-owned businesses and 11% Women-owned businesses.

Consistent with the statutory requirements set forth at State Finance and Procurement Article, Section 14-302(a)(1)(iii) and the most recent Disparity Study, the Governor's Office of Small, Minority & Women Business Affairs is issuing this update to the State's Minority Business Enterprise (MBE) Program Subgoals.

NEW RULES FOR MINORITY BUSINESS ENTERPRISES (MBEs) PROVING MATERIALS AND SUPPLIES
Chapter 438, Laws of 2017

A bidder may apply only 60% of the costs of the materials and supplies provided by a certified MBE if the MBE is a **regular dealer** for purposes of achieving the MBE contract goal. A “regular dealer” means an MBE that owns, operates, or maintains a store, a warehouse, or any other establishment in which the materials, supplies, articles, or equipment are of the general character described by the specification required under the contract and are bought, kept in stock, or regularly sold or leased to the public in the usual course of business. Generally, a regular dealer will be identified as a wholesaler or supplier in the MBE Directory on the Maryland Department of Transportation website.

If materials or supplies are purchased from an MBE who is considered a **broker**, bidders cannot apply any portion of the costs of the materials and supplies toward the MBE goal. However, bidders may apply the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, fees or transaction charges for the delivery of materials and supplies required on a procurement toward MBE contract goals. The fees must be reasonable and not excessive as compared with fees customarily allowed for similar services.

If a bidder purchases materials or supplies from a certified MBE who is a **manufacturer** of the materials and supplies, the bidder may count 100% toward meeting the MBE goal.

The participation of a certified MBE supplier, wholesaler, or regular dealer certified in the NAICS Code to **furnish and install** materials necessary for successful contract completion may be counted 100% toward meeting the goal.

PROJECT: _____

PSC#: _____

Attachment A (page 1 of 2)

**CERTIFIED MINORITY BUSINESS ENTERPRISE
UTILIZATION AND FAIR SOLICITATION AFFIDAVIT**

NOTE: You must include this document with your bid or offer. If you do not submit the form with your bid or offer, the procurement officer shall deem your bid non-responsive or your offer not reasonably susceptible of being selected for award.

* * * * *

Part I.

I acknowledge the:

- Overall certified MBE subcontract participation goal of ____ % . and
- The subgoals, if applicable, of:
 - ____ % for certified African American-owned businesses and
 - ____ % for certified Women-owned businesses.

I have made a good-faith effort to achieve this goal. If awarded the contract, I will continue to attempt to increase MBE participation during the project.

Part II.

Check ONE Box

NOTE: FAILURE TO CHECK ONE OF BOXES 1, 2, or 3 BELOW WILL RENDER A BID NON-RESPONSIVE OR AN OFFER NOT REASONABLY SUSCEPTIBLE OF BEING SELECTED FOR AWARD

NOTE: INCONSISTENCY BETWEEN THE ASSERTIONS ON THIS FORM AND THE INFORMATION PROVIDED ON THE *MBE PARTICIPATION SCHEDULE* (ATTACHMENT B) MAY RENDER A BID NON-RESPONSIVE OR AN OFFER NOT REASONABLY SUSCEPTIBLE OF BEING SELECTED FOR AWARD

- 1 I have met the overall MBE goal and MBE subgoals for this project. I submit with this Affidavit [Attachment A] the *MBE Participation Schedule* [Attachment B], which details how I will reach that goal.
- or**
- 2 After having made a good-faith effort to achieve the overall MBE goal and MBE subgoals for this project, I can achieve partial success only. I submit with this Affidavit [Attachment A] the *MBE Participation Schedule* [Attachment B], which details the MBE participation I have achieved.

I request a partial waiver as follows:

- Waiver of overall MBE subcontract participation goal: ____ %
- Waiver of MBE subcontract participation subgoals, if applicable:
 - ____ % for certified African American-owned businesses and
 - ____ % for certified Women-owned businesses.

Within 10 days of being informed that I am the apparent awardee, I will submit *MBE Waiver Documentation* [Attachment F] (with supporting documentation).

or

- 3 After having made a good faith effort to achieve the overall MBE goal and MBE subgoals for this project, I am unable to achieve any portion of the goal or subgoals. I submit with this Affidavit [Attachment A] the *MBE Participation Schedule* [Attachment B].

I request a full waiver.

Within 10 days of being informed that I am the apparent awardee, I will submit *MBE Waiver Documentation* [Attachment F] (with supporting documentation).

Part III.

I understand that if I am the apparent awardee or conditional awardee, I must submit **within 10 working days** after receiving notice of the potential award or within 10 days after the date of conditional award – whichever is earlier – the:

- *Outreach Efforts Compliance Statement* (Attachment C)
- *Subcontractor Project Participation Statement* (Attachment D)
- *Minority Subcontractors Unavailability Certificate* (Attachment E) (if applicable)
- Any other documentation the Procurement Officer requires to ascertain my responsibility in connection with the MBE participation goal and subgoals

I acknowledge that if I fail to timely return complete documents, the Procurement Officer may determine that I am not responsible and therefore not eligible for contract award. If the contract has been awarded, the award is voidable.

I acknowledge that the MBE subcontractors/suppliers listed in the *MBE Participation Schedule* and any additional MBE subcontractor/suppliers identified in the *Subcontractor Project Participation Statement* will be used to accomplish the percentage of MBE participation that I intend to achieve.

In the solicitation of subcontract quotations or offers, MBE subcontractors were provided the same information and amount of time to respond as were non-MBE subcontractors.

The solicitation process was conducted in such a manner so as to not place MBE subcontractors at a competitive disadvantage to non-MBE subcontractors.

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

Bidder/Offeror Name

Affiant Signature

Address

Printed Name & Title

Address (continued)

Date

ATTACHMENT B MBE PARTICIPATION SCHEDULE

This document must be included with the bid or offer. If the bidder or offeror fails to 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.

1. Prime Contractor's Name		2. Prime Contractor's Address/Telephone Number		
3. Project/School Name		4. Project/School Location		
5. LEA Name: _____ PSC Number: _____		6. Base Bid Amount \$ _____ Acceptance Alternates \$ _____ Total \$ _____		
7a. Minority Firm Name: _____ Minority Firm Address: _____ Telephone Number: _____ MDOT Firm Certification Number: _____ NAICS Code: _____ <input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Women <input type="checkbox"/> Hispanic <input type="checkbox"/> Disabled				
Subcontractor Firm (Select One)	Allowable Percentage	Percentage of Total Contract	Subcontractor Dollar Amount	Participation Amount
MDOT Certified Firm	100%		\$	\$
MDOT Certified Prime Contractor	50% of established goal OR		\$	\$
	100% of one subgroup contract subgoal			
MDOT Certified Supplier, Wholesaler and Regular Dealer	60%		\$	\$
7b. Minority Firm Name: _____ Minority Firm Address: _____ Telephone Number: _____ MDOT Firm Certification Number: _____ NAICS Code: _____ <input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Women <input type="checkbox"/> Hispanic <input type="checkbox"/> Disabled				
Subcontractor Firm (Select One)	Allowable Percentage	Percentage of Total Contract	Subcontractor Dollar Amount	Participation Amount
MDOT Certified Firm	100%		\$	\$
MDOT Certified Prime Contractor	50% of established goal OR		\$	\$
	100% of one subgroup contract subgoal			
MDOT Certified Supplier, Wholesaler and Regular Dealer	60%		\$	\$
7c. Minority Firm Name: _____ Minority Firm Address: _____ Telephone Number: _____ MDOT Firm Certification Number: _____ NAICS Code: _____ <input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Women <input type="checkbox"/> Hispanic <input type="checkbox"/> Disabled				
Subcontractor Firm (Select One)	Allowable Percentage	Percentage of Total Contract	Subcontractor Dollar Amount	Participation Amount
MDOT Certified Firm	100%		\$	\$
MDOT Certified Prime Contractor	50% of established goal OR		\$	\$
	100% of one subgroup contract subgoal			
MDOT Certified Supplier, Wholesaler and Regular Dealer	60%		\$	\$
8. MBE Total Amount			9. Total MBE Percent of Entire Contract	
10. Form Prepared by: Name: _____ Title: _____ Date: _____			11. Reviewed and Accepted by Board of Edu. MBE Liaison Name: _____ Title: _____ Date: _____	

Total MBE Participation:	\$ _____	_____ %
Total African-American Participation:	\$ _____	_____ %
Total Women MBE Participation:	\$ _____	_____ %
Total Other Participation:	\$ _____	_____ %

Attachment C

OUTREACH EFFORTS COMPLIANCE STATEMENT

In conjunction with the bid or offer submitted in response to _____ County Public Schools for the _____ project, PSC # _____, I state the following:
(name)

- 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 certified MBEs for these subcontract opportunities.

- 3) Bidder/Offeror made the following attempts to contact personally the solicited MBEs:

- 4) Bidder/Offeror assisted MBEs to fulfill or to seek waiver of bonding Requirements (Described Efforts)
 This project does not involve bonding requirements.

- 5) Bidder/Offeror did/did not attend the pre-bid conference
 No pre-bid conference was held.

Bidder/Offeror Name

By: _____

Address

Name, Title

Date

Attachment D

MINORITY BUSINESS ENTERPRISES SUBCONTRACTOR PROJECT PARTICIPATION STATEMENT

PROJECT/ SCHOOL NAME: _____

PROJECT/ SCHOOL LOCATION: _____

LEA: _____

NAME OF PRIME CONTRACTOR: _____

NAME OF MBE SUBCONTRACTOR: _____

MDOT Certification Number

NAICS Code

1. Work/Services to be performed by MBE Subcontractor: _____

2. Subcontract Amount: \$ _____ Participation Amount: \$ _____

3. Bonds - Amount and type required of Subcontractor if any: _____

4. MBE Anticipated or Actual Commencement Date: _____ Completion Date: _____

5. This MBE subcontract represents the following percentage of the total contract cost: _____

6. This is an African American Firm: Yes _____ No _____

7. This is a Women-owned Firm: Yes _____ No _____

8. This is an Asian, Native American, Hispanic or Disabled Firm: Yes _____ No _____

(Circle One)

The undersigned subcontractor and prime contractor will enter into a contract for the work/service indicated above upon the prime contractor's execution of a contract for the above referenced project with the _____ Board of Education. The undersigned subcontractor is a MDOT certified Minority Business Enterprise. The terms and conditions stated above are consistent with our agreements.

Signature of Subcontractor: _____

Date: _____

The term and conditions stated above are consistent with our agreements.

Signature of Prime Contractor: _____

Date: _____

Attachment E

MINORITY SUBCONTRACTOR UNAVAILABILITY CERTIFICATE

1. It is hereby certified that the firm of _____
 _____ (Name of Minority firm)
 located at _____
 _____ (Number) _____ (Street)

 _____ (City) _____ (State) _____ (Zip)
 was offered an opportunity to bid on the _____ school project
 in _____ County by _____
 _____ (Name of Prime Contractor's Firm)

2. The _____ (Minority Firm), is either unavailable for the work/service or unable to prepare a bid for this project for the following reason(s):

_____ Signature of Minority Firm's MBE Representative	_____ Title	_____ Date
--	----------------	---------------

_____ MDOT Certification #	_____ Telephone #
-------------------------------	----------------------



3. To be completed by the prime contractor if Section 2 of this form is not completed by the minority firm.

To the best of my knowledge and belief, said Certified Minority Business Enterprise is either unavailable for the work/service for this project, is unable to prepare a bid, or did not respond to a request for a price proposal and has not completed the above portion of this submittal.

_____ Signature of Prime Contractor	_____ Title	_____ Date
--	----------------	---------------

Attachment F

MBE WAIVER DOCUMENTATION

Project Name: _____

PSC No. _____

Base Contract Amount \$ _____

Plus Accepted Alternates \$ _____

Equals Total Contract Amount \$ _____

I have previously requested that a waiver be granted to the overall MBE goal for this project of ____ percent, with a minimum of ____ percent from certified African American-owned businesses, a minimum of ____ percent from certified Women-owned businesses, and the balance from all certified minority business enterprises, if applicable. This would include the total dollar value of all materials, supplies, equipment, and services, including construction services directly or indirectly, from Minority Business Enterprises (MBE) which are currently certified by the Maryland Department of Transportation (MDOT).

I _____, hereby certify that my position is
(Name of Company Representative)

_____, and I am the duly authorized representative of
(Position Title)

(Company Name)

I further certify that I have submitted a *Schedule for Participation of Certified Minority Business Enterprises* which reflects the percentage and dollar value of certified Minority Business Enterprise participation which my company expects to achieve for this contract. Therefore, the request for the waiver is as follows:

Summary MBE Participation Schedule from Attachment B

Minority Group	MBE GOAL		Actual MBE Participation		Request for Waiver	
	Dollar Value of Total Contract*	Percent of Total Contract	Dollar Value	Percent of Total Contract	Dollar Value	Percent of Total Contract
a. Sub Goal African American						
b. Sub Goal Women						
c. Other * in Sub Goal group a/b above						
TOTALS						

* with accepted/rejected alternates

To support this request for a waiver, I include the following information as attachments which I certify to be true to the best of my knowledge.

1. A detailed statement of the efforts made by the contractor to identify and select portions of the work proposed to be performed by subcontractors in order to increase the likelihood of achieving the stated goal.
2. A detailed statement of the efforts made by the contractor prior to and up to 10 days before the bid opening to solicit minority business enterprises through written notices that describe the categories of work for which subcontracting is being solicited, the type of work to be performed, and specific instructions on how to submit a bid;
3. A detailed statement of the contractor's efforts to make personal contact with MBE firms identified for Item 2. above.
4. A record of the name, address, telephone number, and dates contacted for each MBE identified under items 2. and 3. above.
5. A description of the information provided to MBE's regarding the plans, specifications, and the anticipated time schedule for portions of the work to be performed.
6. Information on activities to assist minority business enterprises to fulfill bonding requirements, or to obtain a waiver of these requirements.
7. Information on activities to publicize contracting opportunities to minority business enterprises, attendance at pre-bid meetings, or other meetings scheduled by the MBE Liaison or designated representative.
8. As to each MBE that placed a subcontract quotation or offer which the apparent low bidder or successful offeror considers not to be acceptable, a detailed statement of reasons for this conclusion; and
9. A list of minority subcontractors found to be unavailable. This shall be accompanied by a Minority Subcontractor Unavailability Certificate signed by the minority business enterprise or from the apparent low bidder or successful offeror indicating that the minority business did not provide the written certification.

Signature _____ Date _____
(Company Representative Name)

Sworn and subscribed before me this _____ day.
of _____ in the year _____ Notary Public _____

Reviewed and accepted by the _____ County Board of Education MBE Liaison.
(County Name)

Signature _____ Date _____
(County Representative Name)

MBE Request For Waiver Master Form (July 2002)

Attachment H

IAC/PSCP FORM 306.6

CLOSE-OUT COST SUMMARY

LEA: _____

DATE: _____

SCHOOL NAME: _____

PSC #: _____

	<u>Public School Construction</u>			<u>Local and Other</u>		
Allocation:	_____	_____	_____	_____	_____	_____
Cash Disbursements:	_____	_____	_____	_____	_____	_____
	Approved Contracts	Expenditures	Balance	Approved Contracts	Expenditures	Total Expenditures
Construction			\$0			.
A/E			\$0			\$0
Related Costs			\$0			\$0
Total	\$0	\$0	\$0	\$0	\$0	\$0

I hereby certify that the data shown hereon is correct and request this project be closed.

Signature of LEA Representative

FOR STATE USE ONLY

ADJUSTMENTS:

Allocation: _____

Cash: _____

Initials	
Date	

AUDIT COMMENTS:

Initials	
Date	

