

BALTIMORE COUNTY, MARYLAND MBE/WBE PARTICIPATION SUMMARY

Executive Order: Minority business enterprises and women business enterprises (MBE/WBE) shall have the maximum opportunity to participate in the performance of contracts financed in whole, or in certain circumstances, in part with County funds. Accordingly, on June 4, 2009, the County Executive adopted the attached Executive Order addressing MBE/WBE participation in County contracts.

Each Contract: The County shall establish a minimum MBE/WBE participation amount for each contract, as applicable.

Bidder Responsibility: The bidder shall ensure that MBE/WBE participation occurs in accordance with the contract requirements and the County Executive's Executive Order. All bidders shall ensure that MBE/WBE have the maximum opportunity to compete for and perform County contracts, as applicable. Baltimore County, Maryland, and/or its bidders and contractors shall not discriminate on the basis of race, color, national origin, disability or sex in the award and performance of any County contract.

APPROVED MBE/WBE LISTINGS

Published compilations of approved and certified MBE/WBE, contractors, subcontractors, material suppliers, etc. include:

1. BALTIMORE COUNTY MINORITY AND WOMEN BUSINESS ENTERPRISE DIRECTORY (PRISM):
<http://www.baltimorecountymd.gov/Agencies/fairpractices/minoritybusiness/directory.html>
2. DIRECTORY OF MINORITY BUSINESS ENTERPRISE (MDOT):
http://mbe.mdot.state.md.us/directory/search_select.asp
3. MINORITY BUSINESS DIRECTORY OF THE CITY OF BALTIMORE:
<http://cityservices.baltimorecity.gov/mwboo/>

BIDDER'S ACTIONS

Seeking Commitments: The bidder will seek commitments by subcontract or otherwise from MBE/WBE for supplies and/or services, any combined value of which equals or exceeds the required percentage of MBE/WBE participation for the County contract.

Expenditures for Materials and Supplies: A bidder may count toward its MBE/WBE contract requirements, all expenditures for materials and supplies obtained from MBE/WBE suppliers and manufacturers, provided that the MBE/WBE assumes the actual and contractual responsibility for the provision of the materials and supplies.

Information to be Supplied: All bidders shall submit the following information to the County at the time of bid submission:

1. The name of an employee designated as the bidder's liaison to the County's Office for Fair Practices.
2. The following forms shall be completed and submitted
 - Certified MBE/WBE Utilization and Fair Solicitation Affidavit (**Form A**); from among those names appearing in the Approved MBE/WBE Listings (excepting Federal Highway Administration projects, which exclusively require MBE/WBE approved and certified by the Maryland Department of Transportation Certification Committee);
 - A MBE/WBE Participation (**Form B**) completed and signed by the prime contractor and MBE/WBE for each MBE/WBE listed on the Form.
 - A MBE/WBE Disclosure and Participation Statement (**Form C**) completed and signed by the prime contractor and MBE/WBE for each MBE/WBE listed on the Form.

- If applicable, MBE/WBE Subcontractor Unavailable Certificate (**Form D**) completed and signed by the prime contractor and MBE/WBE for each MBE/WBE listed on the Form.
 - If applicable, MBE/WBE Outreach Efforts - Compliance Statement (**Form E**) completed and signed by the Bidder.
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3. For DPW contracts, if the bidder intends to fulfill the MBE/WBE requirements by use of a joint venture, he/she must submit a Joint Venture Disclosure Affidavit (**Form D-EEO-006-A** and **B** showing the extent of MBE/WBE participation. If a bidder intends to use a MBE/WBE joint venture as a subcontractor to meet its MBE/WBE requirements, the affidavit must be submitted through the bidder by the proposed subcontractors and signed by all parties.
 4. If the bidder's proposed MBE/WBE participation does not meet the MBE/WBE contract requirements, information sufficient to demonstrate that the bidder has made every effort to meet the requirements must be submitted. (See DETERMINATION OF BID RESPONSIVENESS hereafter)

RECORDS AND REPORTS

Records to be Kept: The bidder must keep such records as are necessary to determine compliance with its MBE/WBE utilization requirements:

1. The MBE/WBE and non-minority contractors, type of work being performed, actual values of work and services.
2. Documentation of all correspondence, contacts, telephone calls, etc., to obtain MBE/WBE services for the contract.
3. All prime contractors and MBE/WBE sub-contractors are required to report monthly to the County through an online system called PRISM. If the contractor cannot submit his/her report on time, he/she will notify the County MBE/WBE office and request additional time to submit the report. Failure of the contractor to report in a timely manner may result in a finding of noncompliance. The County in its sole discretion and/or upon written request may require additional reports regarding MBE/WBE.

Retaining Records: All MBE/WBE records must be retained for 3 years following the expiration or any earlier termination of the contract and shall be available for inspection and photocopying by the County.

Investigation and Notification: Whenever the County believes the bidder, contractor, or any subcontractor may not be operating in compliance with the MBE/WBE requirements, the County may, in its sole discretion, conduct an investigation. If the County finds the bidder, contractor, or any subcontractor is not in compliance with the MBE/WBE requirements, the County may exercise any and all rights and remedies available to the County, under the contract, at law or equity, as deemed applicable and appropriate by the County in its sole discretion.

DETERMINATION OF BID RESPONSIVENESS

Request for Deviation: If the bidder is unable to procure from MBE/WBE's (by subcontract or otherwise), supplies and services, any combined value of which equals the required percentage of the total value of the contract, the bidder may request, in writing, a deviation or waiver of the contract requirements. To obtain such a waiver, the bidder must submit the following information at the time bids are due:

The request for waiver request shall include (1) a signed unavailability statement (Form D) executed by all MBEs and WBEs that the bidder solicited for participation and (2) Outreach Efforts/Compliance Statement (Form E) that demonstrates the bidder's good faith efforts to comply with the contract requirements, including copies of solicitation documentation to all potential subcontractors:

Emails, letters, facsimile transmittals and confirmations containing plans, specifications, and anticipated time schedule for portions of the work to be performed and meeting notes and agendas clearly identifying the certified MBE or WBE classification and dates that the bidder contacted each MBE/WBE; and

Telephone logs containing names, addresses, dates, telephone numbers, work to be performed, anticipated time schedule and classification of certified MBEs and WBEs contacted.

Bid Rejection/Liquidated Damages/Contract Breach: For Purchasing contracts, the apparent low bidder's failure to provide a responsive MBE/WBE Plan as required by the solicitation may result in the bidder being deemed non-responsive and the County's rejection of the bid. FOR DPW CONTRACTS, (a) THE SOLICITATION, INCLUDING BUT NOT LIMITED TO THIS MBE/WBE PARTICIPATION SUMMARY AND ALL RELATED COUNTY MBE/WBE DOCUMENTS, AND (b) THE BID RESPONSE SHALL COLLECTIVELY OVERRIDE, CONTROL AND GOVERN OVER Section GP 7.29 of the February 2000 Baltimore County Department of Public Works' Standard Specifications for Construction and Materials. For DPW contracts, the apparent low bidder's failure to provide a responsive MBE/WBE Plan in the bidder's response as required by (a) described above, may result in the Director of the Department of Public Works' determination that the bid is non-responsive and recommendation to reject the bid as non-responsive despite the bidder being the apparent low bidder. For DPW contracts, if the County awarded the contract to the apparent low bidder who provided a responsive MBE/WBE Plan, but, if after said award and before execution of Contract Documents, the apparent low bidder fails to comply with the MBE/WBE Plan as required in (a) and (b) above, such failure may result in the Director of the Department of Public Works' recommendation to annul the award and forfeiture of the bidder's Proposal Guaranty to the County, not as a penalty, but as liquidated damages sustained. In such case, the County may proceed as it determines to be in its best interest, including but not limited to, the Notice of Award may be made to the next lowest responsive and responsible bidder or the work may be re-advertised.

After execution of each and any applicable County contract, in the event a contractor becomes aware it may or will fail to fulfill the applicable MBE/WBE requirements and/or may or will deviate from the contractor's bid response/contract terms, the contractor shall promptly advise the County of this in writing. Thereafter, the County will determine what action or remedy, if any, is appropriate on a case-by-case, contract by contract, basis. For example, such contractor failure may result in (i) a breach for which the County determines it is appropriate to declare a contract default and thereafter take further action and/or remedy as deemed appropriate by the County in its sole discretion, or (ii) a contract breach upon which the County may elect take no further action if deemed appropriate by the County in its sole discretion, or (iii) if mutually agreeable to the County and the contractor, such revision shall be documented via a contract amendment, executed by legally authorized representatives of the County and the contractor as described below in "Approval Required for Changes", or (iv) other actions or remedies as deemed appropriate by the County. Each action and/or remedy described above is at the sole discretion of the County.

Cooperation in Reviews: The bidder will cooperate with the County in any reviews of the contractor's procedures and practices with respect to MBE or WBE firms, which the County may from time to time conduct in its sole discretion.

Approval Required for Changes: Any and all changes to the contractor's use of MBE/WBE subcontractors during the contract term must be mutually agreeable to the County and the contractor and shall be documented via a contract amendment, executed by legally authorized representatives of the County and the contractor.

Other: If the documents used to determine the contractor's efforts, achievement of, and/or the status of an MBE/WBE requirement or fulfillment thereof contain false, misleading or misrepresenting information, the contractor may be declared in breach of the contract and/or the County may take any and all actions and/or remedies available to the County under the contract, at law, or in equity. If an MBE/WBE is disqualified by any public entity, including but not limited to, Baltimore City, the State or MDOT, at any time after award or during the term of the contract, the County may, in its sole discretion, take any action or no action, as deemed appropriate by the County, including but not limited to, review of each situation on a case-by-case basis, require the prime contractor to promptly submit for County approval, the contractor's plans for fulfilling the required MBE/WBE participation under the contract, and/or request such detail and additional information as the County, in its discretion deems appropriate.