



## **EXECUTIVE ORDER**

### **USE OF MINORITY BUSINESS ENTERPRISES AND WOMEN'S BUSINESS ENTERPRISES IN COUNTY CONTRACTS**

WHEREAS, Baltimore County, Maryland recognizes the important contributions made by Minority Business Enterprises and Women's Business Enterprises to the overall economic health of the region; and

WHEREAS, it is the goal of this Administration to provide maximum opportunities for Minority Business Enterprises and Women's Business Enterprises to participate in all phases of procurement in the county, including construction, purchases of goods and services, architectural and engineering agreements, consultant contracts and other professional service agreements;

NOW, THEREFORE, it is this 4th day of June, 2009, by the County Executive of Baltimore County, Maryland, ordered that the March 5, 2004 Executive Order, Utilization of Minority Business Enterprises and Women's Business Enterprises in County Contracts, is hereby repealed and replaced by the following:

#### **SECTION 1. DEFINITIONS.**

In this Executive Order, the following words have the meanings indicated:

(A) (1) "Discretionary dollars" means dollars spent in county procurements from county capital funds and county operating funds.

(2)(I) "Discretionary dollars" does not include dollars spent on procurements or classes of procurements for which the county is not able to control or influence the utilization of MBE or WBE firms.

(II) These procurements are likely to include or involve:

- (a) other governmental or quasi-governmental agencies;
- (b) utilities;
- (c) proprietary items;
- (d) emergency procurements; and
- (e) operating grants to arts entities.

(B) “Minority Business Enterprise” or “MBE” means a business enterprise that is owned, operated and controlled by one or more minority group members (African American, Hispanic American, Asian American, or Native American) who have at least 51% ownership and in which the minority group members have operational and managerial control, interest in capital, and earnings commensurate with their percentage of ownership.

(C) “Women’s Business Enterprise” or “WBE” means a business enterprise that is owned, operated, and controlled by one or more women who have at least 51% ownership and in which the women have operational and managerial control, interest in capital and earnings commensurate with their percentage of ownership.

(D) “Waiver” means an adjustment to the MBE/WBE goals established by the Procurement Review Group for a solicitation that may be requested by a bidder at the time of bid submission.

## SECTION 2. MINORITY AND WOMEN’S BUSINESS ENTERPRISE GOALS.

(A) An overall goal of 15% of the cumulative total of all discretionary dollars spent in a fiscal year of county procurements is to be awarded to and/or performed by MBE and WBE firms.

(B) All county offices and departments shall make good faith efforts to equitably use the services of MBE and WBE firms.

(C) The Office of Fair Practices and Community Affairs (hereinafter “Office of Fair Practices”) shall submit to the County Executive an annual written report on the efforts made in accordance with this section.

(D) All contracts or other agreements between Baltimore County and other governmental agencies, quasi-governmental agencies, developers, or any other parties, involving the provision of discretionary dollars from or through the county for the purpose of contracting with such entities to acquire and build, renovate, rehabilitate, demolish or otherwise perform a public works function shall include provisions regarding participation by MBE firms and WBE firms consistent with this Executive Order.

## SECTION 3. PROCUREMENT REVIEW GROUP

(A)(1) There is a Procurement Review Group that, at a minimum, shall consist of at least one representative from:

- (I) The Office of Budget and Finance;
- (II) The Department of Public Works; and
- (III) The Office of Fair Practices.

(2) The Chairman of the Procurement Review Group may request the presence and participation (without voting rights) of representatives from other agencies.

(B) The representative from the Office of Fair Practices shall serve as the Chairman of the Procurement Review Group.

(C) (1) The Procurement Review Group shall review bid solicitations involving discretionary dollars to determine whether opportunities exist for MBE or WBE participation or both MBE and WBE participation.

(2) The Procurement Review Group may make recommendations for dividing total requirements of a solicitation into smaller contracts or shorter terms to allow maximum MBE or WBE participation or both MBE and WBE participation.

(3) (I) The Procurement Review Group may recommend that the minimum MBE or WBE participation or both MBE and WBE participation in an individual procurement or class of procurements be more or less than the 15% overall goal established in Section 2, as appropriate.

(II) Any recommendation that the minimum MBE or WBE participation or both MBE and WBE participation in an individual procurement or class of procurements be more or less than the 15% goal established in Section 2 shall be reasonable and shall reflect the number of willing and able firms available to perform the items of work to be subcontracted.

(D) (1) The Procurement Review Group may adopt rules of procedure for the conduct of its business.

(2) The rules may include:

(I) rules and standards for evaluating and determining MBE and WBE goals for solicitations;

(II) rules for evaluating requests for waivers; and

(III) refinements to the definition of “discretionary dollars.”

(E) The Procurement Review Group shall meet regularly as determined by the Chairman.

#### SECTION 4. SOLICITATIONS - OPPORTUNITIES.

In accordance with the recommendations of the Procurement Review Group, the Office of Budget and Finance and the Department of Public Works shall:

(1) To the extent practicable and consistent with other provisions of this Executive Order, take the steps outlined in this Section to ensure that MBE firms and WBE firms have maximum opportunity to participate on county contracts;

(2) Use best practices (which may include, but not be limited to, use of the county website, advertisement in newspapers, and other media outlets) to notify MBE and WBE firms of bid solicitations in accordance with Section 6 (Formal Bid Procedure) of the Purchasing Manual;

(3) Inform all prospective bidders of the county's policy concerning MBE and WBE participation during the solicitation phase of the bid process; and

(4) To the extent practicable, divide total requirements of a solicitation into smaller contracts or shorter terms to allow maximum MBE and WBE participation.

#### SECTION 5. AGENCY RESPONSIBILITIES.

(A) It shall be the responsibility of the Office of Fair Practices to ensure that county offices and departments adhere to the procedures and provisions of this Executive Order.

(B) The Office of Fair Practices shall:

(1) Post a list of certified MBE and WBE subcontractors on the county website;

(2) On request, provide a list of certified MBE and WBE subcontractors to prospective bidders; and

(3) Assume primary responsibility for reviewing, on a continuing basis, all aspects of the use of Minority Business Enterprises and Women's Business Enterprises in county contracts to assure that the purpose of this Executive Order is being achieved.

(C) The Department of Public Works shall:

(1) Post lists of pre-qualified consultants and contractors on the county website; and

(2) On request, provide a list of pre-qualified consultants and/or contractors to MBE and WBE subcontractors.

(D) The Office of Fair Practices and the Office of Budget and Finance shall jointly:

(1) Assist county offices and departments in identifying qualified certified MBE and WBE firms ready and able to provide services, equipment, materials and supplies to the county;

(2) If applicable, attend pre-bid meetings and bid openings to provide information to prospective bidders about the county's policy with respect to MBE and WBE participation;

(3) Review MBE and WBE participation plans submitted by general contractors to determine whether goals are being achieved;

(4) Provide outreach services to MBE and WBE firms by working closely with the Department of Public Works; and

(5) Provide periodic reports to the County Executive and County Council.

#### SECTION 6. BID REQUIREMENTS.

(A) (1) All bidders shall submit a list of all subcontractors contacted in preparation of their bid package or proposal.

(2) The list shall include the service to be performed, bid amount, and the race/ethnicity/gender of the business owner(s).

(B) (1) All bidders shall submit a list of all subcontractors to be used on a county contract in the bid package.

(2) This list shall include all subcontractors (both MBE/WBE and non-MBE/WBE) used, the service to be performed, the total amount to be paid, and the race/ethnicity/gender of the owner.

(C) Bidders (including certified MBE/WBE prime consultants and general contractors) shall make a good faith effort to meet the goals established in a bid for a project.

(D) Subject to subsection (E) of this Section, a bidder shall be deemed non-responsive if:

(1) The bidder does not comply with Subsections (A), (B), and (C) of this Section; or

(2) The bidder does not meet the goal established by the Procurement Review Group.

(E) (1) If a bidder is unable to comply with the goals established in a bid for a project, the bidder may submit a request for a waiver at the time of bid submission.

(2) The request for waiver shall include documentation that demonstrates the bidder's good faith efforts to comply with the goals, including:

(I) Signed unavailability statements from all MBEs and WBEs that the bidder solicited for participation; and

(II) Copies of solicitation documentation to all potential subcontractors, including:

(a) 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; and

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

## SECTION 7. CERTIFICATION.

In calculating the county's success in achieving the goals established in this Executive Order, the county may include the following:

(1) On contracts that have MBE/WBE subcontracting requirements, only the participation by subcontractors certified by the Maryland Department of Transportation or Baltimore City's Minority Business Office Certification shall be counted;

(2) For contracts by the Office of Budget and Finance, contracts with non-certified prime contractors who certify their status as an MBE/WBE under oath or Prime contractors certified by any jurisdiction as an MBE/WBE shall be counted toward the MBE/WBE participation; and

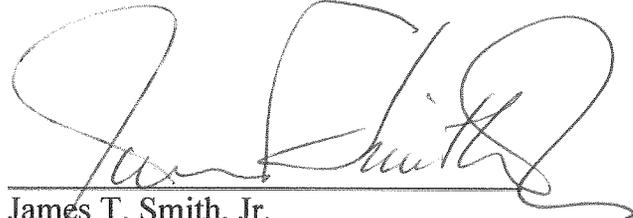
(3) For Public Works contracts, only prime consultants and general contractors certified by Maryland Department of Transportation or Baltimore City's Minority Business Office Certification programs shall be counted toward the MBE/WBE participation.

SECTION 8. EFFECTIVE DATE.

This Executive Order shall take effect on the day it is signed by the County Executive and shall continue in effect until changed by another Executive Order.

ATTEST:

  
\_\_\_\_\_  
Peter O'Malley  
Chief of Staff to the County Executive

  
\_\_\_\_\_  
James T. Smith, Jr.  
County Executive

Reviewed for legal form and sufficiency  
and approved for execution

  
\_\_\_\_\_  
Office of the County Attorney      Date      6-4-09