

Appendix 4. MBE Participation Goal

4.1. Establishment of Goal and Subgoals

An overall Minority Business Enterprise (MBE) subcontractor participation goal as identified in the solicitation's Key Information Summary Sheet (KISS) has been established for this procurement, representing a percentage of the total Contract dollar value, including all renewal option terms, if any.

Notwithstanding any subgoals established for this procurement, the Contractor is encouraged to use a diverse group of subcontractors and suppliers from any/all the various MBE classifications to meet the remainder of the overall MBE participation goal.

By submitting a response to this solicitation, the Bidder/Offeree acknowledges the overall MBE participation goal and subgoals, and commits to achieving the overall goal and subgoals by utilizing certified MBEs, or requests a full or partial waiver of the overall goal and/or subgoals.

If a bidder or offeror fails to complete accurately or submit Attachment D-1A, MBE Utilization and Fair Solicitation Affidavit and MBE Participation Schedule, an agency's procurement officer, after consultation with the agency's minority business liaison, shall notify the bidder or offeror of the deficiency and require the bidder or offeror to submit an amended MBE Utilization and Fair Solicitation Affidavit, MBE Participation Schedule, or both within three business days.

If, within three business days, the bidder or offeror fails to submit the amended form or forms correcting the deficiency identified, the procurement-officer may determine, in the case of a bid, that the bid is not responsive or, in the case of a proposal, that the proposal is not reasonably susceptible of being selected for award.

A Bidder or Offeror must accurately complete and submit a separate Attachment D-1A, MBE Utilization and Fair Solicitation Affidavit and MBE Participation Schedule, for EACH Functional Area (I and II), if applicable, for which it is submitting a bid or proposal. If a Bidder or Offeror is submitting a bid or proposal for each of Functional Area I and II, the Bidder or Offeror must submit two separate Attachment D-1As, one for each of the two Functional Areas.

A Bidder or Offeror that does not commit to meeting the entire MBE participation goal outlined in the solicitation must select and request a waiver with its bid or proposal submission (see Attachment D for waiver forms).

4.2. Attachments

- a) D-1 to D-5 – The following Minority Business Enterprise participation instructions, and forms are provided to assist Bidders/Offerors:
1. Attachment D-1A MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (must be submitted with Bid/Proposal) (*See Appendix 4A for instructions to complete this form*)
 2. Attachment D-1B Waiver Guidance
 3. Attachment D-1C Good Faith Efforts Documentation to Support Waiver Request
 4. Attachment D-2 Outreach Efforts Compliance Statement
 5. Attachment D-3A MBE Subcontractor Project Participation Certification
 6. Attachment D-3B MBE Prime Project Participation Certification
 7. Attachment D-4A Prime Contractor Paid/Unpaid MBE Invoice Report
 8. Attachment D-4B MBE Prime Contractor Report
 9. Attachment D-5 Subcontractor Paid/Unpaid MBE Invoice Report

The Bidder/Offeror shall include with its Bid/Proposal a completed MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) whereby:

1. The Bidder/Offeror acknowledges the certified MBE participation goal and commits to make a good faith effort to achieve the goal and any applicable subgoals, or requests a waiver, and affirms that MBE subcontractors were treated fairly in the solicitation process; and
2. The Bidder/Offeror responds to the expected degree of MBE participation, as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of Bid/Proposal submission. The Bidder/Offeror shall specify the percentage of total contract value associated with each MBE subcontractor identified on the MBE participation schedule, including any work performed by the MBE prime (including a prime participating as a joint venture) to be counted towards meeting the MBE participation goals.
3. The Bidder/Offeror requesting a waiver should review **Attachment D-1B** (Waiver Guidance) and **D-1C** (Good Faith Efforts Documentation to Support Waiver Request) prior to submitting its request.

Bidders/Offerors are responsible for verifying that each MBE (including any MBE prime and MBE prime participating in a joint venture) selected to meet the goal and any subgoals and subsequently identified in Attachment D-1A is appropriately certified and has the correct NAICS codes allowing it to perform the committed work.

Within ten (10) Business Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, the Bidder/Offerors must provide the following documentation to the Procurement Officer:

- a) Outreach Efforts Compliance Statement (**Attachment D-2**);
- b) MBE Subcontractor/Prime Project Participation Certification (**Attachment D-3A/3B**); and
- c) Any other documentation required by the Procurement Officer to ascertain Bidder/Offeror responsibility in connection with the certified MBE subcontractor participation goal or any applicable subgoals.
- d) A recommended awardee that requested a waiver of the goal or any of the applicable subgoals (in whole or in part) will be responsible for submitting the Good Faith Efforts Documentation to Support Waiver Request (**Attachment D-1C**) and all documentation, within ten (10) Business Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, as required in COMAR 21.11.03.11.

If the recommended awardee fails to return each completed document within the required time, the Procurement Officer may determine that the recommended awardee is not responsible and, therefore, not eligible for Contract award. If the Contract has already been awarded, the award is voidable.

A current directory of certified MBEs is available in the State MBE Directory.

All documents, including the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (Attachment D-1A), completed and submitted by the Bidder/Offeror in connection with its certified MBE participation commitment shall be considered a part of the Contract and are hereby expressly incorporated into the Contract by reference thereto. All of the referenced documents will be considered a part of the Bid/Proposal for order of precedence purposes (see Exhibit 2 – Sample Contract).

As set forth in COMAR 21.11.03.12-1(D), when a certified MBE firm participates on a contract as a prime contractor (including a joint-venture where the MBE firm is a partner), a procurement agency may count the distinct, clearly defined portion of the work of the contract that the certified MBE firm performs with its own work force towards fulfilling up to fifty-percent (50%) of the MBE participation goal (overall) and up to one hundred percent (100%) of not more than one of the MBE participation subgoals, if any, established for the contract. (e.g., if the contract has a 5% MBE goal, the prime contractor can self-perform up to 2.5% of the goal)

As set forth in COMAR 21.11.03.12-1, once the Contract work begins, the work performed by a certified MBE firm, including an MBE prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract. Refer to MBE forms (**Attachment D**) for additional information.

4.3. Minority Business Enterprise (MBE) Reports

If this solicitation includes an MBE Goal (see **Key Information Summary Sheet**), the Contractor shall:

- a) Submit the following reports to the Contract Monitor and the MBE Liaison Officer:
 - 1) A Prime Contractor Paid/Unpaid MBE Invoice Report (Attachment D-4A) Certified MBE subcontractors are required to submit to the procurement agency a report for each month during which the MBE performs work or receives payment under the contract. Monthly payment reporting requirements do not apply when the MBE subcontractor is not actively engaged in its designated phase of work, has completed its contractual work, or has no outstanding invoices to be paid; and
 - 2) (If Applicable) An MBE Prime Contractor Report (Attachment D-4B) identifying an MBE prime's self-performing work to be counted towards the MBE participation goals.
- b) Include in its agreements with its certified MBE subcontractors a requirement that those subcontractors submit an MBE Subcontractor Paid/Unpaid Invoice Report (**Attachment D-5**) to the Contract Monitor and the MBE Liaison Officer that identifies the Contract and lists all payments to the MBE subcontractor received from the Contractor in the preceding reporting period month, as well as any outstanding invoices, and the amounts of those invoices.
- c) 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, type of work performed by each, and actual dollar value of work performed. Subcontract agreements documenting the work performed by all MBE participants must be retained by the Contractor and furnished to the Procurement Officer on request.
- d) Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the MBE participation obligations. Contractor must retain all records concerning MBE participation and make them available for State inspection for three years after final completion of the Contract.
- e) Upon completion of the Contract and before final payment and release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.