



Department
Directive


Approved By:
Gary D. Maynard
Secretary

Title: Minority Business Enterprise Program	Directive Number: DPSCS.020.0015
Related Statute/Regulations/Directives: Correctional Services Article, §§2-103, Annotated Code of Maryland; COMAR 21.05.03; 21.11.01; and 21.11.03.01-.17 BPW Advisory No. 2001-1, 6/29/01; 2001-2, 10/24/01; 1996-1, 3/1/10; 2003-4, 8/31/05; and Reporting Waivers 12/17/03.	Supersedes: DPSCS.020.0015 (formerly SDD 05-2004) Dated 4/20/2004
Related ACA Standards: 4-4038	Authorized By: Assistant Secretary – Capital Programs
Related MCCS Standards: N/A	Effective Date: May 6, 2011 Number of Pages: 8

.01 Purpose.

This directive establishes the purpose and scope of the Department of Public Safety and Correctional Services (Department) Minority Business Enterprise (MBE) program, including efforts to maximize Department efforts to extend contracting opportunities to certified Minority Business Enterprises (MBE).

.02 Scope.

This Directive applies to all agencies and units of the Department.

.03 Policy.

Under the provisions of COMAR 21.11.01 and 21.11.03.01, the Department shall work to maximize participation of certified minority business enterprises when contracting for services, supplies, maintenance, information technology, architectural and engineering services, construction and construction-related services.

.04 Definitions.

A. In this directive, the following terms have the meanings indicated.

B. Terms Defined.

- (1) “Administrative compliance review” means a process of gathering relevant information in the Minority Business Enterprise Office (MBEO) to determine compliance with MBE program requirements.
- (2) “Certified minority business enterprise” has the meaning stated in State Finance and Procurement Article, §14-301(d), Annotated Code of Maryland.
- (3) “Debarment” means action taken by the Maryland Board of Public Works to disallow or suspend contractors from entering into contracts with the State when the contractor has been convicted of a crime or whose participation will otherwise adversely affect the integrity of the procurement process.
- (4) “GOMA” means the Governor’s Office on Minority Affairs.
- (5) “Minority business enterprise (MBE)” has the meaning stated in State Finance and Procurement Article, §14-301(f), Annotated Code of Maryland.

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- (6) On-site compliance review” means a process of gathering relevant information either at the primary contractor’s, MBE’s or field office to determine compliance with the MBE program.
- (7) “Prime contractor” means a party to which a contract is awarded.
- (8) “Procurement solicitation” means seeking bids, offers, or expressions of interest providing information concerning the nature of a procurement, relevant dates, the availability of documents and other pertinent information to a prospective bidder.
- (9) “Race-neutral measure” has the meaning stated in State Finance and Procurement Article, §14-301(h), Annotated Code of Maryland.

.05 Responsibility/Procedures.

- A. The Minority Business Enterprise Liaison Officer, also known as the Director, MBEO, is designated by the Secretary of Public Safety and Correctional Services (Secretary).
- B. The Director, MBEO is responsible for:
 - (1) Coordinating Department and agency outreach efforts to the minority business community;
 - (2) Reviewing Department and agency contract procedures to ensure maximum contracting opportunities for certified MBEs;
 - (3) Reviewing certified MBE submittals, waivers, and other procurement-related documents pertaining to a certified MBE goal;
 - (4) Assisting in the resolution of contracting issues involving a certified MBE;
 - (5) Developing race-neutral measures in contract procedures;
 - (6) Recommending corrective action to non-compliance issues;
 - (7) In cooperation with the contract monitor, reviewing activities to ensure compliance with certified MBE contract provisions;
 - (8) In cooperation with appropriate Department staff, preparing an annual report of certified MBE participation in Department activities;
 - (9) Representing the Department on the State MBE Advisory Committee;
 - (10) Monitoring compliance with provisions of this directive;
 - (11) Chairing the Procurement Review Group (PRG);
 - (12) Developing Department certified MBE monitoring mechanisms; and
 - (13) Developing Department certified MBE compliance initiatives.

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C. A Procurement Officer is responsible for:

- (1) Notifying MBEO before a PRG meeting of contracts to be reviewed at the meeting for goal determination;
- (2) Developing records demonstrating certified MBE availability according to the Maryland Department of Transportation MBE website;
- (3) Explaining to the PRG contract description, purpose, scope, budget and cost information specifications and historical certified MBE data when available;
- (4) Making recommendations to the PRG regarding maximizing certified MBE contracting opportunities;
- (5) Ensuring that solicitations have been reviewed and signed off by the PRG before advertising on eMarylandMarketplace website;
- (6) After a contract is awarded, providing MBEO with appropriate bid and award documents;
- (7) Establishing the contract in FMIS by listing each certified MBE at the time of a bid and the corresponding projected dollar amounts each certified MBE receives during the contract period;
- (8) Including the certified MBE goal percentage and, if applicable, the certified MBE waiver information in FMIS;
- (9) Using the forms and affidavits developed by the MBEO;
- (10) Providing, upon request by a certified MBE with an interest in subcontracting, names of prime contractors requesting or purchasing solicitation documents for construction contracts;
- (11) Notifying the MBEO throughout the life of a contract of modifications to the approved certified MBE participation, contract revisions, and change orders;
- (12) Noting work areas eliminated by a change order impacting certified MBE participation in the contract modification document;
- (13) Sending a copy of the solicitation or notice of the solicitation, or both, to a sufficient number of certified MBEs listed in the central directory as is likely to result in certified MBE responses to the solicitation;
- (14) Ensuring that prime contractors are provided direction on locating the solicitation documents; and
- (15) Considering compliance with certified MBE requirements as a part of a prime contractor's State contracting history for use to evaluate a prime contractor's responsibility under future procurements.

D. Procurement Review Group (PRG).

- (1) The PRG includes:

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- (a) The Director MBEO, or a designee (Chair);
 - (b) The Department's Chief Procurement officer, or a designee;
 - (c) The Procurement Officer, or a designee, responsible for the procurement solicitation under review by the PRG; and
 - (d) On an as needed basis, a representative of the Office of the Attorney General.
- (2) If a resulting contract award would exceed \$25,000 (\$50,000 for a construction contract), the PRG shall review the following to assess the potential for certified MBE or small business participation:
- (a) Procurement solicitation;
 - (b) Proposal to exercise contract options; and
 - (c) Proposal to award a sole-source contract.
- (3) The PRG review of items under §.05D(2) of this directive shall include an assessment of:
- (a) Available certified MBEs at the prime contract level;
 - (b) Subcontracting opportunities;
 - (c) Potential availability of certified MBEs for the work components of the contract;
 - (d) Proximity of certified MBEs to the work location;
 - (e) Small business availability for Small Business Preference procurement;
 - (f) The existence of unnecessary or prohibitive:
 - (i) Bond requirements;
 - (ii) Restrictive specifications;
 - (iii) Performance parameters; or
 - (iv) Experience requirements;
 - (g) Division of complex procurement requirements into separate procurements consistent with certified MBE guidelines;
 - (h) In sole-source contracts, work components that may reasonably be sub-contracted to a certified MBE;
 - (i) Benefits of renewal options versus re-competing the contract; and

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- (j) Past performance, potential for cost reduction, and current opportunities for certified MBE participation.
- (4) PRG recommendations following a review and assessment under §§.05D(2) and (3) of this directive shall:
 - (a) Be in writing;
 - (b) Include methods to maximize certified MBE participation;
 - (c) Address certified MBE contract goals;
 - (d) Be provided, if requested, to the Board of Public Works; and
 - (e) Be provided to the agency head, or a designee, responsible for the procurement.
- (5) The PRG shall meet at least monthly based on a schedule prepared by the Chair.

E. Procurement Solicitation Requirements.

- (1) A procurement solicitation shall comply with State statutory and regulatory procurement requirements.
- (2) At a minimum, a procurement solicitation shall:
 - (a) Require bidders to:
 - (i) Identify specific work categories within the scope of the procurement appropriate for subcontracting;
 - (ii) Solicit certified MBEs in writing at least 10 days before bids or proposals are due, describing the identified work categories and providing instructions on how to bid on the subcontracts;
 - (iii) Document attempts to make personal contact with the certified MBEs solicited;
 - (iv) Offer to provide reasonable assistance to certified MBEs to fulfill, or to seek waiver of, requirements for bond; and
 - (v) Attend pre-bid or other meetings the Department schedules to publicize contracting opportunities to certified MBEs;
 - (b) Provide a required MBE forms packet to be completed and submitted as part of a proposal indicating agreement to:
 - (i) Meet the certified MBE participation goal or a request for a full or partial waiver of certified MBE participation goal requirements; and
 - (ii) Utilize certified MBEs in the performance of the contract and identify the percentage of the contract value attributed to a certified MBE used in the contract;

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- (c) Include notification that failure to accurately complete and submit as part of the proposal a MBE forms packet shall result in a determination that the proposal is:
 - (i) Not responsive; and
 - (ii) May not be selected for an award;
- (d) Include a statement that a certified MBE goal and sub-goals apply to increased contract amounts resulting from an authorized modification, except if the modification specifically exempts certified MBE participation in the modification;
- (e) Include a requirement for a prime contractor to submit, for concurrence, a final report of the contractor's certified MBE activities, including payment data, throughout the contract term to determine if the contractor met the certified MBE goal and sub-goals;
- (f) Provide information concerning a contract remedy process that has been approved by the Department's Assistant Attorney General; and
- (g) Require that certified MBE participation data is provided to the MBEO before final payment of a contract.

F. Contract Compliance and Monitoring

- (1) The Contract Monitor shall:
 - (a) Document actions taken by a prime contractor to comply with the certified MBE program requirements;
 - (b) Document circumstances that may cause a prime contractor not to meet the established certified MBE goal or sub-goals;
 - (c) Ensure certified MBE payments are entered into the appropriate State and Department accounting systems in a timely and accurate manner;
 - (d) Notify the MBEO of a decrease in the contract amount and document the prime contractor's actions to utilize new or existing certified MBEs to compensate for the reduction in the contract amount;
 - (e) Conduct, in coordination with the MBEO, a certified MBE pre-execution meeting with the prime contractor and named certified MBEs;
 - (f) Evaluate payments made to MBEs in terms of total payments made to the prime contractor to assess if the prime contractor is on track with the certified MBE goal and sub-goals;
 - (g) Conduct payment assessments in terms of the certified MBE goal and sub-goals:
 - (i) At least twice each year for a multi-year contract; or
 - (ii) Each month for a contract of one year or less; and

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(h) Conduct:

- (i) On-site compliance reviews at the contractor or certified MBE business location or project site;
or
 - (ii) Administrative compliance reviews.
- (2) The Contract Monitor shall assess the prime contractor's final report detailing certified MBE payments and activity throughout the course of the contract and:
- (a) Prepare the assessment in written format; and
 - (b) Provide a copy of the written assessment to the Department's Chief Procurement Officer and MBEO.

G. Reporting.

- (1) The Department's Chief Procurement Officer, or a designee, shall maintain a record of contract awards that contain a certified MBE goal.
- (2) The Department's fiscal officers, or designees, shall prepare monthly summaries of MBE expenditure by vendor.
- (3) At the end of each fiscal year, the Department shall submit an annual certified MBE program report to the GOMA that reflects the Department's certified MBE activity during the previous fiscal year.
- (4) The Department agency shall report certified MBE award, waiver, and payment activity on a monthly basis to the MBEO.
- (5) The Department agency responsible for procurement shall report certified MBE award, waiver, and payment activity monthly to the MBEO.

H. Sanctions.

- (1) If a prime contractor does not meet the certified MBE contract requirements the Department may impose remedies identified in the contract.
- (2) The MBEO shall notify a prime contractor found to be in non-compliance with certified MBE program requirements in writing of the non-compliance.
- (4) The MBEO shall report behavior or circumstances that may be a basis for debarment to the Department's Assistant Attorney General.
- (5) The Department's Assistant Attorney General shall report a prime contractor's failure to perform or unsatisfactory performance on one or more contracts within the past five years to the Office of the Attorney General.

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.06 Attachment(s).

There are no attachments to this directive.

.07 History.

- A. This directive supersedes DPSCS.020.0015 (Formerly Department Directive 05-2004) dated April 20, 2004.
- B. This directive represents a significant re-write of the original directive adding substantial detail concerning certified MBE participation requirements. Underlining of changed text was not done in §.05, as this section was completely re-written.
- C. This directive supersedes provisions of any other prior existing Department or agency communication with which it may be in conflict.