

## APPENDIX M TO SOLICITATION OR CONTRACT

### PRINCE GEORGE'S COMMUNITY COLLEGE MINORITY BUSINESS ENTERPRISE PARTICIPATION

#### I. MINORITY BUSINESS ENTERPRISE PURPOSE AND DEFINITION

Contractor shall structure its procedures for the performance of the work required in this contract or Solicitation to attempt to achieve the minority business enterprise (MBE) goal stated in the Invitation for Bids or Request for Proposals. MBE performance must be in accordance with this Exhibit. Contractor agrees to exercise all good faith efforts to carry out the requirements set forth in this Exhibit.

An MBE is defined by the College as follow: A Minority Business Enterprise (MBE) is any legal entity, other than a joint venture, organized to engage in commercial transactions which is at least 51% owned and controlled by one or more minority persons (African Americans, Hispanics, American Indians, Asians, women and the physically or mentally disabled), or a non-profit entity organized to promote the interest of the physically or mentally disabled.

Although State certification is not required, Contractors shall be required to provide adequate proof that each MBE proposed/utilized meets the College's requirement/status and be required to execute the College's MBE Affidavit or other execute/provide other required documents determined by the College, at a later date.

Contractors/SubContractors that are not certified by the Maryland Department of Transportation (MDOT), are encouraged to initiate certification as soon as possible. For more information on the State's MBE program or questions related to certification, please contact MDOT's Office of Minority Business Enterprise/Equal Opportunity, telephone 800-544-6056 or view the MDOT website: <http://www.mdot.state.md.us/mbe/index.html>.

#### **MBE Goals and Sub Goals**

An MBE subcontract participation goal **percent** of the total contract dollar amount has been established for this procurement. By submitting a response to this solicitation, the bidder or offeror agrees that this percentage of the total dollar amount of the contract will be performed by minority business enterprises.

By submitting a response to this solicitation, the bidder or offeror agrees that these percentages of the total dollar amounts of the contract will be performed by minority business enterprises as specified.

An **MBE prime contractor** — may accomplish 100% the required MBE goal. A prime contractor utilizing MBE partner(s) will accomplish the MBE subcontract goal with preferably certified and local (Prince George's County) MBE subcontractors.

#### II. TECHNICAL PROPOSAL REQUIREMENTS

A bidder or offeror **must** include with its TECHNICAL PROPOSAL:

1. A completed ***MBE Utilization Affidavit*** whereby the bidder or offeror acknowledges the MBE participation goal or requests a waiver, commits to make a good faith effort to achieve the goal, and affirms that MBE subcontractors were treated fairly in the solicitation process.
2. **MBE Participation Schedule** whereby the Proposer/Offeror responds to the expected degree of Minority Business Enterprise participation as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of submission of the Price Proposal. The bidder or offeror shall specify the percentage of the contract value or dollar amount and the items of work associated with each MBE. subcontractor identified on the MBE Participation Schedule.

***If a bidder or offeror fails to submit the MBE Utilization Affidavit with the bid or offer as required, the Procurement Officer may deem the bid non-responsive or shall determine that the offer is not reasonably susceptible of being selected for award.***

**III. NOTICE OF CONTRACT AWARD:** Within 10 working days (unless modified by the College) from notification that it is the apparent awardee or from the date of the actual award, whichever is earlier, the apparent awardee must provide the following documentation to the Procurement Officer.

(1) **Outreach Efforts Compliance Statement** (Attachment M-C)

(2) **Subcontractor Project Participation Statement** (Attachment M-D)

(3) If the apparent awardee believes a waiver (in whole or in part) of the overall MBE goal or of any sub goal is necessary, it must submit a fully documented waiver request that complies with the provisions in this solicitation.

(4) Any other documentation required by the Procurement Officer to ascertain bidder or offeror responsibility in connection with the MBE participation goal.

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

#### **IV. CONTRACT ADMINISTRATION REQUIREMENTS**

Contractor shall:

1. Submit monthly (unless otherwise modified by the Procurement Officer) to the Procurement Officer, hereafter referred to as “Department” or the College’s third party designee 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.

2. Include in its agreements with its MBE subcontractors a requirement that those subcontractors submit monthly to the Department a report that identifies the prime contract and lists all payments received from Contractor in the preceding 30 days (unless otherwise modified by the Procurement Officer), as well as any outstanding invoices, and the amount of those invoices.

3. Maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of 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 Procurement Officer or designee on request.

4. Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the College'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.

5. At the option of the College, upon completion of the contract and before final payment and/or 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.

**Note:**

**A. MBE Utilization Affidavit (must be submitted with Technical Proposal)**

**B. MBE Participation Schedule (must be submitted with the Technical Proposal)**

**C. Outreach Efforts Compliance Statement, M-C (must be submitted within 10 working days of notification of apparent award or actual award, whichever is earlier), unless modified by the College, at a later date.**

**D. Subcontractor Project Participation Statement, M-D (must be submitted within 10 working days of notification of apparent award or actual award, whichever is earlier) , unless modified by the College, at a later date.**

**PRINCE GEORGE'S COMMUNITY COLLEGE**

**MINORITY BUSINESS ENTERPRISE UTILIZATION AFFIDAVIT**

I hereby declare and affirm that I am the \_\_\_\_\_  
(Title)

and the duly authorized representative of \_\_\_\_\_

\_\_\_\_\_  
(Name of Bidder)

1. I further declare and affirm that the Bidder acknowledges the Minority Business Enterprise participation goal of not less than \_\_\_percent of the total contract amount, and commits to make a good faith effort to achieve the goal.

Therefore, I will not be seeking a waiver pursuant to MBE provisions included in this solicitation.

**OR**

I conclude that I am unable to achieve the MBE participation goal and/or subgoals. I hereby request a waiver, in whole or in part, of the overall goal and/or subgoals. Within 10 business days of receiving notice that our firm is the apparent awardee, I will submit all required waiver documentation in accordance with the provisions included in the solicitation or as requested by the College at a later date.

2. If requested and/or required under this solicitation by PGCC to submit an MBE Participation Schedule with our firm's Technical Proposal, I acknowledge that I will/have identify/ied the MBE's that meet the College's MBE status and goal requirements, per the solicitation documents.

3. I understand that if I am notified that I am the apparent awardee, I must submit the following additional documentation within 10 working days of receiving notice of the potential award or from the date of conditional award, whichever is earlier.

- (a) Outreach Efforts Compliance Statement (M-C Form)
- (b) Subcontractor Project Participation Certification (M-D Form)
- (c) Any other documentation, including waiver documentation, if applicable, required by the Procurement Officer to ascertain bidder or offeror responsibility in connection with the certified MBE participation goal.

I understand that if I fail to return each completed document within the required time, the Procurement Officer may determine that I am not responsible and therefore not eligible for contract award. If the contract has already been awarded, the award is voidable.

4. In the solicitation of subcontract quotations or offers, MBE subcontractors were provided (or will be provided) not less than the same information and amount of time to respond as were (are)

non-MBE subcontractors.

5. I understand that my failure to comply with the requirements of this solicitation and the contract may result in my being assessed liquidated damages as stated in the Contract issued with this solicitation.

6. I solemnly affirm under the penalties of perjury that the contents of this paper are true to the best of my knowledge, information, and belief.

\_\_\_\_\_  
Bidder/Offeror Name

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
Address

\_\_\_\_\_  
Printed Name, Title

\_\_\_\_\_

\_\_\_\_\_  
Date

**SUBMIT THIS AFFIDAVIT WITH INITIAL TECHNICAL PROPOSAL**

**MBE Participation Schedule**  
**(for submission with Proposal)**

This document must be included with the bid or Price Proposal offer. If the Offeror fails to submit this form with the bid or Price Proposal 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.

Prime Contractor (Firm Name, Address, Phone)	Project Description
Project Number	Total Contract Amount \$
<b>List Information For Each Certified MBE Subcontractor On This Project</b>	
Minority Firm Name	MBE Certification Number
Work To Be Performed	
Dollar Amount or Percentage of Total Contract	
Minority Firm Name	MBE Certification Number
Work To Be Performed	
Dollar Amount or Percentage of Total Contract	
Minority Firm Name	MBE Certification Number
Work To Be Performed	
Dollar Amount or Percentage of Total Contract	

**USE THE ATTACHED CONTINUATION PAGE AS NEEDED**

**SUMMARY**

TOTAL MBE PARTICIPATION:	_____ % \$ _____
TOTAL AFRICAN-AMERICAN MBE PARTICIPATION:	_____ % \$ _____
TOTAL ASIAN-AMERICAN MBE PARTICIPATION:	_____ % \$ _____
TOTAL HISPANIC-AMERICAN MBE PARTICIPATION:	_____ % \$ _____
TOTAL WOMAN-OWNED MBE PARTICIPATION:	_____ % \$ _____
TOTAL OTHER MBE PARTICIPATION:	_____ % \$ _____

Document Prepared By: (please print or type) Name: _____ Title: _____
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NOTE: MBE FORMS M-C, AND M-D ARE TO BE  
SUBMITTED ONLY IF THE FIRM PROGRESSES IN THE  
PROCUREMENT PROCESS AS IS APPLICABLE.



**IF PROPOSER IS NOTIFIED AS THE APPARENT AWARDEE:**

**Form M-C**

**OUTREACH EFFORTS COMPLIANCE STATEMENT**

**Complete and submit this form within 10 working days of notification of apparent award or actual award, whichever is earlier, unless modified by the College, at a later date.**

In conjunction with the bid/proposal submitted in response to Solicitation No. \_\_\_\_\_, I state the following:

1. Bidder/Offeror identified subcontracting opportunities in these specific work categories:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Attached to this form are copies of written solicitations (with bidding/proposal instructions) used to solicit certified MBE firms for these subcontract opportunities.

3. Bidder/Offeror made the following attempts to personally contact the solicited MBE firms:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**4. Please Check One:**

- This project does not involve bonding requirements.
- Bidder/Offeror assisted MBE firms to fulfill or seek waiver of bonding requirements. (DESCRIBE EFFORTS):

\_\_\_\_\_  
\_\_\_\_\_

**5. Please Check One:**

- Bidder/Offeror did attend the pre-bid/pre-proposal conference.
- No pre-bid/pre-proposal meeting/conference was held.
- Bidder/Offeror did not attend the pre-bid/pre-proposal conference.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature of Representative

\_\_\_\_\_  
Address

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
City, State and Zip Code

\_\_\_\_\_  
Date

**IF PROPOSER IS NOTIFIED AS THE APPARENT AWARDEE:**

**M- D**

**SUBCONTRACTOR PROJECT PARTICIPATION STATEMENT**

Please complete and submit **one form for each MBE listed in the MBE Participation Schedule** within 10 working days of notification of apparent award, unless modified by the College, at a later date.

Prime Contractor Address and Phone	Project Description
Project Number	Total Contract Amount \$
Minority Firm Name	MBE Certification Number
Description of MBE's Work to Be Performed	
Percentage of Total Contract	
Type of Bonds Required of MBE, if any and amounts:	

Provided that \_\_\_\_\_ (*Prime Contractor Name*) is awarded the contract in conjunction with Solicitation described above \_\_\_\_\_, it and \_\_\_\_\_ (*Subcontractor Name*) intend to enter into a contract by which Subcontractor shall provide the services described above.

The undersigned Prime Contractor and Subcontractor hereby certify and agree that they have fully complied with the College's Minority Business Enterprise requirements, which provides that, except as otherwise provided or modified by the College, a contractor may not identify a minority business enterprise in a bid or proposal and:

- (1) fail to request, receive, or otherwise obtain authorization from the minority business enterprise to identify the minority business enterprise in its bid or proposal;
- (2) fail to notify the minority business enterprise before execution of the contract of its inclusion of the bid or proposal;
- (3) fail to use the minority business enterprise in the performance of the contract; or
- (4) pay the minority business enterprise solely for the use of its name in the bid or proposal.

Both parties signing below understand that failure to comply with the requirements of the College may result in both parties being assessed liquidated damages as stated in the Contract issued with the solicitation. Both parties affirm that this is a contractual requirement for both the Prime Contractor and the MBE Subcontractor.

\_\_\_\_\_  
Prime Contractor Signature

\_\_\_\_\_  
Subcontractor Signature

By: \_\_\_\_\_  
Name, Title  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name, Title  
Date: \_\_\_\_\_

**FORMS E AND F THAT FOLLOW ARE TO BE USED  
TO REPORT PAYMENTS/NON-PAYMENTS**

**MBE M-E (Sample)**  
**Minority Business Enterprise Participation**  
**Prime Contractor Unpaid MBE Invoice Report**

Report #: _____  Reporting Period (Month/Year): _____  <b>Report is due by the 15<sup>th</sup> of the following month, or as requested by the College.</b>	Contracting Unit: _____ Contract Amount: _____ MBE Subcontract Amt: _____ Project Begin Date: _____ Project End Date: _____ Services Provided: _____
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Prime Contractor:		Contact Person:	
Address:			
City:		State:	ZIP:
Phone:	FAX:		
Subcontractor Name:		Contact Person:	
Phone:	FAX:		
Subcontractor Services Provided:			
<b>List all unpaid invoices over 30 days old received from the MBE subcontractor named above:</b>			
1.			
2.			
3.			
<b>Total Dollars Unpaid: \$</b> _____			

\*\*If more than one MBE subcontractor is used for this contract, please use separate forms.

**Return one copy (hard or electronic) of this form to the following address (electronic copy is preferred):**

Contact person: _____ Dept: _____ Address: _____ _____ E-mail: _____
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Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**MBE M-F (Sample)**  
**Minority Business Enterprise Participation**  
**Subcontractor Paid/Unpaid MBE Invoice Report**

<p>Report#: _____</p> <p>Reporting Period (Month/Year): _____</p> <p><b>Report is due by the 15<sup>th</sup> of the following month, or as requested by the College.</b></p>	<p>Contracting Unit: _____</p> <p>Contract/PO Amount: _____</p> <p>MBE Subcontract Amount: _____</p> <p>Project Begin Date: _____</p> <p>Project End Date: _____</p> <p>Services Provided: _____</p>
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MBE Subcontractor Name:		
MDOT Certification #:		
Contact Person:		
Address:		
City:	State:	ZIP:
Phone:	FAX:	
Subcontractor Services Provided:		
<p><b>List all payments received from Prime Contractor during reporting period indicated above.</b></p> <p>1.</p> <p>2.</p> <p>3.</p> <p><b>Total Dollars Paid: \$</b> _____</p>	<p><b>List dates and amounts of any unpaid invoices over 30 days old.</b></p> <p>1.</p> <p>2.</p> <p>3.</p> <p><b>Total Dollars Unpaid:</b> \$ _____</p>	
Prime Contractor:		Contact Person:

**Return one copy (hard or electronic) of this form to the following address (electronic copy is preferred):**

Contact Person: _____
Dept.: _____
Address: _____
_____
_____
E-mail: _____

Signature: \_\_\_\_\_ Date \_\_\_\_\_

## PRINCE GEORGE'S COMMUNITY COLLEGE

### MINORITY BUSINESS ENTERPRISE PARTICIPATION ADDITIONAL PROVISIONS

MBE 1. Noncompliance. If the college determines that the apparent successful bidder/contractor has not complied with the certified MBE subcontract participation contract goal, and has not obtained a waiver in accordance with MBE 2, or if the bidder/contractor fails to submit the documentation required by the solicitation, the College, may reject the bid or offer or cancel the award of the contract. The reasons for this action shall be specified in writing and mailed or delivered to the bidder.

MBE 2. Waiver.

MBE 2.1. If, for any reason, the apparent successful bidder/contractor is unable to achieve the contract goal for MBE participation, the bidder may request, in writing, an exception to the goal with justification to include the following:

- (a) A detailed statement of the efforts made to select portions of the work proposed to be performed by MBEs in order to increase the likelihood of achieving the stated goal;
- (b) A detailed statement of the efforts made to contact and negotiate with certified MBEs, including:
  - (1) The names, addresses, dates and telephone numbers of MBEs contacted, and;
  - (2) A description of the information provided to MBEs regarding the specifications, and anticipated time schedule for portions of the work to be performed;
- (c) As to each MBE that had placed a subcontract quotation or offer which the successful bidder/contractor considers not to be acceptable, a detailed statement of the reasons for this conclusion; and
- (d) A list of minority subcontractors found to be unavailable. This list may include a statement from the apparent successful bidder/contractor that the minority business refused to give the required documentation, or documentation proving reasonable outreach and verification from the MBEs.

MBE 2.2. A waiver of a MBE contract goal may be granted only upon a reasonable demonstration by the bidder that MBE participation was unable to be obtained or was unable to be obtained at a reasonable price and if the College determines that the public interest is served by a waiver. In making a determination under this section, the College may consider engineering estimates, catalogue prices, general market availability, and availability of MBEs in the area work is to be performed, other bids or offers and subcontract bids or offers substantiating significant variances between MBE and non-MBE cost of participation, and their impact on the overall cost of the contract to the college and any other relevant factor.

MBE 2.3. The College may waive any of these provisions for a sole source, expedited or emergency procurement in which the public interest cannot reasonably accommodate use of these procedures.

MBE 3. Amendment for Unforeseen Circumstances. If at any time before execution of a contract, the apparent successful bidder/contractor determines that a MBE listed on the schedule for participation has become or will become unavailable, then the apparent successful bidder/contractor shall immediately notify the Procurement Officer. Any desired change in the schedule for participation shall be approved in advance by the Procurement Officer and shall indicate the Contractor's efforts to substitute another MBE subcontractor to perform the work. Desired changes occurring after the date of Contract execution may occur only upon written approval by the Procurement Officer and subsequently by Contract amendment.

MBE 4. Compliance.

MBE 4.1. To assure compliance with certified MBE subcontract requirements, the college may require the Contractor to furnish documentation that include but not limited to; forms M-E and M-F, and;

- (a) Copies of purchase orders, subcontracts, cancelled checks, and other records that may indicate the number, names, dollar value of MBE subcontracts, dates, and schedule time for performance of work by an MBE subcontractor; and
- (b) Entry for an on-site verification inspection.

The College reserves the right to modify change the format of these forms or the format in which MBE reporting shall be provided to the College during the duration of the Contract.

MBE 4.2. Upon determining the Contractor's non-compliance, the college shall notify the Contractor in writing of its findings and shall specify what corrective actions are required. The Contractor shall be required to initiate the corrective actions within 10 days and complete them within the time specified by the college.

MBE 4.3. If the college determines that substantial non-compliance with MBE subcontract provisions exists and that the Contractor refuses or fails to take the corrective action required by the college, then the following sanctions may be invoked:

- (a) Termination of the Contract in whole or in part for cause;
- (b) \*Liquidated damages;
- (c) Initiation of any other specific remedy identified by Contract; or
- (d) The college may use any other compliance mechanism authorized by Contract or by law.



#### MBE 4.4 Liquidated Damages.

Liquidated damages may include but are not limited to:

- 1) a per-day penalty in an amount determined by the College for failing to provide reports in full compliance with the College's MBE provisions;
- 2) a per-subcontract penalty for every subcontract that does not require subcontractors to submit payment reports per the College's MBE provisions;
- 3) a penalty for terminating, canceling, or changing the scope of work or value of a contract with an MBE subcontractor and/or amending the MBE participation schedule in an amount that equals the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the contract; and
- 4) a penalty for failure to meet the Contractor's total MBE participation goal and subgoal commitments in an amount equal to the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.

#### MBE 4.5 Other Provisions

The College at its sole discretion may change and modify any MBE provisions or requirements at any given time during the life of a contract. Written notification will be provided to the Contractor of any MBE provision changes.