

**MBE ATTACHMENT H-1A:  
MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT  
& MBE PARTICIPATION SCHEDULE**

**PART 1 - INSTRUCTIONS**

***PLEASE READ BEFORE COMPLETING THIS DOCUMENT***

**This form includes Instructions and the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule which must be submitted with the bid/proposal. If the bidder/offeror fails to accurately complete and submit this Affidavit and Schedule with the bid or proposal, the Procurement Officer shall deem the bid non-responsive or shall determine that the proposal is not reasonably susceptible of being selected for award.**

1. Contractor shall structure its procedures for the performance of the work required in this Contract to attempt to achieve the minority business enterprise (MBE) subcontractor participation goal stated in the Invitation for Bids or Request for Proposals. Contractor agrees to exercise good faith efforts to carry out the requirements set forth in these Instructions, as authorized by the Code of Maryland Regulations (COMAR) 21.11.03.
2. MBE Goals and Subgoals: Please review the solicitation for information regarding the Contract's MBE overall participation goals and subgoals. After satisfying the requirements for any established subgoals, the Contractor is encouraged to use a diverse group of subcontractors and suppliers from the various MBE classifications to meet the remainder of the overall MBE participation goal.
3. MBE means a minority business enterprise that is certified by the Maryland Department of Transportation ("MDOT"). Only MBEs certified by MDOT may be counted for purposes of achieving the MBE participation goals. In order to be counted for purposes of achieving the MBE participation goals, the MBE firm, including a MBE prime, must be MDOT-certified for the services, materials or supplies that it is committed to perform on the MBE Participation Schedule. A firm whose MBE certification application is pending may not be counted.
4. Please refer to the MDOT MBE Directory at <https://mbe.mdot.maryland.gov/directory/> to determine if a firm is certified with the appropriate North American Industry Classification System ("NAICS") code and the product/services description (specific product that a firm is certified to provide or specific areas of work that a firm is certified to perform). For more general information about NAICS codes, please visit <https://www.census.gov/eos/www/naics/>. Only those specific products and/or services for which a firm is certified in the MDOT Directory can be used for purposes of achieving the MBE participation goals.  
**CAUTION:** If the firm's NAICS code is in graduated status, such services/products may not be counted for purposes of achieving the MBE participation goals. A NAICS code is in the graduated status if the term "Graduated" follows the code in the MDOT MBE Directory.
5. **Guidelines Regarding MBE Prime Self-Performance.** Please note that when a certified MBE firm participates as a prime contractor on a Contract, 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 workforce toward fulfilling up to, but no more than, fifty-percent (50%) of the overall MBE participation goal, including up to one hundred percent (100%) of not more than one of the MBE participation subgoals, if any, established for the Contract.
  - ✓ In order to receive credit for self-performance, an MBE prime must be certified in the appropriate NAICS code to do the work and must list its firm in the MBE Participation Schedule, including

the certification category under which the MBE prime is self-performing and include information regarding the work it will self-perform.

- ✓ For the remaining portion of the overall goal and the remaining subgoals, the MBE prime must also identify on the MBE Participation Schedule the other certified MBE subcontractors used to meet those goals or request a waiver.
- ✓ These guidelines apply to the work performed by the MBE Prime that can be counted for purposes of meeting the MBE participation goals. These requirements do not affect the MBE Prime's ability to self-perform a greater portion of the work in excess of what is counted for purposes of meeting the MBE participation goals.
- ✓ Please note that the requirements to meet the MBE participation overall goal and subgoals are distinct and separate. If the contract has subgoals, regardless of MBE Prime's ability to self-perform up to 50% of the overall goal (including up to 100% of any subgoal), the MBE Prime must either commit to use other MBEs for each of any remaining subgoals or request a waiver. As set forth in Attachment 1-B Waiver Guidance, the MBE Prime's ability to self-perform certain portions of the work of the Contract will not be deemed a substitute for the good faith efforts to meet any remaining subgoal or the balance of the overall goal.
- ✓ In certain instances where the percentages allocated to MBE participation subgoals add up to more than 50% of the overall goal, the portion of self-performed work that an MBE Prime may count toward the overall goal may be limited to less than 50%. Please refer to the Governor's Office of Small Minority & Women Business Affairs' website for the MBE Prime Regulations Q&A for illustrative examples.

[http://www.goMDsmallbiz.maryland.gov/Documents/MBE\\_Toolkit/MBEPrimeRegulation\\_QA.pdf](http://www.goMDsmallbiz.maryland.gov/Documents/MBE_Toolkit/MBEPrimeRegulation_QA.pdf)

6. Subject to items 1 through 5 above, when a certified MBE performs as a participant in a joint venture, a procurement agency may count a portion of the total dollar value of the Contract equal to the distinct, clearly-defined portion of the work of the Contract that the certified MBE performs with its own forces toward fulfilling the Contract goal, and not more than one of the Contract subgoals, if any.
7. 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. Please refer to COMAR 21.11.03.12-1 for more information regarding these requirements.

8. **Materials and Supplies: New Guidelines Regarding MBE Participation.**

- ✓ Regular Dealer (generally identified as a wholesaler or supplier in the MDOT Directory): Up to 60% of the costs of materials and supplies provided by a certified MBE may be counted towards the MBE participation goal(s) if such MBE is a Regular Dealer of such materials and supplies. Regular Dealer is defined as a firm that owns, operates, or maintains a store, a warehouse, or any other establishment in which the materials, supplies, articles, or equipment are of the general character described by the specifications required under the contract and are bought, kept in stock, or regularly sold or leased to the public in the usual course of business; and does not include a packager, a broker, a manufacturer's representative, or any other person that arranges or expedites transactions.

*Example for illustrative purposes of applying the 60% rule*

*Overall contract value: \$2,000,000*

*Total value of supplies: \$100,000*

*Calculate Percentage of Supplies to overall contract value:*

*\$100,000 divided by \$2,000,000 = 5%*

**Apply 60% Rule - Total percentage of Supplies/Products 5% x 60% = 3%**

**3% would be counted towards achieving the MBE Participation Goal and Subgoal, if any, for the MBE supplier in this example.**

- ✓ Manufacturer: A certified MBE firm's participation may be counted in full if the MBE is certified in the appropriate NAICS code(s) to provide products and services as a manufacturer.
- ✓ Broker: With respect to materials or supplies purchased from a certified MBE that is neither a manufacturer nor a regular dealer, a unit may apply the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, fees, or transportation charges for the delivery of materials and supplies required on a procurement toward the MBE contract goals, provided a unit determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. A unit may not apply any portion of the costs of the materials and supplies toward MBE goals.
- ✓ Furnish and Install and other Services: The participation of a certified MBE supplier, wholesaler, and/or regular dealer certified in the proper NAICS code(s) to furnish and install materials necessary for successful contract completion may be counted in full. Includes the participation of other MBE service providers in the proper NAICS code(s) may be counted in full.

9. **Dually certified firms**. An MBE that is certified in more than one subgroup category may only be counted toward goal fulfillment of ONE of those categories with regard to a particular contract.

Example: A woman-owned Hispanic American (dually certified) firm may be used to fulfill the women-owned OR Hispanic American subgoal, but not both on the same contract.

10. CAUTION: The percentage of MBE participation, computed using the percentage amounts determined for all of the MBE firms listed in Part 3, MUST meet or exceed the MBE participation goal and subgoals (if applicable) as set forth in Part 2- for this solicitation. If a bidder/offeror is unable to meet the MBE participation goal or any subgoals (if applicable), then the bidder/offeror must request a waiver in Part 2 or the bid will be deemed not responsive, or the proposal not reasonably susceptible of being selected for award. You may wish to use the attached Goal/Subgoal Worksheet to assist in calculating the percentages and confirming that your commitment meets or exceeds the applicable MBE participation

goal and subgoals (if any).

11. If you have any questions as to whether a firm is certified to perform the specific services or provide specific products, please contact MDOT's Office of Minority Business Enterprise at 1-800-544-6056 or via email to [mbe@mdot.state.md.us](mailto:mbe@mdot.state.md.us) sufficiently prior to the submission due date.

## Subgoals (if applicable)

Total African American MBE Participation:	_____ %
Total Asian American MBE Participation:	_____ %
Total Hispanic American MBE Participation:	_____ %
Total Women-Owned MBE Participation:	_____ %

## Overall Goal

Total MBE Participation (include all categories): \_\_\_\_\_ %

## **PART 2 - MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT**

**This MBE Utilization and Fair Solicitation Affidavit and MBE Participation Schedule must be completed and included with the bid/proposal. If the bidder/offero fails to accurately complete and submit this Affidavit and the Schedule in Part 3 with the bid or proposal as required, the Procurement Officer shall deem the bid non-responsive or shall determine that the proposal is not reasonably susceptible of being selected for award.**

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

**MBE Participation (PLEASE CHECK ONLY ONE) [UMB intends to set a MBE goal and/or subgoals for those projects over \$200,000 and reserves the right to set an MBE goal for any commissioning projects \$200,000 or less. UMB will insert the participation goal and subgoal amounts in the blanks below and delete any of the subgoals that do not apply to this task order.]**

I acknowledge and intend to meet IN FULL both the overall certified Minority Business Enterprise (MBE) participation goal of \_\_\_\_\_ percent and all of the following subgoals:

\_\_\_\_\_ percent for African American-owned MBE firms  
\_\_\_\_\_ percent for Hispanic American-owned MBE firms  
\_\_\_\_\_ percent for Asian American-owned MBE firms  
\_\_\_\_\_ percent for Women-owned MBE firms

Therefore, I am not seeking a waiver pursuant to COMAR 21.11.03.11. I acknowledge that by checking the above box and agreeing to meet the stated goal and subgoal(s), if any, I must complete Part 3 - MBE Participation Schedule and Part 4 Signature Page in order to be considered for award.

**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. I acknowledge that by checking this box and requesting a partial waiver of the stated goal and/or one or more of the stated subgoal(s) if any, I must complete Part 3, the MBE Participation Schedule and Part 4 Signature Page for the portion of the goal and/or subgoal(s) if any, for which I am not seeking a waiver, in order to be considered for award. I acknowledge that by checking this box and requesting a full waiver of the stated goal and the stated subgoal(s) if any, I must complete Part 4 Signature Page in order to be considered for award.

## **Additional MBE Documentation**

I understand that if I am notified that I am the apparent awardee or as requested by the Procurement Officer, I must submit the following documentation within 10 working days of receiving notice of the potential award or from the date of conditional award (per COMAR 21.11.03.10), whichever is earlier:

- (a) Good Faith Efforts Documentation to Support Waiver Request (Attachment H-1C)
- (b) Outreach Efforts Compliance Statement (Attachment H-2);
- (c) MBE Subcontractor/MBE Prime Project Participation Statement (Attachments H-3A and 3B);
- (d) Any other documentation, including additional waiver documentation if applicable, required by the Procurement Officer to ascertain bidder or offeror responsibility in connection with the certified MBE participation goal and subgoals, if any.

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.

## **Information Provided to MBE firms**

In the solicitation of subcontract quotations or offers, MBE firms were provided not less than the same information and amount of time to respond as were non-MBE firms.

**I solemnly affirm under the penalties of perjury that: (i) I have reviewed the instructions for the MBE Utilization & Fair Solicitation Affidavit and MBE Schedule, and (ii) the information contained in the MBE Utilization & Fair Solicitation Affidavit and MBE Schedule is true to the best of my knowledge, information and belief.**

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Bidder/Offeror Name  
(*PLEASE PRINT OR TYPE*)

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Signature of Authorized Representative

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Address

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Printed Name and Title

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City, State and Zip Code

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Date

**SUBMIT THIS AFFIDAVIT WITH TECHNICAL PROPOSAL**

## PART 3 - MBE PARTICIPATION SCHEDULE

Set forth below are the (i) certified MBEs I intend to use, (ii) the percentage of the total Contract value allocated to each MBE for this project and, (iii) the items of work each MBE will provide under the Contract. I have confirmed with the MDOT database that the MBE firms identified below (including any self-performing MBE prime firms) are performing work activities for which they are MDOT-certified.

Prime Contractor	Project Description	Project/Contract Number
	<u>UMB On Call Commissioning Services</u>	_____

LIST INFORMATION FOR EACH CERTIFIED MBE FIRM YOU AGREE TO USE TO ACHIEVE THE MBE PARTICIPATION GOAL AND SUBGOALS, IF ANY. MBE PRIMES: PLEASE COMPLETE BOTH SECTIONS A AND B BELOW.

### **SECTION A: For MBE Prime Contractors ONLY (including MBE Primes in a Joint Venture)**

<p>MBE Prime Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p>	<p>Percentage of total Contract Value to be performed with own forces and counted towards the MBE <b>overall participation goal</b> (up to 50% of the overall goal): _____ % Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</p> <p>Percentage of total Contract Value to be performed with own forces and counted towards the <b>subgoal</b>, if any, for my MBE classification (up to 100% of not more than one subgoal): _____ %</p> <p><input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%) <input type="checkbox"/> Manufacturer (count 100%) <input type="checkbox"/> Broker (count reasonable fee/commission only) <input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work your firm is self-performing to calculate amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</p> <p><b>A. Percentage amount of subcontract where the MBE Prime firm is being used for manufacturer, furnish and install, and/or services (excluding products / services from suppliers, wholesalers, regular dealers and brokers) _____ %</b></p> <p><b>B. Percentage amount for items of work where the MBE Prime firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule). Total percentage of Supplies/Products _____ % x 60% = _____ %</b></p> <p><b>C. Percentage amount of fee where the MBE Prime firm is being used as broker (count reasonable fee/commission only) _____ %</b></p> <p>Description of the Work to be performed with MBE prime's own forces: _____</p>
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**SECTION B: For all Contractors (including MBE Primes and MBE Primes in a Joint Venture)**

<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p>	<p><b>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</b></p> <p><input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%) <input type="checkbox"/> Manufacturer (count 100%) <input type="checkbox"/> Broker (count reasonable fee/commission only) <input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p><b>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work that the MBE firm named to the left will be performing to calculate the amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</b></p> <p><b>A. Percentage amount of subcontract where the MBE firm is being used for manufacturer, furnish and install, and/or services (excluding products/services from suppliers, wholesalers, regular dealers and brokers) _____ %</b></p> <p><b>B. Percentage amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule)).</b> Total percentage of Supplies/Products _____ % X 60% = _____ %</p> <p><b>C. Percentage amount of fee where the MBE firm is being used as broker (count reasonable fee/commission only) _____ %</b></p> <p>Description of the Work to be Performed: _____</p>
<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p>	<p><b>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</b></p> <p><input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%) <input type="checkbox"/> Manufacturer (count 100%) <input type="checkbox"/> Broker (count reasonable fee/commission only) <input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p><b>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work that the MBE Firm named to the left will be performing to calculate the amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</b></p> <p><b>A. Percentage amount of subcontract where the MBE Firm is being used for manufacturer, furnish and install, and/or services (excluding products/services from suppliers, wholesalers, regular dealers and brokers) _____ %</b></p> <p><b>B. Percentage amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule)).</b> Total percentage of Supplies/Products _____ % X 60% = _____ %</p> <p><b>C. Percentage amount of fee where the MBE firm is being used as broker (count reasonable fee/commission only) _____ %</b></p> <p>Description of the Work to be Performed: _____</p>

<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p>	<p><b>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</b></p> <p><input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%) <input type="checkbox"/> Manufacturer (count 100%) <input type="checkbox"/> Broker (count reasonable fee/commission only) <input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p><b>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work that for the MBE firm named to the left will be performing to calculate the amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</b></p> <p><b>A. Percentage amount of subcontract where the MBE firm is being used for manufacturer, furnish and install, and/or services</b> (excluding products/services from suppliers, wholesalers, regular dealers and brokers) _____ %</p> <p><b>B. Percentage amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer</b> (60% Rule). Total percentage of Supplies/Products _____ % X 60% = _____ %</p> <p><b>C. Percentage amount of fee where the MBE firm is being used as broker</b> (count reasonable fee/commission only) _____ %</p> <p>Description of the Work to be Performed: _____ _____</p>
<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p>	<p><b>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</b></p> <p><input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%) <input type="checkbox"/> Manufacturer (count 100%) <input type="checkbox"/> Broker (count reasonable fee/commission only) <input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p><b>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work that the MBE firm named to the left will be performing to calculate the amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</b></p> <p><b>A. Percentage amount of subcontract where the MBE firm is being used for manufacturer, furnish and install, and/or services</b> (excluding products/services from suppliers, wholesalers, regular dealers and brokers) _____ %</p> <p><b>B. Percentage amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer</b> (60% Rule). Total percentage of Supplies/Products _____ % X 60% = _____ %</p> <p><b>C. Percentage amount of fee where the MBE firm is being used as broker</b> _____ %</p> <p>Description of the Work to be Performed: _____ _____</p>

CONTINUE ON SEPARATE PAGE IF NEEDED

**I solemnly affirm under the penalties of perjury that: (i) I have reviewed the instructions for the MBE Utilization & Fair Solicitation Affidavit and MBE Schedule, and (ii) the information contained in the MBE Utilization & Fair Solicitation Affidavit and MBE Schedule is true to the best of my knowledge, information and belief.**

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Bidder/Offeror Name

*(PLEASE PRINT OR TYPE)*

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Signature of Authorized Representative

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Address

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Printed Name and Title

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City, State and Zip Code

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Date

**SUBMIT THIS AFFIDAVIT WITH TASK ORDER PROPOSAL**

## **MBE Attachment H-1B** **WAIVER GUIDANCE**

### **guidance for documenting good faith efforts to meet MBE participation goals**

In order to show that it has made good faith efforts to meet the Minority Business Enterprise (MBE) participation goal (including any MBE subgoals) on a contract, the bidder/offeror must either (1) meet the MBE Goal(s) and document its commitments for participation of MBE Firms, or (2) when it does not meet the MBE Goal(s), document its Good Faith Efforts to meet the goal(s).

#### **I. Definitions**

**MBE Goal(s)** – “MBE Goal(s)” refers to the MBE participation goal and MBE participation subgoal(s).

**Good Faith Efforts** – The “Good Faith Efforts” requirement means that when requesting a waiver, the bidder/offeror must demonstrate that it took all necessary and reasonable steps to achieve the MBE Goal(s), which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient MBE participation, even if those steps were not fully successful. Whether a bidder/offeror that requests a waiver made adequate good faith efforts will be determined by considering the quality, quantity, and intensity of the different kinds of efforts that the bidder/offeror has made. The efforts employed by the bidder/offeror should be those that one could reasonably expect a bidder/offeror to take if the bidder/offeror were actively and aggressively trying to obtain MBE participation sufficient to meet the MBE contract goal and subgoals. Mere *pro forma* efforts are not good faith efforts to meet the MBE contract requirements. The determination concerning the sufficiency of the bidder's/offeror's good faith efforts is a judgment call; meeting quantitative formulas is not required.

**Identified Firms** – “Identified Firms” means a list of the MBEs identified by the procuring agency during the goal setting process and listed in the procurement as available to perform the Identified Items of Work. It also may include additional MBEs identified by the bidder/offeror as available to perform the Identified Items of Work, such as MBEs certified or granted an expansion of services after the procurement was issued. If the procurement does not include a list of Identified Firms, this term refers to all of the MBE Firms (if State-funded) the bidder/offeror identified as available to perform the Identified Items of Work and should include all appropriately certified firms that are reasonably identifiable.

**Identified Items of Work** – “Identified Items of Work” means the bid items identified by the procuring agency during the goal setting process and listed in the procurement as possible items of work for performance by MBE Firms. It also may include additional portions of items of work the bidder/offeror identified for performance by MBE Firms to increase the likelihood that the MBE Goal(s) will be achieved. If the procurement does not include a list of Identified Items of Work, this term refers to all of the items of work the bidder/offeror identified as possible items of work for performance by MBE Firms and should include all reasonably identifiable work opportunities.

**MBE Firms** – “MBE Firms” refers to a firm certified by the Maryland Department of Transportation (“MDOT”) under COMAR 21.11.03. Only MDOT-certified MBE Firms can participate in the State's MBE Program.

## II. Types of Actions Agency will Consider

The bidder/offeror is responsible for making relevant portions of the work available to MBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available MBE subcontractors and suppliers, so as to facilitate MBE participation. The following is a list of types of actions the procuring agency will consider as part of the bidder's/offeror's Good Faith Efforts when the bidder/offeror fails to meet the MBE Goal(s). This list is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

### **A. Identify Bid Items as Work for MBE Firms**

#### 1. Identified Items of Work in Procurements

(a) Certain procurements will include a list of bid items identified during the goal setting process as possible work for performance by MBE Firms. If the procurement provides a list of Identified Items of Work, the bidder/offeror shall make all reasonable efforts to solicit quotes from MBE Firms to perform that work.

(b) Bidders/Offerors may, and are encouraged to, select additional items of work to be performed by MBE Firms to increase the likelihood that the MBE Goal(s) will be achieved.

#### 2. Identified Items of Work by Bidders/Offerors

(a) When the procurement does not include a list of Identified Items of Work or for additional Identified Items of Work, bidders/offerors should reasonably identify sufficient items of work to be performed by MBE Firms.

(b) Where appropriate, bidders/offerors should break out contract work items into economically feasible units to facilitate MBE participation, rather than perform these work items with their own forces. The ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder/offeror of the responsibility to make Good Faith Efforts.

### **B. Identify MBE Firms to Solicit**

#### 1. MBE Firms Identified in Procurements

(a) Certain procurements will include a list of the MBE Firms identified during the goal setting process as available to perform the items of work. If the procurement provides a list of Identified MBE Firms, the bidder/offeror shall make all reasonable efforts to solicit those MBE firms.

(b) Bidders/offerors may, and are encouraged to, search the MBE Directory to identify additional MBEs who may be available to perform the items of work, such as MBEs certified or granted an expansion of services after the solicitation was issued.

#### 2. MBE Firms Identified by Bidders/Offerors

(a) When the procurement does not include a list of Identified MBE Firms, bidders/offerors should reasonably identify the MBE Firms that are available to perform the Identified Items of Work.

(b) Any MBE Firms identified as available by the bidder/offeror should be certified to perform the Identified Items of Work.

### C. **Solicit MBEs**

1. Solicit all Identified Firms for all Identified Items of Work by providing written notice. The bidder/offeror should:

(a) provide the written solicitation at least 10 days prior to bid opening to allow sufficient time for the MBE Firms to respond;

(b) send the written solicitation by first-class mail, facsimile, or email using contact information in the MBE Directory, unless the bidder/offeror has a valid basis for using different contact information; and

(c) provide adequate information about the plans, specifications, anticipated time schedule for portions of the work to be performed by the MBE, and other requirements of the contract to assist MBE Firms in responding. (This information may be provided by including hard copies in the written solicitation or by electronic means as described in C.3 below.)

2. "All" Identified Firms includes the MBEs listed in the procurement and any MBE Firms you identify as potentially available to perform the Identified Items of Work, but it does not include MBE Firms who are no longer certified to perform the work as of the date the bidder/offeror provides written solicitations.

3. "Electronic Means" includes, for example, information provided *via* a website or file transfer protocol (FTP) site containing the plans, specifications, and other requirements of the contract. If an interested MBE cannot access the information provided by electronic means, the bidder/offeror must make the information available in a manner that is accessible to the interested MBE.

4. Follow up on initial written solicitations by contacting MBEs to determine if they are interested. The follow up contact may be made:

(a) by telephone using the contact information in the MBE Directory, unless the bidder/offeror has a valid basis for using different contact information; or

(b) in writing *via* a method that differs from the method used for the initial written solicitation.

5. In addition to the written solicitation set forth in C.1 and the follow up required in C.4, use all other reasonable and available means to solicit the interest of MBE Firms certified to perform the work of the contract. Examples of other means include:

(a) attending any pre-bid meetings at which MBE Firms could be informed of contracting and subcontracting opportunities; and

(b) if recommended by the procurement, advertising with or effectively using the services of at least two minority focused entities or media, including trade associations, minority/women community organizations, minority/women contractors' groups, and local, state, and federal minority/women business assistance offices listed on the MDOT Office of Minority Business Enterprise website.

### D. **Negotiate With Interested MBE Firms**

Bidders/Offerors must negotiate in good faith with interested MBE Firms.

1. Evidence of negotiation includes, without limitation, the following:

(a) the names, addresses, and telephone numbers of MBE Firms that were considered;

(b) a description of the information provided regarding the plans and specifications for the work selected for subcontracting and the means used to provide that information; and

(c) evidence as to why additional agreements could not be reached for MBE Firms to perform the work.

2. A bidder/offeror using good business judgment would consider a number of factors in negotiating with subcontractors, including MBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration.

3. The fact that there may be some additional costs involved in finding and using MBE Firms is not in itself sufficient reason for a bidder's/offeror's failure to meet the contract MBE goal(s), as long as such costs are reasonable. Factors to take into consideration when determining whether a MBE Firm's quote is excessive or unreasonable include, without limitation, the following:

- (a) the dollar difference between the MBE subcontractor's quote and the average of the other subcontractors' quotes received by the bidder/offeror;
- (b) the percentage difference between the MBE subcontractor's quote and the average of the other subcontractors' quotes received by the bidder/offeror;
- (c) the percentage that the MBE subcontractor's quote represents of the overall contract amount;
- (d) the number of MBE firms that the bidder/offeror solicited for that portion of the work;
- (e) whether the work described in the MBE and Non-MBE subcontractor quotes (or portions thereof) submitted for review is the same or comparable; and
- (f) the number of quotes received by the bidder/offeror for that portion of the work.

4. The above factors are not intended to be mandatory, exclusive, or exhaustive, and other evidence of an excessive or unreasonable price may be relevant.

5. The bidder/offeror may not use its price for self-performing work as a basis for rejecting a MBE Firm's quote as excessive or unreasonable.

6. The "average of the other subcontractors' quotes received" by the bidder/offeror refers to the average of the quotes received from all subcontractors. Bidder/offeror should attempt to receive quotes from at least three subcontractors, including one quote from a MBE and one quote from a Non-MBE.

7. A bidder/offeror shall not reject a MBE Firm as unqualified without sound reasons based on a thorough investigation of the firm's capabilities. For each certified MBE that is rejected as unqualified or that placed a subcontract quotation or offer that the bidder/offeror concludes is not acceptable, the bidder/offeror must provide a written detailed statement listing the reasons for this conclusion. The bidder/offeror also must document the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.

(a) The factors to take into consideration when assessing the capabilities of a MBE Firm, include, but are not limited to the following: financial capability, physical capacity to perform, available personnel and equipment, existing workload, experience performing the type of work, conduct and performance in previous contracts, and ability to meet reasonable contract requirements.

(b) The MBE Firm's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the efforts to meet the project goal.

## **E. Assisting Interested MBE Firms**

When appropriate under the circumstances, the decision-maker will consider whether the bidder/offeror:

1. made reasonable efforts to assist interested MBE Firms in obtaining the bonding, lines of credit, or insurance required by the procuring agency or the bidder/offeror; and
2. made reasonable efforts to assist interested MBE Firms in obtaining necessary equipment, supplies, materials, or related assistance or services.

## **III. Other Considerations**

In making a determination of Good Faith Efforts the decision-maker may consider engineering estimates, catalogue prices, general market availability and availability of certified MBE Firms in the area in which the work is to be performed, other bids or offers and subcontract bids or offers substantiating significant variances between certified MBE and Non-MBE costs of participation, and their impact on the overall cost of the contract to the State and any other relevant factors.

The decision-maker may take into account whether a bidder/offeror decided to self-perform subcontract work with its own forces, especially where the self-performed work is Identified Items of Work in the procurement. The decision-maker also may take into account the performance of other bidders/offerors in meeting the contract. For example, when the apparent successful bidder/offeror fails to meet the contract goal, but others meet it, this reasonably raises the question of whether, with additional reasonable efforts, the apparent successful bidder/offeror could have met the goal. If the apparent successful bidder/offeror fails to meet the goal, but meets or exceeds the average MBE participation obtained by other bidders/offerors, this, when viewed in conjunction with other factors, could be evidence of the apparent successful bidder/offeror having made Good Faith Efforts.

## **IV. Documenting Good Faith Efforts**

At a minimum, a bidder/offeror seeking a waiver of the MBE Goal(s) or a portion thereof must provide written documentation of its Good Faith Efforts, in accordance with COMAR 21.11.03.11, within 10 business days after receiving notice that it is the apparent awardee. The written documentation shall include the following:

### **A. Items of Work (Complete Good Faith Efforts Documentation Attachment 1-C, Part 1)**

A detailed statement of the efforts made to select portions of the work proposed to be performed by certified MBE Firms in order to increase the likelihood of achieving the stated MBE Goal(s).

### **B. Outreach/Solicitation/Negotiation**

1. The record of the bidder's/offeror's compliance with the outreach efforts prescribed by COMAR 21.11.03.09C(2)(a). (**Complete Outreach Efforts Compliance Statement – Attachment 2**).

2. A detailed statement of the efforts made to contact and negotiate with MBE Firms including:

(a) the names, addresses, and telephone numbers of the MBE Firms who were contacted, with the dates and manner of contacts (letter, fax, email, telephone, etc.) (**Complete Good Faith Efforts Attachment 1-C- Part 2, and submit letters, fax cover sheets, emails, etc. documenting solicitations**); and

(b) a description of the information provided to MBE Firms regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed and the means used to provide that information.

**C. Rejected MBE Firms (Complete Good Faith Efforts Attachment 1-C, Part 3)**

1. For each MBE Firm that the bidder/offeror concludes is not acceptable or qualified, a detailed statement of the reasons for the bidder's/offeror's conclusion, including the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.
2. For each certified MBE Firm that the bidder/offeror concludes has provided an excessive or unreasonable price, a detailed statement of the reasons for the bidder's/offeror's conclusion, including the quotes received from all MBE and Non-MBE firms bidding on the same or comparable work. **(Include copies of all quotes received.)**
3. A list of MBE Firms contacted but found to be unavailable. This list should be accompanied by a MBE Unavailability Certificate (see Exhibit A to this Part 1) signed by the MBE contractor or a statement from the bidder/offeror that the MBE contractor refused to sign the MBE Unavailability Certificate.

**D. Other Documentation**

1. Submit any other documentation requested by the Procurement Officer to ascertain the bidder's/offeror's Good Faith Efforts.
2. Submit any other documentation the bidder/offeror believes will help the Procurement Officer ascertain its Good Faith Efforts.

**Exhibit A****MBE Subcontractor Unavailability Certificate**

1. It is hereby certified that the firm of \_\_\_\_\_  
 (Name of Minority firm)

located at \_\_\_\_\_  
 (Number) \_\_\_\_\_ (Street)

\_\_\_\_\_ (City) \_\_\_\_\_ (State) \_\_\_\_\_ (Zip)

was offered an opportunity to bid on Solicitation No. \_\_\_\_\_

in \_\_\_\_\_ County by \_\_\_\_\_  
 (Name of Prime  
 Contractor's Firm)

\*\*\*\*\*

2. \_\_\_\_\_ (Minority Firm), is either  
 unavailable for the

work/service or unable to prepare a bid for this project for the following reason(s):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Signature of Minority Firm's MBE Representative**  
 Date

Title

MDOT Certification #

Telephone #

3. To be completed by the prime contractor if Section 2 of this form is not completed by the minority firm.

To the best of my knowledge and belief, said Certified Minority Business Enterprise is either unavailable for the work/service for this project, is unable to prepare a bid, or did not respond to a request for a price proposal and has not completed the above portion of this submittal.

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

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Date

**MBE attachment H-1c****GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST**

Page \_\_\_\_\_ of \_\_\_\_\_

Prime Contractor	Project Description	Solicitation Number

**Parts 1, 2, and 3 must be included with this certificate along with all documents supporting your waiver request.****I AFFIRM THAT I HAVE REVIEWED ATTACHMENT H-1B, WAIVER GUIDANCE. I FURTHER AFFIRM UNDER PENALTIES OF PERJURY THAT THE CONTENTS OF PARTS 1, 2, AND 3 OF THIS ATTACHMENT H-1C GOOD FAITH EFFORTS DOCUMENTATION FORM ARE TRUE TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.**

---

Company Name

Signature of Representative

---

Address

Printed Name and Title

---

City, State and Zip Code

Date

**GOOD FAITH EFFORTS DOCUMENTATION**  
**TO SUPPORT WAIVER REQUEST**

**Part 1 – identified items of work bidder/offeror made available to**  
**MBE firms**

Page \_\_\_\_\_ of \_\_\_\_\_

Prime Contractor	Project Description	Solicitation Number

Identify those items of work that the bidder/offeror made available to MBE Firms. This includes, where appropriate, those items the bidder/offeror identified and determined to subdivide into economically feasible units to facilitate the MBE participation. For each item listed, show the anticipated percentage of the total contract amount. It is the bidder's/offeror's responsibility to demonstrate that sufficient work to meet the goal was made available to MBE Firms, and the total percentage of the items of work identified for MBE participation equals or exceeds the percentage MBE goal set for the procurement. Note: If the procurement includes a list of bid items identified during the goal setting process as possible items of work for performance by MBE Firms, the bidder/offeror should make all of those items of work available to MBE Firms or explain why that item was not made available. If the bidder/offeror selects additional items of work to make available to MBE Firms, those additional items should also be included below.

Identified Items of Work	Was this work listed in the procurement?	Does bidder/offeror normally self-perform this work?	Was this work made available to MBE Firms? If no, explain why?
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

PLEASE CHECK IF ADDITIONAL SHEETS ARE ATTACHED.

**GOOD FAITH EFFORTS DOCUMENTATION**  
**TO SUPPORT WAIVER REQUEST**

**Part 2 – identified MBE firms and record of solicitations**

Page \_\_\_\_\_ of \_\_\_\_\_

Prime Contractor	Project Description	Solicitation Number

Identify the MBE Firms solicited to provide quotes for the Identified Items of Work made available for MBE participation. Include the name of the MBE Firm solicited, items of work for which bids/quotes were solicited, date and manner of initial and follow-up solicitations, whether the MBE provided a quote, and whether the MBE is being used to meet the MBE participation goal. MBE Firms used to meet the participation goal must be included on the MBE Participation Schedule. Note: If the procurement includes a list of the MBE Firms identified during the goal setting process as potentially available to perform the items of work, the bidder/offeror should solicit all of those MBE Firms or explain why a specific MBE was not solicited. If the bidder/offeror identifies additional MBE Firms who may be available to perform Identified Items of Work, those additional MBE Firms should also be included below. Copies of all written solicitations and documentation of follow-up calls to MBE Firms must be attached to this form. This list should be accompanied by a Minority Contractor Unavailability Certificate signed by the MBE contractor or a statement from the bidder/offeror that the MBE contractor refused to sign the Minority Contractor Unavailability Certificate (see Exhibit A to MBE Attachment 1-B). If the bidder/offeror used a Non-MBE or is self-performing the identified items of work, Part 3 must be completed.

Name of Identified MBE Firm & MBE Classification	Describe Item of Work Solicited	Initial Solicitation Date & Method	Follow-up Solicitation Date & Method	Details for Follow-up Calls	Quote Rec'd	Quote Used	Reason Quote Rejected
<b>Firm Name:</b>  <b>MBE Classification (Check only if requesting waiver of MBE subgoal.)</b> <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American-Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification		Date: <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Date: <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Time of Call:  Spoke With:  <input type="checkbox"/> Left Message	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Used Other MBE <input type="checkbox"/> Used Non-MBE <input type="checkbox"/> Self-performing
<b>Firm Name:</b>  <b>MBE Classification (Check only if requesting waiver of MBE subgoal.)</b> <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American-Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification		Date: <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Date: <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Time of Call:  Spoke With:  <input type="checkbox"/> Left Message	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Used Other MBE <input type="checkbox"/> Used Non-MBE <input type="checkbox"/> Self-performing

**PLEASE CHECK IF ADDITIONAL SHEETS ARE ATTACHED.**

**GOOD FAITH EFFORTS DOCUMENTATION**  
**TO SUPPORT WAIVER REQUEST**

**Part 3 – additional information regarding rejected MBE quotes**

Page \_\_\_\_\_ of \_\_\_\_\_

Prime Contractor	Project Description	Solicitation Number

This form must be completed if Part 2 indicates that a MBE quote was rejected because the bidder/offoffer is using a Non-MBE or is self-performing the Identified Items of Work. Provide the Identified Items Work, indicate whether the work will be self-performed or performed by a Non-MBE, and if applicable, state the name of the Non-MBE. Also include the names of all MBE and Non-MBE Firms that provided a quote and the amount of each quote.

Describe Identified Items of Work Not Being Performed by MBE (Include spec/section number from bid)	Self-performing or Using Non-MBE (Provide name)	Amount of Non-MBE Quote	Name of Other Firms who Provided Quotes & Whether MBE or Non-MBE	Amount Quoted	Indicate Reason Why MBE Quote Rejected & Briefly Explain
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE  <hr/>	\$ _____	<hr/> <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE  <hr/>	\$ _____	<hr/> <input type="checkbox"/> MBE <input type="checkbox"/> Non- MBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE  <hr/>	\$ _____	<hr/> <input type="checkbox"/> MBE <input type="checkbox"/> Non- MBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non- MBE  <hr/>	\$ _____	<hr/> <input type="checkbox"/> MBE <input type="checkbox"/> Non- MBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non- MBE  <hr/>	\$ _____	<hr/> <input type="checkbox"/> MBE <input type="checkbox"/> Non- MBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non- MBE  <hr/>	\$ _____	<hr/> <input type="checkbox"/> MBE <input type="checkbox"/> Non- MBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other

PLEASE CHECK IF ADDITIONAL SHEETS ARE ATTACHED.

**MBE Attachment H - 2**  
**OUTREACH EFFORTS COMPLIANCE STATEMENT**

Complete and submit this form within 10 working days of notification of apparent award or actual award, whichever is earlier.

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 MDOT-certified MBE firms: \_\_\_\_\_

---

---

**4. Please Check One:**

This project does not involve bonding requirements.  
 Bidder/Offeror assisted MDOT-certified 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

**MBE Attachment H-3A**  
**MBE SUBCONTRACTOR PROJECT PARTICIPATION CERTIFICATION**

**PLEASE COMPLETE AND SUBMIT ONE FORM FOR EACH CERTIFIED MBE FIRM LISTED ON THE MBE PARTICIPATION SCHEDULE (ATTACHMENT H-1A) WITHIN 10 WORKING DAYS OF NOTIFICATION OF APPARENT AWARD. IF THE BIDDER/OFFEROR FAILS TO RETURN THIS AFFIDAVIT WITHIN THE REQUIRED TIME, THE PROCUREMENT OFFICER MAY DETERMINE THAT THE BIDDER/OFFEROR IS NOT RESPONSIBLE AND THEREFORE NOT ELIGIBLE FOR CONTRACT AWARD.**

Provided that \_\_\_\_\_ (Prime Contractor's Name) is awarded the State contract in conjunction with Solicitation No. \_\_\_\_\_, such Prime Contractor intends to enter into a subcontract with \_\_\_\_\_ (Subcontractor's Name) committing to participation by the MBE firm \_\_\_\_\_ (MBE Name) with MDOT Certification Number \_\_\_\_\_ which will receive at least \$ \_\_\_\_\_ which equals to \_\_\_\_\_ % of the Total Contract Amount for performing the following products/services for the Contract:

<b>NAICS CODE</b>	<b>WORK ITEM, SPECIFICATION NUMBER, LINE ITEMS OR WORK CATEGORIES (IF APPLICABLE)</b>	<b>DESCRIPTION OF SPECIFIC PRODUCTS AND/OR SERVICES</b>

Each of the Contractor and Subcontractor acknowledges that, for purposes of determining the accuracy of the information provided herein, the Procurement Officer may request additional information, including, without limitation, copies of the subcontract agreements and quotes. Each of the Contractor and Subcontractor solemnly affirms under the penalties of perjury that: (i) the information provided in this MBE Subcontractor Project Participation Affidavit is true to the best of its knowledge, information and belief, and (ii) has fully complied with the State Minority Business Enterprise law, State Finance and Procurement Article §14-308(a)(2), Annotated Code of Maryland which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a Bid/Proposal and:

- (1) fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified Minority Business Enterprise in its Bid/Proposal;
- (2) fail to notify the certified Minority Business Enterprise before execution of the Contract of its inclusion of the Bid/Proposal;
- (3) fail to use the certified Minority Business Enterprise in the performance of the Contract; or
- (4) pay the certified Minority Business Enterprise solely for the use of its name in the Bid/Proposal.

<p><b>PRIME CONTRACTOR</b></p> <p>Signature of Representative:</p> <hr/> <p>Printed Name and Title: _____</p> <hr/> <p>Firm's Name: _____</p> <p>Federal Identification Number: _____</p> <p>Address: _____</p> <hr/> <p>Telephone: _____</p> <p>Date: _____</p>	<p><b>SUBCONTRACTOR</b></p> <p>Signature of Representative:</p> <hr/> <p>Printed Name and Title: _____</p> <hr/> <p>Firm's Name: _____</p> <p>Federal Identification Number: _____</p> <p>Address: _____</p> <hr/> <p>Telephone: _____</p> <p>Date: _____</p>
--	---

**MBE Attachment H-3B**  
**MBE PRIME - PROJECT PARTICIPATION CERTIFICATION**

PLEASE COMPLETE AND SUBMIT THIS FORM TO ATTEST EACH SPECIFIC ITEM OF WORK THAT YOUR MBE FIRM HAS LISTED ON THE MBE PARTICIPATION SCHEDULE (ATTACHMENT H-1A) FOR PURPOSES OF MEETING THE MBE PARTICIPATION GOALS. THIS FORM MUST BE SUBMITTED WITHIN 10 WORKING DAYS OF NOTIFICATION OF APPARENT AWARD. IF THE BIDDER/OFFEROR FAILS TO RETURN THIS AFFIDAVIT WITHIN THE REQUIRED TIME, THE PROCUREMENT OFFICER MAY DETERMINE THAT THE BIDDER/OFFEROR IS NOT RESPONSIBLE AND THEREFORE NOT ELIGIBLE FOR CONTRACT AWARD.

Provided that \_\_\_\_\_ (Prime Contractor's Name) with Certification Number \_\_\_\_\_

is awarded the State contract in conjunction with Solicitation No. \_\_\_\_\_, such MBE Prime Contractor intends to perform with its own forces at least \$ \_\_\_\_\_ which equals to \_\_\_\_\_% of the Total Contract Amount for performing the following products/services for the Contract:

NAICS CODE	WORK ITEM, SPECIFICATION NUMBER, LINE ITEMS OR WORK CATEGORIES (IF APPLICABLE). FOR CONSTRUCTION PROJECTS, GENERAL CONDITIONS MUST BE LISTED SEPARATELY.	DESCRIPTION OF SPECIFIC PRODUCTS AND/OR SERVICES	VALUE OF THE WORK

**MBE PRIME CONTRACTOR**

Signature of Representative:

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

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

Firm's Name: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Federal Identification Number: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

**MBE Attachment H-4A**  
**(Department)**  
**Minority Business Enterprise Participation**  
**Prime Contractor Paid/Unpaid MBE Invoice Report**

Report #: _____	Contract #: _____
Reporting Period (Month/Year): _____	Contracting Unit: _____
<b>Prime Contractor: Report is due to the MBE Liaison by the 10<sup>th</sup> of the month following the month the services were provided.</b>	Contract Amount: _____
<b>Note: Please number reports in sequence</b>	MBE Subcontract Amt: _____
	Project Begin Date: _____
	Project End Date: _____
	Services Provided: _____

Prime Contractor:	Contact Person:		
Address:			
City:	State:	ZIP:	
Phone:	Fax:	E-mail:	
MBE Subcontractor Name:	Contact Person:		
Phone:	Fax:		
Subcontractor Services Provided:			
<b>List all payments made to MBE subcontractor named above during this reporting period:</b>		<b>List dates and amounts of any outstanding invoices:</b>	
<b>Invoice#</b>	<b>Amount</b>	<b>Invoice #</b>	<b>Amount</b>
1.		1.	
2.		2.	
3.		3.	
4.		4.	
<b>Total Dollars Paid: \$ _____</b>		<b>Total Dollars Unpaid: \$ _____</b>	

- If more than one MBE subcontractor is used for this contract, you must use separate H-4A forms for each subcontractor.
- Information regarding payments that the MBE prime will use for purposes of meeting the MBE participation goals must be reported separately in Attachment H-4B
- **Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 (Required)

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

Regina Spencer University of Maryland, Baltimore Strategic Sourcing and Acquisition Services 220 Arch Street, Rm. 02-100 Baltimore, MD 21201 Phone: 410.706.5122 Fax: 410.706.8577 eMail: <a href="mailto:rspencer@umaryland.edu">rspencer@umaryland.edu</a>
--

This form must be completed  
monthly by all MBE subcontractors.

## Sample MBE ATTACHMENT H-5

### Minority Business Enterprise Participation Subcontractor Paid/Unpaid MBE Invoice Report

Report#: _____	Contract # _____
Reporting Period (Month/Year): _____	Contracting Unit: _____
<b>Report is due by the 10<sup>th</sup> of the month following the month the services were performed.</b>	MBE Subcontract Amount: _____ Project Begin Date: _____ Project End Date: _____ Services Provided: _____

MBE Subcontractor Name: _____			
MDOT Certification #: _____			
Contact Person: _____	E-mail: _____		
Address: _____			
City: _____	State: _____	ZIP: _____	
Phone: _____	Fax: _____		
<b>Subcontractor Services Provided:</b>			
List all payments received from Prime Contractor during reporting period indicated above.		List dates and amounts of any unpaid invoices over 30 days old.	
<u>Invoice Amt</u>	<u>Date</u>	<u>Invoice Amt</u>	<u>Date</u>
1.		1.	
2.		2.	
3.		3.	
<b>Total Dollars Paid: \$ _____</b>		<b>Total Dollars Unpaid: \$ _____</b>	
Prime Contractor: _____		Contact Person: _____	

**\*\*Return one copy of this form to the following address (electronic copy with signature & date is preferred):**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
(Required)

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

Regina Spencer  
University of Maryland, Baltimore  
Strategic Sourcing and Acquisition Services  
220 Arch Street, Rm. 02-100  
Baltimore, MD 21201 Phone: 410.706.5122 Fax: 410.706.8577 eMail: rspencer@umaryland.edu

**MBE Attachment H-4B**  
**(Department)**  
**Minority Business Enterprise Participation**  
**MBE Prime Contractor Report**

MBE Prime Contractor: Certification Number: Report #: _____ Reporting Period (Month/Year): _____ <b>MBE Prime Contractor: Report is due to the MBE Liaison by the ___ of the month following the month the services were provided.</b> <b>Note: Please number reports in sequence</b>	Contract #: _____ Contracting Unit: _____ Contract Amount: _____ Total Value of the Work to the Self-Performed for purposes of Meeting the MBE participation goal/subgoals: _____ Project Begin Date: _____ Project End Date: _____
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Contact Person: _____		
Address: _____		
City: _____	State: _____	ZIP: _____
Phone: _____	Fax: _____	E-mail: _____

Invoice Number	Value of the Work	NAICS Code	Description of the Work

**Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 (Required)

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

Regina Spencer University of Maryland, Baltimore Strategic Sourcing and Acquisition Services 220 Arch Street, Rm. 02-100 Baltimore, MD 21201 Phone: 410.706.5122 Fax: 410.706.8577 eMail: <a href="mailto:rspencer@umaryland.edu">rspencer@umaryland.edu</a>
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**MBE ATTACHMENT H-5**  
**Minority Business Enterprise Participation**  
**Subcontractor Paid/Unpaid MBE Invoice Report**

Report#: _____	Contract # _____
Reporting Period (Month/Year): _____	Contracting Unit: _____
<b>Report is due by the ___ of the month following the month the services were performed.</b>	MBE Subcontract Amount: _____ Project Begin Date: _____ Project End Date: _____ Services Provided: _____

MBE Subcontractor Name: _____		
MDOT Certification #: _____		
Contact Person: _____	E-mail: _____	
Address: _____		
City: _____	State: _____	ZIP: _____
Phone: _____	Fax: _____	
<b>Subcontractor Services Provided:</b>		
List all payments received from Prime Contractor during reporting period indicated above.		List dates and amounts of any unpaid invoices over 30 days old.
<b>Invoice Amt</b>	<b>Date</b>	<b>Invoice Amt</b>
1. _____	_____	1. _____
2. _____	_____	2. _____
3. _____	_____	3. _____
<b>Total Dollars Paid: \$ _____</b>		<b>Total Dollars Unpaid: \$ _____</b>
Prime Contractor: _____ Contact Person: _____		

**Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
(Required)

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

Regina Spencer University of Maryland, Baltimore Strategic Sourcing and Acquisition Services 220 Arch Street, Rm. 02-100 Baltimore, MD 21201 Phone: 410.706.5122 Fax: 410.706.8577 eMail: <a href="mailto:rspencer@umaryland.edu">rspencer@umaryland.edu</a>
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## MBE Attachment H-6

### **Liquidated Damages Provisions for Construction Contracts Containing MBE Participation Goals**

This contract requires the contractor to make good faith efforts to comply with the Minority Business Enterprise (“MBE”) Program and contract provisions. The State and the Contractor acknowledge and agree that the State will incur damages, including but not limited to loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not make good faith efforts to comply with the requirements of the MBE Program and MBE contract provisions. The parties further acknowledge and agree that the damages the State might reasonably be anticipated to accrue as a result of such lack of compliance are difficult to ascertain with precision.

Therefore, upon a determination by the State that the Contractor failed to make good faith efforts to comply with one or more of the specified MBE Program requirements or contract provisions, the Contractor agrees to pay liquidated damages to the State at the rates set forth below. The Contractor expressly agrees that the State may withhold payment on any invoices as a set-off against liquidated damages owed. The Contractor further agrees that for each specified violation, the agreed upon liquidated damages are reasonably proximate to the loss the State is anticipated to incur as a result of such violation.

- a. Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): **\$30.59** per day until the monthly report is submitted as required.
- b. Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B (4): **\$107.07** per MBE subcontractor.
- c. Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and/or amendment of the MBE participation schedule: 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.
- d. Failure to meet the Contractor’s total MBE participation goal and subgoal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.

Notwithstanding the use of liquidated damages, the State reserves the right to terminate the contract and exercise all other rights and remedies provided in the contract or by law.”