Attachment D. Minority Business Enterprise (MBE) Forms

TO CONTRACTOR MINORITY BUSINESS ENTERPRISE REPORTING REQUIREMENTS

CATS+ TORFP #J02B8400047

These instructions are meant to accompany the customized reporting forms sent to you by the TO Manager. If, after reading these instructions, you have additional questions or need further clarification, please contact the TO Manager immediately.

As the TO Contractor, you have entered into a TO Agreement with the State of Maryland. As such, your company/firm is responsible for successful completion of all deliverables under the contract, including your commitment to making a good faith effort to meet the MBE participation goal(s) established for TORFP. Part of that effort, as outlined in the TORFP, includes submission of monthly reports to the State regarding the previous month’s MBE payment activity. Reporting forms D-5 (TO Contractor Paid/Unpaid MBE Invoice Report) and D-6 (Subcontractor Paid/Unpaid MBE Invoice Report) are attached for your use and convenience.

The TO Contractor must complete a separate Form D-5 (TO Contractor Paid/Unpaid MBE Invoice Report) for each MBE subcontractor for each month of the contract and submit one copy to each of the locations indicated at the bottom of the form. The report is due no later than the 15th of the month following the month that is being reported. For example, the report for January’s activity is due no later than the 15th of February. With the approval of the TO Manager, the report may be submitted electronically. Note: Reports are required to be submitted each month, regardless of whether there was any MBE payment activity for the reporting month.

The TO Contractor is responsible for ensuring that each subcontractor receives a copy (e-copy of and/or hard copy) of Form D-6 (Subcontractor Paid/Unpaid MBE Invoice Report). The TO Contractor should make sure that the subcontractor receives all the information necessary to complete the form properly, i.e., all of the information located in the upper right corner of the form. It may be wise to customize Form D-6 (upper right corner of the form) for the subcontractor the same as the Form D-5 was customized by the TO Manager for the benefit of the TO Contractor. This will help to minimize any confusion for those who receive and review the reports.

It is the responsibility of the TO Contractor to make sure that all subcontractors submit reports no later than the 15th of each month, regardless of whether there was any MBE payment activity for the reporting month. Actual payment data is verified and entered into the State’s financial management tracking system from the subcontractor’s D-6 report only. Therefore, if the subcontractor(s) do not submit their D-6 payment reports, the TO Contractor cannot and will not be given credit for subcontractor payments, regardless of the TO Contractor’s proper submission of Form D-5. The TO Manager will contact the TO Contractor if reports are not received each month from either the prime contractor or any of the identified subcontractors. The TO Contractor must promptly notify the TO Manager if, during the course of the contract, a new MBE subcontractor is utilized. Failure to comply with the MBE contract provisions and reporting requirements may result in sanctions, as provided by COMAR 21.11.03.13.

**MDOT MBE FORM A**

**STATE-FUNDED CONTRACTS**

CERTIFIED MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT

**PAGE 1 OF 2**

This affidavit must be included with the bid/proposal. If the bidder/offeror fails to accurately complete and submit this affidavit as required, the bid shall be deemed not responsive or the proposal not susceptible of being selected for award.

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

1. **MBE Participation (PLEASE CHECK ONLY ONE)**

I have met the overall certified Minority Business Enterprise (MBE) participation

goal of       percent (     %) and the following sub-goals, if applicable:

      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

I agree that these percentages of the total dollar amount of the Contract, for the MBE goal and sub-goals (if any), will be performed by certified MBE firms as set forth in the MBE Participation Schedule - Part 2 of the MDOT MBE Form B (State-Funded Contracts).

**OR**

I conclude that I am unable to achieve the MBE participation goal and/or sub-goals. I hereby request a waiver, in whole or in part, of the overall goal and/or sub-goals. Within 10 business days of receiving notice that our firm is the apparent awardee or as requested by the Procurement Officer, I will submit a written waiver request and all required documentation in accordance with COMAR 21.11.03.11. For a partial waiver request, I agree that certified MBE firms will be used to accomplish the percentages of the total dollar amount of the Contract, for the MBE goal and sub-goals (if any), as set forth in the MBE Participation Schedule - Part 2 of the MDOT MBE Form B (State-Funded Contracts).

1. **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 business days of receiving such notice:

(a) Outreach Efforts Compliance Statement (MDOT MBE Form C - State-Funded Contracts);

(b) Subcontractor Project Participation Statement (MDOT MBE Form D - State-Funded Contracts);

(c) If waiver requested, MBE Waiver Request Documentation and Forms (MDOT MBE/DBE Form E – Good Faith Efforts Guidance and Documentation) per COMAR 21.11.03.11; and

(d) Any other documentation required by the Procurement Officer to ascertain bidder’s responsibility/ offeror’s susceptibility of being selected for award in connection with the certified MBE participation goal and sub-goals, if any.

I acknowledge that if I fail to return each completed document (in 2 (a) through (d)) within the required time, the Procurement Officer may determine that I am not responsible and therefore not eligible for contract award or that the proposal is not susceptible of being selected for award.

**MDOT MBE FORM A**

**STATE-FUNDED CONTRACTS**

CERTIFIED MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT

**PAGE 2 OF 2**

1. **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.

1. **Products and Services Provided by MBE firms**

I hereby affirm that the MBEs are only providing those products and services for which they are MDOT certified.

I solemnly affirm under the penalties of perjury that the information in this affidavit is 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

**MDOT MBE FORM B**

**STATE-FUNDED CONTRACTS**

**PART 1 – INSTRUCTIONS FOR MBE PARTICIPATION SCHEDULE**

**page 1 of 3**

**parts 2 and 3 must be included with the bid/proposal. If the bidder/offeror fails to accurately complete and submit part 2 with the bid/proposal as required, the bid shall be deemed not responsive or the proposal shall be deemed not susceptible of being selected for award.**

**PLEASE READ BEFORE COMPLETING THIS FORM**

1. Please refer to the Maryland Department of Transportation (MDOT) MBE Directory at [www.mdot.state.md.us](http://www.mdot.state.md.us) to determine if a firm is certified for 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, please visit [www.naics.com](http://www.naics.com). Only those specific products and/or services for which a prime or subcontractor is a certified MBE in the MDOT Directory can be used for purposes of achieving the MBE participation goals.
2. In order to be counted for purposes of achieving the MBE participation goals, the MBE firm (whether a prime or subcontractor) must be certified for that specific NAICS Code (“MBE” for State-funded projects designation after NAICS Code). **WARNING:** If the firm’s NAICS Code is in **graduated** **status**, such services/products **will not be counted** for purposes of achieving the MBE participation goals. Graduated status is clearly identified in the MDOT Directory (such graduated codes are designated with the word graduated after the appropriate NAICS Code).
3. Examining the NAICS Code is the **first step** in determining whether an MBE firm is certified and eligible to receive MBE participation credit for the specific products/services to be supplied or performed under the contract. The **second step** is to determine whether a firm’s Products/Services Description in the MBE Directory includes the products to be supplied and/or services to be performed that are being used to achieve the MBE participation goals. 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 at mbe@mdot.state.md.us.
4. Complete the Part 2 – MBE Participation Schedule for all certified MBE firms (including primes and subcontractors) being used to achieve the MBE participation goal and sub-goals, if any.
5. **MBE Prime Self-Performance.** When a certified MBE firm participates as a prime (independently or as part of a joint venture) 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 forces toward fulfilling up to fifty-percent (50%) of the MBE participation goal (overall) and up to one hundred percent (100%) of not more than one of the MBE participation sub-goals, if any, established for the contract. In order to receive credit for self-performance, an MBE prime must be (a) a certified MBE (see 1-3 above) and (b) listed in the Part 2 – MBE Participation Schedule with its certification number, the certification classification under which it will self-perform, and the percentage of the contract that can be counted as MBE self-performance. For the remaining portion of the overall goal and any sub-goals, the MBE prime must also list, in the Part 2 – MBE Participation Schedule, other certified MBE firms used to meet those goals or, after making good faith efforts to obtain the participation of additional MBE firms, request a waiver. Note: A dually-certified MBE firm can use its own forces toward fulfilling ONLY ONE of the MBE sub-goals for which it can be counted.
6. The Contractor’s subcontractors are considered second-tier subcontractors. Third-tier contracting used to meet an MBE goal is to be considered the exception and not the rule. The following two conditions must be met before MDOT, its Modal Administrations and the Maryland Transportation Authority may approve a third-tier contracting agreement: (a) the bidder/offeror must request in writing approval of each third-tier contract arrangement, and (b) the request must contain specifics as to why a third-tier contracting arrangement should be approved. These documents must be submitted with the bid/proposal in Part 2 of this MBE Participation Schedule.
7. For each MBE firm that is being used as a supplier/wholesaler/regular dealer/broker/manufacturer, please follow these instructions for calculating the **amount of the subcontract for purposes of achieving the MBE participation goals**:
8. Is the firm certified as a broker of the products/supplies? If the answer is YES, please continue to Item C. If the answer is NO, please continue to Item B.

B. Is the firm certified as a supplier, wholesaler, regular dealer, or manufacturer of such products/supplies? If the answer is YES, continue to Item D. If the answer is NO, continue to Item C only if the MBE firm is certified to perform trucking/hauling services under NAICS Codes 484110, 484121, 484122, 484210, 484220 and 484230. If the answer is NO and the firm is not certified under these NAICS Codes, then no MBE participation credit will be given for the supply of these products.

**MDOT MBE FORM B**

**STATE-FUNDED CONTRACTS**

**PART 1 – INSTRUCTIONS FOR MBE PARTICIPATION SCHEDULE**

**page 2 of 3**

C. For purposes of achieving the MBE participation goal, you may count only the amount of any reasonable fee that the MBE firm will receive for the provision of such products/supplies - not the total subcontract amount or the value (or a percentage thereof) of such products and/or supplies. For Column 3 of the MBE Participation Schedule, please divide the amount of any reasonable fee that the MBE firm will receive for the provision of such products/services by the total Contract value and insert the percentage in Line 3.1.

D. Is the firm certified as a manufacturer (refer to the firm’s NAICS Code and specific description of products/services) of the products/supplies to be provided? If the answer is NO, please continue to Item E. If the answer is YES, for purposes of achieving the MBE participation goal, you may count the total amount of the subcontract. For Column 3 of the MBE Participation Schedule, please divide the total amount of the subcontract by the total Contract value and insert the percentage in Line 3.1.

1. Is the firm certified as a supplier, wholesaler and/or regular dealer? If the answer is YES and the MBE firm is furnishing and installing the materials and is certified to perform these services, please divide the total subcontract amount (including full value of supplies) by the total Contract value and insert the percentage in Line 3.1. If the answer is YES and the MBE firm is only being used as a supplier, wholesaler and/or regular dealer or is not certified to install the supplies/materials, for purposes of achieving the MBE participation goal, you may only count sixty percent (60%) of the value of the subcontract for these supplies/products (60% Rule). To apply the 60% Rule, first divide the amount of the subcontract for these supplies/products only (not installation) by the total Contract value. Then, multiply the result by sixty percent (60%) and insert the percentage in Line 3.2.
2. For each MBE firm that **is not** being used as a supplier/wholesaler/regular dealer/broker/manufacturer, to calculate the **amount of the subcontract for purposes of achieving the MBE participation goals**, divide the total amount of the subcontract by the total Contract value and insert the percentage in Line 3.1.

**Example:** $ 2,500 (Total Subcontract Amount) ÷ $10,000 (Total Contract Value) x 100 = 25%

1. **WARNING:** The percentage of MBE participation, computed using the percentage amounts determined per Column 3 for all of the MBE firms listed in Part 2, MUST at least equal the MBE participation goal **and** sub-goals (if applicable) as set forth in MDOT MBE Form A – State-Funded Contracts for this solicitation. If a bidder/offeror is unable to achieve the MBE participation goal and/or any sub-goals (if applicable), then the bidder/offeror must request a waiver in Form A or the bid will be deemed not responsive, or the proposal not susceptible of being selected for award. You may wish to use the attached Goal/Sub-goal Worksheet to assist you in calculating the percentages and confirming that you have met the applicable MBE participation goal and sub-goals (if any).

**MDOT MBE FORM B**

**STATE-FUNDED CONTRACTS**

**PART 1 – INSTRUCTIONS FOR MBE PARTICIPATION SCHEDULE**

**page 3 of 3**

**GOAL/SUBGOAL PARTICIPATION WORKSHEET**

1. Complete the Part 2 – MBE Participation Schedule for each MBE being used to meet the MBE goal and any sub-goals.
2. After completion of the Part 2 – MBE Participation Schedule, you may use the Goal/Sub-goal Worksheet to calculate the total MBE participation commitment for the overall goal and any sub-goals.
3. **MBE Overall Goal Participation Boxes:** Calculate the total percentage of MBE participation for each MBE classification by adding the percentages determined per Column 3 of the Part 2 – MBE Participation Schedule. Add the percentages determined in Lines 3.1 and 3.2 for the MBE subcontractor (subs) total. Add the overall participation percentages determined in Line 3.3 for the MBE prime total.
4. **MBE Subgoal Participation Boxes:** Calculate the total percentage of MBE participation for each MBE classification by adding the percentages determined per Column 3 of the Part 2 – MBE Participation Schedule. Add the percentages determined in Lines 3.1 and 3.2 for the MBE subcontractor (subs) total. Add the subgoal participation percentages determined in Line 3.3 for the MBE prime total.
5. The percentage amount for the MBE overall participation in the Total MBE Firm Participation Box F1 should be equal to the sum of the percentage amounts in Boxes A through E of the MBE Overall Goal Participation Column of the Worksheet.
6. The percentage amount for the MBE subgoal participation in the Total MBE Firm Participation Box L should be equal to the sum of the percentage amounts in Boxes A through E of the MBE Subgoal Participation Column of the Worksheet.

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| --- | --- | --- |
| **GOAL/SUBGOAL WORKSHEET** | | |
| **MBE Classification** | **MBE Overall Goal**  **Participation** | **MBE Subgoal**  **Participation** |
| **(A)** Total African American Firm Participation  (Add percentages determined for African American-Owned  Firms per Column 3 of MBE Participation Schedule) | \_\_\_\_\_\_\_\_\_%subs  \_\_\_\_\_\_\_\_\_%prime | \_\_\_\_\_\_\_\_\_%subs  \_\_\_\_\_\_\_\_\_%prime |
| **(B)** Total Hispanic American Firm Participation  (Add percentages determined for Hispanic American-Owned  Firms per Column 3 of MBE Participation Schedule) | \_\_\_\_\_\_\_\_\_%subs  \_\_\_\_\_\_\_\_\_%prime | \_\_\_\_\_\_\_\_\_%subs  \_\_\_\_\_\_\_\_\_%prime |
| **(C)** Total Asian American Firm Participation  (Add percentages listed for Asian American-Owned  Firms per Column 3 of MBE Participation Schedule) | \_\_\_\_\_\_\_\_\_%subs  \_\_\_\_\_\_\_\_\_%prime | \_\_\_\_\_\_\_\_\_%subs  \_\_\_\_\_\_\_\_\_%prime |
| **(D)** Total Women-Owned Firm Participation  (Add percentages determined for Women-Owned  Firms per Column 3 of MBE Participation Schedule) | \_\_\_\_\_\_\_\_\_%subs  \_\_\_\_\_\_\_\_\_%prime | \_\_\_\_\_\_\_\_\_%subs  \_\_\_\_\_\_\_\_\_%prime |
| **(E)** Total for all other MBE Firms  (Add percentages for firms listed as Other MBE Classification per Column 3 of the MBE Participation Schedule) | \_\_\_\_\_\_\_\_\_%subs  \_\_\_\_\_\_\_\_\_%prime | \_\_\_\_\_\_\_\_\_%subs  \_\_\_\_\_\_\_\_\_%prime |
| **Total MBE Firm Participation**  (Add total percentages determined for all MBE Firms in each column of the Worksheet) | **(F1)**\_\_\_\_\_\_\_\_\_\_% | **(F2)**\_\_\_\_\_\_\_\_\_\_% |

**MDOT MBE FORM B**

**STATE-FUNDED CONTRACTS**

**PART 2 – MBE PARTICIPATION SCHEDULE**

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

**Parts2 and 3 must be included with the bid/proposal. If the bidder/offeror fails to accurately complete and submit part 2 with the bid/proposal as required, the bid shall be deemed not responsive or the proposal shall be deemed not susceptible of being selected for award.**

|  |  |  |
| --- | --- | --- |
| **Prime Contractor** | **Project Description** | Solicitation Number |
|  |  |  |

**LIST INFORMATION FOR EACH CERTIFIED MBE PRIME OR MBE SUBCONTRACTOR YOU AGREE TO USE TO ACHIEVE THE MBE PARTICIPATION GOAL AND SUB-GOALS, IF ANY. NOTE INSTRUCTIONS IN EACH COLUMN.**

|  |  |  |
| --- | --- | --- |
| **COLUMN 1** | **COLUMN 2** | **COLUMN 3** Unless the bidder/offeror requested a waiver in MDOT MBE Form A – State Funded Contracts for this solicitation, the cumulative MBE participation for all MBE firms listed herein must equal at least the MBE participation goal and sub-goals (if applicable) set forth in Form A. |
| **NAME OF MBE PRIME OR MBE SUBCONTRACTOR**  **AND TIER** | **CERTIFICATION NO. AND MBE CLASSIFICATION** | FOR PURPOSES OF ACHIEVING THE MBE PARTICIPATION GOAL AND SUB-GOALS, refer to Sections 5 through 8 in Part 1 - Instructions. State the percentage amount of the products/services in Line 3.1, except for those products or services where the MBE firm is being used as a wholesaler, supplier, or regular dealer. For items of work where the MBE firm is being used as a supplier, wholesaler and/or regular dealer, complete Line 3.2 using the 60% Rule. For items of work where the MBE firm is the prime, complete Line 3.3. |
| **MBE Name:**    Check here if MBE firm is a subcontractor and complete in accordance with Sections 6, 7, & 8 of Part 1 - Instructions. If this box is checked, complete 3.1 or 3.2 in Column C, whichever is appropriate.  Check here if MBE firm is the prime contractor, including a participant in a joint venture, and self-performance is being counted pursuant to Section 5 of Part 1 - Instructions. If this box is checked, complete 3.3 in Column C.  Check here if MBE firm is a third-tier contractor (if applicable).  Please submit written documents in accordance with Section 6 of Part 1 - Instructions | **Certification Number:**    **(If dually certified, check only one box.)**  African American-Owned  Hispanic American- Owned  Asian American-Owned  Women-Owned  Other MBE Classification  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | 3.1. **TOTAL PERCENTAGE TO BE PAID TO THE SUBCONTRACTOR** (STATE THIS PERCENTAGE AS A PERCENTAGE OF THE TOTAL CONTRACT VALUE- EXCLUDING PRODUCTS/SERVICES FROM SUPPLIERS, WHOLESALERS OR REGULAR DEALERS).  **\_\_\_\_\_\_\_\_\_\_% (Percentage for purposes of calculating achievement of MBE Participation goal and sub-goals, if any)**  3.2 **TOTAL PERCENTAGE TO BE PAID TO THE SUBCONTRACTOR FOR ITEMS OF WORK WHERE THE MBE FIRM IS BEING USED AS A SUPPLIER, WHOLESALER AND/OR REGULAR DEALER)** (STATE THE PERCENTAGE AS A PERCENTAGE OF THE TOTAL CONTRACT VALUE AND THEN APPLY THE 60% RULE PER SECTION 7(E) IN PART 1 - INSTRUCTIONS).  \_\_\_\_\_\_\_\_\_\_\_\_\_% Total percentage of Supplies/Products  **x \_\_\_\_\_\_\_\_\_60% (60% Rule)**  **\_\_\_\_\_\_\_\_\_\_% (Percentage for purposes of calculating achievement of MBE Participation goal and sub-goals, if any)**  3.3. **TOTAL PERCENTAGE TO BE PAID TO MBE PRIME FOR WORK THAT CAN BE COUNTED AS MBE SELF-PERFORMANCE** (STATE THIS PERCENTAGE AS A PERCENTAGE OF THE TOTAL CONTRACT VALUE).  **(a) \_\_\_\_\_\_\_\_\_\_\_\_% Total percentage for self-performed items of work in which MBE is certified)**  **(b) \_\_\_\_\_\_\_\_\_\_\_\_% (Insert 50% of MBE overall goal)**  **(c) \_\_\_\_\_\_\_\_\_\_\_\_% (Insert subgoal for classification checked in Column 2, if applicable)**  **Percentages for purposes of calculating achievement of MBE Participation goals:**  **🡆 For MBE Overall goal – Use lesser of (a) or (b)**  **🡆 For MBE Subgoal – Use lesser of (a) or (c)**  **🡆 If MBE Prime is supplier, wholesaler and/or regular dealer, apply the 60% rule.** |

Check here if Continuation Sheets are attached.

**MDOT MBE FORM B**

**STATE-FUNDED CONTRACTS**

**PART 2 – MBE PARTICIPATION SCHEDULE**

**CONTINUATION SHEET**

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

|  |  |  |
| --- | --- | --- |
| **Prime Contractor** | **Project Description** | Solicitation Number |
|  |  |  |

**LIST INFORMATION FOR EACH CERTIFIED MBE PRIME OR MBE SUBCONTRACTOR YOU AGREE TO USE TO ACHIEVE THE MBE PARTICIPATION GOAL AND SUB-GOALS, IF ANY. NOTE INSTRUCTIONS IN EACH COLUMN.**

|  |  |  |
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| **COLUMN 1** | **COLUMN 2** | **COLUMN 3** Unless the bidder/offeror requested a waiver in MDOT MBE Form A – State Funded Contracts for this solicitation, the cumulative MBE participation for all MBE firms listed herein must equal at least the MBE participation goal and sub-goals (if applicable) set forth in Form A. |
| **NAME OF MBE PRIME OR MBE SUBCONTRACTOR**  **AND TIER** | **CERTIFICATION NO. AND MBE CLASSIFICATION** | FOR PURPOSES OF ACHIEVING THE MBE PARTICIPATION GOAL AND SUB-GOALS, refer to Sections 5 through 8 in Part 1 - Instructions. State the percentage amount of the products/services in Line 3.1, except for those products or services where the MBE firm is being used as a wholesaler, supplier, or regular dealer. For items of work where the MBE firm is being used as a supplier, wholesaler and/or regular dealer, complete Line 3.2 using the 60% Rule. For items of work where the MBE firm is the prime, complete Line 3.3. |
| **MBE Name:**    Check here if MBE firm is a subcontractor and complete in accordance with Sections 6, 7, & 8 of Part 1 - Instructions. If this box is checked, complete 3.1 or 3.2 in Column C, whichever is appropriate.  Check here if MBE firm is the prime contractor, including a participant in a joint venture, and self-performance is being counted pursuant to Section 5 of Part 1 - Instructions. If this box is checked, complete 3.3 in Column C.  Check here if MBE firm is a third-tier contractor (if applicable).  Please submit written documents in accordance with Section 6 of Part 1 - Instructions | **Certification Number:**    **(If dually certified, check only one box.)**  African American-Owned  Hispanic American- Owned  Asian American-Owned  Women-Owned  Other MBE Classification  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | 3.1. **TOTAL PERCENTAGE TO BE PAID TO THE SUBCONTRACTOR** (STATE THIS PERCENTAGE AS A PERCENTAGE OF THE TOTAL CONTRACT VALUE- EXCLUDING PRODUCTS/SERVICES FROM SUPPLIERS, WHOLESALERS OR REGULAR DEALERS).  **\_\_\_\_\_\_\_\_\_\_% (Percentage for purposes of calculating achievement of MBE Participation goal and sub-goals, if any)**  3.2 **TOTAL PERCENTAGE TO BE PAID TO THE SUBCONTRACTOR FOR ITEMS OF WORK WHERE THE MBE FIRM IS BEING USED AS A SUPPLIER, WHOLESALER AND/OR REGULAR DEALER)** (STATE THE PERCENTAGE AS A PERCENTAGE OF THE TOTAL CONTRACT VALUE AND THEN APPLY THE 60% RULE PER SECTION 7(E) IN PART 1 - INSTRUCTIONS).  \_\_\_\_\_\_\_\_\_\_\_\_\_% Total percentage of Supplies/Products  **x \_\_\_\_\_\_\_\_\_60% (60% Rule)**  **\_\_\_\_\_\_\_\_\_\_% (Percentage for purposes of calculating achievement of MBE Participation goal and sub-goals, if any)**  3.3. **TOTAL PERCENTAGE TO BE PAID TO MBE PRIME FOR WORK THAT CAN BE COUNTED AS MBE SELF-PERFORMANCE** (STATE THIS PERCENTAGE AS A PERCENTAGE OF THE TOTAL CONTRACT VALUE)..    **(a) \_\_\_\_\_\_\_\_\_\_\_\_% Total percentage for self-performed items of work in which MBE is certified)**  **(b) \_\_\_\_\_\_\_\_\_\_\_\_% (Insert 50% of MBE overall goal)**  **(c) \_\_\_\_\_\_\_\_\_\_\_\_% (Insert subgoal for classification checked in Column 2, if applicable)**  **Percentages for purposes of calculating achievement of MBE Participation goals:**  **🡆 For MBE Overall goal – Use lesser of (a) or (b)**  **🡆 For MBE Subgoal – Use lesser of (a) or (c)**  **🡆If MBE Prime is supplier, wholesaler and/or regular dealer, apply the 60% rule.** |

Check here if Continuation Sheets are attached.

**MDOT MBE FORM B**

**STATE-FUNDED CONTRACTS**

**part 3 – certification for mbe participation schedule**

**Parts 2 and 3 must be included with the bid/proposal**

**as directed in the invitation to bid/ request for proposals.**

I hereby affirm that I have reviewed the Products and Services Description (specific product that a firm is certified to provide or areas of work that a firm is certified to perform) set forth in the MDOT MBE Directory for each of the MBE firms listed in Part 2 of this MBE Form B for purposes of achieving the MBE participation goals and sub-goals that were identified in the MBE Form A that I submitted with this solicitation, and that the MBE firms listed are only performing those products/services/areas of work for which they are certified. I also hereby affirm that I have read and understand the form instructions set forth in Part 1 of this MBE Form B.

The undersigned Prime Contractor hereby certifies and agrees that they have 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 or 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 or proposal;

(2) fail to notify the certified minority business enterprise before execution of the contract of its inclusion of the bid or 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 or proposal.

I solemnly affirm under the penalties of perjury that the contents of Parts 2 and 3 of MDOT MBE Form B 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

**MDOT MBE FORM C**

**STATE-FUNDED CONTRACTS**

**OUTREACH EFFORTS COMPLIANCE STATEMENT**

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

1. Bidder/Offeror took the following efforts to identify 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 meeting/conference.

□ No pre-bid/pre-proposal meeting/conference was held.

□ Bidder/Offeror did not attend the pre-bid/pre-proposal meeting/conference.

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

Company Name Signature of Representative

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

Address Printed Name and Title

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

City, State and Zip Code Date

**MDOT MBE FORM D**

**STATE-FUNDED CONTRACTS**

**MBE SUBCONTRACTOR PROJECT PARTICIPATION AFFIDAVIT**

**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 or that the proposal is not susceptible of being selected for award. SUBMIT ONE FORM FOR EACH CERTIFIED MBE FIRM LISTED IN THE MBE PARTICIPATIOn schedule. bidders/offerors are highly encouraged to submit form D prior to the ten (10) day deadline.**

Provided that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Prime Contractor’s Name) is awarded the State contract in conjunction with Solicitation No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, such Prime Contractor will enter into a subcontract with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Subcontractor’s Name) committing to participation by the MBE firm \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (MBE Name) with MDOT Certification Number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (if subcontractor previously listed is also the MBE firm, please restate name and provide MBE Certification Number) which will receive at least $\_\_\_\_\_\_\_\_\_\_\_ or \_\_\_% (Total Subcontract Amount/ Percentage) for performing the following products/services for the Contract:

|  |  |  |
| --- | --- | --- |
| **NAICS CODE** | **WORK ITEM, SPECIFICATION NUMBER, LINE ITEMS OR WORK CATEGORIES (IF APPLICABLE)** | **DESCRIPTION OF SPECIFIC PRODUCTS AND/OR SERVICES** |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

I solemnly affirm under the penalties of perjury that the information provided in this MBE Subcontractor Project Participation Affidavit is true to the best of my knowledge, information and belief. I acknowledge 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.

|  |  |  |
| --- | --- | --- |
| **PRIME CONTRACTOR**  Signature of Representative:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Printed Name and Title:\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Firm’s Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Federal Identification Number: \_\_\_\_\_\_\_\_\_\_  Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Telephone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **SUBCONTRACTOR (SECOND-TIER)**  Signature of Representative:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Printed Name and Title:\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Firm’s Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Federal Identification Number: \_\_\_\_\_\_\_\_\_\_  Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Telephone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **SUBCONTRACTOR (THIRD-TIER)**  Signature of Representative:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Printed Name and Title:\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Firm’s Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Federal Identification Number: \_\_\_\_\_\_\_\_\_\_  Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Telephone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**IF MBE FIRM IS A THIRD-TIER SUBCONTRACTOR, THIS FORM MUST ALSO BE EXECUTED BY THE SECOND-TIER SUBCONTRACTOR THAT HAS THE SUBCONTRACT AGREEMENT WITH THE MBE FIRM.**

**Attachment D-5**

**Maryland Department of Information Technology**

This form is to be completed monthly by the prime contractor.

**Minority Business Enterprise Participation**

**Prime Contractor Paid/Unpaid MBE Invoice Report**

|  |  |
| --- | --- |
| Report #: \_\_\_\_\_\_\_\_  Reporting Period (Month/Year): \_\_\_\_\_\_\_\_\_\_\_\_\_  **Report is due to the MBE Officer by the 10th of the month following the month the services were provided.**  **Note: Please number reports in sequence** | Contract #: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Contracting Unit: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Contract Amount: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  MBE Subcontract Amt: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Project Begin Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Project End Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Services Provided: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Prime Contractor: | | | | Contact Person: | |
| Address: | | | | | |
| City: | | | State: | | ZIP: |
| Phone: | FAX: Email: | | | | |
| Subcontractor Name: | | | | Contact Person: | |
| Phone: | FAX: | | | | |
| Subcontractor Services Provided: | | | | | |
| **List all payments made to MBE subcontractor named above**  **during this reporting period:**  **Invoice# Amount**  **1.**  **2.**  **3.**  **4.**  **Total Dollars Paid: $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | | **List dates and amounts of any outstanding invoices:**  **Invoice # Amount**  **1.**  **2.**  **3.**  **4.**  **Total Dollars Unpaid: $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | | | |

\*\*If more than one MBE subcontractor is used for this contract, you must use separate D-5 forms.

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

|  |  |
| --- | --- |
| (TO MANAGER OF APPLICABLE POC NAME, TITLE)  (AGENCY NAME)  (ADDRESS, ROOM NUMBER)  (CITY, STATE ZIP)  (EMAIL ADDRESS) | (TO PROCUREMENT OFFICER OR APPLICABLE POC NAME, TITLE)  (AGENCY NAME)  (ADDRESS, ROOM NUMBER)  (CITY, STATE ZIP)  (EMAIL ADDRESS) |

**ATTACHMENT D-6**

**Minority Business Enterprise Participation**

This form must be completed by MBE subcontractor

**Subcontractor Paid/Unpaid MBE Invoice Report**

|  |  |
| --- | --- |
| Report#: \_\_\_\_  Reporting Period (Month/Year): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  **Report is due by the 10th of the month following the month the services were performed.** | Contract #  Contracting Unit:  MBE Subcontract Amount:  Project Begin Date:  Project End Date:  Services Provided: |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| MBE Subcontractor Name: | | | | |
| MDOT Certification #: | | | | |
| Contact Person: Email: | | | | |
| Address: | | | | |
| City: Baltimore | | | State: | ZIP: |
| Phone: | FAX: | | | |
| **Subcontractor Services Provided:** | | | | |
| **List all payments received from Prime Contractor during reporting period indicated above.**  **Invoice Amt Date**  **1.**  **2.**  **3.**  **Total Dollars Paid: $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | | **List dates and amounts of any unpaid invoices over 30 days old.**  **Invoice Amt Date**  **1.**  **2.**  **3.**  **Total Dollars Unpaid: $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | | |
| Prime Contractor: Contact Person: | | | | |

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

|  |  |
| --- | --- |
| (TO MANAGER OF APPLICABLE POC NAME, TITLE)  (AGENCY NAME)  (ADDRESS, ROOM NUMBER)  (CITY, STATE ZIP)  (EMAIL ADDRESS) | (TO PROCUREMENT OFFICER OR APPLICABLE POC NAME, TITLE)  (AGENCY NAME)  (ADDRESS, ROOM NUMBER)  (CITY, STATE ZIP)  (EMAIL ADDRESS) |

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

(Required)

**ATTACHMENT 2 - MDOT MBE/DBE FORM E**

**GOOD FAITH EFFORTS GUIDANCE AND DOCUMENTATION**

**Part 1 – Guidance for Demonstrating Good Faith Efforts to Meet MBE/DBE Participation Goals**

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

**I. Definitions**

**MBE/DBE Goal(s) –** “MBE/DBE Goal(s)” refers to the MBE participation goal and MBE participation sub-goal(s) on a State-funded procurement and the DBE participation goal on a federally-funded procurement.

**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/DBE Goal(s), which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient MBE/DBE 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 DBE participation sufficient to meet the DBE contract goal. Mere *pro forma* efforts are not good faith efforts to meet the DBE 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 DBEs identified by the procuring agency during the goal setting process and listed in the federally-funded procurement as available to perform the Identified Items of Work. It also may include additional DBEs identified by the bidder/offeror as available to perform the Identified Items of Work, such as DBEs certified or granted an expansion of services after the procurement was issued. If the procurement does not include a list of Identified Firms or is a State-funded procurement, this term refers to all of the MBE Firms (if State-funded) or DBE Firms (if federally-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/DBE Firms. It also may include additional portions of items of work the bidder/offeror identified for performance by MBE/DBE Firms to increase the likelihood that the MBE/DBE 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/DBE Firms and should include all reasonably identifiable work opportunities.

**MBE/DBE Firms –** For State-funded contracts, “MBE/DBE Firms” refers to certified **MBE** Firms. Certified MBE Firms can participate in the State’s MBE Program. For federally-funded contracts, “MBE/DBE Firms” refers to certified **DBE** Firms. Certified DBE Firms can participate in the federal DBE Program.

**II. Types of Actions MDOT will Consider**

The bidder/offeror is responsible for making relevant portions of the work available to MBE/DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available MBE/DBE subcontractors and suppliers, so as to facilitate MBE/DBE participation. The following is a list of types of actions MDOT will consider as part of the bidder's/offeror’s Good Faith Efforts when the bidder/offeror fails to meet the MBE/DBE 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/DBE 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/DBE 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 or DBE Firms, whichever is appropriate, to perform that work.

(b) Bidders/Offerors may, and are encouraged to, select additional items of work to be performed by MBE/DBE Firms to increase the likelihood that the MBEDBE 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, bidders/offerors should reasonably identify sufficient items of work to be performed by MBE/DBE Firms.

(b) Where appropriate, bidders/offerors should break out contract work items into economically feasible units to facilitate MBE/DBE 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 or DBE Firms to Solicit**

1. DBE Firms Identified in Procurements

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

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

2. MBE/DBE Firms Identified by Bidders/Offerors

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

(b) Any MBE/DBE Firms identified as available by the bidder/offeror should be certified in the appropriate program (MBE for State-funded procurements or DBE for federally-funded procurements)

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

**C. Solicit MBE/DBEs**

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/DBE Firms to respond;

(b) send the written solicitation by first-class mail, facsimile, or email using contact information in the MBE/DBE 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/DBE, and other requirements of the contract to assist MBE/DBE 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 DBEs listed in the procurement and any MBE/DBE Firms you identify as potentially available to perform the Identified Items of Work, but it does not include MBE/DBE 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/DBE cannot access the information provided by electronic means, the bidder/offeror must make the information available in a manner that is accessible by the interested MBE/DBE.

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

(a) by telephone using the contact information in the MBE/DBE 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/DBE Firms certified to perform the work of the contract. Examples of other means include:

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

(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; and

(c) effectively using the services of other organizations, as allowed on a case-by-case basis and authorized in the procurement, to provide assistance in the recruitment and placement of MBE/DBE Firms.

**D. Negotiate With Interested MBE/DBE Firms**

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

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

(a) the names, addresses, and telephone numbers of MBE/DBE 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/DBE Firms to perform the work.

2. A bidder/offeror using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE 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/DBE Firms is not in itself sufficient reason for a bidder's/offeror’s failure to meet the contract DBE goal, as long as such costs are reasonable. Factors to take into consideration when determining whether a MBE/DBE Firm’s quote is excessive or unreasonable include, without limitation, the following:

(a) the dollar difference between the MBE/DBE subcontractor’s quote and the average of the other subcontractors’ quotes received by the bidder/offeror;

(b) the percentage difference between the MBE/DBE subcontractor’s quote and the average of the other subcontractors’ quotes received by the bidder/offeror;

(c) the percentage that the DBE subcontractor’s quote represents of the overall contract amount;

(d) the number of MBE/DBE firms that the bidder/offeror solicited for that portion of the work;

(e) whether the work described in the MBE/DBE and Non-MBE/DBE 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/DBE 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, except that there should be quotes from at least three subcontractors, and there must be at least one quote from a MBE/DBE and one quote from a Non-MBE/DBE.

7. A bidder/offeror shall not reject a MBE/DBE Firm as unqualified without sound reasons based on a thorough investigation of the firm’s capabilities. For each certified MBE/DBE 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/DBE and Non-MBE/DBE Firms quoting similar work.

(a) The factors to take into consideration when assessing the capabilities of a MBE/DBE 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/DBE 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/DBE Firms**

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

1. made reasonable efforts to assist interested MBE/DBE Firms in obtaining the bonding, lines of credit, or insurance required by MDOT or the bidder/offeror; and

2. made reasonable efforts to assist interested MBE/DBE 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/DBE 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/DBE and Non-MBE/DBE 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/DBE 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/DBE 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 Form E, Part 2)**

A detailed statement of the efforts made to select portions of the work proposed to be performed by certified MBE/DBE Firms in order to increase the likelihood of achieving the stated MBE/DBE 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) through (e) and 49 C.F.R. Part 26, Appendix A. **(Complete Outreach Efforts Compliance Statement)**

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

(a) the names, addresses, and telephone numbers of the MBE/DBE Firms who were contacted, with the dates and manner of contacts (letter, fax, email, telephone, etc.) **(Complete Good Faith Efforts Form E, Part 3, and submit letters, fax cover sheets, emails, etc. documenting solicitations)**; and

(b) a description of the information provided to MBE/DBE 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/DBE Firms (Complete Good Faith Efforts Form E, Part 4)**

1. For each MBE/DBE 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/DBE and Non-MBE/DBE Firms quoting similar work.

2. For each certified MBE/DBE 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/DBE and Non-MBE/DBE firms bidding on the same or comparable work. **(Include copies of all quotes received.)**

3. A list of MBE/DBE Firms contacted but found to be unavailable. This list should be accompanied by a Minority Contractor Unavailability Certificate signed by the MBE/DBE contractor or a statement from the bidder/offeror that the MBE/DBE contractor refused to sign the Minority Contractor 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.

**ATTACHMENT 2 - MDOT MBE/DBE FORM E**

**GOOD FAITH EFFORTS GUIDANCE AND DOCUMENTATION**

**Part 2 – Certification Regarding Goof Faith Efforts and Documentation**

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

|  |  |  |
| --- | --- | --- |
| **Prime Contractor** | **Project Description** | **Solicitation Number** |
|  |  |  |

**Parts3, 4, and 5 must be included with this certificate along with all documents supporting your waiver request.**

I hereby request a waiver of (1) the Minority Business Enterprise (MBE) participation goal and/or subgoal(s), (2) the Disadvantaged Business Enterprise (DBE) participation goal, or (3) a portion of the pertinent MBE/DBE participation goal and/or MBE subgoal(s) for this procurement.[[1]](#footnote-2) I affirm that I have reviewed the Good Faith Efforts Guidance MBE/DBE Form E. I further affirm under penalties of perjury that the contents of Parts 3, 4, and 5 of MDOT MBE/DBE Form E 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

**MDOT MBE/DBE FORM E**

**GOOD FAITH EFFORTS GUIDANCE AND DOCUMENTATION**

**Part 3 – Identified Items of Work Bidder/Offeror Made Available to MBE/DBE Firms**

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

|  |  |  |
| --- | --- | --- |
| **Prime Contractor** | **Project Description** | **Solicitation Number** |
|  |  |  |

Identify those items of work that the bidder/offeror made available to MBE/DBE Firms. This includes, where appropriate, those items the bidder/offeror identified and determined to subdivide into economically feasible units to facilitate the MBE/DBE 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/DBE Firms, and the total percentage of the items of work identified for MBE/DBE participation equals or exceeds the percentage MBE/DBE 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/DBE Firms, the bidder/offeror should make all of those items of work available to MBE/DBE Firms or explain why that item was not made available. If the bidder/offeror selects additional items of work to make available to MBE/DBE 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/DBE Firms?**  **If no, explain why?** |
|  | □ Yes □ No | □ Yes □ No | □ Yes □ No |
|  | □ Yes □ No | □ Yes □ No | □ Yes □ No |
|  | □ Yes □ No | □ Yes □ No | □ Yes □ No |
|  | □ Yes □ No | □ Yes □ No | □ Yes □ No |
|  | □ Yes □ No | □ Yes □ No | □ Yes □ No |
|  | □ Yes □ No | □ Yes □ No | □ Yes □ No |
|  | □ Yes □ No | □ Yes □ No | □ Yes □ No |
|  | □ Yes □ No | □ Yes □ No | □ Yes □ No |

Please check if Additional Sheets are attached.

**MDOT MBE/DBE FORM E**

**GOOD FAITH EFFORTS GUIDANCE AND DOCUMENTATION**

**Part 4 – Identified MBE/DBE Firms and Record of Solicitations**

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

|  |  |  |
| --- | --- | --- |
| **Prime Contractor** | **Project Description** | **Solicitation Number** |
|  |  |  |

Identify the MBE/DBE Firms solicited to provide quotes for the Identified Items of Work made available for MBE/DBE participation. Include the name of the MBE/DBE Firm solicited, items of work for which bids/quotes were solicited, date and manner of initial and follow-up solicitations, whether the MBE/DBE provided a quote, and whether the MBE/DBE is being used to meet the MBE/DBE participation goal. MBE/DBE Firms used to meet the participation goal must be included on the MBE/DBE Participation Schedule, Form B. Note: If the procurement includes a list of the MBE/DBE 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/DBE Firms or explain why a specific MBE/DBE was not solicited. If the bidder/offeror identifies additional MBE/DBE Firms who may be available to perform Identified Items of Work, those additional MBE/DBE Firms should also be included below. Copies of all written solicitations and documentation of follow-up calls to MBE/DBE Firms must be attached to this form. If the bidder/offeror used a Non-MBE/DBE or is self-performing the identified items of work, Part 4 must be completed.

| **Name of**  **Identified MBE/DBE 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** |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Firm Name:**  **MBE Classification**  **(Check only if requesting waiver of MBE subgoal.)**  African American-Owned  Hispanic American- Owned  Asian American-Owned  Women-Owned  Other MBE Classification  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |  | Date:  □ Mail  □ Facsimile  □ Email | Date:  □ Phone  □ Mail  □ Facsimile  □ Email | Time of Call:  Spoke With:  □ Left Message | □ Yes □ No | □ Yes □ No | □ Used Other MBE/DBE  □ Used Non-MBE/DBE  □ Self-performing |
| **Firm Name:**  **MBE Classification**  **(Check only if requesting waiver of MBE subgoal.)**  African American-Owned  Hispanic American- Owned  Asian American-Owned  Women-Owned  Other MBE Classification  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |  | Date:  □ Mail  □ Facsimile  □ Email | Date:  □ Phone  □ Mail  □ Facsimile  □ Email | Time of Call:  Spoke With:  □ Left Message | □ Yes □ No | □ Yes □ No | □ Used Other MBE/DBE  □ Used Non-MBE/DBE  □ Self-performing |

Please check if Additional Sheets are attached.

**MDOT MBE/DBE FORM E**

**GOOD FAITH EFFORTS GUIDANCE AND DOCUMENTATION**

**Part 5 – Additional Information Regarding Rejected MBE/DBE Quotes**

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

|  |  |  |
| --- | --- | --- |
| **Prime Contractor** | **Project Description** | **Solicitation Number** |
|  |  |  |

This form must be completed if Part 3 indicates that a MBE/DBE quote was rejected because the bidder/offeror is using a Non-MBE/DBE 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/DBE, and if applicable, state the name of the Non-MBE/DBE. Also include the names of all MBE/DBE and Non-MBE/DBE Firms that provided a quote and the amount of each quote.

| **Describe Identified Items of Work Not Being Performed by MBE/DBE**  **(Include spec/section number from bid)** | **Self-performing or Using Non-MBE/DBE (Provide name)** | **Amount of**  **Non-MBE/DBE Quote** | **Name of Other Firms who Provided Quotes &**  **Whether MBE/DBE or Non-MBE/DBE** | **Amount Quoted** | **Indicate Reason Why MBE/DBE Quote Rejected & Briefly Explain** |
| --- | --- | --- | --- | --- | --- |
|  | □ Self-performing  □ Using Non-MBE/DBE  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | $\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  □ MBE/DBE  □ Non-MBE/DBE | $\_\_\_\_\_\_\_\_\_ | □ Price  □ Capabilities  □ Other |
|  | □ Self-performing  □ Using Non-MBE/DBE  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | $\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  □ MBE/DBE  □ Non- MBE/DBE | $\_\_\_\_\_\_\_\_\_ | □ Price  □ Capabilities  □ Other |
|  | □ Self-performing  □ Using Non-MBE/DBE  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | $\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  □ MBE/DBE  □ Non- MBE/DBE | $\_\_\_\_\_\_\_\_\_ | □ Price  □ Capabilities  □ Other |
|  | □ Self-performing  □ Using Non- MBE/DBE  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | $\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  □ MBE/DBE  □ Non- MBE/DBE | $\_\_\_\_\_\_\_\_\_ | □ Price  □ Capabilities  □ Other |
|  | □ Self-performing  □ Using Non- MBE/DBE  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | $\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  □ MBE/DBE  □ Non- MBE/DBE | $\_\_\_\_\_\_\_\_\_ | □ Price  □ Capabilities  □ Other |
|  | □ Self-performing  □ Using Non- MBE/DBE  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | $\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  □ MBE/DBE  □ Non- MBE/DBE | $\_\_\_\_\_\_\_\_\_ | □ Price  □ Capabilities  □ Other |

Please check if Additional Sheets are attached.

1. MBE participation goals and sub-goals apply to State-funded procurements. DBE participation goals apply to federally-funded procurements. Federally-funded contracts do not have sub-goals.

   [↑](#footnote-ref-2)