

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

**I. PURPOSE**

The Contractor shall structure its procedures for the performance of the work required in this Contract to attempt to achieve the Minority Business Enterprise (MBE) goal stated in the Request for Proposal. MBE performance must be in accordance with this Exhibit. Contractor agrees to exercise all good faith efforts to carry out the requirements set forth in this Exhibit.

**II. MBE GOALS AND SUBGOALS**

An MBE Subcontract participation goal of **25%** of the total Contract dollar amount has been established for this procurement. By submitting a response to this solicitation, the Offeror agrees that this percentage of the total dollar amount of the Contract will be performed by minority business enterprises.

By submitting a response to this solicitation, the Offeror agrees that these percentages of the total dollar amount of the Contract will be performed by minority business enterprises as specified.

An **MBE Prime Contractor** may accomplish 100% the required MBE goal. A prime Contractor utilizing MBE partner(s) will accomplish the MBE Subcontract goal with preferably certified and local MBE Subcontractors.

**III. TECHNICAL PROPOSAL REQUIREMENTS**

An Offeror **must** include the following MBE Forms with its TECHNICAL PROPOSAL:

1. A completed *MBE Utilization Affidavit (see ATTACHMENT E1)* whereby the Offeror acknowledges the MBE participation goal or requests a waiver, commits to make a good faith effort to achieve the goal, and affirms that MBE Subcontractors were treated fairly in the solicitation process.

2. **MBE Participation Schedule (see ATTACHMENT E2)** whereby the Offeror responds to the expected degree of Minority Business Enterprise participation as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of submission of the Price Proposal. The Offeror shall specify the percentage of the Contract value or dollar amount and the items of work associated with each MBE. Subcontractor identified on the MBE Participation Schedule.

***If an Offeror fails to submit the MBE Utilization Affidavit with the offer as required, the Procurement Officer may deem the offer is not reasonably susceptible of being selected for award.***

#### **IV. NOTICE OF CONTRACT AWARD**

Within ten (10) working days (unless modified by the College) from notification that it is the apparent awardee or from the date of the actual award, whichever is earlier, the apparent awardee must provide the following documentation to the Purchasing Manager.

- A. Outreach Efforts Compliance Statement (**ATTACHMENT E3**)
- B. Subcontractor Project Participation Statement (**ATTACHMENT E4**)
- C. If the apparent awardee believes a waiver (in whole or in part) of the overall MBE goal or of any sub goal is necessary, it must submit a fully documented waiver request that complies with the provisions in this solicitation.
- D. Any other documentation required by the Procurement Officer to ascertain bidder or offeror responsibility in connection with the MBE participation goal.

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

## V. CONTRACT ADMINISTRATION REQUIREMENTS

- A. The Contractor shall submit monthly (unless otherwise modified by the Procurement Officer) to the Procurement Officer, hereafter referred to as “Department” or the College’s third-party designee a report listing any unpaid invoices, over thirty (30) days old, received from any certified MBE Subcontractor, the amount of each invoice and the reason payment has not been made.
- B. The Contractor shall include in its agreements with its MBE Subcontractors a requirement that those Subcontractors submit monthly to the Department a report that identifies the prime Contract and lists all payments received from Contractor in the preceding thirty (30) days (unless otherwise modified by the Procurement Officer), as well as any outstanding invoices, and the amount of those invoices.
- C. The Contractor shall maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of minority and non-minority Subcontractors employed on the Contract, the type of work performed by each, and the actual dollar value of work performed. Subcontract agreements documenting the work performed by all MBE participants must be retained by the Contractor and furnished to the Procurement Officer or designee on request.
- D. The Contractor shall consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the College’s representatives verifying compliance with the MBE participation obligations. Contractor must retain all records concerning MBE participation and make them available for State inspection for three years after final completion of the Contract.
- E. The Contractor shall submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE Subcontractors. At the option of the College, upon completion of the Contract and before final payment and/or release of retainage.

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**ADDITIONAL PROVISIONS**

The College reserves its right to change and modify any and all MBE provisions, at any time, at its sole discretion.

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

MBE 2. Waiver.

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

- (a) A detailed statement of the efforts made to select portions of the work proposed to be performed by MBEs in order to increase the likelihood of achieving the stated goal;
- (b) A detailed statement of the efforts made to contact and negotiate with certified MBEs, including:
  - (1) The names, addresses, dates and telephone numbers of MBEs contacted, and;
  - (2) A description of the information provided to MBEs regarding the specifications, and anticipated time schedule for portions of the work to be performed;

- (c) As to each MBE that had placed a Subcontract quotation or offer which the successful bidder/Contractor considers not to be acceptable, a detailed statement of the reasons for this conclusion; and
- (d) A list of minority Subcontractors found to be unavailable. This list may include a statement from the apparent successful bidder/Contractor that the minority business refused to give the required documentation, or documentation proving reasonable outreach and verification from the MBEs.

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

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

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

MBE 4. Compliance.

MBE 4.1. To assure compliance with certified MBE Subcontract requirements, the College may require the Contractor to furnish documentation that include, but not limited to **ATTACHMENTS E5** and **E6**.

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

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

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

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

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

#### MBE 4.4 Liquidated Damages.

Liquidated damages may include but are not limited to:

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

#### MBE 4.5 Other Provisions

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