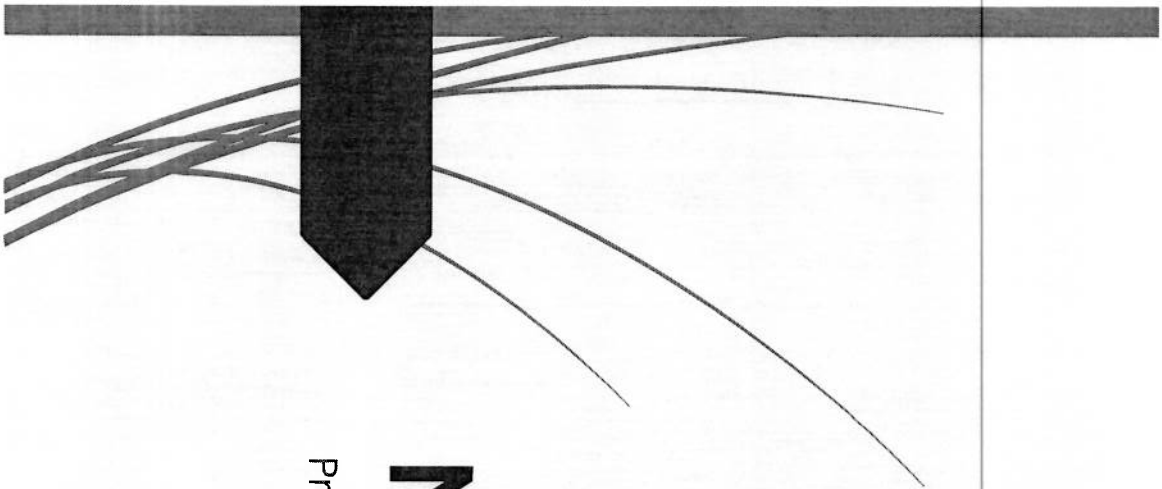


APPENDIX B



New 60% Rule

Presented by GOSBA at 11/16/17 SPAG Meeting



Chapter 438, Laws of Maryland 2017 (SB309), Section 2

- ▶ Effective October 1, 2017
- ▶ Based on Federal Disadvantaged Business Enterprise (DBE) rules regarding counting supplies



Counting MBE Suppliers –How?

MBE Suppliers Crediting Classifications =

- 1.MBE Manufacturers
- 2.Furnish & Install
- 3.MBE Regular Dealers
- 4.MBE Brokers (not a manufacturer or regular dealer)



MANUFACTURERS

- ▶ If the materials or supplies are obtained from a MBE certified in the appropriate NAICS code(s) to provide products and services as a **manufacturer**, count 100 percent of the cost of the material or supplies toward MBE goals.



FURNISH & INSTALL

- ▶ If a vendor is a certified MBE supplier, wholesaler, and/or Regular Dealer certified in the proper NAICS code(s) is a manufacturer or wholesale merchant to **furnishes supplies and install materials** necessary for successful Contract completion, count 100 percent of the cost of the material, supplies and labor toward MBE goals.



Regular Dealer

- ▶ A regular dealer is defined in the statute as: a firm that owns, operates, or maintains a store, a warehouse, or other establishment in which the materials, supplies, articles, or equipment are of the general character described by the specifications required under the Contract 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.
- ▶ If the materials or supplies are purchased from an **MBE Regular Dealer**, count 60 percent of the material or supplies toward MBE goals.



Broker

- ➤ For materials or supplies purchased from a certified MBE that is neither a manufacturer nor a Regular Dealer, but rather a **broker**, count the entire amount of fees or commissions charged for assistance in the procurement of the material and supplies, fees, transportation charges for the delivery of materials and supplies required on a procurement, towards the MBE Contract goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward MBE goals.



Summary

- Supplies from MBE **manufacturer** = **Count 100%** of cost of materials towards project MBE goal
- Supplies from MBE manufacturer or Regular Dealer that **furnishes and installs** = **Count 100%** of cost of materials towards project MBE goal
- Supplies from MBE **Regular Dealer** = **Count 60%** of cost of materials towards project MBE goal
- Supplies from MBE **broker** = **Count only the fee or commission** the broker charges for the procurement counts towards the project MBE goal if you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services

**CERTIFIED MINORITY BUSINESS ENTERPRISE
UTILIZATION AND FAIR SOLICITATION AFFIDAVIT**

NOTE: You must include this document with your bid or offer. If you do not submit the form with your bid or offer, the procurement officer shall deem your bid non-responsive or your offer not reasonably susceptible of being selected for award.

* * * * *

Part I.

I acknowledge the:

- Overall certified MBE subcontract participation goal of ____ %.
- The subgoals, if applicable, of:
 - ____ % for certified African American-owned businesses and
 - ____ % for certified Women-owned businesses.

I have made a good-faith effort to achieve this goal. If awarded the contract, I will continue to attempt to increase MBE participation during the project.

Part II.

Check ONE Box

NOTE: FAILURE TO CHECK ONE OF BOXES 1, 2, or 3 BELOW WILL RENDER A BID NON-RESPONSIVE OR AN OFFER NOT REASONABLY SUSCEPTIBLE OF BEING SELECTED FOR AWARD

NOTE: INCONSISTENCY BETWEEN THE ASSERTIONS ON THIS FORM AND THE INFORMATION PROVIDED ON THE *MBE PARTICIPATION SCHEDULE* (ATTACHMENT B) MAY RENDER A BID NON-RESPONSIVE OR AN OFFER NOT REASONABLY SUSCEPTIBLE OF BEING SELECTED FOR AWARD

- 1 I have met the overall MBE goal and MBE subgoals for this project. I submit with this Affidavit [Attachment A] the *MBE Participation Schedule* [Attachment B], which details how I will reach that goal.
- or**
- 2 After having made a good-faith effort to achieve the overall MBE goal and MBE subgoals for this project, I can achieve partial success only. I submit with this Affidavit [Attachment A] the *MBE Participation Schedule* [Attachment B], which details the MBE participation I have achieved.

I request a partial waiver as follows:

- Waiver of overall MBE subcontract participation goal: ____ %
- Waiver of MBE subcontract participation subgoals, if applicable:
 - ____ % for certified African American-owned businesses and
 - ____ % for certified Women-owned businesses.

Within 10 working days of being informed that I am the apparent awardee, I will submit *MBE Waiver Documentation* [Attachment F] (with supporting documentation).

or

- 3 After having made a good faith effort to achieve the overall MBE goal and MBE subgoals for this project, I am unable to achieve any portion of the goal or subgoals. I submit with this Affidavit [Attachment A] the *MBE Participation Schedule* [Attachment B].

I request a full waiver.

Within 10 working days of being informed that I am the apparent awardee, I will submit *MBE Waiver Documentation* [Attachment F] (with supporting documentation).

Part III.

I understand that if I am the apparent awardee or conditional awardee, I must submit **within 10 working days** after receiving notice of the potential award or within 10 days after the date of conditional award – whichever is earlier – the:

- *Outreach Efforts Compliance Statement* (Attachment C)
- *Subcontractor Project Participation Statement* (Attachment D)
- *Minority Subcontractors Unavailability Certificate* (Attachment E) (if applicable)
- Any other documentation the Procurement Officer requires to ascertain my responsibility in connection with the MBE participation goal and subgoals

I acknowledge that if I fail to timely return complete documents, the Procurement Officer may determine that I am not responsible and therefore not eligible for contract award. If the contract has been awarded, the award is voidable.

I acknowledge that the MBE subcontractors/suppliers listed in the *MBE Participation Schedule* and any additional MBE subcontractor/suppliers identified in the *Subcontractor Project Participation Statement* will be used to accomplish the percentage of MBE participation that I intend to achieve.

In the solicitation of subcontract quotations or offers, MBE subcontractors were provided the same information and amount of time to respond as were non-MBE subcontractors.

The solicitation process was conducted in such a manner so as to not place MBE subcontractors at a competitive disadvantage to non-MBE subcontractors.

I solemnly affirm under the penalties of perjury that this Affidavit is true to the best of my knowledge, information, and belief.

Bidder/Offeror Name

Address

Address (continued)

Affiant Signature

Printed Name & Title

Date

July 11, 2011

**ATTACHMENT B
MBE PARTICIPATION SCHEDULE**

REVISED

This document must be included with the bid or offer. If the bidder or offeror fails to submit this form with the bid or offer as required, the procurement officer shall deem the bid non-responsive or shall determine that the offer is not reasonably susceptible of being selected for award.

| | | | | |
|---|---------------------------------------|--|------------------------------------|-----------------------------|
| 1. Prime Contractor's Name | | 2. LEA and PSC No. | | |
| 3. Project/School Name | | 4. Project/School Location | | |
| 5. Prime Contractor's Address/Telephone Number/Email | | 6. Base Bid Amount | \$ _____ | |
| | | Acceptance Alternates | \$ _____ | |
| | | Total | \$ _____ | |
| 7a. Minority Firm Name: _____ | | Telephone Number: _____ | | |
| Minority Firm Address: _____ | | NAICS Code: _____ | | |
| MDOT Firm Certification Number: _____ | | | | |
| <input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Women <input type="checkbox"/> Hispanic <input type="checkbox"/> Disabled | | | | |
| <i>Subcontractor Firm (Select One)</i> | <i>Allowable Percentage</i> | <i>Percentage of Total Contract</i> | <i>Subcontractor Dollar Amount</i> | <i>Participation Amount</i> |
| MDOT Certified Firm | 100% | | \$ _____ | \$ _____ |
| MDOT Certified Prime Contractor | 50% of established goal OR | | \$ _____ | \$ _____ |
| | 100% of one subgroup contract subgoal | | | |
| MDOT Certified Supplier, Wholesaler and Regular Dealer | 60% | | \$ _____ | \$ _____ |
| 7b. Minority Firm Name: _____ | | Telephone Number: _____ | | |
| Minority Firm Address: _____ | | NAICS Code: _____ | | |
| MDOT Firm Certification Number: _____ | | | | |
| <input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Women <input type="checkbox"/> Hispanic <input type="checkbox"/> Disabled | | | | |
| <i>Subcontractor Firm (Select One)</i> | <i>Allowable Percentage</i> | <i>Percentage of Total Contract</i> | <i>Subcontractor Dollar Amount</i> | <i>Participation Amount</i> |
| MDOT Certified Firm | 100% | | \$ _____ | \$ _____ |
| MDOT Certified Prime Contractor | 50% of established goal OR | | \$ _____ | \$ _____ |
| | 100% of one subgroup contract subgoal | | | |
| MDOT Certified Supplier, Wholesaler and Regular Dealer | 60% | | \$ _____ | \$ _____ |
| 7c. Minority Firm Name: _____ | | Telephone Number: _____ | | |
| Minority Firm Address: _____ | | NAICS Code: _____ | | |
| MDOT Firm Certification Number: _____ | | | | |
| <input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Women <input type="checkbox"/> Hispanic <input type="checkbox"/> Disabled | | | | |
| <i>Subcontractor Firm (Select One)</i> | <i>Allowable Percentage</i> | <i>Percentage of Total Contract</i> | <i>Subcontractor Dollar Amount</i> | <i>Participation Amount</i> |
| MDOT Certified Firm | 100% | | \$ _____ | \$ _____ |
| MDOT Certified Prime Contractor | 50% of established goal OR | | \$ _____ | \$ _____ |
| | 100% of one subgroup contract subgoal | | | |
| MDOT Certified Supplier, Wholesaler and Regular Dealer | 60% | | \$ _____ | \$ _____ |
| 8. MBE Total Participation Amount | | 9. Total MBE Percent of Entire Contract | | |
| 10. Form Prepared by: | | 11. Reviewed and Accepted by Board of Edu. MBE Liaison | | |
| Name: _____ | | Name: _____ | | |
| Title: _____ | | Title: _____ | | |
| Date: _____ | | Date: _____ | | |

| | | |
|---------------------------------------|----------|---------|
| Total MBE Participation: | \$ _____ | _____ % |
| Total African-American Participation: | \$ _____ | _____ % |
| Total Women-Owned MBE Participation: | \$ _____ | _____ % |
| Total Other Participation: | \$ _____ | _____ % |

October 1, 2017

Outreach Efforts Compliance Statement

****Complete and submit this form within 10 business days of notification of apparent award

In conjunction with the bid or offer submitted in response to the solicitation for <<project name>> / <<Solicitation No.>>, I affirm the following:

1. Bidder/Offeror identified opportunities to subcontract in these specific work categories (extend list as needed):
 - a. _____
 - b. _____
 - c. _____
 - d. _____
 - e. _____
 - f. _____
2. Attached to this form are copies of written solicitations (with bidding instructions) used to solicit certified MBEs for these subcontract opportunities.
3. Bidder/Offeror made the following attempts to contact personally the solicited certified MBEs (extend list as needed):
 - a. _____
 - b. _____
 - c. _____
4. Select ONE of the following:
 - a. This contract does not involve bonding requirements.

OR

 - b. Bidder/Offeror assisted certified MBEs to fulfill or seek waiver of bonding requirements (*describe efforts*).
5. Select ONE of the following:
 - a. Bidder/Offeror did/did not attend the pre-bid/proposal conference.

OR

 - b. No pre-bid/proposal conference was held.

Bidder/Offeror Printed Name

By: _____
Signature: _____
Title: _____
Date: _____

Address: _____

Attachment D

MINORITY BUSINESS ENTERPRISES SUBCONTRACTOR PROJECT PARTICIPATION STATEMENT

PROJECT/ SCHOOL NAME: _____

PROJECT/ SCHOOL LOCATION: _____

LEA: _____

NAME OF PRIME CONTRACTOR: _____

NAME OF MBE SUBCONTRACTOR: _____

MDOT Certification Number

NAICS Code

1. Work/Services to be performed by MBE Subcontractor: _____

2. Subcontract Amount: \$ _____ Participation Amount \$ _____

3. Bonds - Amount and type required of Subcontractor if any: _____

4. MBE Anticipated or Actual Commencement Date: _____ Completion Date: _____

5. This MBE subcontract represents the following percentage of the total contract cost: _____

6. This is an African American Firm: Yes _____ No _____

7. This is an Women Owned Firm: Yes _____ No _____

8. This is a Native American, Hispanic or Disabled Firm: Yes _____ No _____

(Circle One)

The undersigned subcontractor and prime contractor will enter into a contract for the work/service indicated above upon the prime contractor's execution of a contract for the above referenced project with the Board of Education. The undersigned subcontractor is a MDOT certified Minority Business Enterprise. The terms and conditions stated above are consistent with our agreements.

Signature of Subcontractor: _____

Date: _____

The term and conditions stated above are consistent with our agreements.

Signature of Prime Contractor: _____

Date: _____

MINORITY 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 the _____ school project
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 | _____ Title | _____ Date |
| _____ 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 |
|--|----------------|---------------|

Attachment F

MBE WAIVER DOCUMENTATION

Project Name: _____ PSC No. _____

Base Contract Amount \$ _____

Plus Accepted Alternates _____

Equals Total Contract Amount \$ _____

I have previously requested that a waiver be granted to the overall MBE goal for this project of ____ percent, with a minimum of ____ percent from certified African American-owned businesses, a minimum of ____ percent from certified Women-owned businesses, and the balance from all certified minority business enterprises, if applicable. This would include the total dollar value of all materials, supplies, equipment, and services, including construction services directly or indirectly, from Minority Business Enterprises (MBE) which are currently certified by the Maryland Department of Transportation (MDOT).

I _____, hereby certify that my position is
(Name of Company Representative)

_____, and I am the duly authorized representative of
(Position Title)

(Company Name)

I further certify that I have submitted a *Schedule for Participation of Certified Minority Business Enterprises* which reflects the percentage and dollar value of certified Minority Business Enterprise participation which my company expects to achieve for this contract. Therefore, the request for the waiver is as follows:

Summary MBE Participation Schedule from Attachment B

| Minority Group | MBE GOAL | | Actual MBE Participation | | Request For Waiver | |
|--|---------------------------------|---------------------------|--------------------------|---------------------------|--------------------|---------------------------|
| | Dollar Value of Total Contract* | Percent of Total Contract | Dollar Value | Percent of Total Contract | Dollar Value | Percent of Total Contract |
| a. Sub Goal African American | | | | | | |
| b. Sub Goal Women-owned | | | | | | |
| c. Other * in Sub Goal group a/b above | | | | | | |
| TOTALS | | | | | | |

* with accepted/rejected alternates

To support this request for a waiver, I include the following information as attachments which I certify to be true to the best of my knowledge.

1. A detailed statement of the efforts made by the contractor to identify and select portions of the work proposed to be performed by subcontractors in order to increase the likelihood of achieving the stated goal;
2. A detailed statement of the efforts made by the contractor prior to and up to 10 days before the bid opening to solicit minority business enterprises through written notices that describe the categories of work for which subcontracting is being solicited, the type of work to be performed, and specific instructions on how to submit a bid;
3. A detailed statement of the contractor's efforts to make personal contact with MBE firms identified for Item 2. above;
4. A record of the name, address, telephone number, and dates contacted for each MBE identified under items 2. and 3. above;
5. A description of the information provided to MBE's regarding the plans, specifications and the anticipated time schedule for portions of the work to be performed;
6. Information on activities to assist minority business enterprises to fulfill bonding requirements, or to obtain a waiver of these requirements;
7. Information on activities to publicize contracting opportunities to minority business enterprises, attendance at pre-bid meetings, or other meetings scheduled by the MBE Liaison or designated representative;
8. As to each MBE that placed a subcontract quotation or offer which the apparent low bidder or successful offeror considers not to be acceptable, a detailed statement of reasons for this conclusion; and
9. A list of minority subcontractors found to be unavailable. This shall be accompanied by a Minority Subcontractor Unavailability Certificate signed by the minority business enterprise or from the apparent low bidder or successful offeror indicating that the minority business did not provide the written certification.

Signature _____ Date _____
 (Company Representative Name)

Sworn and subscribed before me this _____ day.

of _____ in the year _____ Notary Public _____

Reviewed and accepted by the _____ County Board of Education MBE
 Liaison.
 (County Name)

Signature _____ Date _____
 (County Representative Name)

MBE Request For Waiver Master Form (July 2002)