



ADMINISTRATIVE PROCEDURE

MINORITY BUSINESS ENTERPRISE PROCUREMENT PROCEDURES

3325

Procedure No.

Ju.y 1, 2004

Date

- I. **PURPOSE:** To establish a resolution that a goal of 30 percent be attempted on all contracts with a minimum of 15 percent requirement of the total dollar value for all Prince George's County Public Schools' contracts for materials (other than materials of instruction), supplies, equipment, services and construction, as entered into during any fiscal year, be purchased directly or indirectly from Minority Business Enterprises (MBEs).

- II. **POLICY:** As set forth in state law and county ordinance, the Prince George's County Public Schools' Minority Business Enterprise Program must meet certain statutory and regulatory requirements. In recognition of existing state and county statutes, rules, regulations, and resolutions, and consistent with statutory provisions related to bidding proposals and awards thereon by local boards of education, the Board of Education of Prince George's County adopted a minority business Administrative Procedure on April 21, 1986. This procedure, revised on July 1, 2004, supersedes the procedure of June 30, 1998.

- III. **BACKGROUND:** The following regulations all seek to achieve certain minimum percentages of total contract expenditures for minority business enterprises, as hereafter defined, where state or county funds are involved.
 - A. Annotated Code of Maryland, State Finance and Procurement, Article 14-301.
 - B. Annotated Code of Maryland, Education, Article Section 5-301.
 - C. Annotated Code of Maryland, Education, Article Section 4-125.
 - D. Code of Maryland Regulations, Title 21, Subtitle 11, Chapter 3.
 - E. Prince George's County Code, 10-A, Subdivision 10A-136, Assistance to Minority Business Enterprise.
 - F. Interagency Committee Rules, Regulations and Procedures for the Administration of the School Construction Program, Section 15 (approved by Board of Public Works, October 6, 1993).

- IV. **DEFINITIONS:**
 - A. Minority Person: A member of a socially or economically disadvantaged minority group that for the purposes of this procedure includes African Americans, American Indians/Native Americans, Asians, Hispanics, Women, Physically or Mentally challenged individuals, and Not-for-Profit



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entities organized to promote the interests of physically or mentally disabled individuals.

- B. Minority Business Enterprise (MBE): Any legal entity, other than a joint venture, that is at least 51 percent owned and controlled by one or more minority person(s), organized to engage in commercial transactions.
- C. Ownership:
1. For a sole proprietorship to be deemed a minority business enterprise, the sole proprietor must be a minority person. If the ownership interest held by a minority person is subject to formal or informal restrictions such as options, security interests, agreements, etc., held by a non-minority person or business entity, the options, security interests, agreements, etc., held by the non-minority person or business entity must not significantly impair the minority person's ownership interest.
 2. For a partnership to be deemed a minority business enterprise, at least 51 percent of the partnership's assets or interests must be owned by a minority person or minority persons. If the ownership interest held by a minority person is subject to formal or informal restrictions such as options, security interests, agreements, etc., held by a non-minority person or business entity, the options, security interests, agreements, etc., held by the non-minority person or business entity must not significantly impair the minority person(s) ownership interest.
 3. For a corporation to be deemed a minority business enterprise, legal and equitable ownership of at least 51 percent of the aggregate of all classes of stocks, bonds, or other securities issued by the corporation must be owned by a minority person(s). If an ownership interest held by a minority person is subject to formal or informal restrictions such as options, security interests, agreements, etc., held by a non-minority person(s) or business entity, the options, security interests, agreements, etc., held by the non-minority person(s) or business entity may not significantly impair the minority person(s)' ownership interest. (Note: stock held in trust is not considered as stock held by the disadvantaged business persons when computing the business person(s)' ownership).
- D. Control: Minority owners shall either collectively or individually possess the working knowledge of the technical requirements needed, power to



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direct or cause the direction of management, policies and objectives and to make all substantive, day-to-day decisions on applicant's major and/or essential operations. In addition, the applicant must demonstrate technical knowledge of the firm's major areas of work. No formal or informal restrictions of any kind shall exist which limit the customary discretion necessary for actual business control by the minority owners.

- E. Certification: The determination that a legal entity is a minority business enterprise consistent with the provisions of Subtitle 3 (13-301b) of the State Finance and Procurement Article.
- F. Certified Minority Business Enterprise: A minority business that holds a certification issued by Maryland Department of Transportation (MDOT) or recertification issued by Prince George's County Government.
- G. Race Neutral Measure: Means a method that is or can be used to assist small businesses.
- H. Minority Business Enterprise Coordinator: The employee designated to administer the Board of Education's Minority Business Enterprise Program.
- I. Buyer: Purchasing agent-handling solicitations.

V. MINORITY BUSINESS ENTERPRISE PROGRAM RESPONSIBILITIES:

- A. A roster of MBEs, listing each firm by commodity and service provided, certification, minority business code, location, and current certification status, shall be maintained in Purchasing Services.
- B. The MBE Coordinator, who shall be an employee assigned to Purchasing Services, shall have the direct responsibility for maintaining said roster.
- C. Any MBE on a current listing of Maryland Department of Transportation or Prince George's County Government list of certified MBEs shall, upon furnishing evidence of such, be automatically deemed eligible for placement on the roster of MBEs of Prince George's County Public Schools.

VI. CERTIFICATION: The determination that a legal entity is an MBE consistent with the intent of Subtitle 3 of the State Finance and Procurement Article.

VII. TECHNICAL ASSISTANCE-OUTREACH-TRAINING EFFORTS: The MBE Coordinator shall have the direct responsibility for implementing a



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"Technical Assistance-Outreach-Training Program" for small and minority vendors. Said program may cover any and all factors necessary to enable small and minority firms to do business with Prince George's County Public Schools.

- VIII. **SOLICITATION OF BIDS:** All Invitations for Bid (IFB) and Requests For Proposal (RFP) will be reviewed and may, at the discretion of the Board of Education's representative, require a percentage equal to 30 percent but a minimum of 15 percent participation by minority businesses as defined herein in supply, service, construction, moveable equipment, and architectural and engineering services contracts.
- IX. **ADVERTISING INVITATIONS FOR BID:** Prior to advertising an Invitation for Bid (IFB), a Prince George's County Public Schools' representative from the appropriate division responsible for the contract, a Purchasing agent, and the MBE Coordinator will jointly identify all subcontractable opportunities in the IFB. All bids will include the following information:
- A. The Prince George's County Public Schools does not discriminate on the basis of race, color, sex, or national origin in consideration for award. **Minority businesses are encouraged to submit bids in response to this notice.**
 - B. Minority business firms will be considered as minority business contractor or subcontractor, if certified by any of the following: Prince George's County Government and the Maryland Department of Transportation.
 - C. The certified minority business goal for each IFB will be noted on the front cover of the IFB under "Special Note" and identified as a **deliverable in the contract.**
- X. **SOLICITATION PROCESS FOR PHONE AND WRITTEN QUOTES.**
THIS PROCESS INCLUDES PROFESSIONAL SERVICES (Architects, Engineers, Non-Instructional Services Consultants, Contractual Services, etc.)
- A. For contracts less than \$5,000, solicitations from more than one vendor are not required. Users and buyers are **strongly** encouraged to solicit from MBEs in addition to other prospective bidders.
 - B. If contracts are estimated to be between \$5,001 - \$10,000, a minimum of three (3) qualified firms shall be solicited for quotations. Two (2) firms are to be a certified minority. If three (3) firms cannot be solicited, or if pricing is obtained directly from the manufacturer or its direct distributor, a note of explanation shall be made on the quotation worksheet. Current



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catalog prices and prior bid prices may, if confirmed by the supplier, serve in lieu of quotations. Certified minority business enterprises (MBEs) should always be contacted in addition to other prospective bidders.

- C. A request for written quotations shall be solicited when the estimated dollar value of the request exceeds \$10,001 but is less than \$15,000. A written specification shall be prepared and mailed to a minimum of three (3) firms requesting written quotations of pricing. **A minimum of two (2) minority firms shall be sent the solicitation.**
- D. Formal bids are required for procurements over \$15,000.
- E. Local MBE firms within Prince George's County should be contacted first for telephone and written solicitations. If there are less than 3 MBE firms available in Prince George's County, a broader search of the MDOT MBE Central Directory at www.marylandtransportation.com (click on MBE/DBE Program and proceed to the Directory) shall be contacted.
- F. In the event the buyer/user department is unable to locate a minority firm for a specific service, the MBE Coordinator shall be contacted as an additional resource.
- G. Evaluation and selection of professional services - The contract process for these services will involve Purchasing Services.

XI. **SOLICITATION PROCESS FOR FORMAL BIDS:**

- A. To be considered a responsive bidder, contractors are required, when specified in bid documents, to subcontract with MBEs for the stated percentage of the total dollar value of the contract price. (The percentage of MBE participation is based on the anticipated value of the contract.) Should MBE participation be required, MBE forms 1 through 5 must be completed and submitted within ten (10) days after notification of being low bidder.
- B. Bonus Points:
 - Minority Business Enterprise (10%)
 - Prince George's County Based Minority Business Enterprise (15%)
- 1. During the evaluation process the Buyer shall determine the eligibility of any participating certified MBE to match the bid of the lowest responsible bidder by application of bonus points.



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2. In determining if a certified MBE is entitled to match the competitively bid price of the lowest responsible bidder, the Buyer shall adjust the bid price submitted by an MBE (for the purpose of evaluation and offer to match only) by reducing the bid price of such firm by the product of: (1) the bid price of the apparent lowest responsible bidder; and: (2) the bonus factor applicable to the MBE (as stated above).
3. Once it has been determined through the application of the bonus points as aforementioned that the bid price submitted by an MBE, after adjustment, was lower than or equal to the bid price of the lowest responsible bidder, such MBE shall be given the opportunity to accept the bid at the lowest bid price.
4. If said lowest responsible bidder is a minority firm not located in Prince George's County or Maryland, a Prince George's County-based or Maryland-based firm will be awarded bonus points. Once the bonus points are applied, the Prince George's County-based or Maryland-based minority firm will be afforded the opportunity to match the bid of the lowest responsible bidder, if so justified.
5. The Buyer shall notify the MBEs, that by virtue of the application of the bonus points, the **minority** business enterprise is entitled to match the bid of the lowest responsible bidder. Qualifying MBEs will be given a period of five (5) business days from the issuance of such notifications by the Buyer the opportunity to match the bid originally submitted by the lowest responsible bidder.
6. As a result of such notifications, if more than one MBE proposes to reduce its previous bid to that of matching the bid of the original lowest responsible bidder, the contract shall be awarded with preferences given in the following order: first, Prince George's County-based MBE; and second, Maryland-based MBE.
7. If two or more MBEs qualify for the same preference contract award and are prepared to match the bid of the original lowest responsible bidder, the Buyer shall, by toss of a coin, select the party to whom the contract will be awarded.
8. If the MBE entitled to match a bid indicates to the MBE Coordinator that it can only match the bid of the otherwise lowest responsible bidder if relieved from the necessity of furnishing a bond from a recognized surety guaranteeing the total performance under any contract to be awarded, the Chief Financial Officer may,



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upon a finding that the MBE has demonstrated adequate performance on prior contracts with the state, county, any of its agencies, municipal corporations, or any local boards of education, waive such requirement.

9. If the MBE determines that it cannot match the lowest responsible bidder after being offered an opportunity to do so, **the MBE will not be penalized.**

C. Composition of Minority Subcontractors:

1. It is the intent of Prince George's County Public Schools (PGCPS) that the contractor includes fair representation of all minority groups in the required percentage of MBE subcontracting participation.
2. If the successful bidder is an MBE firm, it shall be the obligation of the contractor to maintain its status as a certified MBE or to maintain the required subcontracting percentage with certified MBE firms, whichever may be applicable, throughout the term of the contract or any extension thereof. In the event that any of the representations or circumstances of the contractor change with respect to the MBE status, the contractor shall notify the Board of Education immediately. The contractor shall also report any change in minority business usage if different than information submitted at the time contract is signed.

D. Pre-Bid Conference:

1. At each Pre-Bid Conference, the Prince George's County Public Schools representative will explain the MBE subcontracting requirement, MBE provisions of the solicitation, documentation required, and its relationship to the bidder's responsiveness.
2. Prime contractors must request price quotes from MBE subcontractors at least five (5) working days prior to the bid opening. However, this may be adjusted at the discretion of the Board of Education.
3. Bidders may use the services offered by the MBE Program Coordinator to develop its MBE participation requirement.



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4. When MBE subcontracting is required, each bid or offer submitted in response to a solicitation must be accompanied by a completed Minority Business Enterprise Utilization Affidavit (MBE Form #1) which has been duly notarized.
5. After the review of responsive bids, the apparent low bidder will be notified. Final approval of contract award will not be made until a list of all MBEs and other related documents from the contractor are received and reviewed.

E. Contract Award:

1. The following documentation must be furnished by the apparent low bidder within ten (10) working days from notification when subcontracting is required:
 - a. A completed Schedule for Participation of Minority Business Enterprise (MBE Form #2);
 - b. A Statement of Intent (MBE Form #5); and
 - c. A copy of the current acceptable certification letter attached to each Statement of Intent.

Each document will show the agreed prices to be paid to each certified MBE for the work and identify in detail the contract items to be performed by the certified minority business and the proposed timetable for such performance. All documents must be signed by an authorized representative from both the prime and subcontracting firms.

The bidder will certify in writing that there is an existing subcontract for all work that has been sublet.

2. The Prince George's County Public Schools' MBE Program Coordinator will conduct a preliminary evaluation of the apparent low bidder's submission to determine whether the proposed MBE participation is in compliance with the outlined requirements.
3. Based on the evaluation of contract documents submitted, the Prince George's County Public Schools' representative will determine if the low bidder is in compliance with the MBE participation requirements and may recommend to make the final award or require additional information.



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F. Request For Waiver of Minority Business Enterprise Goal:

1. A waiver of the MBE contract requirement may be granted by the Board of Education **only** upon receipt of a written request with supporting documentation which presents a reasonable demonstration by the bidder that MBE participation was impossible to obtain or was not obtainable at a reasonable price, and that the public interest is served by a waiver. Any request for a waiver should be submitted on a Request for Waiver (MBE Form #4) and contain the following:
 - a. A detailed statement of the efforts made to contact and negotiate with certified minority businesses including: names, addresses, dates, and telephone numbers of certified minority businesses contacted;
 - b. A description of the information provided to MBEs regarding plans, specifications, and anticipated time schedule for portions of the work to be performed;
 - c. A detailed statement of efforts made to select portions of work proposed to be performed by certified minority businesses in order to increase the likelihood of achieving the stated requirement;
 - d. A detailed statement of reasons for a contractor's conclusion that a certified minority business is not qualified to perform the work needed; and
 - e. A list of minority subcontractors found to be unavailable. (This list should be accompanied by the Minority Subcontractor Unavailability Certificate (MBE Form #5) signed by the MBE or a statement from the apparent low bidder that the certified business did not provide the Minority Subcontractor Unavailability Certificate.)
2. A waiver exception to the MBE requirement will be granted upon determination by the Prince George's County Public Schools' representative that qualified MBEs are not available to participate in a contract or at a reasonable price consistent with the stated MBE contract requirement and the total contract award. Upon consideration of all the waiver documents submitted in accordance with this provision, the Prince George's County Public Schools' MBE Coordinator may approve or deny any request for a waiver.



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3. The low bidder's failure to participate in any of these proceedings or failure to furnish information after written request may result in rejection of the bid on the basis of non-responsiveness.
- G. Contractor Responsibility and Compliance: The contractor shall perform the contract in accordance with the representations made in the Minority Business Enterprise Utilization Affidavit submitted as part of the bid proposal and on the Schedule for Participation of Certified Minority Business Enterprise (MBE) submitted after the bid proposal (MBE Form #2). All compliance monitoring of certified MBE participation will be in accordance with the following:
1. The contractor shall structure operations for the performance of the contract to attempt to achieve the purpose of this procedure.
 2. The contractor agrees to apply the firm's best efforts to carry out these requirements consistent with the efficient performance of the project.
 3. The contractor must assure that MBEs shall have the maximum practical opportunity to compete for subcontract work under the contract, even after award of contract.
 4. The contractor shall cooperate in any reviews of the contractor's procedures and practices with respect to MBEs that the Board of Education may, from time to time, conduct.
 5. The contractor shall maintain such records as may be necessary to confirm compliance with its MBE utilization obligations. These records shall indicate the identity of minority subcontractors employed on the contract, type of work performed by each, dollar amount proposed, actual monies paid during the reporting period to date, and any services and procurements achieved.
 6. All records concerning MBE participation must be retained by the contractor for a period of three (3) years after final completion of the contract and will be available for inspection by the Board of Education.
 7. It shall be the obligation of the contractor to maintain its status as a certified MBE or to maintain the required subcontracting percentage with certified MBE firms, whichever may be applicable, throughout the term of the contract or any extension.



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8. Any desired changes in the Schedule for Minority Business Enterprise Participation must be approved in advance by the Board of Education and shall indicate the contractor's efforts to substitute another MBE subcontractor to perform the work. Additionally, if changes to the contract require additional work resulting in a cost increase, the MBE participation should be adjusted to reflect this change.
 9. Failure to notify the Board of Education of any changes of representations or circumstances of the contractor with respect to the MBE status of the contractor or the percentage of MBE participation, may cause the contractor to be subject to disqualification from the award of any PGCPSS system contracts for a period of three (3) years. In addition, the contractor shall be subject to such other actions as may be provided under applicable county ordinances and/or state law.
 10. The agreed MBE goal identified in the IFP and RFP is a deliverable. Failure to comply shall be subject to such other actions applicable to county ordinances and /or State law.
- H. Amendment For Unforeseen Circumstances: If, at any time before award, an apparent low bidder believes or has reason to believe that a certified minority business listed in the Prince George's County Public Schools' Schedule of Minority Business Enterprise Participation has become unqualified or unavailable, the bidder will immediately notify the Prince George's County Public Schools' MBE Coordinator. Within five (5) working days, the apparent low bidder must make every reasonable effort to achieve the stated requirement for the minority participation. Failure to make such efforts may result in a determination that the apparent low bidder is not eligible for award of the contract.
- I. Emergency: If the Prince George's County Public Schools' Chief Financial Officer determines that a project is an emergency (e.g., hazard to the health and welfare of students), the Chief Financial Officer may waive requirements for MBE documentation.
- J. Filing of Reports:
1. The Chief Executive Officer (CEO) shall report to the members of the Board of Education of Prince George's County, at least semi-annually, commencing January 2005, regarding progress being made in attainment of requirements established by the Resolution of



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- the Board of Education revised, concerning the awarding of contracts to MBEs.
2. The Minority Business Office is required to submit to the CEO on a semi-annual basis a report of MBE participation. Each year two reports will be issued: an interim report covering the period July 1 through December 31, and an annual report detailing activity from July 1 through June 30. Each report will include:
 - a. Total dollar value of contracts and purchases, by category; and
 - b. Total dollar value of contracts and purchases, by category, awarded to MBEs.
- K. Records, Reports and Subcontractor Payments: The prime contractor agrees to pay subcontractors within five (5) working days of receipt of payment from Prince George's County Public Schools. If payments are not made, the Board reserves the right to withhold the amount owed to subcontractor(s) from the prime contractor's next payment requisition.
- L. Monitoring:
1. The Board of Education will carry out reviews as deemed necessary to monitor compliance with MBE participation requirements. Such reviews may include site visitations to ensure compliance with MBE requirements.
 2. The Board of Education and contractors will maintain appropriate records and, upon request, assist in on-site or post-audit reviews.

XII. BONDING:

- A. The Director of Purchasing and Supply may, upon finding that an MBE has demonstrated adequate performance on prior contracts with the state, county, or any of its agencies, municipal corporations, or any local boards of education, waive bonding requirement on certain projects.
- B. At the discretion of the Buyer, unless otherwise required by state or federal law or regulations as a condition to state, federal or county assistance, no bid bond, performance or payment bonds shall be required if the contract price is less than \$50,000.
- C. Bonds on construction projects over \$50,000 must be provided by prime. However, at the discretion of the Prince George's County Public Schools'



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representative, bonds may be waived. Additional documents may be required.

XIII. **NON-DISCRIMINATION:**

- A. No contract may be awarded to any contractor or subcontractor unless the contract, subcontract or agreement contains the following non-discrimination clause:

"The contractor is to conduct business in a non-discriminatory manner prohibiting discrimination in any manner against any employee or applicant for employment because of sex, race, creed, color, age, mental or physical disability, sexual orientation or national origin."

- B. If the non-discrimination clause is omitted from a contract or subcontract subject to this Section, the Board of Education may declare the contract void. In that event, the contractor is entitled to the reasonable value of work that has been performed and materials that have been provided.
- C. If the contractor willfully fails to comply with the requirements of the non-discrimination clause and the contract is partially completed, the Board of Education may compel the contractor to continue to perform under the contract; however, the Board:
1. Is liable for no more than the reasonable value of work performed and materials provided after the date on which the breach of contract was or should have been discovered; and
 2. Shall deduct any money that has been paid under the contract from the money that became due.
- D. If a subcontractor willfully fails to comply with the requirements of a non-discrimination clause, the contractor may void the subcontract. In that event, the contractor is liable for no more than the reasonable value of work performed or materials provided.

- XIV. **RELATED PROCEDURES:** Administrative Procedure 7419, Minority Business Enterprise Procedures For State Funding Public School Construction Projects.

- XV. **MAINTENANCE AND UPDATE OF THESE PROCEDURES:** These procedures originate with the Department of Purchasing and Supply and will be updated as necessary.



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- XVI. **CANCELLATIONS AND SUPERSEDURES:** This Administrative Procedure cancels and supersedes Administrative Procedure 3325, dated June 30, 1998.
- XVII. **EFFECTIVE DATE:** July 1, 2004.

APPROVED BY:

André J. Hornsby
Chief Executive Officer

Attachments:

- 1 - Minority Business Enterprise Utilization Affidavit
- 2 - Minority Subcontractor Unavailability Certificate
- 3 - Request for Waiver
- 4 - Statement of Intent
- 5 - Schedule For Participation of Minority Business Enterprise

Distribution: Lists 1, 2, 3, 4, 5, 6, 10, and 11