

MINORITY BUSINESS ENTERPRISE
PROCUREMENT PROCEDURES FOR LOCALLY
FUNDED CONTRACTS

- I. **PURPOSE:** To establish a resolution that a Minority Business Enterprise (MBE) goal of thirty percent (30%) with a minimum of fifteen percent (15%) 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 certified minority business enterprise when locally funded dollars are utilized with a subgoal of twenty percent (20%) from certified County-Based Minority Business Enterprise (CBMBE) for construction including design, demolition/sitework and building stages) of County subsidized projects.. All contractors, including certified MBE/CBMBE firms, when bidding as general or prime contractors are required to attempt to achieve the MBE/CBMBE subcontracting goals from certified MBE/CBMBE firms.
- II. **BACKGROUND:** The following laws all seek to achieve certain minimum percentages of total contract expenditures for minority business and county 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 (COMAR), 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).
- III. **DEFINITIONS:**
- A. Buyer: Purchasing agent handling solicitations
 - B. Certification: The determination that a legal entity is a minority business enterprise consistent with the provisions of Subtitle 3 (14-301b) of the State Finance and Procurement Article.

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- C. Certified Minority Business Enterprise: A minority business that holds a certification or recertification issued by Maryland Department of Transportation (MDOT), Prince George's County Supplier Development and Diversity Division (SDDD) or Washington Metropolitan Airport Transportation Authority (WMATA).
- D. Control: Minority owners shall either collectively or individually possess the working knowledge of the technical requirements needed, power to 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. County-Based Business (CBB): A Prince George's County based business whose principal place of operation, as determined by Prince George's County Office of Central Services, is located within the County.
- F. County-Based Minority Business Enterprise (CBMBE): An MBE, as defined below, whose principal place of operation, as determined by the Prince George's County Office of Central Services, is located within the County.
- G. 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.
- H. Minority Business Enterprise Coordinator: The employee designated to administer the Board of Education's Minority Business Enterprise Program.
- I. 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 entities organized to promote the interests of physically or mentally disabled individuals.
- J. Ownership:

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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). Board must be controlled by at least 51 percent Minority Officers.

K. Race Neutral Measure: Means a method that is or can be used to assist small businesses.

IV. MINORITY BUSINESS ENTERPRISE PROGRAM RESPONSIBILITIES:

A. DIRECTORY: A Directory of MBEs and CBMBEs, listing each firm by commodity and service provided, certification, minority business code, location, and current certification status, are available at the following websites:

1. MDOT - https://mbe.mdod.maryland.gov/directory/search_select.asp

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2. SDDD - <https://www.princegeorgescountymd.gov/1315/Supplier-Directories>
 3. WMATA - https://supplier.wmata.com/psp/supplier/SUPPLIER/ERP/c/WT_CL_SEP_MENU.WT_CL_VDR_DIR_CMP.GBL?Page=WT_CL_VDR_DIR_PG&Action=U

- a. Any MBE/CBMBE on a current listing of (MDOT), (SDDD) or (WMATA) list of certified MBE/ CBMBEs shall, upon furnishing evidence of such, be automatically deemed eligible for placement on the Directory of MBE/CBMBEs of Prince George's County Public Schools.

V. TECHNICAL ASSISTANCE-OUTREACH-TRAINING EFFORTS: The MBE Coordinator shall have the direct responsibility for implementing a "Technical Assistance-Outreach-Training Program" for small and minority vendors. The program may cover any and all factors necessary to enable small and minority firms to do business with Prince George's County Public Schools.

VI. 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 30 percent by a MBE with a minimum of 20 percent by a CBMBE as defined herein in supply, service, construction, moveable equipment, and architectural and engineering services contracts.

VII. 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: (MDOT) ,(SDDD) or (WMATA).
 - C. The certified MBE/CBMBE 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.

VIII. SOLICITATION PROCESS FOR PHONE AND WRITTEN QUOTES

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- 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 MBE/CBMBEs in addition to other prospective bidders.
- B. If contracts are estimated to be between \$5,001 - \$14,999, a minimum of three (3) qualified firms shall be solicited for quotations. Two (2) firms are to be a certified MBE/CBMBE. 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 catalog prices and prior bid prices may, if confirmed by the supplier, serve in lieu of quotations. Certified MBE/CBMBEs 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 \$15,000 but is less than \$25,000. 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) MBE/CBMBE firms shall be sent the solicitation.
- D. Formal bids are required for procurements over \$25,000.
- E. MBE/CBMBE firms should be contacted first for telephone and written solicitations. If there are less than 3 MBE/CBMBE firms available, a broader search of the MDOT, SDDD, or WMATA Vendor Directory at <https://marylandmdbe.gob2g.com/> or <https://www.princegeorgescountymd.gov/1315/Supplier-Directories> or https://supplier.wmata.com/psp/supplier_1/SUPPLIER/ERP/c/WT_CL_SEP_MENU.WT_CL_VDR_DIR_CMP.GBL 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. These guidelines also apply to the evaluation and selection of professional services, such as architects, engineers, non-instructional services consultants, contractual services. Etc. If a contract involves professional services, a representative from Purchasing Services must be involved.

IX. SOLICITATION PROCESS FOR FORMAL BIDS:

To be considered a responsive bidder, contractors are required, when specified in bid documents, to subcontract with MBE/CBMBEs for the stated percentage of the total dollar value of the contract price. (The percentage of MBE/CBMBE participation is based on the anticipated value of the contract.)

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Should MBE/CBMBE participation be required, MBE/CBMBE Attachments #4 and #5 must be completed and submitted within ten (10) days after notification of being the low bidder.

A. Bonus Points:

1. During the evaluation process the Buyer shall determine the eligibility of any participating certified MBE/CBMBE to match the bid of the lowest responsive bidder by application of bonus points.
2. In determining if a certified MBE/CBMBE is entitled to match the competitively bid price of the lowest responsive bidder, the Buyer shall adjust the bid price submitted by an MBE/CBMBE (for the purpose of evaluation and offer to match only) by the bid price of the MBE/CBMBE by the product of: (1) the bid price of the apparent lowest responsive bidder; and (2) the bonus factor applicable to the MBE/CBMBE:

MBE:	10%
CBMBE:	15%

3. Once it has been determined through the application of the bonus points that the bid price submitted by a MBE/CBMBE, after adjustment, was lower than or equal to the bid price of the lowest responsive bidder, the MBE/CBMBE shall be given the opportunity to accept the bid at their bid price as the lowest responsive bidder. (For instance, if the lowest bid was \$100,000.00 and the bid price of a qualified MBE/CBMBE was \$115,000.00; the qualified MBE/CBMBE would be the lowest responsive bidder by application of bonus points and thus be awarded the contract at the bid price of \$115,000.00).
4. If the lowest responsive bidder is a MBE not located in Prince George's County or Maryland, a Prince George's County-based or Maryland-based MBE will be awarded bonus points. Once the bonus points are applied, the Prince George's County-based or Maryland-based MBE will be afforded the opportunity to match at their bid price as the lowest responsive bidder.
5. The Buyer shall notify the MBE/CBMBE, that by virtue of the application of the bonus points, the MBE/CBMBE is entitled to bid at their price as the lowest responsive bidder. Qualifying MBEs will be given a period of five (5) business days from the Buyer's notification to accept the bid as the lowest responsive bidder.

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6. As a result of the Buyer's notification, if more than one MBE/CBMBE by virtue of bonus points applied is lowest responsive bidder, the contract shall be awarded with preferences given in the following order: first, CBMBE; and second, Maryland-based MBE.
7. If two or more MBE/CBMBEs qualify for the same preference contract award by virtue of bonus points applied is lowest responsive bidder, the Buyer shall, by toss of a coin, select the party to whom the contract will be awarded.
8. If the MBE/CBMBE by virtue of bonus points applied is lowest responsive bidder bid indicates to the MBE Coordinator that it can only qualify as the lowest responsive 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 Purchasing Director may, upon a finding that the MBE/CBMBE 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/CBMBE determines that it cannot perform on the project after being offered an opportunity to do so, the MBE/CBMBE will not be penalized.

B. Composition of Minority Subcontractors:

1. It is the intent of PGCPs that the contractor includes fair representation of all minority groups in the required percentage of MBE/CBMBE subcontracting participation.
 - a. If the successful bidder is an MBE/CBMBE firm, it shall be the obligation of the contractor to maintain its status as a certified MBE/CBMBE or to maintain the required subcontracting percentage with certified MBE/CBMBE 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/CBMBE status, the contractor shall notify the MBE Coordinator immediately. The contractor shall also report any change in MBE/CBMBE usage if different than information

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submitted at the time contract is signed. Prime Contractors may not remove/change a MBE/CBMBE subcontractor or contract dollar amount without prior written approval of the MBE Coordinator.

C. Pre-Bid Conference:

1. At each Pre-Bid Conference, the Prince George's County Public Schools representative will explain the MBE/CBMBE subcontracting requirement, MBE/CBMBE provisions of the solicitation, documentation required, and its relationship to the bidder's responsiveness.
2. Prime contractors must request price quotes from MBE/CBMBE subcontractors at least five (5) working days prior to the bid opening. However, this may be adjusted at the discretion of the Director of Purchasing.
3. Bidders may use the services offered by the MBE Program Coordinator to develop its MBE/CBMBE participation requirement.
4. When MBE/CBMBE subcontracting is required, each bid or offer submitted in response to a solicitation must be accompanied by a completed Minority Business Enterprise/County-Based Business Utilization Affidavit (MBE/CBMBE Attachment #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 MBE/CBMBEs and other related documents from the contractor are received and reviewed.

D. 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. Statement of Intent (MBE/CBMBE Attachment #4);
 - b. Schedule for Participation of Minority Business Enterprise and County-Based Business (MBE/CBMBE Attachment #5);
 - c. An Outreach Compliance Statement (MBE/CBMBE Attachment #6); and,

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- d. 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/CBMBE for the work and specify the contract items to be performed by the certified MBE/CBMBE 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 MBE Program Coordinator will conduct a preliminary evaluation of the apparent low bidder's submission to determine whether the proposed MBE/CBMBE participation is in compliance with the outlined requirements.
3. Based on the evaluation of contract documents submitted, the MBE Coordinator will determine if the low bidder is in compliance with the MBE/CBMBE participation requirements and may recommend to make the final award or require additional information.

E. Request For Waiver of Minority Business Enterprise Goal:

1. A waiver of the MBE/CBMBE contract requirement may be granted by the MBE Coordinator only upon receipt of a written request with supporting documentation which presents a reasonable demonstration by the bidder that MBE/CBMBE 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/CBMBE Attachment #3) 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 MBE/CBMBEs 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;

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- 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 Business Enterprise/County-Based Business Subcontractor Unavailability Certificate (MBE/CBMBE Attachment #2) signed by the MBE/CBMBE 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/CBMBE requirement will be granted upon determination by the MBE Coordinator that qualified MBE/CBMBEs are not available to participate in a contract or at a reasonable price consistent with the stated MBE/CBMBE contract requirement and the total contract award. Upon consideration of all the waiver documents submitted in accordance with this provision, the MBE Coordinator may approve or deny any request for a waiver.
 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.
- F. 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 and County-Based Business (MBE/CBMBE Attachment #5) submitted after the bid proposal. All compliance monitoring of certified MBE/CBMBE participation will be in accordance with the following:
 1. Monthly Reports
 - a. The contractor that is awarded the contract under this solicitation shall provide Monthly Reports to the Minority Business Enterprise (MBE) Office via email at mbeoffice@pgcps.org using the Certified MBE/CBMBE Participation Standard Monthly Supplier Participation Report (MBE/CBMBE Attachment #7).
 - b. The MBE Office will review reports and take action if the reports are incomplete, if there are questions about the validity

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of the information in the reports and/or if reports are not submitted.

- c. Contractor must understand that not reporting and/or meeting their participation requirements constitutes a material breach of contract that could result in Liquidated Damages Fees for each violation up to termination of Contract.
 - d. Should compliance issues arise with meeting the utilization requirement, Contractor agrees to consult the MBE Office in an effort to cure the issues or challenges.
 - e. Should the Contractor not be in position to find appropriate suppliers to meet participation requirements, then the Contractor should contact the MBE Office for assistance in finding appropriate vendors to satisfy participation requirements.
- 2. The contractor shall structure operations for the performance of the contract to attempt to achieve the purpose of this procedure.
- 3. The contractor agrees to apply the firm's best efforts to carry out these requirements consistent with the efficient performance of the project.
- 4. The contractor must ensure that MBE/CBMBEs have the maximum practical opportunity to compete for subcontract work under the contract, even after award of contract.
- 5. The contractor shall cooperate in any reviews of the contractor's procedures and practices with respect to MBE/CBMBEs that the Board of Education may, from time to time, conduct.
- 6. The contractor shall maintain such records as may be necessary to confirm compliance with its MBE/CBMBE 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.
- 7. All records concerning MBE/CBMBE 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.

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8. It shall be the obligation of the contractor to maintain its status as a certified MBE/CBMBE or to maintain the required subcontracting percentage with certified MBE/CBMBE firms, whichever may be applicable, throughout the term of the contract or any extension.
 9. Any desired changes in the Schedule for Minority Business Enterprise Participation must be approved in advance by the MBE Coordinator and shall indicate the contractor's efforts to substitute another MBE/CBMBE subcontractor to perform the work.
 10. Failure to notify the MBE Coordinator of any changes of representations or circumstances of the contractor with respect to the MBE/CBMBE status of the contractor or the percentage of MBE/CBMBE participation, may cause the contractor to be subject to disqualification from the award of any PGCPs 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.
 11. The agreed MBE/CBMBE goal identified in the IFB, RFP and RFQ is a deliverable. Failure to comply shall be subject to such other actions applicable under county ordinances and /or state law.
- G. Amendment For Unforeseen Circumstances: If, at any time before award, an apparent low bidder believes or has reason to believe that a certified MBE/CBMBE 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 MBE Coordinator. Within five (5) working days, the apparent low bidder must make every reasonable effort to achieve the stated requirement for the MBE/CBMBE participation. Failure to make such efforts may result in a determination that the apparent low bidder is not eligible for award of the contract.
- H. Emergency: Formal bid requirements may be waived in the event that an emergency situation arises. An emergency is considered something that may affect the healthy, safety of welfare of students or employees. A written determination and justification establishing the basis for the emergency and for the selection of the particular vendor must be submitted by the requestor to the Office of Purchasing prior to creating an obligation. The Director of Purchasing will approve or disapprove the purchase as an emergency procurement. The approved written determination shall become part of the procurement file. The potential loss of year-end funds and/or poor planning is not considered adequate justification for an emergency purchase and will not be approved. If the Chief Operating Officer (COO)

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determines that a project is an emergency (e.g., hazard to the health and welfare of students), the COO may waive requirements for MBE participation.

- I. Rider Contracts: With the approval of the Director of Purchasing, PGCPs may enter into contracts without following the formal bid process when another governmental entity has procured similar items or services and the governmental entity has a current contract for the items or services in which PGCPs requires. The purpose of these cooperative purchasing agreements (rider contracts) is to promote efficiency and savings for PGCPs. When a Rider Contract over \$100,000 is used, each award submitted in response to a solicitation must meet or exceed PGCPs MBE/CBMBE participation requirements.
- J. Filing of Reports:
 - 1. The Superintendent shall report to the members of the Board of Education of Prince George's County, at least semi-annually, regarding progress made in attainment of requirements established by the Resolution of the Board of Education revised, concerning the awarding of contracts to MBE/CBMBEs.
 - 2. The Minority Business Office is required to submit to the CEO on a semi-annual basis a report of MBE/CBMBE 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 MBE/CBMBE.
- 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:

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1. The Board of Education will carry out reviews, including site visitations, as deemed necessary to monitor and enforce compliance with MBE/CBMBE participation requirements.
2. The Board of Education and contractors will maintain appropriate records and, upon request, assist in on-site or post-audit reviews.

X. LIQUIDATED DAMAGES/FAILURE TO PERFORM WORK

The successful bidder accepts this contract with the understanding that should they fail to complete the work in an acceptable manner and in the time stated, they shall be subject to the payment of liquidated damages as stated in the bid document.

Liquidated Damages Schedule – Amount Per Day

\$25,000 and under	\$100.00
\$25,000 - \$100,000	\$250.00
\$100,000- \$500,000	\$500.00
\$500,000- \$1,000,000	\$550.00
\$1,000, 000-\$2,500,000	\$750.00
\$2,500,000-\$5,000,000	\$1,000.00
\$5,000,000-\$10,000,000	\$1,500.00
\$10,000,000-\$15,000,000	\$2,000.00
\$15,000,000 and More	\$2,500.00

Liquidated Damages Provision for County Funded Contracts Containing MBE/CBMBE Participation Goals:

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

Therefore, upon a determination by the Board that the Contractor failed to make good faith efforts to comply with one or more of the specified MBE/CBMBE Program requirements or contract provisions, the Contractor agrees to pay liquidated damages to

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the Board at the rates set forth below. The Contractor expressly agrees that the Board may withhold payment on any invoices as a set-off against liquidated damages owed. The Contractor further agrees that for each specified violation, the agreed upon liquidated damages are reasonably proximate to the loss the Board is anticipated to incur as a result of such violation.

- a. Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): \$_____ per day until the monthly report is submitted as required.
- b. Failure to include in its agreements with MBE/CBMBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B (4): \$ _____per MBE/CBMBE subcontractor.
- c. Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE/CBMBE subcontractor and/or amendment of the MBE/CBMBE participation schedule: the difference between the dollar value of the MBE/CBMBE participation commitment on the MBE/CBMBE participation schedule for that specific MBE/CBMBE firm and the dollar value of the work performed by that MBE firm for the contract.
- d. Failure to meet the Contractor's total MBE/CBMBE participation goal and subgoal commitments: the difference between the dollar value of the total MBE/CBMBE participation commitment on the MBE/CBMBE participation schedule and the MBE participation actually achieved.
- e. Failure to promptly pay all undisputed amounts to an MBE/CBMBE subcontractor in full compliance with the prompt payment provisions of this contract: \$_____ per day until the undisputed amount due to the MBE/CBMBE subcontractor is paid. This section does not apply to contracts that are subject to section 15-226 of the State Finance and Procurement Article – Construction Contracts – Prompt Payment of Subcontractors.

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

XI. BONDING:

- A. The Director of Purchasing and Supply may, upon finding that an MBE/CBMBE 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.

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- C. Bonds on construction projects over \$50,000 must be provided by the prime contractor. However, at the discretion of the Prince George's County Public Schools' representative, bonds may be waived. Additional documents may be required.

XII. NON-DISCRIMINATION:

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."

- A. 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.
- B. 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.
- C. 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.

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

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

MINORITY BUSINESS ENTERPRISE PROCUREMENT PROCEDURES FOR LOCALLY FUNDED CONTRACTS

XV. CANCELLATIONS AND SUPERSEDURES: This Administrative Procedure cancels and supersedes Administrative Procedure 3325, dated July 1, 2007.

XVI. EFFECTIVE DATE: August 1, 2026.

Attachments:

- 1 - Minority Business Enterprise/County-Based Business Utilization Affidavit
- 2 – Minority Business Enterprise/County Based Business Subcontractor Unavailability Certificate
- 3 – Request for Waiver
- 4 – Statement of Intent
- 5 – Schedule For Participation of Minority Business Enterprise and County-Based Business
- 6 –Outreach Efforts Compliance Statement
- 7 – Certified MBE/CBMBE Participation Standard Monthly Subcontractors Participation Report

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