



Washington Metropolitan Area Transit Authority

## **STANDARD OPERATING PROCEDURE (SOP)**

### **Procedure Number: SOP #21-09**

Minority Business Enterprise (MBE) Contract Compliance Procedures

January 5, 2023

### ***Revision History***

<b>Revision No.</b>	<b>Revision Date</b>	<b>Reviser/ Author</b>	<b>Document Section No. (if applicable) or N/A</b>	<b>Description of Changes</b>
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## 1 Scope

- 1.1 This Standard Operating Procedure (SOP) applies to the Small Business Programs Office, the Office of Procurement and Materials, and Department/Program staff.
- 1.2 The Minority Business Enterprise (MBE) commitment is equal to any other contractual commitment made by the contractor and is to be handled in the same fashion as any other deliverable.
- 1.3 The Small Business Programs Office plays a pivotal role in MBE contract compliance but must interact with and rely on other key stakeholders to complete the compliance function. The Office of Procurement and Materials and Program staff work more directly with the contractor to ensure that all technical scope of work deliverables are met, i.e., the purchased product/service is provided to the Washington Metropolitan Area Transit Authority (WMATA) on time, within specifications, and at the agreed upon price. Accordingly, the two most important actions taken by the Office of Procurement and Materials/Program staff that assists the Small Business Programs Office in monitoring the MBE deliverable are:
  - 1.3.1 Promptly (prior to contract start) providing Small Business Programs Office with all of the documents and information in its possession, as outlined in Section 6.2 of this SOP; and
  - 1.3.2 Seeking prior approval, or otherwise notifying Small Business Programs Office of any formal contract changes that may potentially impact the MBE outcome, e.g., contractor-requested changes to MBE Schedule of Participation (the Termination Substitution Reduction (TSR) process), change orders that add/subtract work under the contract, workplace behavioral issues, commercially useful function concerns, etc.
- 1.4 Closer proximity to the contractor and work site on a more frequent basis positions the Office of Procurement and Materials/Program staff to identify issues more easily or concerns early on that may negatively impact the MBE deliverable. Taking proactive steps to address such concerns significantly increases the chance of a favorable MBE outcome.
- 1.5 This SOP outlines the specific steps that must be taken by all parties to set the right tone going into the contract and to reinforce WMATA's commitment to equal and fair treatment for all of WMATA's small/minority/women owned business partners.
- 1.6 This document has been created in compliance with the Quality Management System Plan (QMSP), Policy Instructions 1.1 (Document Governance and Hierarchy) and 6.1 (Records Management).

## 2 Purpose

The purpose of this SOP is to outline the roles and responsibilities and to provide instructions on organizing and conducting prime contractor and MBE subcontractor compliance on locally funded contracts with established MBE goals.

## 3 Definitions

- 3.1 **Contract Administrator:** an individual assigned by the Contracting Officer to support him/her in the general administration of the terms and conditions of each particular contract.
- 3.2 **Contracting Officer:** the Authority's Senior Vice President & Chief Procurement Officer or such person(s) or positions as shall be designated in writing by the Senior Vice President & Chief Procurement Officer to act on his/her behalf. Wherever the term "Contracting Officer" shall appear in this document, the term also includes his/her designee(s).
- 3.3 **Commercially Useful Function:** a business performs a commercial function when it is responsible for the execution of the assigned work by actually performing, managing and supervising the work. A business does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction or contract where funds are passed in order to obtain the appearance of legitimate participation.
- 3.4 **Good Faith Efforts:** efforts to achieve an MBE goal which, by their scope, intensity and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.
- 3.5 **Independent Cost Estimate (ICE):** represents the Authority's best estimate of the most current price for the supplies or services being procured based on market research, past pricing, established price lists, etc.
- 3.6 **Notice to Proceed (NTP):** a notice issued to the successful bidder advising them of the Washington Metropolitan Area Transit Authority (WMATA) intent to award a contract. The notice establishes the date on which the contractor may commence work and directs the contractor to proceed with all or a portion of the work. The period of performance starts on the NTP date.
- 3.7 **Minority Business Enterprise (MBE):** a business must be at least 51% owned and controlled by one or more socially-and economically disadvantaged individuals. Under current state law, an individual is presumed to be socially and economically disadvantaged if that individual belongs to one of the following groups: African Americans, Hispanic Americans, Asian Pacific Americans, Subcontinent Asian Americans, Native Americans, and Women. Persons who own and control their business

but are not members of one of the above groups, also may be eligible for MBE certification if they establish their social and economic disadvantage.

- 3.8 **MBE Appendix B-2:** a document which is attached to the solicitation that outlines the MBE requirements associated with the solicitation, bid/proposal submission and resulting contract. All required MBE forms, templates and instructions are included in MBE Appendix B-2.
- 3.9 **MBE Goal:** a contract-specific numerical target that equates to the expected level of MBE utilization for the contract. Goals are expressed as a percentage of the anticipated dollar value of the contract.
- 3.10 **MBE Participation Schedule:** the document contained in MBE Appendix B-2 that is to be used by the bidder/offeror to list the names of certified MBEs that will be used to meet the MBE goal and the corresponding commitments expressed as a percentage of the total value of the contract. The Schedule is also used to notify WMATA if a waiver of some or all of the MBE goal is being requested.
- 3.11 **Procurement Review Committee (PRC):** the committee established by the Chief Procurement Officer to establish on a contract-by-contract basis all Disadvantaged Business Enterprise (DBE) and MBE goals and to determine if the procurement should be a Small Business Enterprise (SBE) or Small Business Programs (SBP) set-aside.
- 3.12 **WMATA Certification Program (WCP):** refers to the Disadvantaged Business Enterprise (DBE), Small Business Enterprise (SBE), Minority Business Enterprise (MBE), Small Business Program (SBP) and Micro Business Program (MBP) established to provide additional contracting and subcontracting opportunities for small businesses; MBE, SBP and MBP apply only to non-federally funded projects/contracts.

#### 4 Acronyms

- 4.1 **CCR** – Contract Compliance
- 4.2 **CLM** – Contract Lifecycle Management
- 4.3 **CO** – Contracting Officer
- 4.4 **COR** – Contracting Officer's Representative
- 4.5 **CUF** – Commercially Useful Function
- 4.6 **DBE** – Disadvantaged Business Enterprise
- 4.7 **GFE** – Good Faith Efforts
- 4.8 **ICE** – Independent Cost Estimate
- 4.9 **MBE** – Minority Business Enterprise

- 4.10 **MBELO** – Minority Business Enterprise Liaison Officer
- 4.11 **MBP** – Micro Business Program
- 4.12 **NTP** – Notice to Proceed
- 4.13 **PRC** – Procurement Review Committee
- 4.14 **QMSP** – Quality Management System Plan
- 4.15 **SBAN** – Small Business Analyst
- 4.16 **SBE** – Small Business Enterprise
- 4.17 **SBP** – Small Business Program
- 4.18 **SOP** – Standard Operating Procedure
- 4.19 **SSBA** – Senior Small Business Auditor
- 4.20 **TSR** – Termination Substitution Reduction
- 4.21 **U.S.** – United States
- 4.22 **WCP** – WMATA Certification Program
- 4.23 **WMATA** – Washington Metropolitan Area Transit Authority

## **5 Responsibilities**

### **5.1 Small Business Programs Office Director** is responsible for the following:

- (a) Implementing appropriate mechanisms to ensure compliance with the contractual MBE commitment by all program participants (e.g., applying legal/contractual remedies as allowed under the contract and WMATA regulations/policy).
- (b) Developing a monitoring and enforcement mechanism to ensure that work committed to MBEs at contract award is performed by the MBE's own workforce.
- (c) Establishing and maintaining a mechanism for keeping a running tally of actual MBE utilization (e.g., payments made to MBE firms) and ensuring that such utilization is credited towards contractual MBE participation and WMATA's overall MBE achievement.

### **5.2 Small Business Programs Office Manager** is responsible for the following:

- (a) Ensuring that all direct reports are aware of this procedure and have participated in mandatory MBE compliance training;

- (b) Coordinating the development, review and approval of all training content and materials used to assist with the implementation of this SOP; and
- (c) Developing an annual listing of contracts for which compliance reviews must be conducted and establishing a schedule for completion of the reviews.

5.3 **Small Business Programs Office Senior Small Business Auditor (SSBA)** is responsible for conducting MBE Contract Compliance Reviews (CCR) on locally funded contracts that contain MBE goals and monitoring the Contract Lifecycle Management (CLM) Prompt Payment Tool to ensure that prime contractors and subcontractors are entering and confirming payment data each month as required.

5.4 **Department/Program Office** is responsible for working directly with prime contractors and subcontractors to complete technical work deliverables. Program Office staff is responsible for knowing the specifics of when and how, and what each MBE is supposed to perform/deliver and noting and reporting to the Contract Administrator any indication that the prime contractor is not or may not be acting in good faith to fulfill MBE requirements.

6.10.1 Observed instances of any contractor or subcontractor staff worksite behavior that is inconsistent with contractual MBE requirements is to be reported and addressed immediately. This includes any behavior that appears to undermine or jeopardize the work performed by MBE subcontractors.

6.10.2 Assisting with the compilation of historical and current contract invoicing/payment data to complete a final accounting of all MBE and non-MBE subcontractor participation for purposes of contract closeout.

5.5 **The Office of Procurement and Materials** is responsible for ensuring that copies of all MBE-related solicitation and contract documents, including task order contracts, are provided to the Small Business Programs Office as they are finalized. The initial executed contract documents shall be provided no later than ten (10) days after contract execution. MBE subcontracts finalized after contract commencement must be forwarded to the Small Business Programs Office within five (5) business days of receipt from the prime contractor.

## 6 Process Steps

6.1 The Small Business Programs Office will conduct a CCR on locally funded contracts with MBE goals. The CCR is a comprehensive review that investigates all aspects of a contractor's employment practices. The CCR generally consists of seven (7) steps: (1) Review Scheduling; (2) Contractor Notification; (3) Desk Audit (Pre-Audit); (4) Commercially Useful Function Review/Verification; (5) Virtual/Onsite Verification and/or Interviews; (6) Audit Review Committee; and (7) Closeout Report (Compliance Determination and Formal Notification). Reviews include, but are not limited to, the following:



- (a) Periodically reviewing the work activity and payments of currently certified MBE firms working under WMATA contracts to assess compliance with all MBE subcontractor obligations; and
  - (b) Reviewing the contracts of prime contractors at any time to assess compliance with all of the MBE obligations outlined in MBE Appendix B-2 of the contract.
- 6.2 To begin the review process, a letter will be sent to the prime and subcontractor announcing that a CCR will be conducted. The CCR letter will request receipt of all required documentation no later than ten (10) calendar days prior to the date of the onsite visit. The CCR Checklist will be included in the announcement with a request for some or all of the following:
  - (a) MBE Schedule of Participation;
  - (b) MBE Letters of Intent;
  - (c) Unavailability Certification Notices;
  - (d) WMATA's Award Letter to prime contractor;
  - (e) MBE Certification Letters of the participating firms;
  - (f) Notice to Proceed;
  - (g) Signed Copy of WMATA's contract with prime contractor;
  - (h) Project Work Schedule;
  - (i) Signed subcontracts (all tiers);
  - (j) Lease Agreements (office and/or equipment);
  - (k) List of Non-MBE subcontractors;
  - (l) Joint Check Agreement;
  - (m) Certified Payrolls (Current) or United States (U.S.) Department of Labor Wage and Hour Division Payroll form; and
  - (n) Worksite Location.
- 6.3 After the required documentation is received, the SSBA will conduct the pre-audit (desk audit) where all documentation will be reviewed. The auditor will analyze and compare all documentation and may reach out for additional information and follow-up questions to clarify any inconsistencies. At this stage, any unresolved discrepancies found during the pre-audit phase of the audit review will be documented.
- 6.4 The SSBA will create a Contract Monitoring File containing all documents and information mentioned in Section 6.2 above. The following are the pre-award and post award processes:
  - 6.4.1 Contract Compliance Cycle (Pre-Award)
    - 6.4.1.1 The Program Office identifies the need for materials/goods/services.
    - 6.4.1.2 The Program Office develops scopes of work/specifications.
    - 6.4.1.3 The Program Office enters the Requisition, MBE Goal Worksheet and ICE into CLM and forwards to the Office of Procurement and Materials to be assigned to a Contract Administrator.

- 6.4.1.4 The Office of Procurement and Materials selects the appropriate method of procurement and funding source selected.
- 6.4.1.5 The Office of Procurement and Material requests the MBE goal or SBP set aside from the Small Business Programs Office.
- 6.4.1.6 The Small Business Programs Office reviews the submitted MBE Goal Worksheet within CLM.
- 6.4.1.7 The Small Business Programs Office coordinates PRC meeting details and sends notifications.
- 6.4.1.8 The PRC will approve the set aside or recommended/newly proposed MBE goal.
- 6.4.1.9 If the MBE Goal Worksheet request is a task order, the Small Business Programs Office will review, approve, and send back to the Office of Procurement and Materials.
- 6.4.1.10 Once the overall MBE goal is approved by the Chief Procurement Officer, it will be entered into CLM by the Small Business Programs Office.
- 6.4.1.11 The Contract Administrator sends the calendar invite for the pre-bid/proposal meeting at least 2 weeks before the meeting date. The pre-bid/proposal meeting includes, at a minimum, the SSBA's discussion of set aside or goal, tiering requirements, work areas targeted for subcontracting and MBE submission requirements.
- 6.4.1.12 The solicitation is published by the Contract Administrator.
- 6.4.1.13 The Office of Procurement and Materials receives and evaluates quotes, bids, or proposals.
- 6.4.1.14 The Small Business Programs Office receives and reviews the MBE Appendix B-2 submitted by the lowest priced responsive, responsible bidder or apparent successful proposer.
- 6.4.1.15 The Small Business Programs Office will respond in writing to the Contract Administrator to confirm approval/denial of the MBE Appendix B-2 submission.
- 6.4.1.16 If additional information is needed, the auditor will send an email to the Contract Administrator and copy the Department/Program Office requesting additional information.
- 6.4.1.17 If the Small Business Programs Office does not receive a response within five (5) business days, the request will be sent back to the Department/Program Office and copy the Contract Administrator.
- 6.4.1.18 The purchase order or formal contract is created, approved, and executed.
- 6.4.1.19 The Office of Procurement and Materials will enter the final approved overall MBE goal and list each MBE subcontractor with its assigned goal percentage in CLM.
- 6.4.1.20 The Office of Procurement and Materials will ensure the bidder profiles (contact information) of both the prime contractor and subcontractor(s) have the correct credentials in CLM.
- 6.4.1.21 As they are finalized and become a part of the official contract record, the Office of Procurement and Materials will provide the Small Business Programs Office with copies of all documents in their possession listed in Section 6.2 (a) through 6.2 (n) above.

#### 6.4.2 Contract Compliance Cycle (Post Award)

- 6.4.2.1 The Office of Procurement and Materials will notify the Small Business Programs Office via email of the NTP date.
- 6.4.2.2 The Office of Procurement and Materials/Program Office shall schedule the kick-off meeting.
- 6.4.2.3 The Office of Procurement and Materials shall send the calendar invite to the Small Business Programs Office Manager at least two (2) weeks prior to scheduled project kick-off meeting.
- 6.4.2.4 The kick-off meeting objectives include discussion of Prompt Payment training and reporting, the TSR request process, and other prime/subcontractor workplace and reporting responsibilities.
- 6.4.2.5 The Small Business Programs Office schedules prime contractor and all named MBEs that shall attend Prompt Payment training.
- 6.4.2.6 The prime contractor and all MBEs must post payments to the CLM Prompt Payment Tool by the 10th of each month.
- 6.4.2.7 The Small Business Programs Office will periodically run Prompt Payment reports from CLM to monitor reporting compliance and MBE utilization.
- 6.4.2.8 If the prime contractor wants to add, remove, and/or substitute a named MBE, the prime contractor must submit a TSR request form to the Contracting Officer's Technical Representative (COTR):
  - (a) Certified MBEs must be used to replace terminated MBEs, or a waiver must be requested, and Good Faith Efforts (GFE) documentation must be provided;
  - (b) Affected MBE(s) shall be given written notice with ten (10) days to respond;
  - (c) The Small Business Programs Office/COTR shall review the request and the final TSR determination is sent back to the Office of Procurement and Materials; and
  - (d) The contract may be selected for a desk or field audit.
- 6.4.2.9 Other MBE-related issues that arise during the contract term must be immediately made known to the Small Business Programs Office by the Office of Procurement and Materials/Program Office staff to facilitate effective joint resolution.
- 6.4.2.10 The Program Office/Office of Procurement and Materials shall begin the closeout process. The Small Business Programs Office must be notified a minimum of two (2) weeks prior to pending contract closeout:
  - (a) The Small Business Programs Office reviews the contract's MBE activity to date to determine attainment and identify outstanding MBE payments or other issues needing resolution prior to final contractor payment;
  - (b) If the contract has already been closed, the Program Office/Office of Procurement and Materials must send a

copy of the Release of Retainage to the Small Business Programs Office; and

- (c) If no Prompt Payment data exists in CLM, the Small Business Programs Office will send emails to the prime contractors and subcontractors to confirm MBE attainment.

6.5 The SSBA assigned to Prompt Payment will review the Prompt Payment reports uploaded by the prime contractor, subcontractors and sub-tiers and ensures that they have been uploaded by the 10<sup>th</sup> of each month regardless of whether they have performed any services or received payment for invoices. If no payment is received, \$0.00 should be reported. The monthly reports are to include the following:

- (a) Actual amount paid to each non-MBE and MBE subcontractor;
- (b) Date of payment to the subcontractor;
- (c) Invoice number and date;
- (d) Invoice amount;
- (e) Description of work;
- (f) Percentage of physical work completed; and
- (g) Documentation of payment must include any of the following:
  - Documentation of automated clearing house transfers, checks, receipts, invoices marked as paid, or other evidence of Prompt Payment receipt.  
*\*Note the hard copy Prompt Payment Reporting form is not sufficient documentation for proof of payment and should only be utilized during instances when Prompt Payment reporting through the WMATA Supplier Portal is not available to reporting parties. In either case, the report must be accompanied by the aforementioned proof of payment documentation.\**

6.6 The SSBA will conduct periodic unannounced commercially useful function (CUF) reviews in person and/or virtual worksite visits and make random calls to subcontractors during the life of the contract.

6.7 If the Contract Administrator becomes aware that the contractor is failing or has failed to act in good faith to meet any MBE requirement as outlined in the contract, the Contract Administrator will notify the Small Business Programs Office of the details. The Small Business Programs Office will confirm the nature/scope of the deficiency and notify the contractor in writing with a copy to the Contract Administrator. The notification will include specific steps that must be completed and a timeframe for completion.

6.8 If the contractor fails or refuses to comply within the timeframe given, the CO or other delegated representative may issue a "Stop Work Order" which shall not allow the contractor to file a claim for time extension, excess costs or damages. WMATA may act on the contractor's failure to comply by taking certain actions, including but not limited to:

- (a) Suspension;

- (b) Debarment for a specific period or permanently;
- (c) Contract termination; or
- (d) Referral to WMATA's Office of Inspector General.

6.9 Before contract closeout, the SSBA will conduct a meeting with the Small Business Programs Office Auditors, the Minority Business Liaison Officer (MBELO), and management to discuss:

- (a) The overall MBE goal attainment;
- (b) Any previous Prompt Payment issues;
- (c) Each MBE's actual versus promised utilization;
- (d) Any formal (written) complaints received from the contractor or MBEs that are unresolved;
- (e) Results of CUF review(s), (if applicable);
- (f) Any other findings or expectations required of the prime contractor prior to the official contract closing; and
- (g) Conditions for withholding retainage, if necessary.

#### 6.10 Determination of Goal Achievement

6.10.1 The SSBA will schedule the final closeout meeting and add the meeting to the Small Business Programs Office Manager's calendar. The SSBA, MBELO, and CO/Contract Administrator signs the official document certifying that the prime contractor has:

- (a) Satisfied all MBE Appendix B-2 contractual requirements, or
- (b) Has one or more unresolved MBE-related deficiencies that if not addressed before the final payment is made, will become part of the contractor's MBE compliance record with WMATA. A negative MBE compliance record could impact a contractor's ability to compete for future contract opportunities.

6.10.2 The contractor will be notified in the event any adverse information is entered into the contract record relating to MBE non-compliance.

## 7 Safety Management

The following steps shall be followed by SSBA's who conduct site visits:

- 1) Attend all required safety related training to access WMATA property for site visits;
- 2) Ensure that safety equipment is properly maintained, updated as required and worn while conducting site visits;
- 3) Attend Roadway Worker Protection Training for certification to level 1;

- 4) Coordinate with WMATA Department of Safety to address any safety issues witnessed while on a site visit; and
- 5) During site visits inform manager of date/times, locations, contracts/company name for site visit.

## **8 References**

- 8.1 MBE Appendix B-2 (Solicitation)
- 8.2 Policy Instruction (P/I) 1.1 Document Governance and Hierarchy
- 8.3 Quality Management System Plan (QMSP)
- 8.4 Regulatory Framework Document
- 8.5 WCP Vendor Certification Non-Federal SOP #21-11

## **9 \*Records**

- 9.1 MBE Appendix B-2 Review Form
- 9.2 MBE Contract Compliance File Checklist
- 9.3 MBE Contract Compliance Final Analysis Review Form
- 9.4 MBE Commercially Useful Function Review Form

\*The documents referenced in this section can be located internally on the Office of Procurement and Materials' webpage under, "Knowledge Library," "Resources," "Common Forms," "Small Business Programs Office." They are also available externally on [wmata.com](http://wmata.com), Business, Small Business Programs Office, in the section marked, "Resources".

## **10 Appendices, Attachments and/or Exhibits**

N/A

## 11 Approvals

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*Controlled Document*

I hereby state that I have found no errors of this controlled quality document, and thus the document is ready for release

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*Content Approved*

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