

**NOTICE OF REQUIREMENTS FOR
MINORITY BUSINESS ENTERPRISE (MBE)**

August 2021

1. MINORITY BUSINESS ENTERPRISE (MBE) REQUIREMENT:

The requirements of the Authority's Minority Business Enterprise (MBE) Program Plan applies to this contract. Accordingly, the contractor shall carry out the requirements of the Authority's MBE Program Plan and this Appendix as it relates to the award and administration of this locally funded contract.

2. POLICY

It is the policy of the Authority, that MBEs shall be allowed to compete fairly to receive and participate in the performance of locally funded contracts, including contracts and subcontracts at any tier. It is further the policy of the Authority that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts. The contractor hereby agrees to fully carry out this policy in the award and administration of subcontracts consistent with efficient contract performance.

3. CONTRACT GOAL

- (a) If the bidder/proposer is not an MBE, the bidder/proposer agrees that the MBE goal for this contract shall be met by subcontractors or by joint ventures with MBEs. The goal set forth for this contract is ____% of the final contract price, including amendments and modifications. The amount of MBE participation will be determined by the dollar value of the work performed and/or supplies furnished by MBE firms as compared to the total value of all work performed and/or supplies furnished under this contract. The contractor shall have met this goal if the contractor's total MBE participation meets or exceeds this goal.
- (b) In cases where work is added to the contract by modification such that additional MBE participation is necessary to meet this goal, the contractor shall increase the participation of one or more firms listed on the "Schedule of MBE Participation" or submit additional MBE certified firms to meet the goal. In cases where work is deleted from the contract, the goal shall be applicable to the new contract amount. The contractor shall be permitted to meet the goal by revising its MBE participation, provided however, that the revision shall not result in MBE participation that is less than the original goal. In all cases where the initial MBE utilization level is impacted by a contractual adjustment, a Termination, Substitution and Reduction (TSR) request must be submitted to the Small Business Programs Office (SBPO). Written approval must be obtained from SBPO before any such changes may occur.

4. DEFINITIONS

- (a) **Bidder.** A party submitting a bid resulting from an invitation for bid solicitation.
- (b) **Broker.** A firm that arranges transactions between a buyer and a seller for a commission when the deal is executed. Brokers are unlike regular dealers in that brokers do not take physical possession of the brokered items. For purposes of MBE counting, a prime contractor may only count the commissions paid to an MBE broker towards its MBE participation.
- (c) **Certified MBE.** A for-profit small business concern (i) that is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which fifty-one percent (51%) of the stock is owned by one or more such individuals; (ii) whose

management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and (iii) whose eligibility is evidenced by a current WMATA Certification letter.

- (d) **Contract Administrator (CA).** An individual assigned by the contracting officer to support him/her in the general administration of the terms and conditions of each particular contract.
- (e) **Contractor.** Any individual or other legal entity that directly or indirectly (e.g., through an affiliate), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a Washington Metropolitan Area Transit Authority (WMATA) contract, including a contract for carriage or commercial bills of lading, or a subcontract under a contract.
- (f) **Good Faith Efforts (GFE).** Efforts to achieve an MBE goal or other requirements of the Authority's MBE Program Plan which by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the goal program requirement.
- (g) **Joint Venture.** An association of a MBE firm and one (1) or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the MBE is responsible for a distinct, clearly defined portion of the work of the contract and shares in the capital contribution, control, management, risks, and profits of the joint venture commensurate with its ownership interest.
- (h) **Manufacturer.** A firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
- (i) **MBE Appendix B-2.** The Notice of Requirements for an MBE, which when attached to a solicitation, implements the MBE requirements of the Authority's MBE Program in the award and administration of locally funded contracts.
- (j) **Pre-certification.** A requirement under 49 CFR § 26.81 Sub Part E, Section (5)(3c) that all certifications by the DCUCP be made final before the due date for bids or offers on a contract on which a firm seeks to participate as a MBE
- (k) **Proposer:** Any individual, firm, partnership, corporation, or combination thereof, submitting a proposal in response to an open solicitation.
- (l) **MBE Race-conscious.** A measure or program that is focused specifically on assisting only Minority Business Enterprises (MBE), including women-owned MBEs.
- (m) **Race-neutral.** A measure or program that assists all small businesses. Race neutral Minority Business Enterprise (MBE) participation includes, but is not limited to, any time a MBE wins a prime contract through a customary competitive procurement procedure, is awarded a subcontract on a prime contract that does not carry a MBE goal, or even if there is a MBE goal, wins a subcontract from a prime contractor that did not consider its MBE status in **making the award** (e.g. strict low bid). For the purpose of the MBE program, race-neutral also includes gender-neutral participation in the MBE program.
- (n) **Regular Dealer.** A firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described and required under the contract are bought, kept in

stock, and regularly sold or leased to the public in the usual course of business.

(o) **Socially and Economically Disadvantaged Individual.** Any individual who is a citizen or other lawfully admitted permanent resident of the United States and who the Authority finds to be a socially and economically disadvantaged individual, and any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

- (1) African Americans, which includes persons having origins in any of the Black racial groups of Africa;
- (2) Hispanic Americans, which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- (3) Native Americans, members of a Federally or State recognized Indian tribe to receive the presumption of social disadvantage as a Native American. (Under Section 26.5 Part (2), the term "Native Americans" also includes Alaska Natives, or Native Hawaiians);
- (4) Asian-Pacific Americans, which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the North Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- (5) Subcontinent Asian Americans, which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka;
- (6) Women; and
- (7) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

5. HOW MBE PARTICIPATION IS COUNTED TOWARDS THE CONTRACT GOAL

MBE participation shall be counted towards meeting the MBE goal in accordance with the following:

- (a) When an MBE participates in a contract, only the value of the work performed by the MBE is counted towards the MBE goal.
 - (1) This amount includes the entire amount of that portion of a construction contract that is performed by the MBE's own workforce. This amount includes the cost of supplies and materials obtained by the MBE for the work of the contract, including supplies purchased or equipment leased by the MBE (except supplies and equipment the MBE subcontractor purchases or leases from the prime contractor or its affiliate).
 - (2) This amount includes the entire amount of fees or commissions charged by an MBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance

specifically required for the performance of the contract, towards the MBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

- (3) When an MBE subcontracts part of its work under the contract to another firm, the value of the subcontract work may be counted towards the MBE goal only if the MBE's subcontractor is itself an MBE. Work that an MBE subcontracts to a non-MBE firm does not count towards the MBE goal.
- (b) When an MBE performs as a participant in a joint venture, the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that a MBE performs with its own forces towards the MBE goal may be counted.
- (c) Expenditures to an MBE contractor towards the MBE goal may be counted only if the MBE is performing a commercially useful function on that contract.
 - (1) An MBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by performing, managing, and supervising the work involved. To perform a commercially useful function, the MBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a MBE is performing a commercially useful function, the Authority will consider the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and the MBE credit claimed for its performance of the work, and other relevant factors.
 - (2) An MBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed to obtain the appearance of MBE participation.
 - (3) If an MBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own workforce, or if the MBE subcontracts a greater portion of the work of a contract than would be expected based on normal industry practice for the type of work, the Authority will presume that the MBE is not performing a commercially useful function.
- (d) The following factors will be used by the Authority in determining whether an MBE trucking company is performing a commercial useful function:
 - (1) The MBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible for on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting the MBE goal.
 - (2) The MBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
 - (3) The MBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers, it employs.
 - (4) The MBE may lease trucks from another MBE firm, including an owner-

operator who is certified as an MBE. The MBE who leases trucks from another MBE receives credit for the total value of the transportation services the lessee MBE provides on the contract.

- (5) The MBE may also lease trucks from a non-MBE firm, including an owner-operator. The MBE who leases trucks equipped with drivers from a non-MBE is entitled to credit for the full value of transportation services provided by non-MBE leased trucks, but only up to the equivalent of the total value of services provided by MBE-owned trucks or leased trucks with MBE employee drivers. Additional leasing services provided by non-MBE owned trucks with drivers may receive credit only for the fee or commission it receives resulting from the lease arrangement. The MBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by an MBE.
 - (6) MBEs that lease trucks without drivers from a non-MBE leasing company may receive credit for the total value of the transportation services if the MBE uses its own employees as drivers.
 - (7) The lease must indicate that the MBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the terms of the lease with the consent of the MBE, so long as the lease gives the MBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the MBE.
- (e) The following factors will be used to count expenditures with MBEs for materials or supplies towards the MBE goal:
- (1) If the materials or supplies are obtained from an MBE manufacturer, one hundred percent (100%) of the cost of the materials or supplies will be counted towards the MBE goal. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
 - (2) If the materials or supplies are purchased from an MBE regular dealer, sixty percent (60%) of the cost of the materials or supplies will be counted towards the MBE goal. A regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph if this person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph.
- (f) With respect to materials or supplies purchased from an MBE which is neither a manufacturer nor a regular dealer, i.e., the MBE is acting as a broker, the entire amount of fees or commissions charged for assistance in the procurement of the

materials and supplies, or fees or transportation charges for the delivery of materials and supplies required on a job site, may be counted towards the MBE goal, provided the fees are reasonable and are not excessive as compared to fees customarily allowed for similar services. The cost of the materials and supplies themselves may not be counted towards the MBE goal. All MBE firms must be certified by WMATA at the time of bid/proposal submission. Participation by a firm that is not certified as an MBE at the time of bid/proposal submission, does not count towards the MBE goal.

- (g) The dollar value of work performed under this contract by a firm that WMATA decertifies as an MBE does not count towards the MBE goal.
- (h) The dollar value of work performed under this contract by a firm that WMATA decertifies as an MBE does not count towards the MBE goal.
- (i) The participation of an MBE subcontractor does not count towards the contractor's MBE goal until the amount being counted towards the goal has been paid to the MBE.

6. BID/PROPOSAL REQUIREMENTS (WITH THE INITIAL SUBMISSION):

The bidder/proposer shall submit the following with its submission. Any bidder/proposer who fails to complete and return this information with its submission shall be deemed to be not responsive and may be ineligible for contract award. Bidders/proposers that fail to meet the MBE goal above and fail to demonstrate "good faith efforts" to justify waiver of the MBE goal (See paragraph 6.C. below) shall be deemed to be not responsible and will be ineligible for contract award.

- (a) Completed **"Schedule of MBE Participation" (MBE Attachment A-1)** sufficient to meet the above goal. If the bidder/proposer is an MBE firm and intends to satisfy the MBE requirement with its own firm, it must indicate in the Schedule of MBE Participation the area of work and percentage it will perform to satisfy the goal. If a full/partial waiver is being requested, the "Yes" line must be checked at the top left side of the Schedule. All bidders/proposers must attach current WMATA certification letters for each MBE listed on the Schedule.
- (b) Executed **"Letters of Intent (LOI) to Perform as a Subcontractor/Joint Venture" (MBE Attachment A-2)**. If the bidder/proposer is not an MBE or is an MBE but intends to satisfy some of the MBE requirements by using other MBE firms, the bidder/proposer must attach one signed LOI from each certified MBE listed on the Schedule of MBE Participation.
- (c) **MBE Waiver Documentation (MBE Attachment A-3)**. If in its submission, the bidder/proposer fails to meet the MBE goal listed above, the bidder/proposer has the burden of furnishing sufficient documentation with its bid/proposal of its GFE to justify a waiver of the entire goal or a portion of the goal. Such justification shall be in the form of a detailed narrative report. The following is a list of actions that shall be considered as part of the bidder/proposer's good faith efforts to obtain MBE participation. This list is neither a mandatory checklist nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in certain cases:
 - (1) Soliciting through all reasonable and available means (e.g. attendance at pre-bid/pre-proposal meetings, advertising and/or written notices) the interest of all certified MBEs who have the capability to perform the contract. The bidder/proposer must solicit this interest within sufficient time to allow the

MBEs to respond to the solicitation. The bidder/proposer must determine with certainty if the MBEs are interested by taking appropriate steps to follow up initial solicitations. Selecting portions of the work to be performed by MBEs to increase the likelihood that the MBE goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

- (2) Providing interested MBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- (3) Negotiating in good faith with interested MBEs. It is the bidder/proposer's responsibility to make a portion of the work available to MBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available MBE subcontractors and suppliers, so as to facilitate MBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of MBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for MBEs to perform the work. **"MBE Unavailability Certifications" (MBE Attachment A-3)** shall be completed, signed by the MBE, and submitted as appropriate.
- (4) A bidder/proposer using good business judgment would consider a number of factors in negotiating with subcontractors, including MBE subcontractors, and would take a firm's price and capabilities as well as the contract goal into consideration. However, the fact that there may be some additional costs involved in finding and using MBEs is not in itself sufficient reason for a bidder/proposer's failure to meet the contract MBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the contract with its own organization does not relieve the offeror of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from MBEs if the price difference is excessive or unreasonable.
- (5) Not rejecting MBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The MBE's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids/proposals in the contractor's efforts to meet the project goal.
- (6) Making efforts to assist interested MBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- (7) Making efforts to assist interested MBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- (8) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to aid in the recruitment and placement of MBEs.

7. SUBMISSION REQUIREMENTS (AFTER BID/PROPOSAL SUBMISSION)

If applicable, the bidder/proposer shall submit the following items within ten (10) calendar days after notification that they are being considered for contract award:

- (a) **“Information for Determining Joint Venture Eligibility” (MBE Attachment A-4, pgs. 1-4).** Submittal shall be signed by all parties, dated, and notarized.
- (b) Copy of Joint Venture Agreement, if applicable. Submittal shall be signed by all parties, dated, and notarized.
- (c) For design-build contracts, if an MBE goal is specified in the MBE GOAL/REQUIREMENTS, the bidder/proposer shall submit, with its initial bid/proposal, a list of MBE-certified firms that it intends to enter into subcontract agreements with for this contract. If no goal is specified in the solicitation and the bidder/proposer still intends to utilize MBEs in the performance of this contract, the bidder/proposer shall submit with its initial submission a list of those MBE-certified firms. The documentation requirements of the solicitation shall be completed and submitted at the time of bid/proposal submission for any contract in which an MBE goal is applicable or for any contract in which there was no goal established, but the offeror identified MBE-certified firms that it intended to enter into subcontract agreements with. Any bidder/proposer who fails to complete and return the information with its bid/proposal may be deemed to be not responsible and may be ineligible for contract award. Offerors that fail to meet the MBE goal, if any, specified in the solicitation and fail to demonstrate a good faith effort and/or to justify waiver of the MBE goal, may be deemed to be not responsible and may be ineligible for contract award.

8. CONTRACT ADMINISTRATION REQUIREMENTS

The following requirements apply after contract award:

- (a) The contractor shall include the following provision in each subcontract it awards in support of the MBE goal:

“The contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any WMATA contract or in the administration of its MBE program. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the award and administration of its subcontracts. WMATA’s MBE program requirements are incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon verification of the contractor’s failure to carry out WMATA’s approved program, the Department may impose sanctions which may include but are not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future contracting opportunities as non-responsible.

- (b) The Contractor shall monitor the performance of its MBE subcontractors and collect and report data on MBE participation to WMATA’s SBPO on the WMATA website at www.wmata.com under *Doing Business with WMATA*. Failure to submit these reports may result in suspension of contract payments. The contractor shall certify with each payment request that payment has been or will be made to all

subcontractors that are due payment, within ten (10) days after receipt of payment from the Authority for work completed by that subcontractor. The contractor shall inform the Contracting Officer's Representative (COR) and Contracting Officer's Technical Representative (COTR), with their payment request, of any situation in which scheduled subcontractor payments have not been made and the reason, therefore.

The contractor shall require each subcontractor to report prompt payment data to WMATA's SBPO online at www.wmata.com under *Doing Business with WMATA*. The subcontractor shall certify that payment has been timely received.

The contractor and the subcontractor are required to have prompt payment reporting training for each WMATA contract that has been awarded to them. Failure to complete this training may result in suspension of contract payments.

- (c) The contractor shall have a continuing obligation to maintain a schedule for tracking participation by MBE subcontractor(s) to meet its goal set forth above in this Appendix. The contractor shall not have MBE-obligated work performed nor materials or supplies furnished by any individual or firm other than those named in the "Schedule of MBE Participation." If at any time, the contractor believes or has reason to believe that it needs to obtain a substitute for a MBE contractor named in the "Schedule of MBE Participation", the contractor shall, within ten (10) days, notify the CA and the SBPO of that fact in writing on the **"Termination/Substitution/ Reduction Request" Form, (MBE Attachment A-5)**.

A copy of the notice sent by the contractor to the affected MBEs, and the MBE response(s) must be included with the TSR request. The contracting officer shall meet with SBPO to review the documentation submitted. A written approval/denial determination will be made within ten (10) days. There is no appeal provision for this decision. A copy of the TSR decision shall be maintained in the contract file. Situations which may warrant substitution for a MBE firm includes, but is not limited to the following:

- (1) Evidence of change in ownership or circumstances regarding the firm's status as an MBE.
- (2) Death or physical disability, if the named subcontractor or MBE partner of the joint venture is an individual.
- (3) Dissolution, of a corporation or partnership.
- (4) Bankruptcy of the subcontractor, subject to applicable bankruptcy law, and only instances where the bankruptcy affects the contractor's ability to perform.
- (5) Inability to furnish a reasonable performance or payment bond, if required.
- (6) Inability to obtain, or loss of, a license necessary for the performance of the particular category of work.
- (7) Failure or inability to comply with a requirement of law applicable to contractors and subcontractors on a construction, alteration, or repair project.
- (8) Failure or refusal to execute the subcontract in accordance with the terms of an offer submitted to the contractor prior to the contractor's submission of its offer, but only where the CA or other delegated Authority representative can

ascertain with reasonable certainty the terms of such offer. In the absence of any other factors, such a failure or refusal will be considered an unusual situation only if the bidder/proposer obtained, prior to bidding/proposing, an enforcement commitment from the subcontractor involved.

- (9) Failure to comply with the terms and conditions of this contract or those of its subcontract or joint venture agreement.

1.1. The contractor must have the prior, written approval of the CA and the SBPO before substitution of an MBE subcontractor, regardless of the reason for substitution. Failure to obtain the Authority's approval could result in the contractor's suspension or debarment.

If the request for substitution is approved, within seven (7) days thereafter, the contractor shall, if necessary to achieve the MBE Appendix B-2 goal, make every reasonable effort to subcontract the same or other work equivalent in value to other certified MBE firms. These efforts must be submitted in writing to the CA and the SBPO. Examples of reasonable efforts include, but are not limited to the following:

1. documentation of efforts made to assist the MBEs that needed assistance in obtaining bonding or insurance required by the bidder/proposer or the Authority;
2. documentation of efforts to utilize the services of small business organizations, community, and contractor groups to locate qualified MBEs;
3. documentation that the bidder/proposer has broken out contract work items into economically feasible units in fields where there are available MBE firms to perform the work; and
4. evidence that adequate information was provided to interested MBEs about the plans, specifications, and requirements of the contract, and that such information was communicated in a timely manner.

- (d) The contractor shall forward copies of all subcontracts to the MBE Office at the time of their execution.
- (e) The contractor shall not terminate an MBE subcontractor or an approved substitute MBE firm without WMATA's prior written consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for an MBE subcontractor with its own forces or those of an affiliate, a non-MBE firm, or with another MBE firm.
- (f) If the CA or other delegated Authority representative determines that the contractor has failed to comply with this MBE Appendix B-2, he/she will notify the SBPO of such noncompliance. The SBPO will contact the contractor to confirm the failure to comply and to request a corrective action plan. The contractor shall, after receipt of such notice, take corrective action. If the contractor fails or refuses to comply promptly, the CA or other delegated Authority representative may issue a "stop work order" stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop work order shall be made the subject of claim for extension of time or for excess costs or damages by the contractor. When the Authority proceeds with such formal actions, it has the burden of proving that the contractor has not met the requirements of this Appendix. The contractor's failure to meet its MBE Appendix B-2 goal shall shift the burden to it to show that it has met the good faith requirements of this Appendix. After exhausting all of its administrative and legal remedies, if the contractor is found to have failed to exert a "good faith effort" to involve MBEs in the work, the Authority may suspend or debar the contractor.

- (g) The contractor agrees to cooperate in any studies or surveys as may be conducted by the Authority which are necessary to determine the extent of the contractor's compliance with this Appendix.
- (h) The contractor shall keep records and documents for five (5) years following performance of this contract to indicate compliance with this Appendix. These records and documents, or copies thereof, shall be made available at reasonable times and places for inspection by any authorized representative of the Authority and will be submitted upon request, together with any other compliance information that such representative may require.
- (i) If the Authority has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements regarding the MBE Program, the matter shall be referred to WMATA's SBPO, and WMATA's Office of Inspector General (OIG).
- (j) Failure by the contractor to carry out the requirements of this Appendix is a material breach of this contract, that may result in the termination of this contract or such other remedy as the Authority deems appropriate.

SUMMARY OF SUBMITTALS

With the Response:

1. Completed "Schedule of MBE Participation" (**MBE Attachment A-1**)
2. Executed "Letters of Intent to Perform as a Subcontractor/Joint Venture" (**MBE Attachment A-2**).

Waiver Documentation, if applicable. Include narrative GFE report and completed "MBEUnavailability Certifications" (**MBE Attachment A-3**) as appropriate.

3. Copy of MBE Certification Letter(s) (one for each named MBE).

Response Requirements (Apparent Awardee):

1. If applicable, "Information for Determining Joint Venture Eligibility" (**MBE Attachment A-4, pgs. 1, 2, 3, 4**).
2. Copy of Joint Venture Agreement.

After Contract Award

1. **Termination/Substitution/Reduction Request Form, (MBE Attachment A-5)** (see paragraph 8.C) – Submit as necessary.
2. Copies of subcontracts submitted at the time of their execution.

MBE Attachment A-1

SCHEDULE OF MBE PARTICIPATION (SUBMIT WITH BID/PROPOSAL)

Contract Number: _____ **Task order:** _____
Project Name: _____ **Name of the Bidder/Proposer:** _____
WAIVER IS REQUESTED: _____ **YES** _____ **NO**

The bidder/proposer shall complete this Schedule by identifying only those MBE firms who have agreed to perform work on this contract. The prices shall add up to an amount that is at least equal to the MBE percentage goal for the entire contract. The offeror agrees to enter into a formal agreement with the MBE firm(s) listed for the work, at an amount equal to, or greater than, the prices listed in this Schedule, subject to award of a contract with the Authority. If the total MBE amount is less than the MBE percentage goal, a waiver must be requested by checking "Yes" above. Waiver documentation of Good Faith Efforts (GFE) must be included with the bid/proposal submission.

Name of MBE Subcontractor*	Address	Work Description/NAICS Contract Items or Parts Thereof to be Performed and Work Hours Involved	Agreed Price
Subtotal \$ MBE Subcontractors			
Name of MBE Prime Contractor	Address	Type of Work (Electrical, Paving, Etc.) and Contract Items or Parts Thereof to be Performed and Work Hours Involved	Agreed Price
Subtotal \$ MBE Prime Contractor			
TOTAL \$ ALL MBE CONTRACTORS		TOTAL	

Signature of Contractor's Representative
Title
Date

***If the MBE named is a second-tier or lower subcontractor, attach a separate document that lists the MBE's name, tier level (2nd, 3rd, etc.), name of the company with direct contractual relationship to the MBE, and a full explanation of the tiering arrangement.**

MBE ATTACHMENT A-2

**LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR/JOINT VENTURE(ALL ITEMS MUST
BE COMPLETED)**

Contract Number: _____ **Task order:** _____

Project Name: _____ **TO:** _____
Name of the Bidder/Proposer

The undersigned intends to perform work in connection with the above projects as (check one):

_____ An Individual

_____ A Corporation

_____ A Partnership

_____ A Joint Venture

Specify in detail the particular work items or parts thereof to be performed:

at the following price: \$_____. Please indicate _____% of the dollar value of the subcontract that will be awarded to non-MBE contractors, if applicable. The undersigned will enter into a formal agreement with you for the above work upon your execution of a contract with the Authority.

Name of MBE Subcontractor/Joint Venture

Phone Number

Address:

City, State, and Zip:

WMATA Vendor ID #/MBE Cert. #

MBE Subcontractor Signature & Title

Date

The following is to be completed by the prime contractor. A copy of this letter must be returned to the MBE subcontractor to indicate acceptance.

To: _____ (Name of MBE)

You have projected your interest and intent for such work, and the undersigned is projecting completion of such work as follows:

WORK ITEMS	PROJECTED MBE COMMENCEMENT DATE	PROJECTED MBE COMPLETION DATE

(Date)

(Name of Prime Contractor & Acceptance Signature)

MBE ATTACHMENT A-3
MBE UNAVAILABILITY CERTIFICATION

(SUBMIT WITH BID/PROPOSAL IF REQUESTING A WAIVER)

I, _____, _____, of _____
(Name) (Title) (Bidder/proposer)

certify that on _____ I contacted the following MBE contractor(s) to obtain offer(s) for work
(Date)

items to be performed on _____ and _____

WMATA contact number

WMATA task order (if applicable)

MBE Contractor

Work Items Sought

Form of Bid/Proposal Sought
(i.e., Unit Price, Materials and
Labor Only, Etc.)

To the best of my knowledge and belief, said MBE contractors were unavailable (exclusive of unavailability due to lack of agreement on price) for work on this project, or unable to prepare a bid/proposal, for the following reason(s):

Signature: _____ Date: _____

_____ was offered an opportunity to submit a bid/proposal on the above
(Name of MBE Contractor)

identified work on _____ by _____
(Date) (Source)

The above statement is a true and accurate account of why I did not submit an offer on this project.

(Signature of MBE Contractor)

Date

MBE ATTACHMENT A-4
Information for Determining Joint Venture Eligibility

Page 1

.....
Name and address of Joint Venture:

Contact Person: _____ Telephone: _____

Have you attached a copy of the Joint Venture agreement? ☐ Yes ☐ No

NOTE: Affidavit will not be processed without a copy of the Joint Venture agreement.

.....
Name and address of Joint Venture partner: _____

Contact Person: _____ Telephone: _____

Status of firm: ☐ MBE ☐ Non-Minority

Does firm have current Metro, DC DOT or DCUCP MBE certification? ☐ Yes ☐ No

.....
Name and address of Joint Venture partner: _____

Contact Person: _____ Telephone: _____

Status of firm: ☐ MBE ☐ Non-Minority

Does firm have current Metro, WCP MBE certification? ☐ Yes ☐ No

.....
Describe the nature of the Joint Venture's business:

Describe the role in the Joint Venture of each partner listed above:

Describe the experience and business qualifications of each partner in the Joint Venture listed above:

.....

Information for Determining Joint Venture Eligibility

Page 2

.....

Indicate the percentage of ownership in the Joint Venture for each Joint Venture partner, indicating dollar amounts wherever applicable.

Name of Partner	Percentage of Ownership	Profit and Loss Sharing	Capital Contributions including Equipment	Other Agreements
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

TOTALS:

.....

Identify by name, title, race, sex, and company affiliation those individuals responsible for the management control of and participation in this contract:

1. Financial decisions, such as payroll, insurance, surety and/or bonding requirements:

Name: _____ Race: _____

Title: _____ Sex: ☐ Male ☐ Female

Company affiliation: _____

2. Management decisions, such as estimating, marketing and sales, hiring and firing, purchasing supplies:

Name: _____ Race: _____

Title: _____ Sex: ☐ Male ☐ Female

Company affiliation: _____

3. Supervision of field operations:

Name: _____ Race: _____

Title: _____ Sex: ☐ Male ☐ Female

Company affiliation: _____

.....

Information for Determining Joint Venture Eligibility

Page 3

.....

The undersigned swears that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operations of our following named Joint Venture:

and the intended participation by each Joint Venture in the undertaking. Further, the undersigned covenant and agreement to provide the Authority current, complete, and accurate information regarding actual Joint Venture work and the payment thereof and any proposed changes in any of the Joint Venture arrangements and to permit the audit and examination of the books, records, and files of the Joint Venture, or those of each Joint Venture relevant to the Joint Venture, by authorized representatives of the Authority or the Federal funding agency. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal and State laws concerning false statements.

It is recognized and acknowledged that the Authority's MBE Program shall have access to the information provided herein above for establishing eligibility and authenticity of the minority/woman-owned status of the Joint Venture.

It is understood that trade secrets and information privileged by law, as well as commercial, financial, geological, and geophysical data furnished will be protected.

_____ (NAME OF FIRM)	_____ (NAME OF SECOND FIRM)
_____ (SIGNATURE OF AFFIANT)	_____ (SIGNATURE OF AFFIANT)
_____ (PRINT NAME)	_____ (PRINT NAME)
_____ (TITLE)	_____ (TITLE)
_____ (DATE)	_____ (DATE)

.....

Information for Determining Joint Venture Eligibility

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.....
Date: _____ State: _____ County: _____

On this _____ day of _____, 20_____,

before me appeared _____
(Name)

to me personally known, who, being duly sworn, did execute the foregoing Affidavit, and did state that he or she was properly authorized by _____
(Name of Firm)

to execute the Affidavit and did so as his or her free act and deed.

(Seal) Sworn and subscribed before me _____
(Notary Public)

Commission Expires: _____

.....
Date: _____ State: _____ County: _____

On this _____ day of _____, 20_____,

before me appeared _____
(Name)

to me personally known, who, being duly sworn, did execute the foregoing Affidavit, and did state that he or she was properly authorized by _____
(Name of Firm)

to execute the Affidavit and did so as his or her free act and deed.

(Seal) Sworn and subscribed before me _____
(Notary Public)

Commission Expires: _____

MBE Attachment A-5

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

TERMINATION/SUBSTITUTION/REDUCTION REQUEST (TSR) INSTRUCTIONS

*Terms used on this form, *contractor* and *subcontractor* are synonymous with *consultant* and *Sub-consultant* respectively.

The contractor shall follow the guidelines provided in this MBE Appendix B-2 when deciding to terminate/substitute or reduce the work of an MBE listed on the Schedule of MBE Participation. The contractor shall make all reasonable efforts to avoid termination, substitution or reducing the work of an MBE listed on the MBE Letter of Intent. All terminations, substitutions, and reductions in scope must be approved in writing by the Chief Procurement Officer (CPRO) or designee.

The process for substitution is as follows:

- A. Submit a written request on the attached form to the Contract Administrator (CA) and a copy to the MBE vendor;
- B. The MBE vendor has ten (10) days to respond to the CO and forward a copy to the prime contractor;
- C. A copy of the TSR request and MBE vendor response is forwarded to the MBE liaison or designee;
- D. The MBE liaison and CO meet to discuss TSR and make a determination;
- E. The contractor receives approval/denial from the CA; and
- F. If approved, the contractor submits Good Faith Efforts (GFE) documentation.

The contractor must demonstrate GFE to replace a committed MBE firm with another committed MBE firm. Reasonable methods to resolve performance disputes must be applied. If an MBE subcontractor is approved to be terminated or fails to complete its work on the contract for any reason, the prime contractor will make GFE to find another MBE subcontractor to replace the original MBE. The GFE will be directed at finding another MBE to perform **at least** the same amount of work under the contract as the MBE that was terminated or replaced, to the extent needed to meet the contract goal established for the project.

GFE documentation must be submitted to WMATA within seven (7) calendar days from the date WMATA approves the request.

The contractor shall submit an amended MBE Letter of Intent and a copy of the new subcontract with the substitute MBE's name, description of work, NAICS code, Vendor Identification Number, and dollar value of work. Approval from WMATA must be obtained prior to the substituted MBE beginning work.

MBE Attachment A-5
Washington Metropolitan Area Transit Authority
Minority Business Enterprise Program
Termination/Substitution/Reduction (TSR) Request
Form

Contract Number: _____ MOD: _____ Task Order: _____

Prime Contractor: _____ Vendor Identification No.: _____

MBE Firm: _____ MBE Certification No.: _____

Requestor: _____ Email: _____

Phone No: _____

Type of Request: _____ Termination _____ Substitution _____ Reduction

1. Is this request due to a WMATA Change Order/Scope?

___ Yes, explain the Change Order/Scope impact on MBE participation.

___ No, select below the fact(s) and the reason(s) for the request (see attached instructions).

- ___ Failure or refusal to execute the written contract;
- ___ Failure or refusal to perform work in accordance with normal industry standards;
- ___ Bankruptcy, insolvency, or exhibits credit unworthiness;
- ___ Is ineligible to work because of suspension or debarment proceedings;
- ___ Is not a responsible contractor;
- ___ Voluntarily withdraws from the project and provides to WMATA written notice of its withdrawal;
- ___ Is Ineligible to receive MBE credit for the type of work required;
- ___ The owner died or became disabled resulting in inability to complete work on the contract;
- or
- ___ Other documented good cause (attach documentation).

Attach a brief statement of facts describing the situation and any documentation to substantiate selection above.

2. Date determined the MBE is unwilling, unable or ineligible to perform work.

3. Date of written notice to MBE: _____

(Attach a copy of MBE notice and MBE response with this TSR request.)

4. Amount of MBE subcontract. \$_____

5. Amount paid to MBE for work completed. \$_____

6. MBE amount to be substituted. \$_____

7. Proposed New Subcontractor Name (if applicable).

8. Projected date for replacement subcontractor to commence work: _____

9. Is the replacement a WMATA certified MBE?

___ Yes (Please submit a new MBE Letter of Intent for each new MBE)

___ No (Please submit Good Faith Effort (GFE) documentation with this request)

10. Is this project scheduled to meet the agreed upon MBE goal? _____Yes_____No

Original MBE Subcontractor Signature

Date

Prime Contractor Signature

Date

WMATA Contracting Officer Signature

Date

FOR WMATA USE ONLY

Request is: _____Approved_____Denied

WMATA: _____
Signature