



ANNUAL MINORITY BUSINESS ENTERPRISE (MBE) PROCUREMENT REPORT GUIDELINES FOR FY 2011

The Governor's Office is continuing their request to expedite the preparation and submission of the statewide Annual MBE Report. Therefore, all agencies are being asked to submit their Individual MBE Reports to the Governor's Office of Minority Affairs (GOMA) on or before the close of business on **Friday, August 19, 2011.**

GOMA will continue to use the two Excel spreadsheets and the Access database application to report agencies' FY 2011 MBE participation. Accordingly, this document is meant to be used as a guideline to assist all reporting agencies:

- I. All state procurement units are reminded to take great care in reporting MBE contract participation and contract waiver data. Procurement units should not report any MBE data (prime or subcontract dollars) in their 2011 MBE reports that is not adequately supported by auditable contract documentation.
- II. All procurement units must report, in addition to MBE prime contract and subcontract award data, actual payments made to MBE prime and MBE subcontractors during fiscal year 2011. **Please note that the Form 3 database that was modified in FY 2009 is again being used for the FY 2011 reporting period. Starting in FY 2009, Form 3 represents a comprehensive MBE contract payments and compliance database that captures prime and subcontractor actual payments on both a fiscal year and a contract-to-date basis.** A separate set of instructions for completing the database has been provided.
- III. GOMA will provide technical assistance and support through the MBE Report Help Desk. You can reach the help desk by calling 410.767.8232 and asking for the MBE Report Help Desk.

WHAT IS THE 2011 REPORTING FORMAT?

The following reporting process will remain in effect for FY 2011.

- I. Procurement units will continue to complete and submit the MBE Summary Statement that summarizes the agency's contract award and payment data. The Department Secretary, University President, or Agency Head must sign and submit this form under separate cover to the Governor's Office of Minority Affairs.

- II. Procurement units will continue to submit their annual MBE report electronically in specified file formats, using the GOMA-approved report template.
- III. **Reporting Form #1 – Total Contract Awards by Procurement Categories** – has been developed in an Excel spreadsheet format. Form 1 captures all reportable contract awards, including MBE prime/subcontract awards and all MBE waiver activity. Agencies should refer to BPW Advisory 1998-2 and/or legal counsel for assistance in determining whether a contract item is MBE-reportable.
- IV. **Reporting Form #2 – Total MBE Prime Contract/MBE Subcontract Awards by MBE Classifications and Procurement Categories** – has been developed in an Excel spreadsheet format. The total number and dollar value of all MBE prime and MBE subcontract awards should be included on Form 2. **NOTES:** (i) If you report the full value of a MBE prime contract award at the bottom of Form 2, DO NOT include any related MBE subcontract awards at the top of Form 2. Doing so will result in an overstatement of your unit's MBE activity. (ii) To avoid overstating participation of dually-certified MBEs, be sure to include the affected businesses in only one of the newly created MBE categories.
- V. **Reporting Form #3 – Annual MBE Procurement Report Database** – provides an accounting of payments made to MBE prime and MBE subcontractors. Beginning in FY 2009, Form 3 has been revised to provide the compliance status of contracts with MBE subcontracting commitments. In keeping with regulatory requirements (COMAR), each reporting procurement unit **MUST** supply all of the data elements included in the payment database template. Instructions on the use of the database are attached to this document. **Please read the instructions carefully before you begin entering data into the Form 3 database.** **NOTE: In the past, in order to avoid over-counting MBE payments, you were instructed not to include subcontractor payment data for contracts where the prime contractor is a MBE. The new version of the database has been reprogrammed so that subcontractor payment data should be entered for all contracts, including ones where the prime contractor is a MBE.**
- VI. **NEW for FY 2011 – MBE Prime Contractors and MBE Subcontractor Awards Detail Report** – has been developed in an Excel spreadsheet format. The Detail Report captures the contracts awarded to MBEs in FY 2011 and the names of those MBE prime and subcontractors.

REGULATORY AUTHORITY

- I. In accordance with COMAR 21.11.03.17 MBE Reporting, each procurement unit shall make a report annually to the Office of Minority Affairs that includes:
 - a. The total number, value, and description of its procurements from State-certified MBEs as prime contractors, and separately as subcontractors, by business name and specific category of minority business enterprise;

- b. The percentages, by specific category of MBE, that purchases represent of the total number and value of its procurements for the fiscal year just ended;
- c. The number of MBE waivers granted; and
- d. An evaluation by the procurement agency of the success of its MBE program.

Each procurement agency shall furnish any other information or periodic reports requested by the Governor's Office of Minority Affairs and the Department of Transportation in connection with MBE certification and procurement, or any other matters related to the administration, effectiveness, or continuation of the Minority Business Enterprise Program.

The Governor's Office of Minority Affairs shall prepare an annual report summarizing certified MBE participation throughout the State, for submission by the end of each calendar year to the Legislative Policy Committee of the Maryland General Assembly.

MBE REPORTING REQUIREMENTS & CRITERIA

- I. In accordance with COMAR 21.11.03.15 Certification - General, the Department of Transportation is the agency designated to certify, recertify, and decertify minority business enterprises. A procurement agency may not permit a business to participate in procurement as a certified MBE unless the Department of Transportation has certified it as a minority business enterprise.
- II. Pursuant to COMAR 21.11.05.08 Minority Business Status, in calculating compliance with the certified Minority Business Enterprise goals under COMAR 21.11.03 and for reporting purposes under COMAR 21.11.03.17, a procurement agency:
 - a. May include in its MBE procurements the annual dollar value of its contracts with Blind Industries and Services of Maryland and with certified Community Service Providers (as defined in COMAR 21.11.03.17); and,
 - b. May exclude from its total annual procurements the annual dollar value of its contracts with Maryland Correctional Enterprises (MCE).
- III.
 - a. **DGS Contracts:** Beginning in FY 2009, agency-specific commodities and maintenance contracts awarded by or through the Department of General Services (DGS) should be included on the using agency's annual report on Forms 1 and 2. Non-delegated DGS contracts (i.e., Statewide, Capital Construction, etc.) should be excluded from Forms 1 and 2 as DGS will report these awards. However, all agency purchases from statewide contracts and delegated contracts should be included on the using agency's Form 3 Payments/Compliance Database. (See the DGS website – Bid Boards page – for guidance on the types of contracts for which MBE responsibility has been delegated.)
 - b. **DoIT/DBM Master Contracts:** Certain Department of Budget and Management (DBM) and Department of Information Technology (DoIT) master contracts have been delegated to

the using agency for purposes of MBE compliance and reporting. Task order awards made from these delegated contracts should be reported on Forms 1 and 2 by the using agency. Payments made to these task order contractors (prime and subcontractor) during FY 2011 are to be reported on Form 3. (See the DBM and DoIT websites for the most current list of contracts for which MBE responsibility has been delegated.)

- c. **Multi-year contracts:** The full value of a multi-year contract should be reported on Forms 1 and 2 in the year that the multi-year contract was awarded. Ex: A 3-year contract for \$4,000,000 was awarded on November 12, 2010 by Agency X. The contract includes 2 one-year option periods and has a 25% MBE subcontracting goal. For FY 2011, Agency X should include the entire \$4,000,000 award on Form 1, and the \$1,000,000 subcontract amount on Form 2 in the appropriate MBE categories. If exercised, the 1st option should be reported in FY 2013 and the 2nd in FY 2014. DO NOT prorate the reporting of the 3-year initial award amount over the 3-year term of the contract.

Form 3 MBE payment/compliance data for multi-year contracts should reflect the actual payments disbursed to all prime contractors and MBE subcontractors during: a) the current fiscal year reporting period, and b) contract-to-date.

- d. **Contract modifications:** Changes to contracts that increase the overall contract value (i.e., change orders, extra work orders, supplemental agreements, contract amendments, etc.) are part of the agency's contract award activity and are to be reported in the year in which the modification is issued. Any MBE participation associated with the modification amounts should be included.
- e. **Direct Vouchers:** Direct Vouchers are one-time-only procurement reportable purchases to be reported as awards on Forms 1 and 2 and as payments on Form 3. However, direct vouchers that represent DGS statewide master contract purchases or non-delegated DBM or DoIT contracts should only be reported as payments on Form 3. Do not report these voucher amounts on Forms 1 and 2, as the control agencies have already reported these contracts on Forms 1 and 2 of their annual MBE report.
- f. **Corporate Purchasing Cards:** P-card procurement reportable purchases are to be reported as awards on Forms 1 and 2, and as payments on Form 3 with the following exception: P-card purchases from all non-delegated DBM, DGS, and DoIT contracts should be excluded from Forms 1 and 2, as the control agency (DBM or DGS) has already reported these contracts as part of their annual MBE report.
- g. **MBE Prime Contracts:** PLEASE NOTE: MBE subcontractor participation that is part of a MBE prime contract award cannot be reported twice. If the procurement unit reports the full value of the MBE prime contract in the MBE Prime Awards section on Form 2, the value of the MBE subcontract participation for that contract cannot be included in the MBE Subcontract Awards section of Form 2.

DEFINITIONS

- I. **Architectural Services** *COMAR 21.01.02.01 Definitions* - Professional or creative work that is performed in connection with the design and supervision of construction or landscaping, and that requires architectural education, training and experience. Architectural services include consultation, research, investigation, evaluation, planning, design, document preparation, and coordination of services furnished by structural, civil, mechanical and electrical engineers and other consultants.
- II. **Certification** *COMAR 21.01.02.01 Definitions* - The process of ensuring that a legal entity is a MBE via a determination by the Maryland Department of Transportation (MDOT) per procedures outlined in *COMAR 21.11.03*.
- III. **Community Service Provider** *COMAR 21.11.05.01 Definitions* - Means an entity, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual that is:
 - a. Organized under the laws of the United States or the State of Maryland;
 - b. Accredited by the Division of Rehabilitation Services of the State Department of Education for participation in the Employment Works Program; and
 - c. Operated in the interests of individuals who have a mental or physical disability, including blindness, that:
 - i. Constitutes a substantial barrier to employment; and
 - ii. Prevents the individual from engaging in competitive employment.
- IV. **Construction** *COMAR 21.01.02.01 Definitions* -The process of building, altering, repairing, improving or demolishing any structure, building, or other improvement to real property.
- V. **Construction Related Services** *COMAR 21.01.02.01 Definitions* - A service that is necessary for construction and maintenance of a public improvement project. These services include feasibility studies, surveying, construction management, inspection, energy audits, interior design, design and installation of telecommunication systems, etc.
- VI. **Emergency** *COMAR 21.01.02.01 Definitions* - When competitive sealed bidding or competitive sealed proposal cannot be used in awarding or modifying the procurement of supplies and equipment, services, maintenance, construction or construction-related services, in excess of \$25,000 because of an emergency.
- VII. **Expedited** *COMAR 21.01.02.01 Definitions* - When competitive sealed bidding or competitive proposal cannot be used in awarding the procurement of supplies and equipment, services,

maintenance, construction or construction-related services, in excess of \$25,000 because circumstances require expedited action.

- VIII. **Engineering Services** *COMAR 21.01.02.01 Definitions* - Professional or creative work that is performed in connection with structures, utilities, machines, buildings, equipment and processes which require engineering education, training and experience in the application of special knowledge in the mathematical, physical and engineering sciences.
- IX. **Human, Social, Cultural & Educational Services** *COMAR 21.01.02.01 Definitions* - Contractual services procured by the Department's of Health & Mental Hygiene, Human Resources, Labor, Licensing and Regulation, Juvenile Justice and Aging in order to provide support, care or shelter directly to third party clients. All procurements meeting this description must be reported in this category regardless of the dollar amount.
- X. **Information technology** *COMAR 21.01.02.01 Definitions* - Means all electronic information-processing hardware and software, including:
 - a. Maintenance
 - b. Telecommunications; and
 - c. Associated consulting services
- XI. **Maintenance** *COMAR 21.01.02.01 Definitions* - Any work necessary for the continued operation or maintenance of a facility, structures, building, grounds, or building systems. This includes, but is not limited to janitorial services, landscaping services and trash removal.
- XII. **Minority Business Enterprise (MBE)** *COMAR 21.01.02.01 Definitions* - Any legal entity, other than a joint venture, organized to engage in commercial transactions, which is at least 51% owned, managed, and controlled by one or more MBE(s) or a Non-profit entity organized to promote the interests of physically or mentally disabled individuals.
- XIII. **Minority Business Status** *COMAR 21.11.05.08 Definitions* - In calculating compliance with the certified Minority Business goals under COMAR 21.11.03 and for reporting purposes under COMAR 21.11.03.17 a procurement agency:
 - a. May include in its MBE procurements the annual dollar value of its contracts with Blind Industries and Services of Maryland, community service providers, and individual-with-disability-owned businesses; and
 - b. May exclude from its total annual procurements the annual dollar value of its contracts with Maryland Correctional Enterprises.
- XIII. **Minority Person** *COMAR 21.11.03.03 Definitions*- A member of one of the following socially or economically disadvantaged groups:

- a. African American (not of Hispanic origin)
- b. Asian
- c. Hispanic
- d. Native American
- e. Women
- f. Physically or Mentally Disabled and
- g. Non-Profit - organized to promote the interests of physically or mentally disabled individuals.

- XIV. **Service** *COMAR 21.01.02.01 Definitions* - (excluding Architectural, Construction Related, Engineering, Human and Maintenance Services) - the rendering of time, effort or work, rather than the furnishing of a specific physical product other than reports incidental to the required performance. It includes, but is not limited to, the professional, personal and/or contractual services provided by attorneys, accountants, physicians, consultants, appraisers, land surveyors, advertisers and exterminators. It is also associated with the provision of expertise or labor in areas such as: property management, janitorial services, security, waste disposal, pest control, trash removal, window cleaning, computer hardware and software maintenance, snow removal and office equipment.
- XV. **Supplies & Equipment** *COMAR21.01.02.01 Definitions* - All tangible personal property, including equipment leases, insurance, printing, food, building materials, office supplies and materials, and other items needed to support normal operations.
- XVI. **Sole Source** *COMAR 21.11.03.03 Definitions* - when competitive selection method cannot be used because there is only one available source for the subject of the contract.

FY 2012 STRATEGIC & TACTICAL MBE PLAN

Each department/agency shall submit a **Fiscal Year 2012 Strategic & Tactical MBE Plan** consistent with ***Maryland Managing for Results*** that include the following:

- I. **Program Description** of major ongoing activities of the program. Include in the Program Description an evaluation of the agency's FY 2011 performance.
- II. **MBE Vision Statement** - a brief and compelling description of the preferred, ideal future towards which the program is working.
- III. **Key Goals** that outline the general ends toward which an organization directs its efforts. Goals clarify the mission and provide direction, but do not state how to get there.
- IV. **Objectives** should be developed for the key goals.

- V. **Strategies** should be listed to explain how the department/agency plans to achieve the goals and objectives developed for the program.
- VI. **Performance Measures** should be submitted to demonstrate quantifiable accomplishments of the agency.
- VII. **Accountability**- Explain who will be responsible for implementing your department/agency's MBE Plan and Initiatives. Include the following information:
- Name(s):
Title(s):
Location/Unit:
Phone Number(s):
- VIII. **Monitoring** - Procedures established to ensure that desired outcomes are immediately and continually achieved.

Attachments

- Directions for Using the Excel Spreadsheet File to Compile the Annual Minority Business Procurement Awards Report Data - Forms 1 & 2
- Directions for Use of the Form 3 MBE Payments/Compliance Database
- Instructions for Completing the List of MBE Prime Contractors and Subcontractors for the FY 2011 Annual Report
- Summary Statement (In PDF Fill-In Format) - Form 5