



BPW Advisory No.: 2001-1

Date: June 29, 2001

Subject: Minority Business Enterprise Participation

Effective Date: July 1, 2001

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Governor*

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Purpose: To notify State agencies of changes to the procurement law concerning minority business enterprise (MBE) participation.

Goal: Chapter 339, Acts of 2001, increases the minority business enterprise participation goal to 25% of each agency's total dollar value of procurement contracts. To reach that 25% overall goal, agencies must target spending 7% of their total procurement dollars with African American-owned businesses and 10% of their total procurement dollars with women-owned businesses. Only businesses certified as MBEs by the Maryland Department of Transportation may be counted toward the goal.* The law is effective July 1, 2001. Amendments to Title 21, Code of Maryland Regulations, will be forthcoming.

*Information on the ethnicity of certified MBEs is available on the MDOT website: www.mdot.state.md.us.

Guidelines: *Setting MBE Participation Goals*

The MBE law directs agencies to evaluate each procurement contract to determine the appropriate MBE participation goal. Some factors to consider when establishing an appropriate MBE goal are:

1. Can the procurement reasonably be broken down into subcontracts appropriate for an MBE goal?
2. Are MBEs available in the primary and subcontracting category(ies) required in the procurement?
3. Where are MBEs located if the goods or services must be provided locally?
4. Can sole source and emergency contracts reasonably include MBE participation goals at the prime contractor level, subcontractor level, or both?

Remember that the 25% MBE participation goal is an overall goal. Individual contracts may contain MBE goals above or below the 25% goal provided the annual total dollar value targets 25% MBE participation. If a contractor acquires MBE certification after contract award, the MBE participation may be credited beginning on the effective date of the certification.

Each solicitation (IFB, RFP, small procurement) must encourage minority businesses to respond to the solicitation. When appropriate, each solicitation must contain an MBE subcontracting goal.

Prime Contractors

The new law requires prime contractors who are certified MBEs to meet the subcontracting goal. In the past, if a prime contractor was an MBE, agencies did not require the MBE prime contractor to meet the subcontracting MBE goal. That has changed. Now, if the solicitation contains a subcontracting goal, even an MBE prime contractor must comply with the goal.

Race Neutral Measures

The new law encourages each unit to meet the maximum feasible portion of its MBE goals by using race-neutral measures. Race-neutral measures are methods that assist businesses without regard to their ethnicity. Specific examples of race-neutral measures are:

1. Using the Small Business Preference. (See COMAR 21.11.01)
2. Maintaining a database of qualified small businesses, including MBEs, in order to keep them informed of upcoming procurements.
3. Relaxing bonding requirements when permissible by law. Regulations provide that agencies may use irrevocable letters of credit, title to real property, and other forms of security described in COMAR 21.06.07.
4. Dividing a large procurement into several smaller procurements.
5. Simplifying bidding requirements to the extent permitted by law.
6. Advising businesses of the practices of past successful bidders (what successful bidders are doing “right”).
7. Using pre-solicitation conferences to clarify complex solicitations and to link subcontractors and prime contractors.
8. Training small businesses on State procurement practices.
9. Offering financial and technical assistance for small business development.

Questions may be addressed to:

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