

# WELCOME!

Today's Topic:

## Maryland's MBE Compliance Considerations for Prime Contractors

October 7, 2025

T.I.P.S.

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# GUEST INSTRUCTOR



**NICHELE JOHNSON**

MBE OMBUDSMAN



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# MBE PROGRAM

## MBE COMPLIANCE CONSIDERATIONS FOR PRIME CONTRACTORS

Presented by **Nichelle Johnson**

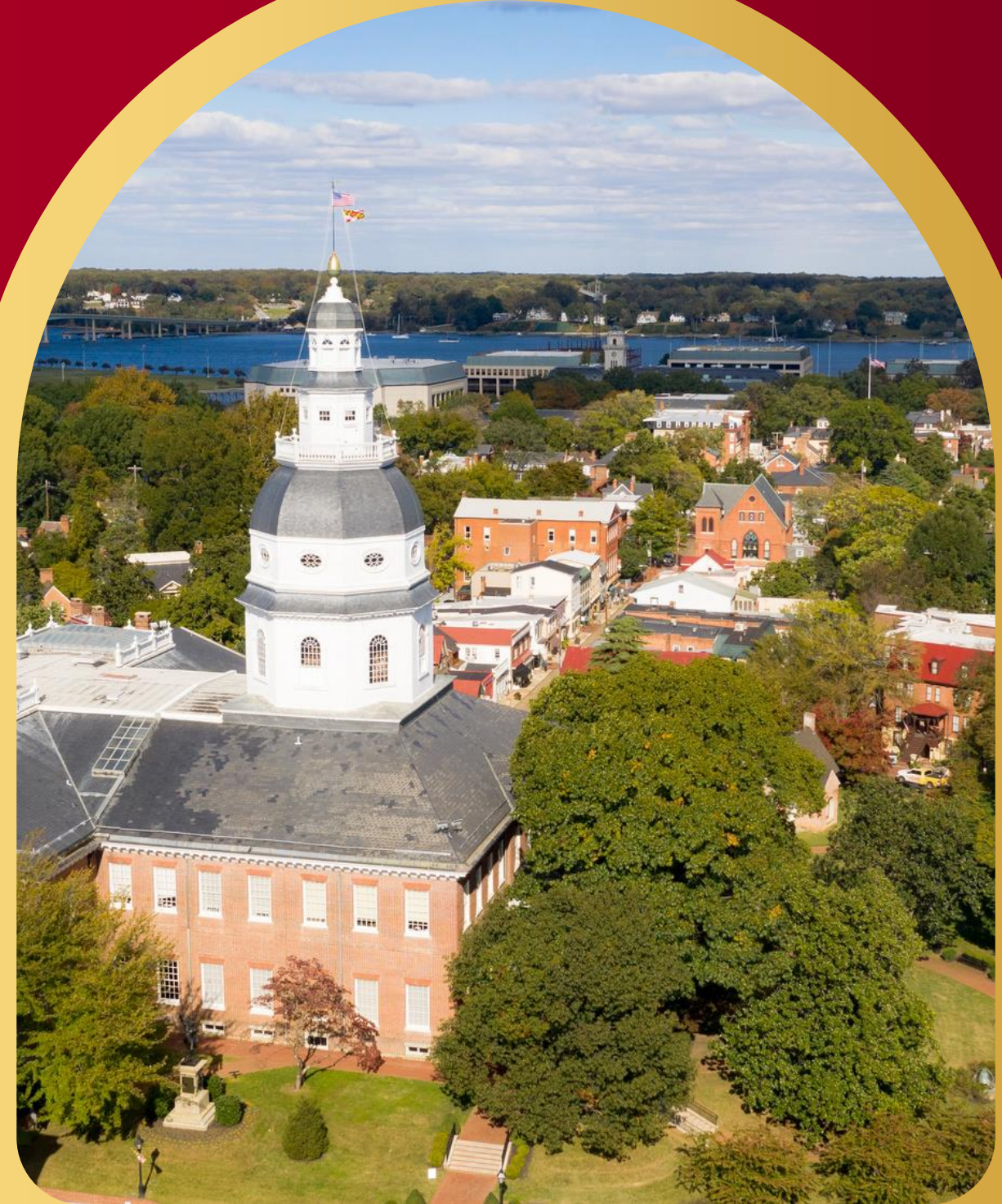
10.7.2025



# AGENDA



- Overview (Program/OSBA)
- Role of the MBE Ombudsman
- MBE Laws (statutes)
- Regulations
- MBE Compliance and Policies
  - MBE Goals
  - Securing MBE Firms (Do's / Don'ts)
  - MBE Forms
  - Payment
  - Advocacy/Outreach
- MBE Program Best Practices





## **MBE Program**

Created to ensure that socially and economically disadvantaged small business owners are included in the State's procurement and contracting opportunities.

## **IMPORTANT**

The program's existence can help equalize the effects of both explicit discrimination and implicit bias.

# MBE PROGRAM

While the program is meant to level the playing field, caused by explicit discrimination, it can also help business owners overcome the effects of implicit bias.

## **Implicit Bias**

May be more indirect, not as openly expressed or aggressive.

Prime contractors need to ensure they avoid expressing both explicit and implicit bias while operating in state procurement to follow MBE laws, regulations, and related policies.

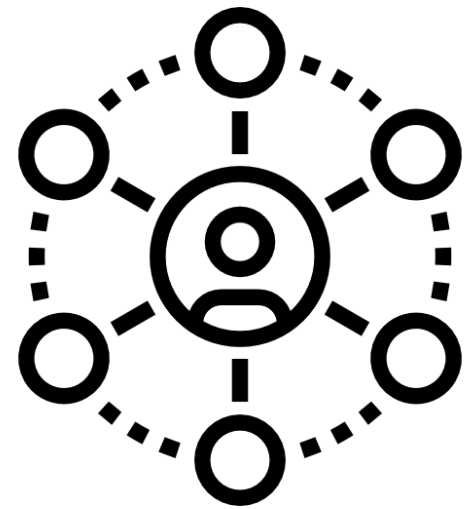




## OFFICE OF SMALL, MINORITY & WOMEN BUSINESS AFFAIRS



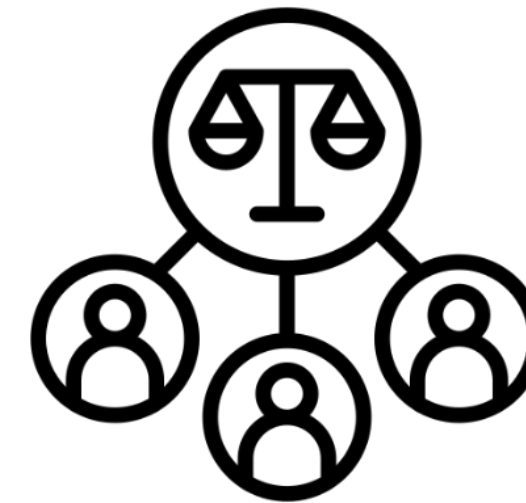
Implement  
Maryland's 3  
socioeconomic  
procurement  
programs across  
70+ agencies and  
departments



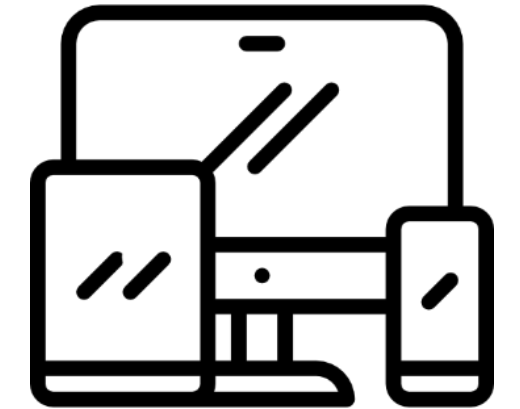
Connect small,  
minority, women,  
& veteran  
business owners  
to opportunities  
in the state  
contracting arena



Conduct free small  
business webinars,  
hosts stakeholder  
engagement events,  
and participates in  
outreach programs  
statewide



Work with MBEs  
to address issues  
that may arise  
during contract  
performance  
through the MBE  
Ombudsman unit

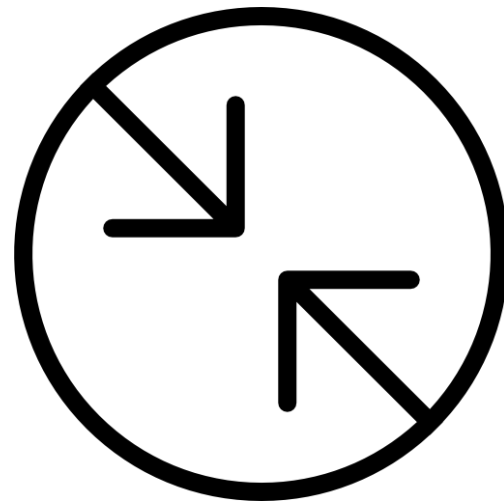


Curate online  
resources at the  
federal, state, and  
local levels for  
small business  
growth and  
development

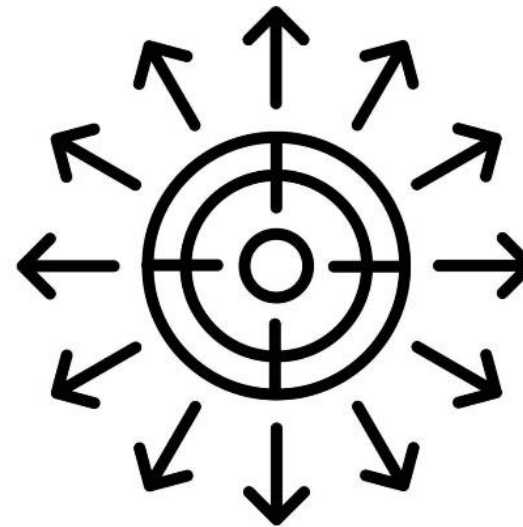
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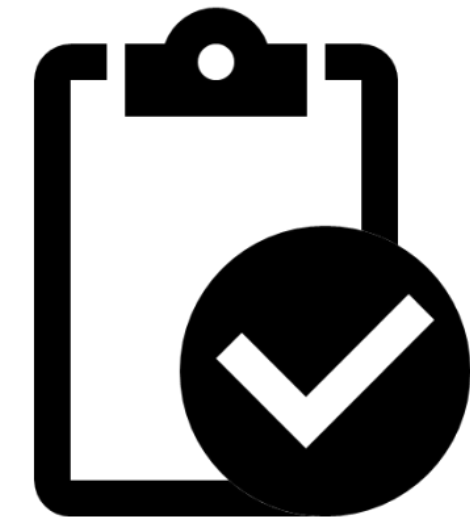
# The MBE Ombudsman Unit



Serves as an internal resource across the 70+ agencies and departments engaged in the MBE Program



Serves as an external resource to certified MBEs, prime contractors, legislators, and stakeholder organizations



Enforces compliance during contract performance to maximize implementation of the MBE Program

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# **The MBE Program is governed by:**

- State Finance & Procurement (SFP) Articles  
§§14-301—14-309
- The Code of Maryland Regulations (COMAR)  
21.11.03

# MBE Program Statutes & Regulations

## STATE FINANCE AND PROCUREMENT (SFP)

### Articles §§14-301—14-308

- § 14-301. Definitions
- § 14-301.1. Legislative findings
- § 14-302. Procurement from minority businesses
- § 14-303. Regulations by Board
- § 14-304. Powers of certification agency
- § 14-305. Annual reports; information
- § 14-307. Duty of Legislative Policy Committee
- § 14-308. Prohibited acts

# MBE Program Statutes & Regulations

## COMAR 21.11.03

### Minority Business Enterprise Policies

- 01 General — Purpose
- 02 Scope
- 03 Definitions
- 04 Procurement Agency Responsibility
- 05 MBE Liaison Officer
- 06 Central Directory
- 07 Race Neutral Measures
- 08 MBE Notification
- 09 Procurement Solicitations
- 10 Contract Award
- 11 Waiver
- 12 Amendment of MBE Participation Schedule
- 13 Compliance
- 15 Certification — General
- 16 Minority Business Enterprise Advisory Committee
- 17 Reporting

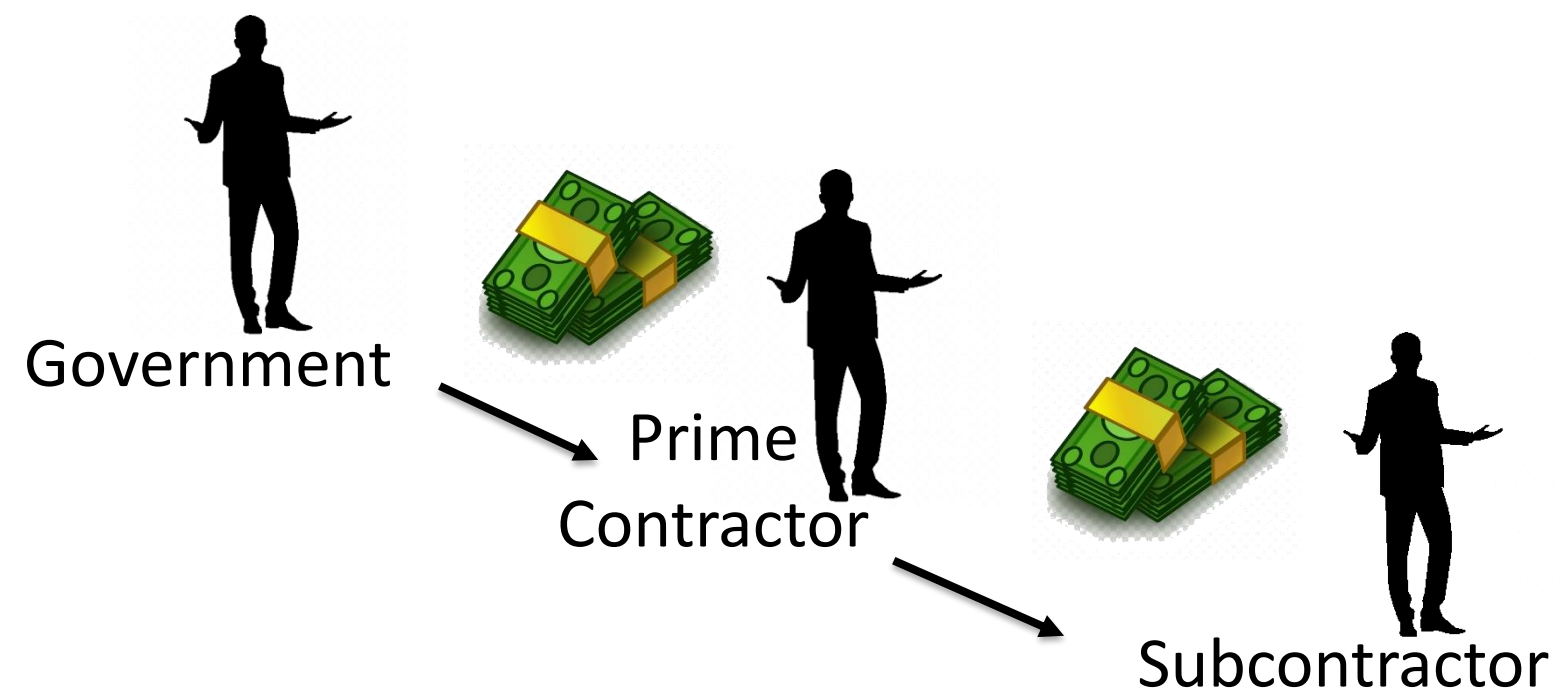
# Subcontractor vs Prime Contractor?

- Maryland awards procurement contracts
  - ✓ Directly to prime contractors
- This means that the State's only legal contractual relationship is with the prime contractor and NOT the subcontractor



# Subcontractor vs Prime Contractor?

- The Subcontractor only has a legal relationship with the prime contractor, not the state
- Payment to the subcontractor will come from the prime contractor, not the state



# MBE COMPLIANCE

- As a part of the compliance process for the MBE program, Prime contractors should monitor, facilitate, and ensure compliance to MBE Program Laws, Regulations, Guidelines, Policies, and Objectives.
- Both Prime Contractors and State personnel are responsible for the proper treatment of Small, Minority & Women business owners while operating on state funded contracts. Specifically, state-certified MBE businesses.
- This includes a commitment to identifying and acting on both compliance lapses and fraud.

# MBE COMPLIANCE

- When working through compliance lapses, there is a chain of command.
  1. MBE certified vendors and Prime contractors should attempt to work through all issues together first,
  2. If MBE vendors are unable or do not work through issues with prime contractors, they may contact the agency contract owner through the MBE liaison or contract monitor/manager,
  3. If the prime contractor and the agency are unable or do not resolve the issue, MBEs may proceed to contact the MBE Ombudsman unit to help resolve issues
- Unlike working with a regular subcontractor, working with an MBE subcontractor at any level requires adherence to the additional MBE rules and regulations.

# MBE COMPLIANCE



- Whose is put in place to carry out compliance?
  - Contract Monitors
  - Contract Managers
  - Compliance Officers
  - Project Managers
  - Procurement Officers
  - Fair Practice Office
  - MBE Liaison Officers

## Frequent Partners in Compliance include:

- Finance/Budget Office
- Procurement Unit Head
- Procurement Director
- Agency Assistant Attorney General (AAG)
- MBE Ombudsman

# MBE Liaison


COMAR 21.11.03.05



The head of each procurement agency shall designate an employee to serve as a liaison officer in the administration of that agency's MBE program.

- Liaisons Role:
  - Reports directly to a Secretary, Deputy Secretary, or head of a procurement agency
  - Coordinate agency outreach efforts
  - Participation in the Procurement Review Group (Goal Setting Process)
  - Review's agency contracting procedures to ensure compliance with COMAR (this includes review of appropriate solicitation documents & forms during the solicitation prep, bidding, award and contract compliance processes)
  - Assists in the resolution of contracting issues
  - Submits required reports or information as required in COMAR

# The Beginning - Procurement Review Group (PRG)

- 
- ✓ There is at least one or more standing procurement review group (PRG) within every unit.
  - ✓ The PRG is comprised of:
    - ✓ A unit's chief procurement official or designee
    - ✓ MBE Liaison Officers (and other liaison officers) or designee
    - ✓ A unit's legal counsel to provide support and advice, as necessary
  - ✓ Evaluation of solicitations, setting MBE & VSBE goals, and designating contracts as small business reserve or applying a small business preference occurs on a case-by-case basis.

# *Overall MBE Goal vs. Subgoals*

- ✓ **Subgoals are the means by which we further diversify the firms that our Prime Contractors use to fulfill the Stated MBE Goal on a procurement.**

In 2011, the State became concerned that Prime Contractors would continue to use the same firms (or even worse, the most overrepresented firms in each industry category to fulfill the MBE requirements on a contract).

# Overall MBE Goal vs. Subgoals

TABLE 2 – RECOMMENDED SUBGOALS								
Combined Industry Category (Check appropriate column per Step 5.)			Cons	AE-CRS	Main	IT	Serv	CSE
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. # of Firms	10. ≥ 3 Y/N	Subgroups						
		African American	8%	7%	9%	10%	—	6%
		Hispanic American	—	—	3%	—	2%	2%
		Asian American	—	—	2%	—	3%	—
		Women	11%	10%	—	10%	10%	8%
Subgoal Total			19%	17%	14%	20%	15%	16%
*Subgoal Total Plus 2% Margin			21%	19%	16%	22%	17%	18%
*The Subgoal Total Plus 2% Margin is the sum of the Recommended Subgoals plus 2%.								

***\*NEW - EFFECTIVE OCTOBER 1***

***MODIFICATION OF THE MBE PARTICIPATION GOAL***

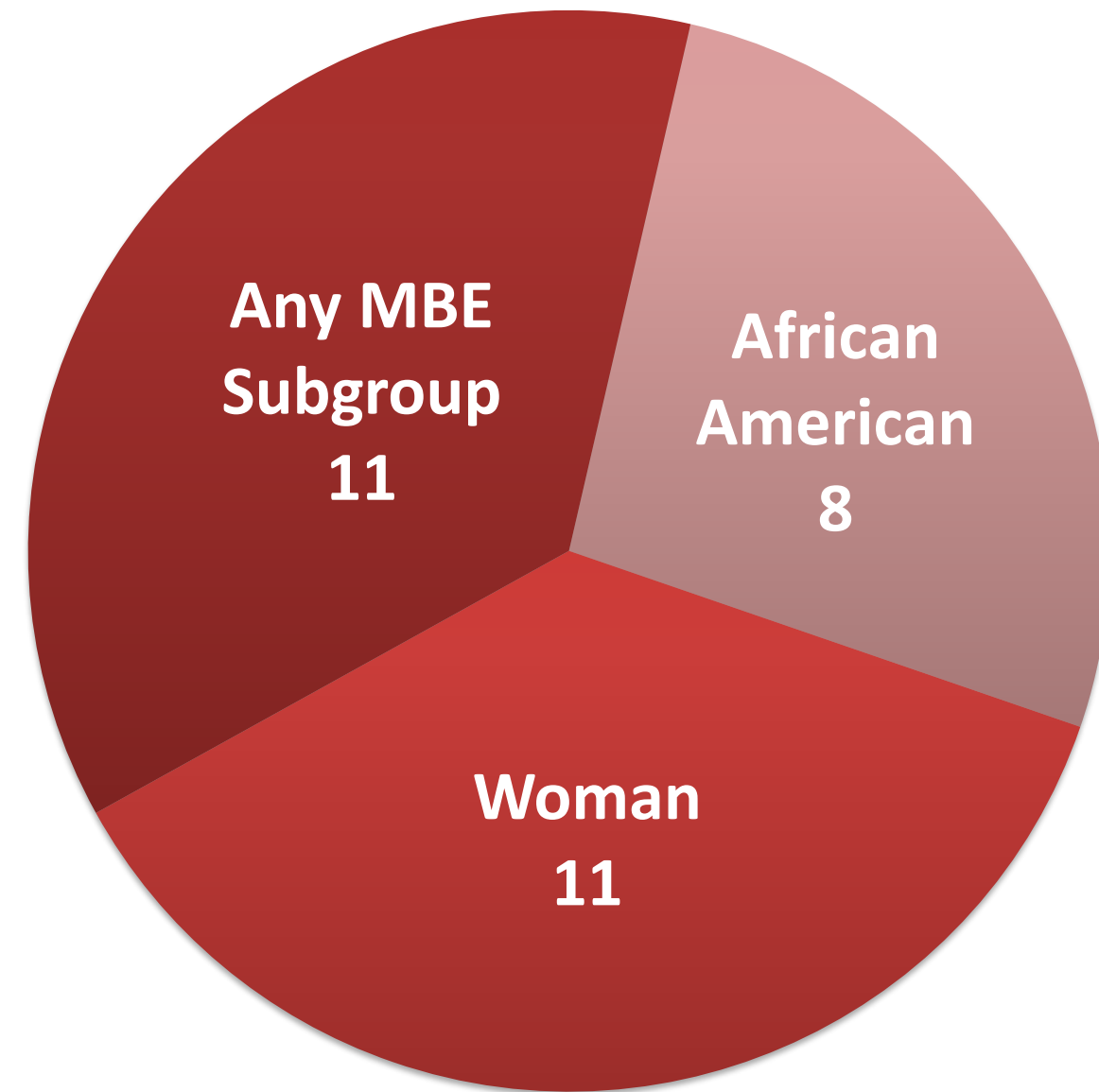


The passing the Procurement Reform Act of 2025 (PRA) allows Procurement Officers to modify both MBE and VSBE participation goals. Modifications are possible both before and after contract execution, in certain circumstances.

These changes are reflected in State Finance and Procurement Article  
§§ 14-302

# Subgoals in Practice

**Subgoals**



■ African American ■ Woman ■ Any MBE Subgroup

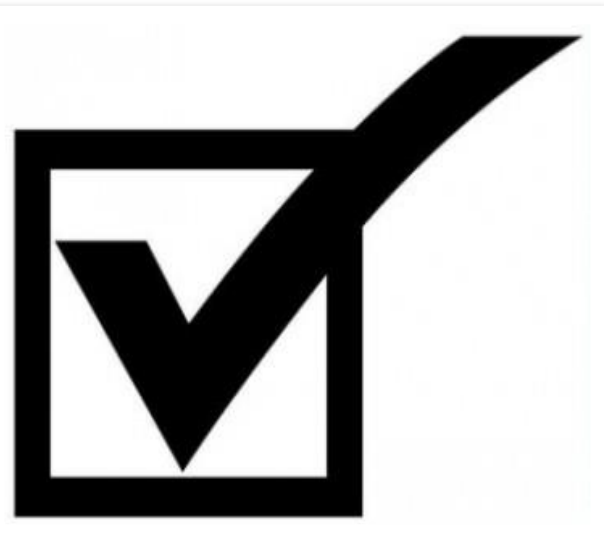
**Calverton ES/MS  
Construction - 30 %  
Overall MBE Goal & Subgoals**

# COUNTING OF MBE PARTICIPATION

- Firms who are certified as both a woman-owned firm and a member of a subgroup (Asian American, African American, etc.) can count under both classifications.
- This allows the work of a certified woman-owned MBE, who is also a member of an ethnic group, to possibly be counted for more than one subgoal on a contract.

# MBE Program Vendor Verification

- ✓ In accordance with COMAR, procurement agencies may not permit a vendor to participate in a procurement as a certified MBE unless the state has certified the firm as an MBE.
- ✓ Prime contractors must utilize ONLY state certified MBE firms to fulfill MBE goals on contracts





# MBE Certified Firms



The Office of Minority Business Enterprise (OMBE) is the office that certifies, recertifies, and decertifies MBEs.

As of October 1, OMBE transitioned to the Department of Social and Economic Mobility (DoSEM). This office was formerly under the Maryland Department of Transportation.

A Central Directory of Certified MBEs is available to the general public through the internet. [MBE Directory: \(https://marylandmdbe.mdbecert.com/?TN=marylandmdbe\)](https://marylandmdbe.mdbecert.com/?TN=marylandmdbe)

# MBE Certified Firms



☐ NO **PENDING** APPLICATIONS

☐ NO  GRADUATED FIRMS

☐ NO PARTIALLY GRADUATED NAICS  
CODES

# MBE FORMS

- ✓ **Vet MBE firms for inclusion in bid response**

This includes getting quotes, assessing the skills/capabilities of the subcontractors, and getting the MBE firm's consent to be included in the bid response.



- ✓ **During the bidding process:**

Prime contractors will need to fill out an MBE Utilization and Fair Solicitation Affidavit & Participation Schedule (D-1A) for the MBE firms they have vetted and will use to fulfill the MBE goal.

# MBE Utilization and Fair Solicitation Affidavit

## • PART 2 - MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT

### 1. MBE Participation (PLEASE CHECK ONLY ONE)

☐ I acknowledge and intend to meet IN FULL both the overall certified Minority Business Enterprise (MBE) participation goal of percent and all of the following subgoals:

\_\_\_\_\_percent for African American-owned MBE firms

\_\_\_\_\_percent for Hispanic American-owned MBE firms

\_\_\_\_\_percent for Asian American-owned MBE firms

\_\_\_\_\_percent for Women-owned MBE firms

Therefore, I am not seeking a waiver pursuant to COMAR 21.11.03.11. I acknowledge that by checking the above box and agreeing to meet the stated goal and subgoal(s), if any, I **must** complete PART 3 - MBE Participation Schedule and Part 4 Signature Page in order to be considered for award.

### OR

☐ After making good faith outreach efforts prior to making this submission, I conclude that I am unable to achieve the MBE participation goal and/or subgoals. I hereby request a waiver, in whole or in part, of the overall goal and/or subgoals I acknowledge that by checking this box and requesting a partial waiver of the stated goal and/or one or more of the stated subgoal(s) if any, I must complete Part 3, the MBE Participation Schedule and Part 4 Signature Page for the portion of the goal and/or subgoal(s) if any, for which I am not seeking a waiver, in order to be considered for award. I acknowledge that by checking this box and requesting a full waiver of the stated goal and the stated subgoal(s) if any, I must complete Part 4 Signature Page in order to be considered for award.

Office of Small, Minority & Women Business Affairs

# MBE FORMS

**SECTION B: For all Contractors (including MBE Primes and MBE Primes in a Joint Venture)**

<div>MBE Firm Name: _____</div> <div>MBE Certification Number: _____</div> <div>(If dually certified, check only one box.) <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification</div> <div>NAICS code: _____</div>	<div>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</div> <div><input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%) <input type="checkbox"/> Manufacturer (count 100%) <input type="checkbox"/> Broker (count reasonable fee/commission only) <input type="checkbox"/> Furnish and Install and other Services (count 100%)</div> <div>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work that the MBE firm named to the left will be performing to calculate the amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</div> <div>A. Percentage of total contract amount where the MBE firm is being used for manufacturer, furnish and install, and/or services (excluding products/services from suppliers, wholesalers, regular dealers and brokers) ____%</div> <div>B. Percentage of total contract amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule)). Total percentage of Supplies/Products ____% X 60% = ____%</div> <div>C. Percentage amount of fee where the MBE firm is being used as broker (count reasonable fee/commission only) ____ %</div> <div>Description of the work to be performed: _____ _____</div>
--	---

The MBE Participation Schedule is where Prime contractors will report all the MBE firms they will utilize to fulfill the MBE goal on a particular solicitation in Part 3 – Section B of the D-1A.

You would report items like percentage of the total contract value to be awarded to each subcontractor, description of work, work type, NAICS codes, MBE Classification, Cert #, and Firm name.

# MBE Program Compliance – 60% Rule

COMAR 21.11.03.12-1

Form D-1A

## Supplier, Wholesaler and/or Regular Dealer

Count 60% of award towards MBE goal

Example: MBE paint wholesaler buys the paint from the manufacturer then distributes it to the State.

This MBE subcontractor is awarded 10% of the contract.

The prime contractor may only count 60% of the total expenditure (6%) toward the MBE goal.

## Manufacturers

Count 100% of award towards MBE goal

Example: MBE paint manufacturer makes and sells paint to the state.

This MBE subcontractor is awarded 20% of the contract.

The prime contractor may count the entire amount (20%) of the expenditure toward the MBE goal.

## Furnish & Installer & Other Services

Count 100% of award towards MBE goal

Example: MBE paint wholesaler who is also doing the painting. Materials, supplies, and labor.

The MBE subcontractor is awarded 10% of the contract

The prime contractor may count the entire amount (10%) of the expenditure toward the MBE goal.

## Broker (has no store or stock)

Count only reasonable fee/commission towards MBE goal

Example: MBE Paint Broker arranges the purchase and distribution of paint from the manufacturer to the State.

The MBE subcontractor is awarded 10% of the contract

The prime contractor may only count reasonable fees and transportation costs, not the cost of the product.

# MBE Participation Schedule (cont.)

D10

**PART 4 – SIGNATURE PAGE**

**To complete Affidavit committing to MBE(s) or requesting waiver,  
Bidder/Offeror must sign below:**

**I solemnly affirm under the penalties of perjury that: (i) I have reviewed the instructions for the MBE Utilization & Fair Solicitation Affidavit and MBE Schedule, and (ii) the information contained in the MBE Utilization & Fair Solicitation Affidavit and MBE Schedule is true to the best of my knowledge, information and belief.**

\_\_\_\_\_  
Bidder/Offeror Name  
*(PLEASE PRINT OR TYPE)*

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Address

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
City, State and Zip Code

\_\_\_\_\_  
Date

**SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL**

Office of Small, Minority & Women Business Affairs

# ***\*NEW - EFFECTIVE OCTOBER 1***

## ***CORRECTION OF MBE FORM DEFICIENCIES***



The passing the Procurement Reform Act of 2025 (PRA) allows bidders/offerors to correct deficiencies in the MBE forms. If a Procurement Officer determines that a deficiency exists in an MBE form, the Procurement Officer shall:

- Notify the bidder or offeror of the deficiency, and
- Require the bidder or offeror to submit an amended form correcting the deficiency within a reasonable time period.

**\*\*These changes are reflected in State Finance and Procurement Article §§ 14-302. Updates to the MBE and VSBE forms and appendices are forthcoming and will reflect these PRA changes.**

# PRIME CONTRACTOR RESPONSIBILITIES



## MBE Commitments

- ✓ Request Pricing/Quote before committing to a certain price to ensure all variables/materials/equipment, etc. are accounted for.
- ✓ Make sure MBE commitments are clearly, completely and accurately stated on the MBE forms
- ✓ Within 10 days of being notified that you are the apparent awardee, you will be required to submit ***Certified MBE Subcontractor Participation Certification*** forms as well as subcontract agreements for each named MBE to the procurement officer as per COMAR 21.11.03.10.
- ✓ Use named MBE subcontractors as promised



# MBE FORMS

- MBE Participation Forms required during bidding process
  - ✓ D-1A – MBE Utilization and Fair Solicitation Affidavit and MBE Participation Schedule
  - ✓ D-3A – Certified MBE Subcontractor Participation Certification

D-3A

## CERTIFIED MBE SUBCONTRACTOR PARTICIPATION CERTIFICATION

### INSTRUCTIONS:

**PRIME CONTRACTOR:** After completing SECTIONS A, B, and D, provide this form to *each* certified Minority Business Enterprise subcontractor (MBE) listed on the MBE Participation Schedule (Attachment D-1A) allowing sufficient time for the MBE to respond within the required timeframe.

**CERTIFIED MBE SUBCONTRACTOR:** Complete SECTION C to acknowledge and certify the information in SECTION A. Return the completed form directly to the Procurement Officer identified in SECTION D within 10 days after notice from the Prime Contractor of the State's intent to award the Contract. Provide a copy to the Prime Contractor.

*IF THIS FORM IS NOT RETURNED WITHIN THE REQUIRED TIME, THE PROCUREMENT OFFICER MAY DETERMINE THAT THE PRIME CONTRACTOR IS NOT RESPONSIBLE AND THEREFORE NOT ELIGIBLE FOR CONTRACT AWARD.*

### SECTION A

Provided that (Prime Contractor) \_\_\_\_\_ is awarded the State contract in conjunction with Solicitation Number \_\_\_\_\_, (Prime Contractor) \_\_\_\_\_ intends to enter into a subcontract with (Certified MBE Subcontractor) \_\_\_\_\_ with MDOT Certification Number \_\_\_\_\_ committing to participation by (Certified MBE Subcontractor) \_\_\_\_\_ of at least \$ \_\_\_\_\_ which equals \_\_\_\_\_% of the Total Contract Value for the following products/services:

### PAGE 2 – CERTIFIED MBE SUBCONTRACTOR PARTICIPATION CERTIFICATION

#### SECTION B – Prime Contractor

Signature of Representative: \_\_\_\_\_

Printed Name and Title: \_\_\_\_\_

Prime Firm's Name: \_\_\_\_\_

Federal Identification Number: \_\_\_\_\_

Street Address, City, State, Zip Code: \_\_\_\_\_

#### SECTION C – Certified MBE Subcontractor

Signature of Representative: \_\_\_\_\_

Printed Name and Title: \_\_\_\_\_

MBE Firm's Name: \_\_\_\_\_

Federal Identification Number: \_\_\_\_\_

Street Address, City, State, Zip Code: \_\_\_\_\_

# PRIME CONTRACTOR RESPONSIBILITIES

- **You will be required to submit MBE subcontract agreements to the procurement officer as per COMAR 21.11.03.10:**
- (2) An MBE subcontractor project participation statement shall be furnished, signed by the bidder or offeror and each MBE listed in the MBE participation schedule, which includes:
  - (a) A statement of intent to enter into a subcontract agreement between the apparent successful bidder or offeror and each proposed MBE subcontractor at the time the State contract is awarded to the apparent successful bidder or offeror;
  - (b) A copy of each subcontract agreement between the apparent successful bidder or offeror and each proposed MBE subcontractor, that the apparent successful bidder or offeror and each proposed MBE subcontractor intend to enter into contingent upon the State's contract award to the apparent successful bidder or offeror, containing all necessary terms, including pricing, required for the MBE to perform its proposed work and for the apparent successful bidder or offeror to pay the MBE for its work during the contract term; and
  - (c) The amount and type of bonds required of MBE subcontractors, if any.

# MBE PROGRAM COMPLIANCE

COMAR 21.11.03.11



## Waiver Documentation

- Carefully review any waiver documentation to make sure it fits the “good faith efforts” requirement.
  - D-1B - Exhibit A: MBE Subcontractor Unavailability Certificate
  - D-1C - Good Faith Efforts Documentation (as defined in COMAR 21.11.03.11)
  - D-2 - MBE Outreach Efforts Compliance Statements
- You can look at the waiver guidance on the website of the Office of State Procurement, in the Attachment D, Form D-1C

# Good Faith Efforts Documentation

- Consider COMAR 21.11.03.09C(2) when considering if a “Good Faith Effort” was made:

## **C. MBE Subcontracting Provisions**

(2) Solicitation Content. Each solicitation identified by a procurement agency as having subcontract opportunities shall contain the clauses required by COMAR 21.05.08.03 and .04. The solicitation shall also contain provisions requiring bidders or offerors including those bidders or offerors that are certified MBEs to:

- (a) Identify specific work categories within the scope of the procurement appropriate for subcontracting;
- (b) Solicit certified MBEs in writing at ***least 10 days before bids or proposals are due***, describing the identified work categories and providing instructions on how to bid on the subcontracts;
- (c) Attempt to make personal contact with the certified MBEs solicited and to document these attempts;
- (d) Assist certified MBEs to fulfill, or to seek waiver of, bonding requirements; and
- (e) Attend prebid or other meetings the procurement agency schedules to publicize contracting opportunities to certified MBEs.

Office of Small, Minority & Women Business Affairs

# Good Faith Efforts Documentation

- Good Faith Efforts Documentation should include:
  - The names, addresses, dates, telephone numbers, and classification of certified MBEs contacted
  - A detailed statement of the reasons for rejected quotations from certified MBE firms
  - Emails & phone contact records
  - Any other records of negotiations with MBE firms

Office of Small, Minority & Women Business Affairs

# Good Faith Efforts Documentation

(cont.)

GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST  
PART 1 – IDENTIFIED ITEMS OF WORK OFFEROR MADE AVAILABLE TO MBE FIRMS

PAGE \_\_ OF \_\_

Prime Contractor:	Project Description:	PROJECT/CONTRACT
Offeror Company Name, Street Address, Phone		Solicitation #:

Identify those items of work that the Offeror made available to MBE Firms. This includes, where appropriate, those items the Offeror identified and determined to subdivide into economically feasible units to facilitate the MBE participation. For each item listed, show the anticipated percentage of the total contract amount. It is the Offeror's responsibility to demonstrate that sufficient work to meet the goal was made available to MBE Firms, and the total percentage of the items of work identified for MBE participation equals or exceeds the percentage MBE goal set for the procurement. Note: If the procurement includes a list of Proposal items identified during the goal setting process as possible items of work for performance by MBE Firms, the Offeror should make all of those items of work available to MBE Firms or explain why that item was not made available. If the Offeror selects additional items of work to make available to MBE Firms, those additional items should also be included below.

Identified Items of Work	Was this work listed in the procurement?	Does Offeror normally self-perform this work?	Was this work made available to MBE Firms? If no, explain why not.
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

☐ Please check if Additional Sheets are attached.

GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST  
PART 2 – IDENTIFIED MBE FIRMS AND RECORD OF SOLICITATIONS

PAGE \_\_ OF \_\_

Prime Contractor:	Project Description:	PROJECT/CONTRACT
Offeror Company Name, Street Address, Phone		Solicitation #:

Identify the MBE Firms solicited to provide quotes for the Identified Items of Work made available for MBE participation. Include the name of the MBE Firm solicited, items of work for which quotes were solicited, date and manner of initial and follow-up solicitations, whether the MBE provided a quote, and whether the MBE is being used to meet the MBE participation goal. MBE Firms used to meet the participation goal must be included on the MBE Participation Schedule. Note: If the procurement includes a list of the MBE Firms identified during the goal setting process as potentially available to perform the items of work, the Offeror should solicit all of those MBE Firms or explain why a specific MBE was not solicited. If the Offeror identifies additional MBE Firms who may be available to perform Identified Items of Work, those additional MBE Firms should also be included below. Copies of all written solicitations and documentation of follow-up calls to MBE Firms must be attached to this form. This list should be accompanied by a Minority Contractor Unavailability Certificate signed by the MBE contractor or a statement from the Offeror that the MBE contractor refused to sign the Minority Contractor Unavailability Certificate (Attachment D-1B - Exhibit A). If the Offeror used a Non-MBE or is self-performing the identified items of work, Part 4 must be completed.

Name of Identified MBE Firm & MBE Classification	Describe Item of Work Solicited	Initial Solicitation Date & Method	Follow-up Solicitation Date & Method	Details for Follow-up Calls	Quote Rec'd	Quote Used	Reason Quote Rejected
Firm Name: MBE Classification (Check only if requesting waiver of MBE subgoal.) <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification		Date: <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail	Date: <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail	Time of Call: Spoke with: <input type="checkbox"/> Left Message	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Used Other MBE <input type="checkbox"/> Used Non-MBE <input type="checkbox"/> Self-performing
Firm Name: MBE Classification (Check only if requesting waiver of MBE subgoal.) <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification		Date: <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail	Date: <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail	Time of Call: Spoke with: <input type="checkbox"/> Left Message	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Used Other MBE <input type="checkbox"/> Used Non-MBE <input type="checkbox"/> Self-performing

☐ Please check if Additional Sheets are attached.

Office of Small, Minority & Women Business Affairs

# Good Faith Efforts Documentation (cont.)

GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST  
PART 3 – ADDITIONAL INFORMATION REGARDING REJECTED MBE QUOTES

PAGE \_\_ OF \_\_

D19

Prime Contractor:	Project Description:	PROJECT/CONTRACT NUMBER:
Offeror Company Name, Street Address, Phone		Solicitation #:

This form must be completed if Part 1 indicates that an MBE quote was rejected because the Offeror is using a Non-MBE or is self-performing the Identified Items of Work. Provide the Identified Items Work, indicate whether the work will be self-performed or performed by a Non-MBE, and if applicable, state the name of the Non-MBE. Also include the names of all MBE and Non-MBE Firms that provided a quote and the amount of each quote.

Describe Identified Items of Work Not Being Performed by MBE (Include spec/ section number from Proposal)	Self-performing or Using Non-MBE (Provide name)	Amount of Non-MBE Quote	Name of Other Firms who Provided Quotes & Whether MBE or Non-MBE	Amount Quoted	Indicate Reason Why MBE Quote Rejected & Briefly Explain
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____	\$ _____	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____	\$ _____	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____	\$ _____	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____	\$ _____	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____	\$ _____	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other

☐ Please check if Additional Sheets are attached.

Office of Small, Minority & Women Business Affairs



# Outreach Efforts Compliance Statement

- Not required to be submitted with bid/offer
- Requested from procurement officer in connection with notice of intent to award
- Asks for bidder's MBE outreach efforts and attempts made to assist MBE subcontractors
- Reasonable timeframe to submit (10 days)
- Failure to submit this form could result in withdrawal of offer (see pg. 5 of Affidavit)

Office of Small, Minority & Women Business Affairs

For Internal Training Purposes Only

# Outreach Efforts Compliance Statement (cont.)

D20

D- 2  
OUTREACH EFFORTS COMPLIANCE STATEMENT

Complete and submit this form within 10 Business Days of notification of apparent award or actual award, whichever is earlier.

In conjunction with the Proposal submitted in response to Solicitation No. \_\_\_\_\_, I state the following:

1. Offeror identified subcontracting opportunities in these specific work categories:  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_
2. Attached to this form are copies of written solicitations (with Proposal instructions) used to solicit certified MBE firms for these subcontract opportunities.
3. Offeror made the following attempts to personally contact the solicited MDOT-certified MBE firms:  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_
4. Please Check One:  

☐ This project does not involve bonding requirements.

☐ Offeror assisted MDOT-certified MBE firms to fulfill or seek waiver of bonding requirements. (DESCRIBE EFFORTS):  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_
5. Please Check One:  

☐ Offeror did attend the pre-Proposal conference.

☐ No pre -Proposal meeting/conference was held.

☐ Offeror did not attend the pre-Proposal conference.

D21

PLEASE PRINT OR TYPE

Company:  
\_\_\_\_\_  
Company Name (please print or type)  
  
By:  
\_\_\_\_\_  
Signature of Authorized Representative  
  
Printed Name:  
\_\_\_\_\_  
Printed Name  
  
Title:  
\_\_\_\_\_  
Title  
  
Date:  
\_\_\_\_\_  
Date  
  
Address:  
\_\_\_\_\_  
Company Address

Office of Small, Minority & Women Business Affairs

# PRIME CONTRACTOR RESPONSIBILITIES



## Reporting Requirements

- ✓ Meet all deliverables on time
- ✓ Keep good records to document project progress and MBE subcontracting performance
- ✓ Get confirmation from the state in writing about approved change order work outside of the original contract scope.

## Best Practices

- ✓ Comply with monthly MBE payment reporting requirements
- ✓ Ensure your MBE subs comply with reporting requirements-- this is critical for programmatic compliance monitoring for the state.

# MBE PROGRAM COMPLIANCE

- Contract Compliance will be tracked by the contract monitor or other assigned staff using the MBE reports (Attachment D) regularly received from both Primes/Subcontractors
  - D-4A - Prime Contractor Paid/Unpaid Invoice Report
  - D-5 - MBE Subcontractor Paid/Unpaid Invoice Report
- Agency contract compliance reports are regularly generated by liaisons, contract monitors, or other assigned staff which utilized this data.

**D-4A**  
**Minority Business Enterprise Participation**  
**Prime Contractor Paid/Unpaid Invoice Report**

Report #:	Contract #:
Reporting Period (Month/Year):	Contracting Unit:
<b>Prime Contractor: Report is due to the MBE Liaison by the 10th of the month following the month the services were provided.</b> <b>Note: Please number reports in sequence</b>	Contract Amount:
	MBE Subcontract Amt:
	Project Begin Date:
	Project End Date:
	Services Provided:

Prime Contractor:		Contact Person:	
Address:			
City:		State:	ZIP:
Phone:	FAX:	E-mail:	
MBE Subcontractor Name:		Contact Person:	
Phone:	FAX:	E-mail:	
Subcontractor Services Provided:			

<b>List all payments made to MBE subcontractor named above during this reporting period:</b>			<b>List dates and amounts of any outstanding invoices:</b>		
	<b>Invoice #</b>	<b>Amount</b>		<b>Invoice #</b>	<b>Amount</b>
1.			1.		
2.			2.		
3.			3.		
4.			4.		
<b>Total Dollars Paid: \$</b>			<b>Total Dollars Unpaid: \$</b>		

- If more than one MBE subcontractor is used for this contract, you must use separate **Attachment D-4A** forms. Information regarding payments that the MBE prime will use for purposes of meeting the MBE participation goals must be reported separately in **Attachment D-4B**.
- **Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

# MBE FORMS

Prime contractors must submit the D-4A Payment Forms monthly.

These forms help procurement units track payments to MBE subcontractors and outstanding invoices.

Another prime contractor form, the D-4B is only for MBE certified primes and simply reports their invoices related to the MBE goal for the previous month.

**D-5**  
**Minority Business Enterprise Participation**  
**MBE Subcontractor Paid/Unpaid Invoice Report**

Report #:	Contract #:
Reporting Period (Month/Year):	Contracting Unit:
<b>Report is due by the 10th of the month following the month the services were performed.</b>	MBE Subcontract Amt:
	Project Begin Date:
	Project End Date:
	Services Provided:

MBE Subcontractor Name:					
MDOT Certification #:					
Contact Person:					
Address:					
City:		State:		ZIP:	
Phone:		FAX:		E-mail:	
<b>Subcontractor Services Provided:</b>					
<b>List all payments received from Prime Contractor during reporting period indicated above.</b>			<b>List dates and amounts of any unpaid invoices over 30 days old.</b>		
	<b>Invoice Amount</b>	<b>Date</b>		<b>Invoice Amount</b>	<b>Date</b>
1.			1.		
2.			2.		
3.			3.		
4.			4.		
<b>Total Dollars Paid: \$</b>			<b>Total Dollars Unpaid: \$</b>		
Prime Contractor:			Contract Person:		

**Return one copy of this form to the following addresses (electronic copy with signature and date is preferred):**

\_\_\_\_\_  
Contract Monitor Name

\_\_\_\_\_  
Contracting Unit

# MBE FORMS

MBE Subcontractors are responsible for submitting the D-5 Payment Forms.

Prime contractors should ensure that MBE subcontractors are aware of this responsibility and that the requirement is listed within the subcontract agreement.

MBE Subcontractors report payments received and any outstanding payments over 30 days old.

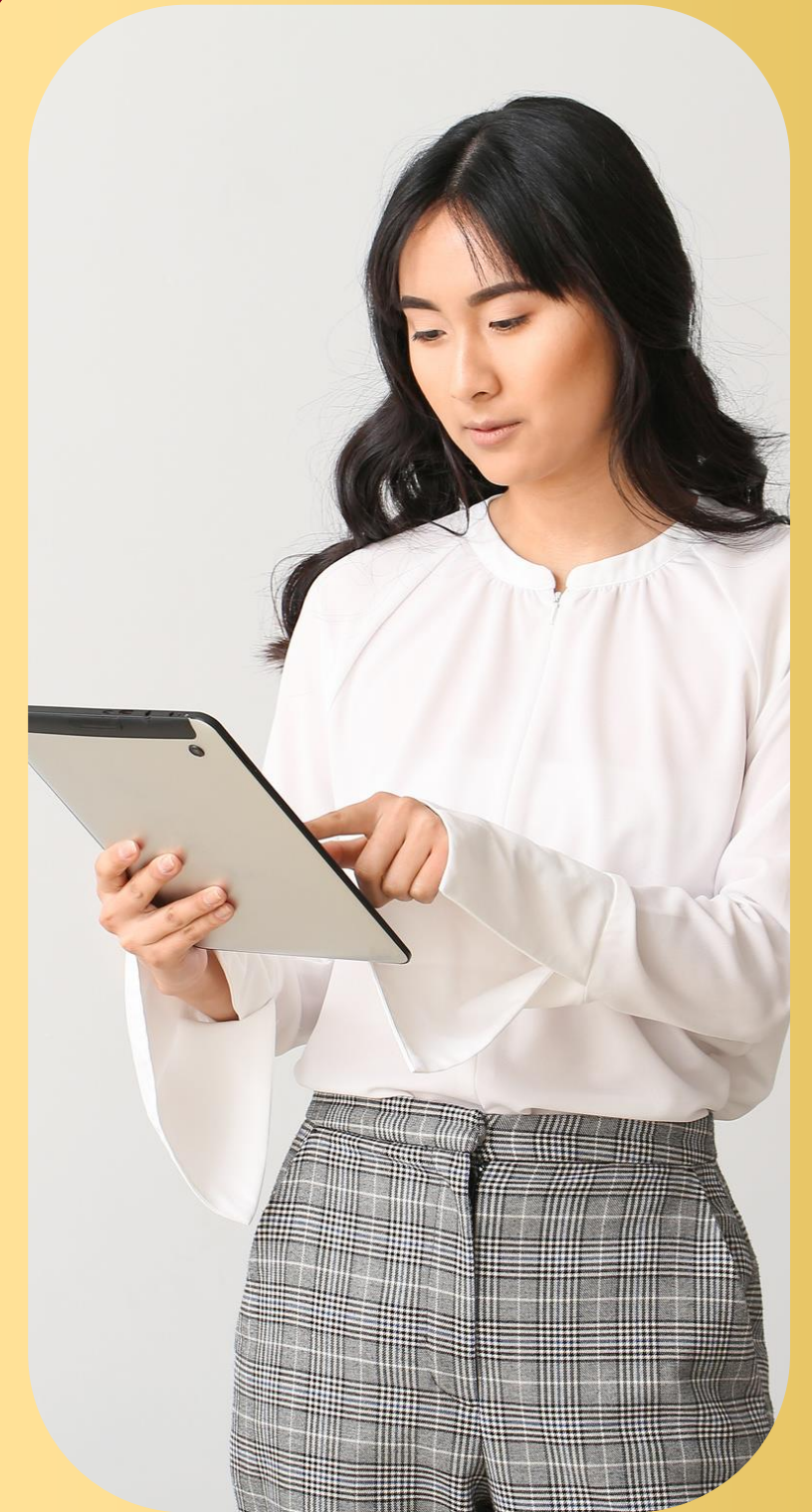
# AMENDMENT OF MBE FORMS

## *BEFORE* CONTRACT AWARD



Primes who wish to amend MBE participation schedules must work with procurement staff and the MBE liaison to amend the MBE participation schedule

- (1) Provide written notice to the procurement officer; and
- (2) Work with the agency to substitute a new MBE firm or fulfill the goal in another way
- (3) Amend the MBE forms



# MBE FORMS



## ✓ During the contract term:

Prime Contractors may ask to add MBEs, but not at the expense of originally-named MBEs.

The Participation Schedule will have to be amended and approved by the procurement unit.

## ✓ Removal or Change of MBEs

May ask to remove MBEs but must demonstrate good cause per COMAR 21.11.03.12.




Prime contractors must work with the procurement officer and liaison to amend participation schedule and replace MBE vendors.



# MBE Form Samples

- MBE Form Samples are located on our website in the MBE toolkit in the MBE Program Resources Section:
- Let's look at a few [EXAMPLES](#).

## MBE Program Resources

- [MBE Program Subgoal Guidance](#)
- [MBE Program Subgoal Worksheet](#)
-  [MBE RFP Solicitation Language](#)
- [PRG Guidance & Worksheets](#) (located on the Office of State Procurement's website)
-  [Section 4 Sample PRG Template in Excel](#)
-  [SAMPLE MBE FORMS](#)

# Compliance Regulations



COMAR 21.11.03.13 – General Compliance Requirements



COMAR 21.11.03.10 – Contract Award Compliance Requirements including Good Faith Efforts considerations for Waiver Requests and Contract provisions, such as Liquidated Damages.

# Compliance Regulations



COMAR 21.11.03.13

Compliance Staff may need to visit the worksite and even interview subcontractors or workers:

- The contractor shall:
- Permit the procurement agency to inspect any relevant matter, including records and the jobsite and to interview subcontractors and workers;

# COMPLIANCE REGULATIONS - PAYMENT

## [COMAR 21.11.03.13](#) [Collection & Review of payment reports]

B (3) Submit monthly to the procurement agency a report listing payments made to each MBE subcontractor in the preceding 30 days and any unpaid invoices over 30 days old received from a certified MBE subcontractor, and the reason payment has not been made; and...

C. Upon determining that a contractor did not make good faith efforts to comply with contract MBE participation goals, the procurement agency shall notify the contractor in writing of its findings and shall specify what corrective actions are required. The contractor is required to initiate the corrective actions within 10 days and complete them within the time specified by the procurement agency.

- [COMAR 21.10.08](#) – Prompt Payment Requirements may intersect with MBE program compliance requirements when payment issues involve an MBE subcontractor.

# COMPLIANCE VS FRAUD

## ❑ Compliance requirements:

- ✓ Use of the MBEs listed at the time of bid/proposal
- ✓ MBE Subcontractors must perform their items of work, independent from the prime contractor, with their own supervisor and employees
- ✓ MBEs should not subcontract out a greater portion of their work without prior approval from the agency than what is industry standard
- ✓ MBE must perform a **commercially useful function** “....For execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved; and (ii) 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.”

# REMEDIES TO NON-COMPLIANCE

COMAR 21.07.01 & 21.10.08



There are several tools at the agency level to handle compliance issues, at several phases:

- ✓ Letter of non-performance
- ✓ Corrective Action Plans
- ✓ Withholding Payment
- ✓ Liquidated Damages
- ✓ Contract Termination for Cause or Convenience

# REMEDIES TO NON-COMPLIANCE



- COMAR 21.07.01.14

Liquidated Damages. Mandatory provision for:

- A. All contracts with certified MBE participation goals in accordance with COMAR 21.11.03.10E; and
- B. Any other contracts deemed appropriate by the procurement officer in consultation with the Office of the Attorney General.

# REMEDIES TO NON-COMPLIANCE



## COMAR 21.11.03.13

D. If a procurement agency determines that material noncompliance with MBE contract provisions exists and that the prime contractor refuses or fails to take the corrective action required by the procurement agency, then the following actions may be taken:

- (1) Termination of the contract;
- (2) Referral to the Office of the Attorney General for appropriate action; or
- (3) Initiation of any other specific remedy identified by contract.



# COMPLIANCE VS FRAUD



•**Fraud:** “deceit, trickery, or breach of confidence for profit or to gain some unfair or dishonest advantage.”

- ✓ Using the MBE in name only (pass through)
- ✓ Listing employees on certified payroll when actually paid by another company
- ✓ Reporting work is being performed by MBE when another firm is actually doing the work

**Alleged Fraud is handled by the Attorney General's Office  
and can be reported to our office.**

# BENEFITS OF THE PROGRAM

## HOW CAN YOU HELP?



- ✓ Monitoring internal Contract Compliance is an integral part of the success of the MBE Program
- ✓ Any observed issues should immediately be brought to the attention of procurement staff, the MBE liaison, contract monitor or other compliance staff.
- ✓ Outreach to small, minority, and women-owned businesses at pre-bid meetings and other venues.
- ✓ Host your own events, or attend events hosted by others to meet minority businesses.
- ✓ Notify us of your outreach events and we will promote them on our website and social media platforms



# RESOURCES

- Your main resources include:
  - [Office of State Procurement Website](#)
  - [OSBA Resource Page](#)
    - Guidance (Sample Forms, Guide to Prompt Payment)
  - [MBE Ombudsman Page](#)
  - [MBE Directory](#)
    - State Certified MBE Vendors
  - [BPW Livestream](#)

# Visit the Office of Small, Minority & Women Business Affairs Website

<https://gomdsmallbiz.maryland.gov/Pages/default.aspx>

- ✓ Register for Technical Trainings
  - ✓ Browse and register for events both in and outside of state agencies
  - ✓ Connect to other Maryland resources
- ✓ Review the Procurement Forecast
  - ✓ Look at the MBE Liaison listing
  - ✓ Find contact information for our staff

# CONTACT US FOR FURTHER QUESTIONS



Nichelle Johnson  
MBE Ombudsman



**Telephone**

410-697-9605



**Website**

[gomdsmallbiz.maryland.gov](http://gomdsmallbiz.maryland.gov)



**Email**

[mbe.ombudsman@maryland.gov](mailto:mbe.ombudsman@maryland.gov)

[nichelle.johnson1@maryland.gov](mailto:nichelle.johnson1@maryland.gov)

# THANK YOU



After listening to our presentation, we hope that the information we have delivered has been useful.

# **Special Survey!**

## **Question #1:**

**Do you feel that starting the Bonding Requirement on construction contracts at \$400,000 instead of \$100,000 will make it easier for you to compete for such contracts?**

## **Question #2:**

**What challenges have you faced as a vendor attempting to secure a performance bond for construction contracts?**

**[www.gomdsmbiz.maryland.gov](http://www.gomdsmbiz.maryland.gov)**

**Let us know what you think!**

**SURVEY**



**Scan the QR Code to  
take the Survey!**



# RESOURCES



# Mining Public Data Techniques

[eMaryland Marketplace  
Advantage \(eMMA\)](#)

[Procurement Forecast](#)

[Board of Public Works](#)

[Communicating with Confidence](#)

# T.I.P.S.

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- Access video recordings of all classes on our YouTube playlist

# Keep Learning



# T.I.P.S. Webinar Series Playlist

-  **Doing Business with the State of Maryland - July 25, 2024**  
StateMaryland • 2 views • 1 day ago  
2:03:45
-  **Crafting A Compelling Capability Statement - July 23, 2024**  
StateMaryland • No views • 1 day ago  
2:04:30
-  **Anatomy of a Bid - June 27, 2024**  
StateMaryland • No views • 1 day ago  
1:48:57
-  **Strategies for Digital Marketing - June 25, 2024**  
StateMaryland • No views • 1 day ago  
1:38:22
-  **Maryland's Veteran-Owned Small Business Enterprise (VSBE) Program**  
StateMaryland • 76 views • 2 months ago  
2:00:24

<https://www.youtube.com/playlist?list=PLlgoHh4Po1J0W63akD6aGAU8JmT0qzOrX>

[www.gomdsmbiz.maryland.gov](http://www.gomdsmbiz.maryland.gov)



[goMDsmallbiz.maryland.gov](http://goMDsmallbiz.maryland.gov)

## Upcoming

**Thursday**  
**October 9, 2025**

9:00 a.m.

Maryland's  
VSBE/SBR Certification Workshop  
@ Calvert & St. Mary's Counties

**Friday**  
**October 24 , 2025**

10:00 a.m.

Small Biz Resource  
Connections  
Webinar Series:

IRS Tools & Resources  
for Small Businesses

**Tuesday**  
**October 28 , 2025**

10:00 a.m.

T.I.P.S. Small Business  
Webinar Series:

Using AI in Operations, Marketing,  
Sales & Services

# Partners

**Maryland APEX Accelerators  
(formerly PTAC)**

<https://www.marylandapex.org/>

**Greater Baltimore SCORE**

<https://greaterbaltimore.score.org/>

**Maryland Women's Business Center  
(MWBC)**

<https://marylandwbc.org/>

**Baltimore-Metro Women's Business Center  
(Balt-Metro WBC)**

<https://www.baltmetrowbc.org/>

**Maryland Small Business Development  
Center (SBDC)**

<https://www.marylandsbdc.org/>

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# Resources

**Office of Small, Minority & Women Business Affairs**

<https://gomdsmallbiz.maryland.gov/Pages/default.aspx>

**Maryland's Office of Minority Business Enterprise (OMBE)**

<https://www.mdot.maryland.gov/tso/pages/Index.aspx?PagelId=90>

**Maryland Department of Commerce**

**Maryland Financial Incentives for Business**

<https://commerce.knack.com/maryland-funding-incentives>

**Maryland Entrepreneur HUB**

<https://marylandentrepreneurhub.com/>

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[gomdsmallbiz.maryland.gov](https://gomdsmallbiz.maryland.gov)

# Follow Us!

## Office of Small, Minority & Women Business Affairs



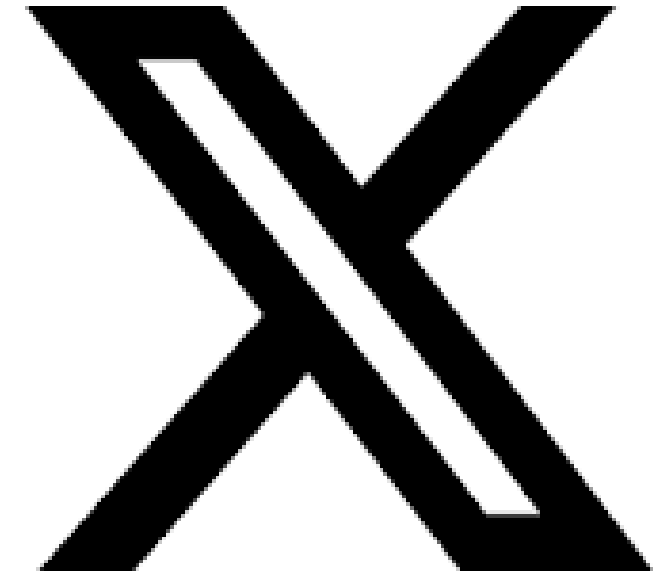
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**Thank You!**