



Best Practices and Guidelines

The 72 Hour Rule Provision Review

BACKGROUND

The Minority Business Enterprise (MBE) Program establishes goals for subcontracting with certified MBE firms in State procurement. The definition of an MBE firm can be found in [COMAR 21.01.02.01\(54\)](#) and MBE policies are set forth in [COMAR 21.11.03](#).

RULES AND REGULATIONS

[State Finance and Procurement Code Ann. \(SFP\) § 14-302\(a\)\(10\)](#) states that if a bidder or offeror determines that an MBE identified in the MBE participation schedule has become or will become unavailable or ineligible to perform the work required under the contract, the bidder or offeror shall notify the unit within 72 hours of making the determination. [COMAR 21.11.03.12](#) also details this process.

PROCEDURES

- A. The 72 Hour Rule provision has very limited application. The rule only applies in instances where unavailability or ineligibility becomes apparent after the date of bid/proposal submission, but before contract award. **After contract award, the 72 Hour Rule provision no longer applies.**
- B. If the bidder/offeror submitting the request is the apparent awardee, the procurement officer must delay issuing a notice of award until the request to amend has been resolved.
- C. When a bidder/offeror submits a request to amend the MBE participation schedule under the 72 Hour Rule provision, the procurement officer should review the submission to determine that all the required elements have been met. Specifically, the procurement officer shall assure that:
 1. There is a clear explanation of the reason for inclusion of the unavailable or ineligible firm on the original MBE participation schedule.
 2. There is a full description of the bidder's/offeror's efforts to substitute another certified MBE subcontractor(s) to perform the same percentage of work that the unavailable or ineligible MBE subcontractor would have performed.
 3. The request clearly identifies each certified MBE subcontractor that will be substituted for the unavailable or ineligible certified MBE subcontractor.
 4. There is a description of the work each certified MBE subcontractor will perform, as well as the percentage of the contract to be paid to each certified MBE subcontractor for the work or supply.



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- D. In conducting the review, the procurement officer should verify through the MDOT database (<https://mbe.mdot.maryland.gov/directory/>) that the newly identified MBE subcontractor(s) are certified in the associated NAICS Code and for the type of work for which they are proposed.
- E. The procurement officer should verify that the newly identified MBE subcontractor(s) are serving a commercially useful function, as defined in [COMAR 21.11.03.12-1](#).
- F. In consultation with the MBE liaison, the procurement officer shall decide whether to approve the request to amend the MBE participation schedule after addressing all of the considerations above. If necessary or required under agency policy, the procurement officer may consult with the agency Assistant Attorney General, the Governor's Office of Small, Minority & Women Business Affairs, and/or other agency procurement personnel prior to making a final decision.
- G. If the request is approved, the procurement officer shall notify the bidder/offeror in writing and replace the MBE information in the bid/proposal with updated information.
- H. If the request is not approved. The procurement officer shall provide the bidder/offeror with an explanation as to why the request was denied. An award cannot be made to a bidder/offeror whose request is denied.