



Best Practices and Guidelines

MBE Goalsetting and Outreach Considerations for Emergency Procurements

BACKGROUND

Maryland State Finance and Procurement Code Annotated (SFP) §13-108 sets forth the definition of an emergency procurement, under what conditions the Emergency Procurement method may be used, the requirements of the Emergency Procurement method, and approval and reporting requirements for emergency procurements.

Regulations do not allow a default waiver of Minority Business Enterprise (MBE) participation goal and outreach considerations for an Emergency Procurement. An assessment of the appropriateness of setting an MBE goal must be made.

MBE GOALSETTING

The following factors shall be taken into consideration when determining whether establishing an MBE goal is appropriate on an Emergency Procurement:

1. The length of time between declaration of the emergency and start date for the contract. **Five or more days** between the declaration of the emergency and the start date for the contract constitutes sufficient time for the procuring agency to establish a goal for MBE participation.
2. The extent to which direct solicitation, subcontracting, or a combination thereof will most likely result in maximum minority business inclusion.
3. Are MBEs available to perform contracts at the prime contract level? Do enough MBEs exist at the prime contractor level to reasonably assure maximum opportunities for MBEs to compete for, and potentially obtain the contract, at that level?
4. Are MBE subcontracting opportunities feasible, and are there a minimum of five days available between the declaration of the emergency and the need to commence the contract in order to obtain quotes.
5. Does the base of potentially available MBEs, the contract's work components, and the timeline for completion make MBE goals attainable, taking into account the geographic proximity of MBEs to the work location?

6. Are the specifications, and requirements of the procurement designed to ensure that they do not unreasonably limit or inhibit participation by small businesses, including MBEs? Inhibiting factors may include unnecessary or prohibitive bonding requirements, restrictive specifications, unnecessary or unreasonable performance parameters, and unnecessary or unreasonable experience requirements. General policies for developing specifications are set forth in COMAR 21.04.01.

MBE OUTREACH

In order to show that a good faith effort has been made to solicit and contract with MBEs on an emergency procurement contract:

1. The procuring agency must document and maintain in the file a list of:
 - a. MBE firms identified to either direct solicit or include in MBE goalsetting considerations.
 - b. Possible items of work for performance by MBE firms
2. The apparent contract awardee must:
 - a. Provide documented solicitation attempts of MBEs by electronic means or telephone.
 - b. Obtain a reasonable number of quotes from qualifying MBE firms, given time and availability considerations.