HOWARD COUNTY MARYLAND

EQUAL BUSINESS OPPORTUNITY PROGRAM

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POLICY STATEMENT

As a part of our commitment to Equal Business Opportunity (EBO), it is the policy of the Howard County Government to encourage increased participation by Minority/Women and Disabled Business Enterprises in the procurement of all goods and services through all solicitations by the County.

THE EQUAL BUSINESS OPPORTUNITY (EBO) PROGRAM TAKES POSITIVE STEPS TO IDENTIFY, CERTIFY, AND ENCOURAGE MBE/WBE/DBE FIRMS TO PARTICIPATE IN EVERY ASPECT OF THE COUNTY'S PROCUREMENT OF GOODS AND SERVICES.

I. <u>APPLICABILITY</u>:

This policy and procedure is applicable to the following:

- a. All goods and services obtained with County funds.
- b. All other procurements obtained through grants funded by Federal Agencies (i.e., EPA, DOT/UMTA, HUD, etc.) and the State of Maryland.

II. DEFINITIONS:

Definitions applicable to the terms and policy guidelines contained in this program are as follows:

a. Control:

- 1. This term means both managerial and operational control and requires that the minority, woman or disabled person(s) direct the management of the business and guide its operation. Operational control and managerial control are interpreted separately.
- 2. Operational Control The minority, woman or disabled person(s) have some experience and technical competence in the industry to which certification is sought, and show that basic decisions pertaining to the daily operations of the business can be independently made.
- 3. Managerial Control The minority, woman or disabled person(s) has the

demonstrable ability to make independent and unilateral business decisions needed to guide the future and destiny of the business.

- b. MBE/WBE/DBE Corporation Legal and equitable ownership of at least 51 percent of all classes of stock, bonds, or other securities issued by the corporation must be owned by a minority, women or disabled person(s).
- c. MBE/WBE/DBE Partnership At least 51 percent of the partnership's assets or interests must be owned by a minority, women or disabled person(s).
- d. MBE/WBE/DBE Sole Proprietorship The sole proprietor must be a minority, women or disabled person(s).
- e. Disabled Business Enterprise (DBE) A business enterprise:
 - 1. Which is:
 - (a) At least 51% owned by [[1]]ONE or more individuals with disabilities; or
 - (b) In the case of any publicly-owned corporation, at least 51% of the stock of which is owned by [[1]]ONE or more individuals with disabilities; and
 - 2. WHOSE OWNERSHIP INTEREST IS REAL AND CONTINUOUS, AND NOT CREATED SOLELY TO MEET THE DISABLED OWNED BUSINESS PROVISIONS OF THIS POLICY; AND
 - [[2]]3. Whose general management and daily business affairs and essential productive operations are controlled by [[1]] ONE or more individuals with disabilities; and
 - [[3]]4. Which has been certified by the Equal Business Opportunity Commission as a disability business enterprise.
- f. Disabled Individual: An individual who has a physical or mental impairment that substantially limits [[1]]ONE or more major life activities or has a record of such

impairment.

- g. MBE/WBE and DBE Directory A compilation of MBE/WBE and DBE firms provided to the contractor for use in identifying subcontractors, materials suppliers, consultants, etc.
- h. Joint Venture An association of [[2]] TWO or more individuals, partnerships, corporations, or combinations thereof, founded to carry on a simple business activity.
- i. Minority Business Enterprise (MBE) A business enterprise:
 - 1. Which is:
 - (a) At least 51% owned by [[1]] ONE or more minority individuals; or
 - (b) In the case of any publicly-owned corporation, at least 51% of the stock of which is owned by [[1]]ONE or more minority individuals; and
 - 2. WHOSE OWNERSHIP INTEREST IS REAL AND CONTINUOUS, AND NOT CREATED SOLELY TO MEET THE MINORITY OWNED BUSINESS PROVISIONS OF THIS POLICY; AND
 - [[2]]3. Whose general management and daily business affairs and essential productive operations are controlled by [[1]] ONE or more minority individuals; and
 - [[3]]4. Which has been certified by the Equal Business Opportunity Commission as a minority business enterprise.
- j. Minority Individual: An individual who is a member of [[1]] ONE of the following groups:
 - [[1. African Americans
 - 2. American Indians
 - 3. Asian Americans
 - 4. Hispanic Americans]]

- 1. AFRICAN AMERICANS: WHO INCLUDES PERSONS HAVING ORIGINS IN ANY OF THE BLACK RACIAL GROUPS OF AFRICA;
- 2. Native Americans: who includes persons who are American Indian, Eskimos, Aleuts or Native Hawaiians;
- 3. ASIAN AMERICANS: WHO INCLUDES PERSONS WHO ARE ASIAN PACIFIC AMERICANS WHOSE ORIGINS ARE FROM JAPAN, CHINA, TAIWAN, KOREA, VIETNAM, LAOS, CAMBODIA, THE PHILIPPINES, SAMOA, GUAM, THE U.S. TRUST TERRITORIES OF THE PACIFIC, THE NORTHERN MARIANAS; AND ASIAN INDIAN AMERICANS WHOSE ORIGINS ARE FROM INDIA, PAKISTAN, AND BANGLADESH.
- 4. HISPANIC AMERICANS: WHO INCLUDES PERSONS OF MEXICAN, PUERTO RICAN, CUBAN, CENTRAL OR SOUTH AMERICAN, OR OTHER SPANISH CULTURE OR ORIGIN.
- 5. VETERANS: VETERANS SHALL MEAN:
 - (A) A PERSON WHO SERVED ON FULL TIME ACTIVE DUTY IN THE UNITED STATES
 ARMED FORCES, OTHER THAN ACTIVE DUTY FOR TRAINING, AND WAS
 DISCHARGED OR RELEASED UNDER CONDITIONS OTHER THAN
 DISHONORABLE; OR
 - (B) A PERSON WHO WAS DISABLED FROM A DISEASE OR INJURY INCURRED OR AGGRAVATED IN THE LINE OF DUTY WHILE PERFORMING ACTIVE DUTY FOR TRAINING OR INACTIVE DUTY TRAINING; OR
 - (C) A PERSON WHO SERVED FULL TIME AS A COMMISSIONED CORPS MEMBER OF THE PUBLIC HEALTH SERVICE OR THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.
- k. Operation Managerial and official staff comprised of minority, women, or disabled persons in sufficient ratio and gross earnings to demonstrate that these individuals ownership and involvement in fact demonstrates day-to-day management.
- 1. Women Business Enterprise (WBE) A business enterprise:
 - 1. Which is:
 - (a) At least 51% owned by [[1]] ONE or more women; or

- (b) In the case of publicly-owned corporation, at least 51% of the stock of which is owned by [[1]]ONE or more women; and
- 2. WHOSE OWNERSHIP INTEREST IS REAL AND CONTINUOUS, AND NOT CREATED SOLELY TO MEET THE WOMEN OWNED BUSINESS PROVISIONS OF THIS POLICY; AND
- [[2]]3. Whose general management and daily business affairs and essential productive operations are controlled by 1 one or more women; and
- [[3]]4. Which has been certified by the Equal Business Opportunity Commission as a women business enterprise.

III. CERTIFICATION:

HOWARD COUNTY CONDUCTS A VENDOR CERTIFICATION PROGRAM TO VERIFY THAT SELF-IDENTIFIED MBE/WBE/DBE FIRMS MEET THE DEFINITION OF SUCH ENTERPRISES AS SET FORTH IN THIS POLICY.

THE COUNTY DESIRES THAT MBE/WBE/DBE FIRMS HAVE AN EQUAL OPPORTUNITY TO PARTICIPATE IN ITS PROCUREMENT PROCESS AND PROVIDE THEIR GOODS AND SERVICES TO THE COUNTY, INCLUDING AS SUBCONTRACTORS WHO DO NOT THEMSELVES BID DIRECTLY ON COUNTY SOLICITATIONS.

IT IS THEREFORE NECESSARY THAT THE COUNTY HAVE CREDIBLE AND RELIABLE MEANS OF IDENTIFYING 'BONAFIDE' MBE/WBE/DBE FIRMS. TO THIS END, THE COUNTY IN CONJUNCTION WITH THE EQUAL BUSINESS OPPORTUNITY COMMISSION (EBOC) WILL MANAGE AND MAINTAIN A FORMAL CERTIFICATION PROCESS TO SUBSTANTIATE THE LEGITIMACY OF THE FIRM'S OWNERSHIP AND CONTROL AS AN MBE/WBE/DBE FIRM. THE CERTIFICATION WILL BE VALID FOR A PERIOD OF TWO YEARS PER APPLICATION CYCLE WITH AN OPPORTUNITY TO RENEW AND REMAIN CERTIFIED.

ELIGIBILITY STANDARDS, CRITERIA AND THE PROCEDURES FOR CERTIFICATION AS A MBE/WBE/DBE FIRM WILL INCLUDE THE FOLLOWING:

(A) ONLY FIRMS THAT MEET THE CRITERIA AND DEFINITION OF MBE/WBE/DBES AS DEFINED IN THIS POLICY MAY BE CERTIFIED.

- (B) THE FIRM'S OWNERSHIP BY A MINORITY, WOMAN OR DISABLED INDIVIDUAL MUST BE REAL, SUBSTANTIAL AND CONTINUING, GOING BEYOND PROFORMA OWNERSHIP OF THE FIRM AS REFLECTED IN THE OWNERSHIP DOCUMENTS, AND MUST NOT HAVE BEEN CREATED SOLELY TO MEET THE MBE/WBE/DBE PROVISIONS OF THIS POLICY.
- (C) IT IS EXPECTED THAT THE MINORITY, WOMAN OR DISABLED INDIVIDUAL OWNER(S) WILL HAVE AN OVERALL UNDERSTANDING OF THE FIRM'S OPERATIONS AND MANAGERIAL AND TECHNICAL COMPETENCE, EXPERIENCE AND EXPERTISE DIRECTLY RELATED TO THE FIRM'S OPERATIONS AND WORK. IF ANY LAW REQUIRES THE OWNERS TO HAVE A PARTICULAR LICENSE OR OTHER CREDENTIAL TO OPERATE, OWN AND/OR CONTROL A CERTAIN TYPE OF BUSINESS, THEN THE LICENSE OR CREDENTIAL SHOULD BE HELD IN THE NAME OF THE MINORITY, WOMAN OR DISABLED OWNER(S) OF THE FIRM.
- (D) IN ORDER TO BE CERTIFIED, A MBE/WBE/DBE FIRM MUST BE IN GOOD STANDING WITH THE MARYLAND STATE DEPARTMENT OF ASSESSMENTS AND TAXATION.
- (E) THE FIRM FOR CERTIFICATION AS A MBE/WBE/DBE HAS THE BURDEN OF DEMONSTRATING BY A PREPONDERANCE OF EVIDENCE THAT IT MEETS THE ELIGIBILITY STANDARDS AND CRITERIA.
- (F) THE EQUAL BUSINESS OPPORTUNITY COMMISSION WILL MAKE ALL ELIGIBILITY DETERMINATIONS AND ALL DETERMINATIONS ARE FINAL.
- (G) ALL APPLICATIONS FOR CERTIFICATION MUST BE ACCOMPANIED BY A SWORN AFFIDAVIT ATTESTING TO THE ACCURACY AND TRUTHFULNESS OF THE INFORMATION PROVIDED.

- (H) THE MBE/WBE/DBE FIRM MUST COOPERATE FULLY WITH THE COUNTY DURING THE CERTIFICATION PROCESS; FAILURE TO DO SO COULD RESULT IN THE DENIAL OF CERTIFICATION.
- (I) THE EQUAL BUSINESS OPPORTUNITY COMMISSION MAY DIRECTLY CONTACT AND INTERVIEW PROSPECTIVE APPLICANTS, IF NEED BE, AND/OR REQUEST ADDITIONAL INFORMATION AND/OR SUPPORTING DOCUMENTATION FOR DETERMINING ELIGIBILITY.
- (J) IN THE SPIRIT OF THE EBO CERTIFICATION PROCESS; ALA CARTE COMBINATIONS TO REACH THE 51% THRESHOLD RUN COUNTER TO THE EBO PROGRAM. THE 51% OWNERSHIP REQUIREMENT SHALL BE IN ONLY ANY ONE PARTICULAR EBO GROUP.

THE COUNTY WILL MAINTAIN A CURRENT DIRECTORY OF CERTIFIED MBE/WBE/DBES AND THE COMMODITIES AND/OR SERVICES THEY OFFER. THE DIRECTORY WILL BE MADE AVAILABLE ON THE OFFICE OF PURCHASING WEBSITE.

IN ADDITION TO ITS CERTIFICATION PROGRAM, Howard County recognizes businesses certified by the following regulatory bodies:

- a. All counties within the State of Maryland whose certification requirements are similar to Howard County.
- State of Maryland agencies whose certification requirements are similar to Howard County.
- c. Certain federal agencies when that agency is the grantor for a County project.
- d. Certain other states and municipalities when it would be impractical or unreasonable not to use a certified MBE/WBE/DBE from that immediate region (i.e. transporting goods from out of state to Howard County).

IV. EQUAL BUSINESS OPPORTUNITY PROGRAM GOALS:

Howard County will obtain its MBE/WBE/DBE participation [[goals]]GOAL primarily through [[2]]TWO mechanisms; by requiring prime contractors to utilize MBE/WBE/DBE firms as subcontractors/suppliers, and by encouraging MBE/WBE/DBE firms to respond

directly to County requests for goods and services.

Accordingly, Howard County's MBE/WBE/DBE participation percentage goals are as follows:

- a. When the contract value is \$50,000 or more, the prime contractors will subcontract [[10%]]15% of each contract to MBE/WBE/DBE firms. [[This requirement is applicable to bidders who are themselves MBE/WBE and DBE owned firms.]] The percentage requirement may vary if the contract is funded by a federal or state agency.
- b. Each fiscal year, award [[15%]]20% of the County's total dollar amount of all contracts directly to MBE/WBE/DBE firms. This includes consulting services, construction, professional services, and other procurements for goods and services.
- [[c. Ensure that the MBE/WBE/DBE goal specified for each federal and state-funded contract is met as specified by the funding agency. Participation requirements for the various Federal and State agencies vary by organization and may be obtained from the Capital Project Administrator for the project of concern in conjunction with the EBO Coordinator.]]

V. RESPONSIBILITIES:

The effectiveness of the EBO Program is based on the efforts of many who have a role in assuring its success. Their responsibilities are as follows:

a. Chief Administrative Officer (Purchasing Agent)

The Chief Administrative Officer or the Officer's designee shall be responsible for the development and implementation of the Equal Business Opportunity Program, which is designed to assure the participation of minority, woman and disabled business enterprises in the purchasing activities of the County. [[The Chief Administrative Officer shall designate the Equal Business Opportunity Officer who shall report directly to the Officer or designee.]] The Chief Administrative Officer Shall either Designate the Deputy Chief Administrative Officer or The Purchasing Administrator as the Equal Business Opportunity

OFFICER.

b. <u>Equal Business Opportunity Officer</u>:

The EBO Officer will be responsible for policy and oversight of the EBO program to include decertification authority and the investigation of sworn, written allegations of wrongdoing by a certified business. The EBO Officer will also serve as the Executive Secretary to the EBO Commission.

c. Office of Purchasing:

- The Office of Purchasing will be the centralized point for managing, coordinating and executing EBO program requirements/provisions and will supplement the Equal Business Opportunity Officer's actions as follows.
- 2. The Office of Purchasing will:
 - (a) Provide maximum opportunity for MBE/WBE/DBE firms participation in the County's procurement process through dissemination of bid information and solicitations.
 - (b) Encourage MBE/WBE/DBE participation in every solicitation by:
 - (1) [[Soliciting at least three MBE/WBE/DBEs on the bidders list for all transactions of \$5,000.00 or less.]] ENCOURAGING USER AGENCIES TO SOLICIT CERTIFIED MBE/WBE/DBES FOR ALL SMALL PURCHASES.
 - (2) [[Soliciting at least six MBE/WBE/DBE firms on the bidders list for all transactions from \$5,000.00 to less than \$30,000.00.]] SOLICITING CERTIFIED MBE/WBE/DBEs FOR INFORMAL AND FORMAL SOLICITATIONS
 - [[(3) Soliciting all MBE/WBE/DBE firms on the bidders list for all transactions of \$30,000.00 or more.

- (4) If there are no MBE/WBE/DBE firms on the bidders list, the Office of Purchasing will seek qualified MBE/WBE/DBE firms through neighboring jurisdictions.]]
- (c) Encourage MBE/WBE/DBE firms to respond to solicitations as prime contractors.
- (d) Encourage the use of MBE/WBE/DBE subcontractors by contractors who are awarded County construction projects.
- (e) Include equal business opportunity clauses in [[all solicitation/contracts]] SOLICITATIONS AND CONTRACTS, as appropriate.
- (f) Assure that MBE/WBE/DBE firms on the bidders list are given the same opportunity as others.
- (g) Identify specific commodities and services for which MBE/WBE/DBE firms are not currently being used and encourage their participation in the solicitation process.
- (h) Identify qualified MBE/WBE/DBE firms through participation in business opportunity fairs, meetings, trade shows; communications with other procurement personnel; and through directories that identify MBE/WBE/DBE firms.
- (i) Meet with MBE/WBE/DBE firms to discuss recurring procurement opportunities and acquaint the vendors with Howard County procedures, needs, and the procurement approach.
- (j) Review the [["equal business opportunity" clause]] EQUAL BUSINESS OPPORTUNITY PROGRAM; and explain the County's policy encouraging the use of MBE/WBE/DBE firms during pre-bid conferences.
- (k) Explain the requirements for federal and state-funded projects as appropriate.
- (l) Provide technical assistance to potential MBE/WBE/DBE suppliers, as necessary, to ensure that they are given sufficient information regarding bid requirements and procedures. ASSIST MBE/WBE/DBE FIRMS IN BECOMING CERTIFIED.

- (m) [[Insure]] ENSURE that MBE/WBE/DBE participation is sought for subsequent contract years on [[requirement]] REQUIREMENTS contracts.
- [[(n) Advertise County procurement needs in minority publications as appropriate.]]
- ([[o]]N) [[Coordinate with state, federal and various associations to obtain current MBE/WBE/DBE directories.]] COORDINATE WITH OFFICIALS OF FEDERAL AND STATE AGENCIES, LOCAL MINORITY BUSINESS DEVELOPMENT ORGANIZATIONS, AND OTHER MINORITY CONTRACTOR ASSOCIATIONS IN THE FURTHERANCE OF EFFORTS TO ENCOURAGE MBE/WBE/DBE PARTICIPATION.
- ([[p]]O)ELECTRONICALLY notify the MBE/WBE/DBE community of contract opportunities.
- ([[q]]P)Provide to prime contractors a resource for locating and contacting MBE/WBE/DBE firms.
- ([[r]]Q) Maintain records showing participation.
- ([[s]]R)Ensure that EBO policy requirements have been met in awarding all contracts [[and sub-agreements]].
- ([[t]]S) Conduct a contract compliance process required in Section VI g. to monitor subcontractor participation during contract performance.
- ([[u]]T)In accord with Section VI g. execute procedures for reporting and correcting non-compliance and for administrative action where prime contractors fail to comply with EBO policy requirements.
- ([[v]]U) Meet specific guidelines for projects involving federal and state funds by accomplishing the following:
 - (1) Execute the administrative functions as required by the grantor agency who is providing the funding. It should be noted that many federal and state agencies have varying percentage participation amounts for the various EBO groups [[(i.e., for 10% EBO participation, the federal

- government may recommend that a MBE firm receive 7%, a WBE firm receive 3%, but no percent recommendation for a DBE firm)]].
- (2) Coordinate with the grantor agency contact personnel to resolve problems and/or make recommendations to improve EBO program operation.
- (v) Provide a referral service to those MBE/WBE/DBE firms who require technical assistance when responding to the County's solicitations.
- (w) Provide information to interested MBE/WBE/DBE firms in obtaining bonding, insurance etc.
- (X) MAINTAIN THE HOWARD COUNTY ONLINE CERTIFIED VENDOR
 DIRECTORY TO IDENTIFY READY, WILLING AND ABLE
 MBE/WBE/DBE FIRMS THAT CAN BE NOTIFIED OR UTILIZED TO
 MEET THE REQUIREMENTS OF THIS POLICY.

d. <u>Equal Business Opportunity Coordinator</u>:

The EBO Coordinator performs various tasks in carrying out the provisions of the EBO program and is responsible for many of the functions listed under V. c. titled Office of Purchasing. The EBO Coordinator is a part of the Office of Purchasing professional staff.

e. Equal Business Opportunity Commission (EBOC):

- 1. As provided for in Section 4.600 of the Howard County Code the EBOC will:
 - (a) Assist the efforts of the County in procuring goods and services from MBE/WBE/DBE firms.
 - (b) Conduct surveys and studies on County policies and procedures in procurement and contracting and, if needed, recommend changes to the Administration and the County Council.
 - (c) Make recommendations to the County Purchasing Agent on the

- criteria for certification and the procedures for certification (the EBOC may issue County certification and reciprocal local government and State of Maryland certification).
- (d) Recommend to the County Purchasing Agent changes in existing laws, policies and programs and practices designed to ensure equal business opportunity for MBE/WBE/DBE firms.
- (e) Hear and decide appeals regarding the decertification of MBE/WBE/DBE firms.

f. Consulting Firms:

- 1. All Consultants bidding on County contracts estimated at \$50,000 or more (amounts for federal and state funded procurements will be guided by the funding agencies requirements) will be required to subcontract to MBE/WBE/DBE firms a share of the work awarded consistent with the County's goal oriented system. The consultant will be required to adhere to the County's EBO policy even though they may have the capability to complete the project with its own workforce. Where the consultant fails to achieve the MBE/WBE/DBE goal, they must request a waiver and provide documentation of its good faith attempts to obtain MBE/WBE/DBE participation. [[Documentation required by Exhibit II will be submitted.]]
- 2. Consulting firms who habitually subcontract certain requirements (i.e., engineering, design and surveying) are expected to take positive steps to use MBE/WBE/DBE firms for such subcontracting consistent with the County's goal oriented system. In addition, in their role as consultants for the County, these positive efforts should consist of at least the following:
 - (a) Assist the County in ensuring that opportunities are extended to MBE/WBE/DBE firms by the prime construction contractors for subcontracting or joint agreements.
 - (b) Divide the total design and construction requirements into smaller tasks, where economically feasible, to permit maximum

- MBE/WBE/DBE participation.
- (c) Assist the County in operating its goal oriented system.
- (d) Require that each subcontractor under the contract comply with the EBO policy as appropriate if further subcontracting is contemplated.
- (e) Keep the County informed of any MBE/WBE/DBE contracts or subcontracts as well as changes in plans to award previously proposed subcontracts to MBE/WBE/DBE firms.

g. <u>Contractors</u>:

- 1. All prime contractors bidding on contracts estimated at \$50,000 or more (amounts for federal and state funded procurements will be guided by the funding agencies requirements) will be required to subcontract to MBE/WBE/DBE firms a share of the work awarded consistent with the County's goal oriented system. The contractor will be required to adhere to the County's EBO policy even though they may have the capability to complete the project with its own workforce. Where the contractor fails to achieve the MBE/WBE/DBE goal, they must request a waiver and provide documentation of its good faith attempts to obtain MBE/WBE/DBE participation. [[Documentation required by Exhibit II will be submitted.]]
 - (a) Extending opportunities for subcontracting, joint arrangements, and material supplying to MBE/WBE/DBE firms.
 - (b) Complying with and implementing the County's goal oriented system.
 - (c) Identifying to the County, MBE/WBE/DBE firms [[to be used by submitting Exhibit I as required by the bid document]] THAT WILL BE USED ON THE PROJECT, THEIR ADDRESS, CERTIFYING AGENCY, CERTIFICATION NUMBER, TYPE OF WORK TO BE PERFORMED, TOTAL ANTICIPATED MBE/WBE/DBE PARTICIPATION PERCENTAGE AND THE DOLLAR AMOUNT OF THE SUBCONTRACT WORK FOR EACH IDENTIFIED MBE/WBE/DBE SUBCONTRACTOR/SUPPLIER. Where

- MBE/WBE/DBE firms are not used or are not available, provide the documentation [[required by Exhibit II]] to demonstrate good faith efforts.
- (d) Maintaining records of MBE/WBE/DBE firms contacted, including negotiation efforts to reach competitive price levels, and awards to MBE/WBE/DBE firms.
- (e) Requiring subcontractors under the contract to comply with the EBO policy.
- (f) Keeping the County informed of all MBE/WBE/DBE [[subagreements]]SUBCONTRACTOR AGREEMENTS or changes in plans to award subcontracts previously reported as proposed for MBE/WBE/DBE firms.

h. Minority Business, Women Business and Disabled Business Enterprises:

- 1. All MBE/WBE/DBE firms are expected to at least take the following actions:
 - (a) Become informed of planned County projects and the bid process.
 - (b) Contact and maintain liaison with prime contractors bidding on County projects to make them aware of their capabilities and to obtain subcontracting opportunities.
 - (C) ATTEND PRE-BID CONFERENCES TO ESTABLISH CONTACTS AND RELATIONSHIPS WITH PRIME CONTRACTORS FOR POTENTIAL FUTURE BUSINESS OPPORTUNITIES.
 - ([[c]]D) Provide capability statements to State and the County MBE/WBE/DBE Persons.
 - [[(d) Maintain liaison with the Regional Office of Civil Rights and Urban Affairs.]]
 - (e) Contact and maintain liaison with [[the State Office of MBE/WBE/DBE Affairs and other federal or state funded]] FEDERAL, STATE AND LOCAL MBE/WBE/DBE assistance organizations and associations.

(f) When required, seek assistance from MBE/WBE/DBE funded organizations in financing, estimating, bid packaging, bonding and technical assistance services.

VI. PROGRAM IMPLEMENTATION:

a. Bid/Proposal Solicitations:

- 1. Notice [[of Lettings]] for County solicitations shall include A CLAUSE ENCOURAGING EBO PARTICIPATION AND OUTLINING GOALS, WHEN APPLICABLE. [[the following information. Sub-paragraph (a) will always be used in conjunction with (b) or (c) as appropriate to the type of contract (i.e., county or federally funded).
 - (a) All: "Howard County hereby notifies all bidders that MBE/WBE/DBE firms will be afforded full opportunity to submit bids in response to this notice and will not be subjected to discrimination on the basis of race, color, sex, national origin, or impairment in consideration of an award."
 - (b) <u>County Funded Contracts</u>: "It is required that contractors procure from MBE/WBE/DBE firms by subcontract or otherwise, supplies and services, the combined value of which equals 10% of the total value of the contract if the contract amount exceeds \$50,000.00. Failure to do so may lead to rejection of bids. Bidders shall submit with such bids the County's Equal Business Opportunity Certificate." (Appendix I.)
 - (c) Federally Funded Contracts: "It is the goal of Howard County that MBE/WBE/DBE firms participate in ____% (enter amount specified by federal guidelines) of the total value of this contract. Bidders shall submit with such bids the County's Equal Business Opportunity Certificate." (Appendix 1).]]

- [[2. Notices will be placed in newspapers with high minority, women and disabled business readership and may also be sent but not limited to the following organizations:
 - (a) The Baltimore American Indian Center, Inc.
 - (b) The Baltimore Council for Equal Business Opportunity (CEB0).
 - (c) The Columbia Business Resource Center.
 - (d) The Howard County Libraries.
 - (e) The MD/DC Minority Supplier Development Council.
 - (f) The Maryland Minority Contractor's Association (MMCA).
 - (g) The State Office of Minority Affairs (OMF).
 - (h) The various Local & State of Maryland EBO Officers.]]
- 2. THE OFFICE OF PURCHASING SHALL PROVIDE AND MAKE AVAILABLE ONLINE ON ITS WEBSITE AND/OR ELECTRONICALLY DISSEMINATE TO MBE/WBE/DBE FIRMS LISTED IN THE COUNTY'S ONLINE DIRECTORY OF CERTIFIED MBE/WBE/DBE FIRMS' INFORMATION REGARDING CONTRACT AND/OR PROCUREMENT OPPORTUNITIES WITH THE COUNTY.
- 3. NOTICES MAY ALSO BE DISSEMINATED ELECTRONICALLY TO OFFICIALS OF FEDERAL AND STATE AGENCIES, LOCAL MINORITY BUSINESS DEVELOPMENT ORGANIZATIONS, AND OTHER MINORITY CONTRACTOR ASSOCIATIONS IN THE FURTHERANCE OF EFFORTS TO ENCOURAGE MBE/WBE/DBE PARTICIPATION.
- [[3]]4. Prime contractors who bid on County solicitations will be provided assistance if needed in locating MBE/WBE/DBE firms for subcontract opportunities.
- b. <u>Pre-Bid Conference</u>: At each pre-bid conference the County's EBO program and the County's percentage goals of MBE/WBE/DBE participation will be explained.

The detailed steps to assure compliance for federally funded projects will also be reviewed.

c. <u>Equal Business Opportunity Clause For Bids/RFPs</u>: All solicitations estimated to be \$50,000 or more shall contain [[the following]] A CLAUSE ADVISING SUCCESSFUL BIDDERS THEY ARE EXPECTED TO COMPLY WITH THE EBO PROGRAM REQUIREMENTS unless deemed to be inappropriate due to certain conditions (i.e. hazardous waste hauling where subcontracting is not permitted, some banking services and other unique procurements that do not lend themselves to subcontracting).

[["If the total of the contract awarded is \$50,000 or more, the successful bidder shall be expected to comply with the provisions of the County's Equal Business Opportunity Program (10% MBE/WBE/DBE participation)".]]

D. PROGRAM SCOPE:

- 1. This policy applies to all eligible procurements performed by and for Howard County, except those that offer no potential for MBE/WBE/DBE participation. The EBO Officer has the authority to waive MBE/WBE/DBE subcontracting participation percentage goals, prior to notice of lettings of County solicitations, on certain procurements that are non-segmentable or that do not lend themselves to MBE/WBE/DBE participation. A few examples of these types of contracts include, but are not limited to: sole source contracts, expedited purchases, purchases from large utilities, purchases of specialized equipment, medical and legal services.
- 2. IF THE EBO OFFICER APPROVES A WAIVER OF THIS PROGRAM'S APPLICATION FOR A GIVEN CONTRACT OR PURCHASE ORDER, A JUSTIFICATION MEMORANDUM THAT EXPLAINS THE BASIS AND FACTUAL FINDINGS SUPPORTING THAT WAIVER DECISION SHALL BE CLEARLY STATED IN THE CONTRACT DOCUMENTS.

3. PURCHASES THAT SHALL BE EXEMPTED FROM MBE/WBE/DBE PARTICIPATION INCLUDE PURCHASES FROM COLLEGES AND UNIVERSITIES, GOVERNMENT AGENCIES, CHARITABLE ORGANIZATIONS, FOUNDATIONS AND NONPROFIT SOCIAL SERVICE PROVIDERS.

[[d]]E. Contract Awards:

- 1. After bid opening but prior to contract award the apparent low bidder will be required to submit documentation showing MBE/WBE/DBE participation.
- 2. The appropriate documents will be submitted to the Office of Purchasing before the contract is executed.

F. ACCOMPLISHMENT OF MBE/WBE/DBE PARTICIPATION GOALS:

HOWARD COUNTY ENCOURAGES PRIME CONTRACTORS TO PROVIDE MBE/WBE/DBE FIRMS THE OPPORTUNITY TO PARTICIPATE AS SUBCONTRACTORS AND SUPPLIERS IN WHICH THE MBE/WBE/DBE FIRMS ARE MEANINGFUL AND CONTRIBUTING PARTICIPANTS.

1. IN ORDER TO COUNT BONAFIDE MBE/WBE/DBE PARTICIPATION TOWARDS MEETING THE PARTICIPATION GOALS ON A PROCUREMENT, A MBE/WBE/DBE MUST PERFORM A 'COMMERCIALLY USEFUL FUNCTION'. AN MBE/WBE/DBE PERFORMS A COMMERCIALLY USEFUL FUNCTION WHEN IT IS RESPONSIBLE FOR EXECUTION OF THE WORK OF THE CONTRACT AND IS CARRYING OUT ITS RESPONSIBILITIES BY ACTUALLY PERFORMING, MANAGING, AND SUPERVISING THE WORK INVOLVED. TO PERFORM A COMMERCIALLY USEFUL FUNCTION, THE MBE/WBE/DBE MUST ALSO BE RESPONSIBLE, WITH RESPECT TO MATERIALS AND SUPPLIES USED ON THE CONTRACT, FOR NEGOTIATING PRICE, DETERMINING QUANTITY AND QUALITY, ORDERING THE MATERIAL, AND INSTALLING (WHERE APPLICABLE)

AND PAYING FOR THE MATERIAL ITSELF. TO DETERMINE WHETHER AN MBE/WBE/DBE IS PERFORMING A COMMERCIALLY USEFUL FUNCTION, AN EVALUATION MUST BE PERFORMED OF THE AMOUNT OF WORK SUBCONTRACTED, NORMAL INDUSTRY PRACTICES, WHETHER THE AMOUNT THE MBE/WBE/DBE FIRM IS TO BE PAID UNDER THE CONTRACT IS COMMENSURATE WITH THE WORK IT IS ACTUALLY PERFORMING AND THE MBE/WBE/DBE CREDIT CLAIMED FOR ITS PERFORMANCE OF THE WORK, AND OTHER RELEVANT FACTORS.

- 2. Specifically, an MBE/WBE/DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of qualified MBE/WBE/DBE participation.
- 3. IN ORDER FOR A FIRM TO BE COUNTED TOWARDS A BIDDER'S MBE/WBE/DBE PARTICIPATION, THE FIRM MUST BE APPROPRIATELY CERTIFIED BY A REGULATORY BODY AS SPECIFIED IN SECTION III, PRIOR TO CONTRACT EXECUTION. NON-CERTIFIED MBE/WBE/DBE FIRMS MAY BE USED BY BIDDERS FOR THEIR PROCUREMENT NEEDS. HOWEVER, THOSE FIRMS CANNOT BE COUNTED TOWARD MEETING THE MBE/WBE/DBE GOAL.
- 4. A PRIME CONTRACTOR MAY COUNT TOWARDS THE PARTICIPATION GOAL ANY TIER OF CERTIFIED MBE/WBE/DBE SUBCONTRACTORS AND/OR SUPPLIERS THAT WILL BE UTILIZED IN EXECUTION OF THE WORK ON A CONTRACT.
- 5. CERTIFIED MBE/WBE/DBE PRIME CONTRACTORS CAN COUNT 100% OF THE WORK THEY SELF-PERFORM ON CONTRACTS WITH EBO SUBCONTRACTING GOALS.
- [[e]]G. <u>Waiver</u>: In the event a prime contractor is unable to reach the [[required]] DESIRED goal, a waiver may be requested from the Office of Purchasing. A waiver will only

be considered after a determination that the contractor has made a genuine good faith effort [[and documented the efforts on Exhibit II]].

- [[f]]H. 1. Good Faith Effort Criteria: In making a determination that the contractor has made good faith efforts to meet the EBO goals, the County will consider, though not be limited to the following:
 - ([[1]]A)Whether the contractor attended pre-bid or pre proposal meetings to discuss MBE/WBE/DBE participation matters.
 - ([[2]]B) Whether the contractor advertised in general circulation, trade association, and/or MBE/WBE/DBE focused media concerning subcontracting opportunities.
 - ([[3]]C)Whether the contractor solicited a reasonable number of MBE/WBE/DBE firms with written notice, in sufficient time to allow the firms an opportunity to participate effectively.
 - ([[4]]D) Whether the contractor followed-up initial solicitations of interest to MBE/WBE/DBE firms to determine with certainty whether the firms were interested.
 - ([[5]]E)Whether the contractor selected portions of the work to be performed by MBE/WBE/DBE firms in order to increase the likelihood of meeting the EBO goals including and where appropriate, breaking the contract into economically feasible subcontracts to allow for MBE/WBE/DBE participation.
 - ([[6]]F)Whether the contractor provided interested MBE/WBE/DBE firms with adequate information about the plans, specifications, scope of work, and requirements of the contract.
 - ([[7]]G) Whether the contractor negotiated in good faith with interested MBE/WBE/DBE firms; not rejecting them as unqualified without sound reasons based on a thorough investigation of their capabilities;
 - ([[8]]H)Whether the contractor made efforts to assist interested MBE/WBE/DBE firms in obtaining bonding, lines of credit, insurance, etc., as required by the County or the contractor.

- ([[9]]I)Whether the contractor effectively used the services of available community organization contractor groups, local, Howard County, State, and Federal business assistance programs; and other organizations which provide assistance in the identification of MBE/WBE/DBE firms; and
- ([[10]]J)Whether the contractor obtained and used the County's MBE/WBE/DBE directory to obtain certified firms.

In determining whether a contractor has demonstrated good faith the County will not only look at the different kinds of efforts the contractor has made but also the quantity and intensity of those efforts. Efforts that are merely pro forma in nature would not be sufficient to be considered good faith efforts to meet the County's MBE/WBE/DBE goals (even if such efforts are sincerely motivated).

- [[11.]]2. After evaluation of the apparent low bidder's compliance with the County's MBE/WBE/DBE Program, the Office of Purchasing will notify the bidder of the following:
- (a) Final award of the contract with or without waiver of the MBE/WBE/DBE goal.
- [[(b) Non-award based on apparent non-attempt to attain the MBE/WBE/DBE goal. Apparent low bidders who fail to achieve the desired MBE/WBE/DBE participation can be declared "non-responsive" bidders in which case the next low bidder becomes the apparent low bidder. This process may be repeated until an apparent low bidder meeting the MBE/WBE/DBE requirement is obtained or the County may elect to re-bid the project to obtain both an equitable price and EBO compliance.
 - 12. Unless an objection of non-award is filed by an apparent low bidder, in writing, within 7 days of such notification, the determination is final.

In the event an objection is filed, the Office of Purchasing will arrange a meeting with the bidder. At that time the Office of Purchasing may request additional information from the bidder. Other interested parties including the EBO Officer may offer information relevant to the issues on which a review of the determination will be made.]]

g. <u>Contract Compliance Process</u>:

1. The Office of Purchasing will conduct periodic compliance reviews with all prime contractors [[required to comply with the EBO goal]].

THE COMPLIANCE MONITORING PROCESS COULD INCLUDE, EITHER CONDUCTING AN ADMINISTRATIVE CONTRACT COMPLIANCE REVIEW, OR AN ON-SITE INVESTIGATION TO CONFIRM COMPLIANCE WITH THE EBO PROGRAM.

AS PART OF ITS ADMINISTRATIVE REVIEW, THE OFFICE OF PURCHASING MAY REQUEST FROM PRIMES MBE/WBE/DBE PARTICIPATION REPORTS, WHOSE CONTENTS MAY INCLUDE, BUT NOT BE LIMITED TO, A LISTING OF MBE/WBE/DBE SUBCONTRACTORS, SUPPLIERS, SUB-CONSULTANTS APPLICATIONS FOR PAYMENT AND/OR INVOICES, AS APPROPRIATE, AND PROOF OF PAYMENTS. THE REVIEW MAY BE CONDUCTED DURING THE COURSE OF A CONTRACT OR AT THE CONCLUSION OF A CONTRACT TO DETERMINE MBE/WBE/DBE PARTICIPATION. THE OFFICE OF PURCHASING MAY REQUIRE ADDITIONAL DOCUMENTATION TO ASSIST IN ITS ANALYSIS OF COMPLIANCE WITH THIS POLICY.

- 2. Contractors will be given at least a 14 day prior notification of a pending on-site verification and review for contract compliance. During such on-site review the contractor will have the following available for inspection:
 - (a) Copies of Purchase Orders and contracts containing

- MBE/WBE/DBE work effort.
- (b) Records to indicate the number, names, dollar value of the MBE/WBE/DBE subcontracts, the amount and dates, and the scheduled times for each MBE/WBE/DBE to be on the job site.
- (c) Any other appropriate documents requested prior to the on-site visit.
- 3. The on-site verification and interviews at a minimum will consist of the following:
 - (a) An initial meeting with the contractor or his representative to explain visit objectives.
 - (b) Tour of the job site.
 - (c) Interviews of subcontractors, suppliers, etc.
- 4. At the conclusion of the on-site visit an exit conference will be conducted. This conference will consist of a discussion of the compliance process and determination time frame, and suggestions for corrective action to be taken if necessary.
- 5. A report indicating compliance status will be prepared and forwarded to the EBO Officer.
 - (a) If a determination of compliance is made the Office of Purchasing will so notify the contractor in writing.
 - (b) If a determination of non-compliance is made the Office of Purchasing may conduct further investigation. The contractor will be notified and an attempt made to remedy any problems of compliance. In the event conciliation fails, the Office of Purchasing will inform the EBO Officer that the contractor is in non-compliance.
 - [[(c) If the County concurs in the determination of non-compliance a "Show Cause Notice" will be issued. This notice will contain the deficiencies noted in the findings, establish a compliance conference date, outline the administrative actions to be taken, and provide a forum for the contractor to show that he is in compliance.
 - (1) If the contractor corrects his deficiencies, the "Show Cause

- Notice" will be rescinded and the contractor notified of his compliance in writing.
- (2) If the contractor refuses to take steps necessary to rescind the "Show Cause Notice", the County will begin administrative action against the contractor.]]
- [[h. <u>Enforcement</u>: If a contractor fails or refuses to take corrective action the County will determine in accordance with Section 4.103 of the Howard County Code which of the following should be imposed to promote the purpose of the Howard County EBO Program.
 - 1. Termination of the contract.
 - 2. Withholding a percentage of progress payment.
 - 3. Referral to the County Solicitor for follow-up action.
 - 4. Deny the contractor any future contract awards.
 - 5. Other action deemed appropriate by the County.]]

VII. STATE AND FEDERAL FUNDING:

- a. The County receives funding from state and federal agencies.
- b. The special bid conditions, equal business opportunity requirements, and the utilization of MBE/WBE/DBE firms for those agencies will vary based on the program.
- c. While not limited to these, Environmental Protection Agency and Department of Transportation/Urban Mass Transportation Administration funded contracts are most often used by the County.
- d. As a result, current applicability, EBO goals, definitions, County's action, EBO policy and obligation, determination of MBE/WBE/DBE participation percentage, contractor's action, and records and reports can be obtained from the Capital Projects Administrator for the project of concern in conjunction with the Office of Purchasing.
- e. When required, County forms[[, Appendix I and Exhibits I, and II]] may be used for state and federally funded contracts.