

County Council Of Howard County, Maryland

2017 Legislative Session

Legislative Day No. 13

Resolution No. 121 -2017

Introduced by: The Chairperson at the request of the County Executive

A RESOLUTION pursuant to Section 4.122 of the Howard County Code, approving a revised Equal Business Opportunity Program Manual that governs the internal operating procedures of the County's Equal Business Opportunity Program; ~~providing that Veterans are a group that may be counted towards Equal Business Opportunity goals;~~ amending certain goal percentages; and generally relating to the Equal Business Opportunity Program.

Introduced and read first time October 2, 2017.

By order Jessica Feldmark
Jessica Feldmark, Administrator

Read for a second time at a public hearing on October 16, 2017.

Tabled 11/6/17

By order Jessica Feldmark
Jessica Feldmark, Administrator

This Resolution was read the third time and was Adopted , Adopted with amendments , Failed , Withdrawn , by the County Council on December 4, 2017.

Certified By Jessica Feldmark
Jessica Feldmark, Administrator

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment

1 **WHEREAS**, Section 4.122 of the Howard County Code requires the County Purchasing
2 Agent to and implement an Equal Business Opportunity Program (the “Program”), subject to the
3 approval of the County Executive and of the County Council, by resolution; and
4

5 **WHEREAS**, the Program has not been updated since 2001 and, in order to update the
6 Program, the County Purchasing Agent has revised the Equal Business Opportunity Program
7 Manual (the “Manual”), substantially in the form attached to this Resolution; and
8

9 **WHEREAS**, pertinent changes to the Program include updating definitions, ~~providing~~
10 ~~that Veterans are a new group that can be counted towards EBO goals~~, clarifying certain
11 certification requirements, establishing an overall Program goal of 20% and a subcontracting
12 goal of 15%, allowing for certain electronic notification, allowing for certain information to be
13 obtained from prime contractors, and making certain technical corrections; and
14

15 **WHEREAS**, on December 5, 2016, the County Council passed Council Resolution No.
16 181-2016 that tasked the Equal Business Opportunity Commission (“EBOC”) with making
17 certain studies regarding the Program; and
18

19 **WHEREAS**, the EBOC issued its report on August 3, 2017 and the EBOC’s
20 recommendations are included in the proposed revised Manual; and
21

22 **WHEREAS**, the EBOC has provided input on the proposed revised Manual; and
23

24 **WHEREAS**, the County Executive has requested County Council approval of the revised
25 Manual.
26

27 **NOW, THEREFORE, BE IT RESOLVED** by the County Council of Howard County,
28 Maryland this 4th day of December, 2017, that it hereby approves the revised Equal Business
29 Opportunity Program Manual, substantially in the form attached to this Resolution.
30

31 **AND BE IT FURTHER RESOLVED**, that the County Purchasing Agent may correct
32 obvious errors, capitalization, spelling, grammar, headings and similar matters and may publish

- 1 the Equal Business Opportunity Program Manual by adding or amending covers, title pages,
- 2 table of contents, and graphics to improve readability.

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HOWARD COUNTY MARYLAND

EQUAL BUSINESS OPPORTUNITY PROGRAM

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30 Equal Business Opportunity (EBO)

31 Self-Certification Affidavit]]

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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. APPLICABILITY:

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

1 demonstrable ability to make independent and unilateral business decisions
2 needed to guide the future and destiny of the business.
3

4 b. MBE/WBE/DBE Corporation - Legal and equitable ownership of at least 51
5 percent of all classes of stock, bonds, or other securities issued by the corporation
6 must be owned by a minority, women or disabled person(s).
7

8 c. MBE/WBE/DBE Partnership - At least 51 percent of the partnership's assets or
9 interests must be owned by a minority, women or disabled person(s).
10

11 d. MBE/WBE/DBE Sole Proprietorship - The sole proprietor must be a minority,
12 women or disabled person(s).
13

14 e. Disabled Business Enterprise (DBE) - A business enterprise:

15 1. Which is:

16 (a) At least 51% owned by ONE or more individuals with
17 disabilities; or

18 (b) In the case of any publicly-owned corporation, at least 51% of the
19 stock of which is owned by ONE or more individuals with
20 disabilities; and

21 2. WHOSE OWNERSHIP INTEREST IS REAL AND CONTINUOUS, AND NOT CREATED
22 SOLELY TO MEET THE DISABLED OWNED BUSINESS PROVISIONS OF THIS
23 POLICY; AND

24 3. Whose general management and daily business affairs and essential
25 productive operations are controlled by ONE or more individuals with
26 disabilities; and

27 4. Which has been certified by the Equal Business Opportunity Commission
28 as a disability business enterprise.
29

30 f. Disabled Individual: An individual who has a physical or mental impairment that
31 substantially limits ONE or more major life activities or has a record of such

1 impairment.

2
3 g. MBE/WBE and DBE Directory - A compilation of MBE/WBE and DBE firms
4 provided to the contractor for use in identifying subcontractors, materials suppliers,
5 consultants, etc.

6
7 h. Joint Venture - An association of [[2]] TWO or more individuals, partnerships,
8 corporations, or combinations thereof, founded to carry on a simple business
9 activity.

10
11 i. Minority Business Enterprise (MBE) - A business enterprise:

12 1. Which is:

13 (a) At least 51% owned by [[1]] ONE or more minority individuals; or

14 (b) In the case of any publicly-owned corporation, at least 51% of the
15 stock of which is owned by [[1]] ONE or more minority individuals;
16 and

17 2. WHOSE OWNERSHIP INTEREST IS REAL AND CONTINUOUS, AND NOT CREATED
18 SOLELY TO MEET THE MINORITY OWNED BUSINESS PROVISIONS OF THIS
19 POLICY; AND

20 [[2]]3. Whose general management and daily business affairs and essential
21 productive operations are controlled by [[1]] ONE or more minority
22 individuals; and

23 [[3]]4. Which has been certified by the Equal Business Opportunity Commission
24 as a minority business enterprise.

25
26 j. Minority Individual: An individual who is a member of [[1]] ONE of the following
27 groups:

28 [[1. African Americans

29 2. American Indians

30 3. Asian Americans

31 4. Hispanic Americans]]

- 1
2 1. AFRICAN AMERICANS: WHO INCLUDES PERSONS HAVING ORIGINS IN ANY OF THE
3 BLACK RACIAL GROUPS OF AFRICA;
4 2. NATIVE AMERICANS: WHO INCLUDES PERSONS WHO ARE AMERICAN INDIAN,
5 ESKIMOS, ALEUTS OR NATIVE HAWAIIANS;
6 ~~3. ASIAN AMERICANS: WHO INCLUDES PERSONS WHO ARE ASIAN PACIFIC AMERICANS~~
7 ~~WHOSE ORIGINS ARE FROM JAPAN, CHINA, TAIWAN, KOREA, VIETNAM, LAOS,~~
8 ~~CAMBODIA, THE PHILIPPINES, SAMOA, GUAM, THE U.S. TRUST TERRITORIES OF THE~~
9 ~~PACIFIC, THE NORTHERN MARIANAS; AND ASIAN INDIAN AMERICANS WHOSE~~
10 ~~ORIGINS ARE FROM INDIA, PAKISTAN, AND BANGLADESH~~
11 3. ASIAN AMERICANS: WHO INCLUDES INDIVIDUALS HAVING ORIGINS IN THE FAR EAST,
12 SOUTHEAST ASIA, OR THE INDIAN ASIAN SUBCONTINENT, OR THE PACIFIC ISLANDS;
13 AND
14 4. HISPANIC AMERICANS: WHO INCLUDES PERSONS OF MEXICAN, PUERTO RICAN,
15 CUBAN, CENTRAL OR SOUTH AMERICAN, OR OTHER SPANISH CULTURE OR ORIGIN.
16 5. ~~VETERANS: VETERANS SHALL MEAN:~~

17 ~~(A) A PERSON WHO SERVED ON FULL TIME ACTIVE DUTY IN THE UNITED STATES~~
18 ~~ARMED FORCES, OTHER THAN ACTIVE DUTY FOR TRAINING, AND WAS~~
19 ~~DISCHARGED OR RELEASED UNDER CONDITIONS OTHER THAN~~
20 ~~DISHONORABLE; OR~~

21 ~~(B) A PERSON WHO WAS DISABLED FROM A DISEASE OR INJURY INCURRED OR~~
22 ~~AGGRAVATED IN THE LINE OF DUTY WHILE PERFORMING ACTIVE DUTY FOR~~
23 ~~TRAINING OR INACTIVE DUTY TRAINING; OR~~

24 ~~(C) A PERSON WHO SERVED FULL TIME AS A COMMISSIONED CORPS MEMBER OF~~
25 ~~THE PUBLIC HEALTH SERVICE OR THE NATIONAL OCEANIC AND~~
26 ~~ATMOSPHERIC ADMINISTRATION.~~

- 27
28 k. Operation - Managerial and official staff comprised of minority, women, or
29 disabled persons in sufficient ratio and gross earnings to demonstrate that these
30 individuals ownership and involvement in fact demonstrates day-to-day
31 management.
32

1 1. Women Business Enterprise (WBE) - A business enterprise:

2 1. Which is:

3 (a) At least 51% owned by [[1]] ONE or more women; or

4 (b) In the case of publicly-owned corporation, at least 51% of the stock
5 of which is owned by [[1]]ONE or more women; and

6 2. WHOSE OWNERSHIP INTEREST IS REAL AND CONTINUOUS, AND NOT CREATED
7 SOLELY TO MEET THE WOMEN OWNED BUSINESS PROVISIONS OF THIS POLICY;
8 AND

9 [[2]]3. Whose general management and daily business affairs and essential
10 productive operations are controlled by ~~1~~ one or more women; and

11 [[3]]4. Which has been certified by the Equal Business Opportunity Commission
12 as a women business enterprise.

13
14 III. CERTIFICATION:

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

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

22
23 IT IS THEREFORE NECESSARY THAT THE COUNTY HAVE CREDIBLE AND RELIABLE MEANS OF
24 IDENTIFYING 'BONAFIDE' MBE/WBE/DBE FIRMS. TO THIS END, THE COUNTY IN
25 CONJUNCTION WITH THE EQUAL BUSINESS OPPORTUNITY COMMISSION (EBOC) WILL
26 MANAGE AND MAINTAIN A FORMAL CERTIFICATION PROCESS TO SUBSTANTIATE THE
27 LEGITIMACY OF THE FIRM'S OWNERSHIP AND CONTROL AS AN MBE/WBE/DBE FIRM. THE
28 CERTIFICATION WILL BE VALID FOR A PERIOD OF TWO YEARS PER APPLICATION CYCLE WITH
29 AN OPPORTUNITY TO RENEW AND REMAIN CERTIFIED.

30
31 ELIGIBILITY STANDARDS, CRITERIA AND THE PROCEDURES FOR CERTIFICATION AS A

1 MBE/WBE/DBE FIRM WILL INCLUDE THE FOLLOWING:

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

4
5 (B) THE FIRM'S OWNERSHIP BY A MINORITY, WOMAN OR DISABLED INDIVIDUAL MUST BE
6 REAL, SUBSTANTIAL AND CONTINUING, GOING BEYOND PROFORMA OWNERSHIP OF
7 THE FIRM AS REFLECTED IN THE OWNERSHIP DOCUMENTS, AND MUST NOT HAVE BEEN
8 CREATED SOLELY TO MEET THE MBE/WBE/DBE PROVISIONS OF THIS POLICY.

9
10 (C) IT IS EXPECTED THAT THE MINORITY, WOMAN OR DISABLED INDIVIDUAL OWNER(S)
11 WILL HAVE AN OVERALL UNDERSTANDING OF THE FIRM'S OPERATIONS AND
12 MANAGERIAL AND TECHNICAL COMPETENCE, EXPERIENCE AND EXPERTISE DIRECTLY
13 RELATED TO THE FIRM'S OPERATIONS AND WORK. IF ANY LAW REQUIRES THE
14 OWNERS TO HAVE A PARTICULAR LICENSE OR OTHER CREDENTIAL TO OPERATE, OWN
15 AND/OR CONTROL A CERTAIN TYPE OF BUSINESS, THEN THE LICENSE OR CREDENTIAL
16 SHOULD BE HELD IN THE NAME OF THE MINORITY, WOMAN OR DISABLED OWNER(S)
17 OF THE FIRM.

18
19 (D) THE HOWARD COUNTY EBOC MUST CERTIFY ALL MBE/WBE/DBE FIRMS THAT
20 PARTICIPATE IN THE EBO PROGRAM. THE EBOC'S CERTIFICATION OF A FIRM WHICH HAS
21 ITS PRINCIPAL PLACE OF BUSINESS LOCATED IN THE COUNTY SHALL BE BASED UPON THE
22 COUNTY'S CERTIFICATION PROCESS OR THE FIRM'S CERTIFICATION BY ANOTHER
23 REGULATORY BODY AS DESCRIBED IN THIS SECTION III. THE EBOC'S CERTIFICATION OF
24 A FIRM LOCATED OUTSIDE OF THE COUNTY SHALL BE BASED UPON THE FIRM'S
25 CERTIFICATION BY ANOTHER REGULATORY BODY AS DESCRIBED IN THIS SECTION III.

26
27 (E) IN ORDER TO BE CERTIFIED, A MBE/WBE/DBE FIRM MUST BE IN GOOD STANDING
28 WITH THE MARYLAND STATE DEPARTMENT OF ASSESSMENTS AND TAXATION.

29
30 (F) THE FIRM FOR CERTIFICATION AS A MBE/WBE/DBE HAS THE BURDEN OF
31 DEMONSTRATING BY A PREPONDERANCE OF EVIDENCE THAT IT MEETS THE
32 ELIGIBILITY STANDARDS AND CRITERIA.

1
2 (F G) THE EQUAL BUSINESS OPPORTUNITY COMMISSION WILL MAKE ALL ELIGIBILITY
3 DETERMINATIONS AND ALL DETERMINATIONS ARE FINAL.
4

5 (G H) ALL APPLICATIONS FOR CERTIFICATION MUST BE ACCOMPANIED BY A SWORN
6 AFFIDAVIT ATTESTING TO THE ACCURACY AND TRUTHFULNESS OF THE INFORMATION
7 PROVIDED.
8

9 (H I) THE MBE/WBE/DBE FIRM MUST COOPERATE FULLY WITH THE COUNTY DURING
10 THE CERTIFICATION PROCESS; FAILURE TO DO SO COULD RESULT IN THE DENIAL OF
11 CERTIFICATION.

12 (I J) THE EQUAL BUSINESS OPPORTUNITY COMMISSION MAY DIRECTLY CONTACT AND
13 INTERVIEW PROSPECTIVE APPLICANTS, IF NEED BE, AND/OR REQUEST ADDITIONAL
14 INFORMATION AND/OR SUPPORTING DOCUMENTATION FOR DETERMINING
15 ELIGIBILITY.

16 ~~(J) IN THE SPIRIT OF THE EBO CERTIFICATION PROCESS; A LA CARTE COMBINATIONS TO~~
17 ~~REACH THE 51% THRESHOLD RUN COUNTER TO THE EBO PROGRAM. THE 51%~~
18 ~~OWNERSHIP REQUIREMENT SHALL BE IN ONLY ANY ONE PARTICULAR EBO GROUP.~~

19
20 THE COUNTY WILL MAINTAIN A CURRENT DIRECTORY OF CERTIFIED MBE/WBE/DBES AND THE
21 COMMODITIES AND/OR SERVICES THEY OFFER. THE DIRECTORY WILL BE MADE AVAILABLE ON THE
22 OFFICE OF PURCHASING WEBSITE.

23
24 IN ADDITION TO ITS CERTIFICATION PROGRAM, Howard County recognizes businesses certified by
25 the following regulatory bodies:

26
27 a. ~~All counties within the State of Maryland whose certification requirements are~~
28 ~~similar to Howard County.~~

29 b A. State of Maryland agencies whose certification requirements are similar to Howard
30 County AT LEAST EQUAL TO HOWARD COUNTY'S.

31 e B. Certain federal agencies when that agency is the grantor for a County project.

1 The Chief Administrative Officer or the Officer's designee shall be responsible for
2 the development and implementation of the Equal Business Opportunity Program,
3 which is designed to assure the participation of minority, woman and disabled
4 business enterprises in the purchasing activities of the County. [[The Chief
5 Administrative Officer shall designate the Equal Business Opportunity Officer who
6 shall report directly to the Officer or designee.]] THE CHIEF ADMINISTRATIVE
7 OFFICER SHALL EITHER DESIGNATE THE DEPUTY CHIEF ADMINISTRATIVE OFFICER
8 OR THE PURCHASING ADMINISTRATOR AS THE EQUAL BUSINESS OPPORTUNITY
9 OFFICER.

10
11 b. Equal Business Opportunity Officer:

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

16
17 c. Office of Purchasing:

18 1. The Office of Purchasing will be the centralized point for managing,
19 coordinating and executing EBO program requirements/provisions and
20 will supplement the Equal Business Opportunity Officer's actions as
21 follows.

22 2. The Office of Purchasing will:

23 (a) Provide maximum opportunity for MBE/WBE/DBE firms
24 participation in the County's procurement process through
25 dissemination of bid information and solicitations.

26 (b) Encourage MBE/WBE/DBE participation in every solicitation by:

27 (1) [[Soliciting at least three MBE/WBE/DBEs on the bidders
28 list for all transactions of \$5,000.00 or less.]] ENCOURAGING
29 USER AGENCIES TO SOLICIT CERTIFIED MBE/WBE/DBES FOR
30 ALL SMALL PURCHASES.

1 (2) [[Soliciting at least six MBE/WBE/DBE firms on the bidders
2 list for all transactions from \$5,000.00 to less than
3 \$30,000.00.]] SOLICITING CERTIFIED MBE/WBE/DBES FOR
4 INFORMAL AND FORMAL SOLICITATIONS

5
6 [[(3) Soliciting all MBE/WBE/DBE firms on the bidders list for
7 all transactions of \$30,000.00 or more.

8
9 (4) If there are no MBE/WBE/DBE firms on the bidders list, the
10 Office of Purchasing will seek qualified MBE/ WBE/ DBE
11 firms through neighboring jurisdictions.]]

12 (c) Encourage MBE/WBE/DBE firms to respond to solicitations as
13 prime contractors.

14 (d) Encourage the use of MBE/WBE/DBE subcontractors by
15 contractors who are awarded County construction projects.

16 (e) Include equal business opportunity clauses in [[all solicitation/
17 contracts]] SOLICITATIONS AND CONTRACTS, as appropriate.

18 (f) Assure that MBE/WBE/DBE firms on the bidders list are given the
19 same opportunity as others.

20 (g) Identify specific commodities and services for which
21 MBE/WBE/DBE firms are not currently being used and encourage
22 their participation in the solicitation process.

23 (h) Identify qualified MBE/WBE/DBE firms through participation in
24 business opportunity fairs, meetings, trade shows; communications
25 with other procurement personnel; and through directories that
26 identify MBE/WBE/DBE firms.

27 (i) Meet with MBE/WBE/DBE firms to discuss recurring procurement
28 opportunities and acquaint the vendors with Howard County
29 procedures, needs, and the procurement approach.

30 (j) Review the [{"equal business opportunity" clause}] EQUAL BUSINESS
31 OPPORTUNITY PROGRAM; and explain the County's policy

1 encouraging the use of MBE/WBE/DBE firms during pre-bid
2 conferences.

3 (k) Explain the requirements for federal and state-funded projects as
4 appropriate.

5 (l) Provide technical assistance to potential MBE/WBE/DBE suppliers,
6 as necessary, to ensure that they are given sufficient information
7 regarding bid requirements and procedures. ASSIST
8 MBE/WBE/DBE FIRMS IN BECOMING CERTIFIED.

9
10 (m) ~~[[Insure]]~~ ENSURE that MBE/WBE/DBE participation is sought for
11 subsequent contract years on ~~[[requirement]]~~ REQUIREMENTS
12 contracts.

13 ~~[[n]]~~ Advertise County procurement needs in minority publications as
14 appropriate.]]

15 ~~[[o]]N~~ ~~[[Coordinate with state, federal and various associations to obtain~~
16 ~~current MBE/WBE/DBE directories.]]~~ COORDINATE WITH
17 OFFICIALS OF FEDERAL AND STATE AGENCIES, LOCAL MINORITY
18 BUSINESS DEVELOPMENT ORGANIZATIONS, AND OTHER MINORITY
19 CONTRACTOR ASSOCIATIONS IN THE FURTHERANCE OF EFFORTS TO
20 ENCOURAGE MBE/WBE/DBE PARTICIPATION.

21
22 ~~[[p]]O~~ELECTRONICALLY notify the MBE/WBE/DBE community of
23 contract opportunities.

24 ~~[[q]]P~~Provide to prime contractors a resource for locating and contacting
25 MBE/WBE/DBE firms.

26 ~~[[r]]Q~~Maintain records showing participation.

27 ~~[[s]]R~~Ensure that EBO policy requirements have been met in awarding all
28 contracts ~~[[and sub-agreements]]~~.

29 ~~[[t]]S~~ Conduct a contract compliance process required in Section VI g. to
30 monitor subcontractor participation during contract performance.

31 ~~[[u]]T~~In accord with Section VI g. execute procedures for reporting and
32 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. Equal Business Opportunity Coordinator:

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 1. As provided for in Section 4.600 of the Howard County Code the EBOC
2 will:
3 (a) Assist the efforts of the County in procuring goods and services
4 from MBE/WBE/DBE firms.
5 (b) Conduct surveys and studies on County policies and procedures in
6 procurement and contracting and, if needed, recommend changes to
7 the Administration and the County Council.
8 (c) Make recommendations to the County Purchasing Agent on the
9 criteria for certification and the procedures for certification (the
10 EBOC may issue County certification and reciprocal local
11 government and State of Maryland certification).
12 (d) Recommend to the County Purchasing Agent changes in existing
13 laws, policies and programs and practices designed to ensure equal
14 business opportunity for MBE/WBE/DBE firms.
15 (e) Hear and decide appeals regarding the decertification of
16 MBE/WBE/DBE firms.

17
18 f. Consulting Firms:

- 19 1. All Consultants bidding on County contracts estimated at \$50,000 or more
20 (amounts for federal and state funded procurements will be guided by the
21 funding agencies requirements) will be required to subcontract to
22 MBE/WBE/DBE firms a share of the work awarded consistent with the
23 County's goal oriented system. The consultant will be required to adhere to
24 the County's EBO policy even though they may have the capability to
25 complete the project with its own workforce. Where the consultant fails to
26 achieve the MBE/WBE/DBE goal, they must request a waiver and provide
27 documentation of its good faith attempts to obtain MBE/WBE/DBE
28 participation. [[Documentation required by Exhibit II will be submitted.]]
29
30 2. Consulting firms who habitually subcontract certain requirements (i.e.,
31 engineering, design and surveying) are expected to take positive steps to

1 use MBE/WBE/DBE firms for such subcontracting consistent with the
2 County's goal oriented system. In addition, in their role as consultants for
3 the County, these positive efforts should consist of at least the following:

- 4 (a) Assist the County in ensuring that opportunities are extended to
5 MBE/WBE/DBE firms by the prime construction contractors for
6 subcontracting or joint agreements.
- 7 (b) Divide the total design and construction requirements into smaller
8 tasks, where economically feasible, to permit maximum
9 MBE/WBE/DBE participation.
- 10 (c) Assist the County in operating its goal oriented system.
- 11 (d) Require that each subcontractor under the contract comply with the
12 EBO policy as appropriate if further subcontracting is contemplated.
- 13 (e) Keep the County informed of any MBE/WBE/DBE contracts or
14 subcontracts as well as changes in plans to award previously
15 proposed subcontracts to MBE/WBE/DBE firms.

16
17 g. Contractors:

- 18 1. All prime contractors bidding on contracts estimated at \$50,000 or more
19 (amounts for federal and state funded procurements will be guided by the
20 funding agencies requirements) will be required to subcontract to
21 MBE/WBE/DBE firms a share of the work awarded consistent with the
22 County's goal oriented system. The contractor will be required to adhere to
23 the County's EBO policy even though they may have the capability to
24 complete the project with its own workforce. Where the contractor fails to
25 achieve the MBE/WBE/DBE goal, they must request a waiver and provide
26 documentation of its good faith attempts to obtain MBE/WBE/DBE
27 participation. [[Documentation required by Exhibit II will be submitted.]]
28 The contractor's positive efforts should consist of the following:
- 29 (a) Extending opportunities for subcontracting, joint arrangements, and
30 material supplying to MBE/WBE/DBE firms.
- 31 (b) Complying with and implementing the County's goal oriented

1 system.

- 2 (c) Identifying to the County, MBE/WBE/DBE firms [[to be used by
3 submitting Exhibit I as required by the bid document]] THAT WILL
4 BE USED ON THE PROJECT, THEIR ADDRESS, CERTIFYING AGENCY,
5 CERTIFICATION NUMBER, TYPE OF WORK TO BE PERFORMED, TOTAL
6 ANTICIPATED MBE/WBE/DBE PARTICIPATION PERCENTAGE AND
7 THE DOLLAR AMOUNT OF THE SUBCONTRACT WORK FOR EACH
8 IDENTIFIED MBE/WBE/DBE SUBCONTRACTOR/SUPPLIER. Where
9 MBE/WBE/DBE firms are not used or are not available, provide the
10 documentation [[required by Exhibit II]] to demonstrate good faith
11 efforts.
- 12 (d) Maintaining records of MBE/WBE/DBE firms contacted, including
13 negotiation efforts to reach competitive price levels, and awards to
14 MBE/WBE/DBE firms.
- 15 (e) Requiring subcontractors under the contract to comply with the
16 EBO policy.
- 17 (f) Keeping the County informed of all MBE/WBE/DBE
18 [[subagreements]]SUBCONTRACTOR AGREEMENTS or changes in
19 plans to award subcontracts previously reported as proposed for
20 MBE/WBE/DBE firms.

21

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

- 23 1. All MBE/WBE/DBE firms are expected to at least take the following
24 actions:
- 25 (a) Become informed of planned County projects and the bid process.
- 26 (b) Contact and maintain liaison with prime contractors bidding on
27 County projects to make them aware of their capabilities and to
28 obtain subcontracting opportunities.
- 29 (c) ATTEND PRE-BID CONFERENCES TO ESTABLISH CONTACTS AND
30 RELATIONSHIPS WITH PRIME CONTRACTORS FOR POTENTIAL FUTURE
31 BUSINESS OPPORTUNITIES.

1 ([[c]]D) Provide capability statements to State and the County
2 MBE/WBE/DBE Persons.

3 [[d) Maintain liaison with the Regional Office of Civil Rights and Urban
4 Affairs.]]

5 (e) Contact and maintain liaison with [[the State Office of
6 MBE/WBE/DBE Affairs and other federal or state funded]]
7 FEDERAL, STATE AND LOCAL MBE/WBE/DBE assistance
8 organizations and associations.

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

12
13
14 VI. PROGRAM IMPLEMENTATION:

15
16 a. Bid/Proposal Solicitations:

17 1. Notice [[of Lettings]] for County solicitations shall include A CLAUSE
18 ENCOURAGING EBO PARTICIPATION AND OUTLINING GOALS, WHEN
19 APPLICABLE. [[the following information. Sub-paragraph (a) will always be
20 used in conjunction with (b) or (c) as appropriate to the type of contract (i.e.,
21 county or federally funded).

22 (a) All: "Howard County hereby notifies all bidders that
23 MBE/WBE/DBE firms will be afforded full opportunity to submit
24 bids in response to this notice and will not be subjected to
25 discrimination on the basis of race, color, sex, national origin, or
26 impairment in consideration of an award."

27 (b) County Funded Contracts: "It is required that contractors procure
28 from MBE/WBE/DBE firms by subcontract or otherwise, supplies
29 and services, the combined value of which equals 10% of the total
30 value of the contract if the contract amount exceeds \$50,000.00.
31 Failure to do so may lead to rejection of bids. Bidders shall submit

1 with such bids the County's Equal Business Opportunity
2 Certificate." (Appendix I.)

- 3 (c) Federally Funded Contracts: "It is the goal of Howard County that
4 MBE/WBE/DBE firms participate in ___% (enter amount specified
5 by federal guidelines) of the total value of this contract. Bidders
6 shall submit with such bids the County's Equal Business
7 Opportunity Certificate." (Appendix 1).]]

8
9
10 [[2. Notices will be placed in newspapers with high minority, women and
11 disabled business readership and may also be sent but not limited to the
12 following organizations:

- 13 (a) The Baltimore American Indian Center, Inc.
14 (b) The Baltimore Council for Equal Business Opportunity (CEB0).
15 (c) The Columbia Business Resource Center.
16 (d) The Howard County Libraries.
17 (e) The MD/DC Minority Supplier Development Council.
18 (f) The Maryland Minority Contractor's Association (MMCA).
19 (g) The State Office of Minority Affairs (OMF).
20 (h) The various Local & State of Maryland EBO Officers.]]

21
22 2. THE OFFICE OF PURCHASING SHALL PROVIDE AND MAKE AVAILABLE ONLINE
23 ON ITS WEBSITE AND/OR ELECTRONICALLY DISSEMINATE TO
24 MBE/WBE/DBE FIRMS LISTED IN THE COUNTY'S ONLINE DIRECTORY OF
25 CERTIFIED MBE/WBE/DBE FIRMS' INFORMATION REGARDING CONTRACT
26 AND/OR PROCUREMENT OPPORTUNITIES WITH THE COUNTY.

27
28 3. NOTICES MAY ALSO BE DISSEMINATED ELECTRONICALLY TO OFFICIALS OF
29 FEDERAL AND STATE AGENCIES, LOCAL MINORITY BUSINESS DEVELOPMENT
30 ORGANIZATIONS, AND OTHER MINORITY CONTRACTOR ASSOCIATIONS IN THE
31 FURTHERANCE OF EFFORTS TO ENCOURAGE MBE/WBE/DBE

PARTICIPATION.

1
2
3 [[3]]4. Prime contractors who bid on County solicitations will be provided
4 assistance if needed in locating MBE/WBE/DBE firms for subcontract
5 opportunities.

6
7 b. Pre-Bid Conference: At each pre-bid conference the County's EBO program and
8 the County's percentage goals of MBE/WBE/DBE participation will be explained.
9 The detailed steps to assure compliance for federally funded projects will also be
10 reviewed.

11
12 c. Equal Business Opportunity Clause For Bids/RFPs: All solicitations estimated to
13 be \$50,000 or more shall contain [[the following]] A CLAUSE ADVISING SUCCESSFUL
14 BIDDERS THEY ARE EXPECTED TO COMPLY WITH THE EBO PROGRAM REQUIREMENTS
15 unless deemed to be inappropriate due to certain conditions (i.e. hazardous waste
16 hauling where subcontracting is not permitted, some banking services and other
17 unique procurements that do not lend themselves to subcontracting).

18
19 [[“If the total of the contract awarded is \$50,000 or more, the successful bidder
20 shall be expected to comply with the provisions of the County’s Equal Business
21 Opportunity Program (10% MBE/WBE/DBE participation)”].]

22
23 d. PROGRAM SCOPE:

24
25 1. THIS POLICY APPLIES TO ALL ELIGIBLE PROCUREMENTS PERFORMED BY AND FOR
26 HOWARD COUNTY, EXCEPT THOSE THAT OFFER NO POTENTIAL FOR
27 MBE/WBE/DBE PARTICIPATION. THE EBO OFFICER HAS THE AUTHORITY TO
28 WAIVE MBE/WBE/DBE SUBCONTRACTING PARTICIPATION PERCENTAGE
29 GOALS, PRIOR TO NOTICE OF LETTINGS OF COUNTY SOLICITATIONS, ON CERTAIN
30 PROCUREMENTS THAT ARE NON-SEGMENTABLE OR THAT DO NOT LEND
31 THEMSELVES TO MBE/WBE/DBE PARTICIPATION. A FEW EXAMPLES OF THESE

1 TYPES OF CONTRACTS INCLUDE, BUT ARE NOT LIMITED TO: SOLE SOURCE
2 CONTRACTS, EXPEDITED PURCHASES, PURCHASES FROM LARGE UTILITIES,
3 PURCHASES OF SPECIALIZED EQUIPMENT, MEDICAL AND LEGAL SERVICES.
4

5 2. IF THE EBO OFFICER APPROVES A WAIVER OF THIS PROGRAM'S APPLICATION FOR
6 A GIVEN CONTRACT OR PURCHASE ORDER, A JUSTIFICATION MEMORANDUM THAT
7 EXPLAINS THE BASIS AND FACTUAL FINDINGS SUPPORTING THAT WAIVER
8 DECISION SHALL BE CLEARLY STATED IN THE CONTRACT DOCUMENTS.
9

10 3. PURCHASES THAT SHALL BE EXEMPTED FROM MBE/WBE/DBE PARTICIPATION
11 INCLUDE PURCHASES FROM COLLEGES AND UNIVERSITIES, GOVERNMENT
12 AGENCIES, CHARITABLE ORGANIZATIONS, FOUNDATIONS AND NONPROFIT
13 SOCIAL SERVICE PROVIDERS.
14

15 [[d]]E. Contract Awards:

- 16 1. After bid opening but prior to contract award the apparent low bidder will
17 be required to submit documentation showing MBE/WBE/DBE
18 participation.
19 2. The appropriate documents will be submitted to the Office of Purchasing
20 before the contract is executed.
21

22 F. ACCOMPLISHMENT OF MBE/WBE/DBE PARTICIPATION GOALS:
23

24 HOWARD COUNTY ENCOURAGES PRIME CONTRACTORS TO PROVIDE
25 MBE/WBE/DBE FIRMS THE OPPORTUNITY TO PARTICIPATE AS SUBCONTRACTORS
26 AND SUPPLIERS IN WHICH THE MBE/WBE/DBE FIRMS ARE MEANINGFUL AND
27 CONTRIBUTING PARTICIPANTS.
28

- 29 1. IN ORDER TO COUNT BONAFIDE MBE/WBE/DBE PARTICIPATION TOWARDS
30 MEETING THE PARTICIPATION GOALS ON A PROCUREMENT, A
31 MBE/WBE/DBE MUST PERFORM A 'COMMERCIALY USEFUL FUNCTION'.

1 AN MBE/WBE/DBE PERFORMS A COMMERCIALY USEFUL FUNCTION WHEN
2 IT IS RESPONSIBLE FOR EXECUTION OF THE WORK OF THE CONTRACT AND IS
3 CARRYING OUT ITS RESPONSIBILITIES BY ACTUALLY PERFORMING,
4 MANAGING, AND SUPERVISING THE WORK INVOLVED. TO PERFORM A
5 COMMERCIALY USEFUL FUNCTION, THE MBE/WBE/DBE MUST ALSO BE
6 RESPONSIBLE, WITH RESPECT TO MATERIALS AND SUPPLIES USED ON THE
7 CONTRACT, FOR NEGOTIATING PRICE, DETERMINING QUANTITY AND
8 QUALITY, ORDERING THE MATERIAL, AND INSTALLING (WHERE APPLICABLE)
9 AND PAYING FOR THE MATERIAL ITSELF. TO DETERMINE WHETHER AN
10 MBE/WBE/DBE IS PERFORMING A COMMERCIALY USEFUL FUNCTION, AN
11 EVALUATION MUST BE PERFORMED OF THE AMOUNT OF WORK
12 SUBCONTRACTED, NORMAL INDUSTRY PRACTICES, WHETHER THE AMOUNT
13 THE MBE/WBE/DBE FIRM IS TO BE PAID UNDER THE CONTRACT IS
14 COMMENSURATE WITH THE WORK IT IS ACTUALLY PERFORMING AND THE
15 MBE/WBE/DBE CREDIT CLAIMED FOR ITS PERFORMANCE OF THE WORK,
16 AND OTHER RELEVANT FACTORS.

17
18 2. SPECIFICALLY, AN MBE/WBE/DBE DOES NOT PERFORM A COMMERCIALY
19 USEFUL FUNCTION IF ITS ROLE IS LIMITED TO THAT OF AN EXTRA PARTICIPANT
20 IN A TRANSACTION, CONTRACT, OR PROJECT THROUGH WHICH FUNDS ARE
21 PASSED IN ORDER TO OBTAIN THE APPEARANCE OF QUALIFIED
22 MBE/WBE/DBE PARTICIPATION.

23
24 3. IN ORDER FOR A FIRM TO BE COUNTED TOWARDS A BIDDER'S
25 MBE/WBE/DBE PARTICIPATION, THE FIRM MUST BE APPROPRIATELY
26 CERTIFIED BY A REGULATORY BODY AS SPECIFIED IN SECTION III, PRIOR TO
27 CONTRACT EXECUTION. NON-CERTIFIED MBE/WBE/DBE FIRMS MAY BE
28 USED BY BIDDERS FOR THEIR PROCUREMENT NEEDS. HOWEVER, THOSE FIRMS
29 CANNOT BE COUNTED TOWARD MEETING THE MBE/WBE/DBE GOAL.
30

- 1 4. A PRIME CONTRACTOR MAY COUNT TOWARDS THE PARTICIPATION GOAL ANY
2 TIER OF CERTIFIED MBE/WBE/DBE SUBCONTRACTORS AND/OR SUPPLIERS
3 THAT WILL BE UTILIZED IN EXECUTION OF THE WORK ON A CONTRACT.
4
5 5. CERTIFIED MBE/WBE/DBE PRIME CONTRACTORS CAN COUNT 100% OF THE
6 WORK THEY SELF-PERFORM ON CONTRACTS WITH EBO SUBCONTRACTING
7 GOALS.
8
9

10 ~~[[e]]~~G. Waiver: In the event a prime contractor is unable to reach the ~~[[required]]~~ DESIRED
11 goal, a waiver may be requested from the Office of Purchasing. A waiver will only
12 be considered after a determination that the contractor has made a genuine good
13 faith effort ~~[[and documented the efforts on Exhibit II]]~~.
14

15 ~~[[f]]~~H. 1. Good Faith Effort Criteria: In making a determination that the contractor has
16 made good faith efforts to meet the EBO goals, the County will consider, though
17 not be limited to the following:

18 ~~[[1]]~~A) Whether the contractor attended pre-bid or pre proposal meetings to
19 discuss MBE/WBE/DBE participation matters.

20 ~~[[2]]~~B) Whether the contractor advertised in general circulation, trade
21 association, and/or MBE/WBE/DBE focused media concerning
22 subcontracting opportunities.

23 ~~[[3]]~~C) Whether the contractor solicited a reasonable number of
24 MBE/WBE/DBE firms with written notice, in sufficient time to allow the
25 firms an opportunity to participate effectively.

26 ~~[[4]]~~D) Whether the contractor followed-up initial solicitations of interest to
27 MBE/WBE/DBE firms to determine with certainty whether the firms were
28 interested.

29 ~~[[5]]~~E) Whether the contractor selected portions of the work to be performed by
30 MBE/WBE/DBE firms in order to increase the likelihood of meeting the
31 EBO goals including and where appropriate, breaking the contract into
32 economically feasible subcontracts to allow for MBE/WBE/DBE

1 participation.

2 ([[6]]F) Whether the contractor provided interested MBE/WBE/DBE firms with
3 adequate information about the plans, specifications, scope of work, and
4 requirements of the contract.

5 ([[7]]G) Whether the contractor negotiated in good faith with interested
6 MBE/WBE/DBE firms; not rejecting them as unqualified without sound
7 reasons based on a thorough investigation of their capabilities;

8 ([[8]]H) Whether the contractor made efforts to assist interested
9 MBE/WBE/DBE firms in obtaining bonding, lines of credit, insurance, etc.,
10 as required by the County or the contractor.

11 ([[9]]I) Whether the contractor effectively used the services of available
12 community organization contractor groups, local, Howard County, State,
13 and Federal business assistance programs; and other organizations which
14 provide assistance in the identification of MBE/WBE/DBE firms; and

15 ([[10]]J) Whether the contractor obtained and used the County's
16 MBE/WBE/DBE directory to obtain certified firms.

17
18 In determining whether a contractor has demonstrated good faith the County
19 will not only look at the different kinds of efforts the contractor has made
20 but also the quantity and intensity of those efforts. Efforts that are merely
21 pro forma in nature would not be sufficient to be considered good faith
22 efforts to meet the County's MBE/WBE/DBE goals (even if such efforts are
23 sincerely motivated).

24
25 [[11.]]2. After evaluation of the apparent low bidder's compliance with the
26 County's MBE/WBE/DBE Program, the Office of Purchasing will
27 notify the bidder of the following:

28
29 (a) Final award of the contract with or without waiver of the
30 MBE/WBE/DBE goal.

31 [[(b)] Non-award based on apparent non-attempt to attain the

1 MBE/WBE/DBE goal. Apparent low bidders who fail to achieve
2 the desired MBE/WBE/DBE participation can be declared "non-
3 responsive" bidders in which case the next low bidder becomes the
4 apparent low bidder. This process may be repeated until an apparent
5 low bidder meeting the MBE/WBE/DBE requirement is obtained or
6 the County may elect to re-bid the project to obtain both an equitable
7 price and EBO compliance.
8

9 12. Unless an objection of non-award is filed by an apparent low bidder,
10 in writing, within 7 days of such notification, the determination is final.
11 In the event an objection is filed, the Office of Purchasing will arrange
12 a meeting with the bidder. At that time the Office of Purchasing may
13 request additional information from the bidder. Other interested parties
14 including the EBO Officer may offer information relevant to the issues
15 on which a review of the determination will be made.]]
16
17

18 g. Contract Compliance Process:

- 19 1. The Office of Purchasing will conduct periodic compliance reviews with all
20 prime contractors [[required to comply with the EBO goal]].
21

22 THE COMPLIANCE MONITORING PROCESS COULD INCLUDE, EITHER
23 CONDUCTING AN ADMINISTRATIVE CONTRACT COMPLIANCE REVIEW, OR AN
24 ON-SITE INVESTIGATION TO CONFIRM COMPLIANCE WITH THE EBO
25 PROGRAM.
26

27 AS PART OF ITS ADMINISTRATIVE REVIEW, THE OFFICE OF PURCHASING MAY
28 REQUEST FROM PRIMES MBE/WBE/DBE PARTICIPATION REPORTS, WHOSE
29 CONTENTS MAY INCLUDE, BUT NOT BE LIMITED TO, A LISTING OF
30 MBE/WBE/DBE SUBCONTRACTORS, SUPPLIERS, SUB-CONSULTANTS
31 APPLICATIONS FOR PAYMENT AND/OR INVOICES, AS APPROPRIATE, AND

1 PROOF OF PAYMENTS. THE REVIEW MAY BE CONDUCTED DURING THE COURSE
2 OF A CONTRACT OR AT THE CONCLUSION OF A CONTRACT TO DETERMINE
3 MBE/WBE/DBE PARTICIPATION. THE OFFICE OF PURCHASING MAY
4 REQUIRE ADDITIONAL DOCUMENTATION TO ASSIST IN ITS ANALYSIS OF
5 COMPLIANCE WITH THIS POLICY.
6

- 7 2. Contractors will be given at least a 14 day prior notification of a pending
8 on-site verification and review for contract compliance. During such on-
9 site review the contractor will have the following available for inspection:
- 10 (a) Copies of Purchase Orders and contracts containing
11 MBE/WBE/DBE work effort.
 - 12 (b) Records to indicate the number, names, dollar value of the
13 MBE/WBE/DBE subcontracts, the amount and dates, and the
14 scheduled times for each MBE/WBE/DBE to be on the job site.
 - 15 (c) Any other appropriate documents requested prior to the on-site visit.
- 16 3. The on-site verification and interviews at a minimum will consist of the
17 following:
- 18 (a) An initial meeting with the contractor or his representative to
19 explain visit objectives.
 - 20 (b) Tour of the job site.
 - 21 (c) Interviews of subcontractors, suppliers, etc.
- 22 4. At the conclusion of the on-site visit an exit conference will be conducted.
23 This conference will consist of a discussion of the compliance process and
24 determination time frame, and suggestions for corrective action to be taken
25 if necessary.
- 26 5. A report indicating compliance status will be prepared and forwarded to the
27 EBO Officer.
- 28 (a) If a determination of compliance is made the Office of Purchasing
29 will so notify the contractor in writing.
 - 30 (b) If a determination of non-compliance is made the Office of
31 Purchasing may conduct further investigation. The contractor will

1 be notified and an attempt made to remedy any problems of
2 compliance. In the event conciliation fails, the Office of Purchasing
3 will inform the EBO Officer that the contractor is in non-
4 compliance.

5 [[(c) If the County concurs in the determination of non-compliance a
6 "Show Cause Notice" will be issued. This notice will contain the
7 deficiencies noted in the findings, establish a compliance conference
8 date, outline the administrative actions to be taken, and provide a
9 forum for the contractor to show that he is in compliance.

10 (1) If the contractor corrects his deficiencies, the "Show Cause
11 Notice" will be rescinded and the contractor notified of his
12 compliance in writing.

13 (2) If the contractor refuses to take steps necessary to rescind the
14 "Show Cause Notice", the County will begin administrative
15 action against the contractor.]]

16
17 [[h. Enforcement: If a contractor fails or refuses to take corrective action the County
18 will determine in accordance with Section 4.103 of the Howard County Code which
19 of the following should be imposed to promote the purpose of the Howard County
20 EBO Program.

- 21 1. Termination of the contract.
- 22 2. Withholding a percentage of progress payment.
- 23 3. Referral to the County Solicitor for follow-up action.
- 24 4. Deny the contractor any future contract awards.
- 25 5. Other action deemed appropriate by the County.]]

26
27 VII. STATE AND FEDERAL FUNDING:

- 28 a. The County receives funding from state and federal agencies.
- 29 b. The special bid conditions, equal business opportunity requirements, and the
30 utilization of MBE/WBE/DBE firms for those agencies will vary based on the
31 program.

- 1 c. While not limited to these, Environmental Protection Agency and Department of
2 Transportation/Urban Mass Transportation Administration funded contracts are
3 most often used by the County.
- 4 d. As a result, current applicability, EBO goals, definitions, County's action, EBO
5 policy and obligation, determination of MBE/WBE/DBE participation percentage,
6 contractor's action, and records and reports can be obtained from the Capital
7 Projects Administrator for the project of concern in conjunction with the Office of
8 Purchasing.
- 9 e. When required, County forms[[, Appendix I and Exhibits I, and II]] may be used
10 for state and federally funded contracts.

Amendment 1 to Council Resolution No. 121-2017

BY: The Chairperson at the
request of the County Executive

Legislative Day No. 15
Date: December 4, 2017

Amendment No. 1

(This amendment:

1. Corrects the definition of "Minority Individual";
2. Removes "Veterans" from the list of "Minority Individuals"; and
3. Removes a provision that prohibits certain combinations of ownership interests which is inconsistent with State requirements. Because we accept State certifications, the inconsistency raised by the proposed language is problematic.)

1 In the title, strike "providing that Veterans are a group that may be counted towards Equal
2 Business Opportunity goals;"

3
4 On page 1, in line 9, strike "providing".

5
6 On page 1, in line 10, strike "that Veterans are a new group that may be counted towards EBO
7 goals;"

8
9 In the EBO Manual, attached to the Resolution as prefiled:

- 10 1. On page 4, strike lines 6 through 10, inclusive and in their entirety and substitute:
11 "3. ASIAN AMERICANS: WHO INCLUDES INDIVIDUALS HAVING ORIGINS IN THE FAR EAST,
12 SOUTHEAST ASIA, OR THE INDIAN ASIAN SUBCONTINENT, OR THE PACIFIC ISLANDS; AND";
- 13 2. On page 4, strike lines 13 through 23, inclusive and in their entirety; and
- 14 3. On page 7, strike lines 8 through 10, inclusive and in their entirety.

ADOPTED as amended 12/4/17
FAILED _____
SIGNATURE Jessica Jeddman

Amendment 1 to Amendment No. 1 to Council Resolution No. 121-2017

BY: The Chairperson at the
request of the County Executive

Legislative Day No. 15
Date: December 4, 2017

Amendment No. 1

(This amendment corrects the definition of "Asian American" to clarify that Pacific Islanders are included.)

- 1 On page 1, in line 12:
- 2 • Strike the first "OR";
- 3 • Strike "INDIAN" and substitute "ASIAN"; and
- 4 • After "SUBCONTINENT", insert ", OR THE PACIFIC ISLANDS".

ADOPTED

12/4/17

FAILED

SIGNATURE

Jessica Feldman

Amendment 2 to Council Resolution 121-2017

BY: Calvin Ball
Jon Weinstein

Legislative Day No: 15
Date: Dec. 4, 2017

Amendment No. 2

1 (This amendment would require non-Howard County based MBE/WBE/DBE firms to be
2 certified by another regulatory body before being certified by the EBOC)
3
4

5 On page 6 of the document attached to the resolution entitled, "Howard County
6 Maryland Equal Business Opportunity Program", immediately following line 15, insert the
7 following:

8 "(D) THE HOWARD COUNTY EBOC MUST CERTIFY ALL MBE/WBE/DBE FIRMS THAT
9 PARTICIPATE IN THE EBO PROGRAM. THE EBOC'S CERTIFICATION OF A FIRM
10 WHICH HAS ITS PRINCIPAL PLACE OF BUSINESS LOCATED IN THE COUNTY
11 SHALL BE BASED UPON THE COUNTY'S CERTIFICATION PROCESS OR THE FIRM'S
12 CERTIFICATION BY ANOTHER REGULATORY BODY AS DESCRIBED IN THIS
13 SECTION III. THE EBOC'S CERTIFICATION OF A FIRM LOCATED OUTSIDE OF THE
14 COUNTY SHALL BE BASED UPON THE FIRM'S CERTIFICATION BY ANOTHER
15 REGULATORY BODY AS DESCRIBED IN THIS SECTION III."
16

17 Renumber the remainder of the section accordingly.
18

19 On page 7 of the document attached to the resolution, strike lines 19 and 20, in their
20 entirety.

21 On the same page, in line 21, strike "b" and substitute "A". Also, on the same line, strike
22 "similar to Howard County" and substitute "AT LEAST EQUAL TO HOWARD COUNTY'S".

23 On the same page, in lines 23 and 24, strike "c" and "d", respectively, and substitute "B"
24 and "C", respectively.
25
26

ADOPTED as amended 12/4/17
FAILED _____
SIGNATURE Jessica Feldman

Amendment 1 to Amendment 2 to Council Resolution No. 121 - 2017

BY: Calvin Ball
Jon Weinstein

Legislative Day No. 15
Date: 12/4/17

Amendment No. 1

(This amendment would clarify that firms located in Howard County must have their principal place of business in the County)

- 1 On page 1, in line 9, immediately following "FIRM", insert "WHICH HAS ITS PRINCIPAL
- 2 PLACE OF BUSINESS".
- 3
- 4
- 5

ADOPTED 12/4/17
FAILED
SIGNATURE Jessica Feldman

Amendment 1 to Council Resolution No. 121-2017

BY: The Chairperson at the
request of the County Executive

Legislative Day No. 5
Date: December 4, 2017

Amendment No. 1

(This amendment:

1. Corrects the definition of "Minority Individual";
2. Removes "Veterans" from the list of "Minority Individuals"; and
3. Removes a provision that prohibits certain combinations of ownership interests which is inconsistent with State requirements. Because we accept State certifications, the inconsistency raised by the proposed language is problematic.)

1 In the title, strike "providing that Veterans are a group that may be counted towards Equal
2 Business Opportunity goals;"

3

4 On page 1, in line 9, strike "providing".

5

6 On page 1, in line 10, strike "that Veterans are a new group that may be counted towards EBO
7 goals;"

8

9 In the EBO Manual, attached to the Resolution as prefiled:

10 1. On page 4, strike lines 6 through 10, inclusive and in their entirety and substitute:

11 "3. ASIAN AMERICANS: WHO INCLUDES INDIVIDUALS HAVING ORIGINS IN THE FAR EAST,
12 SOUTHEAST ASIA, OR THE INDIAN SUBCONTINENT; AND";

13 2. On page 4, strike lines 13 through 23, inclusive and in their entirety; and

14 3. On page 7, strike lines 8 through 10, inclusive and in their entirety.

Amendment 2 to Council Resolution 121-2017

BY: Calvin Ball
Jon Weinstein

Legislative Day No: 15
Date: 12/4/17

Amendment No. 2

1 (This amendment would require non-Howard County based MBE/WBE/DBE firms to be
2 certified by another regulatory body before being certified by the EBOC)
3
4

5 On page 6 of the document attached to the resolution entitled, "Howard County
6 Maryland Equal Business Opportunity Program", immediately following line 15, insert the
7 following:

8 "(D) THE HOWARD COUNTY EBOC MUST CERTIFY ALL MBE/WBE/DBE FIRMS THAT
9 PARTICIPATE IN THE EBO PROGRAM. THE EBOC'S CERTIFICATION OF A FIRM
10 LOCATED IN THE COUNTY SHALL BE BASED UPON THE COUNTY'S
11 CERTIFICATION PROCESS OR THE FIRM'S CERTIFICATION BY ANOTHER
12 REGULATORY BODY AS DESCRIBED IN THIS SECTION III. THE EBOC'S
13 CERTIFICATION OF A FIRM LOCATED OUTSIDE OF THE COUNTY SHALL BE BASED
14 UPON THE FIRM'S CERTIFICATION BY ANOTHER REGULATORY BODY AS
15 DESCRIBED IN THIS SECTION III."
16

17 Renumber the remainder of the section accordingly.
18

19 On page 7 of the document attached to the resolution, strike lines 19 and 20, in their
20 entirety.

21 On the same page, in line 21, strike "b" and substitute "A". Also, on the same line, strike
22 "similar to Howard County" and substitute "AT LEAST EQUAL TO HOWARD COUNTY'S".

23 On the same page, in lines 23 and 24, strike "c" and "d", respectively, and substitute "B"
24 and "C", respectively.
25
26

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County Council Of Howard County, Maryland

2017 Legislative Session

Legislative Day No. 12

Resolution No. 121-2017

Introduced by: The Chairperson at the request of the County Executive

A RESOLUTION pursuant to Section 4.122 of the Howard County Code, approving a revised Equal Business Opportunity Program Manual that governs the internal operating procedures of the County's Equal Business Opportunity Program; providing that Veterans are a group that may be counted towards Equal Business Opportunity goals; amending certain goal percentages; and generally relating to the Equal Business Opportunity Program.

Introduced and read first time _____, 2017.

By order _____
Jessica Feldmark, Administrator

Read for a second time at a public hearing on _____, 2017.

By order _____
Jessica Feldmark, Administrator

This Resolution was read the third time and was Adopted ____, Adopted with amendments ____, Failed ____, Withdrawn ____, by the County Council on _____, 2017.

Certified By _____
Jessica Feldmark, Administrator

NOTE: ~~[[text in brackets]]~~ indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; ~~Strike-out~~ indicates material deleted by amendment; Underlining indicates material added by amendment

1 **WHEREAS**, Section 4.122 of the Howard County Code requires the County Purchasing
2 Agent to and implement an Equal Business Opportunity Program (the “Program”), subject to the
3 approval of the County Executive and of the County Council, by resolution; and
4

5 **WHEREAS**, the Program has not been updated since 2001 and, in order to update the
6 Program, the County Purchasing Agent has revised the Equal Business Opportunity Program
7 Manual (the “Manual”), substantially in the form attached to this Resolution; and
8

9 **WHEREAS**, pertinent changes to the Program include updating definitions, providing
10 that Veterans are a new group that can be counted towards EBO goals, clarifying certain
11 certification requirements, establishing an overall Program goal of 20% and a subcontracting
12 goal of 15%, allowing for certain electronic notification, allowing for certain information to be
13 obtained from prime contractors, and making certain technical corrections; and
14

15 **WHEREAS**, on December 5, 2016, the County Council passed Council Resolution No.
16 181-2016 that tasked the Equal Business Opportunity Commission (“EBOC”) with making
17 certain studies regarding the Program; and
18

19 **WHEREAS**, the EBOC issued its report on August 3, 2017 and the EBOC’s
20 recommendations are included in the proposed revised Manual; and
21

22 **WHEREAS**, the EBOC has provided input on the proposed revised Manual; and
23

24 **WHEREAS**, the County Executive has requested County Council approval of the revised
25 Manual.
26

27 **NOW, THEREFORE, BE IT RESOLVED** by the County Council of Howard County,
28 Maryland this ___ day of _____, 2017, that it hereby approves the revised Equal Business
29 Opportunity Program Manual, substantially in the form attached to this Resolution.
30

31 **AND BE IT FURTHER RESOLVED**, that the County Purchasing Agent may correct
32 obvious errors, capitalization, spelling, grammar, headings and similar matters and may publish.

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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 ONE or more women; or

1 (b) In the case of publicly-owned corporation, at least 51% of the stock
2 of which is owned by [[1]]ONE or more women; and

3 2. WHOSE OWNERSHIP INTEREST IS REAL AND CONTINUOUS, AND NOT CREATED
4 SOLELY TO MEET THE WOMEN OWNED BUSINESS PROVISIONS OF THIS POLICY;
5 AND

6 [[2]]3. Whose general management and daily business affairs and essential
7 productive operations are controlled by 4 one or more women; and

8 [[3]]4. Which has been certified by the Equal Business Opportunity Commission
9 as a women business enterprise.

10
11 III. CERTIFICATION:

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

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

19
20 IT IS THEREFORE NECESSARY THAT THE COUNTY HAVE CREDIBLE AND RELIABLE MEANS OF
21 IDENTIFYING 'BONAFIDE' MBE/WBE/DBE FIRMS. TO THIS END, THE COUNTY IN
22 CONJUNCTION WITH THE EQUAL BUSINESS OPPORTUNITY COMMISSION (EBOC) WILL
23 MANAGE AND MAINTAIN A FORMAL CERTIFICATION PROCESS TO SUBSTANTIATE THE
24 LEGITIMACY OF THE FIRM'S OWNERSHIP AND CONTROL AS AN MBE/WBE/DBE FIRM. THE
25 CERTIFICATION WILL BE VALID FOR A PERIOD OF TWO YEARS PER APPLICATION CYCLE WITH
26 AN OPPORTUNITY TO RENEW AND REMAIN CERTIFIED.

27
28 ELIGIBILITY STANDARDS, CRITERIA AND THE PROCEDURES FOR CERTIFICATION AS A
29 MBE/WBE/DBE FIRM WILL INCLUDE THE FOLLOWING:

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

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(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.

1 (H) THE MBE/WBE/DBE FIRM MUST COOPERATE FULLY WITH THE COUNTY DURING THE
2 CERTIFICATION PROCESS; FAILURE TO DO SO COULD RESULT IN THE DENIAL OF
3 CERTIFICATION.

4 (I) THE EQUAL BUSINESS OPPORTUNITY COMMISSION MAY DIRECTLY CONTACT AND
5 INTERVIEW PROSPECTIVE APPLICANTS, IF NEED BE, AND/OR REQUEST ADDITIONAL
6 INFORMATION AND/OR SUPPORTING DOCUMENTATION FOR DETERMINING
7 ELIGIBILITY.

8 (J) IN THE SPIRIT OF THE EBO CERTIFICATION PROCESS, ALA CARTE COMBINATIONS TO
9 REACH THE 51% THRESHOLD RUN COUNTER TO THE EBO PROGRAM. THE 51%
10 OWNERSHIP REQUIREMENT SHALL BE IN ONLY ANY ONE PARTICULAR EBO GROUP.

11
12 THE COUNTY WILL MAINTAIN A CURRENT DIRECTORY OF CERTIFIED MBE/WBE/DBES AND THE
13 COMMODITIES AND/OR SERVICES THEY OFFER. THE DIRECTORY WILL BE MADE AVAILABLE ON THE
14 OFFICE OF PURCHASING WEBSITE.

15
16 IN ADDITION TO ITS CERTIFICATION PROGRAM, Howard County recognizes businesses certified by
17 the following regulatory bodies:

- 18
19 a. All counties within the State of Maryland whose certification requirements are
20 similar to Howard County.
21 b. State of Maryland agencies whose certification requirements are similar to Howard
22 County.
23 c. Certain federal agencies when that agency is the grantor for a County project.
24 d. Certain other states and municipalities when it would be impractical or
25 unreasonable not to use a certified MBE/WBE/DBE from that immediate region
26 (i.e. transporting goods from out of state to Howard County).

27
28 IV. EQUAL BUSINESS OPPORTUNITY PROGRAM GOALS:

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

1 directly to County requests for goods and services.

2
3 Accordingly, Howard County's MBE/WBE/DBE participation percentage goals are as
4 follows:

- 5 a. When the contract value is \$50,000 or more, the prime contractors will subcontract
6 [[10%]]15% of each contract to MBE/WBE/DBE firms. [[This requirement is
7 applicable to bidders who are themselves MBE/WBE and DBE owned firms.]] The
8 percentage requirement may vary if the contract is funded by a federal or state
9 agency.
- 10 b. Each fiscal year, award [[15%]]20% of the County's total dollar amount of all
11 contracts directly to MBE/WBE/DBE firms. This includes consulting services,
12 construction, professional services, and other procurements for goods and services.
- 13 [[c. Ensure that the MBE/WBE/DBE goal specified for each federal and state-funded
14 contract is met as specified by the funding agency. Participation requirements for
15 the various Federal and State agencies vary by organization and may be obtained
16 from the Capital Project Administrator for the project of concern in conjunction
17 with the EBO Coordinator.]]

18
19 V. RESPONSIBILITIES:

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

22
23 a. Chief Administrative Officer (Purchasing Agent)

24 The Chief Administrative Officer or the Officer's designee shall be responsible for
25 the development and implementation of the Equal Business Opportunity Program,
26 which is designed to assure the participation of minority, woman and disabled
27 business enterprises in the purchasing activities of the County. [[The Chief
28 Administrative Officer shall designate the Equal Business Opportunity Officer who
29 shall report directly to the Officer or designee.]] THE CHIEF ADMINISTRATIVE
30 OFFICER SHALL EITHER DESIGNATE THE DEPUTY CHIEF ADMINISTRATIVE OFFICER
31 OR THE PURCHASING ADMINISTRATOR AS THE EQUAL BUSINESS OPPORTUNITY

1 OFFICER.

2
3 b. Equal Business Opportunity Officer:

4 The EBO Officer will be responsible for policy and oversight of the EBO program
5 to include decertification authority and the investigation of sworn, written
6 allegations of wrongdoing by a certified business. The EBO Officer will also serve
7 as the Executive Secretary to the EBO Commission.
8

9 c. Office of Purchasing:

10 1. The Office of Purchasing will be the centralized point for managing,
11 coordinating and executing EBO program requirements/provisions and
12 will supplement the Equal Business Opportunity Officer's actions as
13 follows.

14 2. The Office of Purchasing will:

15 (a) Provide maximum opportunity for MBE/WBE/DBE firms
16 participation in the County's procurement process through
17 dissemination of bid information and solicitations.

18 (b) Encourage MBE/WBE/DBE participation in every solicitation by:

19 (1) [[Soliciting at least three MBE/WBE/DBEs on the bidders
20 list for all transactions of \$5,000.00 or less.]] ENCOURAGING
21 USER AGENCIES TO SOLICIT CERTIFIED MBE/WBE/DBES FOR
22 ALL SMALL PURCHASES.
23

24 (2) [[Soliciting at least six MBE/WBE/DBE firms on the bidders
25 list for all transactions from \$5,000.00 to less than
26 \$30,000.00.]] SOLICITING CERTIFIED MBE/WBE/DBES FOR
27 INFORMAL AND FORMAL SOLICITATIONS
28

29 [[(3) Soliciting all MBE/WBE/DBE firms on the bidders list for
30 all transactions of \$30,000.00 or more.
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- (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.

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(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~~~~

1 government may recommend that a MBE firm receive 7%, a
2 WBE firm receive 3%, but no percent recommendation for a
3 DBE firm)]]].

4 (2) Coordinate with the grantor agency contact personnel to
5 resolve problems and/or make recommendations to improve
6 EBO program operation.

7 (v) Provide a referral service to those MBE/WBE/DBE firms who
8 require technical assistance when responding to the County's
9 solicitations.

10 (w) Provide information to interested MBE/WBE/DBE firms in
11 obtaining bonding, insurance etc.

12 (x) MAINTAIN THE HOWARD COUNTY ONLINE CERTIFIED VENDOR
13 DIRECTORY TO IDENTIFY READY, WILLING AND ABLE
14 MBE/WBE/DBE FIRMS THAT CAN BE NOTIFIED OR UTILIZED TO
15 MEET THE REQUIREMENTS OF THIS POLICY.

16
17 d. Equal Business Opportunity Coordinator:

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

22
23 e. Equal Business Opportunity Commission (EBOC):

24 1. As provided for in Section 4.600 of the Howard County Code the EBOC
25 will:

26 (a) Assist the efforts of the County in procuring goods and services
27 from MBE/WBE/DBE firms.

28 (b) Conduct surveys and studies on County policies and procedures in
29 procurement and contracting and, if needed, recommend changes to
30 the Administration and the County Council.

31 (c) Make recommendations to the County Purchasing Agent on the

1 criteria for certification and the procedures for certification (the
2 EBOC may issue County certification and reciprocal local
3 government and State of Maryland certification).

4 (d) Recommend to the County Purchasing Agent changes in existing
5 laws, policies and programs and practices designed to ensure equal
6 business opportunity for MBE/WBE/DBE firms.

7 (e) Hear and decide appeals regarding the decertification of
8 MBE/WBE/DBE firms.

9
10 f. Consulting Firms:

11 1. All Consultants bidding on County contracts estimated at \$50,000 or more
12 (amounts for federal and state funded procurements will be guided by the
13 funding agencies requirements) will be required to subcontract to
14 MBE/WBE/DBE firms a share of the work awarded consistent with the
15 County's goal oriented system. The consultant will be required to adhere to
16 the County's EBO policy even though they may have the capability to
17 complete the project with its own workforce. Where the consultant fails to
18 achieve the MBE/WBE/DBE goal, they must request a waiver and provide
19 documentation of its good faith attempts to obtain MBE/WBE/DBE
20 participation. [[Documentation required by Exhibit II will be submitted.]]

21
22 2. Consulting firms who habitually subcontract certain requirements (i.e.,
23 engineering, design and surveying) are expected to take positive steps to
24 use MBE/WBE/DBE firms for such subcontracting consistent with the
25 County's goal oriented system. In addition, in their role as consultants for
26 the County, these positive efforts should consist of at least the following:

27 (a) Assist the County in ensuring that opportunities are extended to
28 MBE/WBE/DBE firms by the prime construction contractors for
29 subcontracting or joint agreements.

30 (b) Divide the total design and construction requirements into smaller
31 tasks, where economically feasible, to permit maximum

1 MBE/WBE/DBE participation.

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

8
9 g. Contractors:

10 1. All prime contractors bidding on contracts estimated at \$50,000 or more
11 (amounts for federal and state funded procurements will be guided by the
12 funding agencies requirements) will be required to subcontract to
13 MBE/WBE/DBE firms a share of the work awarded consistent with the
14 County's goal oriented system. The contractor will be required to adhere to
15 the County's EBO policy even though they may have the capability to
16 complete the project with its own workforce. Where the contractor fails to
17 achieve the MBE/WBE/DBE goal, they must request a waiver and provide
18 documentation of its good faith attempts to obtain MBE/WBE/DBE
19 participation. [[Documentation required by Exhibit II will be submitted.]]
20 The contractor's positive efforts should consist of the following:

- 21 (a) Extending opportunities for subcontracting, joint arrangements, and
- 22 material supplying to MBE/WBE/DBE firms.
- 23 (b) Complying with and implementing the County's goal oriented
- 24 system.
- 25 (c) Identifying to the County, MBE/WBE/DBE firms [[to be used by
- 26 submitting Exhibit I as required by the bid document]] THAT WILL
- 27 BE USED ON THE PROJECT, THEIR ADDRESS, CERTIFYING AGENCY,
- 28 CERTIFICATION NUMBER, TYPE OF WORK TO BE PERFORMED, TOTAL
- 29 ANTICIPATED MBE/WBE/DBE PARTICIPATION PERCENTAGE AND
- 30 THE DOLLAR AMOUNT OF THE SUBCONTRACT WORK FOR EACH
- 31 IDENTIFIED MBE/WBE/DBE SUBCONTRACTOR/SUPPLIER. Where

1 MBE/WBE/DBE firms are not used or are not available, provide the
2 documentation [[required by Exhibit II]] to demonstrate good faith
3 efforts.

4 (d) Maintaining records of MBE/WBE/DBE firms contacted, including
5 negotiation efforts to reach competitive price levels, and awards to
6 MBE/WBE/DBE firms.

7 (e) Requiring subcontractors under the contract to comply with the
8 EBO policy.

9 (f) Keeping the County informed of all MBE/WBE/DBE
10 [[subagreements]]SUBCONTRACTOR AGREEMENTS or changes in
11 plans to award subcontracts previously reported as proposed for
12 MBE/WBE/DBE firms.

13
14 h. Minority Business, Women Business and Disabled Business Enterprises:

15 1. All MBE/WBE/DBE firms are expected to at least take the following
16 actions:

17 (a) Become informed of planned County projects and the bid process.

18 (b) Contact and maintain liaison with prime contractors bidding on
19 County projects to make them aware of their capabilities and to
20 obtain subcontracting opportunities.

21 (c) ATTEND PRE-BID CONFERENCES TO ESTABLISH CONTACTS AND
22 RELATIONSHIPS WITH PRIME CONTRACTORS FOR POTENTIAL FUTURE
23 BUSINESS OPPORTUNITIES.

24 [[c]]D) Provide capability statements to State and the County
25 MBE/WBE/DBE Persons.

26 [[(d)] Maintain liaison with the Regional Office of Civil Rights and Urban
27 Affairs.]]

28 (e) Contact and maintain liaison with [[the State Office of
29 MBE/WBE/DBE Affairs and other federal or state funded]]
30 FEDERAL, STATE AND LOCAL MBE/WBE/DBE assistance
31 organizations and associations.

1 (f) When required, seek assistance from MBE/WBE/DBE funded.
2 organizations in financing, estimating, bid packaging, bonding and
3 technical assistance services.
4
5

6 VI. PROGRAM IMPLEMENTATION:
7

8 a. Bid/Proposal Solicitations:

9 1. Notice [[of Lettings]] for County solicitations shall include A CLAUSE
10 ENCOURAGING EBO PARTICIPATION AND OUTLINING GOALS, WHEN
11 APPLICABLE. [[the following information. Sub-paragraph (a) will always be
12 used in conjunction with (b) or (c) as appropriate to the type of contract (i.e.,
13 county or federally funded).

14 (a) All: "Howard County hereby notifies all bidders that
15 MBE/WBE/DBE firms will be afforded full opportunity to submit
16 bids in response to this notice and will not be subjected to
17 discrimination on the basis of race, color, sex, national origin, or
18 impairment in consideration of an award."

19 (b) County Funded Contracts: "It is required that contractors procure
20 from MBE/WBE/DBE firms by subcontract or otherwise, supplies
21 and services, the combined value of which equals 10% of the total
22 value of the contract if the contract amount exceeds \$50,000.00.
23 Failure to do so may lead to rejection of bids. Bidders shall submit
24 with such bids the County's Equal Business Opportunity
25 Certificate." (Appendix I.)

26 (c) Federally Funded Contracts: "It is the goal of Howard County that
27 MBE/WBE/DBE firms participate in ___% (enter amount specified
28 by federal guidelines) of the total value of this contract. Bidders
29 shall submit with such bids the County's Equal Business
30 Opportunity Certificate." (Appendix 1).]]
31

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2 [[2. Notices will be placed in newspapers with high minority, women and
3 disabled business readership and may also be sent but not limited to the
4 following organizations:

- 5 (a) The Baltimore American Indian Center, Inc.
- 6 (b) The Baltimore Council for Equal Business Opportunity (CEBO).
- 7 (c) The Columbia Business Resource Center.
- 8 (d) The Howard County Libraries.
- 9 (e) The MD/DC Minority Supplier Development Council.
- 10 (f) The Maryland Minority Contractor's Association (MMCA).
- 11 (g) The State Office of Minority Affairs (OMF).
- 12 (h) The various Local & State of Maryland EBO Officers.]]

13
14 2. THE OFFICE OF PURCHASING SHALL PROVIDE AND MAKE AVAILABLE ONLINE
15 ON ITS WEBSITE AND/OR ELECTRONICALLY DISSEMINATE TO
16 MBE/WBE/DBE FIRMS LISTED IN THE COUNTY'S ONLINE DIRECTORY OF
17 CERTIFIED MBE/WBE/DBE FIRMS' INFORMATION REGARDING CONTRACT
18 AND/OR PROCUREMENT OPPORTUNITIES WITH THE COUNTY.

19
20 3. NOTICES MAY ALSO BE DISSEMINATED ELECTRONICALLY TO OFFICIALS OF
21 FEDERAL AND STATE AGENCIES, LOCAL MINORITY BUSINESS DEVELOPMENT
22 ORGANIZATIONS, AND OTHER MINORITY CONTRACTOR ASSOCIATIONS IN THE
23 FURTHERANCE OF EFFORTS TO ENCOURAGE MBE/WBE/DBE
24 PARTICIPATION.

25
26 [[3]]4. Prime contractors who bid on County solicitations will be provided
27 assistance if needed in locating MBE/WBE/DBE firms for subcontract
28 opportunities.

29
30 b. Pre-Bid Conference: At each pre-bid conference the County's EBO program and
31 the County's percentage goals of MBE/WBE/DBE participation will be explained.

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

- 3
4 c. Equal Business Opportunity Clause For Bids/RFPs: All solicitations estimated to
5 be \$50,000 or more shall contain [[the following]] A CLAUSE ADVISING SUCCESSFUL
6 BIDDERS THEY ARE EXPECTED TO COMPLY WITH THE EBO PROGRAM REQUIREMENTS
7 unless deemed to be inappropriate due to certain conditions (i.e. hazardous waste
8 hauling where subcontracting is not permitted, some banking services and other
9 unique procurements that do not lend themselves to subcontracting).

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

14
15 d. PROGRAM SCOPE:

- 16
17 1. THIS POLICY APPLIES TO ALL ELIGIBLE PROCUREMENTS PERFORMED BY AND FOR
18 HOWARD COUNTY, EXCEPT THOSE THAT OFFER NO POTENTIAL FOR
19 MBE/WBE/DBE PARTICIPATION. THE EBO OFFICER HAS THE AUTHORITY TO
20 WAIVE MBE/WBE/DBE SUBCONTRACTING PARTICIPATION PERCENTAGE
21 GOALS, PRIOR TO NOTICE OF LETTINGS OF COUNTY SOLICITATIONS, ON CERTAIN
22 PROCUREMENTS THAT ARE NON-SEGMENTABLE OR THAT DO NOT LEND
23 THEMSELVES TO MBE/WBE/DBE PARTICIPATION. A FEW EXAMPLES OF THESE
24 TYPES OF CONTRACTS INCLUDE, BUT ARE NOT LIMITED TO: SOLE SOURCE
25 CONTRACTS, EXPEDITED PURCHASES, PURCHASES FROM LARGE UTILITIES,
26 PURCHASES OF SPECIALIZED EQUIPMENT, MEDICAL AND LEGAL SERVICES.
27
28 2. IF THE EBO OFFICER APPROVES A WAIVER OF THIS PROGRAM’S APPLICATION FOR
29 A GIVEN CONTRACT OR PURCHASE ORDER, A JUSTIFICATION MEMORANDUM THAT
30 EXPLAINS THE BASIS AND FACTUAL FINDINGS SUPPORTING THAT WAIVER
31 DECISION SHALL BE CLEARLY STATED IN THE CONTRACT DOCUMENTS.

1
2 3. PURCHASES THAT SHALL BE EXEMPTED FROM MBE/WBE/DBE PARTICIPATION
3 INCLUDE PURCHASES FROM COLLEGES AND UNIVERSITIES, GOVERNMENT
4 AGENCIES, CHARITABLE ORGANIZATIONS, FOUNDATIONS AND NONPROFIT
5 SOCIAL SERVICE PROVIDERS.
6

7 [[d]]E. Contract Awards:

- 8 1. After bid opening but prior to contract award the apparent low bidder will
9 be required to submit documentation showing MBE/WBE/DBE
10 participation.
11 2. The appropriate documents will be submitted to the Office of Purchasing
12 before the contract is executed.
13

14 F. ACCOMPLISHMENT OF MBE/WBE/DBE PARTICIPATION GOALS:
15

16 HOWARD COUNTY ENCOURAGES PRIME CONTRACTORS TO PROVIDE
17 MBE/WBE/DBE FIRMS THE OPPORTUNITY TO PARTICIPATE AS SUBCONTRACTORS
18 AND SUPPLIERS IN WHICH THE MBE/WBE/DBE FIRMS ARE MEANINGFUL AND
19 CONTRIBUTING PARTICIPANTS.
20

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

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

- 9
- 10 2. SPECIFICALLY, AN MBE/WBE/DBE DOES NOT PERFORM A COMMERCIALY
11 USEFUL FUNCTION IF ITS ROLE IS LIMITED TO THAT OF AN EXTRA PARTICIPANT
12 IN A TRANSACTION, CONTRACT, OR PROJECT THROUGH WHICH FUNDS ARE
13 PASSED IN ORDER TO OBTAIN THE APPEARANCE OF QUALIFIED
14 MBE/WBE/DBE PARTICIPATION.
- 15
- 16 3. IN ORDER FOR A FIRM TO BE COUNTED TOWARDS A BIDDER'S
17 MBE/WBE/DBE PARTICIPATION, THE FIRM MUST BE APPROPRIATELY
18 CERTIFIED BY A REGULATORY BODY AS SPECIFIED IN SECTION III, PRIOR TO
19 CONTRACT EXECUTION. NON-CERTIFIED MBE/WBE/DBE FIRMS MAY BE
20 USED BY BIDDERS FOR THEIR PROCUREMENT NEEDS. HOWEVER, THOSE FIRMS
21 CANNOT BE COUNTED TOWARD MEETING THE MBE/WBE/DBE GOAL.
- 22
- 23 4. A PRIME CONTRACTOR MAY COUNT TOWARDS THE PARTICIPATION GOAL ANY
24 TIER OF CERTIFIED MBE/WBE/DBE SUBCONTRACTORS AND/OR SUPPLIERS
25 THAT WILL BE UTILIZED IN EXECUTION OF THE WORK ON A CONTRACT.
- 26
- 27 5. CERTIFIED MBE/WBE/DBE PRIME CONTRACTORS CAN COUNT 100% OF THE
28 WORK THEY SELF-PERFORM ON CONTRACTS WITH EBO SUBCONTRACTING
29 GOALS.

30

31

32 [[e]]G. Waiver: In the event a prime contractor is unable to reach the [[required]] DESIRED
33 goal, a waiver may be requested from the Office of Purchasing. A waiver will only

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

3
4 [[f]]H. 1. Good Faith Effort Criteria: In making a determination that the contractor has
5 made good faith efforts to meet the EBO goals, the County will consider, though
6 not be limited to the following:

7 ([[1]]A) Whether the contractor attended pre-bid or pre proposal meetings to
8 discuss MBE/WBE/DBE participation matters.

9 ([[2]]B) Whether the contractor advertised in general circulation, trade
10 association, and/or MBE/WBE/DBE focused media concerning
11 subcontracting opportunities.

12 ([[3]]C) Whether the contractor solicited a reasonable number of
13 MBE/WBE/DBE firms with written notice, in sufficient time to allow the
14 firms an opportunity to participate effectively.

15 ([[4]]D) Whether the contractor followed-up initial solicitations of interest to
16 MBE/WBE/DBE firms to determine with certainty whether the firms were
17 interested.

18 ([[5]]E) Whether the contractor selected portions of the work to be performed by
19 MBE/WBE/DBE firms in order to increase the likelihood of meeting the
20 EBO goals, including and where appropriate, breaking the contract into
21 economically feasible subcontracts to allow for MBE/WBE/DBE
22 participation.

23 ([[6]]F) Whether the contractor provided interested MBE/WBE/DBE firms with
24 adequate information about the plans, specifications, scope of work, and
25 requirements of the contract.

26 ([[7]]G) Whether the contractor negotiated in good faith with interested
27 MBE/WBE/DBE firms; not rejecting them as unqualified without sound
28 reasons based on a thorough investigation of their capabilities;

29 ([[8]]H) Whether the contractor made efforts to assist interested
30 MBE/WBE/DBE firms in obtaining bonding, lines of credit, insurance, etc.,
31 as required by the County or the contractor.

1 ((9))i) Whether the contractor effectively used the services of available
2 community organization contractor groups, local, Howard County, State,
3 and Federal business assistance programs; and other organizations which
4 provide assistance in the identification of MBE/WBE/DBE firms; and
5 ((10))r) Whether the contractor obtained and used the County's
6 MBE/WBE/DBE directory to obtain certified firms.

7
8 In determining whether a contractor has demonstrated good faith the County
9 will not only look at the different kinds of efforts the contractor has made
10 but also the quantity and intensity of those efforts. Efforts that are merely
11 pro forma in nature would not be sufficient to be considered good faith
12 efforts to meet the County's MBE/WBE/DBE goals (even if such efforts are
13 sincerely motivated).

14
15 ((11.))2. After evaluation of the apparent low bidder's compliance with the
16 County's MBE/WBE/DBE Program, the Office of Purchasing will
17 notify the bidder of the following:

18
19 (a) Final award of the contract with or without waiver of the
20 MBE/WBE/DBE goal.

21 ((b)) Non-award based on apparent non-attempt to attain the
22 MBE/WBE/DBE goal. Apparent low bidders who fail to achieve
23 the desired MBE/WBE/DBE participation can be declared "non-
24 responsive" bidders in which case the next low bidder becomes the
25 apparent low bidder. This process may be repeated until an apparent
26 low bidder meeting the MBE/WBE/DBE requirement is obtained or
27 the County may elect to re-bid the project to obtain both an equitable
28 price and EBO compliance.

29
30 12. Unless an objection of non-award is filed by an apparent low bidder,
31 in writing, within 7 days of such notification, the determination is final.

1 In the event an objection is filed, the Office of Purchasing will arrange
2 a meeting with the bidder. At that time the Office of Purchasing may
3 request additional information from the bidder. Other interested parties
4 including the EBO Officer may offer information relevant to the issues
5 on which a review of the determination will be made.]]
6
7

8 g. Contract Compliance Process:

- 9 1. The Office of Purchasing will conduct periodic compliance reviews with all
10 prime contractors [[required to comply with the EBO goal]].
11

12 THE COMPLIANCE MONITORING PROCESS COULD INCLUDE, EITHER
13 CONDUCTING AN ADMINISTRATIVE CONTRACT COMPLIANCE REVIEW, OR AN
14 ON-SITE INVESTIGATION TO CONFIRM COMPLIANCE WITH THE EBO
15 PROGRAM.
16

17 AS PART OF ITS ADMINISTRATIVE REVIEW, THE OFFICE OF PURCHASING MAY
18 REQUEST FROM PRIMES MBE/WBE/DBE PARTICIPATION REPORTS, WHOSE
19 CONTENTS MAY INCLUDE, BUT NOT BE LIMITED TO, A LISTING OF
20 MBE/WBE/DBE SUBCONTRACTORS, SUPPLIERS, SUB-CONSULTANTS
21 APPLICATIONS FOR PAYMENT AND/OR INVOICES, AS APPROPRIATE, AND
22 PROOF OF PAYMENTS. THE REVIEW MAY BE CONDUCTED DURING THE COURSE
23 OF A CONTRACT OR AT THE CONCLUSION OF A CONTRACT TO DETERMINE
24 MBE/WBE/DBE PARTICIPATION. THE OFFICE OF PURCHASING MAY
25 REQUIRE ADDITIONAL DOCUMENTATION TO ASSIST IN ITS ANALYSIS OF
26 COMPLIANCE WITH THIS POLICY.
27

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

1 MBE/WBE/DBE work effort.

2 (b) Records to indicate the number, names, dollar value of the
3 MBE/WBE/DBE subcontracts, the amount and dates, and the
4 scheduled times for each MBE/WBE/DBE to be on the job site.

5 (c) Any other appropriate documents requested prior to the on-site visit.

6 3. The on-site verification and interviews at a minimum will consist of the
7 following:

8 (a) An initial meeting with the contractor or his representative to
9 explain visit objectives.

10 (b) Tour of the job site.

11 (c) Interviews of subcontractors, suppliers, etc.

12 4. At the conclusion of the on-site visit an exit conference will be conducted.
13 This conference will consist of a discussion of the compliance process and
14 determination time frame, and suggestions for corrective action to be taken
15 if necessary.

16 5. A report indicating compliance status will be prepared and forwarded to the
17 EBO Officer.

18 (a) If a determination of compliance is made the Office of Purchasing
19 will so notify the contractor in writing.

20 (b) If a determination of non-compliance is made the Office of
21 Purchasing may conduct further investigation. The contractor will
22 be notified and an attempt made to remedy any problems of
23 compliance. In the event conciliation fails, the Office of Purchasing
24 will inform the EBO Officer that the contractor is in non-
25 compliance.

26 [(c) If the County concurs in the determination of non-compliance a
27 "Show Cause Notice" will be issued. This notice will contain the
28 deficiencies noted in the findings, establish a compliance conference
29 date, outline the administrative actions to be taken, and provide a
30 forum for the contractor to show that he is in compliance.

31 (1) If the contractor corrects his deficiencies, the "Show Cause

1 Notice" will be rescinded and the contractor notified of his
2 compliance in writing.

- 3 (2) If the contractor refuses to take steps necessary to rescind the
4 "Show Cause Notice", the County will begin administrative
5 action against the contractor.]]
6

7 [[h. Enforcement: If a contractor fails or refuses to take corrective action the County
8 will determine in accordance with Section 4.103 of the Howard County Code which
9 of the following should be imposed to promote the purpose of the Howard County
10 EBO Program.

- 11 1. Termination of the contract.
12 2. Withholding a percentage of progress payment.
13 3. Referral to the County Solicitor for follow-up action.
14 4. Deny the contractor any future contract awards.
15 5. Other action deemed appropriate by the County.]]
16

17 VII. STATE AND FEDERAL FUNDING:

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

Amendment 1 to Amendment No. 1 to Council Resolution No. 121-2017

**BY: The Chairperson at the
request of the County Executive**

**Legislative Day No. 15
Date: December 4, 2017**

Amendment No. 1

(This amendment corrects the definition of "Asian American" to clarify that Pacific Islanders are included.)

- 1 On page 1, in line 12:
- 2 • Strike the first "OR";
- 3 • Strike "INDIAN" and substitute "ASIAN"; and
- 4 • After "SUBCONTINENT", insert ", OR THE PACIFIC ISLANDS".

Amendment 1 to Council Resolution No. 121-2017

BY: The Chairperson at the request of the County Executive

Legislative Day No. 15
Date: December 4, 2017

Amendment No. 1

(This amendment:

1. Corrects the definition of "Minority Individual";
2. Removes "Veterans" from the list of "Minority Individuals"; and
3. Removes a provision that prohibits certain combinations of ownership interests which is inconsistent with State requirements. Because we accept State certifications, the inconsistency raised by the proposed language is problematic.)

1 In the title, strike "providing that Veterans are a group that may be counted towards Equal
2 Business Opportunity goals;"

3

4 On page 1, in line 9, strike "providing".

5

6 On page 1, in line 10, strike "that Veterans are a new group that may be counted towards EBO
7 goals,".

8

9 In the EBO Manual, attached to t

10 1. On page 4, strike lines 6 t

11 "3. ASIAN AMERICANS: V

12 SOUTHEAST ASIA, OR THL

13 2. On page 4, strike lines 13 through 23, inclusive and in their entirety; and

14 3. On page 7, strike lines 8 through 10, inclusive and in their entirety.

log file

their entirety and substitute:

HAVING ORIGINS IN THE FAR EAST,

”;

Amendment 1 to Amendment 2 to Council Resolution No. 121 - 2017

BY: Calvin Ball
Jon Weinstein

Legislative Day No. 15
Date: 12/4/17

Amendment No. 1

(This amendment would clarify that firms located in Howard County must have their principal place of business in the County)

- 1 On page 1, in line 9, immediately following "FIRM", insert "WHICH HAS ITS PRINCIPAL
- 2 PLACE OF BUSINESS".
- 3
- 4
- 5

Amendment 2 to Council Resolution 121-2017

BY: Calvin Ball
Jon Weinstein

Legislative Day No: 15
Date: 12/4/17

Amendment No. 2

1 (This amendment would require non-Howard County based MBE/WBE/DBE firms to be
2 certified by another regulatory body before being certified by the EBOC)
3
4

5 On page 6 of the document attached to the resolution entitled, "Howard County
6 Maryland Equal Business Opportunity Program", immediately following line 15, insert the
7 following:

8 "(D) THE HOWARD COUNTY EBOC MUST CERTIFY ALL MBE/WBE/DBE FIRMS THAT
9 PARTICIPATE IN THE EBO PROGRAM. THE EBOC'S CERTIFICATION OF A FIRM
10 LOCATED IN THE COUNTY SHALL BE BASED UPON THE COUNTY'S
11 CERTIFICATION PROCESS OR THE FIRM'S CERTIFICATION BY ANOTHER
12 REGULATORY BODY AS DESCRIBED IN THIS SECTION III. THE EBOC'S
13 CERTIFICATION OF A FIRM LOCATED OUTSIDE OF THE COUNTY SHALL BE BASED
14 UPON THE FIRM'S CERTIFICATION BY ANOTHER REGULATORY BODY AS
15 DESCRIBED IN THIS SECTION III."
16

17 Renumber the remainder of the section accordingly.
18

19 On page 7 of the document attached to the resolution, strike lines 19 and 20, in their
20 entirety.

21 On the same page, in line 21, strike "b" and substitute "A". Also, on the same line, strike
22 "similar to Howard County" and substitute "AT LEAST EQUAL TO HOWARD COUNTY'S".

23 On the same page, in lines 23 and 24, strike "c" and "d", respectively, and substitute "B"
24 and "C", respectively.
25
26

Sayers, Margery

From: Sager, Jennifer
Sent: Thursday, November 02, 2017 1:31 PM
To: CouncilMail
Cc: Feldmark, Jessica; Robbins, Lonnie; Hof, Dean; Wilson, B Diane; Connors, Caitlin; Glendenning, Craig; Harrod, Michelle R; Evelyn, Janssen; Sabnani, Mahesh
Subject: CR 121 (EBO Manual)

Councilmembers,

Despite previous emails on this matter, the Administration has recently uncovered some issues with the EBO manual that we would like to address by amendment. For this reason, we respectfully ask that you table Council Resolution 121 on November 6, 2017 so that we have more time to research and prepare amendments.

Thank you for your consideration,

Jen Sager



6240 Old Dobbin Lane ■ Suite 110 ■ Columbia, MD 21045

October 30, 2017

The Honorable Jon Weinstein
Howard County Council Chair
George Howard Building
3430 Court House Drive
Ellicott City, MD 21043

RE: County Resolution 121

Dear Councilman Weinstein:

In the summer of 2016, Council Resolution (CR) 181 was introduced as part of efforts to review County procurement practices, awards, and their impact on the minority business community. The Chamber submitted favorable written testimony in support of this resolution. Since that time, the Equal Business Opportunity Commission (EBOC), the task force charged with reviewing current policies, has completed its work and most recently submitted a set of recommendations for the County Council and the administration's consideration.

During this time, the County Executive introduced CR121 which would amend the current EBOC policy to include Veteran business owners. Both County Executive Allan Kittleman and County Councilmember Dr. Calvin Ball are to be commended for their efforts to further Veteran, Women, Minority, and Disabled business efforts in Howard County. Upon review of both the EBOC recommendations and CR121, the Howard County Chamber believes it would be best if the County delayed the revision of the current EBOC ordinance.

It is our opinion that the County can have more robust Veteran and Minority business policy if it were first to conduct a disparity study and implement the recommendations from the EBOC report. In conducting a disparity study, the administration would have a complete analysis as it relates to current County expenditures with various subgroups, thereby allowing itself to develop more data driven goals and initiatives. In addition, the County could determine whether it is more appropriate to have an amended EBOC policy to include Veterans or to have a separate Veteran and Service Disabled Veterans policy.

Howard County Chamber , CR 121

October 30, 2017

p. 2

The Chamber has several other ideas and suggestions it would be happy to discuss on the fulfillment of this effort. In the interim, we ask that you consider deferring the amendment of the current EBOC policy until the entire procurement process can be reviewed and assessed.

We thank you again for your consideration and attention to this most important initiative. For questions and comments, I can be reached directly at [443-878-1234](tel:443-878-1234).

Respectfully,

A handwritten signature in black ink that reads "Leonardo McClarty". The signature is written in a cursive, flowing style.

Leonardo McClarty, CCE
President, Howard County Chamber

CC: Howard County Council
The Honorable Allan Kittleman, Howard County Executive
Howard County Chamber Board of Directors

Roger L. Barnes
10227 Wincopin Circle
P. O. Box 1236
Columbia, MD 21044

To: Members of The Howard County Council

Subject: Request To Table Resolution 121-2017

Date: October 19, 2017

It is clearly recognized and understood that all segments of our Howard County community appreciate the sacrifice and service of the veterans who have served this country so well. The contributions and dedication of all veterans are key to the democratic principles we all hold so dear. However, in well-intentioned efforts to provide incentives, economic development benefits and to reward veterans for the service rendered, great care should be taken to carefully consider the impact of revising the EBOC Program Manual to add veterans as a disadvantaged category.

The primary mission of the EBOC, is to “foster equal business opportunity for businesses owned by minority individuals, women and individuals with disabilities” who have historically and consistently been denied equal opportunity, been disadvantaged in seeking equal footing in business development or face ongoing barriers to business success. Veterans have not been so historically disadvantaged and do not face the ongoing obstacles suffered by the others noted. Careful study and analysis is needed on all aspects of the EBOC mission, namely; (a) the certification process, (b) contracting opportunities, and (c) the size of the Howard County contracting marketplace, to ensure the well-intentioned desire to benefit veterans does not negatively impact the already challenged and disadvantaged business options and contracting success of women, minorities and disabled business owners within the Howard County community.

I respectfully ask the Howard County Council to table consideration of Resolution No. 121-2017 until more thorough assessments can be performed, implementation impacts can be identified and broader input be received from those affected by the proposed changes to the EBOC Program Manual.

Sincerely,


Rogers L. Barnes, CFA, MBA
Business Consultant

Sayers, Margery

From: Roger Barnes <lewrox1@gmail.com>
Sent: Thursday, October 19, 2017 11:25 PM
To: CouncilMail
Cc: Nathaniel Nat Alston; Roger Barnes
Subject: Request To Table Resolution 121-2017 For Further Consideration
Attachments: Request To Table Resolution 121-2017 For Further Consideration.pdf

Dear Howard County Council Chairman and Members of the Council,
Resolution 121-2017 is of great importance due to potential adverse impact and limited feedback to date of Resolution 121-201. I respectfully request, as a member of the Equal Business Opportunity Commission, which is evaluating the resolution, and as a private citizen of Howard County, that the resolution be tabled as noted in the attached letter.

Roger Barnes, CPA, MBA
Equal Business Opportunity Commissioner

Sayers, Margery

From: Roger Barnes <lewrox1@gmail.com>
Sent: Thursday, October 19, 2017 11:10 PM
To: CouncilMail
Cc: Nathaniel Nat Alston; Roger Barnes
Subject: Response To Resolution 121-2017 to Revise the EBOC Program To Add Veterans

Dear Howard County Council Chairman and Members of the Howard County Council,

As a long-term citizen of Howard County with a lifelong passion for uplifting our community, I continue to find it a pleasure to serve the citizens of Howard County as a member of the Equal Business Opportunity Commission (EBOC).

Please see my concerns below regarding Resolution 121-2017. I oppose the resolution for the numerous negative impacts probable on the disadvantaged business community and the un-intended adverse consequences, I believe, of adding veterans as a category.

As noted during my recent testimony during the Howard County Council working session on October 16, 2017. I expressed concern, as a member of the EBOC, about the proposed Resolution 121-2017 which seeks to revise the EBOC Program Manual to add veterans as a "group that may be counted towards Equal Business Opportunity Goals". Upon careful consideration, it is my belief that while good intentioned, the impact of making the suggested change will have an adverse impact on the very disadvantaged categories of women-owned, minority and disabled owned businesses within Howard County which are the subject of the EBOC mission.

Specifically, the following impacts are cause for concern:

1. The mission of the EBOC is to foster equal business opportunity for those historically disadvantaged and facing unjustified obstacles to business growth and development. Veterans, regardless of how much appreciated, do not serve that mission and do not suffer those same obstacles.
2. There is a persistent problem in reducing the number of waivers requested by prime contractors and other large businesses. Many incorrectly claim qualified women and minority businesses cannot be found in Howard County. The tendency for large firms and general contractors is still to utilize "other resources with whom there are pre-existing relationships" and make waiver claims. The inclusion of veterans and counting of veterans toward Equal Business Opportunity goals would allow an easy alternative to large firms while decreasing opportunities for the disadvantaged local businesses. Genuine research for and solicitation of disadvantaged small businesses would suffer. The result would significantly undercut the very mission of the EBOC. Waiver statistics would dramatically decline but not due to increased success of disadvantaged and small local businesses.
3. The demographics of the area appear to include a huge population of veterans. The size of that demographic could be overwhelming in the limited realm of Howard County.
4. There is a huge federal contracting arena, where veterans are provided set-asides available only to veterans. The size of the federal contracting marketplace surrounding the much smaller Howard County business opportunity marketplace could have a major negative impact on the already existing local statistics which do not have such protections.
5. Existing competition and lack of capital are major obstacles for the disadvantaged business community in Howard County. The magnitude of more favorable federal capital acquisition options available to veterans compounds an already non-level playing field. This disparity would likely increase the competition further while straining the limited funding options already facing local small businesses.

6. The federal marketplace and priority reserved for veteran businesses stabilize veteran businesses and strengthen growth. Without imposition of size limitations on veteran-owned firms, the impact would be negative for the local small and disadvantaged business community.

7. The lack of information on the demographics on the potential veteran business community raises concerns about the numbers of women, minorities and disabled among the veteran community. Dependent upon that composition, the potential result may be replacement of small local woman-owned, minority-owned and disable-owned businesses with veterans not meeting any of those disadvantaged categories. The unintended consequence may result in "pitting the disadvantaged businesses against veterans" for limited Howard County contracting opportunities.

Roger L. Barnes, CPA, MBA
Equal Business Opportunity Commissioner

Sayers, Margery

From: Wanda Riddle <wriddle@mac.com>
Sent: Monday, October 16, 2017 5:51 PM
To: Moore, Robert
Cc: CouncilMail; Terry, Lisa B.; Howard Mooney; Howard Mooney; Georgea Lee Moore (g89@umbc.edu)
Subject: Re: Written Testamony for October 16, 2017 County Council Meeting Agenda Item CR121-2017

Bob - Thank you for submitting the written testimony. Both Howard and I will be there tonight to testify in person and we appreciate you sending your comments to the council!

Wanda

On Oct 16, 2017, at 4:13 PM, Moore, Robert <Robert.Moore@va.gov> wrote:

Please except this written testimony in regards to the October 16, 2017 County Council agenda item CR121-2017, Equal Business Opportunity Program Manual - Approval. This testimony is in support of the resolution to revise and include Veterans in the Equal Business Opportunity Program Manual that governs the internal operating procedures of the County's Equal Business Opportunity Program.

<Testamony for Howard County Council Meeting Item CR121-2017.docx>

Sayers, Margery

From: Howard Mooney <howardtmooneyjr@gmail.com>
Sent: Monday, October 16, 2017 5:02 PM
To: Moore, Robert
Cc: CouncilMail; Wanda Riddle (wriddle@mac.com); Terry, Lisa B.; Howard Mooney (howardtmooneyjr@gmail.com); Georgea Lee Moore (g89@umbc.edu)
Subject: Re: Written Testamony for October 16, 2017 County Council Meeting Agenda Item CR121-2017

BOB: Thanks. Howard

On Oct 16, 2017, at 4:13 PM, Moore, Robert <Robert.Moore@va.gov> wrote:

Please except this written testimony in regards to the October 16, 2017 County Council agenda item CR121-2017, Equal Business Opportunity Program Manual - Approval. This testimony is in support of the resolution to revise and include Veterans in the Equal Business Opportunity Program Manual that governs the internal operating procedures of the County's Equal Business Opportunity Program.

<Testamony for Howard County Council Meeting Item CR121-2017.docx>

Sayers, Margery

From: Moore, Robert <Robert.Moore@va.gov>
Sent: Monday, October 16, 2017 4:13 PM
To: CouncilMail
Cc: Wanda Riddle (wriddle@mac.com); Terry, Lisa B.; Howard Mooney (howard.t.mooney.jr@gmail.com); Howard Mooney (howardtmooneyjr@gmail.com); Georgea Lee Moore (g89@umbc.edu)
Subject: Written Testamony for October 16, 2017 County Council Meeting Agenda Item CR121-2017
Attachments: Testamony for Howard County Council Meeting Item CR121-2017.docx

Please except this written testimony in regards to the October 16, 2017 County Council agenda item CR121-2017, Equal Business Opportunity Program Manual - Approval. This testimony is in support of the resolution to revise and include Veterans in the Equal Business Opportunity Program Manual that governs the internal operating procedures of the County's Equal Business Opportunity Program.

To: Howard County Council
From: Robert Moore
Howard County Commission for Veterans and Military Families
Date: November 17, 2016
Subject: October 16, 2017 County Council Meeting Agenda Item CR121-2017

I would like to thank you for the opportunity to provide written testimony in regards to the October 16, 2017 County Council agenda item CR121-2017, Equal Business Opportunity Program Manual - Approval. Please accept this testimony in support of the resolution to revise the Equal Business Opportunity Program Manual that governs the internal operating procedures of the County's Equal Business Opportunity Program.

As a member of the Howard County Commission for Veterans and Military Families, a resident of Howard County for 28 years, a father of a currently active duty Coast Guard Ensign and future Veteran; I support this initiative that includes United States Veterans in the County's Equal Business Opportunity Program. I highly recommend it get passed.

As a current employee of the U.S. Department of Veterans Affairs (VA), I work within a team that embodies the words that appear on the VA Corporate Offices building on Vermont Avenue in Washington DC. Those words, "To care for him who shall have borne the battle and for his widow and his orphan" were attributed to Abraham Lincoln and from an excerpt from his second inaugural address. By passing this initiative, the county shows that it cares for our Veterans by encouraging and promoting the development of businesses owned by Veterans. It benefits Howard County by creating opportunities for Veterans who will establish roots in our community, lead by example, and provide additional business tax revenue. It will help stimulate the small business community and create growth for our local economy.

With Washington DC, the federal hub of our country's government and an employer of thousands of active duty military that is a reasonable distance to Howard County, many of our active duty service members are looking for future opportunities upon their discharge from the military. These future Veterans would like to establish businesses within our County, to live in a safe area, and have access to good public schools and services. By including Veterans in the County's Equal Business Opportunity Program, Howard County has the opportunity to draw former residents who are now Veterans, and new Veterans to our community. These individuals and their families will continue to provide stability, integrity, respect, commitment and a sense of responsibility to an already existing civil and close community the maintains strong family values.

Robert Moore
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