

**Governor’s Office of Small, Minority & Women Business Affairs**

**(GOSBA) Compliance Call Questions with Summarized Answers**

*(Click icon on topics of interest to expand & view or*  *to collapse.)*





Compliance Call Library

# General Topics

## **Contract Specific Administration / Management**

### CATS+

#### Does DoIT set the goal for CATS+ and statewide contracts and track the goal on the statewide contracts that agencies are utilizing? What are the agencies expected to do as it relates to tracking their IT contracts? \*(1/22/2020)

* DoIT sets an overall CATS+ master contractor goal and subgoals. This does not mean that every Task Order for Proposals (TORFP) has be set at that goal; some will be higher and some will be lower, depending upon the pertinent circumstances of each task order. The procuring agency must evaluate and set individual MBE goals on a task order basis. The objective is to establish a reasonable and attainable MBE goal, given the specifics of the TORFP scope of work and other factors. The procuring agency is expected to track their individual IT contracts. <https://doit.maryland.gov/contracts/Pages/CATSPlusMBEParticipation.aspx>

### Intergovernmental Agreements

#### Concerning IGAs (Intergovernmental Agreements): 1. Are IGA contracts with MBE/VSBE goals placed in FMIS? 2. If there is a goal, should Subcontractor data be tracked in FMIS? 3. Are IGAs exempt from reporting requirements? 4. At IGA Renewal, is documentation of MBE compliance needed from the contract monitor? \*(1/22/2020)

* According to the **Procurement Manual, section 3.4.7,** an Intergovernmental Cooperative Purchasing Agreements (ICPA) solicitation must contain all clauses, terms, and conditions required under State procurement law and the contract is awarded in the same manner as a State contract, including any other required approvals. So, these agreements may have a goal and should be tracked for compliance and in FMIS. Primary Procurement units usually handle these types of contracts. <https://procurement.maryland.gov/mpm-3-pre-solicitation/#3.4>

## **COVID-19 Related Information (\*\*NEW Information)**

### Goals

#### What can we do about issues with vendors, particularly MBE or SBR, not being considered essential and closing down, which is affecting goals and projects? \*(3/25/2020)

* If your agency experiences several instances of vendors being unable to fulfill their goal due to COVID-19 shutdowns, this is through no fault of the vendors own and your agency should be certain to document this well. We should continue to enforce compliance on contracts where the MBE goal can be achieved. When reporting MBE or SBR data, if your agency has been impacted negatively, please add this to the comment section of reports.

#### Will there be any consideration for not placing goals on contracts during this time, or will goals be suspended because most contracts are emergency procurements? \*(3/25/2020)

* All agencies should continue engaging MBEs, VSBEs, and SBR Vendors and placing goals on procurements, where appropriate. It is a best practice to direct solicit MBEs and SBRs for emergency contracts when practicable. We understand that currently, for some agencies, emergency procurements have increased, but goalsetting has not been suspended and the PRG process should continue as normal.

#### We want to remind agency procurement staff and liaisons that your agencies should continue to directly solicit MBE, SBR, and VSBE for procurements, when feasible. These firms should be considered as much as possible, even during emergency procurements. \*(5/13/2020)

### Procurements

#### Agencies should continue to move forward with non-emergency procurements whenever possible. Any active executive orders concerning restricted spending should be followed until it expires. \*(5/13/2020)

#### How should Pre-bid Conferences be handled during COVID-19? \*(5/13/2020)

* Pre-Bid Conferences are required when an MBE goal is stated and recommended for all procurements. The Pre-bid Conference is a time to explain the procurement process to vendors including review of the specification and requirements, explain how to complete required submission documents such as MBE and VSBE participation forms, as well as answer any questions vendors may have. During this unusual time, it is not possible to have an in-person pre-bid conference. Alternatives include conference calls or other virtual meetings. If pre-bid conferences are carried out in this manner, an extended Q&A period should not be needed.

### Reporting

#### How are we going to handle getting signatures on reports, since we are working from home? \*(3/25/2020)

* If you are unable to obtain the secretary/executive director signature on reports, there should be a supervisor's acknowledgement. For now, electronic acknowledgment will be acceptable, such as cc'ing the supervisor and stating that the report has been approved by them.

#### Will there be any adjustments to the SBR, MBE or VSBE reporting schedules in light of present circumstances? \*(3/25/2020)

* Currently, reporting deadlines remain unchanged. Current FY20 Quarterly Reports are not due until April 30. Individual agencies/organizations may contact us by email with any issues meeting the deadlines.

## **New Legislation**

### Small and Minority Business Certification Streamlining Act of 2019

#### Can you provide direction to MBE Liaisons as to how to incorporate the newly enacted Small and Minority Business Certification Streamlining Act of 2019, which became effective 10/1/2019, into their reporting efforts? \*(3/25/2020)

* In reviewing this legislation, it appears that only those companies with DBE Certification and eligible under the current MDOT MBE certification requirements, will be given MBE certification. If a business is certified using this method, they would count as a certified minority business entity. Nothing would be different in how these companies are treated for reporting purposes.
* Per BPW: This legislation impacted both small business programs (preference and reserve) and the MBE program. We discussed the impact on MBE certification. The small business part allows Maryland small business to compete on more out-of-state contracts due to the revisions. The proposed regulations based on this legislation, and those regulations are still in the public comment period. The proposed changes are in COMAR 21.11.01.04 and 21.11.03.15. This new legislation should not impact Small Business Preference/Reserve programs reporting. The change to small businesses is only for those Maryland small business when competing on out-of-state work, not State of Maryland procurements.

## **MBE Forms (\*\*NEW Information)**

### Attachment D

#### MBE Form Amendments; what is the correct way to document and approve changes to MBE Participation / Utilization Documents (Attachment D.)? \*(3/25/2020)

* Generally, changes to the MBE schedule and utilization documents should occur according to the requirements in COMAR 21.11.03.12, Section E:

**E. Amendments to the MBE participation schedule occurring after the date of contract award.**

(1) For purposes of this regulation, “good cause” includes documented nonperformance by the certified MBE or election by the certified MBE to cease work on the contract. Failure of the certified MBE to provide a bond as requested by the contractor is not considered to be nonperformance by the certified MBE if the requested bond violates State Finance and Procurement Article, §13-227, Annotated Code of Maryland.

(2) A contractor may not terminate or otherwise cancel the contract of a certified MBE listed on the MBE participation schedule without:

(a) Showing good cause why the contract with the certified MBE should be terminated or cancelled;

(b) Obtaining the prior written consent of the MBE liaison;

(c) Obtaining approval of the head of the unit; and

(d) Subsequently amending the contract.

(3) The procurement agency shall send a copy of the MBE liaison written consent to the Governor's Office of Small, Minority & Women Business Affairs.

* In addition, all decisions should be well document and all subsequent MBE payments should be well document in the monthly reported submitted by the PRIME.

### Removal of MBE’s

#### GOSBA has received several scenarios from MBE Liaisons concerning making changes to current contracts such as removing MBE's or swapping out MBEs. \*(5/13/2020)

* Reiterated that MBE participation schedules should not be changed unless for good cause (such as the named MBE firm loses certification, declines to complete the work, or is underperforming, etc.). If there is good cause, it must be carefully documented by Prime, the liaison and procurement officer and should be agreed upon by those parties as well as the agency head and AG (in case the matter could become litigious).

## **Reporting**

### Backup Data

#### When collecting the data for the MBE reports in ANSWERS, am I to use the Create Date or the Invoice Date? \*(3/25/2020)

* ANSWERS Reports usually have column headings such as invoice date, due date, and effective date listed on the report. This is the date that should be used to determine when the transaction took place. Please keep in mind that this will usually apply to payments on PO's or Direct Vouchers, as Credit Card transactions are usually combined per vendor for reporting purposes and the beginning and ending date will be the beginning and ending dates of the Fiscal Year. Not all reports use the same column name and reports outside of ANSWERS may use different column headings as well.

## **PRG Process (Goal Setting)**

#### Is it possible to get a walk-through of the proper way to establish MBE goals and subgoals? \*(1/22/2020)

* The GOSBA Legal and Policy Advisor provided a high level walk-through of the PRG Process and goal setting. Please see [BPW Advisory 2001-1](https://bpw.maryland.gov/Pages/adv-2001-1.aspx), the [Subgoal Guidance](https://gomdsmallbiz.maryland.gov/Documents/Legislation/SubgoalGuidanceImplementationGuidelinesFinal-website_000.pdf), and the [PRG Template](https://gomdsmallbiz.maryland.gov/Documents/MBE_Toolkit/Sample%20PRG%20Template%20in%20Word.doc) *[May have to choose View, Edit Document to open]* for more information. Due to demand, GOSBA is considering creating curriculum on goal setting. More to come on that later.

#### 1. What are the best practices for setting MBE and VSBE goals and determining the scope of work for each? 2. How should the search be conducted for MBE and VSBE subcontractors? \*(1/22/2020)

* Current legislation does not clearly define exactly how agencies should go about setting both MBE and VSBE goals on a contract simultaneously. It will take legislative action to clearly spell out a process. In hearing from the agencies, there are multiple ways this has been carried out. As [BPW Advisory 2001-1](https://bpw.maryland.gov/Pages/adv-2001-1.aspx) states, you should consider race neutral measures first, such as the SBR Program, then consider MBE and VSBE Goals. As a best practice, you should consult with your agencies AG, to ensure you are making a sound decision.
* When searching for MBE and VSBE firms, please remember that if three or more firms are found, you should consider adding a goal. ***PLEASE NOTE\*\**** Currently eMMA is not at optimal operation and so agencies can reach out to Tanita Johnson, in our office, for a better list of VSBE firms to consider, if necessary.