

**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 (\*NEW Information)**

### 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 Proposal (TORFP) has to 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>

### Testing Contracts (fees paid by Participants)

#### Should we count contracts as reportable when we actually do not pay the contractor that won the award? The contracts in question are testing contracts where the vendor was awarded the right to administer the test and their payments come directly from the participants of the test. \*(11/12/2020)

* The short answer for that is no because you would only be reporting on state funded contracts but we are confirming that there are no other caveats to this.

## **COVID-19 Related 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.

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

### Attachment D

#### MBE / VSBE Waivers and Supporting Documentation \*(9/9/2020)

* What is the required for a MBE or VSBE Waiver?

1. Agencies must ensure that a contract award is not made until a recommended awardee has committed to the established MBE or VSBE participation goals, if any, through the use of certified MBEs / VSBEs or has requested a waiver and demonstrated a good faith effort to meet the goals.
2. If the recommended awardee requested a full or partial MBE/VSBE waiver, the procurement officer would request that the recommended awardee submit its documentation supporting the waiver request. The procurement officer in consultation with the MBE liaison officer would review the documentation and make a determination whether the recommended awardee made a good faith effort to try to obtain MBE /VSBE subcontractor participation and grant or deny the waiver. The procurement officer must grant the waiver if the recommended awardee provides a reasonable demonstration of good faith efforts to achieve the goal(s). The procurement officer must obtain sign off by the agency head or designee and forward a copy of the waiver determination to the Governor's Office of Small, Minority, and Women Business Affairs.
3. Supporting Documentation Includes:
   * MBE or VSBE Forms Waiver Documents (from Attachment D & E)
   * All documentation listed in COMAR 21.11.03.11.
4. Language: **Prior Certification by Contractor during Bid**:

I understand that if I am notified that I am the apparent awardee or as requested by the

Procurement Officer, I must submit the following documentation within 10 working days of

receiving notice of the potential award or from the date of conditional award (per COMAR

21.11.03.10), whichever is earlier:

(a) Good Faith Efforts Documentation to Support Waiver Request (Attachment D-1C)

(b) Outreach Efforts Compliance Statement (Attachment D-2);

(c) MBE Subcontractor/MBE Prime Project Participation Statement (Attachments D-3A and

3B);

(d) Any other documentation, including additional waiver documentation if applicable, required by the Procurement Officer to ascertain bidder or offeror responsibility in connection with the certified MBE participation goal and subgoals, if any. I understand that if I fail to return each completed document within the required time, the Procurement Officer may determine that I am not responsible and therefore not eligible for contract award. If the contract has already been awarded, the award is voidable.

#### 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).

#### New MBE Form Attachment D Updates to come \*(11/12/2020)

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

### Collaboration

#### The three-pronged approach to collaboration \* (11/12/2020)

* GOSBA would prefer if Liaisons would consider a three-pronged approach to Collaboration:
  1. Liaisons should collaborate among colleagues (especially procurement officers and the agency AG), and each other in order to share experiences, best practices, and solutions or work arounds to common problems and to solve issues or receive advice.
  2. Liaisons should collaborate with our office. When a Liaison is experiencing issues, has questions, needs clarification, is approached for assistance from a MBE/SBR/VSBE firm or Prime, after speaking with the Prime, the MBE firm, procurement staff and the agency AG, reach out to GOSBA for assistance.
  3. Liaisons should also be collaborating with certified Prime and subcontractors in order to notify them of small procurements, and when there are subcontracting opportunities on larger procurements. Also, this helps when agencies are planning events like "Meet the Prime's" or other outreach events.

## **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.

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

### Goalsetting

#### 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.

### New MBE Subgoals (Effective 8/1/2020)

#### A 2020 MBE Subgoal Review was conducted \*(7/29/2020):

* **2020 MBE Program Subgoals information covered @ SPAG and on the July Compliance Call:**

1. New Subgoals for the MBE Program are to be applied prospectively to any IFBs and RFPs issued on or after August 1, 2020 .
2. If you are working on a solicitation with an established MBE goal that has already gone through the PRG process with OSP, and that solicitation is scheduled to be issued after July 31, 2020, you must redo the MBE subgoal analysis using the 2020 MBE Program Subgoal Guidelines prior to publishing the solicitation.
   1. Questions asked during call: To be clear, are you saying that for example State funded contracts reviewed that will hit street after 8/1, need the new subgoal reviews? In regard to the 2020 MBE Subgoals and contracts that will be advertised after August 1, 2020, if a State funded contract was reviewed by PRG and no subgoals were recommended, are you advising that we must submit the new subgoal worksheet? **ANSWER: Yes**
   2. Question asked during call: To confirm, LEA's should use the updated sub goals when bidding [soliciting] projects? **ANSWER: Yes**
3. The 2020 MBE Program Subgoal Worksheet will be accessible online from the www.procurement.maryland.gov webpage in the Procurement Staff section: <https://procurement.maryland.gov/prg-forms/>
4. Guidance on the process for assessing whether or not to add subgoals to a procurement will remain unchanged.
5. The new subgoals reflect an increase in the industry subgoal total for every industry with the exception of Services.

### New OSP PRG Process

#### Could someone from OSP provide an explanation on why you are holding PRG meetings on solicitations that have already been reviewed for potential goals, and explain OSPs role in the procurement process? \*(7/29/2020)

* **Response from Jamie Tomaszewski, DGS-OSP:**

DGS OSP is conducting PRG reviews because DGS OSP is the control agency for all procurements, and agencies are required to have their procurements reviewed and approved by OSP before they can be published, so that includes reviewing the goal setting by the agencies. The DGS OSP Procurement Review Group makes sure the agencies have considered all options and makes suggestions if there seems to be missed opportunities. Otherwise, OSP is not looking to change the goals unless they seem really unreasonable. It's another set of eyes to help the State meet its overall goals for SBR, MBE and VSBE.

1. Question asked during call: So, are they changing the language in COMAR that PRGs only apply to $200,000 and above? **ANSWER: No, although the OSP PRG process is required at $100,000 or more, the regular PRG (w/Subgoals) process, per COMAR, is still only required for procurements $200,000 or above.**

* <https://procurement.maryland.gov/wp-content/uploads/sites/12/2020/06/PP-Procurement-Review-Group-PRG-v3-6-22-2020.pdf>

## **Program Certification**

### MBE/SBR/VSBE Verification

#### Impact of verification of a company on Reporting \*(9/9/2020)

* Vendors must be certified in the specific Socioeconomic Program MBE/SBR/VSBE in order for agencies/departments to count the payment toward the program set aside or goal.

1. MBE Verification: The Maryland Department of Transportation’s (MDOT) Office of Minority Business Enterprise (OMBE)certifies MBEs and certification is verified by the company's listing in the MBE Directory. <https://mbe.mdot.maryland.gov/directory/>
2. SBR Verification: Procurement Officers can verify if vendors are SBR certified by conducting a public vendor search in eMMA using the Quick Reference Guide (QRG) "Public Vendor Serach for Buyers." A SBR vendor will have an SBR number listed along with an expiration date. If you do not see both of these, a vendor's certification may have expired. If you have any questions, you may contact Lisa Mitchell Sennaar or Tanita Johnson (lisa.sennaar@maryland.gov or tanita.johnson1@maryland.gov) for assistance.
3. VSBE Verification: Procurement officers can verify if vendors are VSBE certified by conducting an internal eMMA search and checking the "Credentials" section of the vendor account for an "Approved" and current VSBE Application. If you have any questions pertaining to the VSBE certification, please contact Tanita Johnson (tanita.johnson1@maryland.gov) for assistance. <https://procurement.maryland.gov/wp-content/uploads/sites/12/2019/12/16-eMMA-QRG-Public-Vendor-Search-for-Buyers.pdf>

## **Reporting** **(\*\*NEW Information)**

### Annual Reporting

#### ANNUAL REPORTING REMINDERS TO AGENCY HEADS \*(9/9/2020)

* Would it be possible to have some official correspondence go out to Agency Secretary's and Executive Staff that remind them about the required timely Annual Reporting and signatures for the Socioeconomic Programs?

1. Beginning with the FY20 Annual Reporting Period, GOSBA will start sending an official notification of Annual Reporting Requirements to agency Secretaries/Directors and Executive staff for the MBE, SBR, and VSBE Socioeconomic Programs.

#### ANNUAL REPORTING REQUIREMENTS (REMINDERS & QUESTIONS) \*(7/29/2020)

* FY2021 Procurement Forecast – Due June 30th
  1. This data, which includes all projected purchases of $100,000 and above for the fiscal year, connects with the Hogan administration's theme that “Maryland is Open for Business." Keep in mind the forecast is provided to the public and serves as an important tool for the small, minority, women, and veteran business community. Once Governor Hogan implements his safe, effective, and gradual approach to reopening the state, contracting opportunities will be vital to the recovery of the small business community. Please give the proper attention to this mandatory report by following the instructions and being thorough with your responses.
  2. Procurement Forecast can still be turned in and should be submitted to: [compliance.gosba@maryland.gov](mailto:compliance.gosba@maryland.gov)
* FY2021 MBE and SBR Strategic Planning – Due June 30th

1. The Strategic Plan asks a series of questions which are designed to add structure and detail to your agency's MBE or SBR inclusion/expansion strategy. Each plan should be unique and based on projected purchases for the upcoming fiscal year with the intention to maximize the number of MBEs or SBRs engaged in the procurement/purchasing process. A Strategic Plan must be submitted for each program.
2. Plans can still be turned in and should be labeled "FY2021 (MBE ***or*** SBR) Strategic Plan" and submitted via email to: compliance.gosba@maryland.gov
3. As we prepare to reopen the state, please give the proper attention to this mandatory report. You can have a direct impact on the small business community by providing thorough and detailed responses, following the instructions carefully, and submitting the report in the correct format.
   1. Question asked during call: Has any agency had any luck planning a virtual outreach event? Any guidance would be greatly appreciated. **ANSWER: MDOT's Office of Small & Minority Business Policy has been using GoTo Webinar.**

* FY2020 Annual MBE/SBR/VSBE Report – Due September 30th (MBE/SBR) and October 1st (VSBE)
* New Annual Reporting templates are located in the [MBE](https://gomdsmallbiz.maryland.gov/Pages/Reporting-Tool-MBE.aspx), [SBR](https://gomdsmallbiz.maryland.gov/Pages/Reporting-Tool-SBR.aspx), & [VSBE](https://gomdsmallbiz.maryland.gov/Pages/Reporting-Tool-VSBE.aspx) Toolkits

1. Question asked during call: Has GOSBA issued official guidance regarding VSBE reporting to be done by the MBE Liaison? If not, is GOSBA considering official guidance or a directive? **ANSWER: No, this is not directed yet in statute/regulation, but instead is a suggested best practice. The new VSBE workgroup will be working towards putting forth more legislation concerning the VSBE Program.**
2. Question asked after call: Do the VSBE reporting requirements apply to USM? **ANSWER: Yes, the university system is exempt from VSBE reporting requirements.**
3. Question asked during call: Can a formal notice go out to the Cabinet Secretary's which reminds them of the requirements? **ANSWER: This can be considered but, in the meantime, you all are our portal into your agency. Feel free to share the bulletin with anyone in your office who you believe should know the information sent out in our bulletins.**

#### QUARTERLY REPORT SIGNATURES \*(11/12/2020)

* SBR Quarterly Reports will not be required to have signatures at this time. Annual Reports will still need to be signed.
* At this time, MBE Quarterly reports do not require a signature.

#### REPORTING TREATMENT OF PREFERRED PROVIDERS \*(11/12/2020)

* MBE Report Award - Preferred Providers Excluded Yes

Payment - Preferred Providers Excluded Yes

See legislation which changed how preferred providers were counted, effective July 1, 2015. That said, we will be taking the time to make sure that all instructions are also in agreement with current policies. Let me know if you have any questions. <http://mgaleg.maryland.gov/2013RS/fnotes/bil_0008/hb0048.pdf>

* SBR Report Award - Preferred Providers Excluded Yes

Payment - Preferred Providers Excluded Yes

Code of Maryland Regulations (COMAR) states that procurements made from Preference Providers under 21.11.05 and 21.11.09 are exempt from the Smal Business Reserve (SBR). Further, the Board of Public Works (BPW) Advisory 2005-1 excludes Preferred Providers from the procurement dollar base from which the 15 % SBR goal is calculated. We will be making sure that all report instructions are in agreement with current policies.

<http://www.dsd.state.md.us/comar/comarhtml/21/21.11.01.06.htm>  
 [https://bpw.maryland.gov/Pages/adv-2005-1.asp](https://bpw.maryland.gov/Pages/adv-2005-1.aspx)x

### 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.

## **SBR Program (\*\*NEW Information)**

### Designating Contracts SBR

#### Could you please confirm the number of SBR firms that are needed to designate a procurement SBR? \*(11/12/2020)

* There should be at least three Small Business Reserve (SBR) firms in order to designate a procurement SBR only. This is the same across all three programs, SBR, MBE and VSBE.

## **VSBE Program**

### Reporting

#### Who Reports VSBE Data? \*(9/9/2020)

* There is no official designation of an VSBE Liaison. Our office has strongly suggested that VSBE reports be prepared and submitted via the MBE Liaison. This is because both programs are attainment goal programs and require the reporting of an agency's total procurement awards (contract / DV / CC) and then separately require program specific data. The SBR programs used a different measure of reporting.

### Waivers

#### MBE / VSBE Waivers and Supporting Documentation \*(9/9/2020)

* \*\*See this topic under the MBE Forms - Reporting section