

Please note all MBE Trade Contractors must submit a completed Part B: MBE/WBE and Prime Contractor's Statement of Intent. This form must be received in CAM's office, completed and signed, no later than 2 days prior to the bid date as this document accompanies CAM's bid to the owner.

C. MINORITY AND WOMEN'S BUSINESS OPPORTUNITY REQUIREMENTS

Article 5, Subtitle 28 of the Baltimore City Code (2000 Edition) is incorporated into the Agreement by reference. The failure of Contractor to comply with this Subtitle is a material breach of contract.

During the term of this Agreement, Contractor agrees to fulfill the MBE and WBE commitments submitted with Contractor's bid. Failure to comply with the levels of MBE and WBE participation identified in the bid is a material breach of contract.

Contractor understands that authorized representatives of the City of Baltimore may examine, from time to time, Contractor's books, records and files to the extent that such material is relevant to a determination of whether Contractor is complying with the MBE and WBE participation requirements of this Agreement.

Contractor agrees to pay all subcontractors within 7 days of receipt of payment from the City. Beginning with the second pay request from Contractor to the City, Contractor agrees to provide the City with written evidence that all subcontractors have been paid out of the proceeds of the prior payment, unless a bona fide dispute, documented in writing, exists between Contractor and the unpaid subcontractor.

Contractor agrees to submit the following to the Minority and Women's Business Opportunity Office when requested:

- (1) Copies of signed agreements with the business enterprises being utilized to achieve the contract goals;
- (2) Reports and documentation, including canceled checks, verifying payments to the business enterprises being used to achieve the contract goals; and
- (3) Reports and documentation on the extent to which the contractor has awarded subcontracts to minority and women's business enterprises under contracts not affected by Article 5, Subtitle 28.

If Contractor is unable to meet any contract goal by utilizing the certified business enterprises specified at bid opening, Contractor must seek a substitute certified business enterprise to fulfill its commitment. All substitutions must receive prior written approval by the Minority and Women's Business Opportunity Office. If, after good faith efforts, Contractor is unable to find a substitute, the Contractor may request a waiver of the goal.

Before final payment may be made under this Agreement, Contractor must submit a list of all subcontractors utilized on the contract, both MBE/WBE and non-MBE/WBE. The list must include, as to each subcontractor:

- (1) name;
- (2) total amount paid to subcontractor;
- (3) owner's race/ethnicity and sex.

A Contractor who fails to comply with the requirements of Article, 5, Subtitle 28 of the Baltimore City Code is subject to the following penalties: suspension of contract; withholding of funds; rescission of contract based on material breach; disqualification of contractor from eligibility for providing goods or services to the City for a period not to exceed 2 years; and payment of liquidated damages.

Rev 7/20/15

**MAYOR AND CITY COUNCIL OF BALTIMORE CITY
BALTIMORE CITY CODE, ARTICLE 5, SUBTITLE 28
MINORITY AND WOMEN'S BUSINESS PROGRAM**

**MBE AND WBE PARTICIPATION
COMMITMENT FORMS**

Name of Bidder (Proposer) _____

Address _____

Contracting Agency: Department of Recreation & Parks

Contract (Project) Title: Middle Branch Fitness and Wellness Center

Contract Number: RP19808

Bid Due Date: Wednesday, February 5, 2020

The Overall MBE goal is11% The WBE goal is 7%

If MBE Sub-Goals Apply:

- African American N/A%
- Asian American N/A%
- Hispanic American N/A%
- Native American N/A %

**THIS PACKAGE OF MBE AND WBE PARTICIPATION
COMMITMENT FORMS IS DUE WITH THE BID.**

FOR MORE INFORMATION OR ASSISTANCE WITH THESE FORMS CONTACT:

Minority and Women's Business Opportunity Office (MWBOO)
Baltimore City Department of Law
Room 101, City Hall
100 N. Holliday Street
Baltimore, MD 21202
(410)396-4355

PART A: INSTRUCTIONS

The requirements of Article 5, Subtitle 28 of the Baltimore City Code (2014 Edition) – Minority and Women’s Business Program are a part of this contract and are incorporated by reference. **THE FAILURE OF ANY BIDDER, CONTRACTOR OR SUBCONTRACTOR TO COMPLY WITH ARTICLE 5, SUBTITLE 28 SHALL BE A BREACH OF CONTRACT.**

Highlights of the City’s MBE/WBE program are noted below. A complete copy of Article 5, Subtitle 28 of the Baltimore City Code (2014) is available on the website at: www.baltimorecity.gov/Government/Citychartercodes.aspx or at the Minority and Women’s Business Opportunity Office.

1. BID REQUIREMENTS

Bid must include a commitment to utilize MBEs and WBEs at a percentage that equals or exceeds the contract goals indicated in the contract specifications. Bidder must submit the following completed documents **WITH THE BID**:

- Part B: Statement of Intent Form(s)** – to be signed by Bidder and MBE or WBE
- Part C: Statement of Self-Performance** – if applicable, to be signed by Bidder
- Part D: MBE/WBE Participation Affidavit** – to be completed and signed by Bidder
- Part E: MBE/WBE Participation Waiver Request**– to be completed and submitted by Bidder if unable to meet the participation goals

Any bid that does not include signed Statement of Intent Form(s) and the MBE/WBE Participation Affidavit is non-responsive and will be rejected.

Bidder must keep a record of its efforts to obtain MBE and WBE participation.

2. VERIFYING CERTIFICATION

Bidder is responsible for verifying that each MBE and WBE to be used on a contract is certified by the Minority and Women’s Business Opportunity Office (MWBOO) at bid opening. The MBEs and WBEs named must be certified to provide the services that they are listed to perform, and the services must be required as part of the work on this contract. A directory of certified MBEs and WBEs is available online at <http://cityservices.baltimorecity.gov/law/mwboo> or at the offices of MWBOO. (Art. 5, §28-48(d))

3. COUNTING MBE AND WBE PARTICIPATION

a) Participation of M/WBE’s

A business enterprise that is certified as both an MBE and WBE (M/WBE) may not be counted toward both the MBE and WBE goals for the same project.

The bidder must select the goal to which the business enterprise is to be counted. (Art. 5, §28-31(b) and §28-35))

b) Credit for Self-Performance

A bidder that is an MBE or WBE may count up to 50% of the dollar value of the work it intends to perform with its own forces toward the applicable MBE or WBE goal. The amount of credit may not exceed the MBE's or WBE's available work capacity as calculated with the Contractor Prequalification rules. **Intentions to count self-performance toward the MBE or WBE goal must be indicated on Part C: Statement of Intent to Self-Perform.** (Art 5, §28-31(d)).

c) Commercially Useful Function

The bidder may count toward the contract goals only expenditures to MBEs and WBEs that perform a commercially useful function in the execution of the contract. Commercially useful function means the performance of real and distinct work for which the business enterprise has the skill, expertise and actual responsibility to perform, manage and supervise. (Art. 5, §28-32)

d) Joint Ventures

A bidder may count toward the contract goal the portion of its expenditure to a joint venture that is equal to the percentage of the MBE or WBE participation in the joint venture. The MBE or WBE member of the joint venture must have an interest in the control, management, risks and operation of the joint venture commensurate with the member's percentage of ownership. The MBE or WBE member of the joint venture must be responsible for a clearly defined portion of the work to be performed, equal to its share in the ownership, control and management of the joint venture. (Art. 5, §28-33)

e) Subcontracting by MBE or WBE

A bidder may not count toward its contract goal any agreement with a certified MBE or WBE subcontractor who intends to subcontract more than 10% of the dollar amount of the services to be performed under its agreement with the bidder. This restriction does not apply to an MBE's or WBE's contracts for the purchase of materials, equipment or supplies that are incidental to the performance of services under its agreement with the bidder. (Art. 5, §28-34)

f) Manufacturers and Suppliers

Manufacturers – A bidder may count toward the contract goal its entire expenditure to a certified MBE or WBE that manufactures the goods supplied. (Art. 5, §28-36)

Non-Manufacturers – **Only 25% of each contract goal may be attained by expenditures to MBEs and WBEs that are non-manufacturing suppliers.** (Art. 5, §28-37)

Example: If the bid amount is \$100,000 and the MBE or WBE goal is 15% or \$15,000; then the limit for the MBE or WBE suppliers that are non-manufacturers is \$3,750 or 25% of the 15% goal.

g) Insurance Companies and Travel Agents

A bidder may count toward the contract goals only the fees or commissions charged by an MBE or WBE insurance company or travel agent (Art. 5, §28-38)

h) Financial Institutions

A bidder may count toward the contract goals only the fees charged and earned by an MBE or WBE financial institution. (Art. 5, §28-39)

i) Non Affiliation

A bidder may not use an MBE or WBE to meet a contract goal if the bidder has a financial interest in, has an interest in the ownership or control of, or is significantly involved in the operation of the MBE or WBE. (Art. 5, §28-41).

4. WAIVER REQUESTS

If a bidder is unable to comply with a contract goal, the bidder may submit a waiver request with the bid. The waiver request must be made on the MBE/WBE Participation Waiver Request Form. A waiver will not be granted unless the waiver request includes documentation that demonstrates good faith efforts to meet the goals. (Art. 5, §28-62).

5. SUBSTITUTION OF MBE OR WBE

The Minority and Women's Business Opportunity Office must approve substitution of an MBE or WBE specified at bid opening. Any unjustified failure to comply with this requirement is a material breach of contract. (Art. 5, §28-63(a)).

6. CONTRACT REQUIREMENTS

During the term of the contract, any unjustified failure to comply with the levels of MBE and WBE participation identified in the bid is a material breach of contract. (Art. 5, §28-48 (e)).

Before final payment, the contractor must submit the Subcontractor Utilization Form with its final payment request. The Subcontractor Utilization Form will include a list of the names of all subcontractors utilized on the contract, both MBE/WBE and non-MBE/WBE, the total amount paid to each subcontractor, and the owner's race/ethnicity and gender.

PART B: MBE/WBE AND PRIME CONTRACTOR'S STATEMENT OF INTENT

**COMPLETE A SEPARATE FORM FOR EACH MBE AND WBE NAMED IN THIS BID.
(Make additional copies of this form as needed)**

PART A: INSTRUCTIONS MUST BE REVIEWED BEFORE COMPLETING THIS FORM, WITH PARTICULAR ATTENTION PAID TO SECTIONS 2, 3a and 3f

Name of Prime Contractor: _____

Name of MBE or WBE (circle one): _____

Brief Narrative Description of the Work/Service to be performed by MBE or WBE:

Materials/Supplies to be furnished by MBE or WBE:

Subcontract Dollar Amount: \$ _____ *(If this is a requirements contract, the subcontract dollar amount may be omitted; however, the subcontract percentage must be included.)*

Subcontract percentage of total contract: _____ % *(This is not considered material information for lump sum contracts.)*

(If MBE sub-goals apply, please indicate the sub-goal covered by this Statement of Intent.)

African American: _____ % Asian American: _____ %
Hispanic American: _____ % Native American: _____ %

The undersigned Prime Contractor and Subcontractor agree to enter into a contract for the work/service indicated above for the dollar amount or percentage indicated to meet the MBE/WBE participation goals, subject to the Prime Contractor's execution of a contract with the City of Baltimore. The Subcontractor is currently certified as an MBE or WBE with the City of Baltimore Minority and Women's Business Opportunity Office to perform the work described above.

Signature of Prime Contractor (REQUIRED) _____ Date _____

Signature of MBE or WBE (REQUIRED) _____ Date _____

CHANGES TO INFORMATION ON THIS FORM THAT ARE MATERIAL TO THE AGREEMENT BETWEEN THE PRIME CONTRACTOR AND MBE OR WBE MUST BE INITIALED BY BOTH PARTIES.

PART C: STATEMENT OF INTENT TO SELF-PERFORM

PART A: INSTRUCTIONS MUST BE REVIEWED BEFORE COMPLETING THIS FORM, WITH PARTICULAR ATTENTION PAID TO SECTION 2, 3a, 3b and 3f.

Name of Prime Contractor: _____

Self-Performance to be counted toward the MBE ____ or WBE ____ goal. (Check One)

Brief Narrative Description of the Work/Service to be Self-Performed by the Prime Contractor:

Materials/Supplies to be furnished by the Prime Contractor:

Total Dollar Amount of Work/Services to be Self-Performed by the Prime Contractor on this Contract: \$ _____

Total Dollar Amount of Self-Performed Work to be counted toward the MBE or WBE Goal: (May count up to 50% of the total dollar amount of self-performed work): \$ _____

If this is a Requirements Contract, you may omit the Dollar Amount; however, the Percentage must be included.

Total Percentage of Total Contract to be Self-Performed by Prime Contractor on this Contract: _____ %

Percentage of Self-Performed Work to be counted toward the MBE or WBE Goal: (May count up to 50% of the total percentage of self-performed work): _____ %

(If MBE sub-goals apply, please indicate the sub-goal covered by this Statement of Intent.)

African American: _____ % Asian American: _____ %
Hispanic American: _____ % Native American: _____ %

The undersigned Prime Contractor agrees to Self-Perform the Work/Service indicated above for the Dollar Amount and/or Percentage indicated to meet the MBE/WBE participation goals, subject to the Prime Contractor's execution of a contract with the City of Baltimore. The Prime Contractor is currently certified as an MBE or WBE with the City of Baltimore Minority and Women's Business Opportunity Office to perform the work described above.

Signature of Prime Contractor (REQUIRED)

_____ Date

PART E: MBE/WBE PARTICIPATION WAIVER REQUEST FORM

Name of Bidder (Proposer) _____
Address _____
Contracting Agency: Department of Recreation & Parks
Contract (Project) Number and Title: RP19808 Middle Branch Fitness & Wellness
Bid Due Date: Wednesday, February 5, 2020

Goals on this contract.....MBE: 11 % and WBE: 7 %

If MBE Sub-Goals Apply:

African American: _____ % Asian American: _____ %
Hispanic American: _____ % Native American: _____ %

I have achieved.....MBE: _____ % and WBE: _____ %

If MBE Sub-Goals Apply:

African American: _____ % Asian American: _____ %
Hispanic American: _____ % Native American: _____ %

I am requesting a waiver of.....MBE: _____ % and WBE: _____ %

If MBE Sub-Goals Apply:

African American: _____ % Asian American: _____ %
Hispanic American: _____ % Native American: _____ %

I have contacted MWBOO for assistance: _____ Yes _____ No (Check One)
Number of MBE firms contacted: _____ (Attach a list of names.)
Number of WBE firms contacted: _____ (Attach a list of names.)

Explain why waiver is being requested:

Attach documentation of your good faith efforts to secure, contact and negotiate with MBEs and WBEs, including:

- (1) The reasons your company is unable to secure sufficient MBE/WBE participation to meet the stated goals
- (2) The efforts made by your company to select portions of the contract to be performed by MBEs and WBEs
- (3) For each MBE or WBE that placed a bid that you consider to be unacceptable, a statement that explains the basis for that conclusion

Signature of Authorized Company Representative

Date

PART F: SUBCONTRACTOR UTILIZATION FORM

THIS FORM MUST BE INCLUDED WITH REQUEST FOR FINAL PAYMENT.

Prime Contractor's Name: _____

Contract Number and Title: _____

Total Contract Dollar Amount: _____

Provide the following information for EACH and EVERY subcontractor, both MBE/WBE and NON-MBE/WBE used on this contract. (Make additional copies of this form as needed).

Name of Subcontractor	Goods or services provided on subcontract
Race/ethnicity AND gender of subcontractor's owner	Dollar amount of subcontract
Dollar amount paid to date	If amount paid to date is less than subcontract dollar amount, explain why.

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Prime Contractor's Signature

Date