

THE BALTIMORE CITY
MINORITY AND
WOMEN'S BUSINESS
OPPORTUNITY OFFICE
(MWBOO) OVERVIEW



CITY CODE ARTICLE 5, SUBTITLE 28

- MWBOO oversees compliance with Subtitle 28 governing Minority Business Enterprises (MBE), Women's Business Enterprises (WBE), and Small Local Business Enterprises (SLBE). This subtitle is applicable to all City contracts or agreements providing fiscal assistance pursuant to Article 5, § 28-4.
- The program works to remedy past discrimination in the City's contracting process by prime contractors against minority and women's business enterprises.
- This has resulted in the significant underutilization of minority and women's business enterprises in contracts awarded by the City in the major contracting markets: construction, commodities, architectural, engineering, and professional services.

CONTRACTS MUST

§ 28-54 requires that City contracts:

- (1) incorporate this chapter by reference;
- (2) provide that the failure of any bidder, contractor, or subcontractor to comply with this chapter is a material breach of contract; and
- (3) require that, during its term, the contractor will:
 - fulfill the commitments submitted with the bids;
 - continue to make good faith efforts to utilize minority and women's business enterprises; and
 - maintain records reasonably necessary for monitoring compliance.

NARROWLY TAILORED TO REMEDY ONGOING EFFECTS OF PAST DISCRIMINATION

- The program is narrowly tailored to remedy this underutilization by setting participation goals on a contract-by-contract basis, limiting certification to the market area, and requiring regular reviews of the necessity of this subtitle via the Disparity Study.
- The disparity in the Baltimore City Market Area has been determined by the most recent 2007 Disparity Study.
- This disparity has been persistent, pervasive, and statistically significant based on available vendor data.
- There is currently an ongoing disparity study being conducted. It is evaluating available data for the first time regarding LGBTQ and veteran owned businesses.

<https://cityofbaltimore-habcdisparitystudy.com/>

- A Minority Business Enterprise (MBE) is defined as a business enterprise owned and controlled by an African-American, Hispanic-American, Asian-American, or Native-American.
- A Women's Business Enterprise (WBE) is defined as a business enterprise owned and controlled by a woman, which includes non-minority women, as well as women who are part of any of the above-mentioned minority groups (M/WBE).
- Non-profits are ineligible for certification. The Code defines business enterprise as a legal entity operated for profit.



WHAT ARE
MBE'S /
WBE'S ?

M/WBE CERTIFICATION CLASSIFICATIONS

- A company can be certified as MBE, WBE, or both (M/WBE).
- However the participation of a MBE/WBE is limited to being designated as counting towards a single contract goal.
- When being used to achieve the participation goals on a contract, the MBE/WBE is not allowed to subcontract more than 10% of the dollar amount of services to be performed under the contract to another company.

MWBOO'S PRIMARY DUTIES

- (1) Certifying and maintaining a directory of certified businesses;
- (2) Setting MBE/WBE contract participation goals;
- (3) Evaluating Waivers of participation goals;
- (4) Reviewing bid participation commitment forms for compliance with MBE/WBE participation goals prior to submission to the Board of Estimates (BOE) for award;
- (5) Conducting Contract Compliance Reviews when the contract is pending BOE approval of extensions, amendments, and renewals;
- (6) Working in collaboration with our agency partners to draft contracts and monitor MBE/WBE utilization.

MWBOO'S PRIMARY DUTIES CONTINUED

- (7) Engaging in conciliation meetings with contractors, in collaboration with the agencies, to develop plans for greater utilization to achieve the applicable MBE/WBE goals;
- (8) Investigating alleged violations of the subtitle and, when appropriate, making written recommendations to BOE for the imposition of sanctions;
- (9) Engaging in agency trainings to familiarize them with Code requirements and advocating for process improvements to ensure greater contract participation goal achievement.
- (10) Assisting MBE/WBEs and engaging in business trainings about MWBOO certification, procedures, and benefits.
- (11) Engaging in outreach to the business community for feedback on how MWBOO can improve to greater serve businesses and the City.
- (12) Maintaining certification and compliance data.

MWBOO'S CURRENT STAFFING

Permanent Positions (7):

- Chief
- Deputy Chief
- (3) Contract Compliance Officers (the third is scheduled to join the Team in early December)
- (1) Investigator
- (1) Vacant Program Assistant II Position Pending Advertisement

Temporary Contractual Positions:

- (2) Application Compliance Officers

AGENCY REQUESTS

- MWBOO Compliance Officers review requests from Bureau of Purchases (BOP) and other contracting agencies, such as: DPW, DOT, DHCD, DGS, BCHD, BCIT, BCRP, MORP, MOHS, BCFD, and BPD.
- These include compliance reviews, goal setting, waiver reviews, participation commitment form reviews, and emergency procurements.
- We are currently averaging 45 requests per month from BOP. There are also dozens of additional requests submitted directly from contracting agencies. We are implementing process improvements to capture the data regarding these agency requests.

PRIORITIZATION OF REVIEWS

- MWBOO is under tremendous pressure to evaluate all agency requests with haste.
- MWBOO handles requests in the order of receipt.
- MWBOO is respectful of mission critical contracts and services and will attempt to accommodate such urgent requests when the situation is warranted. As a result, there is no need to generically label all requests as “Urgent!”

MBE/WBE CERTIFICATION APPLICATION CRITERIA

- ☐ The minority and/or women must own at least 51% of the company and have operational and managerial control
 - ☐ Be an independent, operating, small business
 - ☐ Have been in operation for at least 12 months before applying for certification
 - ☐ Have been minority or women-owned for at least 12 months before applying for certification
 - ☐ Have an operating office in the Baltimore City Market Area
- You can now complete the entire application and submit it via the website.
 - If you have a pending renewal application you remain certified until a final determination has been made. Please contact MWBOO if you require an extension of your certification date.



BALTIMORE MARKET AREA DEFINED

The Baltimore Market Area includes the following areas:

- Baltimore City
- Baltimore County
- Anne Arundel County
- Carroll County
- Harford County
- Howard County
- Queen Anne's County

CONTRACT ADMINISTRATION

- The agencies are subject matter experts regarding the goods or services sought via the procurement. Communication and collaboration is key to ensuring participation.
- § 28-70 requires that all contracting opportunities must be evaluated in an effort to divide/segment the total requirements of a contract to provide reasonable opportunities for participation by MBE/WBEs.
- § 28-68 requires that each agency head or designee must assume primary responsibility for achieving the goals of the program and on a continuing basis, review all aspects of operations to assure that the purpose is being attained.

ANNUAL PARTICIPATION GOALS

MBE 27%

WBE 10%

- These goals are not universally applicable.
- Annual participation goals are aspirational goals that aid the City in its annual evaluation of the effectiveness of the Minority and Women's Business Enterprise Program.
- Goals or waivers remain applicable and typically are not changed during the contract term. To change or impose goals upon a contract it must be resolicited.
- Goals can be negotiated on a contract with an existing waiver via the contractor/vendor voluntarily entering into a Commitment to Comply with contract participation goals.

MBE/WBE
GOALS, IF
APPLICABLE,
MUST BE SET
FOR
EACH
SPECIFIC
CONTRACT

Considering, but not limited to, the following Code § 28-22 factors:

- the availability in various industry classifications and professions of MBE/WBEs that are qualified and willing to provide goods, expertise, and services on the particular contract;
- the level of utilization of these firms in past contracts awarded by the City;
- the contract specifications;
- the adverse impact on non-MBEs and WBEs; &
- any other relevant factors.

GOAL CALCULATION

- MWBOO sets goals, absent a waiver, for all contracts, private developments, capital developments, and special agreements.
- We consult the directory to determine the number of certified firms using the prequalification code service description.
- We utilize a spreadsheet containing a formula to calculate the goals by factoring the contract dollar amount, service codes, and total number of MBE/WBE certified in the program.
- If there are no applicable service codes available, goals will be set based upon the dollar range of the contract.
- Goals aim to take into the account the totality of the circumstances of available MBE/WBEs and the ability to segment the contract.

GOAL CALCULATION EXCLUSIONS

Goals exclude aspects of the budget, such as:

- Salaries
- Profits (& Losses)
- Rent or Leases
- Travel
- Utilities
- Communications (Telephone/Internet/Cable)
- General Overhead
- Bonds
- Premiums
- Taxes and Interests

GOALS MAY NOW BE SET ON EMERGENCY PROCUREMENTS

28-51(b) *Emergency utilization requirements.*

- (1) contact the Office for assistance in finding MBE and WBE contractors or subcontractors that can provide the goods or services needed;
- (2) provide contractors with a list of possible subcontractors that contains at least 2 MBE or WBEs, if applicable; and
- (3) to the extent possible, receive at least 1 quote from an MBE and 1 quote from a WBE that can provide the goods or services needed.

MWBOO will provide all necessary assistance to an agency in making good faith efforts to comply with these provisions.

AGENCY WAIVERS

—There is no guarantee of a waiver. Each request is being evaluated individually and is highly scrutinized.

—MWBOO is advising agencies to not request a waiver unless the contract is:

- ☐ a Federal or State pass through that is not receiving City funds,
- ☐ a sole source,
- ☐ limited to salary and fringe benefits, or
- ☐ is limited to services that cannot be segmented to be subcontracted

BIDDER PARTICIPATION FORMS

- MWBOO cannot assist individual bidders in filling out their bid documents to prevent giving a bidder an unfair advantage in the procurement process.
- MWBOO regularly attends pre-bid meetings to provide information to all bidders in attendance.
- Bid documents must evidence the bidder's ability to meet or achieve the applicable MBE/WBE contract participation goals and any bid that does not include the certified business participation affidavit is non-responsive pursuant to § 28-48(b).
- It is the bidders responsibility to ensure all MBE/WBEs have valid MWBOO certification at the time of bid opening pursuant to § 28-48(d). You should consult the certification directory and/or contact MWBOO with any questions or concerns.
- MWBOO is here to assist with locating MBE/WBEs for participation and to discuss efforts that have been undertaken thus far to obtain participation.

CREDIT FOR SELF-PERFORMANCE

§ 28-31(d) provides that:

- A prime contractor may count up to 50% of the dollar value of the work it intends to perform with its own forces towards the applicable MBE or WBE goal.
- The amount of the credit may not exceed the MBE's or WBE's available work capacity as established by their OBC prequalification.

CONTRACTOR/VENDOR WAIVERS

Contractors/Vendors may seek a waiver if they believe that it is impracticable to achieve the MBE/WBE contract participation goals. MWBOO is advising that they first:

- ❑ conduct market research which is, at a minimum, searching the MWBOO certification database for eligible MBE/WBEs to perform the contract services;
- ❑ exhaust all commercially useful functions that can be performed by MBE/WBEs on the contract (Code Article 5, 28-32(a) defined as performance of real and distinct work for which the business enterprise has the skill, expertise, and actual responsibility to perform, manage, and supervise);
- ❑ discuss their difficulties achieving compliance with the contracting agency; and
- ❑ contact MWBOO for assistance.

You should not be seeking a waiver if there are available certified firms to provide the goods and/or perform the contract services.

MONITOR & DOCUMENT VENDOR/CONTRACTOR PERFORMANCE

Agencies should contact MWBOO if:

- ☐ you are concerned that a contractor is not acting in accordance with the Code and contract requirements;
- ☐ if you have concerns about the ability for the contractor to achieve the MBE/WBE goals;
- ☐ if the contractor is failing to utilize MBE/WBEs in spite of receiving adequate work from the contracting agency;
- ☐ If the contractor is not timely providing payments to MBE/WBE subcontractors despite receiving payment from the City; or
- ☐ If you become aware of the use of an additional subcontractor that was not listed. Please ensure that you receive Statements of Intent for all MBE/WBE subcontractors that are utilized so their performance counts towards the contract goals.

COMPLIANCE REVIEWS

As a condition of each contract, the awardee of the contract must submit the following when requested by the Office:

- (1) copies of signed agreements with the business enterprises being utilized to achieve the contract goals;
 - (2) reports and documentation verifying payments to the business enterprises being used to achieve the contract goals; &
 - (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 this chapter.
- This information should be maintained by the agency while monitoring the ongoing performance of the contract and MBE/WBE participation.

CONTRACTOR/VENDOR PENALTIES FOR VIOLATING THE MWBOO SUBTITLE

- If the noncompliance cannot be resolved, MWBOO and the contracting agency must submit written findings and recommendations to the Board of Estimates.
- BOE may impose any or all of the following penalties upon a contractor who fails to comply with any provision of the subtitle:
 - (1) suspension of contract;
 - (2) withholding of funds;
 - (3) rescission of contract based on material breach;
 - (4) refusal to accept a bid;
 - (5) disqualification of a bidder, contractor, or other business from eligibility for providing goods or services to the City for a period not to exceed 2 years;
 - (6) payment of liquidated damages.

PENALTIES CAN
BE IMPOSED
UPON AGENCIES
FOR NON-
COMPLIANCE

§ 28-88. Noncompliance – Agency.

(a) Notice and attempt to resolve.

If, after investigation, the Office finds that a contracting agency has failed to comply with a provision of this chapter, the Office must:

- (1) send the agency a written finding that specifies the nature of the noncompliance; and
- (2) attempt to resolve the noncompliance through conference and conciliation.

(b) Referral to Board of Estimates.

- (1) If the noncompliance cannot be resolved, the Office must submit its written findings and recommendations to the Board of Estimates.
- (2) the Board of Estimates may take appropriate action to secure compliance.

COMING SOON: B2G DIVERSITY
COMPLIANCE MONITORING SOFTWARE

- This will be a large improvement for MWBOO and will aid in contract management and monitoring Citywide.
- B2G will be integrating with Citibuy, Workday, and Unifier Enterprise.
- Announcements will be forthcoming in the near future regarding both internal agency and external City contractor/vendor training.

RECENT TRAINING EFFORTS

- MWBOO is placing a heavy emphasis on communicating our process, policies, procedures, and partnering with the agencies to increase MBE/WBE participation.
- The website <https://law.baltimorecity.gov/mwboo> has recently been revised to be easier to navigate and provide more readily accessible information via new FAQs. Businesses are able to apply for certification, request an expansion of services, update contact information, submit questions, and search the certification directory.
- MWBOO has conducted 9 agency trainings since August regarding MWBOO Code requirements, goals, project monitoring, roles in the process, improving our communication and collaboration. There are 4 additional training sessions scheduled through December.
- MWBOO has engaged in informational training events regarding certification with the Southwest Baltimore Partnership, M & T Bank's 0-100 Fall Accelerator Program, DPW OBC's Small Business Development Growth by Design Training Program.

RECENT OUTREACH EFFORTS

- MWBOO is striving to ensure that MBE/WBEs have adequate information and utilize the resources that are available via MWBOO and throughout the City.
- We participated in the DHCD Community Catalyst Grant recipient orientation program to provide an overview of participation requirements and procedures.
- We have engaged in outreach efforts, such as: the Maryland Washington Minority Companies Association's Reception for DPW Dir. Mitchell, participated as a panelist in Information Technology Industry Council's Fireside Chat panel discussion regarding Procurement & Acquisition Innovation: Advancing MWBE Procurement Reform, and Councilwoman Ramos' District 14 Virtual Town Hall regarding MBE/WBE business development and equity in the procurement process.
- MWBOO is here to assist and regularly meets with contractors and subcontractors to discuss their questions, issues, concerns, or comments regarding how MWBOO can improve.

CONTACT INFORMATION

Baltimore City Minority and Women's Business Opportunity Office
100 N. Holliday Street, Room 101, City Hall
410-396-4355

MWBOO Website (Please click the "Contact MWBOO" link to submit questions) & FAQs:

<https://law.baltimorecity.gov/mwboo>

<https://law.baltimorecity.gov/mwboo-faq>

Ongoing Disparity Study:

<https://cityofbaltimore-habcdisparitystudy.com/>

A background image showing numerous hands of various skin tones raised in the air, suggesting a group activity or a public gathering. Overlaid on this image is a white rectangular box containing the word "QUESTIONS?" in a large, white, serif font.

QUESTIONS?