

## MEMORANDUM

**DATE:** July 1, 2011

**TO:** Cabinet Secretaries

**FROM:** Luwanda W. Jenkins  
Special Secretary

**RE:** **Subgoal Directive – Implementation of Subgoal Guidelines**

The implementation procedures for this Subgoal Directive are described below and are promulgated pursuant to Section 14-302(a)(1)(ii) of the State Finance and Procurement Article (SFP) and Code of Maryland Regulations (COMAR) 21.11.03.01A(2). This Directive establishes the process for setting contract by contract subgoals in the State's Minority Business Enterprise (MBE) Program.

In an ongoing effort to remedy discrimination for minority- and women-owned businesses, ensure that various racial, ethnic and gender Subgroups participate in contracting at those levels that would be expected in the absence of discrimination, foster the overarching policy of diversity in contracting for the State, and promote further compliance with the State's MBE Program, the Governor has instructed me to issue this Subgoal Directive consistent with the statutory requirement set forth at SFP, Section 14-302(a)(1)(ii) and the February 17, 2011 Disparity Study.

All of the Subgroups that were previously a part of the MBE Program, continue to be participants pursuant to SFP, Section 14-301(i)(1)(i). In addition, there will be contract-specific subgoals for some Subgroups that did not have subgoals in the past.

The effective date of this Subgoal Directive is July 11, 2011. This means that the process for setting subgoals set forth herein must be used on contracts that go through the Procurement Review Group for approval on or after July 11, 2011.

### **Guidelines for Setting Contract Subgoals**

#### **I. Preliminary Considerations**

As a threshold matter, the process for setting contract goals and subgoals shall begin with the following considerations:

- (1) Goals and subgoals shall be set on a contract by contract basis.
- (2) Goals and subgoals shall only be set on contracts that actually have subcontracting opportunities.

(3) The unit shall examine the type of work involved in the contract.

(4) The unit shall determine whether there are certified MBEs available to perform the work.

## **II. Subgoal Process**

Once an overall MBE participation goal is set for a contract, each unit shall determine the appropriate subgoals using the following Subgoal Process:

(1) Determine the expected value of the procurement. The Subgoal Process outlined in this Directive must be completed for any procurement expected to equal or exceed \$200,000 in value, regardless of contract type or procurement category. This includes master contract task order procurements where MBE goals and subgoals are determined at the task order level. For procurements that are not expected to have a value that equals or exceeds \$200,000, completion of the Subgoal Process is discretionary.

(2) Identify the Major Industry Category encompassed by the contract. The Major Industry Categories, which are defined at COMAR 21.01.02.01, are listed below with the Combined Industry Category acronym pertinent to that industry:

<b><u>Major Industry Category</u></b>	<b><u>Combined Industry Category</u></b>
Architectural & Engineering	AE-CRS
Construction	Cons
Construction Related Services	AE-CRS
Human, Cultural, Social, & Educational Services	Serv
IT Services	IT
IT Supplies & Equipment	IT
Maintenance	Main
Services	Serv
Supplies & Equipment	CSE

(3) The Recommended Subgoals for each Combined Industry Category are set forth below in item II (7). Use of the Recommended Subgoals is subject to the parameters set forth in items II (4) through II (7).

(4) Subgoals are only permissible when the overall goal for the contract is greater than or equal to the sum of the Recommended Subgoals for all Subgroups in the Combined Industry Category plus two. If the overall goal for the contract is not greater than or equal to the sum of the subgoals plus two, the unit may not use any subgoals on that contract.

(5) A Recommended Subgoal may not be set if the number of certified firms in the Subgroup who are available to perform the work on a contract is less than 3. For purposes of

determining the number of certified firms in a Subgroup, always count dually certified firms as being owned by a member of the relevant racial or ethnic Subgroup, not as a woman-owned firm. **Note:** For purposes of counting MBE participation, bidders or offerors may use a dually certified firm to meet any subgoal they want.

(6) The Recommended Subgoals should be evaluated for each Subgroup. If the Subgroup has 3 or more certified firms who are available to perform the work on a contract, the Recommended Subgoal for that Subgroup should be set unless the unit explains the basis for not applying the Recommended Subgoal and the explanation relates to something specific in the Procurement Review Group documentation.

(7) If a bidder or offeror is unable to meet the overall goal and/or any subgoals established for a contract, the bidder or offeror may request a waiver and submit documentation demonstrating that it made good faith efforts to meet the overall goal and subgoals.

(8) Recommended Subgoals are indicated in the following chart for the Subgroups with the greatest disadvantage or underrepresentation for each Combined Industry Category.

<b>RECOMMENDED SUBGOALS</b>						
<b>Combined Industry Category</b>	<b>Cons</b>	<b>AE-CRS</b>	<b>Main</b>	<b>IT</b>	<b>Serv</b>	<b>CSE</b>
<b>Subgroups</b>	[REDACTED]					
African American	7%	6%	8%	7%	7%	6%
Hispanic American	—	2%	3%	2%	—	—
Asian American	4%	—	3%	—	4%	5%
Women	—	9%	—	8%	12%	10%
<b>Subgoal Total</b>	11%	17%	14%	17%	23%	21%
<b>*Subgoal Total Plus 2% Margin</b>	13%	19%	16%	19%	25%	23%
*The Subgoal Total Plus 2% Margin is the sum of the Recommended Subgoals plus 2%.						