



BPW Advisory No.: 2009-3

Date: December 16, 2009

Subject: **PROCUREMENT – SMALL BUSINESS PRICE PREFERENCE INCLUDING VETERAN-OWNED SMALL BUSINESSES**

Effective: **Immediately**

Martin O'Malley
Governor

Nancy K. Kopp
Treasurer

Peter Franchot
Comptroller

Sheila McDonald
Executive Secretary

Purpose: To explain the Veteran-Owned and the Disabled Veteran-Owned Small Business procurement preferences.

Authority: State Finance and Procurement Article, §§14-201 and 14-206, Annotated Code of Maryland; COMAR 21.11.01.05.

Procurement Agencies That May Use the Preference: Agencies authorized to conduct small business preference procurements are the Department of Transportation, the Department of General Services, the Department of Public Safety and Correctional Services (only in connection with construction of a State correctional facility), the University System of Maryland and Morgan State University. When these agencies designate a procurement as a “small business preference,” the following applies.

Businesses That May Benefit From the Preferences: Small businesses are defined in COMAR 21.01.02.01. A small business must be certified by the Department of General Services to be eligible for award of small business preference procurements and small business reserve procurements. [This Advisory pertains to small business *preference* procurements; *see* BPW Advisory 2005-1 for information on small business *reserve* procurements.] A veteran-owned small business is a small business that is at least 51% owned and controlled by veterans. A disabled veteran-owned small business is a small business that is at least 51% owned and controlled by disabled veterans.

Note: State Law defines a veteran as one “who is domiciled in Maryland.” § 14-201, State Finance and Procurement Article. Veteran small business owners whose state of residence is other than Maryland may participate in a preference procurement only as a small business not as a veteran-owned or a disabled-veteran-owned small business.

The Preference: The using agencies may designate a procurement as a small business preference procurement. When that designation is made, the using agency must also establish the percentage preference to be applied. A certified small business is given up to a 5% base percentage preference. In addition to that base percentage preference, a veteran-owned small business receives up to another 2% preference, and a disabled-veteran-owned small business receives up to 3%. In other words, the maximum percentage price preferences for designated small business preference procurements are 5% for certified small businesses; 7% for veteran-owned certified small businesses; and 8% for disabled veteran-owned certified small businesses.

Procedure:

Designation. Using agencies have discretion to designate which procurements will be conducted as small business preference procurements taking into account the availability of qualified, certified small businesses.

Solicitation. Once a using agency designates a small business preference procurement, the agency should directly solicit businesses listed in the DGS Small Business Directory, the federal VetBiz Registry (www.vip.vetbiz.gov), and the MDOT MBE Directory. Solicitation notices on *eMaryland Marketplace* must clearly state that the procurement is designated as “small business preference.”

Bid Evaluation. In a designated small business preference procurement, the procurement officer must accept the most favorable, responsive bid from a:

- ◆ Responsible, certified small business if the bid does not exceed the most favorable responsive bid price from a responsible bidder who is NOT a certified small business by more than 5% (or other price preference set by the agency).
- ◆ Responsible, certified veteran-owned small business if the bid does not exceed the most favorable responsive bid price from a responsible bidder who is NOT a certified small business by more than 7% (or other price preference set by the agency).
- ◆ Responsible, disabled-veteran-owned certified small business if the bid does not exceed the most favorable responsive bid price from a responsible bidder who is NOT a certified small business by more than 8% (or other price preference set by the agency).

Note: If the most favorable, responsive bid is submitted by a certified small business, and the second most favorable bid is from a veteran-owned or disabled-veteran-owned small business,

the procurement officer applies the difference between the percentages (*i.e.*, 2% for veteran-owned small business and 3% for disabled veteran-owned small business).

Reporting Requirements: By September 30th annually, the Departments of General Services and Transportation and Morgan State University must report to the Board of Public Works and to the Legislative Policy Committee on the operation and effectiveness of the Preference Program in the previous fiscal year. The report must include data on participation by veteran-owned and disabled-veteran-owned small businesses.

Attachments: Attached is *Sample Solicitation Language*.

Questions concerning this Advisory may be addressed to:

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Attachment to BPW Advisory 2009-3

The following language is recommended for the notice of solicitations designated as a Small Business Preference:



Designation This procurement has been designated as a Small Business Preference in accordance with Title 14, Subtitle 2, of the State Finance and Procurement Article of the Maryland Annotated Code. The preference percentages for this procurement are as follows:

- *State-certified, small business (not a veteran-owned or disabled-veteran-owned small business) _____% (not to exceed 5%)*
- *State-certified, veteran-owned small business _____% (not to exceed 7%)*
- *State-certified, disabled-veteran-owned small business _____% (not to exceed 8%)*

The procurement agency will accept the most favorable responsive bid from a responsible, certified small business if the bid does not exceed the most favorable responsive received from a bidder who is not a certified small business by more than the percentage(s) listed above.

Eligibility To be eligible for the preference, your company must have a current small business certification from the Maryland Department of General Services.

Small business size standards in Maryland are different than federal standards. You CANNOT substitute an SBA 8(a) certification or VetBiz verification for Maryland small business certification.

If your small business is eligible but not certified by the State, apply for certification on the Department of General Services website at www.smallbusinessreserve.maryland.gov and obtain a small business certification number.

State Law requires that the veteran business owner be domiciled in Maryland. There is no Maryland residency requirement for owners of small businesses participating in the Preference as small businesses without the veteran-owned or disabled-veteran-owned designation.

Required Information The bidder must provide the following to the procurement officer to prove eligibility for the preference:

- **Certified small business that is not veteran-owned or disabled veteran-owned:**
Provide the DGS small business certification number.

- **Veteran-owned certified small business:** Provide the DGS small business certification number **AND** a copy of the business owner's DD Form 214 attesting to discharge or release under conditions other than dishonorable.
- **Disabled-veteran-owned small business that is currently verified and registered on *www.VetBiz.gov*:** Provide the DGS small business certification number **AND** a copy of the letter from the U.S. Department of Veterans Affairs Verification Program showing your verification is current.
- **Disabled-veteran-owned small business that is NOT currently verified and registered on *www.VetBiz.gov*:** Provide the DGS small business certification number **AND** a copy of your DD Form 214 showing discharge or release under conditions other than dishonorable **AND** a copy of your Adjudication Letter from the U.S. Veterans Administration.