

MINORITY AND WOMEN'S BUSINESS ENTERPRISE PLAN

LAWRENCE COUNTY, PENNSYLVANIA

I. POLICY STATEMENT

It is public policy of the COUNTY OF LAWRENCE to promote the opportunity for full participation by minority and women's business enterprises ("MBEs" and WBEs") in all housing and community development programs receiving funds from the Pennsylvania Department of Community and Economic Development.

II. DEFINITIONS

For the purpose of these requirements, the following terms, as defined below, shall apply:

- A. Grantee-Municipality (COUNTY OF LAWRENCE) under contract with the Commonwealth for receipt of DCED funds.
- B. Administrating Agency-The agency responsible for administrating the grants for the Grantee.
- C. Bidder Responsiveness-Actions taken by prime contract bidders to seek participation by MBE/WBE suppliers, manufacturers, and subcontractors. Responsiveness includes submission of Form DCED-CCD-286, MBE/WBE Contract/Solicitation and Commitment Statement; and, if needed, an explanation for failure to achieve minimum levels of participation, including demonstration that the bidder has not engaged in discriminatory practices.
- D. Bidder Responsibility-Non-discrimination in the selection of subcontractors, suppliers and manufacturers. Non-discrimination is presumed if minimum levels of participation are achieved. Non-discrimination can also be demonstrated by submitting Form DCED-CCD-286 and supplemental evidence that failure to achieve minimum levels of participation was not motivated by consideration of race or gender; that MBEs/WBEs were not treated less favorably than others; and that solicitation and commitment decisions were not based upon policies which disparately affect MBEs/WBEs.

- E. Business Enterprise-Any legal entity which is organized in any form other than as a joint venture (e.g., sole proprietorship, partnership, corporation, etc.) to engage in lawful commercial transactions.
- F. Contractor/Subcontractor-One who participates through a contract, subcontract or lease agreement in any manner covered by the grantee's MBE/WBE Program.
- G. Management Control-The minority or women owners should possess the power to direct or cause the direction of the management and policies of the firm and to make the day-to-day as well as major decisions on matters of management, policy and operations. The firm should not be subject to formal or informal restrictions which limit the customary discretion of the minority or women owners. There should be no restrictions through for example, by-law provisions, partnership agreements or charter requirements for cumulative voting rights or otherwise that prevent the minority or women owners, without the cooperation or vote of an owner who is not a minority or woman, from making a business decision of the firm. If the actual management of the firm is contracted out to or otherwise has been placed with individuals other than the minority or woman owner, those persons who have the ultimate power to hire and fire the managers will ordinarily be considered as controlling the business.
- H. Minority Business Enterprise (MBE)-A business concern that is:
 - 1. a sole proprietorship owned and controlled by a minority; or
 - 2. a partnership or joint venture controlled by minorities in which 51% of the beneficial ownership interest is held by minorities; or
 - 3. a corporation of the other entity controlled by minorities in which at least 51% of the voting interest and 51% of the beneficial ownership interest are held by minorities.
- I. Minority Person-Persons who are citizens of the United States and who are Black Americans, Hispanic Americans, Native Americans or Asian-Pacific Americans.
 - 1. Black (African) Americans-persons having origins from any of the Black groups of Africa. The term includes persons having origins in any of the original peoples of the Cape Verde's Islands.
 - 2. Hispanic Americans-Persons having their origins from one or more of the Spanish-speaking peoples of Mexico, Puerto Rico, Cuba or Central or South America or the Caribbean Islands.

3. Native Americans-Persons having origins from one or more of the original peoples of North America and who are recognized as an Indian by a tribe or tribal organization.
 4. Asian-Pacific Americans-Persons having origins from one or more of the original peoples of the Far East, Southeast Asia or the Pacific Islands, including China, Japan, Korea, Samoa and the Philippine Islands.
- J. Operational Control-The minority or women owners should demonstrate through the application sufficient experience, knowledge and expertise to operate that particular business. Additionally, if the owners of the firm who are not minorities or women are disproportionately responsible for the operation of the firm-to include possessing any required licensing for the firm-the firm will ordinarily be considered not being controlled by minorities or women and not qualifying as an MBE or WBE. Securities, which constitute ownership or control, or both, of a corporation for business purposes of establishing it as an MBE or WBE should be held directly by minorities or women. No securities held in trust, or by a guardian for a minor should be considered as held by minority or women in determining the ownership or control of a corporation.
- K. Ownership
- a. Bona fide minority and women group membership may be established on the basis of the individual's claim that he is a member of a minority group or is of the female gender and is and has been so regarded by that particular community. Verification of group membership may be accepted through submission of birth certificates, military records, passports or tribal cards.
 - b. An eligible MBE or WBE defined in this section should be an independent business. The ownership and control by minorities or women should be real, substantial and continuing and should go beyond the pro forma ownership of the firm as reflected in its ownership documents. The minority and women owners should enjoy the customary incidents of ownership and should share in the risks and profits commensurate with their ownership interests as demonstrated both by an examination of the substance and form of arrangements. Recognition of the business as a separate entity for tax or corporate purposes is not necessarily sufficient for recognition as an MBE or WBE. In determining whether a potential MBE or WBE is an independent business, all relevant factors must be considered, including the date the business was established, its resources and the nature of the financial, lease arrangements and other relationships the business enjoys.

- c. The contributions of capital or expertise by the minority or women owners to acquire their interests of the firm should be real and substantial. Examples of insufficient contributions include a promise to contribute capital, a note payable to the firm or its minorities or women, or the mere participation as an employee rather than as a manager.

L. Women's Business Enterprise (WBE)-A business that is:

1. a sole proprietorship, owned by a woman; or
2. a partnership or joint venture controlled by women in which 51% of the beneficial ownership interest is held by women; or
3. a corporation or other entity controlled by women in which at least 51% of the voting interest and 51% of the beneficial ownership interest are held by women.

M. Women-United States citizens who are of the female gender.

III. PROCEDURES-INVITATIONS FOR BIDS (IFB) OR REQUESTS FOR PROPOSALS (RFP)

A. Advertisements-IFB Only

All invitations to bid will include the following information:

"The bidders/offerors must submit documentary evidence of minority and women business enterprises who have been contacted and to whom commitments have been made. Documentation of such solicitations and commitments shall be submitted concurrently with the bid."

B. Notification of MBE/WBE-IFB and RFP

The procedure for the COUNTY OF LAWRENCE to notify the minority/women business community of contract opportunities will be as follows:

1. Notice Of Invitation for Bid or Request for Proposals-A request will be sent to the Department of Community and Economic Development for a listing of MBE/WBE firms that undertake the particular type of construction or service being advertised or requested. Once this listing is provided by DCED, the County will make this list available to prospective bidders as part of the Notice of Invitation for bids or proposals. It remains the responsibility of a prospective bidder to notify MBE/WBE firms and to attempt to meet the County's MBE/WBE participation goals. PA Department of General Services website

MBE/WEB

search

www.dgsweb.state.pa.us/mbewbe/vendorsearch.aspx.

2. Other Notices-Notices are to be sent to the following organizations (as appropriate):
 - Local Minority Churches and Organizations
 - Appropriate Minority Business Technical Assistance Organizations and/or Schools
 - Appropriate Minority/Women Contractor Associations
 - Appropriate Minority/Women Trade Organizations
3. Plans and Specifications-Plans and specifications or Invitations for Bids in all projects will be made available upon request to minority/women contractor associations and trade organizations.
4. List of Planholders-The names of bidders/offerors requesting bid documents will be made available upon request to minority/women businesses shown on the DCED-provided list.
5. List of Minority/Women Businesses-Each bidder/offeror obtaining plans and specifications or requests for proposals for projects will be provided a list of minority/women businesses to be used in soliciting subcontract bids and for materials and services.

IV. PARTICIPATION REQUIREMENTS FOR MINORITY/WOMEN BUSINESS ENTERPRISE (MBE/WBE AND SOCIALLY/ECONOMICALLY RESTRICTED BUSINESSES (SERBS))

A. Construction Contracts (IFBs)

The COUNTY OF LAWRENCE has established minimum levels of participation for minority and women business enterprises (MBE/WBE) for each project in each bid category to be used solely as a guide in determining bidder responsibility. The minimum participation level for MBEs is 5% and for WBEs 3%.

The following items will be placed in all bid documents:

1. Participation Level
 - a. The COUNTY OF LAWRENCE has established minimum participation levels (MPLs) at 5% for minority business enterprises (MBE) and 3% for women business enterprises (WBE) for this project to be solely used as a threshold in determining bidder responsibility. A bidder will not be rejected as not responsible solely because it fails to reach the

MPLs. To determine the participation level which has been reached, a bidder may divide the total dollar amount of the commitments by the total dollar amount of the bidder's bid.

- b. MBE/WBE subcontracts and manufacturers will be credited toward the minimum level at 100%. Stocking suppliers are credited at 100%. Non-stocking suppliers which are commonly and ordinarily the custom in the industry and a part of the industry's trade practices are credited at 100%; non-stocking suppliers which are not commonly and are ordinarily the custom in the industry nor a part of the industry's trade practice are not credited.
- c. A firm which is both an MBE and WBE will only receive credit toward MPLs as either an MBE or WBE, but not both. Bidders must indicate on Form DCED-CCD-286, MBE/WBE Contract/Solicitation and Commitment Statement whether the firm is being listed as either an MBE or a WBE.
- d. An MBE/WBE firm who is the prime bidder on a project will receive no MPL credit for its own work effort for services provided. MBE/WBE bidding as prime proposer must solicit other certified MBEs/WBEs participation material and/or supplies.
- e. MBE/WBE subcontractors must perform at least seventy-five (75%) of the costs of the subcontract, not including the cost of materials, with their own employees.

2. Responsiveness

- a. **Bidders must complete and submit Form DCED-CCD-286 with the bid. Failure to submit this form with the bid will result in the bid being rejected as non-responsive.**
- b. A bidder should only solicit MBE/WBE subcontractors, vendors, manufacturers, or suppliers whose services, material or supplies are within the scope of work and which the bidder reasonably believes it will choose to subcontract with or purchase from.
- c. Bidders failing to meet the minimum levels of participation must submit concurrently with bid, an explanation of why the MPLs have not been met. This explanation must demonstrate that the bidder has not engaged in discriminatory practices in solicitation and utilization of MWBEO-certified MBEs/WBEs to perform as subcontractors or suppliers of goods and services related to the performance of the contract. The evidence submitted by the bidder must demonstrate the following:

- (1) Indicate whether MBEs/WBEs were solicited for each type of work the bidder expects to subcontract for and for all materials which the bidder expects to procure and, if not, the reason(s) why no such solicitation was made.
 - (2) Indicate the reason why an MBE/WBE has not been committed to for a type of subcontract work of materials in any area where a quote was received from a MBE/WBE, and:
 - (3) In any case where no quotations are received nor commitments made to MBE or WBE firms, indicate on Form DCED-CCD-286 that no quotes were received, and if there is another reason for no commitments being made, the reason for the lack of commitments.
- d. If the bidder fails to submit evidence the bid submission shall be considered non-responsive and the bid rejected.
 - e. Information related to the above may be submitted on Form DCED-CCD-286 or on additional paper.

3. Responsibility

- a. The submittals of each bidder are subject to review to determine whether the bidder has discriminated in the selection of manufacturers, subcontractors and suppliers. If a bidder has met the MPLs for MBE/WBE participation, the bidder will be presumed not to have discriminated in their selections. Where the MPLs are not met, the COUNTY OF LAWRENCE will determine whether discrimination has occurred. If, after investigation including a review of Form DCED-CCD-286, it is found that discrimination has occurred, the reviewed bidder shall thereby be deemed to be not responsible and the bid will be rejected.
- b. Documentation submitted by the bidder should meet the following standard for review:
 - (1) The bidder whose actions resulted in a limited or no commitment to MBEs/WBEs was not motivated by consideration of race or gender;
 - (2) MBEs/WBEs were not treated less favorably than other businesses in the contract solicitation and commitment process.

(3) Solicitation and commitment decisions were not based upon policies which disparately affect MBEs/WBEs.

- c. Commitments to MBE and WBE firms made at the time of bidding must be maintained throughout the term of the contract unless a change in commitment to these firms is pre-approved by the COUNTY OF LAWRENCE or the administering agency performing the evaluation of the invitation for Bid.

4. Access to Information

The COUNTY OF LAWRENCE may obtain documents and information from any bidder, contractor, subcontractor, supplier or manufacturer that may be required in order to ascertain bidder or contractor responsibility. Failure to provide requested information may result in the contractor being declared not responsible.

5. MBE/WBE Certification

- a. Bidders will not be given credit for MBEs/WBEs which are not certified by the state Minority and Women Business Enterprise Office (MWBEO).
- b. Under the State Act of December 21, 1984, No. 230, P.L. 210, 18 P.A.C.S.A. 4107.2 a person commits a felony of the third degree if, in the course of business, he/she engages in deception relating to MBE/WBE certification.

V. PROFESSIONAL/PERSONAL SERVICES-REQUESTS FOR PROPOSALS (RFP)

The COUNTY OF LAWRENCE will assign a weight for socially/economically restricted business participation for each RFP. This weight will be included as one of the criteria for selection for each RFP.

The following items will be placed in all requests for proposals:

A. General Information for Proposers

The COUNTY OF LAWRENCE strongly encourages the submission of proposals by MBE/WBEs.

To achieve the objective of enhancing MBE/WBE participation, the COUNTY OF LAWRENCE has established MBE/WBE utilization as a selection criteria in the evaluation process.

The COUNTY OF LAWRENCE will evaluate the aforementioned criteria and will assign a point value to be considered within the overall RFP total point tabulation.

Proposals submitted by individuals claiming MBE/WBE status, or proposals submitted by individuals reflecting joint venture and subcontracting opportunities with MBE/WBEs, must submit documentation verifying their claim.

B. Information Required from Contractors

MBE/WBE Information

MBE/WBEs are encouraged to participate as prime proposers.

Proposers not considered MBE/WBEs must describe, in narrative form, their company's approach to enhance MBE/WBE utilization on a professional level in the implementation of this proposal.

The following options will be considered as part of the final criteria for selection:

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|-------------------------|---|
| Priority Rank 1. | Proposals submitted by MBE/WBEs |
| Priority Rank 2. | Proposals submitted from a joint venture with a Commonwealth approved MBE/WBE as a joint venture partner. |
| Priority Rank 3. | Proposals submitted with subcontracting commitments to MBE/WBEs. |

Each proposal will be rated for its approach to enhancing the utilization of MBE/WBEs. The optional approach used will be evaluated with option number 1 receiving the greatest value and the succeeding options receiving a value accordance with the above listed priority ranking.

Contractor proposals shall include the MBE/WBE value in the Cost and Price Analysis section of the proposal. The applicable items shown in the Cost and Price Analysis section should also be used to prepare and detail the proposed MBE/WBE Commitment value including, if applicable, fiscal year breakdown. The selected contractor's MBE/WBE Commitment amount will be included as a contractual obligation when a contract is entered in.

C. Criteria for Selection

MBE/WBE participation

Emphasis here is placed on:

1. Proposals submitted by MBE/WBEs.
2. Commitments by proposers not considered to be MBE/WBEs which significantly utilize approved MBE/WBEs in joint ventures.
3. Commitments by proposers not considered by the MBE/WBEs which aggressively pursue the utilization of approved MBE/WBEs in subcontracting opportunities.

VI. PROCEDURES-CONTRACTOR COMPLIANCE PROCESS

A. Contract Provisions

The following provisions will be included in construction contracts and/or in professional service contracts:

1. Construction Contracts

- a. The prime contractor must provide the COUNTY OF LAWRENCE with a report of MBE/WBE subcontracting activity on a quarterly or per project basis, whichever is sooner. The report shall reflect the names of and the total dollar amount paid to all MBE/WBE Subcontractors (including suppliers) utilized under this contract.
- b. MBE/WBE subcontractors must provide the COUNTY OF LAWRENCE with a report reflecting the prime contractors who have purchased their services and/or supplies on a quarterly basis. The report shall reflect the name of the prime contractor and the total dollar amount invoiced and total dollar amount received for payment.

2. Professional Service Contracts

a. Commitment to Enhance MBE/WBEs

- (1) **Joint Venture.** If the joint venture relationship is dissolved, the majority owner of the contract with a commitment to an MBE/WBE, must maintain this commitment for the duration of the contract. If another MBE/WBE joint venture cannot be formed, the majority owner must continue this commitment by entering into contractual agreement(s) with

other MBE/WBEs to perform on this contract. The majority owner must submit all changes to the COUNTY OF LAWRENCE for approval.

- (2) **Subcontracting.** If the Subcontracting commitment made to the Subcontractor for the specified amount is terminated, then the firm that is awarding a contract with a specified dollar amount commitment to an MBE/WBE, must maintain this commitment for the duration of the contract. The firm awarding contract must continue this commitment by entering into contractual agreements with other MBE/WBEs to perform in this contract. The majority owner must submit all changes to the COUNTY OF LAWRENCE for approval.
- (3) The prime proposer must provide the COUNTY OF LAWRENCE with a report of MBE/WBE activity on a quarterly or per project basis, whichever is sooner. The report shall reflect the names of and the total dollar amount paid to all MBE/WBEs utilized under this contract.
- (4) MBE/WBE subcontractors must provide the COUNTY OF LAWRENCE with a report reflecting the prime contractors who have purchased their services and/or supplies on a quarterly basis or per project basis, whichever is sooner. The report shall reflect the name of the prime contractor and the total dollar amount invoiced and total dollar amount received for payment.

B. Grantee Compliance Procedures

1. The prime contractor will be informed by the COUNTY OF LAWRENCE of their quarterly or per project reporting requirements. In addition, all MBE/WBE subcontractors are to be informed of their reporting requirements.
2. The COUNTY OF LAWRENCE will review all reports received from the prime contractor and all contractors to determine if the commitments made by the prime contractor in his/her bid are being met. If reports are submitted on a per project basis, this review is to be

done prior to final payment being made to the contractor and/or subcontractor.

C. Records and Reports

The contractor will keep such records as are necessary to determine compliance with its minority and women business enterprise commitments. These records must be in sufficient detail to indicate the number of minority and women businesses, the contract work performed and the percentage of minority and women businesses performing work. Additionally, the contractor is required to maintain an open file for a specified period, during which time the contract compliance person may make periodic reviews of records pertaining to relevant contracts.

This plan adopted by the COUNTY OF LAWRENCE BOARD OF COMMISSIONERS, _____, 2013, at the regular scheduled Board Meeting.