

Document 00640

**BIDDER REQUIREMENTS FOR
MINORITY AND WOMEN BUSINESS ENTERPRISE (M/WBE) PROGRAM
CONSTRUCTION CONTRACTS**

I. DOCUMENTS THAT MUST BE SIGNED AND RETURNED TO CITY WITHIN TEN DAYS OF NOTIFICATION OF LOW BIDDER OF INTENT TO AWARD:

A. DEPARTMENT OF PUBLIC WORKS AND ENGINEERING:

1. Original Document 00620 - List of Proposed Subcontractors and Suppliers, Part A - M/WBE Participation Plan.
2. Original executed Subcontract(s), Letter(s) of Intent, or documentation of Good Faith Efforts documentation to meet the M/WBE participation goal.
3. Mail documents described in I. A. 1. and 2. above to the attention of the Project Manager identified in Document 00020 - Notice to Bidders at the following address:

City of Houston, Department of Public Works and Engineering
P. O. Box 1562
Houston, Texas 77251-1562

B. AFFIRMATIVE ACTION DIVISION

1. Copy of Document 00620 - List of Proposed Subcontractors and Suppliers, Part A - M/WBE Participation Plan.
2. Original Documents required pursuant to Document 00630 - Affirmative Action Compliance Program.
3. Mail documents described in I. B. 1. and 2. to:

City of Houston Affirmative Action/Contract Compliance Division
611 Walker, 20th Floor
Houston, Texas 77002
Attn: Director - Affirmative Action

II. REPORTS THAT MUST BE SUBMITTED DURING THE COURSE OF THE CONTRACT:

- A. M/WBE Monthly Utilization Report (Attachment B) Page 00640-12

1. Mail original of completed M/WBE Monthly Utilization Report to:

City of Houston
Affirmative Action/Contract Compliance Division
611 Walker, 20th Floor
Houston, Texas 77002
Attn: Director - Affirmative Action

2. and one copy each to:

- a. City of Houston, Department of Public Works and Engineering
611 Walker, 7th Floor
P. O. Box 1562
Houston, Texas 77251-1562
Attn: Herbert Fain, M/WBE Coordinator
- b. Project Manager of record

III. M/WBE REQUIREMENTS:

A. PURPOSE

To facilitate implementation of City of Houston, Tex. Code of Ordinances Chapter 15, Article V, §15-81 et seq., City of Houston, Tex. Ordinance 95-336 (March 29, 1995) and Executive Order No. 1-2 (June 14, 1995) relating to M/WBE contract participation.

B. POLICY

It is the policy of the City to encourage the full participation of Minority and Women Business Enterprises in all phases of its procurement activities and to afford them a full and fair opportunity to compete for City contracts at all levels.

C. POLICY ELEMENTS

- 1. The Contractor agrees to ensure that M/WBEs have a full and fair opportunity to participate in the performance of City contracts. In this regard the Contractor shall take all reasonable Good Faith Efforts to meet the M/WBE goal for this Contract.
- 2. The Contractor and any Subcontractor shall not discriminate on the basis of race, color, religion, national origin, or sex in the performance of City contracts.

3. The Low Bidder will be notified by the Department of Public Works and Engineering and will have 3 days after such notification to submit Document 00620 - List of Proposed Subcontractors and Suppliers, Part A - M/WBE Participation Plan in accordance with instructions in Article I hereof.
4. Contractor's performance in meeting the M/WBE participation goal will be monitored during the construction phase of the Contract by the Affirmative Action/ Contract Compliance Division (Affirmative Action Division).

D. PERCENTAGE GOAL

The M/WBE participation goal (goal) for M/WBE participation in the Work will be as shown in the Bid Documents.

E. CONTRACTOR RESPONSIBILITIES

1. Prior to Award:

Upon completion of the bid tabulation, the apparent low bidder will be notified by the originating design section. The following requirements must be satisfied by the Contractor.

- a. After notification, the Contractor will have 3 days to file Document 00620 - List of Proposed Subcontractors and Suppliers, Part A - M/WBE Participation Plan (Plan).
- b. The Contractor shall be bound by the Plan submitted unless a waiver is received from the Director of the Affirmative Action Division (Director). Contractor must submit a Plan which shall include:
 - (1) Document 00620 - List of Proposed Subcontractors and Suppliers, Part A - M/WBE Participation Plan;
 - (2) Executed Subcontract(s) or Letter(s) of Intent for each M/WBE Subcontractor/Supplier, including:
 - (a) Name and address of each M/WBE Subcontractor/ Supplier used to satisfy the M/WBE goal.
 - (b) Description of the scope of work for each M/WBE Subcontractor/Supplier;
 - (c) Dollar value of each proposed M/WBE subcontract by Subcontractor/Supplier;
 - (d) Subcontract provisions required in Document 00800- Supplementary Conditions, Article 5; and
 - (e) Other information as required by the Director.
 - (3) Documentation of Good Faith Efforts if the M/WBE goal is not met. See Attachment A for minimum standards for Good Faith Efforts. Such documentation shall be presented to the Project Manager for review by the Affirmative Action Division.
- c. All M/WBEs listed on Document 00620 - List of Subcontractors and Suppliers must be certified prior to bid date. Non-certified M/WBEs may obtain priority certification if there are less than three certified M/WBEs with the same capability as the non-certified M/WBE.

- d. If Contractor fails to prepare and submit a plan within the designated period or comply with Document 00620 - List of Subcontractors and Suppliers, and fails to satisfactorily document Good Faith Efforts to meet the goal, **Contractor may be deemed non-responsive and recommendation could be made to award the Contract to the next lowest responsible bidder.**
- e. The Director is authorized to suspend any Contractor who has failed to make Good Faith Efforts to meet an established M/WBE goal; and to suspend any M/WBE who has failed to make Good Faith Efforts to meet all requirements necessary for participation as an M/WBE.
- f. Contractor shall execute written contracts with all M/WBE Subcontractors and shall include in all such contracts those provisions provided in Article 5 of Document 00800 - Supplementary Conditions.
- g. Contractor shall designate an M/WBE liaison officer who will administer the Contractor's M/WBE program and who shall be responsible for maintenance of records of Good Faith Efforts to subcontract with M/WBE Subcontractors/Suppliers.

2. After Award:

- a. Contractor shall submit M/WBE Monthly Utilization Reports, requested in Article II hereof.
- b. The Contractor, upon approval of the Director, shall make Good Faith Efforts to replace a certified M/WBE Subcontractor or Supplier that is displaced, for any reason, with another certified M/WBE Subcontractor.
- c. After award of the Contract, Contractor shall comply with Document 00620 - List of Proposed Subcontractors and Suppliers, Part A - M/WBE Participation Plan unless the Director approves deviation therefrom. Approval shall not be unreasonably withheld.
- d. Contractor shall submit all disputes with M/WBE Subcontractors and Suppliers to binding arbitration as set out in the City's Affirmative Action/ Contract Compliance Division, Minority/Women Business Enterprise (M/WBE) Procedures dated June 1995.

F. ELIGIBILITY OF AN M/WBE

- 1. To ensure that the M/WBE program benefits only those firms that are owned and controlled by a minority person(s) or a woman (women), the Affirmative Action Division will certify the eligibility of M/WBE Subcontractors/Suppliers. Contact the Affirmative Action Division Certification Section at (713) 837-9000 for information regarding certification.
- 2. The Affirmative Action Division publishes and maintains a Minority and Women Disadvantaged Business Enterprise Directory. This Directory is available from the Affirmative Action Division for Contractor use.

NOTE: All M/WBE firms, even if certified by another agency, must be certified by the Affirmative Action Division in order to qualify for attainment of the M/WBE goal.

G. DETERMINATION OF M/WBE PARTICIPATION

M/WBE participation shall be counted toward meeting the M/WBE goal in accordance with the following:

1. Once a firm is certified as an M/WBE, the total dollar value of the subcontract awarded to the M/WBE is counted toward the M/WBE participation goal (See paragraph III.G.4 and III.G.5).
2. When Contractor or Subcontractor is in a joint venture with one or more M/WBEs to satisfy its M/WBE goal, the Director shall determine the percent of participation resulting from such joint venture to be counted toward the M/WBE goal.
3. Contractor may count toward its M/WBE goal, those M/WBE Subcontractors/ Suppliers performing a Commercially Acceptable Function.
 - a. **COMMERCIALLY ACCEPTABLE FUNCTION** means a discrete task or group of tasks, the responsibility for performance of which shall be discharged by the M/WBE by using its own forces or by actively supervising on-site the execution of the tasks by another entity for whose work the M/WBE is responsible. Without limiting the generality of the foregoing, an M/WBE will not be considered to be performing a commercially acceptable function, if it subcontracts to non-M/WBE firms or to other M/WBE firms, more than 50 percent of a contract being counted toward the applicable participation goal, unless such subcontracting in excess of 50 percent has been expressly permitted by the Director in a written waiver of this requirement. A waiver shall be granted upon demonstration that the industry standard for the type of work involved is to subcontract over 50 percent of the work.
4. An M/WBE cannot subcontract more than 50 percent of the Work for which it is responsible to perform unless waived by the Director.
5. Contractor may count 100 percent of M/WBE Supplier's participation toward its M/WBE goal and such M/WBE Supplier contracts shall not exceed 50 percent of the Contract's M/WBE goal.

H. COMPLIANCE OF THE CONTRACTOR

To ensure compliance with M/WBE requirements, the Affirmative Action Division will monitor Contractor's efforts regarding M/WBE Subcontractors/Suppliers during the performance of this Contract. This may be accomplished through the following: job site visits, reviewing of records and reports, and interviews of randomly-selected personnel.

I. RECORDS AND REPORTS

1. Contractor shall submit an initial report outlining M/WBE participation, 40 days after the Notice to Proceed date, and on or before the fifteenth day of each month thereafter until all M/WBE subcontracting or material supply activity is completed. Each report shall cover the preceding month's activity. The M/WBE Monthly Utilization Report form is Attachment B.
2. Contractor shall maintain the following records for review upon request by the Affirmative Action Division:
 - a. Copies of executed Subcontractor agreements and purchase orders;
 - b. Documentation of payments and other transactions with M/WBE Subcontractors/Suppliers;
 - c. Appropriate explanations of any changes or replacements of M/WBE Subcontractors/Suppliers;

NOTE: All replacement M/WBE Subcontractors/Suppliers must be certified by the Affirmative Action Division.

- d. Any other records required by the Director.
3. If the goal is not being met, the monthly report shall include a narrative description of the progress being made in M/WBE participation. If sufficient M/WBE Subcontractors or Suppliers to meet the M/WBE goal are being utilized, they should be identified by name and the dollar amount paid to date for work performed or materials furnished by each M/WBE during the monthly period. Reports are required when no activity has occurred in a monthly period.
4. All such records must be retained for a period of four years following completion of the Work and shall be available at reasonable times and places for inspection by authorized representatives of the City including the City Controller.

IV. SANCTIONS:

A. SUSPENSION PERIOD AND WAIVER

Pursuant to Section 15-86 of the Code of Ordinances, the Director is authorized to suspend for a period of up to, but not to exceed, five years, any Contractor who has failed to make Good Faith Efforts. The Director is also authorized to suspend any M/WBE who has failed to make Good Faith Efforts from engaging in any Contract affected by Article V of Chapter 15 of the Code of Ordinances for a period of up to, but not to exceed, five years.

B. GUIDELINES FOR IMPOSITION OF SANCTIONS

1. General:

- a. No suspension shall be imposed by the Director except upon evidence of specific conduct on the part of an M/WBE or a Contractor that is inconsistent with or in direct contravention of specific applicable requirements for Good Faith Efforts.
- b. Imposition and enforcement of suspensions shall be consistent with applicable state law.

2. Severity of Sanctions:

- a. In determining the length of any suspension, the Director shall consider the following factors:
 - (1) Whether the failure to comply with applicable requirements involved intentional conduct or, alternatively, may be reasonably concluded to have resulted from a misunderstanding on the part of the Contractor or M/WBE of the duties imposed on them by Article V of Chapter 15 of the Code of Ordinances and these procedures;
 - (2) The number of specific incidences of failure by the Contractor or M/WBE to comply;
 - (3) Whether the Contractor or M/WBE has been previously suspended;
 - (4) Whether the Contractor or M/WBE has failed or refused to provide the Director with any information requested by the Director or required to be submitted to the Director pursuant to law or these procedures;
 - (5) Whether the Contractor or M/WBE has materially misrepresented any applicable facts in any filing or communication to the Director; and
 - (6) Whether any subsequent restructuring of the subject business or other action has been undertaken to cure the deficiencies in meeting applicable requirements.
- b. Suspensions may be for any length of time not to exceed five years. Suspensions in excess of one year shall be reserved for cases involving intentional or fraudulent misrepresentation or concealment of material facts, multiple acts in contravention of applicable requirements, cases where the Contractor or M/WBE has been previously suspended, or other similarly egregious conduct.

C. DELEGATION

A decision to implement a suspension may be taken after notice and an opportunity for a hearing by the Director or by another impartial person designated by the Director for that purpose. The Director or other person conducting the hearing shall not have participated in the actions or investigations giving rise to the suspension hearing.

D. NOTICE

- 1. Prior to the imposition of any suspension, the Director shall deliver written notice to the Contractor or M/WBE setting forth the grounds for the proposed suspension and setting a date, time, and place to appear before the hearing officer for a hearing on the matter.

2. Any notice required or permitted to be given hereunder to any Contractor or M/WBE may be given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested, addressed to their most recent address as specified in the records of the Affirmative Action Division or in the Contract if no address is on file with the Affirmative Action Division.

E. HEARING PROCEDURES

Proceedings before the Director or other hearing officer shall be conducted informally, provided that each party may be represented by counsel and may present evidence and cross-examine witnesses. The burden shall be upon the City by a preponderance of evidence. The decision shall be reduced to writing and notice provided to the Contractor or M/WBE.

F. APPEALS

Appeals authorized pursuant to Section 15-86(b) of the Code of Ordinances shall be conducted by an arbitrator who shall act as the hearing officer. Alternatively, an appeal may be taken to City Council, subject to the appellant's compliance with Rule 12 of the City Council Rules of Procedure. Appeals shall be initiated by filing a written notice of appeal with the Director no later than fifteen days following the mailing of notice of the decision of the Director, and the appeal notice shall state whether the appeal is requested to City Council or to an arbitrator. If an arbitration appeal is requested, then the arbitrator shall be selected as provided in Section 9 of these procedures. The arbitrator's or City Council's decision, as applicable, shall be final. The Director shall determine whether to suspend his or her order pending an appeal, taking into account the criteria set forth in Section 6(B)(2) of these procedures.

ATTACHMENT A

CONTRACTOR GOOD FAITH EFFORTS

“Good Faith Efforts” means those efforts required to be made and demonstrated by: (1) an apparently successful Bidder or proposer prior to award of a Contract (whether a Goal-Oriented Contract or a Regulated Contract), (2) a Contractor upon award of a Contract or receipt of Purchase Order, and (3) a Contractor during performance of the Contract, in attempting to meet the Contract’s M/WBE goal.

A. Good Faith Efforts for Bidders and Contractors in construction, procurement, and professional services shall mean at a minimum the following:

- 1.** Delivery of written notice to the following:
 - a.** All local certified M/WBEs in the directory for the month prior to the month of the bid or proposal submission date and identified as performing work or services or providing commodities for all potential subcontracting or supply categories in the Contract; and
 - b.** All minority and women focused associations identified in the directory for the month prior to the month of the bid or proposal submission date; and
 - c.** All news media focused toward minority persons and women identified in the directory for the month prior to the month of the bid or proposal submission date; and
 - d.** All M/WBEs which requested information on the Contract.
- 2.** The written notices will contain:
 - a.** Adequate information about the plans, specifications, and relevant terms and conditions of the Contract and about the work to be subcontracted to or the goods to be obtained from Subcontractors and Suppliers;
 - b.** A contact person within the apparent low bidder's or proposer's office to answer questions;
 - c.** Information as to the apparent low bidder's or proposer's bonding requirements, the procedure for obtaining any needed bond, and the name and telephone number of one or more acceptable surety companies to contact;
 - d.** The last date for receipt by the Bidder or proposer of M/WBE bids or price quotations.
- 3.** Attendance at any special pre-bid meeting called to inform M/WBEs of subcontracting or supply opportunities, if set forth in the bidding or proposal documents.
- 4.** Division of the Contract, as recommended by the department head of the initiating City department and in accordance with normal industry practice, into small, economically feasible segments that could be performed by M/WBEs.
- 5.** Providing an explanation for rejection to any M/WBE whose bid or price quotation is rejected, unless another M/WBE is accepted for the same work, as follows:
 - a.** Where price competitiveness is not the reason for rejection, a written rejection notice including the reason for rejection will be sent to the rejected M/WBE;
 - b.** Where price competitiveness is the reason for rejection, a meeting must be held, if requested, with the price-rejected M/WBE to discuss the rejection; and

6. Providing an explanation for rejection of any M/WBE to the Affirmative Action and Contract Compliance Division, unless another M/WBE firm is accepted for the same work, including the name of the non-M/WBE firm proposed to be awarded the subcontract or supply agreement, and if price competitiveness is the reason for rejection, the M/WBE's price quotation and the successful non-M/WBE's price quotation.
 7. If awarded the prime contract, entering into subcontracts with M/WBEs as provided and in accordance with the Plan, unless deviation therefrom is requested by Contractor and approved by the Director as provided in these procedures.
 8. Submitting a dispute with an M/WBE participant, potential participant, or subcontractor to arbitration/mediation when requested to do so by the Director.
- B. GOOD FAITH EFFORTS FOR M/WBEs in construction, procurement, and professional services shall mean at a minimum the following:**
1. Furnishing prompt written responses to any written inquiry from the Director or any employee of the Affirmative Action Division regarding the M/WBE's performance or information germane to the M/WBE's certification;
 2. Ensuring that at all times during the performance of any Contract or subcontract subject to the requirements of Chapter 1 of the Code of Ordinances the M/WBE is engaging in a commercially acceptable function as that term is defined herein;
 3. Ensuring that no application, response to a request for information, or other factual material submitted to the Director or any employee of the Affirmative Action Division contains any material misrepresentation; and
 4. Furnishing prompt responses to requests from the department administering the Contract, the City Attorney and the City Controller for information, books, and records needed to verify compliance.

END OF DOCUMENT

M/WBE Monthly Utilization Report

Report Period _____

Date of Report _____

PROJECT NAME: _____
 GFS & FILE NUMBER: _____
 PRIME CONTRACTOR: _____
 ADDRESS: _____
 PROJECT MANAGER _____
 PHONE NUMBER: _____

Contract No.: _____
 Date of Commenc: _____
 Est. Compl. Date: _____
 Contract Amount: \$ _____
 Amount Paid to Date: \$ _____
 M/WBE Goal (%): _____
 Est. % of Job Completed: _____

M/WBE SUBCONTRACTOR OR SUPPLIER	DATE OF AA CERTIFICATION	DATE OF SUBCONTRACT	SUBCONTRACT AMOUNT	% OF CONTRACT PARTICIPATION	AMOUNT PAID THIS PERIOD	AMOUNT PAID TO DATE	% OF CONTRACT TO DATE
TOTALS							

- Additional pages may be added.
- Provide support documentation on all revenues paid to M/WBE Subcontractors/Suppliers, to reflect all variances in Contract amount stated in Plan.
- Submit original of the report by the 15th day following the report period to:
 AFFIRMATIVE ACTION/CONTRACT COMPLIANCE DIVISION
 ATTN: DIRECTOR - AFFIRMATIVE ACTION
- Submit copies of the report by the 15th day following the report period to:
 1. DEPARTMENT OF PUBLIC WORKS AND ENGINEERING
 ATTN: ECRE GROUP M/WBE COORDINATOR
 2. PROJECT MANAGER OF RECORD