



MWBE Program Plan

Financial Services Department

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April 2019

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POLICY STATEMENT

It is the policy of the City of Greenville to provide minorities and women equal opportunity for participating in all aspects of the City's contracting and procurement programs. This includes construction projects, supplies/materials purchase, professional and other service contracts, and all other procurement by the City of Greenville.

OVERVIEW

The City of Greenville's Minority and Women Business Enterprise Program (MWBE) is a participation goals program for construction, purchasing, and professional and personal services based on "good-faith efforts". These goals were established for a set period of time and achievement will be evaluated.

The goals of the City for utilization of minority and women business enterprises are:

- Minority business participation in construction services. 10%
- Women business participation in construction services 6%
- Minority business participation in supplies and materials purchases. 2%
- Women business participation in supplies and materials purchases. 2%
- Minority business participation in professional and personal services. 4%
- Women business participation in professional and personal services. 4%

I. INTRODUCTION

In 1989, the North Carolina General Assembly amended G.S. 143-128 requiring the establishment of "verifiable percentage goals for minority business participation in contracts for the erection, construction, alteration or repair of public buildings" where the cost exceeded \$100,000.

Cities and other governmental bodies were to adopt a verifiable goal for participation by minority businesses after notice and public hearing. On December 11, and December 12, 1989, the City of Greenville adopted an interim Minority Business Enterprise Participation Plan with a goal of ten (10) percent participation by minority individuals and businesses until a sufficient factual database was collected to establish verifiable goals.

The City of Greenville conducted a Utilization Study of minority businesses in the City's purchasing programs based on an appropriate pool of qualified MWBEs. The City of Greenville contracted with the North Carolina Institute of Minority Economic Development to assist the City in establishing a verifiable Minority and Women Business Enterprise Goals Program based on the statistical evidence of the study. The minority and women business goals' guidelines developed and recommended do not require nor provide for racially based set-asides; rather they require good-faith effort by both local government and contractors to recruit and select minorities and women businesses, consistent with North Carolina Statutes and the Constitution of the United States as interpreted by the **Croson Decision**.

II. ADMINISTRATION

The City Manager is authorized to take all usual and legal administrative actions necessary to implement this Plan. The ultimate responsibility for the MWBE Plan's administration is assigned to the City Manager. The City Manager is either to be personally responsible or designates a specific person to coordinate and manage this Plan. The City Manager or their designee is responsible for determining whether a contractor has complied with the provisions of this Plan or has shown good-faith effort to do so. Except for those staff services specifically assigned by this Plan to other departments, the heads of departments responsible for construction, procurement of services and materials shall be responsible to the City Manager or their designee and shall cooperate with the City Manager in implementing this Plan.

The MWBE Plan shall apply to all contracts for construction, supplies, and services as specified in Sections IV. The provisions of this Plan take precedence over any other department plans or procedures in conflict herewith, except specific requirements mandated by terms or conditions of agreements in force between the City and the State of North Carolina or the federal government that require different procedures than those described in this Plan. This Plan will be evaluated periodically to determine its effectiveness and what adjustments are required.

III. DEFINITIONS

Inclusive Action - Specific steps to eliminate discrimination and efforts to ensure nondiscriminatory results and practices in the future, and to fully involve minority business enterprises and women business enterprises in contracts and programs.

Bidder/Participant - Any person, firm, partnership, corporation, association, or joint venture seeking to be awarded a public contract or subcontract.

Contract - A mutually binding legal relationship or any modification thereof obligates the seller to furnish equipment or service, including construction and leases, and obligating the buyer to pay for them.

Contractor - Any person, firm, partnership, corporation, association, or joint venture that has been awarded a public contract or lease, includes every subcontract on such a contract.

Discrimination - To distinguish, differentiate, separate and/or segregate on the basis of age, race, religion, color, sex, national origin, handicap and/or veteran status.

Equipment - Includes materials, supplies, commodities, and apparatus.

Goal - A voluntary percentage or quantitative objective.

Joint Venture - An association of two or more businesses to carry out a single business enterprise for profit, for which purpose they combine their property, capital, efforts, skills, and knowledge.

Lessee - A business that leases, or is negotiating to lease, property from the City or equipment or services to the City of Greenville, or to the public on City property.

Minority - A person who is a citizen or lawful permanent resident of the United States and who is:

- a. Black (a person having origins in any of the black racial groups of Africa);
- b. Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
- c. Portuguese (a person of Portuguese, Brazilian, or other Portuguese culture origin, regardless of race);
- d. Asian (a person having origins in any of the original people of the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands);
and

e. American Indian and Alaskan Native (a person having origins in any of the original people of North America).

MWBE - Any minority or women business enterprise.

HUB – Historically underutilized businesses as outlined and defined by the Department of Administration and General Statute.

Minority or Women Business Enterprise (MWBE) - A business that is at least fifty-one (51) percent owned and controlled by minority group members or women. An MWBE is **bona fide** only if the minority group or female ownership interests are real and continuing and not created solely to meet the MWBE requirement. In addition, the MWBE must itself perform satisfactory work or services or provide supplies under the contract and not act as a mere conduit. In short, the contractual relationship must also be **bonafide**. **All firms will need to have HUB certification from the Department of Administration before certified as MWBE.**

IV. PROCEDURES FOR CONSTRUCTION, PURCHASE, PROFESSIONAL AND PERSONAL SERVICE CONTRACTS

A. Purpose and Application

1. The purpose of this Program is to help develop and support Minority and Women Business Enterprises (MBE and WBE). This is done by providing opportunities and support for participation in the performance of all construction, purchase, professional and personal services contracts financed with City, state, and federal funds.

2. This Program shall apply to construction, purchase, professional and personal services contracts when the City's estimated contract cost is \$30,000 or more, except when a contract is exempt from competitive bidding under the General Statutes of North Carolina. Contracts between \$5,000 and \$30,000 that are negotiated will also be covered.

3. Where contracts are financed in whole or in part with federal or state funds, including grants, loans, or other funding sources containing MBE and WBE Programs, the City will, where permitted by the grantor, meet the program requirements with the highest MWBE goals. The City Manager will be responsible for monitoring the Program to ensure the goals are met.

4. Since City construction, purchase, professional and personal services contracts are prepared and administered by various departments, each department shall prepare contract documents and have them verified by the MWBE coordinator before posting of advertisement.

a. The MWBE procedures and contract provisions shall be in effect for all bid documents issued after the date of the City's approval.

B. MWBE Goals

1. To implement the purpose of this Program, the goal shall be to award at least ten (10) percent of the total of all construction contract award amounts in each fiscal year to MBE firms and at least six (6) percent to WBE firms (4) percent will be applied for professional services and services. The (2) percent threshold will be applied for purchasing of materials and supplies that are competitively bid.
2. The City Manager and/or MWBE Program Coordinator may determine that higher or lower goals are appropriate on a project-by-project basis, where it can be shown that the type, size, or location of the project will affect the availability of MBE and WBE firms, so long as the aggregate of all contracts does not lower the annual goals.

C. Bid Documents

1. Bidders shall submit MWBE information with their bids when MWBE documents are present. Such information shall be subject to verification by the City prior to the awarding of the contract. The information shall include names of MWBEs to be used and the dollar value of each such MWBE transaction. Contractors will be responsible for submitting all required documents and supporting information as outlined in the instructions to bidders.
2. Contractors, subcontractors, suppliers, or MWBE members of a joint venture intended to satisfy the City MWBE goals shall be certified by the Department of Administration (HUB).

D. City of Greenville Responsibilities

1. Certification –

a. The certification process will involve submission of a completed certification form or inclusion on NC Department of Administration HUB office registry. All businesses must be recertified every forty eight (48) months for HUB. The submitted form will be subject to approval by the HUB office. The City does not certify firms. The following must be used to gain certification:

- * North Carolina Department of Transportation Reciprocity Certification
- * North Carolina Department of Historically Underutilized Business

2. Certification Eligibility Standards –

a. The eligibility of a business is determined by the ownership and control of the business.

b. An eligible Minority Business Enterprise owner is a citizen or lawful permanent resident of the United States, a member of a recognized ethnic or racial group, and fifty-one (51) percent owner of the business.

The eligible ethnic or racial groups are:

- * Black
- * Hispanic
- * Portuguese
- * Asian/Pacific Islander
- * American Indian/Alaskan Native

c. An eligible Women Business Enterprise owner is a citizen or lawful resident of the United States and a fifty-one (51) percent owner of the business and is female.

3. Pre-bid Conference - The City may hold a pre-bid conference on all informal and formal contracts for prospective bidders, subcontractors, and MWBEs for the purpose of explaining the provisions of the MWBE Plan, the process for bidding, and the contract to be performed. Available data on MWBEs interested and/or capable of engaging in the prospective contract shall be made available to prospective bidders, contractors, and subcontractors.

E. Contractor Responsibilities

1. The contractor (bidder) shall make good-faith efforts to encourage participation and submit all necessary documents and affidavits affirming those efforts in order to be considered a responsive bidder when MWBE documents are provided. A good-faith effort shall include, at a minimum, specific inclusive action steps and complete documentation thereof. The following list of factors to determine good-faith effort is not exclusive or exhaustive:

a. Whether the bidder attended any presolicitation or pre-bid meetings, if scheduled by the City;

b. Whether the bidder identified and selected specific items of the project for which the contract could be performed by Minority and/or Women Business Enterprises, to provide an opportunity for participation by those enterprises (including, where appropriate, breaking down contracts into economically feasible units to facilitate MWBE participation);

- c. Whether the bidder advertised, a reasonable time before the date the bids are opened, in one or more daily or minority weekly newspapers or trade associations (i.e., N.C. Minority Business Association), trade journals, or other media;
- d. Whether the bidder provided mail notice of their or her interest in bidding on the contract to at least three (3) Minority or Women Business Enterprises (for each identified sub-item of the contract) licensed to provide the specific items of the project a reasonable time prior to the opening of bids;
- e. Whether the bidder provided interested Minority and Women Business Enterprises with information about the plans, specifications, and requirements for the selected subcontracting or material supply work;
- f. Whether the bidder contacted the City's MWBE Office for assistance in identifying minority and women businesses certified with the City and three (3) approved public agencies as referenced in Section IV, D(2)a;
- g. Whether the bidder negotiated in good-faith with Minority or Women Business Enterprises and did not unjustifiably reject as unsatisfactory bids prepared by and Minority or Women Business Enterprises, as defined by the City;
- h. Whether the bidder, where applicable, advised and made efforts to assist interested Minority and Women Business Enterprises in obtaining bonds, lines of credit, or insurance required by the City or contractor;
- i. Whether the bidder's efforts to obtain Minority and Women Business Enterprise participation could reasonably be expected by the City to produce a level of participation sufficient to meet the goals of the City.

Bidders are cautioned that even though their submittal indicates they will meet the MWBE goals, they should document their good-faith efforts and be prepared to submit this information to protect their eligibility for award of the contract in the event the City questions whether the good-faith requirement has been met.

2. Performance of MBE and WBE Subcontractors and Suppliers - The MWBEs listed by the contractor on the Schedule of MWBE Participation, which are registered with and certified by the Department of Administration HUB Office, shall perform the work and supply the materials for which they are listed unless the contractor has received prior written authorization from the City to perform the work with other forces or to obtain the materials from other sources.

The contractor shall enter into and supply copies of "Letters of Intent" for each MWBE listed on Affidavit C or D to the City's MWBE Program Coordinator after award of the contract and prior to the issuance of a Notice to Proceed. Any amendments to the subcontracts shall be submitted to the MWBE Office within five (5) days of execution.

Authorization to utilize other forces or sources of materials may be requested for the following reasons:

- a. The listed MWBE, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract, when such written contract, based upon the general terms, conditions, plans and specifications for the project, or on the terms of such subcontractor's or supplier's written bid, is presented by the contractor.
- b. The listed MWBE becomes bankrupt or insolvent.
- c. The listed MWBE fails or refuses to perform their/her subcontract or furnish the listed materials.
- d. The work performed by the listed subcontractor is unsatisfactory according to industry standards and is not in accordance with the plans and specifications; or the subcontractor is substantially delaying or disrupting the progress of the work.

F. Awarding of Contracts

1. If a construction contract is to be awarded, it shall be awarded in accordance with North Carolina General Statutes to the lowest responsive responsible bidder who complies with all of the prescribed requirements and either:
 - a. Made a good-faith effort to comply with these goals and requirements before the time bids are opened as described above. Where a good-faith effort is claimed by the apparent lowest responsive responsible bidder, the bidder shall be required to submit documentation WITHIN SEVENTY-TWO (72) HOURS OR THREE BUSINESS DAYS AFTER THE CITY'S NOTIFICATION, which in most instances will occur the day of bid opening to show that the criteria for good-faith efforts have been met, or
 - b. Once a firm is determined to be an eligible MWBE, and before the contract is awarded, the total dollar value to be paid to the MWBE shall be evaluated by the MWBE Office to ensure that it is in accordance with the bidder's proposal.

If the evaluation shows that the bidder has misrepresented MWBE participation or has not made a good-faith effort to meet the contract goals for MBE and WBE participation, the bidder may be disqualified.

G. Counting MWBE Participation toward Meeting the Goals

The degree of participation by MWBE contractors, subcontractors, suppliers, or joint-venture partners in contract awards shall be counted in the following manner:

1. Once a firm is determined to be an eligible MWBE contractor in accordance with this Plan, the total dollar value of the contract awarded to the MWBE is counted as

participation.

2. The goals can be met by any certified MWBE contractor, subcontractor, supplier, trucker, or joint-venture partner as listed in Department of Administration's HUB directory. All MWBEs used to meet the goal must be certified by the approved agency at the time of bid opening. Only certified firms listed in the directory can be counted toward the goal. The standard for certification is set forth in this Plan.

3. The total dollar value of a contract with a business owned and controlled by a minority woman is counted toward either the minority goal or the goal for women, but not toward both. The contractor or City employing the firm may choose the goal to which the value is applied.

4. In the case of a joint venture, the joint venture recipient or contractor may count toward its MWBE goals a portion of the total dollar value of the contract that the MWBE partner's participation in the joint-venture represents. Credit will be given equal to the minority partner's percentage of ownership in the joint venture. A MWBE joint-venture partner must be responsible for a clearly defined portion of the work to be performed in addition to satisfying requirements for ownership and control.

5. A recipient or contractor may count toward its MWBE goals only expenditures to MWBEs whose ownership interests are real and continuing and not created solely to meet the City's goals for participation, and that perform a commercially useful function in the work of a contract. A MWBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether a MWBE is performing a commercially useful function, the MWBE Office shall evaluate the amount of work subcontracted, industry practices, and other relevant factors. Consistent with normal industry practices, an MWBE may enter into subcontracts. If a MWBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the MWBE shall be presumed not to be performing a commercially useful function. Evidence to rebut this presumption may be presented to the City. The MWBE may present evidence to rebut this presumption. The MWBE Office's decision on the rebuttal of this presumption is subject to review by the City Manager or their designated representative. Once a firm is determined to be an eligible MWBE in accordance with this section, the total dollar value of the contract awarded to MWBE is counted toward the applicable MWBE goals, except as provided in the provisions of this section.

6. A contractor will need to include supplies and materials allocation when considering the use of Affidavit B. MWBE firms should be contacted for supplies and materials when available.

H. Documentation of Attainment of MWBE Participation Requirements

In order that the City Manager may make a recommendation to the City as to the

responsiveness of bidders, bidders shall be required to submit the following information on each MWBE-related subcontract:

1. A description of the subcontract and purchase(s) of significant equipment and supplies to be used to perform the subcontract or prime contract, including the name and address of each MWBE firm selected, and the name and telephone number of a contact person;
2. The dollar amount of participation of each MWBE;
3. A statement of intent from the MWBE subcontractor or material supplier as
 - a. Identified in Section IV, H (1) above that they intend to contract or supply the materials, or
 - b. Sworn statements, with appropriate documentation, showing that the contractor made a good-faith effort to comply with the MWBE Plan in accordance with Section IV, E of this Plan

V. GRIEVANCE PROCEDURE

Any participant feeling himself/herself aggrieved by implementation of the MWBE Program may present such grievance to the City. The grievance (except for certification as a MWBE) shall be first discussed with the responsible operating department. If the grievance is not resolved, a written description of the grievance with appropriate supporting evidence shall be presented to the MWBE Program Coordinator. The MWBE Program Coordinator will review the grievance and supporting evidence and make a written response to the participant within ten (10) working days. In the event the participant is not satisfied, said participant may appeal the grievance by filing a written description thereof and supporting evidence with the City Manager. The City Manager shall hear the grievance within ten (10) working days and shall make a decision thereon, which shall be final.