

ELK COUNTY'S



MINORITY AND WOMEN'S BUSINESS ENTERPRISE PLAN (MBE/WBE)

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ELK COUNTY

I. POLICY STATEMENT

It is public policy of the County of Elk 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 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. 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. 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. Control - The exclusive or ultimate and sole control of a business including but not limited to, capital investment and all other financial, property, acquisition, contract negotiation, and legal matters, officer-director-employee selection and comprehensive hiring, operating responsibility, cost-control matters, income and dividend manners, financial transaction and rights of other shareholders or joint partners. Control shall be real, substantial, and continuing, not pro forma. Control shall include the power to direct or cause the direction of the management and policies of the business and to make the day-to-day as well as major decisions in matters of policy, management, and operations. Control shall be exemplified by possession of the requisite knowledge and expertise to run the particular business and control shall not include majority of absentee ownership. Further, control by a minority individual or woman shall not be deemed to exist in any case where any non-minority owner or employee of the business is disproportionately responsible for the operation of the firm.
- 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 or 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, 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. Socially/Economically Restricted Business (SERB) - SERBs are business whose economic growth and development has been restricted based on social and economic bias. Such businesses are MWBEO certified minority and women owned businesses and certain restricted businesses whose developments has been impeded because their primary or headquarter facility is physically located in an area designated by the Commonwealth as begin in an enterprise zone. Businesses will not be considered socially/economically restricted if one of the conditions listed below exists.
1. The business has growth revenues exceeding four million dollars annually; or
 2. The concentration of an industry is such that 50 percent of the market is controlled by the same type of SERB (MBE/WBE) or businesses within designated enterprise zones.
- K. 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.
- L. Women - United States citizens who are of the female gender.

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

1. Plans and Specifications - Plans and Specifications or Invitations for Bids in all projects will be made available to minority/women contractor associations and trade organizations;
2. 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 listing.
3. List of Minority/Women Business - 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. 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 the form, MBE/WBE Contract/Solicitation and Commitment Statement whether the firm is begin listed as either an MBE or a WBE.
- b. 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 for material and/or supplies.
- c. MBE/WBE subcontractors must perform at least seventy-five percent (75%) of the cost of the subcontract, not including the cost of materials, with own employees.

1. Responsiveness

- a. Bidders must complete and submit Form MBE/WBE Contract/Solicitation and Commitment Statement with the bid. Failure to submit this form with the bid, will result in the bid begin rejected as non-responsive.
- b. A bidder should only solicit MBE/WBE subcontractors, vendors, manufacturers, or suppliers whose services, material, or suppliers 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 the 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 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 or 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 MBE/WBE Contract/Solicitation and Commitment Statement 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 MBE/WBE Contract/Solicitation and Commitment Statement or on additional paper.

2. 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 Elk will determine whether discrimination has occurred. If, after investigation including a review of Form MBE/WBE Contract/Solicitation and Commitment Statement, 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 Elk or the administering agency performing the evaluation of the invitation for Bid.

3. Access to Information

The County of Elk 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 begin declared not responsible.

4. 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. PROCEDURES - CONTRACTOR COMPLIANCE PROCESS

A. Contract Provisions

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

- 1. The prime contractor must provide the County of Elk 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.
- 2. MBE/WBE Subcontractors must provide the County of Elk 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.

B. Grantee Compliance procedures

1. The prime contractor will be informed by the County of Elk 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 Elk 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 Elk County Board of Commissioners, December 7, 2010, at the regular scheduled Board Meeting.

ELK COUNTY COMMISSIONERS

June H. Sorg, Chairman

Daniel R. Freeburg, Commissioner

Ronald Beimel, Commissioner

ATTEST:

Jean Zore, Chief Clerk