

THE PITTSBURGH WATER AND SEWER AUTHORITY

Minority and Women Business Enterprise Participation Policy

A. OVERVIEW

It is the policy of The Pittsburgh Water and Sewer Authority (Authority) to ensure that Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) have the opportunity to receive and participate in Authority contracts. The Authority's MBE and WBE policy is a goal and not a quota. The Authority's goals are to facilitate the development of local minority, women's and disadvantaged businesses within the Pittsburgh region. In furtherance of these goals, the Authority requires that all contractors and/or consultants performing work for the Authority under a construction contract or a professional services contract demonstrate a good faith effort to obtain the participation of MBE and WBE firms.

This policy shall apply to all bids and proposals submitted to the Authority in response to an Invitation for Bids (IFB) or a Request for Proposal (RFP). It is the goal of the Authority that eighteen percent (18%) of each contract amount be expended for participation by MBE firms and seven percent (7%) of each contract amount be expended for participation by WBE firms. All work shall be valid in furtherance of the scope of the project. The MBE and WBE participation of the contract shall be subject to the review of the Equal Opportunity Review Commission of Pittsburgh (the "EORC") for all contracts over \$250,000.00. However, the Authority has the final decision as to whether or not it accepts the EORC's recommendation.

The Authority will have at least one member of its staff and/or consultant designated as its MBE/WBE specialist (the "Specialist") to facilitate, monitor, track and report MBE and WBE participation by the Authority's contractors/consultants. These duties may be in addition to other duties performed by this individual and this individual may delegate duties to others as authorized by Authority management.

B. MBE/WBE QUALIFICATIONS

MBE and WBE firms are defined herein as businesses certified as such by the Pennsylvania Unified Certification Program (including Allegheny County, Port Authority of Allegheny County, Pennsylvania Department of Transportation) and/or the National Minority Supplier Diversity Council. The certification must be current at the time the bid/proposal is submitted and shall continue throughout the time the MBE/WBE firm will be doing work under the contract.

MBE and WBE firm participation may be achieved by any combination of the following:

PERCENTAGE ASSIGNMENT OF PROJECT COSTS TO M/WBE COMPLIANCE ¹		
TYPE OF MWBE SUBCONTRACT	SERVICES DESCRIPTION	PERCENTAGE ALLOWANCE OF COST ALLOCABLE TO MWBE
Professional Services, Construction Activity	An MBE/WBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved.	100%
Broker	Pass through of purchased supplies and materials, or hired labor	10%
Supplier	Materials or supplies purchased from a MBE/WBE Certified regular dealer of the equipment, supplies, etc.	60%
General Services	Management and supervision of the service organization or business activity for which it is responsible on a particular contract	100%

¹ Percentage allowances all in accordance with **49 CFR 26.55**

C. BIDDING/PROPOSING ON A PROJECT

1. A bidder/proposer bidding on a contract must demonstrate to the Authority that it has made a diligent good faith effort to meet the Authority’s goals for MBE and WBE participation. A good faith effort must be shown by a bidder/proposer, regardless of whether or not the bidder/proposer has met the Authority’s goals for MBE and WBE participation. Good faith effort shall, at a minimum, mean performing and documenting all of the following:

- (a) contacting the Authority’s Specialist to identify sources for certified MBE/WBE firms that have the capacity to meet particular contracting or subcontracting needs or to supply materials and services needed for the performance of the contract;
- (b) attending pre-bid/pre-proposal meetings to become informed of MBE/WBE firms for subcontracting opportunities;
- (c) advertising in general, trade and minority focused media;
- (d) providing sufficient timely written notice to a justifiable number of MBE/WBE firms in the Pittsburgh area that their interest in contracting or subcontracting or supplying materials or services on the project is requested;
- (e) following up the initial solicitations by contacting MBE/WBE firms to determine interest;

(f) selecting particular portions of the project work to facilitate subcontracting opportunities for MBE/WBE firms and select particular materials and services to be purchased for the performance of the project to become opportunities for MBE/WBE firms;

(g) providing interested MBE/WBE firms with plans, specifications and contract requirements;

(h) negotiating in good faith with interested MBE/WBE firms;

(i) utilizing the services of available minority community organizations and other organizations that provide assistance in the recruitment and placement of MBE/WBE firms;

(j) utilizing the services of the office of the EORC to provide assistance in the recruitment and placement of MBE/WBE firms; and

(k) providing a statement if MBE and WBE goals are not met, setting forth the reasons why agreements with MBE/WBE firms were not reached.

Documentation in the form of letters, emails, fax receipts, meeting notes, copies of advertisements, etc. will be required to confirm these efforts. Documentation shall include dates of all communications.

2. All bids and proposals submitted to the Authority must include a MBE/WBE Solicitation and Commitment Statement, a copy of which is attached hereto as Exhibit A, properly completed and signed. Failure to submit the signed MBE/WBE Solicitation and Commitment Statement as part of the bid/proposal shall be grounds for rejection of the bid/proposal. The MBE/WBE Solicitation and Commitment Statement of the proposed awardee will be submitted to the Specialist for review, along with any related MBE/WBE Participation Waiver Request (see page 4 of Solicitation and Commitment Statement attached as Exhibit A). The Specialist shall make a recommendation to the Executive Director of the Authority.

3. The Specialist shall review the MBE/WBE Solicitation and Commitment Statement submitted by the bidder/proposer and in its review, proceed as follows:

(a) If the MBE/WBE Solicitation and Commitment Statement is not completed, and no Waiver Request has been submitted, then the Specialist shall notify the Authority's procurement department and the Specialist shall declare the proposed awardee non-responsive. The Authority's procurement department shall notify the proposed awardee that its bid was non-responsive on this basis.

(b) If the MBE/WBE Solicitation and Commitment Statement is completed and no Waiver Request has been submitted, then the Specialist shall conduct the following review:

i. All the MBE and WBE firms listed shall be investigated to determine whether they are currently certified by an entity whose certification is acceptable to the Authority as set forth in Section B, above;

ii. All of the MBE and WBE firms listed which are found to be certified will be contacted. The Specialist will inquire into the following:

aa. whether the MBE or WBE firm was contacted by the bidder/proposer regarding the contract at issue.

bb. whether the bidder/proposer solicited the MBE or WBE firm for goods or services to be used in connection with the contract at issue.

cc. whether the MBE or WBE firm was capable of satisfactorily providing the goods or services sought by the bidder/proposer.

dd. whether the MBE or WBE firm has a written commitment from the bidder/proposer for goods or services in connection with the contract at issue.

ee. what the nature, dollar amount and percentage of total proposed award, of any commitment is that the MBE or WBE firm has with the bidder/proposer.

ff. whether the MBE or WBE (if the prime contractor) intends to subcontract more than 50% of the dollar amount of the services to be performed under the contract solicitation at issue.

gg. the Specialist shall then contact the bidder/proposer to review the information it has obtained and to give the bidder/proposer a final opportunity to submit relevant information which may have an impact upon the determination and recommendation hereunder.

hh. the review hereunder shall include a review of the Authority's own records to determine whether the bidder/proposer has a record of making good faith effort to include MBE and WBE firms in its past performance under Authority contracts.

4. If a Waiver Request is submitted by the bidder/proposer, the Specialist shall:

(a) review the MBE/WBE Solicitation and Commitment Statement;

(b) determine whether the bidder/proposer has made a good faith effort to utilize MBE and WBE firms in light of:

i. the number of available MBE and WBE firms whose market areas include the City of Pittsburgh;

ii. efforts made by the bidder/proposer to contact the MBE and WBE firms to obtain subcontractor bids;

(c) make a determination whether or not the waiver shall be granted.

5. Once the Specialist has reviewed the MBE/WBE Solicitation and Commitment Statement, the Authority shall determine whether the bidder/proposer has made a good faith effort to fulfill the Authority's MBE and WBE participation goals. If the bidder/ proposer has made a good faith effort to satisfy the goals, the Specialist shall contact the proposed awardee. The Authority's determination of the whether or not the proposed awardee meets the Authority's MBE and WBE shall be final. The Authority is under no obligation to accept the EORC's recommendation.

6. For contracts over \$250,000, prior to award of the contract, but within 24 hours of being notified that it is the proposed awardee, the proposed awardee shall submit to the Specialist a MBE/WBE participation plan (the Minority and Women's Participation Plan) that is acceptable to the Authority, in the form of Exhibit B hereto. The proposed awardee shall meet with the Specialist to discuss the implementation of the Minority and Women's Participation Plan. If the proposed awardee fails to submit a Minority and Women's Participation Plan acceptable to the Authority, the Authority may deem the bid non-responsive and award the contract to the next responsive bidder.

D. CONTRACT AWARDS OVER \$250,000.00

For contracts over \$250,000, the Specialist shall submit the proposed awardee's MBE/WBE Solicitation and Commitment Statement, and any other relevant documentation to the EORC. The EORC's recommendation shall be considered by the Authority but the Authority shall make its own independent determination if the proposed awardee has satisfied its MBE/WBE obligations. The Specialist will make one of the following recommendations to the Executive Director of the Authority:

1. The contract be awarded to the proposed awardee because the bidder/proposer has met or substantially met the Authority and/or the EORC's MBE and WBE participation goals.

2. That the contract be awarded to the bidder/proposer because the bidder/proposer has been granted a waiver from meeting the Authority and/or the EORC's MBE and WBE participation goals.

3. That the contract not be awarded to the bidder/proposer because the bidder/proposer has not made a good faith effort to fulfill the Authority and/or the EORC's MBE and WBE participation goals.

4. That the contract not be awarded to the bidder/proposer because the bidder's waiver request has been denied and therefore the bidder has not made a good faith effort to meet the Authority and/or the EORC's MBE and WBE participation goals.

E. CONTRACT AWARDS UNDER \$250,000.00

For contracts under \$250,000, the Authority's determination of the whether or not the proposed awardee met the Authority's MBE and WBE shall be final, and such contracts will not be reviewed by the EORC.

F. MONITORING WBE/MBE PERFORMANCE

During the course of construction (or performance of services under a professional services contract), the contractor /consultant shall submit to the Specialist, monthly reports on the form attached hereto as Exhibit C or in an electronic format as determined by the Authority, detailing MBE/WBE participation in the contract compared with the approved Minority and Women's Participation Plan.

1. After the contract has been awarded the Specialist shall monitor the contractor/consultant's MBE and WBE performance in the following manner:

(a) for construction contracts, the Specialist shall make monthly visits to the project site to determine whether the MBE/WBE participation projected in the Solicitation and Commitment Statement submitted by the contractor is being realized.

(b) The Authority shall require, as a condition of final payment, a report from the contractor/consultant detailing:

i. the dollar amount and percentage of the total contract paid to MBE firms and WBE firms along with the names and addresses of those MBE firms, and the amount will be substantiated by cancelled checks evidencing payments made to MBE and/or WBE firms.

ii. an explanation of any failure to achieve the goals stated in the contractor/consultant's approved Solicitation and Commitment Statement.

(c) upon the conclusion of any contract, the Specialist shall contact the MBE and WBE firms used by the contractor/consultant within one month after final payment and ask those MBE and WBE firms to evaluate the successful bidder/proposer with respect to:

i. the treatment of the MBE or WBE firm by the successful bidder/proposer with regard to the award, performance and payment for work performed or goods provided;

ii. whether the MBE or WBE firm had any complaints or suggestions regarding the contractor/consultant's work;

iii. whether the MBE or WBE firm had any complaints or suggestions regarding the Authority's contracting procedures.

iv. after final payment has been made, the Specialist shall evaluate whether the contractor/consultant made a good faith effort to utilize MBE/WBE firms in its performance under the contract. If the Specialist determines that a contractor/consultant has failed to make a good faith effort to include MBE/WBE firms in its performance under the contract, then the Authority shall retain such documentation for consideration of a bidder/proposer's responsibility status for future awards. In extreme cases, where a bidder/proposer has demonstrated an unwillingness to honor its MBE/WBE commitments under an Authority contract, the Specialist may recommend the bidder/proposer be excluded from bidding/proposing on future projects for not less than one (1) year.

2. The Specialist shall collect and maintain the following statistics with regard to Authority contracts:

(a) the number of contracts awarded by the Authority

(b) the dollar amount of each contract awarded by the Authority

(c) the dollar amount, and the percentage of each contract that it represents, of business awarded to MBE and WBE firms, and copies of the cancelled checks evidencing payment to MBE and WBE firms.

(d) the number and nature of complaints received against specific contractors by MBE and WBE firms.

(e) the number of contractors/consultants who met, exceeded or fell short of the MBE and WBE performance goals as stated on the approved MBE/WBE Solicitation and Commitment Statement.

3. The Specialist shall submit a monthly report discussing the performance of the Authority's MBE and WBE Policy in both narrative and quantitative forms to the Executive Director of the Authority.