



Minority and Women-Owned Business Enterprise Program Administration— Administrative - Fiscal

Responsible Department: Housing & Neighborhoods Department, MWBE Program	Effective Date: February 1, 2021
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PURPOSE OF PROCEDURES

The purpose of these procedures is to provide a framework for administering the City of Raleigh Minority and Women-Owned Business Enterprise Program (MWBE). The City of Raleigh is committed to promoting economic growth and development by ensuring that minority and women-owned businesses have equal opportunities to participate in all aspects of the City's contracting process. The City has adopted an aspirational goal of fifteen percent (15%) of the total contract amount to be performed by MWBE businesses. The MWBE Program helps meet that commitment by promoting the participation of MWBEs in City contracts. The MWBE Program monitors, evaluates, and reports on MWBE participation and compliance with the provisions of the Program.

These procedures serve as a source of guidance and do not guarantee a contractual relationship with the City or establish any property interest or right. MWBE procedures are subject to change.

PROCEDURES

1. General Subcontracting Requirements

- 1.1. The City has an aspirational goal of 15% of the total contract amount to be performed by MWBE businesses in contracts awarded by the City for: (i) building projects of \$300,000 or more and (ii) building projects of \$100,000 with any State funding.

- 1.2. All contractors and first-tier subcontractors are subject to all subcontracting requirements, including Good Faith Efforts (if applicable), regardless of MWBE status.
- 1.3. The City will solicit MWBE participation in contracts for the erection, construction, alteration, or repair of any building, in the amount of thirty thousand dollars (\$30,000) or more, but less than the amounts above.
- 1.4. These procedures do not require contractors, the City, or other awarding authorities, to award contracts or subcontracts to or make purchases of materials or equipment from MWBE business contractors or MWBE business subcontractors who do not submit the lowest responsible, responsive bid (“LRRB”).
- 1.5. The City’s Subcontracting Goals do not apply to any state or federally funded contract subject to state or federal requirements for minority and women business participation.
- 1.6. A Bidder that intends to perform 100% of the work on a Contract with their own workforce may submit an Affidavit B stating that the Bidder does not customarily subcontract elements of this type of project, and normally performs, has the capability to perform, and will perform all elements of work on the Contract with its own current workforces.
 - a. The Affidavit B must be on the City’s form.
 - b. The City may request additional information from the Bidder.
 - c. A Bidder who successfully submits an Affidavit B is not subject to the requirements of Section 2 (“Meeting Subcontracting Goals”) or Section 3 (“Good Faith Efforts”).
 - d. If the Bidder is not licensed to perform all work included in the Contract, or if the City has cause to believe, based on past practice or other grounds that the Bidder will not be performing all work under the Contract with its own current workforce, then the City may reject the Bid for non-compliance.
- 1.7. It is a violation of the MWBE Program, grounds for rejection of a Bid, and other sanctions if a Bidder makes a false or materially misleading statement or certification.
- 1.8. Bidders and Contractors shall not make any false statements, material misrepresentations, or material or misleading omissions to the City. The failure to comply with these procedures entitles the City to exercise any of the remedies in Section 6, “Remedies.”

2. Meeting Subcontracting Goals

- 2.1. All Bidders who have not successfully submitted an Affidavit B, including those who are themselves Certified MWBE, are subject to this Section.

2.2. Obtaining Credit for Subcontracting Goals.

- a. Credit toward the City's Subcontracting Goals is given for MWBEs that:
 - i. Are Certified MWBE by the NC Department of Administration Historically Underutilized Business (NC DOA/HUB) or the NC Department of Transportation Disadvantaged Business Enterprise (NC DOT-DBE);
 - ii. Will perform a Commercially Useful Function. The City will not count an MWBE acting solely as a conduit for achieving subcontracting goals; and
 - iii. Will perform within the area(s) for which they are certified or licensed unless the Bidder provides information satisfactory to the City, showing that the MWBE has performed similar work in the past.
- b. The City will not give credit toward Subcontracting Goals for MWBEs that:
 - i. Are found to be Affiliates of the Bidder before Bid Opening. The City may reject the Bid if: (1) an MWBE is an Affiliate; or (2) if the City determines, in its sole discretion, that the Bidder knew or should have known before the Bid Opening that there was a significant risk that the City would consider the MWBE an Affiliate. Bidders are deemed to know all MWBE Program provisions, including those relating to Affiliates.
 - ii. If an MWBE is decertified between Bid Opening and Contract award. The City will not give credit toward the Subcontracting Goal for amounts committed to that MWBE but may allow the Bidder to replace the decertified MWBE with a Certified MWBE. The substitution of an MWBE will not be permitted if the certification was based on false or fraudulent information that Bidder knew or should have had known.

2.3. Documenting MWBE Participation.

- a. The City may only give Bidders credit toward the Subcontracting Goals for MWBE participation for subcontractors that are:
 - i. Listed on the Identification of MWBE Participation;
 - ii. Listed on the submitted Affidavit C ("MWBE Subcontractor Utilization Commitment") or Affidavit D ("Good Faith Efforts"); and
 - iii. Documented by a Letter of Intent Form timely submitted to the City.
- b. Identification of MWBE Participation and GFE Affidavit.
 - i. City Solicitation Documents for formal Construction capture information about MWBEs and other subcontractors or suppliers that the Bidder intends to use on the Contract ("Identification of MWBE Participation"); and lists

the Bidder's Good Faith Efforts to meet the Subcontracting Goals ("Affidavit A," if applicable). The Bid may be rejected if the documents are not properly completed and submitted with the Bid.

- ii. City Solicitation Documents for Construction Contract bids under \$300,000.00 include an Informal Project Bid Form to capture MWBE participation information. The City encourages Bidders to complete and submit this document with their bids.

c. Letter of Intent.

- i. Within three (3) Business Days of notice of being the apparent LRRB or upon request by the City, the successful bidder must submit a separate Letter of Intent form for each MWBE listed on their Affidavit C or Affidavit D.
- ii. The Letter of Intent must be on the City's form.
- iii. Both the MWBE and the Bidder must execute the Letter of Intent.
- iv. The City will not count MWBE participation for any subcontractor for which no timely Letter of Intent is received unless the MWBE certifies to the City that it initially agreed to participate in the Contract at the amount listed by the Bidder but later declined to do so.

3. Good Faith Efforts

- 3.1. All Bidders who have not successfully submitted an Affidavit B, including those who are themselves Certified MWBE, are subject to this section.
- 3.2. If a Bidder has not fully met the Subcontracting Goals for a Contract, it must show that it has made Good Faith Efforts ("GFE"). For each unmet Subcontracting Goal on a Contract, a Bidder must earn at least 50 GFE points. The failure to achieve at least 50 GFE points is grounds for rejection of a Bid.
- 3.3. In determining whether a Bidder has made Good Faith Efforts, the City will evaluate all efforts made by the Bidder. It will determine compliance based on the quantity, intensity, and results of the Bidder's efforts. The City's assessment will be made on a case by case basis taking all available facts into account. The focus will be on the likely effectiveness of efforts made. Mere pro forma efforts will not be sufficient.
- 3.4. Good Faith Efforts include:
 - a. Contact MWBEs that reasonably could have been expected to submit a quote, known to the Contractor or available on the State or local government-maintained lists, at least ten (10) days before the bid or proposal date, and notifying MWBE of the nature and scope of the work to be performed.

- b. Make the construction plans, specifications, and requirements available for review by prospective MWBEs or provide these documents to MWBEs at least ten (10) days before the bid or proposals are due.
- c. Break down or combining elements of work into economically feasible units to facilitate minority participation.
- d. Work with MWBE business, trade, community, or contractor organizations identified by the MWBE Office and included in the bid documents to aid in MWBE recruitment.
- e. Attend any pre-bid meetings scheduled by the City.
- f. Assist in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors.
- g. Negotiate in good faith with interested MWBE businesses and not rejecting them as unqualified without reasons based on capabilities. Any rejection of an MWBE business based on lack of qualification should document the reasons in writing.
- h. Assist an otherwise qualified MWBE business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assist MWBEs in obtaining the same unit pricing with the Bidder's suppliers to help MWBEs establish credit.
- i. Negotiate joint venture and partnership arrangements with MWBE businesses to increase opportunities for MWBE business participation on a public construction or repair project when possible.
- j. Provide quick pay agreements and policies to enable MWBE contractors and suppliers to meet cash- flow demands.

3.5. Documenting Good Faith Efforts

- a. In addition to the MWBE Participation forms required under Section 2.3, if requested by the City at any time or if part of the Solicitation Documents, a Bidder must complete the below forms and provide any additional documentation requested:
 - i. Good Faith Negotiation Form: This form documents each MWBE who submitted a project bid but is not a part of the Bid, and the reasons why.
 - ii. Solicitation Form: This form lists all MWBEs contacted for a project bid, the date, method of contact, and whether it was responsive.
- b. The Bidder must submit the Good Faith Efforts Documentation within the time specified by the City. If no time is specified, the Bidder must submit the documentation within three (3) Business Days after the City requests it.

3.6. All actions necessary to earn GFE points must occur before the Bid Opening.

4. Waivers

- 4.1. Non-compliance with the MWBE Program may be waived only according to this Section.
- 4.2. Waivers may be granted by the MWBE Program Manager or their designee, by the City Manager or the City Manager's designee, or by City Council.
- 4.3. Waiver of Good Faith Efforts and Good Faith Negotiation. Good Faith Efforts and Good Faith Negotiation requirements may be waived when the following conditions exist:
 - a. The lowest Bidder failed to comply with the Good Faith Efforts and Good Faith Negotiation requirements ("Non-Compliant Bidder");
 - b. The proposed MWBE utilization for the unmet Subcontracting Goal exceeds the percentage proposed by the next lowest Bidder that would otherwise be awarded the Contract, and that has met all of the requirements ("Compliant Bidder").
- 4.4. In determining whether to grant the waiver, the City will consider the following factors:
 - a. The cost difference to the City between the two Bids;
 - b. The difference in the level of MWBE utilization proposed by the Compliant and Non-Compliant Bidders;
 - c. The level of effort the Compliant and Non-Compliant Bidders undertook to meet the Good Faith Efforts requirements;
 - d. Past efforts by the Non-Compliant Bidder to meet Subcontracting Goals;
 - e. Instances of past non-compliance with the Good Faith Efforts requirements; and
 - f. Any other relevant factor.
- 4.5. Minor Non-Compliance Waiver. The City may grant a minor non-compliance waiver based upon a determination of the following factors:
 - a. The non-compliance is minor in nature;
 - b. Waiving the non-compliance would not put Bidders that complied with the MWBE Program at a competitive disadvantage; and
 - c. The non-compliance does not reflect a continued lack of diligence on the Bidder's part in complying with the Program.
- 4.6. Quarterly Report. The MWBE Program will issue a report on at least a quarterly basis of any waivers issued. For each waiver, the report will contain the following information:
 - a. The Project name and Department;
 - b. Company name;
 - c. Number of previous waivers issued to the Company;

- d. Person issuing waiver;
- e. Type of waiver; and
- f. The basis for the waiver.

5. Post Contract Award Requirements

- 5.1. Contractors have a continuing affirmative obligation to meet or exceed the Committed Subcontracting Goals for the Contract's duration.
- 5.2. Unless subject to an exception or exemption under these procedures, the City may find a Contractor to be in violation of the MWBE Program and in breach of its contract if, at any time, the City determines that:
 - a. The Contractor will not meet a Committed Subcontracting Goal; and
 - b. The reason for the Contractor's failure to meet its Committed Subcontracting Goal is within the Contractor's reasonable control.
- 5.3. Exceptions. A Contractor will not be in violation of the MWBE Program for failure to meet its Committed Subcontracting Goal if the failure is a direct result of:
 - a. The City reducing the Contract's scope, resulting in eliminating or reducing work that was going to be performed by an MWBE;
 - b. An MWBE's voluntary withdrawal from the project. The Contractor must provide evidence satisfactory to the City that the MWBE's withdrawal was beyond the Contractor's reasonable control. The Contractor must comply with Good Faith Efforts in replacing the MWBE; or
 - c. Termination or reduction in the work of an MWBE. Any termination or reduction in the work of an MWBE by a Contractor must follow the procedures of Section 5.7 "Terminating or Replacing an MWBE." The Contractor must comply with Good Faith Efforts in replacing the MWBE.
- 5.4. Performance of a Commercially Useful Function.
 - a. Contractors have a continuing affirmative obligation to ensure that any MWBE performing on the Contract performs a Commercially Useful Function.
 - b. Contractors will only receive credit for the amount of MWBE participation that constitutes a Commercially Useful Function. Payments exceeding the value of the Commercially Useful Function performed by an MWBE will not count toward the Committed Subcontracting Goal.
 - c. An MWBE performs a Commercially Useful Function when it is responsible for conducting the work of the Contract and is carrying out its responsibilities by actually performing, staffing, managing, and supervising the work involved. The MWBE

must be responsible for any materials and supplies used on the Contract, negotiating the price, determining quantity and quality, ordering the material, installing (where applicable), and paying for the material itself.

- d. The following factors are considered in determining whether an MWBE is performing a Commercially Useful Function:
 - i. The amount of work subcontracted;
 - ii. Standard industry practices; and
 - iii. The amount the MWBE will be paid is consistent with (a) the work to be performed and (b) the MWBE credit claimed.
- e. An MWBE does not perform a Commercially Useful Function if it is a conduit or an extra participant in a transaction, contract, or project to obtain the appearance of meaningful and useful MWBE participation when in similar transactions there is no such role performed.
- f. A Contractor would violate the MWBE Program and breach its Contract with the City if the Contractor lists an MWBE for credit toward a Committed Subcontracting Goal knowing that the MWBE is a conduit or will not be performing a Commercially Useful Function for the amount of credit sought.

5.5. Affiliate Status.

- a. In determining whether an MWBE is an Affiliate of a Contractor, the City will consider whether:
 - i. One controls or has the power to control the other;
 - ii. A common third party or group controls or has the power to control both; or
 - iii. There is a significant relationship between the two entities as defined below in Section 5.5(c), “Significant Relationship.”
- b. Control. Examples of the power to control include but are not limited to:
 - i. Ownership of a majority equity interest;
 - ii. Voting control of the board of directors;
 - iii. An officer with decision-making authority;
 - iv. Approval rights over critical decisions;
 - v. Power to prevent a quorum or to otherwise block action by the board of directors or shareholders;
 - vi. Control may be direct or indirect and does not need to be exercised to create an Affiliate status.

c. Significant Relationship.

i. There is a significant relationship when:

- (a) One entity plays a critical role in the management or direction of the other;
- (b) The two entities have shared facilities, assets, or employees to a significant degree; or
- (c) The two entities have an identity of interest (through family relationships or otherwise).

ii. Factors the City will consider include but are not limited to:

- (a) Common ownership, management or employees;
- (b) Shared equipment, assets, or facilities;
- (c) Family relationships;
- (d) Physical proximity;
- (e) Percentage of revenue derived from the Contractor;
- (f) Loans, leases, and contributions; and
- (g) Contractual or other significant relationships.

d. Totality of the Circumstances. The City will apply a totality of the circumstances test in deciding whether an MWBE is an Affiliate. No single factor is determinative.

e. If, before work begins on the Contract, an MWBE is found to be an Affiliate of the Contractor, the Contractor will not earn credit toward its Committed Subcontracting Goal for any amounts to be paid to that MWBE.

f. If, after work begins on the Contract, the City determines that an MWBE is an Affiliate of the Contractor or the MWBE is decertified for being an Affiliate, the City may deny the Contractor MWBE credit for any amounts paid to the MWBE.

g. If the City determines that the Contractor knew, or reasonably should have known, there was a significant risk that the City would consider the MWBE an Affiliate, the City may find the Contractor and the MWBE to be in violation of the MWBE Program and in breach of its Contract. Contractors are deemed to know all MWBE Program provisions, including those relating to Affiliates.

5.6. Change in MWBE Status. The following are the City's procedures if an MWBE's certification status changes after submission of the Contractor's Bid or Proposal:

- a. If an MWBE's certification terminates due to expiration or graduation, the dollars paid to the MWBE on the Contract will still count toward the Committed Subcontracting Goals.

- b. If an MWBE's certification terminates because the MWBE is an Affiliate of the Contractor (even if not decertified), then the amount of credit received for the Affiliate MWBE is subject to Section 5.4, "Affiliate Status."
- c. If an MWBE's certification terminates due to the MWBE having done any of the following, then any amount paid to the MWBE on the Contract WILL NOT count toward the Committed Subcontracting Goals. The Contractor will be found in violation of the MWBE Program and in breach of the Contract if it knew or had reason to know of the following:
 - i. The MWBE has obtained certification by false or fraudulent means;
 - ii. The MWBE acts as a conduit on any City Contract with the Contractor; or
 - iii. The MWBE does not perform a Commercially Useful Function consistent with what the Contractor agreed to pay the MWBE.
- d. If an MWBE is decertified for obtaining certification by false or fraudulent means, any amounts paid to the MWBE before decertification can count toward the Contractor's Committed Subcontracting Goals if the Contractor did not know or had no reason to know of the fraud.

5.7. Terminating or Replacing an MWBE.

- a. Contractors cannot terminate, replace, or reduce the work of an MWBE that the Contractor has counted toward its Committed Subcontracting Goal unless:
 - i. The MWBE refuses to enter into a contract with the Contractor consistent with the MWBE's Letter of Intent;
 - ii. The MWBE's certification terminates after submission of the Bid or Proposal;
 - iii. The MWBE materially breaches its contract with the Contractor;
 - iv. The City reduces the Contract scope of work that eliminates or reduces the work that the MWBE was to perform;
 - v. The MWBE is bankrupt or insolvent;
 - vi. The work performed by the MWBE is unsatisfactory according to industry standards or is not according to the plans and specifications; or
 - vii. The MWBE is substantially delaying or disrupting the progress of the work.
- b. Documentation Required.
 - i. The Contractor must provide the Department and the MWBE Program Manager written notice before replacing or terminating an MWBE on a Contract.
 - ii. The written notice must be on the City's "Request to Change MWBE

Subcontractor” form. Any additional explanation to the City must be on the company letterhead.

- iii. The Contractor must provide the Request to Change MWBE Subcontractor form before termination is to occur. If the Contractor cannot complete the Request to Change MWBE Subcontractor form before termination because of unique circumstances, the Contractor should include information about any timeline with the form.

5.8. Notice of New Subcontracting Opportunities.

- a. If a Contractor subcontracts any portion of a Contract not previously designated as subcontracted, or if the scope of work on a Contract increases for any reason that creates a new subcontracting opportunity, the Contractor must:
 - i. Promptly notify the City of the new subcontracting opportunity;
 - ii. Inform the City whether the Contractor or other existing MWBEs or subcontractors on the Contract will perform the new work; and
 - iii. If the Contractor or other existing MWBEs or subcontractors on the Contract will not perform the new work, the Contractor must comply with Good Faith Efforts.
- b. If the Contractor submitted an Affidavit B stating it intended to perform 100% of the work with its own workforce, the Contractor must provide documentation that:
 - i. The need for subcontracting was not a result of any action, error, omission, or negligence of the Contractor;
 - ii. The subcontracting work is outside the original scope of work of the Project; and
 - iii. At the time of the Bid, the Contractor did not know, had no reason to know, and could not anticipate the need for the new subcontracting work.

5.9. Payment to MWBEs.

- a. Within seven (7) days of receipt by the prime contractor of each periodic or final payment, the prime contractor must pay the subcontractor based on work completed or services provided under the subcontract. If the prime contractor does not pay a subcontractor within seven (7) days of receiving payment, the prime contractor must pay interest on any outstanding amount due to the subcontractor at the rate of one percent (1%) per month (beginning on the eighth day).
- b. If the Contractor has made a Quick Pay Commitment as part of the MWBE Program, it must comply with its Quick Pay Commitment, including any provisions that are more stringent than N.C.G.S. §143-134.1(b).
- c. Violation of this Section may subject the Contractor to any remedies available under

these procedures, liability under North Carolina law for violating N.C.G.S. §143-134.1(b), and the payment of interest.

5.10. Compliance Documentation.

- a. Response to City Requests for Information. The City may request information, documents, or other materials from a Contractor at any time to determine whether the Contractor complies with the MWBE Program. Unless otherwise agreed to by the City in writing, the Contractor must comply with any request within three (3) Business Days.
- b. Contractor Compliance with City Consultant Requests for Information. Contractors must cooperate with the City and any consultants hired by the City:
 - i. In any investigation initiated by or on behalf of the City to determine compliance with the MWBE Program; and
 - ii. In connection with any study conducted by or on behalf of the City to study discrimination in City contracts.
- c. Failure to comply with this Section by a Contractor shall entitle the City to exercise the remedies in Section 6, “Remedies.”

6. Remedies

- 6.1. All written statements, affidavits, or certifications made by the Bidder are part of the Contract. If the Contractor does not comply with any statement, affidavit, or certifications or these procedures, it shall be in material breach of Contract.
- 6.2. If any information submitted before the award of the Contract or during the performance of the Contract is inaccurate, false, or incomplete, the Contractor shall be in material breach of the Contract.
- 6.3. Any material breach entitles the City to:
 - a. Exercise all rights and remedies available at law or in equity for breach of contract;
 - b. Terminate the Contract for default;
 - c. Suspend the Contract for default; and
 - d. Withhold payments to the Contractor until the violation is cured, or the City and the Contractor mutually resolve the issue.
- 6.4. These remedies are cumulative and not exclusive; they may be exercised successively or concurrently. This Section is solely for the benefit of the City. If the City allows the Contractor to continue under the Contract, despite any finding of breach, the Contractor is not relieved of its responsibilities or obligations under these procedures, nor will the City be deemed to have waived or relinquished any rights.

DEFINITIONS

All defined terms are capitalized throughout the document. Additional defined terms may be found in the central Policy Glossary.

Affiliate: A business is an affiliate of another when: (a) one controls or has the power to control the other, (b) a common third party or group of parties controls or has the power to control both, or (c) there is a significant relationship between the two entities as described in Section 5.5.

Bid: Documents that a Business Enterprise submits in response to City Solicitation Documents to obtain a Contract.

Bid Agent: Person assigned the responsibility to prepare contract documents, advertise for bids, and open bids for contracts under the Project Manager's direction. The Bid Agent may be a consulting engineer or architect retained by the City, the City Engineer, the Purchasing Agent, or a Department Head responsible for the project, as assigned by the City Manager.

Bid Opening: For contracts subject to formal bidding requirements under North Carolina law, the Bid Opening is the date the City opens received Bids. For other Contracts, Bid Opening means the date that Bids, Proposals, or submittals are due.

Bidder: A Business Enterprise that submits a Bid or Proposal for a Contract.

Business Days: Days when the City of Raleigh's administrative offices are open to the public to do business.

Business Enterprise: Any corporation, limited liability company, partnership, individual, sole proprietorship, joint-stock company, joint venture, professional association, or other legal entity (whether operated for-profit or a non-profit), other than a financial partner, the City, or any other unit of federal, state or local government.

Certified Minority Business (MWBE): A business that meets the following criteria:

- a. One or more minority persons own at least fifty-one percent (51%) of the business. In the case of a corporation, one or more minority persons own at least fifty-one percent (51%) of the stock;
- b. One or more minority persons control the management and daily business operations of the business; and
- c. The business is certified in one of the MWBE categories defined by the NC Department of Administration/Historically Underutilized Business (HUB) and the NC Department of Transportation/Disadvantaged Business Enterprise (DBE).

City: The City of Raleigh, North Carolina, a North Carolina municipal corporation.

City Solicitation Documents: The documents issued by the City to solicit Bids or Proposals for a Contract. The documents include but are not limited to, Invitations to Bid, Requests for

Qualifications, Requests for Proposals, Requests for Quotes, plans and specifications, and proposed contract provisions.

Commercially Useful Function: The function performed by an MWBE when it is responsible for supplying goods or performing a distinct element of the work of a Contract and carrying out its responsibilities by performing, managing, and supervising the work involved. The MWBE Program Manager will determine whether an MWBE is performing a Commercially Useful Function based on the amount of work subcontracted, industry practices, and other relevant factors, as described in Section 5.4.

Committed Subcontracting Goal: An MWBE Goal that a Contractor commits to achieve for a Contract at Contract award (which will be the MWBE goal stated in the Contractor's Bid or Proposal unless modified by mutual agreement of the City and the Contractor).

Conduit: An MWBE listed for participation who knowingly agrees to pass the work to a non-MWBE firm. In this type of relationship, the MWBE has not performed a Commercially Useful Function, and therefore the MWBE's participation does not count toward the MWBE Goal.

Construction Contract/Building Project: A Contract under which a Business Enterprise agrees to provide services to the City relating to the erection, construction, alteration, or repair of any building. A Construction Contract/Building Project may be for horizontal or vertical construction or repair work.

Construction Manager-At-Risk Contract (or CM at Risk Agreement): A construction manager-at-risk agreement defined in N.C.G.S. § 143-128.1; this includes contracts where a licensed general contractor provides construction management services throughout the construction process and guarantees the cost of the project.

Contract: Any agreement through which the City procures goods or services from a Business Enterprise, other than Exempt Contracts. Contracts include agreements and purchase orders for (a) construction, reconstruction, alteration, and remodeling; (b) architectural work, engineering, surveying, testing, construction management, and other professional services related to construction; (c) services of any nature (including but not limited to general consulting and technology-related services), and (d) apparatus, supplies, goods or equipment.

Contractor: A Business Enterprise that enters into a Contract with the City. A Contract may include but is not limited to construction contractors, consultants, architects, engineers, surveyors, suppliers, and other providers of goods and services.

Days: Any reference to "days" in these procedures means calendar days unless indicated explicitly as Business Days.

Department Director: The manager or director of a City Department. As used in these procedures, the term Department Director also applies to a person that the Department Director designates to take any actions required or permitted.

Exempt Contracts: Unless a City Department elects otherwise, Contracts that fall within one or more of the following categories are “Exempt Contracts” and are exempt from all aspects of the MWBE Program:

- a. *No Competitive Process Contracts:* Contracts or purchase orders that are entered into without a competitive process, or entered into based on a competitive process administered by an entity other than the City, including but not limited to contracts that are entered into by (i) sole sourcing, (ii) piggybacking, (iii) buying off a North Carolina State contract, (iv) buying from a competitive bidding group purchasing program allowed under N.C.G.S. §143-129(e)(3), or (v) using the emergency procurement procedures under North Carolina law. These contracts remain subject to the Post Contract Award Requirements of Section 5.
- b. *Managed Competition Contracts:* Managed competition contracts where a City Department or division competes with Business Enterprises to perform a City function.
- c. *Real Estate Leasing and Acquisition Contracts.*
- d. *Federal Contracts Subject to DBE Requirements:* Contracts subject to the U.S. Department of Transportation Disadvantaged Business Enterprise Program.
- e. *State-Funded Contracts Subject to the State’s Required MWBE Goal:* Contracts subject to an MWBE Goal set by the State of North Carolina.
- f. *Interlocal Agreements:* Contracts with units of federal, state, or local government.
- g. *Contracts for Legal Services.*
- h. *Contracts with Waivers:* Contracts where the MWBE Program Manager or the City Manager has waived MWBE Program requirements (e.g., when there are no MWBE subcontracting opportunities on a Contract).
- i. *Special Exemptions:* Contracts where the Department and the Program Manager agree that the Department or Contractor had no discretion to hire an MWBE (e.g., emergency contracts or contracts for banking or insurance services).

Formal Contracts: Contracts estimated to equal or exceed the following dollar thresholds before issuance of the City Solicitation Documents (See also, SOP 501-3):

- a. Construction Contracts: \$500,000
- b. Purchase Contracts: \$90,000

Informal Contracts: Contracts estimated to be less than the following dollar thresholds before issuance of the City Solicitation Documents (See also, SOP 501-3):

- a. Construction Contracts: \$500,000
- b. Purchase Contracts: \$90,000

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

- a. Black: A person having origins in any of the black racial groups in Africa;
- b. Hispanic: A person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;
- c. Asian American: A person having origins in any of the original peoples of the Far East, Southeast Asia, and Asia, the Indian subcontinent, the Pacific Islands;
- d. American Indian: a person having origins in any of the original peoples of North America; or
- e. Non-minority Female.

MWBE Program: The City of Raleigh Minority and Women-Owned Enterprise Program.

MWBE Office: The City office charged with administering and enforcing the MWBE Program.

Prime Contract: A Contract between the City and a Business Enterprise.

Procurement Division: The City Division charged with the overall administration of contracting and purchasing for the City of Raleigh.

Program Manager: The division manager of the City's MWBE Program or their designee.

Proposal: The documents a Business Enterprise submits in response to City Solicitation Documents to obtain a Contract (e.g., Requests for Qualification and Requests for Proposals).

Qualified MWBE: An MWBE that has the financial ability, skill, experience, and access to the necessary staff, facilities, and equipment to complete a particular Contract or subcontract and otherwise meets the criteria for being a "responsible bidder" within the meaning of North Carolina law. Designation as a Qualified MWBE does not supersede or invalidate rules and regulations relating to the pre-qualification of City Contractors.

Quick Pay Commitment: An agreement or policy commitment that a prime contractor makes to pay all MWBEs participating in a Contract within twenty (20) days after the Contractor confirms that the MWBE has satisfactorily performed and completed the subcontracted work.

Responsible Bidder: A Business Enterprise who can fully perform the Contract requirements and the integrity and reliability to assure the Contract's good faith performance.

Responsive Bidder: A person who has submitted a Bid conforming in all material respects to the City's Solicitation Documents.

Socially and Economically Disadvantaged Individual: Socially disadvantaged individuals have been subjected to racial or ethnic prejudice or cultural bias because of their identity as members of a group without regard to their individual qualities. Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been

impaired due to diminished capital and credit opportunities compared to others in the same business area who are not socially disadvantaged. (See, 15 U.S.C. 637).

Subcontractor: A Business Enterprise who directly contracts with a Contractor or first-tier subcontractor to provide goods or services or perform work for a Contract. The term “Subcontractor” also includes “Subconsultants” and “Suppliers.”

INDIVIDUALS AND ENTITIES AFFECTED BY THIS PROCEDURE

All Departments/Divisions.

RESPONSIBILITIES

1. MWBE Office

- 1.1. The MWBE Office is responsible for information gathering and reporting to the City of Raleigh. Information provided will be used by the MWBE Office to:
 - i. Identify those areas of work where there are opportunities for MWBE participation;
 - ii. Make available a list of prospective MWBE contractors and subcontractors.
 - iii. Assist in the determination of technical assistance needed by MWBE contractors; and
 - iv. Provide a directory of all certified MWBEs. The certifications and directories provided by the MWBE Program include certifications and directories maintained by the NC Department of Administration, Office of Historically Underutilized Businesses (HUB), and NC Department of Transportation, Office of Civil Rights (DBE). The directories are available to all City departments, contractors, and the public.
- 1.2. Requests for information concerning the MWBE Program must be referred to the MWBE Office. If during a bid solicitation, a Bid Agent or Department identifies a non-certified Minority or Women-Owned business, the MWBE Program staff will refer the non-certified Minority or Women-Owned business to a designated agency for certification (HUB or DBE).
- 1.3. Inform MWBEs on identifying and obtaining contracting and subcontracting opportunities with the City and other public entities.
- 1.4. Inform MWBEs of the contracting and subcontracting process for public building projects.
- 1.5. Work with North Carolina trade and professional organizations to improve the ability of MWBEs to compete in City building projects.
- 1.6. Review for compliance with all requirements of these procedures and N.C.G.S. §143-128.2 before the recommendation of award.
- 1.7. Evaluate all submitted documents to determine Good Faith Efforts for MWBE utilization before the award recommendation.

- 1.8. Aid in the implementation of training and technical assistance programs.
- 1.9. Identify and apply outreach efforts to increase MWBE participation. Before Bid Opening on each Building Project, the MWBE Office will send a “Project Notice” to MWBEs via GovDelivery. The Project Notice will include:
 - a. A description of the work;
 - b. The date, time, and location of the pre-bid meeting;
 - c. A list of possible subcontracting opportunities;
 - d. A link to the Interactive Purchasing System (IPS) website that provides detailed information about the project; and
 - e. The name of a person in the City who may answer questions about the project.
- 1.10. For each Construction Contract of \$300,000 or more, the MWBE Office will also:
 - a. Attend the scheduled pre-bid conference to clarify minority-business participation requirements, including the Bidders' responsibilities; and
 - b. Use other media likely to inform potential MWBEs of the Bids.
- 1.11. The MWBE Office will review Contracts for compliance with the MWBE Program. This review will include, but not be limited to, (i) maintaining Committed Subcontracting Goals (in both dollars amounts and percentages) over the course of the Contract; and (ii) whether the Contractor improperly terminates, replaces, or reduces the work of an MWBE. The MWBE Office may hire consultants to assist in its review.
- 1.12. The MWBE Program Manager has the following additional responsibilities:
 - a. Complete all annual reports to the City Manager and any reports required by the NC Department of Administration.
 - b. Conduct periodic workshops and training sessions to familiarize MWBEs with the City's contracting procedures. The Program Manager will provide technical assistance resources to firms in bidding, licensing, bonding, and procedures for City contracts.
 - c. Monitor the MWBE Program's overall administration by reviewing and implementing changes as necessary to achieve its goals.

2. City/Department/Bid Agent

- 2.1. Before awarding a Contract, the City or the applicable Department or Bid Agent will:
 - a. Develop a minority business participation outreach plan that identifies MWBEs that can perform public building projects and implement outreach efforts to encourage MWBE participation in these projects through education, recruitment, and interactions

between MWBEs and non-minority businesses.

- b. Attend the scheduled pre-bid conference.
- c. Notify MWBEs who requested City notice for public construction or repair work or the type of work or subcontracting opportunities associated with the project. Notice to MWBEs must be at least ten (10) days before the Bid Opening and must include the following:
 - i. A description of the work;
 - ii. The date, time, and location where Bids are to be submitted;
 - iii. The name of the individual in the City who can answer questions about the project;
 - iv. Where they may review City Solicitation Documents; and
 - v. Any special requirements that may exist.
- d. Use other media likely to inform potential MWBEs of the Bid.
- e. Maintain documentation of any contacts, correspondence, or conversations with MWBE firms made in an attempt to meet these goals.
- f. Review for compliance with all requirements of these procedures and N.C.G.S. §143-128.2 before the recommendation of award.
- g. Review documentation to determine Good Faith Efforts for MWBE utilization before the recommendation of award.
- h. Review prime contractors' pay applications for compliance with minority business commitments before payment.
- i. Upon request, provide evidence of compliance available for review by the MWBE Office.
- j. Provide statistical data and required reports to the MWBE Office.
- k. Upon the MWBE Office's determination that a Contractor has violated these procedures or the MWBE Program, the Program Manager will make a recommendation to the Department Director of appropriate remedies. The Department Director responsible for the Bid or Contract will decide what remedies to pursue.

3. Bidder/Contractor

3.1. Before the scheduled Bid Opening, the Bidder will:

- a. Attend the scheduled pre-bid conference.
- b. Identify and determine any subcontracting opportunities where MWBEs may have an

interest in performing subcontract work.

- c. At least ten (10) days before the scheduled Bid Opening, notify MWBEs of potential subcontracting opportunities. The notification must include the following:
 - i. A description of the work being sub-bid;
 - ii. The date, time, and location where sub-bids are to be submitted;
 - iii. The name of a person in the company who can answer questions about the project;
 - iv. Where they may review any bid documents; and
 - v. Any special requirements (i.e., insurance, licenses, bonds, and financial arrangements).

The Contractor must notify at least three (3) MWBEs if there are more than three (3) MWBEs in the project's general location who offer similar contracting or subcontracting services for a specific trade.

- d. Identify on the Bid any MWBEs used on the project with the corresponding total dollar value of the Bid and an Affidavit B or Affidavit A.

3.2. Upon being named the apparent low bidder, the Bidder must provide one of the following by the deadline in the City's Solicitation Documents:

- a. If the Bidder submitted an Affidavit B with the Bid, the Bidder is not required to resubmit its Affidavit B or submit any additional affidavits. The City may request that the Bidder submit additional documentation.
- b. If the Bidder submitted an Affidavit A with the Bid and the MWBE participation meets or exceeds the applicable goal, the Bidder must submit an Affidavit C. The Affidavit C must be on the City's form and include a description of the portion of work to be performed by MWBEs expressed as a percentage of the total contract price, which is equal to or more than the applicable goal.
- c. If the Bidder submitted an Affidavit A with the Bid and the MWBE participation does not meet the applicable goal, the Bidder must submit an Affidavit D. The Affidavit D must be on the City's form and include documentation of all Good Faith Efforts made. The City may request that the Bidder submit additional documentation.
- d. Failure to comply with these requirements is grounds for rejection of the bid and award to the next lowest responsible and responsive bidder.

3.3. The Contractor must submit the City's "Contract Subcontractor Identification Form," listing all subcontractors the Contractor will use in the Contract's performance within

thirty (30) days of the Contract award.

3.4. The Contractor must submit with each pay request and final payment, the City's "Subcontractor Payment Form" (Affidavit E).

3.5. Comply with all provisions of these procedures.

4. Minority Business Expectations

4.1. While minority businesses are not required to become certified to participate in the City's construction projects, it is beneficial.

4.2. Only the participation of Certified MWBEs is credited toward the applicable goal.

4.3. MWBEs are responsible for promoting themselves and taking the initiative to obtain work on City Contracts. Specifically, MWBEs must:

- a. Monitor the City's website for posting of contracting opportunities;
- b. Make every effort to establish contacts and relationships with prospective Bidders for potential future business, including attending pre-bid conferences;
- c. Respond promptly to solicitation requests; and
- d. Attend seminars, classes, and workshops designed to facilitate networking or enhance business skills.

REFERENCES, RELATED DOCUMENTS, FORMS, AND TOOLS

References

- North Carolina General Statutes §§ 143-128.2, 143-128.4, 143-129, and 143-131
- North Carolina General Statutes §143-64.31
- Raleigh City Code Sec. 4-1004, "Policy of Nondiscrimination"
- City of Raleigh Minority and Women-Owned Business Enterprise Program

Related Documents

- Standard Operating Procedure, "Business Assistance Program (BAP) Policy" SOP 100-51
- Standard Operating Procedure, "Purchasing Policy-Statutory Authority," SOP 501-1
- Standard Operating Procedure, "Public Bidding," SOP 501-3

Forms

- Acknowledgment of MWBE Policy
- Identification of MWBE Participation
- Identification of MWBE Participation for Informal Bids
- Identification of MWBE Participation for Professional Bids
- MWBE Affidavit A, "Listing of Good Faith Efforts"
- MWBE Affidavit B, "Intent to Perform Contract with Own Workforce"
- MWBE Affidavit C, "MWBE Subcontractor Utilization Commitment"
- MWBE Affidavit D, "Good Faith Efforts & Statement of Compliance"

- Letter of Intent
- Good Faith Negotiation Form
- Solicitation Form
- Contract Subcontractor Identification Form
- Payment Affidavit-Subcontractor/Supplier Utilization
- Payment Affidavit-Professional Services Utilization
- Request to Change an MWBE Subcontractor
- Procurement Process Memo

WEBSITE ADDRESS FOR THIS PROCEDURE

[City Manager's Office will complete.] <https://corecon.raleighnc.gov/cor-administrative-policies-and-procedures> - or <http://www.raleighnc.gov/>

HISTORY AND UPDATES

Date	Revision	Change	Reference Section
09/03/02	1	Supersede 501-10	SOP 505-02

APPENDIX

There are no appendices to this procedure.

LEGAL NOTICES

Nothing in this procedure shall alter an employee's at-will status of employment with the City.

This procedure shall not create liability on the part of the City or any officer or employee thereof for any personal injury or property damage that may result from reliance upon this procedure or any administrative decision lawfully made pursuant to this procedure.

If any provision of this procedure is or becomes or is deemed to be invalid, illegal or unenforceable pursuant to applicable law, such provision shall be construed or deemed amended to conform to applicable laws, or if it cannot be so construed or deemed amended without materially altering the purpose or intent of the procedure, such provision shall be stricken and the remainder of the procedure shall remain in full force and effect.