

Document 00467
**SUPPLIER DIVERSITY & OUTREACH PROGRAM
REQUIREMENTS**

1. M/WBE PARTICIPATION REQUIREMENT

The School Board of Broward County, Florida (SBBC) is committed to ensuring the awarding of construction subcontracts to minority and women businesses. In accordance with Florida Statute 1001.41(1) and (2), and the School Board Policy 7007, the Supplier Diversity & Outreach Program (SDOP) requires that all projects shall have M/WBE subcontracting goals and that Contractors awarded work on such projects fully participate in the SDOP. Compliance with the requirements of this Document 00467 is **mandatory**.

The M/WBE Participation Goal for the General Contractor shall be 25 percent or more.

The M/WBE Participation Goal for all other Contractors shall be 10 percent or more.

2. ENFORCEMENT

Monthly Applications for Payment shall be submitted and must include completed M/WBE Utilization Reports. The SDOP will closely monitor these reports to verify that the M/WBE percentage goals are being met and maintained for the duration of the project. Compliance with this procedure will be **strictly enforced**. Payment verification will be closely monitored. If the Contractor fails to comply with this provision it will be considered in default of its contract.

3. DEFINITIONS:

The following terms shall have the stated meanings (the definitions shall not apply outside of this Document where inconsistent with those stated elsewhere in the Bidding Documents).

A. Bidder: An individual, firm, partnership, corporation, LLC or combination thereof submitting a bid to perform the work as the Prime Contractor.

B. Minority/Women Business Enterprise (M/WBE):

1. Any legal entity other than a joint venture, which is organized to engage in commercial transactions and which is at least 51 percent owned and controlled by minority persons. Minority persons being citizens or lawful permanent residents of the United States and who are:

a. An African American, a person having origins in any of the black racial groups of Africa;

- b. An Hispanic, a person of Spanish or Portuguese culture including, but not limited to, persons with origins in Mexico, South America, Central America, or the Caribbean islands, regardless of race;
 - c. An Asian, a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands;
 - d. An American Indian or Alaskan Native, a person having origins in any of the original peoples of North America; or
 - e. A White Female.
- C. M/WBE Subcontractor List: A list of Certified M/WBE Subcontractors maintained by and available from the SDOP. This list represents only the subcontractors that have been certified by SDOP as meeting the requirements for participation as a Certified M/WBE Subcontractor as listed in Section F(1-4). This list is provided as an aid to Contractors in their effort to meet the M/WBE Subcontractor's participation goal. The SDOP does not insist that the Contractor utilize any subcontractor from the list. For additional information call 754-321-0550 or to view a list of vendors and subcontractors certified by SDOP, go to **www.broward.k12.fl.us/supply/vendors/MWBE.htm**.
- D. Director, Supply Management & Logistics Department: An employee of The School Board of Broward County, Florida, or a designee, serving as the School Board's administrator of the contract, responsible for coordinating, implementing and monitoring of SDOP, hereafter referred to as the "Director of Supply Management & Logistics".
- E. M/WBE Subcontracting Goal: M/WBE Subcontractor participation goal established by The SBBC for this project, as stated in this document. This goal is stated as a numerical percentage of the Work proposed on the ERF (Estimating Recap Form - Document 00800b). This goal can be reasonably attained by means of applying every reasonable and sufficient effort to utilize M/WBE Subcontractors in the performance of Work under this Contract and in accordance with the terms and requirements of this Article.
- F. Other Contractors: Electrical, Mechanical, Plumbing or any other licensed, trade specific contractor not considered a General Contractor.
- G. Certified M/WBE Subcontractor: A Subcontractor who is certified as an M/WBE by The SBBC if it meets all of the following criteria:
- 1. The Subcontractor produces evidence of an Occupational License at the time of application for M/WBE Certification, establishing the company as an entity legally authorized to engage in building construction in Broward County, Florida.
- Note: It is the responsibility of the Prime Contractor to verify that all Subcontractors have the required licenses, insurance, and bonding prior to and during the contract period.**

2. The Subcontractor produces evidence of ownership, operation, control and management of the firm on a daily basis.
3. The Subcontractor is an M/WBE Subcontractor as defined under paragraph B (1) above on the date of submission of the ERF.
4. The Subcontractor meets all SBBC and SDOP requirements for Certification prior to the award of the contract.

4. UTILIZATION OF M/WBE SUBCONTRACTORS

- A. Contractor's Obligation: Ensure that Certified M/WBE Subcontractors, as defined above in paragraphs 3(B) and 3(F), have the maximum opportunity to participate in the performance of the contract and are pro-active, in accordance with this Provision, to ensure that Certified M/WBE Subcontractors have the maximum opportunity to compete for and perform work.
- B. Contract Goal: (See Paragraph 3(E)) The stated goal is to have portions of the work under the contract performed by certified M/WBE Subcontractors for dollar amounts that are a numerical percentage of the amount on the ERF which is to be stated in the Agreement.
- C. M/WBE Contractors: A Contractor who is an M/WBE Certified Contractor may, subject to compliance with the applicable requirements of Section 5(C) of this Article, achieve the stated goal by performing work with its own forces with a dollar amount equal to the percentage goal.
- D. Unavailable: An M/WBE Subcontractor is unavailable to do specific work if:
 1. The Subcontractor has been informed of the terms and specifications of the Contract and:
 - a. Does not offer a proposal to do such work or decline an opportunity to do work.
 - b. Does not intend, or is unable, to make a proposal because of lack of interest.
 - c. Is unable to meet the reasonable and ordinary demands connected with doing such work.
 - d. Is unwilling to meet the specifications for such work.
 - e. Is unwilling to work on this project or in this geographic area.
 - f. Otherwise is unable to do the work for any other reason as is determined by SDOP to be sufficient.

5. REQUIREMENTS AND PROCEDURES PRIOR TO THE ISSUANCE OF A NOTICE TO PROCEED:

A. Submittals:

Prior to a Notice to Proceed being issued, as a condition of contract award, the Contractor must submit to the Owner the following M/WBE documents:

1. Document 00470, Letter of Intent: M/WBE Subcontractor Participation: A letter to the Contractor from each prospective Certified M/WBE Subcontractor that has agreed to participate in the project stating Trade Items and dollar amounts.
2. Document 00475, Summary: M/WBE Subcontractors Participating: Wherein all Subcontractors submitting a Letter of Intent are listed, together with their Contract (Trade) Items and subcontract dollar value amounts. The total M/WBE subcontract dollar value amount is compared to the total Bid Price (Base Bid and Alternates) as a percentage (%), which should equal or exceed the Contract Goal.
3. Document 00480, Unavailability Certification: M/WBE Subcontractor Participation: If the Contractor is unable to commit adequate M/WBE Subcontractor Participation to meet the Contract Goal, it shall request execution of this document for each M/WBE Subcontractor it has solicited, but who cannot participate for reasons of their own. This is necessary to show good faith efforts on the Contractor's part to meet the Contract Goal.

B. Good Faith Efforts:

If the information submitted in response to Paragraph 5.A demonstrates that a Contractor does not meet the M/WBE Subcontractor Goal, then information sufficient to satisfy SDOP that the Contractor has made good faith efforts must be submitted.

In making the required judgment, SDOP will consider some or all of the following good faith efforts. Other factors or types of efforts may be relevant in appropriate cases. In determining whether or not a Contractor has made good faith efforts, SDOP will evaluate the efforts that a Contractor has made and the quantity and intensity of these efforts.

Good Faith Efforts are as follows:

1. The Contractor provided written notice to a reasonable number of M/WBE Subcontractors soliciting their participation in sufficient time to allow M/WBE Subcontractors to participate effectively;
2. The Contractor, in order to increase the likelihood of meeting the goal, selected portions of the work to be performed by M/WBE Subcontractors that could be broken down into economically feasible units to facilitate M/WBE Subcontractor participation;
3. The Contractor provided interested M/WBE Subcontractors with adequate information about the plans, specifications and requirements of the contract;
4. The Contractor negotiated in good faith with interested M/WBE Subcontractors, not rejecting M/WBE Subcontractors as unqualified without sound reasons based on a thorough knowledge of their capabilities;
5. The Contractor contacted SDOP for direct referral for certified M/WBE Subcontractors when the Contractor was unsuccessful in locating qualified vendors on their own;

6. The Contractor maintained records stating name, address, type of trade, and described results of contact with each M/WBE Subcontractor specifically for this project;
7. The Contractor actively maintains a file with the names and addresses of M/WBE Subcontractors. (List may be obtained from SDOP)
8. The Contractor engaged in specific and continuing personal recruitment efforts directed at minority contractor organizations, minority recruitment organizations, and minority business assistance centers.

Meeting the goal, or making good faith efforts to do so, is a condition of being issued a Notice to Proceed.

The listing of M/WBE Subcontractors by a Contractor shall constitute a representation by the Contractor that such entity is qualified and available, and a commitment by the Contractor that, if it is issued a Notice to Proceed, it will enter into a subcontract in the amount set forth in its submission, subject to the terms of this Article.

C. Acceptability of M/WBE Subcontractor Submission.

1. If the SDOP questions the acceptability of the Contractor's M/WBE Subcontractor submissions, upon at least three (3) consecutive business days notice given by SDOP, the Contractor shall meet with SDOP to present information to substantiate its compliance with the applicable requirements.
2. Not later than seven (7) calendar days after the communication with the Contractor, SDOP shall make a written recommendation to the Director of Supply Management & Logistics as to the acceptability of the M/WBE Subcontractor involved and which shall include a statement of the facts and reasons upon which it is based.
 - a. If SDOP cannot recommend issuance of a Notice to Proceed to the Primary Contractor, the Secondary Contractor will be contacted to provide the required M/WBE documents as stated in 5(A)(1) through (3).

D. Calculation of M/WBE Subcontractor Participation toward Contract Goal.

M/WBE Subcontractor participation shall be calculated toward meeting the goal as follows:

1. Once The SBBC has determined that a firm is an eligible M/WBE Subcontractor, the total dollar value of the contract awarded to the M/WBE Subcontractor is counted toward the goal, except as limited by paragraph 5(C)(2).
2. The SBBC will count toward the goal a portion of the total dollar value of a contract with a joint venture equal to the percentage of the ownership and control of the M/WBE Subcontractor partner in the joint venture.

3. The SBBC shall count toward the goal only expenditures to M/WBE Subcontractors that perform a useful contractual function in the work. An M/WBE Subcontractor is considered to perform a useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out the responsibilities by actually performing and supervising the work involved.
4. Consistent with normal industry practices, an M/WBE Subcontractor may enter into subcontracts. If such an entity subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices to non-M/WBE subcontractors, the entity shall not be considered as an M/WBE Subcontractor.

E. Issuance of a Notice to Proceed:

Provided the Contractor submitted the completed forms and information as required by Document 00467, and submitted information sufficient to satisfy SDOP that it has met the contract goal or has made good faith efforts to meet the goal, a Notice to Proceed will be issued.

6. REQUIREMENTS AND PROCEDURES SUBSEQUENT TO THE ISSUANCE OF A NOTICE TO PROCEED:

A. Subcontracts:

1. Approved

After issuance of a Notice to Proceed, the Contractor shall submit, for SBBC approval, subcontracts corresponding in all respects to the proposed agreements listed on its SUMMARY: M/WBE SUBCONTRACTORS PARTICIPATING (including authorized substitutions). Upon approval by SDOP, the Contractor shall execute the subcontracts.

2. Disapproved or Excused

The Director of Supply Management & Logistics, together with SDOP, retains the right to disapprove any subcontract with an M/WBE Subcontractor proposed under this Provision. If the Director of Supply Management & Logistics disapproves a subcontract for reasons relating to its form, the same M/WBE Subcontractor shall be allowed to resubmit his proposal for the same work and at the same price, in a form acceptable to the Director of Supply Management & Logistics. If the Director of Supply Management & Logistics disapproves a subcontract for any other reason, or if an M/WBE Subcontractor fails to follow through on its Letter of Intent, the awarded Contractor shall be excused from proposing that subcontract and shall proceed with a substitution of M/WBE Subcontractor as prescribed in Paragraph 6(B) following:

B. Substitution of M/WBE Subcontractors:

1. Excused from Entering Subcontracts: If, prior to execution of a subcontract required by this Article, the Contractor submits a written request to the Director of Supply Management & Logistics and demonstrates to the satisfaction of the Director of Supply Management & Logistics that, as a result of a change in circumstances beyond its control, of which it was not aware, and could not reasonably have been aware prior to the issuance of a Notice to Proceed, an M/WBE Subcontractor who is to enter into such subcontract has not qualified, or the M/WBE Subcontractor has unreasonably refused to execute the subcontract, the Contractor shall be excused from executing such contract with that subcontractor, who will be replaced with another acceptable Certified M/WBE Subcontractor, if possible (or available).
2. Termination of Subcontracts: If, after execution of a subcontract required by this Article, the Contractor submits a written notice to the Director of Supply Management & Logistics that such subcontract has committed and failed to remedy a material breach of the subcontract, the Contractor may proceed to exercise such rights as may be available to terminate the subcontract.
3. Alternative Subcontracts: If the Contractor is excused from proposing a subcontract under Section 6(B)(1) or rightfully terminates a subcontract under paragraph 6(B)(2) and without such subcontract the successful Contractor will not achieve the level of M/WBE Subcontractor participation upon which the Notice to Proceed was issued, the Contractor shall make every reasonable effort to propose and enter into an alternative subcontract or subcontracts for the same work to be performed by other Certified M/WBE Subcontractor(s) for a contract price for such work equal to or less than the price originally scheduled for such work (less all amounts previously paid thereof).
4. Compliance with Contract Goal: The Contractor shall be deemed to be in continued compliance with the established goal for M/WBE Subcontractor Participation if, following the situation described in paragraph 6(B)(3):
 - a. The Contractor shall propose and enter each such alternative subcontract for the same work with an M/WBE Subcontractor.
 - b. The Contractor demonstrates to the satisfaction of SDOP and the Director of Supply Management & Logistics that it has made every reasonable effort to contact and negotiate with M/WBE Subcontractors in an attempt to comply with W/MBE requirements.
 - c. In spite of Contractor's best efforts, it was unable to subcontract the work because M/WBE Subcontractors were not qualified, unavailable, unwilling or unable to propose a price for such work equal to or less than the price originally scheduled for such work (less all amounts previously paid thereof).

5. Monthly Monitoring Report:

- a. The Contractor holding a contract containing M/WBE participation goals is required to submit a monthly M/WBE Contractor/Subcontractors Utilization Report (Document 00485) with their monthly report and invoice. Forms can be obtained from SDOP.

C. Non-Compliance with Contract Goal:

1. Should the Contractor fail to comply with the provisions of Paragraph 6(B)(5)(a), it shall be considered in default of its Contract.

End of Document 00467