

## **ATTACHMENT M POLICY AND PROCEDURE FOR CONTRACTING WITH MINORITY BUSINESS ENTERPRISES, WOMEN-OWNED ENTERPRISES AND DISADVANTAGED ENTERPRISES**

### **I Purpose**

OC Housing and Community Development (HCD) hereby establishes guidelines to affirmatively further contracting opportunities for Minority Business Enterprises (MBEs), Women Business Enterprises (WBEs) and Disadvantaged Business Enterprises (DBEs). These guidelines pertain to applicants under all of HCD programs and they are designed to:

- A. Promote the employment of disadvantaged businesses by providing increased opportunities to MBEs/WBEs/DBEs for participation in HCD projects.
- B. Provide HCD with a process for tracking MBEs/WBEs/DBEs.
- C. Establish and maintain a records system that clearly documents actions taken by OC HCD, and bidding entities (i.e Contractor), to comply with Executive Orders 11625, 12432, 12138 and 13170.
- D. Provide clear and concise information to Prime Contractors on how to qualify as a MBE/WBE/DBE.

### **II Scope**

HCD is complying with Executive Orders 11625, 12432, and 12138 in taking affirmative steps towards providing opportunities to minority-owned women-owned and disadvantaged owned business enterprises. Towards this end, HCD is strongly encouraging Prime Contractors to subcontract or joint venture with firms who meet the definition of MBE/WBE/DBE. Prime Contractors are encouraged to contract with consortiums of minority-owned firms and women's business enterprises when a contract is too large to be handled individually. Prime Contractors are encouraged to submit proposals by advertising subcontracting opportunities in trade newspapers/notices and magazines, trade and union publications, and publications of general circulation. Prime Contractors are encouraged to use the services and assistance, as appropriate, of certifying organizations in the solicitation and utilization of small businesses, minority-owned firms, and women's business enterprises.

HCD is taking affirmative steps to the extent possible to meet the requirements in 24 CFR 84.44. HCD will:

- A. Ensure that **minority**-owned firms and women's business enterprises are, to the fullest extent possible, given equal opportunities to participate in the HCD contract bidding process.
- B. Make information on forthcoming opportunities available and arrange time frames for contracts to encourage and facilitate participation by small businesses, **minority**-owned firms, woman's business enterprises and disadvantaged-owned enterprises.
- C. Consider in the contract process whether firms competing for larger contracts "made a good faith effort" to subcontract with **minority**-owned firms, women's business enterprises and disadvantaged-owned enterprises.
- D. Encourage contracting with consortiums of **minority**-owned firms, women's business enterprises and disadvantaged-owned enterprises when a contract is too large for one of these firms to handle individually.
- E. Encourage Contractors to use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of

Commerce's Minority Business Development Agency in the solicitation and utilization of **minority**-owned firms, women's business enterprises and disadvantaged-owned enterprises.

### **III Definitions**

Minority-owned firms and women's business enterprises fall under the category of Disadvantaged Business Enterprises as defined in 49 CFR 26. Therefore, to meet the definition of a MBE a WBE or a DBE, a firm must have the following characteristics:

- A. At least 51% owned and controlled by one or more socially and economically disadvantaged individuals or in the case of any publicly-owned business, at least 51% of the stock of which is owned and by one or more socially and economically disadvantaged individuals; and
- B. The management and daily business operations of which are controlled by one or more socially and economically disadvantaged individuals who own it.

A **socially disadvantaged** individual is considered socially disadvantaged because of his/her color, origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar cause beyond the individual's control.

An **economically disadvantaged** individual is one whose ability to compete in free enterprises has been impaired due to diminished capital and credit opportunities, compared to others in the same line of business and competitive market area who are not socially disadvantaged.

Socially and economically disadvantaged individuals are those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, women, and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act or by Regional Certification Reciprocity Council (RCRC)/Orange County Transportation Authority, pursuant to 49 CFR Section 26.67.

For purposes of these policies, the **prime contractor** shall be a business or firm who is proposing to assume the responsibility as the primary entity to whom a contract may or will be awarded for a particular service. The prime contractor shall be responsible for the management of all aspects of a contract, including the subcontracting of services to secondary businesses or firms.

### **IV. Good Faith Effort**

Prime Contractors wishing to contract with HCD must make a "Good Faith Effort" to partner or subcontract with MBEs/WBEs. The "Good Faith Effort" involves a reasonable attempt to contract with MBEs/WBEs. The following indicators will be used to determine the Contractor's compliance with the "Good Faith Effort" requirements:

- A. The Prime Contractor's efforts to obtain participation by MBE's and WBE's can be reasonably documented by HCD.
- B. The Prime Contractor attended pre-solicitation or pre-bid meetings, if any, scheduled by HCD. The pre-bid meetings will be the forum used to inform all interested parties of these HCD MBE/WBE/DBE policies for the project for which a contract will be awarded. HCD may waive this requirement if the Prime

Contractor provides verifiable proof and certifies that it is informed and understands these MBE/WBE requirements. To satisfy this requirement, the Prime Contractor must complete and submit as part of its bid documentation a CERTIFICATION OF COMPLIANCE WITH THE MINORITY AND WOMEN BUSINESS ENTERPRISE REQUIREMENT (Attachment A, pg. 155 - 156).

- C. The Prime Contractor identified and selected specific items of the project for which the contract will be awarded to be performed by subcontractors to provide an opportunity for participation by MBE's, WBE's and DBE's. The Prime Contractor shall, when economically feasible, divide total contract requirements into small portions or quantities to permit maximum participation by MBE's and WBE's.
- D. The Prime Contractor advertised for subcontracting bids or proposals from interested business enterprises no less than 10 calendar days prior to the submission of bids or proposals, in one or more daily or weekly newspapers, trade association publications, minority or trade oriented publications, trade journals, or other media specified by the Awarding Authority. The name of each publication and the date that the ad appeared must be provided.
- E. In its advertisements for bids, the Contractor must provide written notice of its interest in bidding on the contract to those subcontracting business enterprises, including MBEs and WBEs, having an interest in participating in such contracts. All notices of interest shall be provided no less than 10 calendar days prior to the date the bids or proposals were required to be submitted. In all instances, the Contractor must document that invitations for subcontracting bids were sent to available MBE's, WBE's and DBE's for each item of work to be performed. HCD shall be available to help Prime Contractors identify interested MBEs, WBEs and DBEs.
- F. The Prime Contractor documented efforts to follow-up initial solicitations of interest by contacting business enterprises to determine with certainty whether the enterprises were interested in performing specific portions of the project not less than three calendar days prior to the date the bids or proposals were required to be submitted.
- G. The Prime Contractor provided interested MBE, WBE and DBE business enterprises with information about the plans, specifications, and requirements for the selected subcontracting work.
- H. The Prime Contractor requested assistance from organizations that provide assistance in the recruitment and placement of MBE's and WBE's no less than 15 calendar days prior to the submission of bids or proposals.
- I. The Prime Contractor negotiated in good faith with interested MBE's, WBE's and DBE's and did not unjustifiably reject as unsatisfactory bids or proposals prepared by a business enterprise. As documentation, the Prime Contractor must submit a list of all sub-bidders for each item of work solicited, including dollar amounts of potential work for MBE's and WBE's.
- J. The Prime Contractor documented efforts to advise and assist interested MBE's and WBE's in obtaining bonds, lines of credit, or insurance required by the Awarding Authority or contractor.

HCD determination of the adequacy of a Prime Contractor's Good Faith Effort will be based on due consideration of all indicators of good faith as set forth above.

The Good Faith Effort is also required even if the Prime Contractor is a certified Minority or Woman Business Enterprise.

In the event that HCD does not award a contract to a Prime Contractor because the proposal is determined to be in non-compliance with the Good Faith Effort requirements set forth above, HCD shall, if requested and prior to the award of the contract, afford the Prime Contractor the opportunity to appeal the HCD selection and present evidence to the Manager, Administration and HCD of the Prime Contractor's compliance with the Good Faith Efforts in making its outreach.

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**CERTIFICATION OF COMPLIANCE  
WITH THE  
MINORITY, WOMEN AND DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENT  
(Attachment A)**

1. I, \_\_\_\_\_ (name) representing \_\_\_\_\_ (firm) am aware that, Orange County Housing and Community Development, is complying with Executive Orders 11625, 12432, 12138 and 13132 in taking affirmative steps towards providing contracting opportunities to Minority and Women Business Enterprises.
2. I understand that Minority, Women Business and Disadvantaged Enterprises are defined as follows:
  - (a) a business concern that must be at least 51% owned and controlled by one or more socially and economically disadvantaged individuals, including women and ethnic minorities, or, in the case of any publicly-owned business, at least 51% of the stock of which is owned by one or more socially and economically disadvantaged individuals, including women and ethnic minorities; and
  - (b) the management and daily business operations of which are controlled by one or more socially and economically disadvantaged individuals, including women and ethnic minorities, who own it.
3. I am aware that the following agencies provide certifications and some provide lists of certified contractors.
  - **City of Los Angeles**  
Department Of Public Works/Bureau Of Contract Administration  
[HTTP://BCA.LACITY.ORG](http://BCA.LACITY.ORG), Telephone (213) 847-1922  
<https://bca.lacity.org/CertificationListings/DBETable.php>
  - **California Department of Transportation (Caltrans)**  
916/324-1700  
  
<https://dot.ca.gov/programs/business-and-economic-opportunity>
4. I understand that when seeking subcontractors and suppliers I will provide opportunities for Minority and Women Business Enterprises to submit proposals by advertising in:
  - (a) Trade newspapers/notices and magazines
  - (b) Trade and union publications
  - (c) Publications of general circulation, including local newspapers publishing primarily for the benefit of persons whose primary language is not English (i.e. including but not limited to Spanish and Vietnamese).
5. I understand that at the completion of the project, if requested by the County, I will provide OC HCD with documentation verifying:
  - (a) Company's marketing activities soliciting Minority and Women Business Enterprises
  - (b) Listing of Minority and Women Business Enterprises businesses that responded to solicitation efforts
  - (c) Identify Minority and Women Business Enterprises participating in this project and state contract amounts.