

COMMISSIONERS OF WAYNE COUNTY

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Solicitor

Minority and Women's Business Enterprise (M/WBE) Action Plan

Wayne County

May 19, 2022

COMMISSIONERS OF WAYNE COUNTY

Adopted by Wayne County Commissioners May 19, 2022



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Definitions

For the purpose of these requirements, the following terms, as defined below, shall apply:

1. GRANTEE - Municipality under contract with the Commonwealth for receipt of DCED funds.
2. ADMINISTERING AGENCY - The agency responsible for administering the grants for the Grantee.
3. BIDDER RESPONSIVENESS - Actions taken by prime contract bidders to seek participation by MBE/WBE suppliers, manufacturers, and subcontractors. Responsiveness includes submission of Form DCED-CCD-286, MBE/WBE Contract/Solicitation and Commitment Statement; and, if needed, an explanation for failure to achieve minimum levels of participation, including demonstration that the bidder has not engaged in discriminatory practices.
4. BIDDER RESPONSIBILITY - Non-discrimination in the selection of subcontractors, suppliers, and manufacturers. Non-discrimination is presumed if minimum levels of participation are achieved. Non-discrimination can also be demonstrated by submitting Form DCED-CCD-286 and supplemental evidence that failure to achieve minimum levels of participation was not motivated by consideration of race or gender; that MBEs/WBEs were not treated less favorably than others; and that solicitation and commitment decisions were not based upon policies which disparately affect MBEs/WBEs.
5. BUSINESS ENTERPRISE - Any legal entity which is organized in any form other than as a joint venture (e.g., sole proprietorship, partnership, corporation, etc.) to engage in lawful commercial transactions.
6. CONTRACTOR/SUBCONTRACTOR - One who participates, through a contract, subcontract, or lease agreement, in any manner covered by the grantee's MBE/WBE Program.
7. MANAGEMENT CONTROL - The minority or women owners should possess the power to direct or cause the direction of the management and policies of the firm and to make the day- to-day as well as major decisions on matters of management, policy and operations. The firm should not be subject to formal or informal restrictions which limit the customary discretion of the minority or women owners. There should be no restrictions through for example, by-law provisions, partnership agreements or charter requirements for cumulative voting rights or otherwise that prevent the minority or women owners, without the cooperation or vote of an owner who is not a minority or woman, from making a business decision of the firm. If the actual management of the firm is contracted out to or otherwise has

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been placed with individuals other than the minority or woman owner, those persons who have the ultimate power to hire and fire the managers will ordinarily be considered as controlling the business.

8. MINORITY BUSINESS ENTERPRISE (MBE) - A for-profit business concern that is one of the following:

a. a sole proprietorship, owned and controlled by a minority; or

b. a partnership or joint venture controlled by minorities in which 51% of the beneficial ownership interest is held by minorities; or

c. a corporation or other business entity controlled by minorities in which at least 51% of the voting interest and 51% of the beneficial ownership interest are held by minorities.

9. MINORITY PERSON - Persons who are citizens of the United States and who are African Americans, Hispanic Americans, Native Americans, or Asian-Pacific Americans.

a. African Americans - Persons having origins from any of the Black groups of Africa. The term includes persons having origins in any of the original peoples of the Cape Verdes Islands.

b. Hispanic Americans - Persons having their origins from one or more of the Spanish- speaking peoples of Mexico, Puerto Rico, Cuba, Central or South America or the Caribbean Islands.

c. Native Americans - Persons having origins from one or more of the original peoples of North America and who are recognized as an Indian by a tribe or tribal organization.

d. Asian-Pacific Americans - Persons having origins from one or more of the original peoples of the Far East, Southeast Asia or the Pacific Islands, including China, Japan, Korea, Samoa, and the Philippine Islands.

10. OPERATIONAL CONTROL – The minority or women owners should demonstrate through the application sufficient experience, knowledge and expertise to operate that particular business. Additionally, if the owners of the firm who are not minorities or women are disproportionately responsible for the operation of the firm—to include possessing any required licensing for the firm—the

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firm will ordinarily be considered not being controlled by minorities or women and not qualifying as an MBE or WBE.

Securities, which constitute ownership or control, or both, of a corporation for business purposes of establishing it as an MBE or WBE should be held directly by minorities or women. No securities held in trust, or by a guardian for a minor should be considered as held by minority or women in determining the ownership or control of a corporation.

11. OWNERSHIP

a. Bona fide minority and women group membership may be established on the basis of the individual's claim that he is a member of a minority group or is of the female gender and is and has been so regarded by that particular community. Verification of group membership may be accepted through submission of birth certificates, military records, passports or tribal cards.

b. An eligible MBE or WBE defined in this section should be an independent business. The ownership and control by minorities or women should be real, substantial and continuing and should go beyond the pro forma ownership of the firm as reflected in its ownership documents. The minority and women owners should enjoy the customary incidents of ownership and should share in the risks and profits commensurate with their ownership interests as demonstrated both by an examination of the substance and form of arrangements. Recognition of the business as a separate entity for tax or corporate purposes is not necessarily sufficient for recognition as an MBE or WBE. In determining whether a potential MBE or WBE is an independent business, all relevant factors must be considered, including the date the business was established, its resources, and the nature of the financial, lease arrangements, and other relationships the business enjoys.

c. The contributions of capital or expertise by the minority or women owners to acquire their interests of the firm should be real and substantial. Examples of insufficient contributions include a promise to contribute capital, a note payable to the firm or its minorities or women, or the mere participation as an employee rather than as a manager.

12. WOMEN'S BUSINESS ENTERPRISE (WBE) – A for-profit business concern that is:

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a. a sole proprietorship, owned and controlled by a woman in which at least 51% of the beneficial ownership is held by women; or

b. a partnership or joint venture controlled by women in which at least 51% of the beneficial ownership is held by women; or

c. a corporation or other entity controlled by women in which at least 51% of the voting interest and 51% of the beneficial ownership interest are held by women.

13. WOMEN - United States citizens who are of the female gender.

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Policy Statement

It is the public policy of Wayne County to promote the opportunity for full participation by minority and women's business enterprises ("MBEs" and "WBEs") in all housing and community development programs receiving funds from the Pennsylvania Department of Community and Economic Development.

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Procedures - Invitations for Bids (IFB) or Request for Proposals (RFP)

A. Advertisement - IFB Only

All invitations to bid will include the following information:

"The bidders/offerors must submit documentary evidence of minority and women business enterprises who have been contacted and to whom commitments have been made. Documentation of such solicitations and commitments shall be submitted concurrently with the bid."

B. Notification of MBE/WBE - IFB and RFP

The procedure for Wayne County to notify the minority/women business community of contract opportunities will be as follows:

1. Notice of Invitation for Bid or Request for Proposals - A listing will be developed utilizing lists from the Department of General Services, Bureau of Contract Administration and Business Development (<http://www.dgsweb.state.pa.us/mbewbe/Vendorsearch.aspx>) and/or the Pennsylvania Housing Finance Agency (<https://mwbe.phfa.org/directory/search.aspx>). Searches are for firms within the Wayne County market area (including Wayne, Monroe, Pike, Susquehanna, and Lackawanna counties) and for the type of firms that may be utilized in the particular contract for which bids are being requested. Once the listing is created, a copy of the Notice of Invitation for Bids or Requests for Proposals will be sent by Wayne County to all MBE/WBE firms listed.
2. Other Notices - Notices are to be sent to the following organizations (as appropriate):

Pocono Chamber of Commerce Women in Business Committee

Greater Scranton Chamber of Commerce Women in Business

The African-American Network, Stroudsburg

Monroe County/Pocono Mountains NAACP

Wilkes-Barre Chapter NAACP

Greater Scranton MLK Commission

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Shiloh Baptist Church, Scranton

Bethel AME Church, Scranton

Scranton Korean Church

Iglesia De Dios En Scranton

Iglesia Ministerio Maranatha Pentecostal

Stroudsburg Alliance Church

3. Plans and Specifications - Plans and Specifications or Invitations for Bids on all projects will be made available to minority/women contractor associations and trade organizations.
4. List of Planholders - The names of bidders/offerors who have obtained bid documents will be made available to minority/women businesses upon request.
5. List of Minority/Women Businesses - Each bidder/offeror obtaining plans and specifications or requests for proposals for projects will be provided a list of minority/women businesses to be used in soliciting subcontract bids and for materials and services.

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Participation Requirements for Minority/Women Business Enterprise (MBE/WBE)

A. Construction Contracts (IFBs)

The County of Pke has established minimum levels of participation for minority and women business enterprises (MBE/WBE) for each project in each bid category to be used solely as a guide in determining bidder responsibility. The minimum participation level for MBEs is 5% and for WBEs 3%.

The following items will be placed in all bid documents:

1. Participation Level

a. Wayne County has established Minority Business Enterprise (MBE) and Women Business Enterprise (WBE) minimum participation levels (MPLs) of five percent for MBE and three percent for WBE of the dollar amount of the bid for this contract.

b. These MPLs serve exclusively as a threshold in determining bidder responsibility. A bidder will not be rejected as not responsible solely because it fails to reach the MPLs. To determine the participation level, which has been reached, a bidder may divide the total dollar amount of the commitments by the total dollar amount of the bidder's bid.

c. A firm which is both an MBE and a WBE will only receive credit toward MPLs as either an MBE or WBE, but not both. Bidders must indicate on Form DCED-CCD- 286, MBE/WBE Contact/Solicitation and Commitment Statement whether the firm is being listed as either an MBE or a WBE.

d. An MBE/WBE firm who is the prime bidder on a project will receive no MPL credit for its own work effort for services provided. MBE/WBE bidding as prime proposer must solicit other certified MBEs/WBEs participation for material and/or supplies.

e. MBE/WBE subcontractors must perform at least 75 percent of the cost of the subcontract, not including the cost of materials, with its own employees.

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2. Responsiveness

a. Bidders must complete and submit Form DCED-CCD-286 with the bid. Failure to submit this form with the bid, will result in the bid being rejected as nonresponsive.

b. A bidder should only solicit MBE/WBE subcontractors, vendors, manufacturers, or suppliers whose services, material, or supplies are within the scope of work and which the bidder reasonably believes it will choose to subcontract with or purchase from.

c. Bidders failing to meet the minimum levels of participation must submit concurrently with the bid, an explanation of why the MPLs have not been met. This explanation must demonstrate that the bidder has not engaged in discriminatory practices in solicitation and utilization of MBEs/WBEs contained on the solicitation list provided by the grantee to perform as subcontractors or suppliers of goods and services related to the performance of the contract. The evidence submitted by the bidder must demonstrate the following:

(1) Indicate whether MBEs/WBEs were solicited for each type of work the bidder expects to subcontract for and for all materials which the bidder expects to procure and, if not, the reason(s) why no such solicitation was made;

(2) Indicate the reason why an MBE/WBE has not been committed to for a type of subcontract work or materials in any area where a quote was received from a MBE/WBE, and;

(3) In any case where no quotations are received nor commitments made to MBE or WBE firms, indicate on Form DCED-CCD-286 that no quotes were received, and if there is another reason for no commitments being made, the reason for the lack of commitments.

d. If the bidder fails to submit such evidence, the bid submission shall be considered non-responsive and the bid rejected.

e. Information related to the above may be submitted on Form DCED-CCD-286 or on additional paper.

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3. Responsibility

a. The submittals of each bidder are subject to review to determine whether the bidder has discriminated in the selection of manufacturers, subcontractors and suppliers. If a bidder has met the MPLs for MBE/WBE participation, the bidder will be presumed not to have discriminated in their selections. Where the MPLs are not met, Wayne County will determine whether discrimination has occurred. If, after investigation including a review of Form DCED-CCD-286, it is found that discrimination has occurred, the reviewed bidder shall thereby be deemed to be not responsible and the bid will be rejected.

b. Documentation submitted by the bidder should meet the following standards for review:

(1) The bidder whose actions resulted in a limited or no commitment to MBEs/WBEs was not motivated by consideration of race or gender.

(2) MBEs/WBEs were not treated less favorably than other businesses in the contract solicitation and commitment process.

(3) Solicitation and commitment decisions were not based upon policies which disparately affect MBEs/WBEs.

c. Commitments to MBE and WBE firms made at the time of bidding must be maintained throughout the term of the contract, unless a change in commitment to these firms is preapproved by Wayne County or the administering agency performing the evaluation of the invitation for bid.

4. Access to Information

Wayne County may obtain documents and information from any bidder, contractor, subcontractor, supplier, or manufacturer that may be required in order to ascertain bidder or contractor responsibility. Failure to provide requested information may result in the contractor being declared not responsible.

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Procedures - Contractor Compliance Process

A. Contract Provisions

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

2. Construction Contracts

a. The prime contractor must provide Wayne County with a report of MBE/WBE subcontracting activity on a quarterly or per project basis, whichever is sooner. The report shall reflect the names of and the total dollar amount paid to all MBE/WBE subcontractors (including suppliers) utilized under this contract.

b. MBE/WBE Subcontractors must provide Wayne County with a report reflecting the prime contractors who have purchased their services and/or supplies on a quarterly basis. The report shall reflect the name of the prime contractor and the total dollar amount invoiced and total dollar amount received for payment.

B. Grantee Compliance Procedures

1. A letter will be forwarded to the prime contractor by Wayne County informing them of their quarterly or per project reporting requirements. In addition, a letter will be forwarded to all MBE/WBE subcontractors (copy to the prime contractor) informing them of their reporting requirements.

2. Wayne County will review all reports received from the prime contractor and all subcontractors to determine if the commitments made by the prime contractor in his/her bid are being met. If reports are submitted on a per project basis, this review is to be done prior to final payment being made to the contractor and/or subcontractor.

C. Records and Reports

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The contractor will keep such records as are necessary to determine compliance with its minority and women business enterprise commitments. These records must be in sufficient detail to indicate the number of minority and women businesses, the contract work performed, and the percentage of minority and women businesses performing work. Additionally, the contractor is required to maintain an open file for a specified period, during which time the contract compliance person may make periodic reviews of records pertaining to relevant contracts.

(insert DCED-CCD-286)

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(insert MWBE 9-08)

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(insert DCED-CCD-MWBE-02)

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Exhibit 4: Letter to Prime Contractor Regarding Reporting Requirement

(Date)

(Contractor's Name and Address)

RE: [Contract Number, Name of Project]

Dear Sirs/Madam:

Congratulations on being awarded the above referenced contract. In the contract a binding commitment was made by your firm to the following MBE and/or WBE firms - [List Names of MBE and/or WBE firms here].

The attached Prime Contractor's Quarterly Utilization Report should be completed and returned to Wayne County, within ten (10) working days at the end of each quarter or project completion. The information requested on this form will, inter-alia, be used to determine the actual dollar amount paid to Minority and Women Business Subcontracting and/or Suppliers to which your firm made commitments during the bidding process.

If you have any question regarding the above, please contact Andrew Seder at (570) 253-5970 ext. 1301. Best wishes for continued success on this project.

Very truly yours,

Attachment

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Exhibit 5: Letter to Subcontractors Regarding Reporting Requirement

(Date)

[Subcontractor's Name and Address]

RE: [Contract Number, Name of Project]

Dear Subcontractor/Supplier:

The above referenced contract has been awarded to [Name of Prime Contractor]. In the contract, a binding commitment was made to your firm of [dollar amount of commitment].

Please verify the above committed amount with this office within fifteen (15) days after receipt of this letter. If you do not respond, we will presume that your firm is in agreement with the committed amount.

In order that we may track this amount accurately, we ask that the attached Subcontractor's Quarterly Utilization Report be completed and returned to Wayne County within ten (10) working days at the end of each quarter or project completion. Should you have any questions regarding this form, please contact Andrew Seder at (570) 253-5970 ext. 1301.

Your participation in this program will help ensure that it is successful. Your continued participation will be both beneficial to our program and to you.

Very truly yours,

Attachment

cc: [Prime Contractor]

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Exhibit 6: Evaluation and Determination Examples – Responsive Bids

1. An award in a multi-bidder IFB:

The bid submission of _____ at \$_____ is responsive since the bidder did submit the required MBE/WBE Contract/Solicitation and Commitment Statement along with sufficient evidence from which to evaluate the bidder's responsibility. Award to (Contractor's Name) will result in the following:

MBE Participation \$ = %

a. (subcontractor's name) \$

b. \$

WBE Participation \$ = %

2. All services and supplies provided in-house:

The bid submission of _____ at \$_____ is responsive since the bidder did submit the required MBE/WBE Contract/Solicitation and Commitment Statement along with sufficient evidence from which to evaluate the bidder's responsibility. The bidder indicated that all services and supplies will be provided in-house.

3. No certified MBEs/WBEs available:

The bid submission of _____ at \$_____ is responsive since the bidder did submit the required MBE/WBE Contract/Solicitation and Commitment Statement along with sufficient evidence from which to evaluate the bidder's responsibility. The bidder indicated that certified MBEs/WBEs are not available in the area requested.

The bid submission of _____ at \$_____ is responsive. The bidder did not solicit quotes from certified MBEs/WBEs, nor did they provide an explanation as to why no quotes were solicited. However, Wayne County does not have any certified MBEs/WBEs in this specialized area.

4. Indicated "N/A", "None" or "did not solicit", but bid specs show subcontracting not necessary:

The bid submission of _____ at \$_____ is responsive. Although the bidder indicated "N/A", upon evaluation of the specifications it was determined that the services and supplies in support of this contract could be provided by the bidder.

5. Labor provided in-house; Materials cannot be anticipated:

The bid submission of _____ at \$_____ is responsive since the bidder did submit the required MBE/WBE Contract/Solicitation and Commitment Statement along with sufficient evidence from which to evaluate the bidder's responsibility. The bidder indicated that all services and supplies will be provided in-house and materials are such that they cannot be anticipated.

6. Bidder did not submit DCED-CCD-286; Under \$25,000:

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The bid submission of _____ at \$_____ is responsive. Although the bidder did not submit the required MBE/WBE Contract/Solicitation and Commitment Statement, the bid is still responsive since it is under \$25,000.00. If the bid is amended or renewed and it increases the contract value to \$25,000.00 or above, a MBE/WBE Contract/Solicitation and Commitment Statement must be submitted for evaluation.

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Exhibit 7: Evaluation and Determination Examples – Not Responsive Bids

1. Only One bidder; no solicitation:

The bid submission of _____ at \$_____ is not responsive. The bidder did not solicit bids from certified MBEs/WBEs, nor did they provide an explanation as to why the MPLs were not achieved as required by the bid documents.

2. Subcontractors not certified by DGS or PA DOT:

The bid submission of _____ at \$_____ is not responsive. The bidder committed to a firm that is not certified by the Department of General Services or Department of Transportation as required by the bid documents. Certified MBEs/WBEs are available to provide services/supplies for this contract.

3. "N/A" or "None" on DCED-CCD-286; No explanation provided:

The bid submission of _____ at \$_____ is not responsive. The bidder indicated "N/A"/"None" in response to the solicitation and commitment to MBEs/WBEs and they failed to provide an explanation as to why the MPLs for MBEs/WBEs was not achieved as required by the bid documents.

4. Certified MBE/WBE listing only themselves on the DCED-CCD-286:

The bid submission of _____ at \$_____ is not responsive. The bidder listed themselves on the MBE/WBE Contract/Solicitation and Commitment Statement without addressing MBE/WBE solicitations and commitments as required by the bid documents.

5. No documentation for not meeting participation levels:

The bid submission of _____ at \$_____ is not responsive. The bidder failed to submit an explanation as to why the MPLS for the MBEs/WBEs was not achieved as required by the bid documents.

6. Did not commit; Did not achieve MPLs:

The bid submission of _____ at \$_____ is not responsive. The bidder failed to commit to any of the MBEs/WBEs solicited and they did not provide an explanation as to why the MPLs for MBEs/WBEs was not achieved as required by the bid documents.

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APPROVED this _____ day of _____, 2022.

Attest:

Signatures:

Andrew Seder, Chief Clerk Date

Brian W. Smith, Chairman Date

Joseph W. Adams, Commissioner Date

Jocelyn Cramer, Commissioner Date