

## **SLR 19. Minority and Women Business Enterprise (M/WBE) Requirements**

The City has a Minority and Women Business Enterprise (M/WBE) requirement that ensures participation of African-Americans, Hispanic Americans and Women-owned businesses on City public works projects. Goals are set for each particular group, whether the project is for street/water construction or general/building construction. Contracts that are solely for materials and supplies do not count toward the M/WBE utilization goal.

Included within these bid documents and immediately following this page, are the policy statement, utilization goal, participation plan, participation documents and utilization plan, and good faith effort sections for this contract, and the check list for type of work the City believes may be performed by certified M/WBE's available in the RMSA. However, the City's checklist is provided for informational purposes only and does not relieve the bidder of making a good faith effort to meet the M/WBE Utilization goals for this contract.

A paper copy of the "Minority and Women Business Enterprise (M/WBE) Construction Utilization Goal" documents will no longer be included with City of Rochester bid documents. However, a paper copy of the complete set of the M/WBE documents will be provided to the successful bidder(s) upon award of the contract.

A complete set of the "Minority and Women Business Enterprise (M/WBE) Construction Utilization Goal" documents is available on the City of Rochester's website, and are hereby incorporated by reference. They can be accessed by visiting the City of Rochester's website, under Services – Contracts, Bids, RFPs – Public Works Construction Documents.

Information about M/WBE requirements may be obtained on an advisory basis by contacting the City of Rochester M/WBE Officer at (585) 428-6190.

## **MINORITY AND WOMEN BUSINESS ENTERPRISE (M/WBE) CONSTRUCTION UTILIZATION GOAL**

### **1. Policy Statement**

The City of Rochester has determined, through a study of procurement disparity by ethnic and gender group, that there has been discrimination on the basis of race toward African-American and Hispanic-owned construction businesses and on the basis of sex toward Woman-owned construction businesses. Therefore, in order to remediate this discrimination, City Council Ordinance 92-326 (as amended by Ordinance 94-213) authorizes a policy of affirmative action toward contractors in the above groups whose businesses are located within the Rochester Metropolitan Statistical Area (RMSA). In order to achieve this policy, the City has set an M/WBE utilization goal for each group that shall be applied to each contract. The utilization goals depend upon the particular group and whether the project is for street construction or general construction.

### **2. M/WBE Utilization Goal**

2.1. The M/WBE utilization goals for this contract are 6.7 % for African-American, 2.2 % for Hispanic, and 1.0 % for Women business enterprises of the total dollar amount of this contract.

2.2. Only M/WBE firms that are certified by the State of New York, and located within the Rochester MSA, or otherwise approved by the City's M/WBE Officer can be used to fulfill these utilization goals. The list of City approved State Certified M/WBE firms is found in the directory that can be found on the City of Rochester's website, under Services – Contracts, Bids, RFPs – Public Works Construction Documents.

2.3. If this contract award is less than \$50,000, the Minority and Women Business Enterprise Goals may be a simple composite goal of 9.9 %, fulfill able by any single M/WBE or group of M/WBE's.

2.4. Contracts solely for materials and supplies do not count toward the M/WBE utilization goals.

### **3. M/WBE Participation Plan**

3.1. Bidders must submit with their bid a completed M/WBE Form P – the M/WBE Participation Plan, pages 1 and 2. This Plan indicates the M/WBE subcontractors the bidder intends to utilize if awarded this contract in order to fulfill the M/WBE goals listed in Section 2 above. Form P, Page 1, lists the names of each subcontractor the bidder intends to use, the M/WBE classification, the type of work that the subcontractor will do, the proposed dollar amount of the subcontract and the percentage of the base bid amount. On Form P, Page 2, the bidder must indicate at what stage, or stages, each M/WBE subcontractor is expected to be utilized.

3.2. Only M/WBE firms included in the most current version of the City Approved list of Certified M/WBE Firms in the Rochester Metropolitan Statistical Area provided on the City's web site provided in Section 2.2 will be approved for use in meeting the City's M/WBE utilization goals, unless otherwise approved by the City's M/WBE Officer.

3.3. The M/WBE Participation Plan (Form P) will be used by the City to determine whether or not the bidder has demonstrated the ability to meet the M/WBE goal requirements of this contract. The Form P Plan will be reviewed for compliance with the Utilization Goal requirements, including, but not limit to, the certification and good faith efforts described below. The City reserves the right to require the bidder to modify their use of M/WBE firms shown on Form P if they do not fully meet the M/WBE goal requirements, either by category or percentage. The City also reserves the right to require that the bidder modify the M/WBE firms shown on Form P, should the City determine that use of other M/WBE contractors is possible and preferable in order to more fully meet the goal requirements. The final approved M/WBE Plan which shall become part of the contract documents shall be the approved M/WBE Form A, along with corresponding Form B and Form C documents.

#### **4. M/WBE Participation Documents and Utilization Plan**

4.1. Upon notification by the City, a bidder must submit, within ten (10) calendar days, a completed M/WBE Form A - Schedule of Participation, along with an M/WBE Form B – Intent to perform as a Subcontractor and M/WBE Form C – M/WBE Affidavit for each M/WBE subcontractor. Unless otherwise approved by the City, the subcontractors shown on the M/WBE Participation Plan – Form P must be used in the Schedule of Participation, Form A. Blank copies of these forms are available from the Bureau of Purchasing.

4.2. If the City elects to choose Add or Delete Alternates in addition to the Base Bid, the Form A – Schedule of Participation shall be adjusted to insure that the M/WBE goals are met based upon the total value of the contract award.

4.3. Once approved by the City, the M/WBE Schedule of Participation and related Forms B and C shall constitute the Approved M/WBE Utilization Plan, which shall be the contractual obligation of the Contractor for meeting the M/WBE goal requirements.

4.4. If the total cumulative amount of the contract with the City changes the initial contract award amount by 5% or more based upon the net of all change orders approved by the City during the performance of the contract, the Contractor must submit a revised Form A, and related Forms B and C, and have these approved by the City, in order to insure that the cumulative total of M/WBE subcontracts meets the M/WBE goal requirements of this contract.

4.5. For any subcontract that requires materials and/or supplies as part of the contract, the M/WBE subcontractor must provide a service of installation, connection, set-up, mounting, assembly, construction, erection, raising and/or building using product or material supplied. The M/WBE subcontract cannot be reduced to just providing or passing along materials and/or supplies. If an M/WBE subcontract becomes primarily a materials and/or supplies contract, then the subcontract agreement between prime contractor and the M/WBE shall no longer be considered a bona fide M/WBE subcontract that can count towards fulfillment of the M/WBE utilization goals of this contract.

4.6. If the M/WBE subcontractor participation proposed in Form A does not meet the M/WBE goals of this contract, the bidder must request a waiver based on one or more of the circumstances set forth in Section 5. If the bidder requests a waiver due to M/WBE non-availability, Forms D and E must be submitted. M/WBE Form D provides a list of all M/WBE's who were invited to submit quotes. M/WBE Form E is a certification proving that an M/WBE firm invited to submit a quote declined to do so. Other M/WBE certification forms and/or documentation may be required by the City to verify that a good faith effort was made to meet the utilization goals.

## **5. Good Faith Effort**

5.1. In order to be considered for a waiver of any of the M/WBE goals in this contract, a bidder must demonstrate a good faith effort to obtain M/WBE subcontractors. In judging whether a bidder has made a good faith effort to meet the M/WBE Utilization Goal requirements of this contract, the City will consider the different kinds of effort used as well as the intensity of those efforts.

5.2. Demonstration of a good faith effort should include, but not be limited to, the following actions:

5.2.1. Should attend the pre-bid conference at which bidders are informed of the M/WBE goals.

5.2.2. Should solicit M/WBE's listed in the City approved State Certified M/WBE directory available on the City's web site (referenced above in Section 2.2). Such solicitation must be for appropriate portions of the work which could be performed by MBE and WBE subcontractors, and shall clearly describe the plans and specifications of such work, including providing the opportunity to review plans and specifications. Solicitations should be made a reasonable period (at least one week) before bids or proposals are due.

5.2.3. Should advertise for quotes from MBE's and WBE's in general circulation media and minority and women focused media. Advertisements should appear for a reasonable period (at least one week) before bids or proposals are due.

5.2.4. Should notify appropriate minority and women subcontractor associations in writing within a reasonable period (at least one week) before bids or proposals are due.

5.2.5. Should utilize the services of and cooperate with those organizations providing technical assistance to MBE's and WBE's for running companies and obtaining business, such as the Minority Business Development Center and the SUNY Brockport SBA program.

5.2.6. In the event that the specialized machinery and/or materials/products required to fulfill the contract represents a substantial portion of the cost of the contract, and where the specialized machinery/materials/products can only be supplied by a limited number of non-M/WBE suppliers, the bidder must provide the City with the substantiation for such costs and how this reduces the opportunity to utilize M/WBE subcontractors for this contract.

5.2.7. Should submit all required documentation to the City within the time frames required in these contract documents, including all forms for proposed subcontractors and any other documentation requested by the City.

5.3. The following documentation at a minimum is required to support any request for a waiver to allow for only partially meeting the M/WBE utilization goals:

5.3.1. Attendance at the pre-bid conference for this bid.

5.3.2. Written documentation demonstrating the efforts made to comply with the requirements of Sections 5.2.2 through 5.2.6. above.

5.3.3. Written documentation demonstrating efforts to subcontract with M/WBE's, including names, dates and contact information of all M/WBE firms contacted and solicited, along with their

responses, and if not selected, the reasons for such decision.

5.3.4. Written documentation to verify that the bidder gave M/WBE's direct access to, and adequate time to review, all necessary project plans, drawings, specifications and other documents, as well as adequate time to prepare subcontract bids.

5.3.5. Written documentation that the bidder has met the Utilization Goals after adjusting for specialized machinery and/or materials/products as covered in Section 5.2.6.

5.4. Any bidder requesting a waiver from fully meeting the M/WBE Utilization Goals for this contract must meet with the City's M/WBE Officer and/or the City Purchasing Agent if requested to review the good faith effort made by the bidder to meet the Utilization Goals.

5.5. The City's decision as to sufficiency of documentation and/or adequacy of a good faith effort shall be final.