

PLEASE NOTE: This packet consists of four (4) "Instruction" pages and six (6) attached "Forms" titled 100, 101, 102, 103A, 103-B, 105. If all pages are not attached, please contact: **Office of Business Diversity, Chicago Public Schools, 125 South Clark Street, 16th Floor, Chicago Illinois, 60603, PHONE: 773-553-2980 FAX: 773-553-2981.**

You may also download forms at <http://www.csc.cps.k12.il.us/purchasing>

Board of Education of the City of Chicago

REMEDIAL PROGRAM FOR MINORITY AND WOMEN BUSINESS ENTERPRISE ECONOMIC PARTICIPATION

INSTRUCTIONS TO BIDDERS

On July 2006, the Board of Education of the City of Chicago (the "Board") adopted the Remedial Program for Minority and Women Business Enterprise Economic Participation in Construction Contracts ("M/WBE Program"). The M/WBE Program is the governing document establishing and explaining requirements concerning Minority and Women Business Enterprise participation and its terms are incorporated into the contract. Compliance with the provisions of the M/WBE Program is an element of bidder/proposer responsibility for award of the contract. The M/WBE Program, the compliance specifications, and all compliance materials as finally approved by the Office of Business Diversity, Waiver Review Committee, Appeals Committee, the Chicago Public Schools (the "District"), and/or the Board constitute the bidder/proposer Compliance Agreement and are incorporated as part of the contract. All heirs, executors, administrators or assignees and any other persons or entities claiming by or through the bidder/proposer, including but not limited to insurance companies, bonding companies, or sureties, are bound by the bidder/proposer Compliance Agreement.

Any questions regarding compliance with these requirements should be directed to the Office of Business Diversity, Chicago Public Schools, 125 South Clark Street, 16th Floor, Chicago Illinois, 60603, 773-553-2980, FAX: 773-553-2981. Notice by fax transmission is valid notice, if the originals are subsequently deposited in U.S. mail and the fax transmission is verifiable.

DEFINITIONS

MINORITY:

A member of any of the following racial/ethnic groups:

- African Americans or Blacks (persons having origins in any of the Black racial groups of Africa);
- Hispanics (persons of Spanish culture with origins in Mexico, South or Central America or the Caribbean Islands, regardless of race); and
- Asians (persons having origins in any of the original peoples of East Asia, Southeast Asia, the Indian subcontinent, or the Pacific Islands).

MBE:

A business which is owned and controlled by a Minority person or persons,

WBE:

A business which is owned and controlled by a Woman or Women,

CHICAGO SMSA:

The six-county Chicago Metropolitan Statistical Area including: Chicago and Cook, DuPage, Kane, McHenry, Lake, and Will Counties.

CERTIFICATION:

Refers to an MBE or WBE that has been formally certified as such in accordance with M/WBE Program. (Where a provision of the

(CERTIFIED)

Program expressly makes certification a prerequisite to some benefit or activity, that requirement shall not be obviated because related Program text refers only to "M/WBEs" and not to "certified M/WBEs".)

CONTRACTOR:

A firm that enters into a contract (including through the receipt of a purchase order) with the District to provide goods or to perform services.

(PRIME)

JOINT VENTURE:

An association between two or more independent firms formed, consistent with the laws of the State of Illinois to perform one or more specific contracts.

SUBCONTRACTOR:

A firm which enters into a contract with a Prime Contractor to provide goods or services pursuant to a contract between the Prime Contractor and the District.

(SUPPLIER)

GOAL STRUCTURE FOR MINORITY AND GENDER GROUPS

One goal for MBE participation, to insure that the minority groups that are the principal discrimination victims will, in fact, receive the principal portion of the remedy, with a separate WBE participation goal. For purposes of meeting the WBE goal, businesses owned by Minority Women may be counted on a particular contract as an MBE or WBE, but not both.

For each competitively bid contract for commodities where it is determined that the prime bidder/proposer will perform a broker/distributor function for the manufacturer of said commodities, only the aggregate goal for MBE and WBE participation shall be applicable.

METHODS OF ACHIEVING THE PROGRAM GOALS INCLUDE A COMBINATION OF ANY OF THE FOLLOWING

1. Being a certified M/WBE prime contractor
2. Engaging in joint ventures with certified M/WBEs
3. Subcontracting with certified M/WBEs
4. Purchasing supplies and/or services directly related to the performance of the contract from certified M/WBEs
5. Purchasing supplies and/or services not directly related to the performance of the contract (upon District approval)
6. Business development activities

The Chief Executive Officer of the Chicago Public Schools may adopt other alternative forms of securing and administering M/WBE participation for a particular contract, upon notice to the Board. Such other alternative methods may be used when doing so will enable securing a level of M/WBE participation that otherwise would not be attainable.

LIMITATION TO COMMERCIALY TYPICAL BUSINESS RELATIONSHIP

MBE and WBE compliance participation shall not be recognized for any portion of the dollar value of the contract performance which is passed through to non-M/WBE firms in the form of (a) sub-contracts, or (b) equipment leasing or other acquisition of goods or services for performance of the contract in a manner which is not typical of industry practice with respect to such contracts.

COMMERCIALY INDEPENDENT FUNCTION

A M/WBE must be an independent business serving a Commercially Independent Function. This means that the M/WBE must execute a distinct element of work by actual performance, management, and supervision.

DEMONSTRATION OF COMPLIANCE

Each bidder/proposer must submit with its bid or proposal a signed commitment to comply with the M/WBE Program (Compliance Affidavit), or the bid/proposal will be deemed non-responsive. Each bidder/proposer must also submit, as part of its bid or proposal, a detailed Compliance Demonstration showing the manner in which the contractor will comply with MBE and WBE requirements. The Compliance Demonstration is an element of bidder responsibility. Requirements for Compliance Demonstrations may be further specified by the Office of Business Diversity and standard forms shall be provided to bidders/proposers.

The Compliance Demonstration must be provided on Form 100 through Form 105, copies of which are included with this solicitation. Additional forms and/or additional information, concerning your Compliance Demonstration with the M/WBE Program may be separately submitted, but applicable forms must be completed, and will be incorporated in the contract. Please refer to the table below to determine which forms must be completed.

- Form 100 - Prime Bidder/Proposer Information
- Form 101 - Direct/Indirect Participation – Subcontractors/Suppliers/Consultants
- Form 102 - Joint Venture
- Form 103A - Letter of Intent
- Form 103B - Non-Bid Professional Service Affidavit
- Form 105 - Request for Waiver

Other requirements established by the M/WBE Program are set forth in the Special Conditions included with the Solicitation. A copy of these Special Conditions must be submitted along with your bid/proposal and are incorporated into the contract regardless of whether submitted with the bid or proposal.

The Compliance Demonstration must show how all applicable goals and sub-goals will be fulfilled. Proposed MBEs and WBEs must be identified. If full compliance with all goals is not shown, Form 105 (Request for Waiver) must be submitted covering any deficiencies.

Prime Bidder is a: (Status)	Level of Participation		
	Full Compliance	Partial Compliance	No Additional Compliance
Non-Minority Firm	Forms 100, 101, 103A,	Forms 100, 101, 103A, 105,	Forms 100, 101, 105
M/WBE Firm	Forms 100, 101, 103A,	Forms 100, 101, 103A, 105,	Forms 100, 101, 105
Joint Venture	Forms 100, 101, 102, 103A,	Forms 100, 101, 102, 103A, 105,	Forms 100, 101, 102, 105,
Non-Bid Consultant Firm <i>(utilizing M/WBE individual sole proprietors)</i>	Forms 100, 101, 103A,	Forms 100, 101, 103A, 105,	Forms 100, 101, 105

WAIVERS

Bidders/proposers may request a waiver of the MBE/WBE goals applicable to this contract in whole or in part if, despite good faith efforts, it is impossible or economically unreasonable to meet an MBE or WBE goal. A bidder/proposer may request:

- Waiver of one or more goals or subgoals where others have been fulfilled;
- Acceptance of a lower percentage level of MBE and/or WBE participation; or
- Acceptance of a bid without any MBE or WBE participation.

Waiver requests shall be signed, accompanied by supporting documentation, and directed in writing to the Office of Business Diversity. (See Form 105) The waiver request must establish clearly and in detail why full compliance with MBE or WBE requirements is impossible or economically unreasonable under the circumstances. Information showing good faith effort should generally include, but not be limited to the Bidder/Proposer's general affirmative action policies; efforts to obtain minority/women participation as subcontractors or suppliers; and notification of minority and women contract assistance agencies of a solicitation for sub-bids.

A waiver request based on the assertion that prices quoted by M/WBEs were too high will be presumed insufficient, unless the contractor can establish to the satisfaction of the Waiver Review Committee that no reasonable price can be obtained from any MBE or WBE. A price quoted by an MBE or WBE for a subcontract or agreement will, however, be presumed unreasonable if it exceeds by more than ten percent (10%) or \$100,000, whichever is less, that amount determined by the Office of Business Diversity to represent the average price for the goods and services to be provided.

CERTIFICATION

There are two "Classes" of certification. An Individual Independent Contractors/Sole Proprietors participating on non-bid Professional Service Contracts may apply for compliance on a contract-by-contract basis by completing the Individual Independent Contractor/Sole Proprietor Affidavit (Form 103B). An Affidavit must be submitted for each contract.

"Class I Certification" shall consist of certification by the City of Chicago.

Any firm which is, at any point in time, certified and in good standing with the City of Chicago Procurement Department as an MBE and/or WBE, shall have Class I certification status under this M/WBE Program, for as long as it maintains its City certification. It is the responsibility of the firm to demonstrate such status.

"Class II Certification" shall consist of certification by another recognized government agency. Accordingly, any firm which is, at any point in time, currently certified in good standing by one of the following agencies as an MBE or WBE shall have Class II certification status under this M/WBE Program, for as long as it maintains such other-agency certification. It is the responsibility of the firm to demonstrate such status.

*Chicago Transit Authority – Cook County - Illinois Department of Transportation - Metropolitan Transit Authority
Metropolitan Water Reclamation District - U.S. Small Business Administration –State of Illinois.*

SPECIAL CONDITIONS

A. Applicability of the Program. It is the policy of the Board of Education (the "Board") that qualified and bona fide Minority Business Enterprises ("MBE") and Women Business Enterprises ("WBE"), as those terms are defined in the Remedial Program for Minority and Women Business Enterprise Economic Participation (the "Program") shall have the maximum feasible opportunities to participate fully in the performance of all contracts administered by the Chicago Public Schools (the "District"). Consistent with that policy, it shall be the responsibility of all bidders/proposers and a specific condition of all District contracts to which they are a party to exhaust all feasible means to ensure significant contract participation by MBEs and WBEs. The bidder/proposer agrees that the officer or employee of the bidder/proposer that executed has read and understands all provisions of the Program. The Program in its entirety, including any and all modifications and amendments thereto, is incorporated into the contract and made a part thereof.

B. Applicability of the Special Conditions. The bidder/proposer agrees that the appropriate officer or employee of the bidder/proposer authorized to execute the bid/proposal has read and understands the terms of these Special Conditions and the bidder/proposer agrees to be bound by them. These Special Conditions are incorporated into the contract and made a part thereof. These Special Conditions summarize the provisions of the Program applicable to the bidder/proposer after execution of the contract. They do not diminish in any way the applicability of the Program to the contract. In construing the rights and obligations of the bidder/proposer the Program controls.

C. Other Contract Documents. In addition, all documents submitted in connection with proposed compliance with the Program are incorporated into the contract and made a part thereof.

D. MBE/WBE Goals. The bidder/proposer agrees to meet the goals set forth in the M/WBE Program.

E. Record Keeping and Reporting Requirements. The bidder/proposer agrees to maintain records of all relevant data with respect to the utilization of MBEs and WBEs, including without limitation: payroll records, tax returns and records, and books of account. The bidder/proposer agrees to retain these records for a period of at least three years after the District's final acceptance of the work on this contract. Full access to these records shall be granted to the District or any duly authorized representative thereof upon 48 hours notice.

The bidder/proposer agrees to submit monthly progress reports (Sworn Statements) to the Office of Business Diversity as requested throughout the term of the contract. The bidder/proposer will submit reports on all expenditures made within the period reported on, including the name and business address of each MBE and WBE involved in the contract; a description of the work performed and/or product or service supplied by each MBE and WBE, the total amount subcontracted to MBEs and WBEs; the dollar amount expended with each MBE and WBE and the dates expended; and such other information as may assist the Office in determining the bidder/proposer's compliance with MBE and WBE requirements.

The bidder/proposer agrees to maintain records of all relevant data with respect to M/WBE participation pursuant to Section 12 of the Program. The bidder/proposer agrees to retain these records for a period of at least three years after the District's final acceptance of the work on this contract. Full access to these records shall be granted upon 48 hours notice to the District, or any duly authorized representative thereof. The bidder/proposer agrees to submit monthly reports to the Office of Business Diversity as requested throughout the term of the contract containing relevant information required by the District relating to the credits given by the District to the bidder/proposer.

The Office of Business Diversity shall have the right to request and obtain from the bidder/proposer any and all additional data as the Office of Business Diversity may determine to be reasonably related or necessary to verify the representations made in progress reports. The Office may periodically conduct on-site inspections on contract site.

F. Subsequent Waiver. During the performance of the contract, the bidder/proposer may request a partial waiver from compliance with its MBE or WBE demonstration for the following reasons:

1. Due to substantially changed circumstances, it is impossible to meet the originally proposed MBE or WBE goal; or
2. Despite every good faith effort, it is impossible to meet the originally proposed MBE or WBE goal.

The Waiver Review Committee shall review all subsequent waiver requests to determine whether there is sufficient evidence that despite good faith efforts by the bidder/proposer or due to substantially changed circumstances, it is impossible or economically unreasonable to meet the MBE or WBE goal. The waiver request must establish by clear and convincing evidence that full compliance with MBE or WBE commitments is impossible or economically unreasonable under the circumstances.

The Waiver Review Committee may request from the bidder/proposer any information relevant to the waiver request. Failure of the bidder/proposer to cooperate in providing requested information is grounds for rejection of the waiver request. The bidder/proposer has the right to appeal a denial of waiver request. Waivers shall be sparingly granted.

G. Substitutions. The bidder/proposer agrees that it shall not make any substitutions with respect to MBE or WBE participants without the prior written approval of the Director of the Office of Business Diversity, along with reasons justifying such substitution. Examples of reasons which may be acceptable include the following: a previously committed MBE or WBE has rescinded that commitment; a committed MBE or WBE was found unable to produce acceptable work; a committed MBE or WBE was discovered later not to be bona fide; an MBE or WBE previously committed at a given price later demanded an unreasonable escalation of price. Stated reasons which would not be acceptable include; a replacement firm has been recruited to perform the same work under terms more advantageous to the bidder/proposer issues about performance by the committed WBE or MBE were disputed (unless every reasonable effort has already been taken to have the issues resolved or mediated satisfactorily); an MBE or WBE has requested reasonable price escalation which may be justified due to unforeseen circumstances.

The bidder/proposer shall include in any request for substitution the name, address and principal official of any proposed substitute MBE or WBE and the dollar value and scope of work of the proposed contract. The bidder/proposer shall be required to submit an M/WBE Compliance Demonstration and current certification information. The Director of the Office of Business Diversity may approve or reject any request in its entirety or impose conditions upon any approval. If such substitution would result in failure by the bidder/proposer to fulfill its compliance plan, a request for waiver may be submitted to the Waiver Review Committee.

H. Attorney Fees and Costs. The bidder/proposer agrees to pay any attorney's fees and costs incurred by the District if the District is the prevailing party in litigation by or against it arising from the application of the Program to the contract.

I. Non-Compliance. Upon indications of inadequate compliance or non-compliance, the Office of Business Diversity will notify and negotiate with the bidder/proposer to correct deficiencies. If after notification of deficiencies the Office of Business Diversity determines that the contractor is not meeting or has not met applicable MBE or WBE goals and is not demonstrating or has not demonstrated every good faith effort to meet the goals, the bidder/proposer shall be subject to suitable sanctions.

J. Sanctions. Upon indications of a contractor's inadequate compliance or non-compliance, the Office of Business Diversity will notify and negotiate with the bidder/proposer to correct deficiencies. After notification of deficiencies, the Office of Business Diversity may make a determination of non-compliance and recommend the imposition of sanctions for material breach of the contract. After a determination of non-compliance the sanctions set forth in Part 12 are applicable.

Sanctions shall be imposed by the procuring or user Department upon the recommendation of the Office of Business Diversity, provided that the sanctions may be imposed directly by the Office of Business Diversity if immediate action is necessary or upon the failure of the procuring or user Department to do so.

The imposition of any of these sanctions may be appealed by a bidder/proposer to the Appeals Committee. The sole function of the Appeals Committee shall be to determine whether the process followed by the Office of Business Diversity is in accordance with the Program and the decision of the Office of Business Diversity is properly documented and supported by substantial evidence.