

## **PARTICIPATION REQUIREMENTS FOR MINORITY/WOMEN BUSINESS ENTERPRISE (MBE/WBE)**

### **A. Construction Contracts**

The *County of Elk* 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. The *County of Elk* 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-186, 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.

#### **2. Responsiveness**

- a. Bidders must complete and submit Form DCED-CCD-186 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 reasonable 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
  - i. 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;
  - ii. 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;
  - iii. In any case where no quotations are received nor commitments made to MBE or WBE firms, indicate on form DCED-CCD-186 that no quotes were received, and if there is another reason 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-186 or on additional paper.

#### **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, the County of Elk will determine whether

discrimination has occurred. If, after investigation including a review of Form DCED-CCD-186, 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:
    - i. The bidder whose actions resulted in a limited or no commitment to MBEs/WBEs was not motivated by consideration of race or gender;
    - ii. MBEs/WBEs were not treated less favorable than other businesses in the contract solicitation and commitment process.
    - iii. 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 the County of Elk or the administering agency performing the evaluation of the invitation for Bid.
4. Access to Information

The *County of Elk* 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.

## PROCEDURES – CONTRACTOR COMPLIANCE PROCESS

### 1. Contract Provisions

The following provisions will be included in the construction contracts and/or in the professional service contract:

- a. Construction Contracts
  - 1. The prime contractor must provide the *County of Elk* 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.
  - 2. MBE/WBE Subcontractors must provide the *County of Elk* 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.

## RECORDS AND REPORTS

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.

A letter will be forwarded to the prime contractor by the *County of Elk* 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.

The *County of Elk* 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.