# Indiana Department of Administration
# M/WBE Participation Policy for Construction Projects

## I. Introduction

The Indiana Department of Administration ("IDOA") in its commitment to Minority and Women participation in the state's procurement and contracting process, will require MBE and WBE participation or a best-efforts waiver as a specification in bids for construction services $150,000 and over with subcontracting opportunities effective January 1, 2006. *See* Indiana Code 5-22-7, 5-22-7-2, 5-22-7-4.

## II. Definitions

"Application for MBE and WBE Program Waiver" means documents submitted by Bidder for relief from contract goal after demonstrating all reasonable good faith efforts were made by the Bidder for the purpose of fulfilling the contract goal. The Application for MBE and WBE Program Waiver may be submitted prior to the bid due date or included in the bid package response.

"Certification" means verification by the Indiana Department of Administration, Minority and Women's Business Enterprises Division ("MWBED") or an organization accepted by MWBED with respect to the authenticity of a minority or women owned business enterprise.

"Commercially useful function" Determination that an enterprise performs a commercially useful function will be made based on the following considerations:

(1) An MBE or a WBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the MBE or WBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an MBE or a WBE is performing a commercially useful function, one must evaluate the following:

(A) The amount of work subcontracted.

(B) Industry practices.

(C) Whether the amount the enterprise is to be paid under the contract is commensurate with the work it is actually performing.

(D) The credit claimed for its performance of the work.

(E) Other relevant factors.

(2) An MBE or a WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of MBE or WBE participation. In determining whether an MBE or a WBE is such an extra participant, one must examine similar transactions, particularly those in which MBEs or WBEs do not participate.

(3) In the case of construction contracts, if:

(A) an MBE or a WBE does not perform or exercise responsibility for at least the agency's requisite percent of the total cost of its contract with its own workforce; or

(B) the MBE or WBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved;

it is presumed that the enterprise is not performing a commercially useful function.

"Letter of Commitment" means a letter obtained from the MBE and WBE's by the Bidders. The Letter of Commitment is a signed letter(s), on company letterhead, from the minority and/or women certified business. It must be produced no later than 24 hours after the bid due date and time. This letter(s) shall state and will serve as acknowledgement from the minority and/or women certified business of their level of participation in this solicitation, the dollar amount of the commitment, the scope of service or product to be provided and the anticipated dates of utilization.

"Minority and Women Business Enterprises Division (MWBED)" means the Division which acts on behalf of the state to actively promote, monitor, and enforce the MBE AND WBE program. The final authority on all matters pertaining to the maintenance and administration of the MBE AND WBE program and compliance thereto.

"Minority/Woman Business Enterprise (MBE and WBE)" means an individual, partnership, corporation, limited liability company, or joint venture of any kind that is at least fifty-one percent (51%) owned and controlled by one (1) or more persons who are United States citizens and a member(s) of a minority group. The MBE and WBE must meet the eligibility requirements of 25 IAC 5.

"Participation Plan" means the IDOA prescribed document that sets forth the MBE and WBE subcontractors that will perform work under the contract.

## III. Minority and Women Business Enterprise Certification

MBE and WBEs must be listed on the IDOA directory of certified firms at the time the bid is submitted to be eligible to meet the contract goals. The bidder should verify that a firm is certified before the bid is submitted.

Questions regarding Certification should be addressed to the following:

Indiana Department of Administration
Minority and Women's Business Enterprises Division
402 West Washington Street, Room W469
Indianapolis, IN 46204
(317) 232-3061
www.buyindiana.in.gov
mwbe@idoa.in.gov

## IV. Bidding Process

IDOA will review projects for viable subcontracting opportunities. All projects will be governed by this policy unless otherwise stated.

A representative from MWBED will attend most pre-bid meetings to discuss and answer questions related to the MBE and WBE participation requirement. The MWBED will be available to assist Bidders in locating MBE and WBE firms to engage in the contract.

The 2005-2006 Contract Goals for construction projects are 6% for MBE's and 6% for WBE's.

Effective January 1, 2006, the following procedures will be implemented in the acceptance and evaluation of responsive and responsible bids.

Bidders must produce a Participation Plan on the approved form listing the utilization of MBE and WBE subcontractors who will be providing a commercially useful function on the project. Letter of Commitment from MBE and WBE firms they plan to engage in the contract if successful on the bid

Per 25 IAC 5-6-2(d), all prime contractors, including MBE and WBE prime contractors, must meet the sub-contracting goals through use of businesses found in the IDOA directory of certified firms. MBE and WBE prime contractors will get no credit toward the contract goal for the use of their own workforce.

If the bidder can not achieve the Contract Goals established for the bid package, the bidder shall submit a Waiver Application on the form supplied by MWBED. Bidders may submit waiver applications to MWBED up to two business days in advance of the bid due date to obtain advance approval of the waiver, or the application may be submitted without advance approval with the bid package. Bidders who submit a Participation Plan that will achieve the Contract Goals are not required to submit a Waiver Application.

If a partial waiver is being requested, a Participation Plan listing the MBE and WBE certified firms that will be used to satisfy the portion of the goal that will be met, must be included. Partial waivers may be requested using the waiver application process discussed above. A faxed copy of the Letter of Commitment for each MBE and WBE firm that is listed in the Participation Plan must be provided by the Low Bidder to the appropriate department no later than 24 hours after the bid due date and time. The original letter(s) must be provided upon receipt.

MWBED will review Applications for MBE and WBE Program Waivers and make a determination as to the bidder's responsiveness and good faith efforts. Evidence of efforts should be included with the waiver form. Any combination of the following criteria may be utilized in determining whether good faith efforts have been made:

A. Notice to MBE and WBEs. Whether and when the bidder provided written notice, by mail, hand delivery, facsimile or electronic transmission to all qualified MBE and WBEs that perform the type of work to be subcontracted and advising the MBE and WBEs:

   1. of the subject work the bidder intends to subcontract;

   2. that their interest in Subcontracts is being solicited;

   3. how to obtain information for the review and inspection of Contract plans and specifications; and

   4. how to bid on the subcontracting opportunities and deadlines.

B. Economically Feasible Subcontract. Whether the bidder selected economically feasible portions of the work to be performed by an MBE and WBE, including, when appropriate, breaking Subcontracts into smaller pieces or combining elements of work into economically feasible units. The ability of the bidder to perform the work with its own forces will not excuse the bidder from making positive efforts to meet the MBE and WBE goals.

C. Consideration of all MBE and WBE Quotations. Whether the bidder considered all quotations received from MBE and WBEs and, for those quotations not accepted, an explanation of why the MBE and WBE will not be used during the course of the Project. Receipt of a lower quotation from a non-MBE and WBE will not, in itself, excuse bidder's failure to meet the MBE and WBE goals. Price alone does not constitute an acceptable basis for rejecting MBE and WBE subcontractor bids unless the bidder can demonstrate that a reasonable price was not obtained from an MBE and WBE.

D. MBE and WBE Barrier Assistance. Whether the bidder provided assistance to interested MBE and WBE firms: in reviewing the Contract plans and specifications or addressing other barriers to subcontracting.

E. Advertisement. Whether the bidder advertised to search for prospective MBE and WBEs to participate in the Contract.

F. Agency Assistance. Whether the bidder contacted any of the following agencies for the purpose of locating prospective MBE and WBEs:

1. Indiana Department of Administration
Minority and Women's Business Enterprises Division
402 West Washington Street, Room W469
Indianapolis, IN 46204
(317) 232-3061
mwbe@idoa.in.gov

2. Indiana Business Diversity Council, Inc.
2126 North Meridian Street
Indianapolis, IN 46202
(317) 921-2678
mdhouse@inbdc.org

G. Research Participation Areas. Whether the bidder made efforts to research other possible areas of participation including supplying, shipping, engineering and any other role that may contribute to the production and delivery of the products or services needed to fulfill the Contract.

H. Response Time. The time the bidder allowed for a meaningful response to its solicitations.

I. Documentation of Statements from MBE and WBEs. Any documentation or statements received from MBE and WBEs who have been listed as having been contacted by the bidder.

J. Availability of MBE and WBEs. The availability of MBE and WBEs to perform the work and the availability, or lack of availability, of MBE and WBEs in the location where the work is to be performed.

K. Other Criteria. Any other criteria deemed appropriate by MWBED.

This list is not intended to be exclusive or exhaustive. The bidder may also submit documentation of other types of efforts that they have taken which reflect the quality, quantity and intensity of those efforts.

When evaluating Waiver Applications, MWBED reserves the right to verify that any information supplied on the Participation Plan and Wavier Application is accurate. By the submittal of a bid, the bidder acknowledges the right of MWBED to ensure compliance with the Participation Program and thereby agrees to provide, upon request, earnest, diligent and prompt cooperation in MWBED's verification process.

In cases where MWBED concludes the bidder's Participation Plan and the Waiver Application is deficient through no fault of the bidder, the bidder may be instructed to submit a modified Participation Plan within five (5) working days from the date of such notice. Failure to submit the modified Participation Plan within the specified period of time, may result in the bid being considered non-responsive and may be rejected.

In cases where MWBED concludes that the Participation Plan and Waiver Application is deficient or in cases where MWBED has determined that the bidder has not cooperated with its efforts to verify the submitted documentation, a bid may be considered non-responsive and may be rejected.

If the established Contract Goals are not achieved but the Waiver Application is granted, the bid will be considered responsive. If the established Contract Goals are not achieved and the Waiver Application is denied, a bid may be considered non-responsive and may be rejected.

Failure to provide the Participation Plan and/or a Waiver Application accounting for the total participation goal set for the project will result in the bid being considered non-responsive and the bid may be rejected.

By submission of a bid, a bidder thereby acknowledges and agrees to be bound by the regulatory process set forth in 25 IAC 5.

A bidder who knowingly or intentionally misrepresents the truth about either the status of a firm that is being proposed as an MBE and WBE or who misrepresents the level of the nature of the amount to be subcontracted to the MBE and WBE may suffer penalties pursuant to Indiana Code 5-16-6.5-5.

A Contractor who knowingly or intentionally misrepresents the truth about his/her status as an MBE and WBE or who misrepresents the level or the nature of the amount subcontracted to his/her firm may suffer penalties pursuant to Indiana Code 35-44-2-1.

## V. Compliance

Contractors shall contract with all MBE and WBE firms listed on the Participation Plan. The subcontract or purchase order shall be for an amount that is equal to, or greater than, the total dollar amount listed on the form.

Contractors shall notify MWBED immediately if any firm listed on the Participation Plan refuses to enter into a subcontract or fails to perform according to the requirements of the subcontract.

The Contractor's proposed MBE and WBE Contract Goals will become incorporated into and a requirement of the Contract. Contractors shall not substitute, replace or terminate any MBE and WBE firm without prior written authorization from MWBED and the Owner.

Contractors shall cooperate and participate in compliance reviews as determined necessary by MWBED. Contractors shall provide all necessary documentation to show proof of compliance with the requirements as requested by MWBED.

## VI. Non Compliance

A bid governed by this policy that does not meet the participation goals or does not receive an approved waiver will NOT be considered.

After the bid is awarded and if it is determined by MWBED that the Contractor is not in compliance with this Participation Program, MWBED will notify the Contractor within ten (10) days after the initial compliance review or the site visit and identify the deficiencies found and the required corrective action that should be taken to remedy the deficiencies within a specific time period.

If a Contractor is found non-compliant, the Contractor must submit, in writing, a specific commitment, in writing, to correct the deficiencies. The commitment must include the precise action to be taken and the date for completion.

If MWBED determines the Contractor has failed to comply with the provisions of this Participation Program, Contractor's Utilization Statement or 25 IAC 5, IDOA may impose any or all of the following sanctions:

a. Withholding payment on the Contract until such time that satisfactory corrective measures are made.

b. Adjustment to payments due or the permanent withholding of retainages of the Contract.

c. Suspension or termination of the specific Contract in which the deficiency is known to exist. In the event this sanction is employed, the Contractor will be held liable for any consequential damages arising from the suspension or termination of the Contract, including damages caused as a result of the delay or from increased prices incurred in securing the performance of the balance of the work by other Contractors.

d. Recommendation to the certification board to revoke the contractor's certification status with the Public Works Division of IDOA. This recommendation may result in the suspension or revocation of the contractor's ability to perform on future state contracts for a period no longer than thirty-six (36) months.

e. Continued non-compliance may be deemed a material breach of the agreement between MWBED and Contractor, whereupon MWBED shall have all the rights and remedies available to it under the Contract or at law.

f. Suspension, revocation, or denial of the MBE or WBE certification and eligibility to participate in the MBE or WBE program for a period of not more than thirty-six (36) months.

## VII. Forms and Attachments

Minority Participation Plan
Good Faith Efforts Worksheet
Application for Waiver

## MINORITY AND WOMEN'S BUSINESS ENTERPRISES PARTICIPATION PLAN

A Respondent is expected to submit in each response a Minority and Women's Business Enterprises Participation Plan in accordance with IC 4-13-16.5 and 25 IAC 5. The Plan must show that there are, participating in the proposed contract, Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) listed in the Minority and Women's Business Enterprises Division (MWBD) directory of certified firms. Respondents must indicate the name of the MBE and WBE with which it will work, the contact name and phone number at the firm(s), the service supplied by the firm(s), the specific dollar amount from this contract that will be directed toward each firm, and the approximate date these products and/or services will be utilized. If participation is met through use of vendors who supply products and/or services, the Respondent must also indicate the vendor's tax ID number as well as provide a description of products and/or services provided to the Respondent that are directly related to this proposal and the cost of direct supplies for this proposal. All prime contractors, including MBE and WBE prime contractors, must meet the contract goals through use of subcontractors. MBE and WBE prime contractors will get no credit toward the contract goal for the use of its own workforce. The State does not accept national plans.

Failure to meet these requirements will affect the evaluation of your Proposal. The Department reserves the right to verify all information included in the Plan.

Respondents are encouraged to contact and work with MWBD to design a plan to meet established goals. MWBD's website address is www.IN.gov/idoa/minority/ and contains a complete list of all the Department's certified MBE's and WBE's.

### Minority & Women's Business Enterprises Participation
### Letter of Commitment

A signed letter(s), on company letterhead, from the MBE and/or WBE must accompany the Plan. This letter(s) shall state and will serve as acknowledgement from the MBE and/or WBE of its amount of participation, the scope of products and/or services, and approximate date these products and/or services will be utilized.

By submission of the Proposal, the Respondent acknowledges and agrees to be bound by the regulatory processes involving the State's M/WBE Program. Questions involving the regulations governing the Plan should be directed to MWBD's Compliance Unit at 317/232-3061

### MBE/WBE PARTICIPATION PLAN

RFP # / Bid # / Quote # _____ DUE DATE_____

(Circle One)

RFP / BID / QUOTE NAME _____

(Circle One)

RESPONDENT _____

ADDRESS _____

CITY/STATE/ZIP _____

PHONE ( ) _____

The following MBE and/or WBE's listed in the MWBD directory will be participating in the contract:

| MBE/WBE | P HONE | COMPANY NAME | SCOPE OF PRODUCTS AND/OR SERVICES | UTILIZATION DATE | AMOUNT |
|---|---|---|---|---|---|
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***If additional room is necessary, indicate here_____. Please attach a separate page.**

**THIS DOCUMENT MUST BE INCLUDED IN YOUR RESPONSE**

**Indiana Department of Administration**
**Public Works and State Office Building Commission**
**GOOD FAITH EFFORTS WORKSHEET**

BIDDER _____ BID/PROJECT NUMBER _____

CONTRACT GOALS **6% MBE** **6% WBE**

List the M/WBEs contacted and complete the following information for each. Copies of all communications to and from each vendor should be maintained.

| Company Name and Address | MBE | WBE | Type of Contact | Date of Contact | Date Response Due | Goods Or Services Requested | Result (Include Price Quote) |
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Indicate **Good Faith Efforts** made to utilize MWBEs. Check and explain all that apply or should be considered. Please provide evidence of the efforts that you want to be considered. A complete description of each criteria may be found in the **Indiana Department of Administration Public Works and State Office Building Commission MWBE Participation Policy.**

| | |
|---|---|
| **MBE and WBE Barrier Assistance** | Describe |
| **Advertisement** | Describe |
| **Agency Assistance** | Describe |
| **Other Criteria** | Describe |

**INDIANA DEPARTMENT OF ADMINISTRATION**
**PUBLIC WORKS AND STATE OFFICE BUILDING COMMISSION**
**APPLICATION FOR WAIVER**

BIDDER _____

BID/PROJECT NUMBER _____

CONTRACT GOALS **6% MBE** **6% WBE**

WAIVER APPLICATION IS FOR:

____FULL WAIVER MBE ____ PARTIAL WAIVER MBE

____ FULL WAIVER WBE ____ PARTIAL WAIVER WBE

IF PARTIAL WAIVER, specify % of M/WBE Participation

_____% MBE _____% WBE

Indicate Primary Reason the Waiver Application is being submitted:

____ Inability to locate M/WBE that provides _____
_____

____ Inability to locate M/WBE with capacity to provide _____
_____

____ Inability to secure competitive price for _____
_____

**$_____ M/WBE Price $_____ Non/WBE price**

____ Other. Describe _____
_____
_____

I hereby affirm, under the penalties of perjury, the information set forth above is true and accurate. I acknowledge the Indiana Stadium and Convention Building Authority and Hunt Construction Group, or their designees, may verify any of the information set forth above.

Signature:_____
Printed Name:_____
Date:_____
Bidder Name:_____
Bidder Address:_____
City/State/Zip:_____
Telephone:_____
Email:_____

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MWBE Use Only:
Date Received:_____ Date returned to Bidder:_____
Date Reviewed:_____ Notes:_____
Final Outcome:_____ Compliance Specialist_____