

100-C-203 INDIANA DEPARTMENT OF ADMINISTRATION M/WBE PARTICIPATION
POLICY FOR INDIANA DEPARTMENT OF TRANSPORTATION CONSTRUCTION PROJECTS

(Revised 06-10-09)

I. Introduction

The Indiana Department of Administration is committed to Minority and Women participation in the state's procurement and contracting process. As a result, it will require MBE and WBE participation or evidence of adequate Good Faith Efforts to obtain such participation as a specification in bids for construction services with subcontracting opportunities effective January 1, 2006. See Indiana Administrative Code 25 IAC-5-7-5. All Indiana Department of Transportation projects with 100% state funding will be governed by this provision unless otherwise stated.

II. Definitions

“**Bidder**” means a contractor that intends to or has submitted a bid on an INDOT project at an INDOT letting.

“**Certification**” means verification by the Indiana Department of Administration, Minority and Women's Business Enterprises Division or an organization accepted thereby of the authenticity of a minority or women owned business enterprise and its conformance to the requirements of 25 IAC-5.

“**Commercially Useful Function (CUF)**” means actually performing, managing, and supervising the contract work, and with respect to material suppliers, negotiating price, determining quality and quantity, ordering and paying for materials, and installing (where applicable).

“**Contractor**” means the Bidder selected to perform on an INDOT project.

“**Good Faith Efforts**” mean documented efforts taken by the Bidder that demonstrate the quality, quantity and intensity of its efforts to achieve the MBE/WBE goals on a particular bid submission. See 25-IAC 5-7-5.

“**Good Faith Efforts Worksheet**” means the form that the Bidder must complete and submit with supporting documentation to INDOT within three (3) days of receiving notification that it submitted the apparent low bid but did not meet the MBE/WBE goals.

“**Governor's Commission on Minority and Women's Business Enterprises**” means the commission established by Indiana Code 4-13-16.5-2 that establishes annual MBE/WBE goals.

“**IDOA**” means the Indiana Department of Administration

“**INDOT**” means the Indiana Department of Transportation

“Letter of Commitment” means a letter

- signed by an authorized signatory of each MBE and WBE participating on the contract
- on MBE/WBE company letterhead
- that acknowledges the scope of services or materials to be provided; the percentage participation on the contract; the dollar amount of the Bidder’s commitment; and the anticipated dates of performance.
- produced no later than 24 hours after the INDOT bid date and time.

“Minority and Women Business Enterprises Division (MWBED)” means the IDOA Division that administers and actively promotes, monitors, and enforces the State of Indiana MBE/ WBE Program.

“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 or more persons who are United States citizens, a member(s) of a qualifying minority group or female(s), and satisfy the eligibility requirements of 25 IAC 5.

“MBE/WBE Compliance Review Committee” means the IDOA committee that is responsible for hearing appeals of Good Faith Efforts determinations.

“Participation Plan” means the IDOA prescribed document in which the Bidder lists any and all MBEs and WBEs that will perform as subcontractors under the contract.

“Prequalification Committee” means the INDOT Committee that reviews contractor and consultant qualification in accordance with 105 IAC 11-2-1(f) of the Indiana Administrative Code and has the authority to issue contractor sanctions for contract non-compliance.

III. Minority and Women Business Enterprise Certification

The Bidder shall verify that all MBEs and WBEs included on the Participation Plan appear on the IDOA List of Certified Business Enterprises at the time the bid is submitted. Only MBEs and WBEs included on this list are eligible to be counted toward MBE/WBE contract goals. The List of Certified Business Enterprises is available through the IDOA website at www.in.gov/idoa.

IV. Bidding Procedures

INDOT will review all projects, and if reasonable subcontracting opportunities exist, will include those current MBE/WBE construction contract goals set by the Governor's Commission on Minority and Women's Business Enterprises.

Bidders are encouraged to contact MWBED before INDOT bid lettings for assistance in locating appropriate MBEs and WBEs to meet contract goals.

Questions regarding MBE/WBE certification and goals shall 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
<http://www.in.gov/idoa/2867.htm>
mwbe@idoa.in.gov

Bidders shall submit a Participation Plan on the approved form listing all MBE and WBE subcontractors that will be providing a commercially useful function on the project. The Bidder shall include the scope of services or materials each MBE and WBE will provide; the contract percentage participation and the dollar commitment for each enterprise; and the anticipated dates of performance.

All prime contractors, including MBE and WBE **prime** contractors, shall meet, or use adequate Good Faith Efforts to meet both the MBE and WBE sub-contracting goals through use of businesses found in the IDOA directory of certified firms. MBE and WBE prime contractors shall not receive credit toward the contract goals for the use of their own workforce. *See* 25 IAC 5-6-2(d). If a firm is certified as both MBE and WBE, the Bidder may use this firm to satisfy only one of the goals. The other goal must be met with a separate certified firm.

A Bidder that knowingly or intentionally misrepresents the truth about either the status of a firm that is being proposed as an MBE and WBE or that misrepresents the level or 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 firm that knowingly or intentionally misrepresents the truth about its status as an MBE and WBE or that misrepresents the level or the nature of the amount subcontracted to the firm may suffer penalties pursuant to Indiana Code 35-44-2-1.

The apparent low Bidder must submit Letters of Commitment from each participating MBE and WBE no later than 24 hours after the INDOT bid date and time. Letters of Commitment must be sent to:

Indiana Department of Transportation
Contract Administration Division
Indiana Government Center, N855
100 N. Senate Ave.
Indianapolis, Indiana 46204

V. Post-Bidding Procedures

If the Bidder is unable to meet the MBE and the WBE contract goals, and is otherwise determined by INDOT to be the apparent low-bidder on the contract, INDOT will provide written notification to the Bidder of its failure to meet the MBE/WBE contract goals and advise the Bidder that it shall have three (3) business days after the receipt of this written notification to provide INDOT with a written response (the Response) stating why the Bidder was unable to meet the goals. The Bidder shall include with this Response a completed Good Faith Efforts Worksheet accompanied by supporting documentation setting forth all efforts and affirmative actions taken prior to the bid letting to achieve the contract goals.

The Bidder shall send the Response and Good Faith Efforts Worksheet to the following address:

Indiana Department of Transportation
Contract Administration Division
Indiana Government Center, N855
100 N. Senate Ave.
Indianapolis, Indiana 46204

Failure by the Bidder to file a Response within three business days may result in rejection of the bid, forfeiture of the bid bond and the referral of the Bidder to INDOT's Prequalification Committee.

If a Response is timely made, INDOT will forward the Response, any supporting documentation, copies of all other Bid Proposal books and any Commitment Letters to the MWBED. The MWBED will formally review the information for compliance with the Good Faith Efforts requirements. The MWBED will consider the following criteria in determining whether the Bidder made adequate Good Faith Efforts.

- A. **Notice to MBEs and WBEs.** Whether and when the Bidder provided written notice, by mail, hand delivery, facsimile or electronic transmission to all qualified MBEs and WBEs that perform the type of work to be subcontracted and advising the MBEs and WBEs:
1. of the subject work the Bidder intends to subcontract;
 2. that their interest in subcontracting 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 Subcontracting Units.** 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 MBEs 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 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 MBEs 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 contract specific 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.** Whether the Bidder allowed sufficient time for a meaningful response to its solicitations.

- I. **Documentation of Statements from MBE and WBEs.** Any documentation or statements received from those MBE and WBEs that the Bidder contacted.
- J. **Availability of MBE and WBEs.** The availability of MBEs and WBEs to perform the work and the availability, or lack of availability, of MBEs 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 taken which reflect the quality, quantity and intensity of its overall efforts.

MWBED reserves the right to verify the accuracy of any and all information supplied by the Bidder on the Participation Plan, Good Faith Efforts Worksheet and supporting documentation. The Bidder shall cooperate fully with MWBED verification process.

If MWBED determines that the Bidder made adequate Good Faith Efforts, it will forward this information and all documents to INDOT's Contract Administration Division, recommending contract award.

If the MWBED determines that the Bidder's Good Faith Efforts were inadequate, the MWBED shall advise the Bidder in writing of its determination and the Bidder's right to an informal hearing before the MBE/WBE Compliance Review Committee (the Committee) pursuant to 25 IAC 5-7-7.

If, as a result of the hearing, the Committee determines that the Bidder's Good Faith Efforts were sufficient, the Committee will issue a written finding to INDOT's Contract Administration Division, recommending contract award.

If the Committee determines that the Bidder's Good Faith Efforts were inadequate, the Committee shall issue a written finding to INDOT's Contract Administration Division, recommending that the contract not be awarded to the Bidder. INDOT's Contract Administration Division shall then forward the Committee's recommendation together with all related documentation to the INDOT Commissioner. The INDOT Commissioner shall have the sole discretion to determine whether to award the contract to the Bidder, or without further proceedings, either direct that the contract be awarded to the next lowest, qualified bidder or reject all bids and re-let the contract.

The INDOT Commissioner's determination shall become the final INDOT decision concerning the award of the contract at issue.

VI. Compliance

The Contractor shall contract with all MBE and WBE firms listed on the Participation Plan in the amount equal to or greater than the listed dollar commitment.

The Contractor shall notify INDOT immediately if any MBE/WBE 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 Goals will become incorporated into and made a requirement of the contract. Contractors shall not substitute, replace or terminate any MBE and WBE without prior written authorization from MWBED.

The Contractor shall cooperate and participate in compliance reviews performed by MWBED and/or INDOT, and provide all requested documentation as proof of compliance.

The MBEs and WBEs must perform a commercially useful function on the contract. INDOT will determine whether an enterprise performs a commercially useful function based upon the following considerations:

- (A) The amount of work subcontracted.
- (B) Standard 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.

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.

VII. Non-Compliance

If, during performance of the contract, the MWBED determines that the Contractor is not in compliance with its Participation Program, the MWBED will notify the Contractor, identifying the deficiencies and the corrective actions that shall be taken within a specified time period to remedy the deficiencies.

When so notified, the Contractor must submit a written plan to correct the deficiencies. The commitment must include the precise actions that will be taken and the date for completion.

If the MWBED determines the Contractor has failed to comply with the provisions of this Plan and is in non-compliance with its Participation Plan or any other compliance requirement as set forth in 25 IAC 5, IDOA may recommend to INDOT that it impose any or all of the following sanctions:

- a. Withholding payment on the contract until such time that the Contractor makes satisfactory corrective measures.
- b. Adjustment to payments due to the Contractor.
- c. Suspension or termination of the 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. Referral of the Contractor to the INDOT Prequalification Committee for consideration of sanctions.
- e. Continued non-compliance may be deemed a material contract breach whereupon INDOT 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.

VIII. Forms and Attachments

MBE/WBE Participation Plan

Good Faith Efforts Worksheet

MINORITY AND WOMEN'S BUSINESS ENTERPRISES PARTICIPATION PLAN

A Bidder shall submit with each bid a Minority and Women's Business Enterprises Participation Plan in accordance with IC 4-13-16.5 and 25 IAC 5. The Plan must list the Minority Business Enterprises (MBE) and Women Business Enterprises participating as subcontractors in the contract and include 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, the contract percentage participation, and the approximate date these products and/or services will be required. If participation is met through use of vendors who supply products and/or services, the Bidder must also indicate the vendor's tax ID number as well as provide a description of products and/or services provided to the Bidder that are directly related to the bid and the cost of direct supplies for this bid. 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. 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 MBEs and WBEs. By submission of this Participation Plan, the Bidder 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.

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

BIDDER _____ BID/PROJECT NUMBER _____

CONTRACT GOALS 7% MBE 5% 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)

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