

## Minority and Women Business Enterprises (MBE/WBE) Program

The Indiana Department of Transportation will ensure that all certified Minority and Women's Business Enterprises (MBE/WBE) will be afforded full opportunity to submit statements of interest and will not discriminate against any consultant on the grounds of race, color, religion, sex, disability, national origin, or ancestry in the selection process. Contract MBE/WBE goals are incorporated into Requests for Proposals if, in the determination of INDOT, available MBE/WBE subconsulting opportunities exist.

All consultants submitting proposals shall comply with the following:

- A. State of Indiana Minority and Women Business Enterprises (MBE/WBE) Program:
1. General
    - a. Notice is hereby given to the consultant or subconsultant that failure to carry out the requirements set forth in 25 IAC 5-1-1 shall constitute a breach of contract and, after notification, may result in termination of the contract or such remedy as the state deems appropriate.
    - b. The above-referenced section requires that the following policy and MBE/WBE obligation be included in all subsequent agreements between the consultant and any subconsultant:
      - (1) It is the policy of the State of Indiana to provide an equal opportunity for existing and operating minority business enterprises and women's business enterprises to receive and participate in the state's procurement and contracting process. The department shall act on behalf of the state to actively promote, monitor and enforce its MBE/WBE program. It is INDOT's policy that MBE/WBEs shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with state funds under this contract. Consequently, the MBE/WBE requirements of 25 IAC 5-1-1 will apply to any contract entered into as a result of this Request for Proposals.
      - (2) The consultant agrees to ensure that MBE/WBEs as defined in 25 IAC 5-2-1, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with state funds provided under contracts with INDOT. In this regard, the consultant shall take all necessary and reasonable steps to ensure that MBE/WBEs have the maximum opportunity to compete for and perform contracts. The consultant shall not discriminate on the basis of race, color, religion, national origin, ancestry, sex, or disability in the award and performance of federally-assisted contracts.
      - (3) The consultant agrees to accept the following language in its own contract and include the following non discrimination language in its subcontracts.

“Pursuant to I.C. 22-9-1-10 and the Civil Rights Act of 1964, the CONSULTANT, shall not discriminate against any employee or applicant for employment, to be employed in the performance of work under this Contract, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or

indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of this Contract. Acceptance of this Contract also signifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

The CONSULTANT understands that INDOT is a recipient of federal funds. Pursuant to that understanding, the CONSULTANT, agree that if the CONSULTANT employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the CONSULTANT will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The CONSULTANT shall comply with Section 202 of executive order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of Contract.”

- c. It is required that the consultant shall take positive affirmative actions and put forth good faith efforts to use MBE/WBE subconsultants, vendors or suppliers as more fully set forth below.

## 2. Definitions

The following definitions apply to this section:

- a. “Minority Business Enterprise” or MBE means an individual, partnership, corporation, limited liability company, or joint venture of any kind that is owned and controlled by one (1) or more persons who are:
  - A. United States citizens; and
  - B. Members of a minority group.
- b. “Minority Group” means the following:
  - (A) Blacks
  - (B) American Indians
  - (C) Hispanics
  - (D) Asian Americans
  - (E) Other similar minority groups as defined by 13 CFR 124.103.
- c. “Women’s business enterprise or “WBE” means an individual, partnership, corporation, limited liability company, or joint venture of any kind that is owned and controlled by one (1) or more persons who are:
  - (A) United States citizens
  - (B) whose gender is female.
- d. “Good faith efforts” means affirmative actions that one could reasonably expect a consultant to take if the consultant were actively and aggressively trying to obtain MBE/WBE participation sufficient to meet the goal.

## 3. MBE/WBE Subcontracts

- a. This Request for Proposal contains an MBE and a WBE goal. These goals are the *desired minimum* amount to be subcontracted to certified MBEs/WBEs. The consultant is required to identify MBE/WBE

subconsultants prior to submitting its proposal in the attached Affirmative Action Certificate, attached hereto.

- b. The consultant must either meet the goal or demonstrate to INDOT that good faith efforts were taken to meet the goal.
- c. The good faith efforts and the results thereof shall be documented by the contractor and made available to INDOT upon request.
- d. A firm will not be considered a MBE or WBE unless it is currently certified by the Indiana Department of Administration. Only work with MBEs/WBEs that are certified prior to the date of notice to proceed, unless waived for special conditions, will count toward the goal. Credit towards contract goals will be given only for work performed by certified MBE/WBEs in the work areas for which they have been certified.
- e. Achievement of the MBE/WBE goal does not relieve the consultant of the requirement for affirmative actions on subsequent subcontracting or partnering on this contract.
- f. The same requirements with respect to obtaining the goal apply for a consultant that is certified as a MBE/WBE.
- g. MBE/WBE firms must meet all applicable Indiana eligibility standards for the level and type of participation anticipated.
- h. Consultants shall cooperate with the state in any studies and surveys of the consultant's MBE/WBE procedures and practices that the state may from time to time conduct.
- i. The consultant shall submit periodic reports of its MBE/WBE subcontracting in such form and manner and at such times as the state may prescribe.

#### 4. Leases and Rentals

The consultant shall notify INDOT when purchases or rental of equipment (other than leases for hauling) are made with MBE/WBEs. The information submitted shall include the name of the business, the dollar amount of the transaction, and the type of purchase made or type of equipment rented.

#### 5. Changes in MBE/WBE Participation

- a. A written request for changes to a MBE or WBE firm listed in the Affirmative Action Certification shall be approved prior to start of listed services by central office Economic Opportunity Division. Requests to reduce or eliminate the services provided by a listed a MBE or WBE that are accompanied by a written statement of agreement from the MBE or WBE may be considered sufficient justification, if the committed MBE/WBE utilization after the requested change will meet or exceed the contract goal or a lesser percentage approved prior to execution of the contract. If the committed MBE/WBE utilization, after the change, does not meet or exceed the contract goal or a lesser percentage approved prior to execution of the contract, or the listed MBE/WBE does not agree with the change, the consultant shall submit documented evidence that the MBE/WBE is unable to perform successfully. Disposition of the request for change will be determined on the basis of the affirmative actions taken as required herein.
- b. When a MBE/WBE firm is removed from eligibility and is no longer certified, the consultant shall take the following steps:

1. If a subcontract has not yet been executed, the consultant shall not count work performed by the firm toward the contract goal. The consultant will be directed to meet the contract goal with an eligible MBE/WBE firm or demonstrate that it has made a good faith effort to do so.
2. If a subcontract has been executed before the firm has been declared ineligible, the consultant shall continue to count work performed by the firm toward the contract goal.

c. MBE or WBE Joint Ventures

Type A (separate firms performing separate identifiable work as separate firms) do not require MBE or WBE joint venture certification. MBE or WBE joint ventures Type B (separate firms merging as one to perform work) do require MBE/WBE joint venture certification. A request for MBE/WBE joint venture Type B certification shall be submitted not later than 9:00 a.m. local time at least two (2) days prior to the submission date and shall be approved prior to the submission of the proposal in order to receive credit toward the MBE/WBE goal. The MBE/WBEs involved shall be certified as MBE/WBEs prior to requesting MBE/WBE joint venture certification. The work for the MBE/WBE shall be identified, performed, managed, and supervised by its forces in accordance with industry standards and practices.

6. Guidelines for Determining Good Faith Efforts.

Appendix A of 49 CFR Part 26 has been used for guidance in preparing INDOT's procedures to determine the adequacy of good faith efforts. Additional factors consistent with 49 CFR Part 26, and INDOT's policies and procedures have also been used.

The following factors will be considered in determining good faith efforts. The consultant, including MBE/WBE consultants, shall submit written evidence on each of the factors to INDOT upon request. This list is not intended to be conclusive or exhaustive, but is intended to show examples of what is meant by "good faith efforts."

a. The consultant shall make reasonable efforts to contact all appropriate ready, willing, and able MBE/WBE s who express a desire to work on any phase of the work required in accordance with this Request for Proposals. Documentation of initial and follow-up solicitations made to MBE/WBEs for subcontracting opportunities should be made. The consultant must obtain a current listing of certified MBE/WBEs from the Indiana Department of Administration's MBE/WBE/DBE directory located on its website.

b. To effectively participate, the consultant shall give the MBE/WBE a sufficient opportunity to review the potential scope of work and submit statements of interest prior to the submission deadline. Information provided by the consultant to the MBE/WBEs shall include, at a minimum, all appropriate information required for an appropriate response, and the date and time of the desired response.

- c. The consultant shall select the portions of the work to be performed by MBE/WBEs in order to increase the likelihood of MBE/WBE participation. This shall include, where appropriate, an attempt to break down the contract into economically feasible units to facilitate MBE/WBE participation.
- d. The consultant shall provide the interested MBE/WBEs with available information about the potential scope of work of the project. Attempts shall be made to have appropriate information available or to notify the MBE/WBE of the location of such available information. The consultant shall notify the MBE/WBE of all appropriate revisions. List of efforts used to attract MBE/WBE firms should be made, including any advertising submitted to trade journals, newspapers, minority focus publications and other available non-traditional media where MBE/WBE firms are likely to learn of subconsulting opportunities.
- e. It will be considered unacceptable to avoid subcontracting to MBE/WBEs, if such subcontracting to MBE/WBEs results in the need to further subdivide work elements.
- f. The consultant shall negotiate in good faith with interested MBE/WBEs with the intent of hiring and not reject such MBE/WBEs as unqualified without sound reasons based on thorough investigation of their capabilities. Confirmed documentation that a MBE/WBE has not been able to perform previous work through no fault of others will be considered to be sound reason. Unacceptable criteria include, but are not limited to, unsubstantiated oral statements and unsigned documentation.
- g. The consultant shall make efforts to provide reasonable assistance to interested MBE/WBEs to facilitate their participation. However, the consultant shall affirmatively consider waiving requirements it may have in order to assist the MBE/WBE.

7. Affirmative Action Certification and MBE/WBE -3 Form.

The Affirmative Action Certification, attached hereto, shall be completed when the Proposal is submitted to the Department. The certification shall list all MBE/WBEs included in the proposal and shall include a brief explanation stating the type of work or services that the MBE/WBE will be performing. In addition to the listing of MBE/WBE firms that will be used to meet the goal, the consultant shall also provide an estimated percentage for the amount of work that it anticipates will be performed by other MBE/WBE firms on the contract, beyond the goal requirements, if any.

Upon completion of the contract and subsequent payment of its subconsultants and/or receipt of notification from the Department, a Disadvantaged Minority and Women's Business Enterprise Utilization Affidavit, Form MBE/WB -3, shall be provided by INDOT, completed by the consultant and returned to the INDOT. The consultant and the MBE/WBE subconsultant shall certify on Form MBE/WBE-3 the actual specific amounts that have been paid and received. A MBE/WBE-3 Form certification shall be completed and submitted for every MBE/WBE used on the contract, not just those listed on the Affirmative Action Certification.

## 8. Records and Reports

The consultant shall keep such records as necessary to determine compliance with its MBE/WBE utilization obligations and compliance with the Guidelines for Determining Good Faith Efforts and make such records and reports available upon the request of INDOT.

## 9. Good Faith Efforts Review Procedure

INDOT will select the consultant for purposes of negotiations based upon qualifications, the consultant's proposal and the consultant's compliance with the Request for Proposal. If the consultant has achieved less than the MBE/WBE goal, the consultant shall include with its proposal, documented evidence of its good faith efforts to achieve the MBE/WBE goal, including but not limited to all affirmative actions taken to achieve the goal. Failure to include the required "good faith efforts" documentation may result in rejection of the proposal.

If, in the determination of the Commissioner, the consultant used good faith efforts to achieve the MBE/WBE goal, the consultant will be selected to proceed to negotiations with the Department.

If, in the determination of the Commissioner, the consultant did not use good faith efforts to achieve the MBE/WBE goal, the Department may reject the proposal and select the next eligible consultant for negotiations.

The Commissioner's determination under this section will be the final agency action and a judicially appealable order.

**AFFIRMATIVE ACTION CERTIFICATION**

I do hereby certify that it is the intention of my company to affirmatively seek out and consider certified MBE/WBEs to participate as part of this proposal

I understand and agree that all subconsulting in connection with this proposal, whether undertaken prior to or subsequent to the notice to proceed will be in accordance with the requirements for the Disadvantaged Minority and Women’s Business Enterprise Program, included elsewhere in this RFP. I understand and agree that no subcontracting will be approved or commenced until the Department of Transportation has reviewed and approved the affirmative actions taken by my company or me.

I understand that utilization of certified MBE/WBEs is in addition to all other equal employment requirements of this RFP.

I acknowledge that this certification is to be made an integral part of this proposal.

I understand and agree that the submission of a blank certification shall cause the proposal to be rejected.

I hereby certify that contact has been made with the certified MBE/WBEs listed in this certification. If my company becomes the CONSULTANT, the certified MBE/WBEs have tentatively agreed to perform the services. I understand that neither my company nor I will be penalized for amounts achieved over or under the amount shown for voluntary MBE/WBE utilization anticipated over the goal. However, INDOT may request an explanation for any variances.

**SUBCONSULTANTS**

**Certified MBE/WBE Name & Address**

**Type(s) of Work**

- 1.
- 2.
- 3.
- 4.
- 5.

Approximate Percentage Credited toward MBE/WBE Goal (RC) \_\_\_\_\_

Approximate Percentage of Voluntary MBE/WBE Work Anticipated over MBE/WBE Goal (RN) \_\_\_\_\_

Name of Company \_\_\_\_\_

By: \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_  
Individual’s Name and Title (printed or typed)