

2018



Winston-Salem

18-0151 - MWBE PROGRAM POLICY 2018

-FINAL

MINORITY AND WOMAN-OWNED BUSINESS PROGRAM PLAN

LEGISTAR
M/WBE DIVISION

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CITY OF WINSTON-SALEM
MINORITY AND WOMEN BUSINESS ENTERPRISE PROGRAM POLICY
FOR
CONSTRUCTION, PROFESSIONAL SERVICES, GOODS, and OTHER SERVICES
ORIGINAL PLAN ADOPTED ON JULY 18, 1983

I. M/WBE POLICY STATEMENT

It is the policy of the City of Winston-Salem to provide minorities and women equal opportunity to participate in all aspects of City contracting and purchasing programs, including but not limited to, participation in procurement contracts for commodities and services as well as for contracts relating to construction, repair work and/or leasing activities.

It is further the policy of the City of Winston-Salem to prohibit discrimination against any person or business in pursuit of these opportunities on the basis of race, color, sex, religion or national origin and to conduct its contracting and purchasing programs so as to prevent such discrimination.

II. M/WBE PROGRAM-RESPONSIBILITIES

The City of Winston-Salem, in concert with other local, state and federal agencies, and with the assistance of minority groups and agencies, will:

1. Formally state and declare the City's policy with regard to non-discrimination in the purchasing practices of the City.
2. Outline the procedures that will be used to ensure that our current and future contracting and purchasing practices provide to the fullest extent possible, consistent with sound management practices and local, state and federal laws, opportunities for participation by firms owned and controlled by minorities and women.
3. Monitor and assess the utilization of M/WBE businesses in all city contract and procurement activities in accordance with city policy and all applicable local, state and federal laws.
4. Advocate and promote equal opportunity and access to contracting and procurement opportunities in the City.

5. Identify qualified M/WBE businesses, promote their awareness of City contracting opportunities, and offer them the opportunity to participate as providers of goods and services to the City.
6. Recommend revisions and changes to policies and/or procedures that are an impediment or barrier to equal opportunity of participation for M/WBE business in City contracting and procurement activities.
7. Create and implement programs that provide assistance and training to M/WBE firms.
8. Support the development of M/WBE firms by providing small business assistance.
9. Ensure employee accountability regarding commitment to the City's procurement guidelines.

III. SCOPE OF THE M/WBE PROGRAM

The City of Winston-Salem views the M/WBE Program as complying with the letter and the spirit of the United States Supreme Court's decision in *City of Richmond v. J.A. Croson Co.* The M/WBE Program is a voluntary goal program incorporating a permissible good faith efforts test to ensure that discrimination has no place in the City's purchasing/contracting program.

The M/WBE Program is designed to encourage M/WBE participation in the City's purchasing/contracting program. It is neither a set-aside program nor a mandatory quota program. It is a program that encourages contractors and consultants to voluntarily offer M/WBE participation and to meet the established contractual goals, or submit a good faith effort if the established M/WBE goals are not achieved. The goals become part of the contractor's and consultant's contractual obligation once the same have been incorporated into the executed contract.

IV. MINIMUM PARTICIPATION GOALS-CONSTRUCTION AND REPAIR PROJECTS

In March of 2011, City Council adopted a resolution establishing a minimum 10% minority and women participation goal on formal City construction and repair projects estimated to cost \$300,000 or more. The State of North Carolina has a verifiable percentage goal of 10% for participation by minority businesses on city building projects of \$100,000 or more when using state funds. M/WBE participation goals depend upon the project scope of work, the historical participation of M/WBE firms, and the availability and capacity of M/WBE firms, especially in the local market. If the

goal is not achieved for City of Winston-Salem projects the M/WBE Advisory Committee evaluates the good faith efforts of the lowest, responsible, responsive bidder. The City of Winston-Salem has decided that M/WBE participation goals would be set on construction and repair projects estimated to cost \$100,000 or more. For building projects exceeding \$100,000 approval from the governing body is required.

V. M/WBE PARTICIPATION GOALS-PROFESSIONAL SERVICES & OTHER SERVICES

1. Submissions

The City of Winston Salem requires a 10% M/WBE participation goal to be set on all submittals for professional and other services. A proposer may meet this goal through the participation of certified sub-consultants and/or through his/her own performance on the project, if the proposer is a certified minority or woman-owned firm. The utilization of M/WBE firms accounts for 20% of the evaluation and scoring.

For professional services, per N.C. G.S. 143-63.31, firms are selected based upon their ability to provide services as demonstrated through competence and qualification for the type of professional services required without regard to fee. Negotiation of a contract for those services for a reasonable rate will take place with the best qualified firm, in compliance with all applicable laws.

Other services, which are those not covered by N.C. G.S. 143-63.31, are selected based solely on qualifications. Common examples of other services include contracts for the purchase of legal, banking, accounting services, janitorial etc.

An M/WBE that is not certified with the State of N.C. Office for Historically Underutilized Businesses at the time that the proposal is due, must be certified before the contract is completed. If the M/WBE Office determines that the business is not certified at project completion, the business will not be counted towards the M/WBE goals.

2. Evaluation Panel

Each city panel evaluating professional service proposals must be diverse in nature. The originating department must form an evaluation panel consisting of no less than five individuals for the purposes of reviewing and scoring proposals and making the selection of a consultant for contract award. Said panel shall consist of: (1) at least one city staff member from the M/WBE Division or another city staff member designated by the City Manager or his/her designee and (2) a city staff member from a City department other than the originating department. The remaining members are selected at the discretion of the original department.

Each evaluation panel member is responsible for thoroughly reviewing and fairly scoring each responsive proposal to the best of his or her ability consistent with the selection criteria posted in the solicitation, with the exception of the city staff member from the M/WBE Division or their designee. The role of the M/WBE staff person or their designee is to serve as support to the evaluation panel and to ensure compliance with the M/WBE Program. In the event an evaluation panel is unable to reach consensus on the recommended selection, each evaluation panel member shall be required to disclose their scoring and provide to the full evaluation panel a written explanation of the reasoning behind such. The Respondent or Bidder / Participant receiving the highest cumulative total of points shall be recommended by the evaluation panel for contract award.

Self-performance

If it is the normal practice of the proposer to perform all elements of this type of service with its own workforce and without the use of sub-consultants, the proposer must affirm, by the submission of Affidavit B. In the event the proposer does not self-perform 100% of the work, the contract will be subject to the M/WBE goals originally established for the project, as well as, good faith efforts and documentation requirements of the M/WBE program. The utilization of M/WBE firms accounts for 20% of the evaluation and scoring, and will not be allocated to proposals in which an Affidavit B is submitted.

See Special Instructions for Professional Services, Appendix B, regarding compliance with the City of Winston Salem's and/or City County Utility Commission's Minority and Women Business Enterprise Program.

VI. METHODOLOGY FOR SETTING M/WBE GOALS - CONSTRUCTION & REPAIR PROJECTS

While the minimum M/WBE goal has been established as 10%, the project scope of work, the historical participation of M/WBE firms, and the availability and capacity of M/WBE firms will be examined on a project by project basis to determine if there is capacity for a higher project specific M/WBE goal, for a City or City/County Utility Commission construction or repair project that meets or exceeds \$100,000. During the design phase of a project, an engineering/architectural breakdown of specifications is developed by the consultant, along with all the associated estimates of cost. The estimated cost for the various aspects of the project, and total project construction cost are used to determine specific contracting, subcontracting, and/or supplier opportunities for firms registered on the City's vendor directory and/or firms certified with the State of North Carolina Historically Underutilized Business (HUB) Office as an M/WBE.

Relevant data sources such as the Disadvantaged Business Enterprise (DBE) Listing, HUB Database, and City Vendor Directories are used to supplement one another during the goal setting process. Based on the scope of work and relative M/WBE availability,

a verifiable goal is recommended by the Internal Goal Setting Committee and inserted into the bidding documents.

The City will consider the following factors in establishing project specific M/WBE goals:

1. The number of M/WBE's registered or certified in the City's vendor directory and HUB/DBE directories;
2. The relative availability of M/WBE's registered or certified in the City's vendor directory and HUB/DBE directories, as determined by firms available to perform a specific scope considering that the project is bid within a reasonable amount of time;
3. The availability of registered or certified firms in the City's vendor directory and the HUB/DBE directories having the capacity and/or requisite skills to perform on a related contract; and
4. The nature of the project/ scope of work.

VII. INTERNAL REVIEW COMMITTEE

The Internal M/WBE Committee is responsible for setting M/WBE goals and reviewing the Good Faith Efforts on formal construction projects. The committee is composed of nine members, six voting members and three non-voting members.

The City Manager or-his/her designee, the City/County Purchasing Director or his/her designee, the Solid Waste Administrator or his/her designee, City/County Special Project Coordinator or his/her designee, and the City Engineering Design Manager or his/her designee, the City/County Construction Specialist/Buyer or his/her designee are all voting members.

The Business Inclusion and Advancement Director, the Business Inclusion Manager, and the Diversity Compliance Specialist, are all non-voting members. Standing meetings take place on the 1st and 3rd Thursday of each month.

VIII. BIDDING & SUBCONTRACTING

City policy mandates M/WBE subcontracting on formal construction and repair projects estimated to meet or exceed \$100,000. Subcontracting with M/WBE's will be encouraged on all construction and repair projects. First and second-tiered subcontractors/suppliers will count towards M/WBE participation percentages. All M/WBE firms must be certified by the State of North Carolina Office of Historically Underutilized Businesses (HUB) prior to the completion of the project.

No specific M/WBE goals have been established for informal contracts, or projects estimated to cost less than \$100,000. However, contractors are strongly encouraged to make a good faith effort to obtain 10% or more M/WBE participation on all contracts.

The lowest, responsive, responsible bidder will be expected to provide M/WBE participation to the extent of at least the goal percentages set for the project. Contractors who bid are encouraged to make arrangements for M/WBE participation prior to submitting bids. Bidders will submit to the City an Identification of Minority Business Participation (“IMBP”) Form with their bids giving the names and addresses of minority and women contractors who will perform as construction subcontractors, vendors or suppliers, and the anticipated dollar amount of participation expected for each. If the IMBP Form is not included with the bid, the bid will be considered non-responsive. The IMBP Form will then become a part of the contract between the City and the successful contractor. If the expected goals are not met by the apparent low bidder, said bidder will be required to document good faith efforts made in reaching the goal.

Self-performance

Pursuant to North Carolina G.S. 143-128.2 (f), a contractor, including a first-tier subcontractor on a construction manager at risk project, that performs all of the work under a contract with its own workforce may submit an affidavit to that effect in lieu of the affidavit otherwise required under this subsection 143-128.2 (c). If the contractor meets the provisions of this subsection, including an affidavit that no portion of the work will be subcontracted, he/she cannot be denied the contract.

See Special Instructions to Bidders, Appendix A, regarding compliance with the City of Winston Salem’s and/or City County Utility Commission’s Minority and Women Business Enterprise Program.

IX. GOOD FAITH EFFORT

Formal Construction Contracting

Several items are considered to determine if a bidder has made a good faith effort to solicit M/WBE participation before bidding to meet the goals. In some instances, a good faith effort demonstration will be required at the end of a project, before final payment is released, if the contractual M/WBE percentages are not met.

The City’s Internal Staff Committee and/or M/WBE Advisory Committee will evaluate the efforts made by the bidder/prime contractor and will determine compliance with said efforts. Good faith efforts can be demonstrated using among other factors, the following:

- (a) Attending pre-solicitation or pre-bid meetings that are scheduled by the City to inform M/WBE firms of contracting, subcontracting, and supply opportunities.
- (b) Advertising in general circulation, trade association, or minority-focus media concerning subcontracting opportunities.
- (c) Providing written notice, to a reasonable number of specific M/WBE firms that

their interest in the contract is being solicited, at least 10 days before bids are due, to allow M/WBE firms time to participate.

(d) Following up initial solicitation of interest by contacting M/WBE firms to determine with certainty whether the M/WBE firms are interested.

(e) Identifying and selecting portions of the work to be performed by M/WBE firms in order to increase the likelihood of M/WBE participation (including where appropriate, breaking down contracts into economically feasible units to facilitate M/WBE participation).

(f) Providing interested M/WBE firms with equal access to plans, specifications, and requirements of the contract.

(g) Negotiating fairly with interested M/WBE firms, not rejecting M/WBE firms as unqualified without sound reasons based on a thorough investigation of their capabilities.

(h) Using the services of the City of Winston-Salem's M/WBE Division, available minority community organizations; minority contractors' groups; local, state, and federal minority business offices; and other organizations that provide assistance in the recruitment and placement of M/WBE firms.

(i) Assisting interested M/WBE firms in need of equipment, loan capital, lines of credit or joint pay agreements to secure loans, supplies or letters of credit, including waiving credit that is ordinarily required.

(j) Assisting interested M/WBE firms in obtaining bonding, insurance, or providing alternatives to bonding or insurance for subcontractors.

(k) Negotiating joint venture and partnership arrangements with minority businesses to increase the opportunities for minority participation when possible.

(l) Provide for quick pay agreements and policies to enable minority contractors and suppliers to meet cash flow demands.

A contractor must accumulate at least 115 points out of 180 points to demonstrate a Good Faith Effort was made. Partial points may be awarded when the complete requirement of an item is not met. For construction projects that meet or exceed \$100,000, failure to provide the required documentation may result in the City or City/County Utility Commission rejecting the bid and the award going to the next lowest responsive responsible bidder. If it is determined that a Good Faith Effort has been made, the contract shall be awarded to the apparent lowest, responsive, responsible bidder. If the respective committee determines that a Good Faith Effort was not made, the respective Governing Board may reject all bids and order the project re-advertised. Further, for projects estimated to meet or exceed \$100,000, the respective

Governing Board may award a contract to the lowest responsible bidder, responsible bidder meaning a bidder who meets the expected goals for the project or who documents to the board's satisfaction that a Good Faith Effort was made.

Professional Services & Other Services

If the established 10% goals for participation by minority/woman owned businesses is not achieved, the proposer must provide with the proposal, documentation to the City of his/her Good Faith Effort to meet the goals set forth. Examples of documentation may include, but are not limited to the information below.

- (a) Advertising in general circulation, professional association, or minority focused media about subcontracting opportunities.
- (b) Providing written notice, to a reasonable number of specific M/WBE firms that their interest in the contract is being solicited, at least 10 days before proposals are due, to allow M/WBE firms time to participate.
- (c) Following up initial solicitation of interest by contacting M/WBE firms to determine with certainty whether the M/WBE firms are interested.
- (d) Identifying and selecting portions of the work to be performed by M/WBE firms in order to increase the likelihood of M/WBE participation (including where appropriate, breaking down contracts into economically feasible units to facilitate M/WBE participation).
- (e) Using the services of the City of Winston-Salem's M/WBE Division available minority community organizations; minority contractors' groups; local, state, and federal minority business offices; and other organizations that provide assistance in the recruitment and placement of M/WBE firms.
- (f) Negotiating joint venture and partnership arrangements with minority businesses to increase the opportunities for minority participation when possible.
- (g) Provide for quick pay agreements and policies to enable minority contractors and suppliers to meet cash flow demands.

A proposer must accumulate 55 out of 90 points to demonstrate a Good Faith Effort was made. Partial points may be awarded when the complete requirement of an item is not met. If the respective committee determines that a Good Faith Effort was not made, the respective Governing Board may reject all bids and order the project re-advertised. Except as noted herein, for projects estimated to meet or exceed \$100,000, the respective Governing Board may award a contract to the most qualified proposer based upon points. A qualified proposer means one who meets the expected goals for

the project or who documents to the board's satisfaction that a Good Faith Effort was made. For contracts covered by G.S. 143-64.31 et. seq., if the proposer fails to meet the 10% goal or demonstrate a Good Faith Effort, but still has the most points, the contract may be awarded to said proposer in accordance with said statute; however, the proposer will be subject to qualification adjustment criteria for any bid or proposal submitted subsequent thereto.

X. IMPLEMENTATION OF THE M/WBE PROGRAM POLICY

The City Manager shall implement and administer the City's M/WBE Policy through The Office of Business Inclusion & Advancement. Several methods may be used to increase the opportunity for M/WBE participation. The methods include but are not limited to:

1. Maintain a current directory of M/WBEs and the commodities and/or services they offer. The Office of Business Inclusion and Advancement shall regularly update the M/WBE directory on the City's website and provide links to other M/WBE certified directories.
2. Provide technical assistance to City departments relating to vendor rotation and the implementation of the M/WBE Program.
3. Provide assistance related to meeting the requirements on this policy to prospective bidders on City contract, including how to identify qualified M/WBE subcontractors, how to contact them, and best practices to solicit bids from M/WBE firms.
4. Encourage general contractors to provide assistance as needed to M/WBE firms in the form of loan capital, lines of credit, joint pay agreements, and credit waivers.
5. Provide information regarding bid opportunities, upcoming request for proposals, and all other procurement opportunities via the City's website, email, and other methods to contractors and subcontractors.
6. Host educational workshops and networking/outreach events for M/WBE firms.
7. Encourage general contractors to provide assistance as needed to M/WBE firms in the form of: loan capital, lines of credit, joint pay agreements, and credit waivers.
8. Conduct pre-bid conferences to review with prospective bidders the M/WBE program in general, the specific M/WBE goals, and to respond to the questions and/or concerns.

9. Encourage City departments, consultants, and contractors to consistently break down the scope of work into economically feasible units.
10. Provide assistance with the State of North Carolina's Historically Underutilized Business Certification.
11. Establish M/WBE participation goals and provide project management on a project-by-project basis.

XI. VENDOR DATABASE

The City of Winston Salem maintains an updated listing of vendors interested in providing goods and services to the city. By completing the City's online Vendor Registration Form, a company's information will be included in the City's vendor listing. Completion and submission of the said form does not guarantee solicitation of offers nor award of contracts from the City of Winston Salem. City departments, purchasing officials, general contractors, etc. will use the information from the database to include applicants on bidder's lists when formal and informal bid notices are issued. City departments have some authority to enter into purchase or service contract without the approval of the Purchasing Department, up to a certain amount.

XII. LOCAL VENDOR REQUIREMENTS

The City of Winston Salem is committed to spending funds within the local economy and when possible to M/WBE firms. Local vendors are defined as any business with a physical address (PO BOX does not qualify) within the corporate limits of Winston-Salem. For purchases made by the City/County joint departments, local vendors also include businesses with a physical location within Forsyth County.

For all discretionary spending under \$20,000, local vendors must be used if available, and local M/WBE vendors must be given the opportunity to submit a bid/proposal. Awards under \$20,000 must be given to the lowest, responsive, responsible bidder taking into consideration quality, performance, and time specified per NC 143.129 (b). Such process shall ensure that M/WBE vendors are afforded an equal opportunity to be selected and awarded a contract. The City also promotes vendor rotation within our departments to increase transparency and create opportunity for diversity and inclusion in our commitment to spending funds within the local economy, and with M/WBE firms.

For goods, professional, and other service contracts that are valued below \$20,000 and that are of a fairly routine nature, the City Manager may reserve such contracts and purchase orders for award to a pre-qualified panel of M/WBE firms on a rotating basis. In determining whether the M/WBE Vendor Rotation Element should be applied to a

particular contract, M/WBE staff shall consider: a) whether there are at least three M/WBE vendors that are available and capable to perform as Prime Contractors on such contracts; b) whether the anticipated frequency of such contract opportunities will warrant multiple awards on a rotating basis; and c) the M/WBE vendor is located within City limits.

XIII. POST-AWARD COMPLIANCE

In addition to other requirements as set forth elsewhere, the following shall apply to applicable contracts awarded by the City:

1. Failure to achieve the M/WBE participation goals, or make a Good Faith Effort to do so, may result in serious consequences, up to and including disqualification from bidding on future projects with the City of Winston Salem and the City/County Utility Commission.
2. Under Section 2-3 of the City Code pertaining to the disqualification of bidders, the City Manager or their designee has the authority to preclude contractors from bidding on construction and repair projects if they fail to satisfy the contractual M/WBE requirements and fail to make a Good Faith Effort to meet the contractual percentages for M/WBE participation. *See Appendix C, Good Faith Effort Remedial Actions for specific details on applicable sanctions.*
3. For professional and other service contracts, where the consultant/bidder did not meet the M/WBE requirements of a previous contract, and failed to demonstrate a good faith effort to do so, said consultant/bidder will receive a deduction or adjustment for non-compliance in the evaluation of any proposal/bid submitted subsequent thereto. *See Appendix D, Qualification Adjustments for Subsequent Bids.*
4. Replacement of an M/WBE without written approval from the City of Winston Salem's Office of Business Inclusion & Advancement staff is a violation of contract provisions and may result in the contractor being disqualified from bidding on future City and/or Commission projects. The M/WBE Replacement Request Form must be approved before a substitution occurs.
5. Site visits will be conducted through the course of the contract to track the progression of work, treatment, and payment of M/WBE firms.
6. During the course of the contract, the successful bidder will be required to submit M/WBE Documentation for Contract Payments, with each monthly pay request.

7. The Final Affidavit of Payment to M/WBE subcontractors should total all payments including full retainage.
8. Per *N.C. G.S. 143-134.1 (b)* within seven days of receipt by the prime contractor of each periodic or final payment, the prime contractor shall pay the subcontractor based on the work completed or service provided under the subcontract. If any periodic work or final payment to the subcontractor is delayed by more than seven days, the prime contractor shall pay the subcontractor interest beginning on the eight day.
9. The City, at its discretion, may require additional periodic reports. Final payment will be withheld until it has been determined that the goal percentages for M/WBE participation, previously agreed to by the successful bidder, have been confirmed by the City and/or Commission.

See Special Instructions to Bidders, Appendix A and Special Instruction for Professional Services, Appendix B regarding compliance with the City of Winston Salem's and/or City County Utility Commission's Minority and Women Business Enterprise Program.

XIV. M/WBE PROGRAM RECORDS AND MONITORING

The City/County Purchasing Office shall maintain data on M/WBE participation, including data concerning prime and sub contracts awarded to M/WBE firms. Information concerning construction contracts shall be maintained by the City/County Purchasing Director. Annual reports shall be submitted to the City Manager who shall report to City Council from the data compiled by the Office of Business Inclusion & Advancement.

The City/County Purchasing Office also maintains a copy of plans and specifications for viewing. It is our hope this will enhance the capacity of the local contracting community and will increase the flow of technical information from the City and/or user department to M/WBE firms.

XV. DISPUTE RESOLUTION

The City's M/WBE Program expects all parties involved in the procurement process, including City personnel and vendors/contractors, to act in good faith in all aspects of this process. If any vendor or contractor has a concern or complaint related to the application of this policy, whether by personnel or a contractor, that party is expected to seek, cooperatively, a voluntary resolution of the matter. If the affected parties are unable to resolve the dispute, the offended party should report his/her concerns to the applicable department for the project; if the complaint involves an M/WBE

subcontractor or prime, the user department shall immediately notify the Office of Business Inclusion and Advancement for appropriate action.

XVI. SEVERABILITY CLAUSE

If any section, paragraph, sentence, clause, phrase, or word of this M/WBE Program Policy, or the application thereof to any person or circumstance is held invalid for any reason by a court of competent jurisdiction, such invalidity shall not affect the validity of other provisions of the M/WBE Program Policy, nor its application to other persons or circumstances nor any other component of City procurement. The M/WBE Program Policy is hereby declared to be severable.

XVII. DEFINITIONS

Award - The final selection of a bidder for a specified prime contract or subcontract dollar amount. Contract awards are made by the City to prime contractors or vendors and by prime contractors or vendors to subcontractor or sub-vendors, usually pursuant to a solicitation process. (Contract awards are to be distinguished from contract payments in that they only reflect the anticipated dollar amounts instead of actual dollar amounts that are paid to a contractor under an awarded contract).

Bid - A written quotation, proposal, or offer by a bidder or contractor to perform to provide labor, materials, equipment, supplies, or services to the City of Winston Salem for a price certain, submitted in response to competitive bidding solicitation issued by the City of Winston Salem.

Bidder - A business enterprise that submits a bid as defined herein.

Business Development Division - monitors and promotes business and economic development opportunities throughout the City, utilizing a series of related programs to provide concentrated assistance to targeted areas and groups. The division focuses on enhancing the quality of life by attracting, creating, and retaining jobs; augmenting the tax base; and assisting small and minority-owned businesses.

Business Enterprise - A legal entity existing for the purpose of engaging in business for profit, including but not limited to a corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private, legally recognized entity.

Business Inclusion Manager - The City official responsible for the management of the M/WBE Program and ultimately responsible for oversight, tracking, administration, implementation, and reporting.

Certification - The process by which M/WBEs verify their status to the City of Winston Salem through the State of N.C. Historically Underutilized Business (HUB) Office. The City of Winston Salem no longer certifies businesses as M/WBE. A firm may apply for multiple certifications that cover each status category for which it is able to satisfy eligibility standards.

City and City limits - The incorporated City limits of the City of Winston Salem, North Carolina and its annexed boundaries, as the same may be amended at the city's discretion.

Classification - The designation which best describes the ownership (MBE or WBE) of a business enterprise.

Compliance - The condition or status of a prime contractor whose bid demonstrates that it complies with the M/WBE contract goals.

Contract - any and all agreements, regardless of what may be titled, for the procurement of supplies, services, or construction.

Contractor - any business that enterprise that has entered into a contract with the City.

Discretionary Spending- all spending made by City departments by purchasing card (P-Card, purchase order, or request for check under \$20,000).

Diversity Compliance Specialist - The City official responsible for the enforcement of the contractor and vendor compliance with contract participation requirements.

First-tier subcontractor- a subcontractor holding a subcontract with the prime/general contractor

Formal Solicitation - an invitation for bids, request for proposals, request for qualifications or other solicitation document issued by a city department for a contract valued at \$100,000 or greater, and that requires formal advertisement in accordance with the procurement rules adopted by the City of Winston Salem.

Goal- the percentage of M/WBE participation on a given project. Goals are established on a per project basis based on trade types and M/WBE availability.

Goal Setting – the process by which subcontracting opportunities are identified based on an engineering/architectural breakdown of project specifications and M/WBE relative availability.

Good Faith Effort - documentation of the prime contractor's intent to comply with the M/WBE Program and procedures by adequately soliciting M/WBE firms. Examples of compliance include, but are not limited to, (1) Providing written notice to a reasonable number of specific M/WBE firms that their interest in the contract is being solicited, at least ten days before bids are due. (2) Identifying portions of the work to be performed by M/WBE firms in order to increase the likelihood of M/WBE participation. (3) Assisting interested M/WBE firms in need of equipment, loan capital, lines of credit or joint venture agreements to secure loans, including waiving credit that is ordinarily required. See N.C.G.S. 143-128.2 for a full detailed description of the requirements for a Good Faith Effort.

Informal Solicitation - solicitations for contracts that are less than \$100,000 in value, and do not require formal solicitation.

Internal M/WBE Committee - an internal committee made up of City staff who is responsible for setting project goals and reviewing the Good Faith Efforts of prime contractors. The committee is composed of the Business Inclusion Manager or designee, City/County Purchasing Director, Assistant City Manager, Solid Waste Administrator Supervisor, Engineering Design Manager, Special Projects Coordinator and Construction Specialist.

Local Vendor - defined as any business with a physical address location (P.O. Box does not qualify) within the corporate limits of Winston-Salem. For purchases made by City/County joint departments, local vendors also include businesses with a physical location within Forsyth County. If available, a department must use local vendors for all purchases under \$20,000.

M/WBE Advisory Committee - a committee of citizens who is charged with the responsibility of reviewing the City's MWBE program, making periodic reports and recommendations regarding program enhancements, and evaluating the good faith efforts of contractors.

M/WBE Directory - a listing of minority- and women-owned businesses that have completed either the City's Vendor Registration Form and/or are certified with the State of N.C. Historically Underutilized Business Office. Purchasing officials will use this information to include applicants on bidder's lists when formal bid notices are issued. However, City and county departments have wide authority to enter into purchase or service agreements without Purchasing Department approval, under \$20,000. Applicants are encouraged to contact other departments listed on City and county websites to insure the best possible opportunity for city and/or county business.

Minority Business Enterprise (MBE's) - an entity that is certified as at least fifty-one (51%) owned, managed, and controlled by one or more minority individuals that are

lawfully residing in, or are citizens of, the United States, and who is willing ready, willing, and able to sell goods or services to the City of Winston Salem.

Minority/Women Business Enterprise (M/WBE) - any firm that is certified as either a Minority Business Enterprise or as a Women Business Enterprise, and at least 51% of the business is owned by one or more persons stated below:

- Black- a person having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian;
- Hispanic- a person of Spanish or Portuguese culture having origins in Mexico, South or Central American, or the Caribbean islands, regardless of race;
- Asian American- a person having origins in any of the original people of the Far East, Southeast Asia, Asia, Indian continent, or Pacific islands;
- American Indian- a person having origins in any of the original people of North America;
- Female
- Disabled- a person with a disability as defined in G.S. 168-1 or G.S. 168 A-3
- Disadvantaged- a person who is socially and economically disadvantaged as defined in.

Non-Responsive Bidder - a bidder who has submitted a bid which does not conform in all material respects to the requirements set forth in the invitation for bids.

Office of Business Inclusion & Advancement- Herein referred to Business Inclusion & Advancement M/WBE Division and the staff therein as the M/WBE staff.

Other- services: service contracts with exception of architectural, engineering, surveying and Construction Manager at Risk which are selected based solely on qualifications. Common examples of service contracts include contracts for the purchase of legal, banking, accounting services, janitorial.

Prime Contractor - the vendor or contractor to whom a purchase order or contract is issued by the City of Winston Salem for the purpose of providing goods or services for the City.

Procurement - the process of buying, renting, or otherwise obtaining or acquiring any real or personal property, supplies, materials, equipment or services.

Professional Service- services which require licensure as a prerequisite to participate for a profit which involve predominately mental or intellectual labor and skills, including but not limited to, architects, engineers, and surveyors. Firms are selected based upon their ability to provide services on the basis demonstrated through

competence and qualification for the type of professional services required without regard to fee. Negotiation of a contract for those services for a reasonable rate takes place with the best qualified firm. Qualification for the type of professional services will take into consideration compliance with city policies on prior contracts.

Responsible Bidder - a bidder who has the capacity, in all respects, to fully perform the contract and all of its requirements and the demonstrated experience, reliability, facilities, equipment and credit to reasonably assure performance.

Responsive Bidder - a bidder who has submitted a bid which conforms to all material aspects to the requirements set forth in the invitation for bids.

Subcontract - an agreement between the contractor (prime) and another business entity (subcontractor) for the performance of work that is part of the prime contractor's contract with the City.

Vendor rotation- a revolving list of vendors selected on the basis of qualification to provide goods and services in a specific field of expertise.

Women Business Enterprise (WBE's) - an entity that is certified as at least fifty-one (51%) owned, managed, and controlled by one or more non-minority female individuals that are lawfully residing in, or are citizens of, the United States, and who is willing ready, willing, and able to sell goods or services to the City of Winston Salem.

Appendix

- A. Special Instructions for Bidders
- B. Special Instructions for Professional Services
- C. Good Faith Effort Remedial Actions
- D. Qualification Adjustments for Subsequent Bids