

Minority/Women Contracting**ADMINISTRATIVE PROCEDURES FOR M/WBE PARTICIPATION IN CONSTRUCTION CONTRACTING**

In order to implement Board Rule 6Gx13- 3G-1.01, Business Development and Assistance Program, it is necessary to establish specific M/WBE Administrative Procedures for Construction Contracting. These procedures establish uniform policies and guidelines to ensure that all M/WBEs have an opportunity to compete for construction contracts with the School Board, and are intended to provide the vehicle for meeting the Business Development and Assistance participation objectives and goals established in Board Rule 6Gx13- 3G-1.02, Establishment of Business Development and Assistance Objectives.

I. Advertising Projects for M/WBE Participation

To enhance Minority/Women Business Enterprise participation in the Capital Improvement Program of the School Board, construction type contracts shall be advertised as follows:

- A. All advertisements are to be published and mailed to the following:

PUBLICATIONS

Miami Times
 Diario Las Americas
 Miami Daily Business
 Review
 El Nuevo Herald

ORGANIZATIONS

Latin Chamber of Commerce
 The Women's Chamber of
 Commerce of Miami-Dade
 County
 Miami Dade Chamber of
 Commerce
 Allied Minority Contractors
 Association, Inc.
 Latin Builders Association, Inc.
 Haitian Chamber of Commerce
 National Association of Women in
 Construction
 Black Business Association
 Asian-American Federation of
 Florida, Inc.

- B. Whenever possible, staff shall supply M/WBEs and organizations assisting M/WBEs with a list of projects and anticipated bid dates, to provide ample time to develop and complete bid packages, proposals and obtain any other needed assistance.
- C. Advertisements shall designate the type of affirmative action method, and indicate the specific group(s) of M/WBEs, eligible to participate.
- D. Advertisements shall include a Project Description.

- E. Advertisements shall specify the M/WBE participation, and bids will indicate that bids may not be considered if the bidder does not meet the M/WBE participation or prove, conclusively, that it was unattainable, after the use of best efforts.
- F. Advertisements for educational facilities construction techniques and financing mechanisms authorized under '235.211, Fla. Stat., and other non-conventional construction methods approved by the Board shall specify the established M/WBE Assistance Levels. Bids shall indicate that failure to meet the established Assistance Levels will be deemed a default under the contract and sanctions for violations will be imposed as set forth in the Special Provisions for Compliance with M/WBE Assistance Levels that are applicable to the construction technique, financing mechanism or other non-conventional construction method utilized for the project.

II. Identifying Set Aside Projects

It shall be the responsibility of the Division of Business Development and Assistance to review all project documents, to identify potential projects for M/WBE participation, and gather pertinent data from the participating architect(s) for review by the Construction Contract Review Committee (CCRC). The CCRC will review all projects and forward committee decisions to the Technical Review Committee (TRC) for inclusion in the projects under consideration as set asides, M/WBE Assistance Levels, reduction type project(s), or identifying specific scope(s) of work. Projects will then be advertised according to the procedures in Section I.A. (Advertising Projects for M/WBE Participation).

- A. The CCRC will consist of two (2) administrators from the Division of Business Development and Assistance, two (2) from Facilities Planning and Construction, and one (1) from Internal Audits. A member of the M/WBE Advisory Committee will be included on the CCRC as a non-voting member. Reviews shall be held as necessary to effectively implement the M/WBE Program. A majority vote of the members present will be necessary to effect a decision.

III. Criteria for Set Aside Projects

Whenever projects are reviewed by the CCRC for potential set aside, in whole or in part, the Committee shall be guided by the following criteria:

- A. The scope of work, method of construction, and estimated construction cost of the project which may be appropriate for M/WBE participation;
- B. The availability and capability of M/WBE contractors to compete in the bidding process;

- C. The extent to which construction annual Assistance Levels are being achieved;
- D. The need for specific M/WBE group participation in a particular trade area, or construction category; and
- E. Unless the School Board specifically directs otherwise, the CCRC will make the decision as to whether projects of \$8 million or less are designated for the set aside program. Projects over \$8 million must be approved in advance by the Board before being designated for the set aside program. The M/WBE Advisory Committee will review this requirement on an annual basis and recommend changes, as appropriate.

IV. Establishing Assistance Levels for Minority/Women Business Enterprises Subcontracting Participation

- A. Subcontracting Assistance Levels for individual contracts, will be established by the CCRC and will be based on the findings of the 1990 Disparity Study, utilizing the Ready, Willing and Able (RWA) model as specified in Board Rule 6Gx13- 3G-1.02.

The CCRC may include M/WBE Subcontracting Assistance Levels, in both non-set aside projects and set aside projects, to assure M/WBE participation, across the board, and in a variety of situations, including, but not limited to, identifying specific scopes of work exclusively for M/WBE participation.

Projects estimated to cost \$5 million or more must have M/WBE Subcontracting Assistance Levels.

- B. In specific situations, the CCRC may establish adjusted M/WBE Assistance Levels in order to provide the Board and Superintendent with the necessary flexibility to administer the construction program. These special situations are as follows: (1) when all bids for an advertised project have come in over the established budget and the construction estimate is deemed to be current; (2) when there are no bids on an advertised project and it has been determined that the construction method is still viable; (3) when the low bidder on an advertised project is deemed non-responsive; or (4) when there is only one bid on an advertised project and that bid is deemed to be non-compliant or non-responsive.

If the specific situations as described above occur, the CCRC may adjust the M/WBE Assistance Levels based on the following criteria:

1. An analysis of the statistically derived Assistance Levels calculated on expenditures as determined in accordance with Board Rule 6Gx13- 3G-1.02;

2. An analysis of what the statistically derived Assistance Levels would be if they were based on awards;
 3. Market conditions, the scope of work, method of construction, and estimated construction cost of the project which may be appropriate for M/WBE participation;
 4. The availability and capability of M/WBE contractors to compete in the bidding process;
 5. The extent to which construction annual Assistance Levels are being achieved; and
 6. The need for specific M/WBE group participation in a particular trade area, or construction category.
- C. Joint ventures will be considered and recommended by the Construction Contract Review Committee (CCRC) on a project by project basis. Joint venture agreements will be reviewed by the Division of Business Development and Assistance prior to award, to establish that Minority/Women Business Enterprises are sharing in the profits, risks, and management of the joint venture commensurate with their ownership.
- D. Listing of M/WBE Subcontractors
1. Prime contractors utilizing conventional construction methods will be required to list their M/WBE subcontractors, by ethnicity and gender, along with the subcontractors' scope of work and price at the time of bid. The apparent low bidder will have an additional forty-eight (48) hours to provide Letters of Intent for the listed M/WBE subcontractors, in a sealed envelope, to the Division of Project and Contract Administration. The Division of Business Development and Assistance will conduct a Compliance Review pursuant to the Special Provisions for Compliance with M/WBE Subcontracting Assistance Levels.
 2. Prime contractors for any construction technique and financing mechanism authorized under '235.211, Fla. Stat., or other non-conventional construction method may not be required to identify their M/WBE subcontractors at the time of bid or submission of the project price, if the Board deems it impractical to do so. However, for purposes of this section, the prime contractor shall commit to the fulfillment of the established M/WBE Assistance Levels at the time of bid or submission of the project price in the manner set by the Board as part of the bid documents. Failure to make such commitment shall render the bid non-responsive. The prime contractor's level of success in achieving the M/WBE Assistance Levels shall be assessed at

regular intervals throughout the contract/project through conclusion (substantial completion) by the Division of Business Development and Assistance. The prime contractor will be advised by the Division of Business Development and Assistance at any time such review indicates that compliance with established Assistance Levels is in jeopardy. In the event of a determination of Non-compliance with the established M/WBE Assistance Levels, sanctions for violations will be imposed as set forth in the Special Provisions for Compliance with M/WBE Subcontracting Assistance Levels and in Section VII.B. of the current rule.

E. Contract Monitoring

The Division of Business Development and Assistance will enhance the procedures for monitoring construction contracts, as specified in the Special Provisions for Compliance with M/WBE Subcontracting Assistance Levels.

F. Technical Review Committee (TRC) Review

The subcontracting M/WBE Assistance Levels are goals which, although established with a reasonable belief of attainability within the construction budget, are not rigid and inflexible. For this reason, when the low bid received on a particular project has been determined to be in Noncompliance with the subcontracting M/WBE Assistance Levels, by the Division of Business Development and Assistance, the TRC may review appropriate documentation and recommend award, notwithstanding the finding of Noncompliance with the established Assistance Levels. This action will be exercised only when the committee has found compelling reasons, including cases of sole bids or when the committee has determined that the low bid is within budget or reasonably approximating the budget. Bidders may not apply for this review. It shall be solely the determination of the TRC.

G. The M/WBE Advisory Committee will review the application of the criteria listed under Section IV. on a regular basis, and recommend changes, as appropriate.

V. Criteria for Reducing Large Contracts

Large projects shall be reduced, when possible.

The Construction Contract Review Committee (CCRC) will review large projects to determine the feasibility of reducing the project to smaller ones, when possible, for M/WBE participation. Pertinent factors to be considered are:

A. The degree of complexity of the project's design which permits

reduction;

- B. The extent of the need for M/WBE participation in a specific type of work or a particular project;
- C. The extent to which the construction annual M/WBE Assistance Levels are being met; and
- D. The potential costs/benefits of reducing the project.

VI. Payment to Subcontractors

The prime contractor will be expected to make payment to subcontractors, material suppliers and others providing goods/services on School Board projects, within ten (10) days of receipt of payment from the School Board. This policy will include payment for mobilization, retainage, change orders and payment requisitions.

VII. Retainage

- A. Under conventional construction bidding methods, ten percent (10%) of each requested and approved payment will be retained by the Board unless otherwise provided in Construction Documents.
- B. Under any construction technique and financing mechanism authorized under '235.211, Fla. Stat., or other non-conventional construction method approved by the Board, ten percent (10%) of each requested and approved payment will be retained by the Board unless otherwise provided in Construction Documents. Retainage will be released upon (1) completion of the contract, as determined by the Project Architect/Engineer and appropriate School Board staff in accordance with the Construction Documents, and (2) a satisfactory demonstration of the bidder's Compliance with the M/WBE Assistance Levels, as determined by the Division of Business Development and Assistance Contract Compliance administrator (Contract Administrator).

VIII. Proprietary Specifications

The Division of Business Development and Assistance will establish an ad hoc committee, composed of appropriate staff and consultants, to review procedures as they relate to proprietary specifications. The ad hoc committee will identify procedures which impede the ability of small and minority contractors to participate on School Board projects, as well as address those procedures which interfere with the successful implementation and administration of projects.

IX. Technical Assistance

- A. Plan/Document Room

In order to accommodate those contractors/subcontractors/ vendors, who are not eligible for free contract documents in the preparation of bids, a Plan/Document Room will be established and equipped. The Plan/Document Room will be designed to accommodate a minimum of three (3) contractors, subcontractors, and vendors, with information relative to contracts scheduled for bidding and administered through Facilities Planning and Construction. Technical support will be provided, as needed, by staff from the originating department.

B. The M/WBE Capital Trust Advisory Board and Consortium

The M/WBE Capital Trust Advisory Board and Consortium addresses bonding, financing, insurance and technical assistance. The Task Force, in conjunction with the consortium (Banks, Bonding Companies, Insurance Companies), provides access to these resources.

X. Reporting

The procedures for reporting Minority/Woman Business Enterprises (M/WBE) construction activity are designed to track dollar expenditures associated with primes, subcontractors and consultants. They provide a basis for monitoring the Business Development and Assistance Program to ensure the achievement of goals and objectives. The reporting procedures are as follows:

A. Procedures

1. Vendor identification numbers will be assigned to consultants, contractors and subcontractors by the Bureau of Procurement and Materials Management, upon completion and submittal of the Vendor Application. Contractors, subcontractors and consultants seeking M/WBE status, must submit a Vendor Application, Minority/Women Business Enterprise Certification Application (with supporting documentation, as stipulated in Board Rule 6Gx13- 3G-1.05), and a NIGP Category of Item Numbers and Services Description Catalog form. The vendor number is essential in the payment process. Once certified as an M/WBE, the file will be coded with the ethnic/gender code assigned by the Division of Business Development and Assistance;
2. Consultants, contractors and subcontractors submitting a Vendor Application will be included on Facilities Planning and Construction, Division of Project and Contract Administration, bidder's list and notified, when possible, of bids for those items and services identified on the items and services form;
3. Information provided on the Minority/Woman Business

Enterprise Certification Application which identifies the minority/woman status will be retained in the Division of Business Development and Assistance computer data base, in addition to all other relevant data. The original M/WBE Certification Application, and supporting documentation, will be filed with the Division of Business Development and Assistance.

B. The Division of Business Development and Assistance generates the following reports:

1. M/WBE Expenditure Reports

The M/WBE Annual Expenditure Reports for construction and construction related activities with Minority/Women Business Enterprise will be submitted to the Superintendent and School Board members by the Division of Business Development and Assistance on an annual or semi-annual basis. The activity will be reflected by total non-salaried expenditures, notwithstanding the specialty, on the Minority Vendor Dollar Volume Report prepared by the Office of Information Technology, and the M/WBE subcontractor expenditures reported by the prime contractor and submitted to the Division of Business Development and Assistance. The reporting format may be revised as required. The reports will reflect year-to-date expenditures with M/WBE firms and overall expenditure levels as stated in the List of Objects Report. The information provided on the statement will detail the distribution of expenditures in each of the minority/women classifications.

2. Summary of M/WBE Dollars Committed by the School Board for Purchasing and Construction

This report is prepared from the School Board agenda items to report recommendations for award to M/WBE vendors, contractors, and consultants. It further provides an analysis, by race, gender and ethnicity, as compared to the total awards. The Division of Business Development and Assistance shall prepare the report and present it to the Superintendent and the School Board Members at the time of each School Board meeting.

3. Construction Contract Review Committee Analysis

A summary of all contracts reviewed by the Construction Contract Review Committee (CCRC) during its scheduled meetings shall be prepared. The minutes of these meetings shall be forwarded to the Board.

4. M/WBE Subcontracting Monitoring Reports

A minority tracking program has been developed to monitor and track all projects which include minority/women participation. This report will provide a breakdown by project and minority/women subcontractors used to meet the M/WBE Assistance Levels. This report will provide a method to insure that prime contractors achieve the M/WBE Assistance Level(s) which formed the basis of Compliance.

Prime contractors are required to provide to the Division of Business Development and Assistance all actual expenditures to M/WBE subcontractors in order to compile the annual or semi-annual reports.

5. Projects Included Under the Bond Waiver Program

Under the School Board's bond waiver policy, projects less than \$200,000 do not require a performance and payment bond, pursuant to Section 255.05, Florida Statutes. Projects within this threshold will be monitored and reported to the School Board, as appropriate.

6. M/WBE Directory

The Division of Business Development and Assistance will issue an annual M/WBE Directory to Facilities Planning and Construction, prime contractors and other appropriate offices, departments, and school sites to facilitate the utilization of M/WBE firms.

7. The M/WBE Advisory Committee will be requested to review the implementation of procedures in this Board Rule and other issues pertinent to the M/WBE Program and will be provided with an opportunity to report to the Board on a periodic basis. Such issues include, but are not limited to, a proposal to establish a capital outlay financing, bonding, and technical support program.

XI. References

- A. School Board Resolution 85-3 Minority Business Enterprise Statement, February 6, 1991.
- B. School Board Rule 6Gx13- 3G-1.01, Business Development and Assistance Program.
- C. School Board Rule 6Gx13- 3G-1.02, Establishment of Business Development and Assistance Objectives.
- D. Miami-Dade County School Board - Special Provisions for Compliance

with M/WBE Subcontracting Goals Participation.

- E. Miami-Dade County School Board - Instruction to Bidders and General Conditions.
- F. D.J. Miller and Associates 1990 DCPS Disparity Study.
- G. Bureau of Management and Accountability, Division of Minority Business Enterprises, Minority Business Enterprises Utilization Study Recommendations and Administration Responses, April 24, 1991.
- H. Education Facilities Chapter 6A-2, Florida Administrative Code.
- I. City of Richmond v. J.A. Croson, 109 S.Ct. 706 (1989)
- J. Transcript - Public Hearing, Special Panel, Vol. I & II, August 28-29, 1990.

Specific Authority: 230.22(2) F.S.

Law Implemented, Interpreted, or Made Specific: 235.211; 235.31(1)(b); 237.02; 287.093 F.S.; 6A-1.012 FAC

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