

CITY OF PHILADELPHIA

MINORITY BUSINESS ENTERPRISE COUNCIL

ANTIDISCRIMINATION POLICY-DISADVANTAGED MINORITY, WOMEN AND DISABLED OWNED BUSINESS ENTERPRISES

Bidder's Guidelines Relating to Executive Order 1-93

These guidelines pertain to Executive Order 1-93, the City of Philadelphia's antidiscrimination policy relating to the participation of disadvantaged minority (M-DBE), Women (W-DBE), and disabled (DS-DBE) owned business in City contracts. These guidelines, presented in a question and answer format, are designed to assist the bidder in submitting a responsive bid. These are guidelines and do not supersede or serve as a substitute for carefully reading and responding to the bid documents entitled "Antidiscrimination Policy -Disadvantaged Minority, Women, and Disabled Owned Business Enterprises" included in your bid package. Please note that these guidelines do not apply to bid packages issued by the City implementing the federal goals program for DBEs pursuant to 49 C.F.R. Part 26, or *concessions*.

- 1. If I forget to submit the Solicitation and Commitment Form with my bid, will my bid be rejected?**

Yes. The Solicitation and Commitment Form must be submitted with the bid. If you use additional pages to list solicitations, commitments and/or reasons for your inability to make commitments within the participation ranges, all pages must be submitted with the bid.

- 2. Can a M-DBE, W-DBE or DS-DBE which is not certified by the Minority Business Enterprise Council, be listed on the Solicitation and Commitment Form and be credited towards the ranges for participation?**

No. Only those firms which have been certified by the Minority Business Enterprise Council, prior to bid opening, may be on the Solicitation and Commitment Form and credited towards the participation ranges.

- 3. Can M-DBEs'/W-DBEs/DS-DBEs listed as subcontractors subcontract and still be fully credited toward the range(s)?**

Yes. However, M-DBE/W-DBE/DS-DBE subcontractors to which you have made commitments will be evaluated to ensure that they perform at least 75% of the cost of the subcontract (not including the cost of materials, equipment or supplies incident to the performance of the subcontract) with their own employees.

If the subcontractor contracts out more than 10% of their work, then they will need the expressed approval of MBEC.

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4. Will materials purchased from M-DBE/W-DBE/DS-DBEs be credited toward the range(s)?

Yes. M-DBE/W-DBE/DS-DBE subcontractors and manufacturers will be credited toward the range at 100%. Customary industry stocking and non-stocking supplies who as their primary business purchase and sell supplies shall be credited at 100%. Brokers, ad-hoc suppliers and non-stocking suppliers which are not commonly and ordinarily the custom in the industry nor a part of the industry's trade practice will not be credited.

5. If I am an M-DBE/W-DBE/DS-DBE bidding as a prime contractor, may I count myself toward the range?

No. However, an M-DBE/W-DBE/DS-DBE which is a partner in a joint venture bidding as a prime, may have its participation "credited" (provided it satisfies the joint venture criteria set forth in the Antidiscrimination Policy) to the extent of its ownership interest in the joint venture.

6. Do I have to solicit both M-DBEs and W-DBEs?

Yes. If the "Invitation for Bid" includes both a range for M-DBE participation and a range for W-DBE participation, solicitations must be made in each category. 1) Solicitations must be real, i.e. the work solicited must be within the scope of the bid specifications. 2) A reasonable number of firms certified by the MBEC and included in its most recent "Directory of Certified Firms", must be solicited. 3) M-DBE and W-DBE firms solicited must be given adequate information and reasonable time to prepare a quote. (If you intend to perform all of the work related to the project utilizing your own workforce and resources and do not need to subcontract or purchase supplies for the project, see Question 12 below.)

7. Do I have to list all solicitations on the Solicitation and Commitment Form?

Yes. Documentation of all solicitations must be submitted with the bid, regardless of whether you have committed with a solicited firm. However, the failure to list all solicitations may be waived where the bidder has met each of the projected ranges and is therefore rebuttably presumed not to have discriminated.

8. Will my bid automatically be rejected for not meeting the projected range(s) for participation?

No. You can be deemed both responsive and responsible if you give sufficient reasons for not meeting the projected range(s) including specific reasons for not making solicitations or contractual commitments with the M-DBEs/W-DBEs/DS-DBEs that you have solicited. In order to be responsive, documentation of all solicitations and commitments, and reasons must be submitted with the bid. The reasons given must be sufficient to demonstrate that the bidder's failure to meet the projected range(s) is not a result of discriminatory practices.

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9. Do I have to explain why I did not commit with a solicited firm?

Yes. As stated above, specific reasons must be given on the Solicitation and Commitment Form. For example, if you state that an M-DBE's quote was too high, the MBEC will review whether price is your sole criterion for awarding a subcontract. The MBEC may request that you provide quotes from all subcontractors that you have committed to on this project. The MBEC may also request information on other similar contracts, including your private sector work.

10. For requirements contracts, do I need to commit to both a dollar and percentage amount?

No. If the invitation to bid is for a requirements-type contract, a percentage amount will suffice for each commitment made.

11. May I delay making a commitment to a M-DBE/W-DBE/DS-DBE until after I receive the award?

No. All solicitations and commitments must be made and documented on the Solicitation and Commitment Form prior to bid opening. Stating on the form that the commitments will be made after award or listing an indefinite amount of participation (for example, 0%-5%) is not acceptable.

12. If I intend to perform all of the work myself, do I have to solicit and make commitments with M-DBEs/W-DBEs/DS-DBEs in order to submit a responsive bid?

No. Bidders who, consistent with their standard practices, are planning to perform all of the labor of a contract with their own work force and/or to provide their own supplies (from stock currently on hand or to be manufactured by the bidder), are not required, under the Executive Order, to create subcontracting opportunities for M-DBEs/W-DBEs/DS-DBEs in order to meet the projected range(s). Bidders must, however, submit a bid which is responsive to the Order, the bidder must state on the Solicitation and Commitment Form its intention to perform all of the labor and/or to provide all of the supplies (from stock currently on hand or to be manufactured by the bidder) necessary for the contract. Submitting a blank Solicitation and Commitment Form, with no further explanation, would not be deemed responsive despite the bidder's (unexpressed) intention to perform all of the work.

Note:

Bidders who submit a responsive bid that is not within the stated participation ranges are also reviewed for responsibility, i.e., the MBEC will investigate whether discrimination has occurred. In the case of a responsive bidder who does not intend to subcontract, the MBEC would review the bid and any other relevant information to confirm the veracity of the bidder's intention. The bidder's conduct on this bid must be consistent with its standard practice and not simply a contrivance to avoid the Executive Order.

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13. If my bid is deemed nonresponsive can I be awarded the contract and correct the defects?

No. If you are deemed nonresponsive your bid will be rejected and you will not be permitted to amend your bid.

14. On bids that include add or deduct alternates, should the amount(s) I am committing to be applied solely to my base bid or to the base and the alternates?

Commitments listed by bidders on the Solicitation and Commitment Form should be based upon the base bid. If the City elects to award any add or deduct alternates, the apparent lowest responsible bidder may be required to amend its Solicitation and Commitment Form accordingly.

15. How do I locate certified M-DBEs/W-DBEs/DS-DBEs?

The MBEC publishes a Directory of Certified Firms. The Directory is available at the MBEC offices (Municipal Services Building, 1401 JFK Blvd., Room 330, Philadelphia, PA 19102) for a charge of \$15.00. The Directory may also be used, without charge, at the MBEC office, The Procurement Department Information Counter, MSB, 1401 JFK Blvd., Room 170, Philadelphia, PA 19102, the phone number is 686-4720. and at all twelve regional Free Libraries. Bidders are expected to ascertain the current status of all M-DBE/W-DBE/DS-DBE firms and commodity codes by using the latest published Directory, (make checks payable to the "City of Philadelphia".)

16. Where do I go if I have questions concerning Executive Order 1-93?

The MBEC is available to answer your questions, and is located at the Municipal Services Building, 1401 JFK Blvd., Room 330, Philadelphia, PA 19102, the office hours are Monday through Friday, 8:30 a.m. to 5:00 p.m. Contact the MBEC Public Works Unit and/or Supplies, Services, & Equipment Unit at 686-6232, our fax number is 686-3878.

And/or

The Procurement Department Information Counter, MSB, 1401 JFK Blvd., Room 170, Philadelphia, PA 19102, the phone number is 686-4755.

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MINORITY BUSINESS ENTERPRISE COUNCIL
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(FOR BIDS TO BE AWARDED BY THE PROCUREMENT DEPARTMENT)

Under the authority of Executive Order No. 1-93, the City of Philadelphia has established an antidiscrimination policy relating to the participation of Disadvantaged Minority (M-DBE), Disadvantaged Women (W-DBE) and Disadvantaged Disabled (DS-DBE) Owned Business Enterprise in City contracts. The purpose of this policy is to provide equal opportunity for all businesses and to assure that City funds are not used, directly or indirectly, to promote, reinforce or perpetuate discriminatory practices. The City is committed to fostering an environment in which all businesses are free to participate in business opportunities, flourish without the impediments of discrimination and participate in all City contracts on an equitable basis. In accordance with the contracting requirements of the City, the City's antidiscrimination policy is applicable to this invitation to bid.

The Minority Business Enterprise Council (MBEC) has established projected ranges of participation for this invitation to bid which serve as a guide in determining each bidder's responsibility. These ranges represent the percentage of M-DBE/W-DBE/DS-DBE participation that should be attained from business opportunities existing in the available market absent discrimination in the solicitation and selection of these businesses. These ranges are based upon an analysis of factors such as the size and scope of the contract and the availability of certified M-DBE/W-DBE/DS-DBEs to perform various elements of the contract. Please review these forms carefully as the submission of a Solicitation and Commitment Form (more fully discussed below) with this bid is an element of responsiveness to the bid and failure to submit a Solicitation and Commitment Form will result in rejection of your bid.

A. PARTICIPATION RANGE

1. Under the authority of Executive Order 1-93, the Minority Business Enterprise Council (MBEC) has established the following M-DBE, W-DBE and DS-DBE participation ranges for this invitation to bid:

See Bid Cover for Participation Ranges

These participation ranges serve exclusively as a guide in determining bidder responsibility.

2. Only firms that are certified by the MBEC prior to bid opening will be credited toward the participation ranges. A list of certified firms is maintained by the MBEC and is available for review at the MBEC, Municipal Services Building, 1401 JFK Blvd. Suite 330, Philadelphia, PA 19102-1666

3. M-DBE/W-DBE/DS-DBE subcontractors and manufacturers will be credited toward the participation range at 100%. Stocking suppliers will be credited at 100% Non-stocking suppliers

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which are commonly and ordinarily the custom in the industry and which have as its principal business and in its own name, the purchase and sale of these supplies, will be credited at 100%. Brokers, ad-hoc suppliers and non-stocking suppliers which are not commonly and ordinarily the custom in the industry nor a part of the industry's trade practice will not be credited.

4. In order to maximize opportunities for as many businesses as possible, a firm that is certified in two or more categories (e.g. M-DBE and W-DBE and DS-DBE or W-DBE and DS-DBE) will only be credited toward one participation range as either an M-DBE or W-DBE or DS-DBE. The firm will not be credited toward more than one category. Bidders will note with their submission which category, M-DBE or W-DBE or DS-DBE, is submitted for credit.

5. An M-DBE/W-DBE/DS-DBE submitting as the prime bidder, will not receive credit toward the participation ranges for its own work or supply effort on this invitation to bid. However, the participation of an M-DBE/W-DBE/DS-DBE partner, as part of a joint venture created for this bid, may be credited to the extent of the partner's ownership interest in the joint venture in accordance with the following criteria:

- The M-DBE, W-DBE or DS-DBE partner(s) must be certified by the MBEC prior to bid opening;
- The M-DBE/W-DBE/DS-DBE partner(s) must derive substantial benefit from the arrangement;
- The M-DBE/W-DBE/DS-DBE partner(s) must be substantially involved in all phases of the contract including bidding, planning, staffing and daily management;
- The business arrangement must be customary (i.e., each partner shares in the risk and profits of the joint venture commensurate with their ownership interest, contributes working capital and other resources, etc).

6. M-DBE/W-DBE/DS-DBE subcontractors must perform at least seventy-five percent (75%) of the cost of the subcontract (not including the cost of materials, equipment or supplies incident to the performance of the subcontract) with their own employees.

7. For the purpose of applying the participation ranges on Public Works projects that Include add or deduct alternates, commitments listed by bidders on the Solicitation and Commitment Form should be based upon the base bid. In the event the City elects to award any add or deduct alternates, the City reserves the right to require the apparent lowest responsible bidder to amend its Solicitation and Commitment Form, to ensure the bidder's continuing responsibility.

8. In listing amounts committed to on the Solicitation and Commitment Form, bidders should list both the dollar amount and percentage of total bid for each commitment made. (If the invitation to bid is for a requirements-type contract, a percentage amount will suffice.) In calculating the percentage amount, bidders may apply the standard mathematical rules in rounding off numbers. In the event of an inconsistency between the dollar and percentage amounts listed on the Solicitation and Commitment Form, the amount which results in the greater commitment will be used.

B. RESPONSIVENESS

1. Bidders must submit documentary evidence of M-DBE, W-DBE and DS-DBEs who have been solicited and with whom commitments have been made.

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a. Documentation of all solicitations (regardless of whether commitments resulted therefrom) as well as all commitments made prior to bid opening shall be submitted, concurrently with the bid, on the enclosed document entitled "Solicitation and Commitment Form". If the bidder has entered into a joint venture with an M-DBE, W-DBE and/or DS-DBE partner, the bidder should submit along with the Solicitation and Commitment Form, a document entitled "Joint Venture Eligibility Information Form," available at the Office of the MBEC, for the City's review and approval of the joint venture arrangement. Failure to submit the required information on M-DBE/W-DBE/DS-DBE participation will result in rejection of the bid as nonresponsive. (Bidders should note that only commitments that have been made prior to bid opening and listed on the Solicitation and Commitment Form will be credited toward the participation ranges. Since the City must ensure that all bidders respond on equal terms, a bid which indicates that the bidder will make commitments after bid opening will be rejected as nonresponsive.)

b. Upon award, the completed forms and accompanying documents regarding solicitation and commitments with M-DBE, W-DBE and DS-DBEs become part of the contract. A bidder should only make actual solicitations of M-DBE/W-DBE/DS-DBEs whose work or materials are within the scope of this invitation to bid. Mass mailing of a general nature to M-DBE/W-DBE/DS-DBEs will not be deemed solicitation, but rather will be treated as informational notification only. A reasonable period of time should be given to all solicited firms to ensure that they have sufficient time to adequately prepare their quotes.

c. The bidder's listing of a commitment with a M-DBE/W-DBE/DS-DBE as described on the Solicitation and Commitment Form constitutes a representation that the bidder has, prior to bid opening, made a binding commitment to contract with such firm, upon receipt of a contract award from the City.

2. Bidders failing to submit a bid within any one or more of the participation range(s) established for this invitation to bid shall submit concurrently with the bid submission, sufficient evidence which demonstrates to the City that the bidder has not engaged in discriminatory practices in the solicitation and commitment of contract participants. Such evidence shall be contained on the Solicitation and Commitment Form. Failure to submit such evidence will result in the rejection of the bid as nonresponsive.

a. Evidence submitted on this point should indicate:

(1) Whether M-DBE/W-DBE/DS-DBEs were solicited for the type of work or materials to be contracted for and, if not, the reason(s) why no such solicitation was made;

(2) The reasons for not committing with a M-DBE/W-DBE/DS-DBE which has submitted a quote; and

(3) Where no quotations are received or commitments made within a particular range, the lack of quotations and/or commitments must be shown and explained on the Solicitation and Commitment Form.

b. Evidence submitted will be reviewed to ascertain whether discrimination has occurred in the solicitation or selection of contract participants. The review will include consideration of the following:

(1) Whether the bidder's actions were motivated by considerations of race or gender or disability. For example, the MBEC may investigate the bidder's contracting activities and business practices on similar public and private sector contracts;

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(2) Whether M-DBE/W-DBE/DS-DBEs were treated less favorably than other businesses in the solicitation and commitment process. For example, the MBEC will investigate whether M-DBE/W-DBE/DS-DBEs are given the same information and amount of time to prepare a quote as others who were solicited;

(3) Whether the bidder's solicitation and commitment decisions were based upon policies which disparately affect M-DBE/W-DBE/DS-DBEs.

C. RESPONSIBILITY

1. Upon receipt of bids for this contract, the bidder's submittal will be subject to review by the MBEC to determine whether the bidder has discriminated in the solicitation and/or selection of contract participants. If the bidder has submitted a bid within each of the projected range(s) for M-DBE/W-DBE/DS-DBE participation, the bidder will be rebuttably presumed not to have discriminated in its selections. If the bidder has not submitted a bid within the projected range(s), the MBEC will initiate an investigation to determine whether discrimination has occurred. After review of the Solicitation and Commitment Form and other relevant information. The MBEC will make a recommendation to the Procurement Commissioner or his/her designee (the "Commissioner"). If the Commissioner, after review of the recommendation and supporting documentation concurs that discrimination has occurred; the bidder will be deemed not responsible and its bid rejected. Bids rejected for responsibility (due to a determination of discrimination) may result in the suspension of the bidder from bidding on and/or participating in any future City contracts for a period of up to three (3) years.

2. M-DBE/W-DBE/DS-DBE percentage commitments are to be maintained throughout the term of the contract and shall apply to the total contract value (including approved change orders and amendments). Any change in commitment, including but not limited to substitutions for the listed firm(s), changes or reductions in the work and/or listed dollar/percentage amounts, must be pre-approved in writing by the MBEC.

C. ACCESS TO INFORMATION

1. The MBEC shall have the right to make site visits to the bidder's place of business and/or job site and obtain documents and information from any bidder, subcontractor, supplier, manufacturer of contract participant that may be required in order to ascertain bidder responsibility.

2. Failure to cooperate with the MBEC in its review will result in a recommendation to the Commissioner that the bidder be deemed not responsible and its bid rejected.

D. RECORDS AND REPORTS

1. The successful bidder shall maintain all books and records relating to its M-DBE/W-DBE/DS-DBE commitments (e.g. copies of subcontracts, joint venture agreement, correspondence, cancelled checks, invoices, telephone logs) for a period of at least three (3) years following acceptance of final payment. These records shall be made available for inspection by the MBEC and/or other appropriate City officials.

2. The successful bidder agrees to submit reports and other documentation to the MBEC as deemed necessary by the MBEC to ascertain the successful bidder's fulfillment of its M-DBE/W-DBE/DS-DBE commitments.

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F. REMEDIES

1. The successful bidder's compliance with the requirements of Executive Order 1-93, including the fulfillment of any M-DBE/W-DBE/DS-DBE commitments, is material to the contract. Any failure to comply with these requirements constitutes a substantial breach of the contract. It is further understood and agreed that in the event the Director of Finance determines that the successful bidder hereunder has failed to comply with these requirements the City may, in addition to any other rights and remedies the City may have under the contract, any bond filed in connection therewith or at law or in equity, exercise one or more of the following remedies which shall be deemed cumulative and concurrent:

- a. Withhold payment(s) or any part thereof until corrective action is taken.
- b. Terminate the contract, in whole or in part.
- c. Suspend the successful bidder from bidding on and/or participating in any future City contracts for a period of up to three (3) years.
- d. Recover as liquidated damages, one percent of the total dollar amount of the contract for each one percent (or fraction thereof) of the commitment shortfall. (NOTE: The "total dollar amount of the contract" shall include approved change orders, amendments and for requirements contracts shall be based on actual quantities ordered by the City.)

SOLICITATION FOR PARTICIPATION AND COMMITMENT FORM (BID) Disadvantaged Minority (M-DBE), Women (W-DBE), and Disabled (DS-DBE) Owned Business Enterprises				DEPARTMENT OF FINANCE MINORITY BUSINESS ENTERPRISE COUNCIL (MBEC)					
BID NUMBER		NAME OF BIDDER		DATE OF BID OPENING					
List below ALL M-DBE/W-DBE/DS-DBEs that were solicited regardless of whether a commitment resulted therefrom. - Photocopy this form as necessary.									
<input type="checkbox"/> M-DBE <input type="checkbox"/> W-DBE <input type="checkbox"/> DS-DBE ¹		TYPE OF WORK OR MATERIALS		Date Solicited		Commitment Made		Give Reason(s) If No Commitment ²	
Company Name				By Phone	By Mail	Yes (If Yes, give date)			NO
Address									
Contact Person				Quote Received		Amount Committed To			
Telephone Number Fax #				YES	NO	Dollar Amount			
MBEC CERTIFICATION #						\$	Percent of Total Bid		
						%			
<input type="checkbox"/> M-DBE <input type="checkbox"/> W-DBE <input type="checkbox"/> DS-DBE ¹		TYPE OF WORK OR MATERIALS		Date Solicited		Commitment Made		Give Reason(s) If No Commitment ²	
Company Name				By Phone	By Mail	Yes (If Yes, give date)			NO
Address									
Contact Person				Quote Received		Amount Committed To			
Telephone Number Fax #				YES	NO	Dollar Amount			
MBEC CERTIFICATION #						\$	Percent of Total Bid		
						%			
<input type="checkbox"/> M-DBE <input type="checkbox"/> W-DBE <input type="checkbox"/> DS-DBE ¹		TYPE OF WORK OR MATERIALS		Date Solicited		Commitment Made		Give Reason(s) If No Commitment ²	
Company Name				By Phone	By Mail	Yes (If Yes, give date)			NO
Address									
Contact Person				Quote Received		Amount Committed To			
Telephone Number Fax #				YES	NO	Dollar Amount			
MBEC CERTIFICATION #						\$	Percent of Total Bid		
						%			
<input type="checkbox"/> M-DBE <input type="checkbox"/> W-DBE <input type="checkbox"/> DS-DBE ¹		TYPE OF WORK OR MATERIALS		Date Solicited		Commitment Made		Give Reason(s) If No Commitment ²	
Company Name				By Phone	By Mail	Yes (If Yes, give date)			NO
Address									
Contact Person				Quote Received		Amount Committed To			
Telephone Number Fax #				YES	NO	Dollar Amount			
MBEC CERTIFICATION #						\$	Percent of Total Bid		
						%			

¹ M-DBE/W-DBE/DS-DBES listed above must be certified by the MBEC prior to bid opening.

² Failure to give reason may result in rejection of your bid. Use additional pages if necessary.