

HOUSING AUTHORITY OF THE CITY OF MILWAUKEE (HACM)

PRIME CONTRACTOR FORMAL CONTRACT PROVISIONS FOR SUBCONTRACTING WITH EMERGING BUSINESS ENTERPRISES

I. GENERAL

A. The HOUSING AUTHORITY OF THE CITY OF MILWAUKEE (HACM) is its own Contracting Officer and shall make every feasible effort to ensure that Emerging Business Enterprises (EBEs) shall participate in all formal contract activities. EBEs include Minority-Owned Business Enterprises (MBEs), Women-Owned Business Enterprises (WBEs), Disadvantaged Business Enterprises (DBEs), Small Business Enterprises (SBEs), Veteran Owned Business Enterprises (VOBs), and other designations as determined by the source of contract dollars as explained below.

1. Where Federal (HUD) funding is involved, these provisions shall ensure MBEs and/or WBEs in accordance with Public Law 95-507 and 2 CFR 200.321. The target participation percentage is 20% or more or any combination thereof. MBEs and WBEs must be currently certified by race and gender-based certification program such as the State of Wisconsin Department of Administration (DOA), other Wisconsin government entities, or entities within the Federal Government.
2. Where Non-Federal funding is involved, the target participation percentage is 20% or more of MBE, WBE, DBE, EBE, SBE, VOB, or any combination thereof. These firms must be certified by a Wisconsin governmental entity.
3. Where mixed funding is involved, i.e. Federal (HUD) and Wisconsin Housing and Economic Development Authority (WHEDA), the target participation percentage is 25%, of which 20% must be MBE, WBE, or any combination thereof, and the remaining 5% may be any designation recognized by WHEDA (e.g. MBE, WBE, DBE, EBE, SBE, VOB)

B. This contract calls for:

- Federal (HUD) 20 % MBE, WBE, or any combination thereof subcontract participation.
- Non-Federal 20 % MBE, WBE, DBE, EBE, SBE, VOB, or any combination thereof subcontract participation.
- Mixed Funding (HUD and WHEDA) 25 % overall EBE subcontract participation, of which 20% must be MBE, WBE (HUD), or any combination thereof, and the remaining 5% may be any designation recognized by WHEDA (e.g. MBE, WBE, DBE, EBE, SBE, VOB) or any combination thereof.

C. The Prime Contractor shall prepare and submit timely and accurate EBE utilization forms and reports to HACM. The forms and reports shall include but not be limited to the following:

1. Form A: Prime Contractor Affidavit of Compliance (contractor's commitment to EBE percent participation)
2. Form B: Prime Contractor List of EBE Subcontractors
3. Electronic Vendor Compliance Reporting System: HACM's Electronic Vendor Compliance Reporting System at <https://hacm.diversitycompliance.com> (B2Gnow) will be utilized during the term of this contract. The Prime Contractor and its subcontractors must provide all necessary information, when requested, for account setup and shall report all payments in the system. In addition, the Prime Contractor and its subcontractors shall provide all required compliance data with respect to any applicable EBE requirements via the electronic system. The Prime Contractor and its subcontractors shall be responsible for responding to any requests for data or information by the noted response due dates, and shall check the electronic system on a regular basis to manage contact information and contract records. The Prime Contractor shall also be responsible for ensuring that all subcontractors have completed all requested items with complete and accurate information and that their contact information is current.

HOUSING AUTHORITY OF THE CITY OF MILWAUKEE

Failure to submit the required forms and reports fully completed to HACM may result in actions, such as rejection of the bid or proposal, delay of payments, or other appropriate actions. Final contract payments shall not be made until final EBE subcontractor payment certification forms are on file with HACM.

- D. During the performance of this contract, HACM reserves the right to conduct compliance reviews of the Prime Contractor and EBE subcontractors and require documentation that will indicate levels of compliance by the Prime Contractor and EBE subcontractors. If a contractor is not in compliance with the specifications, HACM will notify the contractor in writing of the need to take corrective action. If the contractor fails or refuses to take corrective action as directed, HACM may take one or more of the following actions:
1. Terminate or cancel the contract, in whole or in part.
 2. Recommend HUD debarment of the Prime Contractor from award of a Federally-funded contract.
 3. Withhold payments on the contract.
 4. Any other remedy available to HACM at law or in equity.

II. DEFINITIONS

- A. *Disadvantaged Business Enterprise (DBE)* means a small business concern that is owned, operated, and controlled by one or more disadvantaged individuals. The disadvantaged individuals must have day-to-day operational and managerial control, as well as, interest in capital, financial risks, and earnings commensurate with the percentage of their ownership.
- B. *Disadvantaged Individual*, means a person who is a citizen or lawful permanent resident of the United States and who has experienced and who continues to experience substantial difficulty in achieving business-related success.
- C. *Minority Business Enterprise (MBE)*, means a small business concern that is at least fifty-one percent (51%) owned by one or more minorities (as defined below) and whose management and daily operations are controlled by one or more minority owners.
- D. *Minority*, means a person who is a citizen or a lawfully admitted permanent resident of the United States who is a member of one of the following groups:
1. *Black Americans*, includes persons having origins in any of the Black racial groups of Africa.
 2. *Hispanic Americans*, includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.
 3. *Native Americans*, includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 4. *Asian-Pacific Americans*, includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas;
 5. *Asian-Indian Americans*, includes persons whose origins are from India, Pakistan, and Bangladesh.
 6. *Hasidic Jewish Americans*, in conjunction with HUD and the community, recognized membership in this group will be addressed on a case-by-case basis.
- E. *Women Business Enterprise (WBE)*, means a small business concern that is at least fifty-one percent (51%) owned by one or more women and whose management and daily business operation are controlled by one or more women owners.
- F. *Minority/Women Business Enterprise (M/WBE)*, means a small business concern that is at least fifty-one percent (51%) owned by one or more minority women and whose management and daily business operations are controlled by one or more minority women owners.

HOUSING AUTHORITY OF THE CITY OF MILWAUKEE

- G. *Small Business Enterprise* means a business that is independently owned, not dominant in its field of operation, and not an affiliate or subsidiary of a business dominant in its field of operation. The size standards in 13 CFR Part 121 should be used to determine business size.
- H. *Joint Venture* shall be eligible under this program if the EBE or partners own at least fifty-one percent (51%) of the joint venture and share to an equivalent percent in the management responsibilities, risks, and profits of the joint venture, as well as being responsible for a clearly defined portion of the work performed.
- I. *Owned, Operated, and Controlled*, means a business that meets one of the following:
 - 1. A sole proprietorship legitimately owned and controlled by an EBE.
 - 2. A partnership or joint venture legitimately owned, operated, and controlled by disadvantaged individuals, minority individuals, or women who own at least 51% of the beneficial ownership interests in the enterprise and who hold at least 51% of the voting interests of the enterprise.
 - 3. A corporation legitimately owned, operated, and controlled by one or more minority individuals or women, if applicable, who own at least 51% of the outstanding shares and who hold at least 51% of the voting interests of the corporation.

III. EBE UTILIZATION REQUIREMENTS

A. MBE, WBE (Federal)

Twenty percent (20%) or more MBE and/or WBE participation. Note that MBE and/or WBE participation pertains to the base bid excluding specified allowances, but including, alternates and change orders. MBE and WBE commitments relative to contract award shall be based upon the approved Form B, "Prime Contractor List of EBE Subcontractors."

B. MBE, WBE, DBE, EBE, SBE, VOB (Non-Federal)

Twenty percent (20%) or more MBE, WBE, DBE, EBE, SBE, and/or VOB participation. Note that MBE, WBE, DBE, EBE, SBE, and/or VOB participation pertains to the base bid excluding specified allowances, but including, alternates and change orders. MBE, WBE, DBE, EBE, SBE and/or VOB commitments relative to contract award shall be based upon the approved Form B, "Prime Contractor List of EBE Subcontractors."

C. Mixed Funding (HUD and WHEDA)

Twenty-five percent (25%) or more **overall EBE subcontract participation, of which 20% must be MBE, WBE** (HUD), or any combination thereof, and the remaining 5% may be any designation recognized by WHEDA (e.g. MBE, WBE, DBE, EBE, SBE, VOB) or any combination thereof. Note that EBE participation pertains to the base bid excluding specified allowances, but including, alternates and change orders. EBE commitments relative to contract award shall be based upon the approved Form B, "Prime Contractor List of EBE Subcontractors."

D. The determination of an EBE shall be based on the following criteria:

- 1. The firms identified as EBE by the Prime Contractor on Form B, "Prime Contractor List of EBE Subcontractors," must be certified by one of the specified agencies prior to bid opening.
- 2. The Prime Contractor shall pay special attention to the area(s) specified as the business specialty by the applicant business in the certification application. New or expanded business specialties are subject to certification review by the certifying agency.
- 3. The Prime Contractor shall be credited for the entire expenditure to an EBE only if all of the identified scope of work has a commercially useful function in the actual work of the contract and is performed directly by the certified EBE.
- 4. The Prime Contractor shall be credited for the expenditure to an EBE manufacturer only if the manufacturer produces goods from raw materials or substantially alters material for resale. Twenty-percent (20%) or less of the overall EBE participation goal may be expended for EBE suppliers that

HOUSING AUTHORITY OF THE CITY OF MILWAUKEE

do not operate or maintain a store, warehouse, or other establishment in which the materials or supplies are kept in stock and regularly sold to the public in the usual course of business. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this section.

5. The Prime Contractor shall count toward the EBE participation goal only expenditures to EBEs that perform a commercially useful function in the actual work of the contract. EBEs are required to notify the SECTION 3 COORDINATOR in writing if they will further subcontract out work on the contract. The SECTION 3 COORDINATOR shall be notified in writing of labor shortages, if any, affecting the contract work. The HACM CONTRACTING OFFICER OR DESIGNEE and SECTION 3 COORDINATOR will make the final determination and evaluation of whether or not the firm is performing a commercially useful function on the contract.
 6. The Prime Contractor shall be credited one hundred percent (100%) of expenditures to an EBE delivery service, hauler, or trucker of materials and supplies required on a job site, but not the cost of the materials and supplies.
 7. The Prime Contractor shall count toward the EBE participation goals only expenditures to EBEs that perform a commercially useful function in the actual work of the contract. The Prime Contractor is required to notify the HACM CONTRACTING OFFICER OR DESIGNEE if its EBEs will further subcontract out work on the contract. Credit will be given based on actual participation by the EBEs. Credit will not be given for work subcontracted by EBEs without prior approval from SECTION 3 COORDINATOR.
- E. The Form A, "Prime Contractor Affidavit of Compliance," must be submitted with the bid or proposal, indicating the appropriate EBE percent (%) participation.
- F. The Form B, "Prime Contractor List of EBE Subcontractors," may be submitted with the bid or proposal. The deadline date for receipt of the list by HACM is the third (3rd) business day following the date of the bid or proposal opening unless by special arrangement with SECTION 3 COORDINATOR. Revision to the initial list is due the second (2nd) business day following receipt of the initial list.
- G. Information on Form B shall include but not be limited to:
1. Each EBE subcontractor's name, address, telephone number, and authorized contact person(s) for the EBEs that will participate on the contract.
 2. A description of the scope of work to be performed by each EBE on the contract.
 3. Each EBE subcontractor's dollar values and corresponding percentages that the dollar values represent of the total contract amount.
 4. Listing of EBEs on Form B shall constitute a representation that the Prime Contractor has communicated directly with the EBEs listed, and agreed to the specified work and dollar values. If awarded the contract, the bidder or offeror shall enter into a written subcontract with each EBE for its portion of the work as indicated.
- H. Failure to submit an Affidavit of Compliance (Form A) may render the bid or offer non-responsive and could result in an award recommendation to the next apparent low bidder or offeror.
- I. Only EBEs that have been certified as such by the specified certification agency may be listed on Form B. The firms shall be counted towards the targeted percentage on this project. Directories of certified firms may be obtained from the specified certification agencies. Copies of EBE's certifications must be submitted with Form B.
- J. After execution of the contract, if for any reason, an EBE cannot perform the specified work, the Prime Contractor shall immediately provide the HACM CONTRACTING OFFICER with a written explanation detailing the reason, and including a request for approval from SECTION 3 COORDINATOR to substitute another certified firm or approval of an EBE if a replacement has been identified.

HOUSING AUTHORITY OF THE CITY OF MILWAUKEE

- K. Approval to delete or replace initial EBEs must be obtained from SECTION 3 COORDINATOR prior to making the deletion or replacement. Any difference in the cost occasioned by such substitution, deletion, or replacement shall be borne by the Prime Contractor.
- L. If the Prime Contractor has a problem in meeting the EBE goal or if any other issues relative to EBEs arise during the completion of this project, the Prime Contractor shall immediately inform the HACM CONTRACTING OFFICER in writing with a copy to SECTION 3 COORDINATOR detailing the issues.
- M. Certification as an EBE from programs other than from those agencies specified is neither accepted by HACM nor has any bearing whatsoever on the eligibility criteria established by the specified certification agencies.

**BIDDER/OFFEROR INSTRUCTIONS
FOR COMPLETING EMERGING BUSINESS ENTERPRISES FORMS**

**PRIME CONTRACTOR AFFIDAVIT OF COMPLIANCE (FORM A)
PRIME CONTRACTOR LIST OF EBE SUBCONTRACTORS (FORM B)**

Step 1:

Thoroughly review the “Prime Contractor Formal Contract Provisions for Subcontracting with Emerging Business Enterprises”

Step 2:

Note the type of business(es) targeted for participation on this project. See Article I, Paragraph A, on Page 1 of the Provisions (“This contract calls for...”). This section specifies the type of business(es) and the target participation percentage(s) for this particular contract.

Step 3:

On the Prime Contractor Affidavit of Compliance (Form A), fill in the subcontract percentage participation on the lines(s) that correspond to the type of targeted business(es) indicated at Article I, Paragraph A, on Page 1 of the Provisions.

For example, if the Provisions call for 20% MBE and/or WBE participation, you may indicate the following on the Affidavit of Compliance:

- A. MBEs at 20%; OR
- B. WBEs at 20%; OR
- C. MBEs at 10% and WBEs at 10% (or any combination of percentages totaling the overall target percentage).

Note that the Prime Contractor Affidavit of Compliance is a part of the bid or request for proposals and requires submission with the bid or proposal.

Step 4:

On the Prime Contractor List of EBE Subcontractors (Form B) list businesses that correspond to the type of targeted business(es) indicated at Article I, Paragraph A, on Page 1 of the Provisions. Provide copies of all EBE certifications on Form B.

Note: The Prime Contractor List of EBE Subcontractors (Form B) may be submitted with the bid or proposal but must be submitted within three (3) business days following the bid or proposal opening.

Questions regarding EBE participation or reporting forms may be directed to:
Konita Jude, Contract Compliance Officer, at (414) 286-2940 or kpjude@milwaukee.gov

**PRIME CONTRACTOR AFFIDAVIT OF COMPLIANCE
FOR PARTICIPATION IN THE HACM EMERGING BUSINESS ENTERPRISE PROGRAM**

Official Notice # _____ **Date:** _____

Project Description: _____

The bidder/offeror's commitment for MBE participation on this project is _____%

The bidder/offeror's commitment for WBE participation on this project is _____%

The bidder/offeror's commitment for DBE participation on this project is _____%

The bidder/offeror's commitment for Other participation on this project is
%

For Other, indicate type (e.g. EBE, SBE, VOB):

HACM may reject and disqualify any bid or proposal that does not include the Emerging Business Enterprise Program. HACM may reject and disqualify any bid if the contractor fails to consider the "Prime Contractor Formal Contract Provisions for Subcontracting with Emerging Business Enterprises."

The undersigned hereby states that he/she has not discriminated in any manner on the basis of race, sex, or national origin in any manner in the preparation of the attached bid or proposal or in the selection of subcontractors or material suppliers for such bid/proposal.

The undersigned acknowledges, understands, and agrees that submission of a bid or proposal shall commit the bidder or offeror to comply with HACM's Emerging Business Enterprise Program, including the submittal of Forms A and B.

The undersigned also states that all the above information is true and correct to the best of his/her knowledge.

Company Name

Authorized Signature and Title

Printed Name

STATE OF _____, COUNTY OF _____

Personally, came before me this _____ day of _____, 2_____, who acknowledges that he/she executed the foregoing document for the purpose therein contained for and on behalf of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public _____, **State of** _____, **County of** _____

My Commission Expires: _____

PRIME CONTRACTOR LIST OF EBE SUBCONTRACTORS

Date Form B Submitted _____

Initial List/Date _____

Revised List/Date _____

This form must be fully completed. The deadline for submission of this document to the HACM, by the Prime Contractor, is three (3) business days following the bid or proposal opening date, or with the bid or proposal.

Official Notice # _____

Date: _____

Project Description: _____

Prime Contractor _____

Total Bid/Proposal Amount \$: _____

Consult Article I, Paragraph A, on Page 1 of the Provisions to determine target subcontract percentage and targeted types of business(es) for this particular solicitation.

MBE \$'s: _____ / % of Total Bid

DBE \$'s: _____ / % of Total Bid

WBE \$'s: _____ / % of Total Bid

Other \$'s: _____ / % of Total Bid

List all proposed subcontractor(s) and material supplier(s) for this project. It is the bidder or offeror's obligation to obtain the appropriate EBE Participation. Copies of EBE certifications must be submitted with this form.

Firm Name, Address, Phone, Email, and Contact Person	M B E	W B E	D B E	Other (indicate type)	Work to be Performed / Material Supplied	% of Total Bid or Proposal	Amount	Signature of EBE owner or representative needed to confirm all information herein