

RESOLUTION #3253

A RESOLUTION OF THE COUNTY OF WARREN ADOPTING A MINORITY AND WOMEN'S BUSINESS ENTERPRISE PLAN FOR THE GOVERNANCE OF THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM.

BE IT RESOLVED, by the Commissioners of the County of Warren, that the following Minority and Women's Business Enterprise Plan shall be used for the execution of all projects carried out under the Warren County Community Development Block Grant (CDBG) Program:

A. DEFINITIONS

For the purpose of these requirements, the following terms, as defined below, shall apply:

1. GRANTEE – Warren County
2. ADMINISTERING AGENCY – The Warren County Planning and Zoning Commission or such other agency as may be appointed by the Warren County Commissioners to administer the Warren County CDBG Program.
3. BIDDER RESPONSIVENESS – Actions taken by prime contract bidders to seek participation by MBE/WBE suppliers, manufacturers, and subcontractors. Responsiveness includes submission of Form DCED-CCD-286, MBE/WBE Contract/Solicitation and Commitment Statement; and, if needed; an explanation for failure to achieve minimum levels of participation, including demonstration that the bidder has not engaged in discriminatory practices.
4. BIDDER RESPONSIBILITY – Non-discrimination in the selection of subcontractors, suppliers, and manufacturers. Non-discrimination is presumed if minimum levels of participation are achieved. Non-discrimination can also be demonstrated by submitting Form DCED-CCD-286 and supplemental evidence that failure to achieve minimum levels of participation was not motivated by consideration of race or gender; that MBEs/WBEs were not treated less favorably than others; and that solicitation and commitment decisions were not based upon policies which disparately affect MBEs/WBEs.
5. BUSINESS ENTERPRISE – Any legal entity which is organized in any form other than as a joint venture (e.g., sole proprietorship, partnership, corporation, etc.) to engage in lawful commercial transactions.
6. CONTRACTOR/SUBCONTRACTOR – One who participates, through a contract, subcontract, or lease agreement, in any manner covered by the grantee's MBE/WBE Program.
7. CONTROL – The exclusive or ultimate and sole control of a business including, but not limited to, capital investment and all other financial, property, acquisition contract negotiation, and legal matters, officer-director-employee selection and comprehensive hiring, operating responsibility, cost-control matters, income and dividend matters, financial transactions, and rights of other shareholders or joint partners. Control shall be real, substantial, and continuing, not pro forma. Control shall include the power to direct or cause the direction of the management and policies of the business and to make the day-to-day as well as major decisions in matters of policy, management and operations. Control shall be exemplified by possession of the requisite knowledge and expertise to run the particular business and control shall not include majority or absentee ownership. Further, control by a minority individual or woman shall not be deemed to exist in any case where any non-minority owner or employee of the business is disproportionately responsible for the operation of the firm.
8. MINORITY BUSINESS ENTERPRISE (MBE) – A business concern that is:
 - a. a sole proprietorship, owned and controlled by a minority; or
 - b. a partnership or joint venture controlled by minorities in which 51% of the beneficial ownership interest is held by minorities; or
 - c. a corporation or other entity controlled by minorities in which at least 51% of the voting interest and 51% of the beneficial ownership interest are held by minorities.
9. MINORITY PERSON – Persons who are citizens of the United States and who are Black Americans, Hispanic Americans, Native Americans, or Asian-Pacific Americans.

- a. Black (African) Americans – Persons having origins from any of the Black groups of Africa. The term includes persons having origins in any of the original peoples of the Cape Verdes Islands.
 - b. Hispanic Americans – Persons having their origins from one or more of the Spanish-speaking peoples of Mexico, Puerto Rico, Cuba, Central or South America or the Caribbean Islands.
 - c. Native Americans – Persons having origins from one or more of the original peoples of North America and who are recognized as an Indian by a tribe or tribal organization.
 - d. Asian-Pacific Americans – Persons having origins from one or more of the original peoples of the Far East, Southeast Asia or the Pacific Islands, including China, Japan, Korea, Samoa, and the Philippine Islands.
10. SOCIALLY/ECONOMICALLY RESTRICTED BUSINESS (SERB) – SERBs are businesses whose economic growth and development has been restricted based on social and economic bias. Such businesses are MWBEO certified minority and women owned businesses and certain restricted businesses whose development has been impeded because their primary or headquarter facility is physically located in an area designated by the Commonwealth as being in an enterprise zone. Businesses will not be considered socially/economically restricted if one of the conditions listed below exists:
- a. The business has gross revenues exceeding four million dollars annually; or
 - b. The concentration of an industry is such that 50 percent of the market is controlled by the same type of SERB (MBE/WBE) or businesses within designated enterprise zones.
11. WOMEN’S BUSINESS ENTERPRISE (WBE) – A business concern that is:
- a. a sole proprietorship, owned and controlled by a woman; or
 - b. a partnership or joint venture controlled by women in which 51% or the beneficial ownership interest is held by women; or
 - c. a corporation or other entity controlled by women in which at least 51% of the voting interest and 51% of the beneficial ownership interest are held by women.
12. WOMEN – United States citizens who are of the female gender.

B. POLICY STATEMENT

It is the public policy of Warren County to promote the opportunity for full participation by minority and women’s business enterprises (“MBE’s” and “WBE’s”) in all housing and community development programs receiving funds from the Pennsylvania Department of Community and Economic Development.

C. PROCEDURES: INVITATIONS FOR BIDS (IFB) OR REQUEST FOR PROPOSALS (RFP)

1. Advertisement – IFB Only

All invitations to bid will include the following information:

“The bidders/offerors must submit documentary evidence of minority and women business enterprises who have been contacted and to whom commitments have been made. Documentation of such solicitations and commitments shall be submitted concurrently with the bid.

2. Notification of MBE/WBE – IFB and RFP

The procedure for Warren County to notify the minority/women business community of contract opportunities shall be as follows:

(A) Notice of Invitation for Bid or Request for Proposals – An on-line search at the PA Department of General Services website will be used to compile a listing of MBE/WBE firms that undertake the particular type of construction or service being advertised or requested. Once this listing is compiled, a copy of the Notice of Invitation for Bids or Requests for Proposals will be sent by Warren County to all MBE/WBE firms listed.

(B) Other Notices – Notices are to be sent to the following organizations: (as appropriate)

Local Minority Churches and Organizations;

Appropriate Minority Business Technical Assistance Organizations and/or Schools

Appropriate Minority/Women Contractor Associations

Appropriate Minority/Women Trade Organizations

- (C) Plans and Specifications – Plans and Specifications or Invitations for Bids on all projects will be made available to minority/women contractor associations and trade organizations;
- (D) List of Planholders – The names of bidders/offers requesting bid documents will be made available upon request to minority/women businesses shown on the PA Dept of Gen Svcs website provided listing.
- (E) List of Minority/Women Businesses – Each bidder/offers obtaining plans and specifications or requests for proposals for projects will be provided a list of minority/women businesses to be used in soliciting subcontract bids and for materials and services.

D. PARTICIPATION REQUIREMENTS FOR MINORITY/WOMEN BUSINESS ENTERPRISE (MBE/WBE) AND SOCIALLY/ECONOMICALLY RESTRICTED BUSINESSES (SERBs)

1. Construction Contracts (IFBs)

Warren County has established minimum levels of participation for minority and women business enterprises (MBE/WBE) for each project in each bid category to be used solely as a guide in determining bidder responsibility. The minimum participation level for MBEs is 5% and for WBEs 3%.

The following items will be placed in all bid documents:

(A) Participation Level

- (1) Warren County has established minimum participation levels (MPLs) at 5% for minority business enterprises (WBE) for this project to be used solely as a threshold in determining bidder responsibility. A bidder will not be rejected as not responsible solely because it fails to reach the MPLs. To determine the participation level which has been reached, a bidder may divide the total dollar amount of the commitments by the total dollar amount of the bidder's bid.
- (2) MBE/WBE subcontracts and manufacturers will be credited toward the minimum level at 100%. Stocking suppliers are credited at 100%. Non-stocking suppliers which are commonly and ordinarily the custom in the industry and a part of the industry's trade practices are credited at 100%; non-stocking suppliers which are not commonly and ordinarily the custom in the industry nor a part of the industry's trade practice are not credited.
- (3) A firm which is both an MBE and a WBE will only receive credit toward MPLs as either an MBE or WBE, but not both. Bidders must indicate on Form DCED-CCD-286, MBE/WBE Contact/Solicitation and Commitment Statement whether the firm is being listed as either an MBE or a WBE.
- (4) An MBE/WBE firm who is the prime bidder on a project will receive no MPL credit for its own work effort for services provided. MBE/WBE bidding as prime proposer must solicit other certified MBEs/WBEs participation for material and/or supplies.
- (5) MBE/WBE subcontractors must perform at least seventy-five percent (75%) of the cost of the subcontract, not including the cost of materials with its own employees.

(B) Responsiveness

- (1) Bidders must complete and submit Form DCED-CCD-286 with the bid. Failure to submit this form with the bid, will result in the bid being rejected as nonresponsive.
- (2) A bidder should only solicit MBE/WBE subcontractors, vendors, manufacturers, or suppliers whose services, material, or supplies are within the scope of work and which the bidder reasonably believes it will choose to subcontract with or purchase from.

- (3) Bidders failing to meet the minimum levels of participation must submit concurrently with the bid, an explanation of why the MPLs have not been met. This explanation must demonstrate that the bidder has not engaged in discriminatory practices in solicitation and utilization of MWBEO-certified MBEs/WBEs to perform as subcontractors or suppliers of goods and services related to the performance of the contract. The evidence submitted by the bidder must demonstrate the following:
 - (a) Indicate whether MBEs/WBEs were solicited for each type of work the bidder expects to subcontract for and for all materials which the bidder expects to procure and if not, the reason(s) why no such solicitation was made;
 - (b) Indicate the reason why an MBE/WBE has not been committed to for a type of subcontract work or materials in any area where a quote was received from a MBE/WBE; and,
 - (c) In any case where no quotations are received nor commitments made to MBE or WBE firms, indicate on Form DCED-CCD-286 that no quotes were received, and if there is another reason for no commitments being made, the reason for the lack of commitments.
- (4) If the bidder fails to submit such evidence, the bid submission shall be considered non-responsive and the bid rejected.
- (5) Information related to the above may be submitted on Form DCED-CCD-286 or on additional paper.

(C) Responsibility

- (1) The submittals of each bidder are subject to review to determine whether the bidder has discriminated in the selection of manufacturers, subcontractors and suppliers. If a bidder has met the MPLs for MBE/WBE participation, the bidder will be presumed not to have discriminated in their selections. Where the MPLs are not met, Warren County will determine whether discrimination has occurred. If, after investigation, including a review of Form DCED-CCD-286, it is found that discrimination has occurred, the reviewed bidder shall thereby be deemed to be not responsible and the bid will be rejected.
- (2) Documentation submitted by the bidder should meet the following standards for review:
 - (a) The bidder whose actions resulted in a limited or no commitment to MBEs/WBEs not motivated by consideration of race or gender;
 - (b) MBEs/WBEs were not treated less favorably than other businesses in the contract solicitation and commitment process.
 - (c) Solicitation and commitment decisions were not based upon policies which disparately affect MBEs/WBEs.
- (3) Commitments to MBE and WBE firms made at the time of bidding must be maintained throughout the term of the contract, unless a change in commitment to these firms is preapproved by Warren County or the administering agency performing the evaluation of the invitation for bid.

(D) Access to Information

Warren County may obtain documents and information from any bidder, contractor, subcontractor, supplier, or manufacturer that may be required in order to ascertain bidder or contractor responsibility. Failure to provide requested information may result in the contractor being declared not responsible.

(E) MBE/WBE Certification

- (1) Bidders will not be given credit for MBEs/WBEs which are not certified by the State Minority and Women Business Enterprise Office (MWBEO).
- (2) Under the State Act of December 21, 1984, No. 230, P.L. 210, 18 PA. C.S.A. 4107.2 a person commits a felony of the third degree if, in the course of business, he/she engages in deception relating to MBE/WBE certification.

2. Professional/Personal Services – Requests for Proposals (RFP)

Warren County will assign a weight for social/economically restricted business participation for each RFP. This weight will be included as one of the criteria for selection for each RFP.

The following items will be placed in all requests for proposals:

(A) General Information for Proposers

Commitment to Enhance Socially/Economically Restricted Businesses (SERB).

Warren County strongly encourages the submission of proposals by SERBs.

To achieve the objective of enhancing SERB participation, Warren County has established SERB utilization as a selection criterion in the evaluation process.

Warren County will evaluate the aforementioned criteria and will assign a point value to be considered within the overall RFP total point tabulation.

Proposals submitted by individuals claiming SERB status, or proposals submitted by individuals reflecting joint venture and subcontracting opportunities with SERBs, must submit documentation verifying their claim.

SERBs are businesses whose economic growth and development has been restricted based on social and economic bias. Such businesses are MWBEO certified minority and women owned businesses and certain restricted businesses whose development has been impeded because their primary or headquarter facility is physically located in an area designated by the Commonwealth as being in an enterprise zone. Businesses will not be considered socially/economically restricted if one of the conditions listed below exists:

- (1) The business has gross revenues exceeding four million dollars annually; or
- (2) The concentration of an industry is such that 50 percent of the market is controlled by the same type of SERB (MBE/WBE) or businesses within designated enterprise zones.

Proposers not considered to be socially/economically restricted businesses seeking to identify such businesses for joint venture and subcontracting opportunities are encouraged to contact:

Department of General Services
Minority and Women Business Enterprise Office
503 North Office Building
Harrisburg, PA 17125
Phone: (717) 783-8720
Fax: (717) 787-4741

(B) Information Required from Contractors

SERB Information

Socially/Economically Restricted Businesses (SERBs) are encouraged to participate as prime proposers. SERBs qualifying as an MBE/WBE must provide their MWBEO certification number. SERBs qualifying as a result of being located in a designated enterprise zone must provide proof of this status.

Proposers not considered SERBs must describe, in narrative form, their company's approach to enhance SERB utilization on a professional level in the implementation of this proposal.

The following options will be considered as part of the final criteria for selection:

Priority Rank 1. Proposals submitted by SERBs.

Priority Rank 2. Proposals submitted from a joint venture with a Commonwealth approved SERB as a Joint venture partner.

Each proposal will be rated for its approach to enhancing the utilization of SERBs. The optional approach used will be evaluated with option number 1 receiving the greatest value and the succeeding options receiving a value in accordance with the above listed priority ranking.

Contractor proposals shall include the SERB value in the Cost and Price Analysis section of the proposal. The applicable items shown in the Cost and Price Analysis section should also be used to prepare and detail the proposed SERB Commitment value including, if applicable, fiscal year breakdown. The selected contractor's SERB Commitment amount will be included as a contractual obligation when a contract is entered into.

(C) Criteria for Selection

SERB Participation

Emphasis here is placed on:

- (1) Proposals submitted by MWBE approved SERBs.
- (2) Commitments by proposers not considered to be SERBs which significantly utilize approved SERBs in joint ventures.
- (3) Commitments by proposers not considered to be SERBs which aggressively pursue the utilization of approved SERBs in subcontracting opportunities.

3. Procedures – Contractor Compliance Process

(A) Contract Provisions

The following provisions will be included in construction contracts and/or in professional service contracts:

- (1) Construction Contracts
 - (a) The prime contractor must provide Warren County with a report of MBE/WBE subcontracting activity on a quarterly or per project basis, whichever is sooner. The report shall reflect the names of and the total dollar amount paid to all MBE/WBE subcontractors (including suppliers) utilized under this contract.
 - (b) MBE/WBE Subcontractors must provide Warren County with a report reflecting the prime contractors who have purchased their services and/or supplies on a quarterly basis. The report shall reflect the name of the prime contractor and the total dollar amount invoiced and total dollar amount received for payment.
- (2) Professional Service Contracts
 - (a) Commitment to Enhance Socially/Economically Restricted Businesses
 - 1.) Joint Venture. If the joint venture relationship between (firm names) is dissolved, (name of majority owner) as the majority owner of the contract, with a commitment to a Socially/Economically Restricted Business, must maintain this commitment for the duration of the contract. If another Socially/Economically Restricted Business joint venture cannot be formed, (name of majority owner) must continue this commitment by entering into contractual agreement(s) with other Socially/Economically Restricted Business(es) to perform on this contract. (Name of majority owner) must submit all changes to Warren County for approval.
 - 2.) Subcontracting. If the subcontracting commitment made to (name of Subcontractor) in the amount of (\$) is terminated, (name of firm awarded contract) with a (dollar amount) commitment to a Socially/Economically Restricted Business, must maintain this commitment for the duration of the contract. (Name of firm awarded

contract) must continue this commitment by entering into contractual agreements with other Socially/Economically Restricted Business(es) to perform on this contract. (Name of majority owner) must submit all changes to Warren County for approval.

- 3.) The prime proposer must provide Warren County with a report of Socially/Economically Restricted Business activity on a quarterly or per project basis, whichever is sooner. The report shall reflect the names of and the total dollar amount paid to all Socially/Economically Restricted Businesses utilized under this contract.
- 4.) Socially/Economically Restricted Business subcontractors must provide Warren County with a report reflecting the prime contractors who have purchased their services and/or supplies on a quarterly basis or per project basis, whichever is sooner. The report shall reflect the name of the prime contractor and the total dollar amount invoiced and total dollar amount received for payment.

(B) Grantee Compliance Procedures

- (1) A letter will be forwarded to the prime contractor by Warren County informing them of their quarterly or per project reporting requirements. In addition, a letter will be forwarded to all MBE/WBE subcontractors (copy to the prime contractor) informing them of their reporting requirements.
- (2) Warren County will review all reports received from the prime contractor and all subcontractors to determine if the commitments made by the prime contractor in his/her bid are being met. If reports are submitted on a per project basis, this review is to be done prior to final payment being made to the contractor and/or subcontractor.

(C) Records and Reports

The contractor will keep such records as are necessary to determine compliance with its minority and women business enterprise commitments. These records must be in sufficient detail to indicate the number of minority and women businesses, the contract work performed, and the percentage of minority and women businesses performing work. Additionally, the contractor is required to maintain an open file for a specified period, during which time the contract compliance person may make periodic reviews of records pertaining to relevant contracts.

Adopted this 11th day of October 2023.

COMMISSIONERS OF WARREN COUNTY



Tricia D. Durbin
Chair

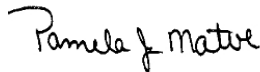


Benjamin Kafferlin
Vice Chair



Jeff Eggleston
Commissioner

Attest:



Pamela J. Matve
Chief Clerk

