

COUNTY OF FULTON

MCCONNELLSBURG, PENNSYLVANIA



MINORITY BUSINESS ENTERPRISE AND WOMEN BUSINESS ENTERPRISE (MBE/WBE) ACTION PLAN

February 2014

TABLE OF CONTENTS

SECTIONS

Applicability	3
Purpose	3
Policy Statement	3
Definitions	3
Invitations for Bids (IFB)/Requests for Proposals (RFP)	6
Participation Requirements for MBE/WBE and Socially/Economically Restricted Business (SERBS)	7
Contractor Compliance Process	10
Fulton County Planning Commission's Mission	12
Review of Plan	13

ATTACHMENTS

Attachment A – Market Areas for MBE/WBE solicitation	14
Attachment B – MBE/WBE contract solicitation and commitment statement	15
Attachment C – Minority and Women Business Enterprise bidder certification	16
Attachment D – Minority and Women Business Enterprise Prime Contractor's Quarterly Utilization Report	17
Attachment E – Minority and Women Business Enterprise Subcontractor's Quarterly Utilization Report	18
Attachment F - 24 CFR PART 85 Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments - PROCUREMENT	19

APPLICABILITY

This plan is for projects funded through the Community Development Block Grant (CDBG), Emergency Shelters Grant (ESG) and/or the Home Investment Partnership (HOME) programs.

PURPOSE

The Minority and Women Business Enterprise Plan's purpose is to set forth a path to promote the opportunity for full participation by Minority and Women Business Enterprises (MBE and WBE) in all community development programs receiving funds from the Pennsylvania Department of Community and Economic Development.

POLICY STATEMENT

It is public policy of the County of Fulton to promote the opportunity for full participation by minority and women's business enterprises ("MBEs" and "WBEs") in all community development programs receiving funds from the Pennsylvania department of Community and Economic Development, especially pertaining to the through the Community Development Block Grant (CDBG), Emergency Shelter Grant (ESG), and/or Home Investment Partnership (HOME) grant programs.

DEFINITIONS

DEFINITIONS

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

1. **GRANTEE** – The County under contract with the Commonwealth for receipt of DCED funds.
2. **ADMINISTERING AGENCY** - The agency responsible for administering the grant funds.
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 that 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, that is covered by the grantee's MBE/WBE Program.
7. MANAGEMENT CONTROL - The minority or women owners should possess the power to direct or cause the direction of the management and policies of the firm and to make the day-to-day as well as major decisions on matters of management, policy and operations. The firm should not be subject to formal or informal restrictions which limit the customary discretion of the minority or women owners. There should be no restrictions through for example, by-law provisions, partnership agreements or charter requirements for cumulative voting rights or otherwise that prevent the minority or women owners, without the cooperation or vote of an owner who is not a minority or woman, from making a business decision of the firm. If the actual management of the firm is contracted out to or otherwise has been placed with individuals other than the minority or woman owner, those persons who have the ultimate power to hire and fire the managers will ordinarily be considered as controlling the business.
8. MINORITY BUSINESS ENTERPRISE (MBE) - A for-profit business concern that is one of the following:
 - a sole proprietorship, owned and controlled by a minority; or
 - a partnership or joint venture controlled by minorities in which 51% of the beneficial ownership interest is held by minorities; or
 - a corporation or other business 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 African Americans, Hispanic Americans, Native Americans, or Asian-Pacific Americans.
 - 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.
 - 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.
 - 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.

- 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. OPERATIONAL CONTROL – The minority or women owners should demonstrate through the application sufficient experience, knowledge and expertise to operate that particular business. Additionally, if the owners of the firm who are not minorities or women are disproportionately responsible for the operation of the firm—to include possessing any required licensing for the firm—the firm will ordinarily be considered not being controlled by minorities or women and not qualifying as an MBE or WBE. Securities, which constitute ownership or control, or both, of a corporation for business purposes of establishing it as an MBE or WBE should be held directly by minorities or women. No securities held in trust, or by a guardian for a minor should be considered as held by minority or women in determining the ownership or control of a corporation.

11. OWNERSHIP:

- Bona fide minority and women group membership may be established on the basis of the individual’s claim that he is a member of a minority group or is of the female gender and is and has been so regarded by that particular community. Verification of group membership may be accepted through submission of birth certificates, military records, passports or tribal cards.
- An eligible MBE or WBE defined in this section should be an independent business. The ownership and control by minorities or women should be real, substantial and continuing and should go beyond the pro forma ownership of the firm as reflected in its ownership documents. The minority and women owners should enjoy the customary incidents of ownership and should share in the risks and profits commensurate with their ownership interests as demonstrated both by an examination of the substance and form of arrangements. Recognition of the business as a separate entity for tax or corporate purposes is not necessarily sufficient for recognition as an MBE or WBE. In determining whether a potential MBE or WBE is an independent business, all relevant factors must be considered, including the date the business was established, its resources, and the nature of the financial, lease arrangements, and other relationships the business enjoys.
- The contributions of capital or expertise by the minority or women owners to acquire their interests of the firm should be real and substantial. Examples of insufficient contributions include a promise to contribute capital, a note payable to the firm or its minorities or women, or the mere participation as an employee rather than as a manager.

12. WOMEN'S BUSINESS ENTERPRISE (WBE) – A for-profit business concern that is:

- a sole proprietorship, owned and controlled by a woman in which at least 51% of the beneficial ownership is held by women; or
- a partnership or joint venture controlled by women in which at least 51% of the beneficial ownership is held by women; or
- 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.

13. WOMEN - United States citizens who are of the female gender.

INVITATIONS FOR BIDS (IFB)/REQUESTS FOR PROPOSALS (RFP)

Advertisement - IFB Only

All invitations to bid will include the following information:

- "The bidders 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."

Notification of MBE/WBE - IFB and RFP

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

A listing of participating firms will be developed utilizing lists from the Department of General Services, Bureau of Contract Administration and Business Development (grantees may use the website at <http://www.dgsweb.state.pa.us/mbewbe/Vendorsearch.aspx> to develop a list) and/or lists from other local agencies that have developed comprehensive lists that they utilize in their programs. Grantees must ensure that searches are for firms within your market area and for the type of firms that may be utilized in the particular contract for which bids are being requested. (See Appendix 8 for a listing showing market areas) Once you have your listing, a copy of the Notice of Invitation for Bids or Requests for Proposals will be sent by County of Fulton to all MBE\WBE firms listed.

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

- Local Minority Churches and Organizations
- Appropriate Minority/Women Contractor Associations
- Appropriate Minority/Women Trade Organizations

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.

List of Plan holders

The names of bidders who have obtained bid documents will be made available to minority/women businesses upon request.

List of Minority/Women Businesses

Each bidder 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.

PARTICIPATION REQUIREMENTS FOR MBE/WBE AND SOCIALLY/ECONOMICALLY RESTRICTED BUSINESSES (SERBS)

Construction Contracts (IFBs)

The County of Fulton 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:

1. Participation Level
 - a. The County of Fulton has established Minority Business Enterprise (MBE) and Women Business Enterprise (WBE) minimum participation levels (MPLs) of five percent for MBE and three percent for WBE of the dollar amount of the bid for this contract.
 - b. These MPLs serve exclusively as a threshold in determining bidder responsibility. A bidder may not be rejected as a non-responsible bidder 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.
 - c. 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.
 - d. 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.
 - e. MBE/WBE subcontractors must perform at least 75 percent of the cost of the subcontract, not including the cost of materials, with its own employees.

2. Responsiveness

- a. 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.
- b. 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.
- c. 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 MBEs/WBEs contained on the solicitation list provided by the grantee 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:
 - i. 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;
 - ii. 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;
 - iii. 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.
- d. If the bidder fails to submit such evidence, the bid submission shall be considered non-responsive and the bid rejected.
- e. Information related to the above may be submitted on Form DCED-CCD-286 or on additional paper.

3. Responsibility

- a. 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, the County of Fulton 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.

- b. Documentation submitted by the bidder should meet the following standards for review:
 - i. The bidder whose actions resulted in a limited or no commitment to MBEs/WBEs was not motivated by consideration of race or gender.
 - ii. MBEs/WBEs were not treated less favorably than other businesses in the contract solicitation and commitment process.
 - iii. Solicitation and commitment decisions were not based upon policies which disparately affect MBEs/WBEs.
- c. 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 the County of Fulton or the administering agency performing the evaluation of the invitation for bid submitted by the bidder should meet the following standards for review:
 - i. Access to Information
 1. The County of Fulton 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.

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 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 joint venture with a Commonwealth approved SERB as a joint venture partner.

- Priority Rank 3 Proposals submitted with subcontracting commitments to SERBs.

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.

Criteria for Selection

SERB Participation

Emphasis here is place on:

1. Proposals submitted by MWBEO approved SERBs.
2. Commitments by proposers not considered to be SERBs which aggressively pursue the utilization of approved SERBs in subcontracting opportunities.
3. Commitments by proposers not considered to be SERBs which aggressively pursue the utilization of approved SERBs in subcontracting opportunities.

CONTRACTOR COMPLIANCE PROCESS

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 the County of Fulton 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 the County of Fulton 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. Grantee Compliance Procedures

- a. A letter will be forwarded to the prime contractor by the County of Fulton 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.
- b. The County of Fulton 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.

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.

FULTON COUNTY PLANNING COMMISSION'S MISSION

The Mission of the Planning Commission is to promote the proper growth of Fulton County to ensure the enjoyment of life by each citizen in a pleasant, healthful and harmonious environment. The Guiding Principles of the Planning Commission include:

- Promote economic development to revitalize communities;
- Protect historic, recreational and valuable natural areas;
- Protect farms, forests and streams;
- Preserve open space and the aesthetic and historic characteristics of Fulton County;

The Planning Commission intends to maintain these principles by providing guidance and sound community planning advice to local governments to steer growth and development to complement existing infrastructure and to promote the efficient use of public monies.

The Planning Commission intends to carry out this mission efficiently and in an environmentally responsible manner with respect for the role of local government in protecting the public interest.

REVIEW OF PLAN

This MBE/WBE Action Plan was submitted to the following agencies for review and comment on the contents of this plan:

1. Fulton County Commissioners
 2. Fulton County Planning Commission
 3. Fulton County Solicitor
 4. Fulton County CDBG Office
 5. Job Training Office
 6. Housing Authority
 7. Center for Community Action
-

This MBE/WBE Action Plan was completed by: Karen M. Hann, CDBG Administrator/
Compliance Officer for the County of Fulton.

ATTACHMENT A

MARKET AREAS FOR MBE/WBE SOLICITATION FOR FULTON COUNTY

The following is a list of adjoining Counties to Fulton County. The County in **bold** is the “nearest urban county” to Fulton County.

Fulton – Bedford, Huntingdon, Franklin, **Dauphin**

In order to complete the necessary MBE/WBE solicitation, you can research businesses at this website: <http://www.dgsweb.state.pa.us/mbewbe/VendorSearch.aspx>.

ATTACHMENT B

MBE/WBE Contract Solicitation and Commitment Statement

Find this form at: <http://www.co.fulton.pa.us/project-development.php>.

ATTACHMENT C

Minority and Women Business Enterprise Bidder Certification

Find this form at: <http://www.co.fulton.pa.us/project-development.php>.

ATTACHMENT D

Minority and Women Business Enterprise Prime Contractor's Quarterly Utilization Report

Find this form at: <http://www.co.fulton.pa.us/project-development.php>.

ATTACHMENT E

Minority and Women Business Enterprise Subcontractor's Quarterly Utilization Report

Find this form at: <http://www.co.fulton.pa.us/project-development.php>.

ATTACHMENT F

24 CFR PART 85 Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments - PROCUREMENT

Find this link at:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/cpo/grantees/cfr8536#smBUS.

**MINORITY BUSINESS ENTERPRISE AND
WOMEN BUSINESS ENTERPRISE
(MBE/WBE) ACTION PLAN**