



MINORITY, AND WOMEN BUSINESS ENTERPRISE (M/WBE) PROGRAM

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ATTACHMENTS

CITY OF PENSACOLA, FLORIDA
MINORITY AND WOMAN BUSINESS ENTERPRISE (M/WBE)
PROGRAM

Section 1.0: Program Overview

1.1 Declaration of Policy Statement

It is the policy of the City of Pensacola, hereinafter referred to as the City to: (1) provide small, minority, and women businesses equal opportunity to participate in all aspects of the City's contracting and purchasing programs, including but not limited to, participation in procurement contracts for materials, services, construction and repair work and lease agreements; (2) prohibit discrimination against any person or business in pursuit of these opportunities on the basis of race, color, sex, religion, national origin, age, disability, or status as a service-disabled veteran, and (3) to conduct its contracting and purchasing programs so as to prevent any discrimination prohibited by state law and federal law relating to discrimination in employment; (4) modify or expand the existing Small Business Enterprise (SBE) program.

1.2 Enabling Action (Council Action and Approval)

In July 2011, the City Council commissioned a Comprehensive Disparity Study to determine whether there was a compelling interest to establish a narrowly-tailored minority- and women-owned business enterprise program. The study was conducted by MGT of America, Inc. and presented to the City Council on (Date). As a result of the study's findings, the City Council hired MGT of America to develop a M/WBE Program Policy. On (date), the City Council unanimously approved and adopted the M/WBE Program Policy.

1.3 Commercial Nondiscrimination Policy

It is the policy of the City not to enter into a *contract* with any *business enterprise* that has discriminated in the solicitation, selection, hiring or treatment of vendors, suppliers, subcontractors, its own employees, or *commercial customers* on the basis of race, gender, religion, national origin, ethnicity, age, or disability, or on the basis of any otherwise unlawful use of characteristics regarding such vendor's, supplier's, or *commercial customer's* employees or owners in connection with a City of Pensacola *contract* or *solicitation*; provided that nothing in this Commercial Non-Discrimination Policy shall *prohibit* or limit otherwise lawful efforts to remedy the effects of discrimination that have occurred or are occurring in the marketplace.

1.4 Program Objectives

- A) To provide small, minority, and women business enterprises equal access to opportunity for participation in City contracts for Construction, Professional Services, Other Services, and Goods and Supplies.
- B) To provide procedures for determining and monitoring M/WBE participation and compliance with the M/WBE requirements stated in the Policy.
- C) Revise the bidding procedures and guidelines to increase the potential for M/WBE participation.

- D) To encourage all City of Pensacola personnel involved in procurement and contracting activities to conduct good faith in soliciting M/WBE firms in the City's purchasing procedures.
- E) Increase awareness of this M/WBE Program and identify M/WBE firms.
- F) To promote awareness of this M/WBE Program throughout the City of Pensacola and neighboring communities.

1.5 Program Roles and Responsibilities

1.5.1 City Council

- Provide oversight and make recommendations for program improvements and modifications.
- Establish enabling policies and ordinances for the implementation of a program.

1.5.2 Mayor

- Ensures this program and policy is communicated to City staff, management, and subcontractors and then implemented.
- Appoint appropriate full-time staff/consultants and resources for program implementation and operations.
- Ensure all levels of City staff are accountable for program implementation and compliance

1.5.3 City Administrator

- Take all necessary and reasonable steps permissible by law to ensure full equitable participation by M/WBE s in the procurement of goods and services for the City of Pensacola.
- Establish and implement the program as an operational policy of the City of Pensacola.
- Establish and implement an internal/external communication plan that articulates the rationale supporting the program.
- Ensure all senior-level staff performance evaluations include an indicator for M/WBE objectives for procurement.

1.5.4 City Attorney

- Review the M/WBE Program, rules, and guidelines to ensure their compliance with federal, state, and local laws.
- Review recommendations to reject a bid for non-compliance with M/WBE Program requirements and provisions.
- Advise the City Council and Staff on legal issues related to the M/WBE Program, its implementation and administration.

- Ensure all City Bids/RFPs/RFIs/RFQs have standard language in place to identify M/WBE Program goals and the supplier selection process sets minimum targets for M/WBE inclusion and selection.

1.5.5 Purchasing Manager

- Daily administration of all components of the M/WBE Program and supervision of the M/WBE Program staff or consultants.
- Develop such rules and guidelines as may be necessary to effectuate the purposes of the M/WBE Program.
- Advise the City on M/WBE Program issues.
- Consult with City departments on M/WBE Program implementation, administration, and reporting.
- Make revisions to the M/WBE Program as needed from time to time to facilitate administration and fulfill Program objectives.
- Provide regular M/WBE participation reports to Council.
- Monitor compliance with the Program requirements.
- Certify small, minority, and women businesses.
- Maintain and develop databases to be maintained as a public record of certified firms.
- Investigate alleged violations of the Program, and the issuance of written statements following any determination of such investigation, stating the reasons therefore and any penalty to be imposed.
- Monitor utilization of M/WBEs on City contracts.
- Establish M/WBE supplier tracking system to enable results reporting (ability to track M/WBE spend by City with prime contractors, subcontractors, goods, services, commodity, geographical area, ethnicity, gender, cost, etc.).
- Establish and maintain documented procedures for planning and implementing internal/external M/WBE program audits to verify whether activities and related results comply with the program policy.
- Develop and implement outreach and assistance programs to promote equal contracting opportunities for all businesses that wish to do business with the City.

1.5.6 Department Directors/Managers

- Promote the M/WBE participation in the contracting and procurement activities of their departments.
- Integrate the M/WBE Program components into procurement practices and processes.
- Ensure M/WBE Program compliance within their departments.

- Develop and implement strategies to achieve the annual and project participation goals established by the M/WBE Program.
- Monitor and report small, minority, and women business participation as required by M/WBE Program Policy.
- Ensure M/WBE Program Policy is formally integrated into the department's strategic sourcing process.
- Identify opportunities where M/WBEs can be significantly integrated in all departmental product/service/commodity areas of spend, including non-traditional areas of spend.
- Implement a process to review the expiration dates of all existing contracts with existing suppliers to find new opportunities for M/WBE suppliers.
- Identify targeted long-term, big hit opportunity areas for greater M/WBE inclusion.

1.6 Definitions

The following words, terms and phrases, when used in this M/WBE Program, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- **Affiliate Relationship.** Two entities are "Affiliates" of one another when: (a) one controls or has the power to control the other, (b) a third party or group of parties controls or has the power to control both; or (c) there is a significant relationship between the two entities.
- **Aspirational Goal.** A state of affairs that a plan is intended to achieve.
- **Bid.** A response to an Invitation to Bid.
- **Bidder.** Individual, sole proprietorship, partnership, joint venture, or corporation that submits a bid or proposal to the City.
- **Business Enterprise.** A corporation, Limited Liability Company, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association, or any other legal entity authorized to do business in the State of Florida.
- **Certification.** An application procedure completed by a business enterprise to participate as a small, minority, or woman business enterprise under the M/WBE Program.
- **Certified Business Enterprise.** A small, minority, or women-owned business enterprise that has been certified by the City and/or certifying agencies approved by the City.
- **Commercially Useful Function.** A firm is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. For the purpose of determining whether a M/WBE business enterprise is performing a commercially useful

function, City shall consider all of the facts in the record, viewed as a whole, including without limitation the following:

- A) An M/WBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved.
 - B) To perform a commercially useful function, the M/WBE must be responsible, with respect to material and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.
 - C) To determine whether a M/WBE is performing a commercially useful function, City will evaluate the amount of work subcontracted by the M/WBE, industry practices regarding subcontracting, whether the amount the M/WBE is to be paid under the contract is commensurate with the work it's actually performing, the M/WBE credit claimed for its performance of the work, and other relevant factors.
 - D) An M/WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of M/WBE participation. In determining whether a M/WBE is such an extra participant, City will examine similar transactions, particularly those in which M/WBEs do not participate.
- **Contract.** A binding written agreement between two or more persons that is enforceable by law.
 - **Contractor.** A person, firm, or legal entity with which the City has entered into a contract.
 - **Control or Controlled.** For the purpose of determining whether the owner or owners of a potential M/WBE (as used in this definition "Woman-owned" and/or "Minority-owned", which shall denote one or more owners) controls the potential M/WBE, the City shall consider all of the facts in the record, viewed as a whole, including without limitation the following:
 - A) For a M/WBE-owner to be deemed to control the potential M/WBE, the potential M/WBE must be independent. An independent business enterprise is a business whose viability does not depend on its relationship with another firm or firms.
 - 1) In determining whether a potential M/WBE is independent, City will scrutinize relationships with other firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.
 - 2) City will consider whether present or recent employer/employee relationships between the M/WBE-owner and other firms or persons associated with other firms compromise the independence of the potential M/WBE firm.

- 3) City will examine the potential M/WBE's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential M/WBE firm.
 - 4) In considering factors related to the independence of a potential M/WBE firm, City will consider the consistency of relationships between the potential M/WBE and other firms with normal industry practice.
- B) A potential M/WBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the M/WBE-owner. There can be no restrictions through corporate charter provisions, by-law provisions, contracts, or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by persons other than the M/WBE-owner, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the M/WBE-owner, without the cooperation or vote of any other individual, from making any business decision of the business enterprise. This paragraph does not preclude a spousal co-signature on documents.
- C) The M/WBE-owner must possess the power to direct or cause the direction of the management and policies of the business enterprise and to make day-to-day as well as long-term decisions on matters of management, policy and operations.
- 1) A M/WBE-owner must hold the highest officer position in the company (e.g., chief executive officer or president).
 - 2) In a corporation, the M/WBE-owner must control the board of directors.
 - 3) In a partnership, the M/WBE-owner must serve as a general partner, with control over all partnership decisions.
- D) Individuals who are not the M/WBE-owner may be involved in a M/WBE as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the business enterprise, or be disproportionately responsible for the operation of the business enterprise.
- E) The M/WBE owners of the business enterprise may delegate various areas of the management, policymaking, or daily operations of the business enterprise to other participants in the firm, regardless of whether these participants are African American, Hispanic, Asian, Native American, or female. Such delegations of authority must be revocable, and the M/WBE-owner must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the M/WBE-owner in the business enterprise's overall affairs must be such that City can reasonably conclude that the M/WBE-owner actually exercises control over the business enterprise's operations, management, and policy.
- F) The M/WBE-owner must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the business enterprise is engaged and the business

enterprise's operations. The M/WBE-owner is not required to have experience or expertise in every critical area of the business enterprise's operations, or to have greater experience or expertise in a given field than managers or key employees. The M/WBE-owner must have the ability to intelligently and critically evaluate information presented by other participants in the business enterprise's activities and to use this information to make independent decisions concerning the business enterprise's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the business enterprise is insufficient to demonstrate control.

- G) If state or local law requires the owner of a particular type of firm to have a particular license or other credential, then the M/WBE must possess the required license or credential in order to be deemed in control. If state or local law does not require an owner to have such a license or credential, City will not deny certification solely on the ground that the M/WBE-owner lacks the license or credential. However, City may take into account the absence of the license or credential as one factor in determining whether the M/WBE-owner actually controls the firm.
- H) City may consider differences in remuneration between the M/WBE-owner and other participants in the business enterprise in determining whether the M/WBE-owner controls the business enterprise. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the business enterprise's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the business enterprise. City may determine that a business enterprise is controlled by its M/WBE-owner although the M/WBE-owner's remuneration is lower than that of some other participants in the business enterprise.
- I) In order to be viewed as controlling a business enterprise, a W/MBE-owner cannot engage in outside employment or other business interests that conflict with the management of the business enterprise or prevent the M/WBE-owner from devoting sufficient time and attention to the affairs of the business enterprise to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, a M/WBE-owner could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the M/WBE-owner controls the business enterprise when it is operating.
- J) A M/WBE-owner may control a business enterprise even though one or more of the M/WBE-owner's immediate family members (who themselves are not African American, Hispanic, Asian, Native American, or female) participate in the business enterprise as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, City must make a judgment about the control the M/WBE-owner exercises vis-a-vis other persons involved in the business enterprise as it does in other situations, without regard to whether or not the other persons are immediate family members. If City cannot determine that the M/WBE-

owner, as distinct from the family as a whole, controls the business enterprise, then the W/MBE-owner has failed to carry her/his burden of proof concerning control, even though s/he may participate significantly in the business enterprise's activities.

- **Designee.** A person, firm, or legal entity authorized by the City to act on its behalf.
- **Good Faith Effort.** Required activity, as defined in this M/WBE Program and policy, to be performed by bidders, proposers, or departments and utilized to provide M/WBE businesses with a bona fide opportunity to participate in City contracts and other procurement opportunities with the goal of obtaining M/WBE participation in percentages equal to or in excess of those specified under the M/WBE policy.
- **Joint Venture.** A legal association between business enterprises that provides for a sharing of economic interest and risks. Each participant in the Joint Venture must be responsible for a clearly defined portion of work, must perform a commercially useful function, and must share in the ownership, control, management responsibilities, risks, and profits of the Joint Venture.
- **Minority individual.** An individual who is a citizen of the United States or a legal resident alien and who satisfies one or more of the following definitions as defined by the United States (U.S.) Census Bureau:
 - A) **African Americans:** U.S. citizens or lawfully admitted permanent residents having an origin in any of the black racial groups of Africa.
 - B) **Hispanic Americans:** U.S. citizens or lawfully admitted permanent residents of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese cultures or origins regardless of race.
 - C) **Asian Americans:** U.S. citizens or lawfully admitted permanent residents who originate from the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.
 - D) **Native Americans:** U.S. citizens or lawfully admitted permanent residents who originate from any of the original peoples of North America and who maintain cultural identification through tribal affiliation or community recognition.
 - E) **Women:** U.S. citizens or lawfully admitted permanent residents who are non-Hispanic white females. Minority women were included in their respective minority category.
- **Minority-owned Business.** A business located in the Pensacola Regional Area, that is at least 51 percent owned by one or more minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more minority individuals.

- **Pensacola Regional Area.** The market area of four Florida counties: Escambia, Santa Rosa, Okaloosa, and Walton as well as Mobile, Alabama.
- **Proposal.** A response to a Request for Proposal, Request for Information, Request for Qualifications, or City-Requested Informal Quote.
- **M/WBE.** A certified minority and woman business enterprise, as defined herein, located in the Pensacola Regional Area.
- **Small Business.** Certified small businesses had been defined as an independently owned and operated business located in the Pensacola Regional Area with: (1) 50 or fewer full time employees, and (2) a net worth of not more than \$1 million. The current SBE definition is divided into tiers:
 - *Tier one (1) small business* means an independently owned and operated business concern which employs fifteen (15) or fewer permanent full-time employees, and which has a net worth of not more than one million dollars (\$1,000,000.00). As applicable to sole-proprietorships, the one million dollars (\$1,000,000.00) net worth shall include both personal and business investments. Goods and services provided by tier one (1) small businesses may be purchased under the mayor's spending authority up to one-hundred thousand dollars (\$100,000.00).
 - *Tier two (2) small business* means an independently owned and operated business concern which employs fifty (50) or fewer permanent full-time employees, and which has a net worth of not more than one million dollars (\$1,000,000.00). As applicable to sole-proprietorships, the one million dollars (\$1,000,000.00) net worth shall include both personal and business investments.
- **Subcontractor.** A business enterprise that has a direct contract with a contractor to perform part of the work on a contract.
- **Supplier.** A business enterprise that furnishes needed items to a contractor; involved in the manufacturing or distribution of the supplies or materials; or otherwise warehouse and ships supplies.
- **Women-owned Business.** A business located in the Pensacola Regional Area that is at least 51 percent owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest is owned by one or more women who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women.

1.7 M/WBE Goals

1.7.1 Aspirational Goals

The City shall establish annual aspirational goals for M/WBE participation. Aspirational goals can be attained through any means of procurement activity. The aspirational goals represent the percentage of M/WBE participation that could be attained in the available market. The aspirational goals are based upon an analysis of factors such as size and scope of the contract and the availability of M/WBEs to perform various elements of the contract.

Based on the 2011 Comprehensive Disparity Study, the aspirational goals established for M/WBE utilization are summarized in the following chart:

**CITY OF PENSACOLA
PROPOSED M/WBE ASPIRATIONAL GOALS
BY PROCUREMENT CATEGORY**

Procurement Category	MBE Goal	WBE Goal
Construction Prime Contracting	12%	1%
Professional Services	3%	4%
Other Services	5%	2%
Goods & Supplies	10%	2%
Construction Subcontracting*	14%	10%

Source: 2011 Comprehensive Disparity Study, MGT of America, Inc.
*percentages of subcontracting not of the total contract

1.7.2 Project Specific Goals

The City or designee shall establish a project specific M/WBE goal that is a percentage of the dollar value of all services and goods the procurement contract requires (including any contingency). Minority and women business enterprise (M/WBE) project goals should be considered first before establishing small business enterprise (SBE) project goals. Small business enterprise goals should be considered after it has been determined that there are no M/WBE firms are available to bid on goods or services needed by the City. The City or designee may waive the goal requirement for a given procurement contract if it determines it to be in the best interests of City.

1.7.3 Mandatory Small Business Utilization

Where applicable by procurement regulations, the City can make purchases under \$25,000 from available and interested small business enterprises (SBEs) certified by the City of Pensacola. The City will request SBEs to provide telephone or written quotes or proposals based on the purchasing guidelines and requirements. Where appropriate the City may consider mandatory SBE subcontractor on projects where there are subcontracting opportunities and available SBEs identified by the City.

1.8 M/WBE Outreach, Assistance, and Business Development

The City or its designee is authorized to develop programs and activities to provide outreach to M/WBEs, and to assist the business development of such enterprises. These activities may include, but are not limited to:

- 1.8.1* Communicating information on the M/WBE Program through newsletters, the Internet, workshops, training activities, and other outreach activities conducted by the City or by other public or private entities in collaboration with the City.
- 1.8.2* Development of a resource directory to be provided to the M/WBE business community in the Pensacola Regional Area with information as to assistance

in bonding, financial management and/or accounting, continuing education, professional organization, and other resources that improve small business market access or capacity.

1.8.3 Such other programs or activities as the City may from time to time recommend.

1.9 Severability

If any section, paragraph, sentence, clause, phrase, or word of this policy is for any reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, or void, such holding shall not affect the remainder of this policy, which shall remain in full force and effect.

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Section 2.0: Program Administration

2.1 Policy Statement

The City is implementing strategies to solicit and utilize small, minority, and women businesses in the City's market area. This policy applies to small purchasing, competitive bids and proposals that are required for most procurement activity. The City also may extend this policy to construction management and/or design build contracts. The City will implement a M/WBE Program, which includes aspirational goals for M/WBE utilization in proportion to the availability of firms in particular areas of procurement.

2.2 Program Requirements

All bidders are required to make good faith efforts to ensure that businesses are not discriminated against on the basis of their race, ethnicity or gender, and to demonstrate compliance with these program requirements at or prior to the time of bid opening, or upon request by City. Bidders are required to ensure prospective subcontractors, vendors, suppliers, and other potential participants are not denied opportunities to compete for work on a City contract on the basis of their race, ethnicity, or gender, and must afford all firms, including those owned by racial or ethnic minorities and women, opportunities to participate in the performance of the business of the City to the extent of their availability, capacity, and willingness to compete.

2.2.1 M/WBE Listing

The City will maintain a database identifying M/WBEs on behalf of the City that will include the types of services provided by the business enterprise and contact information for the business enterprise. A list from the database will be made available to the City and bidders to assist them in their efforts to meet the requirements of the M/WBE program. The list prepared from the database will specify which firms the City has determined to be certified M/WBEs business enterprises, in accordance with the definitions for M/WBEs. This list is not exhaustive.

2.3 Annual and Project Specific Goal Setting

The City shall determine the present availability of all M/WBEs in the City's vendor database and make recommendations to the City for approval. User departments shall assist in the development of annual and project specific goals.

- A) Annual Aspirational Goals will be approved by the City Council at the beginning of each fiscal year. Annual Aspirational Goals can be achieved through all types of procurement.
- B) Project Specific M/WBE Goals may be set for all Formal Contracts and Purchases, except as provided otherwise in this Program.

2.4 Procurement Methods

2.4.1 Small Purchasing (up to \$500)

For purchases up to \$500, the using City department may select verbal quotes which are encouraged but not require. The City department is to select the lowest and most responsive quote meeting specifications. Notification of M/WBE firms is not required but encouraged. A list of City approved M/WBE firms can be located at [\(City's website\)](#).

2.4.2 Informal Purchasing (\$501 - \$25,000)

For purchases up to \$25,000, the Purchasing Office or the City department issues a written Request for Quote. Telephone quotes are acceptable when the purchase does not involve detailed specifications. The City buyer should obtain a minimum of three (3) written quotes, when possible, from three different vendors of which at least one should be a M/WBE firm, if available. A list of City approved M/WBE firms can be located at [\(City's website\)](#).

2.4.3 Formal Sealed Bids

All purchases of \$25,001 or more *may* be acquired through a formal sealed bid. The City has the option of using invitation to bid, RFPs, informal quotes, or to authorize the City staff to negotiate. Bids are to be awarded based on the lowest quotation by a responsible bidder meeting all conditions and requirements of the specifications. Notification to available M/WBE firms is required. A list of City approved M/WBE firms can be located at [\(City's website\)](#).

2.4.4 Professional Services

For purchases of professional services up to \$10,000, must obtain a minimum of one M/WBE in the solicitation for a request for quotes/proposal. For purchases in excess of \$10,000, the notification to available M/WBE firms is required. The City shall include M/WBE Program language in its solicitation to require bidders to submit their strategies to utilize M/WBEs.

2.4.5 Public Notice

Bid advertisements for construction, goods and services, which are required to be published by law, are published for two weeks in a newspaper that satisfied state requirements. Invitations to bid, or bid specifications, are posted on the City's website, DemandStar, and the Florida Panhandle Purchasing Group.

2.4.6 Procurement Cards

Procurement card users should use every effort to purchase items from small, minority-, and women-owned firms.

2.4.7 *Exempt Contracts*

Competitive price quotes are not required for the items below; however, before approval of the procurement, the City should investigate whether there are available M/WBEs that can compete for contract:

- Professional services of auditors, attorney, physicians, and consultants that are not governed by the Consultants Competitive Negotiations Act (CCNA), FS § 287.055.
- Emergency purchases.
- Sole source purchases.
- Purchase contracts.
- Negotiated purchases.

The City will consider M/WBEs that are identified as providers on states or cooperative agreements before the City utilizes one of these methods of procurement. The City will request firms on state contracts and cooperative agreements to provide their M/WBE utilization during the duration of their contract with the City.

2.4.8 *Multi-Year and Annual Contracts*

The City will rotate vendors for the award of these contracts to expand the opportunity for M/WBEs to be awarded contracts. Award of these contracts will be based on firms that meet all required contract specifications and qualifications.

2.4.9 *Splitting Orders*

Dividing procurement transactions in an attempt to circumvent these procedures is prohibited.

2.5 Counting M/WBE Participation

2.5.1 The City will only give bidders credit toward the M/WBE goal for those M/WBEs that:

- A) Are certified M/WBEs as of the bid or proposal due date;
- B) Will actually perform a Commercially Useful Function; and
- C) Will perform within the area(s) for which they are registered with the City unless the bidder provides documentation satisfactory to the City or his/her designee showing that the M/WBE has performed similar work in the past. The City will not give credit towards the goal for subcontracting to M/WBEs that are found to be Affiliates of the bidder.

2.5.2 A prime Bidder is required to meet the goal or demonstrate Good Faith Efforts for subcontracting with M/WBEs as set by the City or its designee.

Only the value of the work actually performed by a M/WBE shall be counted towards the goal, in accordance with the following provisions:

- A) **M/WBE Prime Contractor:** The percentage of work that a Prime M/WBE self-performs shall count toward M/WBE goal.
- If the M/WBE prime intends to self-perform the entire work, then 100 percent participation will be counted.
 - If the M/WBE self-performs a portion of the work and other portions are subcontracted, then the percentage of work the M/WBE prime performs is added to the percentage of work M/WBE subcontractors perform.
 - If the M/WBE self-performs a portion of the work and other portions of the work are subcontracted to non-M/WBEs then only the percentage of work performed by M/WBEs will be counted.
- B) **Non-M/WBE Prime Contractor:** Only the percentage of work performed by a M/WBE subcontractor(s) shall count toward M/WBE goal.
- C) **Joint Ventures:** When a M/WBE performs as a participant in a joint venture, only the distinct and clearly defined percentage of the work that the M/WBE performs with its own forces shall count toward the M/WBE goal.
- D) **Commercially Useful Function:** The expenditures to a M/WBE contractor toward M/WBE goals shall count only if the M/WBE is performing a commercially useful function on that contract.

2.6 Contract Award

All contracts will be reviewed for Program compliance prior to presenting to the City Council or Mayor for award. The City Purchasing Director shall certify to the City Council (in writing) that the award of any contract presented for approval is in compliance with the Program, including the percentages of M/WBE participation, bidder compliance with good faith efforts, and/or any waivers or special consideration granted to the bidder for non-compliance with Program requirements or non-achievement of Program goals.

2.7 M/WBE and Small Business Certification

The City will certify small, minority-, and women-owned business enterprises for identification with this Program. Reciprocal certification, with qualifications, of minority and women, businesses is accepted for purposes of this program from the State of Florida-Office of Supplier Diversity, State of Florida Department of Transportation, and Florida Minority Suppliers Development Council. The City will maintain a database identifying certified M/WBE that will include the types of services provided by the business enterprise and contact information for the business enterprise. The list of M/WBE firms will be located at [\(City's website\)](#).

2.8 Affiliate Relationships

Two entities are “Affiliates” of one another when: (a) one controls or has the power to control the other, (b) a third party or group of parties controls or has the power to control both; or (c) there is a significant relationship between the two entities. The City or its designee shall investigate claims of affiliate relationships when one of the entities is seeking to meet a M/WBE goal. Should the City determine that an affiliate relationship exists credit will not be given towards the goal.

2.9 Program Reports

The City or its designee shall prepare written reports four (4) times each fiscal year, which shall describe the City’s progress in meeting the annual goals for M/WBE utilization, and departments progress in meeting annual goals for small purchasing and the extent to which contractors are meeting project specific M/WBE goals. Copies of such reports shall be provided to the City Council and Mayor.

2.10 Good Faith Efforts

Bidders submitting bids or proposals to provide construction, goods and services to the City shall exercise good faith efforts to comply with the M/WBE goals for the contract as established under this program. Any act or omission by the City shall not relieve the contractor of this responsibility. The City reserves the right to reject any bid or proposal deemed non-responsive for failing to meet these requirements (and the City Council also reserves the right to reject any proposals from bidders who have previously failed to perform properly under a contract). The demonstration of Good Faith Efforts shall include forms to be used by each bidder/offeror to demonstrate M/WBE Program compliance. Bidders/offerors must demonstrate their efforts to comply with M/WBE Program requirements by submitting all supporting documentation with the bid/offer, or the bid/offer may be considered non-responsive. Bid Submission Documents as required by the City must be submitted with the bid/offer or revisions of the bid/offer. The bidder/offeror has the responsibility of demonstrating that its efforts meet the M/WBE program’s Good Faith Efforts requirements as stated herein.

Section 3.0: Good Faith Efforts (GFE) Compliance and Documentation

- 3.1** A bidder must document it has made Good Faith Efforts to solicit and negotiate with M/WBEs in compliance with this section, or met the proposed M/WBE goal. Failure to provide documentation as outlined in Section 3.3 may constitute grounds for rejection of the Bid. "Good Faith Efforts" are referred to in this Section as "GFEs".
- 3.2** If the bidder does not meet the proposed M/WBE goal, the bidder must submit their GFE documentation within forty-eight (48) hours of the date requested by the City or its designee. The City or its designee may require the GFE documentation described in this section or any additional documentation relating to M/WBE solicitations from any bidder at the City's sole discretion. For example, the City or its designee may request solicitation documentation from one or more bidders selected randomly by the City or its designee when bidders submit bids, and/or the City or its designee may request solicitation documentation from a select group of bidders who appear to have submitted the lowest bids. The City or its designee may further elect to request the solicitation documentation from a bidder who, in the City's judgment, requires additional monitoring because of previous instances of non-compliance.
- 3.3** Where project specific goals are established bidders must earn a minimum of seventy (70) points from any combination of the listed GFEs for their bid to be considered responsive. GFE documentation must coincide with the good faith efforts submitted on **Form B, Listing of Good Faith Efforts** which identifies methods utilized to accumulate the minimum points required. Not providing applicable GFE documentation within the required time period could result in the bid being considered non-responsive. GFE credit is awarded upon satisfaction by the City or its designee that GFE documentation is complete and meets the requirements. If a bidder meets the requirements for a sub-section below, then the full number of points will be counted. If a bidder does not meet the requirements of a sub-section below, then no points will be counted. Partial points will not be given. The GFE requirements that bidders must demonstrate to show that they actively and aggressively sought to achieve the M/WBE Goal are as follows:
- 3.3.1** *Notification of Subcontracting Opportunities (10 pts):* To receive credit for this GFE, a bidder must provide to the City or its designee a list of the areas in which the bidder sought subcontractors and suppliers. The bidder may report this information on **Form F, City of Pensacola Subcontracting Opportunities** or another form listing the same information.
- 3.3.2** *M/WBE Contact (10 pts):* To receive credit for this GFE a bidder must contact M/WBE businesses that reasonably could have been expected to submit a bid, for the areas the bidder intends to subcontract or purchase supplies at least **ten (10) days** before the bid date and notified them of the nature and scope of the work to be performed.
- A) **Solicitation Method:** The bidder shall make the M/WBE solicitations by e-mail, fax, U.S. Mail, or overnight courier service. Regardless of the method of contact, the solicitation must occur no less than **ten (10) Days** before bid opening. If the bidder contacts M/WBEs by U.S. Mail, the

City shall presume that the solicitation reached the M/WBE by the required deadline if the bidder: (a) mailed the solicitation at least **ten (10) Days** prior to the bid opening; and (b) documented the solicitation as required by Section C below.

- B) **Solicitation Content:** To receive credit for a solicitation, the substance of the solicitation must be sufficient to put the M/WBE on notice that the bidder is soliciting a bid from the M/WBE to participate in the contract up for award in one or more of the areas for which the M/WBE is certified.
- C) **Solicitation Documentation Requirements:** To receive GFE credit for contacting M/WBEs, a bidder shall document in writing for each M/WBE solicited: (a) the method of contact, (b) the date of the contact, (c) the business name and contact person for each of the M/WBE firms contacted, and (d) the commodity code or a description identifying the goods or services the bidder solicited from the M/WBE. In addition the City or its designee may require the bidder to provide a copy of the solicitation sent to M/WBEs (which must meet the content requirements per subsection 3.3.2B), along with the following documentation depending on the method of contact:
1. **For contacts made by fax:** The bidder must provide a confirmed fax transmission record showing that: (i) a fax was transmitted to a fax number maintained by the M/WBE, or (ii) a fax was directed to a fax number maintained by the M/WBE but did not go through due to reasons outside the bidder's control. If the bidder cannot provide the forgoing, the City or its designee may refuse to consider such contact in awarding GFE points.
 2. **For contacts made by e-mail:** The bidder must provide a copy of an e-mail confirmation notice showing that an e-mail was delivered to an e-mail address maintained by the M/WBE.
 3. **For contacts made by U.S. Mail:** The bidder must provide: (a) a copy of the solicitation that satisfies the content requirements in item B above; and (b) a certificate of mailing from the U.S. Postal Service certifying the date on which the bidder mailed the solicitation; and (c) an affidavit stating that the bidder mailed the solicitation to the M/WBE recipient on the date indicated in the certificate of mailing.
 4. **For contacts made by overnight courier:** The bidder must provide a copy of the solicitation that meets the content requirements set forth in subsection 3.3.2B above, along with a routing slip from the overnight courier showing the M/WBE's address, the date on which the Bidder sent the solicitation to the M/WBE recipient.

3.3.2 ***Making Project Documents Available (10 pts):*** To receive credit for this GFE, the bidder must: (a) make project documents available to interested M/WBEs no less than **ten (10) Days** before bid opening in one (1) of the three (3) ways described below; and (b) notify all M/WBEs contacted under GFE 3.3.2 of the way in which project documents will be made available. The

three (3) ways a bidder may make project documents available to M/WBEs are:

- A) Provide interested M/WBEs with a hard copy of the project documents via email, fax, regular mail or other means of document transfer; or
- B) Provide necessary physical access and adequate time for M/WBEs to fully review the project documents at the bidder's place of business within the Pensacola Regional Area or, if the bidder has no place of business within the Pensacola Regional Area, at an alternate location within the Pensacola Regional Area where the information can be reviewed at no cost to the M/WBEs; or
- C) Post the project documents on a website that M/WBEs can access at no cost. To receive credit for this GFE, the bidder's notice to M/WBEs must identify: (a) a telephone number or email address for requesting copies of the project documents.

3.3.4 Breaking Down Work (15 pts): To receive credit for this GFE, the bidder must: (a) notify M/WBEs as part of a bidder's M/WBE contacts under subsection 3.3.2 that the bidder is willing to divide or combine elements of work into economically feasible units on a case-by-case basis to facilitate M/WBE participation and (b) negotiate in good faith with any M/WBEs that request such divisions or combinations. A bidder may receive credit for this GFE only if it receives credit for subsection 3.3.2 (M/WBE Contacts).

3.3.5 Working with M/WBE Business Assistance Organizations (10 pts): To receive credit for this GFE, the bidder must document that it has performed one of the following within the **twelve (12) month** period before bid opening for a M/WBE Business Assistance Organization:

- A) Provide Location for M/WBE Business Assistance Organization Event: providing a meeting location for the M/WBE Business Assistance Organization to host a regular meeting or special event at no cost or at a reduced rate.
- B) Provide Training for M/WBE Business Assistance Organization Members: providing training or facilitating workshops aimed at increasing the capacity or skill level of the M/WBE Business Assistance Organization members, or participating in training or a workshop sponsored by the M/WBE Business Assistance Organization.
- C) Contracting with new M/WBE: documenting that the M/WBE Business Assistance Organization helped to identify a M/WBE with whom the bidder subsequently subcontracted work (whether on a City contract or other contract). The bidder will not receive credit for this GFE if the bidder contracts with a M/WBE the bidder has used on previous projects.

3.3.6 Host Pre-bid Meeting (20 pts): To receive credit for this GFE, the bidder must conduct a pre-bid meeting for M/WBEs no less than **three (3) Business Days** before bid opening. If the bidder host a pre-bid meeting, the pre-bid

meeting must take place within the city of Pensacola or, if the bidder has no place of business within the city of Pensacola, at an alternate location within the Pensacola Regional Area. No less than forty-eight (48) hours before the pre-bid meeting, the bidder must communicate the time and location of the meeting to the M/WBEs. A bidder may receive credit for this GFE only if it receives credit for subsection 3.3.2 (M/WBE Contacts).

- 3.3.7 *Bonding or Insurance Assistance (20 pts)*: To receive credit for this GFE, the bidder must assist a M/WBE in obtaining its own bond or insurance coverage for a City contract or another contract by (a) providing direct assistance within the **six (6) months** preceding the bid opening, and (b) showing that the M/WBE did not have access to the bond or insurance coverage before the bidder's assistance. To document satisfaction of this GFE, the bidder must submit: (a) the name of the M/WBE; (b) a description of the assistance the bidder provided; (c) the date the bidder provided the assistance; (d) the name of a contact person with the M/WBE who can verify that the bidder provided the assistance; and (e) any additional information requested by the City or its designee. No credit will be given for bonding or insurance assistance to an Affiliate of the bidder.
- 3.3.8 *Negotiate in Good Faith (15 pts)*: To receive credit for this GFE, the bidder must have documented that a M/WBE does not qualify to perform the services it bid. To document satisfaction of this GFE, the bidder must submit: (a) contract termination of the M/WBE; (b) the M/WBE's bid was higher than what was proposed by the subcontractor or supplier the bidder decided to use or higher than the bidder's cost of performing such work on its own; (c) the business enterprise that will be performing in place of the interested M/WBE is more qualified than the interested M/WBE, to the extent that such difference in qualification would materially impact the bidder's bid, or (d) there was a material deficiency with the interested M/WBE's bid (such as it being submitted late, containing inaccurate information, etc.).
- 3.3.9 *Financial Assistance (25 pts)*: To receive credit for this GFE, the bidder must provide one of the following types of assistance to a M/WBE during the **twelve (12) months** before bid opening: (a) assistance in obtaining equipment, a loan, capital, lines of credit, (b) joint pay agreements or guaranties to secure loans, the purchase of supplies, or letters of credit, including waiving credit that is ordinarily required; or (c) assistance in obtaining the same unit pricing with the bidder's suppliers as the bidder. Such assistance may be in connection with a City contract or any other contract. To receive credit for this GFE, bidders must document: (a) the name of the M/WBE; (b) the description of the assistance the bidder provided; (c) the date the bidder provided the assistance; (d) the name of a contact person with the M/WBE who can verify that the bidder provided the assistance was provided. No credit will be given for financial assistance to an Affiliate of the bidder.
- 3.3.10 *Joint Ventures (20 pts)*: To receive credit for this GFE, the bidder must document the existence of a Joint Venture agreement between the bidder

and a M/WBE that increases opportunities for M/WBE business participation, whether on City contracts or other contracts. To document satisfaction of this GFE, bidders must document that they have entered into such an agreement within the **twelve (12) months** before the bid opening, and such documentation must include; (a) the name of the M/WBE; (b) a description of the Joint Venture; (c) evidence of the date the bidder and the M/WBE entered into the agreement; and (d) the name of a contact person with the M/WBE who can verify the terms of the agreement. No credit will be given for a joint venture with an Affiliate of the bidder.

3.3.11 *Quick Pay Agreements (20 pts):* To receive credit for this GFE, bidders must: (a) provide the City or its designee with a copy of a policy containing the quick pay commitment that the bidder has adopted for the project and document that the bidder informed each M/WBE about the quick pay commitment as part of the bidder's M/WBE contacts under subsection 3.3.2; or (b) document that prior to bid opening the bidder made a written quick pay commitment to each M/WBE that will participate in the contract up for award. Including a statement in a bid solicitation letter indicating that the bidder will consider entering into quick pay agreements will not suffice. A bidder may receive credit under subpart (a) of this GFE only if it receives credit for subsection 3.3.2 (M/WBE Contacts). No credit will be given for agreements with an Affiliate of the bidder.

3.3.12 *M/WBE Participation on Non-City Contracts (15 pts):* To receive credit for this item the bidder must document that during the **eighteen (18) months** period before bid opening, the bidder paid M/WBEs on non-City contracts. The bidders must document for each non-City M/WBE subcontract: (a) the name of the project and the parties to the contract; (b) the name of the M/WBEs the bidder paid on the project; (c) the amount the bidder paid to each M/WBE during such period. Documentation to satisfy this requirement may include invoices showing the M/WBE has previously performed such work. The M/WBE firm must be certified and registered at the time of the City bid or proposal receipt. No credit will be given for amounts paid to an Affiliate of the bidder.

3.4 Waiver of Good Faith Efforts

The City or its designee shall be entitled (but not required) to waive the Good Faith Efforts requirement in a situation where the lowest bidder failed to comply with the Good Faith Efforts requirements ("Non-Compliant Bidder") but has proposed M/WBE utilization that is greater than that proposed by the next lowest bidder that complied with the Good Faith Efforts requirements and would otherwise be awarded the contract ("Compliant Bidder"). In determining whether to grant such waiver, the City will take into account:

- A) The cost difference to the City between the two bids;
- B) The difference in the level of M/WBE utilization proposed by the compliant and non-compliant bidders;

- C) The level of effort the compliant and non-compliant bidders undertook to meet the Good Faith Efforts requirement;
- D) The consistency in subcontractors the non-compliant bidder has proposed on City projects (i.e. whether or not the bidder consistently uses the same subcontractors on every bid);
- E) The consistency in M/WBE Goals the non-compliant bidder has proposed on City projects (i.e., whether or not the bidder consistently proposes the same M/WBE Goal); and
- F) Instances of past non-compliance with the Good Faith Efforts requirements on the part of the non-compliant bidder and any other factors deemed relevant by the City or its designee.

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Section 4.0: Program Compliance

- 4.1 A bidder or proposer is deemed to be compliant with the M/WBE requirements when:
- A) The Bidder or proposer has met the project goal; or
 - B) The Bidder or proposer has documented evidence of meeting the good faith efforts; or
 - C) The Bidder or proposer has demonstrated evidence that the bidder or proposer can and will self perform all aspects of the project.
- 4.2 Bidders shall provide with their bid or proposal, **Form A, M/WBE Utilization Commitment**, identifying the amount of M/WBE participation to meet M/WBE objectives; or
- 4.3 Provide with the bid or proposal, **Form B, Listing of Good Faith Efforts** if the project goal is not attained; or
- 4.4 Provide with the bid or proposal, **Form C, Statement of Intent to Perform Work without Subcontracting**, and upon request, information sufficient for the City or its designee to determine that the bidder does not customarily subcontract work on this type project. Such bidders will be required to document good faith efforts to provide equal opportunity to M/WBEs to participate in significant material supplier opportunities under the prime contract and identify its own minority and women employees by name and job title that will have a significant material role on the project.
- 4.5 Upon being named apparent low bidder, the bidder shall provide **Form D, Letter of Intent to Perform as a Subcontractor or Subconsultant**, complete with a description of the scope of services and dollar value from each M/WBE firm proposed at the time of bid for use on the contract.
- 4.6 Failure to submit the applicable forms may result in the bid being declared non-responsive. The City reserves the right to waive any irregularities in M/WBE documentation if the City finds it to be in its best interest to do so and award the contract.
- 4.7 Failure by any contractor to comply with such requirements as described in this document will constitute a breach of contract exposing the contractor to a potential termination of the contract or other appropriate remedy in accordance with the termination provisions of the contract.
- A) All documents and information submitted by a successful bidder will become a legal and binding part of the final contract document.
 - B) A finding by the City that any of the information submitted is inaccurate, false or incomplete will constitute grounds for a finding that a bid is non-responsive and may result in rejection of the bid or termination of the contract.
 - C) During the contract period, all M/WBE requirements will apply to change

orders, additions or replacements of subcontractors. The contractor is responsible for notifying the City of problems arising from M/WBE performance and possible contract changes prior to removing any M/WBE subcontractor or making major changes in their contract amendments.

- D) Problems arising out of either contractor or subcontractor non-compliance with the program requirements will be reviewed by the City or its designee.
 - E) The City or its designee will make a determination on the adequacy of the good faith efforts. The decision of the City shall be final and the contractor shall be notified in writing within ten (10) days of that decision.
 - F) The City reserves the right to waive any irregularities in M/WBE documentation if they can be resolved prior to award of the contract and the City finds it to be in its best interest to do so and award the contract.
- 4.8** The City or its designee may request information, documents or other materials from a contractor at any time for the purpose of determining whether the contractor is in compliance with the M/WBE Program. The contractor shall comply with all such requests within **three (3) Business Days**, unless otherwise agreed by the City in writing.

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Section 5.0: Post Award Requirements

- 5.1** Bidders shall have an affirmative, ongoing obligation to meet or exceed the committed M/WBE goal for the duration of the contract. The City may deem a contractor to be in violation of the M/WBE Program and in breach of its contract if at any time the City or its designee determines that: (a) the contractor will not meet the committed M/WBE goal; and (b) the reasons for the contractor's failure are in the City's judgment within the bidder's control. For example, if a bidder does not meet the M/WBE goal because the bidder terminated a M/WBE without cause or caused a M/WBE to withdraw from the project without justification, then the City could find the bidder to be in violation. The City reserve the right to conduct an audit of a contractor's work on an eligible project to confirm the contractor's compliance with this M/WBE program, including without limitation compliance with the covenant of non-discrimination, the good faith efforts documentation, and the M/WBE participation commitment.
- 5.2** **Exceptions.** A contractor shall not be deemed in violation of this Program for failure to meet the committed M/WBE Goal to the extent such failure is directly attributable to:
- 5.2.1** The City reducing the scope of a contract so as to eliminate or reduce work that was going to be performed by M/WBEs (whether through a change order, contract amendment, force account or otherwise); or
 - 5.2.2** A M/WBE's voluntary withdrawal from the project if the contractor demonstrates that such withdrawal was beyond the bidder's reasonable control, so long as the bidder complied with the Good Faith Efforts to replace the M/WBE with another M/WBE; or
 - 5.2.3** Termination or reduction in the work of a M/WBE, if the contractor demonstrates that such termination was consistent with the terms of this Program, and that the bidder complied with the Good Faith Efforts to replace the M/WBE with another M/WBE.
- 5.3** Bidders shall not terminate, replace, or reduce the work of a M/WBE that the bidder has counted toward meeting the committed M/WBE goal unless:
- 5.3.1** The M/WBE refuses to enter into a contract consistent with the M/WBE's Letter of Intent;
 - 5.3.2** The M/WBE's certification terminates;
 - 5.3.3** The M/WBE materially breaches its contract with the bidder;
 - 5.3.4** The M/WBE voluntarily withdraws from the contract for reasons not within the bidder's reasonable control.
- 5.4** Contractors shall provide the City or its designee written notice prior to replacing or terminating a M/WBE on a contract. The notice shall 1) identify the M/WBE and the contract; 2) state the reason for the termination or replacement, and 3) state the proposed date on which such termination or replacement will occur. Unless the

circumstances necessitate immediate termination or replacement, the bidder shall provide such notice to the City or its designee at least **five (5) Business Days** before the bidder terminates the M/WBE. The bidder shall further provide written notice to the M/WBE stating the reasons for the termination. Unless circumstances dictate otherwise, the bidder shall provide such notice before termination is to occur.

- 5.5** If a bidder elects to subcontract any portion of a contract that the bidder did not previously identify to the City as a subcontracting opportunity, or if the scope of work on a contract increases for any reason in a manner that creates a new M/WBE subcontracting opportunity (whether through a change order, contract amendment, inaccurate initial estimate by the bidder or otherwise), the bidder shall: (a) promptly notify the City or its designee of the new subcontracting opportunity and, (b) inform the City or its designee whether the bidder, existing M/WBE(s) or other subcontractor(s) can perform the new opportunity.

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Section 6.0: Documentation of Utilization and Payments

6.1 Bidders shall report to the City or its designee the total dollars paid to each subcontractor and supplier on each contract, and shall provide such payment affidavits, certifications or other documentation regarding payment to subcontractors as may be requested by the City. Such affidavits, certifications or documents shall be in the format specified by the City, and shall be submitted at such times as required by the City. Failure to provide such reports within the time period specified by the City may include, but not be limited to, withholding payment from the contractor and/or collecting liquidated damages.

6.1.1 Bidders are required to submit **Form E, Documentation of All Payments to Subcontractors, Suppliers, and Service Providers** with each periodic and final pay requests. Form E will include payments to non-M/WBEs as well as contracted M/WBEs.

6.1.2 Within **seven (7) days** of receipt by the prime contractor of each periodic or final payment, the prime contractor shall pay the subcontractor or suppliers based on work completed, services or materials provided under the subcontract. If any periodic or final payment to the subcontractor is delayed by more than seven days after receipt of the periodic or final payment by the prime contractor, the prime contractor shall pay the subcontractor interest, beginning on the eighth day, at the rate of one percent (1%) per month or fraction thereof on such unpaid balance as may be due.

Section 7.0: Violations and Remedies

7.1 Contractors and M/WBEs shall report any alleged M/WBE Program violations or unfair practices involving the M/WBE Program to the City or its designee within **five (5) Business Days** after the contractor or M/WBE first became aware of the act or omission in question. The City or its designee may reject as untimely any report submitted after such time. The City or its designee shall not accept reports of violations or unfair practices that are submitted more than 30 calendar days after the M/WBE first became aware of the act or omission in question.

7.2 Violation of the M/WBE Program by a contractor shall constitute a material breach of the contract, and shall entitle the City to exercise all rights and remedies that it may have at law or at equity for violation of the contract;

7.2.1 Terminate the contract for default;

7.2.2 Suspend the contract for default;

7.2.3 Withhold all payments due to the contractor under the contract until such violation has been fully cured or the City and the contractor have reached a mutually agreeable resolution;

7.2.4 Assess liquidated damages as provided in subsection 7.3; and/or,

7.2.5 Offset any liquidated damages and/or any amounts necessary to cure any violation of the M/WBE Program from any retainage being held by the City on the contract, or from any other amounts due to the contractor under the contract.

The remedies set forth herein shall be deemed cumulative and not exclusive, and may be exercised successively or concurrently, in addition to any other available remedy.

7.3 Liquidated Damages

In entering into a contract that is subject to the M/WBE Program, the contractor agrees to the following:

The City and the contractor acknowledge and agree that the City will incur damages if the contractor violates the M/WBE Program in one or more of the ways set forth below, including but not limited to loss of goodwill, detrimental impact on economic development and diversion of internal staff resources. The parties further acknowledge and agree that the damages the City might reasonably be anticipated to accrue as a result of such failures are difficult to ascertain due to their indefiniteness and uncertainty. Accordingly, the contractor agrees to pay the liquidated damages assessed by the City at the rates set forth below for each specified violation of the M/WBE Program. The contractor further agrees that for each specified violation the agreed upon liquidated damages are reasonably proximate to the loss the City will incur as a result of such violation:

- 7.3.1 **Failure to Meet M/WBE Commitment.** If the City determines upon completion or termination of a contract that the contractor did not meet the committed M/WBE commitment and that such failure is not otherwise excused under Section 6.0, the City may assess the lesser of: (a) \$30,000 or (b) the dollar difference between the committed M/WBE Goal and the contractor's actual M/WBE utilization;
- 7.3.2 **Using M/WBE as a Conduit.** If the contractor lists a M/WBE to receive credit toward a committed M/WBE goal with knowledge that the M/WBE will be acting as a conduit or will not be performing a commercially useful function reasonably commensurate with the payment amount for which the contractor will be seeking credit, the City may assess the lesser of: (a) \$20,000 or (b) the dollar amount the contractor indicated that it would pay such M/WBE in the M/WBEs contract (or if no contract has been signed, the M/WBE's Letter of Intent);
- 7.3.3 **Wrongful Termination or Replacement of M/WBE Services.** If the contractor terminates or replaces a M/WBE in violation of the M/WBE Program, the City may assess the lesser of: (a) \$20,000 or (b) the dollar amount of the work remaining to be performed by the terminated M/WBE at the time it was terminated (or if the M/WBE was not terminated because it was never retained, then, the dollar amount that the Contractor indicated it would pay the M/WBE in the M/WBE's letter of intent);
- 7.3.4 **Failure to Comply with M/WBE Program Following Termination or Withdrawal by M/WBE.** If the contractor fails to comply with the Good Faith Efforts requirements in replacing a M/WBE that is terminated or withdraws from work on a contract, the City may assess the lesser of: (a) \$20,000 or (b) the dollar amount of the work remaining to be performed by the M/WBE that withdrew or was terminated at the time of the termination or withdrawal;
- 7.3.5 **Failure to Comply with M/WBE Program to Add New Subcontractors.** If the contractor fails to comply with Good Faith Efforts when required in adding new subcontractors to a contract, or when the scope of work of a contract changes so as to create a new M/WBE subcontracting opportunity, or on a contract renewal, the City may assess the lesser of: (a) \$20,000; or (b) the dollar amount of the new or additional work;
- 7.3.6 **False Statements and Misrepresentations.** If the contractor makes a false statement, material misrepresentation or material misleading omission regarding any matter relevant to the M/WBE Program (including but not limited to information relating to good faith efforts, M/WBE utilization, M/WBE certification or payments to M/WBEs), the City may assess the lesser of: (a) \$25,000; or (b) if the misrepresentation relates to payment, the dollar difference between what the Contractor represented and the truth;
- 7.3.7 **Failure to Respond to Request for Information.** If the contractor fails to provide any report, documentation, affidavit, certification or written submission required under the M/WBE Program within the time period set

forth therein, the City may assess \$25 per day for each day that such report, documentation or written submission is overdue.

7.4 Dispute Resolution

- A) All actions taken by the City or designee to ensure the fair and equitable treatment of bidders, contractors and subcontractors or joint venture partners working on City projects or seeking work on City projects are done pursuant to the City's non-discrimination policy and shall not be construed as the City taking a position as to the merits of the dispute nor creating any privity of contract between the City and any contractor or subcontractor.
- B) Further, no bidders, contractors and subcontractors working on a City project or seeking work from the City shall have any claim against the City, its designee, and/or the City Council for any actions taken to ensure the fair and equitable treatment of subcontractors working on City projects or seeking work on City projects.
- C) In the event of any dispute arising out of or in any related to this Agreement, or any of the transactions or occurrences described or contemplated herein, the parties shall be obligated to follow the following dispute resolution procedures:
 - 1) First, the parties shall attempt to negotiate a resolution of the dispute by direct discussions. Such negotiation shall be initiated by written demand by one party to another, and the negotiations may occur with or without counsel, as the parties elect.
 - 2) Second, in the event that any dispute is not resolved under paragraph (a) any party may file a written complaint to the City Purchasing Director and/or their designee which shall attempt to negotiate a resolution of the dispute by direct discussions. Such negotiation shall be initiated by written demand by City Purchasing Director and/or their designee to the disputing parties, and the negotiations may occur with or without counsel, as the parties elect.
 - 3) If within three weeks of written demand for negotiation the parties have not resolved the dispute the City or its designee shall investigate the dispute and make a non-binding determination as to an equitable resolution and submit this finding to the City Attorney for review and if necessary further action by the City, if required.
 - 4) The parties shall have the option to mediate the dispute under the statutes and rules governing mediation in the State of Florida. The parties shall first attempt to select a mediator by mutual agreement. Any mediator selected, or sought to be appointed as provided below, shall be a mediator certified by the Supreme Court of Florida to mediate civil cases. If they cannot do so within thirty (30) business days following the expiration of the ninety (90) day negotiation period, the parties shall petition the then Chief Judge of the First Judicial Circuit of Florida to appoint an appropriate mediator. Such mediation shall be without prejudice to further voluntary or court-ordered mediation in the event it is unsuccessful. The costs of obtaining the appointment of a mediator, the fees and expenses of the mediation, or any

other cost or charge of the mediation shall be borne equally by the parties, unless otherwise agreed.

- 5) If any dispute is not resolved pursuant to the foregoing process, either party may resort to any other judicial or non-judicial remedies available to them under this Agreement and applicable law.

7.5 Arbitration

In responding to a bid or entering into a contract that is subject to the M/WBE Program, the contractor agrees to the following:

Any claim or dispute by a contractor against the City, or against any agent, employee, successor, or assign of the City, whether related to a bid, this policy, contract, or otherwise, and any claim or dispute related to a bid, contract, or the relationship or duties contemplated under this policy, including the validity of this arbitration clause, shall be resolved by binding arbitration by the American Arbitration under the Arbitration Rules then in effect. The location of any arbitration hearing shall be in the City of Pensacola, Florida. Any award of the arbitrator(s) may be entered as a judgment in any court of competent jurisdiction. Information may be obtained and claims may be filed at any office of the American Arbitration Association or at Corporate Headquarters, 335 Madison Avenue, Floor 10, New York, New York 10017-4605. This agreement shall be interpreted under the Federal Arbitration Act.

CITY OF PENSACOLA
M/WBE PROGRAM POLICY
DOCUMENTATION OVERVIEW

Form	Submission Requirements	Required Form
<p>M/WBE Utilization Commitment Lists the total dollar amount of such participation by M/WBE subcontractors and suppliers the Bidder will use on the project.</p>	Due with bid/proposal	Form A
<p>Listing of Good Faith Efforts (GFE) Indicates the actions you undertook to recruit and solicit minority vendors, subcontractors, vendors, or suppliers for this project.</p>	Due with bid/proposal if goal is not met (if subcontracting or purchasing supplies/materials)	Form B and Form A
<p>Statement of Intent to Perform Contract with Own Workforce Indicates that the bidder does not customarily subcontract elements of this type project, normally performs all elements of work on this project with his/her own current work force AND will not purchase any materials or supplies in the performance of the contract.</p>	Due with bid/proposal (self-performing and not purchasing supplies/materials).	Form C
<p>Letter of Intent to Perform as a Subcontractor or Subconsultant Identifies minority participation will be used on the project. Form D is signed by the M/WBE</p>	Within three (3) business days after notification of being the apparent low bidder. Must match firms listed on Form A .	Form D
<p>Documentation for All Payments to Subcontractors, Suppliers, and Service Providers Contractor shall provide with each pay request to the City all payments to contractors, subcontractors, supplies and service providers.</p>	Must submit with each pay request and final payment.	Form E
<p>Subcontracting Opportunities Bidders a list of the areas in which the bidder sought subcontractors and suppliers.</p>	Due with GFE documentation when requested.	Form F

CITY OF PENSACOLA
FORM B – LISTING OF THE GOOD FAITH EFFORTS

Attach FORM B to the Bid/Proposal if goal is not attained

Affidavit of _____

(Name of Bidder)

I have made a good faith effort to comply under the following areas checked. Bidder must earn at least 50 points from the Good Faith Efforts list for their bid to be considered responsive.

	1 – Notification of Subcontracting Opportunities (10 Points) bidder must provide to the City or their designee a list of the areas in which the bidder sought subcontractors and suppliers.
	2 – M/WBE Contact (10 pts) Contacted M/WBE businesses that reasonably could have been expected to submit a quote, for the areas the bidder intends to subcontract or purchase supplies at least ten (10) days before the bid date and notified them of the nature and scope of the work to be performed.
	3 – Making Project Documents Available (10 pts) Made the construction plans, specifications, and requirements available for review by prospective M/WBE businesses, or providing these documents to them at least ten (10) days before the bids are due.
	4 – Breaking Down Work (15 pts) Broken down or combined elements of work into economically feasible units to facilitate M/WBE participation.
	5 – Working with M/WBE Assistance Organizations (10 pts) Worked with minority and women trade, community, or contractor organizations identified by the City and included in the bid documents that provide assistance in recruitment of minority businesses.
	6 – Host Pre-Bid Meeting (20 pts) Conduct a pre-bid meeting for M/WBE within five (5) days of the bid opening.
	7 – Bonding or Insurance Assistance (20 pts) Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors or subconsultants.
	8 – Negotiate in Good Faith (15 pts) Negotiated in good faith with interested M/WBE businesses and did not reject them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.
	9 – Financial Assistance (25 pts) Provided assistance to an otherwise qualified M/WBE business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisted M/WBE businesses in obtaining the same unit pricing with the bidder's suppliers in order to help the M/WBE businesses in establishing credit.
	10 – Joint Ventures and/or Mentor Protégé (20 pts) Negotiated joint venture, partnership and/or mentor protégé arrangements with M/WBEs in order to increase opportunities for M/WBE participation when possible.
	11 – Quick Pay Agreements (20 pts) Provided quick pay agreements and policies to enable M/WBE to meet cash-flow demands.
	12 – M/WBE Participation on Non-City Contracts (15 pts) The Bidder must document that during the eighteen (18) month period before Bid Opening, the Bidder paid M/WBEs on non-City contracts.

In accordance with Policy the undersigned will enter into a formal agreement with the firms listed on the Minority, and Women, Business Utilization Commitment schedule conditional upon execution of a contract with the Owner. Failure to abide by this statutory provision will constitute a breach of the contract. The undersigned hereby certifies that he or she has read the terms of the Minority, and Women Business Enterprise commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: _____

Name of Authorized Officer: _____

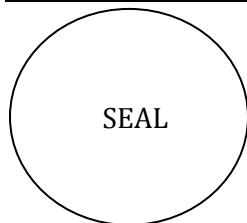
Signature: _____

Title: _____

State of _____, County of _____
Subscribed and sworn to before me this _____ day of _____ 20____

Notary Public

My commission expires _____



CITY OF PENSACOLA
FORM C
STATEMENT OF INTENT TO PERFORM WORK WITHOUT SUBCONTRACTING

Attach this form to the Bid/Proposal

Affidavit of _____
(Name of Bidder)

I hereby certify that it is our intent to perform 100% of the work required for the
_____ contract.
(Name of Project)

In making this certification, the Bidder states that the Bidder does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform all elements of the work on this project with his/her own current work forces; and

The Bidder agrees to provide any additional information or documentation requested by the owner in support of the above statement.

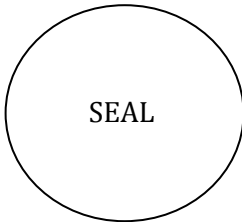
The undersigned hereby certifies that he or she has read this certification and is authorized to bind the Bidder to the commitments herein contained.

Date: _____

Name of Authorized Officer: _____

Signature: _____

Title: _____



State of _____, County of _____

Subscribed and sworn to before me this _____ day of _____ 20____

Notary Public

My commission expires _____

CITY OF PENSACOLA
FORM D - LETTER OF INTENT TO
PERFORM AS A SUBCONTRACTOR OR SUBCONSULTANT
(PROVIDE MATERIALS AND/OR SERVICES)

Project Name: _____ Project/Bid # _____

Name of Prime Bidder/Proposer: _____

Address: _____
Street City State Zip Code

Telephone: _____ Fax: _____ Email: _____

Name of Certified Vendor: _____

The undersigned intends to perform work in connection with the above project as

____ Minority Business Enterprise ____ Women's Business Enterprise
____ Small Business Enterprise

The undersigned is prepared to perform the following described work or provide materials or services in connection with the above project (specify in detail particular work items, materials or services to be performed or provided):

Description of work to be performed by certified vendor:

Subcontracting at any tier must be reported and is subject to all M/WBE compliance requirements. This form shall be used for M/WBE subcontracting at any level.

Date: _____

(Name & Phone No. of M/WBE Company)

(Title of Authorized Officer)

(Signature)

Certification #

Vendor #

THE BIDDER MUST GET THIS FORM COMPLETED BY THE SUBCONTRACTORS/SUPPLIERS

CITY OF PENSACOLA
 FORM E - DOCUMENTATION FOR ALL PAYMENTS TO
 SUBCONTRACTORS, SUPPLIERS, AND SERVICE PROVIDERS

Prime Contractor/Architect: _____

Address & Phone: _____

Project Name: _____

Pay Application #: _____ Period: _____

Current Requested Payment Amount: _____

The following is a list of payments to be made to all contractors/suppliers & other providers on this project for the above-mentioned period.

Firm Name and Address	*M/WBE Category	Amount to be Paid form this pay Request	Total Payments to date	Total Amount Committed

*M/WBE categories: African American (**B**), Asian American (**A**), Hispanic (**H**), Native American (**N**), Woman (**W**), Small (**S**)

Date: _____ Approved/Certified By: _____

Name

Title

Signature

****THIS DOCUMENT MUST BE SUBMITTED WITH EACH PAY REQUEST & FINAL PAYMENT****

