



BOSTON HOUSING
AUTHORITY

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SECTION 00800

MINORITY AND WOMEN'S PARTICIPATION PROVISION (MWPP)

for

BHA JOB NO. _____

1.01 GENERAL

A. This section summarizes goals for the project (the "Project") for the utilization of minority and women workers and minority business enterprises ("MBEs") and women's business enterprises ("WBEs") under the Contract. This section also summarizes goals for BHA's purchasing of supplies and services not related to construction.

B. Other duties and requirements of law that may not be specified in this section apply and are inherently a part of the Contract.

1.02 UTILIZATION OF MINORITY AND WOMEN WORKERS AND MBEs AND WBEs

The Boston Housing Authority's Minority and Women's Participation Provision ("MWPP"), consisting of Sections 00800 through 00800C, sets out certain affirmative action goals for the Contract. The Contractor shall take affirmative action to meet the minority and women workforce goals and minority and women's business enterprise utilization goals for the Project set out herein.

A. Minority Workforce Goals. The Contractor and each of its Subcontractors shall take affirmative action to employ and maintain Minority workers that perform a total of *FORTY PERCENT (40 %)* of the total employee person hours under the Contract.

B. Women Workforce Goals. The Contractor and each of its Subcontractors shall take affirmative action to employ and maintain Women workers that perform a total of *TWELVE PERCENT (12 %)* of the total employee person hours under the Contract.

C. Utilization of MBEs.

1. Agency-wide Goals. The BHA's goal for the utilization of MBEs is *TWENTY PERCENT (20 %)*. The Contractor for supplies or services unrelated to construction shall take affirmative action to expend twenty percent of the Contract price to MBEs for the procurement of goods, supplies, and/or services under the Contract if the nature of the Contract permits.

2. Construction & Design Work Goals. The **Project goal** for the utilization of MBEs for construction and construction design is *TWENTY-FIVE PERCENT (25 %)*. The Contractor shall take affirmative action to expend twenty-five percent of the Contract price to MBEs to procure construction work, supplies, and goods and/or services for the Project under the Contract. The Contractor can self-perform as an MBE or joint-venture with MBEs, subcontract to MBEs, or purchase materials/goods or other services from MBEs.

D. Utilization of WBEs.

1. Agency-wide Goals. The BHA's goal for the utilization of WBEs is *FIFTEEN PERCENT (15 %)*. The Contractor for supplies or services unrelated to construction shall take affirmative action to expend fifteen percent of the Contract price to WBEs for the procurement of goods, supplies, and/or services under the Contract if the nature of the Contract permits.

2. Construction & Design Work Goals. The **Project goal** for the utilization of WBEs for construction and construction design is *FIFTEEN PERCENT (15 %)*. The Contractor shall take affirmative action to expend fifteen percent of the Contract price to WBEs to procure construction work, supplies, and goods and/or services for the Project under the Contract. The Contractor can self-perform as a WBE or joint-venture with WBEs, subcontract to WBEs, or purchase materials/goods or other services from WBEs.

E. Required Certification. Only MBEs and WBEs certified by the Massachusetts Supplier Diversity Office (SDO) or the City of Boston's Supplier Diversity Program (SDP) will be deemed MBEs and WBEs to demonstrate compliance with the MWPP. If an SDO or SDP-certified MBE or WBE is not performing work on the contract, such MBE or WBE participation will not contribute towards the utilization goals.

1.03 REQUIRED SUBMITTALS FOR CONSTRUCTION CONTRACTS.

The Contractor shall, in accordance with Section 3 of Section 00800A of the MWPP, complete and submit to the BHA the Required Submittals within five (5) business days of bid opening. The Required Submittals are contained in the Boston Housing Authority Minority and Women Participation Provision Forms ("MWPP Forms") in Section 00800B of the MWPP.

1.04 EXTENSION OF TIME FOR SUBMITTAL.

The Contractor may, in accordance with Section 4 of Section 00800A of the MWPP, request an extension of time for making the Required Submittals

1.05 WAIVER OF MWPP UTILIZATION GOALS.

The Contractor may, in accordance with Sections 7 and 9 of Section 00800A of the MWPP, request a waiver of the MWPP goals set out in this section. *Waiver requests should be directed to the Director of Civil Rights at the BHA, 9th Floor, 52 Chauncy Street, Boston, MA 02111. Waiver requests may be mailed, emailed, faxed, or hand-delivered.*

1.06 INCREASE IN CONTRACT PRICE.

If there is an increase in the Contract price attributable to the selection of one or more alternates and/or to the use of unit prices, the Contractor shall, in accordance with Section 12 of Section 00800A of the MWPP, conform the Required Submittals to reflect such increase. If there is an increase in the Contract price attributable to change orders or other adjustments, the Contractor may, in accordance with such Section 12, be required to revise its Required Submittals to reflect such increase.



1.07 EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION REQUIREMENTS.

The Contractor agrees to comply with all applicable Federal, State or other governmental rules, regulations and requirements relating to equal opportunity and affirmative action in construction projects (see Specifications section in Section 00800C of the MWPP).



SECTION 00800A

MINORITY AND WOMEN'S PARTICIPATION PROVISION (MWPP)

TABLE OF CONTENTS

Page		
Section 1:	Definitions	2
Section 2:	Utilization of Minority and Women's Business Enterprises.....	3
Section 3:	Required Submittals.....	3
Section 4:	Extension of Time for Submittal.....	3
Section 5:	Penalty for Failure to Make Required Submittals.....	3
Section 6:	Review of Required Submittals	4
Section 7:	Waiver of MBE/WBE Requirements	4
Section 8:	Utilization of Minority Workers	4
Section 9:	Waiver of Minority Workforce Requirements	4
Section 10:	Joint Venture Certification	5
Section 11:	Compliance Monitoring after Contract Award	5
Section 12:	Increase in Contract Price	6
Section 13:	No Substitution for Designated MWPP Subcontractors	6
Section 14:	Enforcement.....	7
Section 15:	Penalties for Noncompliance.....	7
Section 16:	Access to Documents.....	8
Section 17:	Equal Opportunity and Affirmative Action Requirements	9
Section 18:	Required Clauses	



SECTION 00800A

MINORITY AND WOMEN'S PARTICIPATION PROVISION (MWPP)

Statement of Provision

The Boston Housing Authority ("BHA") has established the following provision to promote the utilization of minority and women business enterprise ("M/WBEs") on BHA projects. This Provision shall be incorporated in its entirety in all BHA contracts and apply to all contractors.

1. Definitions.

For the purposes of this Provision, the following terms have the following meanings:

- 1.1 Agency-wide Goals means the Boston Housing Authority's aspirational goals for the total dollars spent on goods, supplies, and services by or from an MBE or WBE set out in Section 00800.
- 1.2 BHA means the Boston Housing Authority.
- 1.3 Bidder means any individual, partnership, joint venture, corporation, or other entity which submits a general bid to the BHA for performance of construction work;
- 1.4 Contract means the contract executed or to be executed between a General Contractor or proposer and the BHA for performance of construction work, professional services, or purchase of goods of which this Provision is a part.
- 1.5 Contractor means the individual, partnership, joint venture, corporation, or other entity that has executed the contract with the BHA.
- 1.6 Minority Business Enterprise ("MBE") means a business enterprise owned and controlled by 51% or more by one or more minority persons and certified as a MBE by the SDO pursuant to M.G.L. c. 7, § 58 or certified by the City of Boston's Supplier Diversity Program (SDP).

M.G.L. c. 7, § 58 defines an MBE as follows: "Minority business enterprise" or "MBE", for the purpose of receipt of services from the Supplier Diversity Office (SDO), means a business enterprise that is owned and controlled by one or more socially or economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such persons include, but are not limited to, African Americans, Cape Verdeans, Western Hemisphere Hispanics, Asians, American Indians, Eskimos, and Aleuts. For purposes of section 61 and of section 40N of chapter 7, the term "minority owned business" shall have the same meaning as "minority business enterprise."
- 1.7 Perform means the doing of work by a contractor with its own organization.
- 1.8 Services means work supplied to the Contractor in connection with its performance of this Contract, including rental of equipment, trucking, security, and other similar services, but not including insurance, bonding, or other financial services.



BOSTON HOUSING AUTHORITY

- 1.9 Subcontractor means any individual, partnership, joint venture, corporation, or other entity under contract with the Contractor (or any of its Subcontractors) to perform work under this Contract.
- 1.10 Supplier Diversity Office ("SDO") means the Commonwealth's Supplier Diversity Office as designated by M.G.L. c. 7, § 61 and § 58. The office is the successor to the State Office of Minority and Women Business Assistance ("SOMWBA") pursuant to 425 CMR 2.00.
- 1.11 Supplier Diversity Program ("SDP") means Minority Business Enterprise and Women Business Enterprise certification with the City of Boston's Supplier Diversity Program.
- 1.12 Supply means the provision of any goods or services by a vendor to the Contractor. An MBE or a WBE (as defined below) that merely acts as an agent or a passive conduit in connection with the provision of goods or materials, or an MBE or a WBE that does not assume any financial risk or control over goods and materials provided shall not be considered a vendor or supplier under this definition.
- 1.13 Utilization Goals means the total dollar amount of the contract spent on MBE or WBE General Contractor, Subcontractor, and/or supplier of goods/services set out in Section 00800.
- 1.14 Women Business Enterprise ("WBE") means a business enterprise owned and controlled by 51% or more by one or more women and certified as a WBE by SDO pursuant to M.G.L. c. 7, § 58 or SDP Certified.
- M.G.L. c. 7, § 58 defines a WBE as follows: "Women business enterprise" or "WBE", for the purpose of receipt of services from SDO means a business enterprise that is both owned and controlled, by one or more women who have invested in an ongoing business free of conversion rights. For purposes of section 61 and of section 40N of chapter 7, the term "women owned business" shall have the same meaning as "women business enterprise."
- 1.15 Workforce Goals means the total labor hours performed by a minority and/or women worker under the Contract set out in Section 00800.

2. Utilization of MBEs and WBEs. Contractor/Bidders shall take affirmative action to meet the MBE and WBE utilization goals for work and/or for the supply of goods and/or services set out in Section 00800. Contractor/Bidders shall self-perform as an M/WBE or joint-venture with M/WBEs, subcontract to M/WBEs, or purchase materials/goods or other services from M/WBEs for the performance of the Contract.

3. Required Submittals for Construction Contracts. Within five (5) business days of bid opening the apparent low general bidder shall complete and submit to the BHA signed copies of the following documents (collectively, the "Required Submittals") contained in Section 00800B:

3.1 Attachment MWPP1, entitled "Contractor's Certification" ("Attachment MWPP1"), if not submitted with bid;

3.2 Attachment MWPP2, entitled "MBE/WBE Utilization Form" ("Attachment MWPP2"); and



BOSTON HOUSING AUTHORITY

3.3 Attachment MWPP3, entitled "Letter of Intent", for each MBE and WBE listed in the general bidder's Attachment MPP2 as providing materials and/or construction services for the project.

In addition, the BHA may request any other general bidder to make the Required Submittals and such general bidder shall do so within five (5) business days of receipt of the BHA's request. The BHA shall make any such request in writing.

4. Extension of Time for Submittal. The apparent low general bidder may request an extension of time for making the Required Submittals, provided that:

- 4.1 The request is made in writing; and
- 4.2 Is made before the initial 5-day period for making the Required Submittals has expired; and
- 4.3 Sets out with specificity the reasons for the request.

The BHA will respond within two (2) business days of its receipt of a request for an extension of time. If the BHA does not respond to the request for an extension of time in a timely manner, the general bidder will be deemed to have been granted an extension of five (5) business days.

5. Penalty for Failure to Make Required Submittals. Failure to submit the Required Submittals in a timely manner may cause the BHA to reject the general bidder's bid.

6. Review of Required Submittals. The BHA will review the Required Submittals for compliance with the BHA's MWPP. Only MBEs and WBEs certified by the SDO or SDP will be deemed MBEs or WBEs for the purpose of demonstrating compliance with the MWPP.

If after reviewing the Required Submittals the BHA determines that a general bidder has not met the affirmative action obligations established for the job in accordance with MWPP requirements, the BHA may in the exercise of its discretion afford that bidder an opportunity to amend its Required Submittals by the addition, deletion and/or substitution of MBEs and/or WBEs.

If the BHA has permitted a general bidder to amend its Required Submittals by the addition, deletion and/or substitution of MBEs and/or WBEs, that bidder shall promptly submit to the BHA its amended Attachment MWPP2, together with an Attachment MWPP3 for each new MBE and/or WBE.

7. Waiver of MBE/WBE Requirements. If, despite a best faith effort, the apparent low general bidder or Contractor is unable to meet the MBE/WBE goals established for the job, it may request a waiver, either in full or in part, of the MBE/WBE goals, provided that:

- 7.1 The request is made in writing; and
- 7.2 Is made before the initial 5-day period for making the Required Submittals has expired; and
- 7.3 Is submitted with such of the Required Submittals as may be made; and
- 7.4 Sets out with specificity the reasons for the request. (Provide documentation demonstrating all the efforts undertaken including but not limited to the types and modes of outreach events to MBEs and/or WBEs, list of MBEs



BOSTON HOUSING AUTHORITY

and/or WBEs directly contacted, frequency and timeline of communication efforts, and any other compelling best faith efforts.)

Upon receiving a request for a waiver of the MBE/WBE goals established for the job, the BHA will determine whether there is reasonable cause to waive the MBE/WBE goals for the job, either in full or in part. If in the exercise of its discretion the BHA determines that there is reasonable cause to grant the request for a waiver, it will notify the general bidder or Contractor in writing of its decision and its reasons therefor.

In no event will the BHA's failure to act on a request for a waiver of the MBE/WBE goals for a job be deemed a grant of such a waiver.

8. Utilization of Minority and Women Workers. The Contractor and each of its Subcontractors will take affirmative action to assure that the percentages set out in Section 00800 of all person hours contributed in all job categories of construction work will be contributed by minority and women employees.

9. Waiver of Minority Workforce Requirement. If, despite its best efforts, the Contractor or any of its Subcontractors is unable to comply with the Minority workers requirements established for the job, the Contractor may request a waiver, either in full or in part, of such requirements, provided that:

- 9.1 The request is made in writing; and
- 9.2 Is made in a timely manner; and
- 9.3 Sets out with specificity the reasons for the request, including recruitment or outreach efforts undertaken.

Upon receiving a request for a waiver of the Minority workforce requirements established for the job, BHA will meet with the Contractor in order to determine whether there is reasonable cause to waive such requirements for the job, either in full or in part. If in the exercise of its discretion the BHA determines that there is reasonable cause to grant the request for a waiver, it will notify the Contractor in writing of its decision and its reasons therefor.

In no event will BHA's failure to act on a request for a waiver of the Minority workforce requirements for a job be deemed a grant of such a waiver.

10. Joint Venture Certification. Upon the BHA's certification that a venture between an MBE and a non-minority-owned business, or between a WBE and a non-women-owned business, is as to form and substance, a legitimate joint venture, such a joint venture may be utilized, as provided herein, toward fulfillment of the goals established by the MWPP for the job. If the Contractor or a Subcontractor is certified by the BHA as a legitimate joint venture, the creditable dollar amount of the work, goods or services performed or supplied by the MBE or WBE partner of the joint venture will be determined by the BHA in its sole discretion. In taking its determination as to the dollar amount to credit toward the MWBE goals, the BHA will consider, among other things, the amount of the initial capital contribution of the MBE or WBE partner to the joint venture and the amount of joint venture proceeds to be distributed and actually distributed to said MBE/WBE partner of the joint venture. The Contractor and any proposed parties to a joint venture shall provide to the BHA upon request such information or permit access by designees of the BHA, with or without prior notice, to any books, records, accounts, contracts or other sources of information necessary both to an initial determination or

certification and to on-going and final reviews of the business of the joint venture, in order to determine compliance with this Section 10.

11. Compliance Monitoring after Contract Award

11.1 Prior to the execution of any Subcontract, whether prior to or after commencement of work under the Contract, the Contractor shall notify the BHA of the name, address, telephone number and MBE/WBE status of the Subcontractor with which it intends to contract for work and/or materials and/or supplies, the nature of the work and/or materials and/or supplies for which it intends to contract, the projected dates for commencement and completion of such work and/or provision of materials and/or supplies.

11.2 A Contractor performing a construction contract shall also submit a completed and signed Attachment MWPP1A, entitled "Subcontractor's Certification" ("Attachment MWPP1A") for such Subcontractor.

11.3 At the end of each week following commencement of work under the Contract and continuing through to the completion of the work the General Contractor for a construction contract and each of its Subcontractors shall complete and submit to the BHA Attachment MWPP5, entitled "Weekly Utilization Report" ("Attachment MWPP5") showing for the preceding week the hours worked in each trade by each employee and identifying the minority status and sex of each such employee.

11.4 The Contractor shall submit with each application for payment under the Contract a completed and signed Attachment MWPP7, entitled "MBE/WBE Utilization Progress Report" ("Attachment MWPP7").

12. Increase in Contract Price. If there is an increase in the Contract price attributable to the selection of one or more alternates and/or to the use of unit prices in awarding the Contract, the Contractor shall submit a revised Attachment MWPP2 to reflect the increased price and, where applicable, an Attachment MWPP3 for each new MBE and/or WBE, or for each MBE and/or WBE doing additional work and/or providing additional material and/or supplies to the Contractor for an increased price. If there is an increase in the Contract price after execution attributable to change orders or other adjustments, the BHA may require the Contractor to submit a revised Attachment MWPP2 and, where applicable, new or revised Attachment MWPP3s.

13. No Substitution for Designated MWPP Subcontractors. Except with the prior express written consent of the BHA the Contractor shall not substitute for any MBE or WBE named in its Attachment MWPP2 as performing construction work or providing materials and/or supplies its own workforce or capacity or the workforce or capacity of any other subcontractor. If the Contractor is unable, for reasons beyond its control, to complete the work of the Contract using the MBEs or WBEs named in its Attachment MWPP2, the Contractor may request that the BHA accept the addition, deletion and/or substitution of one or more MBEs or WBEs, or that the BHA waive the Contractor's MBE/WBE commitment under the MWPP to the extent necessary to bring the Contractor into compliance, or that the BHA accept an alternative commitment consistent with MWPP goals, provided that:

13.1 The request is made in writing; and

13.2 Is made promptly after the issue arises; and

13.3 Sets out with specificity the reasons for the request.

Upon receiving such a request, the BHA may meet with the Contractor in order to determine whether there is reasonable cause to grant the request, either in full or in part, or it may make its determination based upon written submissions and/or telephone interviews. If in the exercise of its discretion the BHA determines that there is reasonable cause to grant the Contractor's request, it will notify the Contractor in writing of its decision and its reasons therefor.

In no event will the BHA's failure to act on such a request be deemed a grant of the request.

14. Enforcement.

14.1 If at any time the BHA determines that the Contractor is not in compliance with its obligations and commitments under the MWPP, it shall notify the Contractor in writing of such finding and of any sanctions it intends to apply. Such written notice shall give the Contractor an opportunity to meet with representatives of the BHA to present information demonstrating that it is in compliance, or in mitigation of its failure to comply and shall appoint a time and place for such meeting, subject to the Contractor's availability. The BHA may require the attendance of any Subcontractor at any such meeting.

14.2 Following any meeting held with a Contractor pursuant to Section 14.1 the BHA shall make a finding as to whether the Contractor is in compliance with its obligations and commitments under the MWPP and shall notify such Contractor in writing of such finding, the information upon which such finding was based and the sanctions, if any, it intends to apply. Such finding shall be final and without recourse, unless it is made in bad faith and without reasonable cause.

15. Penalties for Noncompliance. If, during the term of the Contract the BHA determines that the Contractor is not in compliance with its obligations and commitments under the MWPP, the BHA may impose on the Contractor, or require the Contractor to impose on any Subcontractor, any one or more of the following penalties:

15.1 The recovery from the Contractor of one percent (1%) of the Contract price or \$1,000.00, whichever is lesser, in the nature of liquidated damages for each week that the Contractor fails or refuses or has failed or refused to comply; or if a Subcontractor is in noncompliance, the recovery from the Contractor, to be assessed by the Contractor as a back charge against the Subcontractor, one percent (1%) of the subcontract price, or \$1,000.00, whichever is lesser, in the nature of liquidated damages for each week that the Subcontractor fails or refuses or has failed or refused to comply;

15.2 The suspension of any payment or part thereof due under the Contract, including, where applicable, payment of amounts that should have been paid to an MBE or WBE in accordance with the Contractor's commitment, until such time as the Contractor, or any Subcontractor, where applicable, is able to demonstrate its compliance with the terms of the MWPP;

15.3 Requiring the Contractor to subcontract with an MBE or WBE for any contract or specialty item, or to purchase any goods or services from an MBE or WBE in accordance with the MBE/WBE utilization goals for the Contract and/or the Contractor's commitment under the Contract to utilize MBEs and WBEs for the work of the Contract;



15.4 The termination or cancellation of the Contract, in whole or in part, unless the Contractor or any Subcontractor, where applicable, is able to demonstrate within a reasonable specified time its compliance with its obligations and commitments under the MWPP;

15.5 The retention in connection with final acceptance and final payment of up to five percent (5%) of the Contract price (as adjusted by change orders or other amendments), where the Contractor and/or any Subcontractor has refused to demonstrate compliance with the Contractor's commitment under the Contract to utilize MBEs and WBEs in accordance with the MWPP;

15.6 Denial to the Contractor of the right to participate in any future contracts awarded by the BHA for a period of up to three (3) years.

16. Access to Records and Documents. The Contractor and its Subcontractors shall provide to the BHA upon the BHA's request access during regular business hours to any records, documents and other information prepared and/or kept by the Contractor and/or its Subcontractors in the regular course of business relevant to the Contractor's and/or its Subcontractors' compliance with the BHA's MWPP and shall promptly provide to the BHA upon its request copies of any and all such records, documents and other information.

17. Equal Opportunity and Affirmative Action Requirements. In addition to satisfying the specific requirements of this MWPP, the Contractor agrees to comply with all other applicable Federal, State or other governmental rules, regulations and requirements relating to equal opportunity and affirmative action in construction projects (see Section 00800C).