

# EMERGING BUSINESS ENTERPRISE PROVISIONS – CITY OF MILWAUKEE

## 1. General

- A. In accordance with Chapter 360 of the Milwaukee Code of Ordinances Emerging Business Enterprise (EBE) participation is required in all contracting activities of the (DOA) Business Operations Division-Procurement Services Section. The ordinance requires that certified EBEs be utilized for 18% of the total dollars annually expended through commodity or service contracts. In an effort to meet these requirements, the Purchasing Director, as contracting officer for the City, requires all bidders to utilize EBEs as subcontractors and/or material suppliers on all contracts. **For this contract, bidders are required to achieve a minimum of 18% EBE participation.** Please note that firms that were certified as EBEs under the name of the old program will continue to be eligible to participate in the EBE Program.
- B. The vendor shall prepare and submit accurate and timely EBE utilization forms and reports to the (DOA) Business Operations Division-Procurement Services Section. The report shall include, but not be limited to, EBE participation for subcontractors (Form A), EBE monthly report (Form D), and EBE subcontractor payment certification (Form E) forms as directed. Failure to submit the forms and/or reports to the (DOA) Business Operations Division-Procurement Services Section may result in disqualification of future bids, delay of payments, or other sanctions deemed appropriate. The final contract payments will not be made until final EBE monthly report (Form D) and EBE subcontractor payment certification (Form E) are on file with the (DOA) Business Operations Division-Procurement Services Section.
- C. During the performance of this contract, the (DOA) Business Operations Division-Procurement Services Section reserves the right to conduct compliance reviews. If the contractor is not in compliance with the specifications, the (DOA) Business Operations Division-Procurement Services Section will notify the contractor in writing of the corrective action that will bring the contractor into compliance. If the contractor fails or refuses to take corrective action as directed, except in the case of fraudulent information, the (DOA) Business Operations Division-Procurement Services Section may take one or more of the following actions listed below:
1. Terminate or cancel the contract, in whole or in part.
  2. Possible debarment of the contractor from bidding.
  3. Withhold payments on the contract.
  4. Any other remedy available to the City by law or in equity.

## II. Definitions

- A. *"EMERGING BUSINESS ENTERPRISE" (EBE)* means a small business concern that is owned, operated and controlled by one or more individuals that are at a disadvantage. The individuals must have day-to-day operational and managerial control and interest in capital, financial risks and earnings commensurate with the percentage of ownership.
- B. *"INDIVIDUAL AT A DISADVANTAGE"* means a person who is a citizen or lawful permanent resident of the United States and who has experienced and who continues to experience substantial difficulty in achieving business-related success as defined in subsections 11 and 12 of Chapter 360 of the Milwaukee Code of Ordinances.
- C. *"OWNED/OPERATED AND CONTROLLED"* means a business which is one of the following:
1. A sole proprietorship legitimately owned and operated and controlled by an individual as defined in sub. 12.
  2. A partnership or joint venture legitimately owned, operated and controlled by disadvantaged individuals who are at a disadvantage and who own at least 51% of the beneficial ownership interests in the enterprise and who hold at least 51% of the voting interests of the enterprise.
  3. A corporation legitimately owned, operated and controlled by one or more individuals who are at a disadvantage and who own at least 51% of the outstanding shares and who hold at least 51% of the voting interests of the corporation.

### III. EBE Utilization Requirements

- A. **Each vendor shall utilize EBE to a minimum of 18% on this contract.** Note that the vendor shall be required to attain EBE participation on their base bid (excluding specified, alternatives, and change orders). EBE commitments relative to contract award shall be based upon the approved EBE participation form (Form A).
- B. The determination of EBE utilization shall be based on the following criterion:
1. The firms identified as EBE by the vendor on the EBE participation form must be certified by the City of Milwaukee's Emerging Business Enterprise Program prior to bid opening.
  2. The contractor shall be credited for the entire expenditure to EBE firms only if all of the identified scope of work is performed directly by the certified EBE firm.
  3. The contractor shall be credited for the entire expenditure to an EBE manufacturer only if the manufacturer produces goods from raw materials or substantially alters them for resale. Only 20% of the EBE participation may be extended for EBE suppliers that do NOT manufacture the products they supply.
  4. The contractor shall count only the EBE requirement of expenditures to EBEs that perform a commercially-useful function in the actual work of the contract. EBEs are required to notify the (DOA) Business Operations Division-Procurement Services Section if they subcontract out work on this project, to ensure that they perform a commercially-useful function. The (DOA) Business Operations Division-Procurement Services Section will make the final determination and evaluation of whether or not the EBE is performing a commercially-useful function on this project.
- C. Vendors should submit a completed EBE Participation Form (Form A) and Affidavit of Compliance (Form B), which meet the minimum EBE participation specified utilizing City certified EBEs, with the bid.
1. Information on the Form (A) shall include, but not be limited to:
    - a. The name, address, contact person and telephone numbers for the certified EBE firms that will participate on the bid as subcontractors or suppliers.
    - b. A description of the scope of work to be performed by the EBE(s) on this bid.
    - c. The EBE contract dollar value and corresponding percentages that the dollar value represent of the total contract amount.
    - d. The EBE(s) owner/or authorized representative acknowledgment signature.
  2. The listing on the EBE Participation Form (A) shall constitute a representation that the contractor has communicated directly with the EBE(s) listed. If the vendor is awarded the contract, they will enter into a subcontract with the certified firm(s) for that portion of the work listed at the designated price(s) set forth.
  3. EBE participation is an element of bid responsiveness. Failure to meet the specified EBE requirements will render the bid unresponsive, and the (DOA) Business Operations Division-Procurement Services Section may then recommend award to the next apparent low bidder.
  4. Only EBE(s) that have been EBE City certified by the Emerging Business Enterprise Program may be listed on the EBE Participation Form and counted towards the percentage requirements on this project. A listing of the current CITY certified EBE firms is maintained at:

Emerging Business Enterprise Program  
City Hall, Room 606  
200 East Wells Street  
Milwaukee, Wisconsin 53202  
Eunice Harris  
Phone: (414) 286-8749

- D. If for any reason a EBE cannot perform, **THE CONTRACTOR SHALL CONTACT THE (DOA) BUSINESS OPERATIONS DIVISION-PROCUREMENT SERVICES SECTION FOR APPROVAL TO SUBSTITUTE ANOTHER CITY EBE CERTIFIED FIRM.** The contractor must submit a written request for substitution which specifies the reasons for the request. Approval must be obtained prior to making substitution. Any difference in the cost occasioned by such substitution shall be borne by the contractor. If the contractor cannot find another certified firm to do the work at a comparable price, a non-EBE firm may be substituted with the approval of the (DOA) Business Operations Division-Procurement Services Section.
- E. If the contractor has a problem in meeting the EBE requirements or if any other problems relative to EBE(s) arise during or before completion of the contract, the contractor shall immediately contact the (DOA) Business Operations Division-Procurement Services Section.
- F. Certification programs other than the City's Emerging Business Enterprise Program are not accepted by the City of Milwaukee nor do they have any bearing on the eligibility criteria established by the City of Milwaukee.
- G. The (DOA) Business Operations Division-Procurement Services Section reserves the right to waive any of these specifications when it is in the best interest of the City and in accordance with the procedures set forth in Chapter 360 of the Milwaukee Code of Ordinances.
- H. Right to Appeal. All contracts required to be purchased from the lowest responsible and responsive bidder under s. 16-05-2 of the city charter shall be purchased from the lowest responsible and responsive bidder determined in accordance with applicable city ordinances for participation of EBEs. Determinations made by the purchasing agent under applicable City Ordinances for participation by EBEs shall be subject to appeal in accordance with the procedures prescribed by s. 16-05 of the City Charter and the Milwaukee Code for Appeals from the recommendations of the purchasing agent as to the apparent low responsible and responsive bidder. Effective August 8, 2001, the fee required to appeal bid specifications and recommendations of awards pursuant to s. 16-05 of the charter and s. 310-19 of the code shall be 1% of the dollar value of the recommended award. If your appeal is upheld, your fee will be refunded. The fee is a prerequisite for pursuing your appeal and must accompany your appeal.

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Dated: 1/20/05