

Minority and Women's Business Enterprise Plan

Borough of State College

Pennsylvania

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DEFINITIONS

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

1. **Grantee** - Municipality under contract with the Commonwealth of Pennsylvania for receipt of DCA funds.
2. **Administering Agency** - The agency responsible for administering the grants for the Grantee.
3. **Bidder Responsiveness** - Actions taken by prime contract bidders to seek participation by ME/WBE suppliers, manufacturers, and subcontractors. Responsiveness includes submission of Form STD-168, ME/WBE Contract/Solicitation and Commitment Statement, and if needed; an explanation for failure to achieve minimum levels of participation, including demonstration that the bidder has not engaged in discriminatory practices.
4. **Bidder Responsibility** - Non-discrimination in the selection of subcontractors, suppliers, and manufacturers. Non-discrimination is presumed if minimum levels of participation are achieved. Non-discrimination can also be demonstrated by submitting Form STD-168 and supplemental evidence that failure to achieve minimum levels of participation was not motivated by consideration of race or gender; that MBEs/WBEs were not treated less favorably than others; and that solicitation and commitment decisions were not based upon policies which disparately affect MBEs/WBEs.
5. **Business Enterprise** - Any legal entity which is organized in any form other than as a joint venture (e.g., sole proprietorship, partnership, corporation, etc.) to engage in lawful commercial transactions.
6. **Contractor/Subcontractor** - One who participates, through a contract, subcontract, or lease agreement, in any manner covered by the grantee's ME/WBE Program.
7. **Control** - The exclusive or ultimate and sole control of a business including, but not limited to, capital investment and all other financial, property, acquisition, contract negotiation, and legal matters, officer-director-employee selection and comprehensive hiring, operating responsibility, cost-control matters, income and dividend matters, financial transactions, and rights of other shareholders or joint partners. Control shall be real, substantial, and continuing, not pro forma. Control shall include the power to direct or cause the direction of the management and policies of the business and to make the day-to-day as well as major decisions in matters of policy, management, and operations. Control shall be exemplified by possession of the requisite knowledge and expertise to run the particular business and control shall not include majority or absentee ownership. Further, control by a minority individual or woman shall not be deemed to exist in any case where any non-minority owner or employee of the business is disproportionately responsible for the operation of the firm.

8. **Minority Business Enterprise (ME)** - A business concern that is:
 - a. a sole proprietorship, owned and controlled by a minority; or
 - b. a partnership or joint venture controlled by minorities in which at least 51% of the beneficial ownership interest is held by minorities; or
 - c. a corporation or other entity controlled by minorities in which at least 51% of the voting interest and 51% of the beneficial ownership interest are held by minorities.

9. **Minority Person** - Persons who are citizens of the United States and who are Black Americans, Hispanic Americans, Native Americans, or Asian - Pacific Americans.
 - a. **Black (African) Americans** - Persons having origins from any of the Black groups of Africa. The term includes persons having origins in any of the original peoples of the Cape Verdes Islands.
 - b. **Hispanic Americans** - Persons having origins from one or more of the Spanish-speaking peoples of Mexico, Puerto Rico, Cuba, Central or South America or the Caribbean Islands.
 - c. **Native Americans** - Persons having origins from one or more of the original peoples of North America and who are recognized as an Indian by a tribe or tribal organization.
 - d. **Asian-Pacific Americans** - Persons having origins from one or more of the original peoples of the Far East, Southeast Asia or the Pacific Islands, including China, Japan, Korea, Samoa, and the Philippine Islands.

10. **Socially/Economically Restricted Business (SERB)** - SERBS are businesses whose economic growth and development has been restricted based on social and economic bias. Such businesses are MWBEO certified minority and women owned businesses and certain restricted businesses whose development has been impeded because their primary or headquarter facility is physically located in an area designated by the Commonwealth as being in an enterprise zone. Businesses will not be considered socially/economically restricted if one of the conditions listed below exists:
 - a. The business has gross revenues exceeding four million dollars annually; or
 - b. The concentration of an industry is such that 50 percent of the market is controlled by the same type of SERB (ME/WBE) or businesses within designated enterprise zones.

11. Women's Business Enterprise (WBE) - A business concern that is:
 - a. a sole proprietorship, owned and controlled by a woman; or
 - b. a partnership or joint venture controlled by women in which 51% of the beneficial ownership interest is held by women; or
 - c. a corporation or other entity controlled by women in which at least 51% of the voting interest and 51% of the beneficial ownership interest are held by women.

12. Women - United States citizens who are of the female gender.

POLICY STATEMENT

It is the policy of the Borough of State College to promote the opportunity for full participation by minority and women's business enterprises ("MBEs" and "WBEs") in all housing and community development programs funded by the Pennsylvania Department of Community Affairs or its Successor.

PROCEDURES - INVITATIONS FOR BIDS (IF) OR REQUESTS FOR PROPOSALS (RAP)

A. Advertisement - IF Only

All invitations to bid will include the following information:

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

B. Notification of ME/WBE - IF and RAP

The procedure for the Borough of State College to notify the minority/women business community of contract opportunities will be as follows:

1. Notice of Invitation for Bid or Request for Proposals - A request will be sent to the Department of Community Affairs, Bureau of Housing and Development, 518 Forum Building, Harrisburg, PA 17120 or its Successor, for a listing of ME/WBE firms that undertake the particular type of construction or service being advertised or requested. Once this listing is provided by DCA, a copy of the Notice of Invitation for Bids or Requests for Proposals will be sent by the Borough of State College to all ME/WBE firms listed.
2. Other Notices - Notices are to be sent to the following organizations: (as appropriate)

Local Minority Churches and Organizations;

Appropriate Minority Business Technical Assistance Organizations and/or Schools;

Appropriate Minority/Women Contractor Associations;

Appropriate Minority/Women Trade Organizations

3. Plans and Specifications - Plans and Specifications or Invitation for Bids on all projects will be made available to minority/women contractor associations and trade organizations;
4. List of Plan holders - The names of bidders/offerors requesting bid documents will be made available upon request to minority/women businesses shown on the DCA-provided listing.
5. List of Minority/Women Businesses - Each bidder/offeror obtaining plans and specifications or requests for proposals for projects will be provided a list of minority/women businesses to be used in soliciting subcontract bids and for materials and services.

PARTICIPATION REQUIREMENTS FOR MINORITY/WOMEN BUSINESS ENTERPRISE (ME/WBE) AND SOCIALLY/ECONOMICALLY RESTRICTED BUSINESSES (SERBS)

A. Construction Contracts (IFBs)

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

The following items will be placed in all bid documents:

1. Participation Level
 - a. The Borough of State College has established minimum participation levels (MPLs) at 5% for minority business enterprises (ME) and 3% for women business enterprises (WBE) for this project to be used solely as a threshold in determining bidder responsibility. A bidder will not be rejected because it fails to reach the MPLs. To determine the participation level which has been reached, a bidder may divide the total dollar amount of the commitments by the total dollar amount of the bidder's bid.
 - b. ME/WBE subcontracts and manufacturers will be credited toward the minimum level at 100%. Stocking suppliers (Suppliers which have supplies on hand) are credited at 100%. Non-stocking suppliers (ie. middlemen) which are commonly and ordinarily the custom in the industry and a part of the industry's trade practices are credited at 100%; non-stocking suppliers which are not commonly and ordinarily the custom in the industry nor a part of the industry's trade practice are not credited.
 - c. A firm which is both an ME and a WBE will only receive credit toward MPLs as either an ME or WBE, but not both. Bidders must indicate on

Form STD-168, ME/WBE Contract/Solicitation and Commitment Statement whether the firm is being listed as either an ME or a WBE.

- d. An ME/WBE firm who is the prime bidder on project will receive no MPL credit for its own work effort for services provided. ME/WBE bidding as prime proposer must solicit other certified MBEs/WBEs participation for material and/or supplies.
- e. ME/WBE subcontractors must perform at least seventy-five percent (75%) of the cost of the subcontract, not including the cost of materials, with its own employees.

2. Responsiveness

- a. Bidders must complete and submit Form STD-168 with the bid. Failure to submit this form with the bid will result in the bid being rejected as non-responsive.
- b. A bidder should only solicit ME/WBE subcontractors, vendors, manufacturers, or suppliers whose services, material or supplies are within the scope of work and which the bidder reasonable believes it will choose to subcontract with or purchase from.
- c. Bidders failing to meet the minimum levels of participation must submit concurrently with the bid, an explanation of why the MPLs have not been met. This explanation must demonstrate that the bidder has not engaged in discriminatory practices in solicitation and utilization of MWBEO- certified MBEs/WBEs to perform as subcontractors or suppliers of goods and services related to the performance of the contract. The evidence submitted by the bidder must demonstrate the following:
 - (1) Indicate whether MBEs/WBEs were solicited for each type of work the bidder expects to subcontract for and for all materials which the bidder expects to procure and if not, the reason(s) why no such solicitation was made;
 - (2) Indicate the reason why an ME/WBE has not been committed to for a type of subcontract work or materials in any area where a quote was received from a ME/WBE, and;
 - (3) In any case where no quotations are received nor commitments made to ME or WBE firms, indicate on Form STD-168 that no quotes were received, and if there is another reason for no commitments being made, the reason for the lack of commitments.

- d. If the bidder fails to submit such evidence, the bid submission shall be considered non-responsive and the bid rejected.
- e. Information related to the above may be submitted on Form STD-168 or on additional paper.

3. Responsibility

- a. The submittals of each bidder are subject to review to determine whether the bidder had discriminated in the selection of manufacturers, subcontractors and suppliers. If a bidder has met the MPLs for ME/WBE participation, the bidder will be presumed not to have discriminated in their selections. Where the MPLs are not met, the Borough of State College will determine whether discrimination has occurred. If, after investigation including a review of Form STD-168, it is found that discrimination has occurred, the reviewed bidder shall thereby be deemed to be not responsible and the bid will be rejected.
- b. Documentation submitted by the bidder should meet the following standards for review:
 - (1) The bidder whose actions resulted in a limited or no commitment to MBEs/WBEs was not motivated by consideration of race or gender;
 - (2) MBEs/WBEs were not treated less favorably than other businesses in the contract solicitation and commitment process;
 - (3) Solicitation and commitment decisions were not based upon policies which disparately affect MBEs/WBEs.
- c. Commitments to ME and WBE firms made at the time of bidding must be maintained throughout the term of the contract, unless a change in commitment to these firms is pre-approved by the Borough of State College or the administering agency performing the evaluation of the Invitation for Bid.

4. Access to Information

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

5. ME/WBE Certification

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

B. Professional/Personal Services - Requests for Proposals (RAP)

The Borough of State College will assign a weight for socially/economically restricted business participation for each RAP. This weight will be included as one of the criteria for selection for each RAP.

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

1. General Information for Proposals

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

The Borough of State College strongly encourages the submission of proposals by SERBS.

To achieve the objective of enhancing SERB participation, the Borough of State College has established SERB utilization as a selection criteria in the evaluation process.

The Borough of State College will evaluate the aforementioned criteria and will assign a point value to be considered within the overall RAP total point tabulation.

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

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

- a. The business has gross revenues exceeding four million dollars annually; or

- b. The concentration of an industry is such that 50 percent of the market is controlled by the same type of SERB (ME/WBE) or businesses within designated enterprise zones.

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

Department of General Services
Minority and Women Business Enterprise Office
502 North Office Building
Harrisburg, PA 17125
Phone: (717) 787-7380
1-800-822-2903
Fax: (717) 787-7052

2. Information Required from Contractors

SERB Information

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

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

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

- | | |
|-------------------------|--|
| Priority Rank 1. | Proposals submitted by SERBs. |
| Priority Rank 2. | Proposals submitted from a joint venture with a Commonwealth approved SERB as a joint venture partner. |
| Priority Rank 3. | Proposals submitted with subcontracting commitments to SERBs. |

Each proposal will be rated for its approach to enhancing the utilization of SERBs. Proposals will be evaluated with priority rank number 1 receiving the greatest

value and the succeeding priorities receiving a value in accordance with the above listed priority ranking.

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

3. Criteria for Selection

SERB Participation

Emphasis here is placed on:

- a. Proposals submitted by MWBEO approved SERBs.
- b. Commitments by proposers not considered to be SERBs which significantly utilize approved SERBs in joint ventures.
- c. Commitments by proposers not considered to be SERBs which aggressively pursue the utilization of approved SERBs in subcontracting opportunities.

PROCEDURES - CONTRACTOR COMPLIANCE PROCESS

1. Contract Provisions

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

a. Construction Contracts

1. The prime contractor must provide the Borough of State College with a report of ME/WBE subcontracting activity on a quarterly or per project basis, whichever is sooner. The report shall reflect the names of and the total dollar amount paid to all ME/WBE subcontractors (including suppliers) utilized under this contract.
2. ME/WBE Subcontractors must provide the Borough of State College with a report reflecting the prime contractors who have purchased their services and/or supplies on a quarterly basis. The report shall reflect the name of the prime contractor and the total dollar amount invoiced and total dollar amount received for payment.

b. Professional Service Contracts

1. Commitment to Enhance Socially/Economically Restricted Businesses

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

2. Grantee Compliance Procedures

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

3. Records and Reports

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

EXHIBIT 4

(Date)

(Contractor's Name and Address)

RE: (Contract Number, Name of Project)

Dear Sir/Madam:

Congratulations on being awarded the above referenced contract. In the contract a binding commitment was made by your firm to the following ME and/or WBE firms - (List Names of ME and/or WBE firms here).

The attached Prime Contractor's Quarterly Utilization Report should be completed and returned to the Borough of State College within ten (10) working days at the end of each quarter and at project completion. The information requested on this form, along with other available information, will be used to determine the actual dollar amount paid to Minority and Women Business Subcontracting and/or Suppliers to which your firm made commitments during the bidding process.

If you have questions regarding the above, please contact (Name of Contract Person and Phone Number.)

Sincerely,

XXXX

Attachment

EXHIBIT 5

(Date)

(Subcontractor's Name and Address)

RE: (Contract Number, Name of Project)

Dear Subcontractor/Supplier:

The above referenced contract has been awarded to (Name of Prime Contractor). In the contract, a binding commitment was made to your firm of (dollar amount of commitment).

Please verify the above committed amount with this office within fifteen (15) days after receipt of this letter. If you do not respond, we will presume that your firm is in agreement with the committed amount.

In order that we may track this amount accurately, we ask that the attached Subcontractor's Quarterly Utilization Report be completed and returned to the Borough of State College within ten (10) working days at the end of each quarter and at project completion. Should you have any questions regarding this form please contact (Name of Contract Person and Phone Number.)

Your participation in this program will help to ensure that it is successful. Your continued participation will be both beneficial to our program and to you.

Sincerely,

XXXX

Attachment

cc: (Prime Contractor)

EXHIBIT 6

RAP EVALUATION CHECKLIST

RAP No. _____ Date _____

PROPOSER'S NAME _____

DESCRIPTION _____

OVERALL RAP POINTS _____ SERB POINTS _____

CONTACT PERSON _____ PHONE _____

REVIEWER _____

	Yes	No
Does the company claim SERB status?	_____	_____
Does the company claim joint venture with a SERB?	_____	_____
Does the company commit to the enhancement of SERBS?	_____	_____

SERB Participation:

Is the company a SERB?	_____	_____
Does the proposal reflect a joint venture with a SERB?	_____	_____
Does the proposal reflect subcontracting commitments?	_____	_____

TOTAL _____

This company does not qualify as a SERB or Joint Venture because:

1. The company is not certified by MWBEO.
2. The company is not located within a PA Enterprise Zone.
3. The proposal did not reflect ME/WBE Joint Venture ownership.
4. The firm(s) named in the proposal do not qualify as SERB(S).

The bid submission of _____ at \$ _____ is responsive. Although the bidder indicated "N/A", upon evaluation of the specifications it was determined that the services and supplies in support of this contract could be provided by the bidder.

5. Labor provided in -house; Materials cannot be anticipated:

The bid submission of _____ at \$ _____ is responsive since the bidder did submit the required ME/WBE Contract/Solicitation and Commitment Statement along with sufficient evidence from which to evaluate the bidder's responsibility. The bidder indicated that all services and supplies will be provided in-house and materials are such that they cannot be anticipated.

6. Bidder did not submit STD-168; Under \$25,000:

The bid submission of _____ at \$ _____ is responsive. Although the bidder did not submit the required ME/WBE Contract/Solicitation and Commitment Statement, the bid is still responsive since it is under \$25,000. If the bid is amended or renewed and it increases the contract value to \$25,000 or above a ME/WBE Contract/Solicitation and Commitment Statement must be submitted for evaluation.