**00.73.39**

**SUPPLIER DIVERSITY PROGRAM - EXECUTIVE ORDER 524**

**MINORITY AND WOMEN BUSINESS ENTERPRISES**

**1. PROJECT REQUIREMENTS**

General bidders must agree to contract with minority and women-owned businesses as certified by the Supplier Diversity Office (SDO) formerly known as SOMWBA. The amount of participation which shall be reserved for such enterprises shall not be less than the percentages stated in document 00.11.00 Advertisement found elsewhere in these contract documents.

**2. DEFINITIONS:**

For purposes of this Section 00.73.39.00 the following definitions shall apply:

**A.** "Minority business enterprise'' or "MBE'', 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''.

**B.** "SDO” means the Supplier Diversity Office.

**C.** "Minority Business Enterprise" (MBE) means a business organization which is owned and controlled fifty-one percent (51%) or more by one or more minority group members and certified as such by SDO.

**D.** "Women Business Enterprise" (WBE) means a business organization which is owned and controlled fifty-one percent (51%) or more by one or more women and certified as such by SDO.

**E.** "MBE/WBE Manufacturer" means a person or firm certified by SDO and engaged in the process of making, fabricating, constructing, forming or assembling a product(s) from raw, unfinished, semi‑finished, or finished materials through a direct contract with a contractor, subcontractor, or supplier.

**F.** "MBE/WBE Subcontractor" means a person or firm certified as such by SDO and contractually engaged by the contractor to perform a portion (a) of the contracted Work, including labor, materials and supplies, or (b) labor, materials and supplies, or any combination thereof.

**G.** "MBE/WBE Supplier" means a person or firm certified as such by SDO and engaged in selling of materials and supplies to contractors, subcontractors, and/or manufacturers for the purpose of constructing, repairing, remodeling, adding to or subtracting from, or improving any building, structure or property through a direct contract with a contractor or subcontractor. Said MBE/WBE must sustain substantial financial risk in the process of performing/supplying the work for this contract.

**H.** "Amount of Participation" means the percentage stated on the advertisement of the final contract amount which is to be contracted to MBE/WBEs for work to be performed on this contract in accordance with this Section 00.73.39.

**3. JOINT VENTURES**

**A.** A Joint Venture shall mean a business arrangement between MBE/WBEs and a non-SDO certified General Contractor, in which the MBE or WBE has at least a twenty-five percent (25%) interest in the Contract, and in which the other has at least the required minimum percentage of participation in the Contract. It is expected that the M/WBE having the minimum 25% interest will participate in the management and decision making aspects of the project proportionate to its percentage of ownership and interest in the Contract.

**B.** An MBE/WBE Joint Venture shall mean a business arrangement wherein a SDO certified MBE or WBE serves as a General Contractor and engages the services of another SDO certified MBE or WBE (whichever is required) in an amount not less than twenty-five percent (25%) of the Contract amount, and in which the management and decision making aspects of the project are shared to the degree of participation and ownership in the Contract.

**4. CONDITIONS**

**A.** After notice of award, the General Contractor shall submit a completed Participation Schedule (Form 00.73.39.01) and Letters of Intent (Form 00.73.39.02). There needs to be one Letter of Intent for each SDO-certified MBE and WBE used to satisfy the requirements of this Section 00.73.39. The letters shall include the materials or services the MBEs and/or WBEs are proposing to provide or perform and the prices that the MBEs and/or WBEs propose to charge for the materials or services. NOTE: Failure to provide a compliant Participation Schedule and/or complaint Letters of Intent shall be grounds for terminating the contracting process and a claim being made against the General Contractor’s bid deposit.

**B.** MBE and WBEs listed on the Participation Schedule may be any combination of MBE/WBE Subcontractors, MBE/WBE Manufactures, or MBE/WBE Suppliers as defined in Paragraph 2.G.

**C.** Letters of Intent are not required from filed sub-bidders who are SDO Certified MBEs or WBEs.

**D.** The amount of participation of MBE/WBEs listed in The Participation Schedule must total at least the percentage set forth in the Advertisement. The amounts indicated in the Letter of Intent shall not be less than the amount shown on the Participation Schedule. The SDO Certified MBEs and/or WBEs for whom Letters of Intent are submitted must be identical to the ones listed on the Participation Schedule. No substitutions shall be made without the written approval of the Owner.

**E.** The Contractor may include MBEs and/or WBEs utilized by non-certified subcontractors to satisfy the requirements of this article.

**F.** MBE/WBE Certification from any other agency/municipality shall not be considered applicable for this Contract.

**G.** If a filed sub-bidder listed as a MBE and/or WBE is rejected for failure to obtain a performance and payment bond from a surety qualified to do business in the Commonwealth when requested by the general bidder to do so at the time of bid, said failure shall not entitle the general bidder to avoid the requirements of this Section 00.73.39.

**H.** The Contractor shall not change the MBEs and/or WBEs listed in the Participation Schedule or make any other such MBE/WBE substitutions after the Contract has been executed or during construction without the written approval of the Owner.

**5. COMPLIANCE**

**A.** The Contractor must provide information as is necessary, in the judgment of the Owner to ascertain compliance with the terms of this Section 00.73.39.

**B.** The Contractor shall maintain records of Payment to Minority Business Enterprises.

**6. MBE/WBE REPORTING PROCEDURES**

* 1. The Contractor shall maintain records of Payment to Minority Business Enterprises..
		1. The Owner may request copies of canceled checks to confirm compliance.

**7. SANCTIONS**

**A.** If at any time during the life of this Contract, the Contractor is found to be out of compliance with this Section 00.73.39, sanctions may be imposed within fifteen (15) working days after notification to the Contractor of said violation. If within those fifteen (15) days the Contractor remedies the non-compliance to the satisfaction of the Owner or provides compelling documentation as outlined in Paragraph 8.B said sanctions may be postponed or waived. If the Contractor requires more than fifteen (15) days to remedy non-compliance, it shall make a written request to the Owner for a time extension. This request shall be made within the original fifteen (15) day period.

**B.** If the Contractor fails to comply with the terms of these conditions, the Owner may impose the following sanctions:

**(.1)** require the Contractor to provide equivalent substitute participation with SDO Certified MBEs and/or WBEs acceptable to the Owner and at no additional cost to the Owner; or

**(.2)** suspend any payment for the Work that should have been but was not performed by a MBE and/or WBE pursuant to the Participation Schedule.

**C.** To the extent that the Contractor has not complied with the terms of these conditions, the Owner may withhold from any Certificate for Payment moneys equivalent to the product of the percentage of completion times the MBE and/or WBE dollar amount, minus the amount already paid to MBEs and/or WBEs for Work performed under the contract, minus any amounts withheld for previous non-compliance.

**8. RECOURSE**

**A.** The Owner has the option not to impose sanctions if the Contractor demonstrates, to the satisfaction of the EOHLC, that the Contractor has taken every possible measure to comply with Section 00.73.39. This may constitute a reason for waiving this Section in whole or in part.

**B.** To demonstrate every possible measure, the Contractor shall furnish:

**(.1)** the name of each firm solicited for quotations on each Subcontract, the price quoted by each, and whether or not the firm solicited was a minority or woman-owned business;

**(.2)** the reason for not subcontracting with a minority or woman-owned business enterprise when applicable;

**(.3)** evidence showing efforts by the Contractor to supplement its own and SDO lists of minority and woman-owned business sources by contacting the Small Business Administration, trade organizations, the General Services Administration (U.S. Government), minority contractors' organizations, community organizations and other likely sources of names of additional minority or woman-owned business firms capable of performing the Work; and

**(.4)** evidence showing other efforts to comply with this Section 00.73.39.

**9. WAIVERS**

The EOHLC or the Supplier Diversity Office has the discretion to determine that compliance with the participation benchmarks is not feasible and may reduce or waive these benchmarks. To reduce or waive the MBE/WBE participation benchmarks the general bidders must make this request in writing to the EOHLC **PRIOR** to the general bid opening. ***See Article 3.3 - Instructions to Bidders*.**

**10. SEVERABILITY**

The provisions of this section are severable, and if any of these provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions of the Contract.

**End of 00.73.39**

**SUPPLIER DIVERSITY PROGRAM - EXECUTIVE ORDER 524**

**MINORTY AND WOMEN OWNED BUSINESS ENTERPRISES**

#### SDO CERTIFIED MBE/WBE PARTICIPATION SCHEDULE

**□ This form must be submitted by the apparent low general bidder to EOHLC within five working days of receipt of bids.**

□ **Letters of Intent from all MBEs or WBEs listed must be submitted with this Participation Schedule.**

|  |  |
| --- | --- |
| Project  |  |
|  Name of Project |
| The undersigned intends to subcontract with the following firms for the listed work and dollar amounts: |
|  |  |  |  |  |  |  |  |  |  |
|  | **Name of Company** |  | Description of Work |  | **MBE or WBE** |  | **Supplier or Subcontractor** |  | **Value of Participation** |
| 1 |  |  |  |  |  |  |  | $ |  |
| 2 |  |  |  |  |  |  |  | $ |  |
| 3 |  |  |  |  |  |  |  | $ |  |
| 4 |  |  |  |  |  |  |  | $ |  |
| 5 |  |  |  |  |  |  |  | $ |  |
| 6 |  |  |  |  |  |  |  | $ |  |
| 7 |  |  |  |  |  |  |  | $ |  |
| 8 |  |  |  |  |  |  |  | $ |  |
|  |  |  |  |  |  |  |  |  |  |
| **Dollar Value of MBE Commitment:** | $ |  |
| **Dollar Value of WBE Commitment:** | $ |  |
| **Total Dollar Value Commitment:** | $ |  |
|  |  |  |
| **BIDDER CERTIFICATION**The undersigned certifies under the penalties of perjury that (1) it intends to subcontract with the above listed firms for the identified work and dollar amounts unless a waiver or partial waiver has been granted by the Owner and (2) certifies that he/she has read Section 00.73.39 conditions contained in the contract documents with regards to MBE/WBE participation and is authorized to bind the contractor to the commitment set forth above.  |
|  | Name of General Contractor |
| Date |  |  |   |
|  |  | **Authorized Signature** |
|  |  |   |
|  |  | **Address** |
|  |  |   |
|  |  | **City, State & Zip Code** |

## SDO CERTIFIED MBE/WBE

**LETTER OF INTENT**

□ This form is provided for SDOA Certified MBEs and WBEs being utilized as on this contract.

*□* This form must be completed by each SDO Certified MBE or WBE and submitted by the general bidder to EOHLC.

*□* General bidders or filed sub-bidders that are SDO Certified MBEs and WBEs may omit this form.

|  |  |
| --- | --- |
| **TO: General Bidder** | **FROM SDO Certified MBE or WBE** |
| Name: |  | Name: |  |
| Street Address: |  | Street Address: |  |
| City/Town |  | City/Town |  |
| Phone: |  | Phone: |  |
| Fax: |  | Fax: |  |
| Email: |  | Email: |  |
| RE: Project: |  |
|  Name of Project |
| 1. My company intends to perform work in connection with the above project as: |
| [ ]  an individual | [ ]  a corporation | [ ]  a partnership |
| [ ]  a joint venture with |  |
| [ ]  other (explain) |  |
| 2. My company is certified by SDO as a | [ ]  MBE [ ]  WBE in the following categories: |
|  |  |
|  |
|  |
|  |
| 3. My company has not changed its ownership, control, or management in any ways that affect certification since obtaining SDO certification |
| 4. My company understands that if your company is awarded the contract, your company intends to enter into an agreement to perform the work described below for the price indicated. My company also understands that your company will make substitutions only as allowed by Section 00.73.39 of the above project |
| 5. My company intends to |  Brief Description of work |
|  |  |
|  |  |
| This Work includes:  | [ ]  Labor & Materials | [ ]  Labor Only | [ ]  Materials only |
| for a total amount of |  | Dollars $ |  |
| Date |  |  |  |
|  |  |  | Authorized Signature of SCE |
|  |  |
|  | Name and Title |
| **Please advise the Owner immediately if either party attempts to renegotiate this agreement** |