

**CITY OF ROSWELL
PURCHASING DIVISION
38 HILL STREET
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ROSWELL, GA 30075**

**MINORITY/WOMEN-OWNED/SMALL
BUSINESS ENTERPRISE (M/W/SBE)
POLICY & PROCEDURES**



POLICY ADOPTION DATE: MARCH 15, 2004

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Executive Summary

Introduction

As a condition of using State and Federal funds when contracting for goods and services, the City of Roswell must solicit from qualified Minority, Women-owned and Small Business Enterprises (M/W/SBEs). As an example, HUD's Community Development Block Grant (CDBG) Program requires that each grantee (City, County and State) make contracting opportunities available to these firms whenever economically feasible and when these firms are potential sources for these goods and services. M/W/SBEs may be both general contractors and subcontractors.

Regulatory Requirements

HUD requires grantees to do the following:

1. Place M/W/SBEs on solicitation lists;
2. Solicit M/W/SBEs whenever they are potential sources for goods and services;
3. Segment bid requirements into smaller tasks or quantities to permit M/W/SBEs to participate in bidding when feasible;
4. Create delivery schedules that encourage M/W/SBEs to participate in bidding when feasible;
5. Use the U.S. Department of Commerce's Small Business Administration and Minority Business Development Agency as resources for services and assistance in using M/W/SBEs; and
6. Require prime contractors to comply with 1-5 above in the completion of City of Roswell contracts where subcontractors are required to fulfill contract requirements.

Policy Review Committee

A Policy Review Committee made up of the City Attorney, Purchasing Manager, Grants Manager, Deputy City Administrator and Community Development Program Manager collaborated on creating a policy that will ensure the City meets HUD's Federal M/W/SBE procurement regulations.

The M/W/SBE policy created by the committee has 5 key points:

1. The policy applies **only** to State and Federally-funded procurements; however, the Purchasing Division will work to ensure that these business are solicited whenever feasible and consistent with the City's Purchasing Ordinance;
2. The process for the certification of M/W/SBEs has been designed so that it will create a list of these firms for the solicitation of M/W/SBEs for State and Federally-funded projects;
3. This certified list of M/W/SBEs will be available to contractors to assist them in meeting their subcontracting obligations under HUD regulations;
4. The City will require that contractors provide a signed certification that they have made good-faith efforts to solicit participation of M/W/SBEs on City contracts; and
5. Data collected on M/W/SBE participation in City contracts will be submitted to Fulton County for reporting to HUD annually.

Conclusion

The M/W/SBE policy has been reviewed twice by the Policy Committee for legal consistency. The Purchasing Division will be responsible for the policy's implementation.

The policy is being submitted to Administration for review and approval for submission to the Admin/Finance committee at the next meeting on March 4, 2004, and for future inclusion on a Mayor and City Council agenda for adoption.

I. Purpose

It is the policy of the City of Roswell to take steps to ensure the participation of qualified Minority, Women-owned and Small Business Enterprises (M/W/SBEs) in State and Federally-funded procurement activities.

It is the City's position that utilizing M/W/SBEs firms will lead to positive benefits for the local and regional economy.

The City of Roswell, under the guidance of the City Administrator or his designee, will work to ensure that these businesses are included in all solicitations for goods and services whenever feasible and consistent with the City's Purchasing Ordinance.

II. Definitions

The words and phrases defined in this policy shall have the meanings ascribed when used, unless the context clearly indicates another meaning. Other standard definitions that apply to City purchasing activities can be found in the Purchasing Manual or the City Ordinance. The definitions below are those that specifically pertain to the City's M/W/SBE policy.

1. Atlanta Metropolitan Region:

The Atlanta-Sandy Springs-Marietta, GA Metropolitan Statistical Area (MSA) as defined by the U.S. Bureau of the Census which includes the following counties:

Barrow, Bartow, Butts, Carroll, Cherokee, Clayton, Cobb, Coweta, Dawson, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Haralson, Heard, Henry, Jasper, Lamar, Meriwether, Newton, Paulding, Pickens, Pike, Rockdale, Spalding and Walton.

2. Certification:

The process by which the City Administrator or his designee shall determine the eligibility of an established business enterprise to participate in the City of Roswell's M/W/SBE Program as defined in this section.

3. Commercially useful function:

A distinct element of the work such as performing, managing and supervising the work involved. However, a business enterprise that serves as a conduit for another business shall not be deemed to perform a commercially useful function.

4. Control:

The primary power to direct the management and operations of a business enterprise.

5. Contractor good-faith efforts:

- a. Attendance at pre-bid conferences, if held;
- b. Contacting certified M/W/SBEs that perform or supply the type of work to be subcontracted or materials provided;
- c. Segmenting work or creating delivery schedules to encourage M/W/SBEs to participate in the contract when feasible;
- d. Providing written notice of subcontracting opportunities for M/W/SBEs to minority, women and small business professional associations as provided by the City, the U.S. Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce;
- e. Advertising in local news media focused on minority persons, women and small businesses as identified by the City;
- f. Contacting certified M/W/SBEs who have specifically requested information on the specific bidding opportunity and the contract being awarded;
- g. Negotiating with M/W/SBEs on work to be subcontracted, including:
 - i. Reporting the names, addresses and telephone numbers of M/W/SBEs who were contacted;
 - ii. The date negotiations took place; and
 - iii. A description of the information provided to M/W/SBEs regarding the plans, specifications and requirements for portions of the work to be performed.
- h. Assisting M/W/SBEs contacted who needed support in obtaining bonding, insurance, financing or in reviewing the plans, specifications and requirements of the bid.

The City reserves the right to request evidence of compliance from the contractor and will require the contractor to submit the Certification of Good-Faith Efforts documenting his or her compliance.

6. Joint venture:

- a. Two or more persons or corporations which combine their labor, resources and expertise for a single undertaking. The profits and losses are shared equally or according to a contract. There is a common purpose and each “partner” shall have equal right to and control of the operation or activity in the venture without an agreement to the contrary; or
- b. A combination of contractors performing a specific job in which the business enterprises participate and share a percentage of the net profit and loss; or
- c. A joint business association combining property, money, effort and skills and/or knowledge in the fulfillment of a contract.

7. Minority Business Enterprise or MBE:

- a. A sole proprietorship in which the owner is a minority person who owns, controls and manages the business; or
- b. A corporation in which at least 51% of the stock or the assets of such a corporation is owned, controlled and managed by one or more minority persons; or
- c. A partnership in which at least 51% of the assets of such partnership is owned, controlled and managed by one or more minority persons; or
- d. A joint venture in which at least 51% of the interests of such joint venture is owned, controlled and managed by one or more minority persons; or
- e. Any other business or professional entity in which at least 51% of the assets in such business or professional entity is owned, controlled and managed by one or more minority persons; or
- f. Any entity in which at least 51% of the assets of such entity is owned, controlled and managed by one or more minority persons or one or more women and such minority person; or a business which has been determined by the City to be currently certified by another local government’s M/W/SBE program.
- g. No minority business owned or controlled by a minority shall be considered an MBE for the purposes of this program if the ownership was brought about by the transfer of ownership to the minority, other than by descent, within three years following the sale or transfer of ownership.

8. Minority person:

a. A citizen or legal resident alien of the United States who is:

- i. African-American: a person having origins in any of the black racial groups in Africa as well as those identified as Jamaican, Trinidadian or West Indian.
- ii. Spanish/Hispanic: a person who is either Mexican, Puerto Rican, Cuban, Central or South American in origin or descent regardless of race.
- iii. Asian American: a person having origins in the Far East, Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, Taiwan or the Indian Subcontinent.
- iv. Native American: a person having origins in any of the original peoples of North America, American Indian, Eskimo, Aleut or Native Hawaiian.
- v. Origin or descent can be regarded as the ancestry, nationality group, lineage or country in which the person or persons' parents or ancestors were born before their arrival in the United States.

9. M/W/SBE supplier:

A certified M/W/SBE who has an executed contractual agreement with a contractor for:

- a. The production of goods from raw materials; or
- b. The substantial alteration or fabrication of raw materials before resale; or
- c. The delivery of materials and supplies as a condition of the contract.

10. Segmentation:

The act of dividing total requirements for a contract, when economically feasible, into smaller tasks or quantities, or establishing delivery schedules, where requirements permit, to encourage participation by M/W/SBEs in the contracting opportunity.

11. Small business enterprise:

A business concern defined as small under the U.S. Department of Commerce's Small Business Administration (SBA) guidelines published at 13 CFR Chapter 1 §121.101 and 121.201. North American Industry Classification System (NAICS) industry codes are used and expressed either in number of employees or annual receipts in millions of dollars, unless otherwise specified. NAICS industry titles and corresponding size/dollar standards are included in the attachments to this policy. To qualify as a small business under this policy, the small business concern must meet these SBA size standards.

12. Subcontractor:

Any person or business enterprise providing goods, labor or services to a contractor if such goods, labor or services are procured in fulfillment of the contractor's obligations arising from a contract with the City. Subcontractor includes every level of subcontracting required to fulfill a contract with the City.

13. Woman:

A person of the female gender who is a citizen or legal resident alien of the United States.

14. Women-owned Business Enterprise or WBE:

- a. A sole proprietorship in which the owner is a woman who owns, controls and manages the business; or
- b. A corporation in which at least 51% of the stock or assets of such corporation is owned, controlled and managed by one or more women; or
- c. A partnership in which at least 51% of the assets of such partnership is owned, controlled and managed by one or more women; or
- d. A joint venture in which at least 51% of the interests in such a joint venture is owned, controlled and managed by one or more women; or
- e. Any other business or professional entity in which at least 51% of the assets in such business or professional entity is owned, controlled and managed by one or more women; or

- f. Any entity in which at least 51% of the assets of such entity is owned, controlled and managed by one or more minority persons and one or more women; or
- g. A business which has been certified as a WBE by the Purchasing Manager that the business is currently certified by another local government's M/W/SBE program as a WBE.
- h. No woman business enterprise owned or controlled by a woman shall be considered a WBE for the purposes of this program if the ownership was brought about by the transfer of ownership to the woman, other than by descent, within three years following the sale or transfer of ownership.

15. Owned, controlled and managed:

- a. The requisite interests in or assets of a business applying for minority or women-owned business enterprise certification and possessing equivalent incidents of such ownership, including an equivalent interest in profit and loss, and contribution of an equivalent percentage of capital, equipment and/or expertise to the business.
- b. Ownership shall be measured as though not subject to the community property interest of a spouse, if both spouses certify in writing that the nonparticipating spouse relinquishes control over his or her community property interest in the subject businesses (but by doing so is not required to transfer to his or her spouse his or her community property ownership interest or to characterize the property as the separate property of the spouse).
- c. The minority person(s) or woman owner(s) shall be recognized as having ultimate control over day-to-day business decisions affecting the M/W/SBE and shall hold title commensurate with such control. Such ultimate control shall be known to and at least tacitly acknowledged in day-to-day operations by employees of the business.

III. Implementation

The Roswell City Administrator or his designee shall be responsible for the implementation of the City's M/W/SBE policy as it applies to contracting opportunities using State and Federal funds and for the monitoring of the City's procurement activities to ensure City departments are in compliance with the intent of the M/W/SBE program.

The Roswell City Administrator or his designee will also be responsible for:

1. The acceptance of applications for the certification of Minority, Women-owned and Small Business Enterprises to participate in the City's M/W/SBE program;
2. The verification of information submitted on all certification forms to include any actions required to substantiate the degree of minority or woman ownership and control of the business, financial data to determine the size of the business and/or on-site inspections of the business' facilities or other actions necessary;
3. Maintaining a current register, which will be continuously updated as information is provided to the City by vendors, of M/W/SBEs certified to participate in the City's program;
4. Assisting departments as needed with the selection of certified M/W/SBEs for the award of contracting opportunities to further the policies and objectives of the City's M/W/SBE program;
5. Ensuring that the appropriate M/W/SBE participation language and policy references are contained within bid specifications and contracts to ensure participation of certified M/W/SBEs in City contracting opportunities using State and Federal funds;
6. Providing technical assistance to M/W/SBEs in completing the certification process as needed;
7. Ensuring departments make plans and specifications available to the Purchasing Division to assist with the implementation of the M/W/SBE policy;
8. Notifying contractors on bid lists of the City's M/W/SBE procedures, the documentation required with bids, and a list of certified M/W/SBEs available for participation in City contracting opportunities using State and Federal funds;

9. Reviewing the required forms and documents from contractors concerning good-faith efforts made to meet the City's requirements for the utilization of certified M/W/SBEs in City procurement activities using State and Federal funds;
10. Reporting on the City's M/W/SBE contracting activities as needed by State and Federal agencies, the Mayor and City Council, and others.
11. Accepting and reviewing complaints and suggestions concerning the City's implementation of its M/W/SBE program from contractors, M/W/SBEs, departments, etc. Protest procedures related to M/W/SBE program complaints shall be the same as those provided in the City's Purchasing Manual, which guides purchasing activities for the City of Roswell;
12. Making an evaluation of circumstances and a determination of actions required concerning the debarment of contractors or subcontractors from City bidding opportunities who willfully violate the City's M/W/SBE policy;
13. Establishing procedures to ensure the performance of work by M/W/SBEs on City contracts by:
 - a. Requiring that the minority person or woman owner of the M/W/SBE have the necessary experience, expertise, credentials and regulatory authority to conduct the type of business for which the business is certified;
 - b. Requiring that contractors make good-faith efforts to comply with the requirements of the City's M/W/SBE policy; and
 - c. Requiring that M/W/SBEs accurately represent all material information required for certification and truly perform the work they are represented to have performed as included in the City of Roswell's Application for Certification form and Affidavit.
14. Ensuring access to necessary records of prime contractors and subcontractors on City contracts.

IV. Certification

The City Administrator or his designee shall make a determination as to a business' ability to participate in the City's M/W/SBE program. The potential M/W/SBE must provide:

1. The average of the gross receipts for the three years prior; and

2. The average number of employees for the twelve calendar months immediately prior to the request to participate.

The City shall also use information provided by the business as documented in the Application for M/W/SBE Certification included in the attachments to this policy.

This review shall be applicable to all businesses applying for initial certification as an M/W/SBE or to M/W/SBEs who have been certified by other governments, agencies or businesses in the metropolitan Atlanta region. The applicant must present an established business history sufficient in length to allow a determination as to the business' viability based on three years of financial and twelve months of employee data. The City may request additional information as necessary to make a true and accurate determination as to the stability and ultimate suitability of a business to participate in the City's M/W/SBE program.

The City will not maintain a formal M/W/SBE recertification process; however, the City reserves the right to reevaluate the status of any business enterprise at the time of bid submission, prior to contract execution or at any point in the entity's participation in the program. The City also reserves the right to request verification of ownership, control, financial or any other information necessary to ensure that the business enterprise remains qualified to participate in the M/W/SBE program.

Only M/W/SBEs certified by the City of Roswell may participate in the City's M/W/SBE program. Vendors shall be responsible for notifying the City if there is a change in the status of the business enterprise that may affect its participation in the M/W/SBE program.

V. Certification Approval

If the applicant is determined to be eligible for M/W/SBE certification, the applicant shall be notified in writing by U.S. certified mail following the City's completion of the review.

This notice of certification review completion shall inform the applicant of the following:

1. That the applicant has been classified as a certified M/W/SBE;
2. The date of initial certification; and
3. That the certification shall remain in effect unless it becomes known to the City that the circumstances of the certification have changed.

The applicant shall notify the City of any changes to the company's structure, capacity or nature of services provided by the business.

Upon completion of the initial certification of an M/W/SBE, the City shall record the name, address, ownership, gross receipts, employment and other data for the purposes of maintaining a participation file for each certified M/W/SBE in the City's program. Documents must include:

1. Proof of ownership with the applicant's name included;
2. A copy of the applicant's most recent pictured identification showing race and gender;
3. The most recent financial statements for the company, as well as the other required documents listed on the application form; and
4. All other data contained in the Application for Certification.

Copies of M/W/SBE certifications from other governments, agencies or businesses in the metropolitan Atlanta region shall also be included if the applicant has already been certified by any of these entities in the metro-area and is seeking certification from the City of Roswell.

VI. Certification Denial

If the applicant is determined to be ineligible for certification based on information provided to the City the applicant's certification request will be temporarily denied. The applicant will be issued a Notice of Temporary Denial of M/W/SBE Certification from the City by U.S. certified mail. The notice shall specify the deficiencies in the applicant's information and a recommended course of action to correct those deficiencies. The applicant shall have fourteen days to correct these deficiencies. If it is determined, however, that these deficiencies cannot be corrected, the notice shall serve as an indefinite denial of participation in the City's M/W/SBE program until the applicant's identified deficiencies (e.g. financial position, capacity, structure, etc.) are corrected to meet the requirements of the program.

VII. Denial Appeal

The applicant may appeal the denial of certification. The appeal must be presented to the City Administrator within ten business days of receipt of the Notice of Temporary Denial of M/W/SBE Certification. The applicant will be notified of the receipt of the written appeal by the City and the process for a hearing on the determination shall be as described by the City of Roswell's Purchasing Manual. Results of the hearing shall be provided to the applicant at the conclusion of the hearing and provided in writing through U.S. certified mail within ten business days of the conclusion of the hearing.

VIII. Contractors

Contractors participating in City contracts shall ensure that M/W/SBEs have an opportunity to participate in the performance of City contracts. In this regard, contractors shall make reasonable good-faith efforts, as defined in this policy, to solicit and award subcontracts to certified M/W/SBEs through the contractor's participation in City contracting opportunities using State and Federal funds. M/W/SBEs shall perform commercially useful functions in the bid submitted for the contracted work.

While it is not a requirement that a contractor meet a specific M/W/SBE participation goal, it is required that the contractor be able to objectively demonstrate to the City that he or she has made good-faith efforts to comply with the City's M/W/SBE policy. To this end, the contractor shall maintain records as prescribed by this and other City policies that document the contractor's efforts to meet the policy's requirements including:

1. The number and type of M/W/SBEs utilized on each contract;
2. The percentage of utilization; and
3. The intended scope of work for each M/W/SBE.
4. The contractor shall be required to sign and submit the Certification of Good-Faith Efforts attesting to his or her compliance with the City's M/W/SBE policy. This certification shall be submitted with the contractor's bid documentation and the City reserves the right to review contractor records to verify compliance at its convenience.

Contractors shall negotiate in good-faith with certified M/W/SBEs and will not determine an M/W/SBE as unqualified or unacceptable without sound reasons based on a thorough investigation of the M/W/SBE's capabilities. The basis for rejecting an M/W/SBE deemed unqualified or unacceptable must be included in the good-faith efforts documentation. The contractor will not impose unrealistic conditions of performance on M/W/SBEs seeking contracting opportunities. The condition of performance expected of M/W/SBEs by the contractor must be included with the good-faith efforts documentation.

No contract shall be executed prior to a contractor providing the Certification of Good-Faith Efforts indicating his or her compliance with the City's M/W/SBE policy.

Contractors who determine that an M/W/SBE named in a bid submittal is unavailable or cannot perform shall request an acceptable alternate from the City. For approval of such request, adequate documentation of cause for the

change must be provided to the City. Another certified M/W/SBE may not be substituted prior to approval of such substitution by the City.

IX. Breach of Contract

Contractors found to be in violation of their good-faith efforts or their utilization of M/W/SBEs on City contracts shall be considered to be in breach of contract as specified in the City's contract language. The circumstances surrounding these conditions shall be investigated by the City. Upon confirmation that a breach of contract exists, the City may exercise its option to suspend all future payments under the contract until the conditions that have resulted in the breach of contract have been corrected or take other actions as deemed necessary.

X. Debarment

The City shall establish procedures for the debarment of contractors and subcontractors who do not comply with the City of Roswell's M/W/SBE policy and procedures. Opportunities to appeal a decision to remove a contractor or subcontractor from future City contracting opportunities shall be as provided for in the City's Purchasing Manual.

XI. Attachments

M/W/SBE Forms:

1. Application for M/W/SBE Certification
2. Certification Affidavit
3. Notice of M/W/SBE Certification Approval
4. Notice of Temporary Denial of M/W/SBE Certification
5. SBA North American Industry Standard Classifications
6. Certification of Good-faith Efforts
7. Waiver of Good-faith Efforts
8. M/W/SBE Utilization Report
9. HUD Form 2292 – Certification Regarding Debarment and Suspension
10. Agenda-Regular meeting of the Mayor and City Council (March 15, 2004).