

ILLINOIS INSTITUTE OF TECHNOLOGY
MBE/WBE PLAN AND
EQUAL EMPLOYMENT OPPORTUNITY PLAN
(As Adapted for the Purchase of Goods and/or Services)

The following constitutes the MBE/WBE and Equal Employment Opportunity Plan (the "Plan") which shall govern the activities of the Contractor and Subcontractors engaged to provide goods and services (the "Project") to Illinois Institute of Technology (IIT). Each Contractor or Subcontractor who agrees to provide goods and/or services, shall be deemed to have agreed to the terms of this Plan and this Plan shall be deemed incorporated into any contract or agreement for goods and/or services, as is fully set forth therein.

I. DEFINITIONS

As used in this Plan, the following terms shall have the following meanings indicated:

- A. "Minority" means a person who is a citizen or lawful resident of the United States and who is Black; Hispanic; Asian-American and Pacific Islander; American Indian or Alaskan native.
- B. "Minority Business Enterprise" ("MBE") means a business that is Owned and Controlled (as herein defined) by one or more Minority persons.
- C. "Women Business Enterprise" ("WBE") means a business that is Owned and Controlled by one or more women.
- D. "Owned" means a business which is (1) a sole proprietorship legitimately Owned by a Minority person or woman, (2) a partnership or joint venture in which at least 51 percent of the beneficial ownership interests legitimately are Owned by Minority persons or women, or (3) a corporation or other entity in which at least 51 percent of the beneficial ownership interests are Owned by Minority persons or women.
- E. "Controlled" shall be determined by considering the degree to which Minority group members or women participate in direction and management of this partnership, corporation, joint venture or other entity, including consideration of their participation in the decisions affecting the day-to-day management and operations of the business, and of their proportionate interest in the capital, assets and profits of the business.
- F. "Eligible MBE or WBE Firm" includes any qualified Contractor or Subcontractor providing labor, services, products or materials for the Project who has been certified by one of the agencies or programs listed below:

City of Chicago, National Minority Supplier Development Council Affiliates (NMSDC), Chicago Minority Business Development Council (CMBDC), State of Illinois - Department of Transportation (IDOT), Small Business Administration (SBA-8A), and the Women's Business Enterprise National Council.
- G. "Contractor" means any person who has a Contract with Illinois Institute of Technology, providing labor, services, products and materials for the Project.

- H. "Subcontractor" means any person who has such a Contract with a Contractor or with a Subcontractor providing labor, services, products and materials for the Project.
- I. "Joint Venture" means an association of two or more businesses to carry out a single business enterprise in which they may combine their property, capital, efforts, skills and/or knowledge. A joint venture seeking to be credited for MBE and/or WBE participation may be formed among MBE and/or WBE firms or between a MBE and/or WBE firm and a non-MBE/WBE firm.
- A Joint Venture is eligible if, and only if, all of the following requirements are satisfied:
- The MBE and/or WBE venturer(s) share in the (1) ownership, (2) control, (3) management responsibilities, (4) risks and (5) profits of the Joint Venture in proportion with the MBE and/or WBE ownership percentage; and
 - The MBE and/or WBE venturer(s) are responsible for a clearly defined portion of the work to be performed in proportion with the MBE and/or WBE ownership.
- J. "Area of Specialty" means the description of a MBE or WBE firm's business which has been determined by the M/WBE certifying agency to be most reflective of the MBE or WBE firm's claimed specialty of expertise. Each MBE and WBE letter of certification contains a description of their Area of Specialty. Credit toward this contract's MBE or WBE participation goal shall be limited to the participation of firms performing within their Area of Specialty.
- K. "Commercially Useful Function" means that a contractor is responsible for execution of a distinct element of work and carries out its responsibilities by actually performing, managing and supervising the work involved.

II. STATEMENT OF INTENT AND PROGRAM IMPLEMENTATION

The Contractor recognizes its obligations to establish and implement aggressive equal employment opportunity programs and appropriate MBE/WBE programs to insure full participation of minorities and females in providing goods and/or services to IIT. In order to assure that minorities and females fully participate in contracts and agreements with IIT, Contractor agrees to the obligations described below and to designate a Plan Officer who will act on its behalf to fulfill its responsibilities thereunder.

Failure to effectively implement the Plan shall be deemed to be a default under the Contract/Agreement.

III. M/WBE CONTRACTING & PROCUREMENT

- A. Contractor shall make good faith efforts to actively solicit and achieve the participation of M/WBE firms in the contracting and procurement process and to identify and use eligible M/WBE firms for any Work that may be subcontracted by it and material or supplies purchased by it, whenever possible.
- B. The goal for MBE utilization is a minimum of 25% of the aggregate dollar value of the contract, including all changes to the contract/agreement. The goal for WBE utilization is a minimum of 7% of the aggregate dollar amount of the contract/agreement, including all changes to the contract/agreement.

- C. Contractor shall maintain a documented record of all contacts with M/WBE firms and M/WBE trade associations, and of all bid solicitations and the results thereof. Such documentation shall be available to IIT upon request.
- D. Where economically and technically feasible, Contractor shall award Contracts to M/WBE firms as a result of competitive bidding processes or negotiations limited to M/WBE firms.
- E. Where economically and technically feasible, Contractor shall divide the Work to be contracted into smaller portions to permit greater participation by M/WBE firms. In the preparation of bid packages, Contractor shall carefully analyze and evaluate the requirements for goods and services to identify those which may be assembled into bid packages of a size and scope within the ability of the greatest number of M/WBE firms to provide and perform.
- F. Where appropriate, Contractor shall provide technical assistance to M/WBE firms in the bidding, estimating and scheduling processes.

IV. EQUAL EMPLOYMENT OPPORTUNITY

- A. Contractor shall not discriminate against employee or applicant for employment because of race, color, religion, sex, sexual orientation, age, national origin, or disability not affecting ability to perform. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, age, national origin. Such action shall include, but not be limited to the following: employment, job classification, upgrading, promotion, demotion or transfer, recruitment, layoff or termination, rates of pay or other forms of compensation and selection for and quality of training, including apprenticeship.
- B. Contractor shall comply, at its own expense, with all applicable laws, ordinances, rules, regulations and orders of any public authority relating to the terms and conditions of employment of any person who is employed in connection with the Project including, without limitation, the applicable provisions of the Fair Labor Standards Act, the Fair Employment's Practices Law and the Equal Pay Act.
- C. In an effort to insure equal minority and female employment opportunities on the Project, the Contractor shall use good faith efforts to achieve at least 25% minority participation and 7% female participation in employment on the Project. These goals are expressed in percentages of the aggregate hours of Work performed in support of the Project. While the Contractor must use good faith efforts to achieve the above-stated participation, nothing herein shall be construed as requiring the Contractor to hire persons who are not qualified to perform the Work for which they are hired. Achievement of the goals in each work force and trade category shall be based upon an evaluation of the availability of qualified minority and female workers in each trade category and the extent of documented good faith efforts to achieve the goals.
- D. In an effort to insure that maximum employment opportunities exist for persons who reside in the areas that surround this university, should the Contractor need to hire personnel to service the Project, Contractor shall use good faith efforts to hire at least one community resident to be employed on the Project. This goal also pertains to each subcontractor performing work on the Project. While the Contractor must use good faith efforts to achieve the above stated participation, nothing herein shall be construed as requiring the Contractor to hire persons who are not qualified to perform the work for which they are hired. For the purpose of clarification, local residents are those whose home address is located within the following zip codes: 60616, 60609, 60615, 60653.

- E. Contractor shall make oral and written notifications to labor unions or representatives of workers with which it has a collective bargaining agreement, or understanding of its equal employment obligations, requesting their cooperation and assistance in the referral of qualified minority and female workers. Copies of such notice and requests shall be delivered to IIT.
- F. IIT will be actively assisting the contractor by providing lists of certified contractors, sponsoring outreach conferences, and attending meetings to facilitate relationships between M/WBE and non-M/WBE firms. Contractor shall utilize resource organizations identified by IIT for referral of minorities, females, local residents and other resource organizations as may be available.
- G. Contractor shall monitor utilization of minority and female workers in its own work force and the work force of its Subcontractors and, when underutilization is evident, take or request that immediate, corrective action be taken to achieve the appropriate levels of participation to insure equal employment opportunity.
- H. When underutilization continues for an extended period of time, IIT will convene a meeting with Contractor and, if required, Contractor shall convene a meeting with Subcontractors not in compliance for the purpose of reviewing their equal employment efforts and all supporting documentation. During the meeting, an agreed upon action to achieve the goals shall be established.

V. ADMINISTRATION AND MONITORING

Contractor's obligation under this Plan is to make good faith efforts to comply with all provisions and to meet all goals set forth herein or otherwise agreed upon. Contractor agrees that the Plan shall be administered in the following manner:

- A. Prior to the award of a Contract to any Subcontractor, the Contractor shall be required to submit documentation, provided by the Subcontractor, verifying its good faith efforts via a detailed plan for actual utilization of M/WBE firms in an amount equal to or greater than the commitments or goals incorporated into this Plan.
- B. Contractor agrees that these equal employment and MBE/WBE utilization provisions are to be inserted into each contract/agreement for any of the Work subcontracted by the Contractor to others, and that the Contractor will be responsible for enforcing or causing Subcontractors to enforce such provisions. The Contractor will report such enforcement efforts to IIT as often as may be required by IIT.
- C. Contractor agrees that it will meet with a representative of each subcontractor to review the specific requirements of the Plan, including reporting procedures and documentation, and obtain written acknowledgment from the subcontractor with respect to each such requirement.
- D. Contractor agrees that it shall maintain and make available to IIT documentation regarding M/WBE utilization. Documentation shall contain, at a minimum, names and addresses of M/WBE subcontractors and suppliers, evidence of certification by one of the authorized agencies or programs, the actual dollar amount of the contract/agreement awards or purchase agreements, affidavits confirming M/WBE participation. Documentation shall be maintained in such form as to permit a determination that good faith efforts have been made to achieve the goals of the Plan. After an initial presentation of Contractor's proposed Plan, reports summarizing this information shall be submitted to IIT on a quarterly basis. Failure to submit the required reports will be considered as Non-Compliance and subject to action as described in Paragraph VIII below.

- E. Referrals of eligible M/WBE firms may be made by IIT or other parties from time to time. These referrals shall not be deemed to be a recommendation by IIT to utilize any such firms or a representation or warranty that such firms are qualified to perform any work associated with the Project. Referrals are solely for the convenience of Contractor and any decision by Contractor to utilize any firms so referred shall be the sole decision of Contractor without participation by IIT. Contractor acknowledges that IIT shall have no responsibility for Contractor's decisions regarding M/WBE utilization.

VI. COUNTING MBE/WBE PARTICIPATION TOWARDS CONTRACT/AGREEMENT GOALS

MBE/WBE participation shall be counted toward meeting Affirmative Action Goals set in accordance with this contract/agreement as follows:

- A. Once a firm is determined to be an eligible MBE/WBE in accordance with these rules, the total dollar value of the contract awarded to the MBE/WBE is counted toward the applicable MBE/WBE goals.
- B. A Contractor may count towards its MBE/WBE goals a portion of the total dollar value of a contract with a joint venture eligible under the standards of the definition of a joint venture equal to the percentage of the ownership and controls of the MBE/WBE partner in the joint venture.
- C. A Contractor may count toward its MBE/WBE goals only expenditures to MBEs/WBEs that perform a commercially useful function in the work of a contract/agreement as defined in Section I, Definitions. To determine whether an MBE/WBE is performing a commercially useful function, the Contractor shall evaluate the amount of work subcontracted, industry practices, and other relevant factors.
- D. Consistent with normal industry practices, an MBE/WBE may enter into subcontracts. If an MBE/WBE Contractor subcontracts a significantly greater portion of work than would be expected on the basis of normal industry practices, the MBE/WBE shall be presumed not to be performing a commercially useful function. The MBE/WBE may present evidence to rebut this presumption to IIT.
- E. A Contractor may count toward its MBE/WBE goals, expenditures for materials and supplies obtained from MBE/WBE suppliers and manufacturers, provided that the MBEs/WBEs assume the actual and contractual responsibility for the provision of the materials and supplies.

VII. RECORD KEEPING

- A. The Contractor shall, no later than thirty (30) days after the approval of the M/WBE Utilization Plan, execute formal contracts or purchase orders with those MBEs and WBEs included in its approved MBE/WBE Utilization Plan.
- B. The Contractor shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs.

VIII. NON-COMPLIANCE

Failure to comply with the MBE/WBE requirements of this contract/agreement or failure to use MBEs and WBEs as stated in the Form 100 - M/WBE Utilization Plan constitutes a material breach of the contract/agreement, and may lead to the suspension or termination of the contract/agreement in part or in whole.

IX. MBE AND WBE CONTRACTOR ASSISTANCE

Contractors must themselves assist MBEs and WBEs in overcoming barriers to program participation. The following methods may be appropriate:

- A. Develop solicitations of subcontract bids so as to increase potential MBE and WBE participation. This can take the form of breaking down large subcontracts into smaller ones, and by issuing notice of solicitations in a timely manner;
- B. Provide technical assistance and guidance in bid clarifications, estimating and scheduling process;
- C. Purchase supplies and/or lease the required equipment for a job;
- D. Provide accelerated payments or establish pro-rated payment and delivery schedules so as to minimize cash flow problems faced by smaller firms;
- E. Consider alternative Subcontractor bonding requirements i.e. allowing incremental bonding.
- F. Conduct a pre-bid conference for potential Subcontractors.

X. CONTRACTOR ASSISTANCE AGENCIES

The following Minority and Women Business Enterprise assistance agencies should be contacted to identify certified contractors:

African American Contractors Assoc.
3706 S. Indiana Ave.
Chicago, Illinois 60616
Attn: Omarr Shareef
(312) 915-5960
(312) 567-9919 fax

Project P.R.I.D.E.
4500 S. Wabash Ave., Room 111
Chicago, IL 60653
Attn: Elder Kevin Ford
(773) 538-5120
(773) 538-5125 fax

Hispanic American Construction
Industry Association (HACIA)
641 W. Lake St., #300
Chicago, Illinois 606615
Attn:
(312) 258-9621
(312) 258-9628 fax

Association of Asian
Construction Enterprises (AACE)
333 N. Ogden Ave.
Chicago, Illinois 60607
Attn: Ken Chin
(312) 563-0746

Black Contractors United (BCU)
400 W. 76th St., #200
Chicago, Illinois 60620
Attn: Ms. Florence Cox
(773) 483-4000
(773) 483-4150 fax

National Association of Women in Construction
330 E. 22nd St., 4th Flr.
Chicago, Illinois
Attn: Andrea Seles
(312) 793-3204

Cosmopolitan Chamber of Commerce
1444 S. Michigan Ave.
Suite 240
Chicago, Illinois 60605
Attn: Gloria Bell
(312) 786-0212
(312) 786-9079 fax

Chicago Minority Business
Development Council (CMBDC)
11 S. LaSalle Street, #850
Chicago, Illinois 60603
Attn: Tracy Smith
(312) 263-0105

Chicago Women In Trades
220 S. Ashland Ave., #101
Chicago, Illinois 60607
Attn: Lauren Sugarmen
(312) 942-1444

Directory of Certified, Disadvantaged,
Minority and Women Business Enterprises
City of Chicago – Dept. of Purchases
Certification Unit
City Hall – Room 403
Chicago, Illinois 60602

Women's Business Development Center
8 S. Michigan Ave., #400
Chicago, Illinois 60603
Attn: Hedy Radner
(312) 853-3477

Federation of Women Contractors
175 W. Jackson
Chicago, Illinois 60606
Attn: Sandra Gidley
(312) 360-1122

The New Coalition
19 S. LaSalle St.
Suite 903
Chicago, Illinois 60603
Attn: Lee Walker
(312) 377-4000

XI. EQUAL EMPLOYMENT OPPORTUNITY

Compliance with MBE and WBE requirements will not diminish or supplant Equal Employment Opportunity and Civil Rights provisions as required by law as they relate to Prime Contractor and subcontractor obligations.

XII. INABILITY TO MEET M/WBE GOALS

In the event that the respondent finds it impossible to fully meet the M/WBE goals stated above, the respondent must submit a signed petition for grant of relief from these goals on the respondent's letterhead, accompanied by documentation demonstrating that all reasonable "good faith" efforts were made toward fulfilling the goal.

To demonstrate sufficient reasonable efforts to meet the M/WBE goals, the respondent shall document the steps it has taken to obtain M/WBE participation, including but not limited to the following:

- A. Attendance at a vendor conference, if any, scheduled by IIT to inform M/WBEs of subcontracting opportunities under a given solicitation.
- B. Written notification to M/WBEs that their interest in the /contract/agreement is solicited.
- C. Efforts made to select portions of the work proposed to be performed by M/WBEs in order to increase the likelihood of achieving the stated goals.
- D. Efforts to negotiate with M/WBEs for specific sub-bids including at a minimum:
 - i. The names, addresses, and telephone numbers of M/WBEs that were contacted;
 - ii. A description of the information provided to M/WBEs regarding the plans and specifications for portions of the work to be performed; and
 - iii. A statement of why additional agreements with M/WBEs were not reached.
- E. Concerning each M/WBE the respondent contacted but rejected as unqualified, the reason for the respondent's conclusion.

Respondents that fail to meet M/WBE goals and fail to demonstrate sufficient reasonable efforts will be deemed in non-compliance and shall not be eligible to be awarded the contract/agreement.