

# COMPLIANCE CONDITIONS

REGARDING PARTICIPATION BY MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES

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These Compliance Conditions form a part of the contract documents.  
**Failure to carry out any of the commitments contained herein shall constitute a material breach of the contract.**

## DEFINITIONS

All terms not specifically defined in the Compliance Conditions will be governed by the definitions in the General Conditions unless the context indicates otherwise.

**Broker** means a person or entity that fills orders by purchasing or receiving supplies from a third party supplier rather than out of its own existing inventory, and provides no commercially useful function other than acting as a conduit between the supplier and the customer. Brokerage will not be counted toward MBE/WBE goals.

**Certification** or “certified” means official recognition of the MBE or WBE status of a business by a public or private entity such as the City of Chicago, the Chicago Minority Business Development Council (CMBDC), the Women’s Business Development Center (WBDC), or the Small Business Administration (SBA).

**Commercially useful function** means that a firm is responsible for the execution of a distinct element of the work of the contract and carries out its responsibilities by actually performing, managing, and supervising the work involved, or by fulfilling its responsibilities as joint venturer. To determine whether a firm is performing a commercially useful function, the Chicago Park District will evaluate the amount of work subcontracted, industry practices, and other relevant factors.

**Contract** means any contract, purchase order, or agreement awarded by any officer or agency of the Chicago Park District, or whose cost is to be paid from funds belonging to or administered by the Park District, regardless of the source.

**Direct participation** means the participation by an MBE or WBE as (1) the prime contractor, (2) a joint venture partner, or (3) a subcontractor of a portion of the work of the contract.

**Established business** means a business entity which, by virtue of its size and capacity for competing in the markets in which it operates, does not need to be a participant in the MBE/WBE program in order to effectuate the purposes of the program as determined by the Park District. In general, a business entity shall be presumed to be an established business if it meets local and other nationally recognized standards for such status.

**Indirect participation** means the participation by an MBE or WBE in ancillary aspects of the work of the contractor.

**Joint venture** means an association of two or more businesses formed to carry out a single business enterprise for profit, and for which purposes they combine their expertise, property, capital, efforts, skills and knowledge.

**Local business** means a business entity located within the counties of Cook, DuPage, Kane, Lake, McHenry or Will in the State of Illinois (the “Six-County Region”) which has the majority of its regular, full-time work force located within the six-county region.

**Minority group** means any of the following racial or ethnic groups:

- African-Americans or Blacks (persons having origins in any of the Black racial groups in Africa)
- Hispanics (persons of Spanish culture with origins in Mexico, South or Central America or the Caribbean Islands, regardless of race)
- Asian-Americans (persons having origins in any of the original peoples of East Asia, Southeast Asia, the Indian subcontinent, or the Pacific Islands)
- Other groups, or other individuals, found by the General Superintendent to be socially and economically disadvantaged and to have suffered actual racial or ethnic discrimination and decreased opportunities to compete in Chicago area markets and to do business with the Chicago Park District

- For purposes of contracts funded by state or federal government sources, groups found to be eligible for the designation of DBE (Disadvantaged Business Enterprise) by such governmental sources

**Minority-owned business** or **MBE** means a local business that is certifiably at least 51% owned by one or more members of one or more minority groups, or, in the case of a publicly-held corporation, a corporation in which at least 51% of the stock is owned by one or more members of one or more minority groups, and whose management and daily business operations are controlled by one or more members of one or more minority groups, and which is not an established business.

**Minority-owned business enterprise goal** or **MBE goal** means the goal adopted for participation by MBEs by the Chicago Park District Code, Chapter XI, Section F.

**Owned** means having all of the customary incidents of ownership, including the right of disposition and the sharing of all risks and profits, commensurate with the degree of ownership interest.

**Program** means the Minority and Women-owned Business Enterprise Program enacted by Chapter XI, Section F of the Code of the Chicago Park District, and all rules, regulations, forms, and schedules promulgated thereunder.

**Schedules** means the Schedule A and Schedule B prepared by the Park District.

**Women-owned business** or **WBE** means a local business that is certifiably at least 51% owned by one or more women, or, in the case of a publicly held corporation, a corporation in which 51% of the stock is owned by one or more women, and whose management and daily business operations are controlled by one or more women, and which is not an established business.

**Women-owned business enterprise goal** or **WBE goal** means the goal adopted for participation by WBEs by the Chicago Park District Code, Chapter XI, Section F.

- I. **POLICY:** It is the policy of the Chicago Park District that members of minority groups and women participate to the maximum feasible extent in the performance of Park District contracts. During the performance of this contract, the submitter agrees that it shall not discriminate on the basis of race, color, religion, sex, national origin, ancestry, age, marital status, physical or mental disability, unfavorable discharge from military service, parental status, or sexual orientation in the solicitation for or purchase of goods or services, or the subcontracting of work in the performance of this contract.

## II. COMMITMENT TO MBE/WBE PARTICIPATION

- A. In order to be considered responsive, the submitter shall commit to the expenditure of at least 25% of the total contract price with MBEs ("MBE goal") and at least 5% with WBEs ("WBE goal"), and identify by category the type of work, goods, or service that will be provided by MBE/WBE firms, unless, **prior to the submission of the proposal**, the Park District grants a percentage reduction or a waiver through the process detailed in Section II.F below. The Director of Purchasing, subject to the approval of the General Superintendent, may extend the period for the granting of reductions or waivers in order to increase the opportunities for the participation of MBEs and/or WBEs in the performance of the contract.
- B. If the submitter is a certified MBE firm, the WBE requirement **must still be met**. If the submitter is a certified WBE firm, the MBE requirement **must still be met**. A business enterprise owned by a woman who is a member of a minority group may be counted on a particular contract as an MBE or a WBE, **but not both**.
- C. The total dollar value of the submitter's MBE or WBE direct participation and indirect participation shall be counted toward the MBE and/or WBE goals.
- D. If the contract value is increased through a change order or contract modification, the MBE and WBE expenditures must increase proportionally.
- E. The commitment to achieve the MBE goal and the WBE goal may be met by:
1. the submitter's status as a MBE or a WBE; or
  2. the submitter's status as a joint venturer with one or more MBEs and/or WBEs. The percentage of the ownership and control of the MBE joint venturer or WBE joint venturer shall be the percentage of participation counted toward the MBE goal and/or the WBE goal. A joint venture

is eligible for participation as an MBE and/or WBE, if, and only if, all of the following requirements are satisfied:

- a. the MBE or WBE venturer(s) participates in the ownership, control, management responsibilities, risks and profits of the joint venture in proportion with the MBE and/or WBE ownership percentage;
- b. the MBE and/or WBE venturer(s) is responsible for a clearly defined portion of the work of the contract in proportion with the MBE's and/or WBE's ownership percentage; and
- c. the MBE and/or WBE venturer(s) actually performs with its own forces and using its own equipment, work equal to at least 75% of the value of its ownership of the joint venture.

The Director of Purchasing, in consultation with appropriate Park District staff, will evaluate the proposed joint venture agreement and all other relevant documents to determine whether these requirements have been satisfied; or

3. subcontracting a portion of the work of the contract to one or more MBEs and/or WBEs:

- a. A submitter may count toward its MBE or WBE goal only expenditures to firms that perform a commercially useful function in the work of the contract.
- b. **Brokering will not be counted toward the Program's goals.** Consistent with normal industry practices, a MBE or WBE may enter into subcontracts; however, if an MBE or WBE subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the MBE or WBE shall be presumed not to be performing a commercially useful function. The submitter may present evidence to rebut this presumption. Where an MBE or WBE, consistent with industry practices, intends to enter into further subcontracts totaling more than 25% of the value of the MBE's or WBE's subcontract, the MBE or WBE must submit all documents required by Section IV of these Conditions regarding all further subcontracts, except that reductions or waivers of the MBE goal or WBE goal need not be obtained. However, the dollar value of any work that is further subcontracted to other than MBEs and/or WBEs shall not be counted toward the attainment of the bidder's MBE and/or WBE goals. This provision does not apply to MBEs or WBEs who represent manufacturers. Agreements between a submitter and an MBE or WBE in which the MBE or WBE promises not to provide subcontracting quotations to other submitters are prohibited.

4. the purchase of materials or services used in or related to the performance of the contract from one or more MBEs and/or WBEs; or

5. Any combination of the foregoing.

**F. Reduction or Waiver of the MBE goal and/or WBE goal**

The Director of Purchasing, in consultation with appropriate Park District staff, shall consider any request for a reduction or a waiver of the MBE goal and/or the WBE goal when necessary. A reduction or waiver may be granted if, among other things, the reasonable and necessary requirements of the contract render sufficient subcontracting, joint venturing or other participation of MBEs and/or WBEs unfeasible or excessively costly; or, sufficient MBEs and/or WBEs capable of providing the goods and services required by the contract are not readily available despite affirmative efforts to locate such businesses.

1. If a submitter determines that it is unable to meet the required MBE goal and/or the WBE goal through direct subcontracts, the submitter should attempt to meet the goals through indirect subcontracts.
2. In the rare instance in which indirect subcontracting also is not possible, the submitter must request a reduction or a waiver of the goal(s) **prior to submission of its proposal**. In order to obtain a reduction or waiver, the submitter must document its unsuccessful solicitation (as either subcontractors or joint venturers) of a reasonable number of the appropriately certified MBEs and WBEs. Documentation must include, but is not necessarily limited to:

- a. a detailed statement of efforts to identify and select portions of work identified in the proposal solicitation for subcontracting to or joint venturing with MBEs and WBEs; and
- b. a listing of all MBEs and WBEs contacted and not utilized, including:
  - i. names, addresses and telephone numbers of MBEs and WBEs solicited;
  - ii. date, time and method of contact;
  - iii. a statement from each contacted MBE or WBE explaining why it was not available to do the work, or a statement that the MBE or WBE did not respond; and
  - iv. where relevant, documentation of all prices quoted by all subcontractors.

### **III. COMPLIANCE WITH MBE/WBE REQUIREMENTS**

#### **A. Proposal**

1. In the MBE/WBE Affidavit provided in the submittal documents, the submitter must commit to a minimum of 25% MBE and 5% WBE participation in any contract awarded to the submitter as a result of this proposal solicitation, and identify by category the type of work, goods, or service that will be provided by MBE/WBE firms.
2. After the Park District's proposal evaluation, if the submitter is being considered for contract award, the prospective awardee will be required to complete and submit the MBE/WBE Schedule A, Schedule Bs, and certification letters, as set out below.

#### **B. Prior to award**

1. Schedule A: Statement of Prime Submitter Regarding MBE/WBE Utilization. During the pre-award evaluation period, the potential awardee will be required to submit a completed Schedule A, committing to the utilization of each listed MBE and WBE, including MBE and WBE joint venturers. That submitter must commit to the expenditure of a specific dollar and/or percentage amount of participation by each MBE and WBE firm. The total dollar or percentage commitment to proposed MBE firms must at least equal the MBE goal of 25%. The total dollar or percentage commitment to proposed WBE firms must at least equal the WBE goal of 5%. The submitter is responsible for calculating the dollar equivalent of the MBE and WBE goals. All commitments made in Schedule A must conform to the submitted Schedule Bs. The submitter will not be permitted to substitute another firm for the MBEs and/or WBEs listed in Schedule A, except as described in Section IV. C. of these Conditions.
2. Schedule B: Letter of Intent from MBE or WBE to Perform as Subcontractor, Supplier and/or Consultant as included in the Submitter's Schedule A. Each Schedule B must accurately detail the work to be performed by the MBE or WBE and the agreed rates and prices, and must be completed and signed by the MBE or WBE firm.
3. Letters of Certification: A copy of each proposed MBE's and WBE's current letters of certification (or other certification documents) must be submitted with the Schedule B. The Park District accepts certification by public or private entities such as the City of Chicago, the Chicago Minority Supplier Development Council [CMSDC], the Women's Business Development Center [WBDC], or the Small Business Administration [SBA]. The Park District reserves the right to determine that even if an entity is certified, its inclusion in the Program does not further the Program's purposes. The Park District – not the bidder – shall determine the adequacy of the letters of certification or other certification documents.
  - a. A receipt for the submittal of an application for certification is NOT AN ACCEPTABLE alternative to a current certification letter.
  - b. The only ACCEPTABLE alternative to a current certification letter is a "courtesy extension letter" from the same certifying agency.

#### **C. Evaluation of the Schedules**

If the potential awardee fails to meet the MBE goal and/or the WBE goal and no reduction or waiver was granted before the proposal was submitted; or if the submitter is found to be unresponsive or uncooperative; or if false statements were made in the Schedules; or if the submitter fails to cooperate promptly with the Park District; the submitter may be deemed unresponsive and eliminated from award consideration.

#### **IV. CONTRACT PERFORMANCE**

##### **A. MBE and WBE Utilization Reports**

The awardee shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs, retaining these records for a period of at least three years after expiration of the contract. The awardee shall file quarterly MBE and WBE Utilization Reports. Each MBE and WBE Utilization Report will reflect the current status of current and projected payments to MBEs and WBEs. Such reports shall include the following: the name, business address, telephone number and contact person of each MBE and WBE actually involved in the performance of the contract; a description of the work performed and/or product or service supplied by each MBE or WBE; the date and amount of each payment; and such other information as may assist the Director of Purchasing in determining the awardee's compliance with the provisions of the Program.

##### **B. Access to Records**

During the term of the contract and for a period of three years after the expiration date of the contract, the Director of Purchasing shall have access to the awardee's books and records, including without limitation payroll records, tax returns and records, and books of account, on five business days notice, to allow the Director of Purchasing to determine the awardee's compliance with its commitment to MBE and WBE participation and the status of any MBE or WBE performing any portion of the contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the awardee's records by any officer or official of the Chicago Park District for any purpose.

##### **C. Substitution of MBEs and WBEs Listed in the Schedules**

When the awardee believes it has become necessary to substitute a new MBE or WBE in order to actually fulfill the MBE goal or WBE goal, or to complete the work of the contract, the awardee must submit to the Director of Purchasing a written request for permission to substitute a different MBE or WBE. Any substitution must receive prior approval from the Director of Purchasing. If the participation of MBEs and/or WBEs in the contract would be reduced by the substitution, the awardee must utilize MBEs and/or WBEs in other areas of the contract to meet the MBE goal and/or WBE goal, unless a reduction or waiver is granted. Such a request must include specific reasons for the proposed substitution, including an affidavit from the MBE or WBE listed in Schedule A and not utilized, stating why the MBE or WBE is unable to complete the work. Acceptable reasons include, but are not limited to, the following:

1. the MBE or WBE was found not to be able to perform the work as described in the Schedules, or was not able to perform on time;
2. the MBE or WBE was found not to be able to produce acceptable work;
3. the MBE or WBE was discovered to be improperly certified; or
4. the MBE or WBE later demands an unreasonable escalation of price.

The awardee's substitution request should include the names, addresses, and officials of any proposed substitute MBE or WBE and the dollar value and scope of work of the proposed subcontract. Such notification shall also include documents that are required for the determination of proposal compliance, including the Schedules and current certification letters. The Park District will not approve extra payment for escalated costs incurred by the awardee when a substitution becomes necessary for the awardee in order to comply with the MBE goal and/or the WBE goal.

#### **V. NON-COMPLIANCE**

The following constitute material breaches of the contract and shall entitle the Park District to declare a default, terminate the contract and exercise those remedies provided for in the contract and at law or in equity: (1) failure to satisfy the MBE goal and/or the WBE goal required by the contract; or (2) the disqualification of the MBE or WBE when such status was a factor in the contract award and was misrepresented by the submitter

- A.** In the event of an awardee's non-compliance with the commitment to MBE and/or WBE participation, the awardee agrees to pay damages to the MBEs and WBEs that were underutilized due to no fault of the MBE or WBE. The unexcused reduction of MBE and/or WBE participation in connection with a contract, including any modification thereof, shall entitle the affected MBEs and WBEs to damages. The awardee agrees to submit any dispute concerning such damages to binding arbitration by an independent arbitrator, other than any department or agency of the Chicago Park District, with reasonable expenses, including attorneys' fees and costs being recoverable by a prevailing MBE or WBE.
- B.** In the event that an awardee is determined by the Director of Purchasing not to have been involved in any misrepresentation of the status of a disqualified MBE or WBE included in the Schedules, the Director of Purchasing may allow the awardee to discharge the MBE or WBE and, if possible, identify and engage a qualified MBE or WBE as a replacement. A MBE must be replaced by another MBE and a WBE must be replaced by another WBE, unless a reduction or waiver is granted.
- C.** If, after notice and a hearing before the Director of Purchasing, the General Superintendent determines that an awardee or a MBE or WBE has made fraudulent misrepresentations to the Director of Purchasing regarding the utilization of MBEs or WBEs, or has colluded with another making such fraudulent misrepresentations, the awardee or MBE or WBE shall be disqualified from contracting or subcontracting on additional contracts with the Park District for a period of three years.
- D.** The consequences provided herein shall be in addition to any other criminal or civil liability to which such entities may be subject. The General Superintendent, through the General Counsel of the Park District, shall inform the appropriate law enforcement officers of instances of fraudulent misrepresentation and collusion.

#### **End of Compliance Conditions**