

CITY OF MINNEAPOLIS – AHTF CONTRACTING REQUIREMENTS (4/20/12)

The borrower will be required to comply with all applicable Federal, State and local laws and regulations. These requirements vary depending upon the type of development and the source and amount of public investment, if any, and may include, without limitation, the payment of Prevailing Wages for construction, the preparation of Affirmative Action Plans, competitive bidding, compliance with the Small and Underutilized Business Enterprise program or equivalent federal program, and Business Subsidy Act/Living Wage Ordinance, and reporting requirements for those programs. Some of the standard requirements are further discussed below, but the following list is not exhaustive. The borrower is responsible for compliance with all City contracting requirements. Failure to incorporate the requirements as appropriate in any bidding documents or contracts may make a project ineligible for funding or public assistance.

Proposers unfamiliar with these standard requirements are urged to seek further information. Proposers should be aware that additional project costs may result from some of these requirements.

1. **Equal opportunity (nondiscrimination and affirmative action)** The borrower, its general contractor and other contractors or subcontractors with contracts exceeding \$50,000 will be required to submit a written Affirmative Action Plan for the development project. The borrower also must comply and cause its contractors to comply with applicable provisions of Chapters 139 and 141 (Title 7, Civil Rights), Minneapolis Code of Ordinances, nondiscrimination provisions contained in Chapter 181, Minnesota Statutes, the Americans with Disabilities Act of 1990 (as amended), Section 109 of the Housing and Community Development Act of 1974 (as amended), the Age Discrimination Act of 1975 (as amended) and Executive Order 11246, as amended by Executive Order 12086. The borrower will be required to agree not to discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, affectional preference, disability or other handicap, age (40 – 70), marital status, or status with regard to public assistance. The borrower also will be required to take affirmative action to ensure that all employment practices are free of such discrimination. These employment practices include, but are not limited, to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The borrower will post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this non-discrimination clause. The borrower also will be required to, in all solicitations or advertisements for employees placed by or on behalf of the borrower, state that it is an equal opportunity or affirmative action employer. The City requires compliance in demolition, construction and marketing of development projects. (See attached MDCR Contract Compliance fact sheet for further Affirmative Action and other compliance requirements.)
2. In accordance with the City's **Prevailing Wage Policy**, the borrower (for 8+ unit projects) must covenant and agree that it will cause its general contractor and subcontractors to comply with the wage and hour standards issued by the United States Secretary of Labor pursuant to the Davis Bacon Act, 40 U.S.C. Sections 276a to 276a-5, as amended, and the Contract Work Hours and Safety Standards Act 40 U.S.C. Sections 327-333. The borrower shall maintain appropriate payroll documentation for a 3-year period after completion of the project.

Additional requirements for **federal funds**: construction projects receiving **federal** funds may need to comply with the provisions of the Davis-Bacon Act (requirements vary depending on amount and type of funding – see attached compliance requirement summary). The Davis-Bacon Act requires that all contractors and subcontractors pay prevailing wages as determined by the federal Davis-Bacon wage decision. All contractors and subcontractors subject to the Davis-Bacon Act must provide weekly certified payroll records to the Minneapolis Department of Civil Rights. The signed contract that contains the building specifications for the project must contain a copy of the appropriate United States Department of Labor Federal Wage Decision document and the HUD form 4010, Federal Labor Standards Provisions.

3. Borrower and its contractors and suppliers must comply with the Small & Underutilized Business Enterprise Program (SUBP) requirements as outlined in Minneapolis City Code Chapter 423 and the provisions attached hereto as Attachment I (the "SUBP Requirements"). The SUBP Requirements apply to any development project that receives assistance in excess of one hundred thousand dollars (\$100,000). Any questions about the SUBP Requirements should be directed to the Small & Underutilized Business Enterprise Program, City of Minneapolis Civil Rights Department, 239 City Hall, 350 South 5th Street, Minneapolis, Minnesota 55415, Attention: Director Small & Underutilized Business Enterprise Program (612-673-3076).
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5. The borrower's contractors will be subject to the City's **Apprenticeship Training Policy** (for 8+ unit projects).
6. The development must be in conformance with the Uniform Federal **Accessibility Standards** as published on April 1, 1988. The borrower must describe the accessibility design for people with disabilities of each of the code required handicapped units, any proposed housing development (e.g. roll-in showers), the mix of accessible units in the project and where they are located, and any appropriate safety features for vision- and hearing-impaired people.
7. The City's **Affordable Housing Policy** applies to any residential development (rental or ownership) with ten units or more, or a project with a residential component of 10 or more units, that receives any public financial assistance. Public financial assistance includes the receipt of Affordable Housing Trust Fund monies.

Under the Affordable Housing Policy, three options are available:

- 20% of the units in the development must be affordable, or
- A comparable number of affordable units must be legally committed by the developer to be built elsewhere in the City, or
- A payment equal to the number of required affordable housing units times \$80,000 must be made into the City's Affordable Housing Fund.

Units are considered affordable if the rent (and/or the combined PITI with utilities) is no more than 30% of 60% of the Twin Cities Standard Metropolitan Statistical Area monthly household income, by family size. If the project receives Affordable Housing Trust Funds, 20% of the units must be affordable to households at or below 50% of the area median income. Units must be affordable for a minimum of 15 years after completion.

8. **Rezoning Responsibility:** It is the borrower's responsibility to undertake and finance any rezoning, variance and use permits necessary for approval of proposed development.
9. **Utilities:** It is the borrower's responsibility to identify the locations of and provide for the installation of electricity, gas, water, sewer service and other utilities servicing the site from the public mains to the individual units.
10. **Construction Standards:** Development must meet FHA minimum property standards and all Minneapolis City codes, and projects will be reviewed for energy efficiency.
11. **Residential Sale and Commercial Sale/ Lease:** The completed units must be advertised and offered publicly and must be sold to the general public.
12. **Hold Harmless:** The borrower shall agree to defend, indemnify and hold the City harmless from any and all claims or lawsuits that may arise from the borrower's activities under the provisions of the loan agreement, that are attributable to the acts or omissions, including breach of specific contractual duties of the borrower or the borrower's independent contractors, agents, employees or officers.
13. **Insurance:** The insurance required for projects approved for funding will include general liability, auto, builder's risk, worker's compensation, and any other insurance appropriate to the project.
14. **Payment and Performance Bond:** The borrower must provide payment and performance bonds in the form prescribed by Minnesota Statutes, Section 574.26, covering the faithful performance of the general contractor's obligations under the construction contract, naming the City as a co-obligee, in the full amount of the construction contract and written by a surety mutually acceptable to the City and the borrower, or an irrevocable letter of credit from a lender approved by the City in the amount of 100% of the construction costs.
15. **Bidding Requirements:** The borrower is required to demonstrate compliance with CPED competitive bidding requirements for general and subcontractor selection.
16. **Interest of Members of City :** No member of the governing body, officer, employee or agent of the City who exercises any function or responsibilities in connection with the carrying out of the project to which this proposal pertains, shall have any personal interest, financial or otherwise, direct or indirect, in the loan agreement.

17. Transfer of Interest

The borrower shall not assign any interest in the loan agreement, and shall not transfer any interest in the same either by assignment or novation without the prior written approval of the City, provided, however, that claims for money due or to income due to the borrower may be assigned to a bank, trust company or other financial institution, or to a trustee in bankruptcy without such approval. Notice of any such assignment or transfer shall be furnished to the City. The borrower shall not subcontract any services under the loan agreement without prior approval of the City's designated Contract Manager.

18. Performance Monitoring

The City will monitor the performance of the borrower against goals and performance standards required in the loan agreement. Substandard performance as determined by the City may result in the initiation of contract termination procedures. The City's designated Contract Manager shall review each portion of the work when certified as complete and submitted by the borrower and shall inform the borrower of any apparent deficiencies, defects, or incomplete work, at any stage of the project.

19. Independent Contractor

Nothing contained in the loan agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The borrower shall at all times remain an independent contractor with respect to the services to be performed under the loan agreement. Any and all employees of the borrower or other persons engaged in the performance of any work or services required by the borrower under the loan agreement shall be considered employees or sub-contractors of the borrower only and not of the City; and any and all claims that might arise, including worker's compensation claims under the Worker's Compensation Act of the State of Minnesota or any other state, on behalf of said employees or other persons while so engaged in any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the borrower.

20. Retention of Records

The borrower shall retain financial records, supporting documents, statistical records and all other records pertinent to the expenditures under the loan agreement for a period of six years from the completion of the project, pursuant to the requirements of 24 CFR 84.53(b) as modified by 570.502(b)(3)(ix)(A) and (B). Records that are the subject of audit findings shall be retained for six years after such findings have been resolved. Records for non-expendable property acquired with funds under the loan agreement shall be retained for six years after final disposition of such property. Records for any displaced person must be kept for six years after he or she has received final payment.

21. Data Practices

The borrower agrees to comply with the Minnesota Government Data Practices Act and all other applicable state and federal laws relating to data privacy or confidentiality. The borrower must immediately report to the City any requests from third parties for information relating to the loan agreement. The City agrees to promptly respond to inquiries from the borrower concerning data requests. The borrower agrees to hold the City, its officers, and employees harmless from any claims resulting from the borrower's unlawful disclosure or use of data protected under state and federal laws.

22. Inspection of Records

All borrower records with respect to any matters covered by the loan agreement shall be made available to the City or its designees at any time during normal business hours, as often as the City deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data.

23. Applicable Law

The laws of the State of Minnesota shall govern the loan agreement, and the appropriate venue and jurisdiction for any litigation which may arise thereunder will be in those courts located within the County of Hennepin, State of Minnesota, regardless of the place of business, residence or incorporation of the borrower.

24. Conflict and Priority

In the event that a conflict is found between provisions in the loan agreement, the borrower's Proposal or the City's Request for Proposals, the provisions in the following rank order shall take precedence: 1) loan agreement; 2) Proposal; and last 3) Request for Proposals.

25. Billboard Advertising

Through Section 109.470, Minneapolis Code of Ordinances, City and City-derived funds are prohibited from use to pay for billboard advertising as a part of a City project or undertaking.

26. Conflict Of Interest/Code Of Ethics

The borrower agrees to be bound by the City's Code of Ethics, Minneapolis Code of Ordinances, Chapter 15. The borrower will be required to certify that to the best of its knowledge all City employees and officers participating in the loan agreement have also complied with that Ordinance. It is agreed by the parties that any violation of the Code of Ethics constitutes grounds for the City to void the loan agreement. All questions relative to this section shall be referred to the City and shall be promptly answered.

27. Additional Federal

RELOCATION: The borrower shall comply with Titles I and II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601-55) and 49 C.F.R. Part 24, for displacement of persons, businesses, nonprofit organizations, and farms occurring as a direct result of any project receiving federal funds to the extent said statutes apply to the loan agreement.

AFFIRMATIVE MARKETING: Recipients of HOME program funds shall comply with the City's Affirmative Marketing requirements under 24 C.F.R. §92.351.

HUD "SECTION 3 REQUIREMENTS" (24 C.F.R. Part 135) IN THE PROVISION OF TRAINING EMPLOYMENT AND BUSINESS OPPORTUNITIES: Borrowers receiving more than \$200,000 of federal funds for a project and any contractor or subcontractor with a contract on such a project in excess of \$100,000 are subject to the Section 3 requirements outlined in 24 C.F.R. Part 135. All Section 3 covered contracts shall include the following clause (referred to as the "Section 3 Clause"):

- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 C.F.R. part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative or workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 C.F.R. part 135.
- F. Noncompliance with HUD's regulations in 24 C.F.R. part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b) 24.

ENVIRONMENTAL COMPLIANCE: The borrower agrees to comply with the National Environmental Policy Act of 1969, and the HUD Environmental Review Procedures (24 C.F.R., Part 58) insofar as they might apply to the performance of the loan agreement.

HISTORIC PRESERVATION: The borrower agrees to comply with the historic preservation requirements set forth in the National Historic Preservation Act of 1966 (16 U.S.C. 470) and the Archaeological and Historic Preservation Act of 1974, Public Law 93-291, and the procedures set forth in 36 C.F.R., Part 800, insofar as they apply to the performance of the loan agreement.

ARCHITECTURAL COMPLIANCE: The borrower agrees to comply with any regulations issued by HUD pursuant to compliance with Section 504 of the Rehabilitation Act of 1973, 24 C.F.R. §8.22 (new construction) and §8.23 (existing building), which prohibits discrimination against the handicapped in any federally assisted program. The City shall provide to the borrower any necessary guidelines for compliance with that portion of the regulations in force during the loan agreement period. The borrower must also comply with the Fair Housing Act 24 C.F.R. §100.205. Section 504 uses Uniform Federal Accessibility Standards (UFAS) and Fair Housing Act uses American National Standards Institute (ANSI – 1986).

LEAD BASED PAINT REMEDIATION: Projects receiving funds from the Program must comply with Federal, State, and City lead-based paint regulations. All projects must have a lead-risk assessment done by an authorized company. The specific regulations are as follows:

Federal Regulations

EPA – 40 C.F.R. Part 745 and any other regulations issued pursuant to Section 403 of the Toxic Substances Control Act (TSCA) as amended by the Residential Lead-Based Paint Hazard Reduction Act of 1992.

OSHA – 29 C.F.R. Part 1910 and Part 1926.

HUD – 24 C.F.R. Part 35 especially Subparts B, G, H, J, K & R

State Statute

Department of Health – Minnesota Statutes, Section 144.9501 through Section 144.9509 (The Childhood Lead Poisoning Act).

Section 144.9504 deals with “lead orders” issued by the Commissioner of Health.

Section 144.9508 deals with “rules” prepared or adopted by the Commissioner of Health for addressing lead contamination and its abatement.

City of Minneapolis Ordinance

Chapter 240, Minneapolis Code of Ordinances – Enforcement authority granted to the City’s Department of Regulatory Services-Environmental Health Division, to enforce “lead orders” issued by the State. HUD regulations for lead paint have been in existence for many years, however, on September 15, 2000, new regulations became effective. The regs consolidate all of HUD’s existing regulations in one part of the Code of Federal Regulations (CFR), requires control of lead-contaminated dust associated with the presence of lead-based paint, requires clean up or clearance, and requires trained and certified lead paint professionals to assure that lead hazard control work is done safely.

For more detail information, refer to Attachment 7-A (Summary of Lead-Based Paint Requirements by Activity) and Attachment 7-B (Four Approaches to Implementing Lead Hazard Evaluation and Reduction).

ATTACHMENT I

MINNEAPOLIS DEPARTMENT OF CIVIL RIGHTS

Small and Underutilized Business Enterprise Program (SUBP)

**SPECIAL PROVISIONS FOR CONSTRUCTION CONTRACTS OR DEVELOPMENT PROJECTS
WITH CITY ASSISTANCE
IN EXCESS OF \$100,000**

I. PURPOSE

These provisions explain the City of Minneapolis Small and Underutilized Business Enterprise Program (SUBP) requirements applicable to covered contracts, the process the Minneapolis Department of Civil Rights (MDCR) will follow to evaluate the developer's contractor's efforts to obtain SUBP participation, the standards MDCR will use to measure compliance with these requirements, and the sanctions that may result from noncompliance with these requirements.

II. POLICY

It is the policy of the City of Minneapolis to provide equal opportunities to all contractors, and to redress the discrimination in the city's marketplace and in public contracting against minority-owned ("MBE") and women-owned ("WBE") business enterprises. The City of Minneapolis shall set contract goals for the participation of Minnesota Uniform Certification Program (Mn/UCP) certified MBEs and WBEs in the marketplace based upon their qualifications and availability. Firms certified by the Mn/UCP can be found at <http://www.dot.state.mn.us/civilrights/>. The city's marketplace includes the geographical area of the Minnesota counties of Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, and Wright. Only firms in these counties will be counted towards meeting SUBP goals.

III. SUBP GOALS ON THIS PROJECT

The SUBP goals on this project are: ____% MBE ____% WBE

The developer's contractor must either meet the goals listed above or show that it made good faith efforts, as defined in Minneapolis Code of Ordinances, Section 423.90, to meet the MBE/WBE goals for this project. MDCR will determine whether the contractor has made adequate good faith efforts to meet the SUBP goals. If the contractor fails to meet the goals and does not demonstrate good faith efforts, the City may refuse to award or advance project assistance to the developer, among other things.

IV. REQUIRED DOCUMENTATION AND SUBMITTAL OF INFORMATION

The developer's contractor must list in the preconstruction booklet the MBEs and WBEs it intends to contract with and the respective subcontract amounts.

The developer's contractor must make every necessary and reasonable effort to subcontract with MBEs/WBEs.

The contractor must thoroughly document its efforts to solicit and incorporate MBE/WBE participation in order to meet the SUBP goals.

If the preconstruction booklet demonstrates and MDCR has verified, sufficient MBE/WBE participation to meet the SUBP goals, the contractor must include with the preconstruction booklet the following:

Bidders List. The Bidders List must include all MBE/WBE and non-MBE/WBE subcontractors, sub-consultants, service providers or suppliers that submitted a bid or quote for the project. It also indicates which firms the contractor proposes to use.

If the preconstruction booklet does not demonstrate, or MDCR could not verify, sufficient MBE/WBE participation to meet the SUBP goals, the contractor must submit, within three (3) business days after submitting the preconstruction booklet, documentation demonstrating that the contractor made sufficient good faith efforts to meet the goals. The documentation must include the following:

1. *Bidders List.* The Bidders List must include all MBE/WBE and non-MBE/WBE subcontractors, sub-consultants, service providers or suppliers that submitted a bid or quote for the project. It also indicates which MBE/WBE firms the contractor proposes to use.
2. *Certificate of Good Faith Efforts.* The Certificate of Good Faith Efforts must list all MBE/WBE and non-MBE/WBE firms (including all subcontractors, sub-consultants, service providers, and suppliers) from which the contractor solicited bids or quotes for the project.
3. *Good Faith Efforts Affidavit.* The Good Faith Efforts Affidavit is a notarized document certifying the truth and accuracy of the information contained in the Certificate of Good Faith Efforts.
4. *Supporting Documentation to Demonstrate Good Faith Efforts.* The contractor must submit information that demonstrates its efforts to achieve the SUBP goals. The documentation must identify the actions taken to achieve the SUBP goals, including those listed in the section below entitled, “Good Faith Efforts Evaluation Where Goal Not Met.” The information may include, but is not limited to, copies of solicitation letters, actual bids received, faxes, phone conversations, and emails to MBE/WBE firms.

V. FAILURE TO SUBMIT INFORMATION.

If the contractor fails to submit the required information by the due date, the City of Minneapolis may refuse to award or advance project assistance to the developer.

VI. IDENTIFYING THE LEVEL OF MBE AND WBE PARTICIPATION

The information provided by the contractor will be used to determine the total base bid amount of the contract. Each total base amount will be multiplied by the MBE/WBE percentage established for the project to determine the exact dollar amount of MBE/WBE goal participation (without rounding up) for the project. This amount will then be compared against the exact dollar amounts that the contractor has listed as MBE/WBE participation. If the total dollar amount of participation listed meets or exceeds the established MBE/WBE goal participation for the project, MDCR will determine that the goal has been met and good faith efforts will be presumed.

In addition, MDCR will determine the exact commitment percentage for each listed MBE/WBE by dividing the dollar amount listed for each MBE/WBE by the total base bid dollar amount. These individual percentages, when totaled for all listed MBE/WBE, will establish the total committed percentage level of MBE/WBE participation for the project.

In providing the exact dollar amount of participation for each listed MBE/WBE, the contractor should take care never to round up in determining whether or not the total of these amounts meets or exceeds the established percentage goal. The goals must be met or exceeded by dollar amounts and percentages for MDCR to determine that the contractor has met or exceeded the applicable SUBP goals.

Compliance with the SUBP goal will be determined on the base bid amount. If a bid or proposal contains alternates, MBE/WBE participation contained in any alternate will not count towards the project goal. However, should any designated alternate be selected by the developer for inclusion in the contract ultimately awarded the MBE/WBE goal percentage levels submitted, on the base amount, will also apply to the selected alternates. Thus, even though such participation will not be considered in evaluating bids or proposals, bidders or proposers are urged to consider MBE/WBE participation in preparing bids or proposals for designated alternates.

MDCR will utilize the following guidelines in determining the percentage of eligible business participation that will be counted toward the project goals:

- a) If a business is not an MBE or WBE at the time of the execution of the contract, the business' participation toward any MBE/WBE project goals will not be counted.
- b) The dollar value of work performed under a contract with a subcontractor after the subcontractor has ceased to be an MBE or WBE, as defined by Minneapolis Code of Ordinances, Chapter 423, will not be counted toward the project goals.
- c) The participation of an MBE or WBE subcontractor toward the prime contractor's project goals will not be counted until the amount being counted toward the goals has been paid to the MBE/WBE.
- d) When an MBE or WBE participates in a contract, the value of the work actually performed will be counted as follows:
 - 1) The entire amount of that portion of a construction contract that is performed by the MBE's/WBE's own forces, including the cost of supplies and materials utilized by the MBE/WBE for the work of the contract, including supplies purchased or equipment leased by the MBE/WBE (except supplies and equipment the MBE/WBE subcontractor purchases or leases from the prime MBE/WBE contractor or its affiliate).
 - 2) The entire amount of fees or commissions charged by the MBE/WBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a contract toward MBE/WBE project goals, provided that MDCR determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - 3) When an MBE/WBE subcontracts part of the work of its contract to another business, the value of the subcontract work may be counted toward MBE/WBE project goals only if the MBE's/WBE's subcontractor is itself an MBE/WBE. Work that an MBE/WBE subcontracts to a non-MBE/non-WBE will not count toward MBE/WBE project goals.
- e) When an MBE/WBE performs as a participant in a joint venture, MDCR will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the MBE/WBE performs with its own forces toward MBE/WBE project goals.

VII. COMMERCIALY USEFUL FUNCTION

MDCR will count expenditures of an MBE/WBE toward MBE/WBE project goals only if the MBE/WBE is performing a commercially useful function on that contract:

- 1) An MBE/WBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the MBE/WBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price,

determining quality and quantity, ordering the material, installing (where applicable) and paying for the material itself. To determine whether an MBE/WBE is performing a commercially useful function, MDCR may evaluate the amount of work subcontracted, industry practices, whether the amount the MBE/WBE is to be paid under the contract is commensurate with the work it is actually performing, and other relevant factors.

- 2) An MBE/WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which the funds are passed in order to obtain the appearance of MBE/WBE participation. In determining whether an MBE/WBE is such an extra participant, MDCR may examine similar transactions, particularly those in which MBEs and WBEs do not participate, and other relevant factors.
- 3) If an MBE/WBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the MBE/WBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, MDCR may presume that it is not performing a commercially useful function.
- 4) When an MBE/WBE is presumed not to be performing a commercially useful function, the MBE/WBE may present evidence to rebut this presumption. MDCR may determine that the business is performing a commercially useful function given the type of work involved and normal industry practices, and other relevant factors.

VIII. GOOD FAITH EFFORTS EVALUATION WHERE GOALS NOT MET

If the contractor has not fully met the project goals, then it shall demonstrate its good faith efforts to do so. MDCR may consider the following list of actions when reviewing if the contractor solicited in good faith:

- 1) Soliciting through all reasonable and available means (attendance at pre-bid meetings, advertising and/or written notices) the interest of all MBEs/WBEs certified in the scopes of work of the contract. The contractor must solicit MBEs/WBEs in sufficient time prior to bid opening or the proposal deadline to allow MBEs/WBEs to respond to solicitations. The contractor must determine with reasonable certainty if the MBEs/WBEs are interested by taking appropriate steps to follow up on initial solicitations.
- 2) Selecting portions of the work to be performed by MBEs/WBEs in order to increase the likelihood that the project goals will be achieved. This includes, where appropriate, breaking out contract work into smaller units to facilitate MBE/WBE participation, even when a contractor might otherwise prefer to perform these work items with its own forces.
- 3) Providing interested MBEs/WBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- 4) The contractor must negotiate in good faith with interested MBEs/WBEs and provide written documentation of such negotiation with each such business. In determining whether the bidder or proposer negotiated in good faith, MDCR may consider a number of factors including price, scheduling and capabilities as well as the contract goal.
- 5) The fact that there may be some additional costs involved in finding and using MBEs/WBEs is not itself sufficient reason for the contractor's failure to meet the project goals as long as such costs are reasonable.
- 6) If requested by a solicited MBE/WBE, the contractor must make reasonable efforts to assist such MBEs/WBEs in obtaining bonding, lines of credit or insurance as required by the developer or by the contractor, provided that the contractor need not provide financial assistance toward this effort.
- 7) Effectively using the services of minority/woman community organizations; minority/woman contractors' groups; local, state and federal business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the solicitation and placement of MBEs/WBEs.

IX. POST-AWARD SUBSTITUTIONS

The developer's contractor shall not substitute any subcontractor listed in the preconstruction booklet without the prior written approval of MDCR. A substitution includes having someone or some entity other than the subcontractor listed in the preconstruction booklet perform the work of that subcontractor. A substitution is not allowed until both of the following occur: MDCR receives a written request for approval of the substitution, including the reasons for the substitution; and MDCR issues a written approval of the substitution.

The contractor must make good faith efforts to replace an MBE/WBE subcontractor that is unable to perform successfully with another MBE/WBE to perform the same scope of work. The contractor may request assistance from MDCR staff in replacing an MBE/WBE. Such assistance may include, but is not limited to, providing the contractor with information regarding the identification and availability of other MBE/WBEs.

X. PENALTIES FOR NONCOMPLIANCE WITH THESE SUBP SPECIAL PROVISIONS

Contractor compliance with the requirements of these SUBP Special Provisions is a material condition of performance of the developer's contract with the City, and therefore contractor's failure to comply with these SUBP Special Provisions shall be deemed a breach of the contractor's contract with the developer. If a developer, contractor, subcontractor, supplier, vendor or subrecipient does not make a good faith effort to fulfill its obligations under Minneapolis Code of Ordinances, Chapter 423 and these SUBP Special Provisions, or fails to materially comply with the provisions of Minneapolis Code of Ordinances, Chapter 423 and these SUBP Special Provisions, the City of Minneapolis or the developer, as applicable, may take the following actions wholly, partly, or in any combination:

- a) Temporarily withhold cash payments pending correction of the deficiency.
- b) Disallow the use of funds for all or part of the cost of the activity or action not in compliance.
- c) Suspend or debar the developer, contractor, subcontractor, supplier, vendor or subrecipient as ineligible for all current or potential contracts.
- d) Designate the developer, contractor, subcontractor, supplier, vendor or subrecipient as high-risk for future contracts and require of the developer, contractor, subcontractor, supplier, vendor or subrecipient increased reporting requirements, mandatory audits and similar measures.



**CITY OF MINNEAPOLIS
DEPARTMENT OF CIVIL RIGHTS**

BIDDERS LIST

The information on this form may be provided in an approved alternate format.

Project Name: _____

Prime Contractor _____

MBE Commitment % _____ WBE Commitment % _____

List all comparative quotes of participants performing on the project and participants that bid, including MBEs, WBEs and Non-MBEs and Non-WBEs.

Include Subcontractors, Suppliers, Sub-Consultants & Service Providers (Including Trucking).

Name, Contact Name and Phone number of Contractor	Check (✓) Firms That Will Be Used	Description of Work	Dollar Amount of Subcontract/Quote
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			

Please indicate with a check mark (✓) which subcontractors, suppliers, sub-consultants & service providers you will be using on the project.

(Make additional copies of this form as necessary.)



**CITY OF MINNEAPOLIS
DEPARTMENT OF CIVIL RIGHTS
CERTIFICATE OF GOOD FAITH EFFORTS**

Project Name _____

Prime Contractor _____

LIST YOUR SOLICITATION OF ALL SUBCONTRACTORS, SUB-CONSULTANTS, SUPPLIERS, AND SERVICE PROVIDERS
(Include all MBEs, WBEs, and others solicited)

Subcontractor/Supplier/Service Provider and Address	MBE	WBE	Telephone #	Dates, Method of Contact					Description of Work or Service to be Provided	Dollar Amount of Contract
				Date	Letter	Fax	Phone	*Other		
1.										
2.										
3.										
4.										
5.										
6.										
7.										
8.										
9.										
10.										

* Please indicate how subcontractors, suppliers, sub-consultants & service providers were contacted for a quote on this project: _____.

(Make additional copies of this form as necessary)



**CITY OF MINNEAPOLIS
DEPARTMENT OF CIVIL RIGHTS**

GOOD FAITH EFFORTS AFFIDAVIT

STATE OF _____)
)SS
COUNTY OF _____)

I, _____, being first duly sworn, state as
(Full Name)

follows:

1. I am the _____ of _____
(Title) (Name of Individual, Company, Partnership, or Corporation)

that has been identified as the apparent low bidder preliminarily selected for the City of Minneapolis
Project/Contract:

(Project or Contract Name)

2. I have the authority to make this affidavit for and on behalf of the apparent low bidder
preliminarily selected by the City of Minneapolis.

3. The information provided in the attached Certificate of Good Faith Efforts is true and accurate to
the best of my belief.

Signed _____
(Bidder or authorized representative)

Subscribed and sworn to before me
This _____ day of _____, 20____

(Notary Public)

My commission expires _____, 20_____