**Port of Seattle**

**Diversity in Contracting**

**Woman-Owned and Minority-Owned Business Enterprises (WMBE)**

**Inclusion Plan**

1. GENERAL
   1. The Port of Seattle (the Port) promotes equitable opportunities for businesses to participate in public works contracts.
   2. It is a priority for the Port to increase the opportunities for women business enterprises (WBE) and minority business enterprises (MBE) to participate in Port contracts and develop tools to ensure that WMBE firms are afforded fair and equitable opportunity to compete for Port contracts and succeed as contractors and subcontractors.
   3. The Port has established an aspirational goal for this contract. The Port strongly encourages contractors to work with MWBE to meet or exceed the aspirational goal.
   4. Definitions
      1. Women Business Enterprise (WBE) means a business that is at least 51 percent (51%) owned and controlled by a woman or women. A WBE may be self- identified or certified by Washington state or other federal or state jurisdictions.
      2. Minority Business Enterprise (MBE) means a business that is at least 51 percent (51%) owned and controlled by a minority (including, but not limited to African Americans, Native Americans, Asians, and Hispanics) group members. A MBE may be self-identified or certified.
      3. WMBE = Women Business Enterprise (WBE) & Minority Business Enterprise (MBE)
      4. Affirmative Efforts means documented reasonable attempts in good faith to contract with women and minority businesses.
   5. INCLUSION PLAN & ASPIRATIONAL GOAL
2. The Port has determined that this Contract has possible opportunities for participation by WMBE firms and has established the following aspirational goal (Goal) for WMBE participation on this Contract.

WMBE ASPIRATIONAL GOAL: [\_\_\_] %.

1. The Inclusion Plan (Plan) is an equity tool designed to encourage WMBE participation on Port contracts that have WMBE goals. It is the Port’s intent to increase both the amount paid to WMBE firms and the number of participating WMBE firms. The Plan consists of:
   1. WMBE Commitment Plan Form and
   2. WMBE Affirmative Efforts Form (if applicable).
2. The WMBE Aspirational Goal percentage applies to the total Contract Sum.
3. All Bidders must submit the WMBE Commitment Plan Form with their bid or within one (1) hour after the published Bid submittal time.
4. If the WMBE Commitment does not meet or exceed the WMBE Aspirational Goal on the WMBE Commitment Plan Form, then the bidder must demonstrate the Affirmative Efforts (AE) taken to meet the WMBE Aspirational Goal (using the WMBE Affirmative Efforts Form).
5. The Bidder’s Inclusion Plan becomes a part of the contract upon execution.
   1. SUPPLEMENTAL BIDDER CRITERIA:
6. As a supplemental bidder responsibility criteria, Bidders are required to either (i) meet the WMBE Aspirational Goal or (ii) document Affirmative Efforts of its attempt to meet the WMBE Aspirational Goal. A Bidder will be deemed not responsible if it has not satisfied one of these Inclusion Plan requirements.
7. Required Information:
   1. WMBE Commitment Plan Form. All Bidders must submit a completed WMBE Commitment Plan Form with its sealed bid, or within one (1) hour after the published Bid submittal time. The Bids will be publicly opened and read aloud, one (1) hour after the published bid submittal time. The following information must be provided on the WMBE Commitment Form, in the appropriate location on the form.
      1. WMBE Commitment. Bidders may commit to meeting the WMBE Aspirational Goal through any combination of the following:
         1. Identifying and listing specific WMBEs by name, scope of work, and sub-contract dollar value on the WMBE Commitment Form; and/or
         2. Committing to perform a specified percentage of the Work (measured as a percentage of the Contract Sum) through the use of WMBEs to be identified to the Port after contract execution as a Pre-Construction submittal;
      2. Name of the individual responsible for WMBE management and outreach; and
      3. Bidder’s commitment to comply with subcontractor prompt payment requirements.
   2. WMBE Affirmative Efforts Form. If the WMBE Commitment Form does not indicate a level of WMBE participation that meets or exceeds the WMBE Aspirational Goal, within 2 business days of bid opening, the apparent low bidder and the second-lowest bidder must provide documentation of their Affirmative Efforts taken to meet the WMBE Aspirational Goal by submitting a completed WMBE Affirmative Efforts Form. The WMBE Affirmative Efforts Form must only be provided when a Bidder fails to meet or exceed the WMBE Aspirational Goal on its WMBE Commitment Form.
   3. If a bidder is unable to meet the WMBE Aspirational Goal or document acceptable Affirmative Efforts, the Bidder is not responsible, and its bid will be rejected.
   4. EVALUATING & CALCULATING WMBE UTILIZATION FOR PURPOSES OF AWARD
      1. The Port will calculate the Contractor’s compliance with the Plan as follows:
         1. Firms may be certified or self-identified as a WMBE.
         2. Port will count only the work that will be performed by the WMBE firm.
            1. If the Prime Contractor is a WMBE, the portion of the contract value that will be applied to the Goal is the difference between the Contract Sum and (the sum of all non-WMBE sub-contracts).
         3. A WMBE that is a conduit or pass through or which is not performing a commercially useful function will not be considered applicable to fulfillment of the Goal. A commercially useful function includes, but is not limited to, the performance of a distinct element of work by a firm, which has the skill and experience as well as the responsibility of actually performing, managing, and supervising the work using its own work force and resources.
   5. ONGOING COMPLIANCE FOR TERM OF THE CONTRACT:
      1. During the term of the Contract, the Contractor must meet and maintain the WMBE Commitment from its WMBE Commitment Form. The requirement for participation on this contract must be maintained in relation to the actual total contract sum as adjusted, including all alternates, approved change orders and overruns/under runs of unit price quantities, except as provided below in section (E)(3).
      2. During contract performance, Contractor is expected to continue to do affirmative efforts to increase its utilization of MWBE firms if its percentage commitment does not meet the Port’s aspirational goals.
      3. The Port will verify compliance with the requirement through: (1) review of progress and continuing efforts at monthly construction meetings and (2) the submission of monthly amounts paid submitted via the Port’s Contractor Database System (CDS).
      4. Substitution of Subcontractors After Contract Execution.
         1. The Contractor may not substitute or terminate a WMBE subcontractor listed in the Plan without the prior written consent of the Port. A revised WMBE Commitment Plan Form shall be submitted to the Engineer to request a modification to previously submitted plan.
         2. Such written consent will be provided within 5 business days only if the Port agrees that the prime contractor has good cause to substitute or terminate the WMBE firm. For purposes of this paragraph, good cause includes, but is not limited to, the following circumstances:

(1) The listed subcontractor fails or refuses to execute a written contract;

(2) The listed subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;

(3) The listed subcontractor fails or refuses to meet the prime contractor’s reasonable, non-discriminatory bond requirements;

(4) The listed subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;

(5) The listed subcontractor is ineligible to work on public works projects because of suspension and/or debarment;

(6) The listed subcontractor voluntarily withdraws from the project and provides Contractor official written notice of its withdrawal;

(7) An owner dies or becomes disabled with the result that the listed contractor is unable to complete its work on the contract;

(8) Other documented good cause provided, that the contractor secures the services of another MWBE firm to perform the work or if the contractor cannot secure another MWBE it provides sufficient affirmative efforts to secure a MWBE firm.

* + - 1. Before transmitting to the Port a request to terminate and/or substitute a WMBE subcontractor, the prime contractor must give notice in writing to the WMBE subcontractor, with a copy to the Port of its intent to request to terminate and/or substitute the WMBE, and the reason(s) for the request.
      2. The prime contractor must give the WMBE 3 days to respond to the prime contractor’s notice and advise the Port and the prime contractor of the reasons, if any, why the WMBE objects to the proposed termination of its subcontract and why the prime contractor’s action should not be approved. If required in a particular case as a matter of public necessity (e.g., safety), a response period shorter than three days may be provided.
      3. In addition to post-award substitutions & terminations, the provisions of this section apply to pre-award deletions of or substitutions for WMBE firms.
    1. Change Orders and Unit Price Contracts
       1. The WMBE Commitment applies to all change orders (taken in aggregate) and unit price contracts.
       2. The Port recognizes that there may be multiple Change Orders, some of which may or may not be more amenable to performance (in whole or in part) by WMBEs.
       3. The Contractor must manage (to the extent reasonably practical) its plan for execution of Change Order Work to its subcontractors (and self-performed work) in a manner that will result in meeting its WMBE commitment on all Change Orders.
          1. Change Orders. If the Contractor believes that the Work of a Change Order will affect its ability to meet the WMBE Commitment and the Port’s Aspirational Goal, the Contractor must demonstrate to the Port’s reasonable satisfaction the reasonableness of the steps the Contractor took to locate qualified firm(s) and why it was unsuccessful in securing the services of a WMBE to perform all or part of the Work of a particular Change Order(s).
          2. Unit Price Contract. If the Contractor believes that the actual unit quantities in a unit price contract will affect its ability to meet the WMBE Commitment and the Port’s Aspirational Goal, the Contractor must demonstrate to the Port’s reasonable satisfaction that the actual unit quantities had such an effect, and that the identified WMBE firm(s) was (were) reasonably utilized for the types and scopes of unit price work for which the WMBE was qualified and identified.
  1. FAILURE TO COMPLY WITH THE INCLUSION PLAN

1. In addition to any other remedies that may exist under this Contract, the Port may use failure to comply with the Inclusion Plan as additional supplemental bidder responsibility criteria on future procurements.

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