

REQUIRED FORM I - SPECIAL CONDITIONS REGARDING MINORITY AND WOMEN OWNED BUSINESS ENTERPRISES

NAME OF PROJECT: _____
PROJECT NUMBER: _____
PROPOSER: _____

SECTION I. POLICY STATEMENT AND TERMS

In accordance with the Metropolitan Pier and Exposition Authority Act, 70 ILCS 210/1 et. seq., Section 23.1(b) (hereinafter referred to as "Act"); the Authority has adopted and maintains a Business Diversity Program. Goals established pursuant to the adoption of such a program include the award of not less than 25% of the annual dollar value of all contracts, purchase orders, or other agreements (collectively referred to as "contracts") to minority owned businesses (MBE) and 5% of the annual dollar value of all contracts to women owned business enterprises (WBE).

It is the policy of the Authority that a Contractor take affirmative steps to ensure that minority and women owned businesses have the maximum opportunity to compete for and perform subcontracts for the supply of goods and services. Further, no contractor shall discriminate against any person or business on the basis of race, color, religion, ancestry, age, marital status, physical or mental disability, military discharge status, parental status, sexual orientation, national origin, sex or any other protected status in connection with the purchase of goods and services or the subcontracting of work required by an agreement awarded by the Authority.

SECTION II. DEFINITIONS

For purposes of this Bid or Proposal, the following terms shall have the definitions set forth in this Section II. If there is any discrepancy between the definitions set forth in these Special Conditions and the Act, the provisions of the Act control.

- a. "Area of Specialty" means the description of a MBE or WBE firm's business which has been determined by the Director of Procurement to be most reflective of the MBE or WBE firm's claimed specialty or expertise. Each MBE and WBE letter of certification must contain a description of the firm's Area of Specialty. This information is also contained in each directory published by the Certifying Entities identified in Section III. Credit towards MBE and WBE participation goals on a contract shall be limited to the participation of firms performing within their Area of Specialty.
- b. "Bid" or "Proposal" means a bid, proposal, or submittal detailing a description of the services or work to be provided by the Contractor in response to a bid solicitation, request for proposal, request for qualification or task order request issued by the Authority.
- c. "Bidder" or "Proposer" means any person or business entity that submits a bid, proposal, qualification or submittal that seeks to enter into a contract with the Authority, and includes all partners, affiliates and joint ventures of such person or entity.

- d.** "Broker" means any person or entity that fills orders by purchasing or receiving supplies rather than out of its own existing inventory and provides no substantial service other than acting as a conduit between his or her supplier and his or her customer.
- e.** "Commercially Useful Function" means responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing, and supervising the work involved, evidencing the responsibilities and risks of a business owner.
- f.** "Compliance Monitoring System" means the computer-based system established by the Authority to monitor Contractor compliance in meeting MBE/WBE goals for a contract.
- g.** "Consultant" means an expert who is called on for professional or technical advice or opinions.
- h.** "Contract Specific Goals" means the subcontracting goals for MBE and WBE participation established for a particular contract.
- i.** "Contractor" means any person or business entity that has entered into a contract with the Authority as described herein, and includes all partners, affiliates, and joint ventures of such person or entity.
- j.** "Coordinator" means the Authority's Business Diversity Program Coordinator.
- k.** "Direct Participation" means the total value of payments made to MBE or WBE firms for work that is completed in their Area of Specialty directly related to the performance of the subject matter of the contract.
- l.** "Directory" means a directory of certified minority business enterprises and women business enterprises maintained and published by a Certifying Entity. The Directory identifies firms that have been certified as MBEs and WBEs, and includes both the date of the firm's last certification and the Area of Specialty in which the firm is certified. Contractors are responsible for verifying the current certification status of all proposed MBE and WBE firms.
- m.** "Good Faith Efforts" means actions undertaken by a bidder or contractor to achieve a Contract Specific Goal in accordance with Section VIII(b).
- n.** "Joint Venture" means an association of at least one MBE or WBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which each Joint Venture partner contributes property, capital, efforts, skills and knowledge, and in which the MBE or WBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the Joint Venture are commensurate with its ownership interest.
- o.** "Minority Business Enterprise" or "MBE" shall be defined in accordance with the Business Enterprise for Minorities, Females, and Persons with Disabilities Act, 30 ILCS 575/2.01, et. seq., and means a business concern which is at least 51% owned by one or more minority persons, or in the case of a corporation, at least 51% of the stock in which is owned by one or more minority persons; and the management and daily business operations of which are controlled by one or more of the minority individuals who own it.

- p. "Special Conditions" means the terms and conditions of the Authority's Business Diversity Program as set forth in this document.
- q. "Supplier" means a firm who manufactures or fabricates from raw materials or substantially alters the materials / supplies; or a firm that is the wholesale/retail distributor of materials or supplies.
- r. "Women Business Enterprise" or "WBE" shall be defined in accordance with the Business Enterprise for Minorities, Females, and Persons with Disabilities Act, 30 ILCS 575/2.01, et. seq., and means a business concern which is at least 51% owned by one or more females, or, in the case of a corporation, at least 51% of the stock in which is owned by one or more females; and the management and daily business operations of which are controlled by one or more of the females who own it.

SECTION III. CERTIFICATION

The Authority neither certifies nor decertifies a firm's MBE or WBE status. Rather, it accepts the current certifications of other agencies whose policies and procedures are consistent with the requirements of Section 23.1(b) of the Act. The Authority presently accepts certifications from the City of Chicago, Chicago Minority Business Development Council, County of Cook, Women's Business Development Center through a partnership with the Women's Business Enterprise National Council, and the State of Illinois through its Central Management Services Division. Other certifications will be reviewed on a case-by-case basis. To be eligible for credit towards meeting the MBE and WBE goals, a firm must be certified by the time of contract award.

The Authority does not make any representation concerning the ability of any MBE or WBE to perform work within the firm's Area of Specialty. It is the responsibility of all Contractors to determine the capability and capacity of MBEs and WBEs to satisfactorily perform the work proposed.

Bidder or Proposer must confirm that neither it nor any of its proposed subcontractors have been decertified by any of the certifying agencies listed above. If an MBE or WBE firm loses its certification from any of the certifying agencies above during the contract term, the Contractor and the MBE or WBE must immediately notify the Authority. The Authority has the right to demand the substitution by a certified MBE or WBE or take other appropriate action.

SECTION IV. CONTRACT GOALS

The Authority has established the following Contract Specific Goals for this contract:

MBE PERCENTAGE	WBE PERCENTAGE
25%	5%

These goals shall apply to the contract, unless Bidder or Proposer requests an appropriate waiver at the time of the submission of the Bid or Proposal and such request is granted in writing by the Authority.

SECTION V. OBLIGATIONS OF BIDDERS AND PROPOSERS

- a.** Each Bidder or Proposer must commit to utilize MBE and WBE firms to meet the goals stated above relative to the total contract price (inclusive of any and all modifications and amendments). Evidence of such commitment shall be the responsibility of the Bidder or Proposer. MBE and WBE commitments may be met by one or a combination of the following:
 - 1.** Bidder or Proposer status as a certified MBE or WBE firm;
 - 2.** Subcontracting part of the work to one (1) or more certified MBE or WBE firms; or
 - 3.** A joint venture as prime contractor with one (1) or more certified MBE or WBE firms to the extent of the MBE and WBE participation in such joint venture; or
 - 4.** Purchasing materials or supplies used in performing the contract from one (1) or more certified MBE or WBE firms.
- b.** Bidders or Proposers that are unable to meet the goals set forth in Section IV above must request a waiver or reduction at the time of Bid or Proposal submission and demonstrate Good Faith Efforts pursuant to Section VIII(b) herein;
- c.** Bids or Proposals may be rejected as non-responsive if:
 - 1.** Bids or Proposals do not include a detailed MBE or WBE commitment or a request for a waiver accompanied by evidence of Good Faith Efforts;
 - 2.** Bidder or Proposer fails to cooperate with Authority requests regarding MBE or WBE participation efforts; or
 - 3.** False or misleading statements are made regarding MBE or WBE participation.
- d.** Bidders or Proposers are encouraged to contact the Coordinator early in the process of preparing their Bids or Proposals to obtain assistance identifying qualified and certified MBE and WBE firms. Direct requests to:

Metropolitan Pier and Exposition Authority
301 East Cermak Road, Chicago, Illinois 60616
Telephone: (312) 791-6333 ~ Facsimile: (312) 791-7125
Email: tpetties@mpea.com
Attention: Tiffany M. Petties
Business Diversity Program Compliance Coordinator

SECTION VI. SUBMITTAL REQUIREMENTS

- a. Required Documents.** The following documents must be submitted to the Authority with the Bid or Proposal:

- 1. Schedule A: Affidavit of Bidders or Proposers Commitments.** The Bidder or Proposer must complete this form to warrant to the Authority the Bidder's or Proposer's commitment to use specific MBE/WBE firms in performing the contract. Bidder or Proposer must detail a specific MBE/WBE plan on Schedule A and submit it along with the appropriate certification letters for all MBE and WBE firms in accordance with Section III. All Bidders and Proposers are required to submit a completed Schedule A. Any Bid or Proposal submitted without Schedule A and the relevant supporting documents will be rejected unless the Authority deems it appropriate to grant a waiver in accordance with Section VIII.
 - 2. Schedule B: Letter of Intent.** All MBE/WBE firms that will perform services under the contract must complete Schedule B to show the commitment between the Bidders or Proposers and each MBE/WBE participant. MBE and WBE firms that are party to a Joint Venture must also complete Schedule B.
 - 3. Schedule C: Joint Venture Affidavit and Agreement.** All Joint Ventures must complete Schedule C. Where all of the Joint Venture parties are MBE and WBE firms, a copy of the Joint Venture agreement and Schedule B are required, but Schedule C is not required.
 - 4. Schedule D-1 and D-2: Waiver Request and Unavailability Certification.** In the event that the Bidder or Proposer has been unable to identify any MBE/WBE firms to participate in the contract, Bidder or Proposer must complete these forms to demonstrate its Good-Faith Efforts to obtain MBE/WBE participation.
- b. Changes.** Once approved by the Authority, changes to Bidder or Proposer commitments certified in Schedules A- C are prohibited without prior written consent of the Authority. Bidder or Proposer may request, in writing, to substitute or add a new MBE or WBE or change the percentages among the MBE/WBE firms identified in Schedule A due to unforeseen circumstances in order to fulfill the requirements of the contract. All such requests are subject to the Authority's written approval, subject to the terms of the contract.

SECTION VII. COUNTING MBE/WBE PARTICIPATION TOWARD CONTRACT GOALS

- a. Limitations.** MBE and WBE participation generally counts toward MBE and WBE goals according to the total dollar value of the goods and services supplied by the certified MBE or WBE firm. Some restrictions to this general rule apply, as follows:
- 1.** Credit toward MBE/WBE commitments is only given for work by firms performing within their Area(s) of Specialty as stated in the current letter of certification. Firms acting as brokers are not eligible to be counted for credit.
 - 2.** If a firm (including wholly-owned MBE/WBE Joint Ventures) is certified as both an MBE and a WBE, the Authority will determine whether to count the total dollar value of the contract toward the MBE or WBE goal, but not both at once.
 - 3.** Only payments to firms performing Commercially Useful Functions under the contract with the Authority are counted towards MBE/WBE goals. Commercially Useful Functions include actually performing, managing, and supervising a clear element of

the contract. The amount of work subcontracted, industry practices, and other relevant factors are considered.

4. A MBE/WBE subcontractor is presumed not to perform a Commercially Useful Function when it subcontracts a significantly greater part of the contract than customary industry practice permits. MBE and WBE firms may present evidence to rebut this presumption.

b. Direct Participation.

1. Full credit towards the MBE or WBE commitment may be received for the purchase price of materials and supplies if the materials and supplies are wholly consumed in the performance of a contract and:

- A. The MBE or WBE firm manufactures (i.e., fabricates from raw materials or substantially alters) the materials or supplies; or
- B. The contract or subcontract with the MBE or WBE firm calls for the firm to furnish and install the supplies or materials; or
- C. The MBE or WBE firm providing the materials or supplies performs some other Commercially Useful Function in the supply process (e.g., the MBE or WBE firm's Area of Specialty, as stated on the letter of certification, is a wholesale/retail distributor of the materials or supplies in question). The Authority, in its sole discretion, shall determine whether the MBE or WBE firm performs a Commercially Useful Function.

2. If the MBE or WBE subcontracts out any of its work:

- A. The full value of the portion of the work subcontracted to other MBEs or WBEs performing work in its Area of Specialty may be counted toward the Contract Specific Goals.
- B. None of the value of the work that an MBE or WBE subcontracts to a noncertified firm counts toward the Contract Specific Goals.
- C. The fees or commissions charged for providing a bona fide service, such as professional, technical, consulting or managerial services or for providing bonds or insurance and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the Contract, may be counted toward the Contract Specific Goals, provided that the fee or commission is determined by the Authority to be reasonable and not excessive as compared with fees customarily allowed for similar services.

- c. **Purchase of Materials.** If the MBE or WBE firm has the actual and contractual responsibility for providing materials and supplies, then the contract price of those items may be counted towards Bidder or Proposer's MBE/WBE goals.

d. Joint Ventures

1. A Joint Venture that includes MBE/WBE partners may count towards a Bidder or Proposer's Contract Specific Goals, provided, however, that the MBE or WBE partner(s) must:

- A.** Be responsible for a clearly defined portion of the contract to be performed;
 - B.** Perform a Commercially Useful Function;
 - C.** Share in the capital contribution, control, management responsibilities, risks and profits of the Joint Venture are equal to its ownership interest;
 - D.** Execute the Bid or Proposal along with the other Joint Venture partners;
 - E.** Enter into a written Joint Venture agreement with the other Joint Venture partners that specifies the terms and conditions of the relationship between the partners and their relationship and responsibilities to the contract, and certifies that all such terms and conditions of the Joint Venture agreement are in accordance with Section VII(a)(1)-(3) above. Roles assigned between the Joint Venture partners should require activities that are performed on a regular, recurring basis rather than as needed. The roles must also be pertinent to the nature of the business for which credit is being sought.
- 2.** If the conditions set forth in Section VII(d)(1) are met, credit for the Joint Venture will be applied in one (1) of the three (3) following manners:
- A.** If 51% or more of the ownership of the Joint Venture is held solely by MBE firms, or is held solely by WBE firms, then the Bidder or Proposer will receive credit for the full amount of the contract price towards the MBE or WBE commitment, respectively; or
 - B.** If the Joint Venture includes both MBE and WBE firms, then the commitment to the MBE firm(s) will be counted towards the MBE goal, and the commitment to the WBE firm(s) will be counted towards the WBE goal; or
 - C.** If the Joint Venture includes only MBE firm(s), or only WBE firm(s), and the MBE or WBE firm(s) own less than 51% of the Joint Venture, then the joint venture will be credited with the percentage of the contract price committed to the MBE or WBE firm(s).
- 3.** A subcontract agreement between the Joint Venture and the MBE or WBE partner(s) to the Joint Venture clearly delineating the role of each firm in the performance of the contract must be included with the submission of the Bid or Proposal along with a Schedule A that has been completed by the Joint Venture and Schedule B that has been completed by all MBE/WBE firms.

SECTION VIII. GRANT OF RELIEF / REDUCTION OF MBE/WBE GOALS AND WAIVER PROVISIONS

The Coordinator shall determine whether the request for a reduction of MBE/WBE goals or waiver shall be granted. Bidder or proposer may be considered responsive to the terms and conditions of these schedules only if a reduction or waiver request is submitted at the time of the Bid or Proposal opening.

Failure to submit the request for reduction from the stated goals or waiver, sufficient to support the request for a reduction or to support the waiver request with the Bid or Proposal, will cause the Bid or Proposal to be found non-responsive by the Coordinator, and the Bid or Proposal will be rejected by the Director of Procurement.

a. Required Documents. To obtain relief/reduction of MBE/WBE goals, a Bidder or Proposer must submit the following:

1. A written request for reduction or waiver from the goals in the form of a signed petition submitted on the Bidder's or Proposer's letterhead;
2. Copies of the letters on the Bidder's or Proposer's company letterhead sent to at least two (2) assistance agencies requesting assistance in locating MBE/WBE firms (include also a notarized statement certifying that the original of each letter to an assist agency was mailed on the date stated in each letter);
3. Completed Schedules D-1 and D-2: Unavailability Certification for each MBE or WBE firm contacted for participation in the performance of the Bid or Proposal; and
4. Evidence of Good-Faith Efforts as set forth in Section VIII(b) demonstrating that all required efforts were taken to secure certified MBE/WBE firms to meet the goals.

b. Good-Faith Efforts. The following are examples of good-faith efforts. The list is not intended to be exhaustive, and a Bidder or Proposer may present additional information or documentation as evidence of its Good Faith Efforts. The Authority will review all such documentation on a case by case basis, but does not guarantee that documentation of the following factors will automatically qualify as Good Faith Efforts.

1. Having written affirmative action policies and demonstrating general success in implementing those policies.
2. Notifying assistance agencies in writing before Bids or Proposals are due to seek their assistance in identifying viable MBE and/or WBEs for specific work on a contract. (See Section XIV for a list of such agencies.).
3. The method, means, and date(s) by which the Contractor timely notified the MBE/WBEs of the potential for bidding or participation in the subject contract.
4. Documentation that the information Contractor provided to the MBE/WBEs about plans, specifications, requirements of the contract and scope of services was adequate to facilitate the MBE/WBE's ability to provide a substantive bid response to the Contractor.
5. Evidence that the Contractor selected portions of the work to be performed by an MBE/WBE in order to increase the likelihood of participation, including, where appropriate, breaking down contracts into smaller, economically feasible units.
6. If the Bidder or Proposer has directly negotiated with MBE and/or WBEs for subcontracts, the following items must be reported. A detailed statement of the efforts made to negotiate in good faith with MBE/WBEs showing:
 - A.** The names, addresses and telephone numbers of the MBE/WBEs contacted;

- B.** A description of the plans and specifications provided to MBE/WBEs; and
 - C.** A detailed statement of the reason(s) agreements with the MBE/WBEs were not possible;
 - D.** A detailed statement of efforts made to select work for an MBE/WBE.
- 7.** Whether the contractor deemed the MBE/WBE as unqualified on a bona fide basis consistent with legitimate industry standards.
- 8.** The Bidder and/or Proposer must research MBE and/or WBE involvement beyond customary roles. (Affidavits must be submitted stating why MBE/WBE participation was not possible).
- 9.** Assisting MBE and/or WBEs in overcoming participation barriers, for example, by helping firms obtain bonding or insurance coverage.
- c. Price.** Price alone is not an acceptable reason for rejecting an MBE/WBE subcontractor. The bidder or proposer must demonstrate that no MBE and/or WBE offered a reasonable price based on objective factors establishing that the quote is excessively costly. In order to establish that a subcontractor's quote is excessively costly, the Bidder or Proposer must provide the following information:
 - 1.** A detailed statement of the work identified for MBE/WBE participation for which Bidder or Proposer asserts the MBE/WBE quotes(s) was excessively costly (in excess of 10%).
 - 2.** A list of all potential subcontractors contacted for a quote on the relevant work or service to be performed by the subcontractors and the prices quoted for the subcontract in question.
 - 3.** Other documentation that demonstrates to the satisfaction of the Coordinator that the MBE/WBE proposals are excessively costly, even though not in excess of 10% than the average price quoted. This determination will be based on factors that include, but are not limited to the following:
 - A.** The Authority's estimate for the work under a specific subcontract;
 - B.** The Bidder's or Proposer's own estimate for the work under the subcontract;
 - C.** An average of the bona fide prices quoted for the subcontract;
 - D.** Demonstrated increase in other contract costs as a result of subcontracting to the MBE/WBE or other firm.

SECTION IX. IMPRACTICABILITY

If the Authority, determines that a lesser MBE/WBE percentage goal is appropriate with respect to a particular contract subject to competitive bidding or issuance of request for proposals prior to the Bid or Proposal solicitations for such contract, Bid or Proposal specifications shall include a statement of such revised standard. This determination may be made in connection with a particular contract, whether before the contract is let for Bid or Proposal, during the Bid or

Proposal or award process, before or during award of the contract, or during the performance of the contract.

SECTION X. RECORD KEEPING

Records of all relevant data must be maintained for at least five (5) years after the work is accepted or the contract with the Authority ends whichever is later. The Authority shall have access to Contractor's books and records, including without limitation payroll records, tax returns and records and books of account, to determine the Contractor's compliance with its commitment to MBE/WBE participation and the status of any MBE/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 Contractor's records by any officer or official of the Authority for any purpose.

SECTION XI. REPORTING REQUIREMENTS DURING THE TERM OF THE CONTRACT

The Compliance Monitoring System is available at: <https://mpea.diversitycompliance.com>. The Coordinator will set up account access for the Contractor and all subcontractors following execution of the contract.

During the term of the contract, Contractor and all subcontractors will be responsible for submitting monthly reports to the Authority via the Compliance Monitoring System according to the following schedule:

CONTRACTOR (PRIME)	Report all payment activity, including non-payments, to subcontractors for the prior month	15th day of each month
SUBCONTRACTOR	Confirmation of all payments received from prime Contractor	20th of each month

All subcontract agreements between the Contractor and MBE/WBE firms must contain language requiring the MBE/WBE to respond to notifications from the Authority requiring the MBE/WBE firms to report payments received from a prime or a non-certified firm.

SECTION XII. EQUAL EMPLOYMENT OPPORTUNITY

Contractor shall comply with all applicable federal, state, and local Equal Employment Opportunity or Civil Rights laws, codes or ordinances, and regulations, and shall require compliance from all subcontractors.

SECTION XIII. AUTHORITY'S REMEDIES FOR NON-COMPLIANCE

Contractor acknowledges and agrees that the terms and conditions of these Special Conditions are material terms of the Bid or Proposal and that these Special Conditions including Affidavits A – D shall be incorporated by reference into Contractor's contract.

- a. Material Breach.** A material breach of the Special Conditions includes, but is not limited to, the following:
1. Contractor's failure to satisfy the MBE/WBE percentage goals required by the contract.
 2. Contractor or subcontractor disqualification as an MBE or WBE when such status was a factor in contract award and was misrepresented by the Contractor. In the event that the Contractor is determined not to have been involved in any misrepresentation of the status of the disqualified subcontractor or supplier, the Contractor shall seek to discharge the disqualified subcontractor or supplier, report such disqualification to the Coordinator, and make every effort to identify and engage a qualified MBE/WBE as its replacement.
 3. Contractor or subcontractor failure to maintain MBE/WBE certification in good standing with the certifying agency.
- b. Remedies.** In the event of a material breach by Contractor, the Authority may invoke any or all of the following remedies. These remedies are not intended to be exclusive of any other remedies available, and every remedy is cumulative and in addition to any other remedy existing now or later at law, in equity or under the contract.
1. Rejection of the Bid or Proposal.
 2. Termination of the contract.
 3. Deem Contractor non-responsive for future contracts with the Authority.
 4. Debarment of Contractor doing business with the Authority.
 5. Referral of Contractor to the appropriate certifying and/or law enforcement agency(ies).
 6. Withhold payments due to the Contractor until corrective action is taken.
 7. Contractor acknowledges that its failure to engage in Good Faith Efforts, will harm the operations and reputation of the Authority, which is difficult to determine and accurately specify. Accordingly, Contractor agrees that if the Authority issues a notice to cure to Contractor with respect to Contractor's failure to exercise Good Faith Efforts, Contractor shall pay to the Authority Five Thousand Dollars (\$5,000) as liquidated damages, not as a penalty, for each instance of such failure to cure, and each thirty-day period thereafter that Contractor fails to establish Good Faith Efforts consistent with the requirements of these Special Conditions. The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims penalties and all other damages of whatsoever nature incurred by the Authority which are occasioned by any failure of Contractor to establish Good Faith Efforts consistent with these Special Conditions. Any payment due to the Authority shall be deducted from the next payment due to Contractor under the contract and deposited in the Authority's Affirmative Action Commitment Outreach Fund.