



THE HOUSING AUTHORITY OF THE CITY OF ATLANTA, GEORGIA
MBE/WBE/SBE OPPORTUNITY INCLUSION POLICY (OIP)

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ARTICLE I: INTENT

It is the policy of The Housing Authority of the City of Atlanta, Georgia (AH) that there exist full and equal business opportunity for all persons and businesses seeking to do business with AH. It is in furtherance of equal opportunity in public contracting that AH is seeking to mitigate the present and ongoing effects of past and present discrimination against minority and women owned business and their employees. AH is committed to ensuring that it is not a passive participant in any lingering marketplace institutionalization of discrimination. Through the AH's Opportunity Inclusion Policy (OIP) Minority, Women and Small Business Enterprises (MBE/WBE/SBEs) as defined herein and certified by AH recognized certifying organizations, MBE/WBE/SBEs shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. AH will take all necessary and reasonable steps authorized by the Department of Housing and Urban Development (HUD) and promulgated in 2 CFR 200, The National Affordable Housing Act 42 U.S.C 12703, and HUD Procurement Handbook for Public Housing Agencies 7460.8 Rev.2. to ensure that MBE/WBE/SBEs shall have the maximum opportunity to compete for and perform contracts financed in whole or in part by federal funds.

This Policy will be incorporated into AH's Department of Procurement's procedure manual and into all of AH's solicitations and business partners' contracts.

Additionally, this Policy shall be implemented through AH's OIP via MBE/WBE/SBE Utilization Plans that are submitted by entities seeking to do business with AH or its partners who utilize federal funding in whole or in part. This OIP shall be incorporated by reference in its entirety and made a part of each and every Invitation-For-Bid (IFB), Request for Proposal (RFP), contract or similar procurement document issued or entered into by AH directly or indirectly via private property managers, developers or any other entity creating obligations to expend funds from or on behalf of AH.

ARTICLE II: BASIS

AH has evaluated the findings and declarations from an Atlanta Housing Commissioned Disparity Study and forms the basis for determinations with respect to its MBE/WBE/SBE program goals. The Disparity Study confirms that an AH program, of the scope and nature contemplated by Section 281 of the National Affordable Housing Act, must incorporate minority, women and small business outreach in all contracting activities.

AH by means of this OIP is seeking to build on AH's existing efforts to include small, minority and women owned business in its contracting. In AH's existing Administrative Operations Manual – Revised July 1, 2015 Section 16.3 AH did undertake "...affirmative steps and encouraged the use of women and minority-owned businesses (WBE and MBEs), businesses owned by economically disadvantaged persons and small businesses as contractors, subcontractors, consultants, and service providers." The AH Disparity Study confirmed the efforts yielded results but those results were not reproduced by AH's private management developers and developers.

The AH Disparity Study cites HUD's guidance on Procurement by Public Housing Authorities (PHAs). In a model procurement policy to PHAs HUD suggests that "Goals shall be established periodically for participation of small businesses, minority-owned businesses and Section 3 business concerns in prime contracts and subcontracting opportunities".

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ARTICLE III: GOALS

The AH will have an agency-wide goal to be determined annually of its spending through direct contract, contracts awarded by AH's Private Management Developers (PMDs) and Developers (Partners).

AH's Partners, PMDs and other AH contractors are subject to the following minimum goals:

- 35% participation goals for MBE/WBE

AH's not-for-profit/nonprofit contractors are subject to the following minimum goals for direct development opportunities:

- 20% participation goals for MBE/WBE

Respondents' compliance with AH's MBE/WBE/SBE commitment goals will be evaluated on the basis of a percentage of the total base bid or proposal. The MBE/WBE/SBE participation goals shall apply to the total dollar value of the contract, inclusive of all amendments, modifications and change orders. Respondents agree to comply with the MBE/WBE/SBE commitment goal in any contract modification work. AH's President and CEO is authorized to adjust the minimum goals periodically as he/she may determine is in the best interests of AH.

ARTICLE IV: ORDER OF PREFERENCE

Respondents shall, in determining the manner of MBE/WBE/SBE participation, consider the utilization of MBE/WBE/SBEs as joint venture partners, private managers, developers, prime contractors, subcontractors and/or suppliers of goods and services directly related to the performance of their contract. In all cases, AH requires that the respondent demonstrate the specific efforts undertaken to utilize MBE/WBE/SBEs directly in the performance of the contract.

Respondents that have exhausted efforts in identifying MBE/WBE/SBEs directly in the performance of their contract shall seek participation of MBE/WBE/SBE firms on Respondents performance of work indirectly related to Atlanta Housing contract where such participation not counted on another agency's MBE/WBE/SBE program goal.

ARTICLE V: COUNTING MBE/WBE/SBE PARTICIPATION

Counting MBE/WBE/SBE Participation: **Proposed MBE/WBE/SBEs must perform a commercially useful function** in order to be considered eligible for credit towards participation in AH's MBE/WBE/SBE program. A company is considered to perform a commercially useful function responsible for actually performing, managing, and supervising the work involved. To determine whether an MBE/WBE/SBE is performing a commercially useful function, AH will review and evaluate the specific duties that will be performed by the MBE/WBE/SBE. Each MBE/WBE/SBE will be expected to perform all of the work contemplated for it, in its area of certification, by any subcontract or agreement through the use of its own employees and equipment.

AH reserves the right to deny or limit MBE/WBE/SBE credit to the selected Contractor where any MBE/WBE/SBE is found to be engaged in substantial subcontracting or pass-through activities with others.

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Credit for the participation of MBE/WBE/SBE as joint ventures shall be based upon a detailed analysis of the duties, responsibilities and risks undertaken by the MBE/WBE/SBE specified by the joint venture's executed agreement. AH reserves the right to deny or limit MBE/WBE/SBE credit to the Respondent where any MBE/WBE/SBE joint venture partner is found to have duties, responsibilities, and risks of loss and management control over the joint venture that is not commensurate with or in proportion to its joint venture ownership.

ARTICLE VI: WAIVERS

If a Respondent is unable to meet the MBE/WBE/SBE participation commitment goals in its proposal for an AH contract, a written request for waiver of MBE/WBE/SBE participation commitment goals must be submitted as part of its submissions in response to an IFB or RFP. Contractors may achieve compliance by petition for grant of relief or waiver from AH's MBE/WBE/SBE commitment goals on the Respondent's letterhead, accompanied by documentation demonstrating that all reasonable "good faith" efforts were made toward fulfilling published goals.

Failure of a Respondent to carry out the commitments and policies with respect to MBE/WBE/SBEs shall constitute a material breach of contract and may result in the suspension or termination of a contract, the disqualification of the Respondent for a future award of AH contracts, the assessment of liquidated damages or such remedy as AH deems appropriate.

Compliance with AH's MBE/WBE/SBE participation commitment goals will not diminish or supplant Equal Employment Opportunity and Civil Rights provisions as specified elsewhere and as they relate to prime contractor and subcontractor obligations.

AH's Chief Executive Officer has the authority to waive MBE/WBE/SBE participation goals on contracts with a recommendation from the Contract Compliance Section and Purchasing and Contracts Department. This may occur whenever the Chief Executive Officer determines that for the reasons of time, need, or standards not previously known, that such a Waiver would be in AH's best interest.

ARTICLE VII: DEFINITIONS

- A. Area of Specialization – description of the MBE/WBE/SBEs business, which has been determined to be most reflective of the MBE/WBE/SBEs, claimed specialty or expertise. Each Letter of Certification contains a description of the MBE/WBE/SBEs area of specialty. AH reserves the right to investigate and determine active MBE/WBE/SBE participation specifically identified for this contract prior to award.
- B. Contractor – the individual or business entity selected by AH to (1) enter into contract negotiations with AH or (2) to receive an award of contract pursuant to an Invitation for Bid or Request for Proposal. Wherever the term Contractor appears, it shall also be construed to pertain to architects, engineers, consultants or other professional service providers as applicable.
- A. Small Business Enterprise (SBE) – Business that is at least 51% owned by a socially and economically disadvantaged individual(s) who also control it and meet the Small Business Administration's size standard and does not exceed existing gross receipt standards from certifying agencies.
- D. Joint Venture – (1) an association of two or more businesses acting as a contractor or as a

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subcontractor in carrying out all or a definite portion of a contract in which each combine its property, capital efforts, skills, and knowledge; or (2) an enterprise formed after the date of the first publication of AH's Invitations for Bids or Requests for Proposals to perform work on a contract, which if the enterprise were continuing, would qualify as an MBE/WBE/SBE.

- E. Joint Venture Agreement – a fully executed and notarized copy of the joint venture Agreement submitted with the bid by a joint venture. In order to demonstrate the MBE/WBE/SBE partner's share in the ownership, control, management responsibilities, risks in the profits of the joint venture, the proposed Joint Venture Agreement must contain specific details related to:
- Contributions of capital and equipment;
 - Work responsibilities or other performance to be undertaken by the MBE/WBE/SBE company;
 - Commitment of management, supervisory and operative personnel employed by the MBE/WBE/SBE to be dedicated to the performance of the contract; and
 - Defining each partner's authority to contractually obligate the joint venture and each partner's authority to expend joint venture funds (e.g. check signing authority).
- F. Manufacturer – a company that operates or maintains a factory or establishment that produces, on premises, the materials or supplies obtained by a contractor.
- G. Minority Group – may include the following:
- Black/African American; or
 - Asian Pacific American (persons with origins from Japan, China, Philippines, Vietnam, Korea, Samoa, Guam, U.S. Trust Territory of the Pacific Islands, Northern Mariana Islands, Laos, Cambodia, Taiwan); or
 - Native American (American Indian, Eskimos, Aleut or Native Hawaiians); or
 - Subcontinent Asian Americans.
- Ethnic Group
- Hispanic/Latino
- H. Minority Business Enterprise (MBE) – an independent business which performs a commercially useful function and which is 51% or more owned, controlled and operated on a day-to-day basis by one or more minority persons and is currently certified by an accredited agency or is in the process of being certified. Firms with pending MBE certifications may be submitted for MBE credit but will NOT count towards credit without a current letter of certification from an AH approved certifying agency.
- I. Participation Proposal – an affidavit attesting to the MBE/WBE/SBE subcontractors that will be utilized on a given contract, stating the name, address, telephone number of MBE/WBE/SBE subcontractor/supplier, dollar amount and percentage of participation and the scope of work to be performed.
- J. Regular Dealer – a company that owns or maintains a store, warehouse or other establishment in which materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be considered a regular dealer, the company must engage in, as its principal business and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum

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products need not keep such products in stock if it owns or operates distribution equipment.

- K. Women Business Enterprise (WBE) – an independent business which performs a commercially useful function and which is 51% or more owned, controlled and operated on a day-to-day basis by one or more women. Firms with pending WBE certifications may be submitted for WBE credit but will NOT count towards credit without a current letter of certification from an AH approved certifying entity.
- L. Utilization Plan – an affidavit attesting to the MBE/WBE/SBE subcontractors that will be utilized on a given contract stating the names, addresses and telephone numbers of the MBE/WBE/SBE subcontractors/suppliers. The Utilization Plan will also indicate the dollar amount, percentage of participation and the scope of work to be performed.

**ARTICLE VIII: MBE/WBE/SBE UTILIZATION PLAN GUIDELINES GOVERNING
SUBMISSION, EVALUATION AND APPROVAL**

Contractors interested in responding to AH, Partner or PMD issued solicitations for Request for Proposals, Invitations for Bid and requests for quotes must submit an MBE/WBE/SBE Utilization Plan or an affidavit acknowledging contract specific MBE/WBE/SBE goals and indicating their intent to comply. MBE/WBE/SBE Utilization Plans will be reviewed for completeness. Failure to submit a Utilization Plan or affidavit may cause a bid or proposal to be deemed unresponsive and that firm non-responsible.

MBE/WBE/SBE firms proposed for credit towards AH's participation goals must include a copy of the MBE/WBE/SBE's current letter(s) of certification from the City of Atlanta, MARTA, Fulton County, the State of Georgia Department of Transportation, the Minority Business Development Council, the Small Business Administration or from another AH approved certifying agency. AH reserves the right to decline to accept a certification from a certifying entity with insufficient standards or history of questionable certifications as determined by AH at its sole discretion.

All letters of certification must include a statement of the MBE/WBE/SBE's area of specialization, the date of issuance of the letter and the expiration or renewal date of certification and the agency, which should be signed by an authorized individual representing the certifying agency. The MBE/WBE/SBE's scope of work must conform to the area of specialization stated in the proposal/bid.

Any MBE/WBE/SBE with a principal place of business located outside of Atlanta Standard Metropolitan Statistical Area (SMSA) and/or the State of Georgia may participate in contracts let by AH. For an out of state MBE/WBE/SBE to be considered as a Respondent, a copy of a current letter of certification from a recognized local and/or out of state certifying agency must be submitted with the proposal bid. AH, reserves the right to decline to accept a certification from an accrediting entity with insufficient standards or history of questionable certifications as determined by AH at its sole discretion.

MBE/WBE/SBE firms listed on utilization forms for MBE/WBE/SBE credit towards AH goals, may NOT be substituted without a prior written request, properly supported with non-arbitrary or capricious rationale accompanied with a prior written approval from the AH or its Partners and PMDs.

In cases where the Respondent is requesting a waiver or variance of the MBE/WBE/SBE participation goals, the request must be submitted at the time of submission of the overall proposal. AH reserves the right to decline to accept a waiver from any contractor for insufficiently documenting efforts at complying with AH published goals. AH will take into account any request for waiver based on non-availability of

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MBE/WBE/SBE Firms when other bids or proposals are received that demonstrate feasibility.

ARTICLE IX: MBE/WBE/SBE UTILIZATION REPORTING

AH and its Partners, PMDs and other AH business partners shall conduct post-award monitoring throughout the term of the contract at such intervals that coincide with the submission of invoices, pay applications or a monthly report as agreed by contract and upon request from the AH or its Partners or PMDs. AH and its partners will perform regular reviews of compliance, conduct on-site site visits, conduct investigations of inappropriate or fraudulent use by or of MBE/WBE/SBE firms and review and act upon waivers, substitutions and modifications proposed by contractors after the contract has been awarded and executed.

During the terms of contracts, Contractors shall submit payment related data in an electronic format and/or format as requested by AH. As such, AH's Partners, PMDs and other AH business partners, submit regular status reports of MBE/WBE/SBE Subcontract Payments. The reports are to be submitted with each request for payment from AH or its Partners, PMDs and other AH business partners during the term of the contract. Failure to submit the status reports may result in payment delay and/or denial.

ARTICLE X: MBE/WBE/SBE SUBSTITUTIONS

Arbitrary changes by the Respondent or the Contractor of its commitment goals earlier certified in the Schedule A are prohibited. Furthermore, once entering into each approved MBE/WBE/SBE sub-agreement, the Contractor shall thereafter, neither terminate the sub-agreement, nor reduce the scope of the work to be performed by the MBE/WBE/SBE, nor decrease the price to the MBE/WBE/SBE without receiving prior written approval from AH.

In some cases, it may become necessary to substitute new MBE/WBE/SBE requirements. In such cases, AH must receive written rational justifying the release by AH of prior specific MBE/WBE/SBE commitments established in the Contractor's proposal or bid.

ARTICLE XI: NON-COMPLIANCE SANCTIONS AND LIQUIDATED DAMAGES

AH shall have the discretion to apply suitable remedies if Contractor is found to be in non-compliance with the MBE/WBE/SBE requirements. Failure to comply with the MBE/WBE/SBE terms of commitment goals as applicable to and in the contract or failure to use MBE/WBE/SBEs as stated in the selected Contractor's submitted schedules constitutes a material breach of the contract and may lead to the suspension and/or termination of the contract in whole or in part. Furthermore, continued eligibility to enter into future contracting arrangements with AH may be jeopardized as a result of non-compliance. In some cases, payments may be withheld until corrective action is taken.

Owing to the difficulty of determining the value of damages suffered by AH arising from the non-compliance by Contractors in the fulfillment of contractually required MBE/WBE/SBE commitments, where no waiver was sought or granted; AH will set out liquidated damages in its contracts and encourage its Partners, PMDs and other business partners utilizing federal funds to include similar contract remedies within their contracts.