



Administrative Policy

Subject: S/W/MBE Policies for Construction and Professional Services Contracts	Index: 2-78.01
Authority: Statute:	Page: 1 of 28
Resolution:	Date Issued: 4/1/91
	Date Revised: 2/16/2009

PURPOSE: This Administrative Policy provides direction for the implementation of Commission Policy 1-78.01 General Procurement.

RESPONSIBILITIES: All District staff authorized to approve purchases, construction contracts and the acquisition of professional services are to:

- Ensure the maximum feasible competition in the District’s procurement process. Clear and compelling justification will be required to support any deviation from this standard.
- Ensure that Small, Women’s and Minority Business Enterprises have the opportunity to compete for the maximum feasible share of District expenditures for goods, services, construction contracts, and professional services. Consideration should also be given to businesses located within the District and within the State of Wisconsin whenever lawfully possible.

The Procurement Department, in conjunction with the department(s) requesting the procurement, is responsible for the oversight of procurement and contracting activities, including performance monitoring, to assure compliance with applicable commission policies and administrative policies and procedures. With special regard to the utilization of Small, Women’s and Minority Business Enterprises on construction contracts and contracts for professional services, the following policies are applicable:

I. CONSTRUCTION CONTRACTS

With regard to construction contracts, District staff is to implement a system of minimum participation goals for District procurement. These goals are as follows:

Minority Business Enterprise Involvement Goal	13% on all contracts
Women Business Enterprise Involvement Goal	2% on all contracts
Small Business Enterprise Involvement Goal	5% on all contracts



Administrative Policy

Subject: S/W/MBE Policies for Construction and Professional Services Contracts	Index: 2-78.01
Authority: Statute:	Page: 2 of 28
Resolution:	Date Issued: 4/1/91
	Date Revised: 2/16/2009

Any bidder/proposer for contracts with the District is required to make good faith efforts to meet the percentage participation goals established on each contract and to make good faith efforts to include small, women's and minority businesses in their bid or proposal to the maximum extent possible. The attainment of the participation goals and good faith efforts to attain maximum possible Small, Women's and Minority Business Enterprise participation on these contracts are hereby declared to be matters of bidder/proposer responsibility. It is the bidder's or proposer's obligation to establish its responsibility to the District's satisfaction. These goals may be adjusted upward by the Executive Director on a contract-by-contract basis prior to bid, depending upon the amount and type of work involved on the contract and the potential and capabilities within the small, women's and minority business contracting community to do the work. The District will accept those Small, Women's and Minority Business Enterprises that have been certified (see (4) Certification Programs) as such on the date the contract is awarded.

The good faith of the bidder/proposer is dependent on the quality of the affirmative steps and the positive efforts taken by the bidder/proposer to include small, women's and minority businesses in the bid or proposal. The District will include in the bidding documents or in the request for proposals those requirements that a bidder or a proposer need achieve in the event the bidder/proposer does not meet the applicable participation goals. The quality of the affirmative steps and the positive efforts exhibited by a bidder/proposer will be considered in determining whether the bidder/proposer has proved its responsibility to be a contractor with the District. All things being equal, the bidder/proposer who meets or exceeds the goals will be given a preference over another bidder/proposer with lesser participation.

District staff shall implement this policy within the general policy directives that follow:

A. Participation to be Promised in Bid or Proposal. The bid or proposal submitted for any District contract shall state the promised level of Small, Women's and Minority Business Enterprise participation. The bid or proposal shall also identify the Small, Women's and Minority Business Enterprises that will perform the work and the dollar value thereof. It shall be the obligation of the prime contractor to determine the capability of the proposed Small, Women's and Minority Business Enterprise to perform the work prior to listing them for credit.

B. Goal Attainment is a Matter of Bidder/Proposer Responsibility. Regardless of whether the District procures its construction services by competitive bidding or through non-competitive processes, it is a requirement for the bidder/proposer to establish its responsibility to the satisfaction of the District. One integral part of a bidder/proposer proving its responsibility to the satisfaction of the District is that the bidder/proposer must include in its bid or proposal the information required in sec. C (2)(a). In all



Administrative Policy

Subject: S/W/MBE Policies for Construction and Professional Services Contracts	Index: 2-78.01
Authority: Statute:	Page: 3 of 28
Resolution:	Date Issued: 4/1/91
	Date Revised: 2/16/2009

cases, the bidder/proposer must submit evidence that good faith efforts were made to include Small, Women’s and Minority Enterprises. If the participation goal is not attained, the bidder shall also include an explanation of why the goal was not attained.

C. Goal Attainment Determination.

(1) Goal Attainment to be Established at Time of Bid or Proposal. Compliance with the Small, Women’s and Minority Business Enterprise goals must be established at the time a bid or a proposal is opened.

- (a) Participation goal creates rebuttable presumption. A bid or proposal that identifies certified (see (4) Certification Programs) Small, Women's and Minority Business Enterprises to achieve the participation goals will have met the bidder's/proposer's burden of establishing responsibility as to this contract requirement. If District staff contests the propriety of a certification as a women’s or minority business enterprise, the staff must prove non-responsibility as to these contract requirements to the Executive Director’s satisfaction. Thus, as an example, a contractor proposing to use certified minority business enterprises on 13% of its contract has carried its burden of proving this aspect of its responsibility; if the District believes a minority business certification is inappropriate, then the District staff must prove that inappropriateness to overcome the contractor's/proposer’s presumptive showing of responsibility.
- (b) No presumption if participation goal not achieved. If the Small, Women’s and Minority Business Enterprise participation goals are not met; or the identified Small, Women’s and Minority Business Enterprises are either not small or, in the case of women's and minority business enterprises, are not certified, the bidder/proposer must establish its responsibility within 3 work days following receipt of written notification from District staff that such responsibility need be established. Among the considerations that staff will consider is the likelihood of an as-yet uncertified Small, Women's or Minority Business Enterprise being certified by the time of award.

(2) Bidder and Proposer Goal Attainment Responsibilities.

- (a) Required information in bid. Each bidder/proposer shall provide with its bid or proposal information on the Small, Women's and Minority Business Enterprises,



Administrative Policy

Subject: S/W/MBE Policies for Construction and Professional Services Contracts	Index: 2-78.01
	Page: 4 of 28
Authority: Statute:	Date Issued: 4/1/91
Resolution:	Date Revised: 2/16/2009

which comprise the total Small, Women’s and Minority Business Enterprise percentage figure listed on the Bidder's Signature and Sworn Statement (Bid Section).

This information must be submitted on EPA Form 6100-4 (Bid Section). The Bidder's Signature and Sworn Statement (Bid Section) and the EPA Form 6100-4 (Bid Section) must both be submitted with the bid.

1. The following information must be included on the EPA Form 6100-4 form.
 - a. Name of Small, Women’s and Minority Business Enterprise (column 1)
 - b. Type of work performed (column 2);
 - c. Dollar amount for each Small, Women’s and Minority Business Enterprise and category to which participation applies: SBE; WBE; or MBE (column 3); and
 - c. .Indication of current certifications (column 4).

2. Completed EPA Form 6100-3 for each proposed SBE, WBE or MBE subcontractor; signed by both the bidder and subcontractor. ***NOTE: not all entities which qualify as an SBE, WBE or MBE under this policy will also qualify as a WBE or MBE under the U.S. EPA’s Disadvantaged Business Program. Bidders are asked to complete this form for each SBE, WBE or MBE regardless of whether they qualify as WBE or MBE under the U.S. EPA’s program.***

3. Documentation of Good Faith Efforts (see part D(1)).

4. Letters from each Small, Women's or Minority Business Enterprise subcontractor on their company stationery setting forth the type of work to be performed, the dollar amount, the contract number, and the signature of the S/W/MBE owner.

(b) Information required upon request. The District may ask for additional information, including information regarding certifications. Requested information must be submitted within three days of receipt of notification by the District.

(3) Certification or Size Criterion must be Achieved by the Time of Contract Award. It shall be the responsibility of the bidder/proposer that all Small, Women’s and Minority Business Enterprises are



Administrative Policy

Subject: S/W/MBE Policies for Construction and Professional Services Contracts	Index: 2-78.01
Authority: Statute:	Page: 5 of 28
Resolution:	Date Issued: 4/1/91
	Date Revised: 2/16/2009

appropriately certified prior to award of the contract. It is the bidder's/proposer's responsibility to monitor the progress toward certification of a Small, Women's or Minority Business Enterprise if a proposed firm is not certified at bid opening, but is anticipated to be certified by the time of the contract's award.

(4) **Certification Programs.** The District will accept certain certification programs for Small, Women's or Minority Business Enterprises. In addition, the District administers a Small Business Enterprise registration program.

These programs are described below:

- (a) **Small Business Enterprise (SBE)** certifications by the MMSD of companies that are defined as small businesses not exceeding \$2.5 million in gross sales during the recent calendar or fiscal year.
- (b) **Existing Women Business Enterprise (WBE) and Minority Business Enterprise (MBE)** certifications determined by the Joint Certification program until those certifications expire.
- (c) **Minority Business Enterprise (MBE)** certification by the Wisconsin Department of Commerce, Bureau of Minority and Women Business Development. www.commerce.wi.gov/BD/
- (d) **Women Business Enterprise (WBE)** certification by the Wisconsin Department of Commerce, Bureau of Minority and Women Business Development. www.commerce.wi.gov/BD/
- (e) **Minority Business Enterprise (MBE)** certification by the Wisconsin Supplier Development Council. www.suppliercouncil.org/certification.html
- (f) **Disadvantaged Business Enterprise (DBE)** certification by the Wisconsin Department of Transportation, provided they reflect minorities or women-owned status. <http://www.dot.wisconsin.gov/business/engrserv/dbe-main.htm>
- (g) **Disadvantaged Business Enterprise (DBE)** certification by the Milwaukee County Office of Disadvantaged Business Development Programs, provided they reflect



Administrative Policy

Subject: S/W/MBE Policies for Construction and Professional Services Contracts	Index: 2-78.01
Authority: Statute:	Page: 6 of 28
Resolution:	Date Issued: 4/1/91
	Date Revised: 2/16/2009

minorities or women-owned status.

<http://www.county.milwaukee.gov/CertificationService12282.htm>

- (h) **Small Disadvantaged Business (SDB)** certification by the U.S. Small Business Administration, provided they reflect minority or women-owned status. Contact: Business Opportunity Specialist, 414-540-9380, or <http://www.sba.gov/localresources/district/wi/index.html>
- (i) **Women Business Enterprise (WBE)** certification by the Women's Business Enterprise National Council. <http://www.wbenc.org/GetCertified/>
- (j) **Disadvantaged Business Enterprise (DBE)** certification by the U.S. EPA's Office of Small and Disadvantaged Business Utilization provided they reflect minorities or women-owned status. <http://www.epa.gov/osdbu/grants.htm>
- (k) Certification by any other certification program as recognized by the Executive Director.

(5) Basis for Determination of Participation.

(a) Credit based on actual participation. The participation achieved for all contracts awarded will be determined by the ratio of the dollar value of the work contracted to Small, Women's and Minority Business Enterprises to the total value of the contract awarded. Credit for small, women's and minority business participation will be allowed for that amount of the contract actually performed by the small, women's and minority business. Credit will not be given for work subcontracted by a Small, Women's and Minority Business Enterprise to others.

Unless specified otherwise in the contract, 2nd tier subcontractors will not be counted towards S/W/MBE participation.

(b) Procedures to determine actual participation.

1. The S/W/MBE Coordinator shall cause a letter to be sent to each small, women's and minority business enterprise listed by the contractor pursuant to subsec. (2)(b) 1. within three business days of receipt of an acceptable list.



Administrative Policy

Subject: S/W/MBE Policies for Construction and Professional Services Contracts	Index: 2-78.01
	Page: 7 of 28
Authority: Statute:	Date Issued: 4/1/91
Resolution:	Date Revised: 2/16/2009

2. Contractors shall submit such forms and reports as required by the District's S/W/MBE Coordinator in a timely and accurate fashion. The contractor shall provide a list of the start dates for work of the Small, Women's and Minority Business Enterprises within 3 work days of issuance of the notice to proceed or with the approved "critical path method" schedule, whichever is later. This list must be periodically reviewed and updated, as necessary by the contractor as a condition precedent to approval of progress payment requests. Other reports shall include a report on utilization of Small, Women's and Minority Business Enterprises that comprise the Small, Women's and Minority Business Enterprises to work on the contract and a monthly report showing the daily utilization of minority and women workers on the job site. Failure to comply subjects the contractor to the sanctions specified in Sec. E. (1)(b) and (c) and Sec. E. (2).
3. Contractors shall submit copies of all canceled checks issued to Small, Women's and Minority Business Enterprises and certification of the total amount paid to Small, Women's and Minority Business Enterprises by the contractor.
4. Each small, women's and minority business enterprise shall certify to the District on District forms the amount received from the contractor for work, service, or supplies furnished to the contractor.
5. With regard to the list of start dates referenced in 2. above, District staff shall report to the S/W/MBE Coordinator at the next progress payment request after the listed start date whether the contractor met the start dates listed.
6. Each small, women's and minority business enterprise must perform a commercially useful function, as that term is defined in ch. III, sec. B, to be accepted for credit toward the participation goals.

(6) Participation Goals are Separate Initiatives. The Small, Women's and Minority Business Enterprise goals are separate initiatives. No Small, Women's and Minority Business Enterprise may be credited toward the attainment of more than one participation goal.



Administrative Policy

Subject: S/W/MBE Policies for Construction and Professional Services Contracts	Index: 2-78.01
Authority: Statute:	Page: 8 of 28
Resolution:	Date Issued: 4/1/91
	Date Revised: 2/16/2009

(7) Treatment of Special Circumstances.

(a) Trucking.

1. Employee drivers. Trucking contracts and subcontracts will receive credit as provided in subsec. (5), above, depending on the existence of an employee-employer relationship with the truck driver. If the Small, Women's and Minority Business Enterprise trucking contractor must pay both unemployment compensation benefits because the driver is deemed an employee under sec. 108.02(12) and (13), Wisconsin Statutes, and make the Federal Insurance Contributions Act payments for the driver, the work of the employee-driver will be fully credited as work by a Small, Women's and Minority Business Enterprise, as applicable.
2. Temporary drivers. Trucking contracts and subcontracts on which the Small, Women's and Minority Business Enterprise trucking contractor hires drivers from a temporary employment provider which does not lease trucks shall be fully credited as work of the Small, Women's and Minority Business Enterprise trucking contractor.
3. Leased trucks with drivers.
 - a. Except as provided in b., below, if the small, women's and minority business enterprise trucking contractor leases trucks with drivers, which drivers are not employees of the small, women's and minority business enterprise under sec.108.02 (12), Wisconsin Statutes, credit as a small, women's and minority business enterprise will not be allowed beyond 51% of the trucking contract amount if the amount of work done with leased trucks with drivers exceeds 49% of the total amount of the work under the trucking subcontract.
 - b. If the Small, Women's and Minority Business Enterprise trucking contractor leases trucks with drivers, which drivers are not employees of the Small, Women's and Minority Business Enterprise under sec.108.02 (12), Wisconsin Statutes, the work of the truck will be fully credited as work by a Small, Women's and Minority Business Enterprise, as applicable, if and only if the trucks and drivers are



Administrative Policy

Subject: S/W/MBE Policies for Construction and Professional Services Contracts	Index: 2-78.01
Authority: Statute:	Page: 9 of 28
Resolution:	Date Issued: 4/1/91
	Date Revised: 2/16/2009

furnished pursuant to an exclusive lease agreement. An exclusive lease agreement shall be written and have a term of at least six months; shall require a truck lease payment for the term, which is not dependent on whether the Small, Women’s and Minority Business Enterprise actually uses the truck; shall give total control of work assignments for the vehicle to the Small, Women’s and Minority Business Enterprise; shall provide that the Small, Women’s and Minority Business Enterprise is listed on the title and registration, in accordance with state law; and shall operate only under the Small, Women’s and Minority Business Enterprises licensed carrier (L.C.) number during the entire term of the agreement.

3. Leased trucks without drivers. If the Small, Women’s and Minority Business Enterprise trucking contractor leases trucks only and supplies employee-drivers or temporary drivers itself, the work done using leased trucks shall be fully credited as work of the Small, Women’s and Minority Business Enterprise trucking contractor.

(b) Supply subcontracts.

1. “Pass-through” construction materials suppliers unacceptable. No credit against the participation goals of this policy will be allowed for supplier subcontracts of concrete; steel; gravel; stone; aggregate; rebar; gypsum; roofing; petroleum products; lumber; piping; and electrical conduit, boxes, switches, and wire unless the supplier, as that term is defined in Ch. III, sec. A. (7), is certified by a certification program under para. (4) and the provisions of subpara. 2., below, are established to the Executive Director's satisfaction.
2. Legitimate construction materials suppliers acceptable. In order to be accepted as a supplier for any of the items listed in subpara. 1., above, the supplier must establish and have on file with the District its status as a contracted manufacturer's representative for the distribution of the product or it is a regular dealer as defined in ch. III, sec. A. (3).



Administrative Policy

Subject: S/W/MBE Policies for Construction and Professional Services Contracts	Index: 2-78.01
	Page: 10 of 28
Authority: Statute:	Date Issued: 4/1/91
Resolution:	Date Revised: 2/16/2009

3. Regular dealers in construction materials acceptable. As to all other suppliers, credit will be given if the supplier establishes to the District's satisfaction that it is a regular dealer or supplier as those terms are defined in ch. III, sec. A (3) and (7).

(c) Joint ventures. Joint ventures are acceptable for credit as Small, Women's and Minority Business Enterprises provided the joint venture has been registered as a small business enterprise or certified as a women's or minority business enterprise in advance by a certification program recognized by the District and it has assigned Small, Women's and Minority Business Enterprise work. Allocation of Small, Women's and Minority Business Enterprise work to small, women's or minority business participation will be credited on the basis of the percentage of the dollar amount of the work to be performed by the Small, Women's and Minority Business Enterprise. For example, if a minority-majority joint venture proposes to perform 40 percent of a subcontract quoted at \$1 million and 50 percent of the work is to be performed by the minority partner in the joint venture, the minority participation will be credited as 20 percent of the work or \$200,000.

(d) Limitations on trucking and supply subcontracts.

1. Small, Women's and Minority Business Enterprise trucking or supply subcontracts may not aggregate more than 50% of a participation goal or 3% of the total contract bid or contract proposal of the bidder/proposer, whichever is less. The Executive Director may increase or decrease the limit on the amount of trucking or supply subcontracts allowed towards the participation goal where the nature of the contract dictates. Any increase or decrease is to be made by the Executive Director prior to issuance of the contract.
2. Trucking and supply subcontracts are also subject to the limitation in subsec. (8)(c) 2., below.

(8) Substitution or Replacement.

(a) Good cause required. Requests for substitution or replacement of any firm that the contractor has notified the District it proposes to use to meet the Small, Women's and Minority Business Enterprise provisions of this policy will not be granted after bid



Administrative Policy

Subject: S/W/MBE Policies for Construction and Professional Services Contracts	Index: 2-78.01
Authority: Statute:	Page: 11 of 28
Resolution:	Date Issued: 4/1/91
	Date Revised: 2/16/2009

opening except for good cause established by the contractor. A lower price by the proposed substitute or replacement for the listed Small, Women's or Minority Business Enterprise is not good cause. An increase of the quoted price *in toto* or on a per unit basis by the Small, Women's or Minority Business Enterprise may constitute good cause, depending on the circumstances. Inability to perform a subcontract can be good cause, depending upon the circumstances.

- (b) Review by staff required prior to substitution or replacement. Whether substitution or replacement is to be allowed will be determined after thorough review by appropriate District staff, including a representative from the Controller. The burden of proof and persuasion as to the need for a substitution or replacement rests with the contractor. If the Contract Administrator is satisfied that good cause is established and the Contract Administrator has the concurrence of the Controller or the Controller's designee that good cause exists, a substitution or replacement will be allowed.
- (c) Participation level not to be lowered as a result of substitution or replacement.
 1. Substitutions or replacements may not result in an overall lowering of the promised participation level.
 2. Once a bid or proposal is received and opened by the District, supply or trucking Subcontracts may not be substituted for or be the replacement of non-supply or non-trucking work assigned to Small, Women's and Minority Business Enterprises. For example, a trucking subcontract cannot take the place of a concrete construction subcontract and a supply contract cannot take the place of a painting subcontract.
- (d) Abusive substitution or replacement practices. If the Contract Administrator or the S/W/MBE Coordinator believes that a contractor has listed a nominally certifiable Small, Women's or Minority Business Enterprise for the purpose of meeting the participation goal but without intent to actually have the Small, Women's and Minority Business Enterprise do the work, he or she shall recommend to the Executive Director that procedures under sec. E. (1)(b) & (c) and (2) be initiated.

D. Determination of Good Faith Efforts



Administrative Policy

Subject: S/W/MBE Policies for Construction and Professional Services Contracts	Index: 2-78.01 Page: 12 of 28
Authority: Statute: Resolution:	Date Issued: 4/1/91 Date Revised: 2/16/2009

(1) Regulatory Agency Requirements. The United States Environmental Protection Agency and the Wisconsin Department of Natural Resources each require that federal or state fund recipients, such as the District, assure the utilization of Small, Women’s and Minority Business Enterprises on construction contracts receiving financial assistance from them. The essential element of these programs is documentation of six good faith efforts to obtain participation by S/W/MBE firms. The District requires contractors to make these good faith efforts, and to submit all documentation required by 33 CFR § 33.101 et seq., including EPA forms 6100-3, 6100-4, and 8700-294A (contacts worksheet).

(2) Bidder and Proposer "Good Faith Efforts" Responsibilities. To comply with federal and state requirements, the District has determined that contractors must, at the least, comply with the following six good faith efforts:

- (a) Ensure S/W/MBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. This includes placing qualified small, women's and minority businesses on solicitation lists and personally soliciting them whenever they are potential sources;
- (b) Make information on forthcoming opportunities available to S/W/MBEs and arrange time frames for contracts and establish delivery schedules, where the specifications permit, in a way that encourages and facilitates participation. This includes posting solicitations for subcontracts as early as possible in advance of the bid due date.
- (c) Divide total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of small, women's and minority businesses;
- (d) Consider subcontracting with a consortium of S/W/MBEs when a contract is too large for one of these firms to handle individually;
- (e) Use the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the U.S. Department of Commerce, and the Wisconsin Department of Commerce’s Bureau of Minority Business Development and the District, as appropriate.



Administrative Policy

Subject: S/W/MBE Policies for Construction and Professional Services Contracts	Index: 2-78.01
Authority: Statute:	Page: 13 of 28
Resolution:	Date Issued: 4/1/91
	Date Revised: 2/16/2009

- (f) Require that lower level subcontracts are let utilizing the same procedures required by the District of bidders and proposers as set forth above in paras. (a) through (e) inclusive.

(3) Implementing the Good Faith Efforts

Bidders shall implement the Good Faith Efforts by, at the least, taking the following actions:

1. When feasible, segmenting total work requirements to permit maximum Small, Women's and Minority Business Enterprise participation.
2. Soliciting Small, Women's and Minority Business Enterprise participation by:
 - a. Sending signed, dated letters or making other personal contacts with Small, Women's and Minority Business Enterprises at the same time that other potential subcontractors and suppliers are contacted, notifying them of the specific description(s) and nature of the work to be subcontracted; how and where to obtain plans, specifications, and other detailed information needed to prepare a price quotation; date the quotation should be submitted to the bidder/proposer; and name, address and phone number of person in the bidder's/ proposer's firm to be contacted for further information.
 - b. Sending signed, dated letters or making personal contact with local, state, federal, and private agencies and Small, Women's and Minority Business Enterprise organizations describing the project and requesting referral to any Small, Women's and Minority Business Enterprise that specializes in the type of work to be performed.
 - c. Availing themselves of the information on relevant Small, Women's and Minority Business Enterprises that the District has available.
3. Where feasible, establishing delivery schedules that will encourage participation by Small, Women's and Minority Business Enterprises.



Administrative Policy

Subject: S/W/MBE Policies for Construction and Professional Services Contracts	Index: 2-78.01 Page: 14 of 28
Authority: Statute: Resolution:	Date Issued: 4/1/91 Date Revised: 2/16/2009

(4) Documentation of Good Faith Efforts. The bidder/proposer must demonstrate compliance with the Small, Women's and Minority Business Enterprise participation goals and establish good faith efforts to attain the goals. Failure to do so is grounds for a determination that the bidder/proposer had failed to establish its responsibility. Demonstration of compliance must be documented, irrespective of the participation goal, by submitting with the bid or proposal a record of solicitations and bid received on EPA form 8700-294A.

In addition, bidder/proposer may be asked to provide the following materials. The bidder/proposer shall provide such materials within three working days of the District's request.

1. Certified copies of advertisements by the bidder/proposer in or on media likely to be seen by Small, Women's and Minority Business Enterprises appearing not less than 15 days before the bid opening or proposal receipt date;
2. Copies of signed, dated solicitation letters, including specific descriptions of the work solicited to be subcontracted, sent not less than 15 days before the bid opening or proposed receipt date to all potential sources, as that term is defined-in ch. III, sec. A. (2).
3. Efforts to segment the work so small, women's and minority businesses can or may do the work described;
4. Records of earnest negotiation with Small, Women's and Minority Business Enterprises that respond to the solicitation. Where negotiations were unsuccessful, the records must show that the work and terms offered to the Small, Women's and Minority Business Enterprises were at least as favorable to the Small, Women's and Minority Business Enterprises as those offered to others;
5. Copies of solicitation letters sent to small, women's and minority business or trade associations and technical assistance agencies seeking small, women's, and minority business participation.



Administrative Policy

Subject: S/W/MBE Policies for Construction and Professional Services Contracts	Index: 2-78.01
Authority: Statute:	Page: 15 of 28
Resolution:	Date Issued: 4/1/91
	Date Revised: 2/16/2009

(3) Staff Verification. When a contractor proposes Small, Women's and Minority Business Enterprise participation that does not achieve the participation goals of this policy, the S/W/MBE Coordinator shall review the contractor's good faith efforts and shall verify those efforts when determined necessary

E. Subcontract Defaults

(1) If a subcontracting SBE/WBE/MBE defaults on his contract, the prime contractor shall immediately notify the District by informing the project engineer. The notification to the project engineer shall be in writing, giving the name of the SBE/WBE/MBE, the type of work to be performed and the facts and circumstances surrounding the failure of the SBE/WBE/MBE to perform.

(2) The project engineer will notify the Procurement Department, who will in a timely manner recommend as many replacements as are available to the project engineer. This list shall be passed to the prime contractor so that he may contact them to perform the work.

(3) The prime contractor shall be responsible to make good faith efforts to engage one of the listed SBE/WBE/MBEs to fill the place of the defaulting SBE/WBE/MBE. The effort must be extended to any and all SBE/WBE/MBE's known to either the prime contractor or District personnel providing the SBE/WBE/MBE is certified by one of the certification programs listed in Section I.C.(4) of this policy.

(4) If no suitable replacement can be found, a waiver of the SBE/WBE/MBE requirement may be granted by the Executive Director upon verification of the good faith efforts of the prime contractor.

(5) Waivers can be considered only if the prime contractor satisfies the good faith effort required in the instructions for bidders, and a SBE/WBE/MBE failed to comply with the subcontract and a suitable replacement cannot be found.

F. Non-Compliance with this Policy.



Administrative Policy

Subject: S/W/MBE Policies for Construction and Professional Services Contracts	Index: 2-78.01
Authority: Statute:	Page: 16 of 28
Resolution:	Date Issued: 4/1/91
	Date Revised: 2/16/2009

(1) During Contract Performance.

- (a) Staff to monitor. District staff will monitor compliance with the participation promised by the contractor in the successful bid or proposal. Monitoring levels may vary from contract to contract, depending upon best utilization of staff and compliance experience with the contractor. Staff shall provide EPA Form 6100-2 to all S/W/MBE subcontractors to give subcontractors the opportunity to report concerns.
- (b) Failure to achieve participation goal. If staff believes that the Small, Women's or Minority Business Enterprise participation promised is not forthcoming or that the contractor will not comply with Sec. C. (5)(b), staff shall issue a notice of noncompliance to the contractor by delivery of notice to office and /or site work trailer of the contractor. The notice shall specify in what manner the promised participation is not being provided or the required forms have not been filed. The contractor will have three (3) work days to dispute the notice by delivery of its objection to the Contract Administrator.
- (c) Informal hearing procedure; retainage. The Executive Director or designee shall hold an informal hearing on whether the participation promised has been or will be provided or the required forms will be filed and, if such participation will not be provided or the forms filed, why not and whether such failure will be excused. If failure to provide the promised participation or required forms is not excused or if the contractor does not object to the notice issued, the Executive Director or designate shall direct that an amount equal to the contract dollar amount the promised Small, Women's or Minority Business Enterprise participation is deficient be retained from the contractor's next invoice, or, in the case of refusal to file the reports and forms specified in Sec. C. (5)(b), an additional 2% retainage will be retained from the next invoice. This retainage shall be in addition to any other retainage allowed by statute or by the contract documents. Upon satisfactory proof of post-notice compliance with the promised participation or filing of the required reports, the Executive Director or designee may release the retainage. In the event the contractor does not provide satisfactory proof of post-notice compliance with the promised participation or filing of the required reports, any additional retainage authorized by this paragraph is to be forfeited to the District,



Administrative Policy

Subject: S/W/MBE Policies for Construction and Professional Services Contracts	Index: 2-78.01
	Page: 17 of 28
Authority: Statute:	Date Issued: 4/1/91
Resolution:	Date Revised: 2/16/2009

following an appropriate notice and hearing.

(d) Contract termination. In addition to retainage as authorized above, the Executive Director may terminate or suspend the contract in whole or in part for the complete failure to provide the promised Small, Women's and Minority Business Enterprise participation or where the contractor has consistently attempted to avoid the promised participation by unreasonably changing that work upon which the Small, Women's or Minority Business Enterprise had quoted; by "bid-shopping" after the contractor's bid or proposal is opened by the District; by refusal to submit reports and forms required by Sec. C. (5)(b); or by any acts that have the effect of rendering a listed [or if previously permitted by the Contract Administrator, a substitute or replacement authorized pursuant to sec. C(8)(b)] Small, Women's or Minority Business Enterprise unable to perform the work it quoted upon. This provision does not apply to changes or deletions in the scope, level of effort, or amount of Small, Women's and Minority Business Enterprise work necessitated by District initiated change orders.

(2) Suspension and Debarment.

(a) Reasons for suspension or debarment. After reasonable opportunity to be heard, the Executive Director may debar a person, firm, or company for cause from consideration for award of contracts or suspend a person, firm, or company from consideration for award of contracts if there is probable cause to believe that the person, firm or company has engaged in any activity which might lead to debarment. Debarment shall not be for a period of more than three years. Suspension shall not be for a period exceeding three months. The causes for debarment or suspension include:

1. Violation of contract provisions, as set forth below, of a character which is regarded by the Executive Director to be so serious as to justify debarment or suspension action:
 - a. Deliberate failure to perform in accordance with the Small, Women's and Minority Business Enterprise provisions of the contract within the time limit provided in the contract;



Administrative Policy

Subject: S/W/MBE Policies for Construction and Professional Services Contracts	Index: 2-78.01
Authority: Statute:	Page: 18 of 28
Resolution:	Date Issued: 4/1/91
	Date Revised: 2/16/2009

- b. A recent record of failure to perform or of unsatisfactory performance in accordance with the Small, Women's or Minority Business Enterprise provisions of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
 - c. Repeated listing of Small, Women's or Minority Business Enterprise that the contractor knows or should know does not possess the skills or financial ability to complete the job; or
 - d. Continual failure to pay Small, Women's, or Minority Business Enterprises in a timely manner for completed work.
2. Intentional misrepresentation or the withholding of information to the District regarding the status of a firm as a Small, Women's or Minority Business Enterprise or the intentional use of purported Small, Women's or Minority Business enterprise by a contractor if it is aware of the misrepresentation as to the status of a firm as a Small, Women's or Minority Business Enterprise.

(b) Procedures for suspension or debarment.

1. Notice. District staff will prepare a notice advising the contractor that it is subject to debarment or suspension, what the basis is for the sought action, and offering an opportunity for a hearing. This shall be served by certified mail, return receipt requested, on the principal office listed with the District in any contract documents or as the District can reasonably determine.

2. Hearing. Any contractor that stands to be adversely affected by a debarment or suspension determination by the District may request an opportunity for a hearing. Such a request must be made in writing to the Executive Director within 10 days of the receipt of the District's written notice of proposed action provided for in subpara. 1., above.

- a. The Executive Director shall either act as a hearing officer or appoint a hearing officer. In either case the hearing officer shall not have been directly



Administrative Policy

Subject: S/W/MBE Policies for Construction and Professional Services Contracts	Index: 2-78.01
Authority: Statute:	Page: 19 of 28
Resolution:	Date Issued: 4/1/91
	Date Revised: 2/16/2009

involved in making the determination which is the subject of the request for a hearing.

- b. The hearing officer shall arrange for a prompt hearing which should be conducted in an informal manner. The hearing will provide for the reasonable opportunity to call, ask questions of, and confront witnesses without resorting to formal rules of evidence and procedure.
- c. The party requesting the hearing may be represented by counsel or other duly authorized representative.
- d. A transcribed record of the hearing shall be made unless the District and the party requesting the hearing mutually agree in writing to waive this requirement. A copy of the transcript shall be made available for cost upon request.
- e. A representative of the District shall attend such hearing and submit in writing the Procurement Department's views to the hearing officer and the party requesting the hearing.

3. Determination. The hearing officer shall make a written determination on the evidence presented and recommend a decision to the Executive Director, or if the hearing officer is the Executive Director, to the Commission. Following Executive Director or Commission action, as applicable, a copy of the decision shall be delivered to the party requesting the hearing, by personal service or certified mail, return receipt requested.

II. PROFESSIONAL SERVICES.

A. Small, Women's and Minority Business Enterprise Participation Required on all Professional, Architectural and Engineering Service Contracts.

It is the policy of the District to ensure that small, women's and minority owned businesses offering professional, architectural and engineering services will be allowed the maximum feasible opportunity to compete for District contracts and subcontracts. A minimum goal for involvement of Small,



Administrative Policy

Subject: S/W/MBE Policies for Construction and Professional Services Contracts	Index: 2-78.01
Authority: Statute:	Page: 20 of 28
Resolution:	Date Issued: 4/1/91
	Date Revised: 2/16/2009

Women's and Minority Business Enterprise architectural and engineering firms on all District programs is hereby established at the goal levels listed below:

- Minority Business Enterprise
A/E Involvement Goal 13% on all contracts
- Women's Business Enterprise
A/E Involvement Goal 2% on all contracts
- Small Business Enterprise
A/E Involvement Goal 5% on all contracts

Goal attainment will be based upon the cumulative dollar value of the architectural and engineering service performed.

B. Procedures for Small, Women's and Minority Business Enterprise Participation on Professional Service Contracts Over \$100,000.

- (1) Subagreements to be Awarded in Excess of \$100,000 for Architectural and Engineering Services.

The District shall seek proposals from Small, Women's and Minority Business Enterprises whose area of technical expertise and capability will allow them to effectively perform the services required.

- (2) Subagreements to be Awarded in Excess of \$100,000 for Professional Services other than Architectural and Engineering Services.

The District shall actively seek proposals from professional small, women's and minority business enterprise service firms whose area of technical expertise and capability will allow them to effectively perform the services required.

III. DEFINITIONS.



Administrative Policy

Subject: S/W/MBE Policies for Construction and Professional Services Contracts	Index: 2-78.01
Authority: Statute:	Page: 21 of 28
Resolution:	Date Issued: 4/1/91
	Date Revised: 2/16/2009

A. Definitions.

(1)"Minority Business Enterprise" means a business concern which is:

(a) Certified through an appropriate certification process prior to contract award, as appears below:

1. Has previously been certified by the Joint Certification Program as a minority business enterprise prior to January 1, 2001.
2. Certification by the Wisconsin Department of Commerce Bureau of Minority Business Development as a minority business enterprise.
3. Certification by the State of Wisconsin Department of Transportation or Milwaukee County as a disadvantaged business enterprise because of minority status.
4. Certification by the Women's Business Education Consortium, Inc. for minority females.
5. Certification by Wisconsin Supplier Development Council as a minority business enterprise.
6. Certification by Small Business Administration as a Small Disadvantaged Business because of minority status.
7. Certified by the Milwaukee County Office of Disadvantaged Business Development Programs as a Disadvantaged Business Enterprise.
8. Certification by any other certification program recognized by the Executive Director.

and;



Administrative Policy

Subject: S/W/MBE Policies for Construction and Professional Services Contracts	Index: 2-78.01
Authority: Statute: Resolution:	Page: 22 of 28
	Date Issued: 4/1/91
	Date Revised: 2/16/2009

(b) Documented as an independent business concern that is at least 51 percent owned and controlled by a minority group member(s).

1. The minority group member requirement is established if the concern is owned and controlled by an individual or individuals who are citizens of the United States and he, she, or they are one of the following:

- a. Black American;
- b. Hispanic American (with origins from Puerto Rico, Mexico, Cuba, South or Central America);
- c. Native American (American Indian, Eskimo, Aleut, native Hawaiian); or
- d. Asian-Pacific American (with origins from Japan, China, the Phillipines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Mariana Islands, Laos, Cambodia, Taiwan or the Indian subcontinent).

and;

2. The minority ownership requirement is established by a minority ownership interest that is real, substantial and continuing. Such interest is characterized by:

- a. Risk of loss/share of profit commensurate with the proportional ownership; and
- b. Receipt of the customary incidents of ownership, such as profit or intangible benefits.

and;

3. The minority control requirement is established by the minority having control of the business decisions. Characteristics of control include, but are not limited to:

- a. Authority to sign bids and contracts;



Administrative Policy

Subject: S/W/MBE Policies for Construction and Professional Services Contracts	Index: 2-78.01
	Page: 23 of 28
Authority: Statute:	Date Issued: 4/1/91
Resolution:	Date Revised: 2/16/2009

- b. Decisions in price negotiations;
- c. Incurring liabilities for the firm;
- d. Final staffing decisions;
- e. Policy-making; and
- f. General company management decisions.

(2) "Potential sources" means a Small, Women's or Minority Business Enterprise generally recognized in the local community as providing work, goods or services of a particular type, i.e., small concrete mason, carpenter, HVAC contractor, electrical conduit and box installer; or a Small, Women's or Minority Business Enterprise listed with the U.S. Department of Commerce's Office of Minority Business Enterprises or the Wisconsin Department of Commerce's Bureau of Minority Business Development as providing work, goods or services of a particular type; or a Small, Women's or Minority Business Enterprise who is listed with local Small, Women's or Minority Business Enterprise construction trade groups as providing work, goods or services of a particular type; or a Small, Women's or Minority Business Enterprise that has notified the contractor of its interest in the type of work to be solicited.

(3) "Regular dealer" means, for purposes of this policy, a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the 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 a regular dealer, the firm 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 products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as regular dealers within the meaning of this policy.

(4) "Small Business Enterprise" means a business that is registered as a "Small Business Enterprise with the District.



Administrative Policy

Subject: S/W/MBE Policies for Construction and Professional Services Contracts	Index: 2-78.01
Authority: Statute: Resolution:	Page: 24 of 28
	Date Issued: 4/1/91 Date Revised: 2/16/2009

(5) "Small Business" means a business with gross sales of \$2.5 million or less in the most recent calendar or fiscal year.

(6) "Small Business Concern" means, for purposes of contracts subject to 40 CFR Part. 35, a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on contracts, and qualified as a small business under the criteria and size standards set forth in 13 CFR121.

(a) "Concern" is defined as any business entity located inside the United States that is organized for profit (even if it is owned by a non-profit entity), pays U.S. taxes, and uses American products, materials, or labor, etc. A "concern" may be an individual, a partnership, a corporation, a joint venture, an association, or a cooperative.

(b) "Not dominant in the field of operation" is defined as not exercising a controlling or major influence in an industry. A controlling or major influence can be derived from factors such as business volume, number of employees, financial resources, competitiveness, ownership or control of materials, processes, patent license agreements, facilities, sales territory, and nature of business activity.

(c) "Affiliates" is defined as multiple business concerns where, either directly or indirectly:

1. One or more of the concerns are controlled by or have the potential to be controlled by one of the business concerns; or

2. The business concerns are controlled by or have the potential to be controlled by yet another concern.

3. In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management and contractual relationships; provided that restraints imposed by a franchise agreement are not considered in determining whether the franchiser controls or has the power to control the franchisee, if the franchisee has the right to profit from its efforts, commensurate with ownership, and bears the risk of loss or



Administrative Policy

Subject: S/W/MBE Policies for Construction and Professional Services Contracts	Index: 2-78.01
Authority: Statute: Resolution:	Page: 25 of 28
	Date Issued: 4/1/91
	Date Revised: 2/16/2009

failure. Any business entity may be an affiliate, whether or not it is organized for profit or located inside the United States.

(7) "Supplier" means a business which acts both as:

- (a) A distributor of goods and services, materials or equipment; and
- (b) That provides a commercially useful function when such activity is traditional in the industry manufacturing the material or equipment supplied. Commercially useful function for supply contracts will normally include:
 1. Providing technical assistance to the purchaser prior to the purchase, during installation and after the supplies or equipment are placed in service; or,
 2. Manufacturing of the supplies or equipment; or,
 3. Providing functions other than merely accepting and referring requests for supplies to another party for direct shipment to a contractor.
- (c) A Small, Women's or Minority Business Enterprise which acts only as a distributor must meet the definition of "regular dealer", notwithstanding that it labels itself a "supplier."

(8) "Women's Business Enterprise" means a business that is:

- (a) Certified through an appropriate certification process prior to contract award, as appears below:
 - (1) Previously certified by the Joint Certification Program as a women's business enterprise prior to January 1, 2001.
 - (2) Certified by the Women's Business Educational Consortium, Inc. as a Women Business Enterprise.
 - (3) Certified by the Wisconsin Department of Transportation as a Disadvantaged Business Enterprise because of gender.



Administrative Policy

Subject: S/W/MBE Policies for Construction and Professional Services Contracts	Index: 2-78.01
Authority: Statute:	Page: 26 of 28
Resolution:	Date Issued: 4/1/91
	Date Revised: 2/16/2009

- (4) Certified by Milwaukee County as a Disadvantaged Business Enterprise because of gender.
- (5) Certified by the Small Business Administration as a Small Disadvantaged Business because of gender.
- (6) Certified by any other certification program as recognized by the Executive Director.

and;

- (7) Documented as an independent concern which is at least 51% owned and controlled by a woman or women, who are each United States citizens.

1. A women's ownership requirement is established by an ownership interest that is at least 51 percent owned by a woman or women. Otherwise qualified women's business enterprises which are 51 percent owned by a married woman in a community property state will not be disqualified because the husband is deemed to have a 50 percent interest in her share. Similarly, a business which is 51 percent owned by a married man and 49 percent owned by a women, not the man's wife, will not become a qualified women's business enterprise by virtue of the wife's 50 percent interest in the man's share of the business.

and;

2. The woman ownership requirement must be real, substantial and continuing. Such interest is characterized by:

- a. Risk of loss/share of profit commensurate with the proportional ownership; and

- b. Receipt of the customary incidents of ownership, such as profit or intangible benefits.



Administrative Policy

Subject: S/W/MBE Policies for Construction and Professional Services Contracts	Index: 2-78.01
Authority: Statute:	Page: 27 of 28
Resolution:	Date Issued: 4/1/91
	Date Revised: 2/16/2009

and;

3. The woman control requirement is established by the control of business decisions. Characteristics of control include, but are not limited to:

- a. Authority to sign bids and contracts;
- b. Decisions in price negotiations;
- c. Incurring liabilities for the firm;
- d. Final staffing decisions;
- e. Policy-making; and
- f. General company management decisions.

B. Commercially Useful Function Required. To be a Small, Women's or Minority Business Enterprise, under secs. A. (1), A. (5), A. (6), or A. (8), the enterprise must perform a commercially useful business function according to custom and practice in the industry. For example, in the case of a manufacturer, a commercially useful function is established if the manufacturer produces goods from raw materials or substantially alters them for resale. Acting merely as a passive conduit of funds to some other firm where such activity is unnecessary to accomplish the project does not constitute a "commercially useful business function according to custom and practice in the industry." The purpose of this approach is to discourage the use of "fronts" and to limit the creation of an artificial supplier and broker marketplace.



Administrative Policy

Subject: S/W/MBE Policies for Construction and Professional Services Contracts	Index: 2-78.01 Page: 28 of 28
Authority: Statute: Resolution:	Date Issued: 4/1/91 Date Revised: 2/16/2009

IV. MISCELLANEOUS

A. Directories and Lists. The District will make listings of small businesses registered with the District available to prospective bidders at prebid conferences. The directories of small, women's and minority businesses will be developed and distributed by the Wisconsin Department of Commerce. Prospective bidders can contact the District's S/W/MBE Coordinator for information on directories of other certifying agencies accepted by the District. Bidders/proposers intending the use of small businesses not previously registered must insure that the businesses meets the federal size standard if the contract is subject to 40 CFR Part 35 or the state size standard if the contract is subject to NR128.14 (4), Wis. Adm. Code.

B. Citizen Input. Citizen input regarding the effectiveness of this policy document is encouraged and should be directed to the Procurement Supervisor.