KUTZTOWN UNIVERSITY

PENNSYLVANIA STATE SYSTEM OF HIGHER EDUCATION

INSTRUCTIONS TO BIDDERS, MBE/WBE REQUIREMENTS

1. Scope

These MBE/WBE Requirements are applicable for all contracts to be administered by the System for construction of new facilities and/or for maintenance, repair, alteration, or improvements to existing facilities. These MBE/WBE Requirements are unique to System solicitations and contracts.

2. Definitions

The following words or terms are defined as stated when used herein, unless clearly indicated otherwise.

MBE/WBE: A business enterprise that is owned/operated by a person or persons considered to be a minority due to race or gender.

Certified MBE/WBE: Written designation given to a business enterprise by a duly constituted public body that attests that the business enterprise has submitted evidence of satisfying the minimum criteria established by that body for recognition of ownership by an individual or group of individuals recognized as a minority due to race or gender.

Non-Minority Firm: A business enterprise that has not been certified as an MBE/WBE.

Reasonable Effort Award Amount (REAA): That dollar amount of the work under a project contract for which competitive quotes can reasonably be expected to be obtained from Certified MBE/WBE subcontractors, suppliers, and/or vendors.

Proactive Solicitation: Aggressive effort taken by a bidder to obtain written subcontractor, supplier, and/or vendor quotes from Certified MBE/WBE to submit with his/her bid so as to reach or exceed the Reasonable Effort Award Amount established for the contract.

Commitment: A conditional written promise that a subcontractor, supplier, and/or vendor written quote given at the time of bid will be honored at the amount quoted, or in a lesser amount, if acceptable by mutual negotiations, for the scope of work and/or materials specified.

Subcontract: In these Instructions, the term subcontract shall include subcontracts for construction services, purchase orders for construction materials and/or equipment rental, or some combination of the two, or similar arrangements. No distinction is made between subcontractor, supplier, and vendor.

3. Proactive Solicitation Policy

Certified MBE/WBE shall be proactively solicited and encouraged to submit competitive written bids or quotes for portions of the work on System facilities projects by prime contractors submitting bids for those System facilities projects. Additionally, System procurement officers shall proactively solicit bids directly from Certified MBE/WBE as prime contractors. Depending on written bids or quotes received, contracts or subcontracts shall be awarded to Certified MBE/WBE for the work if the bid or quote is the lowest received, if the bid or quote is responsive, and if the firm is determined to be responsible.

4. Reasonable Proactive Solicitation

At a minimum, an acceptable proactive solicitation effort by bidders for MBE/WBE participation is considered to be that solicitation such that competitive quotes totaling the REAA could reasonably be expected to be received from Certified MBE/WBE.

The REAA for each contract is established by the System and is provided in the Special Instructions to Bidders. It is based on the scope of work of the project and current demographics concerning available qualified MBE/WBE subcontractors, suppliers, and/or vendors in an appropriate geographic area.

Evidence of proactive solicitation of the REAA is considered in determining the responsiveness of a bid. A bidder shall be considered to have fulfilled the requirement to conduct proactive solicitation in one of the following ways. All actions shall be as of the time of bid.

a. If the bidder makes commitments to Certified MBE/WBE at or above the REAA at the time of receipt of bids, the bidder will be considered to have met the MBE/WBE proactive solicitation requirements.

b. If the bidder does not make commitments to Certified MBE/WBE at or above the REAA at the time of receipt of bids, the bidder must have proactively solicited for sufficient different types of subcontracts from Certified MBE/WBE totaling the REAA, with one or a combination of the following occurring.

(1) A proactive effort was made to obtain quotes from Certified MBE/WBE, but written quotes were not received from Certified MBE/WBE, and/or

(2) A written quote was received from a Certified MBE/WBE, but a lower written quote was received from a Non-Minority Firm for the identical scope of work, and a commitment was made to that Non-Minority Firm.

5. Submission Requirements for Evidence of Proactive Solicitation

Bidders must show proof of their proactive solicitation by submitting with their bid a completed MBE/WBE Solicitation Form and copies of the following, as appropriate.

a. All written solicitations to Certified MBE/WBE.

b. All solicited and unsolicited written quotes received from Certified MBE/WBE.

c. Any written quote from a Non-Minority Firm that is lower than the lowest quote received from a Certified MBE/WBE, and which is the basis of a commitment to that Non-Minority Firm.

d. Any letters of commitment to Certified MBE/WBE or Non-Minority Firms submitting the lowest written quotes.

e. When commitments cannot be made to Certified MBE/WBE at the level of the REAA, explanatory information which provides reasons, if known, why written quotes were not received from solicited Certified MBE/WBE firms, and/or reasons why written commitments were not made for the lowest written quotes received from Certified MBE/WBE.

If the bidder is a Certified MBE/WBE, he/she must indicate on the MBE/WBE Solicitation Form that they are a Certified MBE/WBE, and list their Certification Number. No other documentation is required.

6. Determination of Responsiveness

The procurement office issuing the contract will review the documentation submitted and determine, based on the documentation submitted, whether adequate proactive solicitation was conducted. If commitments which total the REAA were not made to Certified MBE/WBE, and/or if acceptable required supporting documentation and/or reasonable explanations were not provided as to why not, the Contracting Officer may determine the bid is non-responsive, and reject the bid. In either case, if the documentation required to be submitted is not adequate to provide evidence of commitments and/or explanations, or is incomplete in any other way, the determination will normally be made that the bid is non-responsive, and the bid will normally be rejected.

The review and determination will consider, among other things, the following requirements.

- If the MBE/WBE Solicitation Form was fully completed, and if all supporting documents were included.

- If the bidder listed all those Certified MBE/WBE to which solicitations were made.

- If the bidder identified the scope of work and/or supplies solicited from each Certified MBE/WBE.

- If the bidder identified the Certified MBE/WBE by certification number or similar designation.

- If the bidder contacted Certified MBE/WBE directly and requested written quotes for specific work or materials. Mailings to large numbers of Certified MBE/WBE which are intended to provide notice of a contractor's interest in bidding a construction project may not be deemed proactive solicitation.

- If the bidder provided sufficient time for the Certified MBE/WBE to properly formulate a response and quote.

- If the bidder submitted all solicited and/or unsolicited quotes from Certified MBE/WBE.

- If the bidder submitted his own quote for the scope of work or materials for which he obtained quotes from Certified MBE/WBE. Normally this is not allowed.

The review and determination may also include, among other things, the following considerations.

- Did the bidder solicit a varied selection of Certified MBE/WBE which appears to be categorized as performing the required subcontracting or supply effort? Did the bidder not solicit a certain scope of work for which there are appropriate Certified MBE/WBE within the appropriate geographic locale?

- Did the bidder solicit appropriate scopes of work to the various Certified MBE/WBE? Scopes or work that are too small, oddly organized, or cut out of a larger scope may not be of interest to some Certified MBE/WBE; scopes of work that are too large or include other trades or specialties may not be within the capacity of some Certified MBE/WBE.

- Did the bidder solicit Certified MBE/WBE in a geographic locale such that they would reasonably be expected to quote on the project, or outside that locale? Did the bidder make an effort to solicit all the appropriate Certified MBE/WBE within a reasonable geographic locale, or simply solicit a set number?

- Was the bidder supportive of solicited Certified MBE/WBE in order to obtain their quotes? Was the scope of work being solicited clear? Did the solicitation address where and how the plans and specifications could be reviewed? Was the time for submitting a quote clear?

- How many quotes did the bidder get from Certified MBE/WBE, even if some or all of them were not competitive? How many quotes were received, and what percent of the REAA did they represent? If so, and depending on the number and percent, the proactive solicitation effort may not be required to be as demanding as if no bids or quotes were received.

- Was the bidder able to make some commitments to Certified MBE/WBE, even if at below the REAA? For what percent of the REAA were commitments made? If so, and depending on that percentage, the proactive solicitation effort for the remaining dollar value to reach the REAA may not be required to be as demanding as if no commitments were made.

- Did the bidder receive low quotes from Certified MBE/WBE, but those Certified MBE/WBE then refused a commitment(s)?

- How clear and convincing is the bidder's explanatory information as to why he was not able to meet the REAA with commitments to Certified MBE/WBE?

7. Contractual Obligations

The bid of the successful bidder, including the completed MBE/WBE Solicitation Form and accompanying documents regarding solicitation and commitments to Certified MBE/WBE, shall be considered as incorporated in and become contractual obligations under the terms and conditions of the Contract awarded to that bidder.

If a Certified MBE/WBE submits a bid or quote that is the lowest bid or quote for a specific scope of work, the successful bidder is obligated to offer a commitment, at the time of bid, in the amount quoted to that Certified MBE/WBE, but only to the extent that there is an agreement as to the scope of work and/or materials specified at the time of bid. The successful bidder may, however, offer a commitment to a Certified MBE/WBE whose bid or quote was not the lowest bid or quote.

If accepted by the Certified MBE/WBE, commitments to those Certified MBE/WBE made at the time of receipt of bids must be culminated with a subcontract or purchase order of at least to the dollar value of the commitment, unless otherwise agreed upon by the Certified MBE/WBE. If a commitment is not accepted by the Certified MBE/WBE, a commitment may be made to any other qualified subcontractor or supplier without penalty of invalidating the contractor's MBE/WBE participation.

The System will send copies of the successful bidder's Notice of Award letter to those Certified MBE/WBE who presented the lowest bids or quotes and/or received commitments from the successful bidder at the time of receipt of bids. These copies will serve as notice to the Certified MBE/WBE to anticipate award of subcontracts and/or purchase orders for the project.

Failure to follow the above procedures constitutes a potential breach of the System's MBE/WBE program and the Contract, and may be grounds for termination of the Contract. In any event, the Contract price will not be adjusted to accommodate rejected offers or commitments made to subcontractors or suppliers to satisfy MBE/WBE requirements.

Other contractual requirements relative to the MBE/WBE program are in Rider A of the Contract.

8. MBE/WBE Certification

Certification as a bona fide minority- or women-owned business enterprise must be made within statutory requirements set forth in the Act of December 21, 1984, No. 230, P.L. 210, 18 Pa. CSA, Section 4107.2 by any duly constituted public body. Certification of an entity as an MBE/WBE means only that the applicant has submitted information that qualifies it as an MBE/WBE in terms of its ownership and control. Certification does not address the ability of the MBE/WBE to perform the required services. The Commonwealth Department of General Services' Bureau of Minority and Women Business Opportunities certifies minority and women businesses. Information is available on their web site.