

---

# Third Party Agreements

## Compliance Overview



# COA M/WBE Commitment

---

- November 8, 2007 Resolution requires that the language of the Minority-owned and Women-owned Business Enterprise (MBE/WBE) Procurement Program be included as an element of all eligible Third-party Agreements requiring compliance with the standards and principles of the City's MBE/WBE Ordinance.
- Eligible Third-party Agreements include agreements with developer participation, economic development, ground leases, 380 Agreements, and third party agreements negotiated between the City and private entities desiring to develop City-owned property.



# MBE/WBE Third Party Agreement Requirement

## The Commitment

- November 8, 2007 Resolution required language of the Minority-owned and Women-owned Business Enterprise (MBE/WBE) Procurement Program be included as an element of all eligible Third-party Agreements requiring compliance with the standards and principles of the City's MBE/WBE Ordinance. A revision in May 2012 updated participation goals and current requirements.
- Eligible Third-party Agreements include agreements with developer participation, economic development, ground leases, 380 Agreements, and third party agreements negotiated between the City and private entities desiring to develop City-owned property.

## The Requirement

- Applies to the entire value of the project since inception when the City provides a financial investment to a portion of the project.
- MBE/WBE compliance is addressed and negotiated at earliest stages of negotiation
- Contract terms include compliance with the standards and principles of the City's MBE/WBE Ordinance
- Establishes ethnic specific goals for the design and construction when applicable and also includes the purchase of commodities over the City Manager's threshold.

Currently the City Manager's threshold for fiscal year 2019 is \$61,000. Threshold's may change annually.

## The Process

- Identify subcontracting opportunities
- Contact SMBR for availability lists & goal determination
- Meet established goal or follow the Good Faith Effort Process
- Monthly report submissions to SMBR
- Report Annually for Compliance Determination

# SMBR & EDD Coordination

- Proposal & Agreement draft review
- Participation in interest meeting with the company
- Hold M/WBE requirements meeting prior to execution
- Attend meetings regarding project detail such as design and construction phasing
- Receive trade summaries for goal determination and issuance of availability list
- Attend pre-award meetings to review M/WBE requirements
- Review monthly expenditure to track participation
- Attend On-site 3<sup>rd</sup> Party Review Audits
- Review compliance annually payment release or continuation of the agreement.

# Developer Requirements

---

- Compliance with the MBE/WBE Ordinance
- Compliance Interest Meeting with SMBR & prior to Council approval.
- Compliance Meeting with City Staff and SMBR prior to design and/or construction of project to review requirements
- Submission of an Outreach Program Plan
- Contact SMBR for availability lists
- Monthly, Quarterly, and or Annual report submissions to SMBR



# Outreach Program Plan

---

Prior to starting design or construction, the Developer must submit an outreach plan for SMBR's review. The Outreach Plan should include:

- Project overview identifying scopes of work
- Timelines (project phases and bid submission deadlines)
- Identifying outreach strategies and a schedule of networking events
- Process for distribution of plans and specification distributions to minority and women organizations
- Identify Public Outreach Coordinator



# Supplier Diversity Policy

---

Developer must submit a Supplier Diversity Policy for SMBR's review. The Policy should include:

- Company's procurement procedures of materials and services to be used exclusively facilities located in Austin, TX.
- Statement of the Company's agreement to solicit and procure when possible local certified M/WBEs suppliers for commodities following the purchasing authority established for the City Manager pursuant to Article VII (Finance) § 15 (Purchase Procedure) of the City Charter.

NOTE: The policy does not apply to valid contracts the Company has in existence on the Effective Date of the Agreement for the procurement of supplies.



# SMBR Assistance

---

- Meet with the Developer to review Third Party Requirements before design/construction of projects
- Review the Developers Outreach Plan and Supplier Diversity Policy
- Facilitate compliance process to include
  - Assisting in identifying and reviewing potential scopes of work
  - Establishing project specific goals
  - Providing availability lists
  - Reviewing GFEs
  - Scheduling and hosting outreach meetings
  - Providing guidance on bid packages
  - Monitoring compliance
- Report MBE/WBE participation and compliance results to Council Committee and Advisory Committee





# Good Faith Efforts (GFE)

---

- Minimum Requirements (if goals are not met)
  - Contact SMBR for availability list & assistance
  - Soliciting MBE/WBEs using two separate forms of notifications (i.e. emails, fax transmittals, mailings, and/or phone logs) within 7 business days prior to bid date
  - Providing adequate bid information and requirements on the notice
  - Conduct follow up with interested MBE/WBEs
  - Negotiate in good faith with interested MBE/WBEs
  - Break out scopes of work to facilitate MBE/WBE participation
  - Publishing notice in a local publication or electronic/social media
  - Provide solicitation to minority or women trade organizations



# GFE Documentation

---

- Good Faith Efforts documentation includes but is not limited to:
  - Fax logs with names and fax numbers
  - Copies of networking flyers/postcards and sign in sheets
  - Copies of written responses from all respondents to your solicitation
  - Copies of responses received from MBE/WBEs
  - Phone logs with responses
  - Copy of letters sent by mail, hand delivered, or emailed
  - Copy of advertisements in local newspapers or electronic/social media
  - Documentation of contacts with trade associations and Chambers of Commerce



# Counting Participation

---

- Only firms that are certified by the City of Austin as MBEs or WBEs may be counted toward meeting the goals.
- MBE and WBE firms must also be certified for the scopes of work they are listed to perform.
- Only the value of the work actually performed by the MBE/WBE toward MBE/WBE goals shall be counted toward the overall goal.
- If a MBE/WBE firm ceases to be certified during the contract, participation will only be counted for the value of work that was performed while the firm was certified.
- The Third Party/Private Entity may count the MBE or WBE participation of every level of subcontracting toward the goals (2nd/3rd tier subcontractors).



# Reporting Requirements

---

- Provide by the 10<sup>th</sup> of every month reports on the progress toward meeting the MBE and WBE participation goals
- Submit a monthly Activity Summary
- Submit GFE Documentation If goals have not been met for any activities performed for the reporting month
- The Third Party/Private Entity may be asked to report and appear before the City's MBE/WBE and Small Business Advisory Committee, the MBE/WBE and Small Business Council Sub-committee and/or Austin City Council regarding MBE and WBE participation.
- Electronic versions of the required reports can be found at [www.austintexas.gov/SMBR](http://www.austintexas.gov/SMBR).

