

## **SPECIAL INSTRUCTIONS FOR SERVICES REGARDING COMPLIANCE WITH THE CITY OF WINSTON-SALEM'S AND/OR CITY/COUNTY UTILITY COMMISSION'S MINORITY AND WOMEN BUSINESS ENTERPRISE (M/WBE) PROGRAM**

### Policy

It is the policy of the City of Winston-Salem and/or the City/County Utility Commission (an agency of the City of Winston-Salem), that minority and women-owned business enterprises shall have an equal opportunity to participate in the performance of contracts financed in whole or in part with City and/or Commission funds.

### Obligation of Proposers

Proposers agree to use their best efforts to comply with all the terms and conditions of the City of Winston-Salem's and/or City/County Utility Commission's Minority and Women Business Enterprise (M/WBE) Program, as the same may be amended from time to time, through the award of subcontracts to minority and women-owned business enterprises and utilization of minority and women-owned business enterprise suppliers to the fullest extent consistent with the efficient performance of this contract. As used in this contract, the term "minority and women business" shall mean a company that is 51% or more owned and controlled by minority group members or women.

A **10%** goal for participation by minority and women-owned businesses has been established for this service. A proposer may meet this goal through the participation of M/WBE sub-consultants, through his/her own performance on the project if the proposer is a certified minority/woman-owned firm, or through demonstrating a good faith effort to meet the M/WBE participation goal. If it is the normal practice of the proposer to perform all elements of this type of service with its own workforce and without the use of sub-consultants, the proposer must certify, by the submission of Affidavit B, that if they do employ any sub-consultants during the contract, that they will be subject to the M/WBE goals original established for this service. The utilization of M/WBE firms accounts for 20% of the evaluation and scoring, and will not be allocated to proposals in which an Affidavit B is submitted.

Firms are highly encouraged to consider any and all possibilities for M/WBE participation. A complete list of firms certified by the State of North Carolina Office for Historically Underutilized Businesses (HUB) can be found here: <https://www.ips.state.nc.us/vendor/searchvendor.aspx?t=h>. The 10% M/WBE goal may be satisfied by an entity that qualifies as a Minority Business Enterprise under N.C. General Statute 143-128, and that has been certified by the State of North Carolina, before the project is completed. Beginning September 3, 2018, all firms must HUB certified at the time the proposal is submitted.

During the course of the contract successful consultant will be required to submit ***Minority Documentation for Contract Payments, Affidavit F***, with each monthly pay application. Final payment will be withheld until the consultant completes and submits an ***Affidavit of Payment to M/WBE Sub Consultants***. The City, however, at its discretion may require additional periodic reports. Final payment will be withheld until the goal percentages for M/WBE participation, previously agreed to by the successful consultant, have been confirmed by the City and/or Commission. For professional and other service contracts, where the consultant/bidder did not meet the M/WBE requirements of a previous contract, and failed to demonstrate a good faith effort to do so, said consultant/bidder will receive a deduction or adjustment for non-compliance in the evaluation of any proposal/bid submitted subsequent thereto.

**MWBE DOCUMENTATION-** Firms are required to include the following documentation with the proposal.

### **Failure to do so will render your proposal as non-responsive:**

- Identification of Minority Business Participation- must be submitted with your letter of interest if your firm will employ any sub-consultants on this project; and
- Affidavit A- Listing of Good Faith Efforts; or
- Affidavit B- Intent to Perform Contract with Own Workforce, if the proposer intends to perform 100% of the work required for the contract without the use of sub-consultants.

**Additional M/WBE Forms-** To be utilized by the firm that is awarded the contract with the Owner

- Affidavit E- Minority Utilization Commitment Form
- Affidavit F- Minority Documentation for Contract Payments, M/WBE Replacement Request Form, and the Final Affidavit of Payment to M/WBE Sub-consultants.

It is mandatory that the **Identification of Minority Business Participation form** and **Affidavit “A” Listing of Good Faith Efforts** be properly completed, and notarized as defined in the document specifications and submitted with the Bid/Proposal (unless the prime consultant/contractor intends to perform 100% of the work with Own Workforce and properly executes Affidavit B). If the proposer is a certified M/WBE firm, and will be performing less than 100% of the work, then the proposer should indicate the percentage/dollar amount that they will perform, in addition to the remaining work performed by other M/WBE firms.

The **Identification of Minority Business Participation form** must include all M/WBE firms to be used on this project and the total percentage of the proposal that will be performed by businesses who will be subcontractors, vendors, or suppliers on this project. Additional information such as business phone number, work types, city/state, and minority category are important and useful. Failure to list, at a minimum the business name and the total percentage and/or dollar amount of firms contracting will render your proposal as non-responsive and will not be considered for award. If the proposer has no minority participation, they shall indicate this by entering the word “none” or the number “0.”

The **Affidavit B Intent to Perform Contract with Own Workforce** form must be executed with the Proposal/Bid **only** if the prime consultant/contractor intends to perform 100% of the work required for the proposal/contract without the use of sub consultants. If the prime consultant/contractor is an M/WBE firm, they must indicate such on Affidavit B in order to receive the full 20% credit during the evaluation.

Actual participation achieved or offered shall not be determinative on the issue of good faith efforts. Further, if other factors, other than factors (a) through (g) listed on Affidavit A, are considered, they may be used to credit the contractor’s good faith efforts, but not to discredit them.

In accordance with the **Minority Utilization Commitment Form “Affidavit E”**, no sub consultant/subcontractor who is identified and listed on Affidavit E may be replaced with a different sub consultant/subcontractor unless:

A) the sub consultant/subcontractor’s proposal/bid is later determined by the prime consultant/contractor to be non-responsible or non-responsive, or the listed sub consultant/subcontractor refuses to enter into a contract for the complete performance of the work, or

B) With the approval of the City of Winston-Salem M/WBE office for the good cause demonstrated. Prior to substituting a sub consultant/subcontractor, the prime consultant/contractor shall identify the substitute sub consultant/subcontractor and inform the City of Winston-Salem M/WBE office of its good faith efforts; including the MWBE Replacement Request Form.



**\*\*\*MUST BE SUBMITTED WITH PROPOSAL\*\*\***

(Unless the prime consultant intends to perform 100% of the work with Own Workforce)

**AFFIDAVIT A: GOOD FAITH EFFORTS**

Project: \_\_\_\_\_

A 10% goal for participation by minority/women owned businesses has been established on this proposal/bid. A proposer/bidder may meet this goal through the participation of M/WBE sub-consultants/sub-contractors, through their own performance on the project if the proposer/bidder is a minority/woman-owned firm. Please list below all M/WBE firms to be used on this proposal/bid.

Affidavit of \_\_\_\_\_  
(Name of Proposer)

I hereby do certify the attached documentation as true and an accurate representation of my good faith efforts.  
(Attach additional sheet if required)

Minority Firm Name City-State	Phone Number	Minority Category*	Type of Work	Dollar Value/ Percent of Work
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

\*Minority Categories: Black, African American (B), Hispanic (H), Asian American (AA), American Indian (AI), Female (WF), Socially and Economically Disadvantaged (SE), and Disabled (D).

If the established 10% goal for participation by minority/women owned businesses is not achieved, the **proposer/bidder must provide, with the proposal, the following documentation** to the Owner of their Good Faith Efforts to meet the goals set forth in these provisions. Examples of documentation include, but are not limited to, the following evidence.

✓	Description	Points	Awarded Points
_____	(a) Did a representative of your company attend the pre-solicitation or pre-bid meeting scheduled by the City to inform M/WBE firms of contracting, subcontracting, and supply opportunities and to review contractor requirements of complying with the program? If no pre-bid was scheduled, did your firm submit a question in writing before the end of questions deadline?	10	_____
_____	(b) Did your company provide written notice to a reasonable number of specific M/WBE firms that their interest in the contract is being solicited, at least 10 days before proposals/bids are due to allow M/WBE firms time to participate? Please provide a copy of the solicitations for quotes sent to at least 3 minority firms from the source list provided by the owner for each subcontract to be let under this contract (if 3 or more firms are shown on the source list). Each solicitation shall include a specific description of the work to be subcontracted, location where bid documents can be reviewed, name of representative of the prime bidder to contact, and location, date, and time.	15	_____

**GOOD FAITH EFFORTS (continued)**

✓	Description	Points	Awarded Points
_____	(d) Did you follow up initial solicitation of interest by contacting M/WBE firms to determine with certainty whether the M/WBE firms are interested? Please include telephone log of follow up calls you made to confirm interest.	20	_____
_____	(e) How did your company identify and select portions of the work to be performed by M/WBE firms in order to increase the likelihood of M/WBE participation (including where appropriate, breaking down contracts into economically feasible units to facilitate M/WBE participation)? Please provide a copy of documentation where this information was included.	15	_____
_____	(f) Explain how you provided interested M/WBE firms with equal access to specifications, plans, and requirements of the contract.	10	_____
	(h) What services were used from the City of Winston-Salem's M/WBE office; available minority community organizations; minority contractors' groups; local, state, and federal minority business assistance offices; and other organizations that provide assistance in the recruitment and placement of M/WBE firms? Please <b>provide a copy</b> of this documentation. <b>Note: A contractor must utilize at least two agencies to receive full value.</b>	20	_____
	<b>Total Points</b>	<b><u>90</u></b>	<b>_____</b>

**NOTE:** A proposer/bidder must accumulate at least **55 points** to demonstrate a “**Good Faith Effort**” was made. Partial points may be awarded when the complete requirement of an item is not met.

Failure to provide the documentation as listed in these provisions may result in rejection of the bid and award go to the next lowest responsible and responsive bidder.

**GOOD FAITH EFFORTS (continued)**

**Identification of Minority Business Participation & Good Faith Effort Notarization**

Date: \_\_\_\_\_ Name of Officer: \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

State of North Carolina, County of \_\_\_\_\_ Subscribed and sworn before  
me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

Notary Public: \_\_\_\_\_ My commission expires: \_\_\_\_\_

SEAL



County of \_\_\_\_\_

Affidavit \_\_\_\_\_  
(Name of Firm)

I, hereby, certify that it is the intent of the aforesaid firm to perform 100% of the work required for the contract:

\_\_\_\_\_  
(Name of Project)

In making this certification, the Proposer states:

- That the proposer does not customarily subcontract elements of this type project,
- Normally performs, has the capability to perform, and will perform all elements of the work on this project with his/her own current work force, and
- Agrees to provide any additional information or documentation requested by the City of Winston-Salem in support of the above statement.

**The following information is requested and may be used during the proposal evaluation process. Bidder certifies that:**

We ( ) are a Historically Underutilized Business (HUB) certified by the State of North Carolina.

We ( ) are a minority business enterprise

We ( ) are not a minority business enterprise

If yes, please identify in the appropriate box below:

- ( ) Black
- ( ) Hispanic
- ( ) Asian American
- ( ) American Indian
- ( ) Female
- ( ) Socially and Economically Disadvantaged
- ( ) Disabled

*\*Minority Categories: Black, African American (B), Hispanic (H), Asian American (AA), American Indian (AI), Female (WF), Socially and Economically Disadvantaged (SE), and Disabled (D).*

In the event the Proposer does not self-perform 100% of the work, the contract will be subject to the M/WBE goals originally established for this project, as well as, good faith efforts and documentation requirements of this program. The utilization of M/WBE firms accounts for 20% of the evaluation and scoring, and will not be allocated to proposals in which an Affidavit B is submitted. A proposer may meet the 10% goal through the participation of M/WBE sub consultants and/or through their own performance on the project if the proposer is a certified minority and/or woman owned firm.



**AFFIDAVIT B CONTINUED**

The undersigned hereby certifies that he/she has read this certification and is authorized to bind the Proposer to the commitments herein contained.

Date: \_\_\_\_\_

Name of Officer: \_\_\_\_\_

Signature

\_\_\_\_\_

Title

\_\_\_\_\_

State of North Carolina, County of \_\_\_\_\_ Subscribed and sworn before me,

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public \_\_\_\_\_ My commission expires \_\_\_\_\_

SEAL

**AFFIDAVIT "E"**

**MINORITY UTILIZATION COMMITMENT FORM**

Project: \_\_\_\_\_

Affidavit of: \_\_\_\_\_  
 (Name of Proposer)

**Within thirty (30) days after award of contract**, the Proposer shall file Affidavit E identifying all M/WBE subcontractors for use on this project. No subcontractor who is identified and listed on this form may be replaced, substituted, or supplemented; nor can their scope of work be modified to include a different subcontractor unless:

- (a) Subcontractor's bid is later determined by the Proposer to be non-responsible or non-responsive, or the listed Subcontractor refuses to enter into a contract for the complete performance of the bid work, or
- (b) With the approval of the City of Winston-Salem M/WBE Office for good cause demonstrated. **Good Faith Efforts** as set forth in the Special Instructions to Proposers shall apply to the selection of a substitute Subcontractor. Prior to substituting a Subcontractor, the Proposer shall identify the substitute Subcontractor and inform the City of Winston-Salem M/WBE Office of its good faith efforts.

Minority Firm Name Phone Number	City-State	Minority Category*	Type of Work	Dollar Value

\* Minority Categories: Black, African American (B), Hispanic (H), Asian American (AA), American Indian (AI), Female (WF), Socially and Economically Disadvantaged (SE), and Disabled (D).

Failure to provide the documentation as listed in these provisions may result in rejection of the Bid and award go to the next lowest responsible and responsive bidder.

Date: \_\_\_\_\_ Name of Officer: \_\_\_\_\_  
 Signature \_\_\_\_\_  
 Title \_\_\_\_\_

State of North Carolina, County of \_\_\_\_\_ subscribed and sworn before  
 me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

Notary Public \_\_\_\_\_ My commission expires \_\_\_\_\_  
 SEAL

**THIS DOCUMENT MUST BE SUBMITTED  
WITH EACH PAY REQUEST AND FINAL PAYMENT**

**AFFIDAVIT "F"**

**MINORITY DOCUMENTATION FOR CONTRACT PAYMENTS**

Prime Consultant: \_\_\_\_\_  
 Address & Phone Number: \_\_\_\_\_  
 Project Name: \_\_\_\_\_  
 Pay Application Number: \_\_\_\_\_ Period: \_\_\_\_\_

The following is a list of payments to be made to minority business sub-consultants on this project for the above mentioned period.

Minority Firm Name and Address	Minority Category*	Amount Paid For This Period	Amount Paid To Date
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

\* Minority Categories: Black, African American (B), Hispanic (H), Asian American (AA), American Indian (AI), Female (WF), Socially and Economically Disadvantaged (SE), and Disabled (D).

Date: \_\_\_\_\_ Approved/Certified by \_\_\_\_\_

In addition to the list of payments above, I hereby certify that no sub-consultant that was identified and listed on Affidavit A- Minority Participation/Good Faith Efforts Form, has been replaced without approval from the City of Winston-Salem's M/WBE Division. Note: Additional M/WBE's can be added for new work only. In this case, please notify M/WBE staff.

Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Signature \_\_\_\_\_

THE ABOVE MENTIONED PROJECT IS APPROXIMATELY \_\_\_\_\_% PERCENT COMPLETE



## MWBE Replacement Request Form

It is the policy of Winston-Salem and the City/County Utility Commission (an agency of the City of Winston Salem), that minority and women-owned business enterprises shall have an equal opportunity to participate in the performance of contracts financed in whole or in part with the City and/or Commission funds.

In accordance with the "Minority Utilization Commitment Form-Affidavit E", no sub-consultant who is identified and listed on this form may be replaced with a different sub-consultant unless: A) the sub-consultant's proposal is later determined by the consultant to be non-responsible or non-responsive, or the listed sub-consultant refuses to enter into a contract for the complete performance of the work, or

B) With the approval of the City of Winston-Salem's M/WBE Division, good cause has been demonstrated. Prior to substituting a sub-consultant, the Consultant shall identify the substitute sub-consultant and inform the City of Winston-Salem's M/WBE Division of its good faith efforts; including the M/WBE Replacement Request Form. In order to meet the terms stated above, an M/WBE Replacement Request Form must be completed. Replacement of an M/WBE without written approval from M/WBE Staff is a violation of contract provisions and may result in the Consultant being disqualified from submitting proposals on future City and/or Commission projects.

If a committed M/WBE sub-consultant is terminated for a good cause, the Consultant shall make a Good Faith Effort to find another M/WBE sub-consultant to substitute for the terminated M/WBE. This Good Faith Effort shall be directed at finding another M/WBE to perform at least the same amount of work under the contract as the M/WBE that was terminated, to the extent needed to meet the contract goal established for the project.

**Replacement M/WBE:** \_\_\_\_\_

**Amount of Subcontract:** \_\_\_\_\_

**Work to be performed:** \_\_\_\_\_

**New Committed M/WBE Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

By signing this document, the Consultant, M/WBE, and City of Winston Salem's M/WBE Division acknowledges that the 5 days to respond was given, and concurs with the process of replacing the named M/WBE sub-consultant.

\_\_\_\_\_  
Original M/WBE Signature (where possible) Date

\_\_\_\_\_  
Consultant Signature Date

\_\_\_\_\_  
M/WBE Staff Signature Date

## **INSTRUCTIONS FOR SUBMITTAL OF M/WBE REPLACEMENT REQUEST FORM**

IN ADDITION TO SUBMITTING THIS FORM, THE CONSULTANT MUST ENSURE THAT THE FOLLOWING STEPS ARE SATISFIED.

1. Prior to starting the replacement process, the consultant is responsible for coordinating with the M/WBE sub-consultant to see if they are willing and able to perform the work as indicated in their contract. If the Consultant notices a reoccurring issue with an M/WBE sub-consultant, the Consultant shall notify the City of Winston Salem M/WBE staff and keep them abreast of the issues.

2. If the M/WBE sub-consultant cannot perform the work or if the Consultant shows good cause for replacement, M/WBE staff will coordinate with the Consultant to begin the M/WBE replacement process. M/WBE staff will coordinate with other City departments as appropriate.

*(Examples of good cause include: M/WBE fails or refuses to execute a written contract; M/WBE fails or refuses to perform the work of its subcontract consistent with normal industry standards; M/WBE fails to meet reasonable, nondiscriminatory bond requirements; M/WBE becomes bankrupt, insolvent, or exhibits credit unworthiness; M/WBE is ineligible to work because of suspension and debarment proceedings; M/WBE voluntarily withdraws from the project and provides written notice; M/WBE owner dies or becomes disabled and is unable to complete its work; or other documented good cause that compels termination. Good cause does not exist where the Contractor terminates a committed M/WBE for failure or refusal to perform the work of the subcontract results from bad faith or discriminatory action of the prime consultant.)*

3. Before requesting the City of Winston Salem's consent for the proposed termination/replacement of an M/WBE, the Consultant shall give written notice of the proposed termination/replacement, including the reason for termination/replacement, to the M/WBE firm with a copy to the City of Winston Salem M/WBE staff. The M/WBE shall be given **five days** to respond unless the five day requirement needs to be reduced, due to public necessity (e.g. safety).

4. After the notice period has passed, M/WBE staff will ensure that the Consultant has submitted all supporting documentation for the M/WBE replacement. Letters, phone logs, emails or any other correspondence between the Consultant, the M/WBE sub-consultant, and/or City staff will be considered supporting documentation. This documentation must provide valid reason(s) for replacement as well as the opportunity to correct the issue. Consultants cannot replace for convenience or perform the work with its own forces or those of an affiliate.

5. Once the Consultant is given approval by the City of Winston Salem M/WBE staff to replace an M/WBE sub-consultant, M/WBE staff will send notification to the City project manager and the City/County Purchasing Department for informational purposes.

6. Signature lines on form: Ideally, the form should contain the signature of the original M/WBE sub-consultant being replaced. However, if this is not possible (i.e. the M/WBE will not sign), the documentation supporting the decision and acknowledgement of the reasons for replacement of the M/WBE sub-consultant should be attached. The form shall also be signed by the replacement M/WBE to show their participation on the project as the new committed M/WBE.