

# **CITY OF ROCHESTER, MINNESOTA DESTINATION MEDICAL CENTER MINORITY AND WOMAN OWNED BUSINESS ENTERPRISE UTILIZATION PLAN**

## **I. DECLARATION OF POLICY STATEMENT**

It is the policy of the City of Rochester (City) to promote increased participation by qualified minority-owned and women- owned businesses (M/WBE) and to provide an opportunity to participate in all Destination Medical Center (DMC) related public infrastructure project contracting. To this end, the City shall utilize the participation level percentages determined by the Minnesota Department of Transportation for Olmsted County as its target goal level for M/WBE participation. This shall not be construed to be a quota.

## **II. OBJECTIVES**

**The objectives of the M/WBE Plan are:**

1. To provide minority and woman owned businesses an opportunity for participating in DMC related construction, contracting, professional services and procurement programs.
2. To provide procedures that will enable the City to fulfill DMC related statutory requirements related to minority and women business enterprise participation in its construction and procurement programs.

## **III. DEFINITIONS**

**Bidder/Participant** – Any person, firm, partnership, corporation, association, or joint venture seeking to be awarded a public contract or subcontract.

**Contract** – A mutually binding legal relationship or any modification thereof, obligating one party to furnish equipment or services, including construction and leases, and obligating the other party to pay for them.

**Contractor** – Any person, firm, partnership, corporation, association or joint venture which has been awarded a public contract or lease.

**Development Assistance Agreement** – A binding document between a developer of a DMC related public infrastructure project and the City, which specifies the obligations of both parties and the terms of any public assistance that may be provided.

**Discrimination** – To distinguish, differentiate, separate and/or segregate on the basis of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation or age.

**Goal** – The MNDOT DBE target goal for Olmsted County.

**Joint Venture** – An association of two or more persons or businesses to carry out a single business enterprise for profit, for which purpose they combine their property, capital, efforts, skills, and knowledge.

**Low Bidder** - Any person, firm, partnership, corporation, association, or joint venture awarded a DMC related public infrastructure contract or subcontract that provides the lowest responsible and responsive bid or has been selected for award of contract through the best value procurement process.

**Minnesota Unified Certification Program** – A program established to certify Minnesota M/WBE firms and provide directory to contractors.

**M/WBE** – A minority- owned or woman- owned business enterprise.

**Minority or Women Business Enterprise (M/WBE)** – A business that is certified by the Minnesota Unified Certification Program (MnUCP) as a minority-owned or woman-owned business enterprise..

**Project Developer** – The entity that is undertaking a DMC related public infrastructure project.

**Public Infrastructure Project** - (a) "Public infrastructure project" means a project financed in part or in whole with public money in order to support the medical business entity's development plans, as identified in the DMCC development plan. A public infrastructure project may:

- (1) acquire real property and other assets associated with the real property;
- (2) demolish, repair, or rehabilitate buildings;
- (3) remediate land and buildings as required to prepare the property for development;
- (4) install, construct, or reconstruct elements of public infrastructure required to support the overall development of the destination medical center development district including, but not limited to, streets, roadways, utilities systems and related facilities, utility relocations and replacements, network and communication systems, streetscape improvements, drainage systems, sewer and water systems, subgrade structures and associated improvements, landscaping, façade construction and restoration, wayfinding and signage, and other components of community infrastructure;
- (5) construct or reconstruct, and equip parking facilities and other facilities to encourage intermodal transportation and public transit;
- (6) install, construct or reconstruct, furnish, and equip parks, cultural, and recreational facilities, facilities to promote tourism and hospitality, conferencing and conventions, and broadcast and related multimedia infrastructure;
- (7) make related site improvements including, without limitation, excavation, earth retention, soil stabilization and correction, and site improvements to support the destination medical center development district;
- (8) prepare land for private development; and
- (9) construct and equip all or a portion of one or more suitable structures on land owned by the city for sale or lease to private development; provided, however, that the portion of any structure

directly financed by the city as a public infrastructure project must not be sold or leased to a medical business entity.

**Subcontractor** – Any named person, firm, partnership, corporation, association, or joint venture identified in a public contract that supplies any work, labor, services, supplies, equipment, materials, or any combination of the foregoing under contract with the contractor on a public contract.

#### **IV. ADMINISTRATION OF THE M/WBE PROGRAM**

The City Administrator or his designee shall direct implementation of this program. The City may contract with other governmental or nongovernmental persons or entities to administer the program on behalf of the City, provided that the City is fully protected from liability and risk of loss arising out of such a contract.

#### **V. CERTIFICATION**

A directory to facilitate identifying M/WBEs with stated capabilities relative to general contracting, procurement, and professional service requirements is available at [www.mnucep.org](http://www.mnucep.org)

#### **VI. DMC RELATED CONTRACT BID REQUIREMENTS**

1. Evidence of compliance with bid documents. All DMC related public infrastructure project contractors are required to submit evidence to the Project Developer, with their bid documents, demonstrating compliance with and commitment to the outreach goal or, alternatively, compliance with good faith efforts. Before the bid is awarded, the Contractor shall submit evidence of its compliance with the requirements of the plan.

2. Commitment to goal. Before a contract is awarded, an apparent low bidder on a DMC related public infrastructure project contract must submit evidence to the Project Developer that it has or will enter into binding contracts with certified subcontractors whose contract dollar amounts meet or exceed the levels of participation established, or have documented that they have engaged in good faith efforts as required under Section VIII of the is Plan.

#### **VII. M/WBE PROGRAM RECORDS, MONITORING AND THE USE OF VOLUNTARY GOALS**

##### **A. Program Monitoring**

In order to monitor the implementation of the City's plan to provide M/WBEs an opportunity to participate in the City's DMC related public infrastructure project construction, procurement and professional service programs, participation at each stage of the contracting process will be documented and reported by the contractor. This will include:

1. The number of M/WBEs available to provide goods and services;
2. The number of solicitations sent to M/WBEs;

3. The number of bids submitted by M/WBEs;
4. The number of contracts and subcontracts awarded to M/WBEs; and
5. The value of contracts and subcontracts awarded to M/WBEs.

#### **B. Calculation of M/WBE Participation in Contracts Awarded**

The degree of participation by minority-majority joint ventures, M/WBE contractors and M/WBE suppliers in contracts awarded will be calculated as follows:

1. Once a firm is determined to be an eligible M/WBE in accordance with this M/WBE plan, the total dollar value of the contract awarded to the M/WBE, including sales tax and contingency, is counted as participation.
2. The total dollar value of a contract to a M/WBE owned and controlled by both minority males and non-minority females is counted as participation for minorities and women respectively, in proportion to the percentage of ownership and control of each group in business. The total dollar value of a M/WBE owned and controlled by minority women is counted as either the minorities' or women's participation, but not both.

### **VIII. PROCEDURES TO ENSURE THAT CONTRACTORS MAKE GOOD FAITH EFFORTS TO PROVIDE EQUAL OPPORTUNITY TO M/WBES IN DMC RELATED PUBLIC INFRASTRUCTURE CONSTRUCTION PROJECTS**

#### **A. Documentation of Good Faith Efforts**

For construction contracts, bidders shall submit documentation to the Project Developer that the contractor has made sufficient good faith efforts to provide equal opportunity for M/WBEs certified with the MnUCP to participate in subcontracting and significant material supplier opportunities available under the contract. During bid review, the Project Developer will make a determination of M/WBE compliance.

All contracts between the Project Developer and a Contractor shall contain provisions to the effect that failure by the Contractor to adequately document good faith efforts to subcontract with M/WBEs shall subject the Project Developer, if an entity other than the City, to being in default under the terms of the Development Assistance Agreement.

#### **B. Mandatory Acts of Good Faith Effort**

1. Using the source list provided by the MnUCP, the bidder, including those certified as M/WBEs, shall solicit sub-bids and quotes from M/WBEs with reasonable advance notice to ensure that M/WBEs will have an adequate opportunity to respond. In soliciting sub-bids and quotes, the bidder shall furnish at least the following information:
  - a. Bidder's name, address and telephone number;

- b. Project location and description;
- c. Work to be subcontracted or materials purchased, including a specific description of the work involved;
- d. Location and availability of plans, drawings and specifications for review;
- e. The identity and contact information of the bidders' contracting representative; and
- f. Location, date and time when sub-bids and quotes must be received by the bidder.

If the bidder does not receive a response from a M/WBE, he/she must advise the Project Developer that no response was received.

2. A contractor will consider all sub-bids and quotes received from M/WBEs, not rejecting M/WBEs as unqualified without sound reasons based on a thorough understanding of their capabilities. If a subcontract is not awarded to a M/WBE, the contractor must document why.

### **C. Other Good Faith Effort Consideration**

In determining whether the Contractor selected for the award has made good faith efforts, the Project Developer will evaluate all efforts made by the Contractor and will determine compliance and results of these efforts. The Project Developer will take into account any or all of the following:

- 1. Whether the contractor attended any pre-solicitation or pre-bid meetings that were scheduled;
- 2. Whether the contractor advertised in general circulation, trade association, and minority-focused media concerning the subcontracting opportunities;
- 3. Whether the contractor provided written notice to a reasonable number of specific M/WBEs that their interest in the contract was being solicited in sufficient time to allow the M/WBEs to participate effectively;
- 4. Whether the contractor followed up initial solicitations of interest by contacting M/WBEs to determine with certainty whether the M/WBEs were interested;
- 5. Whether the contractor selected portions of the work to be performed by M/WBEs in order to increase the likelihood of meeting M/WBE goals (including, where appropriate, breaking down contracts into economically feasible units to facilitate M/WBE participation);
- 6. Whether the contractor provided interested M/WBEs with adequate information about the plans, specifications, and requirements of the contract;
- 7. Whether the contractor negotiated in good faith with interested M/WBEs, not rejecting M/WBEs as unqualified without sound reasons based on a thorough investigation of their capabilities.

### **D. Competitive Bids**

Nothing in this plan is to be construed to require contractors to award subcontracts to, or make significant material purchases from, M/WBEs who do not submit the lowest responsible and responsive sub-bid.

**E. Determination of Program Compliance**

1. Upon receipt of the M/WBE documentation from the apparent low bidder, the Project Developer shall review the documentation and make initial determination as to whether or not the bidder is in compliance with the M/WBE Plan.
2. Each Project Developer will monitor its project for compliance to the M/WBE Plan provisions for the life of the contract
3. The Project Developer, if an entity other than the City, shall make a determination on the adequacy of the good faith efforts and compliance with the W/MBE and provide a certification of compliance to the City, which may be reviewed from time to time by the City.

**F. City Review of Good Faith Effort Documentation and Program Compliance**

All DMC public infrastructure contracts and certifications will be subject to periodic review by the City. A finding by the City that any of the information submitted is inaccurate, false or incomplete will constitute grounds for a finding of an Event of Default under the terms of a Development Assistance Agreement.