

CITY OF ROCHESTER, MINNESOTA DESTINATION MEDICAL CENTER TARGETED 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 targeted business enterprises (TB) in all Destination Medical Center (DMC) public infrastructure project contracting.

II. OBJECTIVES

The objectives of the TB Plan are:

- A. To provide businesses owned by minority, women, veterans and disabled persons an opportunity to participate in DMC public infrastructure construction and contracting.
- B. To promote increased participation in workforce employment opportunities for women and minorities.
- C. To provide procedures that will enable the City to fulfill DMC statutory requirements related to TB participation in DMC public infrastructure construction projects.

III. DEFINITIONS

Best Value Procurement (BVP) – A procurement process where price and other key factors can be considered in the evaluation and selection process to minimize impacts and enhance the long-term performance and value of construction.

Bidder – Any person, firm, partnership, corporation, association, or joint venture seeking to be awarded a public contract or subcontract. This term is extended to include proposers under the BVP process.

CERT – Central Certification Program administered by the City of St. Paul for small businesses, including those owned by minorities and women.

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 DMC public infrastructure contract.

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

Goal – The aspirational percentage of TB participation and workforce participation for each construction project.

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.

MnUCP - Minnesota Unified Certification Program established to certify Minnesota M/WBE firms and provide a directory of contractors for transportation related projects.

M/WBE – A minority- owned or woman- owned small business enterprise certified by the MnUCP, TG/ED or CERT.

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

Public Infrastructure Project - "Public infrastructure project" means a project financed in part or in whole with public money in order to support a project, 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.

Small Business Enterprise (SBE) – An entity certified as a small business under MnUCP, TG/ED or CERT.

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.

TB – Targeted Business - Economically Disadvantaged Small Business Enterprise with majority ownership held by minority, women, veterans, or disabled persons.

TG/ED – Targeted Group / Economically Disadvantaged Small Business Program administered by the Materials Management Division of the Minnesota Department of Administration..

Veteran-Owned Business - A small veteran-owned business (VBE) is a firm certified as a Service-Disabled Veteran Owned Small Business (SDVOSB) or a Veteran Owned Small Business (VOSB) by the United States Department of Veteran Affairs. Each VBE also must be a Minnesota-based business.

IV. ADMINISTRATION OF THE TB 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.

V. GOALS

The following goals for workforce participation, TB contracting and VBE and SBE preferences represent current targets and may be adjusted to meet changing business conditions or specific project needs.

A. Workforce employment: 4% for minorities and 6% for women.

B. TB participation: 4% of the total value for each construction project.

C. VBE Preference: Up to 6 percent preference when responding to solicitations. The preference is applied only to the first \$1 million of the solicitation and will not exceed \$60,000.

D. SBE Preference: Eligible verified small businesses with their principal place of business in Minnesota may receive up to 6 percent preference in the evaluation of their project proposal. The preference is applied only to the first \$1 million of the solicitation and will not exceed \$60,000.

VI. CERTIFICATION

Directories to facilitate identifying TBs with stated capabilities relative to general contracting, procurement, and professional service requirements are available under MnUCP, TG/ED or CERT.

VII. DMC CONTRACT BID REQUIREMENTS

A. Evidence of compliance with bid documents.

All DMC public infrastructure project Bidders are required to submit evidence to the Project Developer, with their bid documents, demonstrating compliance with and commitment to the outreach goal or, alternatively, good faith efforts towards compliance. Before the contract is awarded, the Bidder shall submit evidence of its compliance with the requirements of the plan in a form prescribed by the City.

B. Commitment to goal.

Before a contract is awarded, the selected bidder on a DMC related public infrastructure project contract must submit evidence to the Project Developer, such as letters of intent to contract, 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 IX of the Plan.

If a VBE preference is being applied in a solicitation, the solicitation document will include language and a form relative to the preference. Eligible VBE small businesses should complete the VBE Preference Form, and include any required documentation. Only eligible, verified, VBE small businesses that provide the required documentation will be given the preference.

If a SBE preference is being applied in a solicitation, the solicitation document will include language and a form relative to the preference. Eligible SBEs should complete the SBE Preference Form, and include any required documentation. Only eligible, verified, SBEs that provide the required documentation will be given the preference.

VIII. TB PROGRAM MONITORING AND THE USE OF VOLUNTARY GOALS

A. General Program Monitoring

In order to monitor the implementation of the City's plan to provide TBs an opportunity to participate in a DMC public infrastructure project construction, participation at each stage of the contracting process will be documented and reported by the Contractor on forms prescribed by the City. This will include such efforts as: The number of solicitations sent to TBs; The number of bids submitted by TBs; The number of contracts and subcontracts awarded to TBs; and The value of contracts and subcontracts awarded to TBs.

The degree of participation by TB contractors and TB suppliers in contracts awarded will be calculated as follows:

1. When a TB participates in a contract, count only the value of the work actually performed by the TB toward the TB Goal.
 - (a) Count the entire amount of that portion of a contract that is performed by the TB's own forces. Include the cost of supplies and materials obtained by the TB for the work of the contract, including supplies purchased or equipment leased by the TB (except supplies and equipment the TB Subcontractor purchases or leases from the Construction Manager or its affiliate).
 - (b) Count the entire amount of fees or commissions charged by a TB firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the contract, toward TB Goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.
 - (c) When a TB subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward Targeted Business goals only if the TB's Subcontractor is itself a Targeted Business. Work that a TB subcontracts to a non-Targeted Business firm does not count toward TB Goal.

2. A Targeted Business certified as a supplier may perform both the supplier role and broker role under the same contract. Items purchased directly and solely by the Targeted Business supplier from the manufacturer will be counted at the supplier value of 60%. Items purchased directly and solely by the Targeted Business supplier from another supplier or wholesaler will only count at the broker rate of 5%.

C. Job Site Monitoring

1. On forms prescribed by the City, Contractors will complete monthly employment utilization reports to allow monitoring of targeted workforce employment performance.
2. These utilization reports must be completed by all Contractors. General Contractors and construction managers will collect employment data from subcontractors.

IX. PROCEDURES TO ENSURE THAT CONTRACTORS MAKE GOOD FAITH EFFORTS TO PROVIDE EQUAL OPPORTUNITY TO TBS IN DMC PUBLIC INFRASTRUCTURE CONSTRUCTION PROJECTS

A. Documentation of Good Faith Efforts

For construction contracts, bidders shall submit documentation to the Project Developer that they have made sufficient good faith efforts to provide equal opportunity for TBs certified with MnUCP, TG/ED or CERT to participate in subcontracting and significant material supplier opportunities available under the contract. During bid review, the Project Developer will make a determination of TB 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 TBs shall subject the Project Developer, if an entity other than the City, to enforcement remedies as defined under the terms of the Development Assistance Agreement.

B. Mandatory Acts of Good Faith Effort

1. Using the source lists provided by MnUCP, TG/ED or CERT the bidder, including those certified as TBs, shall solicit sub-bids and quotes from TBs with reasonable advance notice to ensure that TBs 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, mailing address, email 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.

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

C. Other Good Faith Effort Considerations

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 TBs that their interest in the contract was being solicited in sufficient time to allow the TBs to participate effectively;
4. Whether the Contractor followed up initial solicitations of interest by contacting TGBs to determine with certainty whether the TBs were interested;
5. Whether the Contractor selected portions of the work to be performed by TBs in order to increase the likelihood of meeting TB goals (including, where appropriate, breaking down contracts into economically feasible units to facilitate TB participation);
6. Whether the Contractor provided interested TBs with adequate information about the plans, specifications, and requirements of the contract;
7. Whether the Contractor negotiated in good faith with interested TBs, not rejecting TBs as unqualified without sound reasons based on a thorough investigation of their capabilities.

D. Determination of Program Compliance

1. Upon receipt of the TB documentation from the selected bidder, the Project Developer shall review the documentation and make initial determination as to whether or not the selected bidder is in compliance with the TB Plan.
2. Each Project Developer will monitor and document the project for compliance to the TB 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 TB 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. For public infrastructure projects not undertaken by the City as the Project Developer, 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. In the event that the inaccurate, false or incomplete information is such a severe violation of the intent of the TB Plan as determined by the City Council, then the City may choose to bar the Project Developer from future Public Infrastructure Projects for a time set by the City Council.