



**Dallas County Community College
District**

**Minority/Women Business Enterprise
(M/WBE)
Program Manual**

July 2006



**DALLAS COUNTY COMMUNITY COLLEGE DISTRICT
MINORITY/WOMEN BUSINESS ENTERPRISE PROGRAM**

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I. STATEMENT OF POLICY

It shall be the policy of the Dallas County Community College District (DCCCD) to provide equitable business opportunities to all of its contractors/consultants and vendors, to increase the competitiveness and qualifications of minority and women-owned business enterprises (M/WBEs), and to address identified underutilizations and inequitable contracting and procurement by M/WBEs found in the DCCCD marketplace and in most local public contracting entities.

The DCCCD seeks to encourage and solicit the full participation of minority and women-owned businesses in all phases of its contracting and procurement activities and to afford them full and fair opportunity to compete on DCCCD contracts and procurements of equipment, supplies, services, and construction. The purpose and objectives of this program are as follows:

- A. To ensure nondiscrimination in the award and administration of DCCCD contracts and procurements to all interested bidders and proposers. The DCCCD, its contractors/consultants and subcontractors/sub-consultants, shall not discriminate on the basis of race, color, religion, creed, religion, national origin, sex, age, or handicap, in the award and performance of contracts, subcontracts, or employ business practices which have an exclusionary impact on minority or women-owned businesses.
- B. To develop both “race-neutral” and “race-conscious” approaches and initiatives that will foster a more level playing field and competitiveness for M/WBEs, so that they can become more qualified and competitive and more effectively compete on DCCCD contracts and procurements.
- C. To ensure that the DCCCD’s M/WBE program is focused and narrowly tailored in accordance with applicable laws and regulations.
- D. To ensure that only minority and women-owned businesses, as defined by and meeting the DCCCD’s M/WBE program eligibility standards are permitted to participate in this program.
- E. To help increase the competitiveness and qualifications of M/WBEs and more effectively outreach and promote the DCCCD’s business opportunities to such firms by removing “barriers” to their participation.
- F. To assist in the development of and outreach/solicitation to minority and women-owned business enterprises so that they can compete successfully in the DCCCD’s marketplace without the assistance of the DCCCD’s M/WBE program.

This policy statement shall be distributed district-wide and shall be made available to all business communities that are interested in and participate in the District's contracts and procurements.

II. SCOPE

The policies, procedures, and contractual clause(s) established under this M/WBE program shall be applicable to all DCCCD contracts and bidders, proposers, and recipients of contracts, related subcontracts, including minority and women-owned firms. These policies, procedures, and contract clause(s) shall apply to all contracts, whether or not federally-assisted, unless the provisions herein are in conflict with state or federal law or rules and regulations promulgated thereunder.

The provisions of this policy and program are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this policy or program, or the invalidity of the application thereof to any person or circumstances shall not affect the validity of the remainder of this policy or program, or the invalidity of its application to other persons or circumstances.

III. PROGRAM INTERPRETATION

Nothing in the DCCCD's M/WBE program is intended, nor should it be construed, or interpreted, as authorizing violations of the competitive bidding statutes and professional services solicitation statutes promulgated under applicable local, state, or federal rules, laws, or regulations.

IV. PROGRAM RESPONSIBILITY

Under the authority delegated by the DCCCD's Board of Trustees and the guidance of the Chancellor and Vice Chancellor of Business Affairs, the DCCCD's Business Diversity Programs Department has overall responsibility to interpret, administer, and enforce M/WBE policies, standards, definitions, criteria, and procedures to govern the implementation, interpretation, and application of this program in a manner to achieve its stated objectives.

Program abuse, suspected program abuse or any violation of this program by DCCCD officials, prime contractors/consultants, or minority/women business enterprises is to be submitted to the Business Diversity Programs Department for formal or informal review and resolution. Although the Business Diversity Programs Department will conduct its program inquiries with the highest confidentiality, certain allegations, accusations, and program infractions will only be entertained if submitted in a formal manner. Formal inquiries are to be submitted in a written, non-anonymous format, which may request a response on the DCCCD's behalf. Informal inquiries may entail verbal notice(s) and/or

meeting to discuss the issue(s) in question. Anonymous calls or letters will generally be reviewed along informal lines.

The Business Diversity Programs Department reserves the right to accept or decline to pursue submitted inquiries and will ascertain on a case-by-case basis the procedural format for such investigations.

V. DEFINITIONS

Bid: A quotation, solicitation, proposal, or offer by a bidder or proposer to perform or provide labor, materials, equipment, supplies, or services to the DCCCD for a price.

Bidder/Proposer/Respondent: Any person, firm, partnership, corporation, or joint venture seeking to be awarded a DCCCD contract by a competitive process.

Business Enterprise: Any legal entity that is organized to engage in lawful commercial transactions for the purpose of making a profit and is actively engaged in such transactions.

Certification: The process by which a business enterprise is determined to be a bona-fide minority-owned or woman-owned business enterprise.

Commercially-Useful Function: Work in which the M/WBE in light of industry practices is responsible for the execution of a distinct element of the work by actually performing, managing, and supervising the work involved.

Contract: An agreement between two or more parties that is written and enforceable by law, which binds the parties to a performance of work, labor, services, the provision of supplies, equipment, materials, or any combination thereof.

Contractor/Consultant/Vendor: A supplier of commodities or services under a purchase order contract or other contract.

Goal: A numerically expressed flexible target determined by the DCCCD to be achieved through the DCCCD's contracting activity and by the Prime contractor's/consultant's/consultants good faith efforts.

Good Faith Effort: Positive efforts that were actively and aggressively made to meet the DCCCD's M/WBE goal(s), where applicable by a Prime contractor/consultant, which by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the M/WBE program's objective. The DCCCD's Business Diversity Programs Department shall interpret and make determinations of good faith efforts in their sole discretion.

M/WBE Joint Venture: An association of a minority business enterprise or a woman business enterprise and/or one or more other firms to carry out a single, for profit business enterprise, for which the parties combine their property, capital, efforts, skills, and knowledge, and in which the M/WBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Minority Business Enterprise (MBE): A business enterprise in which at least 51% is owned by a member(s) of a minority group or in the case of a corporation, at least 51% of the shares are owned by members of a minority group(s), is managed and independently controlled by members of a minority group(s), and is certified as such by the DCCCD. Minority groups include: Black or African Americans (persons whose origins are in one of the Black racial groups of Africa); Hispanic (persons whose origins are in Mexico, Central or South America, Spain, or any of the Spanish-speaking islands of the Caribbean, regardless of race); Native-American (persons whose origin are in any of the original peoples of North America; and Asian (persons whose origins are in any of the peoples of the Far East, Southeast Asia, the islands of the Pacific or the Northern Mariana's, or the Indian Subcontinent.

Owned, Managed, and Independently Control – One or more minority persons who own the requisite interest in or assets of a business possess the customary incidents of such ownership, including an equivalent interest in profit and loss, and shall have contributed an equivalent percentage of capital or equipment and expertise to the business. The ownership and control of the firm shall be real, substantial, and continuing and shall go beyond the pro forma ownership of the firm as reflected in its ownership documents.

Prime Contractor/Consultant: Any person, firm, partnership, corporation, association, or joint venture as herein provided which has been awarded a DCCCD contract or agreement.

Subcontractor/Sub-consultant: Any named person, firm, partnership, corporation, association, or joint venture as herein provided identified as providing work, labor, services, supplies, equipment, materials, or any combination of the foregoing, under contract with a Prime contractor/consultant on a DCCCD contract. Subcontractor/sub-consultant includes every level of subcontracting/sub-consulting required to fulfill a contract with the DCCCD. For purposes of this program, the term subcontract includes sub-consultants. Sub-consultants are persons or business enterprises providing professional services to a prime consultant if such professional services are procured or used in fulfillment of the prime consultant's obligations arising from a contract with the DCCCD and include every level of subcontracting required to fulfill a contract with the DCCCD.

Women Business Enterprise (WBE): A business enterprise that is owned, managed, and independently controlled by one or more females. A women business enterprise must also satisfy the owned, managed, and controlled provisions under the minority business definition. Additionally, women business ownership shall be measured as though not subject to the community property interest of a spouse if both spouses certify in writing that the non-participating spouse relinquishes control over his or her community property interest in subject business.

VI. PROGRAM IMPLEMENTATION

The DCCCD's Business Diversity Programs Department shall administer, monitor, and enforce or seek to enforce the procedures for implementation of the M/WBE program and will perform in a manner as may be necessary to achieve the purposes and objectives of this program. The Business Diversity Programs Department shall issues guidelines and implementing procedures as necessary and appropriate to achieve the objectives of this program.

Each DCCCD College and/or department which has or shares responsibility for the awarding of DCCCD contracts, including procurements and professional services, has a direct responsibility under this program to promote, support, and assist in carrying out this program.

Such departments shall be held accountable for exercising specific functions in support of the program, as well as any other function(s) deemed necessary by management. The following departments have specific responsibilities under this program as follows:

Business Diversity Programs Department

- Responsibility for the implementation, development, coordination, and monitoring of the DCCCD M/WBE program.
- Assisting the Colleges and applicable departments with contracting/procurement authority to accomplish their M/WBE program responsibilities.
- Disseminating and coordinating information on available business opportunities to the M/WBE business community to provide timely notice and equitable opportunity for all businesses to consider and compete in DCCCD contracting opportunities.
- Providing key information on contracting policies and procedures to the M/WBE community in a timely and effective manner.
- Assisting and coordinating with DCCCD Colleges and/or departments to ensure that proper M/WBE program requirements are included in all requests for bids/proposals.

- Facilitating assistance to respondents to DCCCD's requests for bids/proposals in fulfilling their M/WBE program responsibilities and in meeting technical compliance with applicable program requirements.
- Development and dissemination of M/WBE lists for potential M/WBE subcontracting, procurement, and sub-consultant opportunities.
- Assisting DCCCD contract administrators in monitoring and reporting contract specific M/WBE contract compliance during the life of a DCCCD contract.
- Monitoring price agreements to identify M/WBE participation opportunities.
- Assisting The Colleges and departments with contracting/procurement authority to identify and develop solutions to barriers which minimize opportunities for M/WBEs to participate in DCCCD contracting opportunities.
- Where applicable, establish overall and approve contract specific M/WBE goals and report the DCCCD's achievement of applicable M/WBE goals.
- Serve as the official DCCCD representative on the North Central Texas Regional Certification Agency (NCTRCA) Board of Directors addressing and representing DCCCD interests in M/WBE certification.
- Presenting quarterly, annual, and ad hoc reports and studies in regards to DCCCD M/WBE program effectiveness and the achievement of program goals and objectives.
- Make administrative revisions to the M/WBE program as deemed necessary by DCCCD management.

Procurement and Facilities Management Departments

- Support and specifically assist the Business Diversity Programs Department with the implementation and promotion of the DCCCD's M/WBE program.
- Assist in identifying and addressing DCCCD contracting and procurement barriers and solutions which minimize opportunities for consideration and participation by M/WBEs to participate in DCCCD contracts.
- Ensure that all contracts and procurements under their authority are in compliance with the DCCCD's M/WBE program requirements, policies, and procedures, particularly with their respective prime contractors/consultants.
- Coordinating and assisting in M/WBE outreach efforts in coordination with and at the request of the Business Diversity Programs Department, including attending vendor/trade fairs to share contracting/procurement information, etc.
- Providing timely notice of upcoming projects and/or procurement opportunities, especially upcoming bids and proposals.
- Ensuring that all applicable aspects of the DCCCD's M/WBE program are included in bid/proposal specifications and assisting with the identification of potential subcontracting opportunities.

- Each department shall appoint a specific departmental representative to serve as liaison between the department and potential minority and women business bidders/proposers on DCCCD opportunities.
- Maximize M/WBE outreach and contacts in soliciting bids/quotes and/or proposals, particularly where M/WBE firms are known to be available for goods and services.
- Provided that the overall cost of a contract/procurement is not increased and to the extent that it does not violate bid laws, develop bid packages and requests for proposals so as to increase and maximize potential M/WBE participation; e.g., using certain types of materials and methods, and breaking down large contracts into smaller ones.
- Periodically review insurance requirements and bonding requirements with a view towards determining, if prudent and feasible, whether established risk/exposure limits may be changed to allow business enterprises, including M/WBE firms to bid more competitively on DCCCD contracts.

Legal

- On an annual basis, review standard and non-standard contracts to ensure that the M/WBE program provisions and contractual clause is properly included.
- Provide legal guidance, advice, and direction on M/WBE program policy and program implementation, issues, and concerns.
- Provide guidance and recommendations regarding program non-compliance determinations.

Business Affairs

- Provide assistance as needed to retrieve payment and invoice data required for contractor/consultant compliance, monitoring, and utilization reporting.
- Institute prompt payment practices and procedures to support and promote viable M/WBE participation.

Audit

- Provide audit assistance as requested to ensure M/WBE program and contractor/consultant compliance.

VII. M/WBE GOALS

The Business Diversity Programs Department specifically retains the right to recommend and/or establish applicable M/WBE goals for the DCCCD. Where appropriate, the Business Diversity Programs Department shall recommend and establish aspirational overall M/WBE goals for the construction, professional services and procurement trade areas, as well as any other business area

deemed appropriate by DCCCD management for M/WBE goal development, such as the DCCCD's bond program. The Business Diversity Programs Department shall also reserve the right to recommend and/or establish individual project-by-project M/WBE goals.

The Business Diversity Programs Department shall establish narrowly-tailored M/WBE goals, which will be based upon current findings and evidence of availability and utilization. In certain instances, the Business Diversity Programs Department shall be guided in developing the applicable goals by the DCCCD's Availability/Disparity Study. All M/WBE goals established under this program shall also be reviewed by the DCCCD's legal counsel for legal conformity.

During the process of developing the aspirational overall M/WBE goal(s), the Business Diversity Programs Department will review and consider information on the availability of M/WBEs in the DCCCD marketplace, as well as any other information and data which is pertinent to goal setting. In effect, the final recommended goal(s) shall reflect known circumstances and conditions in an attempt to match proposed trade area or project work with available and qualified M/WBEs. Aspirational overall goals shall be established or reaffirmed on an annual basis and will reflect the DCCCD's commitment directed at increasing the participation of M/WBE enterprises which will also serve as a valuable standard for determining the effectiveness of this program.

The Business Diversity Programs Department shall also employ a contract and/or program specific M/WBE goal process to establish such goals on a contract-by-contract or program basis for the construction and professional services areas. Due to the nature of procurement, the Business Diversity Programs Department will principally utilize an aspirational overall M/WBE goal for procurement and specifically retains the right to establish at its discretion contract specific goals in appropriate procurement area contracts. Contract specific goals are established to allow the DCCCD to give consideration to actual project subcontracting/consultant and procurement needs and opportunities, allowing the DCCCD to establish reasonable contract specific M/WBE goals effectively.

Low qualified bidders, proposers, and vendors are not required to subcontract/consult with unqualified M/WBEs or to compromise valid standards in order to meet established M/WBE goals. If goals are not met, no sanctions will be recommended or imposed provided the successful bidder, proposer, or vendor can fully demonstrate that he/she made an acceptable good faith effort, as interpreted and defined by the DCCCD, to achieve it. As previously mentioned, M/WBE goals are not to be interpreted, defined, or applied as quotas.

VIII. M/WBE CLAUSE

All DCCCD departments having contract and/or procurement administration responsibilities shall ensure that the following M/WBE Clause is included in all specification packages and requests for bids or proposals. The inclusion of the M/WBE Clause and applicable goal(s) in a contractor's bid/proposal package shall become a binding part of his/her DCCCD contract.

MINORITY/WOMEN BUSINESS ENTERPRISE CLAUSE

- A. It is the policy of the DCCCD that minority/women business enterprises (M/WBEs) shall have the maximum practicable opportunity to participate in the awarding of DCCCD contracts and related subcontracts.
- B. The bidder, proposer, or Prime contractor/consultant specifically agrees to comply with all applicable provisions of the DCCCD's M/WBE program and this clause specifically.
- C. Bidders, proposers, and prime contractors/consultants agree to employ good faith efforts to carry out this policy through award of subcontracts or sub-consultants to M/WBE firms to the fullest extent consistent with the efficient performance of this contract. All DCCCD Prime contractors/consultants shall be expected to solicit bids or proposals for subcontract, sub-consultant, and supplier opportunities from available M/WBEs.
- D. The Prime contractor/consultant shall appoint a high level official to administer and coordinate the Prime contractor's/consultant's efforts to carry out this M/WBE policy.
- E. Prime contractors/consultants shall maintain records, as specified in the Audit and records section of the General or Special Provisions in his/her contract, showing (i) subcontractor/sub-consultant/supplier awards, specifically to minority and/or women-owned business enterprises; (ii) specific efforts to identify and award such contracts to minority and/or women business enterprises; and (iii) submit when requested, copies of executed contracts with M/WBE firms to establish actual M/WBE contract participation.
- F. Prime contractors/consultants agree to submit periodic reports of subcontract, sub-consultant, and/or supplier awards to minority and women-owned business enterprises in such form and manner and at such time as the DCCCD shall prescribe and shall provide access to books, records, and accounts to authorized officials of the DCCCD, state or federal agencies for the purposes of verifying M/WBE contract participation and good faith efforts, when applicable, to carry out this M/WBE policy. All DCCCD Prime contractors/consultants may be subject to a post contract M/WBE audit. Audit findings and determinations may be

considered and have a bearing in the evaluation of a contractor's good faith efforts on future DCCCD contracts.

- G. All construction bidders and/or Prime contractors/consultants with contracts of \$25,000.00 or more shall demonstrate good faith efforts to subcontract and achieve the DCCCD contractual M/WBE goal, when applicable, as specified in individual contract bid specifications with DCCCD certified minority and/or women business enterprises through the submittal of an acceptable M/WBE Utilization Statement (Exhibit _). All construction bidders are required to satisfy applicable M/WBE program requirements prior to the award of the DCCCD contract. Bidders or Prime contractors/consultants that fail to meet these requirements will be considered non-responsive or in non-compliance as described in Section L of this Clause. Construction bidders and/or Prime contractors/consultants with contracts *less than* \$25,000.00 shall be required to demonstrate good faith efforts by contacting by telephone, facsimile, or e-mail M/WBEs to solicit quotes from M/WBE firms. Documentation to verify solicitation and consideration of M/WBE firms may be requested by the Business Diversity Programs Department at their discretion.

- H. All professional services proposers and/or prime consultants (Architects, Engineers, Construction Management, and other related consultant services) with contracts of \$25,000.00 or more shall demonstrate good faith efforts to sub-consult and achieve the DCCCD contractual M/WBE goal, when applicable, as specified in individual contract bid specifications with DCCCD certified minority and/or women business enterprises through the submittal of an acceptable M/WBE Utilization Statement (Exhibit _). All professional services proposers are required to satisfy applicable M/WBE program requirements prior to the award of the DCCCD contract. Proposers or prime consultants that fail to meet these requirements will be considered non-responsive or in non-compliance as described in Section L of this Clause. Proposers and/or prime consultants with contracts *less than* \$25,000.00 shall be required to demonstrate good faith efforts by contacting by telephone, facsimile, or e-mail M/WBEs to solicit sub-proposals from M/WBE firms. Documentation to verify solicitation and consideration of M/WBE firms may be requested by the Business Diversity Programs Department at their discretion.

- I. All procurement-related bidders and/or proposers shall by bid or Purchase Order submittal, specifically agree to all applicable provisions of the DCCCD's M/WBE program and the M/WBE Clause specifically, which is to be included as part of the vendor's Purchase Order or contract. In consultation with the DCCCD's procurement department, Business Diversity Programs Department representatives, at their discretion, will require certain vendors (contractors/consultants) in procurements which in

the opinion of the DCCCD may appear to reasonably present sub-vendor opportunities, to demonstrate good faith efforts to utilize and achieve the DCCCD contractual goal, when applicable, as specified in individual contract bid specifications with DCCCD certified minority and/or women business enterprises through the submittal of an acceptable M/WBE Utilization Statement. Vendors (contractors/consultants) required to satisfy good faith effort requirements shall satisfy such requirements prior to the award of a Purchase Order or contract. All vendors (contractors/consultants) failing to satisfy these requirements will be considered non-responsive or in non-compliance as described in *Section L* of this Clause.

- J. Notification is hereby given that a contract specific M/WBE goal ___ *has* ___ *has not* been established for this DCCCD contract. If a contract specific M/WBE goal has been established, the goal for M/WBE participation is ___ percent of the total dollar value of the contract with M/WBE firms certified as such by an entity acceptable to the DCCCD.
- K. All changes to the original Schedule of Service/Work submitted with a bid or proposal, excluding vendors, shall be submitted for review and approval in accordance with DCCCD procedures for adding, deleting, or changing subcontractors or sub-consultants on DCCCD projects *prior* to their execution. All Prime contractors/consultants shall also be required to demonstrate good faith efforts to replace M/WBE subcontractors or sub-consultants unable to perform on the contract with another M/WBE firm.
- L. Failure or refusal by a bidder, proposer, vendor, or contractor/consultant to comply with the M/WBE provisions herein or any applicable provision of the DCCCD's M/WBE program, either during the bid/proposal process or at anytime during the term of the contract, shall constitute a material breach of contract whereupon the contract, at the option of the DCCCD, may be cancelled, terminated, or suspended in whole or in part; and, the contractor/consultant may be debarred from further contracts with the DCCCD as a non-responsible contractor/consultant.

IX. PROGRAM COMPLIANCE

The DCCCD's Business Diversity Programs Department shall provide technical assistance to DCCCD bidders, proposers, vendors, contractors/consultants or DCCCD departments as may be necessary in complying with the M/WBE Clause and the M/WBE program requirements in general.

Colleges and DCCCD Departments

The Dallas County Community College District shall require its Colleges and DCCCD offices to make good faith efforts in its direct contracting opportunities

for construction; professional services (professional and consulting services); and commodities contracts.

In accordance with Purchasing Policy 4. 1.2. G, all Colleges and departments with procurement authority are to adhere to the following: “To the maximum extent feasible, opportunities for involvement in the DCCCD’s business activities will be made available to minority, women, and disadvantaged business enterprises which are certified by a DCCCD approved certification process or agency”.

In this regard, the College and/or department initiating an invitation for bid or proposal shall:

- A. Ascertain and identify all procurement/contracting opportunities that may appear to reasonably present sub-vendor/subcontractor/sub-consultant opportunities, providing timely notice to the Business Diversity Programs Department during the planning or preparation of the bid process.
- B. Ensure that the DCCCD’s M/WBE Clause and, if applicable, the M/WBE goal is included in all specification packages and requests for bids or proposals. The inclusion of the M/WBE Clause and applicable goal(s) in the bid/proposal package shall become a binding part of the DCCCD contract.
- C. On procurement/contracting opportunities of less than \$25,000.00, all Colleges and departments shall be required to consider and solicit M/WBE participation through contact by telephone, facsimile, or e-mail to obtain bid quotes. Documentation to verify solicitation and consideration of M/WBE firms may be requested by the Business Diversity Programs Department at their discretion.
- D. On procurement/contracting opportunities of \$25,000.00 or greater, all Colleges and departments shall ensure compliance with Prime contractor/consultant requirements under the M/WBE Clause requiring acceptable good faith effort demonstration *prior* to the award of the procurement or contract. The Colleges or departments shall coordinate such requirement through the DCCCD’s Business Diversity Programs Department.

Prime Contractors/Consultants

At solicitation opening and identification of successful bidder or selection of successful proposer, that bidder or proposer, except for procurement contractors/consultants (vendors), will be required to provide the information listed below:

- A. The M/WBE Utilization Statement which demonstrates compliance with all applicable provisions of the DCCCD's M/WBE Clause documenting good faith efforts, as determined by the DCCCD, to include the achievement of the project specific M/WBE goal, if applicable. The DCCCD Business Diversity Programs Department shall review and deem acceptable a bidder or proposer's good faith efforts prior to the award of the DCCCD contract.

The Utilization Statement shall contain:

- Section A: *Project Identification Section* - Contains the Project information, M/WBE goals, and a statement if no subcontracting opportunities are anticipated or if the Prime will not be subcontracting or sub-consulting.
 - Section B: *Schedule of Service/Work* - Lists all the contractors/consultants and/or suppliers to be utilized. **Upon award of contract, this Schedule becomes a binding provision of the contract.**
 - Section C: *Good Faith Efforts Review* - Provides documentation of the steps taken by the Prime to include M/WBEs and lists the M/WBEs contacted for each type of work subcontracted. **Completion of this section is not required if the Prime is not subcontracting or sub-consulting or if the prime is able to meet or exceeds the project M/WBE goal.**
- B. Submittal of M/WBE certification information for all non-certified M/WBE firms utilized on the project, including M/WBE primes if applicable. Notice is hereby given that it is the responsibility of the Prime contractor/consultant to ensure that its M/WBE subcontractors, sub-consultants, and/or vendors submit all necessary information for proper M/WBE status review, certification and credit.
- C. Notwithstanding the fact that a prospective contractor/consultant may have the capability to complete a total project with its own work force, and without the use of subcontractors/sub-consultants, all DCCCD Prime contractors/consultants are required to demonstrate positive and good faith efforts to subcontract/consult with and/or procure supplies/services with M/WBE firms. Prime contractors/consultants who propose to perform the contract with their own work force, and without the use of subcontractors/sub-consultants will be required to demonstrate its good faith effort by submitting information through the M/WBE Utilization Statement sufficient for the DCCCD to determine the following; and effectuate a waiver of M/WBE requirements: (i) That it is a normal business practice of the contractor/consultant to perform the particular elements of the contract at hand with its own work forces without the use of subcontractors/sub-consultants; (ii) that the technical nature of the

proposed project does not facilitate subcontracting/consulting nor any significant supplier opportunities in support of the project; and/or, (iii) that the Prime contractor/consultant has in fact demonstrated its capabilities to perform the elements of the contract with its own work forces without the use of subcontractors/sub-consultants.

- D. Any changes to the original Schedule of Service/Work submitted with the bid or proposal, excluding vendors shall be submitted for review and approval to the Business Diversity Programs Department in accordance with the DCCCD's procedures when adding, deleting, or changing subcontractors or sub-consultants on DCCCD projects *prior* to their execution. All Prime contractors/consultants shall be required to make a good faith effort to replace M/WBE subcontractors or sub-consultants that are unable to perform on the contract with another M/WBE firm.
- E. All of the foregoing information must be approved by the DCCCD's Business Diversity Programs Department *prior* to the award of a DCCCD contract. If the Business Diversity Programs Department determines bidder or proposer good faith efforts to be inadequate, it may find the bidder or proposer to be in non-compliance with the policies and provisions of the DCCCD's M/WBE program. In such a case, the Business Diversity Programs Department may seek to bring the low bidder or successful proposer into voluntary compliance, or recommend that the contract not be awarded. The Business Diversity Programs Department may recommend additional sanctions against DCCCD prime contractors/consultants who are found to be in non-compliance with M/WBE program requirements or M/WBE contract provisions at any time during the term of the DCCCD contract.

Construction Bond Program

The DCCCD's M/WBE program shall be applicable to the DCCCD's construction bond program as follows:

- A. The DCCCD's M/WBE program applies to all projects that are funded in whole or in part through the DCCCD's Bond Program.
- B. DCCCD Bond Program administrators shall on an annual basis provide the Business Diversity Programs Department with a sufficiently detailed description of the DCCCD bond program that will allow the Business Diversity Programs Department to reasonably identify and establish contracting and procurement opportunities. At a minimum, the project description shall identify trade area (construction and professional services) projects, estimated dollar values, contemplated project commencement and completion dates, projected subcontracting/consultant and major opportunities.

- C. Construction, professional service, and direct procurements under the bond program shall address the DCCCD M/WBE program requirements and the M/WBE Clause specifically, which is designed to ensure and monitor compliance from Prime contractors/consultants, professional service providers, and suppliers on DCCCD projects. DCCCD bond program managers shall provide the Business Diversity Programs Department with all information as is reasonably requested and assistance as necessary to carry out its responsibilities under the DCCCD's M/WBE program.
- D. Within a reasonable timeframe of receiving project description (information under B above), the Business Diversity Programs Department shall present a recommended overall M/WBE goal for the bond program and recommend individual project specific M/WBE goals. The overall bond program M/WBE goal shall be reviewed and adopted on an annual basis. The project specific M/WBE goal shall be developed individually for each project, which goal, shall remain in effect for the duration of project including any change orders or modifications. The goals are not to be considered or construed as quotas.
- E. All bond program prime construction and professional service contractors /consultants shall be required to demonstrate compliance with all applicable provisions of the DCCCD's M/WBE Clause. This specifically includes approval of the DCCCD required M/WBE Utilization Statement demonstrating its good faith efforts, as determined by the DCCCD, to include the achievement of the project specific M/WBE goal. Direct major procurement vendors on the bond program shall also, at the discretion of the Business Diversity Programs Department, demonstrated compliance with all applicable provisions of the DCCCD's M/WBE Clause and be required to submit an M/WBE Utilization Statement demonstrating good faith efforts, as determined by the DCCCD, to include the achievement of the project specific M/WBE goal, if applicable. The DCCCD Business Diversity Programs Department shall review and deem acceptable a bidder, vendor, or proposer's good faith efforts *prior* to the award of the DCCCD contract.
- F. In cooperation with bond program representatives, the Business Diversity Programs Department shall establish and provide quarterly reports to DCCCD management to monitor the progress made towards meeting the overall M/WBE bond program goal commitment, individual project specific goal achievement, and to ensure Prime contractor/consultant M/WBE program compliance. The Business Diversity Programs Department shall also present an annual report addressing the bond program's overall performance and progress.

- G. Failure or refusal by bond program bidders, proposers, vendors or contractors/consultants to comply with all applicable provisions of the DCCCD's M/WBE program either during the bid/proposal process or term of the contract, shall constitute a material breach of contract whereupon the contract, at the option of the DCCCD, may be cancelled, terminated, or suspended in whole or in part; and the bond program bidder, proposer, vendor, or contractor/consultant be debarred from further contracts with the DCCCD being deemed as non-responsible.

Procurement/Contracting Emergency Situations

Emergency procurements and contract situations, as defined under DCCCD procurement guidelines, shall be coordinated through the Business Diversity Programs department director and provide consideration for M/WBE participation to the greatest extent feasible.

The DCCCD procurement director or contract administrator must provide written documentation justifying the emergency situation.

X. GOOD FAITH EFFORTS

As part of the DCCCD's efforts to promote and ensure *equality of opportunity* to all bidders, proposers, vendors and contractors/consultants and to redress contract involvement/utilization disparities to underutilized minority and/or women business enterprises, the DCCCD has instituted a good faith effort process to review Prime contractor/consultant support and compliance with the DCCCD's non-discrimination efforts in addressing identified underutilizations and inequitable contracting and procurement by M/WBEs found in the DCCCD marketplace and in most local public contracting entities.

As part of this non-discrimination policy, all DCCCD Prime contractors/consultants shall be required to consider and solicit bids or proposals for subcontract, sub-consultant, and major supplier opportunities from available M/WBEs through the submittal and approval by the Business Diversity Programs Department of an M/WBE Utilization Statement demonstrating good faith efforts.

In making determinations of good faith efforts, the Business Diversity Programs Department shall minimally consider among other actions, the criteria set forth below as part of its specific documentation concerning the positive steps taken to consider and involve M/WBE firms on DCCCD projects. The below listed efforts are provided as a guide to Prime contractors/consultants, by way of illustration and not limitation to the following factors:

- A. Whether the bidder, proposer, vendor or Prime contractor/consultant attended the pre-bid or pre-proposal conferences or meetings scheduled by the DCCCD to discuss M/WBE participation opportunities;

- B. Whether the bidder, proposer, vendor or Prime contractor/consultant advertised in general circulation, trade association, and/or M/WBE focused media concerning subcontracting/consultant and/or supplier opportunities;
- C. Whether the bidder, proposer, vendor or Prime contractor/consultant provided written notice to a reasonable number of M/WBEs that their interest in the contract was being solicited in sufficient time to allow M/WBEs to participate effectively;
- D. Whether the bidder, proposer, vendor or Prime contractor/consultant followed up on initial solicitations of interest by contacting M/WBEs to determine with certainty whether M/WBEs were in fact interested;
- E. Whether consideration was given to select portions of the work to be performed by M/WBEs in order to increase the likelihood of meeting the M/WBE goals, where applicable, to include breaking down the contract, where appropriate, into economically feasible subcontracts to facilitate M/WBE participation;
- F. Whether interested M/WBE firms were provided with adequate information regarding plans, specifications, scope of work, and other requirements of the contract;
- G. Whether there were any negotiations in good faith with interested M/WBEs, not rejecting M/WBEs as unqualified without sound reasons based on a thorough investigation of their capabilities;
- H. Whether the bidder, proposer, vendor or Prime contractor/consultant negotiated in good faith with interested M/WBEs using good business judgment, taking into consideration the M/WBE subcontractor/sub-consultant or vendor's price quote and not rejecting reasonable quotes from interested M/WBE firms;
- I. Whether there was assistance offered to M/WBEs in obtaining bonding, lines of credit, insurance, etc., as required under the DCCCD project;
- J. Whether efforts were made to assist interested M/WBEs in obtaining necessary equipment, supplies, materials, or related assistance services;
- K. Whether the services of available minority and women business groups, community organizations, contractor/consultant groups, local, state, and federal business assistance offices and centers, and other organizations that provide assistance in identifying M/WBEs were effectively utilized;

- L. Whether other bidders, proposers, vendors or Prime contractors/consultants demonstrate M/WBE project participation and attained a sufficient level of M/WBE participation to meet the contractual goal, where applicable.

The Business Diversity Programs Department will review not only the different kinds of efforts that bidders, proposers, vendors, and Prime contractors/consultants make, but also closely examine the intensity, quality and quantity of those efforts. Efforts that are merely pro forma shall not be considered to satisfy good faith effort requirements, even if they are sincerely motivated, if given all relevant circumstances, the bidder, proposer, vendor or Prime contractor/consultant could reasonably be expected to generate M/WBE contract participation.

XI. OUTREACH

An integral component of the DCCCD's M/WBE program are the processes, procedures and formalized efforts to identify, solicit and ensure consideration and participation by minority and/or women-owned businesses on DCCCD contracting and procurement opportunities.

The DCCCD's commitment to the achievement of equitable contracting opportunities for *all* businesses is the principal reason in establishing its M/WBE Program. The program's outreach efforts are designed to document initiatives and establish processes which best inform, solicit, and confirm DCCCD and prime contractor/consultant efforts for maximum consideration and participation by minority and women business enterprises.

Key actions to the DCCCD's outreach efforts are internal and external communication and interaction by the Business Diversity Programs Department and other DCCCD departments and the minority and women-owned business community. These outreach efforts shall be the primary responsibility of and coordinated through the Business Diversity Programs Department.

Internal Communication

All DCCCD Colleges and departments having or sharing responsibility for the awarding of DCCCD contracts have a responsibility to support and assist in promoting and carrying out the DCCCD's M/WBE program. In support of the DCCCD's M/WBE program, the Business Diversity Programs Department will established in conjunction with appropriate DCCCD Colleges and departments, procedures to enhance qualifications, competitiveness, and opportunities for minority and women business consideration and involvement. Processes will be jointly established to capture, disseminate, analyze, and communicate DCCCD business opportunities, and to address barriers to effective minority and women-owned business participation.

A myriad of formats, procedural processes and regularly scheduled activities will be institutionalized under this program into the texture of the DCCCD structure designed to foster a coordinated approach in ensuring communication with, and solicitation of minority and/or women-owned firms through the DCCCD's M/WBE program.

External Communications

Communication and support of the DCCCD's M/WBE initiatives by entities that represent or promote minority and/or women business interest is a crucial element to a viable and effective M/WBE Program effort. Correspondingly, the Business Diversity Programs Department has also formalized efforts to ensure communication and participation by external minority and women business-related entities in maximizing the DCCCD's identification and solicitation efforts for such businesses. Efforts with these entities are geared towards establishing a fluid communication process that informs, facilitates networking, and assists in the overall development and management of the DCCCD's M/WBE program. Business Diversity Programs Department representatives shall participate in minority and women business support entity activities and look to these entities as the principal organizations to generate active support and participation by the minority and women business community. DCCCD Colleges and departments may be required as necessary to assist the Business Diversity Programs Department in its efforts to effectively implement its external communications.

XII. RACE AND GENDER NEUTRAL PROGRAM MEASURES

The DCCCD shall develop and employ measures to facilitate the equitable consideration and participation of *all* business enterprises in its contracting and procurement opportunities. Specific measures to identify, solicit, and encourage consideration and participation by minority and/or women-owned business enterprises will be established under this program. These measures will include, but not be limited to the following:

- A. Develop a bonding and insurance strategy to eliminate unnecessary barriers to contracting with the DCCCD. This effort will include review of overall and individual requirements in this area and the utilization of local, state and federal bonding programs. Also, this effort will examine and consider phased and waived bonding on DCCCD contracting and procurement opportunities where applicable.
- B. Adopting prompt payment procedures, including recommending a requirement by contractual clause that Prime contractors/consultants pay subcontractors/sub-consultants within ten (10) days of receipt of payment from the DCCCD; and where appropriate, issuing joint checks to contractors/consultants and subcontractors/sub-consultants.

- C. Development of a financial assistance strategy to leverage and provide greater opportunity for DCCCD contractors/consultants and vendors to address and secure financing. This effort will include initiatives to educate and position firms whereby they can become better qualified to secure project financing. Efforts will be specifically directed towards project specific leverage financing and establishment of pre-qualified bidder pools.
- D. Consider the development of a “Construction Training Academy” in the near future. The Construction Training Academy will focus on developing critical operational and administrative skills necessary for successful bid and project performance. The academy will be presented by local Prime contractors and will feature networking sessions that will facilitate more intimate professional relationships, which hopefully lead to greater participation by such firms at both the prime and subcontractor levels.
- E. Develop specific technical assistance programs and initiatives to enhance prime bidder qualifications and competitiveness. These initiatives will take into consideration specific project needs such as, bid assistance efforts, specification availability and understanding, enhanced bid notices, project specific networking sessions, etc.
- F. Develop web site information to more effectively publicize and promote minority and/or women-owned business opportunities and initiatives, to include project information and status, and general outreach.
- G. Development of race neutral, small business Mentor-Protégé Programs.
- H. Development of race neutral, small business Joint Venture Programs.
- I. Review and development of, if allowable under current state law, a small business set-aside program.

XIII. M/WBE CERTIFICATION

To ensure that the DCCCD’s M/WBE program benefits businesses, which are owned in both form and substance by minority and women individuals, as defined under this program, the DCCCD shall require such firms to submit documentation acceptable to the DCCCD certifying their respective status.

The DCCCD shall require M/WBE firms to be certified as such by an entity acceptable to the DCCCD. Currently the DCCCD accepts M/WBE certification from the following:

- North central Texas Regional Certification Agency (NCTRCA)

- State of Texas Historically Underutilized Business (HUB) Program
- Dallas/Fort Worth Minority Business Development Council (DFW MBDC)
- Women's Business Council – Southwest

Please note that failure to be certified as an M/WBE firm does not preclude a firm from participating directly in the DCCCD's contracting and procurement activities. However, only certified M/WBE business participation may be counted towards fulfilling the DCCCD's overall and contract specific goals, where applicable.

The purpose of certification is two-fold:

- A. To ensure the integrity of the M/WBE program by providing increased contracting opportunities for minority and women business enterprises as defined by the DCCCD; and,
- B. To develop and establish such listings for the DCCCD, contractors/consultants, and other entity solicitation.

Firms which desire or are required by the DCCCD to be certified for M/WBE participation credit must complete and submit the appropriate status certification information for review and approval. In the case of joint ventures, the M/WBE member must be certified as an M/WBE and the joint venture itself must complete the M/WBE certification affidavit for joint ventures.

The DCCCD reserves the right to prioritize M/WBE status certification review of firms that are currently involved in the bidding process or in contract negotiations with the DCCCD or its contractors/consultants.

XIV. M/WBE LISTINGS

As part of the DCCCD's efforts to identify and ensure solicitation of M/WBE involvement/utilization on DCCCD projects, the Business Diversity Programs Department shall maintain listings (directories) of M/WBE certified firms by trade areas; i.e., construction, professional services (architects, engineers, etc.), and procurement for DCCCD project needs.

The listings will be updated on a regular basis, and will be used to identify, solicit, and notify M/WBEs of business opportunities; and provide the primary vehicle for DCCCD bidders, proposers, vendors, and contractors/consultants to satisfy M/WBE program requirements, meet M/WBE goals where applicable, as well as, facilitate a base for joint ventures, partnerships, etc.

XV. RECORDS AND REPORTS

In order to monitor the progress of its M/WBE program efforts, the DCCCD shall maintain a record-keeping system designed to:

- A. Assess M/WBE utilization on DCCCD contracts, on an overall program basis, and by Prime contractor/consultant, subcontractor/sub-consultant, and total basis for the construction, professional services, and procurement areas.
- B. Identify and monitor Prime contractors'/consultants' M/WBE utilization, overall and on a project-by-project basis.
- C. Identify and list all DCCCD bidders, proposers, subcontractors/sub-consultants, as well as certified M/WBE firms.

The Business Diversity Programs Department will review and present quarterly and annual reports on M/WBE progress and performance and the achievement of the DCCCD overall M/WBE aspirational goals to DCCCD administration. On an individual basis the Business Diversity Programs department will be prepared to present information detailing the achievement of the project specific M/WBE performance, to include M/WBE goals where applicable. On an ad hoc basis, other M/WBE-related internal and external reports shall also be prepared.

Calculation of M/WBE Participation

The participation of M/WBE contractors/consultants and suppliers in contract awards will be calculated as follows: Once a firm is determined to be a certified M/WBE in accordance with this program, the total dollar value of the contract(s) awarded to such prime and subcontractors/sub-consultants is counted as participation in each appropriate category through the third-tier level.

The DCCCD may also count as M/WBE participation, a portion of the total dollar value of a contract with partially owned M/WBE firms equal to the percentage of the ownership of the M/WBE co-owner. Joint venture M/WBE participation will be counted as detailed in the definition section under "Joint Ventures".

The DCCCD will count as M/WBE participation only expenditures to M/WBEs that perform a commercially useful function in the work of a contract. An M/WBE is considered to perform a commercially-useful function when it is responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved.

The DCCCD and its contractors/consultants may also count toward the M/WBE performance ranges the following expenditures to M/WBE firms:

- A. The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services, and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the contract, provided that the fee or commission is determined by the DCCCD to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- B. The fees charged for delivery of material and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of a regular dealer in the materials and supplies, provided that the fee is determined by the DCCCD to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- C. The fees of commission charged for providing any bonds or insurance specifically required for the performance of the contract, provided that the fee or commission is determined by the DCCCD to be reasonable and not excessive as compared with fees customarily allowed for similar services.

XVI. SUNSET PROVISION

The DCCCD's M/WBE program will expire at the end of three (3) fiscal years following the fiscal year adopted, unless prior to that date the DCCCD elects to reauthorize or terminate the program.