



EQUAL BUSINESS OPPORTUNITY PROGRAM

Center City Affiliated Boards

DOWNTOWN MEMPHIS COMMISSION
114 N Main Street, Memphis, TN

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Introduction

Section 1: Introduction

The Downtown Memphis Commission and its affiliated boards, Center City Development Corporation, Center City Revenue Finance Corporation, Memphis Center City Design Review Board and Downtown Parking Authority (hereafter collectively referred to as “DMC”) are committed to a policy of non-discrimination pursuant to the Equal Protection provisions of the Constitutions of the United States and the State of Tennessee. It is the policy of the DMC that its purchasing and contracting practices not implicate the DMC as a passive participant in any discriminatory practices which may be engaged in by private contractors or vendors who seek to receive or who receive financial incentives or subsidies (e.g. loans, payment in lieu of taxes also referred to as PILOT, and PILOT extension funds) from the DMC. In furtherance of these policy objectives, the DMC seeks to afford all citizens equal opportunities to do business with the DMC. The DMC also seeks to ensure that all bidders, proposers, vendors and developers doing business with the DMC provide to businesses owned and controlled by racial and ethnic minorities and women, maximum practicable opportunities - commensurate with availability price and capabilities required - to participate in contracts which are paid for, in whole or in part, with monetary appropriations from the DMC.

The DMC prohibits discrimination against any person or business in pursuit of these opportunities on the bases of race, color, sex, religion, disability or national origin. Title VI as codified at 42 U.S.C. 2000d, et seq. provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. The DMC will conduct its contracting and purchasing programs to discourage any discrimination and will vigorously seek to resolve all claims of discrimination brought against the DMC or any vendors or developers involved in such contracting and purchasing programs.

Section 2: Purpose and Scope

The purpose of the Equal Business Opportunity Program is to enhance the participation of qualified Minority-Owned Businesses, as defined herein, in providing goods and services required by the DMC. This program describes the policies and procedures to accomplish this purpose and the manner by which the DMC will monitor and evaluate the success of this program. The scope of this program shall include all projects, ventures, transactions and include, but not be limited to:

1. Identifying and working to eliminate discrimination against any person or business in pursuit of business opportunities with the DMC

2. Identifying qualified Minority-Owned Businesses and establishing goals for each procurement-opportunity to ensure Minority-Owned Business utilization
3. Providing information and assistance to majority-owned and Minority-Owned Businesses regarding procurement opportunities with the DMC
4. Implementing mechanisms and procedures to monitor vendors and developers for compliance with this program
5. Implementing mechanisms to evaluate the program's success
6. Maintaining a database identifying certified Minority-Owned Businesses

Section 3: Policy Statement

The DMC recognizes the positive benefits of initiatives that encourage the development of Minority-Owned Businesses and further acknowledges as one of its primary goals the development of a supplier-base that reflects the diversity of the business community. To achieve this goal and to provide equal business opportunities in the procurement process, DMC encourages vendors, or developers, to solicit bids from Minority-Owned Businesses. The DMC is responsible for making every reasonable effort to utilize Minority-Owned Businesses when opportunities exist. The DMC will take active steps to encourage full participation of qualified, capable, competent, and competitive Minority-Owned Businesses. The DMC affirmatively covenants that, in the selection of any contractor in the procurement of commodities or services, significant Minority-Owned Business participation will be sought commensurate with the availability of such businesses in the relevant markets.

Responsibilities and Requirements

Section 4: Administrative Responsibilities

The DMC shall review each proposed request for development, goods or services to determine the potential for the utilization of Minority-Owned Businesses. This review is based on known availability of capable Minority-Owned Businesses in the area as it relates to the scope of the development, the response to a request for proposal (RFP) package or request for qualification (RFQ). The following procedures will be utilized during the procurement process.

1. Pre-Bid Activity
 - a. Language

Language regarding the EBO Program will be inserted into each development and or specification to assure that all prospective vendors and developers are aware of a requirement to make efforts to utilize Minority-Owned Businesses.

b. Notification

The DMC will provide written notification to vendors, developers, and Minority-Owned Businesses regarding: pre-award conferences; technical assistance to Minority-Owned Businesses; EBO programs procedures and required documentation; and provide a list of Minority-Owned Businesses who have expressed an interest in submitting a proposal or bid or in performing as a Joint Venture partner or sub-contractor.

2. Ordinary Procurement Contracts

- a. Subject to the DMC's policies and procedures in effect from time to time, the DMC shall have the maximum flexibility in making Ordinary Procurements and may use any available procurement procedure, including negotiation.
- b. The DMC will strive, to the maximum extent practicable, to engage in Ordinary Procurements with Minority-Owned Businesses.

3. Vendor/Developer Responsibilities

a. Effort to Achieve Minority Participation

All entities seeking to become vendors or developers are required to make efforts to achieve maximum Minority-Owned Business participation when submitting a request for proposal, request for qualification, bid, or negotiated proposal in response to a DMC procurement opportunity. Prospective vendors and developers shall not discriminate on the basis of race, color, national origin, or sex when soliciting bids in the performance of the DMC procurements. Efforts should be documented on EBO Form E: Solicitation Certification Form.

b. Utilization

Prospective vendors and developers are required to utilize Minority-Owned Businesses that are certified in order to receive credit for the utilization of a Minority-Owned Business. Vendors and developers must document all Minority-Owned Businesses to be utilized, their percentage of utilization and their intended scope of work. Such information should be submitted on EBO Form A: Proposed Utilization Plan or EBO Form B: Business Utilization Plan. This documentation must be submitted with the RFP, RFQ, bid, or negotiated proposal document.

c. Unavailability

If a potential vendor or developers' efforts to obtain Minority-Owned Business participation are unsuccessful due to the unavailability of the Minority-Owned Business, the vendor or developer will submit a statement of unavailability on EBO Form C: Explanation of Changes to Original Utilization Plan or EBO Form E: Solicitation Certification Form.

- d. Commercially Useful Functions
All Minority-Owned Businesses identified on EBO Form A: Proposed Utilization Plan or EBO Form D: Monthly Business Utilization Plan shall perform a Commercially Useful Function
 - e. Pre-Work Conference
Any vendor or developer who was the successful proposer shall be required to attend a conference with the DMC prior to beginning the work. The primary purpose of this conference is to review the project scope and review the Minority-Owned Business participation as outlined in EBO Form A: Proposed Utilization Plan or EBO Form C: Explanation of Changes to Original Utilization Plan.
 - f. Post-Award Change
Any vendor or developer who determines that a Minority-Owned Business, identified on EBO Form A: Proposed Utilization Plan or EBO Form D: Monthly Business Utilization Plan, cannot perform shall request approval from the DMC to contract with an alternate. Such request will be reviewed and approved only after adequate documentation for the proposed change is presented.
 - g. Monthly Certification
Each month the vendor or developer shall submit an EBO form certifying all payments made to Minority-Owned Businesses.
4. Minority-Owned Business Vendor Responsibilities
- a. Commercially Useful Function
It is the responsibility of each Minority-Owned Business providing goods and/or services to submit an EBO form certifying that it is performing the work and that it is a Commercially Useful Function.
5. Credit for Minority Participation in Joint Venture
- A Joint Venture consisting of Minority-Owned Business(es) and Non-Minority-Owned Business(es) will be credited with Minority-Owned Business participation on the basis of the percentage of the dollar amount of the work to be performed by the Minority-Owned Business(es).

Section 5: Fulfilling Minority-Owned Business Participation Requirements

For the purpose of this program, a vendor or developer may utilize the services of a Minority-Owned Business in estimating and satisfying the scope of work provided that a written

contract/agreement is executed between the vendor or developer and the Minority-Owned Business.

Section 6: Payment

In order to assist Minority-Owned Businesses, the DMC upon request will consider requests by Minority-Owned Businesses for expedited payments.

Certification and Efforts to Achieve Participation

Section 7: Database / Certification

The DMC will maintain a database of Minority-Owned Businesses. The database will be made available to assist vendors and developers in identifying Minority-Owned Businesses with capabilities relevant to contracting requirements, Joint Venture, and partnering opportunities. The database will be available to vendors and developers in making Efforts to Achieve Minority-Owned Business Participation and to promote maximum, practicable opportunities for Minority-Owned Businesses. The database provided by the DMC is not exhaustive of all certified Minority-Owned Businesses. If the vendor or developer utilizes a Minority-Owned Business that is not listed on the DMC database, the vendor or developer is responsible for assuring the certification of the minority-business. If a vendor or developer desires to utilize a Minority-Owned Business not certified such vendor or developer should encourage the selected firm to seek such certification.

To ensure that the ownership and control over decision-making and day-to-day operations of a Minority-Owned Business are legitimate, the DMC reserves the right to verify the ownership status of each Minority-Owned Business utilized. The DMC will consider Minority-Owned Business eligibility status based on proof of certification from any of the various agencies and/or governmental entities granting such status.

To ensure that the ownership and control over decision-making and day-to-day operations of a Minority-Owned Business providing professional services (including, but not limited to, lawyers, accountants, engineers, and architects) is legitimate the professional service provider shall provide an Affidavit of Ownership.

The DMC may remove businesses from the database for the following reasons:

1. Failure to perform according to contract provisions
2. Conviction in a court of law of any criminal offense in connection with the conduct of business
3. Clear and convincing evidence of a violation of any federal or state antitrust law based on the submission of bids or proposals or the awarding of contracts
4. Clear and convincing evidence that the vendor or developer has attempted to give a DMC employee a gratuity of any kind for the purpose of influencing a recommendation or decision in connection with any part of the DMC purchasing activity
5. Violation or circumvention of the EBO program
6. Other reasons deemed appropriate by the DMC

Section 8: Monitoring Minority-Owned Business Utilization

The DMC intends to monitor and enforce this program. The DMC reserves the right to:

1. Conduct random audits of each of its vendor's Minority-Owned Business Utilization Commitment
2. Reevaluate a Minority-Owned Business certification at any time
3. Conduct an annual evaluation of the EBO Program

Recommendations for future program modification will be made if deemed necessary.

Section 9: Efforts to Achieve Minority-Owned Business Participation

The vendor or developer shall consider all proposals, bids, and/or quotations received from Minority-Owned Businesses. When a subcontract is not awarded by a vendor or developer to any Minority-Owned Business, the vendor or developer must document the reason(s) the award was not made. It is the responsibility of the vendor/developer to prove that it employed Efforts to Achieve Minority-Owned Business participation. Evidence supporting the vendor's/developer's efforts must be documented on EBO Form C: Explanation of Changes to Original Utilization Plan or EBO Form E: Solicitation Certification Form, which must include, but is not limited to:

1. Vendor/Developer must submit proof that it solicited Minority-Owned Business participation through all reasonable and available means including, but not limited to:
 - a. Written notices to Minority-Owned Businesses in the database who have the capability to perform the work or provide the service
 - b. Direct mailing, electronic mailing, facsimile or telephone requests

2. Vendor/Developer must submit proof that it provided interested Minority-Owned Business with adequate information about plans, requirements, and specifications of the contract in a timely manner to assist them in responding to a solicitation.
3. Vendor/Developer must submit proof that it made efforts to achieve Minority-Owned Business participation including, but not limited to: proof that it made opportunities available to interested Minority-Owned Businesses and identified opportunities commensurate with opportunities made available and identified to Non-Minority-Owned Businesses.
4. Vendor/Developer must submit proof that it effectively used the services of the DMC, available Minority-Owned Business groups, local Minority-Owned Business assistance offices, small business groups, and other organizations to provide assistance in the recruitment and placement of Minority-Owned Businesses.
5. Vendor/Developer must submit proof that it allowed Minority-Owned Business sub-vendors to review bid specifications, blueprints, and all other bid/request for proposal/request for qualification related items at no charge to the Minority-Owned Businesses. The vendor/developer must allow sufficient time for review, thus allowing Minority-Owned Businesses to participate effectively.
6. Vendor/Developer must submit proof that it negotiated in good faith with interested Minority-Owned Businesses, not rejecting a Minority-Owned Business as unqualified or unacceptable without sound reasons based on a thorough investigation of their capabilities. Vendor/Developer must submit proof of the basis for rejecting any Minority-Owned Business deemed unqualified or unacceptable. The vendor/developer will not impose unrealistic conditions of performance on Minority-Owned Businesses seeking subcontracting opportunities. Vendor/Developer must submit proof of the condition of performance expected of the Minority-Owned Business by the vendor/developer.

The vendor or developer must fully cooperate with the DMC in its post-contract award EBO Program audit and compliance efforts.

Substitution and Noncompliance

Section 10: Substitution of Minority-Owned Businesses after Contract Award

In order to make a substitution of a Minority-Owned Business, a vendor/developer must make a request to the DMC. The DMC reserves the right to approve any substitution of a Minority-Owned Business. The vendor/developer has the responsibility to provide the DMC with a sufficient basis for substitution. If the vendor desires to substitute the Minority-Owned

Business with a Non-Minority-Owned Business, then the vendor must comply with the efforts to achieve Minority-Owned Business participation provisions set forth herein.

Section 11: Noncompliance with the Equal Business Opportunity Program

Any of the following reasons, individually or collectively, may result in suspension from bidding, prohibition from contracting, or cancellation of contracts:

1. The failure to perform according to contract provision relating to this EBO Program
2. Violation of, circumvention of, or failure to comply with the EBO Program
3. Other reasons deemed appropriate by the DMC

Program and Definitions

Section 12: Equal Business Opportunity Program Forms*

Equal Business Opportunity (EBO) Forms:

- A. Certification of Efforts
- B. Minority-Owned Business Utilization Plan
- C. Minority-Owned Business Affidavit of Ownership
- D. Statement of Intent to Perform as Subcontractor or Provide Supplies or Services
- E. Statement of Payments to Minority-Owned Businesses

***Please see attached forms on the back of this document**

Section 13: Construction of Program

This Equal Business Opportunity Program is consistent with the DMC Regulations, Policies, and Procedures. Wherever conflicts may exist, the provision in the DMC Regulations, Policies, and Procedures will prevail.

Section 14: Bid Awards

No Vendors or Developers will be awarded a contract or bid until they have provided specific detailed documentation on how Minority-Owned Businesses will be utilized, and the Minority-Owned Business participation plan is approved by the DMC.

Section 15: Definitions

The following terms will have the following meanings throughout this document:

1. **“Bidder / Proposer / Developer / Vendor”** means any person, firm, partnership, corporation, association, or joint venture seeking to be awarded a contract, or subcontract, to provide a service or receive an incentive or subsidy.
2. **“Certification”** means a Minority-Owned Business, as defined herein that is certified by the United States Small Business Administration’s 8a Program, a recognized Uniform Certification Agency, or by any one of the following: an existing Minority Purchasing Council, State, City, Municipality, Airport Authority, State Department of Transportation, or any agency or instrumentality of state government, all of Tennessee. This certification shall be and constitute the Minority-Owned Business certification for the purposes of the DMC Equal Business Opportunity Program, unless modified by the DMC.
3. **“Commercially Useful Function”** means being responsible for the management and performance of a distinct element of the total work.
4. **“Control”** means exercising the power to make policy decisions.
5. **“Efforts to Achieve Minority-Owned Business Participation”** means that the vendor or developer will consider all competitive proposals, sub-bids, and quotations received from Minority-Owned Businesses. When a subcontract is not awarded to the Minority-Owned Business submitting the most competitive bid, the vendor or developer must document the reason(s) the award was not made and substantiate that documentation in writing. If the vendor or developer terminates an agreement and/or subcontract with a Minority-Owned Business, the vendor or developer will be required to adhere to these provisions of a Minority-Owned Business in the selection of the replacement for that Minority-Owned Business.
6. **“Joint Venture”** means a joint business association of Minority-Owned Businesses as defined herein and Non-Minority-Owned Businesses combining their labor, resources, and expertise for a single undertaking. The profits and losses are shared equally or according to a contract. There is a common interest of purpose and each “partner” has the equal right of control of the operation or activity of the venture without an agreement to the contrary.
7. **“Vendor / Developer”** means a person who provides or proposes to provide goods or services to the corporation pursuant to a contract, but does not include an employee of the DMC, or a state or city agency or instrumentality thereof.
8. **“Ordinary Procurement Contract”** means any product or service costing less than \$15,000.00 and unique to the DMC, but not including materials, supplies, equipment, and services, to the ordinary operation of a corporation.

9. **“Major Procurement Contract”** means any product or service costing equal to or in excess of \$15,000.00 and unique to the DMC, but not including materials, supplies, equipment, and services, to the ordinary operation of a corporation.
10. **“Minority-Owned Business”** means a business which is solely owned, or at least 51% of the assets or outstanding stock of which is owned, by an individual who personally manages and controls the daily operations of such business and who is impeded for normal entry into the economic mainstream because of:
 - a. Past practices of discrimination based on race, religion, ethnic background, or sex
 - b. Disability as defined in Tenn. Code Ann. 4-26-102
 - c. Past practices of racial discrimination against African-Americans
11. **“Non-Minority”** means a business which is not defined as a Minority-Owned Business.
12. **“Unavailable”** means either that: (1) there is no Certified Minority-Owned Business providing goods or services requested; or, (2) no Certified Minority-Owned Business submitted a proposal or bid.

Section 16: Questions and Information

Questions regarding this program and requests for information should be directed to:

Downtown Memphis Commission, 114 N Main St., Memphis, TN 38103