

State Procurement Policy # E24-115.01

Minority Business

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DEFINITIONS

Agency – The South Carolina Military Department/Office of the Adjutant General.

Controllable Dollars - The total dollar amount estimated to be expended by an agency or entity where the agency or entity has discretion in the selection of the private vendor.

Economically Disadvantaged Individuals - Those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area that are not socially disadvantaged.

Minority Business Enterprise – A business which has been certified as a socially and economically disadvantaged small business by the Office of Small and Minority Business Assistance (i.e. - South Carolina Division of Small and Minority Business Contracting and Certification).

Minority Person - A United States citizen who is economically and socially disadvantaged.

Small Business - A for-profit concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on government contracts, and qualified as a small business under the criteria and size standards in 13 C.F.R. Section 121 (1996), as amended. Such a concern is “not dominant in its field of operation” when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

Socially Disadvantaged Individuals - Individuals who have been subject to racial or ethnic prejudice or cultural bias because of their identification as members of a certain group without regard to their individual qualities. Such groups include, but are not limited to, Black Americans, Hispanic Americans, Native Americans (including American Indians, Eskimos, Aleuts and Native Hawaiians), Asian Pacific Americans, Women and other minorities to be designated by the South Carolina Department of Administration or the South Carolina Military Department/Office of the Adjutant General.

Socially and Economically Disadvantaged Small Business - Any small business concern which, as certified by the Office of Small and Minority Business Assistance (i.e. - South Carolina Division of Small and Minority Business Contracting and Certification):

- Is at least 51% owned by one or more citizens of the United States who are determined to be socially and economically disadvantaged and who also exercise control over the business per 49 CFR Part 26, Subpart D (2006), as amended.
- In the case of a concern that is a corporation, of which 51% of all classes of voting stock of such corporation must be owned by an individual or individuals determined to be socially and economically disadvantaged who also exercise control over the business.

- In the case of a concern that is a partnership, at a minimum, 51% of the partnership interest must be owned by an individual or individuals determined to be socially and economically disadvantaged who also exercise control over the business.

POLICY

1. The South Carolina Military Department of South Carolina will afford those businesses owned and operated by minority persons the opportunity to fully participate in the overall procurement process of this Agency.

2. The Agency will make every possible effort to assist minority-owned businesses to develop fully as a part of the Agency's policies and programs designed to promote balanced economic and community growth throughout the State.

3. Agency Goals

a. In accordance with the South Carolina Code of Laws 11-35-5240(1)(d), the Agency's goal is to expend with Minority Business Enterprises (MBE) certified by the South Carolina Division of Small and Minority Business Contracting and Certification (SMBCC) no less than an amount equal to ten percent (10%) of the Agency's total dollar amount of funds expended.

b. In accordance with guidance provided by the Executive Director of the State Budget and Control Board (i.e. – SC Department of Administration) in a letter dated 15 Aug 2016, "total dollar amount of funds expended" in relation to defining the funds that this percentage will be applied against is defined as "the total dollar amount estimated to be expended by an agency or entity ... where the agency or entity has discretion in the selection of the private vendor" (i.e. – Controllable Dollars). (https://procurement.sc.gov/files/2006_Letter.pdf)

4. The Agency will adhere and continue to support the National Guard Bureau's Small Business Programs.

PROCEDURE

1. Minority Business Enterprise Liaison Officer

a. The Director of Procurement for the Office of the Adjutant General (Ms. Ginny Reedy) is hereby appointed as the MBE Liaison Officer for Agency.

b. In all matters pertaining to the use of minority contractors and subcontractors as outlined herein, the MBE Liaison Officer will report directly to the Deputy Adjutant General.

c. The MBE Liaison Officer will:

- Develop, manage, and implement the MBE plan on a day-to-day basis;
- Outline procedures to be used when it is determined feasible to divide larger projects into smaller tasks to allow MBE participation;
- Develop instructions to prime contractors requiring them to address the use of certified minority business subcontractors;
- Provide a directory of certified minority businesses that wish to do business with the State;
- Disseminate information on available business opportunities to provide minority businesses equal opportunity to compete for professional services and construction contracts;

- Maintain reference files of federal and state organizations that provide assistance to minority business organizations and make files available to minority businesses;
- Establish and maintain records on the number of bid solicitations sent to and directed toward certified minority businesses, answers received, and contracts awarded when applicable to the Agency's dollar procurement limit; and
- Maintain records and submit progress reports to the Division of Small and Minority Business Contracting and Certification (SMBCC).

2. Agency MBE Plan

a. The MBE Liaison Officer will prepare the Agency's annual MBE Plan in accordance with the South Carolina Code of Laws 11-35-5240(1) and guidance from the SMBCC

b. The MBE Liaison Officer will submit the Agency's MBE Plan to the SMBCC no later than 30 July of each year

3. Listing of MBE Businesses. The SMBCC maintains a listing of State certified MBE businesses at <http://smbcc.sc.gov/directory.html>.

4. Calculating Controllable Dollars

a. Controllable procurement dollars include, but are not limited to, those anticipated expenditures for services, supplies, equipment, or construction that are not:

- Currently under contract for the present fiscal year;
- Covered by mandatory term contract;
- Defined as sole source acquisitions;
- Obligated to be awarded to the lowest responsive and responsible source;
- Obligated for repayment of time-pay, lease-purchase equipment, or real property; or
- Required by statute to be expended with a governmental body.

b. The Agency will calculate its controllable dollars by reducing the total Agency budgeted dollars by the following budgeted expenses:

- Payroll and fringe
- Utilities
- Pass through to other agencies/counties
- Training
- Postage
- Fuel
- Rental of State property
- Insurance premiums paid to the SC Insurance Reserve Fund (IRF)
- Travel expenses

c. The Agency will use its calculated Controllable Dollars to assess its progress in meeting its MBE goals.

5. Commodity Categories

a. Services

(1) Includes HVAC, electrical, janitorial, plumbing, etc.

(2) The Agency will solicit business from MBE businesses to the maximum extent possible.

b. Supplies

(1) Includes janitorial, educational, maintenance, office, etc.

(2) State Term Contracts bid by the Department of Administration, Division of Procurement Services provide 80% of the Agency's Supplies Commodities such as Maintenance, Repair and Operations (MRO) supplies, petroleum, office and miscellaneous items.

(3) The Agency will make a continuing effort to include minority business in all supply actions where State Term Contracts are not in effect.

c. Equipment

(1) Includes grounds maintenance, HVAC, office, motorized vehicles, etc.

(2) Of this category, the Agency controls 15% of these expenditures. The Agency's equipment procurement relates primarily to mechanical systems (in place) and is limited to brand named items as replacement equipment.

(3) The Agency will solicit business from MBE businesses to the maximum extent possible.

d. Construction

(1) Includes building improvements, new construction, road construction, infrastructure maintenance, etc.

(2) The majority of the Agency's construction requirements are obtained by one of three methods:

- Materials obtained by various procurement actions and labor supplied by the National Guard troop labor as training projects in their Military Occupational Specialty (MOS).
- Procurement actions requiring materials/supplies and services over \$100,000 are passed to the Division of Procurement Services for advertisement and award.
- Procurement actions for construction services over \$100,000 are forwarded to the State Engineer's Office for advertisement.

(3) The Agency will solicit business from MBE businesses to the maximum extent possible within the limits and restrictions defined by the State Procurement Code and Procedures and the State Engineer's Office.

6. Contracting With Certified Minority Businesses

a. Professional Services

(1) The Agency will procure all professional services in accordance with The Office of the State Engineer's Manual for Planning and Execution of State Permanent Improvements, Chapter 4.

(2) The Agency may directly negotiate contracts for construction related professional services with fees \$25,000 or less with a certified minority business.

(3) An Agency may direct a contract for construction related professional services with fees exceeding \$25,000 towards certified minority businesses.

(a) The Agency must include the following statement in the advertisement: "This is a designated contract directed towards certified South Carolina based minority firms to satisfy the minority business enterprise goal of the Agency.

(b) This does not prevent other firms from submitting resumes for consideration."

b. Construction

(1) The Agency may direct an entire construction contract towards certified minority businesses.

(a) The Agency must procure the contract in accordance with the requirements of the Procurement Code and The Office of the State Engineer's Manual for Planning and Execution of State Permanent Improvements.

(b) If the procurement requires advertisement, then the Agency must include the following statement in the advertisement: "This is a designated contract directed towards certified South Carolina based minority firms to satisfy the minority business goal of the Agency. However, this does not prevent other firms from bidding on this project."

(2) The Agency may direct all bidders to address the use of certified minority businesses as subcontractors.

(a) The Agency should provide specific instructions in the bid documents and the advertisement on how to comply with the requirement.

(b) The Agency may declare a bid non-responsive for failure to address the use of minority business subcontractors as instructed.

7. Division of Larger Projects Into Smaller Units

a. The Agency, whenever feasible (and not subject to being viewed as breaking down a procurement action "piece meal" to avoid competition), may divide the total project requirements into smaller units to allow MBE firms to participate in the competitive procurement process.

b. Before subdividing, the Agency must determine that the five (5) criteria stipulated in the South Carolina Procurement Code, Section 11-35-5230 have been met.

8. Subcontracting a Scope of Service to Another Governmental Body

a. The Agency will maintain a reference file of federal, state and other organizations that provide assistance to small and minority business.

b. Contractors must agree to make positive efforts to use small and minority owned business and individuals. This effort will include, but not be limited to, establishing a Minority Business Utilization Policy and a system for reporting compliance quarterly to the Office of the Adjutant General.

c. The Agency will provide reporting forms to contractors for the purpose of reporting minority utilization each quarter.

9. Reporting

a. The Budget and Finance Department will furnish the Procurement Department with a quarterly expenditures report.

b. The Procurement Department will develop the MBE Quarterly Report and forward the documents to the SMBCC.

10. Records. The Agency MBE Liaison Officer will maintain copies of all MBE plans and reports in accordance with the State Document Retention Schedule.