INSTRUCTIONS TO BIDDERS
For
AFFIRMATIVE ACTION ISSUES
for Public Works and Construction Projects

Office of Equal Opportunity & Contract Compliance
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AA.01: Definitions

Relevant to the requirements set forth in this bidding document

Construction Bidding Statutes*

Public Works Projects
Governed under Massachusetts General Laws, ch. 30, sec. 39M.
Includes all municipal contracts for construction, reconstruction, alteration, remodeling, and/or repair/s estimated to cost more than $10,000 which does not include work on a building. Includes the construction and repair of roads, bridges, water mains, sewers, and the like, as well as improvement to public land (i.e.: operation of a municipal landfill, removal of waste materials, grading, erosion control, and other forms of improvement and maintenance.

Also governs contracts of $50,000-150,000 for construction, reconstruction, installation, demolition, maintenance, or repair work on a building.

Building Projects
Governed under Massachusetts General Laws, Ch. 149, sec. 44.
Includes all contracts for the construction, reconstruction, installation, demolition, maintenance, or repair of a building at an estimated cost of more than $25,000.

Lowest Eligible & Responsible Bidder*
Massachusetts G.L. c. 30, sec. 39M; c. 149, sec. 44A state that the contract be awarded to the lowest eligible and responsible bidder.

Eligible means the bidder meets all of the requirements set forth in the bidding documents.

Responsible means the bidder possesses the skill, ability, and integrity to complete the job.

Reasonable Accommodations
Any change in work environment or the way job duties are customarily performed that enables individuals with disabilities to perform the essential functions of the job in issue, or that ensures equal opportunity for individuals with disabilities with respect to the application process or the enjoyment of benefits and privileges of employment.

Administering Agency
The agency that administers the city, state, state-assisted, or federally assisted contract awarded by the contracting agency

Contracting Agency
The agency that directly awards the contract

Contractor
Any general contractor and all subcontractors

* This information is taken directly from "Designing and Constructing Municipal Facilities: Legal Requirements; Recommended Practices, Sources of Assistance" Published by, William Francis Galvin, Secretary of the Commonwealth, Office of the Inspector General, Oct. 1989.
Minority / Women Business Enterprise
As defined by the Massachusetts SDO (State Diversity Office) (formerly known as SOMWBA). In summary, an MBE/WBE is a business at least fifty-one percent (51%) owned or controlled by minority/women group members, or an individual contractor or professional who is a minority/women group member (as defined by SDO).

Minority refers to:

Native American
A person having origin in any of the original people of North America, who is recognized as American Indian by a tribe or tribal organization or is recognized as such within his/her community

Asian
A person having origin in any of the original people of the Far East, Southeast Asia, Indian Subcontinent, Korea, Philippines, and Samoa

Black
A person having origin in any of the black racial groups of Africa

Cape Verdean
A person having origin in any of the original people of the Cape Verde Islands

Eskimo / Aleut
A person having origin in any of the original people of Northern Canada, Greenland, Alaska, and East Siberia

Hispanic
A person of Spanish descent and culture having origin in Mexico, the Island of the Caribbean, Central America or South America
City of New Bedford
133 William Street
New Bedford, MA 02740

FEEO/AA POLICY STATEMENT

City of New Bedford has a statutory mandate under law to guarantee equal treatment for all who seek access to its services or opportunities for employment and advancement. No discrimination will be tolerated on the basis of race, creed, political affiliation, color, sex, national origin, age, or handicap. The ultimate goal is for personnel of this organization to reflect the proportions of minority, female, and handicapped persons in the populations they serve.

City of New Bedford will meet its legal, moral, social, and economic responsibilities for Equal Employment Opportunity/Affirmative Action as authorized and required by all pertinent state and federal legislation, executive orders and rules and regulations, including the following:

1. Title II of the Civil Rights Act of 1964 (42 USC §2000e et seq.), which prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin; and

2. The Age Discrimination in Employment Act of 1967 (29 USC §621 et seq.), which prohibits discrimination in employment on the basis of age with regard to those individuals who are at least 40 years of age, but less than 65 years of age; and

3. Section 504 of the Rehabilitation Act of 1973 (29 USC §794), and the regulations promulgated pursuant thereto (45 CFR Part 84), which prohibit discrimination against qualified handicapped individuals on the basis of handicap and require employers to make reasonable accommodations to known physical or mental limitations of otherwise qualified handicapped applications and employees; and

4. M.G.L. c. 151B §4 (1), as amended by Chapter 533, 1983, which prohibits discrimination in employment on the basis of race, color, sex, religious creed, national origin, ancestry, age or handicap,

In addition, the Provider agrees to be familiar with and abide by:

• Massachusetts Executive Order S24
• Massachusetts Executive Order S26
• Equal Pay Act of 1963
• Massachusetts Architectural Barriers Board Act
• Federal Executive Orders 11246 and 11375 as amended.
All employees, unions, sub contractors and vendors must make genuine and consistent efforts:

1. To ensure equal employment opportunities for present and future employees, and

2. To implement affirmative action, as legally required, to remedy the effects of past employment discrimination and social inequalities.

The responsibility for implementing and monitoring this policy has been delegated to:

__________________________
EEO Contract Compliance Officer

Name and Title of Employee

Furthermore, __City of New Bedford__

prohibits that any employee, or applicant, be subjected to coercion, intimidation, interference or discrimination for filing a complaint or assisting in an investigation under this program. No portion of this __Equal Employment Opportunity/Affirmative Action Policy__ shall be construed as conflicting with any existing or future judicial or legislative mandate where a constriction consistent with that mandate is reasonable.

__________________________
Signature of Chief Executive

__________________________
Mayor

__________________________
Title of Chief Executive

__________________________
Date
AA.02: Statement of Policy

MINORITY/WOMAN BUSINESS ENTERPRISE PROGRAM

It is the policy of the government of the United States of America, the Commonwealth of Massachusetts and the City of New Bedford, that no person shall be discriminated against in any manner whatsoever, on the grounds of race, color, age, national origin, disability, religion, or sex.

Under this policy, the minority and woman business enterprises shall have the maximum practicable opportunity to participate in federally assisted projects, and shall not be excluded from such participation, nor denied the benefits of or be subjected to discrimination under any program or activity receiving federal assistance.

The City of New Bedford unequivocally subscribes to said policies as the recipient of Federal and state financial assistance, in connection with its activities, and may receive further Federal and State financial assistance in the future.

The City of New Bedford strongly affirms that it will not discriminate in any contractual procedure against any person because of race, color, age, national origin, disability, religion, or sex, or any other condition that is a bona fide qualification. This policy shall be administered at all levels with a positive, aggressive and supportive attitude by all department heads.

It is the responsibility of all department heads and employees to take affirmative steps to implement this policy to ensure equality of opportunity in conducting the affairs of the City of New Bedford, including notifying those persons and businesses doing business with the City of New Bedford, that contracts for goods and services and construction, shall be made without reference to race, color, age, national origin, disability, religion or sex.

This Minority/Woman Business Enterprise Program sets forth the administrative standards for the further implementation of the City of New Bedford's policy for the utilization of minority and female contractor, subcontractors, and suppliers.

Each department shall ensure that all solicitation in advertisements includes a statement of the City's affirmative action policy, in an approved format.

The city's Equal Opportunity Officer shall be responsible for ensuring that all aspects of the MBE/WBE program are initiated and undertaken. By virtue of the delegation of this responsibility and authority to direct the program, the Contract Compliance Officer will report directly to the Mayor on equal opportunity matters. The Equal Opportunity Officer shall be responsible for the development, administration, and monitoring of all activities necessary to ensure the accomplishment and success of this program.

NOW, THEREFORE IT IS HEREBY RESOLVED that the following Minority/Woman Business Enterprise Program is instituted for and in behalf of the City of New Bedford.

[Signature]
Mayor Jonathan P. Mitchell
Date 2/15/12

Revised 2007
AA.03: City of New Bedford Ordinances - Synopsis

See *Appendix A* for complete City Ordinances relevant to this bid document

(1) **Residency Requirements for Certain City-Supported Construction Projects**, Chap. 10, Article II.

(a) Shall apply to all general and subcontractors of public works projects which have a projected cost of more than $100,000.00

(b) Fifty (50) percent of the total employee man-hours in each trade must be performed by residents of the City of New Bedford (excluding the employer’s foreman or supervisor and two other key employees).*

* **Contact the N.B. EEO Dept. for further assistance in this matter.**

(c) resident is defined as someone having his/her true, fixed, and permanent home and principal establishment in the City of New Bedford, for a minimum of six (6) months prior to the contract bid opening date.


(a) Shall apply to all bidders *and* subcontractors for projects subject to MGL c. 149

(b) Not applicable to construction projects where the low general bid was less than $100,000; to subcontracts bid for less than $25,000; or to re-bids for which the City receives fewer than three (3) qualified bidders in the original bid

(c) Must pay appropriate lawful prevailing wage rates to employees

(d) Must maintain or participate in a bona fide *apprentice training program* for each apprenticable trade represented in the workforce

(e) Must furnish hospitalization and medical benefits and maintain appropriate accident insurance coverage

(f) Must classify all employees as employees rather than independent contractors, and treat accordingly regarding workers compensation, unemployment taxes, social security taxes and income tax withholding.

**AA.04: Contractors Agreements under Executive Order 11246, as Amended by Executive Order 11375**

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment of compensation; and selection of training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

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2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of Sept. 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order, unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

AA.05: Dept. of Labor, 41 Code of Federal Regulations Parts 60-1, 60-6 - Government Contractors, Affirmative Action Requirements, Executive Order 11246

(1) Segregated Facilities. The contractor hereby certifies that it does not and will not maintain or provide any facilities for its employees in a segregated manner, or permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. Further, the contractor shall obtain a similar certification of non-segregated facilities prior to the award of any contract or subcontract, which is subject to Executive Order 11246, and shall provide a copy thereof to the Association.

This clause prohibits segregation on the basis of race, color, religion, national origin, or sex, and applies to all contracts regardless of the amount thereof. The term facilities includes, but is not limited to, waiting rooms, work areas, restaurants and other eating areas, time clock, parking

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lots, drinking fountains, recreation or entertainment areas, transportation, employer-provided housing, washrooms, locker rooms or other storage or dressing areas.

(2) **Affirmative Action Compliance Program.** The contractor certifies that it has developed a written affirmative action compliance program for each of its establishments consistent with the rules and regulations published by the Department of Labor in 41 CFR Chapter 60, and agrees to require a similar certification from each of its nonexempt subcontractors. Such an affirmative action program shall contain a set of specific and result-oriented procedures, the objective of which shall be the achievement of equal employment opportunity. An acceptable affirmative action program must include an analysis of areas within which the contractor is deficient in the utilization of minority groups and women and further, goals and timetables to which the contractor’s good faith efforts must be directed to correct any deficiencies and, thus, to achieve prompt and full utilization of minorities and women, at all levels and in all segments of his work force where deficiencies exist.

The contractor’s affirmative action plan shall be summarized and updated annually and the program summary shall be submitted to the Office of Federal Contract Compliance Programs (OFCCP) on the anniversary date of the contractor’s affirmative action program.

(3) **Contractor’s Compliance with Exec. Order and 41 CFR Par 60-4.** The contractor’s compliance with E.O. 11246 and 41 C.F.R. Part 60-4, shall be based on its implementation of the Equal Opportunity clause, specific affirmative action obligations required by the specifications set forth in 41 C.F.R. 60-4.3, and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed.

**AA.06: Section 503 of the Rehabilitation Act of 1973**

(Dept. of Labor, 41 Code of Federal Regulations, Parts 60-250 and 60-741, Affirmative Action & Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals with Disabilities, Disabled Veterans, and Veterans of Vietnam Era)

Parties holding a Government contract or subcontract in excess of $10,000 must take affirmative action to employ and advance in employment-qualified individuals with disabilities. Contractors are required to use effective practices to recruit qualified individuals with disabilities,

Applicants with disabilities must be provided a reasonable accommodation if they are qualified with respect to the application process (e.g.: if they present themselves at the correct location and time to fill out an application).

**AA.07: MBE / WBE Policy (for the life of the project)**

(1) **Eleven (11) percent** of the work on this project shall be performed by Minority Business Enterprises (MBEs) and **five (5) percent** of the work shall be performed by Women Business Enterprises (WBEs) for a total of 16% overall. **Four and one-third (4.33%) percent of all Airport projects shall be performed by Disadvantaged Business Enterprises (DBE).** Proven documentation of non-availability and the filing of a MBE/WBE/DBE Request for Waiver will be required to be submitted by the general contractor in circumstances where the EEO goals are not met.

(2) If it is determined that one or more of the MBE/WBE or DBE contractors, as submitted by the Contractor on the EEO forms, is not SDO (State Diversity Office) (formerly known as SOMWBA)
certified or certified by the Local Government Unit, in accordance with the provision of Executive Order 237, the bidder shall have five (5) working days following notification to either find a certified MBE/WBE/DBE contractor to perform work equal to or greater than that of the uncertified contractor, or to submit a waiver request.

(3) The contractor shall not enter into any subcontract with any person or firm debarred from government contracts, pursuant to Executive Order 11246.

AA.08: Workforce Utilization (for the life of the project)

(1) Minimum percentages for employment (workforce utilization) on the project are at 18% minority and 6.9% female participation. The employment percentages shall apply to the contractor and to all subcontractors, regardless of tier, for all on-site work.

A single goal for minorities and a separate goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally, the contractor may be in violation of the Exec. Order if a specific minority group of women is under-utilized.)

(3) The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

AA.09: Contractor's EEO / Records Monitor

The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof, as may be required by the Government, and to keep records which shall at least include, for each employee, the name, address, telephone numbers, social security number, race, sex, status, (e.g.: mechanic, apprentice, trainee, helper, or laborer) dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents.

AA.10: Bidder's Eligibility

The lowest responsible and eligible bidder shall mean the General Bidder whose bid is the lowest of those bidders demonstrating possession of the skill, ability and integrity necessary for the faithful performance of the work, and

(a) who shall certify that he/she is able to furnish labor that can work in harmony with other labor employed on the work;

(b) who shall certify that he/she will demonstrate good faith efforts to obtain the minority workforce goal (18%) the woman workforce goal (6.9%) and, for projects $100,000+, NB residency goal of 50%; the insurance that all subcontractors and/or sub-subcontractors are
also in compliance with workforce utilization goals; including compliance with the minority business goal (11%) and woman business goal (5%), for a total of 16% (or 4.33% for Airport projects) of the total dollar amount of the contract, and will certify that it will meet all applicable City Ordinances in accordance with this contract provision.

**AA.11: Bid Submission Requirements**

(1) Required bid forms that must be completed, signed, and submitted with the bid at the time of the bid opening, are as follows:

(a) Certificate of Understanding; Certification of Compliance w/ Exec. Order 11246

(b) Schedule of Participation for MBE/WBE or DBE as required

(c) Letter of Intent (for each MBE/WBE/DBE participation)

(d) MBE/WBE/DBE Contractor Identification Statement (for each MBE/WBE/DBE)

(e) Bidder’s Certification (to be completed by both the General Contractor and each MBE/WBE/DBE)

(f) If applicable, a completed and signed MBE/WBE/DBE Unavailability Certification in the event that the work listed on the Schedule is not sufficient to fulfill the requirement for MBE/WBE/DBE Participation. This certification must include a statement by the bidder of the reasons why it believes it is in compliance with this provision, and a list of the names, addresses, telephone numbers and reason given for unavailability of the Minority/Women Contractor contacted by the bidder with respect to the performance of work under the contract.

(g) If applicable, a completed and signed Minority / Women / Disadvantaged Business Enterprises Request for Waiver.

(2) The successful bidder will also be required to submit, prior to award, its estimates of labor (permanent and trainee) and material required to carry out its work under the contract, for review by the City, so as to establish maximum feasible goals for the utilization of City residents and business concerns. These goals, and the basis for monitoring and reporting progress toward meeting them, will be established by mutual agreement, with the assistance of the City’s Contract Compliance Officer, and discussed in the Pre-Construction and/or Pre-Award Conference.

**AA.12: Bid Approval or Disapproval**

(1) At the time of the bid opening, the bidder will have five (5) days, from the date of the bid opening, to comply with the MBE/WBE/DBE requirements. Failure to meet these requirements within the five days will have the Bid/Proposal disapproved by the Office of Equal Opportunity.

(2) Each bidder, as part of its bid submission, must agree to make good faith efforts to contract with minority and woman owned businesses (and disadvantaged business when applicable), as defined by the State Diversity Office (SDO) (formerly known as Office of Minority and Woman Business Assistance (SOMWBA)) and the City of New Bedford’s affirmative action policies. The
amount of participation reserved for such enterprises shall not be less than 16% of the total bid amount, of which at least 11% of the total bid amount applies to minority businesses. The balance 5% is applied to women-owned businesses. Proven documentation of non-availability of either one of these entities provides that the available business may be awarded no less than 16% of the total contract dollar value.

(3) If the general bidder is either an MBE or WBE and is responsible for 100% of the project work, the 16% is fulfilled. If said MBE/WBE contractor is a joint venture, the MBE/WBE must be responsible for at least 51% of the project.

(4) The general contractor must submit, as part of its bid and as a condition of contract approval, signed Letters of Intent with all subcontractors and material suppliers listed on the participation schedule. Sub-bidders must submit the participation schedule with their bid and a participation schedule if they intend to sub-sub work.

**AA.13: Steps to Ensure a Responsive Bid**

The total price for work to be performed by Minority/Woman or Disadvantaged Contractors, as indicated in each bidder’s bid submission, is required to be sufficient to fulfill the MBE/WBE/DBE requirements, unless the bidder shall demonstrate to the satisfaction of the Awarding Authority that:

(1) it has made every possible effort to contact and negotiate with Minority/Women or Disadvantaged Contractors in an attempt to subcontract work, including every possible effort to select the portions of the work proposed to be subcontracted in order to meet the requirements;

(2) it was unable, notwithstanding such efforts, to achieve the stated requirement because Minority/Woman or Disadvantaged Contractors were not qualified or were unavailable (any proven non-availability of MBE/WBE/DBE must make up the difference to still fulfill the 16% goals with the available MBE or WBE or 6.0% DBE. If neither category is available to fulfill the goal, it must have a SDO statement as to no business listed);

(3) it included in its Schedule of Participation such proposed agreements as could be made with such efforts;

(4) the general contractor is a MBE or WBE and said contractor is performing 16% of work or the general contractor is a DBE and is performing 6.0% of the work and therefore, will be deemed as fulfilling the affirmative action bidding requirements;

(5) for contractors performing work under $50,000 that can demonstrate all work will be completed under the contractor’s own workforce, the contractor must be able to demonstrate how this will be accomplished and submit, at the time of the bid a statement requesting a waiver of the 16% MBE/WBE or 6.0% DBE participation goal. Said contractors will still be required to demonstrate good faith efforts regarding the prescribed employment workforce percentage goals.

**AA.14: Bid Award or Rejection**

(1) The Awarding Authority will responsible for awarding or rejecting any bid, with the
approval/disapproval of the Office of Equal Opportunity & Contract Compliance in its decision. The Awarding Authority also reserves the right to reject any or all bids, or to accept any other than the lowest bidder, should it be deemed to be in the best interest of the City of New Bedford, Massachusetts, to do so.

(2) The Awarding Authority may reject, as non-responsive, any bid, which it determines, fails to comply with the applicable requirements of this contract provision. Nothing, herein, shall relieve any bidder or any contractor performing any work under the contract, from any of the terms, conditions, or requirements of the contract.

AA.15: Awarded Contractor’s Obligations

(1) The Contractor shall specifically ensure that the City’s EEO policy and affirmative action obligations under this contract provision, is reviewed with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decision, including specific review of these terms with on-site supervisory personnel, prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(2) Minority/Woman Work Hours must be maintained for the life of this project (at a minimum ratio of 18% minority work hours and 6.9% woman work hours to total work hours in each job category, including, but not limited to bricklayers, carpenters, cement masons, electricians, ironworkers, operating engineers, and those classes of work identified in Section 44C of M.G.L. ch. 149). (Please note the City of New Bedford’s Residency Ordinance requiring 50% City of New Bedford residents on projects of $100,000+)

(3) Apprentices and Trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability, in order for the apprentices and trainees to be counted toward the minority/woman work hour percentage goals.

(4) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement to refer either minorities or women, shall excuse the contractor’s obligation under these specifications, Exec. Order 11246 or the regulations promulgated pursuant thereto.

(5) In the employment of journeymen, apprentices, teamsters and laborers, the Contractor shall give preference first, to citizens of the Commonwealth who have served in the armed forces of the United States in time of war and have been honorably discharged therefrom or released from active duty therein, and who are qualified to perform the work which the employment relates, and secondly, to citizens of the City of New Bedford, and if such cannot be obtained in sufficient numbers, the Commonwealth generally, then to citizens of the United States.

(6) Reports to Be Submitted to the Office of Equal Opportunity & Contract Compliance include:

(a) Licensing Statutes: Every contractor and subcontractor must submit, before starting work, a plan by which he/she will satisfy the requirements of licensing statutes, including the following, where applicable: MGL Ch. 149, Sec. 6 (painters); Ch. 146, Sec. 53 (hoisting engineers); Ch. 149, Sections 6B-6F (asbestos abatement workers, supervisors & contractors); Ch. 146, Sec. 3 & 3B (plumbers & gas fitters); Ch. 141, Sec. 1

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(electricians); Ch. 14, Sec. 84 (pipefitters & sprinkler fitters); and Ch. 143, Sec. 94 (construction supervisor).

(b) Work Hour Reports: The contractor and each subcontractor shall prepare weekly reports in an approved form, of the hours worked in each trade by each employee, identified as minority or non-minority, and/or female, and/or resident. Copies of these shall be provided at the end of each such week to the City's Office of Equal Opportunity & Contract Compliance.

(c) Projected Manning Tables: The contractor shall prepare projected manning tables on a quarterly basis. These shall be broken down into projections, by week, of workers required in each trade. Copies shall be furnished one week in advance of the commencement of the period covered, and also when updated, to the City. A copy of the certified payroll will be submitted with these reports.

(d) Billing Reports: The contractor shall prepare and submit monthly billing reports of amounts paid to MBEs, WBEs and/or DBEs each monthly billing period, as well as the record of final payment accompanied by canceled checks.

(e) Payroll Reports: Every contractor and subcontractor shall submit weekly payroll reports to the City, indicating the following information for each employee and/or independent contractor employed on the project; name, address, hours worked, occupational classification, wages, and fringe benefit payments, if any. Said reports shall be signed by the employer or his authorized agent under the penalties of perjury (see MGL Ch. 149, Section 27B).

AA.16 Recruitment/Referral Responsibilities

(1) In the hiring of minority/woman journeymen, apprentices, teamsters, and laborers, the contractor shall rely on referrals from a multi-employer affirmative action program approved by the City, traditional referral method utilized by the construction industry, and referrals from agencies, not more than three in number at any one time, designated by the City’s Equal Opportunity Officer.

(2) Records of employment referral orders, prepared by the contractor, shall be made available to the awarding authority.

(3) The contractor will maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization, and of what action was taken with respect to each such individual.

(4) If such individual was sent to the union hiring hall for referral, and was not referred back to the contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the contractor may have taken.

(5) The contractor will document and maintain a record of all solicitations of offers for subcontractors from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractors’ associations and groups.

(6) The contractor will, in all solicitations or advertisements for employees placed by or on
behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin, and maintain a record thereof.

**AA.17: Subcontracts**

(1) The Contractor receiving the award of the contract shall be required to obtain from each of its subcontractors (filed or non-filed) and submit to the Authority prior to the performance of any work under said subcontract, a certification by said subcontractor, regardless of tier, that it will comply with the minority and women work hours/employee ratio and specific affirmative action steps, and to submit this information to the Office of Equal Opportunity, prior to the subcontractor’s performance on the project.

(2) In order to ensure that the said subcontractor’s certification becomes a part of all subcontracts under the prime contract, no subcontract shall be executed until an authorized representative of the Authority administering this project has determined, in writing, that the said certification has been incorporated in such subcontract, regardless of tier. Any subcontract executed without such written approval shall be void.

(3) Whenever the contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000, the contract provisions listed in this Instructions to Bidders for Affirmative Action Issues, and the applicable goals for minority and female participation and which is set forth in the solicitation form which the contract resulted.

(4) Noncompliance of a subcontractor in compliance with these provisions, will result in the contractor taking such action, with respect to any subcontract or purchase order, as the administering agency may direct, as a means of enforcing such equal opportunity provisions; provided that, in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor, as a result of such direction, the contractor may request the United States, the State of Massachusetts or the City of New Bedford, to enter into such litigation to protect the interests of the U.S., the State or the City.

**AA.18: Wage Rates**

(1) Attention is called to Labor Standards provisions regarding conditions of employment, including State and Federal Wage Rates, the Davis-Bacon Act, the Copeland Anti-Kickback Act, and the Contract Work Hours and Safety Standards Act. Where Federal and State wage rates differ, the higher rates shall be used as a minimum.

(2) The rate per hour of the wages to be paid to mechanics, apprentices, teamsters, chauffeurs, and laborers employed on the work shall be not less than the rate of wages in Minimum Wage Rates as determined by the Commissioner of Labor and Industries, as required by M.G.L. Chapter 149, Sections 26 & 27-27h. This schedule shall be in place for said employees during the life of this contract.

(3) Contractor shall keep posted on the site, a legible copy of said schedule. The Contractor shall keep on file wage rates and classifications of labor employed on this work, in order that they may be available for inspection by the Administrator, the Office of Equal Opportunity, or the Architect.

(4) Apprentices employed pursuant to this determination of wage rates must be registered and
approved by the State Apprenticeship Council, wherever rates for journeymen or apprentices are not listed.

(5) Pay reserve police officers employed on this work the prevailing rate of wages paid to regular police officers, as required by M.G.L. Chap. 149, Sec. 34B, as amended. Such police officers shall be covered by Workmen’s Compensation Insurance and Employer’s Liability Insurance by the Contractor.

(6) Noncompliance by the contractor or any subcontractor will result in the City’s Contract Compliance Office and/or Legal Office, to consult with the Department of Labor and Industries, and will result in the contractor or subcontractor receiving notification of such, and subsequently must respond to the City of New Bedford within five (5) business days.

**AA.19: Access to Compliance Information & Reports**

(1) The contractor will provide all information and reports, required by the administering agency or the City of instructions issued by either of them, and will permit access to its facilities and any books, records, accounts, and other sources of information pertinent to the City’s affirmative action contract requirements.

(2) Where the information required is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the administering agency or the City, and shall set forth what efforts he/she has made to obtain the information.

**AA.20: Noncompliance**

(1) Investigation

Whenever the administering agency or the City believe the general contractor or any subcontract may not be operating in compliance with the terms of this provision, the City directly or through it designated agent, shall conduct an appropriate investigation, and may confer with the parties, to determine if such contractor is operating in compliance with the terms of this contract provision. If noncompliance is found, then a preliminary report on noncompliance will be made, and the City or its agent will notify such contractor, in writing, of such steps as will, in the judgment of the city or its agent, bring such contractor into compliance.

(2) Report of Noncompliance

In the event that such contractor fails or refuses to fully perform such affirmative action steps, the City shall make a final report of non-compliance, and recommend to the administering agency, the imposition of one or more of the sanctions identified in these provisions. Within fourteen (14) days of the receipt of the recommendations of the City, the administering agency shall move to impose one or more of the following sanctions as it may deem appropriate to attain full and effective enforcement.

(3) Any disagreement between the City and a contractor or subcontractor shall be submitted for a hearing pursuant to the provisions of Chapter 30A. The City shall impose one or more of the following sanctions, as it may deem appropriate, to attain full and effective enforcement.

**AA.21: Sanctions**

(1) The recovery by the administering agency from the general contractor of 1/100 of 1% of the
contract award price, or $1,000.00, whichever sum is greater, in the nature of liquidated damages, or if a subcontractor is in non-compliance, the recovery by the administering agency from the general contractor, a back charge against the subcontractor, of 1/10 of 1% of the subcontract price or $400.00, whichever sum is greater, in the nature of liquidated damages, for each week that such party fails or refuses to comply.

(2) The suspension of any payment or part thereof, due under the contract, until such as the general contractor or any subcontractor is able to demonstrate his/her compliance with the terms of the preceding sections of the contract.

(3) The termination of employment of the contractor and taking possession of the site and finishing the work by whatever method he/she may deem expedient, upon giving the contractor and his/her surety, if any, seven dayswritten notice.

(4) The termination or cancellation of the contract, in whole or in part.

(5) The denial to the general contractor and any subcontractor of the right to participate in any future contract awarded by the administering agency for a period of up to three years.

(6) Other sanctions to be applied, as stipulated in the City of New Bedford Ordinances (Residency and Responsible Employer Plan ordinances) and other local, state, and federal laws and regulations, as applicable.

AA.22: Appeal of Sanctions

If, at any time after imposition of one or more of the sanctions listed in these provisions, the contractor or subcontractor is able to demonstrate that it is in compliance with the EEO/AA program, the contractor or subcontractor may request the administering or contracting agency, in consultation with the City’s Equal Employment Opportunity compliance officer, to conditionally suspend the sanction, pending final determination by the investigating officer, whether the contractor is in compliance. Upon final determination by the investigating office, the administering or contracting agency, based on the investigating officer’s recommendation, shall either lift the sanctions or impose them.

Sanctions shall not be imposed by the contracting agency or administering agency except after an adjudicatory proceeding, as defined by M.G.L. Chapter 30A, has been conducted. No investigation by the Office of Equal Opportunity shall be initiated without prior notice to the contractor or the subcontractor.

AA.23: Severability

The provisions of this section are severable, and if any of these provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.
APPENDIX A

BID SUBMISSION DOCUMENTS
The City of New Bedford
Office of Equal Opportunity
133 William Street Room 208
New Bedford, MA 02740
ph: 979-1446 / fax: 508-991-6148

(1) Certificate of Understanding: Certification of Compliance with Executive Order 11246"
(2) Schedule of Participation for Minority, Woman & Disadvantaged Business Enterprises
(3) Letter of Intent - for each MBE/WBE/DBE Participation
(4) MBE/WBE Contractor Identification Statement - for each MBE/WBE/DBE
(5) Bidder's Certification - must be completed and signed by the General Contractor and all Subcontractors who will work on the project (to include MBE/WBE/DBE and non-MBE/WBE/DBEs)
(6) If applicable, a completed and signed MBE/WBE/DBE Unavailability Certification in the event that the work listed on the Schedule is not sufficient to fulfill the Requirement for MBE/WBE/DBE Participation. This certification must include a statement by the bidder of the reasons why it believes it is in compliance with this Provision, and a list of the names, addresses, telephone numbers and reason given for unavailability of the Minority /Woman/ Disadvantaged Contractor who was contacted by the Bidder with respect to the performance of work under the contract.
Commonwealth of Massachusetts

BIDDERS CERTIFICATE OF UNDERSTANDING


Contractor __________________________________________ Project ________________

Address __________________________________________ Tel. # ________ Project # ___

Fax # __________________________________________

I, the undersigned, understand that:

A. Minority Business Enterprises are to be awarded at least 11% of the total contract amount for construction/public works projects.

B. Woman Business Enterprises are to be awarded at least 5% of the total contract amount for construction/public works projects.

C. Disadvantaged Business Enterprises are to be awarded at least 4.33% of the total contract amount for airport projects.

D. All required MBE/WBE/DBE forms included in Instructions to Bidders are to be completed and submitted with the bid.

E. Prior to award of the contract, a pre-construction conference must be held (to be attended by the general contractor and all subcontractors, regardless of tier) at which time the following requirements will be discussed:

1. Weekly Workforce Utilization Reports (Form CAD85) are to be submitted weekly with payroll reports within five (5) days of last payroll;

2. Quarterly Manpower Projection Tables (Form CAD85-1) are to be submitted with the Start Construction notification;

3. Any project in the amount of $100,000+ is subject to the New Bedford Resident Hiring and Responsible Employer Plan ordinances;

4. A minimum goal of 18% minority manpower utilization, in terms of total work hours in the aggregate workforce, in each trade or craft, on each project, will be maintained. The goal for female manpower utilization will be maintained at 6.9% according to regulations;

5. Minority and female work hours are to be uniform in each trade, and minorities and females are to be employed evenly on each project;

6. Minority or female employees are not be transferred from project to project for the purpose of meeting goals;

7. A roster of all minority and/or female applicants for employment must be maintained at each project site (Federal & Non-Federal) in the New Bedford Hometown Plan Area.

F. The submission of the above reports and adherence to hiring practices and equal opportunity performance of subcontractors is the responsibility of the prime contractor.

The bidder hereby certifies that he/she shall comply with the minority manpower ratio and specific affirmative action steps contained in the EEO above, including compliance with the minority contractor compliance specifications. The Contractor receiving the award of the contract shall be required to obtain from each of its subcontractors, and submit to the contracting or administering agency prior to the performance of any work under said contract, a certification by said subcontractor, regardless of tier, that it will comply with the minority manpower ratio and specific affirmative action steps contained in this appendix.

Authorized Signature ____________________________ Date ________________

Name (Please Print or Type) ________________________ Title ___________________

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SCHEDULE OF PARTICIPATION
DISADVANTAGED/MINORITY/WOMAN BUSINESS ENTERPRISES
to be completed by the Bidder

Item I - Minority Or Disadvantaged Business Enterprise Participation

1. Name: ________________________________

   Address: ________________________________

   Nature of Participation: ________________________________

   Dollar Value / % of Bid: ________________________________

2. Name: ________________________________

   Address: ________________________________

   Nature of Participation: ________________________________

   Dollar Value / % of Bid: ________________________________

   TOTAL BID PRICE $ ________________________________

   TOTAL DBE or MBE COMMITMENT $ ____________________ %

---

Item II – Woman Or Disadvantaged Business Enterprise Participation

1. Name: ________________________________

   Address: ________________________________

   Nature of Participation: ________________________________

   Dollar Value / % of Bid: ________________________________

2. Name: ________________________________

   Address: ________________________________

   Nature of Participation: ________________________________

   Dollar Value / % of Bid: ________________________________

   TOTAL BID PRICE $ ________________________________

   TOTAL WBE or DBE COMMITMENT $ ____________________ %

---

The bidder agrees to furnish implementation reports, as required by the awarding authority, to indicate the MBE/WBE/DBE which it has used or intends to use. Breach of this commitment constitutes a breach of the contract.

General Bidder: ________________________________

Signature: ________________________________ Date: ________________________________
LETTER OF INTENT
to be completed by the DBE/MBE/WBE

This form is to be completed by the DBE or MBE and WBE and must be submitted by the General Bidder as part of the Bid Proposal. A separate form must be completed for each MBE, WBE or DBE involved in the project.

Project Title: __________________________ Project Location: ________________

To: ___________________________________________________

(Name of Bidder)

From: ________________________________

(Name of DBE/MBE/WBE)

Indicate DBE/MBE/WBE status

I / we intend to perform work in connection with the above project as (Check One)

{ } an individual
{ } a partnership
{ } a corporation
{ } a joint venture with: ________________________________

{ } other (explain): ________________________________

It is understood that if you are awarded the contract, you intend to enter into an agreement to perform the activity described below for the prices indicated.

DBE/MBE/WBE PARTICIPATION:
Description of Activity Project Start Date $ Amount % of Bid Price

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

The undersigned certify that they will enter into a formal agreement upon execution of the contract for the above-referenced Project

BIDDER

Authorized Signature Date

Address

Telephone / Fax

DBE/MBE/WBE

Authorized Signature Date

Address

Telephone / Fax
MINORITY / WOMAN BUSINESS ENTERPRISE PROGRAM

CONTRACTOR IDENTIFICATION STATEMENT

Project Name: _____________________________________ Project #: ____________

Total Bid Price: $________________________ Bid Date: ______________

In accordance with the New Bedford Minority Business Enterprise Program, the undersigned bidder certifies that he/she:

1.  is a bona fide Minority/Woman/Disadvantaged Business Enterprise currently certified by the State Office of Minority/Woman Business Assistance (SOMWBA); and such SOMWBA certification has not changed; and in the event of said status changing, it will immediately forward written notification to the City of New Bedford and SOMWBA; and

2.  intends to perform certain work (specified by formal bid proposal) under a contract in connection with the above-named project, and that work will not be sublet to any company at any tier; and

3.  will comply with the minority/woman workforce ratio and specific affirmative action steps contained in the EEO/AA Contract Provisions and shall obtain from each of its subcontractors a copy of the bidder's certification and submit to the administering agency, prior to the award of such subcontract, regardless of tier, that he/she will comply with the minority/woman workforce ratio and specific affirmative action steps contained in these and the EEO/AA Contract Provisions.

SOMWBA CERTIFICATION CATEGORY: ________________________________

CONTRACTORS NAME: ______________________________
{ } MBE { } WBE { } DBE

ADDRESS: ________________________________________________

__________________________________________________________

TELEPHONE #: ___________________________ FAX #: __________________

REPRESENTATIVE NAME & TITLE: ____________________________________________

AUTHORIZED SIGNATURE: ____________________________________________

GENERAL BIDDERS NAME: ____________________________________________

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BIDDERS CERTIFICATION

To be completed by General Contractor & each of its Subcontractors (MBE/WBE/DBE and non-MBE/WBE/DBE)

The undersigned bidder hereby certifies that he/she will comply with the Minority/Woman Workforce Ratio and Specific Affirmative Action Steps contained in the EEO/AA Provisions of this contract, including compliance with the Minority/Woman/Disadvantaged Business Enterprise as required under these contract provisions.

The contractor receiving the award of the contract shall be required to obtain, from each of its subcontractors, regardless of tier, a copy of this Bidder’s Certification indicating that it will comply with the Minority/Woman Workforce Ratio and Specific Affirmative Action Steps contained in these EEO/AA Contract Provisions, and submit it to the contracting agency prior to the award of such contract and subcontract.

Name of General Contractor

Name of Subcontractor
{ } MBE { } WBE { } DBE { } Non-MBE/WBE

Signature of Authorized Representative

Signature of Authorized Representative

Name & Title (Printed or Typed)

Name & Title (Printed or Typed)

Date

Date
MINORITY / WOMAN BUSINESS ENTERPRISES
UNAVAILABILITY CERTIFICATIONS
_to be completed by General Contractor_

(The Bidder shall prepare additional copies of this information form in the quantity necessary to comply with the bidding requirements)

I, _______________________________________, Title ________________________________

of ______________________________________, Contractor Name

certify that on ____________________________, Date of Contact
requesting a bid for Project __________________________________________________________
as an { } MBE, { } WBE or { } DBE for the provision of

{ } Goods & Services or { } Labor to accomplish __________________________

Subcontract Work Offered to this MBE/WBE/DBE Company

Name of Prospective Sub-Contractor _______________________________________________

Address ___________________________ City and State __________________ Telephone # __________

Contact was made by { } Telephone { } In Person

Said sub-contractor was unavailable for work on this project or unable to prepare a bid for the following reason(s): (check appropriate answer):

{ } MBE/WBE/DBE Firm Declined Job

{ } MBE/WBE/DBE Firm offered to do a job at the price of $______________________________, which was not acceptable because: __________________________

{ } Other __________________________

The above information is accurate and complete, to the best of my knowledge and belief. Signed under the pains and penalties of perjury.

_________________________________________ __________________________
Signature of Authorized Representative, General Contractor Date
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MINORITY / WOMAN/DISADVANTAGED BUSINESS ENTERPRISES

REQUEST FOR WAIVER

Upon exhausting all known sources and making every possible effort to meet the minimum requirements for MBE/WBE/DBE participation, the Contractor may seek relief from these requirements by filing this form (completed) NO LATER THAN FIVE (5) working days following the bid opening. Failure to comply with this process shall cause the bidder to be rejected, thereby rendering the contractor not eligible for award of the contract.

General Information

Project Title: __________________________________________ Location: __________________________

Bid Opening (time/date): __________________________ Location: __________________________

Bidder: ____________________________________________

Mailing Address: _______________________________________________________________________

Contact Person: ______________________________________________________________________

Telephone No.: (____) __________________________ Ext. __________________________________

Minimum Requirements

The contractor must show that good faith efforts were undertaken to comply with the percentage goals, as specified. The bidder seeking relief must show that such efforts were taken appropriately, in advance of the time set for opening bid proposals, to allow adequate time for response(s) by submitting the following: (please check all that apply and attach applicable documentation)

A. A detailed record of the effort made to contact and negotiate with minority, woman or disadvantaged business enterprises, to include:

( ) 1. Names, addresses and telephone numbers of all such companies contacted;

( ) 2. Copies of written notice(s) which were sent to MBE/WBE/DBE potential subcontractors prior to bid opening;

( ) 3. Copies of advertisements prior to bid opening, as appearing in general publications, trade-oriented publications, and applicable minority/women focused media detailing the opportunities for participation;

( ) 4. A detailed statement as to why each subcontractor contacted (a) was not willing to do the job or (b) was not qualified to perform the work as solicited; and

( ) 5. In the case(s) where a negotiated price could not be reached, the bidder should detail what efforts were made to reach an agreement on a competitive price

( ) 6. Contractor certifies that 100% of the project is to be carried out with his/her own workforce. No subcontractors are to be utilized.
B. The Agency may require the contractor to produce such additional information, as it deems appropriate and may obtain whatever other information it deems necessary to reach a conclusion from any source.

C. No later than fifteen (15) days after receipt of all necessary information and documentation, a decision will be made in writing to the bidder. If the waiver request is denied, the facts upon which a denial is based will be set forth. A contractor who is dissatisfied with the decision may then appeal that decision to the Equal Opportunity Employment Agency.

Certification

The undersigned herewith certified that the above information and appropriate attachments are true and accurate to the best of my ability, and that I have been authorized to act on behalf of the bidder in this matter.

__________________________________________________________________________ (Authorized original signature) ____________ Date

Submit to: Equal Employment Opportunity Compliance Officer 133 William Street, Room 208 New Bedford, MA 02740

To be completed by the City of New Bedford's EEO

____________________________________ Bid Date

Date Received by EEO    ____________________ Initials