

**Section 25 – Minority Business  
Enterprise and Women Business  
Enterprise (MBE/WBE)  
Policies and Procedures**



**MODESTO**  
CALIFORNIA

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## **Background**

The City of Modesto (City) is an entitlement grantee under the Federal Community Development Block Grant Program (CDBG) and a Participating Jurisdiction (PJ) under the Home Investment Partnerships Act (HOME) program. As an entitlement jurisdiction, the City is required to establish policies and procedures to support equal opportunity programs related to minority business enterprises (MBE) and women business enterprises (WBE).

## **Governing Regulations**

### **OMB Circular A-102**

Contracting With Small and Minority Firms, Women's Business Enterprises and Labor Surplus Area Firms. It is national policy to award a fair share of contracts to small and minority business firms. Grantees shall take similar appropriate affirmative action to support of women's enterprises and are encouraged to procure goods and services from labor surplus areas.

### **Section 281 Equal Opportunity of the National Affordable Housing Act**

Solicitation of Contracts. -Each participating jurisdiction shall prescribe procedures acceptable to the Secretary to establish and oversee a minority outreach program within each such jurisdiction to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, including, without limitation, real estate firms, construction firms, appraisal firms, management firms, financial institutions, investment banking firms, underwriters, accountants, and providers of legal services, in all contracts, entered into by the participating jurisdiction with such persons or entities, public and private, in order to facilitate the activities of the participating jurisdiction to provide affordable housing authorized under this Act or any other Federal housing law applicable to such jurisdiction.

### **Housing and Urban Development Regulations**

The HOME program regulations at 24 CFR 92.351(b) call for a minority outreach program inclusive of minority business enterprises (MBE) and women business enterprises (WBE). The Uniform Administrative Requirements of 24 CFR 85.36(e) require the City to "take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible." This requirement is applicable to contracting and subcontracting opportunities funded in whole or in part with the federal housing and community development assistance provided to the City as a grantee and PJ.

Further, the City is required under §570.507(b) - Reports (24 CFR Part 570, CDBG Final Rule) to submit a report to the U.S. Department of Housing and Urban Development (HUD) on the City's MBE- WBE contracting and subcontracting activity generated through the expenditure of HUD funds.

### **Program Objective**

This MBE-WBE plan establishes a program for the achievement of certain contracting and subcontracting goals related to contracts and subcontracts funded in whole or in part with federal housing and community development assistance. It is the intent of the City of Modesto to comply fully with the applicable federal policies on MBE-WBE contracting opportunity.

### **MBE and Who Qualifies**

A Minority Business Enterprise (MBE) is a United States citizen minority group member (Asian, Black, Hispanic, Native American) that is at least 51% owner or in the case of a publicly- owned business, at least 51% of the stock is owned by one or more such individuals.

The management and daily operations are also controlled by those minority group member(s).

### **To qualify as an MBE a business must**

- Company must be at least 51 percent owned, operated, and controlled by a minimum of one U.S. citizen whose ethnic background is at least 25 percent Asian-Indian, Asian- Pacific, Black, Hispanic, or Native American.

### **Minority Person**

Persons who are citizens of the United States and who are Black Americans, Hispanic Americans, Native Americans, or Asian-Pacific Americans.

- Black (African) Americans - Persons having origins from any of the Black groups of Africa. The term includes persons having origins in any of the original peoples of the Cape Verdes Islands.
- Hispanic Americans - Persons having their origins from one or more of the Spanish- speaking peoples of Mexico, Puerto Rico, Cuba, Central or South America or the Caribbean Islands.
- Native Americans - Persons having origins from one or more of the original peoples of North America and who are recognized as an Indian by a tribe or tribal organization.
- Asian-Pacific Americans - Persons having origins from one or more of the original peoples of the Far East, Southeast Asia or the Pacific Islands, including China, Japan, Korea, Samoa, and the Philippine Islands.

### **WBE and Who Qualifies**

A Women's Business Enterprise (WBE) is an independent business that is at least 51% owned and controlled by one or more women who are U.S. citizens or Legal Resident Aliens; whose business formation and principal place of business are in the U.S or its

territories; and whose management and daily operation is controlled by a woman with industry expertise.

To qualify as a WBE a business must

- Be a small business (Defined-Title 13 Part 121.201 of the Code of Federal Regulations)
- Be at least 51 percent owned and controlled by women who are U.S citizens or Legal Resident Aliens
- Have women manage day to day operations and also make long term decisions

### **MBE/WBE Certification**

WBE/MBE Certification is not required, but strongly encouraged.

- Certification may be obtained at no cost at SBA.GOV or through a third-party entity
- Misrepresented businesses will be disqualified from future bidding opportunities

### **Affirmative Steps**

The Code of Regulations Title 40 Part 31.36(e), "Procurement", requires the Recipient and Prime Contractor to take all necessary steps to assure that women-owned business and minority-owned business are afforded contracting opportunities.

The goal of this policy is to fully make WBE/MBE firms aware of contracting opportunities through outreach and recruitment activities. This will be achieved by the following steps

- Include qualified small and minority business and women's business enterprises on solicitation lists
- Ensure women's business and minority business are solicited whenever they are potential sources of products or services
- Divide total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by women's and minority businesses
- Use services and assistance from partnerships, administrations, and agencies such as the Small Business Administration, and the Minority Business Development Agency.
- Require the Prime Contractor to take affirmative steps to subcontract with woman-owned and minority-owned business if they subcontract.

### **Good Faith Effort**

All Prime Contractors must provide documentation to support a "good faith" effort in the solicitation of MBE and WBE firms. A Prime Contractor is a business concern that

enters into written agreements directly with the Recipient which includes agreements to provide services (including engineering and legal), supplies, equipment and construction.

The submission of documentation to support a “good faith” effort in the solicitation of Small Business Enterprise is not required; however, the Prime Contractor must maintain this documentation in their files for possible future reference. Documentation may include the following:

- Copies of announcements/postings in newspapers or other media for specific contracting/subcontracting opportunities. Include language in announcements/postings that MBE/WBE firms are encouraged to bid.
- Copies of announcements/postings of contracting/subcontracting opportunities in trade publications or minority media that target MBE and/or WBE firms.
- Documentation of sources used to identify potential MBE/WBE firms
- Documentation of contacts with MBE/WBE firms, including the firm name, address, telephone number dates of phone calls, letters and the contract results.
- Copies of direct solicitation letters sent to all MBE/WBE firms.
- Copies of the MBE/WBE certification documentation for ALL proposed prime and subcontractor MBE/WBE firms.
- Documentation showing Prime Contractor has made the six good faith efforts to seek qualified MBE/WBE subcontracts - to the extent they use subcontractors.

To ensure the City of Modesto is given credit for good-faith outreach efforts, the City will document the searches executed and the results of the searches, describe criteria used to determine who on the list(s) to directly solicit and describe any other resources used to seek qualified MBE/WBE firms to solicit.

The City of Modesto will maintain registered MBE/WBE certifications in the Neighborly Contractor Portal. The City will provide the list to Prime Contractors in an effort to assist with requirements to make good faith outreach efforts when searching for MBE/WBE subcontractors. Prime Contractors are also required to document their outreach efforts.