

**METROPOLITAN ST. LOUIS SEWER DISTRICT
BUSINESS DIVERSITY**

**MWBE Utilization and Workforce Program
Construction Projects with Federal Funding**

Effective September 1, 2017

PURPOSE

The Metropolitan St. Louis Sewer District (MSD or District) will provide opportunities for the meaningful participation by Minority and Women Business Enterprises (MWBE) and for minority and women workforce on Construction Projects performed for the District.

The Purpose of this procedure is to establish guidelines for compliance with the Diversity Program for MWBE participation by applicable vendors, bidders, contractors, service providers and any person, corporation, business, or other entity performing a Commercially Useful Function (CUF) while doing business with the District on Construction Projects that are receiving federal funding for which compliance with Title 40 CFR Part 33 is required. This procedure also establishes the guidelines for workforce participation compliance.

MWBE UTILIZATION

Certified MWBE's participating on an MSD contract, regardless of the procurement type, are required to perform a Commercially Useful Function (CUF) in fulfillment of an awarded contract. Certified MWBE's listed for performance on any contract to meet MWBE goals are subject to all conditions of compliance monitoring throughout the duration of the contract.

The purpose of CUF requirements is to ensure that Primes perform their due diligence to utilize MWBE firms that are ready, willing and able to perform specific work for which they are qualified, certified and authorized to perform, according to the terms and conditions as set forth in the contract. Work performed by an MWBE on MSD contracts must be consistent with industry practices and other relevant considerations and has a necessary and useful role in the transaction (i.e., the firm's role cannot be a superfluous step added to a project in an attempt to obtain credit towards meeting MWBE goal requirements). CUF requirements also exist to prevent, to the extent possible, MWBEs from being utilized as a "pass through" or "front" for a prime contractor or another subcontractor. A commercially useful function occurs when the MWBE firm has the sole responsibility for execution of the specified scope identified in their contract and performs responsibly by managing and supervising all aspects of the work involved with respect to ordering all materials, equipment, supplies, negotiating price, determining quality and quantity, installing (where applicable), and payment for its own materials, supplies, equipment and labor without requirements for two-party payments. If in the District's judgment, the MWBE (even if certified) does not perform a commercially useful function in performance of a the scope of work specified in the contract, the Prime credit towards meeting stated MWBE goals will not be counted. When a MWBE firm is the manufacturer of materials provided for performance on the contract, or the MWBE firm is providing labor in performance of a scope of services that is a necessary requirement for the contract, the MWBE firm will generally be considered as CUF, however all labor must be tied to a specific project scope identified on MSD Form A.

Special Provision for Acceptance of Two-Party Checks (Only for Joint Check Payment of Fringe Benefits)

The following provision only allows for Primes to make joint payments (two-party check made payable to an MWBE firm and a third party benefit provider) for fringe benefits (pension, welfare, vacation, training, or other fringe benefit) that are due to benefit providers while employees are performing work on an MSD contracted job if the subcontractor is in an arrears status at the time of contract award, has been in an arrear status at any time within the most recent 24 month period, or becomes in arrears prior to completion of their portion of the contract work during the project with any of their payments of fringe benefits. The District must receive written notice signed by the MWBE firm, Prime and third party benefit provider of the arrangement prior to the start of work or when such agreement is made necessary by failure of subcontractor to pay benefits during the course of the subcontract. Prime contractors would receive full credit for the two-party payments with submission of copies of the paid checks (front and back) as verification of the payment and validation list of employees for which the payments are made with final validation (via submitted certified payrolls) that these employees worked on the MSD project. The third party benefit provider shall also agree not to seek garnishment of any payments owed by the contractor to the subcontractor for this project.

A. MWBE Subcontracting Requirements

1. The Metropolitan St. Louis Sewer District (District) has established a MBE goal of **10.00%** utilization for **construction contracts** in the amount of **\$50,000** or more for which federal funding is being utilized and for which compliance with **Title 40 CFR Part 33** is required. Exceptions will be noted in the contract documents, when required.
2. The Metropolitan St. Louis Sewer District (District) has established a WBE goal of **5.00%** utilization for **construction contracts** in the amount of **\$50,000** or more for which federal funding is being utilized and for which compliance with **Title 40 CFR Part 33** is required. Exceptions will be noted in the contract documents, when required.
3. A bidder who has achieved the **10.00%** participation for MBE utilization and **5.00%** participation for WBE utilization as defined herein will be in compliance with the requirements of this specification. A bidder who cannot achieve the 10.00% MBE utilization goal and the 5.00% WBE utilization goal must provide all proof via documentation, as prescribed in paragraph C.4. to demonstrate that good faith efforts were initiated and performed prior to bid submittal consisting of efforts undertaken to achieve the MBE goal. If in the sole judgment of the District, the bidder does not demonstrate sufficient evidence that good faith efforts were performed, the bid will be rejected as non-responsive.
4. The term Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) refers to:
 - a. A Minority Business Enterprise (MBE) is defined as a business that is at least 51% owned, operated and controlled by a minority or minority group members, who are citizens of the United States. "Controlled" means that the minority owner(s) must exercise actual day-to-day management of the business. For this procedure the only minority groups that will count towards meeting goals for MBE vendor utilization are certified African American, Hispanic American, Asian American, Pacific Islander, American Indian or Alaskan Native.
 - b. A Women Business Enterprise (WBE), is defined as a business that is at least 51% owned, operated and controlled by a woman or women, who are citizens of the United States. "Controlled" means that the woman owner(s) must exercise actual day-to-day management of the business

5. As prospective MWBE participants on this project, MSD will only accept those MWBE firms possessing a current valid certification issued by an approved certifying agency at the time of bid. The MWBE's certification issued by an approved certifying agency must identify the MWBE's certification with a valid North American Industry Classification System (NAICS) code indicating the type of service and/or materials for which they are proposing to be utilized as a subcontractor by at least one or more of the following agencies on or before the date of the bid opening:

- Missouri State Office of Equal Opportunity
- City of St. Louis
- St. Louis Minority Business Council *(Through December 31, 2017)

*Note: Effective January 1, 2018, MSD will no longer accept MBE certifications issued by the St. Louis Minority Business Council (SLMBC). MSD does not accept reciprocity certifications issued by other certifying agencies. For all bids advertised after January 1, 2018, in order for participation to be counted towards Diversity Program requirements, the MBE must be certified by one of the acceptable certifying agencies at the time the bid becomes due.

6. MWBE Subcontractor Advance Payments

An amount will be paid to the Prime contractor for the purpose of making advance payment to eligible subcontractors in anticipation of the subcontractor's mobilization to the jobsite. Payment to MWBE subcontractors shall only apply to subcontractors in the category of "Material/Supplies including Labor or Installation" and/or "Service Provider/Installer" as listed on MSD Form A at the time of Bid, and as confirmed by the District. Please refer to the General Conditions or Project Technical Specifications for additional Advance Payment information.

B. Pre-Contract Award Obligations:

1. For bids that do not meet the MWBE participation goal, a properly signed bid must certify that the bidder has undertaken the good faith efforts described in this MWBE guideline procedure to achieve the stated goal for MWBE participation. For all other bidders, it is mandatory for each bidder to submit MSD Form A with their bid for consideration of MWBE subcontractors to be utilized to fulfill goal requirements. All other MWBE participation information including but not limited to attachments to Form A, Form B, and all attachments and information required to demonstrate good faith efforts (if needed) must also be submitted to MSD with the original bid at the due date and time specified. Failure to submit any of the required information (on MSD Form A, MSD Form B, or for "Good Faith Efforts") will result in the bid being rejected as non-responsive.
2. To establish a bid as responsive, the bidder must document on MSD Form A the proposed utilization and tier level of participation of all MWBE participants to be utilized for achievement of the stated goals, and/or document on MSD Form B the good faith efforts expended by the bidder to utilize MWBE participants. The documentation requirements are outlined in C.4, a-f below. For the purpose of determining the degree of goal attainment through MWBE subcontractor joint ventures, MWBE subcontractors, MWBE manufacturers, MWBE distributors, MWBE suppliers, and MWBE brokers, the following methodology will be utilized:
 - a. Any **Joint Venture** Subcontractor consisting of a certified MWBE and majority non-certified business enterprise, but functioning as a singular joint entity, will receive MWBE participation credit **only** for the MWBE's participation based upon a percentage of the dollar amount of the work performed by the MWBE entity. Only the verifiable dollar amount as defined in paragraphs c. thru h. below will be allowed to count towards MWBE participation goals.

- b. MSD allows Mentor/Protégé relationships consisting of a certified MWBE and majority non-certified business enterprise; however, participation credit will be based solely on the Commercial Useful Function activities performed by the MWBE subcontractor. Only the verifiable dollar amount as defined in paragraphs B.4 – B.6 below will be allowed to count towards MWBE participation goals.
 - c. All bidders including certified Prime MWBE's must achieve the required 10.00% MBE and 5.00% WBE subcontract utilization goal by obtaining the additional participation from certified MWBE's.
 - d. A contractor or subcontractor who has an ownership stake (at any level) in another business entity (whether as a parent or subsidiary) may not use that organization for purposes of meeting goal requirements in a subcontracting capacity on a MSD project. MWBE participation must be obtained through utilization of an independent, certified MWBE contractor with no ownership affiliation to the Prime contractor or subcontractors in the hiring capacity.
3. Bidders will be credited **100%** for qualified MWBE participation of the dollar amount for purchases made from certified MWBE subcontractors for work performed at the jobsite, but may include limited situations where the sub-contracting activity relative to the work being performed on the contract is performed at an off-site location but meets the CUF needs of the project (i.e. reinforcing steel mats tied at a yard and then shipped to the jobsite, painting of structural steel, etc.), subject to approval by MSD's Diversity Division.
 4. Any bidder will be credited with MWBE participation for **100%** of the dollar amount of purchases made from:
 - MWBE manufacturers who operate or maintain a facility and/or establishment with a manufacturing business that produces on site materials, supplies, items and/or equipment per specification documents; or
 - MWBE distributors/suppliers contracted with a manufacturer to distribute products and who will in fact **provide qualified installation services** of the manufactured or distributed supplies/materials for which they are authorized to sell or distribute.
 - The MWBE distributor/supplier must be engaged in marketing, sales, warehousing, distribution, and delivery for the manufacturing entity.
 - MWBE participation proposed under this category shall require the following attachments to Form A:
 - Evidence that the MWBE is certified within the identified manufacturing industry;
 - Product specifications; MWBE's location of manufacturing operations;
 - Address of MWBE's product marketing, sales, warehouse, distribution; and
 - Evidence of MWBE's proposed installation services on the contract.
 5. Any bidder will be credited with MWBE participation of **20.0%** of the dollar amount of purchases made from:
 - MWBE distributors and/or suppliers possessing a manufacturer's contract or agreement and engaged in the sales, warehousing, and distribution of materials and/or supplies.
 - MWBE participation proposed under this category shall require as an attachment to Form A identification of the address where the sales, warehousing, and distribution activities occur.

6. Any bidder will be credited with MWBE participation of **3.0%** of the dollar amount of purchases made from:
 - MWBE providers of materials and supplies who act as a **broker or dealer** and who do not satisfy the requirements for any of the above categories must be certified as a **broker or dealer** in accordance with the requirements of and by one of the acceptable agencies listed in paragraph A.4. above.
7. A MWBE subcontractor may be used for participation at any tier provided the bidder identifies the “tier” level of utilization for the subcontractor on MSD Form A. All MWBE certifications are verified during bid evaluation that the MWBE listed on Form A is certified and is in good standing with an acceptable Certifying Agency. For new MWBE subcontractors that have not previously worked on MSD projects, or MWBE’s proposing to perform a new scope not previously performed on a MSD project, MSD requires MWBE to have a valid certification with the NAICS applicable to the proposed scope to be provided by the MWBE subcontractor.
8. Any non-certified MWBE subcontractor at any tier level **will not** count towards meeting a bidder’s MWBE participation goals. Therefore, all tiers of MWBE subcontractors are required to “substitute or replace” subcontractor participation **only** to other certified MWBE subcontractors providing the same services in order to be counted towards meeting the MWBE participation goals. Any deviation from this requires immediate notification to and approval by the District.

C. Evaluation of Goal Achievement

1. As a prerequisite, to demonstrate MWBE goal achievement, the bidder must provide the following documentation with their bid:

NOTE: MSD Form A must be used for this purpose. **Failure to provide Form A with bid will result in a “Non-Responsive” determination for that bid.**

- a. List the name of the Prime contractor;
 - b. List the name of the certified MWBE, Certification Agency and Ethnicity of the MWBE;
 - c. Indicate the tier level of participation for each MWBE;
 - d. Identification of MWBE’s participation tier level and eligibility for Advance Payment by checking the appropriate box indicating the percentage of participation for each MWBE to be credited towards meeting MWBE participation goal and to establish the MWBE has a Commercially Useful Function on the project;
 - e. Complete a description of materials/Service/Scope of Work for each MWBE;
 - f. List the total amount for each MWBE’s participation in each MWBE’s section;
 - g. List the Subcontracting Total at the bottom of each Form A (use additional sheets if needed) to capture all participation for the bid.
2. For evaluation of bids, MSD reserves the right to request clarifications, conduct on-site interviews and/or inspections of the MWBE’s listed on Form A at their place of business for purposes of verifying certification information presented at the time of bid and to determine if the MWBE’s business is in compliance with MSD’s guidelines for MWBE participation on the MSD project.
 3. MSD reserves the right to not count dollar amounts presented on Form A to meet participation goals at the time of bid, if a bidder, at the request of MSD during the evaluation of a bid: 1) fails to validate or provide evidence that the MWBE will perform a “Commercially Useful Function” on the project; or 2) fails to validate that the MWBE is certified at the time of bid to provide the scope identified for the MWBE on Form A. Based on the results of the bid evaluation, in the event there is a reduction or change in any dollar amounts for any MWBE listed on Form A, the amount used to calculate a bidder’s final total amount of participation will be reflected in the final dollar and percentages and will determine if the goal was attained. Please note that reductions in the amounts listed on Form A could result in a bidder falling short of attaining the goal rendering the bid as “non-responsive” if acceptable “good faith efforts” as described in these guidelines are not successfully demonstrated.

4. For bids that do not meet the District's stated MWBE goals, the bidder must present documented proof of all "good faith efforts" undertaken by the bidder to achieve the stated goal at the time of bid. For a bid to be considered responsive, efforts undertaken shall be concentrated and aggressive so as to reach the intended MWBE targets for participation through various means of outreach, personal contact, follow-up, and/or actual negotiation consultation with qualified certified MWBE firms. The bidder is required to submit MSD Form B with their bid along with their "good faith effort" documentation package.

MSD Form B - Pre-Award "Good Faith Effort" Documentation Requirements

The following is a list of the minimum requirements (a thru f below) a bidder must complete in order to demonstrate they have exhausted all opportunities for inclusion of MWBE participation on the contract being bid and are in compliance with meeting the minimum requirements for "Good Faith Efforts" in order to be found responsive. All efforts must be undertaken with specific targeting of MWBE firms having skills or services relevant to the project being bid and with "ready, willing and able" MWBE's to provide those skills or services. Any and all information submitted as validation of "good faith effort" activities will be subject to evaluation and verification that the bidder actually performed the activities. Bidder must be able to provide details of quantities and estimates for the specific scopes of work or materials that MWBE's are requested to provide bids, proposals, or quotes for.

- a. A minimum of two (2) advertisements must meet the following requirements:
 - a. Bidder must provide documented proof of all advertising efforts undertaken to extend opportunities to local certified MWBE firms; advertisements must be targeted within locally distributed media so as to reach MWBE's who are certified in MSD's service area.
 - b. Advertisements must be published at least fourteen (14) days prior to the bid due date.
 - c. Advertising Examples: local or regional minority trade association publications or newsletters, minority-owned media specifically targeted to MSD's service area, minority contractor associations, local community based publications located within the MSD service area, etc.
 - d. MSD requires verifiable, documented proof of advertisements to be submitted with good faith effort documentation: i.e., copies of the advertisement containing verification of publication and dates published or publication affidavits.
 - e. Advertisements must solicit for specific services and/or scopes identified for MWBE's participation on the project that will serve a commercial useful function.
 - f. Only one (1) advertisement activity can satisfy the requirements identified in section "c" below for purposes of hosting a pre-bid meeting.
- b. Minimum outreach requirements to reach potential MWBE's for specific work being sought for the project:

As a resource and to assist bidders with locating certified MWBE's, MSD's Supplier Diversity Website (www.stlmsd.com) provides direct links to the acceptable certifying agencies with databases which provide access to the direct contact information of certified MWBE's for purposes of making contact with MWBE's to solicit for quotes, bids, etc. However, it is the responsibility of the bidder to verify the current certification status, qualifications and experience of the MWBE and the MWBE's ability to perform work or supply services or materials as a MWBE subcontractor on the bid.

1. Bidder must provide proof of documented contact with a minimum of two (2) Professional or advocacy organizations, each of which has capabilities to assist with the identification of potential certified MWBE's for subcontracting opportunities. Evidence of contact with the organization must be provided with good faith effort documentation.

- c. Bidder must advertise and host a Pre-Bid meeting, prior to bid completion, to reach qualified MWBE's. A Pre-Bid meeting agenda with sign in sheets containing MWBE's contact information and signatures must be submitted with bidder's "good faith effort" documentation. Announcement of pre-bid meetings, including date and time, should be included in the bidder's advertisement for the pre-bid.

As an alternative, Local Construction Contractor Associations or the equivalent may advertise separately for a single location pre-bid meeting for numerous potential Prime Bidders and/or MWBE firms. The prime contractor shall submit sign in sheets showing their attendance and documenting the attendance of MWBE firms with good faith effort documentation. This will only satisfy one advertisements requirement for good faith efforts as stated in item a.6. above.

- d. Written Correspondence and Notifications: In order to provide verification of "good faith efforts":

1. Bidder must provide copies of efforts to solicit bids and/or material quotes from qualified MWBE's through timely notifications to solicit business via written correspondence or letters. Any solicited materials must contain a valid confirmation receipt date or be postmarked a minimum of fourteen (14) calendar days prior to bid opening. Solicitations may be sent using the following methods with required proof submitted with good faith effort documentation:
 - Registered or certified mail with a returned receipt required (postmarked and signed) with a copy of the correspondence provided to the District; or
 - E-mailed notifications with acknowledgement by recipient or confirmation
 - via returned "read" receipts, with a copy of the correspondence provided to the District; or
 - Faxed documentation with acknowledgement by recipient or confirmation receipts, with a copy of the correspondence provided to the District; or
 - Courier with proof of the MWBE's acceptance signature, with a copy of the correspondence provided to the District.
2. Verifiable proof of all such notifications must be submitted as confirmation of the bidder's due diligence to secure qualified minority participants within MSD's service area.
3. Bidder shall provide the source listing of MWBE's that was used to solicit bids. Bidder must attempt to contact an adequate number of certified MWBE's, whether sourced through MSD's website (www.stlmsd.com) or a n approved certifying agency's database, must be contacted in relevant work categories, as designated in the following table:

Number of MWBE's in Relevant Work Category	Minimum Number of MWBE's Contacted Based on Sourced Listing used to Solicit Bids
Five or Less	All Available MWBE's
Six to 10	At Least Five MWBE's
11 or More	At Least 50% of Available MWBE's

e. Contracting in Good Faith with MWBEs

It is the bidder's responsibility to specifically identify sufficient portions of the project work that would result in attainment of the goal based on the bid submitted to the District. It is also the bidder's responsibility to select and actually make available to MWBE's portions of work, materials, supplies, services, etc. consistent with providing opportunities to MWBE firms so as to facilitate commercially useful MWBE participation on the project. A Bidder who does not make sufficient participation available to MWBE's must provide acceptable justification as to why a sufficient amount of participation could not be subcontracted to MWBE's to attain the goals.

A bidder using good business judgment would consider a number of factors in deciding to contract with MWBE firms and would certainly take a firm's price, capacity, past performance, experience and qualifications as well as project goals into consideration. Good faith effort include those additional steps taken to do business with MWBE's such as negotiations, one-on-one meetings, etc., the bidder takes beyond sending the initial request for a quote to reach an acceptable agreement for participation with the MWBE. The ability or desire of a bidder to perform the work on a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. A bidder is not, however, required to accept higher quotes/bids from MWBE's if the price is excessive or unreasonable, however, MSD has the right to request additional clarification as to how pricing was the determining factor for rejection of an MWBE's quote/bid.

f. Bidder must provide a justification statement specifically stating the reasons why the bidder could not attain the goals. The justification statement must describe in detail why all efforts undertaken to comply did not result in meeting the goal or substantiate in detail any other reasonable explanation to support the bidder's position for not meeting the goal.

g. The District will make a final determination of whether or not a bidder met the minimum requirements to be responsive based on bidder's actions performed for items C.4., a-f and submission of verifiable documentation for paragraphs a-f above. Any omission of any portions of paragraphs a-f for "Good Faith Effort" will result in bidder being found non-responsive.

D. Post Contract Award Requirement:

1. Within fifteen (15) calendar days after notice of award of the contract, MWBE Verification Forms signed by all the MWBE participants (and, if requested by the District, copies of all MWBE related sub-agreements) signed by both the contractor and MWBE subcontractors must be submitted to the District. If a bidder fails to submit the required information and documentation within fifteen (15) calendar days after notice of award, the District may withdraw the notice of award and the bid security of that bidder will be forfeited to the District.
2. When a Prime contractor is directed by Change Order to perform specific work exceeding \$500,000 that is outside the limits of the original scope of the project, the Prime contractor will be obligated to meet the established 30.00% subcontracting utilization goal for Building construction contracts with MWBE (African American) participation and meet workforce participation goal requirements as outlined in "Workforce Requirements" herein. This obligation shall be separate from the Prime contractor's original obligation as committed to at the time of bid and subject to meeting all other Diversity compliance requirements. Prime contractor may propose the use of MWBE subcontractors (as appropriate) who are already participating on the contract or use new MWBE subcontractors for the change order work. All Change Order utilization must be submitted on MSD Form A.

3. MWBE Utilization on Emergency Contracts: MSD has established “Guidelines for the Development and Maintenance of an Emergency Contractor List” which states Contractor Requirements for providing the District with a list of the MWBE subcontractor/vendors that the Contractor is committed to utilizing to the extent practical based on the emergency scope of work, the availability of the subcontractor(s) and the reasonableness of the subcontractor’s cost proposal.

E. Contractual Compliance Requirements:

1. For the purpose of validating Diversity compliance on any MSD project, the District will perform one or more of the following: on-site monitoring; require proper validation of payments reported as made to participating MWBE’s on the project; and conduct audits of records pertaining to the project in order to verify the participation of MWBE’s performing work on the contract. Failure to respond to request for validation of payments in a timely manner can subject the Prime contractor to sanctioned withholding of project payments including but not limited to doing future work with the District up to and including a complete prohibition from performing work on any District project for a time period to be decided solely by the District.
2. During construction, for purposes of validating compliance for the utilization of hauling, trucking, or any delivery of material supplies requiring any level of transportation services, contractors may be required to submit Trucking Reports to validate participation amounts to be credited towards meeting goal requirements through submission of monthly Trucking Reports and/or additional documentation if requested. A contractor will be requested to provide Trucking Reports for the following: 1) Subcontractor lacks capacity to solely fulfill the full scope of contracted participation for the project; 2) Non-compliance activities observed during project monitoring and/or inspections of project. Failure to submit requested monthly Trucking Reports in a timely manner can subject the Prime contractor to sanctioned withholding of project payments including but not limited to doing future work with the District up to and including a complete prohibition from performing work on any District project for a time period to be decided solely by the District.
3. During construction, the contractor must submit monthly online utilization reports to the District or through the assigned project Construction Manager (CM) using the online **MSD Diversity Reporting System**. MSD will verify that the contractor has reported their monthly MWBE and/or Non-MWBE involvement participation upon receipt of each progress payment request until the Final Payment Application for the project is submitted. On months where there is **no** MWBE activity, Prime contractor must still submit a report indicating no activity was performed for that month. Failure to submit monthly involvement reports in a timely manner can subject the Prime contractor to sanctioned withholding of project payments including but not limited to doing future work with the District up to and including a complete prohibition from performing work on any District project for a time period to be decided solely by the District. Monthly involvement reporting must be current in order for progress payments to be approved for payment.
4. Changes to the Prime contractor’s original or previously approved MWBE utilization (MSD Form A) will only be considered by the District for one of the following reasons:
 - a. The named MWBE subcontractor is unable to meet the delivery requirements of the contract schedule.
 - b. The named MWBE subcontractor is dilatory in complying with the requirements of the contract documents.
 - c. The named MWBE subcontractor is prevented from performing due to bankruptcy, insolvency or circumstances related to the failure of the business.
 - d. The type and amount of work to be performed by the MWBE subcontractor is less than what the contractor could have reasonably assumed at the time of the bid.

The Prime contractor must promptly report to the District, in writing, any proposed changes in the utilization of MWBE subcontractors, and include appropriate written justification documentation, signed off by both the Prime contractor and the affected MWBE. All contract modifications to any MWBE participation and/or MWBE scope of work requires an approved written District Change Order to the contract prior to final close out of a project.

5. Before **final payment** will be authorized by the District, , the Prime contractor must submit a MWBE Payment Verification Confirmation Form (signed by both the contractor and the MWBE subcontractor) for each MWBE subcontractor utilized on the project indicating the full amount paid to date. Prime contractor must indicate on the Verification Form whether this amount represents full or partial payment of all amounts owed to the MWBE subcontractor. In a case where the total final payment to the MWBE subcontractor cannot be made until the District makes its final payment to the contractor, the contractor shall also indicate on the form the amount to be paid upon receipt of final payment from the District. Upon receipt of final payment from the District, and subsequent payment of any outstanding payments owed to MWBE subcontractors, the contractor shall record final payment into Prism and submit a new MWBE Payment Verification Confirmation Form for each MWBE subcontractor receiving such outstanding payment confirming their receipt of final payment.
6. In the event the contractor fails to conform to meeting its MWBE obligations, the contractor must furnish to the District, in writing, the reasons for failure. If, in the sole judgment of the District, there have not been sufficient good faith efforts taken on the part of the contractor to meet its full contract MWBE participation obligations, the District will advise the contractor, in writing, of corrective actions to be initiated. If the contractor fails to fully initiate the corrective actions in a timely manner, the District may withhold the equivalent amount, which should have been paid to the MWBE(s), from any payments and/or institute appropriate actions pursuant to the provisions that have been incorporated into the contract specifications. An equivalent amount shall be defined as that portion of the MWBE goal per party that was not met, as initially set forth on MSD Form A or by an approved MSD contract change order agreement.

F. Disclaimer

The District's implementation of this MWBE procedure and its requirements does not constitute any endorsement of any MWBE. By submitting a bid to the District, the bidder agrees to hold harmless the District, its officers and employees, for all claims arising out of this bid or any contract connected thereto with regard to the diversity guidelines.

WORKFORCE REQUIREMENTS

Construction projects with Federal Funding of amounts greater than \$10,000 requires compliance with workforce participation goals during project construction as follows:

- A. Workforce Requirements
 - 14.7% Minority workforce participation per trade;
 - 6.9% Woman workforce participation per trade;

Minority is defined as a male or female African American, Asian American, Hispanic American Pacific Islander, American Indian or Native American.

B. Contractual Requirements for Workforce

1. The Prime contractor must comply with all applicable workforce contractual requirements at the onset of all MSD projects. All “boots on the ground” workforce activity on a MSD project must be reported. This includes the workforces of both certified and non-certified subcontractors.

a. At least fifteen (15) days prior to mobilization Prime contractor is required to submit a 60 Day Project Workforce Plan to the District forecasting the anticipated workforce utilization for the first 60 days of the project schedule for the Prime contractor and all subcontractors providing any labor as a component of their scope of work who will have workers on the project in the first 60 days of the project schedule. Contractor is required to use the appropriate “60 Day Workforce Plan Template” provided by MSD’s Diversity Department and located at the following website link:
<http://www.stlmsd.com/our-organization/diversity-msd/diversity-policies-and-forms>

The following fields of information is required to be included in the plan:

- Project Information
 - Name of each worker
 - Trade/Craft of each worker
 - Gender of each worker
 - Ethnicity of each worker
 - Employment Status of each worker, i.e., New Hire, Union Hall Hire, etc.
 - Length of employment with the Prime contractor or subcontractor

2. In the event a project does not meet the workforce goal requirements at the onset of a project, the Prime contractor must also complete and provide a “Project Workforce Plan” schedule (also found at the website link listed above) which identifies to the District plans for meeting the workforce goal requirements and in addition which demonstrates the “good faith efforts” undertaken by both the Prime contractor and subcontractors to meet the workforce requirements by the end of the project. To successfully demonstrate “good faith effort,” the following must be provided to the District:

a. Monthly documented proof of contact with the resources listed below requesting availability of qualified workers must be provided to the District along with responses received to the request for diverse workforce from the following:

- MSD’s Bud Training Program (SLATE)
- MSD’s First Source Hiring Program (SLATE)
- Documented contact with union affiliates (if applicable)
- Documented contact with an affiliated labor provider for trades utilized in performance of the MSD project

b. If a Prime contractor initially meets workforce goals then begins to fall short of meeting goals during the course of a project and does not have an active workforce plan on file may be requested to submit an Action Plan which includes the intent to fulfill contract workforce goals by the end of the project. When requested, the Action Plan must be provided with the Prime contractor’s next monthly workforce report submission. At a minimum, all good faith effort documentation submissions must include the following in order to be considered acceptable:

1. Initial requests to union affiliates (if applicable) for diverse applicant;
2. Initial requests to SLATE (First Source Hiring and/or BUD) for diverse applicant;
3. Response from initial request of 1 and 2;
4. Results of applicant referrals from 1 and 2;
5. Any other good faith efforts completed by the Prime contractor to fulfill workforce goals.

3. All actions of good faith must include the steps listed in 2. a-b above. Failure to meet these minimum obligations can subject the Prime contractor to sanctions on doing future work with the District up to and including a complete prohibition from performing work on any District projects for a time period to be decided solely by the District.
4. Upon receipt of Prime contractor's 60 Day Project Workforce Plan by the District, Prime contractor will receive acknowledgement via email that the Plan has been received and is under review. Within 5 business days of acknowledgement, contractor will receive a notice of acceptance or request for additional information. This process will continue until an acceptable plan is on file. The Prime contractor is prohibited from proceeding with any portion of the work having a workforce component until the Plan has been deemed acceptable by the District.
5. Monthly Workforce Reporting Requirements: To be in compliance with MSD's labor and workforce reporting requirements contractor must utilize MSD Diversity Reporting, Diversity's online reporting system located at the following website link: www.msddiversityreporting.com. Prime contractor shall submit monthly workforce utilization reports online by the 10th of each month for the previous month. Certified Payrolls detailing actual utilization for the past month for the Prime contractor and all subcontractors performing work in the month being reported on. If the workforce goals have not been met, the report shall also include documentation of specific "good faith efforts" performed in the past month as well as the planned actions to be taken by the contractor and the subcontractors to fulfill workforce contractual requirements. All workforce documentation can be submitted online through the MSD Diversity Reporting System.
 - a. As part of its monthly workforce reporting, documented proof of "good faith effort" activities including initial contact documentation for requests of minority and women and ongoing contact with the programs listed above (2a) must be provided along with documented responses from each entity contacted for the request of diverse workers and shall include all follow up request for information pertaining to applicant referrals which indicates the outcome of the referral(s).
6. During the life of the Community Benefits Agreement ("CBA"), MSD shall ensure that the First Source Hiring Program and Training Programs are material terms on all new MSD CIRP contracts; all amended or renewed CIRP projects and voluntary extensions of existing CIRP projects. Under these CIRP projects the requirements for use of these programs shall commence as of the effective date of the contract. MSD shall actively monitor performance of the BUD and First Source Hiring Programs, shall enforce the requirements for use of the BUD and First Source Hiring Programs and shall take appropriate enforcement actions to address noncompliance.

The BUD and First Source Hiring Programs provide access to targeted Minority and Women applicants for MSD projects. Contractors shall receive prompt, cost-free eligibility lists of available qualified and trained applicants when requested for MSD Projects. MSD requires contractor participation in the BUD and First Source Hiring Programs with regard to all job vacancies on MSD projects by:

- a. Prime Contractors and their subcontractors;
- b. Contractors and subcontractors entering into or receiving an extension in the scope of an existing project contract, an amendment or renewal of an existing project in which the CBA was in effect at the time of the original contract.

Nothing contained in the CBA or MSD guidelines shall require contractors who are subject to collective bargaining agreements with union affiliates to comply with utilization of SLATE Programs which violates any component of bargaining agreement terms. Conflicts regarding the use of these programs with collective bargaining agreements must be provided to the District along with good faith effort documentation.

c. Contact Information for BUD Training and First Source Hiring Programs:

St. Louis Agency on Training and Employment (SLATE)
First Source Hiring / BUD Program Administrator
1520 Market Street, Suite 3050
St. Louis, MO 63103
(314) 657-3599 / Fax: (314) 589-8027
www.stlworks.com
Applicant Intake Referrals Email: Constructionintake@stlworks.com

7. For the purposes of validating workforce compliance on any MSD project, the District will perform on-site monitoring in order to confirm workforce compliance as described in paragraph A above.

Failure to meet the “Good Faith Effort” requirements listed above will subject the Prime contractor to sanctions on doing future work with the District up to and including a complete prohibition from performing work on any District project for a time period to be decided solely by the District.

DIVERSITY CONTRACT COMPLIANCE, DIVERSITY FINAL EVALUATIONS AND PRE-QUALIFICATION EVALUATIONS

- A. Approval of Prime contractor’s monthly payment application is based on the contractor’s compliance with submission of their monthly utilization reports until Diversity has conducted a final evaluation of Diversity contract compliance. Contractors who are delinquent with submission of any utilization reports will not receive payment until they have met all reporting requirements.
- B. Upon submission of a final payment request, MSD’s Diversity Division will conduct a final evaluation of both vendor and workforce (if applicable) goal attainment on all contracts with vendor and/or workforce goals prior to release of contractor’s final contract payment. A contractor is considered to be in compliance with MSD’s Diversity Program guidelines upon successful utilization of the MWBE subcontractors proposed on Prime contractor’s originally submitted MSD Form A and satisfaction of applicable workforce utilization goal requirements. Any deviation from Prime contractor’s originally approved MWBE’s, requires contractor to have an approved change order with appropriate justification documentation. Final contract payments will not be approved without all of the required documentation.
- C. For Building contracts exceeding \$500,000, to be in compliance with meeting workforce requirements, an Initial 60 Day Workforce Plan and Project Plan (if required) must be on file, all required monthly Workforce Utilization Reports for Prime and all Subcontractors must be on file, all required certified payrolls for Prime and all Subcontractors for all hours worked must be on file, and any additional required workforce compliance documentation such as Good Faith Effort documents must be on file if any portions of workforce goals were not met on the project. Failure to meet the workforce compliance requirements can subject the contractor to sanctions on doing future work with the District up to and including a complete prohibition from performing work on any District project for a time period to be decided solely by the District.
- D. Diversity participates with Engineering to evaluate each pre-qualified contractor requesting to continue as an approved pre-qualified contractor. Diversity evaluates each pre-qualified contractor on their performance and compliance with the Diversity Program with regards to meeting their vendor and workforce goals as well as their compliance with all Diversity Program requirements. Failure to meet vendor and workforce compliance requirements or remain in compliance with the Diversity Program can subject the contractor to sanctions on doing future work with the District up to and including a complete prohibition from performing work on any District project for a time period to be decided solely by the District.