


STANDARD PROCEDURES OF THE WASHINGTON SUBURBAN SANITARY COMMISSION

ORIGINATOR & POSITION Towanda R. Livingston Small, Local and Minority Business Enterprise ("SLMBE") Director	SP NUMBER: SLBE 08-01 SUPERSEDES SLBE 06-01	APPROVED BY COMMISSION: DATE: September 19, 2007 	EFFECTIVE DATE: October 27, 2007	PAGE 1 OF 11
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SUBJECT: SMALL LOCAL BUSINESS ENTERPRISE ("SLBE") PROGRAM

PURPOSE

- 1.0 The following Standard Procedure is adopted pursuant to Article 29, Section 3-110 of the Annotated Code of Maryland to implement a program to promote the award of Washington Suburban Sanitary Commission (WSSC) contracts for Architecture and Engineering, Construction, Procurement and Professional Services to business enterprises that are both small and local (SLBE). The Small Local Minority Business Enterprise ("SLMBE") Office will administer this program.
- 2.0 On September 19, 2007, WSSC adopted Resolution 2008-1784 in compliance with Md. Ann. Code Art. 29, §3-110(c)(1)(i), which requires that WSSC establish qualifications for small businesses in accordance with COMAR 21.11.01.04, for purposes of awarding contracts under the SLBE Program. From the effective date of this Standard Procedure, a small business qualifying under COMAR 21.11.01.04, or under any successor regulations adopted under State Finance & Procurement Article § 14-203, or any successor provision thereto, shall qualify as a Small Business under the SLBE Program if the small business meets the other eligibility requirements set forth herein.
- 3.0 The purpose of the SLBE Program ("Program") is to assist small businesses that are located in Montgomery County and Prince George's County through the establishment of a Sheltered Market, Subcontracting or appropriate preference or assistance involving the award of Construction, Architecture and Engineering, Goods and Services and Professional Service contracts.

OVERVIEW

- 1.0 The Program is intended to provide an additional race- and gender-neutral tool for the Commission to use in its efforts to ensure that all segments of its local business community have a reasonable and significant opportunity to participate in WSSC contracting. The SLBE Program also furthers the Commission's objective of fostering

effective broad-based competition from all segments of the vendor community, including, but not limited to, minority business enterprises, small business enterprises, and local business enterprises. Moreover, the SLBE Program provides additional avenues for the development of new capacity and new sources of competition for WSSC contracts from the growing pool of small and locally-based businesses.

STATEMENT OF POLICY

- 1.0 The procedures contained herein constitute the WSSC policy designed to encourage greater availability, capacity development, and contract participation by Small Local Business Enterprises ("SLBEs") in Commission contracts. This policy is, in part, intended to further the WSSC's compelling interest in avoiding either active or passive participation in private sector marketplace discrimination, and in promoting equal opportunity for all segments of the contracting community to participate in WSSC contracts.

DEFINITIONS AND TERMS

- 1.0 **Affirmative Procurement Initiatives** – Waivers, bid incentives, price preferences, sheltered market, mandatory subcontracting, competitive business development demonstration projects, and award of SLBE Points in proposal evaluations.
- 2.0 **Bid Incentives** – Additional inducements or enhancements in the bidding process that are designed to increase the chances for the selection of SLBE firms in competition with other firms. These bid incentives may be applied to all solicitations, contracts, and letter agreements for architecture and engineering services, construction services, commodities, and services (professional and non-professional), including change orders and amendments.
- 3.0 **Bidder** – A firm submitting a price, or proposal in response to an Invitation for Bid (IFB) or Request for Proposal (RFP).
- 4.0 **Centralized Bidder Registration ("CBR")** – An automated web-based system wherein the Commission requires all prospective bidders that are ready, willing and able to provide goods and/or services to the Commission to register on-line. The CBR system assigns a unique user identification code (user ID) and password to each registrant that allows full access to bid opportunities listed on the CBR "Bid Opportunity" web page (Standard Procedure Number ACQ 07-01).
- 5.0 **Goal** – A non-mandatory percentage goal for SLBE contract participation is established each year for the Architecture and Engineering, Construction, Procurement and Professional Services areas by business category and by SLBE program components. A mandatory percentage goal for SLBE subcontract participation may be established on a contract-by-contract basis by the SLMBE Office for contracts in excess of \$25,000.

- 6.0 **Good Faith Efforts** – Documentation of the bidders' intent to comply with SLBE Program goals, and evaluation of that intent from a review of the documentation to support the actions taken.
- 7.0 **Graduation** – The process by which a certified firm is deemed no longer eligible to participate in the SLBE Program due to the criteria set forth in this procedure.
- 8.0 **Industry Categories** – Procurement groupings for the WSSC inclusive of Architecture and Engineering, Construction, Professional Services, and Goods and Services (commodity procurement--manufacturing, wholesale and retail, and non-professional services). Also referred to as Business Categories or Contracting Areas.
- 9.0 **Joint Venture** – An association of two or more persons or businesses carrying out a single business enterprise for which purpose they combine their capital, efforts, skills, knowledge and/or property. Joint ventures must be established by written agreement.
- 10.0 **Local Business Enterprise (LBE)** – A firm having a Principal Place of Business or a Significant Employee Presence in Prince George's or Montgomery County, Maryland. This definition is subsumed within the definition of Small Local Business Enterprise.
- 11.0 **Points** – The quantitative assignment of value for specific evaluation criteria in the selection process.
- 12.0 **Principal Place of Business** – A location wherein a firm maintains a physical office and through which it obtains no less than fifty percent of its overall customers or sales dollars, or through which no less than twenty-five percent of its employees are located and domiciled either in Prince George's County or Montgomery County.
- 13.0 **Responsible** – A firm is capable in all respects to fully perform the contract requirements and has the integrity and reliability, which will assure good faith performance.
- 14.0 **Responsive** – A firm's bid or proposal conforms in all material respects to the IFB or RFP and shall include compliance with SLBE goals or good faith efforts.
- 15.0 **Sheltered Market** – An affirmative procurement initiative designed to set aside a portion of the WSSC procurements and contracts for bidding exclusively by SLBEs.
- 16.0 **Significant Employee Presence** – No less than twenty-five (25%) percent of a firm's total number of employees are domiciled in either Prince George's County and/or Montgomery County.
- 17.0 **SLBE Directory** – A listing of small, local businesses that have been certified for participation in the SLBE Program.

- 18.0 **Small Business Enterprise (SBE)** – A small business qualifying under the State of Maryland Small Business Preference as established in regulations adopted by the State of Maryland’s Department of General Services under State Finance & Procurement Article § 14-203 or any successor provision. As of the effective date of this Standard Procedure, COMAR 21.11.01.04 defined a small business as:
- 18.1 Any for-profit enterprise that is not a broker as defined in COMAR 21.01.02.01B; that is independently owned and operated; that is not a subsidiary of another business; and that is not dominant in its field of operation; and
- 18.2 That satisfies the following size requirements:
- 18.2.1 It is independently owned and operated;
- 18.2.2 It is not a subsidiary of another firm;
- 18.2.3 It is not dominant in its field of operation;
- 18.2.4 Its wholesale operations did not employ more than 50 persons, and its gross sales did not exceed an average of \$ 2,000,000 in its most recently completed 3 fiscal years;
- 18.2.5 Its retail operations did not employ more than 25 persons and its gross sales did not exceed an average of \$ 2,000,000 in its most recently completed 3 fiscal years;
- 18.2.6 Its manufacturing operations did not employ more than 100 persons, and its gross sales did not exceed an average of \$ 2,000,000 in its most recently completed 3 fiscal years;
- 18.2.7 Its service operations did not employ more than 100 persons, and its gross sales did not exceed an average of \$ 2,000,000 in its most recently completed 3 fiscal years; and
- 18.2.8 Its construction operations did not employ more than 50 persons, and its gross sales did not exceed an average of \$ 7,200,000 in its most recently completed 3 fiscal years.
- 18.3 If a business has not existed for 3 years, the employment and gross sales limits described above shall be applied based upon the annual averages over the course of the existence of the business.
- 18.4 This definition is subsumed within the definition of **Small Local Business Enterprises**.

- 19.0 **Small Local Business Enterprise (SLBE)** – A Local Business Enterprise that is also a Small Business Enterprise and that is approved by the SLMBE Office as such. A business enterprise may qualify as a local small business for purposes of the program without regard to the race, ethnicity, or gender of the participants in the business enterprise.
- 20.0 **Small Local Minority Business Enterprise (“SLMBE”) Director** – The WSSC employee responsible for the oversight, tracking, monitoring, administration, and implementation of the SLBE program, ensuring that compliance with contract participation requirements is maintained, and overall program goals and objectives are met. The Director has supervisory responsibility for the entire Small Local Minority Business Enterprise Office.
- 21.0 **Small Local Minority Business Enterprise (SLMBE) Office** – The office within the Commission that is primarily responsible for implementing and administering the SLBE and Minority Business Enterprise (MBE) Programs.

PROGRAM OBJECTIVES

- 1.0 **To meet the objectives of this Program, the WSSC is committed to:**
- 1.1 Increasing the participation of Small Local Business Enterprises (SLBEs) in WSSC contracting, and, to the extent possible, ameliorating through race- and gender-neutral means any disparities in the participation of minority business enterprises or women business enterprises on WSSC contracts.
- 1.2 Establishing a means for regular evaluation regarding the progress of the Program using accumulated availability and utilization data to determine specific program provisions that require modification, expansion, and/or curtailment via the SLMBE Office.
- 1.3 Continuously seek the review and advice of the SLMBE Office in administering the policy and goals herein.
- 1.4 Providing accountability and accuracy in setting goals and in reporting program results, through the adoption of a mandatory automated Centralized Bidder Registration capable of identifying with specificity the universe of firms that are available and interested in bidding on and/or performing on WSSC contracts, and to provide the means of tracking actual WSSC bids, contract awards, and prime contract and subcontract payments to registered bidders on the basis of firm ownership status, commodity or sub-industry codes, firm location, and firm size.
- 2.0 **The SLMBE Office shall:**
- 2.1 Report to the WSSC and the public on at least an annual basis as to the WSSC's progress towards satisfying SLBE program objectives;

- 2.2 Recommend and/or grant Program waivers, improvements and adjustments to the Commission goal-setting and other Program functions;
- 2.3 Have substantive input in a contract specification review process to be undertaken in advance of the issuance of WSSC RFPs and bid solicitations to ensure that contract bid specifications are not unnecessarily restrictive and unduly burdensome to SLBE firms;
- 2.4 Receive and analyze external and internal information including statistical data and anecdotal testimonies it deems appropriate to effectively accomplish its duties; and
- 2.5 Monitor and support the implementation of the rules under this Program.
- 2.6 Establish on a contract-by-contract basis the minimum mandatory SLBE subcontracting goal for contracts in excess of \$25,000.
- 2.7 Recommend annual SLBE objectives for the four contracting areas (A&E, Construction, Goods & Services and Professional Services) to the Commission.

ELIGIBILITY FOR THE SLBE PROGRAM

- 1.0 For the purpose of this program, a firm will be approved/certified as a SLBE via the SLMBE Office upon its submission of a completed certification form, SLBE application, supporting documentation, and a signed affidavit stating that the firm:
 - 1.0.1 Is an independently owned and operated business concern;
 - 1.0.2 Meets size standard eligibility requirements for SBEs as defined under the State of Maryland regulations adopted by the Department of General Services pursuant to State Finance & Procurement Article § 14-203 and as reflected in this Procedure which shall be modified as necessary to remain consistent with State law;
 - 1.0.3 Has Principal Place of Business or Significant Employment Presence in Montgomery or Prince George's County with no less than 25% of the business's total number of employees being domiciled in Montgomery County or Prince George's County;
 - 1.0.4 Has been established for at least one year or the principals of the business have at least three years of relevant experience prior to forming or joining the business; and

- 1.0.5 In the year preceding the date of certification application, has not received more than \$500,000 in contract awards in open competition from the WSSC.
- 2.0 Upon receipt of SLBE certification or re-certification applications, the SLMBE Office shall review all enclosed forms, affidavits and documentation to make a prima facie determination as to whether the applicant satisfies the SLBE eligibility requirements as set forth in this policy. Applicants determined ineligible to participate as a SLBE shall receive a letter from the SLMBE Office stating the basis for the denial of eligibility. Applicants determined ineligible shall not be eligible to submit a new application for **one year** after the date of the notice of denial of eligibility.
- 3.0 Applicants determined eligible to participate in the SLBE program shall submit a completed re-certification application every **two years** to the SLMBE Office for review and continued certification. However, upon application for re-certification, the only eligibility criteria that an SLBE firm must meet are: whether the firm is an independently-owned and operated business concern; size requirement; dollar value of contracts awarded; and whether the firm maintains a Principal Place of Business or Significant Employment Presence in Montgomery or Prince George's Counties in accordance with Subsections 1.0.3 under the "Eligibility for the SLBE Program" Section of this Standard Procedure.

GRADUATION AND SUSPENSION CRITERIA

- 1.0 A bidder may not count towards its SLBE participation the amount subcontracted to an SLBE firm that has graduated or been suspended from the program as follows:
- 1.0.1 An SLBE firm shall be graduated from the SLBE Program after it has been awarded a cumulative total of at least \$5 million of WSSC-funded prime contracts or subcontracts in at least five separate contracts since its initial certification as an SLBE firm; or
- 1.0.2 An SLBE firm shall be temporarily suspended by the SLMBE Office for the balance of any fiscal year after it has been awarded a cumulative total of \$1.5 million as a prime contractor and / or subcontractor for that fiscal year; provided, however, that the SLBE firm shall be eligible to participate in such preferences in the following fiscal year so long as the firm has not yet satisfied the graduation criteria stated in Subparagraph 1.0.1 above.
- 1.0.3 The SLMBE Office will provide written notice to the SLBE upon graduation or suspension from the SLBE program, and therein state the reasons for such graduation or suspension.

APPEALS

- 1.0 A business concern that is denied eligibility as a SLBE, or who has its eligibility, suspended, revoked, or who has been denied a waiver request can appeal the decision to the General Manager. A written notice of appeal must be received by the General Manager within 15 days of the date of the decision. Upon receipt of a timely notice (15 days) of appeal, the General Manager, or designee, shall conduct a hearing pursuant to Standard Procedure No. L-07-02 ("Procedure For Adjudicatory Hearings"). The decision of the General Manager, or designee, shall be the final decision of the Commission.

AFFIRMATIVE PROCUREMENT INITIATIVES FOR ENHANCING SLBE CONTRACT PARTICIPATION

- 1.0 The WSSC in conjunction with the appropriate Contracting Officer and the SLMBE Office may utilize the following methods in assisting in the award of WSSC contracts to SLBEs.
- 1.0.1 **Waiver:**
The WSSC, at its discretion, may waive or reduce the bonding, or insurance requirements depending on the type of contract and whether the Commission determines that the bonding and or insurance requirements would deny the SLBE an opportunity to perform the contract that the SLBE has shown itself otherwise capable of performing.
- 1.0.2 **Price Preferences:**
- a. The WSSC may award a contract to a SLBE which submits a bid within 10% (inclusive) of a low bid by a non-SLBE. This preference would not apply if the award to the SLBE would result in a total contract cost to WSSC of \$50,000, or more, annually in excess of the low bid over the contract's life.
 - b. The WSSC may award up to 20% of the total Points to a SLBE or a joint venture with a SLBE in response to a RFP
- 1.0.3 **Mandatory Subcontracting:**
- a. The SLMBE Office in conjunction with the WSSC Contracting Officer may, at their discretion, require that a predetermined percentage of a specific contract, up to 40%, be subcontracted to eligible SLBEs.
 - b. An SLBE prime contractor may not subcontract more than 49% of the contract value to a non-SLBE.
 - c. A prospective bidder on a WSSC contract shall submit at the time of bid **their subcontracting plan** describing both the percentage of subcontracting by the SLBE and the work to be performed by the SLBE. A bidder may request a waiver of this mandatory subcontracting requirement from the SLMBE Director for good cause.

1.0.4 Sheltered Market:

- a. The SLMBE Director and the appropriate WSSC Contracting Officer may select certain contracts which have a contract value of \$300,000 or less for award to a SLBE or a joint venture with a SLBE through the Sheltered Market program.
- b. In determining whether a particular contract is eligible for the Sheltered Market Program, the WSSC's Contracting Officer and SLMBE Director shall consider: whether there are at least three SLBEs that are available and capable to participate in the Sheltered Market Program for this contract; the degree of under utilization of the SLBE prime contractors in the specific industry categories; and the extent to which the WSSC's SLBE prime contractor utilization goals are being achieved.
- c. If a responsive and responsible bid or response is not received for a contract that has been designated for the Sheltered Market Program or the apparent low bid is determined to be fiscally unacceptable, the contract shall be removed from the Sheltered Market Program.

1.0.5 Competitive Business Development Demonstration Project:

- a. With the concurrence of the General Manager, the SLMBE Office and the WSSC Contracting Officer may reserve certain contracts for placement into a Competitive Business Development Demonstration Project ("CBD Demonstration Project") in situations where WSSC seeks to purchase goods and/or services in industries that routinely generate inadequate numbers of bidders to provide meaningful or sufficient competition for such WSSC contracts. The purpose for the placement of a contract into the CBD Demonstration Project shall be to encourage the development of new capacity within an industry to competitively bid on the future supply of specialized goods or services to the WSSC.
- b. Contracts reserved for CBD Demonstration Projects shall be subject to a RFP process whereby the selected firm will be required to be a joint venture between an established firm in the relevant industry and an SLBE firm. The scope of work for the selected joint venture shall include teaching a hands-on curriculum to SLBE firms that have expressed an interest in diversifying into the relevant industry, in addition to performing the customary functions of the contract. This curriculum shall include both administrative skills (e.g. cost estimating, bidding, staffing, project management) and technical skills (e.g., hands-on demonstration of how to perform necessary tasks in the field) required to qualify for future WSSC contracts and to successfully compete in the industry.

- c. The SLMBE Office shall be required to select SLBE candidate firms for participation on such CBD Demonstration Projects on the basis of an assessment of their current capabilities and their likely success in diversifying into the new relevant industry once given technical assistance, training, and an opportunity to develop a performance track record in the industry.

SLBE PROGRAM PERFORMANCE REVIEW

- 1.0 The SLMBE Director or designee shall monitor the implementation of this Policy and the progress of this Program. On at least an annual basis, the SLMBE Director or designee shall report through the General Manager to the Commission on the progress of achieving the goals established for awards/payments to certified SLBE firms, reporting both dollars awarded and expended. In addition, the SLMBE Director or designee shall report on the progress in achieving the stated Program Objectives, including, but not limited to, enhancing competition, establishing and building new business capacity, and removing barriers to and eliminating disparities in the utilization of available minority business enterprises and women business enterprises on WSSC contracts.
- 2.0 The WSSC shall periodically review the SLBE Program to determine whether the various contracting procedures used to enhance SLBE contract participation need to be adjusted or used more or less aggressively in future years to achieve the stated Program Objectives.
- 3.0 The WSSC shall review the eligibility criteria and administrative procedures (via the SLMBE Office) of the program each year to assess their effectiveness in furthering the purposes of the Program.
- 4.0 The WSSC shall consider findings/recommendations from future Disparity Studies of its MBE Program for enhancements to the SLBE Program.

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