

**THE UNIFIED GOVERNMENT OF  
ATHENS-CLARKE COUNTY  
BUSINESS INCLUSION POLICY**

Finance Department  
375 Satula Avenue  
Athens, GA 30601

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## **PART A: BACKGROUND, OBJECTIVES, AND SUNSET**

### **I. BACKGROUND**

In February 2020, the Unified Government of Athens-Clarke County (ACCGov) Mayor assigned the Government Operations Committee (GOC) to conduct a “[r]eview and make recommendations regarding contracting and procurement activities related to minority, local and underserved businesses to create a favorable business environment and enhance local wealth creation”.

In April 2020, the Attorney’s Office presented research to the GOC regarding Minority Business Enterprise (MBE) programs. Their research concluded that legal precedence required a Disparity Study in order to include a race specific approach in contracting and procurement.

In July 2020, the GOC completed their review of contracting and procurement activities related to minority, local and underserved businesses to enhance local wealth creation.

In August 2020, the GOC presented their findings to the Mayor and Commission in an Agenda Setting Meeting.

On June 15, 2021, the Mayor and Commission adopted the FY 2022 annual budget. In the budget, Mayor and Commission approved the funding of a Disparity Study allocating \$400,000.

On December 22, 2021 the ACCGov Mayor and Commission contracted with MGT Consulting in order to conduct a Disparity Study evaluating the Government’s procurement practices.

On August 8, 2023, the study was presented to the Mayor and Commission. Statistical disparity was identified in ACCGov’s utilization of MBE (Minority Business Enterprise) and WBE (Women Business Enterprise) firms compared to the availability of firms in the relevant 31-county geographic marketplace during the FY17 to FY21 study period. The Disparity Study establishes a strong basis in evidence that supports the use of narrowly tailored race and gender conscious procedures to more adequately address the ongoing effects of (private) marketplace discrimination in ACCGov contracts.

### **II. DECLARATION OF POLICY**

It is the policy of ACCGov to provide equal opportunity to participate in all aspects of government contracting and purchasing programs, and prohibiting discrimination against any person or business in pursuit of these opportunities on the basis of race, color, sex, religion, disability, national origin or any other unlawful discrimination; and conducting its contracting and purchasing programs so as to prevent any discrimination.

ACCGov will actively seek to identify Minority and Women Business Enterprises and offer them an opportunity to participate as providers of goods and services to the Government. It is the intent of this Policy to widen opportunities for participation, increase competition, and ensure the proper and diligent use of public funds.

By creating a race and gender conscious policy implemented through a Minority and Women Business Enterprise program, the ACCGov Business Inclusion Policy will provide annual aspirational goals, subcontracting goals, and Good Faith Efforts for construction and architecture and engineering (A&E) contracts that will further foster the Government’s commitment to equity

and inclusion. Per the Disparity Study Table 8-1, construction and A&E spending accounted for approximately 35% of ACCGov's spending FY17 – FY21.

This Policy is not intended in any manner to require that contracts be awarded by any means other than those provided by Georgia and federal laws, such as the lowest responsive responsible bidder standard of award. This Policy shall be followed in conjunction with ACCGov purchasing policies.

### **III. AUTHORITY**

The Manager is hereby authorized to take all usual and legal administrative actions necessary to implement the ACCGov Business Inclusion Policy. Notwithstanding any specific assignment contained in the Policy, the ultimate responsibility for its administration is assigned to the Manager.

This Policy shall apply to all construction and A&E contracts administered by ACCGov. The provisions of this Policy take precedence over all departmental plans or procedures in conflict herewith, except for specific requirements mandated by state law or the terms of agreements enforced between ACCGov and the Federal Government or the State of Georgia that require different procedures than those described in this Policy.

This Policy, however, shall not apply in emergency situations when a contract is awarded pursuant to non-competitive solicitation. The appropriate Department Director shall, as soon as practical after the emergency non-competitive award, notify the Community Business Procurement Coordinator (CBPC).

The CBPC shall calculate the percentage of government contracts awarded under this emergency exception to the Policy and include the same in the Annual Report hereinafter referenced.

### **IV. POLICY OBJECTIVES**

The ACCGov Business Inclusion Policy seeks to remediate the ongoing effects of (private) marketplace discrimination that the Disparity Study found to adversely affect the participation of Minority and Women Business Enterprises in government construction and A&E contracts. The ACCGov Business Inclusion Policy further seeks to enhance competition in government contracting and promote economic growth and development in the Disparity Study geographical area by:

1. Increasing awareness of available minority and women vendors and the available product lines and services they provide through the development of a Minority Business Enterprise and Women Business Enterprise Vendor Availability Database;
2. Increasing Minority and Women Business Enterprise utilization in construction and A&E contracting;
3. Monitoring, evaluating and reporting on Minority and Women Business Enterprises (here after "M/WBE") participation and contract compliance with the provisions of the ACCGov Business Inclusion Policy.

### **V. ANTI-DISCRIMINATION**

ACCGov's policy is to provide equal opportunity in government contracting. Every contracting-

related decision the Government makes shall be on the basis of merit, without regard to an individual's race, color, creed, religion, national origin, age, disability, or gender, except when being a member of a particular group is deemed to be a bona fide occupational qualification. Moreover, in accordance with federal law, the Government will not deny opportunity in contracting to any person or business because of marriage to, or association with, individuals of a particular race, religion, national origin, disability, or gender. The Government also prohibits discrimination based on an individual's participation in schools or places of worship associated with a particular racial, ethnic, or religious group.

## **VI. SCOPE**

The ACCGov Business Inclusion Policy shall apply to all contracts for the purchase of construction-related services and architecture and engineering services, awarded by the Government; provided, however, that the following categories of contracts shall be excluded from the scope and application of this Policy:

- Contracts that are subject to the U.S. Department of Transportation Disadvantaged Business Enterprise Program as set forth in *49 C.F.R. Part 26* or subsequent legislation;
- Contracts or purchase orders that are entered into without a competitive process or entered into based on a competitive process administered by an entity other than ACCGov;
- Contracts for the acquisition or lease of real estate;
- Contracts for legal services, unless otherwise indicated by the ACCGov Attorney;
- Emergency and exigency contracts for goods or supplies that the Manager or designee determines are necessary for the preservation of public health or safety and whose immediacy of need is so great that it is impractical for the Government to apply the terms of this Policy to the contract;
- Contracts for the Government's lease or purchase of real property where the Government is lessee or purchaser.

The aforementioned contracts shall be Exempt Contracts under this Policy.

## **VII. POLICY REVIEW AND SUNSET**

At least every five years, ACCGov shall conduct a study on the availability and utilization of Minority and Women Business Enterprises businesses and examine relevant evidence of the effects of (private) marketplace race-based or gender-based discrimination upon the utilization of such businesses in ACCGov contracts. Should the study show a strong basis in evidence of ongoing effects of past or present (private) marketplace discrimination that prevents or limits Minority and Women Business Enterprises from participating in government contracts at a level which would have existed absent such discrimination, such evidence shall constitute a basis for the Government's continued compelling interest in remedying such (private) marketplace race and gender discrimination in governmental contracting.

Under such circumstances the Government shall adopt a policy, a rule, contract provisions, and a specific program to remedy such (private) marketplace discrimination. This Policy, to the extent

reasonably practical, should address selected barriers identified in such a study that adversely affects contract participation by disadvantaged Minority and Women Business Enterprises. Absent an extension, as evidenced by a valid Disparity Study authorized by the ACCGov Mayor and Commission, the race and gender conscious measures of the ACCGov Business Inclusion Policy, including the establishment of M/WBE Goals, will expire on **xxxxxx**.

#### **VIII. SEVERABILITY**

If any provision of the ACCGov Business Inclusion Policy (here after “ACCBi Policy”) or any application thereof is held invalid or unenforceable, such invalidity or unenforceability shall not affect other provisions or applications of the ACCBi Policy which can be given effect without the invalid provisions or applications and the remaining provisions are to be severable and shall remain in full force and effect.

## PART B: DEFINITIONS

*ACCBi Policy:* the ACCGov Business Inclusion Policy

*Affiliate:* Two entities are affiliates of one another when: (a) one controls or has the power to control the other, (b) a third party controls or has the power to control both, or (c) there is a significant relationship between the two entities based on common ownership, management or employees; shared equipment, assets, or facilities; physical proximity; percentage of revenue derived from the other entity; or loans, leases, contributions, and contracts.

*Architecture & Engineering (A&E):* professional services within the scope of the practice of architecture, professional engineering, land surveying, landscape architecture and interior design pertaining to construction, as defined by the laws of the state.

*Aspirational Goal:* benchmark percentage of spending by an agency with a particular group over a period of time. The aspirational goal is typically an annual goal. ACCGov will establish aspirational goals for the construction and A&E industries identified by the Disparity Study. This Annual Aspirational Goal is based upon the availability in the Relevant Market as determined by the Disparity Study. Annual Aspirational Goals are not to be routinely applied to individual contracts but are intended to serve as a benchmark against which to measure the overall effectiveness of the ACCGov Business Inclusion Policy on an annual basis, and to gauge the need for future adjustments to Policy administration and implementation.

*ACCGov Regional Area:* the relevant 31-county geographic market area defined by the Disparity Study.

*ACCRA:* ACCGov Regional Area

*Bidder:* a Business Enterprise that submits a bid or proposal for a contract.

*The Government:* the Unified Government of Athens-Clarke County, GA.

*Commercially Useful Function:* a function performed by a Business Enterprise when it is responsible for supplying goods or executing a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. The Purchasing Division will determine whether an M/WBE is performing a Commercially Useful Function, in their discretion, based on the amount of work subcontracted, industry practices, whether the amount the M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing, and other relevant factors. Commercially Useful Function is measured for purposes of determining participation on a contract, not for determination of Certification eligibility.

*Community Business Procurement Coordinator:* a position established to manage and implement the ACCBI Policy and serve as a resource for the M/WBEs and contracting personnel.

*Construction Contract:* Per an April 15, 2017 memorandum issued by the State of Georgia's Assistant Attorney General, David Carson, a construction contract (also referred to as "public works construction contract") is a subcategory of "public works" contracts that includes the following: "the building, altering, repairing, improving, or demolishing of any public structure or building or other public improvements of any kind to any public real property... Such term does not include the routine operation, repair, or maintenance of existing structures, buildings, or real

property[.]”

*Contractor:* a Business Enterprise that enters into a contract, including, but not limited to, construction contractors, architects, and engineers.

*Day(s):* calendar days, unless it is specifically indicated to be Business Days.

*Department Director:* Head and Director of a department.

*Emergency Situation:* a situation that poses a serious and immediate threat to the health and safety of the people or their property within the geographical domain of ACCGov as declared by the governing body.

*Exempt Contracts:* contracts for which no M/WBE goal is set pursuant to the exemptions listed in Part A section VI of this Policy.

*First-tier Subcontractor:* a contractor that provides goods or services directly to the Prime Contractor.

*Good Faith Efforts:* the requirements that Bidders must meet to show that they actively and aggressively sought to achieve the applicable MBE or WBE Goal. Good Faith Efforts requirements may vary based on the type of contract and are defined in Part D of this Policy.

*Good Faith Negotiation:* the requirements that Bidders must meet to show that they negotiated in good faith with M/WBEs. Good Faith Negotiation requirements may vary based on the type of contract and are defined in Part D of this Policy.

*Joint Venture:* an association of two (2) or more Business Enterprises to constitute a single Business Enterprise for which purpose they combine their property, capital, efforts, skills, and knowledge. Each participant in the Joint Venture must be responsible for a clearly defined portion of work, must perform a Commercially Useful Function, and must share in the ownership, control, management responsibilities, risks, and profits of the Joint Venture.

*MBE:* Minority Business Enterprise

*MBE Goal:* a goal established by the Government for MBE utilization on a contract. Calculated as a percentage, the MBE Goal represents the total dollars spent with MBEs as a portion of the total Bid or Proposal amount, including any contingency.

*Minority:* means only those racial or ethnicity classifications, identified by a study conducted in accordance with this Policy, that have been subjected to (private) marketplace discrimination in the relevant marketplace and that have been adversely affected in their ability to obtain contracts with ACCGov.

*Minority Business Enterprise:* a Business Enterprise that: (a) is certified with the Government as a minority-owned business; (b) is registered with the Government as a vendor or is certified by State of Georgia or a Federal Agency; (c) is at least fifty-one percent (51%) owned by one or more persons who are members of one of the below groups:

- *African American or Black*, that is, a person having origins in any of the black racial



groups of Africa;

- *Hispanic*, that is, a person of Spanish or Portuguese culture having origins in Mexico, South or Central America, or other Caribbean Islands, regardless of race;
- *Asian*, that is, a person having origins in any other Far East, Southeast Asia and Asia, Indian subcontinent, or Pacific Islands
- *Native American or American Indian*, that is, a person having origins in any of the original indigenous people of North America

*Minority-Owned Business*: a business owned by a minority person.

*M/WBE*: used to refer collectively to MBEs and WBEs. In some contexts, it means all MBEs and WBEs, and in other contexts it means one or more categories of MBEs or WBEs.

*M/WBE Annual Goal*: annual aspirational goals, which are non-mandatory goals set for government contracting.

*M/WBE Goal*: depends on the context. If a contract has separate subcontracting goals for MBEs and WBEs, the term M/WBE Goal is a shorthand way to refer collectively to both the MBE and WBE goals. In some instances, the Government may set one combined goal for MBEs and WBEs on a contract, in which event the term M/WBE Goal refers to that one, combined goal. In the latter instance, calculated as a percentage, the M/WBE Goal represents the total dollars spent with M/WBEs as a portion of the total Bid or Proposal amount, including any contingency.

*M/WBE Registration*: the process by which an MBE or WBE is registered with the Government as outlined in Part H of this Policy.

*Originating Department*: the Government department or authorized representative of the Government which issues a solicitation, or for which a solicitation is issued on behalf of, for department or Government needs.

*Prime Contract*: a contract between the Government and a Business Enterprise.

*Prime Contractor*: the vendor or contractor to whom a purchase order or contract is issued by ACCGov for purposes of providing goods or services for the Government.

*Policy Elements*: any process or processes defined in this Policy that may be required in order for a contractor to be awarded a Government contract.

*Qualified M/WBE*: an M/WBE that has the financial ability, skill, experience; access to the necessary staff, facilities and equipment needed to complete a particular contract or subcontract; and otherwise meets the criteria for being a “responsible bidder”. The Community Business Procurement Coordinator, with advice from the Government Attorney, may develop methods and criteria for assessment of whether a particular M/WBE is Qualified for a particular contract or subcontract for the purposes of the ACCBI Policy. Nothing contained herein shall in any respect supersede or invalidate rules and regulations that a Department Director may promulgate with respect to pre-qualification of Government Contractors. The Government makes no representations as to the qualification of any M/WBE or any other Business Enterprise.

*Regular Dealer:* a vendor that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of a contract are bought, kept in stock, and regularly sold to the public in the usual course of business.

*Responsive Bidder:* bid documents conform to bid specifications and meet all applicable legal and policy requirements.

*Second-tier subcontractor:* a contractor that is hired by a first-tier subcontractor within the same contract or purchase order to provide a portion of the good and / or services the first-tier subcontractor is obligated to provide under its subcontract to the Prime Contractor.

*Subcontractor:* a Business Enterprise that directly contracts with a contractor, subcontractor, or sub-consultant to provide goods or services or perform work in connection with a contract. Subcontractor also includes any person who has contracted to furnish labor or materials to or who has performed labor for a contractor or another subcontractor in connection with a public construction contract. A subcontractor may be either a first, second, or third-tier subcontractor. The term “Subcontractor” also includes “Sub-consultants” and “Suppliers”.

*Third-tier Subcontractor:* a contractor that is hired by the second-tier subcontractor within the same contract or purchase order to provide a portion of the goods and / or services it is obligated to provide under its subcontract with the first-tier subcontractor.

*Vendor:* a supplier of goods and services. A vendor sells products or services to another company or individual.

*Vendor Availability Database:* the database that tracks all vendors registered with ACCGov that participate in Government contracting. This also includes vendors registered with state and federal databases.

*WBE:* Woman Business Enterprise

*WBE Goal:* a goal established by the Government for WBE utilization on a contract. Calculated as a percentage, the WBE Goal represents the total dollars spent with WBEs as a portion of the total Bid or Proposal amount, including any contingency.

*Woman Business Enterprise:* a Business Enterprise that: (a) is certified by the Georgia Procurement Registry or federal agency; (b) is registered with the Government as a woman-owned business; (c) is at least fifty-one percent (51%) owned by one or more persons who are female.

*Woman-Owned Business:* non-Hispanic white woman-owned businesses

## PART C: POLICY ADMINISTRATION

### I. GOVERNMENT PERSONNEL ROLES AND RESPONSIBILITIES

In addition to any responsibilities specifically identified in this Policy, Government personnel shall have the following roles and responsibilities in administering and enforcing the ACCBI Policy:

- **The ACCGov Manager** is primarily responsible for implementing the ACCBI Policy. The Manager shall:
  - Determine the organizational structure and appropriate staffing for the ACCBI Policy implementation, throughout government departments;
  - Establish lines of authority and reporting for successful Policy implementation;
  - Recommend funding for staffing, operations, training, and outreach to further ACCBI Policy administration and compliance;
  - Assure the integration of the ACCBI Policy components into the practices and processes of all departments;
  - Request revisions to the ACCBI Policy as needed to facilitate administration and fulfill Policy objectives;
  - Approve standards for Good Faith Efforts for staff with respect to Aspirational Goals;
- **The Community Business Procurement Coordinator** is responsible for:
  - Daily administration of all components of the ACCBI Policy administration (and, if determined applicable at a future date, supervision of the ACCBI support staff);
  - Developing such rules and guidelines as may be necessary to effectuate the purposes of the ACCBI Policy;
  - Advising the Manager and Purchasing Administrator on ACCBI Policy administration and implementation issues;
  - Consulting with Department Directors and their staffs on ACCBI Policy implementation;
  - Monitoring and reporting Government-wide Minority and Women Business Enterprise participation;
  - Being the ombudsman for MBE and WBE business concerns associated with the ACCBI Policy administration and implementation;
  - Making revisions to the ACCBI Policy administration procedures as needed to facilitate implementation and fulfill Policy objectives;

- Managing the Vendor Availability Database of M/WBE firms.
- **Department Directors** are responsible for:
  - Ensuring ACCBI Policy compliance within their respective departments;
  - Promoting the ACCBI Policy implementation and M/WBE participation in the contracting and procurement activities of their department;
  - Holding key contracting staff accountable for adhering to the ACCBI Policy.
- **The ACCGov Attorney’s Office** is responsible for:
  - Reviewing the ACCBI Policy, rules and standards to ensure their compliance with federal, state and local laws;
  - Reviewing recommendations to reject a Bid for non-compliance with ACCBI Policy requirements and provisions; and
  - Advising the Mayor and Commission, Manager, Department Directors, and the Community Business Procurement Coordinator on legal issues related to the ACCBI Policy administration and implementation.

## II. ASPIRATIONAL GOALS

### A. Aspirational Goals

For compliance with ACCBI Policy, the Government shall review its budget and establish a combined aspirational (not mandatory) goal in the form of a percentage, for the overall participation in contracts by MBEs and WBEs, collectively referred to as “M/WBE Goals”. The aspirational goal for MBEs and WBEs shall be established consistent with federal methodology and shall not be applied rigidly on specific contracts or projects. Aspirational goals shall apply to construction and A&E contracts except in exempt cases noted in Part A Section VI *Scope*.

#### Aspirational Goals for M/WBEs:

Per Section 8.4.2 of the Disparity Study Report dated August 4, 2023, “any new M/WBE Program implemented to specifically address the identified disparity in accordance with guidance from case law regarding race-based procurement programs. Developments in court cases involving federal disadvantaged business enterprise (DBE) programs provide important insight into the design of local M/WBE programs. Federal courts have consistently found DBE regulations in 49 CFR 26 to be narrowly tailored. The federal DBE program has the features in **Table 8-7** that contribute to this characterization as a narrowly tailored remedial procurement preference program. Athens-Clarke County should adopt these features in any new M/WBE program.”

**Table 8-7**  
**Narrowly Tailored M/WBE Program Features**

Narrowly Tailored Goal-Setting Features	DBE REGULATIONS
Athens-Clarke County should not use M/WBE quotas.	49 CFR 26(43)(a)
Athens-Clarke County should use race or gender	49 CFR 26(43)(b)

conscious set-asides only in extreme cases	
Athens-Clarke County should meet the maximum amount of M/WBE Goals through race-neutral means.	49 CFR 26(51)(a)

**Aspirational Goals Methodology:** Per Section 8.3 of the Disparity Study Report dated August 4, 2023, “Estimates of MBE availability in the Athens-Clarke County’s market area provide the starting point for government-wide annual aspirational goals for contracting across all industry categories. As Athens-Clarke County continues to review its achievement toward the annual aspirational goals *it should assess whether race and gender-based remedies are necessary for all industry categories*. The proposed M/WBE aspirational goal reflected in **Table 8-6** for Construction is 13 percent, Architecture and Engineering is 12 percent, Professional Services is 9 percent, Other Services is 10 percent, and Goods is 2 percent. The overall aspirational goals are recommended at 9 percent for M/WBE firms. The proposed goals are based on a weighted average of utilization and availability. Aspirational goals are based on an accumulation of all spending within Athens-Clarke County [note—to clarify, this means spending within the five industries for FY17 – FY21 and within the 31-county relevant area] and should not be applied rigidly to every individual procurement. Future adjustments to the agency’s aspirational goals should be based on relative availability and adjusted as needed.” [Note—to clarify, adjusted based on a new Disparity Study as defined in Section VII *Policy Review and Sunset*].

**Table 8-6**  
**M/WBE ASPIRATIONAL GOALS**

Industry Category	Aspirational Goal
Construction	13%
Architecture & Engineering	12%
Professional Services	9%
Other Services	10%
Goods	2%
<b>Overall</b>	<b>9%</b>

**Data Tracking for M/WBEs:** The Community Business Procurement Coordinator will issue reports on an annual basis regarding the utilization of M/WBEs in various categories of prime contracts for Construction and Architecture and Engineering contracts.

**Accountability:** The Manager shall ensure that Department Directors contribute appropriately to the achievement of Government-wide M/WBE Goals. The Manager will further ensure that Department Directors work with the Community Business Procurement Coordinator in developing appropriate measures to remediate ongoing (private) marketplace discrimination against MBEs or WBEs that has impacted their ability to participate in government contracts.

## **B. Contract-by-Contract Subcontracting Goal Setting**

All contract-by-contract subcontracting goals will be set pursuant to the ACCBI Policy. It is intended that such goal setting will be based upon the Disparity Study Relevant Area analysis of the availability of Commercially Useful subcontracting opportunities within a given industry and the relative availability of M/WBE firms to perform required tasks on such subcontract opportunities. Such contract-by-contract goal setting shall be based upon reasonably reliable

Respondent and Subcontractor availability data. Compliance with contract-specific subcontracting goals shall also require compliance with Good Faith Efforts and waiver procedures as established below in Part D of this Policy.

- **Goal Setting Methodology.** The Community Business Procurement Coordinator shall follow the methodology for setting M/WBE Goals, as defined by the Government, on Government contracts through rules and guidelines for the implementation of the ACCBI Policy. Such methodology shall take into account contract size, reasonably known availability of subcontracting opportunities that M/WBEs can perform on each contract, whether M/WBE Goals for the project are legally warranted to remedy the effects of past (private) marketplace discrimination, and other factors as the CBPC deems appropriate. M/WBE Goals shall be set only for Construction and A&E contracts as described in this Policy and the Disparity Study.
- **Construction Contracts of \$300,000 or More.** The Government shall establish one or more subcontracting goals on construction contracts unless the contract is determined to be an exempt contract. M/WBE Goals shall be established based on the Disparity Study recommendations.
- **Architecture and Engineering Contracts of \$50,000 or More.** The Government shall establish M/WBE Goals for Architecture and Engineering contracts unless the contract is determined to be an exempt contract. M/WBE Goals shall be established based on the Disparity Study recommendations.
- **State and Federally Funded Contracts.** Notwithstanding anything contained herein to the contrary, the Government will not set subcontracting goals on any state or federally funded contract that is subject to state or federal requirements for Minority and Women Business Enterprise utilization, including without limitation contracts subject to the U.S. Department of Transportation's Disadvantaged Business Enterprise Program.

### III. TRAINING AND WORKSHOPS

The intent of staff training is to create a culture of inclusion with respect to administration of Government contracts and expenditures. The CBPC, with the assistance of the appropriate Government departments, shall conduct seminars and workshops to acquaint small businesses with Government contracting activities and opportunities. Topics shall include, but not be limited to, the process used by the Government in soliciting bids and quotes. Additional classes may be provided with the assistance of the appropriate department on a project-by-project basis through structured seminars, classes, and individual assistance provided to Minority and Women Businesses Enterprises requesting this type of support.

### IV. OTHER MEASURES FOR POLICY IMPLEMENTATION

To show its commitment to the ACCBI, the Government *may*, where consistent with federal, state and local laws:

- Evaluate bonding for contracts less than \$100,000 in value; (O.C.G.A 36-91-90 requires payment bonds for public works construction contracts estimated greater than \$100,000. O.C.G.A 36-91-70 requires performance bonds for public works construction contracts estimated greater than \$100,000.)

- Provide for alternative bids by considering dividing formal (large) projects/purchases into smaller contracts so long as compliance with statutory thresholds remains intact;
- Provide department flow charts with explanations of the major steps in the contracting and procurement process;
- Require departments to provide project information on Internet websites;
- Provide and make networking opportunities available to Prime Contractors with M/WBE subcontractors;

The Government *may*, where consistent with federal, state, and local laws:

- Develop internal procedures to support the Policy;
- Allocate funding for subsequent Disparity Studies, conducted every 5 years, to ensure that the Government is adequately addressing race and gender disparities within Government contracting.

## PART D: GOOD FAITH EFFORTS AND POLICY WAIVERS

### I. GOOD FAITH EFFORTS: M/WBE GOALS OVER ZERO

Adequate Good Faith Efforts mean that the Bidder took all necessary and reasonable steps to achieve the subcontracting goal which, by their scope, intensity, and appropriateness, could reasonably be expected to obtain sufficient M/WBE participation. Adequate Good Faith Efforts also mean that the Bidder actively and aggressively sought M/WBE participation. Mere *pro forma* efforts are not considered Good Faith Efforts. If adequate Good Faith Efforts have not been documented, the Government reserves the right to deem the Bidder unresponsive.

#### A. Good Faith Efforts

For each subcontracting goal that a Bidder has not fully met for the established contract, it must document that it has made Good Faith Efforts for each unmet goal. The Government will consider the quality, quantity, and intensity of the different kinds of efforts a Bidder has made.

*Listed below are **examples of the types of actions** a Bidder will take in making a good faith effort to meet the goals, which are not intended to be exclusive or exhaustive, nor are they intended to be a mandatory checklist.*

- **Contacting M/WBEs.** Bidder must contact M/WBEs in a reasonable manner to reach each subcontracting goal on a specific contract. Factors include, but are not limited to:
  - The number of M/WBEs contacted;
  - Contacting M/WBEs that reasonably could have been expected to submit a quote and that were known to the Bidder or available on the Government's maintained list;
  - Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings or in pre-bid conferences, advertising, written notices, use of verifiable electronic means through the use of the Government's list of available M/WBE firms) the interest of certified M/WBEs who have the capability to perform the work of the contract;
  - The Bidder solicits this interest at least ten (10) days prior to bid opening to allow the M/WBEs to respond to the solicitation;
  - Whether contacts were made and were documented in a verifiable way;
  - Whether the Bidder responded promptly and adequately to inquiries from M/WBEs; and
  - Whether the Bidder made follow-up contact with M/WBEs that did not respond to the Bidder's initial contact
- **Working with Community Business Procurement Coordinator and other related groups.** Bidder documents that it worked the CBPC, available minority community organizations, minority contractors' group, local minority business assistance offices and / or other local organizations that provide assistance in the recruitment and placement of minorities and women to solicit bids for the contract for which the bid was sought.



- **Breaking down work.** Selecting portions of the work to be performed by M/WBEs in order to increase the likelihood that the M/WBE Goals will be achieved.
  - Where appropriate, breaking out contract work items into economically feasible units to facilitate M/WBE participation, even when the Prime Contractor might otherwise prefer to perform these work items with its own forces.
- **Making Plans Available.** Providing prospective M/WBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner or within 10 days before the bid proposals are due to assist them in responding to a solicitation.
- **Negotiating in Good Faith.** Negotiating in good faith with interested M/WBEs and not rejecting M/WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The M/WBE's standing within its industry, membership in specific groups, organizations, or associates and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the Bidder's efforts to meet the project goal. The Bidder shall document in writing the reasons for any rejection of an M/WBE based on lack of qualifications.
- **Bonding or Insurance Assistance on Construction Contracts.** Providing assistance to interested M/WBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or Bidder or providing alternatives to bonding or insurance for subcontractors;
- **Financial Assistance.** Providing assistance to otherwise qualified M/WBEs in need of obtaining necessary equipment, supplies, materials, loan capital, lines of credit, joint pay agreements to secure loans, supplies or letters of credit (including waiving credit that is ordinarily required), or related assistance or services. No credit for Good Faith Effort will be given to an Affiliate of a Bidder as it pertains to financial assistance.
- **Joint Ventures.** Negotiating joint venture and partnership arrangements with M/WBEs in order to increase opportunities for M/WBE participation on public construction and repair contracts. No Good Faith Effort credit will be given to an Affiliate of the Bidder as it pertains to Joint Ventures.
- **Quick Pay Commitment.** Providing quick pay agreements and policies to enable M/WBE contractors and suppliers to meet cash-flow demands. Bidder will not receive credit for Good Faith Effort if the Quick Pay Commitment has a statement indicating that the Bidder *will consider* entering into a Quick Pay Commitment OR the Bidder verbally communicated the Quick Pay Commitment to the subcontractor.

In addition, the Government may take into account (a) whether the Bidder's documentation reflects a clear and realistic plan for achieving the MBE and WBE goals; (b) the Bidder's past performance in meeting the M/WBE Goals; (c) the performance of other Bidders in meeting the M/WBE Goals. For example, when the apparent successful Bidder fails to meet the goals, but others meet it, staff may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful Bidder could have met the goals.

If the apparent successful Bidder fails to meet the M/WBE Goals but meets or exceeds the average MBE and WBE participation obtained by other Bidders, the Government may view this, in conjunction with other factors, as evidence of the apparent successful Bidder having made a Good Faith Effort.

## **B. Negotiating in Good Faith with Interested M/WBEs**

The Bidder must comply with the Good Faith Negotiation. All Bidders that fail to meet a Subcontracting Goal must negotiate in good faith with each certified M/WBE that responds to the Bidder's solicitation or contacts the Bidder of its own accord with respect to the unmet goal(s). If the Bidder does not receive a response from the solicited subcontractors, the Bidder must notify the CBPC that no response was received.

- It is the Bidder's responsibility to make a portion of subcontracted work available to M/WBE subcontractors and suppliers to bid on and to select those portions of the work or material needs consistent with the available M/WBE subcontractors and suppliers, so as to facilitate M/WBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of MBEs and WBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for M/WBEs to perform the work.
- A Bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including M/WBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using M/WBEs is not in itself sufficient reason for a Bidder's failure to meet the contract MBE and WBE Goals, as long as such costs are reasonable. Also, the ability or desire of a Prime Contractor to perform the work of a contract within its own organization does not relieve the Bidder of the responsibility to make Good Faith Efforts. Bidders are not, however, required to accept higher quotes from M/WBEs if the price difference is excessive or unreasonable.

## **II. POLICY WAIVERS**

Prior to the public release of solicitations, a Government Originating Department may request the Manager to waive or modify the application of Policy element requirements for M/WBE participation by submitting its reasons in writing. The Originating Department must fully and accurately document the necessity for the waiver. The CBPC shall evaluate the request to determine that the requirements for a waiver have been satisfied and make a recommendation to the Manager.

1. The Manager may grant such a waiver or modification upon determination that:

- The extraordinary and necessary requirements of the contract render application of the Policy elements infeasible or impractical; or
- The nature of the goods or services being procured are excluded from the scope of this Policy; or

- Sufficient qualified M/WBEs providing the goods or services required by the contract are unavailable in the relevant geographical area of the project despite every reasonable attempt to locate them.

Otherwise, such solicitations shall be forwarded to the CBPC for review and possible application of Policy elements. Any further requests from a Government Originating Department for modification of set goals or other Policy elements as established by the ACCBI Policy shall be presented to the Manager, whose decisions on such requests shall be final.

2. The CBPC may waive the application of Policy elements to enhance M/WBE utilization for a specific contract under the following circumstances:

- The non-compliance is minor in nature; or
- Waiving the non-compliance would not put Bidders that complied with the ACCBI Policy at a competitive disadvantage; or
- The non-compliance does not reflect a lack of diligence on the Bidder's part in complying with the Policy. For example, a repeated violation of the same Policy provisions on two or more bids might be deemed a lack of diligence in complying with the ACCBI Policy; or
- Whenever the needed goods or services are available only from a sole source and the prospective contractor is not currently disqualified from doing business with the Government, or the procurement is necessary to preserve or protect the health and safety of the Government's residents; or
- The Originating Department certifies to the CBPC and Manager:
  - That an emergency exists which requires goods or supplies to be provided with such immediacy that it is unable to comply with the requirements of this Policy; and
  - That the prospective contractor is an M/WBE or, if not, that the prospective contractor will make a good faith effort to utilize M/WBEs.

Nothing in this Policy shall require the CBPC to grant a waiver in any situation or give rise to a suggestion that the CBPC might be inclined to grant a waiver in a certain situation. Likewise, the Government shall not be bound by any oral representation made by any Government employee, official, agent or representative that a waiver will be granted for a particular instance or for a category of instances. Any waivers authorized for this Policy shall be issued in writing.

## PART E: CONSTRUCTION CONTRACTS

### I. SCOPE

ACCGov shall provide equal opportunity for M/WBEs to compete for construction projects. Those actions shall include those matters hereinafter set out. This Policy shall be referenced in the specifications and guidelines for any such project, and non-compliance by any Bidder shall be grounds for declaring the bid or proposal non-responsive. This Policy shall be followed in conjunction with the Government's Purchasing and Contracting Policy along with all applicable federal, state, and local laws.

### II. GENERAL REQUIREMENTS

#### A. Subcontracting Goal Setting

All Subcontracting Goals will be set by the Community Business Procurement Coordinator, in conformity with the ACCBI Policy, and provided to the Bidder with the Government solicitation documents. **When the Government sets a subcontracting goal for construction contracts, each Bidder must either: (a) meet each subcontracting goal established; or (b) comply with the Good Faith Negotiation and Good Faith Efforts requirements set forth in Part D for each unmet subcontracting goal.**

The Government solicitation documents will contain certain forms that Bidders must complete to document having met these requirements. Failure to comply constitutes grounds for deeming the bid or proposal unresponsive. *This shall only apply to projects with M/WBE Goals.*

#### B. Responsibilities

##### 1. Government Responsibilities

- The Community Business Procurement Coordinator shall provide a list of registered qualified M/WBEs for the particular bidding industry, using information obtained from the Government's Vendor Availability Database. This will include the Georgia Procurement Registry. The list shall describe the capabilities of registered MBEs and WBEs depending upon the scope of the project involved.
- Simultaneously with each bid posting of construction contracts for which an M/WBE Goal has been set, the Government will send a "Project Notice" to all M/WBEs in the applicable categories that have registered with the Government as performing the type of work being bid. Project Notice may be sent via email or mail. The Project Notice will include:
  - A description of the work for which the bid is being solicited;
  - The date, time and location where bids are to be submitted;
  - The name of the individual at the Government who will be available to answer questions about the solicitation;
  - Where the Government bid documents may be reviewed; and

- Any special requirements that may exist.
- For each construction contract of \$300,000 or more, the Government will also:
  - Make available (by email, posting on the Government's website or other means) a list of Bidders that have attended the scheduled pre-bid conference, if a pre-bid conference has been held; and
  - Utilize other media, as appropriate, likely to inform potential M/WBEs, as applicable, of the bids being sought.
- Formal Bidding
  - For formal construction contracts put out for bids that include a mandatory pre-bid meeting or conference, the Originating Department shall orient contractors and subcontractors on the steps for M/WBE participation and Good Faith Efforts as specified in this Policy as well as bid procedures and regulations.
  - A period of at least thirty (30) days shall lapse between the date on which the advertisement appears and the date of the opening of formal bids (for construction contracts \$300,000 or more in accordance with Georgia law.) Exceptions may be made in cases of special emergency involving the health and safety of the people or their property.

## 2. Bidder Responsibilities

- Self-performance
  - **Self-performance on Construction Contract with M/WBE Goal.** Bidders that intend to perform 100% of the work on a construction contract with an established M/WBE Goal may submit an affidavit stating that the Bidder does not customarily subcontract elements of this type of project; and normally performs, has the capability to perform, and will perform all elements of work on this contract with its own current workforces. The affidavit shall be in a form provided by the Government as part of the Government Solicitation Documents, and shall affirm (1) it is a normal business practice of the Bidder to perform all elements of the contract with its own workforce without the use of subcontractors and (2) the Bidder in fact has demonstrated its capabilities to perform all elements of the contract with its own workforce without the use of subcontracts. In such an event, the Bidder shall not be required to comply with Good Faith Efforts in Part D or III of this section.
    - If the Bidder is not licensed to perform each and every type of work included in the contract, or if the Government has cause to believe based on past practice or other grounds that the Bidder will not be performing all work under the contract with its own current workforce, then the Government may reject the Bidder's bid or proposal for non-compliance with the ACCBI Policy.
- For any contract put out for bid, the Bidder shall:

- Notify those registered MBEs or WBEs appearing on the list provided by the CBPC, for the portion of the project which will be subcontracted by the single Prime Contractor or separate specification contractor and solicit bids from those M/WBEs.
- Submit a listing of the MBE or WBE participation that will be utilized on the appropriate form (depending on project, will provide the forms for completion) with the Bid in order for the Bid to be considered responsive. Blank forms will not be deemed to represent zero participation.
- Bidders must indicate the total dollar value of M/WBE participation for the contract at the time of the bid opening. Blank forms will not be deemed to represent zero participation.
- Bidders must submit all additional verification of the Good Faith Efforts made to increase M/WBE participation with their bid, for any bid with an M/WBE Goal.
- The successful Bidder shall:
  - Maintain subcontractor payment information, which includes date(s) and amount(s) of payment(s) and submit the same at the time of each pay application to the Government.
  - Submit to the CBPC any M/WBE subcontractor changes during projects.

### **C. Meeting Subcontracting Goals**

- **Counting M/WBEs.** The Government will give Bidders credit toward meeting the subcontracting goals at bid opening only for those M/WBEs that:
  - Are certified with the Government available vendor database as M/WBEs as of the bid due date; and
  - With respect to M/WBEs, are listed in the Government's Vendor Availability Database as being at least 51% owned by individuals in one of the M/WBE categories included in the MBE or WBE Goal set for that project; and
  - Will actually perform a Commercially Useful Function as defined in Part B (which means, among other things, an M/WBE acting solely as a conduit will not be counted)
- **Decertified M/WBEs.** The Government will not give credit toward subcontracting goals for subcontracting to M/WBEs that are found to be Affiliates of the Bidder prior to bid opening. If an M/WBE is decertified between bid opening and contract award, the Government will not allow Good Faith Effort credit toward the subcontracting goal for the amounts committed to that M/WBE, but will allow the Bidder to replace the decertified M/WBE with a certified M/WBE, unless the certification was based on false or fraudulent information of which the Bidder had or should have had knowledge. However, the Government may refuse to allow the substitution and reject the bid if the M/WBE is

decertified for being an Affiliate, or is found to be an Affiliate of the Bidder (even if not decertified), if the Government determines in its sole discretion that the Bidder knew or should have known prior to bid opening that there was a significant risk that the Government would consider the M/WBE an Affiliate. Bidders shall be deemed to have knowledge of all ACCBI Policy provisions, including those relating to Affiliates.

- **M/WBE Prime.** A Prime M/WBE may count the work it intends to perform, with its own current workforces, towards the M/WBE Subcontracting Goals to the extent the requirements set forth in this Section are satisfied.
- **Using M/WBEs the Government Did Not List in Government Solicitation Documents.** Bidders shall receive credit for using M/WBEs that the Government did not list in the Government Solicitation Documents, as long as the requirements above are met.
- **Calculating M/WBE Participation Based on Type.** The Government shall count M/WBE participation on a construction contract as set forth below:
  - **Subcontractor:** If the Bidder utilizes an M/WBE as a subcontractor to perform services, the Government shall count 100% of the value of the Commercially Useful Function the M/WBE performs toward satisfaction of the subcontracting goals, except to the extent the M/WBE performs services as a regular dealer, hauler, broker or packager (in which event the amount counted will be determined by the applicable Section below).
  - **Second and Third Tier Subcontractor:** If the Bidder or subcontractor for a Bidder utilizes a M/WBE as a second or third tier subcontractor to perform services, the Government shall count 100% of the value of the Commercially Useful Function the M/WBE performs toward satisfaction of the subcontracting goals, except to the extent the M/WBE performs services as a regular dealer, hauler, broker or packager (in which event the amount counted will be determined by the applicable Section below).
  - **Manufacturer:** The Government shall count 100% of all expenditures for materials, supplies and equipment obtained from an M/WBE manufacturer toward the subcontracting goals.
  - **Regular Dealer:** The Government shall count 60% of all expenditures for materials, supplies and equipment obtained from an M/WBE regular dealer toward the Subcontracting Goals.
  - **Hauler, Broker or Packager:** The Government shall count fees or commissions charged by a M/WBE hauler, broker or packager for providing a Commercially Useful Function toward the subcontracting goals, provided that the Bidder determines that the fee or commission is reasonable and not excessive as compared with fees customarily charged for similar services. A hauler may or may not take title to the materials or supplies it delivers. Either way, the cost of such materials and supplies shall not count as part of the hauler's fees or commissions for purposes of this Section.

For construction projects not requiring formal bids in accordance with state law, the Government

shall, in addition to its normal procedures, include on its bid list for direct solicitation the M/WBEs listed for the type of construction needed. The non-availability or limited availability of certified businesses in a specific type of construction does not limit the maximum number of M/WBEs which may be solicited. Contracts for building construction are further governed by State Law and may be precluded from complying with requirements of this Policy.

The Government will meet its payment obligations in accordance with established Government policy and State Law. Nevertheless, payments for construction contracts will be made no later than thirty (30) days after receipt of an approved invoice, provided the construction work has been accepted by the Government.

### **III. GOOD FAITH EFFORTS AND NEGOTIATIONS**

If a Bidder has not fully met each subcontracting goal established for a contract, then it must document that it has made Good Faith Efforts with respect to each unmet goal. The Government's process for establishing subcontracting goals is set forth in Part C of this Policy.

Adequate Good Faith Efforts means that the Bidder took all necessary and reasonable steps to achieve the goal which, by their scope, intensity, and appropriateness, could reasonably be expected to obtain sufficient M/WBE participation. Adequate Good Faith Efforts also means that the Bidder actively and aggressively sought M/WBE participation. Mere *pro forma* efforts are not considered Good Faith Efforts. If adequate Good Faith Efforts have not been documented, the Government reserves the right to deem the Bidder non-responsive.

#### **A. M/WBE Solicitation**

Using the directory of certified M/WBE firms maintained by the CBPC, the Bidder shall be required to solicit subcontractor bids and material quotes from individual certified M/WBEs. The Bidder shall solicit bids and quotes from M/WBEs to perform subcontracts for a Commercially Useful Function on behalf of the Bidder. Such subcontractor solicitations shall occur in advance of bid submittal, and shall, at a minimum, furnish the following information:

- Bidder's name, address, telephone number, and email address;
- Project location name, bid solicitation number, and description;
- Description of areas of work to be subcontracted or materials to be supplied;
- Location and availability of project plans, specifications, or blueprints;
- The identity and contact information of the Bidder's contracting representative;
- Location, date, and time when subcontractor bids or quotes must be received by Bidder; and
- The proposed project timeline.

The Government may only give Bidders credit toward the subcontracting goals for M/WBE participation that is listed on the Utilization and Good Faith Efforts Affidavit, and the applicable form from the CBPC submitted with the Bid.



**Utilization and Good Faith Efforts Affidavit.** The Government Solicitation Documents for each construction contract will include a form affidavit that: (a) captures information regarding the M/WBEs and other subcontractors and suppliers that the Bidder intends to use on the contract and (b) lists the Good Faith Efforts undertaken by the Bidder to meet the subcontracting goals (the “Utilization and Good Faith Efforts Affidavit”). Failure to properly complete and submit the Utilization and Good Faith Efforts Affidavit with the bid constitutes grounds for rejection of the bid.

## **B. Good Faith Efforts Categories**

For each subcontracting goal that a Bidder has not fully met for the established contract, it must document that it has made Good Faith Efforts for each unmet goal. For each unmet subcontracting goal, **a minimum of five (5) categories below must be checked in order to have demonstrated “Good Faith Efforts”**. For building construction projects, each Bidder must earn fifty (50) points to demonstrate “Good Faith Efforts.” Each category below shall be assigned a minimum of ten (10) points. The Government will consider the quality, quantity, and intensity of the different kinds of efforts a Bidder has made. Unless otherwise stated, the categories listed below are as defined in Part D, and are listed here:

- ☐ **Contacting M/WBEs.** Bidder must contact M/WBEs in a reasonable manner to reach each subcontracting goal on a specific contract at least 10 days prior to submittal deadline/bid opening.
- ☐ **Followed up with M/WBEs.** Followed up with contacted M/WBEs subsequent to the initial contact and at least 72 hours prior to submittal deadline/bid opening either by phone, writing or in person.
- ☐ **Attendance at Pre-Bid Meeting.** To receive credit, the Bidder must attend pre-bid meetings scheduled by the Government for the contract in question.
- ☐ **Breaking Down Work.** Selecting portions of the work to be performed by M/WBEs in order to increase the likelihood that the M/WBE Goals will be achieved.
- ☐ **Working with CBPC Office or M/WBE Assistance Programs.** The Bidder must document that it worked with the available minority community organizations, minority contractors’ group, local minority business assistance offices and/or other local organizations that provide assistance in the recruitment and placement of Minority or Women Business Enterprises to solicit bids for the contract for which the bid was sought.
- ☐ **Making Plans Available.** Providing prospective M/WBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner or within 10 days before the bid proposals are due to assist them in responding to a solicitation.
- ☐ **Negotiating in Good Faith.** Negotiating in good faith with interested M/WBEs and not rejecting M/WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.
- ☐ **Bonding or Insurance Assistance on Construction Contracts.** Providing assistance to interested M/WBEs in obtaining bonding, lines of credit, or insurance as required by the

recipient or bidder; or providing alternatives to bonding or insurance for subcontractors;

- ☐ **Financial Assistance.** Providing assistance to otherwise qualified M/WBEs in need of obtaining necessary equipment, supplies, materials, loan capital, lines of credit, joint pay agreements to secure loans, supplies or letters of credit (including waiving credit that is ordinarily required), or related assistance or services. No Good Faith Effort credit will be given to an Affiliate of a Bidder as it pertains to financial assistance.
- ☐ **Joint Ventures.** Negotiating joint venture and partnership arrangements with M/WBEs in order to increase opportunities for M/WBE participation on public construction contracts. No Good Faith Effort credit will be given to an Affiliate of the Bidder as it pertains to Joint Ventures.
- ☐ **Quick Pay Commitment.** Providing quick pay agreements and policies to enable M/WBE contractors and suppliers to meet cash-flow demands. Bidder will not receive credit if Quick Pay Commitment has a statement indicating that the Bidder *will consider* entering into a Quick Pay Commitment OR the Bidder verbally communicated the Quick Pay Commitment to the subcontractor.

In addition, the Government may take into account (a) whether the Bidder's documentation reflects a clear and realistic plan for achieving the M/WBE Goals; (b) the Bidders' past performance in meeting the M/WBE Goals; and (c) the performance of other bidders in meeting the M/WBE Goals. To receive credit for some categories of "Good Faith Efforts" additional documentation may be required.

### **C. Good Faith Negotiations**

All Bidders that fail to meet a subcontracting goal must negotiate in good faith with each certified M/WBE that responds to the Bidder's solicitation or contacts the Bidder of its own accord with respect to the unmet goal(s). If the Bidder does not receive a response from the solicited subcontractors, the Bidder must notify the CBPC that no response was received.

A Bidder shall consider all subcontractor bids or quotes received from M/WBEs and will not reject such bids without sound and documented reasons based upon a thorough understanding of the prospective subcontractor's capabilities. If a subcontract is not awarded to a certified M/WBE subcontractor that has provided a bid or quote to the Bidder, the Bidder must state in writing the reasons for the denial of subcontract award. This requirement applies to the Bidder regardless of the tier of subcontracting involved.

The Government may find that a Bidder did not meet its Good Faith Negotiation obligation if in the Government's judgment, the Bidder rejects an interested M/WBE's bid for reasons other than:

- The M/WBE's bid was higher than what was proposed by the subcontractor or supplier the Bidder decided to use
- The M/WBE was not "Qualified" as defined in Part B; or
- The Business Enterprise that will be performing in place of the interested M/WBE is more qualified than the interested M/WBE, to the extent that such difference in qualification would materially impact the Bidder's bid, or

- There was a material deficiency with the interested M/WBE's bid (such as it being submitted late, containing inaccurate information, etc.).

To document Good Faith Negotiation, Bidders must complete a form that will be included in the Government Solicitation Documents. The Government may also request, on a case-by-case basis, documentation sufficient in the Government's judgment to prove that the Bidder's reasons for rejecting an interested M/WBE are valid. Bidders must provide such forms and information within the time period specified by the Government.

Failure to comply with the requirements set forth in this Section (the "Good Faith Negotiation Requirements") shall constitute grounds for rejecting a bid.

#### **IV. EXTENSIONS, FALSE STATEMENTS, AND EXPECTATIONS FOR M/WBES**

##### **A. Extensions**

The CBPC may grant a written extension of any deadline, not to include bid submittal requirements, set forth in this Section. No extension shall be valid unless documented in writing by the Government.

##### **B. False Statements or Certifications**

It shall be a violation of the ACCBI Policy and grounds for rejection of a bid and other sanctions for any Bidder to make a false or materially misleading statement or certification regarding any matter relevant to the ACCBI Policy.

##### **C. Expectations of M/WBES**

M/WBES are responsible for promoting themselves and taking the initiative to obtain work on Government contracts. Specifically, M/WBES shall:

- Monitor the Government's website for posting of contracting opportunities;
- Make every effort to establish contacts and relationships with prospective Bidders for potential future business, including attending pre-bid conferences;
- Respond promptly to solicitation requests; and
- Attend seminars, classes and workshops designed to facilitate networking and/or enhance business skills.

## **PART F: ARCHITECT & ENGINEERING (A&E) SERVICE CONTRACTS**

### **I. SCOPE**

The Unified Government of Athens-Clarke County shall provide equal opportunity for M/WBEs to compete for Architect & Engineering (A&E) Contracts for architectural and engineering services. The methodology for which the Government sets subcontracting goals is described in Part C of this Policy. This Policy shall be followed in conjunction with the Government's Purchasing and Contracting Policy along with all applicable state, federal, and local laws.

### **II. PROFESSIONAL SERVICES**

A&E Contracts include contracts for architectural and engineering services only. A Bidder may submit documentation prior to proposal selection or after a successful proposal has been selected indicating M/WBE outreach. The documentation shall not be considered in the selection of a proposal but will be used for Government documentation of availability and utilization of M/WBEs.

Documentation may be submitted in the following forms:

- (1) **Statement of Commitment and Utilization Affidavit.** The Bidder may submit with its proposal or after proposal selection (a) a commitment to meet subcontracting goals; and (b) an affidavit listing the M/WBEs it intends to use on the contract.
- (2) **Participation Plan.** The Bidder may provide a participation plan on how the Bidder plans to utilize M/WBE participation on the contract.
- (3) **Goods Faith Efforts Documentation.** As defined in Part D of this Policy.
- (4) **Other documentation of M/WBE outreach.** Any other evidence that the Bidder chooses to submit which shows that the Bidder has participated in M/WBE outreach.

Any documentation provided by a Bidder indicating M/WBE outreach or utilization will not be considered in whether a proposal is responsive nor whether the proposal is best qualified.

#### **A. Submission Requirements for Consideration**

The Government may request that Bidders submit M/WBE outreach documentation with their proposals, or at any time specified by the Government. The Government may consider the Bidder's M/WBE outreach documentation as a factor in the evaluation process, and may exclude a proposal from further consideration if the Government determines that the Bidder has not provided required documentation, has not made adequate Good Faith Efforts (if applicable), has not met the Good Faith Negotiation Requirements (if applicable) or has failed to provide a reasonable Participation Plan (if applicable). Such determination may occur before or after the proposal is sent to the Government evaluation committee.

#### **B. Self-Performance**

Bidders that intend to perform 100% of the work with an established M/WBE Goal may submit an affidavit stating that the Bidder will not subcontract elements of the project; and has the capability to perform and will perform all elements of work on this contract with its own current workforces.

Bidders that elect to fully self-perform an A&E contract where the Government has set a subcontracting goal must comply with each of the following provisions. Failure to do so will be considered as a factor in the proposal evaluation process and may result in a Proposal being excluded from consideration:

- (1) The affidavit shall be in a form provided by the Government as part of the Government Solicitation Documents, and shall affirm:
  - a) It is a normal business practice of the Bidder to perform all elements of the contract with its own workforce without the use of subcontractors; and
  - b) The Bidder in fact has demonstrated its capabilities to perform all elements of the contract with its own workforce without the use of subcontractors.
  - c) If the Bidder is not licensed to perform each and every type of work included in the contract, or if the Government has cause to believe based on past practice or other grounds that the Bidder will not be performing all work under the contract with its own current workforce, then the Government may reject the Bidder's proposal as non-responsive for non-compliance with the ACCBI Policy and may be subject to sanctions as described in this Section of this Policy.

If the Bidder provides the above requested documentation the Bidder shall not be required to comply with Good Faith Efforts in Part D or IV of this section.

### **C. Meeting Subcontracting Goals**

**1. The Government will give Bidders credit toward meeting the Subcontracting Goals** at bid only for those M/WBEs that:

- Are certified with the Government as M/WBEs as of the proposal due date;
- With respect to M/WBEs, are listed in the Government's Vendor Availability Database as being at least 51% owned by individuals in one of the M/WBE categories included in the MBE or WBE Goal set for that project (for instance, if a MBE Goal has been set for African American, Native American and Hispanic MBEs, subcontracts awarded to Asian MBEs will not count toward the MBE Goal);
- Will actually perform a Commercially Useful Function as defined in Part B (which means, among other things, an MWSBE acting solely as a conduit will not be counted); and
- Will perform within the area(s) for which they are certified

**2. Affiliates of the Bidder.** The Government will not give Good Faith Effort credit toward subcontracting goals for subcontracting to M/WBEs that are found to be Affiliates of the Bidder prior to the proposal due date.

**3. M/WBE Decertification.** If an M/WBE is decertified between proposal due date and contract award, the Government will not allow credit toward the subcontracting goal for amounts

committed to that M/WBE, but will allow the Bidder to replace the decertified M/WBE with a certified M/WBE, unless the certification was based on false or fraudulent information of which the Bidder had or should have had knowledge. However, the Government may refuse to allow the substitution and reject the proposal if the M/WBE is decertified for being an Affiliate or is found to be an Affiliate of the Bidder (even if not decertified). Bidders shall be deemed to have knowledge of all ACCBI Policy provisions, including those relating to Affiliates.

An M/WBE may count the work it intends to perform with its own current workforces towards the M/WBE Subcontracting Goals to the extent the requirements set forth in this section are satisfied.

#### **4. Using M/WSBEs the Government Did Not List in Government Solicitation Documents.**

Bidders shall receive credit for using M/WSBEs that the Government did not list in the Government Solicitation Documents, as long as the requirements set forth above are met.

### **III. GOOD FAITH EFFORTS AND NEGOTIATIONS**

#### **A. Good Faith Efforts**

When the Government requires a Good Faith Efforts Affidavit, the Good Faith Efforts undertaken by the Bidder will be considered as a factor in the evaluation process. Failure to undertake Good Faith Efforts or submit the Good Faith Efforts Affidavit where required, may result in the Bidder's proposal being rejected. The focus will be on the likely effectiveness of steps taken. Mere *pro forma* efforts will not be sufficient. Unless otherwise stated the factors below are defined further in Part D of this Policy. Factors that may be considered include, but are not limited to:

- (l) **Contacting M/WBEs.** Did the Bidder contact M/WBEs in a reasonable manner to reach each subcontracting goal on a specific contract? Factors include, but are not limited to:
  - (a) The number of M/WBEs contacted;
  - (b) Contacting M/WBEs that could reasonably have been expected to submit a quote and that were known to the Bidder or available on the Government's maintained list;
  - (c) Soliciting through all reasonable and available means the interest of certified M/WBEs who have the capability to perform the scope of work sufficient to meet the goals;
  - (d) The Bidder solicits this interest at least ten (10) days prior to the Proposal due date to allow the M/WBEs to respond to the solicitation;
  - (e) Solicitation provides the opportunity to M/WBEs within the 31-county area identified by the Disparity Study, where the project is located;
  - (f) Whether contacts were made and were documented in a verifiable way;
  - (g) Whether the Bidder responded promptly and adequately to inquiries from M/WBEs; and

- (h) Whether the Bidder made follow-up contact with M/WBEs that did not respond to the Bidder's initial contact.
- (2) **Attendance at Pre-Proposal.** Did the Bidder attend pre-proposal meetings scheduled by the Government for the contract in question?
  - (3) **Breaking Down Work.** Did the Bidder break down or combine portions of the work to be performed by M/WBEs in an economically feasible way in order to increase M/WBE participation?
  - (4) **Working with M/WBE Assistance Programs.** Did the Bidder document that it worked with a M/WBE assistance organization, as applicable, to provide assistance in recruiting M/WBEs for the Contract?
  - (5) **Negotiating in Good Faith.** Did the Bidder document having engaged in at least some back-and-forth negotiation between itself and interested M/WBEs?
  - (6) **Bonding or Insurance Assistance on Construction Contract.** Did the Bidder provide significant and meaningful assistance to an M/WBE in getting required bonding or insurance coverage for the contract at issue or provide alternatives to bonding or insurance for M/WBEs? No Good Faith Effort credit will be given for assistance to an Affiliate of the Bidder as it pertains to bonding or insurance assistance
  - (7) **Financial Assistance.** Did the Bidder provide significant and meaningful assistance to an M/WBE of the following nature in connection with the contract: (a) assistance in obtaining equipment, a loan, capital, lines of credit; (b) joint pay agreements or guaranties to secure loans, the purchase of supplies, or letters of credit, including waiving credit that is ordinarily required; or (c) assistance in obtaining the same unit pricing with the Bidder's suppliers as the M/WBE? No Good Faith Effort credit will be given for assistance provided to an Affiliate of the Bidder as it pertains to financial assistance.
  - (8) **Joint Ventures.** To receive credit for this Good Faith Effort, the Bidder must demonstrate that it negotiated a Joint Venture or partnership arrangement with one or more M/WBEs as applicable on the contract, by submitting the applicable form from the ACC Purchasing Division.
  - (9) **Quick Pay Commitment.** To receive credit for this Good Faith Effort, the Bidder must provide the Government with (a) a copy of the Bidder's Quick Pay Commitment related to the specific project; (b) documentation indicating that all M/WBEs covered under the contract have received a written copy of the Quick Payment Commitment contract prior to the proposal due date;
  - (10) **Other Evidence of Good Faith Efforts.** Any other evidence that the Bidder submits which shows that the bidder has made reasonable Good Faith Efforts to meet the M/WBE Goals.

In addition to the above, the Government may also take into account (1) the Bidder's past performance in meeting M/WBE Goals; and (2) the performance of other Bidders in meeting the established subcontracting goals on the contract up for award. For example, when a Bidder fails to meet a subcontracting goal but other Bidders met it, the Government may reasonably raise the

question of whether, with additional reasonable efforts, the Bidder in question could have met the goal.

## **B. Good Faith Negotiations**

When one or more subcontracting goals are set for a contract, Bidders that fail to fully meet such goals must negotiate in good faith with each M/WBE that responds to the Bidder's solicitations or contacts the Bidder of its own accord. The Government may also require that a Bidder comply with this Section in the absence of subcontracting goals.

The Government may find that a Bidder did not meet its Good Faith Negotiation obligation if, in the Government's judgment, the Bidder rejects an interested M/WBE's proposal for reasons other than:

- (1) The M/WBE's proposal was higher than what was proposed by the subcontractor or supplier the Bidder decided to use;
- (2) The M/WBE was not "Qualified" as defined in Part B; or
- (3) The Business Enterprise that will be performing in place of the interested M/WBE is more qualified than the interested M/WBE, to the extent that such difference in qualification would materially impact the Bidder's proposal, or
- (4) There was a material deficiency with the interested M/WBE's proposal (such as it being submitted late, containing inaccurate information, etc.).

To document Good Faith Negotiation, the Government may require Bidders to complete a form that will be included in the Government Solicitation Documents. The Government may also request on a case-by-case basis documentation sufficient in the Government's judgment to prove that the Bidder's reasons for rejecting an interested M/WBE are valid. Bidders must provide such forms and information within the time period specified by the Government.

Failure to comply with the requirements set forth in this Section (the "Good Faith Negotiation") shall constitute grounds for rejecting a proposal.

## **IV. EXTENSIONS, FALSE STATEMENTS, AND EXPECTATIONS OF MWSBEs**

### **A. Extensions**

The CBPC may grant a written extension of any deadline set forth in this section. No extensions shall be valid unless documented in writing by the Government.

### **B. False Statements or Certifications**

It shall be a violation of the ACCBI Policy and grounds for rejection of a proposal and other sanctions for any Bidder to make false statements or materially misleading statements, or certification regarding any matter relevant to the ACCBI Policy.

### **C. Expectations of M/WBEs**



M/WBEs are responsible for promoting themselves and taking the initiative to obtain work on Government Contracts. Specifically, M/WBEs are encouraged to:

- Monitor the Government's website for posting of contracting opportunities;
- Make every effort to establish contacts and relationships with prospective Bidders for potential future business, including attending pre-bid conferences;
- Respond promptly to solicitation requests; and
- Attend seminars, classes and workshops designed to facilitate networking and / or enhance business skills.

## PART G: RESPONSIBILITY OF M/WBEs

### I. CERTIFICATION AND REGISTRATION

#### A. Certification by ACCGov for M/WBEs

To be certified with the Government as an M/WBE and comply with the ACCBI Policy, a business enterprise must meet the following requirements:

1. **Ownership.** The business enterprise must be owned by an “Eligible Owner” (a) to receive WBE certification, the business enterprise must be at least fifty-one percent (51%) owned by one or more persons who are female; and (b) to receive MBE certification, the business enterprise must be at least fifty-one percent (51%) owned by one or more persons who are members of one of the groups set forth below:

MBE Category	Owned or Controlled by a Person or Persons
<b>African American or Black</b>	Having origins in any of the black racial groups of Africa
<b>Hispanic</b>	Of Spanish or Portuguese culture having origins in Mexico, South or Central America, or the Caribbean islands, regardless of race
<b>Asian</b>	Having origins in any of the original peoples of the Far East, Southeast Asia, Asia, Indian continent, or Pacific islands
<b>Native American or American Indian</b>	Having origins in any of the indigenous peoples of North America

2. **Licensed and For-Profit.** Non-profit organizations cannot become certified as MBEs or WBEs. To obtain MBE or WBE certification, the applicant business enterprise must: (a) be a legal entity authorized to do business in the State of Georgia; and (b) demonstrate that the applicant business enterprise, its employees, or eligible owners hold each business or professional license required for the operation of each scope of business for which the applicant business enterprise seeks MBE or WBE certification;
3. **Management and Control.** The daily business operations of the applicant business enterprise shall be managed and controlled by one or more eligible owners. The eligible owner(s) shall be deemed to manage and control the daily business operations only if:
  - a. Their management and control is specifically demonstrated to be real, substantial, and continuing; and goes beyond the *pro forma* ownership of the applicant business as reflected in its ownership documents;
  - b. They possess the power to and actually direct the management and policies of the applicant business;

- c. They make both routine and major decisions on matters of management, policy, and operations; AND
- d. They are not subject to formal or informal restrictions that are inconsistent with the customary discretion of majority owners.

## **B. Proof of Certification by another certifying entity for M/WBEs**

Proof of certification by the following certifying entities may be accepted:

- The State of Georgia and its entities (for example, Georgia Department of Transportation)
- Other US states or territories
- The Federal Government

## **C. Verification of Certification**

The CBPC shall establish reasonable procedures and methods for the registration of applicant business enterprises as M/WBEs. The CBPC shall be responsible for developing, issuing, and reviewing all certification forms and applications in a manner that is consistent with the standards, definitions, and intent established by this Policy.

The CBPC shall also maintain an automated and up-to-date Vendor Availability Database of all certified M/WBE firms that is readily available to the general public, as well as Government personnel. Verification of certification of all M/WBE firms shall be the responsibility of the Project Manager for the Operating Department initiating the solicitation.

The CBPC may interview all persons upon whom eligibility for certification is based and is empowered to interview such other persons and conduct such onsite visits and investigations as may be appropriate in its sole discretion to verify eligibility for certification.

A Business Enterprise wishing to become or remain Certified as a M/WBE shall cooperate with the CBPC in supplying additional information that may be requested in order to make a determination.

If an M/WBE fails to respond to the CBPC's request for information within (a) either the time period specified in the notice requesting information or (b) if no time is specified in the notice, within 15 days subsequent to the date of the notice, the Government may immediately suspend eligibility and/or terminate M/WBE Certification.

Unless otherwise revised by the Government, an M/WBE certification shall be valid for as long as the M/WBE is certified as such by the State of Georgia or by the Federal Government.

## **D. Appeal of M/WBE Designation**

If a business enterprise feels that it has been unfairly denied M/WBE status or that its M/WBE status has been wrongfully terminated by the Government, the business enterprise shall submit its concerns in writing to the CBPC, within 30 days after the aggrieved incident. The CBPC shall

issue a decision within ten (10) days of receiving a complaint. If the aggrieved party is dissatisfied with the CBPC decision, the aggrieved party may appeal the decision within ten (10) days by sending written notice to the Manager to review the decision. The Notices of Appeal submitted to the Manager shall identify: (1) the decision being appealed, and (2) each reason why the aggrieved party takes issue with the decision. The Manager shall review the appeal and issue a decision within a reasonable time. All decisions made by the Manager shall be final. This paragraph shall not be construed to create a right of standing that does not otherwise exist under Georgia law.

## **II. CERTIFICATION AND EXPIRATION OF M/WBE FIRMS**

### **A. Expiration of M/WBE Certification**

An M/WBE's certification shall expire under the following circumstances:

1. M/WBE certification shall be valid for four (4) years from the date of business enterprise designation granted by ACCGov, unless there is a change in the business ownership, management, or control of daily business operations that affects M/WBE certification status, at which time the business enterprise will need to reapply with the CBPC for recertification. While not required for ACCGov certification, an M/WBE certified with the State of Georgia, another US state or territory, or the Federal Government shall also be certified with ACCGov so long as the certification is valid, subject to the constraints outlined in Part G, Section I.C. above.
2. A business enterprise's certification shall expire when it no longer meets the eligibility for certification that has been set out above for M/WBEs. If a business enterprise's certification expires under these circumstances it shall follow the reapplication process as set out below for recertification.

## **III. SUSPENSION, REVOCATION, OR MODIFICATION**

### **A. Suspension and Revocation**

The CBPC shall have the power to suspend or revoke any M/WBE certification issued under this Policy and may suspend an M/WBE's participation from counting toward an M/WBE Goal if:

- The M/WBE has by false or fraudulent representations obtained M/WBE Certification;
- The CBPC at any time determines that the M/WBE is not eligible for registration due to Affiliate status or other reasons;
- The M/WBE is found to have committed any act which constitutes improper, fraudulent or dishonest dealing;
- The M/WBE acts as a conduit or fails to perform a Commercially Useful Function on a Government project;
- The M/WBE fails to comply with the provisions of the ACCBI Policy, fails to submit information requested by the Government, or fails to cooperate in investigations; or

- The M/WBE fails to actively participate in Government contracting (such as by responding to solicitations) for an extended time, determined solely by ACCGov, without justification deemed adequate by the CBPC.

The CBPC shall make all decisions regarding the suspension or revocation of a M/WBE's certification, and the duration of such suspension or revocation. The CBPC may consider a M/WBE's history of performance on Government projects when determining whether to suspend or revoke M/WBE certification status.

## **B. Modification**

The CBPC may further modify the list of areas for which an M/WBE is certified if the M/WBE regularly fails to submit bids or proposals for work in a particular area, or if it becomes apparent that the M/WBE is not qualified to perform work in a particular area. However, nothing in this ACCBI Policy or in any action or inaction by the CBPC shall be deemed a representation or certification that a particular M/WBE is qualified to perform work in a particular area.

## PART H: POST CONTRACT AWARD REQUIREMENTS

### I. SCOPE

This document governs compliance with the ACCBI Policy after contract award. It applies to and is incorporated into all Government contracts for which a subcontracting goal has been established or negotiated (which includes all construction contracts over \$300,000 and A&E Contracts over \$50,000).

### II. COMMITMENT TO SUBCONTRACTING GOALS

**Contractors shall have an affirmative, ongoing obligation to meet or exceed the Committed Subcontracting Goals for the duration of the Contract.** Unless exempted by another Section of this Policy, the Government may deem a Contractor to be in violation of the ACCBI Policy. The Government may evaluate the Contractor's future participation in Government contracting, if at any time the Government determines that:

- The Contractor will not meet a committed subcontracting goal; and
- The reasons for the Contractor's failure are, in the Government's judgment solely, within the Contractor's control.

For example, if a Contractor does not meet the committed subcontracting goal because the Contractor terminated the M/WBE without cause, or if the Contractor caused the M/WBE to withdraw from the project without justification, then the Government could find the Contractor to be in violation and consider them a non-responsible bidder on future Government projects.

**Exceptions.** A Contractor shall not be deemed in violation of this Policy for failure to meet the committed subcontracting goal to the extent such failure is directly attributable to:

- **The Government reducing the scope of a Contract** so as to eliminate or reduce work that was going to be performed by M/WBEs (whether through a change order, contract amendment, force account or otherwise);
- **A M/WBE's voluntary withdrawal** from the project if the Contractor demonstrates that such withdrawal was beyond the Contractor's reasonable control, so long as the Contractor complied with the Good Faith Efforts to replace the M/WBE with another M/WBE; or
- **Termination or reduction in the work of an M/WBE**, if the Contractor demonstrates that such termination was consistent with the terms of this Policy, and that the Contractor complied with the Good Faith Efforts to replace the M/WBE with another M/WBE. Refer to the good cause termination standard in Section IV below.

For purposes of meeting the committed subcontracting goals, Contractors shall only receive Good Faith Effort credit for the amount of M/WBE participation that constitutes a Commercially Useful Function.

### **III. CHANGE ORDERS**

After an award, if the change order involves items of work already included in a M/WBE's subcontract, or the work is materially the same as the work included in the M/WBE's subcontract, the M/WBE is to have the opportunity to perform the work unless it is documented that the M/WBE is unable or unwilling to perform the work.

If a change order involves work that is not already included in a M/WBE's subcontract, or the work is not materially the same as the work included in the M/WBE's subcontract, and/or the work is not already included in the scope of the project being performed by the Contractor or other non-M/WBE subcontractors, the Contractor shall make Good Faith Efforts to obtain M/WBE participation equal to the existing percentage contract goal.

Under certain circumstances, a post-award waiver of Good Faith Efforts may be granted by the CBPC and the waiver must be documented in writing.

### **IV. TERMINATIONS**

After an award, a Contractor is required to notify the Government of any changes in their M/WBE utilization and/or M/WBE subcontracting plan. The Government will evaluate (a) whether there was good cause to terminate the M/WBE and (b) whether the Contractor participated in subsequent M/WBE outreach to reach the committed subcontracting goals. The Government's evaluation of the Contractor's efforts may provide for future sanctions as indicated in Part J.

Good cause does not exist if the Contractor seeks to terminate an M/WBE represented in the Contractor's M/WBE commitment so the Contractor can self-perform or transfer to another subcontractor work originally committed to the M/WBE.

Good cause includes, but is not limited to the following circumstances:

- The M/WBE subcontractor fails or refuses to execute a written contract;
- The M/WBE subcontractor fails or refuses to perform the work of its subcontract in a manner consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the M/WBE subcontractor to perform its work in the subcontract results from the bad faith or discriminatory action of the Contractor;
- The M/WBE subcontractor voluntarily withdraws from the project and provides to the Contractor written notice of its withdrawal;
- The M/WBE is ineligible to receive M/WBE credit for the type of work required;
- An M/WBE owner dies or becomes disabled with the result that the M/WBE subcontractor is unable to complete its work on the contract; or
- Other documented good cause that the Government determines compels the termination of the M/WBE subcontract.

Any substitutions or terminations of M/WBE firms, included in the committed subcontracting goals, shall be submitted in writing to the CBPC. The submission shall include the following

information:

- The date the contractor determined the M/WBE to be unwilling, unable or ineligible to perform;
- A brief statement of facts describing the situation and citing specific actions or inaction by the M/WBE firm giving rise to the Contractor's assertion that the M/WBE firm is unwilling, unable, or ineligible to perform;
- A brief statement of the subsequent Good Faith Efforts undertaken by the contractor to enable the M/WBE firm to perform or a brief statement as to why Good Faith Efforts were not undertaken by the Contractor to meet the committed M/WBE Goal;
- The total dollar amount currently paid for work performed by the M/WBE firm;
- The total dollar amount remaining to be paid to the M/WBE firm for work completed, but for which the M/WBE firm has not received payment, and over which the Contractor and the M/WBE firm have no dispute; and
- The M/WBE's response to the notice of intent to terminate.

If there is no response from the M/WBE within the time allowed in the notice of intent to terminate, the Contractor shall state that no response was received. The CBPC will consider both the Contractor's submission and the M/WBE's response in reviewing future participation within Government contracts when applying the ACCBI Policy for both the Contractor and the M/WBE.



## **PART I: DETERMINATION OF POLICY COMPLIANCE**

### **I. SCOPE**

The CBPC shall review all contracts for compliance with the ACCBI Policy. This review shall include, but not be limited to, whether the committed subcontracting goals (in both dollar amounts and percentages) are maintained over the duration of the contract, whether the Contractor improperly terminated, replaced, or reduced the work of an M/WBE, whether the Contractor complied with this Policy regarding any contract amendments, renewals or additions to scope, whether M/WBEs on the contract performed a Commercially Useful Function, etc. The CBPC, may conduct such review on its own, or may hire consultants to assist in such a process.

### **II. CONTRACTOR AND SUBCONTRACTOR NON-COMPLIANCE**

Contracting staff of each Government Originating Department, with assistance from the CBPC when necessary, shall monitor compliance with these Policy element requirements during the term of the contract. If it is determined that there is cause to believe that a Contractor or Subcontractor has failed to comply with any of the requirements of this Policy or with the contract provisions pertaining to M/WBE utilization, the CBPC shall notify the Originating Department and the Contractor. The Government may require such reports, information and documentation from Contractors, Respondents, and the Director of any Government Department, division, or office as are reasonably necessary to determine compliance with the Policy requirements within fifteen (15) calendar days after the notice of noncompliance. If the requested materials are not received within fifteen (15) calendar days, then a finding of noncompliance is determined, and appropriate penalties and sanctions as indicated in Part J will apply.

When the CBPC determines that a Contractor has violated the ACCBI Policy, the CBPC shall make a recommendation to the Originating Department Director regarding appropriate remedies for the Government to exercise in that situation and the Department Director is responsible for the affected procurement process or contract shall make the decision as to what remedies will be exercised.

## **PART J: SANCTION AND APPEAL PROCEDURES**

### **I. PENALTIES AND SANCTION PROCEDURE**

Upon determination and recommendation of sanctions by the Manager regarding the failure of a Contractor, Vendor, Respondent or other business representative to comply with any portion of this Policy, the non-complying party shall be subject to the following penalties:

- Determination as non-responsible or non-responsive bid which may be considered in the award of future contracts to the Bidder; and
- Refusal to award contracts to the Bidder on the basis of being a non-responsible bidder for a period not to exceed one year from the date of notice.

It is a violation of the ACCBI Policy to:

- Fraudulently obtain, retain or attempt to obtain, retain or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain certification and registration as an MBE, or WBE under this Policy;
- Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations; or make use of any false writing or document; knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of this Policy;
- Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested registration as an M/WBE;
- Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of this Policy; or
- Make false statements to any entity that any other entity is or is not certified as an M/WBE for purposes of this Policy.

Any person who violates the provisions of this section shall be subject to these sanctions, as well as any other remedies available under law up to the maximum penalty provided by law.

### **II. APPEAL PROCEDURE**

Any person or entity who is the subject of and is directly and adversely affected by a determination of the CBPC may present such an appeal to the CBPC within ten (10) days of being notified of bid results and/or the Government's intent to award.

The CBPC will review the grievance and supporting evidence and make a written response to the appellant within ten (10) business days of receipt of appeal.

In the event the appellant is not satisfied, said appellant may immediately appeal the grievance by

filing a written description thereof and supporting evidence with the Manager's Office. The Manager's Office or designee shall hear the grievance within thirty (30) business days of the initial grievance documentation and shall make a decision thereon.

The responsible Originating Department involved shall also submit a written response and supporting documentation to the Manager's Office for review at least three (3) days prior to the appeal being heard.

Throughout the appeal procedure and until such time as the appellant's appeal is resolved or pending the final decision of the Manager, no awards shall be made.

Notwithstanding the foregoing, a person or entity seeking review of a decision relating to a bid process must notify the CBPC in writing of the request for review within three (3) business days after the person or entity first learned of the decision for which review is sought. For instance, if a Bidder learns at 10:00 a.m. on Wednesday, April 2 that the Government is rejecting its bid due to non-compliance with this Policy, and the bid award is set for the following Wednesday, April 9, the Bidder must request a review in writing from the CBPC by 10:00 a.m. Friday, April 4.

This paragraph shall not be construed to create a right of standing that does not otherwise exist under Georgia law.