

ADMINISTRATIVE POLICIES AND PROCEDURES

SUBJECT: LOCAL BUSINESS ENTERPRISE (LBE) OUTREACH PROGRAM FOR
USE ON ALL CITY AND PUBLIC FINANCING AND ECONOMIC
DEVELOPMENT AUTHORITY/PARKING AUTHORITY PUBLIC WORKS
PROJECTS

Effective: January 3, 2005 (Replaces policy dated September 1, 1997 and November 1,
1995)

PURPOSE:

The Council adopted a Public Works Local Business Enterprise Outreach Program. This policy is to implement the Council's Outreach Program.

The City is committed to insuring a full and equitable participation by LBE's in the provision of public works projects City or Agency.

POLICY:

All Department Managers are responsible for advising and training their respective employees on this policy.

(See attached Local Business Enterprise (LBE) Participation policy.)

APPROVED:


CITY MANAGER

CITY OF MERCED
LOCAL BUSINESS ENTERPRISE (LBE) PARTICIPATION
PROJECT NUMBER
PROJECT NAME

A. GENERAL

This project is subject to the policies and requirements established by the City of Merced. The City is committed to ensuring full and equitable participation by Local Business Enterprises (LBEs) in the provision of all goods and services to the City or Agency on a contractual basis. This outreach program is set forth in these Special Provisions. Bidders shall be fully informed concerning the requirements of this program. Failure to comply with the Good Faith Effort Outreach Program will render the bid non-responsive.

Please note that in accordance with State law, the bidder is required to fill out the list of subcontractors (page ____) at time of bid for any branch of work equal to one-half of one percent of total contract price or \$10,000.00, whichever is greater, that is to be accomplished by persons or companies other than the general contractor. This requirement is considered a totally separate issue from meeting the LBE requirements.

B. POLICY

The subcontracting outreach policy requires the bidder of this project to make a "Good Faith Effort" to obtain sub-bid participation by LBEs which is anticipated by the City to produce the level of LBE participation as shown in the "Notice Inviting Bids".

C. DEFINITIONS

1. Local Business Enterprise (LBE): An LBE is defined as a business firm with a valid non-delinquent City of Merced business license and with fixed offices or distribution points within the County of Merced.
2. Certification as an LBE: A business is automatically considered a certified LBE with the City of Merced if the business has a permanent physical location within Merced County and has an active City business license.
3. Good Faith Effort: The bidder must take affirmative steps prior to bid opening to ensure that a maximum effort is made to recruit LBE sub-bidder/subcontractors. LBEs must be considered along with other business enterprises whenever possible as sources of supplies, construction and other services. The required affirmative steps for Good Faith Effort Certification and Documentation are outlined in Paragraph D herein.

4. Subcontractor: For the purpose of this program, the term "Subcontractor" denotes an agreement between the prime Contractor and an individual, firm or corporation for the performance of a particular portion(s) of the work for which the prime Contractor has obligated itself. Subcontractors must have a valid California Contractor's License or Professional License. For purposes of meeting the LBE requirement, other work including but not limited to trucking, equipment rentals, or any service rendered by local firms for the project shall also be included.
5. LBE Participation Credit: This applies to recognition as an LBE.
 - a. Work performed by a prime contractor who is an LBE is credited 100%
 - b. Work performed by a prime Contractor who is not an LBE will not be considered for credit in computing any expected levels of LBE participation established for this project. The prime Contractor will be required to make good faith efforts to obtain reasonably expected participation levels through subcontracting or materials and supplies acquisition.
 - c. Credit for materials and/or supplies purchased locally shall be considered at 100% of the amount to be paid to the local vendor for such materials/supplies in computing the expected levels of LBE participation.

D. GOOD FAITH EFFORT CERTIFICATION AND DOCUMENTATION

It is the policy of the City of Merced to provide LBEs an equal opportunity to participate in the performance of all City contracts. Bidders shall assist the City in implementing this policy by taking all reasonable steps to ensure that any qualified available business enterprise including LBEs, have an equal opportunity to compete for and participate in City contracts. A bidder's good faith efforts to reach out to LBEs shall be determined from documentation of the level of effort put into achieving the following factors. Certification of Good Faith Effort must be returned with the bid. The low bidder shall submit detailed Good Faith Effort Documentation by 5:00 P.M. within two working days after the bid opening to the Engineering Department, 678 West 18th Street, Merced, California, 95340. Failure to submit the required Good Faith Effort Documentation by 5:00 P.M. within two working days after the day of the bid opening will render the bid non-responsive. Any other bidders who may be considered for award in the event that the low bidder is considered non-responsive shall submit the detailed Good Faith Effort Documentation by 5:00 P.M. within two working days after receipt of a request from the Engineering Department.

Good faith shall be determined by the following:

1. The bidder has made a good faith effort to obtain sub-bid participation by LBEs that could reasonably be expected to produce a level of participation by LBEs, as called for in the Notice Inviting Bids.

2. The bidder has identified and selected specific work items in the project to be performed by sub-bidders/subcontractors in order to provide an opportunity for participation by LBEs. Upon making this determination, the bidder subdivided the total contract work requirements into smaller portions or quantities to permit maximum active participation of LBEs. If the bidder has identified an amount of subcontracting work less than the proposed LBE goal or intends to do all of the project with his own forces, this shall not disqualify his bid. However, the bidder should make a good faith effort to maximize use of local services.
3. The City will provide a plan holder's list for this project upon request to the Engineering Department, phone (209) 385-6846 and provide outreach to local businesses regarding subcontracting opportunities through the Building Exchanges. However, the bidder should also provide written notice of its interest in receiving sub-bids on the contract to those business enterprises, including LBEs having an interest in participation in the selected work items, through builder's exchanges and the trade press.
4. The bidder has documented efforts to follow-up initial solicitations of sub-bid interest by contacting the affected business enterprises to determine with certainty whether said enterprises were interested in performing specific portions of the project work.
5. The bidder has negotiated in good faith with interested LBEs and did not unjustifiably reject as unsatisfactory bids or proposals prepared by any enterprise, as determined by the Engineering Department. As documentation the bidder must submit a list of all sub-bidders for each item of work solicited, including dollar amounts of potential work for LBEs.

The anticipated levels of LBE participation shall not by itself become the basis for any bidder's disqualification or determination of lack of Good Faith Effort. Adequacy of a bidder's good faith effort will be determined by the City Engineer after consideration of the factors of good faith as set forth above. Attached hereto is a copy of the Certification of Good Faith Effort due with the bid and the detailed evaluation sheet (Good Faith Effort Documentation) used by the City to assist in determining the adequacy of a bidders good faith effort.

All Bidders shall submit a completed Certification of Good Faith Effort with their bid. Detailed Good Faith Effort Documentation may be submitted with the bid or shall be submitted by the low bidder by 5:00 P.M. within two working days after the day of the bid opening. Failure to do so will render the bid non-responsive. The Engineering Department, in its review of the Good Faith Effort Documentation may request additional information to validate and/or clarify that a good faith effort was adequately made. Such information shall be submitted promptly upon request. If the low bid is considered non-responsive, additional bidders will be asked to provide Good Faith effort Documentation by 5:00 P.M. within two days after the day of receipt of request from the Engineering Department.

E. AWARD OF CONTRACT

The City reserves the right to reject any and all bids. The award of a contract will be to the lowest responsible bidder whose proposal complies with all requirements prescribed herein. This includes compliance with the required good faith effort outreach program. A positive and adequate demonstration to the satisfaction of the City of a good faith effort is a condition for being eligible for award of the contract.

In the event that the City considers awarding away from the apparent low bidder because of the bidder's failure to satisfy the City with its good faith efforts, the City shall, if requested, and prior to the award of the contract, afford the bidder an opportunity to present further evidence to the City of the bidder's good faith effort.

(This form must be returned with bid)

**CITY OF MERCED
PROJECT NUMBER**

PROJECT NAME

CERTIFICATION OF GOOD FAITH EFFORT

Bidders are required to initial the underlined space provided to the left of each applicable provision if the bidder achieved compliance and submit this certification checklist with the bid to the Office of the Purchasing Agent, at 2525 "O" Street, Merced, California 95340. Failure to submit the required checklist with the bid will render the bid non-responsive.

1. _____ The bidder is a certified Local Business Enterprise and is therefore automatically qualified for 100% credit. No other portions of this Certification of Good Faith Effort form (**except date, signature and contractor name**) are required to be filled out and detailed documentation is not required

(If item 1 above is not checked, please proceed)

2. _____ The bidder is not a Local Business Enterprise. The bidder hereby certifies that his actual LBE participation, estimated at _____%, exceeds the goal listed in the Notice Inviting Bids. No other portions of this Certification of Good Faith Effort form (**except date, signature and contractor name**) are required to be filled out. Within two days after bid opening, only item 7 of the detailed Good Faith Effort Documentation, listing LBEs who will be subcontractors on this project, is required if bidder is the low bidder. (If the bidder has checked this item and after the bids are opened, it is determined that the bidder has not actually met the goal, the bidder must submit a new certification form completely documenting the bidder has made a good faith effort as required below.)

(If item 1 or 2 in not checked, you must complete the remainder of this form)

3. _____ The bidder has made a good faith effort to obtain sub-bid participation by LBEs which could reasonably be expected to produce a level of participation by LBEs as called for in the Notice Inviting Bids.

4. _____ The bidder has identified and selected specific work items in the project to be performed by subbidder/subcontractors in order to provide an opportunity for participation by LBEs. Upon making this determination, the bidder subdivided the total contract work requirements into smaller portions or quantities to permit maximum active participation of LBEs. If the bidder's total identified opportunities for subcontracting are less than the requested participation, this shall not disqualify the bid. However, bidder must make a good faith effort on all identified subcontracting.
5. _____ The bidder has documented efforts to follow-up initial solicitations of sub-bid interest by contacting the affected business enterprises to determine with certainty whether said enterprises were interested in performing specific portions of the project work.
6. _____ The bidder has negotiated in good faith with interested LBEs and did not unjustifiably reject as unsatisfactory bids or proposals prepared by any enterprise, as determined by the City. As documentation due after the bid, the bidder must submit a list of all sub-bidders for each item of work solicited, including dollar amounts of potential work for LBEs.
7. _____ The bidder estimates that his total LBE participation will be _____%. (Actual amount to be provided with detailed documentation due after bid).

CERTIFICATION

I have used this checklist and certify that positive steps were taken and documented to ensure that all available LBEs have had an equal opportunity to compete for and participate in this project. I am submitting this Certification of Good Faith Effort checklist herewith as evidence of the "Good Faith Effort" made. I understand that if I am the low bidder I am required to submit detailed documentation (unless I am a certified LBE or only the list of LBE's if I have met the goal) by 5:00 P.M. within two working days after the day of the bid opening or if my bid is to be considered for award, I am required to submit detailed documentation by 5:00 P.M. within two working days after receiving the request from the Engineering Department. I understand that if my documentation does not demonstrate that I have complied with the requirements of the "Good Faith Effort Outreach Program" as required by these bid specifications or if I do not submit adequate documentation, that my bid will be deemed non-responsive by the City.

Date

Officer's Signature

Firm Name:

Officer's Name and Title (Type or Print)

**(Detailed documentation to be submitted within two working days
after bid opening by low bidder or as requested)**

CITY OF MERCED

PROJECT NUMBER

PROJECT NAME

Name of Bidder: _____

GOOD FAITH EFFORT DOCUMENTATION

1. If Bidder is an LBE, the bidder is not required to submit this form. **If Bidder is not an LBE, and has actually met the required LBE goal, he only needs to fill out item 7 of this form and sign and date this form.**

2. List names and dates of advertisement of each newspaper and trade paper in which the bidder placed a request for LBE participation for this project.

3. List names and dates of all certified LBEs contacted or who contacted you for this project and the dates and methods used for the follow-up solicitation.

Name of LBE Solicited	Date of Solicitation	Name of LBE Solicited	Date of Solicitation
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Name of
LBE Solicited

Date of
Solicitation

Name of
LBE Solicited

Date of
Solicitation

4. List items of work for which the bidder subbids or materials to be supplied by LBEs. If work items have been broken down into smaller portions, please indicate them below.

Items of Work

Items of Supplies

5. List the names of LBEs who submitted for any of the work indicated above which were not accepted, a summary of the bidder's discussions and/or negotiations with them, the name of the subcontractor or supplier that was selected for that portion of the work, and the reasons for the bidder's choice.

a. Names of Rejected LBEs:

b. Summary of Discussions and/or Negotiations:

- c. List Names of subcontractors or suppliers that were selected over the rejected LBEs listed above and the reasons for that choice:

6. List any additional data to support a demonstration of good faith effort:

NOTE: USE ADDITIONAL SHEETS OF PAPER IF NECESSARY. APPROPRIATE DOCUMENTATION SUCH AS COPIES OF NEWSPAPER ADS, LETTERS SOLICITING BIDS, AND TELEPHONE LOGS SHOULD ACCOMPANY THIS FORM.

7. LOCAL BUSINESS ENTERPRISE (LBE) PARTICIPATION CALCULATIONS

CITY OF MERCED

PROJECT NUMBER

PROJECT NAME

Name of Bidder: _____

WORK ITEMS

<u>IDENTIFIED WORK ITEMS</u>	<u>LBE'S NAME</u>	<u>ITEM TOTAL</u>
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
TOTAL OF WORK ITEMS		\$ _____

SUPPLY ITEMS

<u>IDENTIFIED SUPPLY ITEMS</u>	<u>LBE'S NAME</u>	<u>ITEM TOTAL</u>
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
TOTAL OF SUPPLY ITEMS		\$ _____

CALCULATIONS

- A) Total Amount of Work Items = \$ _____
- B) Total Amount of Supply Items = \$ _____
- C) Total Amount of LBE Recognition (A + B) = \$ _____
- D) Total Bid Amount From Bid Proposal = \$ _____
- E) Percent LBE Participation (C/D x 100) = _____

To the best of my knowledge, I believe the LBE Participation Calculations are true and accurate.

Signature of Bidder

Name of Bidder (Print or Type)

Date