

SUPPLIER DIVERSITY PROGRAM POLICY

Policy: BD-1

Department: Business Development

Supersedes:

- BD-1 Equal Opportunity and Business Development Policy 9/26/12
- BD-1 Small Sustainable Enterprise Policy 3/22/06
- BD-2 M/WBE Policy 12/22/94
- BD-3 Micro Contracts Initiative Policy 2/27/02

Date of Board Approval: 5/14/15

Central Florida Expressway Authority

Supplier Diversity Program Policy

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Section 1. Mission of the Supplier Diversity Program

The mission of the Central Florida Expressway Authority (hereinafter referred to as the "Authority") Supplier Diversity Program is to provide small, disadvantaged business enterprise (DBE), minority and women-owned business enterprises (M/WBE) with an equal opportunity and equal access to participate in the Authority's procurement activities.

- A. To further stimulate the local economy, it is the intent of the Authority to assist qualified small disadvantaged, minority and women-owned business enterprises to bid as prime contractors; to joint venture when necessary with other established non-minority and minority contractors, and to bid as subcontractors. The Authority sets a 15% disadvantaged, minority and women-owned (D/M/WBE) business enterprise participation objective for CFX funded projects in the areas of: Construction, maintenance, professional services, and commodities.
- B. The Supplier Diversity Director, Procurement Director or designee and an appropriate Department Representative shall review each proposed project (bid or request for proposal) to determine the potential for subcontracting and for utilizing D/M/WBEs, considering the scope of work and available D/M/WBE's to potentially perform the work.
- C. The D/M/WBE objective for individual bids/RFPs may be higher or lower than the participation objective stated in Section A above. The objective reflects realistic D/M/WBE availability for the particular project. The objective placed in a solicitation is considered to be the minimum level of D/M/WBE participation expected for a particular procurement. The Authority may grant an exemption to a particular respondent based upon documented good faith efforts.
- D. In cases where it is not reasonable to set a D/M/WBE objective, the Supplier Diversity Director may encourage the utilization of D/M/WBE through the bidder/respondent's purchase of goods and/ or services.

Section 2. Equal Employment Opportunity

It is the policy of the Authority to encourage equal employment opportunity for minority and women in the work force by contractors and consulting firms. Contractors and consulting firms doing business with the Authority are encouraged to hire local minorities and women as employees when performing on Authority contracts.

Section 3. Program Participants

Minority and women-owned business enterprise(s) shall be independently owned and operated and certified by the City of Orlando or Orange County in order to become eligible to participate in the Authority's program objective. Firm(s) participating in the Unified Certification Program (UCP) identified by Florida Department of Transportation as a Disadvantaged Business Enterprise (DBE) will also be accepted, but must be independently owned and operated;

Independently owned and operated is defined as a business that is not affiliated or associated with the general contractor or prime contractor providing work or services on CFX project(s) or procurement in which the D/M/WBE seeks to participate. Affiliated status may be determined through common ownership, management, employees, facilities, inventory or any other factors, which would prevent or inhibit an independent status.

Section 4. Waiver

At any time prior to the solicitation of a bid and after receipt of bids for a contract, the Executive Director may grant a partial or complete waiver of the D/M/WBE objective for any contract in which it is demonstrated that participation cannot reasonably be achieved, or due to consideration of property, public safety, and health, including financial impact to the Authority.

Section 5. Prompt Payment

On initial payment, contractors must assure that all subcontractors and material suppliers having interest in the contract will receive prompt payment. The Authority will not make any progress payments after the initial payment until the contractor certifies that appropriate funds have been disbursed to all subcontractors and suppliers out of the previous progress payments received by the contractors, unless the contractor demonstrates good cause for not making the required payment and furnishes written notification of any such good cause to both the Authority and the affected subcontractors and suppliers.

Section 6. Payment Assistance

On contracts in which D/M/WBEs bid as prime contractors, the Executive Director may allow joint checks payable to a disadvantaged, minority or women-owned business enterprise and its primary material or supply house. Payment assistance is provided as outlined in the program procedures. The utilization of this Policy shall not in any way be construed to create a contractual relationship between the Authority and the supply or material house(s). It is solely for the benefit and assistance to disadvantaged, minority and women-owned businesses. For the purpose of filing IRS form 1099, the total amount of any joint payment shall be considered payment only to the disadvantaged, minority or women-owned business enterprise.

Section 7. Supplier Diversity Outreach

The Authority's Supplier Diversity Program is intended to provide outreach and is designed to assist D/M/WBEs in overcoming their economic disadvantage by providing assistance as may be necessary and appropriate to awarded Authority contractors and to strengthen their skills to compete in the private and public sectors.

Section 8. Commodities and Contractual Services

A participation objective may be established in the procurement of commodities and contractual services that are competitively bid. To meet the Authority's participation objective, departments shall make every reasonable effort to utilize D/M/WBEs when available and reasonable.

Section 9. Maintenance Contracts

The Authority's encourages D/M/WBE participation for all maintenance contracts.

Section 10. Professional Services

The Authority encourages D/M/WBE participation for consultants and professional service contracts. The Authority will provide contracting opportunities for professional services pursuant to Section 287.055 Florida Statutes, known as the "Consultants Competitive Negotiation Act" pursuant to the award of bonus points in the selection process. Bonus points will be provided for D/M/WBE participation on professional service contracts.

Section 11. Construction Contracts

The D/M/WBE participation objective may be applied on a project-by-project basis. In construction, the D/M/WBE participation objective will be considered on all construction contracts that are \$100,000 and above unless otherwise specified in the contract.

Section 12. License Requirement

If licensing is required in a specific area, credit for D/M/WBE subcontractors' participation will be granted only for licensed subcontractors. Contracts for construction of toll plazas or any building incidental to the roadway system must be accomplished by a licensed contractor and/or FDOT prequalification as established in the scope of work. This includes projects for renovation, repair, addition, demolition and asbestos abatement.

Section 13. Good Faith Efforts

A proposing prime consultant or contractor must make a good faith effort to meet participation objectives. All bidders/respondents, including D/M/WBE bidders/respondents shall either meet the participation objective or demonstrate in their bid or RFP response that good faith efforts were made, such as:

- 1) The bidder/respondent, at least seven days prior to the bid/RFP deadline, provided written notice to certified D/M/WBEs performing the type of work that the bidder/respondent intends to subcontract, advising the D/M/WBEs (a) of the specific work the bidder/respondent intends to subcontract; (b) that their interest in the contract is being solicited; and (c) how to obtain information about and review and inspect the contract plans and specifications;
- 2) The bidder/respondent selected economically feasible portions of the work to be performed by D/M/WBEs, including, where appropriate, breaking down contracts or combining elements of work into economically feasible units. The ability of the bidder/respondent to perform the work with its own work force will not excuse the bidder/respondent's failure to meet participation objectives;
- 3) The bidder/respondent provided interested D/M/WBEs assistance in reviewing the contract plans and specifications;
- 4) The D/M/WBE objective was not met by other responsive bidders/respondents;
- 5) The bidder/respondent submits all quotations received from D/M/WBEs and for those quotations not accepted, a reasonable explanation of why the D/M/WBE will not be used during the course of the contract;
- 6) The bidder/respondent assisted interested D/M/WBEs in obtaining required bonding, lines of credit, or insurance, etc.;
- 7) The bidder/respondent selected subcontract types of work that match the capabilities of solicited D/M/WBEs.

The above list is not intended to be exclusive or exhaustive and the Authority will look not only at the different kinds of efforts that the bidder/respondent has made but also the quality, quantity and intensity of these efforts.

If a contractor's D/M/WBE participation falls below what has been approved by the Supplier Diversity Department, the bidder must submit good faith effort documentation to the Supplier Diversity Department for determination as to whether the contractor made a good faith effort to comply with the Authority's participation objectives.

Section 14. Responsibility/Monitoring

Monitoring will be conducted to ensure that contractors are complying with the objective of the Authority's Supplier Diversity Program Policy. The Supplier Diversity Director has the responsibility for providing guidance, technical assistance, monitoring good faith efforts and monitoring contract performance and compliance in respect to those project(s) with a D/M/WBE objective.

- A. The D/M/WBE utilization summary shall be completed and submitted with the contractor's proposal. The D/M/WBE subcontractor(s) listed on the form shall not be changed without the prior written authorization from the Supplier Diversity Director or designee.

- B. Unless approved in advance by the Authority, the contractor shall not perform work with its forces that has been identified on the utilization form to be performed by D/M/WBE firm(s). If a D/M/WBE subcontractor is unable to successfully perform the work, the contractor shall make a good faith effort to replace that firm with another D/M/WBE firm and provide an updated utilization form prior to starting or proceeding with the subject item of work. The Authority reserves the right to withhold or deny payment for work performed that does not comply with this article.

Section 15. Non-Performance and Remedies

Consultants and contractors found in non-compliance with their participation commitments may be suspended from bidding with the Authority for one (1) year if their good faith effort support documentation is not accepted by the Supplier Diversity Director or designee.

The Central Florida Expressway Authority reserves the right to exercise any available remedy in the event of a contractor's failure to perform any of its obligations pursuant of the Supplier Diversity Program Policy.

Section 16. Program Review

The Supplier Diversity Director will review and evaluate the policy and procedures on an annual basis and will update the policy and related procedures as needed. Any policy change will be approved by the Authority's Board prior to implementation of such change.

Section 17. Sheltered Market Initiative for Small Sustainable Business Enterprise Program

- A. The Small Sustainable Business Enterprise (SSBE) Program provides the Authority with the opportunity to utilize a sheltered market; when at least three (3) businesses are available and capable of performing the scope of work identified within the solicitation. Only firms registered in the SSBE program are eligible to participate in the shelter market opportunity. Firm(s) participating in this program must perform at least fifty percent of the work designated within the scope of work unless approved by the Supplier Diversity Director or designee.
- B. The SSBE Program allows the Authority to provide increased direct contracting opportunities to small businesses and will assist in the development of these businesses to become prime contractors and consultants. The Authority may designate specific projects estimated up to \$5,000,000 for the SSBE Program. The primary objective of this policy is to enable small businesses to transition to the next level.
- C. The SSBE Program is established in the Procurement Policy for small contracts between \$50,000.00 and \$200,000.00; for solicitations under the SSBE Program. The Executive Director can authorize advertisement and award of these contracts in order to expedite the bidding and award process. The Executive Director, in consultation with the Director of Supplier Diversity, may identify certain projects as appropriate for bidding and award under a sheltered market initiative for the SSBE program.

To qualify for the Sheltered Market Initiative for the SSBE program, firm(s) must be registered with the Authority and meet the following eligibility requirements:

- 1) The business must be locally domiciled within Orange County SMSA (Orange, Lake, Osceola and Seminole Counties)
- 2) The firm must be independently owned and operated and providing a commercially useful function for one (1) year prior to submittal.
- 3) The Business employs 50 or fewer employees

- 4) Owner(s) must be a legal resident of the State of Florida.
- 5) The firm's annual gross sales averaged over the previous three years, cannot exceed the following:

a. Commodities	\$5,000,000.00
b. Professional Services	\$10,000,000.00
c. Construction	\$20,000,000.00
- 6) Obtain all required state/local licenses, certificate of business etc.. required to perform lines of business. Section 12 of this policy defines License Requirements.

Firm(s) participating in the SSBE program must resubmit annually in order to stay active in the program.

D. Graduation

Firm(s) that no longer meet the eligibility requirements stated in the Section 17 C above shall graduate from the SSBE program. Firm(s) shall be allowed to remain eligible to participate in contract(s) and bids/RFP's submitted prior to graduation.

Section 18 Disadvantaged Business Enterprise (DBE) Program Requirements

It is the policy of the Central Florida Expressway Authority (CFX) that a disadvantaged program be established as defined by 49 Code of the Federal Regulations (CFR) Part 26, which shall have an opportunity for DBE firm(s) to participate in the performance of CFX. The objectives of the United States Department of Transportation (DOT) DBE program are to ensure non-discrimination in the award and administration of contracts, ensure firms fully meet eligibility standards help remove barriers to participate, create a level playing field, assist in development of a firm so it can compete successfully outside of the program, provide flexibility and ensure narrow tailoring of the program. CFX has received approval from Federal Highway Administration to adopt and use the Florida Department of Transportation (FDOT) race neutral program goal and DBE contract specifications, as applicable

CFX and its contractors shall take all necessary and reasonable steps to ensure that disadvantaged businesses have an opportunity to compete for and perform on DOT federally funded contracts in a non-discriminatory environment

CFX shall require its contractors to not discriminate on the basis of race, color, national origin, and sex in the award and performance of federally funded contracts. Each DOT federally funded

contract CFX signs with a contractor and each subsequent subcontract the prime signs with lower tier contractors will include the following assurance:

- a. The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

Section 19 Management and Technical Assistance

The Authority may provide management guidance, technical assistance, training and mentorship to participants of the SSBE Program. The Authority may also refer participants to financial and bond assistance providers. In addition, the Authority may assist participating firms with reasonable up-front costs as determined on a project by project basis.

**A RESOLUTION OF THE CENTRAL FLORIDA
EXPRESSWAY AUTHORITY REPEALING THE EQUAL OPPORTUNITY AND BUSINESS
DEVELOPMENT POLICY AND PROVIDING NEW SUPPLIER DIVERSITY PROGRAM
POLICY**

WHEREAS, the Central Florida Expressway Authority ("CFX") has previously adopted an Equal Opportunity and Business Development Policy to provide small, minority and women-owned businesses with an equal opportunity and equal access to participate in CFX's procurement and contracting activities; and

WHEREAS, the governing Board of the CFX wishes to repeal the Policy and provide a new Supplier Diversity Program Policy,

**NOW, THEREFORE, BE IT RESOLVED BY THE CENTRAL FLORIDA
EXPRESSWAY AUTHORITY** as follows:

Section 1. Repeal of Existing Policy: The current Equal Opportunity and Business Development Policy is hereby repealed and rescinded.

Section 2. Adoption of new Supplier Diversity Program Policy: In accordance with the recitals set forth above, the Supplier Diversity Program Policy attached hereto as Exhibit "A" is hereby adopted and shall apply as of the Effective Date shown below.

Section 3. This Resolution and Policy shall be codified in the CFX Permanent Rules as part of BD-1.

Section 4. EFFECTIVE DATE. This Resolution shall take effect upon adoption by the CFX governing Board.

ADOPTED this 14th day of May, 2015.



Welton Cadwell
Chairman

ATTEST: Darleen Mazzillo
Darleen Mazzillo
Executive Assistant

Approved as to form and legality



Joseph L. Passiatore
General Counsel