

University Office of Capital Programs and Real Estate Services (UOCPRES)
Policy on Minority and Female Business Enterprise (MBE/FBE) Goals in Capital Construction Procurement
Policy Approval Authority: Senior Associate Vice President (SAVP) for UOCPRES
December 2013

Overview

The purpose of the policy is to communicate for internal and external audiences how UOCPRES and each respective Campus Construction Unit (CCU) will apply minority and female business enterprise participation goals on capital-related construction projects.

Areas of Responsibility

The SAVP for UOCPRES will have the following areas of responsibility:

- Establish annual MBE/FBE capital construction goals for each campus and regional site in the University of Illinois system for Construction Contracts
- Determine the project size and/or expenditure levels to which these goals will apply
- Establish methods under which achievement of these goals will be measured
- Determine the reporting format and timeframe(s) under which achievement of the goals will be reported
- Determine the units and unit leadership responsible for working to achieve these goals
- Determine the documents, forms, and process(es) for the advertisement of projects, qualification and/or certification of bidders and subcontractors, pre-bid requirements and communication (if applicable), bidding of projects, sufficiency of good faith efforts, change waiver requests, bid rejection criteria, post-bid requirements, and post bid award requirements.

The Director of Diversity (or designee) will have the following areas of responsibility:

- Evaluate and establish methods for promoting MBE/FBE growth and participation
- Determine the MBE/FBE goals if project specific MBE/FBE goals are defined
- Determine with University staff through an evaluation process whether “good faith efforts” or other appropriate measures were utilized by vendors to achieve inclusion of MAFBE firms
- Communicate the consequences for unsatisfactory “good faith efforts” as they relate to bid acceptance/bid rejection, in consultation with University Legal Counsel and UOCPRES leadership.
- Report MBE/FBE goal achievement status for each campus to the SAVP on a quarterly basis and as required for University of Illinois Board of Trustee meetings.

The Director(s) of Construction, Director(s) of Capital Programs and/or Vice Chancellors for Facilities, Capital and Maintenance will have the following areas of responsibility:

- Provide leadership and resources as appropriate to successfully execute said policy and procedures.
- Communicate the importance of achievement of MBE/FBE goals on behalf of the institution to direct reports, subordinates, general staff and construction vendors
- Communicate expectation of execution of said policies and procedures with all staff that directs the planning and execution of capital construction projects
- Engage the SAVP, UOCPRES Leadership, and Director of Diversity in dialogue and discussion regarding any issues related to this policy or procedure
- Designate staff to serve as a resource for vendors that request immediate assistance relative to these procedures

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Pre-Advertisement Period (Internal)

MBE/FBE Goal Setting

Where MBE/FBE goals will apply

1. MBE/FBE goals will apply to all construction projects that are bid. Good Faith Efforts to meet MBE/FBE goals are required on projects that meet or exceed an estimated construction cost of \$250,000, including contingency.
2. MBE/FBE goals will apply to the design-bid-build delivery method for each division of work bid.
3. MBE/FBE goals will apply to the Construction Manager delivery method for the entire project in one or more divisions of work bid.
4. MBE/FBE goals will apply to Energy Performance Contracting delivery method.

When will MBE/FBE goals be set

1. Baseline project MBE/FBE goals approved by the Board of Trustees of the University of Illinois will be utilized on all projects and all divisions of work bid, unless revised as provided below.
2. Projects that meet or exceed an estimated construction cost of \$1,000,000, including contingency, the MBE/FBE goals may be revised (e.g. raised, combined or split) during design development and prior to 50% completion of the construction documents.

Who will be involved in setting individual project goals

1. The Director of Diversity (or designee), CCU project manager, and the CCU staff person responsible for fair employment utilization will recommend MBE/FBE goals utilizing UOCPRES MBE/FBE goals with due consideration for project scope and economically feasible units of work for MBE/FBE construction and supplier contractors.
2. The MBE/FBE goals may be modified with applicable history of achievement with similar projects at the University and from Illinois Capital Development Board (IL CDB) relative to project expenditure level, scope, and certified MBE/FBE division of work experience and/or capacity.
3. The MBE/FBE goals will be communicated to CCU unit leadership for review and to Senior Associate Vice President for UOCPRES for approval.

Pre-Advertisement

1. The MBE/FBE goals will be reviewed and approved, modified or rejected by Senior Associate Vice President for UOCPRES with input from the Director of Diversity (or designee) as part of the construction project review process prior to advertisement.
2. Projects that meet or exceed an estimated construction cost of \$2,000,000, including contingency, will have a minimum 21 calendar day advertisement window to encourage and facilitate the inclusion of MBE/FBE firms.
3. Projects that meet or exceed an estimated construction cost of \$2,000,000, including contingency, will have a mandatory pre-bid meeting a minimum of 10 calendar days prior to bid opening to encourage and facilitate the inclusion of MBE/FBE firms.
4. Beginning and mid-point of each fiscal year, all University of Illinois prequalified construction vendors will be contacted via e-mail to advise them of UOCPRES policies, procedures, MBE/FBE goals, MBE/FBE criteria and requirements, and resources available within the University, Illinois Capital Development Board (IL CDB), trade associations, etc. that may assist in meeting MBE/FBE goals.

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Advertisement Period (External)

1. Project advertisement documents will include statements that indicate the University is seeking to comply with state laws and seeks the cooperation, support and willingness of vendors to assist in meeting MBE/FBE goals.
2. Projects with estimated construction costs greater than \$250,000, including contingency, and less than \$2,000,000, including contingency, will be advertised with a minimum 14 day advertisement window, and may have pre-bid meetings as deemed appropriate by CCU staff and unit leadership.
3. Projects with estimated construction costs that meet or exceed \$2,000,000, including contingency, will have a minimum 21 day advertisement window to encourage and facilitate the inclusion of MBE/FBE firms.

Pre Bid Process (Internal and External)

1. Projects that meet or exceed an estimated construction cost of \$2,000,000, including contingency, will have a mandatory pre-bid meeting a minimum of 10 calendar days prior to bid opening to encourage and facilitate the inclusion of MBE/FBE firms.
2. Bidders will contact MBE/FBE vendors through personal knowledge, IL CDB MBE/FBE Directory, IL CMS MBE/FBE certifications list, and any minority and/or female trade, community, or contractor organizations that provide assistance in recruitment of minority and female-owned construction-related businesses. UOCPRES will work to make available electronically through links or pdf files identified lists or recruitment organizations.
3. If Bidders have questions about achieving the MBE and/or FBE goal they should contact the UOCPRES Director of Diversity to register their concerns/questions and seek to learn of additional recruitment resources they have not utilized to identify vendors that could meet University project requirements.
4. The University of Illinois will only accept MBE/FBE firms certified by the Illinois Department of Central Management Services, Business Enterprise Program.

Bidding (External)

1. The MBE and FBE goal for the project and internal divisions of work is provided in the bidding documents.
2. All Bidders shall list the name, address, and telephone number of the certified minority/female owned firms(s) that will perform any portion of the work. Bidder will also list the proposed dollar value of subcontract(s).
3. All Bidders shall indicate whether the firm is MBE or FBE and their certifying agency.
4. All Bidders shall use Document 00 40 00 Bid Attachment B (Standard Single or Standard Multiple Contract Set) to record MBE/FBE vendor information, MBE/FBE certifying agency, proposed dollar value of subcontract(s), and include a copy of the IL CMS MBE/FBE certificate, or the IL CMS MBE/FBE Recognition Certification Approval Letter.
5. **ALL** bidders not meeting the advertised goal must check the Good Faith Effort Box on Document 00 40 00 Bid Attachment B which indicates written documentation supporting a change/waiver of the goals request will be submitted within seven (7) calendar days of the bid opening. If bidder requests assistance with this process, the Director of Diversity, UOCPRES may be contacted.
6. On 00 40 00 Bid Attachment B, failure to list IL CMS certified MBE/FBE firms and/or list the proposed dollar value of the subcontract(s) applied toward meeting or exceeding the goal, or to provide documentation of a good faith effort within seven (7) calendar days of the bid opening will be a material deficiency which cannot be corrected and the bid will be rejected.

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7. If the bidder is a joint venture, the percentage of ownership held by the MBE/FBE joint venture may be used to meet the MBE/FBE goal for the contract.
8. The University of Illinois values the utilization of certified minority and female business enterprises in capital construction. All such enterprises must perform a commercially useful function. Enterprises which might be considered "pass-throughs" or "fronts" are not permitted. Failure to comply with this requirement or false representations may result in termination of contracts related to University capital construction projects and result in criminal and civil penalties.

Acceptance and Rejection of Bids (Internal and External)

1. University of Illinois Rights. When, in its opinion, it is in the best interest of the University, the University reserves the right to:
 - a. Accept any bid
 - b. Reject any or all bids
 - c. Waive technical deficiencies and irregularities
 - d. Allow bidder to remedy technical deficiencies or irregularities within a stated time
 - e. Rescind any notice of award if UOCPRES determines the notice of award was issued in error
 - f. Rescind any notice of award when it is in the best interest of the University.
 - g. Rebid any contract
2. Bid Rejection.
 - a. Bids will be rejected for the following material deficiencies including but not limited to:
 - i. Failure to be prequalified with University of Illinois no later than the close of business the day before the bid opening (Section 4.2 and Section 4.4)
 - ii. Being determined non-responsible after bid opening as defined by 30 ILCS 500/30-22 and 44 IL Admin Code 526.2046.
 - iii. Submission of a bid late (Section 9.0).
 - iv. Failure to attend a mandatory pre-bid meeting.
 - v. Failure to submit a completed Owner bid form 00 40 00.
 - vi. Failure to submit a completed 00 40 00 Attachment B, Minority/Female Business Enterprise Program Requirements form. A completed form is defined as including the following:
 - Only include firms that are IL CMS Certified MBE/FBEs
 - The MBE/FBE firm name(s) in conformance with the attached IL CMS Certificates(s) or IL CMS Recognition Certification Letter(s)
 - Proposed dollar value of subcontract
 - vii. Failure to use good faith efforts to achieve minority/female business enterprise participation goals as required in Section 6.2 of Document 00 20 00 – General Instructions to Bidders and provide documentation of good faith efforts within seven (7) calendar days after bid opening.
 - viii. Failure to submit Certificate of Registration with State Board of Elections in accord with 30 ILCS 500/20-160, if required.
 - ix. Failure to submit Certifications and Statutory Requirements form.
 - x. Failure to submit Financial Disclosures and Potential Conflicts of Interest form.
 - xi. Failure to submit a bid deposit.
 - xii. Failure to include current and valid printed proof of CMS BEP certification for each identified MBE/FBE vendor.

The IL CMS BEP Vendor Directory can be found at:

<https://www2.illinois.gov/cms/business/sell2/Pages/VendorSearch.aspx>

and a tutorial for using the directory is available at:

http://www.uocpres.uillinois.edu/UserFiles/Servers/Server_992653/file/documents/CMStutorial.pdf. A current and valid print version of the vendor's CMS Business Enterprise Program (BEP) Vendor Directory results should be the printed proof of the CMS MBE/FBE certification. This document includes vendor name, address, ethnicity,

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- county, contract information, certification renewal date and expiration date. If current and valid CMS BEP certification letter is included with the bid, reconciliation to obtain proper printed proof is allowed. If the CMS BEP certification letter is not current and valid, reconciliation is not permitted.
- b. Technical Deficiencies when identified by Owner, may be remedied by the Bidder within seven (7) calendar days of notification. Failure to remedy the bid within seven (7) calendar days may result in rejection of bid.
 - c. University of Illinois at its sole discretion and without conferring any rights on any bidder may waive bid technical deficiencies or irregularities that are not in conformance with the bidding documents but whose non-conformance is non-material or minor.
 - d. Submittal of conditions or qualifying statements contrary to University of Illinois contract terms is not acceptable and, unless rescinded, the bid shall be rejected.

Post-Bid (External)

Submittal of Good Faith Documentation for (i) a Change in MBE/FBE Goal, or (ii) Waiver of Goal Request (External)

1. All bidders shall submit within seven (7) calendar days after bid opening required information necessary to evaluate good faith documentation when a change in MBE/FBE goals or a waiver request is submitted. The minimum expected documentation includes, but is not limited to:
 - a. Any and all information indicating why the bidder believes the specified goal cannot be met.
 - b. A list of all MBE/FBE firms contacted and the dates and method by which they were contacted, including documentation from those firms.
 - c. Copies of all bid solicitation letters to MBE/FBE firms. Letters shall contain, at a minimum:
 - i. Project Title and Location
 - ii. Classification of Work Items for Which Quotations are Requested
 - iii. Date, Time, and Place Quotations are Due
 - iv. Returnable Acknowledgment of the Solicitation
 - d. Evidence, such as a log, of telephone contact including time and date of call, telephone number, and name of the person called.
 - e. All other evidence of good faith efforts made by the bidder to secure eligible MBE/FBE firms to meet the specified goal. Evidence may include documentation that states the following:
 - i. A reasonable number of MBE/FBE firms were contacted.
 - ii. The work selected by the bidder for allocation to MBE/FBE firms was selected in order to increase the likelihood of achieving the specified goal.
 - iii. The bidder negotiated, in good faith, with the potential MBE/FBE firms by not imposing any conditions which are not similarly imposed on all other subcontractors and suppliers, or by denying benefits ordinarily conferred on subcontractors or suppliers for the type of work for which bids were solicited.
 - iv. The services of the referral agencies were used by the bidder in efforts to achieve the specified goal.
 - v. The bidder attended University pre-bid meeting for the project.
 - vi. The Bidder contacted the Director of Diversity for UOCPRES for assistance or to provide notice of difficulties in completing Good Faith Efforts.
 - f. Other relevant information in support of the change/waiver request.

Request for Change of Subcontractor or Supplier

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1. Only upon receipt of Notification of Award (NOA) or Notification of Intent to Award (NOIA) the determined responsive and responsible Bidder may make a request for change of an MBE/FBE subcontractor or supplier which it has previously listed on Attachment B Minority/Female Business Enterprise Program Requirements on bid form 00 40 00. All requests shall be in writing on the Contractor's letterhead and submitted with documented evidence of cause to CCU. CCU and UOCPRES will review each request and may authorize the change.
 - a. After receipt of NOA and/or NOIA letter, but prior to Contract Execution. The contractor may request approval of an MBE/FBE subcontractor or supplier other than one listed on 00 40 00, Attachment B provided sufficient information is supplied by the Contractor as deemed appropriate by CCU and UOCPRES. Supporting documentation from the MBE/FBE subcontractor or supplier may be required.
 - b. After Contract Execution. If for any reason an approved MBE/FBE subcontractor or supplier fails to meet its contractual commitment to the Contractor after an award of contract, or start of construction, or during construction, the Contractor may request approval of an alternate MBE/FBE subcontractor or supplier. All requests shall be in writing on the Contractor's letterhead and submitted with documented evidence of cause to Owner's Director of Diversity, University of Illinois Office of Capital Programs and Real Estate Services. Supporting documentation from the MBE/FBE subcontractor or supplier may be required.

MBE/ FBE Post Award Requirements (00 20 00)

1. Post-Award submittal. The contract awardee shall submit Attachment A - MBE/FBE Subcontractor/Supplier Certification form, for Notice of Intent to Award or Notice of Award Letter for each of the MBE/FBE subcontractor(s) and/or supplier(s) being utilized to meet the designated participation goals as specified on the bid form. The form must be signed by the MBE/FBE subcontractor or supplier and shall be submitted to the CCU.
2. Completion of the Attachment A - MBE/FBE Subcontractor/Supplier Certification form, for Notice of Intent to Award or Notice of Award Letter is not required if the Contractor is an MBE or FBE firm. MBE/FBE prime contractors are encouraged to utilize MBE/FBE subcontractors/suppliers. If goals are split (separate MBE and FBE goals), then an MBE or FBE firm must supply Attachment A - MBE/FBE Subcontractor/Supplier Certification form, for Notice of Intent to Award or Notice of Award Letter for the subcontractor firm(s) utilized to meet the FBE or MBE goal, respectively.
3. Listed Firms. Attachment A - MBE/FBE Subcontractor/Supplier Certification form, for Notice of Intent to Award or Notice of Award Letter shall be completed and submitted for each MBE/FBE firm listed on the bid form. The awarded contractor shall ensure the firm(s) and dollar amount(s) listed on the completed Attachment A of the Subcontractor/Supplier Certification form match the firm(s) and dollar amount(s) listed on Attachment B of the Bid Form, 00 40 00, including any additional firms and/or dollar amounts associated with alternates.
4. Compliance. The MBE/FBE participation goal dollar value is based upon the total contract sum (including awarded alternates). The participation goal percentage amount(s) shall meet or exceed the goal(s) as specified on the bid form, or in an approved change/waiver request (refer to Section 12 of 00 20 00).
5. Voluntary. Contractors are encouraged to utilize MBE/FBE subcontractors/suppliers for those projects that are not designated for MBE/FBE participation and complete the Attachment A - MBE/FBE Subcontractor/Supplier Certification form, for Notice of Intent to Award or Notice of Award Letter for each MBE/FBE firm. MBE/FBE subcontractors/suppliers may be added at any time during the project.
6. Subcontracts/Supplier agreements. Copies of subcontracts or supplier agreements to correspond with each Attachment A - MBE/FBE Subcontractor/Supplier Certification form, for Notice of Intent to Award or Notice of Award Letter are required to be submitted within fifteen (15) days after execution of agreement, or execution of subcontract, whichever is later.

Successful Bidder Post Award Requirements

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1. Bidder’s Duty to Comply. The Contractor may not proceed with the Work until the following post award requirements are met. These requirements are part of the contract and failure to comply with these requirements shall constitute a breach of the contract. The University shall issue Notice to Proceed upon successful completion of these post award requirements.
2. Submittals. Within fifteen (15) calendar days from the date of the notice of intent to award, or notice of award letter, the Contractor shall furnish, on University forms, the following:

Prime Vendor Documentation

 - a. Two (2) copies of contract executed by the Contractor;
 - b. Two (2) copies of Contractor Performance Bond;
 - c. Two (2) copies of Contractor Payment Bond;
 - d. Certificates of Insurance;
 - e. Builder’s Risk Insurance Policy (if applicable);
 - f. Substance Abuse Prevention Program (if the program has been revised since submitted with the annual prequalification).

MBE/FBE Subcontractor/Supplier Documentation

 - a. Attachment A – MBE/FBE Subcontractor/Supplier Certification form, of the Notice of Intent to Award or Notice of Award Letter. Verification of compliance may be made by the University. In addition MBE/ FBE firms may be contacted for verification purposes.
 - b. The awarded contractor shall ensure the firm(s) and dollar amount(s) listed on the completed Attachment A – MBE/FBE Subcontractor/Supplier Certification form match the firm(s) and dollar amount(s) listed on Attachment B-Minority/Female Business Enterprise Program Requirements of the Bid Form, 00 40 00, including any additional firms and/or dollar associated with alternates.
3. Cancellation of Award. All post award requirements are mandatory. Noncompliance shall be cause for the University to cancel the Notice of Award, may make a claim against the bid deposit, and proceed with the next responsive and responsible bidder.
4. Post Award Extensions. UOCPRES may extend the time limitations for good cause. No extension shall operate as a waiver of post award requirements, nor shall it extend the contract completion date.

MBE/FBE Baseline Goals by Region for Construction

| Campus/Medical Center (County) | Contractor |
|-------------------------------------|------------|
| Chicago (Cook) | 22% |
| Urbana (Champaign) | 15% |
| Springfield (Sangamon) | 15% |
| Rockford Medical Center (Winnebago) | 15% |
| Peoria Medical Center (Peoria) | 15% |