

# **ORLANDO UTILITIES COMMISSION**

## **MINORITY AND WOMEN BUSINESS ENTERPRISE POLICY**

### **Policy Statement**

The Orlando Utilities Commission (the Commission or OUC) stands committed to providing equal opportunities to minority and women owned business enterprises (M/WBEs) as well as all other vendors, consultants, contractors and subcontractors who seek to do business with OUC. OUC hereby established this policy in an attempt to insure that certified qualified M/WBEs are made aware of, have an opportunity to bid on, and are considered on an equal basis with all other qualified bidders for the provision of goods and services.

Therefore, it is the policy of OUC to provide and to require its vendors, consultants, contractors and subcontractors to provide certified qualified M/WBEs with an equal opportunity to participate in the bidding process for the procurement of goods and services provided to OUC.

To effectuate this Policy, guidelines have been established herein to direct OUC to engage in outreach activities to identify and certify M/WBEs; to encourage vendors, consultants, contractors and subcontractors to identify qualified M/WBEs for certification to OUC; to insure that certified qualified M/WBEs are notified of and have an opportunity to bid on work/services to be performed for OUC on the same basis as all other qualified vendors, consultants, contractors and subcontractors; to provide for the investigation of and appropriate remedial action for vendors, consultants, contractors and subcontractors who, after notice and an opportunity to respond, are found to have violated one or more of the provisions of this Policy.

The Purchasing Division shall be responsible for administering this Policy with regard to procurement of goods and services. In furtherance of this Policy, every Commission employee who is responsible for the procurement of goods and services on behalf of the Commission will cooperate with the Purchasing Division and/or the M/WBE Coordinator to assist in identifying M/WBEs who may be qualified to bid on such contract for goods and services.

This Policy is not intended to require or allow partiality toward or discrimination against any M/WBE or other vendor, consultant, contractor or subcontractor on the basis of sex, race or national origin; but, rather, to make certain that certified qualified M/WBEs and all qualified vendors have an equal opportunity to participate in the selection process for provision of goods and services to OUC.

### **Definitions**

Bid means all purchase prices sought by procurement methods.

Construction means the process of building, altering, repairing, improving, or demolishing any structure, building, roadway, or other public improvements of any kind to any OUC property. It does not include the routine operation, repair or maintenance of existing structures, buildings or real property, unless performed under contract with OUC.

Contract means all types of agreements regardless of what they may be called, for the purchase or disposal of supplies or services or performance of construction with the following exceptions, which include but are not limited to: salaries/employee benefits, taxes, judgments, dues, pension, utilities, subscription, auto allowances, postage, and those contracts entered into by other public agencies in which OUC may be able to participate at a savings for the benefit of the customer of OUC (i.e., machinery or other supplies procured by the State of Florida). The term contract includes, but is not limited to, contracts for a fixed price, cost, cost plus a fixed fee, or incentive

contracts, contracts providing for the issuance of job or task orders, leases, letter contracts, and purchase orders.

Minority means Blacks, Hispanics, American Indians, Alaskan Natives, Asians, and Pacific Islanders.

Minority Business Enterprise (MBEs), for the purpose of this Policy, is defined as a business firm whose principal place of business is located in Orange, Seminole, Lake, Osceola or Brevard Counties, and which is at least 51 percent (51%) owned by minority group members, or in the case of a publicly owned business, at least 51 percent (51%) of the stock of which is owned by minority group members. The minority ownership must exercise actual day-to-day management and control of the business. MBEs must be officially certified or recognized as such by the City of Orlando.

Other certifications may be considered on a case-by-case basis. However, all interested parties are urged to apply through the City of Orlando.

Services means the furnishing of labor, time or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term includes professional service, but does not include employment agreements or collective bargaining agreements.

Supplies means all property including, but not limited to, equipment, materials, printing, insurance, and leases, but excluding land or a permanent interest in land.

Vendor means vendors, consultants, contractors and/or sub-contractors.

Women Business Enterprise (WBE), for the purpose of this Policy, is defined as a business firm whose principal place of business is located in Orange, Seminole, Lake, Osceola or Brevard Counties and which is at least 51 percent (51%) owned by women, or in the case of a publicly owned business, at least 51 percent (51%) of the stock of which is owned by women. The women ownership must exercise actual day-to-day management and control of the business. WBEs must be officially certified or recognized as such by the City of Orlando.

Other certifications may be considered on a case-by case basis. However, all interested parties are urged to apply through the City of Orlando.

### **Outreach Measures**

OUC shall utilize outreach programs to identify, register, educate, and certify M/WBEs in the procurement/contract process. Such outreach measures, to be undertaken by the M/WBE Coordinator, Purchasing Director and/or other designated representatives, include but are not limited to: attending local, regional and national trade fairs which include M/WBEs; attending meetings whose membership consists in whole or in part of M/WBEs; attending social functions whereby M/WBE firms may be identified; participating in group programs focusing on assistance of M/WBE firms; subscribing to publications aimed at reaching M/WBEs; utilizing printed M/WBE directories and computerized databases; and, other actions designed to identify M/WBE firms and encourage them to participate in the procurement process of OUC.

### **Contract Requirements**

1. This Policy shall be included with all bid document packages. Further, all bid document packages shall include the following paragraph:

The Orlando Utilities Commission (the Commission or OUC) has adopted a Minority and Women Business Enterprise (M/WBE) Policy to encourage broad-based participation in all contracts with OUC. Any bidder submitting a bid for a contract with OUC shall comply with this Policy or may be declared a non-responsive bidder.

2. OUC shall require its vendors who wish to bid on work/services for OUC which are placed for bid to adhere to this Policy and to the requirements set forth herein.
3. Failure of a bidder to comply may be grounds for declaration by OUC of bidder as a non-responsive bidder.
4. Vendors:
  - a. Are encouraged to identify M/WBEs in Orange, Seminole, Lake, Osceola or Brevard Counties qualified to perform the work or to provide the service needed and refer them to OUC for certification.
  - b. Are required to certify in writing that they will comply with this Policy and its guidelines as a condition of bidding on any work/service being placed for bid by OUC.
5. In the case of contracts with OUC, and in all other cases of bids, vendors are required to insure that certified M/WBEs referred by OUC which they have determined to be qualified to perform the work or service in question are:
  - a. Notified of their opportunity to bid on the work or service.
  - b. Provided all of the same data, forms, specifications, plans, bid sheets, and other information regarding the requirements necessary to be considered as are provided to all other qualified vendors.
  - c. Allowed to submit bids on the same basis and under the same rules and procedures as are applicable to all other bidders.
6. Whether a certified M/WBE or any vendor is qualified under subparagraph 4(a) herein for the particular job or service being placed for bid, shall be determined by OUC in the case of direct contracts with OUC, but solely by the vendors in the case of subcontracts.
7. As provided herein, OUC shall take appropriate remedial action against vendors, who after notice and an opportunity to respond, are shown to have failed to follow this Policy and the guidelines adopted to effectuate this Policy.

#### **Award of Contracts**

In awarding contracts as defined in this Policy, OUC shall have the discretion to utilize its business judgment to determine the most responsive and responsible bidder, consistent with OUC purchasing and other policies pertaining to bidding, negotiating and awarding of contracts.

#### **M/WBE Coordinator**

The M/WBE Coordinator or his/her designee shall monitor all contracts with OUC for compliance with the Policy during the contractual term to facilitate compliance with this Policy.

The M/WBE Coordinator shall make available to vendors a list of all certified M/WBEs in their field of business in Orange, Seminole, Lake, Brevard and Osceola Counties. The M/WBE Coordinator shall also perform such other duties relating to the provisions of this Policy as may be directed by the Commission or its designee.

It shall be the responsibility of the M/WBE Coordinator to investigate complaints of violations of this Policy and to recommend appropriate action to the General Manager. Once the M/WBE Coordinator makes a recommendation, the complaint shall be handled as provided herein in the section entitled Non-Compliance.

In addition, a periodic review shall be performed by the M/WBE Coordinator to ensure compliance with commitments made by successful vendors in any bid to or contract with OUC. Should the M/WBE Coordinator obtain information in a periodic review which the Coordinator believes may constitute a violation of this Policy, such violation shall be reported to the General Manager, the vendor and the surety for the vendor within 30 days after the Coordinator becomes aware of the facts. The possible violation shall be subject to the Non-Compliance section of this Policy, commencing with paragraph 2 therein.

### **Non-Compliance**

1. An individual complaint of an alleged violation of this Policy shall be filed by the complainant within thirty (30) calendar days of the date the complainant knew or should have known of the event or occurrence which gave rise to the alleged violation.
2. The complaint or the report shall be investigated by the M/WBE Coordinator or other employee or attorney of or representing OUC as determined by the General Manager. The vendor shall be given an opportunity to provide an oral and a written response to the complaint. After gathering the information, including the vendors response, if any, the investigator shall recommend to the General Manager a finding of cause or no cause to believe that a violation occurred.
3. If the General Manager finds no cause to believe a violation occurred, the General Manager shall notify the complainant and the vendor against whom the complaint was filed and close the investigation. The General Manager's decision shall be final.
4. If the General Manager finds there is cause to believe that a violation has occurred, the General Manager shall notify or cause notice to be given to the vendor in writing specifying:
  - a. The violation asserted.
  - b. The action the vendor may take to remedy the alleged violation.
  - c. The last day on which the violation must be remedied.
  - d. The proposed penalty for failure to remedy the alleged violation if it is ultimately determined that a violation occurred.
  - e. Penalties may include, but not be limited to, debarment from submitting future bids to OUC for a period of one (1) year and forfeiture of a portion of the retainer withheld for work not yet completed, not to exceed 95% of said retainer or such other penalties or remedies as may be deemed appropriate by the General Manager.

5. Within fourteen (14) days of receipt of the written notice, the vendor may request a meeting with the General Manager, or his/her designee, to discuss the alleged violation and the proposed penalty. Such request shall be made in writing to the General Manager.
6. If a timely request is made, the General Manager or his/her designee, shall meet with the vendor and give the vendor an opportunity to explain its position with respect to the alleged violation and proposed penalty.
7. The General Manager, or his/her designee, shall consider the information, including the information provided by the vendor, and determine whether a violation occurred and, if so, whether the proposed penalty or a lesser penalty shall be imposed. The General Manager or his/her designee, shall make issue a decision in writing and shall provide a copy to the vendor. The decision of the General Manager, or his/her designee, shall be final.
8. In the event a proposed penalty, if imposed, involves taking of property of a vendor, the vendor shall be provided due process as required by OUC policy and applicable law.

#### **Conformity with Applicable Law**

The provisions of this M/WBE Policy shall be construed according to and in conformity with applicable local, state and federal law. To the extent that local and/or state law conflicts with federal law, federal law shall supersede such local and/or state law.

#### **Exemptions**

In the event any vendor can establish that compliance with any guideline set forth in the Policy will create an unreasonable burden upon request by the vendor, the M/WBE Coordinator may provide an exemption to compliance with such guideline.