

APPENDIX 00800A
THE BHA MINORITY AND WOMEN'S PARTICIPATION PROVISION

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APPENDIX 00800A

BOSTON HOUSING AUTHORITY MINORITY AND WOMEN PARTICIPATION PROVISION

1. Definitions.

For the purposes of this Provision, the following terms have the following meanings:

1.1 Authority means the Boston Housing Authority.

1.2 Bidder means any individual, partnership, joint venture, corporation, or other entity which submits a general bid to the Authority for performance of construction work;

1.3 Contract means the contract executed or to be executed between a General Contractor and the Authority for performance of construction work, of which this Provision is a part;

1.4 Contractor means the individual, partnership, joint venture, corporation, or other entity which has executed the Contract with the Authority;

1.5 Minority means a person certified as such by the Massachusetts State Office of Minority and Women Business Assistance ("SOMWBA") pursuant to 425 CMR 2.00.

1.6 Minority Business Enterprise ("MBE") means a business enterprise certified as an MBE by SOMWBA pursuant to 425 CMR 2.00.

1.7 Perform means the doing of work by a construction contractor with its own organization.

1.8 Services means construction-related services supplied to the Contractor in connection with its performance of this Contract, including rental of equipment, trucking, security, and other similar services, but not including insurance, bonding, or other financial services.

1.9 SOMWBA means the Massachusetts State Office of Minority and Women Business Assistance, a division of the Office of Minority and Women Business Development, within the Department of Economic Development, which certifies minority, woman and minority/woman business enterprises, non-profit organizations and joint ventures pursuant to 425 CMR 2.00.

1.10 Subcontractor means any individual, partnership, joint venture, corporation, or other entity under contract with the Contractor (or any of its Subcontractors) to perform construction work under this Contract.

1.11 Supply means the provision of any goods or services by a vendor to the Contractor. An MBE or a Women's Business Enterprise ("WBE") that merely acts as an agent or a passive conduit in connection with the provision of goods or materials, or an MBE or a WBE that does not assume any financial risk

or control over goods and materials provided shall not be considered a vendor or supplier under this definition.

1.12 Women's Business Enterprise. ("WBE") means a business enterprise certified as a WBE by SOMWBA pursuant to 425 CMR 2.00.

2. Utilization of MBEs and WBEs. General bidders shall take affirmative action to meet the MBE and WBE utilization goals for construction work and/or for the supply of goods and/or services set out in the Section 00800 of the Specifications.

3. Required Submittals. Within five (5) business days of bid opening the apparent low general bidder shall complete and submit to the Authority signed copies of the following documents (collectively, the "Required Submittals"):

3.1 Attachment MWPP1, entitled "Contractor's Certification" ("Attachment MWPP1"); and

3.2 Attachment MWPP2, entitled "MBE/WBE Utilization Form" ("Attachment MWPP2"); and

3.3 An Attachment MWPP3, entitled "Letter of Intent", for each MBE and WBE listed in the general bidder's Attachment MPP2 as providing materials and/or construction services for the project.

In addition, the Authority may request any other general bidder to make the Required Submittals and such general bidder shall do so within five (5) business days of receipt of the Authority's request. The Authority shall make any such request in writing.

4. Extension of Time for Submittal. The apparent low general bidder may request an extension of time for making the Required Submittals, provided that:

4.1 The request is made in writing; and

4.2 Is made before the initial 5-day period for making the Required Submittals has expired; and

4.3 Sets out with specificity the reasons for the request.

The Authority will respond within two (2) business days of its receipt of a request for an extension of time. If the Authority does not respond to the request for an extension of time in a timely manner, the general bidder will be deemed to have been granted an extension of five (5) business days.

5. Penalty for Failure to Make Required Submittals. Failure to submit the Required Submittals in a timely manner may cause the Authority to reject the general bidder's bid.

6. Review of Required Submittals. The Authority will review the Required Submittals for compliance with the Authority's Minority and Women's Participation Provision ("MWPP"). Only MBEs and WBEs certified by SOMWBA as such will be deemed MBEs or WBEs for the purpose of demonstrating

compliance with the MWPP. Notwithstanding the foregoing, if a SOMWBA-certified MBE or WBE is not eligible under the MWPP, such MBE or WBE will be disqualified from participation by the Authority.

If after reviewing the Required Submittals the Authority determines that a general bidder has not met the affirmative action obligations established for the job in accordance with MWPP requirements, the Authority may in the exercise of its discretion afford that bidder an opportunity to amend its Required Submittals by the addition, deletion and/or substitution of MBEs and/or WBEs.

If the Authority has permitted a general bidder to amend its Required Submittals by the addition, deletion and/or substitution of MBEs and/or WBEs, that bidder shall promptly submit to the Authority its amended Attachment MWPP2, together with an Attachment MWPP3 for each new MBE and/or WBE.

7. Waiver of MBE/WBE Requirements. If, despite its best efforts, the apparent low general bidder is unable to meet the MBE/WBE goals established for the job, it may request a waiver, either in full or in part, of the MBE/WBE goals, provided that:

- 7.1 The request is made in writing; and
- 7.2 Is made before the initial 5-day period for making the Required Submittals has expired; and
- 7.3 Is submitted with such of the Required Submittals as may be made; and
- 7.4 Sets out with specificity the reasons for the request.

Upon receiving a request for a waiver of the MBE/WBE goals established for the job, the Authority will meet with the general bidder making the request in order to determine whether there is reasonable cause to waive the MBE/WBE goals for the job, either in full or in part. If in the exercise of its discretion the Authority determines that there is reasonable cause to grant the request for a waiver, it will notify the general bidder in writing of its decision and its reasons therefor.

In no event will the Authority's failure to act on a request for a waiver of the MBE/WBE goals for a job be deemed a grant of such a waiver.

8. Utilization of Minority and Women Workers. The Contractor and each of its Subcontractors will take affirmative action to assure that the percentage set out in Section 00800 of the Specifications of all person hours contributed in all job categories of construction work will be contributed by minority and women employees.

9. Waiver of Minority and Women Workforce Requirement. If, despite its best efforts, the Contractor or any of its Subcontractors is unable to comply with the Minority and women workers goals established for the job the Contractor may request a waiver, either in full or in part, of such goals, provided that:

- 9.1 The request is made in writing; and
- 9.2 Is made in a timely manner; and
- 9.3 Sets out with specificity the reasons for the request.

Upon receiving a request for a waiver of the Minority and women workforce goals established for the job, the Authority will meet with the Contractor in order to determine whether there is reasonable cause to waive such goals for the job, either in full or in part. If in the exercise of its discretion the Authority determines that there is reasonable cause to grant the request for a waiver, it will notify the Contractor in writing of its decision and its reasons therefor.

In no event will the Authority's failure to act on a request for a waiver of the Minority and women workforce goals for a job be deemed a grant of such a waiver

10. Joint Venture Certification. Upon the Authority's certification that a venture between an MBE and a non-minority-owned business, or between a WBE and a non-women-owned business, is as to form and substance, a legitimate joint venture, such a joint venture may be utilized, as provided herein, toward fulfillment of the goals established by the MWPP for the job. If the Contractor or a Subcontractor is certified by the Authority as a legitimate joint venture, the creditable dollar amount of the work, goods or services performed or supplied by the MBE or WBE partner of the joint venture will be determined by the Authority in its sole discretion. In taking its determination as to the dollar amount to credit toward the MWPP goals, the Authority will consider, among other things, the amount of the initial capital contribution of the MBE or WBE partner to the joint venture and the amount of joint venture proceeds to be distributed and actually distributed to said MBE/WBE partner of the joint venture. The Contractor and any proposed parties to a joint venture shall provide to the Authority upon request such information or permit access by designees of the Authority, with or without prior notice, to any books, records, accounts, contracts or other sources of information necessary both to an initial determination or certification and to on-going and final reviews of the business of the joint venture, in order to determine compliance with this Section 10.

11. Compliance Monitoring after Contract Award.

11.1 Prior to the execution of any Subcontract, whether prior to or after commencement of work under the Contract, the Contractor shall notify the Authority of the name, address, telephone number and MBE/WBE status of the Subcontractor with which it intends to contract for work and/or materials and/or supplies, the nature of the work and/or materials and/or supplies for which it intends to contract, the projected dates for commencement and completion of such work and/or provision of materials and/or supplies and a completed and signed Attachment MWPP1A, entitled "Subcontractor's Certification" ("Attachment MWPP1A") for such

Subcontractor. The Contractor shall not enter into any such Subcontract without the express written consent of the Authority.

11.2 At the pre-construction meeting or one (1) week prior to commencement of work under the Contract and quarterly thereafter the General Contractor shall complete and submit to the Authority Attachment MWPP4, entitled "Quarterly Projected Work Force Table" ("Attachment MWPP4") showing for each week in the next following quarter its projected work force by trade. Attachment MWPP4 submissions shall be made no later than one (1) week in advance of the commencement of each quarter and whenever workforce projections are updated by the General Contractor.

11.3 At the end of each week following commencement of work under the Contract and continuing through to the completion of the work the General Contractor and each of its Subcontractors shall complete and submit to the Authority Attachment MWPP5, entitled "Weekly Utilization Report" ("Attachment MWPP5") showing for the preceding week the hours worked in each trade by each employee and identifying the minority status and sex of each such employee.

11.4 The Contractor and subcontractors shall submit a completed and signed Attachment MWPP 6 entitled "Monthly Employment Utilization Reports" ("Attachment MWPP6") by the fifth day of each month during the term of the Contract.

11.5 The Contractor shall submit with each application for payment under the Contract a completed and signed Attachment MWPP7, entitled "MBE/WBE Utilization Progress Report" ("Attachment MWPP7").

12. Increase in Contract Price. If there is an increase in the Contract price attributable to the selection of one or more alternates and/or to the use of unit prices in awarding the Contract, the Contractor shall submit a revised Attachment MWPP2 to reflect the increased price and, where applicable, an Attachment MWPP3 for each new MBE and/or WBE, or for each MBE and/or WBE doing additional work and/or providing additional material and/or supplies to the Contractor for an increased price. If there is an increase in the Contract price after execution attributable to change orders or other adjustments, the Authority may require the Contractor to submit a revised Attachment MWPP2 and, where applicable, new or revised Attachment MWPP3s.

13. No Substitution for Designated MWPP Subcontractors. Except with the prior express written consent of the Authority the Contractor shall not substitute for any MBE or WBE named in its Attachment MWPP2 as performing construction work or providing materials and/or supplies its own workforce or capacity or the workforce or capacity of any other subcontractor. If the Contractor is unable, for reasons beyond its control, to complete the work of the Contract using the MBEs or WBEs named in its Attachment MWPP2, the

Contractor may request that the Authority accept the addition, deletion and/or substitution of one or more MBEs or WBEs, or that the Authority waive the Contractor's MBE/WBE commitment under the MWPP to the extent necessary to bring the Contractor into compliance, or that the Authority accept an alternative commitment consistent with MWPP goals, provided that:

- 13.1 The request is made in writing; and
- 13.2 Is made promptly after the issue arises; and
- 13.3 Sets out with specificity the reasons for the request.

Upon receiving such a request, the Authority may meet with the Contractor in order to determine whether there is reasonable cause to grant the request, either in full or in part, or it may make its determination based upon written submissions and/or telephone interviews. If in the exercise of its discretion the Authority determines that there is reasonable cause to grant the Contractor's request, it will notify the Contractor in writing of its decision and its reasons therefor.

In no event will the Authority's failure to act on such a request be deemed a grant of the request.

14. Enforcement.

14.1 If at any time the Authority determines that the Contractor is not in compliance with its obligations and commitments under the MWPP, it shall notify the Contractor in writing of such finding and of any sanctions it intends to apply. Such written notice shall give the Contractor an opportunity to meet with representatives of the Authority to present information demonstrating that it is in compliance, or in mitigation of its failure to comply and shall appoint a time and place for such meeting, subject to the Contractor's availability. The Authority may require the attendance of any Subcontractor at any such meeting.

14.2 Following any meeting held with a Contractor pursuant to Section 14.1 the Authority shall make a finding as to whether the Contractor is in compliance with its obligations and commitments under the MWPP and shall notify such Contractor in writing of such finding, the information upon which such finding was based and the sanctions, if any, it intends to apply. Such finding shall be final and without recourse, unless it is made in bad faith and without reasonable cause.

15. Penalties for Noncompliance. If, during the term of the Contract the Authority determines that the Contractor is not in compliance with its obligations and commitments under the MWPP, the Authority may impose on the Contractor, or require the Contractor to impose on any Subcontractor, any one or more of the following penalties:

15.1 The recovery from the Contractor of one percent (1%) of the Contract price or \$1,000.00, whichever is lesser, in the nature of liquidated

damages for each week that the Contractor fails or refuses or has failed or refused to comply; or if a Subcontractor is in noncompliance, the recovery from the Contractor, to be assessed by the Contractor as a back charge against the Subcontractor, one percent (1%) of the subcontract price, or \$1,000.00, whichever is lesser, in the nature of liquidated damages for each week that the Subcontractor fails or refuses or has failed or refused to comply;

15.2 The suspension of any payment or part thereof due under the Contract, including, where applicable, payment of amounts that should have been paid to an MBE or WBE in accordance with the Contractor's commitment, until such time as the Contractor, or any Subcontractor, where applicable, is able to demonstrate its compliance with the terms of the MWPP;

15.3 Requiring the Contractor to subcontract with an MBE or WBE for any contract or specialty item, or to purchase any goods or services from an MBE or WBE in accordance with the MBE/WBE utilization goals for the Contract and/or the Contractor's commitment under the Contract to utilize MBEs and WBEs for the work of the Contract;

15.4 The termination or cancellation of the Contract, in whole or in part, unless the Contractor or any Subcontractor, where applicable, is able to demonstrate within a reasonable specified time its compliance with its obligations and commitments under the MWPP;

15.5 The retention in connection with final acceptance and final payment of up to five percent (5%) of the Contract price (as adjusted by change orders or other amendments), where the Contractor and/or any Subcontractor has refused to demonstrate compliance with the Contractor's commitment under the Contract to utilize MBEs and WBEs in accordance with the MWPP;

15.6 Denial to the Contractor of the right to participate in any future contracts awarded by the Authority for a period of up to three (3) years.

16. Access to Records and Documents. The Contractor and its Subcontractors shall provide to the Authority upon the Authority's request access during regular business hours to any records, documents and other information prepared and/or kept by the Contractor and/or its Subcontractors in the regular course of business relevant to the Contractor's and/or its Subcontractors' compliance with the Authority's MWPP and shall promptly provide to the Authority upon its request copies of any and all such records, documents and other information.

17. Equal Opportunity and Affirmative Action Requirements. In addition to satisfying the specific requirements of this MWPP, the Contractor agrees to comply with all other applicable Federal, State or other governmental rules, regulations and requirements relating to equal opportunity and affirmative action in construction projects (see Appendix Section 00800C).