



BOSTON HOUSING
AUTHORITY

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SECTION 00800

MINORITY AND WOMEN'S PARTICIPATION PROVISION (MWPP)

for

BHA JOB NO. _____

1.01 GENERAL

A. This section summarizes goals for the project (the "Project") for the utilization of minority and women workers and minority business enterprises ("MBEs") and women's business enterprises ("WBEs") under the Contract. This section also summarizes goals for BHA's purchasing of supplies and services not related to construction.

B. Other duties and requirements of law that may not be specified in this section apply and are inherently a part of the Contract.

1.02 UTILIZATION OF MINORITY AND WOMEN WORKERS AND MBEs AND WBEs

The Boston Housing Authority's Minority and Women's Participation Provision ("MWPP"), consisting of Sections 00800 through 00800C, sets out certain affirmative action goals for the Contract. The Contractor shall take affirmative action to meet the minority and women workforce goals and minority and women's business enterprise utilization goals for the Project set out herein.

A. Minority Workforce Goals. The Contractor and each of its Subcontractors shall take affirmative action to employ and maintain Minority workers that perform a total of *FORTY PERCENT (40 %)* of the total employee person hours under the Contract.

B. Women Workforce Goals. The Contractor and each of its Subcontractors shall take affirmative action to employ and maintain Women workers that perform a total of *TWELVE PERCENT (12 %)* of the total employee person hours under the Contract.

C. Utilization of MBEs.

1. Agency-wide Goals. The BHA's goal for the utilization of MBEs is *TWENTY PERCENT (20 %)*. The Contractor for supplies or services unrelated to construction shall take affirmative action to expend twenty percent of the Contract price to MBEs for the procurement of goods, supplies, and/or services under the Contract if the nature of the Contract permits.

2. Construction & Design Work Goals. The **Project goal** for the utilization of MBEs for construction and construction design is *TWENTY-FIVE PERCENT (25 %)*. The Contractor shall take affirmative action to expend twenty-five percent of the Contract price to MBEs to procure construction work, supplies, and goods and/or services for the Project under the Contract. The Contractor can self-perform as an MBE or joint-venture with MBEs, subcontract to MBEs, or purchase materials/goods or other services from MBEs.

D. Utilization of WBEs.

1. Agency-wide Goals. The BHA's goal for the utilization of WBEs is *FIFTEEN PERCENT (15 %)*. The Contractor for supplies or services unrelated to construction shall take affirmative action to expend fifteen percent of the Contract price to WBEs for the procurement of goods, supplies, and/or services under the Contract if the nature of the Contract permits.

2. Construction & Design Work Goals. The **Project goal** for the utilization of WBEs for construction and construction design is *FIFTEEN PERCENT (15 %)*. The Contractor shall take affirmative action to expend fifteen percent of the Contract price to WBEs to procure construction work, supplies, and goods and/or services for the Project under the Contract. The Contractor can self-perform as a WBE or joint-venture with WBEs, subcontract to WBEs, or purchase materials/goods or other services from WBEs.

E. Required Certification. Only MBEs and WBEs certified by the Massachusetts Supplier Diversity Office (SDO) or the City of Boston's Supplier Diversity Program (SDP) will be deemed MBEs and WBEs to demonstrate compliance with the MWPP. If an SDO or SDP-certified MBE or WBE is not performing work on the contract, such MBE or WBE participation will not contribute towards the utilization goals.

1.03 REQUIRED SUBMITTALS FOR CONSTRUCTION CONTRACTS.

The Contractor shall, in accordance with Section 3 of Section 00800A of the MWPP, complete and submit to the BHA the Required Submittals within five (5) business days of bid opening. The Required Submittals are contained in the Boston Housing Authority Minority and Women Participation Provision Forms ("MWPP Forms") in Section 00800B of the MWPP.

1.04 EXTENSION OF TIME FOR SUBMITTAL.

The Contractor may, in accordance with Section 4 of Section 00800A of the MWPP, request an extension of time for making the Required Submittals

1.05 WAIVER OF MWPP UTILIZATION GOALS.

The Contractor may, in accordance with Sections 7 and 9 of Section 00800A of the MWPP, request a waiver of the MWPP goals set out in this section. *Waiver requests should be directed to the Director of Civil Rights at the BHA, 9th Floor, 52 Chauncy Street, Boston, MA 02111. Waiver requests may be mailed, emailed, faxed, or hand-delivered.*

1.06 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, the Contractor shall, in accordance with Section 12 of Section 00800A of the MWPP, conform the Required Submittals to reflect such increase. If there is an increase in the Contract price attributable to change orders or other adjustments, the Contractor may, in accordance with such Section 12, be required to revise its Required Submittals to reflect such increase.



1.07 EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION REQUIREMENTS.

The Contractor agrees to comply with all applicable Federal, State or other governmental rules, regulations and requirements relating to equal opportunity and affirmative action in construction projects (see Specifications section in Section 00800C of the MWPP).



SECTION 00800A

MINORITY AND WOMEN'S PARTICIPATION PROVISION (MWPP)

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SECTION 00800A

MINORITY AND WOMEN'S PARTICIPATION PROVISION (MWPP)

Statement of Provision

The Boston Housing Authority ("BHA") has established the following provision to promote the utilization of minority and women business enterprise ("M/WBEs") on BHA projects. This Provision shall be incorporated in its entirety in all BHA contracts and apply to all contractors.

1. Definitions.

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

- 1.1 Agency-wide Goals means the Boston Housing Authority's aspirational goals for the total dollars spent on goods, supplies, and services by or from an MBE or WBE set out in Section 00800.
- 1.2 BHA means the Boston Housing Authority.
- 1.3 Bidder means any individual, partnership, joint venture, corporation, or other entity which submits a general bid to the BHA for performance of construction work;
- 1.4 Contract means the contract executed or to be executed between a General Contractor or proposer and the BHA for performance of construction work, professional services, or purchase of goods of which this Provision is a part.
- 1.5 Contractor means the individual, partnership, joint venture, corporation, or other entity that has executed the contract with the BHA.
- 1.6 Minority Business Enterprise ("MBE") means a business enterprise owned and controlled by 51% or more by one or more minority persons and certified as a MBE by the SDO pursuant to M.G.L. c. 7, § 58 or certified by the City of Boston's Supplier Diversity Program (SDP).

M.G.L. c. 7, § 58 defines an MBE as follows: "Minority business enterprise" or "MBE", for the purpose of receipt of services from the Supplier Diversity Office (SDO), means a business enterprise that is owned and controlled by one or more socially or economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such persons include, but are not limited to, African Americans, Cape Verdeans, Western Hemisphere Hispanics, Asians, American Indians, Eskimos, and Aleuts. For purposes of section 61 and of section 40N of chapter 7, the term "minority owned business" shall have the same meaning as "minority business enterprise."
- 1.7 Perform means the doing of work by a contractor with its own organization.
- 1.8 Services means work 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.



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- 1.9 Subcontractor means any individual, partnership, joint venture, corporation, or other entity under contract with the Contractor (or any of its Subcontractors) to perform work under this Contract.
- 1.10 Supplier Diversity Office ("SDO") means the Commonwealth's Supplier Diversity Office as designated by M.G.L. c. 7, § 61 and § 58. The office is the successor to the State Office of Minority and Women Business Assistance ("SOMWBA") pursuant to 425 CMR 2.00.
- 1.11 Supplier Diversity Program ("SDP") means Minority Business Enterprise and Women Business Enterprise certification with the City of Boston's Supplier Diversity Program.
- 1.12 Supply means the provision of any goods or services by a vendor to the Contractor. An MBE or a WBE (as defined below) 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.
- 1.13 Utilization Goals means the total dollar amount of the contract spent on MBE or WBE General Contractor, Subcontractor, and/or supplier of goods/services set out in Section 00800.
- 1.14 Women Business Enterprise ("WBE") means a business enterprise owned and controlled by 51% or more by one or more women and certified as a WBE by SDO pursuant to M.G.L. c. 7, § 58 or SDP Certified.

M.G.L. c. 7, § 58 defines a WBE as follows: "Women business enterprise" or "WBE", for the purpose of receipt of services from SDO means a business enterprise that is both owned and controlled, by one or more women who have invested in an ongoing business free of conversion rights. For purposes of section 61 and of section 40N of chapter 7, the term "women owned business" shall have the same meaning as "women business enterprise."
- 1.15 Workforce Goals means the total labor hours performed by a minority and/or women worker under the Contract set out in Section 00800.

2. Utilization of MBEs and WBEs. Contractor/Bidders shall take affirmative action to meet the MBE and WBE utilization goals for work and/or for the supply of goods and/or services set out in Section 00800. Contractor/Bidders shall self-perform as an M/WBE or joint-venture with M/WBEs, subcontract to M/WBEs, or purchase materials/goods or other services from M/WBEs for the performance of the Contract.

3. Required Submittals for Construction Contracts. Within five (5) business days of bid opening the apparent low general bidder shall complete and submit to the BHA signed copies of the following documents (collectively, the "Required Submittals") contained in Section 00800B:

3.1 Attachment MWPP1, entitled "Contractor's Certification" ("Attachment MWPP1"), if not submitted with bid;

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



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3.3 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 BHA 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 BHA's request. The BHA 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 BHA will respond within two (2) business days of its receipt of a request for an extension of time. If the BHA 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 BHA to reject the general bidder's bid.

6. Review of Required Submittals. The BHA will review the Required Submittals for compliance with the BHA's MWPP. Only MBEs and WBEs certified by the SDO or SDP will be deemed MBEs or WBEs for the purpose of demonstrating compliance with the MWPP.

If after reviewing the Required Submittals the BHA determines that a general bidder has not met the affirmative action obligations established for the job in accordance with MWPP requirements, the BHA 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 BHA 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 BHA its amended Attachment MWPP2, together with an Attachment MWPP3 for each new MBE and/or WBE.

7. Waiver of MBE/WBE Requirements. If, despite a best faith effort, the apparent low general bidder or Contractor 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. (Provide documentation demonstrating all the efforts undertaken including but not limited to the types and modes of outreach events to MBEs and/or WBEs, list of MBEs



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and/or WBEs directly contacted, frequency and timeline of communication efforts, and any other compelling best faith efforts.)

Upon receiving a request for a waiver of the MBE/WBE goals established for the job, the BHA will 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 BHA determines that there is reasonable cause to grant the request for a waiver, it will notify the general bidder or Contractor in writing of its decision and its reasons therefor.

In no event will the BHA'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 percentages set out in Section 00800 of all person hours contributed in all job categories of construction work will be contributed by minority and women employees.

9. Waiver of Minority Workforce Requirement. If, despite its best efforts, the Contractor or any of its Subcontractors is unable to comply with the Minority workers requirements established for the job, the Contractor may request a waiver, either in full or in part, of such requirements, 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, including recruitment or outreach efforts undertaken.

Upon receiving a request for a waiver of the Minority workforce requirements established for the job, BHA will meet with the Contractor in order to determine whether there is reasonable cause to waive such requirements for the job, either in full or in part. If in the exercise of its discretion the BHA 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 BHA's failure to act on a request for a waiver of the Minority workforce requirements for a job be deemed a grant of such a waiver.

10. Joint Venture Certification. Upon the BHA'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 BHA 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 BHA in its sole discretion. In taking its determination as to the dollar amount to credit toward the MWBE goals, the BHA 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 BHA upon request such information or permit access by designees of the BHA, 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 BHA 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.

11.2 A Contractor performing a construction contract shall also submit a completed and signed Attachment MWPP1A, entitled "Subcontractor's Certification" ("Attachment MWPP1A") for such Subcontractor.

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 for a construction contract and each of its Subcontractors shall complete and submit to the BHA 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 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 BHA 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 BHA 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 BHA accept the addition, deletion and/or substitution of one or more MBEs or WBEs, or that the BHA waive the Contractor's MBE/WBE commitment under the MWPP to the extent necessary to bring the Contractor into compliance, or that the BHA 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



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13.3 Sets out with specificity the reasons for the request.

Upon receiving such a request, the BHA 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 BHA 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 BHA's failure to act on such a request be deemed a grant of the request.

14. Enforcement.

14.1 If at any time the BHA 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 BHA 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 BHA 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 BHA 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 BHA determines that the Contractor is not in compliance with its obligations and commitments under the MWPP, the BHA 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 BHA for a period of up to three (3) years.

16. Access to Records and Documents. The Contractor and its Subcontractors shall provide to the BHA upon the BHA'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 BHA's MWPP and shall promptly provide to the BHA 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 Section 00800C).



SECTION 00800C

MINORITY AND WOMEN'S PARTICIPATION PROVISION

EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION REQUIREMENTS

Federally-Assisted Contracts over \$10,000 only

Page C-2 to C-3	Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)
Page C-4 to C-5	Equal Opportunity Clause
Page C-6 to C-11	Standard Federal Equal Employment Opportunity Construction Contract Specifications
Page C-12 to C-13	Instructions to Contractors Subject to Federal Bid Conditions



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**NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION
TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY**

(Executive Order 11246)

1. The CONTRACTOR'S attention is called to the "Equal Opportunity Clause" and "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth in this part.
2. The goals¹ and timetables for minority and female participation, expressed in percentage terms for the CONTRACTOR'S aggregate workforce in each trade on all construction work in the covered area, are as follows:

GOALS FOR FEMALE PARTICIPATION IN EACH TRADE
(Nationwide)

UNTIL FURTHER NOTICE, the following goals and timetables for female participation shall be included in all Federal or Federally-assisted construction contracts and subcontracts in excess of ten thousand (\$10,000) dollars. The goals are applicable to the Contractor's aggregate on-site construction work on a Federal or Federally-assisted construction contract or subcontract.

The goal for female participation for each trade is **6.9%**.

GOALS FOR MINORITY PARTICIPATION IN EACH TRADE
(Boston, Massachusetts Area)

UNTIL FURTHER NOTICE, the following goals and timetables for minority participation shall be included in all Federal or Federally-assisted construction contracts and subcontracts in excess of ten-thousand (\$10,000) dollars. The goals are applicable to the contractor's aggregate on-site construction work force whether or not the part of that workforce is performing work on a Federal or Federally-assisted construction contract or subcontract.

GOALS AND TIMETABLES (EFFECTIVE UNTIL FURTHER NOTICE)

The goal for minority participation for each trade is **4.0%**.

These goals are applicable to all the CONTRACTOR'S construction work (whether or not it is Federal or Federally-assisted) performed in the covered area. The covered area is Boston, MA.

¹ According to 41 C.F.R. § 60-4 Appendix B-80, the Office of Federal Contract Compliance Programs (OFCCP) set nationwide goals for female participation at 6.9% and goals for Boston, MA, economic area for minority participation at 4.0%. On December 30, 1980, OFCCP extended the goals established in 41 C.F.R. 60-4 to "until further notice" and remain in effect. However, the BHA has established higher overall workforce goals that are set out in Section 00800 and that do not conflict with the goals specified herein. See U.S. DEP'T. OF LAB. FED. CONT. COMPLIANCE PROGRAMS, CONSTRUCTION CONTRACTORS TECHNICAL ASSISTANCE GUIDE, app. P (2019) <https://www.dol.gov/sites/dolgov/files/ofccp/Construction/files/ConstructionTAG.pdf> (clarifying that "The percentage goal a contractor establishes for minority participation must be at least equal to the percentage established for that geographic area....Contractors may establish higher goals if they desire.").



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The Contractor's Compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3 (a) and its efforts to meet the goals established for the geographical area where the contract is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract in each trade, and the CONTRACTOR shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR part 60-4. Compliance with the goals will be measured against the total work hours performed.

- 3 The CONTRACTOR shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within ten (10) working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the prime contract. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

4. As used in this Notice, and in the contract, the covered area is Arlington, Boston, Belmont, Brookline, Burlington, Cambridge, Canton, Reading, Revere, Somerville, Stoneham, Wakefield, Westwood, Winthrop, Winchester, Woburn, and the Islands of Boston Harbor, Massachusetts.



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EQUAL OPPORTUNITY CLAUSE

During the performance of the contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay, or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract for understanding, a notice to be provided advising the said labor union of workers' representatives of the contractors' commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and relevant orders of the Secretary of Labor.
6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any or the said rules, regulations, or orders, the contractor may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided however, that in the event a subcontractor becomes involved



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in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.



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**STANDARD FEDERAL EQUAL EMPLOYMENT
OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS**

(EXECUTIVE ORDER 11246)

1. As used in these specification:
 - a. Covered Area means the geographical area described in the contract agreement.
 - b. Director means Director, Office of Federal Contract Compliance Program, United States Department of Labor, or any person to whom the Director delegates authority.
 - c. Employer Identification Number means the Federal Social Security Number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - d. Minority includes:
 - I. Black (all persons having origins in any of the Black African racial groups not of Hispanic origin).
 - II. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or other Spanish Culture or origin regardless of race).
 - III. Asian and Pacific Islander (all persons having origin in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands).
 - IV. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation of community identification).
2. Whenever the Contractor or any Subcontractor at any Tier subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the notice which contains the applicable goals for minority and female participation and which is set forth in this contract agreement.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have union participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved plan is individually



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required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals or timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7(a) through (p) of these specifications. The goals set forth in this part are expressed as percentages of the total hours of employment and training of minority and female utilization. The Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246 or the regulations promulgated pursuant thereto.
6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its efforts to achieve maximum results from its actions. The Contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:
 - a. Ensure and maintain a working environment free of harassment, intimidation and coercion at all sites and in all facilities at which the Contractor's employees are assigned to work. The Contractor where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - b. Establish and maintain a current list of minority and female recruitment sources and to community organizations when the Contractor or its unions have employed opportunities available, and maintain a record of the organization's responses.
 - c. Maintain a current file of the names, addresses and telephone numbers of each minority and female applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with



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respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

- d. Provide immediate written notification to the Director when the union with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or women sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7(b) above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year, and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification



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- to organizations, such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after-school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
 - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
 - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or prepare for, through appropriate training, etc., such opportunities.
 - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractors association and other business associations.
 - p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of the affirmative action obligations (7(b) through (p)). The efforts of a contractor association, joint contractor-union, contractor community, or other similar group of which the Contractor is a member or participant, may be asserted as fulfilling any one or more of its obligations under 7(a) through (p) of these Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and those in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables and can provide access to documentation which demonstrates the effectiveness of action taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's non-compliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to



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take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex or national origin.
11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these Specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these Specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligation under these Specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these Specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, of these Specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof, as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security, race, sex, status (e.g. mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g. those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).



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**INSTRUCTIONS TO CONTRACTORS SUBJECT
TO FEDERAL BID CONDITIONS²**

Within ten (10) working days of the award of a subcontract in excess of \$10,000, the contractor must submit a "Notice of Award of Construction Subcontract" to:

Assistant Regional Administrator
Office of Federal Contract Compliance Programs
U.S. Department of Labor
JFK Federal Building, Room 1612C
Boston, MA 02203 (617) 223-5272

In addition, all contractors and subcontractors subject to the Federal EEO Bid Conditions are required to file the Standard Form 257. The instructions for filing this Monthly Employment Utilization Report are as follows:

- a. The report is to be completed by each subject contractor (both prime and subcontractors), signed by a responsible official of the company, and filed by the fifth day of each month during the term of the contract, beginning the effective date of the contract. This report includes the total work hours worked for each employee level in each designated trade for the entire reporting period. The contractor submits a report for its aggregate work force on all Federally-funded or assisted construction contracts and all non-Federal construction work within the particular Bid Condition area, and collects from subcontractors performing work on a Federally-assisted construction project their individual SF-257 reports of aggregate workforce in the Bid Condition area, and submits them with its own report to:

Assistant Regional Administrator
Office of Federal Contract Compliance Programs
U.S. Department of Labor
JFK Federal Building, Room 1612C
Boston, MA 02203

Subcontractors should not individually submit these reports directly to HUD.

- b. Attach to the Standard Form 257 a one time listing of all Federally-funded or assisted contracts within the particular Bid Condition area by agency, contract and/or project number, location, dollar volume, percent completed, completion date, and a similar listing of all non-Federal work being performed in that area. Monthly reports thereafter should only include a listing of new contracts (both federal and non Federal) received

² Forms referred to in these instructions are available from:

U.S. Department of Labor-Area Office
Office of Contract Compliance
507 J.W. McCormack Post Office and Court House Building
Boston, MA 02109 (617) 223-1481



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and current contracts completed.

- c. If there is no work in a craft in the contractor's aggregate workforce for the reporting month, indicate this lack of work by placing a zero (0) in the appropriate column.
- d. Label the final report for a contractor or subcontractor FINAL REPORT-CONTRACT/SUBCONTRACT COMPLETED.
- e. Enter your employer identification number (Federal Social Security number used on the Employers Quarterly Tax Return, U.S. Treasury Department Form 941) in item 1 of the Standard Form 257.
- f. Minority is defined as including Blacks, Hispanics, Asians/Pacific Islanders and American Indians, Aleuts, Cape Verdeans, and Eskimos.
- g. The procedure for assigning OFCCP identification numbers to each contract awarded has been cancelled, and the project names and OFCCP number are no longer required to be reported on the SF-257.

Construction contractors and subcontractors performing work subject to the requirements of Executive Order 11246 in non-plan areas are also required to file SF-257 forms on a monthly basis. The procedure for filing the form is identical to that outlined above except that the geographic area for reporting is the Standard Metropolitan Statistical Area (SMSA) (or county, where no SMSA exists) in which the Federally-assisted construction contract is being performed.