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Contracting Disparities & Sheltered Market Program *Plain Language Background Explainer*

In recent years, the BHA, along with the City of Boston, Boston Water and Sewer Commission, and Boston Planning and Development Agency, conducted studies into equity in contracting for minority and women business enterprises (M/WBE). The studies looked at what minority and women-owned businesses were available for a given service, like financial consulting or construction work, and what percent of contracted the public agencies awarded to vendors of that type.

In short, the studies asked: Is there a disparity between contracts awarded and the proportion of vendors of a particular group who may be seeking to contract with agencies like the BHA? The studies did find disparities in contracting for the various public agencies, for both Minority and Women Business Enterprises.

The BHA had multiple policies in place before the study to promote equity, in part due to its implementation of HUD and DHCD protocols. The BHA has taken additional measures to promote equity. One example is how the BHA evaluates RFPs. After the disparity study, the BHA decided to change our scoring to encourage more participation of M/WBE businesses in proposals.

The “sheltered market program” is another tool, authorized by GL 30B Section 18, the BHA could use for target contracts. What this program would do is allow the BHA to say, “because we know there is a disparity, we’re going to pick a particular contract and offer it to M/WBE vendors first, because of barriers these businesses have faced.”

For example, the BHA *could* try to offer a cleaning contract for a particular public housing development to MBE vendors. BHA would then advertise that particular contract to certified vendors only. The certified vendors would still have to bid competitively.

The BHA and provided a version of this plain language summary to its Resident Advisory Board, and through its Annual Plan Process, to the general public, in Fall 2022. The BHA presented program guidelines for approval and clarified that this was an enabling step prior to consideration of any specific sheltered market solicitation.

The policies approved by the BHA allow the Administrator, or Chief Procurement Officer as authorized by the Administrator, to issue sheltered market program solicitations. These solicitations – i.e. advertisements that the BHA seeks to purchase a given category of supplies or services – would be advertised competitively, but open to City of Boston or Commonwealth of Massachusetts certified Minority and/or Women Business Enterprises, as specified in the contract advertisement. The policies also lay out specific advertising, competition and reporting requirements at various cost thresholds.

Sheltered Market Program Guidelines

The Boston Housing Authority is considering measures to address contracting disparities and is taking comment on policies and procedures for a sheltered market program, which seeks to create opportunities for disadvantaged vendors, including Minority Business Enterprises and Women Business Enterprises. These guidelines provide for general program authorization and oversight, and no specific contract has been identified at this time.

Special Measures to Address Contracting Disparities (Sheltered Market Program): In recognition of the historic and present disparities in access to contracting opportunities facing disadvantaged vendors, the BHA may establish a sheltered market program, as defined in G.L. c.30B §18. The Chief Procurement Officer may establish such program for certain contracts and one or more classes of disadvantaged vendors when authorized by Administrator of the BHA and when, to the extent constitutionally required, such program can be based on findings that the program would serve as remedy for present effects of past discrimination.

Where certain contracts have not been explicitly designated by the Administrator of the BHA as part of a sheltered market program, such contracts may be designated for a sheltered market program when the Chief Procurement Officer determines, based on reasonable evidence which may be internal or external data concerning contracting patterns of the BHA, vendors providing such services, barriers to contracting, and other such relevant data, and submits such finding for administrative review by the Executive Committee of the Boston Housing Authority.

For the purposes of a sheltered market program, the BHA shall accept certification of a disadvantaged business certified by the City of Boston or the Massachusetts Supplier Diversity Office (SDO), and may at its sole discretion accept certification by another municipal, country, state, federal or tribal entity upon submission of proof of such certification.

The Chief Procurement Officer shall ensure for effective competition amongst disadvantaged vendors for contracts within the sheltered market program.

Requirements for Advertisement and Solicitation

- a. Prior to the award of a sheltered market program contract for the procurement of supplies and services in the amount of one thousand dollars but less than ten thousand dollars, the BHA shall solicit and receive written or oral quotations from no fewer than three certified disadvantaged vendors customarily providing such supply or service.
- a. Prior to the award of a sheltered market program contract for the procurement of a supply or service in the amount of ten thousand dollars or more, the BHA shall solicit and receive responsive bids or proposals from no fewer than three certified disadvantaged vendors.
- b. Prior to the award of a sheltered market program contract for the procurement of a supply or service in the amount of fifty thousand dollars or greater, the BHA shall, in addition to any other advertisement or notice required by law, advertise such contract in 1 or more print or online media outlets serving disadvantaged communities.
- c. Any advertisement or solicitation for a sheltered market program contract shall state that the contract will be awarded under a sheltered market program and specifies the class or classes of disadvantaged vendors to which competition for the contract is limited.

d. In no event shall a contract designated for inclusion in a sheltered market program be awarded on a sole source basis or where inadequate certified and responsive submissions have been received.

Review and Assessment

a. The BHA shall review any sheltered market program in effect on an annual basis. Such review may be conducted by the Chief Procurement Officer, the Director of Procurement, or another designee of the Chief Procurement Officer.

b. Each review shall result in the production of a written report, which shall include the number and dollar value of contracts awarded to disadvantaged vendors under the sheltered market program, and the total number, the percentage, the total dollar value, and the percentage dollar value of contracts awarded by the governmental body to disadvantaged vendors eligible for participation in the sheltered market program. The report shall also include a description of other efforts undertaken by the BHA to increase its contracting with disadvantaged vendors, and recommendations for continuing, modifying, or terminating the program.