

Metropolitan School District of Washington Township

Resolution Establishing a Minority, Woman-Owned, Veteran-Owned, and Disabled Individual-Owned Business Enterprise (MWVDBE) Program

In 2016, the Metropolitan School District of Washington Township ("District") presented to District voters a capital projects referendum to fund various construction projects.

Prior to the referendum vote, the District's Board of Education ("School Board") publicly stated its intent to create a program that would facilitate participation of diverse construction contractors and suppliers to meet the District's needs in completing the Projects.

The Board now wishes to continue this program for all District construction projects ("Projects"), including projects funded by the capital project referendum approved by voters in June, 2020.

BE IT RESOLVED that the School Board now adopts a Minority, Woman-Owned, Veteran-Owned, and Disabled Individual-Owned Business Enterprise ("MWVDBE") Program to ensure that MWVDBEs are provided full and equal opportunity to participate in the Projects.

BE IT FURTHER RESOLVED that this Resolution supersedes prior supplier diversity program resolutions by the School Board.

I. FINDINGS

A. The Supreme Court of the United States in *City of Richmond v. Croson*, 488 U.S. 469 (1989), has enunciated certain standards which are necessary to maintain effective supplier diversity programs in compliance with constitutional requirements.

B. The District is committed to implementing a supplier diversity program associated with qualified MWVDBEs in conformance with the United States Supreme Court's decision in *City of Richmond v. Croson* and other relevant law.

C. MWVDBEs continue to be disadvantaged by practices in the local construction industry and economy when competing for contracts and in seeking subcontracting opportunities on such contracts.

D. Indeed, since 1987, the Consolidated City-County of Indianapolis-Marion County ("Indianapolis"), within which the District is located, has maintained a supplier diversity program to address historically disparities within the Indianapolis construction industry.

E. Indianapolis has periodically conducted disparity studies of the construction industry, among other industries, and found continued disparities within Indianapolis. The District incorporates the findings of these studies.

F. MWVDBEs continue to be awarded prime construction contracts and subcontracts in dollar amounts that are disproportionately lower than the availability of such businesses willing and able to perform such contracts.

G. The District's historic procurement practices have contributed to the underutilization of MWVDBEs on construction contracts and subcontracts.

H. MWVDBEs continue to be disadvantaged by practices in the local construction industry and economy when competing for contracts and in seeking subcontracting opportunities on such contracts.

I. The District was a passive participant in the historical discriminatory practices of the construction industry within Indianapolis that have discriminated against MWVDBEs.

J. Despite the District's recent efforts, MWVDBEs remain at a competitive disadvantage in competing for construction contracts and subcontracts.

K. The reduction of such disparity in the local economy will help reduce the disproportionate levels of poverty among minorities in the District and positively affect the District's efforts to educate and promote public safety, health, and welfare.

II. PROGRAM GOALS

The District encourages vendors on the Projects to utilize the appropriate participation of MWVDBE suppliers for the Projects.

The District will monitor goals on a monthly basis and provide quarterly analysis to the Board.

In establishing Program goals, the District has applied the following principles:

- A. Program goals may not be rigid and inflexible quotas, which must be met, nor are they to be considered as either a ceiling or a floor for the selection of particular groups. Quotas are expressly forbidden.
- B. Program goals do not create set-asides for specific groups, nor are they intended to achieve proportional representation or equal results.
- C. Program goals may not be used to supersede selection criteria established under public bidding laws.

III. GOOD FAITH EFFORTS

In evaluating good faith efforts of vendors in achieving the Program goals for the Projects, the District will consider the quality, quantity, and intensity of the different kinds of efforts a vendor has made. Listed below are examples of the types of actions a vendor will take in making a good

faith effort to meet the District's goals and are not intended to be exclusive or exhaustive, nor is it intended to be a mandatory checklist:

A. Soliciting through all reasonable and available means the interest of all qualified MWVDBEs who have the capability to perform the work.

B. Selecting portions of the work to be performed by MWVDBEs in order to increase the likelihood that the MWVDBEs goals will be achieved in compliance with applicable laws and contractual obligations.

1. Where appropriate, break out contract work items into economically feasible units to facilitate MWVDBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
2. Negotiate with subcontractors to assume part of the responsibility to meet the contract MWVDBE goals when the work to be sublet includes potential for MWVDBE participation (*e.g.*, 2nd and 3rd tier subcontractors).

C. Providing interested MWVDBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

D. Negotiating in good faith with interested MWVDBEs. It is the vendor's responsibility to make a portion of the work available to MWVDBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available MWVDBE subcontractors and suppliers, so as to facilitate MWVDBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of MWVDBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for MWVDBEs to perform the work.

E. A vendor using good business judgment would consider a number of factors in negotiating with subcontractors, including MWVDBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using MWVDBEs is not in itself sufficient reason for a vendor's failure to meet the Program goals, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the vendor of the responsibility to make good faith efforts. Vendors are not, however, required to accept higher quotes from MWVDBEs if the price difference is excessive or unreasonable under public bidding laws.

F. Not rejecting MWVDBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The vendor's standing within its industry, membership in specific groups, organizations, or associates and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the vendor's efforts to meet the Program goals.

G. Making efforts to assist interested MWVDBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or vendor.

H. Making efforts to assist interested MWVDBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

I. Effectively using the services of available MWVDBE community organizations; MWVDBE contractors' groups; Federal, State, and local MWVDBE business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of MWVDBEs.

J. Any other evidence that the vendor submits which shows that the vendor has made reasonable good faith efforts to meet the Program goals.

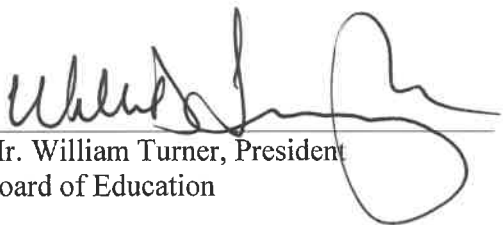
In addition, the District may take into account the following:

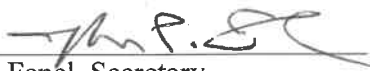
K. Whether the vendor's documentation reflects a clear and realistic plan for achieving the Program goals.

L. The vendor's past performance in meeting the MWVDBE goals with the District or goals under other similar federal, state, or local government programs.

M. The performance of other similar vendors in meeting the Program goals.

Approved this 9th day of June, 2021.


Mr. William Turner, President
Board of Education


John Fencel, Secretary
Board of Education