

15 MINORITY AND WOMEN-OWNED BUSINESSES (MBE/WBE)

15.1 POLICY OVERVIEW

The State of Nebraska is required by Federal statute to conduct outreach to minority- and women-owned businesses (MBE/WBE) for activities conducted under the Community Development Block Grant – Disaster Recovery (CDBG-DR) program. The Nebraska Department of Economic Development (DED) will conduct activities and oversee Subrecipient and Successful Applicant compliance as per the policies and procedures described in this chapter, which includes:

- An overview of the policy to conduct outreach to MBE/WBE;
- The Federal and State regulations governing MBE/WBE outreach efforts, as per the Federal Register Notice(s), State Action Plan, and Federal law;
- Associated requirements for DED and its Subrecipients and Successful Applicants; and
- Methods for conducting outreach to obtain diversity in the entities contracted to implement activities under the CDBG-DR program.

DED is committed to making a good faith effort to utilize MBE/WBEs in contracts for construction, services (including professional and consulting services), and commodities purchases. This effort is related to – but separate – from a similar set of standards set forth under **Chapter 13: Section 3**. To be an eligible MBE or WBE, a firm must be at least 51 percent owned, controlled, and managed by individual(s) who are minorities and/or women.

“MBE/WBE Utilization” is the percentage of project funds spent on MBE/WBE firms. The State of Nebraska does not use specific percentage targets or requirements, but encourages the use of MBE/WBE firms as appropriate.

Section 281 of the National Affordable Housing Act requires that participating jurisdictions in the CDBG-DR program develop procedures acceptable to establish and oversee a minority outreach program. HUD’s minimum standards¹ require that MBE/WBE outreach efforts be:

- Supported by a statement of public policy and commitment published in the print media of widest local circulation;

¹ HUD provides guidance regarding this requirement via the HUD Exchange website. See https://files.hudexchange.info/resources/documents/MBE-WBE_Outreach.pdf.

- Supported by an office and/or a key, ranking staff person with oversight responsibilities and access to the chief elected official; and
- Designed to utilize all available and appropriate public and private sector resources.

These policies and procedures and associated plans must make a good faith, comprehensive, and continuing endeavor to include minority and woman-owned businesses in all contracting activities under the Nebraska CDBG-DR program.

15.2 FEDERAL REQUIREMENTS

MBE/WBE requirements are set forth in Section 281 of the National Affordable Housing Act, which requires that, “Each participating jurisdiction shall prescribe procedures acceptable to the Secretary to establish and oversee a minority outreach program within each such jurisdiction to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women.”²

This requirement is further articulated in 2 C.F.R. § 200.321. Under 2 C.F.R. § 200.321, “The non-Federal entity will take all necessary affirmative steps to assure that minority businesses, women’s business enterprises, and labor surplus area firms are used when possible.” Affirmative steps must include:³

- Placing qualified small and minority businesses and women’s business enterprises on solicitation lists;
- Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources;
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women’s business enterprises;
- Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women’s business enterprises;
- Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above.

15.3 POLICY OBJECTIVES

² National Affordable Housing Act, 42 U.S.C. § 12831.

³ 2 C.F.R. § 200.321.

The goal of the MBE/WBE outreach requirement and this chapter is to address disparities in access to business opportunity by administering outreach efforts that promote equity in opportunities for MBE/WBEs. These efforts ensure that DED, Subrecipients, and Successful Applicants:

- Promote full and equal access to business opportunities for all businesses within the program's procurement needs;
- Give MBE/WBEs the opportunity to increase contracting opportunities with DED;
- Provide subcontracting opportunities to MBE/WBEs whenever possible; and
- Provide MBE/WBEs resources to successfully pursue contracts and business opportunities.

Per this statutory requirement, all Subrecipients and Successful Applicants must develop an MBE/WBE plan that demonstrates marketing and solicitation of MBE/WBE businesses and contractors, including a process to complete the above-described activities. DED will review all MBE/WBE plans after signature of the Subrecipient Agreement or Funding Agreement, and before the first payment of the project. For purposes of the Infrastructure Match Program, projects completed prior to the HUD/DED grant agreement date (July 7, 2021) do not require a MBE/WBE plan. For any questions, please contact DED.

15.4 ROLES AND RESPONSIBILITIES

As a Grantee of HUD funds through the CDBG-DR program, DED will ensure that programs are developed and implemented with the objective of **addressing inequity among protected class groups, promoting integration, and transforming racially or ethnically concentrated areas of poverty into areas of opportunity**. This includes implementation and oversight to ensure compliance with this chapter. The State of Nebraska has further articulated in its Action Plan the intent to prioritize vulnerable populations as a cross-cutting element in all activities.

15.5 SUBRECIPIENT AND SUCCESSFUL APPLICANT REQUIREMENTS

15.5.1 APPLICABILITY

Policies and procedures set forth relating to MBE/WBE outreach are applicable to both Subrecipients and Successful Applicants, including both for-profit and non-profit developers. Unless otherwise specified, all requirements are applicable for any entity conducting local implementation under the CDBG-DR program.

15.5.2 OVERVIEW OF REQUIREMENTS

Subrecipients and Successful Applicants must maintain compliance with these policies and procedures to be considered eligible for CDBG-DR funding. The Nebraska Department of Administrative Services, Materiel Division, State Purchasing Bureau maintains MBE/WBE designation forms and an “Application for Inclusion on Bid List” form. Section 281 of the National Affordable Housing Act encourages the program Grantee (i.e., DED), Subrecipients, and Successful Applicants, among others:

- Develop a systematic method for identifying and maintaining an inventory of certified MBE/WBEs, their capabilities, services, supplies, and/or products;
- Utilize the local media, electronic and print, to market and promote contract and business opportunities for MBEs and WBEs;
- Develop informational and documentary materials (fact sheets, program guides, procurement forecasts, etc.) on contract/subcontract opportunities for MBEs and WBEs;
- Develop procurement procedures that facilitate opportunities for MBEs and WBEs to participate as vendors and supplies of goods and services;
- Sponsor business opportunity-related meetings, conferences, seminars, etc., with minority and women business organizations; and
- Maintain centralized records with statistical data on the utilization and participation of MBEs and WBEs as contractors/subcontractors in all HUD-assisted program contracting activities.

The plan to carry out these activities must be articulated in a MBE/WBE outreach plan that is approved by DED, with clear demonstration of a good faith effort to complete planned activities via reporting in quarterly reports to DED. The MBE/WBE outreach plan should be approved by DED as soon as possible after the Subrecipient or Funding Agreement signature, or before a new contract is put out for bid. Failure to comply with the above requirements may result in the following non-compliance actions by DED.

Table 1: Actions for Non-Compliance with MBE/WBE Requirements by Project Status

| Project Status | MBE/WBE Requirements Non-Compliance Action by DED | Required Action by Subrecipient or Successful Applicant |
|--------------------------------|---|---|
| Application | Ineligible for funding | N/A |
| Implementation/ In progress | Monitoring Finding ⁴ | Projects that are in progress may provide direction and feedback to meet these requirements no less than 30 days after issuance of the Monitoring Report. |
| Closeout/Termination | Monitoring Finding Or Monitoring Finding + Termination* *Cancellation of program activities or recapture of funds in whole or in part. | Repayment of Funds |

15.6 MBE/WBE OUTREACH PLAN

All Subrecipients and Successful Applicants must develop a MBE/WBE Plan based on HUD regulations, which must be submitted to DED for approval. The MBE/WBE Plan, pursuant to Federal regulations, must outline strategies to inform the opportunities, requirements, and practices that the awarded entity must adhere to in executing the MBE/WBE outreach.

DED requires that Subrecipients and Successful Applicants develop their MBE/WBE Plan using the Plan template provided by DED (see [MBE/WBE Outreach Plan](#)).

15.7 MBE/WBE OUTREACH AND ENGAGEMENT STRATEGIES

This section outlines different MBE/WBE outreach and engagement strategies for the purpose of both describing State approaches for conducting outreach and for providing guidance to Subrecipients and Successful Applicants regarding what they can use for CDBG-DR program implementation. Efforts are characterized under two main categories:

- Efforts to award contracts to MBE/WBEs; and

⁴ See also the **Chapter 16: Monitoring and Compliance Plan**.

- MBE/WBE outreach.

15.7.1 EFFORTS TO AWARD CONTRACTS TO MBE/WBES

Subrecipients and Successful Applicants will draft and DED will review their Outreach Plan. The following non-exhaustive list is provided as examples of acceptable types of efforts which should be documented as it relates to efforts to award contracts to MBE/WBES:

- Make frequent and timely advertisements in newspapers and periodicals that market to MBE/WBES;
- Maintain a log of dates of advertisements and the name of the publication and/or maintain copies of the advertisement itself;
- Record copies of responses made by certified MBE/WBES to the advertisement and/or make timely follow ups to responses received by MBE/WBES;
- Log responses from MBE/WBES. If a Subrecipient or Successful Applicant received responses to solicitations but did not select the MBE/WBES, they should maintain records describing why a response from a certified MBE/WBE was not selected;
- Advertise requirements via available websites, including references to DED's website, where applicable;
- Maintain a log of all communications, including names, contacts, and dates, as well as maintain records including copies of notices/solicitations, dates of contact, letters, etc.;
- Conduct pre-bid, pre-award, or other meetings to inform MBE/WBES of available opportunities and maintain a record of the names of companies, dates, and locations of meetings attended;
- Contact community organizations that provide support in the recruitment and placement of MBE/WBES;
- Send written notification to MBE/WBES and trade associations located within the region where the work will be performed;
- Provide documents/plans/bid specifications to certified MBE/WBES, and allow adequate time for them to respond to bids;
- Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by MBE/WBES;
- Establish delivery schedules which encourage participation by MBE/WBES;

- Undertake specific steps to reasonably structure the contract scope of work for the purpose of subcontracting with, or obtaining supplies from MBE/WBEs;
- Make efforts to solicit certified MBE/WBEs located outside the region where the scope of work is to be performed and evaluate their ability to participate;
- Document the evaluation conducted to determine eligibility for participation;
- Provide the same subcontract terms and conditions to certified MBE/WBEs as the ones offered to other subcontractors in the ordinary course of business; and
- Document the terms and conditions being offered to both entities and make efforts to engage in either telephone or direct, in-person negotiations with MBE/WBEs whose quotes were too high.

15.7.2 MBE/WBE OUTREACH

DED, Subrecipients and Contractors should adopt and implement affirmative steps for implementing MBE/WBEs Utilization:

- When economically feasible, structure procurement solicitations so that the total requirements are divided into subsets consisting of smaller tasks or quantities for the purpose of retaining multiple firms or to facilitate subcontracting opportunities within the larger contract that would be suitable for small MBE/WBEs;
- When feasible, establishing delivery schedules within procurements to encourage participation by small and MBE/WBEs; and
- The Subrecipient or Successful Applicant is responsible for taking the affirmative steps and implementing the requirements of this chapter.

15.8 REPORTING

Subrecipients and Successful Applicants must complete quarterly reports as a part of regular program activities (see also **Chapter 16: Monitoring and Compliance Plan**). Quarterly reports must include a comprehensive summary of all outreach and marketing activities by county, along with data regarding outreach efforts in project areas.

Reports will be evaluated based on expected activity at the time of submission (i.e., DED acknowledges that there may not be significant activity during the first 30-60 days of development and construction). Invoices submitted by Subrecipients or Successful Applicants will not be paid until all reporting is up to date.

15.8.1 HUD FORM 2516

DED, Subrecipients, and Successful Applicants are also required to complete [HUD Form 2516](#) for reporting contract and subcontract activities of \$10,000 or more under CDBG-DR. Contracts and subcontracts of less than \$10,000 need to be reported only if such contracts represent a significant portion of the total contracting activity.

The information from HUD Form 2516 is used by HUD to monitor and evaluate MBE/WBE activities against the total program activity and the designated MBE/WBE goals. DED requires the information to provide guidance and oversight for programs for the development of MBE/WBEs. If the information is not collected, HUD would not be able to establish meaningful MBE/WBE goals nor evaluate performance against these goals.

15.8.2 RECORDKEEPING

DED must establish and maintain sufficient records for HUD to determine whether they met the requirements of the program. At a minimum, DED will use Subrecipient and Successful Applicant reporting to maintain the following records:

- MBE/WBE Outreach Plan;
- Quarterly Reporting;
- Documentation of Efforts; and
- Other Supporting certifications needed on file, as identified by DED.

Documentation of efforts should capture the number and dollar value of all contracts awarded to businesses and, in particular, MBE/WBEs during the fiscal year, a description of the best efforts made to award contracts to MBE/WBEs; and the mechanisms by which contractors and subcontractors complied with the MBE/WBE preferences for training, employment, and contract awarding. For further information related to recordkeeping and data management, refer to ***Chapter 17: Recordkeeping and Data Management.***

TOOLKIT LIST

The following documents for **Chapter 15 – MBE/WBE** are available on the [Toolkit section of DED's website](#):

- HUD Form 2516
- Outreach Plan Template