

# **MBE/WBE INITIATIVE**

Missouri Housing Development Commission



## Contents

Policy Statement .....	1
Purpose .....	1
Summary of Program .....	2
MBE/WBE - Initiative .....	2
Participation Standard .....	2
MBE/WBE Preference .....	3
Good Faith Efforts .....	3
Certification/Definition of MBE/WBE .....	3
Implementation and Analysis .....	4
Modification and Finalization of Utilization Plan .....	5
Calculation of Participation Rate .....	5
Cost Categories .....	6
Performance and Compliance.....	9
Responsibilities .....	10
Owner/Developer .....	10
Contractor .....	10
Non-Compliance.....	10
Definitions .....	11

# Policy Statement

On August 25, 2011, the Missouri Housing Development Commission (MHDC ) Board of Commissioners approved the 2012 Qualified Allocation Plan (2012 QAP) which included an MBE/WBE initiative (MBE/WBE Initiative) that encourages involvement and participation of businesses certified as MBEs and WBEs.

MHDC established the MBE/WBE Initiative to encourage the involvement of businesses that are MBE or WBE certified under a business certification program by the State of Missouri, City of Kansas City, St. Louis Airport Authority or other certifying agency as deemed appropriate by MHDC in consultation with the Office of Equal Opportunity for the State of Missouri (OEO).

The provisions originally contained in the 2012 QAP, and which have continued to be incorporated into each subsequent QAP shall be the governing language and this document shall be the guidance for MHDC's administration and supervision of the MBE/WBE Initiative and its components that are paramount to MHDC's effort to achieve diversity, to increase support, and to sustain MBE/WBE involvement in MHDC affordable housing production.

The provisions of the MBE/WBE Initiative shall apply only to Developments financed pursuant to an Application and which contain more than six (6) units, subject to the requirements of controlling Federal and State law. To this end, the MBE/WBE Initiative, through this document provides the following:

- Policy Statement
- Purpose
- Summary of the Program
- Implementation and Analysis
- Responsibilities
- Non-Compliance
- Definition

## Purpose

The MBE /WBE Initiative is created and administered for the following purposes:

1. To facilitate, promote, and achieve equal opportunity to participate in affordable housing development activities;
2. To monitor and assess the utilization of MBE/WBEs in rental property development activities;
3. To monitor and assess compliance by Owners/Developers and Contractors on all MHDC Developments;
4. To identify MBE/WBEs and to promote awareness of MHDC Developments;
5. To provide assistance and training to MBE/WBEs;
6. To ensure non-discrimination in the awarding of loan funds and/or tax credits from MHDC;
7. To provide a narrowly tailored program in accordance with applicable law.

# Summary of Program

## *MBE/WBE - Initiative*

This MBE/WBE Initiative consists of two components: (1) a Participation Standard; and (2) a Preference. Applications disqualified due to an incomplete submittal will not be reviewed for compliance with the MBE/WBE Initiative.

## *Participation Standard*

MHDC's Participation Standard is 10% for Hard Costs and 10% for Soft Costs for MBEs, and 5% for Hard Costs and 5% for Soft Costs for WBEs. Applications submitted under a NOFA, are expected to meet the Participation Standard.

MBE/WBEs must be certified to count toward the Participation Standard. A Utilization Plan must be submitted with the Application indicating the plan for MBE/WBE participation, including the scope of work and compensation. All certifications for MBE/WBEs performing Soft Cost items must be included in the initial Application. Certifications for MBE/WBEs providing Hard Cost items must be provided no later than firm submission. An outreach plan for successfully securing MBE/WBEs to provide Hard Cost and Soft Cost items must be submitted with the Application.

The final Utilization Plan with all certifications must be submitted to MHDC prior to the closing of the construction loan and/or tax credits. The Participation Standard can be satisfied by MBE/WBEs providing competitively priced services and/or materials in the following categories:

1. Hard costs for the actual physical costs of construction, which include, but are not limited to, general contracting, grading, excavation, concrete, paving, framing, electrical, carpentry, roofing, masonry, plumbing, painting, asbestos removal, trucking and landscaping. When calculating hard costs, general requirements, overhead, bond costs, permits and contractor's profit should be excluded.
2. Soft costs, which include, but are not limited to, planning, architectural, relocation, legal, accounting, environmental, engineering, surveying, developer fee, consulting fees, title company, disbursing company, market study, appraisal and soils report. In the calculation of soft costs, the developer fees may be, but are not required to be, included in the calculation of participation levels. Additionally, development costs that do not include actual services or materials, such as public sector financing, construction interest, and bond issuance costs shall not be included in the calculation.

## *MBE/WBE Preference*

A preference in funding will be given to Applications that reflect:

- a. An MBE/WBE Developer, a developer group that includes an MBE/WBE, and/or a Developer Mentor/Protégé Relationship; or
- b. MBE/WBE participation percentages significantly greater than the Participation Standard for MBEs and WBEs for both Hard Costs and Soft Costs

Owners/Developers seeking the Preference under paragraph (a) must provide a comprehensive Utilization Plan detailing the role of, and functions to be performed by, the MBE/WBE. Such roles and functions of the MBE/WBE must be those typically performed by a Developer. A Mentor/Protégé Relationship shall be designed to support, promote and develop the knowledge, skill and ability of the MBE/WBE protégé in a manner intended to assist in the growth and development of the MBE/WBE as a developer.

Owners/Developers seeking a preference under paragraph (b) must provide a comprehensive Utilization Plan detailing how the Owner/Developer intends to significantly exceed the Participation Standard.

Owners/Developers seeking the Preference must include in the Application a history of MBE/WBE participation, as well as evidence of MBE/WBE certification.

## *Good Faith Efforts*

Good faith efforts will apply to the MBE/WBE Initiative. Developers and Contractors should maintain evidence of meetings held, written notifications by e-mail or fax, or certified letters to demonstrate proof of MBE/WBE outreach. All efforts to include MBE/WBEs must allow sufficient time for the MBE/WBEs to effectively and professionally participate in the bidding and/or application process. To achieve maximum effectiveness, outreach to MBE/WBEs should be done well before the Application deadline for Soft Cost work and during submission/approval of architect drawings for Hard Cost work. Good faith efforts to achieve success under the MBE/WBE Initiative may be demonstrated by the performance of items listed in the MHDC Developer's Guide.

## *Certification/Definition of MBE/WBE Companies*

Each MBE/WBE must be certified by an agency that performs the function of certification of MBE/WBEs in the State of Missouri, such as the City of St. Louis, St. Louis Airport Authority, the City of Kansas City, Missouri and the State of Missouri. MHDC will accept certifications from other agencies and/or cities that perform these functions as they deem appropriate in consultation with the State of Missouri Office of Equal Opportunity.

## Implementation and Analysis

The MBE/WBE Initiative Coordinator will review and analyze the Application and the Utilization Plan for each Development to: (1) ensure the Owner/Developer's commitments are appropriately included in the Utilization Plan, and other documents in the Application; and (2) determine whether the Application meets the Participation Standard or qualifies for the Preference.

Applications will be evaluated based on the information in the Application, Utilization Plan and other pertinent documentation submitted during the application process. Applications shall be reviewed using the following criteria:

1. History of securing MBE/WBE participation.
2. Commitment statement evidencing ability to satisfy the Participation Standard for both MBEs and WBEs.
3. Utilization Plan that includes outreach to MBE/WBEs and the intent to engage and secure MBE/WBEs.
4. Initial performance reflected in the Application as evidenced by a listing of MBE/WBEs performing Soft Cost activities, including the scope of work, compensation, and evidence of certification.
5. Information supporting the granting of a Preference;
6. Information detailing the business relationship between the developer and the MBE/WBE(s) that results in MBE/WBE participation which exceeds the Participation Standard.
7. Accuracy of stated participation amounts and percentages.

The MBE/WBE Initiative Coordinator will review and analyze the Application and Utilization Plan for each Development individually to:

- (1) ensure that the Owner/Developer's commitments are appropriately included;
- (2) review participation amounts and percentages for accuracy; and
- (3) make a determination of whether a preference in funding should be given to the Application.

The MBE/WBE Initiative Coordinator's analysis will be provided to MHDC underwriting staff. The analysis shall serve only as one element to be considered by the underwriting staff and shall not guarantee selection of an Application for recommendation to receive funding.

## *Modification and Finalization of Utilization Plan*

A final Utilization Plan is required at the time of the closing of the construction loan and/or tax credits for the Development. The final Utilization Plan should include a Schedule of Participation and the commitment by the Developer/Owner as indicated at application. The Schedule of Participation should be itemized and individually list each MBE/WBE name, address, city, state, zip, contact person, contact email, phone number, the type of work to be performed and the total dollar value of the proposed work to be performed.

The final Utilization Plan and Schedule of Participation may be modified only if the Developer demonstrates that a change is reasonably necessary, and only after obtaining the written consent of the MBE/WBE Initiative Coordinator. Substitution of an MBE/WBE, in whole or part, with a non MBE/WBE may occur only if the Developer demonstrates a good faith effort was made to substitute the MBE/WBE with another MBE/WBE. Any changes to the final Utilization Plan shall be communicated to MHDC's Director of Rental Production and Tax Credit Administrator.

The Participation Standard and basis for Preference set forth in the final Utilization Plan submitted at the time of the closing of the construction loan and/or tax credits for the Development, will be recorded as the official commitment and shall serve as the benchmark against which performance will be measured.

The final Utilization Plan for all Developments for which the Owner/Developer is seeking a preference in funding must include a detailed description of the development relationship including, if applicable, methods and strategies for mentoring processes, together with a detailed listing of the Commercially Useful Functions to be performed by the MBE/WBE.

## *Calculation of Participation Rate*

The method by which the MBE/WBE Initiative Coordinator will calculate the Participation Rate shall include the following:

1. Only an MBE/WBE Contractor that actually performs work on the Development will be counted. This includes any tier of Contractors.
2. Any Owner/Developer who is an MBE/WBE may count Contractor work actually performed or professional services actually performed by the Owner/Developer, including developer fees.
3. Any Contractor who is an MBE/WBE may count the work or services actually performed by said Contractor, including general requirements, builder profit and overhead.
4. Each MBE/WBE must perform a Commercially Useful Function and must actually perform the work itself. If a Contractor qualifies as an MBE and a WBE, the contracted amount actually performed by said Contractor may be split (i.e. if the total contract amount were \$60,000, then \$30,000 may be counted toward the MBE requirements and \$30,000 may be counted toward the WBE requirements), but the full amount will not be counted twice.
5. Calculation of the Participation Rate shall be completed for both Hard Costs and Soft Costs as follows:
  - a. Total costs associated with the Development shall be reduced by any Excluded Costs; then
  - b. Total costs associated with the Development may be, but are not required to be, reduced by any Optional Costs; then
  - c. Remaining total costs shall be separated into Hard Costs and Soft Costs; then
    - i. The total dollar value of the amount expended as payment to MBE/WBEs for work or services performed pursuant to the Firm Submission Checklist and Agreement

- in connection with Soft Costs will be divided by the total dollar amount of funds expended in connection with all Soft Costs for each classification; and
- ii. The total dollar value of the amount expended as payment to MBE/WBEs for work or services performed pursuant to the Firm Submission Checklist and Agreement in connection with Hard Costs will be divided by the total dollar amount of funds expended in connection with all Hard Costs for each classification.

## *Cost Categories*

The following items shall be considered Hard Costs:

1. Earthwork
2. Site Utilities
3. Roads and Walks
4. Off-Site Work
5. Concrete
6. Masonry
7. Structural Metals
8. Rough Carpentry
9. Finish Carpentry
10. Cabinets
11. Waterproofing
12. Insulation
13. Roofing Systems
14. Siding
15. Gutters & Downspouts
16. Doors & Hardware
17. Windows
18. Drywall
19. Flooring
20. Carpet
21. Painting
22. Signage
23. Bathroom & Closet Accessories
24. Appliances
25. Window Coverings
26. Plumbing
27. Fire Sprinklers
28. HVAC
29. Electrical
30. Fire Alarm Systems
31. Special Equipment
32. Landscaping
33. Accessory Building
34. Demolition
35. Sheet Metal
36. Site Work



The following items shall be considered Soft Costs:

1. Architect & Engineering Fee-Design
2. Architect Fee – Supervision
3. Soils Report
4. Survey
5. Engineering
6. Environmental Study
7. Market Study
8. Appraisal
9. Title, Recording & Disbursing
10. Title, Recording & Disbursing(Permanent)
11. Legal Fees (Construction)
12. Legal Fees (Permanent)
13. Legal Fees (Organization)
14. Legal Fees (Acquisition and Recording)
15. Cost Certification
16. Accountant Fees
17. Environmental Abatement Services
18. Relocation
19. Furniture, Fixtures and Equipment
20. Third Party Inspection
21. Historic Consultant
22. Green or NAHB Certification Consultant
23. Consultant Fee
24. Construction Period Insurance

The following items shall be considered Optional Costs:

1. Developer Fee (calculated as a Soft Cost when included)
2. General Requirements (calculated as a Hard Cost when included)
3. Builder Overhead (calculated as a Hard Cost when included)
4. Builder Profit (calculated as a Hard Cost when included)
5. Consultant Fee included in Developer Fee (calculated as a Soft Cost when included)

The following items shall be considered Excluded Costs:

1. MHDC Approved Impact Fees
2. Construction Loan Interest
3. Construction Period R.E. Taxes
4. MHDC Rental Production Application Fee
5. MHDC Construction Loan Fee
6. MHDC Construction Inspection Fee
7. Other Construction Inspection Fee
8. MHDC Permanent Financing Fee
9. Other Permanent Financing Fee
10. Prepaid MIP
11. Contingency
12. Historic Credit Fees
13. Land Acquisition and Recording Fees
14. Acquisition Costs of Buildings
15. Land
16. Tax Credit Allocation Fee
17. Tax Credit Monitoring Fee
18. AHAP Application and Reservation Fee
19. Bond Related Costs
20. Debt Service Reserves (escrow)
21. Syndication Costs
22. Operating Reserves (escrow)
23. Replacement Reserves (escrow)
24. Social Services Reserves (escrow)
25. Lease up and Marketing

## *Performance and Compliance*

Throughout the course of construction or rehabilitation, the MBE/WBE Initiative Coordinator will monitor to ensure the cumulative Participation Rates for each Development to ensure the Participation Standard for each Development is achieved. The Owner/Developer must review the Schedule of Participation each month and report to MHDC on any actual or perceived deficiencies in participation dollar amounts and the Participation Standard. An updated quarterly Schedule of Participation must be submitted to the MBE/WBE Initiative Coordinator reflecting the dollar amounts for each MBE/WBE Contractor actually performing work on the Development.

At construction closing all payments for Soft Costs will be reviewed against contracts signed. If Soft Costs are provided throughout construction, the payments will be monitored for compliance with the contract until the development is completed. Contracts for Hard Costs will be reviewed against the Schedule of Participation, the general contractor's vendor payment listings, and other documents as MHDC deems necessary to ensure timely payment to each MBE/WBE.

Upon completion of Construction, the MBE/WBE Initiative Coordinator shall measure Performance by performing calculations to determine the final actual Participation Rate as it relates to MBE Hard Costs, WBE Hard Costs, MBE Soft Costs, WBE Soft Costs, and to Development costs as a whole. In addition, the MBE/WBE Initiative Coordinator will survey MBE/WBE Contractors to determine the good faith efforts the Owner/Developer employed, the total contract amount, the total payment amount and general feedback on the MBE/WBE contribution to the success of the Development.

Throughout the course of the development process, the MBE/WBE Initiative Coordinator shall monitor documentation provided in connection with the Participation Standard and the Preference to insure that the commitments as stated in the Owner/Developer's Application and at Firm Submission are being followed. At the time of cost certification, the MBE/WBE Initiative Coordinator in coordination with the Tax Credit Administrator shall provide final participation numbers for Soft Costs and Hard Costs for the Development.

# Responsibilities

## *Owner/Developer*

The Owner/Developer is responsible for ensuring that all parties involved in development activities comply with the MBE/WBE Initiative and all Compliance is appropriately and adequately documented.

The Owner/Developer must make a good faith effort to meet the Participation Standard and diligently pursue participation of MBE/WBEs. The Owner/Developer must pursue participation and provide equal opportunity to qualified MBE/WBEs.

The Owner/Developer must communicate the contents, expectations and responsibilities of the MBE/WBE Initiative to all Contractors that will or may subcontract a portion of the work to be performed in connection with the Development.

The Owner/Developer must provide proof of the Certification of all MBE/WBEs.

The Owner/Developer must inform the MBE/WBE Initiative Coordinator of any changes in MBE/WBE Contractors or Contracts.

## *Contractor*

The Contractor is responsible for appropriately documenting Compliance. Only the Contractor (at any tier) that is actually performing the scope of work that is required, will be counted toward the Participation Rates on both Hard Costs and Soft Costs.

Any Contractor that subcontracts a portion of its work is responsible for communicating the contents, expectations and responsibilities of the MBE/WBE Initiative to all subcontractors. The Contractor is responsible for ensuring that the subcontractor complies with the MBE/WBE Initiative and appropriately and adequately documents Compliance.

The Contractor must make a good faith effort to meet the Participation Standard and diligently pursue participation of MBE/WBEs. The Contractor must pursue participation and provide equal opportunity to qualified MBE/WBEs.

## *Non-Compliance*

An Owner/Developer shall be considered to be in a state of Non-Compliance when the Owner/Developer or any Contractor associated with the Development:

1. Fails to adequately document compliance; or
2. Fails to diligently pursue participation of MBE/WBEs; or
3. Fails to comply with the elements set forth in the final Utilization Plan in connection with the Participation Standard or Preference; or
4. Eliminates or reduces the Commercially Useful Functions to be performed by an MBE/WBE after such MBE/WBE was named in the final Utilization Plan, unless the Owner/Developer demonstrates a change was reasonably necessary and secures the consent of the MBE/WBE Initiative Coordinator; or
5. Fails to comply with any element or provision of the MBE/WBE Initiative; or
6. Fails to inform any Contractor or any subsequent tier Contractor that only Contractors or any tier Contractors that are actually performing the scope of work required will be counted in the calculating the Participation Rates.

# Definitions

**Application** – An application submitted to MHDC pursuant to a NOFA and QAP requesting approval to receive an award of tax credits, loans or other funding from MHDC to finance a Development.

**Bid** - A written quotation, proposal or offer by a bidder or contractor to perform or provide labor, materials, equipment, supplies or services for a price submitted in response to competitive bidding solicitation.

**Business Enterprise** – A legal entity existing for the purpose of engaging in business, including but not limited to a corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private, legally recognized entity.

**Certification** – The process by which MBE/WBEs verify their status in order to be considered an MBE or WBE certified company. Certification by a Certifying Agency as defined herein is a prerequisite to participation in the MBE/WBE Initiative.

**Certifying Agency** – State of Missouri, the City of Kansas City, Missouri, or St. Louis Airport Authority or other certifying agencies as deemed appropriate by MHDC in consultation with the Office of Equal Opportunity for the State of Missouri (OEO).

**Commercially Useful Function** – Real and actual service in the discharge of any contractual endeavor, including the execution of an element of work by actually performing, managing and/or supervising the work, in accordance with normal business practices, when the entity receives compensation for the work performed and such work performed is bona fide real and actual services necessary and a part of the Development.

**Compliance** – The condition or status of an Owner/Developer that demonstrates that it complies with the goals of the MBE/WBE Initiative, including the Participation Standard and/or Preference.

**Construction** – The process of building, altering, rehabilitating, repairing, improving or demolishing any structure or building for the purpose of developing affordable housing.

**Contract** – Any and all agreements, regardless of what they may be titled, for the procurement of supplies, services, or Construction in connection with the development of affordable housing.

**Contractor** – Any business enterprise that has entered into a Contract in connection with Construction of a Development that is funded or approved by MHDC, including general contractors and sub-contractors.

**Development** – An affordable housing project consisting of new construction or rehabilitation of six or more rental units funded pursuant to an Application approved by MHDC.

**Excluded Costs** – Costs associated with a Development that are not used in calculations to determine Participation Rates, such as the cost of permits, licenses, public sector financing, bond issuance costs, construction interest, and similar costs.

**Hard Costs** – Costs associated with a Development for the actual physical costs of Construction, including, but not limited to, general contracting, grading, excavation, concrete, paving, framing, electrical, carpentry, roofing, masonry, plumbing, painting, asbestos removal, trucking, landscaping, and similar activities or services. Costs such as general requirements, overhead, bond costs, permits and contractor's profit are not considered Hard Costs.

**Mentor/Protégé Relationship** – A relationship in which a more experienced or more knowledgeable non MBE/WBE developer (the Mentor) helps a less experienced or less knowledgeable MBE/WBE (the Protégé) designed to support, promote and develop the knowledge, skill and ability of the Protégé as a developer. The Protégé must perform a Commercially Useful Function.

**Minority Business Enterprises (MBE)** - a business which is at least 51% owned by one or more minority members; or, in the case of a publicly-owned business, one which at least has 51% of its voting stock

owned by one or more minority group members, and whose management and daily business operations are controlled one or more such individuals. Minority group members include, but are not limited to, Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and Asian Indian Americans. The term “minority worker” shall include representations of all the previously state minority groups.

**MBE/WBE Initiative Coordinator** – The MHDC official that has been assigned the responsibility for managing, implementing, evaluating and promoting the MBE/WBE Initiative

**NOFA** – a Notice of Funding Availability issued by MHDC to solicit applications for 9% and/or 4% low-income housing tax credits, HOME funds and MHDC fund balance funds.

**Non-Compliance** – The status of an Owner/Developer that fails to comply with the MBE/WBE Initiative.

**Optional Costs** – Costs associated with a Development that may be used, but are not required to be used, in calculations of Hard Costs and/or Soft Costs to determine Participation Rates (e.g. developer fees, consultant fees included within developer fees, builder overhead, builder profit, general requirements, etc.).

**Owner/Developer** – The individual or entity that submits an application for the award of MHDC owned or controlled resources or that receives approval for an award of MHDC owned or controlled resources including tax credits, loans or other funding through a competitive application process, including each general partner, member or other type of ownership interest within the Owner/Developer entity reduced to the Principal level irrespective of the number of entity layers which may be present for any entity.

**Participation Standard** – 10% participation of MBEs in Hard Costs, 10% participation of MBEs in Soft Costs, 5% participation of WBEs in Hard Costs, and 5% participation of WBEs in Soft Costs.

**Participation Rate** – The actual percentage of MBE/WBE participation in costs associated with a Development.

**Preference** – A plan intended to provide opportunities to MBE/WBEs through an MBE/WBE Developer, a developer group that includes an MBE/WBE, and/or a Developer Mentor/protégé relationship.

**Performance** – The measurement of the compliance rate.

**Principal** – Any human being who has any interest in an entity identified as an Owner/Developer.

**Professional Services** – Services which involve predominantly mental or intellectual labor and skills, including but not limited to, architects, engineers, surveyors, attorneys, and accountants.

**QAP** – a Qualified Allocation Plan issued by MHDC governing the allocation of 9% and 4% low-income housing tax credits.

**Schedule of Participation** – A document which reflects how the Participation Standard will be achieved including a list of the MBE/WBEs proposed to be used for the Development.

**Soft Costs** – Costs associated with a Development that are outside of actual construction costs, including, but not limited to, planning, architectural, relocation, legal, accounting, environmental, engineering, surveying, developer fees, consulting fees, title company, disbursing company, market study, appraisal, soils report and similar activities or services. Development costs that do not include actual services or materials, such as public sector financing, construction interest and bond issuance costs shall not be included in the calculation of Soft Costs.

**Utilization Plan** – The document which reflects the roles to be performed by each MBE and/or WBE to meet the Participation Standard and to justify a preference including outreach efforts, commitment by the Developer to the Preference or Participation Standard, participation rates and a detailed plan reflecting the nature of the participation of each MBE and/or WBE.

**Women Business Enterprise (WBE)** - a business which is at least 51% owned by one or more women members; or in the case of a publicly owned business, one which at least has 51% of its voting stock owned by one or more women members, and whose management and daily business operations are controlled by one or more of such individuals.