

WAUBONSEE COMMUNITY COLLEGE

BUSINESS ENTERPRISE PROGRAM

MINORITIES, FEMALES, PERSONS WITH DISABILITY PARTICIPATION AND UTILIZATION PLAN

The Business Enterprise Program Act for Minorities, Females and Persons with Disabilities (BEP) establishes a goal for contracting with businesses that have been certified as owned and controlled by persons who are minorities (MBE), female (FBE, also referred to as WBE), or persons with disabilities (DBE) (collectively, BEP certified vendor(s)). 30 ILCS 575.

Contract Goal to be Achieved by Vendor: This solicitation includes a specific **BEP** participation goal of 20% of the total dollar amount awarded to MBEs and FBEs, based on the availability of BEP certified vendors to perform or provide the anticipated services and/or supplies required by this solicitation. At least 50% of that total dollar amount should be awarded to WBEs.

The BEP participation goal is applicable to all bids or offers. In addition to the other award criteria established for this solicitation, Waubonsee Community College (College) will award this contract to a Vendor that meets the goal or demonstrates good faith efforts to meet the goal. This goal is also applicable to change orders and allowances within the scope of work provided by the BEP certified vendor. If Vendor is a BEP certified vendor, the entire goal is met and no subcontracting with a BEP certified vendor is required; however, **Vendor must submit a Utilization Plan indicating that the goal will be met by self-performance.**

Following are guidelines for Vendor's completion of the Utilization Plan. **Please read the guidelines carefully.** A format for the Utilization Plan is included in this section. Vendor should include any additional information that will add clarity to Vendor's proposed utilization of certified BEP vendors to meet the targeted goal. The Utilization Plan must demonstrate that Vendor has either: (1) met the entire contract goal; or (2) made good faith efforts towards meeting the entire goal. Any submission of good faith efforts by Vendor shall be considered as a request for a full or partial waiver. At the time of bid or offer, Vendor, or Vendor's proposed Subcontractor, must be certified with CMS as a BEP certified vendor.

Failure to complete a Utilization Plan or provide good faith effort documentation shall render the bid or offer non-responsive or not responsible, and subject to rejection and/or disqualification in the College's sole discretion.

1. If applicable where there is more than one prime vendor, the Utilization Plan should include an executed Joint Venture Agreement specifying the terms and conditions of the relationship between the parties and their relationship and responsibilities to the contract. The Joint Venture Agreement must clearly evidence that the BEP certified vendor will be responsible for a clearly defined portion of the work and that its responsibilities, risks, profits and contributions of capital, and personnel are proportionate to its ownership percentage. It must include specific details related to the parties' contributions of capital, personnel, and equipment and share of the costs of insurance and other items; the scopes to be performed by the BEP certified vendor under its supervision; and the commitment of management, supervisory personnel, and operative personnel employed by the BEP certified vendor to be dedicated to the performance of the contract. Established Joint Venture Agreements will only be credited toward BEP goal achievements for specific work performed by the BEP certified vendor. Each party to the Joint Venture Agreement must execute the bid or offer prior to submission of the bid or offer to the College.
2. An agreement between a vendor and a BEP certified vendor in which a BEP certified vendor promises not to provide subcontracting or pricing quotations to other vendors is prohibited. The College may request additional information to demonstrate compliance. Vendor agrees to cooperate promptly with the College in submitting to interviews, allowing entry to places of business, providing further documentation, and to soliciting the cooperation of a proposed BEP certified vendor. Failure to cooperate by Vendor and BEP certified vendor may

render the bidder or offeror non-responsive or not responsible. **The contract will not be finally awarded to Vendor unless Vendor's BEP Utilization Plan is approved by the College.**

3. **BEP Certified Vendor Locator References:** Vendors may consult CMS' BEP Vendor Directory at www.sell2.illinois.gov/cms/business, as well as the directories of other certifying agencies, but firms **must be certified with CMS as BEP certified vendors at the time of bid or offer.**

4. **Vendor Assurance:** Vendor shall not discriminate on the basis of race, color, national origin, sexual orientation or sex in the performance of this contract. Failure by Vendor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the College deems appropriate. This assurance must be included in each subcontract that Vendor signs with a subcontractor or supplier.

5. **Calculating BEP Certified Vendor Participation:** The Utilization Plan documents work anticipated to be performed, or goods/equipment provided by all BEP certified vendors and paid for upon satisfactory completion/delivery. Only the value of payments made for the work actually performed by BEP certified vendors is counted toward the contract goal. Applicable guidelines for counting payments attributable to contract goals are summarized below:

5.1. The value of the work actually performed or goods/equipment provided by the BEP certified vendor shall be counted towards the goal. The entire amount of that portion of the contract that is performed by the BEP certified vendor, including supplies purchased or equipment leased by the BEP certified vendor shall be counted, except supplies purchased and equipment rented from the Prime Vendor submitting this bid or offer.

5.2. A vendor shall count the portion of the total dollar value of the BEP contract equal to the distinct, clearly defined portion of the work of the contract that the BEP certified vendor performs toward the goal. A vendor shall also count the dollar value of work subcontracted to other BEP certified vendor. Work performed by the non-BEP certified party shall not be counted toward the goal. Work that a BEP certified vendor subcontracts to a non-BEP certified vendor will not count towards the goal.

5.3. A Vendor shall count toward the goal 100% of its expenditures for materials and supplies required under the contract and obtained from a BEP certified vendor manufacturer, regular dealer, or supplier. A Vendor shall count toward the goal the following expenditures to BEP certified vendors that are not manufacturers, regular dealers, or suppliers:

5.3.1. The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the contract, provided that the fee or commission is determined by the College to be reasonable and not excessive as compared with fees customarily allowed for similar services.

5.3.2. The fees charged for delivery of materials and supplies required by the contract (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer or a supplier of the materials and supplies being procured, provided that the fee is determined by the College to be reasonable and not excessive as compared with fees customarily allowed for similar services. The BEP certified vendor's trucking firm must be responsible for the management and supervision of the entire trucking operation for which it is responsible on the contract, and must itself own and operate at least one fully licensed, insured and operational truck used on the contract.

5.3.3. The fees or commissions charged for providing any bonds or insurance specifically required for

the performance of the contract, provided that the fee or commission is determined by the College to be reasonable and not excessive as compared with fees customarily allowed for similar services.

- 5.4. BEP certified vendors who are performing on contract as second tier subcontractors may be counted in meeting the established BEP goal for this contract as long as the Prime Vendor can provide documentation indicating the utilization of these vendors.
- 5.5. A Vendor shall count towards the goal only expenditures to firms that perform a commercially useful function in the work of the contract.
 - 5.5.1. A firm is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. The BEP certified vendor must also be responsible, with respect to materials or supplies used on the contract, for negotiating price, determining quality and quantity, ordering the materials or supplies, and installing the materials (where applicable) and paying for the material or supplies. To determine whether a firm is performing a commercially useful function, the College shall evaluate the amount of work subcontracted, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the credit claimed for its performance of the work, industry practices, and other relevant factors.
 - 5.5.2. A BEP certified vendor does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction or contract through which funds are passed through in order to obtain BEP certified vendor participation. In determining whether a BEP certified vendor is such an extra participant, the College shall examine similar transactions, particularly those in which BEP certified vendors do not participate, and industry practices.
- 5.6. A Vendor shall not count towards the goal expenditures that are not direct, necessary and related to the work of the contract. Only the amount of services or goods that are directly attributable to the performance of the contract shall be counted. Ineligible expenditures include general office overhead or other Vendor support activities.
6. **Good Faith Effort Procedures:** Vendor must submit a Utilization Plans, subcontract documents, and/or Letters of Intent that meet or exceed the published goal. If Vendor cannot meet the stated goal, Vendor must document and explain within the Utilization Plan the good faith efforts it undertook to meet the goal. Utilization Plans are due at the time of, and must be enclosed and sealed with the bid or offer submission. Copies of subcontract documents and/or Letters of Intent shall be de upon request.
7. **Contract Compliance:** Compliance with this section is an essential part of the contract. The following administrative procedures and remedies govern Vendor's compliance with the contractual obligations established by the Utilization Plan. **After approval of the Plan and award of the contract, the Utilization Plan becomes part of the contract.** If Vendor did not succeed in obtaining BEP certified vendor participation to achieve the goal and the Utilization Plan was approved and contract awarded based upon a determination of good faith, the total dollar value of BEP certified vendor work calculated in the approved Utilization Plan as a percentage of the awarded contract value shall become the contract goal.
 - 7.1. The Utilization Plan may not be amended after contract execution without the College's prior written approval.
 - 7.2. **Vendor may not make changes to its contractual BEP certified vendor commitments or substitute BEP**

certified vendors without the prior written approval of the College. Unauthorized changes or substitutions, including performing the work designated for a BEP certified vendor with Vendor's own forces, shall be a violation of the utilization plan and a breach of the contract, and shall be cause to terminate the contract, and/or seek other contract remedies or sanctions.

- 7.3.** If it becomes necessary to substitute a BEP certified vendor or otherwise change the Utilization Plan, Vendor must notify the College in writing of the request to substitute a BEP certified vendor or otherwise change the Utilization Plan. The request must state specific reasons for the substitution or change. The College will approve or deny a request for substitution or other change in the Utilization Plan within five business days of receipt of the request.
- 7.4.** Where Vendor has established the basis for the substitution to the College's satisfaction, it must make good faith efforts to meet the contract goal by substituting a BEP certified vendor. Documentation of a replacement BEP certified vendor, or of good faith efforts to replace the BEP certified vendor, must meet the requirements of the initial Utilization Plan. If the goal cannot be reached and good faith efforts have been made, Vendor may substitute with a non- BEP certified vendor or Vendor may perform the work.
- 7.5.** If a Vendor plans to hire a subcontractor for any scope of work that was not previously disclosed in the Utilization Plan, Vendor must obtain the approval of the College to modify the Utilization Plan and must make good faith efforts to ensure that BEP certified vendors have a fair opportunity to submit a bid or offer on the new scope of work.
- 7.6.** A new BEP certified vendor agreement must be executed and submitted to the College within five business days of Vendor's receipt of the College's approval for the substitution or other change.
- 7.7.** Vendor shall maintain a record of all relevant data with respect to the utilization of BEP certified vendors, including but without limitation, payroll records, invoices, canceled checks and books of account for a period of at least three years after the completion of the contract. Full access to these records shall be granted by Vendor upon 48 hours written demand by the College to any duly authorized representative thereof, or to any municipal, state or federal authorities. The College shall have the right to obtain from Vendor any additional data reasonably related or necessary to verify any representations by Vendor. After the performance of the final item of work or delivery of material by the BEP certified vendor and final payment to the BEP certified vendor by Vendor, but not later than 30 calendar days after such payment, Vendor shall submit a statement confirming the final payment and the total payments made to the BEP certified vendor under the contract.
- 7.8.** The College will periodically review Vendor's compliance with these provisions and the terms of its contract. Without limitation, Vendor's failure to comply with these provisions or its contractual commitments as contained in the Utilization Plan, failure to cooperate in providing information regarding its compliance with these provisions or its Utilization Plan, or provision of false or misleading information or statements concerning compliance, certification status or eligibility of the BEP certified vendor, good faith efforts or any other material fact or representation shall constitute a material breach of this contract and entitle the College to declare a default, terminate the contract, or exercise those remedies provided for in the contract or at law or in equity.
- 7.9.** The College reserves the right to withhold payment to Vendor to enforce these provisions and Vendor's contractual commitments. Final payment shall not be made pursuant to the contract until Vendor submits sufficient documentation demonstrating compliance with its Utilization Plan.

APPENDIX B - UTILIZATION PLAN PART 1: COMMITMENT AND SIGNATURE

_____ (Vendor) submits the following Utilization Plan as part of our bid or offer in accordance with the requirements of the BEP Program Status and Participation section of the solicitation for Waubonsee Community College's _____ (Project Name).

We understand that all subcontractors must be certified with the CMS BEP Program at the time of submission of all bids and offers. **We understand that compliance with this section is an essential part of this contract and that the Utilization Plan will become a part of the contract, if awarded.**

Vendor submits the following statement:

- Vendor is a BEP certified firm and plans to fully meet the goal through self-performance.
- Vendor has identified BEP certified subcontractor(s) to fully meet the established goal and submits the attached executed Letter(s) of Intent; or
- Vendor has made good faith efforts towards meeting the entire goal, or a portion of the goal, and hereby requests a waiver (complete Demonstration of Good Faith Efforts checklist below).

Vendor's person responsible for compliance with this BEP goal (*please print clearly*):

Name: _____ Title: _____

Telephone: _____ Email: _____

Note: Letters of Intent template may be found on the State of Illinois website, <https://www2.illinois.gov/cpo/general/Documents/Letter%20of%20Intent%20Template%20v.14.1.pdf#search=letter%20of%20intent>

APPENDIX B - UTILIZATION PLAN PART II: PARTICIPATION AGREEMENT

Instructions: The Prime Vendor is required to submit a separate, signed and **fully completed Participation Agreement** from each Business Enterprise Program (BEP) minority-owned, woman-owned or disadvantaged certified vendor. **Once signed and submitted with the bid/offer, this Participation Agreement, along with the other Parts of this Utilization Plan, will become a mandated part of the contract, if awarded.** The Prime Vendor shall not prohibit or otherwise limit the BEP/VSB certified vendor(s) from providing subcontractor quotes to other potential bidders/offerors.

Project Name: _____ **Project/Solicitation Number:** _____

Name of Prime Vendor: _____

Address: _____

City, State and Zip: _____

Telephone: _____ Fax: _____ Email: _____

Vendor's Contact responsible for compliance with this Participation Agreement: _____

Name of BEP Certified Vendor: _____

Type of Certified Vendor: MBE WBE DBE

Address: _____

City, State and Zip: _____

Telephone: _____ Fax: _____ Email: _____

BEP Vendor's Contact responsible for compliance with this Participation Agreement:

Type of Agreement: Services Supplies Both Services and Supplies

(a) Proposed % of Contract to be performed by the BEP/VSB Certified Vendor _____%
NOTE: The Prime Vendor must indicate the percentage of the estimated contract award that will be subcontracted to the certified BEP/VSB Vendor.

(b) Anticipated start date of the Certified BEP Vendor: _____.

(c) This participation agreement shall have a term of _____ to _____, with a total period of _____ years and _____ months, including renewals, change orders or extensions to the underlying contract.

- (d) Description of work to be performed or goods/equipment to be provided by the BEP certified vendor. All Participation Agreements shall be subject to college's approval. Any changes involving or affecting the identified BEP certified vendor, scope(s) of work will not be permitted without notification to the college and BEP Compliance, in writing, and approval of the college. *(If more space is needed to fully describe BEP certified firm's proposed scope of work and/or payment schedule, attach additional sheets.)*

THE UNDERSIGNED PARTIES FURTHER AGREE that once signed and submitted with the bid/offer, this Participation Agreement, along with the other Parts of this Utilization Plan, will become a material part of the contract, and the BEP certified vendor will perform the scope of work for the percentage as indicated above. The Undersigned Parties do also certify that they did not affix their signatures to this document until all areas under Description of Service/ Supply and Fee/Cost were completed.

Vendor (Company Name and d/b/a):

_____/_____
Name (Signature) Date

Name (Print)

Title

Certified BEP (Company Name and d/b/a):

_____/_____
Name (Signature) Date

Name (Print)

Title

APPENDIX B: DEMONSTRATION OF GOOD FAITH EFFORTS TO ACHIEVE GOAL AND REQUEST FOR WAIVER

If the BEP participation goal was not achieved, Vendor must provide document evidence of good faith efforts to achieve the goal.

Below is a checklist of actions that will be used to evaluate a Vendor's Demonstration of Good Faith Efforts and Request for Waiver. **Please check the actions which you completed.** If any other efforts were made to obtain BEP participation in addition to the items listed below, attach a detailed description of such efforts. The College reserves the right to review and audit the results of the Vendor's efforts as described below.

- Utilize the Sell2Illinois website: www2.illinois.gov/cms/business to identify BEP certified vendors within the respective commodity/service codes denoted above and at a minimum email all listed vendors and solicit quotes from all vendors who express an interest via follow-up emails or telephone calls.
- Solicit through all reasonable and available means (e.g., attendance at a vendor conference, advertising and/or written notices) the interest of BEP certified vendors that have the capability to perform the work of the contract. Vendor must solicit this interest within sufficient time to allow the BEP certified vendors to respond to the solicitation. Vendor must determine with certainty if the BEP certified vendors are interested by taking appropriate steps to follow up initial solicitations and encourage them to submit a bid or proposal. Vendor must provide interested BEP certified vendors with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding promptly to the solicitation.
- Select portions of the work to be performed by BEP certified vendors in order to increase the likelihood that the goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate BEP certified vendor participation, even when Vendor might otherwise prefer to perform these work items with its own forces.
- Make a portion of the work available to BEP certified vendors and selecting those portions of the work or material needs consistent with their availability, so as to facilitate BEP certified vendor participation.
- Negotiate in good faith with interested BEP certified vendors. Evidence of such negotiation must include the names, addresses, email addresses, and telephone numbers of BEP certified vendors that were considered; and an explanation as to why an agreement(s) could not be reached.
- Thoroughly investigate the capabilities of BEP certified vendors and not reject them as unqualified without documented reasons. The BEP certified vendor's memberships in specific groups, organizations, or associations and political or social affiliations are not legitimate causes for the rejection or non-solicitation of bids and proposals in Vendor's efforts to meet the goal.
- Make efforts to assist interested BEP certified vendors in obtaining lines of credit or insurance as required by the College.
- Make efforts to assist interested BEP certified vendors in obtaining necessary equipment, supplies, materials, or related assistance or services.

