

DENVER URBAN RENEWAL AUTHORITY
GUIDELINES FOR UTILIZATION OF SMALL BUSINESS ENTERPRISES IN
URBAN REDEVELOPMENT PROJECTS

March 2002

Policy Statement

The Denver Urban Renewal Authority ("DURA") has determined that an ongoing race and gender-neutral program to enhance and maintain opportunity for small business participation in construction, reconstruction and remodeling, and professional design and construction services for DURA projects would benefit DURA and the citizens of Denver by promoting competition in bidding and by enhancing the economic growth of such businesses. This program is not designed or intended to alleviate or remediate discrimination suffered by minority or women business enterprises.

The establishment of a Small Business Enterprise Outreach and Assistance Plan ("SBE Plan") as described below is required for proponents ("Developer") of projects funded in whole or in part by tax increment revenues supplied by DURA.

Goals

DURA has established goals relating to utilization of small business enterprises ("SBEs") for projects supported by DURA funding. In order to be counted towards these goals, SBEs must be certified through; (i) the City of Denver Mayor's Office of Contract Compliance, (ii) State of Colorado or Federal government, (iii) another public entity approved by DURA, or (iv) firms or entities determined by DURA to be qualified as SBE's. The goals are as follows:

Construction Related Contracts and Professional Services –15% SBE (Year 2002).

1. Construction Related Contracts include general contractors, construction management, subcontractors and suppliers for construction, reconstruction and remodeling.
2. Professional Services includes architects, engineers, interior design, surveyors, appraisers, environmental consultants, etc.

DURA may modify the goals on an annual basis. Until modified, the goals set forth herein shall continue in effect.

DURA reserves the right to establish different goals than those listed above or to waive participation of Developer in this program on a project by project basis. An SBE Plan would not be required for projects with DURA tax increment financing of \$100,000 or less.

The Developer must incorporate these goals into a SBE Plan which becomes a part of a redevelopment or similar agreement between the Developer and DURA.

The following factors shall count toward project goals: portions of work undertaken by SBEs as contractors, consultants, subcontractors, subconsultants, suppliers, manufacturers, brokers or joint venturers. The participation of a SBE shall not count toward project goals to the extent it acts as a conduit or fails to perform a commercially useful function. All expenditures for materials, supplies and equipment obtained from a SBE manufacturer or supplier shall count toward the SBE project goals.

SBE Plan Components

The Developer's SBE Plan for professional and construction-related services must include:

1. An outreach plan which details the process for disseminating information regarding the project, bid and selection process to SBE organizations.
 - a. Hold preliminary meetings open to all SBE organizations to present the project scope and schedule.
 - b. Create a direct mail information package for SBE organizations. The package should contain: (1) an overall project budget range; (2) an indication by percentage or dollar amount of each construction trade category for the project; (3) a general block schedule of activities including pre-bid conferences, bidding schedules and projected completion date; (4) any prequalification criteria for bidders, such as bonding or the bidder's commitment to meet SBE goals.
2. A bid advertising plan which provides outreach to SBE construction organizations.
 - a. Place ads in focused media, trade publications and general circulation newspapers, as needed, to invite bidders and advise them of project goals.
 - b. Place bid documents in plan rooms of all SBE organizations. Plans should be provided so that there is ample time for bidders to respond to the bid.
3. A process for structuring the construction project into bid package sizes which will facilitate bid opportunities for SBE construction firms.

- a. Break out and analyze second-tier packages and subsystems based on the potential to offer opportunities to SBE firms. Require that all potential major subcontractors indicate those areas of work that are normally subcontracted out. All tiers of bidders shall be required to complete the attached Form B, Letter of Intent, and submit it with the bid. Any bid not containing this form will be considered non-responsive.
 - b. Establish bid packages by size and complexity that are within the project budget and schedule, which also facilitate maximum feasible SBE participation. Provide all bidders with lists of SBE subcontractors and suppliers.
 - c. Where feasible, separate purchase of materials from labor and performance aspects by: (1) allowing bidders to bid both or either; (2) allowing two separate contracts for subcontractor and material supplier.
 - d. Examine joint venture opportunities between large and SBE firms.
4. A procedure for outreach and reviewing the qualifications and capabilities of all relevant SBE firms.
- a. SBE firms should be contacted with a schedule of activities, prequalification requirements and project description as soon as such is available. This contact should provide the name of a Developer contact person designated to offer technical assistance and a log of all these contacts and communications should be kept. Contact should be made at least ten (10) days prior to bid opening.
 - b. A brief prequalification form should be prepared by the Developer for the project. It should request from SBE firms basic business information, a general statement of interest and any request for specific assistance.
 - c. Meet with representatives of the Mayor's Office of Contract Compliance to obtain information regarding certification requirements and documents for SBE firms that wish to be considered for the project.
5. A statement of any selection criteria to be used for professional or consulting services.
6. A commitment to either hire a consultant or assign Developer staff to carry out the goals and objectives of the SBE Plan.
7. A commitment to maintain the information outlined in Appendix A, Good Faith Efforts, and to provide this information to DURA upon request.

A project-specific proposal process designed by the Developer and acceptable to DURA may be substituted for any aspect of the project if such process is structured to afford SBE organizations substantially equivalent participation in the project as would occur in a competitive bid process.

Additional actions which can be taken to assist in the compliance with the SBE Plan goals are outlined in Appendix B attached. The Developer may select any of these actions to include in the SBE Plan or may include actions developed specifically for the project to assist in accomplishing the goals.

Information Resource

A list of certified SBEs and project plan rooms is available at:
www.denvergov.org/MOCC.

Compliance

1. The Developer must submit monthly reports containing at a minimum the information set forth on Form A attached. If a different reporting form is to be utilized, it must be pre-approved by DURA along with the SBE Plan.
2. The Developer must show that the goals are being reached by the monthly employment reports or must show evidence that the process outlined in the SBE Plan and in Appendix A, Good Faith Efforts, was followed if the goals are not being reached.

Potential Violations

A Developer of the project shall not, at any time before completion of the project:

1. fail to utilize a SBE which was originally listed at bid opening in order to satisfy project goals, and which submitted a letter of intent, without substituting another SBE performing the same commercially useful function and dollar amount, or demonstrating each element of the Good Faith Efforts to substitute another SBE; or
2. fail to allow a SBE functioning as a subcontractor, subconsultant, joint venturer, supplier, manufacturer, or broker to perform the commercially useful function, the value of which was originally counted for that SBE in awarding the contract; or
3. modify or eliminate all or a portion of the scope of work attributable to a SBE upon which the contract was awarded, unless approved by DURA; or
4. terminate a SBE originally utilized without replacing such SBE with another SBE performing the same commercially useful function and dollar amount, or demonstrating Good Faith Efforts to substitute another SBE; or

Remedies for Failure to Comply

Failure of a Developer to comply with the SBE Plan, or to demonstrate Good Faith Efforts to comply with the SBE Plan, shall be cause for DURA to exercise any remedies, to the extent provided in the redevelopment agreement, including withholding payment of the funding of the project from tax increment revenues or tax increment bond proceeds.

APPENDIX A

Good Faith Efforts

If the Developer has not fully met the SBE Plan goals as agreed to in the redevelopment agreement, then the Developer shall demonstrate that it has made good faith efforts to meet the goals. The Developer shall furnish to the Authority within three (3) working days after bid opening a detailed statement of its Good Faith Efforts to meet the SBE Plan goals. This statement shall address each of the items listed below and any additional criteria that the Developer has established in the adopted SBE Plan to ensure maximum outreach and utilization efforts.

The different kinds of efforts as well as the quantity and intensity of the efforts will be considered in determining whether the Developer has used Good Faith Effort.

The statement of Good Faith Efforts shall include a specific response to each of the following. The Developer may include any additional information believed relevant. Failure of the Developer to show Good Faith Efforts as to any one of the following criteria may render its overall good faith showing insufficient. The Developer may require this information to be provided by the project general contractor, construction manager and subcontractors, however, the Developer is ultimately responsible for compliance, or Good Faith Efforts to comply, with the SBE Plan goals.

Actions Reviewed to Determine Good Faith Effort

1. Attendance at pre-bid meetings, if pre-bid meetings are scheduled by the Developer, at which SBEs may be informed of subcontracting opportunities under a given project solicitation. Attendance by the Developer at such pre-bid meetings is not mandatory; however, the Developer is responsible for the information provided at these meetings.
2. Verification of advertisements soliciting bids from SBEs in general or construction-related publications. All such advertisements must expressly advertise the project and expressly state that SBE participation on the project is being sought. All such advertisements for bids shall begin at least fifteen (15) days prior to bid opening.
3. Verification of efforts to contact, by timely notice, appropriate SBEs within identified subcontracting categories listed in the most current certification list of the Office of Contract Compliance, or other approved listings. The notice shall expressly describe the potential subcontracting categories for the project. Written notice to SBE firms that could not provide subcontracting or supplies consistent with the project's scope of work and reasonably consistent with industry practice will not be considered as satisfying the purposes of this category. If potential bidders have purchased project plans seven (7) calendar days or less before bids

are due, documented phone calls to such potential bidders in lieu of written notice shall be permitted.

4. Verification of efforts to subcontract, consistent with industry practice, with the SBEs who the Developer has contacted, or who have contacted the Developer, including the names, addresses and telephone numbers of all SBEs contacted; a description of efforts made to subcontract: a description of the information provided to the SBEs regarding the plans and specifications for portions of the work to be performed by subcontractors; and, if attempts to subcontract actually occurred, the dates and places of such process and a description of the outcome.
5. Verification that the Developer attempted to recruit SBEs from at least the same geographic area from which it attempted to recruit other subcontractors.
6. Verification that, consistent with industry practice, the Developer gave SBEs necessary access to and adequate time to review all necessary project plans, drawings, specifications and other documents, as well as adequate time to prepare subcontract bids and/or negotiate joint venture arrangements.
7. Verification that the Developer selected portions of the work to be performed by SBEs in order to achieve the SBE Plan goals. Such portions of work should be reasonably consistent with industry practice and past practice on similar projects. Verification that the Developer made a reasonable attempt to structure contracts into economically feasible units to facilitate meaningful SBE participation.
8. For each SBE which contacted the Developer or which the Developer contacted or attempted to contract, consistent with industry practice, a statement giving the reasons why the Developer and the SBE did not succeed in reaching a general contracting, subcontracting or joint venture agreement.
9. Verification that the Developer rejected SBEs because they did not submit the lowest bid or they were not qualified. If a SBE is rejected because it did not submit the lowest bid, such verification shall include a statement of the amounts of all bids received from potential contractors on the project and that the Developer rejected the SBE because it did not submit the lowest bid from among such bids. If a potential SBE contractor is rejected because it was not qualified, the Developer shall be guided by the definition of "qualified" in Division 1 of Article III of Chapter 28 of the Revised Municipal Code of the City and County of Denver but evidence of lack of qualifications must be based on factors other than the amount of the SBE's bid. For each SBE found to be not qualified, the verification shall include a statement giving the Developer's reasons for its conclusions.

APPENDIX B

Additional Employment Options

Any, or all, of these options may be incorporated into the Developer's SBE Plan for a project in addition to the required SBE Plan components.

1. Assist SBE firms in establishing necessary industry relationships with financial institutions and surety bonding companies.
2. Advise and instruct major general and subcontractors on methods to utilize SBE subcontractors and suppliers to the maximum feasible levels. Counsel these businesses on joint venture opportunities, and offer simplified contracting methods to facilitate such opportunities.
3. Make available to the SBEs background information and technical personnel to facilitate the ability of SBEs to professionally analyze bid documents and prepare adequate responses thereto, including detailed briefing meetings by the general contractor, the architects and engineers.
4. Anticipate potential obstacles and challenges to smaller SBE contractors and provide necessary administrative and technical support to overcome such; including scheduling support, manpower estimates, and regular progress meetings to ensure that SBEs are able to meet performance milestones. Offer special financial assistance and/or payment procedures, such as joint check agreements, and credit support for selected SBE companies.
5. Set up meetings with appropriate SBE consultants, bonding/surety agencies, specialized technical information or service providers to SBEs, and relevant SBE trade associations in advance of project bids to ensure maximum available technical support.
6. Prequalify bidders including as a criteria for selection their prior commitment and willingness to meet SBE Plan goals. Allow and encourage companies to prequalify with SBE Plan joint venture partners.
7. Where possible, prequalify major manufacturers. Encourage these manufacturers to establish distribution lines with SBE suppliers.
8. Encourage major wholesale supply houses to establish joint venture or joint supply relationships with SBE suppliers.