



## DENVER URBAN RENEWAL AUTHORITY

### GUIDELINES FOR UTILIZATION OF SMALL BUSINESS ENTERPRISES IN URBAN REDEVELOPMENT PROJECTS

November 2014

#### 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.

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

- Be provided to DURA as part of the application process for Tax Increment Finance (TIF) assistance.
- Describe the methods and practices to be followed by the Redeveloper in order to achieve the Plan objectives
- Be incorporated into any Redevelopment Agreement between the Redeveloper and DURA and thus a potential default of that agreement if not adhered to.

\* Failure to develop and implement an SBE plan may disqualify an applicant from receiving DURA TIF assistance.

#### General

An SBE plan will be required for construction related contracts and professional services contracts.

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, and environmental consultants.

## Goals

DURA has established goals relating to utilization of small business enterprises (“SBE’s”) for projects supported by DURA TIF funding. In order to be counted towards these goals, SBE’s must be certified through; (i) the City of Denver’s Division of Small Business Opportunity department, or (ii) another public entity approved by DURA. Any certification that is unable to be verified will **not** be accepted (i.e. Self-Certifications).

The SBE goal for all projects awarded TIF is **23%**.

DURA may modify the SBE goal in this policy on an annual basis and may take into consideration any adjustments made to the SBE goals currently in place for the City and County of Denver. Until modified, the goals set forth herein shall continue in effect.

The percent of participation is calculated against the total project budget (excluding the actual acquisition cost of real property), not the amount of TIF received. (i.e. If a project has a 23% SBE goal, 23% of the total project budget must be contracted with SBE’s.)

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, only in extenuating circumstances. An SBE Plan is not required for projects with DURA tax increment financing of \$100,000 or less.

A Redeveloper should make every effort to award contracting opportunities to businesses with a City and County of Denver Emerging Business Enterprise (EBE) designation. An EBE is an emerging business enterprise with annual receipts less than \$3,000,000 over the past three years for construction services and annual receipts over \$1,000,000 over the past three years for professional services. All EBE’s must meet applicable size standards as established by the Small Business Administration.

## SBE Plan Components

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

The following factors shall count toward project goals: portions of work undertaken by SBE’s as contractors, consultants, subcontractors, subconsultants, suppliers, manufacturers, brokers or joint ventures. 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.

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. The outreach plan must have objectives geared toward the broadest awareness and timing, maximized opportunities and procedures for outreach.
  - a. If electronic notification is forwarded to the SBE organizations of the project scope and schedule, a copy must also be forwarded to the City of Denver's Division of Small Business Opportunity department and to DURA.
2. A bid advertising plan which provides outreach to SBE construction and professional services organizations.
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 2, 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 Redeveloper 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 Redeveloper for the project. It should request from SBE firms basic business information, a general statement of interest and any request for specific assistance. A copy of the prequalification form should be provided to DURA.
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 Redeveloper staff or general contractor 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 Redeveloper 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.

The DURA board will not take action or approval of a Redevelopment Agreement or like agreement until the SBE Plan has been submitted and approved by DURA.

#### Information Resource

A list of certified SBE's and EBE's are available at:

<https://denver.mwdbe.com/FrontEnd/VendorSearchPublic.asp?XID=7939&TN=Denver>

#### Reporting

1. The Redeveloper must submit quarterly reports no later than 30 days after conclusion of the calendar quarter. The report must contain, at a minimum, the information set forth on Form 1 attached. If a different reporting form is to be utilized, it must be pre-approved by DURA along with the SBE Plan.
2. The Redeveloper must show that the goals are being reached through the quarterly reports. If the goals are not being reached, the Redeveloper must show evidence that the process outlined in the SBE Plan and in Appendix A, Good Faith Efforts, was followed.
3. The Redeveloper must provide a copy of the SBE's bonding letter indicating that the SBE is qualified to perform construction related work on the project.

## Potential Violations

A Redeveloper 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 that may cause a material change which may impact achieving the SBE goal, 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 Redeveloper 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 a project is bought out, 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 Redeveloper 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 Redeveloper has used Good Faith Effort.

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

#### Actions Reviewed to Determine Good Faith Effort

1. Verification of the communication that notified SBE's of subcontracting opportunities under a given project solicitation. The Redeveloper is responsible for the information provided to the SBE's.
2. Verification of communication soliciting bids from SBE's 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 buy out.
3. Verification of efforts to contact, by timely notice, appropriate SBE's within identified subcontracting categories listed in the most current certification list of the Division of Small Business Opportunities, 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 Redeveloper has contacted, or who have contacted the Redeveloper, including the names, addresses and telephone numbers of all SBE's contacted; a description of efforts made to subcontract: a description of the information provided to the SBE's 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 Redeveloper attempted to recruit SBE's from at least the same geographic area from which it attempted to recruit other subcontractors.
6. Verification that, consistent with industry practice, the Redeveloper gave SBE's 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 Redeveloper selected portions of the work to be performed by SBE's 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 Redeveloper made a reasonable attempt to structure contracts into economically feasible units to facilitate meaningful SBE participation.
8. For each SBE which contacted the Redeveloper or which the Redeveloper contacted or attempted to contract, consistent with industry practice, a statement giving the reasons why the Redeveloper and the SBE did not succeed in reaching a general contracting, subcontracting or joint venture agreement.
9. Verification that the Redeveloper rejected SBE's 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 Redeveloper 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 Redeveloper 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 Redeveloper's reasons for its conclusions.

## APPENDIX B

### Technical Assistance

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 teaming agreements and joint venture opportunities, and offer simplified contracting methods to facilitate such opportunities.
3. Make available to the SBE's background information and technical personnel to facilitate the ability of SBE's 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 SBE's, 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.
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.



**FORM 2**  
**LETTER OF INTENT**  
**SBE UTILIZATION PLAN/GOALS/TOTAL TO DATE/FORMS**

A. To be completed by the Bidder:

Project No. & Name:	_____	
	_____	
Name of Bidder:	_____	
Address:	_____	
	_____	
Telephone Number:	_____	Fax: _____
Signature:	_____	Title: _____

B. To be completed by SBE firm at any tier and signed by SBE or the Bidder  
**(*PROVIDE PROOF OF CERTIFICATION*):**

Name of Firm:	_____	
Address:	_____	
	_____	
Telephone Number:	_____	Fax: _____
Description of work to be performed, or supplies/materials to be provided by the SBE firm:		
_____		
_____		
Bidder intends to utilize the above named SBE firm for the work described above. The cost of the work and percentage of the total contract bid amount is estimated at \$_____, ____%.		
If the above named bidder is not determined to be the successful bidder, the Letter of Intent shall be null and void.		
If any substantial part of the work to be performed, or supplies/materials to be provided described above is going to be subcontracted by the SBE listed above to another firm, complete the following:		
Name of Firm:	_____	
Address:	_____	
Signature of Officer:	_____	
Telephone Number:	_____	Fax: _____
Check One:	<input type="checkbox"/> Subcontractor	_____
		Type of Work
	<input type="checkbox"/> Supplier	_____
		Type of Material/Supplies