

Introduced: 6/06/11  
Second Read/Public Hearing: 6/20/11  
Adopted: 6/20/11

**ORDINANCE #2011-04**  
***AN AMENDMENT TO THE MUNICIPAL CODE,  
ADOPTING TITLE VI, CHAPTER VI-A, PURCHASING POLICY,  
MINORITY/WOMEN BUSINESS ENTERPRISES***

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***WHEREAS*** the Town administers a Purchasing Policy to insure that public funds are expended prudently and in accordance with applicable law; and,

***WHEREAS*** the Town recently received a federal grant to fund the construction of North/West Fire Station; and,

***WHEREAS*** federal regulations require the adoption of a policy regarding Minority Business Enterprises and Women Business Enterprises;

***NOW THEREFORE BE IT ORDAINED*** by the Town Council of the Town of Londonderry that the Municipal Code of the Town of Londonderry, Title VI – Town Policy, Chapter VI-A, Minority/Women Business Enterprises is hereby adopted as attached.

Sean O’Keefe - Chairman  
Town Council

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Meg Seymour  
Town Clerk

(TOWN SEAL)

***A TRUE COPY ATTEST:***  
***xx/xx/xx***





# **CHAPTER VI-A MINORITY/WOMEN BUSINESS ENTERPRISES POLICY**

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## **CHAPTER VI-A MINORITY/WOMEN BUSINESS ENTERPRISES POLICY**

### **SECTION I PURPOSE**

The purpose of the Minority Business Enterprise/Women Business Enterprise Policy is to provide maximum contracting opportunities to certified minority business enterprises/women business enterprises by using race-neutral, gender-neutral measures to facilitate minority/women business participation in the procurement process.

### **SECTION II GOALS**

Town of Londonderry's goal is to achieve a total of 10% participation from certified minority business enterprises/women business enterprises for all Procurement Contracts which are federally funded, in whole or in part. This is an overall goal for all Federally funded Procurement Contracts. This is not a goal for each and every Federally funded Procurement Contract. Town of Londonderry will comply with the specific percentage required by the Federal entity providing the funding for each Procurement Contract.

The Town of Londonderry's goal is to make good faith attempts to encourage bids or offers from certified minority business enterprises/women business enterprises for all Town funded Procurement Contracts which exceed Five Hundred Thousand Dollars (\$500,000.00).

### **SECTION III. DEFINITIONS**

- A. **“Central Directory”** means the Directory published by the State Department of Transportation listing entities that have been determined to be certified minority/women business enterprises. The Directory specifies the type of supplies, products, services, maintenance, construction, construction-related services, architectural services, or engineering services primarily provided by the Minority Business Enterprise/Women Business Enterprise. The Directory includes the address, telephone number and contact person for the minority/women business enterprise.
- B. **“Certification”** means the determination made by the State Department of Transportation that a legal entity is a minority/women business enterprise.
- C. **“Certified Minority Business Enterprise” or “Certified MBE/WBE”** means a Minority Business Enterprise/Women Business Enterprise that holds a certification.

## CHAPTER VI-A MINORITY/WOMENT BUSINESS ENTERPRISES POLICY (Cont'd.)

### SECTION III. DEFINITIONS (Cont'd.)

- D. **“Contractor”** means any person or entity that has a contract with the Town to provide supplies, products, services, maintenance, construction, construction-related services, architectural services, or engineering services.
- E. **“Contracts Officer”** means the person designated by User to act as the Minority Business Enterprise/Women Business Enterprise liaison officer in the administration of the Minority Business Enterprise/Women Business Enterprise Policy.
- F. **“Town”** means the Town Manager and/or the Town Council of Town of Londonderry.
- G. **“Minority business enterprise”** or **“MBE”** means any legal entity, other than a joint venture, organized to engage in commercial transactions, that is at least fifty-one (51) percent owned and controlled by one or more minority persons, or a nonprofit entity organized to promote the interests of the physically or mentally disabled.
- H. **“Minority person”** means a member of a socially or economically disadvantaged minority group, which for purposes of this policy includes African Americans, Hispanics, American Indians, Asians, women, and the physically or mentally disabled.
- I. **“Procurement Contract”** means a contract to provide supplies, products, services, maintenance, construction, construction-related services, architectural services, or engineering services for a project.
- J. **“Purchasing”** means the Department responsible for procuring supplies, products, services, maintenance, construction, construction-related services, architectural services and engineering services.
- K. **“Solicitation notice”** means public notice of a solicitation for bids, offers, or expressions of interest, which contains the nature of the procurement, relevant dates, the availability of solicitation documents, if any, and other pertinent information. The notice may consist of, but is not limited to, a legal advertisement, a newspaper notice, a notice on the Internet, or bid or proposal documents including the invitation for bids or request for proposals.
- L. **“User”** means the Department that desires to circulate a solicitation notice for supplies, products, services, maintenance, construction, construction-related services, architectural services, or engineering services. For capital projects, User means the administering authority, such as the Department of Public Works.

## **CHAPTER VI-A MINORITY/WOMENT BUSINESS ENTERPRISES POLICY (Cont'd.)**

### **SECTION III. DEFINITIONS (Cont'd.)**

- M. **“Woman business enterprise” or “WBE”** means any legal entity, other than a joint venture, organized to engage in commercial transactions, that is at least fifty-one (51) percent owned and controlled by one or more females.

### **SECTION IV. METHODS OF PROCUREMENT FOR CONTRACTS WHICH ARE FEDERALLY FUNDED, IN WHOLE OR IN PART**

The following methods of procurement will be used to notify MBE/WBEs of contract opportunities:

- A. General
1. The User shall assess the potential for certified MBE/WBE participation in each contract and the amount of participation expected before initiating the procurement. Purchasing shall use the procurement method decided most appropriate for the particular contract.
  2. The following factors shall be used to anticipate the degree of certified MBE/WBE participation, to decide the certified MBE/WBE subcontract participation goal, and the MBE/WBE procurement method to use:
    - (a) The extent to which the direct method or subcontracting method or combination of both methods is determined most likely to result in maximum certified MBE/WBE participation in the project.
    - (b) The number of certified MBE/WBEs listed in the Central Directory or otherwise identified for a particular supply, product, service, maintenance, construction, construction-related service, architectural service, or engineering service;
    - (c) The geographical proximity, when relevant, of certified MBE/WBEs to the location of the work to be performed;
    - (d) The feasibility of subcontracting opportunities given the nature and extent of the proposed contract; and
    - (e) Specific statutory participation goals applicable to the procurement.

## **CHAPTER VI-A MINORITY/WOMENT BUSINESS ENTERPRISES POLICY (Cont'd.)**

### **SECTION IV. METHODS OF PROCUREMENT FOR CONTRACTS WHICH ARE FEDERALLY FUNDED, IN WHOLE OR IN PART (Cont'd.)**

#### **B. Direct Method**

1. If it is known that certified MBE/WBEs could provide the entire contract, the certified MBE/WBEs may be solicited directly.
2. Purchasing shall send a copy of all solicitation notices to certified MBE/WBEs located in geographical proximity to the project, listed in the Central Directory maintained by the State Department of Transportation as providing, or otherwise known to be providing, supplies, products, services, maintenance, construction, construction-related services, architectural services, or engineering services being procured.
3. Purchasing, in cooperation with User, shall solicit a sufficient number of certified MBE/WBEs as to reasonably assure one or more certified MBE/WBE responses to the solicitation notices.
4. The following language should be included in the advertisement: "Minority/women business enterprises are encouraged to respond to this solicitation."

#### **C. Subcontracting Method**

- 1 Notwithstanding whether the direct method is used, all construction contracts shall contain a certified MBE/WBE subcontract participation goal, determined by User, which the Contractor shall attempt to subcontract to certified MBE/WBEs.
- 2 The following language must be included in the solicitation: "An MBE/WBE subcontract participation goal of \_\_\_\_ percent of the total current amount has been established for this procurement. By submitting a response to this solicitation, the bidder or submitter agrees that a good faith effort will be made to meet the participation goal."
- 3 The bidder or submitter shall submit with its bid or proposal a completed Certified MBE/WBE utilization affidavit in a format similar to that in attached Exhibit D.
- 4 The names of prime contractors requesting solicitation documents for construction contracts shall be made available on request to any certified MBE/WBEs whose specialty suggests an interest in subcontracting.
- 5 Each prime contractor given solicitation documents, and who does not have an updated Central Directory shall be given, upon request, one copy of the Directory or the pertinent portions for the purpose of soliciting subcontract quotes, bids, or offers from certified MBE/WBEs.



## **CHAPTER VI-A MINORITY/WOMEN BUSINESS ENTERPRISES POLICY (Cont'd.)**

### **SECTION V. RESPONSIBILITIES OF CONTRACTS OFFICER DESIGNATED BY USER**

The Contracts Officer shall:

- A. Coordinate initial outreach efforts in search of a General Contractor to the minority/women business community through media sources, including but not limited to newspapers, television, the Internet, or any other media accessible to the public, or by coordinating periodic meetings between Purchasing and MBE/WBEs to advise MBE/WBEs of procurement opportunities;
- B. Review contracting procedures to ensure compliance;
- C. Assist in the resolution of contracting issues; and,
- D. Submit MBE/WBE compliance reports and copies of required forms to Purchasing.

### **SECTION VI. REQUIRED FORMS**

- A. The following documentation shall be considered part of the contract and shall be furnished by the successful bidder or submitter to User during the term of the contract, but no later than one month prior to the end of the term of the contract:
  - 1. Schedule of Participation This document shall name each certified MBE/WBE who will participate in the project and shall describe the contract items to be performed or furnished by each MBE/WBE, the proposed timetable for performance, and agreed prices to be paid to each MBE/WBE for the work or supply
  - 2. MBE/WBE Subcontractor Project Participation Statement This document shall be signed by the bidder or submitter and each MBE/WBE listed in the Schedule of Participation. It shall include a statement of intent to enter a contract between the Contractor and each subcontractor or, if the Contractor has awarded to subcontractors, it shall include copies of Subcontractor Agreements and the amount and types of bond required by the MBE/WBE subcontractors, if any List The list shall include: evidence of Contractor's compliance with outreach efforts, certified MBE/WBE subcontractors with whom the Contractor solicited, and price quotes received from both minority/women and non-minority/women subcontract bidders.
  - 3. List The list shall include: evidence of Contractor's compliance with outreach efforts, certified MBE/WBE subcontractors with whom the Contractor solicited, and price quotes received from both minority/women and non- minority/women subcontract bidders.

**CHAPTER VI-A MINORITY/WOMEN BUSINESS ENTERPRISES POLICY  
(Cont'd.)**

**SECTION VI. REQUIRED FORMS (Cont'd.)**

- 4 Affidavit The affidavit shall be signed by the Contractor and shall state that in the solicitation of subcontract quotes or offers, MBE/WBE subcontractors were provided not less than the same information and amount of time to respond as were non-MBE/WBE subcontractors, and that the solicitation process was conducted in such manner as to otherwise not place MBE/WBE subcontractors at a competitive disadvantage to non-MBE/WBE subcontractors.
- 5 Other Documents A waiver may be submitted in accordance with Section VII, if applicable.

B. If the contract has been awarded and the above-referenced documentation is not furnished, or if, based on review of the above-referenced documents, User determines that the bidder or submitter has not complied with the certified MBE/WBE subcontract participation goal and has not obtained a waiver, or determines that the bidder or submitter failed to comply with the outreach efforts, User may reject the bid or cancel the award of the contract.

**SECTION VII. WAIVER**

If, for any reason, the apparent successful bidder or submitter is unable to achieve the contract goal for the certified MBE/WBE participation, the bidder or submitter may request, in writing, a waiver to include the following:

- A. A detailed statement of the efforts made to select portions of the work proposed to be performed by certified MBE/WBEs in order to increase the likelihood of achieving the stated goal;
- B. A detailed statement of the efforts made to contact and negotiate with certified MBE/WBEs including:
  - 1 The names, addresses, dates, and telephone numbers of certified MBE/WBEs contacted, and
  - 2 A description of the information provided to certified MBE/WBEs regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed;

## **CHAPTER VI-A MINORITY/WOMEN BUSINESS ENTERPRISES POLICY (Cont'd.)**

### **SECTION VII. WAIVER (Cont'd.)**

- C. As to each certified MBE/WBE that placed a subcontract quotation or offer that the apparent successful bidder or submitter considers not to be acceptable, a detailed statement of the reasons for this conclusion;
- D. A list of minority/women subcontractors found to be unavailable, which shall be accompanied by an MBE/WBE unavailability certification signed by the minority/women business enterprise, or a statement from the apparent successful bidder or submitter that the minority/women business refused to give the written certification; and
- E. The record of the apparent successful bidder's or submitter's compliance with the outreach efforts required.
- F. The request for waiver shall be submitted to User to make a determination regarding waiver. The request and the determination made by the User shall subsequently be submitted to Purchasing for its files.

### **SECTION VIII. AMENDMENT FOR UNFORESEEN CIRCUMSTANCES**

Any change after contract execution may occur only upon written approval by User and contract amendment. The contract amendment should subsequently be forwarded to Purchasing for its files.

### **SECTION IX. COMPLIANCE**

- A. To ensure compliance with the certified MBE/WBE participation goals, User shall verify that certified, MBE/WBEs in the Schedule of Participation are actually performing work and receiving compensation as set forth in the Schedule of Participation.
- B. To demonstrate compliance to User, the Contractor shall permit User to inspect any relevant matter, including records and the jobsite and to interview subcontractors and workers.
- C. If User determines Contractor's noncompliance; User shall notify Contractor in writing of the findings and direct the Contractor to take corrective actions. The

## **CHAPTER VI-A MINORITY/WOMEN BUSINESS ENTERPRISES POLICY (Cont'd.)**

### **SECTION IX. COMPLIANCE (Cont'd.)**

Contractor is required to initiate corrective actions within ten (10) days and the corrective actions shall be completed within the time specified by User. If Contractor's noncompliance is material and Contractor refuses to or fails to take corrective action, the contract may be terminated.

### **SECTION X. REPORTING**

Purchasing shall complete an annual report, based on information provided by Users, following the close of the fiscal year, and the report shall include the following:

- A. Total number and value of its procurements from certified MBE/WBEs as prime contractors and separately as subcontractors by specific category of minority/women business enterprise;
- B. Percentage by specific category of minority/women business enterprise, of MBE/WBE procurements based on the total number and value of its total procurements for the fiscal year;
- C. The number of waivers granted;
- D. An evaluation by Purchasing of the MBE/WBE program.