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**DEPARTMENT OF  
GENERAL SERVICES**

OFFICE OF MINORITY, WOMEN  
AND SMALL BUSINESS

**CITY OF SACRAMENTO**  
CALIFORNIA

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September 21, 1993

Law and Legislation Committee  
Sacramento, California

Honorable Members in Session:

**SUBJECT: MINORITY/WOMEN BUSINESS ENTERPRISE (M/WBE) PROGRAM  
POLICY REVISIONS AND RECOMMENDATIONS**

**LOCATION AND COUNCIL DISTRICT: City - All Districts**

**RECOMMENDATION**

This report recommends that the Law & Legislation Committee review and recommend approval of the attached policy revisions and recommendations and forward them to the City Council for adoption.

**CONTACT PERSON:** Aaron B. Chong, Office of Minority,  
Women and Small Business  
(OMWSB) Coordinator, 433-6250

**FOR COMMITTEE MEETING OF: September 21, 1993**

**SUMMARY**

This report presents recommended M/WBE program policy revisions that have been developed

to remedy the disparate utilization of minority and women-owned businesses identified in the 1992 M/WBE Utilization Study. This study was conducted jointly on behalf of the County of Sacramento, Sacramento Housing and Redevelopment Agency and Sacramento Regional Transit District.

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## **BACKGROUND INFORMATION**

In order to develop a narrowly tailored Minority/Women Business Enterprise (M/WBE) program for the City of Sacramento, staff has considered the findings of the Sacramento Area Minority/Women Business Enterprise (M/WBE) Utilization Study (study), court decisions, legal parameters and procedural elements relevant to our jurisdiction. The intent of this report is to provide recommended actions that can be put into effect on January 1, 1994, including the revised M/WBE program policy. Staff has received public comment on the proposed program elements.

On March 30, 1993, the City Council approved interim M/WBE goals and immediate actions to be taken in response to the Study's findings. At that time, staff was also directed to develop long-term policy (Attachment I) and procedures (Attachment II) in comportment with the recommendations from the Study.

On May 12, 1993, a public forum was held in the Sacramento Housing and Redevelopment Agency's commission room to hear comments from the community on the proposed program policies and directions of the agencies' M/WBE program activities. Copies of the transcript are available through the City of Sacramento's Office of Small, Minority and Women Business Enterprises. Several speakers suggested supporting partner arrangements between large established businesses and smaller M/WBE firms as well as presenting periodic workshops for vendors to learn the bidding processes of the agencies.

Staff from the four agencies participating in the study endeavored to create a uniform policy as much as possible within the constraints of each participant's legal restrictions. Since each agency's narrowly-tailored M/WBE goals differ, and other restrictions apply to the various agencies depending upon sources of funds, legal structure, etc., the particulars of each agency's program will differ somewhat.

The four participating agencies will hold joint outreach workshops for vendors to learn how to do business with each agency relative to the M/WBE program and procurement and contracting activities. City of Sacramento staff will be trained in the new policy and procedures during the next few months and the M/WBE program staff will continue to work with the other Joint Certification Program (JCP) agencies in efforts to further centralize certification and share helpful program enhancements, legal updates and general information concerning the programs.

The objective of the City of Sacramento's M/WBE program is to remedy the present effects of past discrimination as found in the study by assisting certified M/WBE firms with identifying and participating in the City of Sacramento's procurement and contracting opportunities. The assistance shall be provided until the M/WBEs no longer have a need for such assistance as evidenced by their participation in City business transactions reaching a level of parity when compared with availability.

## DISCUSSION

This section presents highlights of the recommendations for overall policy guidelines of the proposed M/WBE program:

This report provides the City Council with the City of Sacramento's proposed M/WBE policy which outlines the authority of the program, scope and applicability, policy statement, objectives of the program, definitions, responsibilities for carrying out the program, the M/WBE participation goals, M/WBE preferences, and procedures for implementing the program.

The proposed procedures have been assembled by the resource committee consisting of representatives from the City, County, Sacramento Housing and Redevelopment Agency (SHRA), and Regional Transit District (RT). These proposed procedures will provide City staff with guidelines for implementing the City's policy of providing minority and women businesses an equal opportunity to participate in the performance of all City of Sacramento procurement and contracting activities.

The proposed procedures will also provide guidance on how to calculate and apply the proposed M/WBE price/point preference on City contracts. In addition, the reports goes on to identify the good faith efforts, appeal process, violation penalties, and reporting requirements of M/WBE utilization.

The proposed program attempts to provide the City with a workable program that will require changes as staff implements the program over the next year. Staff wishes to point out that even with a price/point preferences, not all M/WBE firms will receive contracts because some vendor bids/proposal will be beyond the 5% or price or point preference. On the other hand, some M/WBE firms will not be awarded contracts if they have not met the contract's goals or good faith efforts.

Staff wishes to clarify the difference between a minority or woman owned business that is certified, program eligible, and preference eligible.

A **certified M/WBE firm** is an Minority/Woman Business Enterprise that has met the certification process for determining an independent business concern which is at least 51% owned and controlled by a woman or minority group member(s). Ownership and control are measured by a variety of factors including: a) responsibility for performance of contract work; b) management responsibility and control; c) at least 51% share of profits and risk and d) other data (including voting rights) that may be related to ownership and/or control.

A **program eligible M/WBE** is a Certified M/WBE firm that has demonstrated that it has attempted to do business with one or more of the agencies located in the Sacramento market area. Firms may be able to demonstrate program eligibility by attempting to register as a vendor, making a sales call on one of the JCP agencies or prime contractor, obtaining a local business license, submitting a bid to a Joint Certification Program (JCP) agency or prime contractor in the past year, or signing an affidavit indicating that the firm has attempted to do one of the above mentioned items.

A **preference eligible M/WBE firm** is a Certified and Program Eligible M/WBE firm that is owned by a woman (women) or by a minority (minorities) for whose ethnic group or gender group the City of Sacramento has a goal in the appropriate business category.

#### **January 1, 1994 Implementation**

Staff recommends that the proposed program be implemented on January 1, 1994. OMWSB staff will need to equip and prepare all City staff on the proposed M/WBE changes to City policy, procedures, reporting formats, computerized reporting and documentation, and a host of other issues.

In addition, staff will be providing workshops to both the M/WBE and non-M/WBE community to inform them of these upcoming changes and bidding procedures to promote a smooth transition into the proposed M/WBE program.

#### **Program Enhancements:**

##### *Computerized M/WBE Identification Program - Decentralization*

A computer program is currently being designed by OMWSB and Department of Information and Computer Services (ICS) staff to provide all City of Sacramento staff with ON-LINE computer ability to identify and locate vendors based on a variety of factors including commodity codes and descriptions, vendor location, ethnicity, gender, preference eligibility, small business, and many other variables. This program will provide the user with on-screen information, hard

copy documentation or printed labels. Staff from ICS and OMWSB anticipates to have this program available for staff utilization on January 1, 1994.

This will also work in conjunction with the new informational format provided in the Joint Certification Program M/WBE directory, published by the City, which will provide the directory holder with the information broken down into the above mentioned format.

Further enhancements include providing the information on diskette and data tape formats for Joint Certification Program Partners.

#### *Informational Workshops*

In order to provide ample information to City of Sacramento City Council staff and City department staff, OMWSB will be providing informational workshops throughout the second quarter of FY 1993-94 to familiarize City of Sacramento staff with the new policies and procedures on M/WBE utilization and compliance. All materials and procedures relating to M/WBE will be distributed to staff prior to the January 1, 1994 program implementation. This program implementation date has been coordinated with the County, SHRA and Regional Transit.

OMWSB staff also proposes to provide joint agency M/WBE vendor workshops to educate both M/WBE and non-M/WBE vendors and contractors on M/WBE changes to enhance their chances for successful participation in the City of Sacramento's and JCP agencies' procurement and contracting opportunities.

#### *Changes to City Code*

Corresponding M/WBE changes must be made to the City Code titles 57 and 58, dealing with supplies, non-professional services and public projects. These changes are set forth in two companion reports.

#### *Subcontracting Reporting*

The City of Sacramento's Local Government Financial System (LGFS) computer reports on M/WBE participation currently report only M/WBE utilization of prime contractors paid directly by the City of Sacramento. Many minority and women contractors or vendors are unable to bid directly on the entire City construction or professional service or supply contracts due to their size. However, many of them bid as certified M/WBE vendors on subcontracted trades or

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disciplines for prime bidders/contractors. Since these subcontracted dollars to M/WBEs are not directly paid through the City of Sacramento's LGFS system, these M/WBE dollars do not show up as being utilized by the City of Sacramento departments on the M/WBE utilization report. We believe a large portion of M/WBE subcontracting dollars are not reported correctly based on the current reporting system.

In order to better reflect these shortcomings, we will work closely with each City of Sacramento department on a reporting format to list and identify all subcontractors, regardless of race or gender, on each project. This information will be provided by each department on all City of Sacramento projects requiring subcontracting.

*Mayor's M/WBE Special Task Force*

The M/WBE Task Force has been working on redefining the role and responsibilities of the task force. In addition, a subcommittee has been reviewing the current business categories on the task force for possible changes in order better reflect the current Sacramento M/WBE business community.

*City Council Liaison*

In order to keep the City Council apprised of M/WBE issues raised by the business community, the Mayor's M/WBE Special Task Force has proposed that a City Council representative attend the monthly Mayor's M/WBE Special Task Force meeting as a liaison. As mentioned earlier, OMWSB staff will also be providing informational meetings to Council staff on the changes to the City's M/WBE policy, procedures, language, forms, and changes to the City Code.

*Joint Certification Program (JCP)*

The Joint Certification Program (JCP) has adopted the Code of Federal Regulations (CFR) Chapter 49 Part 23 (Transportation Guidelines) as the certification criteria. This will allow the City and its JCP partners to accept certifications performed by other M/WBE certification agencies. M/WBE certification appeals will be handled by a multi-agency appeals board to review rejected M/WBE certifications. Appeals may also be made to the Federal Department of Transportation in Washington, D.C. to which Chapter 49 of the Federal Code of Regulations certification programs apply. Staff will also be reviewing M/WBE certifications against the Small Business size standards determined by the U. S. Small Business Administration indicated in the Code of Federal Regulations Chapter 13, Part 121. These certification thresholds and eligibility standards will be updated based on the CFRs.

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The effect of this procedural change will provide the City of Sacramento and JCP partners with additional M/WBE vendors that are currently certified elsewhere but not in the Sacramento region. In addition, this step will further reduce the amount of paperwork required for certification by the City's JCP.

*Good Faith Efforts Documentation*

M/WBE certification and compliance staff from the City, County, SHRA and RT have further refined the Good Faith Efforts (GFE) language. In order to provide a more equitable GFE process, all agencies agreed that bidders on all formally bid contracts undertake ALL ten GFE actions prior to submittal of bid to each of the four participating agencies in order to be deemed responsive and responsible. The bidder has the burden of demonstrating that its efforts could reasonably have been expected to have produced a level of M/WBE participation to meet contract goals.

There has also been discussion on whether the City should do away with GFEs completely in favor of goals only. OMWSB has discussed the matter with the City Attorney's office. The City Attorney's office has determined that nothing prohibits the City from having a goals only program. However OMWSB staff believes that there are other alternatives that better address this problem including the tightening of the Good Faith Language (GFE) requirements, requiring all vendors to submit documentation of M/WBE solicitation and other information as provided on the attached GFE worksheet (Attachment III).

*Goals Implementation*

One significant clarification on utilizing minority women businesses: In cases where a minority woman owned firm participates as a subcontractor in a project, the percentage may be credited towards MBE participation or WBE participation, or allocated between the two, but may not be credited twice fully toward both categories. The impact will be that firms that are minority-woman owned will be given additional opportunities to bid as subcontractors on City contracts and services. Prime contractors will be able to utilize a minority-woman firm and allocate its utilization while meeting both the MBE and WBE goals when the minority-woman firm is contracted, making it easier for primes to meet M/WBE goals.

In addition, OMWSB staff and representatives from the public works, utilities and city attorney's office met to design a program to increase minority utilization on formally bid construction contracts. Staff developed a procedure that would provide an incentive for utilizing M/WBE vendors on all formally bid City construction contracts. All contractors bidding would either have met the M/WBE goals or the required 10 steps identified in the good faith efforts. If a

contractor has met both the Minority and Woman Business Enterprise goals, they would be granted a 5% price preference in evaluation of the bid. If the contractor met only one of the two required goals AND met the good faith efforts, the contractor would be entitled to a 2% price preference. If the contractor simply met the required good faith efforts, the bidder would be deemed a responsive bidder but would receive NO price preference. Finally, if the prime bidder were either a Minority or Woman-owned business enterprise doing the work, they would also be entitled to an additional 2% preference.

Total possible cumulative price preference could total a maximum of up to 7% for a M/WBE prime contractor that has also met the M/WBE subcontracting goals. Under no circumstances would any bidder receive more than \$25,000 in price preferences.

## **FINANCIAL CONSIDERATIONS**

The application of price preferences in determining the lowest responsible bidder may result in increased costs to the City. The magnitude of any such cost increases would depend upon the nature and amount of any such preferences as well as on the level of participation in the bidding process of bidders qualified to receive such preferences.

However, the following items should be pointed out: 1) price preferences may not be given in every contract; 2) the maximum price preference is 7%, but it may be less; 3) the maximum price preference on any contract will be \$25,000.

## **POLICY CONSIDERATIONS**

The proposed action represents adoption of City's revised M/WBE Program policy which will supersede previously adopted policy. Program policy considerations detailed in the administrative procedures manual shall include, but is not limited to: certification, solicitation criteria, preference applications, calculations of price/point preferences, good faith efforts criteria, reporting requirements, and program review.

A major policy change proposed includes providing a 5% price preference to qualified firms for professional and non-professional service contracts, materials & supplies, and all construction projects under \$50,000. In addition, prime contractors bidding on construction projects exceeding \$50,000 may be awarded up to a 7% price preference, contingent upon 3 factors, including compliance with Good Faith Efforts (GFE's), meeting subcontracting goals, and prime contractor being certified as an M/WBE firm. (Please see Section 4.2.2, page 22, under "Construction" for detailed information.)

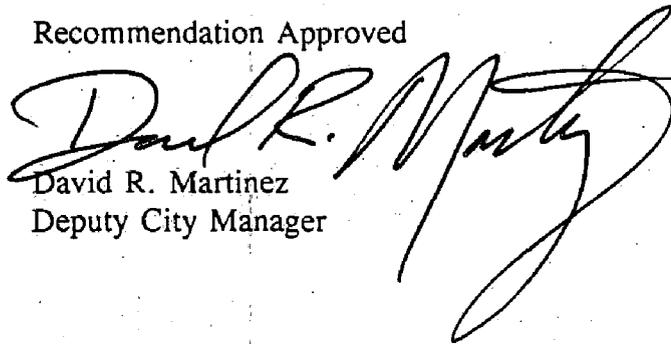
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The proposed action will also require changes to the City Code and the adoption of a Council Resolution dealing with M/WBE price/point preferences.

**M/WBE**

The action proposed in this report recommends significant changes in the M/WBE Program.

Recommendation Approved



David R. Martinez  
Deputy City Manager

Respectfully submitted,



Aaron B. Chong  
OMWSB Coordinator



Betty Masuoka  
Director of Finance

## ATTACHMENT I

### CITY OF SACRAMENTO MINORITY/WOMEN-OWNED BUSINESS ENTERPRISE PROGRAM POLICY

#### AUTHORITY

The policies contained herein supersede previously adopted Minority/Women-Owned Business Enterprise (M/WBE) policies including amendments.

#### SCOPE AND APPLICABILITY

The policies outlined herein shall apply to all applicable procurement and contracting transactions by any and all City of Sacramento officials and departments.

The policies outlined herein shall not supersede federal requirements in applicable contracts.

#### POLICY STATEMENT

It is the policy of the City of Sacramento to provide M/WBE and all other business enterprises an equal opportunity to participate in the performance of City of Sacramento procurement and contracting activities. Bidders and proposers shall assist the City of Sacramento in implementing this policy by taking reasonable steps to ensure that available Minority/Women Business Enterprises have equal opportunity to compete for and participate in City of Sacramento purchases and contracts.

The City of Sacramento, through its City Council, its City Manager, and its respective boards and commissions, will ensure that M/WBEs and all other business enterprises have equal opportunity to participate in the performance of contracts, subcontracts and other City of Sacramento business activities.

It is the policy of the City of Sacramento to institute and maintain a M/WBE Program which provides for:

- A. Equitable utilization of minority/women-owned business enterprises in all aspects of the City of Sacramento's procurement and contracting activities.

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- B. Elimination of any institutional and procedural barriers which would prohibit active participation by M/WBEs in the City of Sacramento's procurement and contracting opportunities.
- C. Training, education and technical assistance opportunities to enhance minority/women business enterprises successful participation in the City of Sacramento's procurement and contracting programs.
- D. Public information on the opportunities available for doing business with the City of Sacramento.
- E. Continued cooperation with other local agencies (e.g. County of Sacramento, Sacramento Housing and Redevelopment Agency (SHRA), and Regional Transit) in developing regional solutions to the disparate utilization of minority/women-owned businesses in the Sacramento market area.

#### **OBJECTIVES**

- A. The objective of the City of Sacramento's M/WBE Program is to remedy the present effects of past discrimination as identified in the Sacramento Area Minority/Women Business Enterprise Utilization Study (November 1992) by assisting certified M/WBEs with identifying and participating in the City of Sacramento's procurement and contracting opportunities. The assistance shall be provided until M/WBEs no longer have a need for such assistance as evidenced by their achieving parity of utilization in the City of Sacramento's procurement and contracting activities.
- B. The M/WBE Program shall continue until its objectives are met and shall maintain sufficient flexibility to assure achievement of its purpose while still remaining viable in terms of the needs of the City of Sacramento to transact its business.

#### **DEFINITIONS**

The terms and words used in this policy are defined in the M/WBE administrative procedures attached hereto and made a part hereof.

## **ORGANIZATION AND RESPONSIBILITY**

### City Council

The City Council is responsible for:

- A. Policy decisions as they relate to the M/WBE program.

### City Manager

The City Manager is responsible for:

- A. The overall administration of the M/WBE Program.
- B. Promulgation of any amendments to ensure consistency with any Federal or State law, regulation or grant requirement.

### Office of Minority, Women and Small Business

The Office of Minority, Women and Small Business is responsible for:

- a. The administration and management of the M/WBE Program on a day-to-day basis.
- b. Coordination of the joint certification agreement with the participating agencies which provides for certification of M/WBEs.
- c. Compiling and evaluating M/WBE participation statistics and providing an annual report to the governing bodies on M/WBE participation.
- d. Providing assistance to City of Sacramento departments in identifying M/WBEs.
- e. Providing assistance to M/WBEs to facilitate a better understanding of the City of Sacramento's procurement and contracting practices.
- f. Providing assistance to non-minority firms to identify and match specific MBE/WBE firms with specific contracting opportunities.

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- g. Providing ongoing public information on City policy regarding M/WBE participation.
- h. Maintaining communications with appropriate associations, industries, organizations, etc., in order to promote and facilitate utilization of M/WBEs.
- i. Maintenance and distribution of Joint Certification Program M/WBE directory.
- j. Assisting in the analysis of City of Sacramento bid documents to determine responsiveness to City of Sacramento M/WBE policy.
- k. Monitoring of City of Sacramento contracts with M/WBE participation requirements and assisting in resolution of M/WBE problems.
- l. Investigate complaints lodged by M/WBE firms with timely resolutions.

City of Sacramento Departments and Appointed Officials

City Departments and Appointed Officials are responsible for:

- a. Assisting in the promotion of M/WBE opportunity and participation within their respective agencies/department assignments.
- b. Complying with the policies and procedures set forth herein.
- c. Working with the Office of Minority, Women and Small Business to improve the utilization of M/WBEs within each department and agency.
- d. Utilizing the M/WBE Directory and/or other resources to increase M/WBE participation.
- e. Providing OMWSB quarterly reports with information regarding department or division M/WBE utilization.

**M/WBE PARTICIPATION GOALS**

It is the policy and intent of the City of Sacramento to afford equitable utilization of M/WBEs in all aspects of the City of Sacramento's procurement and contracting activities

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and to award contracts with M/WBE utilization consistent with the goals contained herein. In furtherance of this policy, outlined below are the annual M/WBE participation goals for the City of Sacramento. These goals represent a standard for M/WBE participation. The City Manager and the M/WBE office shall be responsible for the approval of any modification to the M/WBE goals. Only the dollars expended with certified M/WBE firms, as defined in the accompanying procedures, shall be counted towards satisfying the M/WBE participation goals.

**City of Sacramento M/WBE Utilization Goals**

Ethnicity-Gender/Business Category	Construction	Professional Services	Other Services	Materials & Supplies
Black American	2.0	3.0	5.0	2.0
Hispanic American	5.0	4.0	9.0	7.0
Asian/Pacific Islander	3.5	7.5	11.5	9.5
American Indian Alaskan Native	.07	.17	.25	.21
Non-Minority Women	9.5	14.67	25.75	18.71

**PREFERENCES FOR MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES**

In order to stimulate the participation of M/WBEs in the contracting and procurement activities for the City of Sacramento, the following preferences shall be granted to certified, eligible M/WBEs:

Materials and supplies purchases - 5% price preference

Professional services - 5% point preference

Other services - 5% price or point preference dependent on the criteria for award

Construction - 2% to 7% price preference for contracts above \$50,000.

For contracts that are formally bid, the total possible cumulative price preference could total a maximum of up to 7% for a M/WBE prime contractor that has also met the M/WBE subcontracting goals. Under no circumstances would any bidder receive more than \$25,000 in price preferences. Price preferences are based on the compliance of the M/WBE goals, good faith efforts and M/WBE criteria.

In no case shall the amount of any price preference exceed \$25,000.

### PROCEDURES

The *Office of Minority, Women and Small Business* shall prepare a procedure manual which sets forth the procedures for administration of this policy. Upon approval by the City Manager, the procedures contained in this manual shall have the same force and effect as the provisions of this policy, provided however, that such manual and any amendment thereto shall not be effective, absent an emergency requiring immediate effect, until thirty (30) days following filing with the City Clerk.

The M/WBE procedures shall include such elements as are necessary to implement the provisions of this policy, including, but not limited to, the following:

1. Definitions
2. Certification
3. Program Eligibility
4. Preference Eligibility
5. Bonding and Insurance
6. Penalties
7. Reporting Requirements
8. Right of Acceptance or Refusal
9. Program Review
10. Goals Methodology (Market Area, Utilization, Waiver of Goals)
11. Preference Application
12. Responsible Agency/Department
13. Good Faith Efforts

All provisions of these procedures shall be subject to modification by the City Manager.

## ATTACHMENT II

### MINORITY/WOMEN-OWNED BUSINESS ENTERPRISE PROGRAM ADMINISTRATIVE PROCEDURES

#### 1.0 PURPOSE

The purpose of this document is to detail procedures for all City of Sacramento departments to use for implementing the City of Sacramento's policy of providing Minority and Women-Owned Business Enterprises (M/WBE), an equal opportunity to participate in the performance of all City of Sacramento procurement and contracting activities.

#### 2.0 CERTIFICATION OF MINORITY/WOMEN-OWNED BUSINESS ENTERPRISES

In order to qualify for any special preferences afforded to M/WBEs by the City of Sacramento's M/WBE program, an MBE or WBE participating in a bid or quote must be certified at the time of bid, proposal or quote opening. For purposes of the City of Sacramento program, certification and program eligibility requirements are defined as follows:

##### 2.1 CERTIFIED M/WBE

A firm that has documented that it is at least 51% owned and controlled by a qualified minority (or minorities) and/or woman (women) as defined by the criteria described in Chapter 49 of the Code of Federal Regulations (CFR), Part 23, Subpart A. Currently, the City of Sacramento provides certification processing services for multi-agencies known as the Joint Certification Program (JCP). Other acceptable certifications include CalTrans, Sacramento Regional Transit Authority and any agency using the 49 CFR criteria. (The City of Sacramento certifies firms regardless of the small business size standard.)

##### 2.2 CERTIFIED and PROGRAM ELIGIBLE M/WBE

A M/WBE firm certified by the City of Sacramento and who has attempted to

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do business within the City of Sacramento's and/or JCP's jurisdiction as affirmed by the owner's signature on the affidavit contained in the City of Sacramento JCP M/WBE application certifying that vendor has attempted to do business in the joint agency jurisdiction including: registering as a vendor; making a sales call on a JCP agency or prime contractor; obtaining a local business license; or submitting a bid to a JCP agency or prime contractor within the past year.

### **2.3 CERTIFIED and PREFERENCE ELIGIBLE M/WBE**

A preference eligible M/WBE firm is a certified and program eligible M/WBE firm that is owned by a woman (women) or by a minority (minorities) whose ethnic or gender group the City of Sacramento has a goal in the appropriate business category.

## **3.0 GOALS FOR MINORITY/WOMEN-OWNED BUSINESS ENTERPRISES**

### **3.1 Establishment of Goals for M/WBEs**

The City of Sacramento has adopted narrowly tailored M/WBE goals classified by ethnic and business categories as indicated in the M/WBE Program Policy. These goals were established by using market area availability data derived from the 1992 Utilization Study. The market area for the City of Sacramento was defined in the Study as the geographic areas from which the City of Sacramento purchased 95% of its goods and services.

In order to prevent a single firm with a large dollar value contract from skewing the availability statistics toward a specific geographic area with only a few interested firms, a mathematical weighting process was applied to market area statistics. This weighting, which consisted of the percentage of City of Sacramento contracts awarded to firms in each geographic area over the years analyzed, produces a more accurate characterization of firms that are "ready, willing and able" to bid on contracts.

### **3.2 Modification of Goals**

Requests may be made by City departments and agencies to Office of Minority, Women and Small Business (OMWSB) for waivers or adjustments to the goals upwards or downwards for a specific project. OMWSB shall grant a request after City Manager's approval for reasons including, but not limited to:

- changes in availability
- potential subcontracting opportunities

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- an immediate or existing emergency
- sole source requirements, due to restrictions in specifications
- standardization or quality considerations
- purchases made from or through cooperative purchase agreements with other governmental jurisdictions

### 3.3 Updating of Goals

Goals for M/WBEs by business categories will be updated based on availability of data, such as from the U.S. Census Bureau Minority/Women business census. New goals will be submitted to the City Council for formal approval.

## 4.0 METHODS FOR INCREASING UTILIZATION

In order to increase utilization of M/WBEs to achieve parity with their representation in the market area, the following three (3) methods will be utilized:

### 4.1 Solicitation Standards

Under \$2,000:	Discretionary vendor selection; at least one solicitation to an MBE or WBE firm, whenever available, with options to solicit from other firms.
\$2,000 - \$49,999.99	Minimum of three solicitations, with at least one of every three solicitations made to MBE or WBE firms, when available; Solicitations may be either oral or written.
\$50,000 and above:	Formal competitive procurement procedures, including advertisements and outreach efforts in ethnic publications, Small Business Exchange and NEDA, or M/WBE directory; Maximum possible solicitation from available M/WBE firms.

### 4.2 Price or Point Preference Application

4.2.1 In order to be eligible for a price or point preference, a M/WBE must be certified, program eligible and be from a group for which the City of Sacramento has a goal in the appropriate business category.

A matrix of preference eligible groups by

**M/WBE PROCEDURES**

ethnicity/gender by business category is provided below. Y indicates preference eligibility; N indicates no preference eligibility.

**4.2.2** A price or point preference shall apply to bids/proposals from preference eligible firms as indicated below:

**City of Sacramento M/WBE Utilization Goals**

<b>Ethnicity-Gender/Business Category</b>	<b>Construction</b>	<b>Professional Services</b>	<b>Other Services</b>	<b>Materials &amp; Supplies</b>
<b>Black American</b>	Y	Y	Y	Y
<b>Hispanic American</b>	Y	Y	Y	Y
<b>Asian/Pacific Islander</b>	Y	Y	Y	Y
<b>American Indian Alaskan Native</b>	Y	Y	Y	Y
<b>Non-Minority Women</b>	Y	Y	Y	Y

**CONSTRUCTION:** Apply 5% price preference for contracts from \$2,000 to \$50,000 (or informal construction bids) to:

- An M/WBE prime contractor who is preference eligible, OR
- A prime contractor who meets overall City of Sacramento goals in construction through the use of certified M/WBE subcontractors, suppliers, truckers and/or bonding companies.

Apply a 2%, 4%, 5% or 7% price preference (dependent upon M/WBE status and M/WBE utilization) for contracts over \$50,000 (or formal construction bids) to:

- An M/WBE prime contractor who is preference eligible, OR
- A prime contractor who meets overall City of Sacramento goals in construction through the use of certified M/WBE subcontractors, suppliers, truckers and/or bonding companies.

To receive a 2% price preference, a prime contractor must have met all good

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faith efforts as required **AND** met either the MBE or the WBE sub-contracting goals as required in the bid document;

To receive a 4% price preference, a preference eligible M/WBE prime contractor must have met all good faith efforts **AND** met either the MBE or the WBE sub-contracting goals as required in the bid document;

To receive a 5% price preference, a non-M/WBE prime contractor, regardless of M/WBE status, **MUST** have met **BOTH** the MBE and WBE sub-contracting goals as required in the bid document;

To receive a 7% price preference, a preference eligible M/WBE prime contractor **MUST** have met **BOTH** the MBE and WBE sub-contracting goals as required in the bid document.

**PROFESSIONAL SERVICES:** Apply 5% point preference for:

- Prime consultants who are preference eligible M/WBEs, OR
- Prime consultants who meet City of Sacramento goals through the use of certified M/WBE subconsultants or suppliers.

**OTHER SERVICES:** Apply 5% price or point preference for:

- Prime contractors who are preference eligible M/WBEs, OR
- Prime contractors who meet City of Sacramento goals through the use of certified M/WBE subcontractors or suppliers.

**MATERIALS AND SUPPLIES:** A 5% price preference is allowed for:

- M/WBE vendors who are preference eligible.

### 4.3 Preference Calculation

#### 4.3.1 Calculation of 5% Point Preference for Professional Services

In order to qualify for a preference, proposers or proposer's subcontractors must be certified and preference eligible prior to the time of the bid opening. Proposers relying on pending certifications will not be eligible for preferences.

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The 5% point preference shall be calculated in the following manner:

Step 1 - Determine the responsible, responsive, preference eligible proposer.

Step 2 - Determine total points possible to be awarded in evaluation criteria and multiply total points by 5%.

Step 3 - Add preference points in Step 2 to total evaluation points for the proposer.

Step 4 - Compare the figure calculated in Step 3 with the highest responsive, responsible proposer's points. If the figure calculated in Step 3 is higher, that proposer will receive the award.

### 4.3.2 Calculation of 5% Price Preference

In order to qualify for a price preference, prime bidders must be certified and preference eligible prior to the time of the bid opening, or have met the M/WBE goals through subcontracting. Bidders relying on pending certifications will not be eligible for preferences. The 5% price preference shall be calculated in the following manner:

Step 1 - Determine the lowest responsible, responsive, preference eligible bidder.

Step 2 - Determine that bidder's bid price.

Step 3 - Multiply the bidder's net bid price times 5%. Take the lesser of \$25,000 or the figure calculated in this step.

Step 4 - Deduct the figure calculated in Step 3 from the net bid price. (Step 2 minus Step 3.)

Step 5 - Compare the figure calculated in Step 4 with the lowest responsive, responsible bidder's price. If the figure calculated in Step 4 is lower,

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then the award will be made to the M/WBE at the net bid price as determined in Step 2.

### 4.4 Formally Bid Construction Projects

For formally bid construction projects, in order to be considered a responsible bidder, it is necessary for a bidder to meet one of the two requirements listed below. It is the City of Sacramento's objective to meet the contract-specific goals for M/WBE participation and participating bidders should make every effort to secure M/WBE participation in those proportions.

**4.4.1** Meet contract-specific goals for both MBE and WBE as outlined in the bid document, OR

**4.4.2** Demonstrate fulfillment of all Good Faith Efforts (GFE) as detailed in City Code title 58 and in the format indicated in the Good Faith Effort Worksheet as attached in Attachment III.

#### **4.4.3 Calculation of 2% to 7% Price Preference**

In order to qualify for a price preference, prime M/WBE bidders must be certified and preference eligible prior to the time of the bid opening, or have met the M/WBE goals through subcontracting. Bidders relying on pending certifications will not be eligible for preferences. The 2 to 7% price preference shall be calculated in the following manner:

Step 1 - Determine the lowest responsible, responsive, bidder.

Step 2 - Determine that bidder's bid price.

Step 3 - Multiply the bidder's net bid price times 2% if bidder has met either the minority OR women business enterprise goal, OR

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Multiply the bidder's net bid price times 5% if bidder has met both the minority AND women business enterprise goal.

Step 4 - If Prime bidder is also a preference eligible M/WBE firm, multiply the bidder's net bid price by an additional 2%.

Step 5 - Add total amount of price preferences from steps 3 and 4. Take the lesser of \$25,000 or the total figure calculated from steps 3 and 4.

Step 6 - Deduct the figure calculated in Step 5 from the net bid price. (Step 2 minus Step 4.)

Step 7 - Compare the figure calculated in Step 6 with the lowest responsive, responsible bidder's price. If the figure calculated in Step 6 is lower, then the award will be made to the bidder at the net bid price as determined in Step 2.

### 5.0 APPEALS

Problems or issues related to M/WBE program procedures and requirements, which may include, but are not limited to:

- Bid/proposal preference applications, calculations and awards
- Analysis of Good Faith Efforts requirements

may be appealed to OMWSB for remedial action by addressing the issue in writing. Issues related to certification shall also be directed to the JCP through OMWSB.

#### 5.1 Certification Appeals Procedures

##### 5.1.1 Effect of Denial

A company may not reapply for certification as a Minority/Woman Business Enterprise after the denial of a prior application for certification has become final. The denial shall go into effect immediately, and shall become final as follows:

- A. If no appeal (or notice of intent to appeal at the United States Department of Transportation (USDOT) is filed with the City of

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Sacramento Office of Minority, Women and Small Business (OMWSB) within 45 days of the date of the denial letter, the denial shall become final as of the date of the denial letter.

- B. If an appeal (or notice of USDOT appeal) is filed with OMWSB in a timely manner, and the decision of denial is upheld, the denial shall become final as of the date of the notice that the decision of denial is upheld.
- C. A company may withdraw from OMWSB's appeal process at any point by notifying OMWSB in writing of its intent to withdraw. The denial will become final as of the date that OMWSB receives written notice of intent to withdraw. The file will be closed upon withdrawal, and no further action will be taken regarding certification of the company.
- D. Withdrawal from USDOT's appeals process is governed by the regulations adopted by the Federal Highway Administration (FHWA). OMWSB will comply with the regulations adopted by FHWA.

### 5.1.2 Process and Effect of Appeal

A company may appeal OMWSB's decision of denial at OMWSB and/or at USDOT. In all circumstances where OMWSB and USDOT rulings conflict, the ruling of USDOT shall govern and be final.

#### A. Appeals at OMWSB

Appeals of a denial shall be written and must be received by OMWSB within 45 days from the notice of denial. The appeal must specifically address and rebut all grounds for denial listed in the letter of denial. All supporting evidence and documentation must be received within the 45 day period. All evidence must address the status of the company as of the date of the denial letter; no evidence concerning the status of the company after the date of the denial letter will be considered in support of the appeal. Since the applicant company must comply with all relevant regulations and meet all eligibility criteria, failure to address and rebut any ground of denial may be considered a concession of the validity of that ground, and is reason for upholding the decision of denial.

If merited in the sound discretion of the reviewing Appeals Panel, the company may be notified of the insufficiency of the submitted appeal and granted leave to submit a written supplement to the appeal within a limited deadline extension. If the company is permitted to supplement its appeal, the

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entire appeal shall be deemed to have been received as of the date of the extended deadline.

Upon receipt of a timely filed and sufficient appeal, the Officer/Panel shall review the file and evaluate the soundness of the decision of denial and shall submit a recommendation to the City Manager or his/her designee. The City Manager or his/her designee shall review the recommendation and will make the ultimate determination whether to uphold or reverse the denial.

The company shall have the right to a final decision regarding the appeal within 90 days of the deadline for submitting the appeal. The company may waive this right in writing by certified mail.

The company shall be notified of the decision in writing. If the decision is to uphold the denial, the denial shall become final as of the date of the letter notifying the company of the appeal decision. If the decision is to reverse the denial, the company shall be certified as of the date of the letter notifying the company of the appeal decision.

### B. Appeals at USDOT

A company must notify OMWSB of intent to appeal at USDOT within 45 days from the notice of denial. If the company has elected to appeal at OMWSB as well, OMWSB may elect to continue OMWSB's appeal proceedings while the USDOT appeal is pending or toll the 90-day deadline. Appeals to USDOT shall be written and must be received by USDOT within 180 days from the notice of denial. USDOT's appeal process shall be governed by USDOT's regulations and procedures. Notification of a company's withdrawal from USDOT's appeal process must be received by OMWSB from USDOT, or by sworn affidavit accompanying USDOT's notification to the company that the appeal is withdrawn from further consideration. It shall be the responsibility of the company to notify OMWSB of the findings and determination of USDOT. If the decision is to uphold the denial, the denial shall become final as of the date of OMWSB is notified of the USDOT decision. If the decision is to reverse the denial, the company shall be certified as of the date OMWSB is notified of the USDOT decision.

## 6.0 PENALTIES

Firms found to be in violation of the provisions of these M/WBE policies and procedures are subject to:

- removal from the JCP M/WBE certification directory
- removal from the City of Sacramento's vendor list

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- temporary suspension from bidding on City of Sacramento contracts
- permanent debarment from bidding on City of Sacramento contracts
- assessment of penalties/damages
- termination of ongoing contracts
- penalties imposed by applicable State and Federal laws.

### **7.0 BONDING AND INSURANCE**

The City of Sacramento shall require only sufficient bonding and insurance to meet the needs of the City of Sacramento and in accordance with applicable law. The City of Sacramento shall release performance bonds as early as possible.

### **8.0 REPORTING REQUIREMENTS**

#### **8.1 Office of Minority, Women and Small Business (OMWSB)**

The above named office shall maintain ongoing utilization statistics for the City of Sacramento and shall report such statistics and program progress annually to the City Council.

#### **8.2 Departments/Agencies**

Each City department/agency shall be responsible for appointing a M/WBE coordinator to liaison with the City of Sacramento's OMWSB Program Coordinator on M/WBE issues. The department coordinators shall also assist the OMWSB Program Coordinator in obtaining and tracking department M/WBE utilization statistics.

#### **8.3 City Council Contract Approvals**

All City Council reports requesting approvals for contract expenditures shall reference efforts and achievements regarding M/WBE participation on the contract expenditure in question.

### **9.0 RIGHT OF ACCEPTANCE OR REFUSAL OF BIDS/PROPOSALS**

The City Council and/or the City Manager shall reserve the option of accepting or rejecting any and all bids, with or without cause as deemed to be in the best interest of the City.

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### 10.0 PROGRAM REVIEW

The City Manager (or designated staff) shall review and evaluate existing policies and procedures on an annual basis and conduct a full sunset review within five years of the adoption of these policies.

### 11.0 RESPONSIBLE AGENCY/DEPARTMENT

The City of Sacramento's M/WBE Program shall be administered by the Office of Minority, Women and Small Business Section of the Department of Finance. Each City of Sacramento department shall be responsible for submitting award information to OMWSB on a quarterly basis. All bid documents on construction projects shall be analyzed by OMWSB before issuance and prior to award to assure compliance with program requirements by the successful bidder.

## M/WBE PROCEDURES

### GLOSSARY

**"CERTIFICATION"** - shall mean the verification of the authenticity of a minority or woman-owned business enterprise to determine eligibility for participation under the City of Sacramento's M/WBE program.

**CFR** - Code of Federal Regulations

**CONSULTANT** - The individual, partnership, corporation, joint venture or other legal entity entering into a contract with the Agency.

**CONTRACTOR** - The individual, partnership, corporation, joint venture or other legal entity entering into a contract with the Agency.

**CONTROL** - shall mean having the primary power, direct or indirect, to influence the management of a business enterprise. The controlling party must have the demonstrable ability to make independent and unilateral business decisions on a day to day basis, as well as the independent and unilateral ability to make decisions which may influence and chart the future course of the business.

**JCP** - Joint Certification Program; an M/WBE certification program using the criteria in 49 CFR. This program is funded by the local participating agencies, which include Sacramento Housing and Redevelopment Agency, the County of Sacramento, the City of Sacramento, the Sacramento Regional Transit Authority and the Sacramento Municipal Utility District. The program is administered by the City of Sacramento's Office of Minority, Women and Small Business.

**JOINT VENTURE (JV)** - A business enterprise formed by a combination of firms under a JV agreement. To qualify as a bonafide MBE/WBE, the minority owned/woman or women owned and controlled firms in the joint venture must:

- 1) Satisfy all requirements for bonafide MBE/WBE participation in their own right. In cases where a minority- woman owned firm participates in a JV, the percentage may be credited towards MBE participation or WBE participation, allocated but may not be credited fully to both.
- 2) Share a clearly defined percentage of the ownership, management responsibilities, risks and profits of the JV. Only this percentage will be credited towards the MBE/WBE goal.

**MINORITY BUSINESS ENTERPRISES (MBE)** - An MBE must be an independent business concern which is at least 51% owned and controlled by a minority group member(s). Ownership and control are measured by a variety of factors including: a) responsibility for performance of contract work; b) management responsibility and control; c) at least 51% share of profits and

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risk and d) other data (including voting rights) that may be related to ownership and/or control.

In cases where a minority woman owned firm participates as a subcontractor in a project, the percentage may be credited towards MBE participation or WBE participation, allocated, but may not be credited fully to both.

**MINORITY GROUP MEMBER** - Minority individuals include those persons who are citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Islanders and any other minorities or individuals found to be socially or economically disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Administration Act.

- **BLACK AMERICANS**, which includes persons having origins in any of the black racial groups of Africa.
- **HISPANIC AMERICANS**, which includes persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish or Portuguese culture or origin, regardless of race.
- **NATIVE AMERICANS**, which includes persons who having origins in any of the original peoples of North America.
- **ASIAN-PACIFIC ISLANDERS**, which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, Philippines, Samoa, Guam, the U. S. Trust Territories of the Pacific, Northern Marianas, India, Pakistan and Bangladesh.

**PREFERENCE ELIGIBLE FIRM** - A Certified and Program Eligible M/WBE firm that is owned by a woman (women) or by a minority (minorities) for whose ethnic group the City of Sacramento has a goal in the appropriate business category. A firm must meet the size standards of 49 CFR to be preference eligible for all agencies other than the City.

**PROGRAM ELIGIBLE FIRM** - A Certified M/WBE firm that has demonstrated that it has attempted to do business with one or more of the agencies located in the Sacramento market area. Firms may be able to demonstrate program eligibility by attempting to register as a vendor, making a sales call on one of the JCP agencies or prime contractor, obtaining a local business license, submitting a bid to a JCP agency or prime contractor in the past year, or sign an affidavit indicating that the firm has attempted to do one of the above mentioned items.

**SUBCONTRACTOR** - The individual, partnership, or other legal entity entering into a contract with the prime consultant/contractor to perform a portion of the work.

**SUPPLIER** - The individual, partnership, corporation, joint venture or other legal entity entering into a contract with the prime contractor to provide supplies for a particular project.

**VENDOR** - The individual, partnership, corporation, joint venture or other legal entity who is

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a direct purveyor of materials and supplies to the Agency.

**WOMEN'S BUSINESS ENTERPRISE (WBE)** - A WBE must be an independent business concern which is at least 51% owned and controlled by a woman (women). Ownership and control are measured by a variety of factors including: a) responsibility for performance of contract work; b) management responsibility and control; c) at least 51% share of profits and risk and d) other data (such as voting rights) that may be related to ownership and/or control.

In cases where a minority woman owned firm participates as a subcontractor in a project, the percentage may be credited towards MBE participation or WBE participation, allocated, but may not be credited fully to both.

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MBE/WBE GOOD FAITH WORKSHEET TO ASSIST CONTRACTOR IN ESTABLISHING FORMAT

Contractor Committed Participation:

WBE: \_\_\_\_\_%

MBE: \_\_\_\_\_%

The following format is not all-inclusive of the responses required, but is provided as assistance in complying with the requirements of the proposal. Use a separate sheet of paper, clearly identifying the items you are responding to and attach it to this form. If the goals are not met, compliance and response is required for all 10 items. The proposer/bidder shall submit this completed document, and required attachments clearly identified, to the office at which bids were received within 4 business days after bid opening.

1. Did the proposer/bidder attend the pre-solicitation or pre-bid meeting?

Yes

No

2. List the specific selected items identified that could be performed by MBE's / WBE's which, if awarded, are of sufficient dollar value to exceed or met the goals. Attach additional sheets as necessary. (NOTE: This does not substitute for any subcontractor list required elsewhere in the bid/proposal documents.)

Item of Work Estimated Dollar Value

3. Provide a copy of all advertisements placed in general circulation, trades, and Minority/Women focused media, which requested M/WBE participation. Label each copy with the name of the publication and date the advertisement appeared.

4. Provide a list of the MBE's / WBE's contacted in an effort to meet the required goals. Attach a list of Contractor name, address, phone number, date, person contacted and result of contact.

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5. Provide follow-up contact documentation for contractors listed in 4, above. Attach a list of Contractor name, address, phone number, date, person contacted and result of contact.

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6. Did any MBE / WBE request information about the plans, specifications and requirements of the project?

Yes

No

If yes, attach list stating name, address, phone number, date, requested information and information provided

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7. Attach a list of at least 5 minority and women assistance organizations, minority and women contractor groups, local, state or federal minority or women assistance offices or other organizations that provide assistance in the recruitment and placement of MBE's / WBE's. State name, address, phone number, date, person contacted, requested information and information provided

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8. Was the low bid for a particular subcontract item received and rejected from an MBE / WBE?

Yes

No

If yes, attach list stating name, address, phone number, category of work, MBE / WBE bid and reason for rejection.

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9. Did any MBE / WBE request assistance in obtaining bonds, lines of credit and or insurance for this project?

Yes

No

If yes, attach list stating name, address, phone number, date, assistance requested and assistance provided.

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10. Attach a complete list of all subcontract proposals requested indicating that at least 1 of 3 were MBE / WBE contractors. Include name, address, phone number, person contacted and MBE / WBE status.