



Board of Water and Sewer Commissioners
Policy No: Supplier Diversity 17-01
Approved: March 6, 2017
Amended: August 6, 2018
Amended: February 1, 2021

**SUPPLIER DIVERSITY POLICY FOR CONTRACTS FOR SMALL PUBLIC WORKS
AND OTHER GOODS AND SERVICES THAT EXCEED \$15,000**

PURPOSE:

The purpose of this policy is to increase meaningful participation of Diverse Contractors/Suppliers in MAWSS contracts which are valued at \$15,000 or more and subject to competitive bidding requirements and which do not fall under Supplier Diversity Policy 16-01, to establish MAWSS's goals for Diverse Supplier participation, and to set forth requirements for the MAWSS Supplier Diversity Program.

SCOPE:

This Policy will apply to all MAWSS contracts which are subject to Alabama's competitive bid laws and which do not meet the \$50,000 threshold for Alabama's Public Works Act and to the consultants who manage these contracts. If a contract is to be paid all or in part with non-MAWSS funds, and a funding entity has Contractor/Supplier Diversity program requirements that exceed or are more stringent than those of this Policy, then the additional Contractor/Supplier Diversity policy provisions of the funding entity or entities will also apply as contract requirements. Contracts which do not meet the dollar threshold for public advertisement for bids will be subject to MAWSS's Contractor/Supplier Diversity Policy 18-01.

In the event that MAWSS must enter into a contract for a project or for services or supplies on an emergency basis, MAWSS will still seek competitive bids for the contract and will declare the nature of the emergency in writing and follow the Bid Law. MAWSS reserves the right to waive or modify the requirements of this Policy if the emergency is adversely affecting or presents an immediate threat to public health, safety, or the environment.

DEFINITIONS:

Contractor - An individual or business entity seeking to contract with MAWSS for a public works project and which will function in the role of general contractor for the project, or seeking to contract with MAWSS for provision of services, supplies, or other goods. For purposes of this Policy, also includes Suppliers.

Diverse Contractor/Supplier - A for profit small business concern for which socially and economically disadvantaged individuals own at least a 51 % interest and also control management and daily business

operations, certified as such on one or more of the lists of Diverse Contractors/Suppliers referenced in this Policy. A Diverse Contractor/Supplier may also be a sole proprietorship. For purposes of this Policy, this term includes subcontractors who fulfill diversity requirements.

MAWSS - Mobile Area Water and Sewer System.

Subcontractor - For purposes of this Policy, a subcontractor means an individual or business entity which subcontracts with the general contractor to perform work or services for a public works project or to provide supplies or other goods.

Supplier - For purposes of this Policy, an individual or business entity who enters into a contract with a general contractor or with MAWSS to provide materials, equipment, or other products, goods, or items.

Supplies - For purposes of this Policy, this term may include materials, equipment, supplies, or other products or items.

Goods - Items that are tangible, such as books, pens, shoes, hats, folders, chemicals, equipment and any other tangible items.

Services - Activities provided by other people or entities such as consultants, consulting engineers, lawn care workers, repair or maintenance entities, custodial workers, lawyers, information technology personnel, or online services.

Commercial Useful Function –As used in this Policy, refers to the role of a for-profit business which is itself responsible for execution of the contract or a distinct element of the work; refers to a company or individual who actually performs, manages, or supervises the work involved, or who itself furnishes supplies, goods, or services. It is the intent of this Policy that contracts shall be awarded only to entities which perform commercially useful functions, as opposed to entities that only serve a “pass-through” function.

POLICY:

It is MAWSS policy that Diverse Contractors/Suppliers be given ample and fair opportunities to do business with MAWSS, either directly or indirectly, by ensuring that contractors who enter into publicly bid contracts with MAWSS make earnest and diligent efforts to include Diverse Contractors/Suppliers as subcontractors and suppliers. Contractors who wish to bid on MAWSS projects and other contracts subject to Alabama’s competitive bid laws shall take all necessary and reasonable steps in accordance with this Policy to ensure that Diverse Contractors/Suppliers have the maximum allowable opportunity to compete for subcontracts and contracts for services, supplies, or other goods.

This Policy shall be race and gender-neutral. Contractors shall not discriminate in awarding subcontracts and supplier contracts on the basis of race, color, national origin, ethnicity, or sex, during the bid process as well as during performance of a MAWSS contract.

It is MAWSS’s goal that after all contracts bid, Contractors shall make a demonstrated good faith effort to award fifteen percent (15%) of the contract amount to certified Diverse Contractors/Suppliers as subcontractors and/or suppliers performing commercially useful functions which are consistent with

contract requirements. This percentage shall be considered a target which is subject to modifications and may be waived or adjusted by MAWSS if the Contractor, after demonstrating a good faith effort, is unable to comply with the 15% goal. However, the requirement that a Contractor demonstrate a good faith effort shall not be considered an informality subject to waiver, except in cases of emergency as noted above.

The MAWSS Executive Staff, Supplier Diversity Manager, and its Consulting Engineers may determine that a project or other contract does not meet the criteria for this Policy. In such a case, all potential bidders will be notified before bids are received.

IMPLEMENTATION - THE MAWSS SUPPLIER DIVERSITY PROGRAM:

A. Lists of Certified Diverse Contractors/Suppliers:

All Contractors submitting bids for small MAWSS public works contracts and other contracts subject to Alabama's competitive bid laws are required to utilize MAWSS's most recent list of certified Diverse Contractors/Suppliers in their efforts to meet their good faith Contractor/Supplier Diversity requirements. Bidders may also use the other lists specified below. If a bidder plans to use a Diverse Contractor/Supplier from one of the other lists, the bidder must notify MAWSS's Supplier Diversity Office so that the Diverse Contractor/Supplier's certification can be verified.

MAWSS's list of certified Diverse Suppliers includes a description of the areas for which each Diverse Contractor/Supplier can provide services or supplies. **Contractors are required to use Diverse Contractors/Suppliers only in the areas for which the Diverse Contractors/Suppliers are certified.**

Diverse Contractor/Supplier subcontractors and suppliers may be selected from the following lists; **Contractors must verify that each Diverse Contractor/Supplier has a current certification:**

- MAWSS List of Certified Diverse Suppliers - www.mawss.com (Reciprocity from the following)
- Alabama Department of Transportation Certified List - www.dot.state.al.us
- SRMSDC Certified List [Southern Region Minority Supplier Development Council] www.srmsdc.org
- ADECA Certified List [Alabama Department of Economic and Community Affairs] www.adeca.alabama.gov
- WBENC Women's Business Enterprise National Council - www.wbenc.org
- VOSBA Veteran's Office of Small Business Administration – www.VOSBA.org

A Contractor may also contact MAWSS's Supplier Diversity Office if the Contractor knows of a Diverse Contractor/Supplier who would like to be added to the MAWSS certified list in order to qualify as a subcontractor or a supplier. The MAWSS Supplier Diversity Office will work with the Contractor and the Diverse Contractor/Supplier to determine if the Diverse Contractor/Supplier meets certification requirements.

The current listings of Diverse Contractors/Suppliers certified by MAWSS are available on MAWSS's website: www.mawss.com or by contacting MAWSS's Supplier Diversity Office at (251) 694-3194.

B. MAWSS Supplier Diversity Program Requirements:

Contractors who wish to enter into a contract with MAWSS must make good faith efforts to comply with MAWSS's goals for Diverse Contractor/Supplier participation by learning about, contacting, and negotiating with potential Diverse Contractors/Suppliers who are able and available to provide work or supplies for the contract.

In addition to obtaining lists of certified Diverse Contractors/Suppliers, Contractors will contact organizations which provide assistance to Diverse Contractors/Suppliers and obtain contact information for Diverse Contractors/Suppliers available to provide services and materials. A list of such organizations is available from the MAWSS Supplier Diversity Office.

Contractors will then contact certified Diverse Contractors/Suppliers to obtain prices and other information necessary for the Contractor to evaluate the possibility of participation by Diverse Contractors/Suppliers.

Contractors bidding on MAWSS projects or other contracts must list all Diverse Contractors/Suppliers subcontractors and suppliers on the **Subcontracting Plan form** submitted in the bid package and sign the form. When preparing a bid, the bidding Contractor must obtain firm prices from all Diverse Contractors/Suppliers. The bid package must include correspondence from each Diverse Contractor/Supplier on the Diverse Contractor/Supplier's letterhead in which the Diverse Contractor/Supplier confirms negotiated terms for the subcontract or supply contract, including compensation and a brief description of the scope of work or the items to be supplied.

If a Contractor bidding for a MAWSS contract is unable to meet the 15% goal for Contractor/Supplier Diversity participation for the contract, the Contractor must note this on the Subcontracting Plan form, state what percentage of the goal was achieved, if any, and sign the form. The Contractor must also submit an **Affidavit of Contractor's Good Faith Efforts to Meet Supplier Diversity Goals** with the bid package setting forth the reasons the goal could not be achieved for this contract. The Affidavit must include names, addresses, and contact information for each Diverse Contractor/Supplier contacted, a description of information provided to each, and a statement regarding each as to why an agreement for a subcontract or supply contract was not reached. The Affidavit must include description of the good faith efforts made to obtain Diverse Contractor/Supplier participation, referencing the factors listed below. Documentation supporting the statements in the Affidavit must be attached thereto.

C. Demonstrating good faith efforts to meet MAWSS's Contractor/Supplier Diversity goals:

When bids are received for a contract subject to this Policy, MAWSS's Supplier Diversity Office will review the submittals relative to MAWSS Supplier Diversity Program requirements. **To determine if a bidder has demonstrated a good faith effort to reach MAWSS's Supplier Diversity participation goal, the MAWSS Supplier Diversity Office will review and consider bidder's submitted documentation as to the following factors:**

- Did the bidder obtain the MAWSS List of Certified Diverse Suppliers entities? What other lists of certified Diverse Contractors/Suppliers did the bidder use, if any?

- Did the bidder use the services of available community organizations, small and/or disadvantaged business groups, local, state, and federal small or disadvantaged business assistance offices, and other organizations which provide assistance in recruitment and placement of Diverse Contractors/Suppliers, to obtain information and contact information for Diverse Contractors/Suppliers who might be able to perform work or furnish supplies for the contract?
- Did the bidder attend pre-bid meetings scheduled by MAWSS to which Diverse Contractors/Suppliers were also invited, to inform them of opportunities to provide services or supplies for the contract?
- Did the bidder advertise in general circulation media and trade association publications concerning Contractor/Supplier Diversity opportunities for the contract and give potential subcontractors and suppliers reasonable time to respond and negotiate?
- Did the bidder provide written notice to a reasonable number of Diverse Contractor/Supplier firms and allow them sufficient time to respond and negotiate?
- Was the information provided by the bidder to potential Diverse Contractor/Supplier's subcontractors and suppliers adequate to apprise them of the plans, specifications, and requirements for the contract?
- If the bidder received initial solicitations from interested Diverse Contractors/Suppliers, did the bidder follow up by contacting the Contractors/Diverse Suppliers again to determine if they were interested in subcontracting or furnishing supplies for the contract?
- What efforts did the bidder make to determine whether the contract specifications, drawings, and other requirements presented opportunities for participation by Diverse Contractors/Suppliers? Did the bidder select certain portions of the contract as suitable for performance by the Diverse Contractor/Supplier's subcontractors, or break down the contract into smaller parts in order to allow participation by Diverse Contractors/Suppliers?
- For any Diverse Contractor/Supplier determined by the bidder to be unqualified or unable to participate, did the bidder offer a reasonable justification for the bidder's decision not to utilize that Diverse Contractor/Supplier?
- If the bidder contacted the MAWSS Supplier Diversity Office requesting that potential subcontractors or suppliers be considered for addition to the MAWSS certification list, this should also be documented and will be considered by MAWSS.

The foregoing list is not exclusive. Other efforts to comply may be documented by a bidder for consideration by MAWSS.

Bidders shall have until the close of business on the fourth day after the bid opening to submit complete information in compliance with the MAWSS Supplier Diversity Program. Additional information, such as clarifying documentation, provided after the close of business on the fourth day after the bid opening shall only be provided and/or accepted upon request of the MAWSS' Supplier Diversity Office and such information shall be submitted as expeditiously as possible so MAWSS can determine if the bid is in compliance with this Policy.

Contractors are hereby notified that bids which do not comply with MAWSS's Supplier Diversity Policy and Program requirements may be rejected as non-responsive.

D. Continuing compliance with the MAWSS Supplier Diversity Program during performance of contract:

MAWSS's Supplier Diversity Office will monitor continuing compliance with the MAWSS Supplier Diversity Program requirements as contracts are performed.

If a subcontract or supply contract with a Diverse Contractor/Supplier is terminated prior to its termination date, the Contractor must notify MAWSS's Supplier Diversity Office. This notification must include the reasons for the early termination as well as a description of efforts made by the Contractor to engage another certified Diverse Contractor/Supplier as a replacement subcontractor or supplier.

The Contractor must file a written report with MAWSS's Supplier Diversity Office with a copy delivered to Accounting once a month documenting the Contractor's continuing compliance with the MAWSS Supplier Diversity Program. This report will list all Diverse Contractor/Supplier's subcontractors and supplier's currently performing work or providing supplies for the contract.

The MAWSS contract administrators will be responsible for reviewing the monthly reports and coordinating correction of any deficiencies to the Contractor.

Information and data requested by the MAWSS Supplier Diversity Office regarding compliance with the MAWSS Supplier Diversity Program must be promptly provided by the Contractor. Contractors shall make available to MAWSS's Supplier Diversity Office all records pertaining to use of Diverse Supplier subcontractors and suppliers.

MAWSS reserves the right to make site visits to project locations or other areas where a contract is being performed to confirm compliance with MAWSS Supplier Diversity Program requirements.

A Contractor's failure to comply with this Policy and MAWSS's Supplier Diversity program requirements during performance of a contract may be considered a breach of the contract and may result in its termination.

By entering into a contract with MAWSS, a Contractor acknowledges and agrees that failure to comply with MAWSS's Supplier Diversity Program requirements relative to that contract shall be grounds for its termination by MAWSS.

Failure by a Contractor performing a contract for MAWSS to comply with the MAWSS Supplier Diversity Program requirements may result in that Contractor being determined "not a responsible bidder" in bids for future MAWSS contracts.

Contractors must maintain for three (3) years such records as are necessary to determine compliance with MAWSS's Supplier Diversity policy.

E. MAWSS tracking of MAWSS Supplier Diversity Program Achievements:

MAWSS's Supplier Diversity Manager will report to the MAWSS Board semi-annually on Diverse Contractor/Supplier utilization and on other efforts by MAWSS's Supplier Diversity Office to enhance Diverse Contractor/Supplier participation in all spending at MAWSS for small public works contracts and contracts for other supplies, goods, and services above \$15,000.

MAWSS may also contract for Disparity Studies as determined by the Board, to provide further information to enhance MAWSS's Supplier Diversity Program.