

# MINORITY BUSINESS ENTERPRISE/WOMEN BUSINESS ENTERPRISE POLICY GUIDE

## WASHINGTON STATE OFFICE OF COMMUNITY PLANNING AND DEVELOPMENT

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### **A. BACKGROUND**

As required by Executive Order 11625, HUD must, on an annual basis, compile Department-wide data on Minority Business Enterprises (MBE) and Women's Business Enterprise (WBE) activity for submission to the Minority Business Development Agency of the Department of Commerce.

HUD's Office of Small and Disadvantaged Business Utilization (OSDBU) is charged with overseeing the implementation of this voluntary compliance programs to stimulate MBE participation in procurement and assistance programs. OSDBU provides advice and recommendations to the Secretary of HUD on MBE activities, prepares, monitors and evaluates the Department's Annual Minority Business Development Plan and reports MBE program performance to the Minority Business Development Agency (MBDA) of the Department of Commerce.

OSDBU was created as part of the Small Business Act, as amended by Public Laws 95-507 and 100-507. Every Federal agency is required to have an OSDBU, which, by statute, reports directly to the head of the agency. The primary responsibility of the OSDBU is to ensure that small businesses, small disadvantaged businesses and women-owned businesses are treated fairly and that they have an opportunity to compete and be selected for a fair amount of the agency's contract dollars.

There has been some confusion about Federal MBE/WBE requirements resulting from the passage of I-200 in the State of Washington. Please note, however, that I-200 in no way affects the federal requirements discussed in this policy guide.

## **B. PURPOSE**

The purpose of this guide is to:

- reiterate HUD's policies regarding Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs);
- reiterate HUD regulations for maintaining documentation regarding affirmative marketing of HUD's programs to MBEs and WBEs; and
- provide guidance to HUD Community Planning and Development staff and its grantees on reporting MBE information

## **C. APPLICABLE MBE/WBE STATUTORY AND REGULATORY AUTHORITIES**

The following list is not intended to be an exhaustive account of statutory and regulatory authorities bearing upon MBEs/WBEs. Rather, it identifies those laws and regulations that most directly result in our present MBE/WBE policy.

### **Public Law 95-507, The Small Business Act**

On October 24, 1978, President Carter signed Public Law 95-507 amending the Small Business Act and the Small Business Investment Act of 1958, making federal procurement contracting more readily accessible to all small businesses. PL 95-507 stipulates that it is the policy of the Government to provide maximum practicable opportunities in its acquisitions of goods and services to small businesses, small disadvantaged businesses and women-owned businesses. This stipulation also extends to having the maximum practicable opportunity to participate as subcontractors in contracts awarded by any executive agency. PL 95-07 is the statutory basis for MBE and is the source of most MBE operational definitions.

### **Executive Order 11625**

President Nixon issued Executive Order 11625 on October 13, 1971 authorizing the Secretary of Commerce to coordinate plans, programs and operations of the Federal government that would affect Minority Business Enterprises (MBE). Heads of Federal agencies are to furnish information, assistance and reports on MBE activity as requested by the Secretary of Commerce as well as develop and implement systematic data

collection processes which will provide the Office of Minority Business Enterprise Information Center current data helpful to evaluating and promoting MBE efforts.

### **Executive Order 12138 (WBE)**

On May 18, 1979, President Carter issued Executive Order 1238 creating a National Women's Business Enterprise Policy and prescribing arrangements for developing, coordinating and implementing a national program for Women's Business Enterprise. The Order directs each Federal agency to take appropriate action to facilitate, preserve and strengthen women's business enterprise by ensuring their participation in all business related activities including procurement. The head of each agency is to designate a high level official to have responsibility for the participation and cooperation of that agency in carrying out the Order.

In regard to grants making and cooperative agreements, this Executive Order 12138 directs Federal agencies to issue regulations requiring the recipient of such assistance to take appropriate affirmative action in support of Women's Business Enterprise and to prohibit actions or policies which discriminate against women's business enterprise on the basis of sex.

### **Executive Order 12432**

President Reagan signed Executive Order 12432 on July 14, 1983 directing each Federal agency having substantial procurement or grant making authority to:

- a. develop a minority business development plan and establish programs concerning provision of direct assistance, procurement assistance and management and technical assistance to MBEs.
- b. establish MBE programs consistent with Section 211 of P.L. 95-507 to develop and implement incentive techniques to encourage greater minority business subcontracting by Federal prime contractors.
- c. encourage recipients of Federal grants and cooperative agreements to achieve reasonable minority business participation in contracts let as a result of its grants and agreements.
- d. furnish an annual report regarding the implementation of their program to the Secretary of Commerce.

### **Executive Order 11246**

Signed by President Lyndon Johnson on September 24, 1965, EO 11246, as amended, and as implemented by 41 CFR Part 60, prohibits all nonexempt Government contractors and subcontractors, and federally assisted construction contractors and subcontractors, from discriminating in employment. The Executive Order also requires these contractors to take affirmative action to ensure that employees and applicants are treated without regard to race, color, religion, sex and national origin.

### **24 CFR Part 85 Section 36(e)(i-vi)**

This portion of the CFR provides the required affirmative steps HUD grantees, subgrantees, and prime contractors shall take to assure that minority firms are used when possible.

### **24 CFR Part 84 Section 44(b)(1-5)**

This part of the CFR requires that private non-profit organizations shall make positive efforts to utilize small business and minority-owned businesses as sources of supplies and services.

## **Specific Program Regulations**

### **Community Development Block Grant (CDBG)**

**24 CFR 570.506(g)(6)** - Describes the records that must be maintained by CDBG grantees to meet MBE/WBE requirements.

**24 CFR 570.507(c)** - Sets forth the requirement for submission of the MBE Report (Contractor and Subcontractor Activity Report, HUD 2516

### **HOME Investment Partnership Act (HOME)**

**24 CFR 92.508(a)(7)(ii)(B)** - Describes the records that must be maintained to demonstrate compliance with MBE/WBE requirements.

**24 CFR 92.509(a)** - Sets for the requirement for submission of the MBE Report.

### **Housing Opportunities for People with AIDS (HOPWA)**

**24 CFR 574.520** – Sets forth the requirement for submission of the MBE Report.

### **Emergency Shelter Grant (Esg)**

**(To be updated)**

### **Supportive Housing Program (SHP)**

**24 CFR 583.330** - References the requirements set forth at 24 CFR Part 5 that are applicable to the program.. (See Sec. 5.105 below)

### **Shelter Plus Care (SPC)**

**24 CFR 582.340** - References the requirements set forth at 24 CFR Part 5 that are applicable to the program.. (See Sec. 5.105 below)

### **Section 8 Single Room Occupancy Moderate Rehab (SRO)**

**24 CFR 882.804** - References the requirements set forth at 24 CFR Part 5 that are applicable to the program.. (See Sec. 5.105 below)

### **24 CFR Part 5**

#### **24 CFR 5.105:**

The following Federal requirements apply as noted in the respective program regulations:

(a) .....Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971-1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 139) (Minority Business Enterprises); Executive Order 12432 (3 CFR, 1983 Comp., p. 198) (Minority Business Enterprise Development); and Executive Order 12138, as amended by Executive Order 12608 (3 CFR, 1977 Comp., p. 393 and 3 CFR, 1987 Comp., p. 245) (Women's Business Enterprise).

### **D. DEFINITIONS**

**Minority** - For the purposes of carrying out HUD's MBE strategy, minorities include Black Americans, Native Americans (including Alaskan Natives), Hispanic Americans, Asian/Pacific Americans. In addition, under current HUD policy, Hasidic Jews are also included as minorities based on the Small Business Administration determination that this group is economically and socially disadvantaged as described at section 8(a) of PL 95-507.

**Socially Disadvantaged Individuals** - Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. (P.L. 95-507)

**Economically Disadvantaged Individuals** - Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. (P.L. 95-507)

**Minority Business Enterprise (MBE)** - A Minority Business Enterprise is a business that is both owned and controlled by minorities. This means that there must be not less than 51 percent minority ownership of the business, and the minority ownership must control the management and daily operations of the business.

## **E. CONTRACT AND SUBCONTRACT ACTIVITY FORM (HUD-2516)**

### **General Instructions**

The Contract and Subcontract Activity Form, commonly referred to as the “MBE Report” is used by HUD to report all contract and subcontract activities under HUD programs. All contract/subcontract activity for the following programs administered by the Office of Community Planning and Development is required to be submitted on a semi-annual basis:

Community Development Block Grant  
HOME Investment Partnership  
HOPWA  
Emergency Shelter Grant  
Supportive Housing  
Shelter Plus Care  
Sec 8 Moderate Rehab

The MBE report is due to the Washington State Field Office as follows:

<b>Reporting Period</b>	<b>Due Date</b>
October 1 through March 31	April 30
April 1 through September 30	October 31

### **Instructions for Completing the Contract and Subcontract Activity Form (HUD-2516)**

- Block 1. Enter the name of the local government or non-profit organization who contracts directly with CPD and check the “CPD” box.
- Block 2. Location (Self-explanatory)
- Block 3a. Enter the name of the individual responsible for completing the report.
- Block 3b. Enter the phone number of the individual responsible for completing the report.
- Block 4. Self-explanatory
- Block 5. Not applicable to CPD programs.

- Block 6. Self-explanatory
- Block 7a. Enter the HUD grant number under which the contract/subcontract expenditure is authorized .
- Block 7b. Enter the TOTAL amount of each contract and/or subcontract in excess of \$25,000 awarded to each Prime Contractor or Subcontractor identified in blocks 7e or 7f. Although contracts/subcontracts of less than \$25,000 need only be reported if the recipient believes such contracts represent a significant portion of the recipient's total contracting activity, HUD encourages recipients to report ALL minority enterprise contracts/subcontracts issued during the reporting period.
- Block 7c. Not applicable to CPD programs
- Block 7d. Enter the appropriate racial/ethnic code
- Block 7e. Enter the Tax Identification Number (TIN) for the Prime Contractor
- Block 7f. Enter the Tax Identification Number (TIN) for each subcontractor associated with the Prime Contractor identified in Block 7e.
- Block 7g. Self-explanatory