



MIAMI-DADE EXPRESSWAY AUTHORITY

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## **ARTICLE 11 OF THE MDX PROCURMENT POLICY**

### **EQUAL EMPLOYMENT OPPORTUNITIES AND MDX SMALL BUSINESS PARTICIPATION POLICY**

#### **I. EQUAL EMPLOYMENT OPPORTUNITIES**

MDX, in accordance with the Provisions of Title VII of the Civil rights Act of 1964, as amended, 42 U.S.C. §2000e *et. seq.*, the Florida Civil Rights Act of 1992, as amended, §760.10 *et. seq.*, Fla. Stat. as amended, and other Federal and State discrimination statutes, prohibits discrimination on the basis of race, color, sex, age, national origin, religion, and disability or handicap. MDX notifies all bidders and individuals that it requires and encourages equal employment opportunities for minorities and women as employees in the work force.

MDX strongly supports disadvantaged, small, minority and woman owned businesses having full opportunity to submit bids and proposals in response to Solicitation Documents issued by MDX and commits that bidder and proposers will not be discriminated against on the basis of sex, race, color, national origin, religion or disability, or other protected status. The overall goal of MDX is to obtain an M/WBE and/or DBE participation of twenty-five percent 25% for the aggregate of its projects (“Overall Participation Goal”). However, compliance with the Overall Participation Goal is not a prerequisite for bidders or proposers on MDX projects.

#### **II. MDX SMALL BUSINESS PARTICIPATION POLICY**

It is the policy of MDX to promote the utilization of small businesses by Prime Consultant/Contractors in the fulfillment of their contractual obligations with MDX. In accordance with this policy MDX has adopted the following Small Business Participation Policy which shall be applicable to all Contracts entered into with MDX for Construction and Professional Services, as defined below.

##### **Section I     *Definitions***

The following definitions shall apply:

“*Available or availability*” means to have, prior to Bid submission, the ability to provide professional or construction services under a Contract by having:

1. Reasonably estimated, uncommitted capacity and expertise;
2. All licenses, permits, registrations and certifications;

3. The ability to obtain bonding that is reasonably required to perform the Contract consistent with normal industry practice; and
4. The ability to otherwise meet all the Bid specifications.

“*Bid*” means a quotation, proposal, letter of interest or offer by any Bidder in response to any kind of invitation, request or public announcement to submit such quotation, proposal, letters of interest or offer to perform the Contract.

“*Bid Preference*” means an amount deducted (for evaluation purposes only) from the total bid price in order to calculate the bid price to be used to evaluate the Bid on a competitively bid Contract, which is not set-aside for bidding solely by Small Businesses.

“*Bidder*” means any person, partnership, corporation or other business entity that submits a Bid.

“*Business day*” means a regular week day (Monday through Friday) normally starting at 8:00 a.m. and finishing at 5:00 p.m., excluding Saturdays and Sundays and excluding all legal holidays recognized by the Federal or State governments.

“*CBE Program*” means the Community Business Enterprise Program operated and administered by Miami-Dade County and as codified in Miami-Dade County Code of Ordinances, Part III, Chapter 2, Section 2-10.4.01.

“*CSBE Program*” means the Community Small Business Enterprise Program operated and administered by Miami-Dade County and as codified in Miami-Dade County Code of Ordinances, Part III, Chapter 10, Section 10-33.02.

“*Calendar day*” means a twenty-four (24) hour period covering all days of the week (Monday through Sunday including all holidays), starting at 12:00 a.m. and finishing at 11:59 p.m.

“*Commercially useful function*” means contractual responsibility for the execution of a distinct element of the work of a Contract by a business enterprise and the carrying out of the contractual responsibilities by actually performing, managing, and supervising the work involved. Acting as a broker is not considered a commercially useful function. The determination of whether an activity is a commercially useful function shall include:

1. The evaluation of the amount of work subcontracted;
2. Normal industry practices;
3. The skills, qualifications, or expertise of the enterprise to perform the work;
4. Whether the business’ own personnel perform, manage, and/or supervise the work involved; and other relevant factors.

“*Construction*” means the process of building, altering, repairing, improving, or demolishing any structure or building, or other improvements of any kind to any real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

“*Construction Manager*” replaces the general contractor and works for a fee with MDX and the

architect through the design phase to contain the budget and schedule. The Construction Manager may provide a guaranteed maximum price (“GMP”), and bids the work out to local trade contractors. The Construction Manger mobilizes to the site and manages the trade contractors for quality and schedule.

“*Contract*” means an agreement proposed and/or entered into by MDX for Construction or Professional Services.

“*Contracting participation level*” refers to the level in which a Small Business firm is classified based on the combined bonding capacity of the applicant firm and that of all the firm’s affiliates. A Small Business’ level of bonding capacity shall be determined by utilizing the American Institute of Architect’s (MA) Document A305 Contractor’s Qualification Statement or its equivalent as determined by Miami-Dade County pursuant to its CSBE and CBE Programs. In addition, Contracts of three million dollars (\$3,000,000.00) or less (which may be reserved for limited competition amongst Small Businesses) will be classified into one (1) of the three (3) Contracting Participation Levels based on estimated project cost. The three (3) Contracting Participation Levels are:

Level I..... \$0--\$500,000.00

Level II..... \$500,001.00--\$1,000,000.00

Level III..... greater than \$1,000,000.00

Contracts with estimated project costs in excess of three million dollars (\$3,000,000.00) shall be “open market” Contracts which all firms can Bid on.

Small Businesses prequalified in one (1) Contracting Participation Level may not Bid on a set-aside Contract whose estimated cost falls within a lower Contracting Participation Level (e.g., a Small Business classified in Level III may not Bid on Set-aside Contracts whose estimated cost falls within Level II or I). Small Businesses can Bid on Set-aside Contracts whose estimated cost exceeds the limits of the Contracting Participation Level in which they are classified (e.g., a Level I Small Business can Bid on Set-aside Contracts whose estimated cost falls within Level II or III).

“*Design-Build Contract*” means a single Contract with a design-build firm for the design and construction of a public construction project.

“*Design-Build Firm*” means a partnership, corporation, or other legal entity which:

1. Partnership or joint venture, having at least one partner in compliance with either of the following two requirements:
  - a. Is certified under Section 489.119, Florida Statutes, to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent; or
  - b. Is certified under Section 471.023, Florida Statutes, to practice engineering; certified under Section 481.219 to practice architecture; or certified under Section 481.319 to practice landscape architecture.

2. An individual corporation or other legal entity in compliance with the following two requirements:
  - a. Is certified under Section 489.119, Florida Statutes, to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent; and
  - b. Is certified under Section 471.023, Florida Statutes, to practice engineering; certified under Section 481.219 to practice architecture; or certified under Section 481.319 to practice landscape architecture.

*"Draw"* means a request for payment submitted by the Prime Consultant/Contractor to MDX. A scheduled draw occurs, according to the Contract's payment schedule, when the Prime Consultant/Contractor is allowed to submit its request for payment. The date(s) of a scheduled draw may be stated with specificity in the Contract in the form of a payment schedule or may be stated as a reoccurring event taking place, for example, on the 30th of each month.

*"Firm"* means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice architecture, engineering, landscape architectural or land surveying services or a construction related enterprise.

*"Graduation"* means the Small Business has exceeded the specific size limits stated for the CBE or CSBE Program, based on the firm's three-year average annual gross revenues, and will no longer be considered a Small Business.

*"Guaranteed maximum price ("GMP")"* is the cost of the project that the Contractor guarantees will not be exceeded.

*"MDX Board"* means the Governing Board of MDX and any of its Designees.

*"Prime Consultant/Contractor"* means the successful Bidder who directly contracts with MDX for any Professional Services or Construction Contract.

*"Primary Trade Contractor"* means those contractors who directly contract with the Construction Manager. This definition only applies to Contracts for a Construction Manager.

*"Professional Services"* shall mean those services within the scope of the practice of architecture, professional engineering, landscape architecture, registered land surveying and mapping, as defined by the laws of the state, or those performed by any registered architect, professional engineer, registered landscape architect or registered land surveyor in connection with his professional employment or practice.

*"Program Incentive"* is an incentive that a firm can choose to use in a Bid based on the Bidder's participation in the Mentor-Protégé or the Worker Training Programs. The incentive consists of either a Bid Preference or Selection Factor that will be used in evaluating the Bidder's Bid on a specific project. The program incentive is a reduction of two (2) percent of Bid price (for evaluation purposes, only) or the addition of up to ten (10) percent of the total evaluation points to the Bidder's total score, i.e. the Selection Factor, depending on the type of procurement. For a Construction Manager, the only applicable Program Incentive is the reduction of two (2) percent of the Bid price. At MDX's discretion, this may not apply to Professional Services or consultant

procurements.

“*Selection Factor*” means a percentage of total evaluation points added to the points scored by a Bidder responding to an RSOQ, RFP or RFQ for a Contract which is not set-aside for competition solely amongst Small Businesses.

“*Services*” means construction, maintenance, painting, alteration or repair of a public improvement or any performance of work offered for public consumption that does not consist primarily of goods.

“*Set-aside*” means reservation for competition solely among Small Businesses for a Contract whose estimated cost is three million dollars (\$3,000,000.00) or less.

“*SIC (Standard Industrial Classification) or the equivalent North American Industry Classification System (NAICS) code*” is a code that was developed by the Federal Office of Management and Budget for use in the classification of establishments by type of activity in which they are engaged.

“*Small Business*” means the following:

1. With regard to Professional Services firms, a firm which provides architectural, landscape architectural, engineering, or surveying and mapping professional services, including a Design-Build Firm:
  - a. whose three (3) year average annual gross revenues does not exceed two million (\$2,000,000) dollars for first tier CBE’s, four million dollars (\$4,000,000) for second tier CBE’s in the case of architectural, engineering or surveying and mapping services, or six million dollars (\$6,000,000) for second tier CBE’s in the case of landscape architectural services; and
  - b. who is certified as a CBE, either first tier or second tier, under the CBE Program and is considered in good standing under this program.
2. With regard to Construction firms, a construction related firm, including a Design-Build Firm:
  - a. whose average annual gross revenues for the last three (3) years do not exceed: two million dollars (\$2,000,000.00) for SIC 15 - Building Construction, General Contractors and Operative Builders; two million dollars (\$2,000,000.00) for SIC 16 - Heavy Construction, other than Building Construction; or, one million dollars (\$1,000,000.00) for SIC 17 - Specialty Trade Contractors. Small Business construction firms shall be categorized by the type of construction they perform in accordance with the two-digit Standard Industrial Classification (SIC) code, or the six-digit North American Industry Classification System (NAICS), of the Census applicable to such type of construction; and
  - b. who is certified as a CSBE under the CSBE Program and is considered in good standing under this program.
3. *A Micro Enterprise*, meaning a business entity certified by Miami Dade County

Department of Business Development (“DBD”), providing goods or Services, which has an actual place of business in Miami-Dade County and whose three (3) year average gross revenues does not exceed \$2 million, or a manufacturer with fifty (50) employees or less, wholesaler with fifteen (15) employees or less.

4. A *Small Business Enterprise (SBE)* meaning a business entity certified by DBD, providing goods or Services, which has an actual place of business in Miami-Dade County and whose three (3) year average gross revenues does not exceed \$5 million. The term Small Business Enterprise shall also include a manufacturer with one hundred (100) employees or less or wholesaler with fifty (50) employees or less without regard to gross revenues. Representations as to a business entity's average gross revenues and payroll shall be subject to audit.

“*Small Business Policy*” means the MDX requirement of having not less than ten (10) percent of an MDX Procurement award to Prime Consultant/Contractor(s) for Services dedicated to Small Businesses within that award, unless specifically exempted by the MDX Board.

“*Small Business Requirement*” means the Contract-specific requirement established for Small Business participation on a particular Contract.

“*Solicitation Documents*” has the meaning ascribed to it in the MDX Procurement Policy.

## **Section II     *Program Components***

### **1.     Application**

Except where applicable laws or regulations mandate to the contrary, the provisions of this Policy shall require review of all Contracts to determine the appropriateness of applying Contract measures as set forth in this section.

### **2.     Process.**

Bidders and Proposers shall be required to satisfy the Small Business Requirement or receive at least the minimum score for Good Faith Efforts on MDX Projects. Bidders and Proposers failing to do so shall be deemed nonresponsive. Bidders and Proposers may also receive a Program Incentive for participation in the Mentor-Protégé or Worker Training Programs.

Proposers may also receive bonus points for exceeding the Small Business Requirement for a project. Bonus points shall be added to a proposer's final evaluation score and the proposer with the highest score shall be the apparent successful proposer, except for Design-Build projects where the bonus points shall be added to the Technical Score.

Bidders may also receive a percentage reduction of their bid for purposes of evaluation, only, based upon exceedance of the Small Business Requirement. If the application of the percentage reduction results in any amended bid(s) (“Amended SBE Bids”) that are lower than the lowest bid provided by a responsive and responsible bidder (“Low Bid”), then the bidder with the lowest Amended SBE Bid (“SBE Lowest Bidder”) shall be given the opportunity to (a) perform the work at the Low Bid, using the corresponding bid sheet or (b) perform the work at the Low Bid using an amended bid sheet approved by MDX. If MDX rejects the amended bid sheet submitted by the SBE Lowest Bidder, then the only remaining option is for the SBE Lowest

Bidder to agree to perform the work under the conditions stated in (a). If the SBE Lowest Bidder declines to perform the work under these conditions, the bidder with the next lowest Amended SBE Bid (if one exists) shall be provided the same opportunity and so on until all bidders with Amended SBE Bids lower than the Low Bid have been given the opportunity to perform the work at the Low Bid under the conditions stated herein. If none of these bidders accept, then the contract shall be awarded to the responsible and responsive bidder with the Low Bid.

### **3. Mentor-Protégé Program**

MDX may establish a Mentor-Protégé Program which is defined as a community based effort involving leaders of major firms, financial and bonding institutions, contracting associations, small business enterprises, and support service organizations. The program is an effort to overcome difficulties that typically inhibit or restrict the success of Small Businesses and is designed to produce a broad base of high quality, competitive and profitable companies through incremental improvement. It is expected that as a result of the Mentor-Protégé Program, Protégés will experience a greater than industry average success rate and realize the growth and profitability objectives of their business plans, as well as long range stability. The program will provide a community benefit by strengthening emerging businesses and providing them with opportunities for growth, expansion and increased participation in economic development. In the event such a program is established, to be eligible for incentives under the Mentor-Protégé Program, the Mentors and Protégé must provide evidence indicating they are registered by the Miami-Dade County Department of Business Development in the County's Mentor-Protégé Program.

MDX expressly reserves the right to institute a Mentor-Protégé Program of its own in the future and to determine whether to include this program or Miami-Dade County's in its procurements.

### **4. Worker Training Programs**

This refers to any qualified training program or technical school or other such Construction industry or Professional Services industry-related training program, as approved by MDX prior to receipt of any proposal or bid for a project in which credit for such programs is sought.

### **5. Educational Program**

MDX may implement and administer an educational program providing seminars, training, classes, etc. to provide Small Businesses with the tools and information necessary to assist them in obtaining financing, bonds, completing bid documents and otherwise competing with larger firms in their respective industries.

### **6. Solicitation Documents**

Solicitation Documents shall state the Small Business Requirement and provide:

- a. that only expenditures to Small Businesses for performing a commercially useful function shall be counted toward meeting the Small Business Requirement;
- b. that expenditures to Small Businesses for acting essentially as a conduit to transfer funds to a non-Small Businesses shall not be counted toward meeting a Small Business Requirement unless such conduct receives prior approval from MDX as consistent with

normal industry practice; and

- c. that expenditures to Small Businesses who subcontract work further to non-Small Businesses shall not be counted toward meeting the Small Business Requirement unless such subcontracting receives prior approval from MDX as consistent with normal industry practice.
- d. that Contracts in excess of twenty-five million dollars (\$25,000,000.00) which have Small Business Requirements shall require the Prime Consultant/Contractor during the term of the Contract to make a quarterly report to the MDX Operations Committee on its performance/compliance in meeting such goal.
- e. For Contracts for a Construction Manager, that the Construction Manager shall be responsible for administering and implementing the requirements of this policy and the Contract documents. The Construction Manager shall be required to provide a certified statement indicating it shall satisfy the Small Business Requirement applicable to its Contract. Should such goal not be met, and the Construction Manager cannot substantiate its good faith efforts to meet this goal, the Contract between MDX and the Construction Manager shall be terminable at the option of MDX.
- f. notice that bidders or proposers may challenge or protest a Small Business Requirement established under this section by submitting, no later than ten (10) business days prior to the scheduled Bid or Proposal submittal date, the reasons for such challenge or protest in writing to the Chief Purchasing Officer. Challenges or protests to a Small Business Requirement by bidders or proposers after the time specified in the preceding sentence shall not be considered by MDX.
- g. For Professional Services Contracts of a continuing nature or other such contracts, that proposers shall be required to state they shall comply with the Small Business Requirement for the term of the agreement and provide the requested documentation relating to any subconsultants and/or subcontractors in the proposal and also during the project (as it is recognized that the subconsultants and/or subcontractors may not all be known at the time of proposal submittal).
- h. as determined by the Awards Committee, a bonus point structure for exceeding the Small Business Requirement for a project or a procedure for reducing a bid for purposes of evaluation, only, based upon such exceedance.

With the exception of Contracts for a Construction Manager as noted below, where a Small Business Requirement has been imposed, in order to assure at the time of Bid submission that agreements have been reached between the Prime Consultant/Contractor and the Small Business(es) it intends to utilize to meet the Small Business Requirement, Bid Documents shall require Bidders to submit the following at the time of Bid submission:

- (i) a Schedule of Participation Form (to be provided) identifying all Small Businesses to be utilized to meet the Small Business Requirement, what tier the Small Business is in (if applicable), the trade designation of work each will perform, and the dollar value of such work;
- (ii) a Commitment Letter, signed by an officer or other authorized representative of a

Bidder for a Contract, which specifically commits the Bidder to meet the Small Business Requirement of the Contract;

(iii) a Letter of Intent signed by the Small Business(es) identified on the Schedule of Participation Form; and

(iv) evidence that the Small Business(es) identified on the Schedule of Participation Form is currently certified as defined herein.

For Professional Services Contracts and other such contracts, the Commitment Letter may, at MDX's discretion, be submitted with proposals. If that is the case, the Schedule of Participation, Letter of Intent and evidence of certification by Small Business shall be submitted for each subconsultant or subcontractor by the selected firm for MDX's approval prior to the start of any work on a project by the subconsultant and/or subcontractor. Failure to do so by the selected Firm shall be considered a breach of contract.

Failure to submit any of the above at the time of Bid submission shall render the Bid non-responsive. Submission of a defective Schedule of Participation Form shall render the Bid voidable.

For Contracts for a Construction Manager, the Primary Trade Contractors shall submit the Schedule of Participation Form, Commitment Letter, Letter of Intent and Evidence of Certification at the time of Bid submission to the Construction Manager. Failure to submit the required documents may render the Bid non-responsive, or be subject to sanctions or penalties as outlined in the Contract.

For Contracts for a Construction Manager, the Construction Manager shall be responsible for administering and implementing the requirements of this program and ensuring the goals are met and providing MDX with supporting documentation evidencing compliance on a monthly basis.

Bidders and Proposers whose Bids and Proposals fail to meet the Small Business Requirement, in order to remain eligible for award of the Contract, must submit evidence, at the time of Bid or Proposal submission, proving the lack of available Small Businesses to afford effective competition therefor and substantiate their good faith efforts to acquire Small Business participation as detailed in Section III.

## **7. Contract Measures**

- a. Contract Set-asides: The MDX Board may determine it is in its best interest to waive any competitive bidding or selection requirement and set-aside a Contract for Small Businesses when determined, prior to Bid advertisement, that there are at least three (3) Small Businesses available with the required expertise for the project. Contracts with estimated project construction cost less than or equal to three million dollars (\$3,000,000.00) may be set-aside for competition by Small Businesses.

With respect to Construction Contracts, determination of availability will be based upon the Standard Industrial Classification (SIC) category the Small Business is in, as well as in the Contracting Participation Level that the Contract is classified in (based on the estimated project construction cost). Such Contracts will be placed into one (1) of three (3) Contracting Participation Levels based on the estimated project construction cost, and

will be classified by Standard Industrial Classification (SIC) code. The three (3) Contracting Participation Levels are:

Level I..... \$0--\$500,000.00

Level II..... \$500,001.00--\$1,000,000.00

Level III..... Greater than \$1,000,000.00

Small Businesses will also be categorized by Contracting Participation Level, which will be determined by the Contract participation level the Small Business is qualified for under Miami-Dade County's CSBE Program.

MDX may allow all Contract Participation Levels to compete in a solicitation if it is determined that greater Small Business participation may result.

Small Businesses certified pursuant to Miami-Dade County's CSBE Program in one (1) bonding capacity (e.g. those in bonding capacity Level III) may not bid on a lower level Contract set-aside for Small Businesses (e.g., a three hundred thousand dollar (\$300,000.00) project which falls into Level I). However, a Small Business in a lower level may bid on Contracts whose estimated cost falls within a higher level (e.g., a Level I Small Business may bid on a Level II or III Contract).

Transferring to a non-Small Business through subcontracting or otherwise all or part of the actual work of a Set-aside Contract is prohibited unless such transfer receives prior approval from MDX as consistent with normal industry practice.

A Small Business may compete for any Set-aside Construction Contract in the SIC code for which the Small Business is certified.

- b. Selection factor: A Prime Consultant/Contractor responding to an RSOQ, RFP or RFQ for a Contract which is not set-aside for competition solely amongst Small Businesses shall be entitled to a Program Incentive of up to ten (10) percent of the total evaluation points for participation in the Worker Training Program or the Mentor-Protégé Program. The MDX Board shall establish a sliding scale which provides the extent of preference given a Prime Consultant/Contractor hereunder. In no event shall the cumulative effect of the selection factor hereunder, exceed ten (10) percent of the total evaluation points on any one (1) RSOQ, RFP or RFQ.
- c. Bid Preference: A Prime Consultant/Contractor bidding on a competitively bid Contract which is not set-aside for competition solely amongst Small Businesses shall be entitled to a Program Incentive of up to two percent (2%) of such Prime Consultant/Contractor's bid price (for Bid evaluation purposes only) for participation in the Worker Training Program or the Mentor-Protégé Program. The MDX Board shall establish a sliding scale which provides the extent of preference given a Prime Consultant/Contractor hereunder. In no event shall the cumulative effect of the Bid Preference hereunder, exceed two percent (2%) of such Prime Consultant/Contractor's Bid price.
- d. If a Small Business firm is graduated from that program, it shall likewise become ineligible to participate as a Small Business on MDX Contracts. These firms shall be

allowed to complete any currently awarded Contract. However, for Professional Services Contracts, or other contracts of a similar nature, the Small Business may, at MDX's discretion, continue to work on the project and be counted towards satisfaction of the prime consultant's annual Small Business Requirement for a period equal to the lesser of the term of the agreement or two (2) years after graduation. However, the graduated firm will not be eligible to receive any new Contracts under the Small Business program.

- e. If a Small Business is debarred from that program, it shall likewise become ineligible to participate as a Small Business on MDX Contracts.

## **8. Sanctions for Contractual Violations**

Solicitation Documents and Contracts shall provide that, notwithstanding any other penalties or sanctions provided by law, a Bidder's violation of or failure to comply with this Policy may result in the imposition of one (1) or more of the following sanctions:

- a. The suspension of any payment or part thereof until such time as the issues concerning compliance are resolved;
- b. Work stoppage;
- c. Termination, suspension, or cancellation of the Contract in whole or part;
- d. In the event a Bidder, Proposer or Small Business attempts to comply with the provisions of this Policy through fraud, misrepresentation, or material misstatement, MDX shall, whenever practicable, terminate the Contract. In addition, and as a further sanction, MDX may impose any of the above-stated sanctions on any other Contracts the Bidder, Proposer or Small Business has on MDX projects. In each instance, the Bidder, Proposer or Small Business shall be responsible for all direct and indirect costs associated with such termination or cancellation including attorney's fees and costs.
- e. The foregoing notwithstanding, MDX shall include language in all prospective Contracts containing a Small Business provision which provides that, in addition to any other sanction for failure to fulfill the Small Business Requirement requirements, the Prime Consultant/Contractor's eligibility to receive any future Contracts from MDX may be conditioned upon the Prime Consultant/Contractor making up the deficit in Small Business Requirement in such future Contracts by having Small Business(es) perform equal to double the dollar value of the deficiency in the Small Business Requirement in the prior Contract. The foregoing obligation shall be in addition to any Small Business Requirement otherwise applicable to the future Contract.
- f. Some of the contractual violations that may result in the imposition of the sanctions listed in herein include, but are not limited to, the following:
  - (i) A Small Business serving as a conduit for work awarded to a firm as a Small Business but which is being performed by a non-Small Business firm;

- (ii) A Prime Consultant/Contractor not meeting Small Business Requirement on its contract;
- (iii) Not obtaining or retaining Small Business certification while performing work designated for Small Business firms.
- (iv) Failure to submit monthly utilization reports;
- (v) Deviation from the Schedule of Participation without prior approval from MDX;
- (vi) Termination of the Small Business's Contract without prior approval from MDX;
- (vii) Reduction of the scope of work of a Small Business subcontract without prior approval from MDX;
- (viii) Modifications to the terms and/or prices of payment to a Small Business without prior approval from MDX;
- (ix) Unjustified failure to enter into a written subcontract with a Small Business after listing the firm on a Schedule of Participation.

## **9. Prompt Payment**

- a. The MDX Board shall establish procedures requiring that billings from Prime Consultants/Contractors under contract with MDX shall be promptly reviewed and payment made to the Prime Consultant/Contractor by MDX on those amounts not in dispute within the legally required number of days after receipt of such billing by MDX.

MDX shall notify the Prime Consultant/Contractor, in writing, of those billings submitted by the Prime Consultant/Contractor which are in dispute, pursuant to Section 10-104 of this Policy. This provision is applicable regardless of whether the disputed billing pertains to the work performed and/or billing of Small Businesses.

- b. A Prime Consultant/Contractor shall include in its billing to MDX copies of those billings from Small Businesses utilized to meet the Small Business Requirement applicable to the Contract which the Prime Consultant/Contractor approves and whose cost is included in the payment requested from MDX.

Undisputed portions of billings from Small Businesses that are submitted to the Prime Consultant/Contractor at least five (5) days or more before the date of the Prime Consultant/Contractor's next scheduled draw must be submitted by the Prime Consultant/Contractor to MDX in the Prime Consultant/Contractor's next scheduled draw, according to the Contract's payment schedule. For example: if MDX's billing cycle on the specific Contract allows the Prime Consultant/Contractor to submit its draw on the 30th of each month, a Small Business that submits its billing to the Prime Consultant/Contractor on or before the 25th of the month shall have its billing included in the Prime Consultant/Contractor's next scheduled draw submitted to MDX on the 30th.

Undisputed portions of billings from Small Businesses that are submitted to the Prime Consultant/Contractor less than five (5) days before the Prime Consultant/Contractor's next scheduled draw, may be submitted in the next draw; however, said billings shall be submitted no later than in the Prime Consultant/Contractor's next subsequent scheduled draw. For example, if MDX's billing cycle on the specific Contract allows the Prime Consultant/Contractor to submit its draw on the 30th of each month, a Small Business that submits its billing to the Prime Consultant/Contractor after the 25th of the month but before the 30th of the month shall, at the latest, have its billing included in the Prime Consultant/Contractor's subsequent scheduled draw submitted to MDX on the 30th of the following month.

- c. Failure by the Prime Consultant/Contractor to include or submit the Small Business' billing(s) in its next scheduled draw or subsequent scheduled draw to MDX as outlined above, and absent notification of disputes, as set forth herein, shall result in the Prime Consultant/Contractor making full payment directly to the Small Business for the full amount of the submitted billing(s). Full payment to the Small Business for the particular billing(s) shall be made by the Prime Consultant/Contractor within the same number of days that MDX has mandated as the billing cycle for said Contract in operation, or within forty (40) calendar days of submittal of such billing(s) by the Small Business to the Prime Consultant/Contractor, whichever is less, regardless of whether the Prime Consultant/Contractor has received its payment from MDX.
- d. Contracts to which a Small Business Requirement has been applied shall require that billings from Small Businesses shall be promptly reviewed and payment made to such Small Businesses on those amounts not in dispute within two (2) business days of receipt of payment therefor. The foregoing obligation to promptly review and pay Small Businesses billings shall apply to Prime Consultant/Contractors who are in direct privity with the Small Business. The two (2) day payment provision shall equally apply to retainage payments received by Prime Consultant/Contractors from MDX, and subsequently passed on to Small Businesses.
- e. The Prime Consultant/Contractor agrees to the Contract requirements contained within the Contract Documents for each MDX project and/or MDX's General Specifications. If the Contract Documents are silent on payment of SBEs, this Policy shall control. The requirements found therein are hereby fully incorporated into this Small Business Prompt Payment Subsection and non-compliance, by failing to pay Small Business and failing to provide the requisite Small Business affidavit and/or consent of surety to requisition payment, shall be enforceable through this Subsection.
- f. The Prime Consultant/Contractor on a Contract to which a Small Business Requirement has been applied shall inform the Chief Purchasing Officer and the Small Business, in writing, of those amounts billed by the Small Business which are in dispute, and the specific reasons why they are in dispute, within five (5) calendar days of submittal of such billing by the Small Business to the Prime Consultant/Contractor.

Failure of the Prime Consultant/Contractor to comply with the applicable requirements of this Subsection shall result in the Prime Consultant/Contractor's forfeiture of the right to use the dispute as justification for not paying the Small Business and payment shall be forthcoming from the Prime Consultant/Contractor.

- g. None of the provisions of this section requiring the Prime Consultant/Contractor to make full payment on any billing by a Small Business due to failure to comply with this section shall be construed as also requiring MDX to make a similar full payment of that billing to the Prime Consultant/Contractor. MDX shall not be precluded from disputing billings submitted by Prime Consultant/Contractors in accordance with Section 10-104 of this Policy.
- h. Failure of the Prime Consultant/Contractor to comply with any of this Policy's requirements shall result in the imposition of one (1) or more of the following sanctions:
  - (i) The suspension of any payment or part thereof until such time as the issues concerning compliance have been resolved;
  - (ii) Work stoppage;
  - (iii) Termination, suspension, or cancellation of the Contract in whole or part;

### **Section III    *Good Faith Efforts***

A. Prime Contractors/Consultants who fail to meet the Small Business Requirement are required to submit with their Bid all efforts that would demonstrate a "Good Faith Effort" in the solicitation of sub-consultants/sub-suppliers or subcontractors to meet the Small Business Requirement on the project.

The documentation will be judged on a matrix system with 100 points maximum. Bidders must receive a minimum of 80 points to qualify as having made a Good Faith Effort. Each item is evaluated on a pass/fail basis with either full or zero points received for compliance with each item.

#### **1.    Advertisements – 20 Points**

**Effort:**        The Bidder shall advertise in the general circulation media, and trade association publications. The advertisement shall appear at least 10 days prior to the bid date. If the solicitation period is shortened and does not allow a 10-day notice then a shorter publication period may be acceptable as determined by MDX.

**Evidence:**    Include a list of publications where the advertisement was placed; include a copy of the advertisement and a rate sheet. Advertisement shall include, at a minimum, project location; indication of MDX as owner; location where plans and specifications may be obtained or viewed; sub-bid due date; trade or scopes of work for which subcontracts are being solicited; statement that Bidder intends to conduct itself in good faith with Small Business firms for participation on the project.

#### **2.    Attendance At Pre-Bid Conference - 5 Points**

**Effort:**        Attendance by the Bidder at any pre-bid conference scheduled by MDX. Although attendance may be optional, this will remain one of the criteria for meeting good faith efforts.

**Evidence:**    Attendance will be verified by conference sign-in sheet.

### **3. Written Notification - 20 Points**

**Effort:** Written notification sent by the Bidder to Small Businesses certified pursuant to Miami-Dade County's CBE or CSBE Program.

**Evidence:** Name, address, contact person and date of written notice, the letters should outline the type of work, material, equipment, or services sought to be subcontracted. Copies of these letters to each Small Business should be well documented. Notification must be dated at least ten (10) working days before the Bid date. Firms must be certified pursuant to Miami-Dade County's CSBE or CBE Program and an adequate number of Small Businesses contacted in each SIC code category must be contacted (5 or less – contact all; 6 to 10 – contact at least 5; 11 to 50 – contact 50%, 51 or more – contact at least 25).

### **4. Follow Up – 15 Points**

**Effort:** Bidder followed up initial sub-consultant/sub-supplier or subcontractor Bid solicitation.

**Evidence:** Include a list of sub-suppliers/sub-consultants or subcontractors who were followed up by phone call or revisited after negotiations, and results of that contact, list contact names of Small Businesses, dates and letters.

### **5. Feasible Portions Of Work – 15 Points**

**Effort:** To break the project up into economically feasible portions of work. Identified and selected specific work categories that may be subcontracted to Small Businesses.

**Evidence:** Include steps taken to segment elements of the work into economically feasible units to meet Small Business availability. Identify sub-consultants/sub-suppliers subcontractors and scope of work involved in segmenting; show dates negotiations took place.

### **6. Efforts Made To Negotiate – 15 Points**

**Effort:** Written statements of the Bidder's effort made to negotiate with Small Businesses certified pursuant to Miami-Dade County's CSBE or CBE Program.

**Evidence:** Names, addresses and telephone numbers of Small Businesses certified pursuant to Miami-Dade County's CBE or CSBE Program contacted by the Bidder offering to negotiate prices or services, outline steps taken. Give dates negotiations took place with each subcontractor, explain the offers made to Small Businesses. Document quotes/proposals received for work category solicited to sub-consultant/sub-supplier and/or subcontractors. Barring lack of qualifications, only significant price differences (7% or more) will be considered cause for rejecting Small Business proposals, and evidence of this price differential must be made available.

### **7. Outreach Efforts – 10 Points**

**Effort:** Document outreach efforts to locate Small Businesses certified pursuant to Miami-Dade County's CBE or CSBE Program by utilizing local, state and federal business assistance offices.

**Evidence:** Provide copies of letters, faxes, telephone logs, etc. used to contact organizations. Include the names of organizations/groups, dates persons contacted, and telephone numbers. Provide copies of correspondence received from any of the organizations/groups acknowledging contact by the Bidder. Must notify at least five Small Business organizations.

B. MDX may waive or reduce the Small Business Requirement on a particular contracting opportunity when good faith efforts are demonstrated by the Bidder. MDX shall make the determination of whether a Bidder has made good faith efforts. The Bidder may appeal such determination. This appeal must be filed with MDX within five (5) days from the date of the decision. The MDX Board shall conduct a hearing regarding the determination. MDX shall have the authority to request attendance of any witnesses and production of any documents. The Bidder's failure to comply with these requests promptly may be grounds for a denial of the appeal.

**NOTE: MDX shall investigate and verify information submitted in making decisions awarding Good Faith Effort points.**