MINORITY AND WOMEN BUSINESS ENTERPRISE UTILIZATION AFFIRMATIVE ACTION REQUIREMENTS FOR BIDDERS AND PROPOSERS

1) **MBE (Minority Business Enterprise) and WBE (Women Business Enterprise) Goals**
The County has established, in connection with this contract, the specified goals in the Bid Form for the utilization of MBEs and WBEs. These goals remain in effect throughout the life of the contract.

2) **Policy**
It is the policy of the County that Minority and Women Business Enterprises as defined in this Document and the Allegheny County MBE Participation Plan shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with County funds under this contract.

3) **MBE and WBE Obligation**
Take necessary and reasonable steps to ensure that MBEs and WBEs have the maximum opportunity to compete for and perform contracts. Do not discriminate on the basis of race, color, national origin, or sex in the award and performance of County contracts.

4) **Failure to Comply With MBE and WBE Requirements**
Failure to carry out these requirements constitutes a breach of contract that may result in termination of the contract, being barred from bidding on County contracts for up to three (3) years or such other remedy as the County deems appropriate. Failure to comply with MBE and WBE requirements will include but not be limited to failure to submit the Schedule of MBE and WBE Participation within the time requirements of these provisions for submission of required documents; failure to exert a reasonable good faith effort (as determined by the County for good faith efforts) to meet the established goals; failure to realize the MBE and WBE participation set forth in the approved Schedule of MBE and WBE Participation; or failure to submit the Schedule of MBE and WBE in every subcontract, so that such provisions will be binding upon each subcontractor, supplier, or service agency.

5) **Subcontracts**
Include the provisions of the above paragraphs in every subcontract, so that such provisions will be binding upon each subcontractor, supplier, or service agency.

6) **Definitions**
As used in this Document, the terms "Minority Business Enterprise," "Women Business Enterprise," "Minority," and "Owned and Controlled" are defined below:

i) "**Minority Business Enterprise**" or "MBE" means a small business concern as defined in Small Business Act, 15 USC as amended:

(a) Which is at least 51 percent owned by the one or more minority individuals, or, in the case of any corporation at least 51 percent of the stock of which is owned by one or more minority individuals and:

(b) Whose management and daily business operations are controlled by one or more of the minority individuals who own it.

ii) "**Women Business Enterprise**" or "WBE" means a small business concern as defined in Small Business Act, 15 USC as amended:

(a) Which is at least 51 percent owned by the one or more female individuals, or, in case of any corporation at least 51 percent of the stock of which is owned by one or more female individuals; and

(b) Whose management and daily business operations are controlled by one or more of the female individuals who own it.

iii) **Minority** means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans and any other individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act as amended. For convenience, these individuals and groups are referred to as "disadvantaged." The County may make a rebuttable presumption that individuals in the following groups are minorities and socially and economically disadvantaged (use the certification appeals mechanism of 49 CFR, Part 26 as amended with respect to individuals alleged not to be minorities and socially and economically disadvantaged):

(a) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

(b) "Hispanic Americans," includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;

(c) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

(d) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, .Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marians.

(e) "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan and Bangladesh.

iv) **"Owned and Controlled"** means a business:

(a) Which is at least 51 percent owned by one or more minority or female persons, in case of a corporation, at least 51 percent of the stock of which is owned by one or more minority or female persons; and

(b) Whose management and daily business operations are controlled by one or more such individuals.

7) **Counting MBE and WBE Participation Towards MBE and WBE Goals**
The utilization of MBEs and WBEs is in addition to other equal opportunity requirements of the contract. Count MBE and WBE participation toward meeting MBE and WBE goals as follows:

(a) If a firm is determined to be an eligible MBE or WBE, the total dollar value of the contract awarded to the MBE or WBE counts toward the applicable MBE or WBE goal EXCEPT per provisions of this paragraph.

(b) Count toward the MBE and/or WBE goal(s) a portion of the total dollar value of a contract with a joint venture equal to the percentage of ownership and control of the MBE and/or WBE participant(s) in the joint venture.

(c) Count the total dollar value of a contract with a business certified as both an MBE and WBE toward the WBE or the MBE goal but not to both. If a firm with such dual certification is employed, choose the goal to which the total contract value is to be applied.

(d) Count toward the MBE or WBE goal only expenditures to MBEs or WBEs that perform a commercially useful function in the work of a contract. An MBE or WBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether an MBE or WBE is performing a commercially useful function, the County will evaluate the amount of work subcontracted, industry practices, and other relevant factors.

(e) **Suppliers:**

(i) Count toward the MBE or WBE goal 60 percent of expenditures for materials and supplies required under the contract and obtained from an MBE or WBE regular dealer and count toward the MBE or WBE goal 100 percent of expenditures to an MBE or WBE manufacturer.

(ii) An MBE or WBE manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies to be purchased for the work.

(iii) An MBE or WBE regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business.

(iv) An MBE or WBE regular dealer is a firm that engages in, as its principal business, and in its own name, the purchase and sale of the products in question. An MBE, WBE or DBE regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock, if it owns or operates distribution equipment.

(v) MBE or WBE brokers and MBE or WBE packagers are not regarded as MBE or WBE manufacturers or MBE or WBE regular dealers within the meaning of these provisions.

(f) Count toward the MBE or WBE goal the following expenditures to MBE or WBE firms that are not MBE or WBE manufacturers or MBE or WBE regular dealers:

(i) The fees or commissions charged for providing a BONA FIDE service, such as professional, technical, consulting or managerial services and assistance in the procurement of essential personnel and/or facilities.

(ii) The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the MBE or WBE hauler, MBE or WBE trucker, or MBE or WBE delivery service is not also the MBE or WBE manufacturer of or an MBE or WBE regular dealer in the materials and supplies, provided that the fee is determined by the County to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(iii) The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract, provided that the fee or commission is determined by the County to be reasonable and not excessive as compared with fees customarily allowed for similar services.

Any services to be performed by an MBE or WBE agency are required to be readily identifiable to the project.

8) Action Required by Bidder(s) or Proposer(s) Prior to Award

The apparent low bidder or selected proposer MEETING or EXCEEDING the MBE and WBE goals must provide the following to the Director by 4:00 P.M. of the seventh (7th) calendar day after notification:

i) **Schedule of MBE and WBE Participation** The apparent low bidder or selected proposer must provide a list of M/W/DBE firms that they will work with to fulfill the MBE and WBE goals. The County reserves the right to contact any MBE/WBE firm(s) with regard to the authenticity of the documentation as stated on the Schedule of MBE/WBE Participation. Any evidence of fraudulent information submitted by the apparent low bidder or selected proposer with regard to the MBE/WBE participation is subject to disbarment from County work and/or possible legal action.

Any apparent low bidder or selected proposer NOT MEETING the goals established by the County must submit documentation that demonstrates their good faith efforts to meet the MBE and WBE contract goals.

(1) You are expected to demonstrate good faith efforts by actively and aggressively seeking out MBE and WBE participation in the project to the maximum extent given all relevant circumstances. The following documentation represents the kinds of efforts that may be taken but are not deemed to be exclusive or exhaustive, and the County will consider other related factors and types of efforts that may be relevant:

(a) Documentation of efforts made to select portions of the work proposed to be performed by MBEs and WBEs in order to increase the likelihood of achieving the stated goal, including, where appropriate, but not limited to breaking down contracts into economically feasible units to facilitate MBE and WBE participation. Selection of portions of work shall equal or exceed the goals for MBE and WBE utilization specified in the contract.

(b) Written notification dated at least fifteen (15) calendar days prior to the opening of bids or proposals to individual MBEs and WBEs soliciting their participation in the contract as a subcontractor, regular dealer, manufacturer, consultant or service agency. Indicate in the notification the specific items or type of work involved.

(c) Written notification to minority, women and disadvantaged economic development assistance agencies and organizations that provide assistance in recruitment and placement of MBEs and WBEs of the type of work, supplies or services being considered by MBEs and WBEs on this contract. See Allegheny County's MBE/WBE Department website for partial listing.

(d) Documentation of efforts made to negotiate with MBEs and WBEs for specific items of work which should include the following:

(i) The names, addresses, telephone numbers and e-mails of MBEs and WBEs who were contacted, along with the dates of initial contact and whether initial solicitations of interest were followed up by contacting the MBEs and WBEs to determine with certainty whether the MBEs and WBEs were interested;

(ii) A description of the information provided to MBEs and WBEs regarding the plans and specifications and estimated quantities for portions of the work to be performed;

(iii) A statement of why additional agreements with MBEs and WBEs were not reached;

(e) Documentation of contact with each MBE and WBE contacted but rejected and the reasons for the rejection.

(f) Documentation to certify the absence of any agreement between you and a MBE or WBE in which the MBE or WBE promises not to provide subcontracting quotations to other bidders or proposers.

(g) Documentation of efforts made to aid any MBEs or WBEs that need assistance in obtaining required bonding, insurance, or lines of credit required by you.

(h) Documentation to certify that qualified MBEs and WBEs are not available, or not interested.

(i) Documentation to certify attendance at any meetings scheduled by the County or others to encourage better Contractor-MBE/WBE relationships, forthcoming MBE and WBE utilization opportunities, etc.

(j) Documentation to certify advertisement in general circulation media, trade association publications, disadvantaged-focus media of interest for MBEs and WBEs and area of interest.

(k) Documentation of efforts to effectively use the services of available disadvantaged community organizations; disadvantaged contractors' groups; local, state and federal disadvantaged business assistance offices; and other organizations that provide assistance in the recruitment and placement of MBEs and WBEs.

(2) Consider the following NOT valid justification for failure to meet the MBE and WBE contract goals:

(a) Failure to contract with an MBE or WBE solely because the MBE or WBE was unable to provide performance and/or payment bonds.

(b) Rejection of reasonable MBE or WBE bid or proposal based on price alone.

(c) Equipment idled by contract with an MBE or WBE.

(d) Failure to contract with an MBE or WBE because the MBE or WBE will not agree to perform items of work at the unit price bid.

(e) Rejection of an MBE or WBE because of its union or non-union status.

(f) Failure to contract with an MBE or WBE because you normally would perform all or most of the work in the contract.

(g) Restricting efforts to mailing of letters.

(3) When the documentation required above is not provided by the apparent low bidder or selected proposer on request within the time specified, the bid will be rejected and the next apparent low bidder or selected proposer will be notified by the Director to provide their Schedule of MBE and WBE Participation by 4:00 P.M. of the seventh (7th) calendar day after notification.

9) Action to be Taken by the County before Award

If the apparent low bidder or selected proposer meets the MBE and WBE contract goals and other contract requirements, the County will award to that bidder or proposer.

i) To ensure that its MBE and WBE program benefits only firms owned and controlled by MBEs and WBEs, the County has established that eligibility of business enterprises as MBEs and WBEs or as joint ventures involving MBEs and WBEs will be based on the Small Business Act 15 USC as noted under its definitions.

ii) By identifying an entity as an MBE or WBE, you represent to the County that to the best of your knowledge, information, and belief, that entity so identified is certified as a MBE or WBE.

iii) The County will confirm your certification of MBEs and WBEs and reserves the right to make such an inquiry and require such substantiation as the County, in its discretion, deems appropriate to enable it to determine whether a given entity is an MBE or WBE or is eligible for certification as such. The apparent low bidder or selected proposer has the burden of proving that an entity identified is in fact certified as an MBE or WBE. If the MBE or WBE is in fact not certified or not eligible for certification, the apparent low bidder or selected proposer must prove that the error was made in good faith. The County may permit you, within ten (10) calendar days of notice of such an error, to identify new subcontractors, suppliers, or manufacturers which are in fact certified as MBEs or WBEs or which qualify for certification prior to award or prior to the MBE's or WBE's commencement of work.

iv) If the apparent low bidder or selected proposer meets the other contract requirements but fails to meet the MBE and WBE contract goals, the County will review the apparent low bidder's or selected proposer's MBE

and WBE data and its documentation of good faith efforts and diligent efforts to meet the MBE and WBE contract goals. If its efforts are deemed satisfactory, the Director will recommend award.

v) If the County cannot accept the apparent low bidder's or selected proposer's documentation of good faith efforts, the bid will be considered non-responsive and the County will notify the bidder or proposer that its bid is being rejected. The County will then notify the next apparent low bidder or selected proposer on the project to provide to the Director the information required by 4:00 P.M. of the seventh (7th) calendar day after notification. The bid or proposal and appropriate MBE and WBE data will be evaluated by the County. If the County, during the review of the bidder's or proposer's MBE and WBE data has questions, it will contact the bidder or proposer for clarification.

10) Action to be Taken by the County after Award

To ensure that your obligations regarding MBEs and WBEs are met, the County will review your MBE and WBE program and its implementation throughout the contract.

i) **Sanctions**: Upon completion of the work, the County will review the actual MBE and WBE participation realized and make a determination regarding your compliance with these specifications:

ii) In the event you are found to be in non-compliance, the County may impose sanctions that it deems appropriate.

iii) The County may impose sanctions for unwarranted shortfalls in the approved goal.

iv) Make appeals of sanctions imposed pursuant to the Certification Regulations.

11) Action Required after Award

If the County approves a Schedule of MBE and WBE Participation which is less than the MBE and WBE goals of the contract, continued efforts to increase MBE and WBE participation must be made.

i) The bidder or proposer must ensure that the firms listed on the Schedule of MBE and WBE Participation do not commence work until they are approved.

ii) If for any reason during the life of the contract it is necessary to replace an MBE or WBE that is unable to perform successfully, make a good faith effort to recontract that work with another MBE or WBE or subcontract other work items to MBE or WBE firms to make up the MBE or WBE shortfall. If the projected MBE or WBE participation on an approved Schedule of MBE and WBE Participation exceeds the goal amount for the contract without counting the amount committed to the defaulting MBE or WBE, then no contract shortfall exists and you need not replace the defaulting MBE or WBE. In compliance with the above adhere to the following procedure:

(a) Notify the County immediately in writing of the MBE's or WBE's inability to perform and intent to obtain a substitute MBE or WBE if an MBE or WBE contract shortfall exists.

(b) When you learn an MBE or WBE is unable to perform successfully and the original schedule of MBE and WBE Participation amount cannot be met, provide the County with a revised Schedule of MBE and WBE Participation (show total paid/due, if any, to defaulting MBE or WBE) and additional good faith efforts documentation by 4:00 P.M. of the seventh (7th) calendar day thereafter. The County will evaluate this documentation. The County will contact you if it has questions during its review of your good faith efforts documentation.

(c) During the seven (7) calendar day period plus an additional period for County processing of the revised schedule of MBE and WBE Participation, you may continue the defaulted work with your own workforce to maintain the scheduled progress of the work.

(d) If the County cannot accept your good faith efforts, or if you fail to comply with these provisions, it will constitute a breach of contract that may result in termination of the contract, being barred from bidding on County contracts for up to three (3) years or such other remedy as the County deems appropriate.

iii) When additional and/or extra work is necessary and the original contract amount exceeds $150,000, the MBE and WBE contract goals apply to that additional and/or extra work each time the cumulative net dollar value of additional and/or extra work either exceeds $100,000 or is greater than 10 percent of the original contract amount. Provide a revised Schedule of MBE and WBE Participation to the Director and comply with the following procedures:

(a) Contact qualified MBEs and WBEs and available MBE and WBE referral sources in an effort to contract the required percentage of the additional and/or extra work or subcontract other work items with MBEs and WBEs.

(b) Provide the Director with a revised Schedule of MBE and WBE Participation and good faith effort information by 4:00 P.M. of the seventh (7th) calendar day after notification that the additional and/or extra work is approved.

iv) The County will evaluate your good faith efforts information. Again, the County will contact you if it has questions during its review of your good faith effort information.

v) If the County cannot accept your good faith efforts, or if you fail to comply with these provisions, this will constitute a breach of contract that may result in termination of the contract, being barred from bidding on County contracts for up to three (3) years or such other remedy as the County deems appropriate.

vi) Bring to the attention of the County, in writing, any situation in which regularly scheduled progress payments are not made to MBE and WBE subcontractors, suppliers, or service agencies.

12) Records and Reports

Keep such records as are necessary to determine compliance with your MBE and WBE obligations. Design these records to indicate:

(1) The number of minority, women, disadvantaged and non-disadvantaged subcontractors, regular dealers, manufacturers, consultants, and service agencies and the type of work or materials or services performed on or incorporated into the project.

(2) The progress and efforts made in seeking out minority, women, and disadvantaged contractor organizations and individual minority, women, and disadvantaged contractors for work on the project to increase the MBE and WBE participation and/or to maintain MBE and WBE participation levels on the Schedule of MBE and WBE Participation anytime a subcontractor, supplier, or service contract is contemplated during the life of the contract. Do this, as a minimum, anytime a contract with a subcontractor, regular dealer, manufacturer, consultant, or service agency is contemplated during the life of this contract.

(3) Documentation of correspondence, contacts, telephone calls, etc., to obtain the services of MBEs and WBEs on the project.

(a) Allegheny County uses an internet-based program that allows you to record payments to your subcontractors on contracts you have with the County. A link to the payment website will be sent to you via email along with your Prime Vendor ID Number. Simply update the County's information regarding the payments you have made to your subcontractors. The program is easy to access. You can update your records and it allows you to inform the County of your timely payments to your various sub vendors.

(1) **Prime vendors will be required to report on the 10th of each month the MBE and WBE participation paid in the previous month.**

(2) On completion of each MBE's and WBE's work, paid invoices or certification attesting to actual amount paid each MBE and each WBE and an explanation of the difference between actual amount paid and award amount, if any, must be provided.

(b) Maintain records for a period of 3 (three) years following acceptance of final payment.

(c) Make records available for inspection by the County.