



**Multifamily Division
Minority or Women Business
Enterprises Compliance Guide**

October 2016



Minnesota Housing does not discriminate on the basis of race, color, creed, national origin, sex, religion, marital status, status with regard to public assistance, disability, familial status, or sexual or affectional orientation in the provision of services.

Minnesota Housing is an equal opportunity employer.

This information will be made available in alternative format upon request.

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Chapter 1 – Introduction

1.01 Policy Summary

It is the policy of Minnesota Housing that minority and women-owned business enterprises (MBE/WBE) have equal access to business opportunities resulting from Minnesota Housing-financed developments. This policy addresses marketing and outreach requirements for contracting and purchasing as described by state and federal procurement laws and regulations.

1.02 Applicability

Projects with deferred financing through Minnesota Housing trigger the MBE/WBE marketing and outreach requirements and performance goals described in this guide. Deferred financing includes the following state and federal programs: Economic Development and Housing Challenge, Preservation Affordable Rental Investment Fund, Publicly Owned Housing Program, Rental Rehabilitation Deferred Loan, HOME Investment Partnerships, and National Housing Trust Fund.

The owner/developer must take all necessary affirmative steps to ensure that it and its contractors use MBE/WBEs when possible, in accordance with this guide, for all project related contract awards that exceed \$25,000.

1.03 Statutory and Regulatory Authorities

MBE/WBE marketing and outreach requirements are guided by state and federal regulations.

Procurement Regulations:

Minnesota Statutes § 16C.16. Minnesota state procurement standards for purchasing goods and services from targeted group businesses, including those businesses that are majority owned and operated by women or specific minorities.

2 CFR §200.321. Federal procurement standards for contracting with small and minority businesses, women’s business enterprises, and labor surplus area firms.

Specific Program Regulations:

HOME Investment Partnerships. 24 CFR §92.350 directs participating jurisdictions, including Minnesota Housing, to establish and oversee a minority outreach program within the jurisdiction to ensure the inclusion of minorities and women, and entities owned by minorities and women, in all contracts entered into by the participating jurisdiction. §92.508(a)(7)(ii) requires documentation and record keeping of efforts taken to implement an outreach program, the amount of contracts and documentation.

National Housing Trust Fund. 24 CFR §93.407(a)(5)(viii) requires records demonstrating compliance with 2 CFR §200.321 regarding grantee’s activities related to MBE/WBE.

1.04 Responsibilities

Minnesota Housing

Notify the owner/developer at selection of the MBE/WBE participation goals and objectives along with where to find this guide on Minnesota Housing’s website.

Provide this guide and all appendices to the owner/developer at the launch meeting.

Monitor the performance of owner/developer with respect to MBE/WBE objectives and requirements.

Owner/Developer and Contractor/Subcontractors

Provide this guide and all appendices to prospective contractors/subcontractors before bidding.

Comply with MBE/WBE objectives and requirements in their operations and in the operations of their contractors/subcontractors.

Implement procedures designed to notify MBE/WBEs about contracting opportunities generated by the assistance.

Document steps taken to comply with participation goals, the results of actions taken and impediments using the Contracts and Procurement Report (Appendix C)

Provide proof of certification¹ of all MBE/WBEs.

Complete the Combined Contractor Compliance Activity Report (Appendix B) that detail responsibilities for completion of each required form. Reporting to Minnesota Housing is required before contracts are signed and also at the end of construction.

¹ Each MBE/WBE must be certified by the Minnesota Department of Administration (<http://www.mmd.admin.state.mn.us/pdf/TGWebApp.pdf>).

Chapter 2 – Requirements

2.01 Participation Goals

State and federal regulations direct that affirmative steps must be taken to ensure that MBE/WBEs are contracted when possible. When federal funds are included in a project, these steps must also include labor surplus area firms² and small and disadvantaged business enterprises. Outreach to minorities and women owned businesses must be conducted and documented to the satisfaction of Minnesota Housing for all contracts in excess of \$25,000.

Minnesota Housing set individual participation goals for MBE and WBE. WBE goals are statewide. MBE goals differ for the Twin Cities Seven-County Metropolitan Area and Greater Minnesota. Participation goals are applied to the whole project and pertain to total amount of construction and related contracts

Participation Goals ³	Women Business Enterprises	Minority Business Enterprises
Greater Minnesota	6%	4%
Twin Cities 7 County Metro		13%

2.02 Affirmatively Marketing to Women and Minority-Owned Business Enterprises and Labor Surplus Area Firms

Developers/owners and contractors/subcontractors should maintain evidence of efforts made to demonstrate proof of MBE/WBE outreach. Efforts to include MBE/WBEs must allow for sufficient time to effectively participate in the bidding and/or application process. Good faith efforts to achieve success may be demonstrated by providing documentation detailing outreach plans and activities, including affirmative steps defined in federal regulations at 2 CFR §200.321:

1. Placing qualified small and minority businesses and women’s business enterprises on solicitation lists;
2. Ensuring that small and minority businesses, and women’s business enterprises, are solicited whenever they are potential sources;
3. Dividing total requirements, when they are economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women’s business enterprises;
4. Establishing delivery schedules, where the requirement permits, that encourage participation by small and minority businesses, and women’s business enterprises;
5. Using the services and assistance, as appropriate, of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

² A Labor Surplus Area (LSA) is defined by the US Department of Labor as a civil jurisdiction with an unemployment rate at least 20% above the average unemployment rate for all states during the two previous calendar years. That designation can also be petitioned under exceptional circumstances, demonstrating the area experiences a significant increase in unemployment which is neither temporary nor seasonal and which was not adequately reflected in the data for the two year reference period. The US Department of Labor keeps a list of current LSAs that is updated annually.

³ Participation goals are based up the most recent “Survey of Business Owners” by the Minnesota Department of Employment and Economic Development (2012).

6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps 1-5.

A listing of current Minnesota certified MBE/WBE vendors can be found on the [Department of Administration website](#).

Chapter 3 – Performance and Compliance

3.01 Compliance Summary

To demonstrate compliance with Minnesota Housing’s affirmative marketing requirements, property owners must identify jobs bid and indicate those bid by minority-owned; women-owned; and, for federal funds only, small or disadvantaged businesses or local service area using the Minnesota Housing Combined Contractor Compliance Activity Report. The Combined Contractor Compliance Activity Report is a data collection tool to be included in bidding documents. All contractors and sub-contractors providing bids must complete this form. If not enough contractors (especially minority/women contractors) have been solicited, Minnesota Housing reserves the right to require work be re-bid affirmatively. Minnesota Housing may request additional documentation, if necessary, to ensure compliance with this obligation.

3.02 Compliance Timeline

Project Selection

Minnesota Housing notifies owner/developer of requirements.

Project Launch

Minnesota Housing provides this guide and all appendices to owner/developer at time of project launch.

The owner/developer certifies that they will comply with laws prohibiting discrimination in employment and that they hire affirmatively.

Underwriting

Owner/developer creates bid package, and includes this guide and all appendices, and submits to Minnesota Housing for review and approval prior to bid request.

General contractor certifies that they comply with laws prohibiting discrimination in employment and that they hire affirmatively⁴.

Owner/developer and general contractor provide contractor compliance activity reports and documentation to the extent that MBE/WBE bids were solicited.

Minnesota Housing reviews compliance with applicable goals and reserves the right to require work to be re-bid affirmatively.

At Closing/Start of Construction

Owner/developer and general contractor continue to monitor bidding and solicitations.

Owner/developer and general contractor report on new bids and contracts.

Upon Completion of Construction

Owner/developer and general contractor must update the Combined Contractor Compliance Activity Report with any new contracts and submit to Minnesota Housing.

⁴ If the general contractor changes at any time during the project, the new general contractor must certify.

Chapter 4 – Contract Compliance and Equal Opportunity

5.01 Policy

It is the policy of Minnesota Housing to practice affirmative action to provide equal opportunity in all of our projects, programs, and other endeavors. Minnesota Housing's goal is to achieve a client and recipient mix that is representative of the people who live in our state and our communities so that all employment and contractual benefits that develop as a result of our programs will be shared by all Minnesotans. This policy applies to all Minnesota Housing employees and Minnesota Housing's external partners.

5.02 Purpose

The purpose of this policy is to make Minnesota Housing's commitment to act affirmatively to achieve equal opportunity in all facets of its operation, clear to both internal staff and outside parties with whom we do business.

5.03 Goals

Our goal is to ensure minority and female contractors and subcontractors equal access to business opportunities on Minnesota Housing financed projects and to encourage the presence of minorities and women at all levels, including on the staffs of the program participants having contractual agreements with Minnesota Housing. Minnesota Housing's goal is to ensure that the workforces on the projects and programs we finance reflect demographically the area in which they are located. These goals will apply for the length of the contract or the life of the loan. Minnesota Housing, at its discretion, may set numerical or percentage goals dependent on the location and size of a given project. Current goals will be determined by staff based on the location of the project.

5.04 Requirements

Minnesota Housing is required to comply with all applicable local, state, and federal laws. These requirements are passed on to everyone that Minnesota Housing does business with, either by contractual agreement or as a Minnesota Housing policy.

5.05 Sanctions

Minnesota Housing has the contractual authority to demand full payment of any loan or grant, stop proceeding with any project at any stage, and cease to do business with any entity or individual that fails to follow its affirmative action policies or fails to meet its/his/her contractual equal opportunity obligations.

Chapter 5 – Fair Housing Policy

MINNESOTA HOUSING – MULTIFAMILY MBE/WBE COMPLIANCE GUIDE

It is the policy of Minnesota Housing to affirmatively further fair housing in all its programs so that individuals of similar income levels have equal access to Minnesota Housing programs, regardless of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, familial status, gender identity or sexual orientation.

Minnesota Housing's fair housing policy incorporates the requirements of the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendment Act of 1988, as well as the Minnesota Human Rights Act. Housing providers are expected to comply with the applicable statutes, regulations, and related policy guidance. Housing providers should ensure that admissions, occupancy, marketing and operating procedures comply with non-discrimination requirements.

In part, the Fair Housing Act and the Minnesota Human Rights Act make it unlawful to, because of protected class status:

- discriminate in the selection/acceptance of applicants in the rental of housing units;
- discriminate in terms, conditions or privileges of the rental of a dwelling unit or services or facilities;
- engage in any conduct relating to the provision of housing that otherwise make unavailable or denies the rental of a dwelling unit;
- make, print or publish (or cause to make, print or publish) notices, statements or advertisements that indicate preferences or limitations based on protected class status;
- represent a dwelling is not available when it is in fact available;
- deny access to, or membership or participation in, associations or other services organizations or facilities relating to the business of renting a dwelling or discriminate in the terms or conditions of membership or participation; or
- engage in harassment or quid pro quo negotiations related the rental of a dwelling unit.

Minnesota Housing has a commitment to affirmatively further fair housing for individuals with disabilities by promoting the accessibility requirements set out in the Fair Housing Act, which establish design and construction mandates for covered multifamily dwellings and requires housing providers to make reasonable accommodations and to allow persons with disabilities to make reasonable modifications.

Applicants will be required to submit an Affirmative Fair Housing Marketing Plan at the time of application, to update the plan regularly and to use affirmative fair housing marketing practices in soliciting renters, determining eligibility, and concluding all transactions.

As a condition of funding through Minnesota Housing, housing providers are not permitted to refuse to lease a unit to, or discriminate against, a prospective resident solely because the prospective resident has a Housing Choice Voucher or other form of tenant-based rental assistance.

Certification and Acknowledgement

_____ as the _____ of
(name) (title)

_____, here by acknowledge that I
(company)

have been supplied with a copy of and have read Minnesota Housing’s Multifamily MBE/WBE
Compliance Guide and fully understand and acknowledge, on behalf of

_____ the obligation to strictly comply
(company)

with the requirements set forth therein.

I certify that the information provided in this Certification is true, correct and accurate.

Signature

Date

Appendix A – Terms

Contractor/Subcontractor	Any entity that contracts to perform work in conjunction with the project or work generated by expenditure of Minnesota Housing deferred multifamily financing.
Minority	Persons who are of the following racial or ethnic groups: Black/African American, American Indian or Alaskan Native, Asian, Native Hawaiian or other Pacific Islander, Hispanic or Latino.
Minority Business Enterprise	A MBE is a business that is both owned and controlled by minorities. This means that there must not be less than 51 percent minority ownership of the business, and the minority ownership must control the management and daily operations of the business.
Women Business Enterprise	A WBE is a business that is both owned and controlled by women. This means that there must not be less than 51 percent women ownership of the business, and the women ownership must control the management and daily operations of the business.

Appendix B – Combined Contractor Compliance Activity Report

SAMPLE REPORT PICTURED – The [Contractor Compliance Activity Report](#) is available electronically on the Minnesota Housing website.

 Contractor Compliance Activity Report													
											** COMPLIANCE ERRORS **		
											The project is out of compliance with the goal(s) listed below. For any goal that remains out of compliance, submit documentation on how you attempted to reach that goal. CLICK ON AN ERROR MSG to see the details of that goal in the spreadsheet below.		
Development Number:													
Development Name:													
Development Address:													
Development County Area:													
Total Construction Contract Amount:													
Project is Federally Funded?		<input type="checkbox"/> Yes											
Complete For All Contractors						Minority Business Enterprise / Women Business Enterprise (MBE/WBE) Information			Complete for Section 3 <i>*NOTE: if not federally funded this section does not apply</i>				
Contractor Name & Address	Type of Business / Trade	General or Sub (G/S)	\$ Amt. Of Bid	Contract Awarded (Yes/ No)	Date of Contract If Awarded	WBE (Yes/ No)	MBE (Yes/No)	MBE Ethnic Code	Section 3 Business (Yes or No)	Section 3 Contract (Yes or No)	# of Pos. Currently Filled	# of New Positions to be filled for this contract	# of L.I.P.A.R.
Total(s) Where Applicable		Total Bid Amt:		\$0.00		WBE Contract Award Amount: \$0.00		WBE Percentage: 0.00%		MBE Contract Award Amount: \$0.00		MBE Percentage: 0.00%	
COMPLIANCE TOTALS:													
		Total Awarded Bid Amt:		\$0.00		WBE Contract Award Amount: \$0.00		WBE Percentage: 0.00%		MBE Contract Award Amount: \$0.00		MBE Percentage: 0.00%	
(Click on CONTRACTOR NAME / ADDRESS to change info)													
ADD CONTRACTOR										ADD TRADE - MHFA ONLY			

Appendix C – Contracts and Procurement Report

The financing package Minnesota Housing is considering for your development includes deferred funds, and may include federal funds. Upon accepting these funds, you will be required to track and report on marketing and outreach activities to contract with MBE/WBEs. Minnesota Housing will monitor you for compliance with this requirement. Any non-compliance may result in penalties such as suspension of funding for the project, debarment, repayment if funds have been disbursed, and/or other penalties as defined in the written agreement and/or loan agreement. It is important for you to understand your obligations as the owner of the property.

Document in the space below what marketing and outreach activities you provided for the project, and attach supporting documentation to this report.

Development Name	
Development Address	
Development (D) Number	
Contractor's Name and Title	

Efforts to Award Contracts to MBE/WBE, and LSA, if applicable

Efforts to Provide for Procurement Preference for MBE/WBE, and LSA, if applicable

I certify that the information provided in this Contract and Procurements report is true, correct and accurate.

Signature

Date