



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

October 2016

MINNESOTA HOUSING – MULTIFAMILY MBE/WBE COMPLIANCE GUIDE



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

Table of Contents

Chapter 1 – Introduction	1
1.01 Policy Summary	1
1.02 Applicability	1
1.03 Statutory and Regulatory Authorities	1
1.04 Responsibilities	2
Chapter 2 – Requirements	3
2.01 Participation Goals	3
2.02 Affirmatively Marketing to Women and Minority-Owned Business Enterprises and Labor Surplus Area Firms	3
Chapter 3 – Performance and Compliance	5
3.01 Compliance Summary	5
3.02 Compliance Timeline	5
Chapter 4 – Fair Housing Policy	6
Chapter 5 – Fraud, Misuse of Funds, Conflict of Interest, Suspension, and Disclosure and Reporting	7
5.01 Fraud	7
5.02 Misuse of Funds	7
5.03 Conflict of Interest	7
5.04 Suspension	8
5.05 Disclosure and Reporting	8
Certification and Acknowledgement	9
Appendix A – Terms	A-1
Appendix B – Combined Contractor Compliance Activity Report	B-1
Appendix C – Contracts and Procurement Report	C-2

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

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).

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 – Fair Housing Policy

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, because of protected class status, to:

- 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 to 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.

Chapter 5 – Fraud, Misuse of Funds, Conflict of Interest, Suspension, and Disclosure and Reporting

5.01 Fraud

Fraud is any intentionally deceptive action made for personal gain or to damage another.

Any person or entity (including its employees and affiliates) that enters into an agreement with Minnesota Housing and witnesses, discovers evidence of, receives a report from another source, or has other reasonable basis to suspect that fraud or embezzlement has occurred must immediately make a report through one of the ways described in section 5.05.

5.02 Misuse of Funds

A loan or grant agreement is a legal contract between Minnesota Housing and the borrower or grantee. The borrower or grantee promises to use the funds to engage in certain activities or procure certain goods or services while Minnesota Housing agrees to provide funds to the borrower or grantee to pay for those activities, goods or services. Regardless of the Minnesota Housing program or funding source, the borrower or grantee must use Minnesota Housing funds as agreed, and the borrower or grantee must maintain appropriate documentation to prove that funds were used for the intended purpose(s).

A misuse of funds shall be deemed to have occurred when: (1) Minnesota Housing funds are not used as agreed by a borrower or grantee; or (2) A borrower or grantee cannot provide adequate documentation to establish that Minnesota Housing funds were used in accordance with the terms and conditions of the loan or grant agreement.

Any borrower or grantee (including its employees and affiliates) of Minnesota Housing funds that discovers evidence, receives a report from another source, or has other reasonable basis to suspect that a misuse of funds has occurred must immediately make a report through one of the ways described in section 5.05.

5.03 Conflict of Interest

A conflict of interest, actual, potential, or perceived, occurs when a person has an actual or apparent duty or loyalty to more than one organization and the competing duties or loyalties may result in actions which are adverse to one or both parties. A potential or perceived conflict of interest exists even if no unethical, improper or illegal act results from it.

An individual conflict of interest is any situation in which one's judgment, actions or non-action could be interpreted to be influenced by something that would benefit them directly or through indirect gain to a friend, relative, acquaintance or business or organization with which they are involved.

Organizational conflicts of interest occur when:

- A contracting party is unable or potentially unable to render impartial assistance or advice to Minnesota Housing due to competing duties or loyalties
- A contracting party's objectivity in carrying out the award is or might be otherwise impaired due to competing duties or loyalties

- A contracting party has an unfair competitive advantage through being furnished unauthorized proprietary information or source selection information that is not available to all competitors

Once made aware of a conflict of interest, Minnesota Housing will make a determination before disbursing any further funds or processing an award. Determinations could include:

- Revising the contracting party’s responsibilities to mitigate the conflict
- Allowing the contracting party to create firewalls that mitigate the conflict
- Asking the contracting party to submit an organizational conflict of interest mitigation plan
- Terminating the contracting party’s participation

Any person or entity (including its employees and affiliates) that enters into an agreement with Minnesota Housing must avoid and immediately disclose to Minnesota Housing any and all actual, perceived or potential conflicts of interest through one of the ways described in section 5.05.

A contracting party should review its contract agreement and request for proposals (RFP) material, if applicable, for further requirements.

5.04 Suspension

By entering into any agreement with Minnesota Housing, a contracting party represents that the contracting party (including its employees or affiliates that will have direct control over the subject of the agreement) has not been suspended from doing business with Minnesota Housing. Refer to Minnesota Housing’s website for a list of [suspended individuals and organizations](#).

5.05 Disclosure and Reporting

Activities required to be reported under this chapter may be made in any of the following ways:

- Minnesota Housing’s Chief Risk Officer
- Any member of Minnesota Housing’s [Senior Leadership Team](#)
- The Minnesota Housing hotline reporting service vendor, EthicsPoint, by calling toll-free 866.886.1274 to speak with a live operator or by visiting the EthicsPoint reporting [webpage](#)

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.

	A	B	C	D	E	F	G	H	I	J	K	L	M	N
1	 Contractor Compliance Activity Report													
2	** COMPLIANCE ERRORS **													
3	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.													
4	Development Number:													
5	Development Name:													
6	Development Address:													
7	Development County Area:													
8	Total Construction Contract Amount:													
9	Project is Federally Funded?		<input type="checkbox"/> Yes											
10														
11	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>				
12	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.
13														
14														
15	Total(s) Where Applicable		Total Bid Amt:		\$0.00									
16	COMPLIANCE TOTALS:		Total Awarded Bid Amt:		\$0.00		WBE Contract Award Amount: \$0.00			WBE Percentage: 0.00%				
17							MBE Contract Award Amount: \$0.00			MBE Percentage: 0.00%				
18														
19														
20														
21	(Click on CONTRACTOR NAME / ADDRESS to change info)													
22														
23														
24														

ADD CONTRACTOR
ADD TRADE - MHFA ONLY

Appendix C – Contracts and Procurement Report

The [Contracts and Procurement Report form](#) can be located on the Minnesota Housing website at mnhousing.gov.