

POLICY: 6Hx28:2-05



Responsible Executive:

Vice President, Business Operations and Finance, and Chief Financial Officer

Policy Contacts:

Specific Authority: 1001.64-65, F.S.

Law Implemented: 1001.64-65, F.S.

Effective Date: 12-21-2004

Date of Last Policy Review:

12-21-2004

Minority and Women's Business Enterprise Program

Policy Statement:

- I. In 1992, Valencia College (the "College") along with the Orange County Board of County Commissioners, Orange County Public Schools, and the Greater Orlando Aviation Authority commissioned D.J. Miller and Associates, Inc. to conduct a predicate study (the "Study") to determine and quantify the possible existence, and adverse effects, of past discrimination in local government contracting against minorities and other socially and economically disadvantaged individuals.. The Study was conducted in accordance with the United States Supreme Court decision in City of Richmond v. Croson, 109 S.Ct 706 (1989), and quantified the extent of underutilization of minorities and other socially and economically disadvantaged persons.
- II. D.J. Miller and Associates, Inc. conducted an update of this study in 2001, and presented its findings and recommendations to the District Board of Trustees in October 2001. Based on the Update Study it is the intent and policy of Valencia College to amend its current Program and establish and maintain Programs for Minority and Women Business Enterprises (MWBE) and Local Developing Businesses (LDB).
- III. In establishing the MWBE benchmark participation goals hereunder, the College intends to take reasonable affirmative steps toward remedying the adverse economic effects of actual past discrimination against certain disadvantaged groups and individuals.
- IV. It is the policy of the Board that business concerns owned and controlled by socially and economically disadvantaged individuals, referred to by the College as Minority and Woman Business Enterprises (MWBEs), shall have the maximum opportunity to participate in the performance of contracts lending themselves to MWBE participation.

In addition, all entities performing work for the College under its MWBE Program shall take all necessary and reasonable steps to ensure that MWBEs have the maximum opportunity to participate in contracts without discrimination. The Program shall employ the following remedial efforts:

- A. Encourage appropriate utilization of MWBEs in all aspects of the College's procurement activities.
- B. Eliminate barriers to the award of contracts to MWBEs by ensuring greater participation by MWBEs through the use of various procurement techniques, if consistent with the best interests of the College.
- C. Distribute information and provide training relating to how to do business with the College.
- D. Periodically review and revise utilization goals and related affirmative implementation action to promote participation by MWBEs in procurement opportunities at the College.
- E. Phase out the MWBE Assistance Program when an evaluation of the College's procurement activities indicates that the Program has fulfilled its primary objectives.
- F. Award of contracts for construction and procurement of goods and non-professional services (all services excluding health services as defined in Section 287.057(3)(f), Florida Statutes, attorneys, legal services, auditors, management consultants, architects, engineers, and land surveyors) based upon the lowest, responsive and/or best bid or proposal.

Policy

History:

Adopted 12-10-02; Amended 12-21-04

Procedures:

I. Definitions

When used herein, the following terms will apply, unless otherwise indicated:

- A. "Contract" means: Any agreement with the College for construction projects or for the purchase, lease or disposal of supplies or other goods, or maintenance, installation or other services, but not including leases of real property, space use

licenses, employee benefits, taxes, judgments, dues, pensions, utilities, subscriptions, insurance, items purchased for resale, or postage.

- B. "Vice President of Business Operations and Finance" means: The Vice President of Business Operations and Finance of the College or the person or persons designated by the Vice President of Business Operations and Finance to act on his/her behalf with respect to issues delegated to the Vice President of Business Operations and Finance's responsibilities in this program.
- C. "Goods" means: Personal property of all types, including, without limitation, equipment, tools, vehicles, materials and office supplies.
- D. "Minority and Women Business Enterprise" or "MWBE" means: A business concern that is owned and controlled by one or more socially and economically disadvantaged individuals.
- E. "Ownership and control" means:
 - 1. At least 51% owned by one or more socially and economically disadvantaged individuals, or, in the case of a publicly owned business, at least 51% of the stock of which is owned by one or more socially and economically disadvantaged individuals; and,
 - 2. Whose management and daily business operations are controlled by one or more such individuals.
- F. "Services" means: The furnishing of labor, time, expertise or effort but does not include the rendition of professional services (health services as defined in Section 287.057(3)(f), Florida Statutes, attorneys, legal services, auditors, management consultants, architects, engineers, and land surveyors), employment or collective bargaining agreements, or the providing of a tangible end product.
- G. "Socially and economically disadvantaged individual" means: Persons who are citizens or lawful permanent residents of the United State and who are African Americans (persons having origins in any of the Black racial groups of Africa); Hispanic Americans (persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race); Asian-Pacific Americans (persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); Native Americans (persons having origins in any of the original peoples of that part of North America that has become the United States); or women.
- H. The "Program" shall mean the College's MWBE Assistance Policies and Procedures.

II. MWBE Certifications

- A. In order to ensure that only bona fide MWBEs, and joint ventures involving MWBEs, benefit from the College's program, certain information must be provided to the College prior to award of the contract, and updated upon request during contract performance. This information will be used to certify the eligibility of MWBEs who are named by the apparent successful bidder/proposer, and joint ventures involving MWBEs who are the apparent successful bidders/proposers. Specifically, proposed MWBEs must submit to the College a completed application for certification promulgated by the College's MWBE department. Firms who enter into contracts with the College should note that the College reserves the right to approve all substitutions of subcontractors before award and during contract performance.
- B. The College's MWBE Director will determine prior to the award of each contract which is subject to the procedures set forth in this Policy whether each firm claiming MWBE status and submitting its bid, proposal or quotation to the College shall be recognized as a MWBE firm. In making such determination, the MWBE Director will accept an unexpired MWBE certification issued by the College, GOAA, the City of Orlando, Orange County, any agency of the State of Florida which regularly certifies MWBEs or the National Minority Suppliers Development Council (NMSDC certification will be accepted only for firms supplying goods), provided that the MWBE firm certifies to the College that since the date of its MWBE certification it has not experienced a change which would affect the firm's eligibility as a MWBE. If a firm has been certified by one of the agencies listed above, but has been denied certification by another, the College's Director of MWBE shall make a separate determination of eligibility for certification. In the event a firm cannot be recognized as a MWBE on the basis of an existing MWBE certification, then the College shall determine if the firm should be recognized as a MWBE by evaluating the firm's duly completed and executed certification application. A denial of MWBE certification by the College's MWBE Director shall be communicated in writing to the firm being denied certification.
- C. Any firm, which believes that it has been wrongfully denied certification as a MWBE or joint venture involving MWBEs, may appeal the MWBE office's determination to the Vice President for Administrative Services. The appeal must be filed in writing and within five (5) working days after receipt of the written explanation of the basis for rejection.

III. Program Management and Designation of a Program Director for MWBE Programs

- A. The Vice President of Business Operations and Finance has been designated as the College's MWBE Director. The MWBE Director will be responsible for managing the College's MWBE Policy. The MWBE Director will conduct periodic surveys to determine whether the College's MWBE Policy is achieving

its objectives. Reports of surveys will be the basis for appropriate action to correct deficiencies. Where action is prescribed, the MWBE Director will make appropriate recommendations to the College.

B. A Business Opportunity Council may be established by the College to review and suggest Program elements and implementation efforts and make recommendations to the College for the improvement and refinement of the Program.

C. The MWBE Director will also be responsible for:

1. Providing information to MWBEs on the College's contractual needs and future plans;
2. Providing assistance in resolving major procurement and contracting issues affecting MWBEs;
3. Scheduling seminars to acquaint MWBEs with information on College bid specifications, procurement policies, and general bidding requirements;
4. Providing bid specifications and plans to MWBE contractor associations;
5. Evaluating the effectiveness of the MWBE program;
6. Ensuring that only MWBEs benefit from the MWBE program;
7. Ensuring that the MWBE directories utilized by the College accurately reflect MWBEs available to compete for contracts.
8. Developing, where reasonable, on-the-job technical assistance and participation programs for MWBEs;
9. Assist in monitoring contractors' and subcontractors' compliance with MWBE commitments throughout the performance period of contracts;
10. Attending Pre-Bid, Pre-Proposal and Pre-Construction Conferences to explain MWBE requirements and respond to questions;
11. Assisting in monitoring mentoring relationship;
12. Participating on Bid and Proposal Review Panels, and;
13. Performing related duties, as assigned.

IV. Benchmark Ranges for Utilization of MWBEs in Contracts for Construction and Procurement of Goods and Services

- A. In order to comply with the Disparity Study results and findings, the College will set benchmark ranges for the dollar value of work to be awarded to certain Minority and Women Business Enterprises. In addition to the annual overall Program benchmark ranges established by the College, the Executive Director may set contract goals for individual projects, for which there are known available MWBEs with capabilities consistent with the requirements of a specific contract. The College's overall benchmark ranges will be reviewed at least annually.
- B. By adoption of this amended policy, the College will set overall benchmark ranges for the dollar value of work to be awarded to MWBEs. In setting overall benchmark ranges, the College considered the availability of MWBEs in the relevant market, the capacity of MWBE firms to complete the job, the past results of efforts to contract with MWBEs, and MWBEs firms that indicated they were ready, willing and able to perform work on College projects. These benchmark ranges may be amended or adopted from time to time.
- C. To address the Study findings of underutilization, the College hereby establishes an overall benchmark range of 5%-10% MWBE subcontractor participation for all construction projects.
- D. The MWBE Director will review these benchmark ranges on a periodic basis and make any adjustments needed to meet the Program objectives.
- E. To address the Study findings of underutilization, the College hereby establishes an overall benchmark range of 4% - 9% MWBE subcontractor participation for procurement of goods and supplies, an overall benchmark range of 16%-21% for the procurement of non-professional services (all services excluding health services as defined in Section 287.057(3)(f), Florida Statutes, attorneys, legal services, auditors, management consultants, architects, engineers, and land surveyors), the following procedures shall be used to meet the benchmark range:
 - 1. Formal Written Bids and Proposals-\$25,000 or more. For each purchase of \$25,000 or more, Invitations to Bid or Requests for Proposals shall be sent to no less than three MWBE vendors, if available, and no less than one minority-focused newspaper.
 - 2. Quotations - \$3,500-\$24,999. Competitive quotations shall be requested from MWBE vendors where available.
 - 3. Subcontracting - Vendors of goods and non-professional services are encouraged to utilize, to the maximum extent feasible, MWBE subcontractors and/or suppliers.

- F. To address the Study findings of underutilization, an overall benchmark range of 5%-10% for the procurement MWBE prime and/or subconsultants is established for design professional services (architects, engineers, landscape architects and land surveyors), as defined under Florida Statutes '287.055(2)(a). The College shall comply with the Consultant's Competitive Negotiation Act (CCNA), Florida Statutes '287.055, to facilitate achieving the aforementioned goals. The College shall select in order of preference no fewer than three firms deemed to be the most highly qualified to perform the required services. In determining whether a firm is the most highly qualified, the College may consider such factors, including, but not limited to, the ability of professional personnel; whether a firm is a MWBE; the extent to which MWBE subconsultants will be utilized; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firms; and the volume of work previously awarded to each firm by the College, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms.

V. Enforcement of MWBE Policies

- A. Any individual or entity that engages in fraud, misrepresentation, or other wrongful conduct, whether by act or omission, related to his/her/its participation or eligibility to participate in the College's Program, shall be in violation of the Program. This determination shall be solely the decision of College.
- B. Violators of the College's MWBE Program may be subject to, on an individual and/or entity basis:
 - 1. Suspension from bidding on the College's contracts for up to three (3) years.
 - 2. Permanent debarment from bidding on the College's contracts.
 - 3. Termination or rescission of any present contracts with the College.
 - 4. Suspension or permanently withholding of contract payments.
 - 5. A negative evaluation of good faith effort on future contracts for up to three (3) years.

VI. Support Initiatives and Procedures to Ensure that MWBEs Have an Equitable Opportunity to Compete for Contracts and Subcontracts.

- A. The College shall participate in technical assistance and other support initiatives developed in the community for the purpose of assisting the growth and development of MWBE firms, subject to approval of the President and Board of Trustees, as necessary.

B. In order to ensure that MWBEs have an equitable opportunity to compete for contracts and subcontracts, the College may take affirmative steps to facilitate their involvement. These steps include:

1. Notification to MWBE community organizations that College contracting and subcontracting opportunities are available.
2. Providing plans and specifications to MWBE community organizations at reduced cost.
3. Conducting pre-bid/pre-proposal conferences to provide firms with an opportunity to ask questions about MWBE requirements; MWBE firms will be encouraged to attend these conferences.
4. Upon request, providing MWBEs with lists of firms bidding as prime contractors.
5. Specific and continuing recruitment efforts directed at MWBEs.
6. Disseminating the College's MWBE Policy by advertising in news media, specifically including minority-focus news media, and by notifying and discussing this policy with all firms who seek to be awarded contracts by the College.
7. Subdividing as many trade items as reasonable and prudently possible into small contractual work elements which will enable MWBE firms to compete effectively.
8. Assisting bidders/proposers in efforts to obtain the names and addresses of MWBE firms that may be utilized as subcontractors.

G. Severability

If any part of this Policy or the application thereof to any person or circumstance is deemed invalid, the invalidity shall not affect other provisions or applications of the this Policy which can be given either without the invalid provision or application, and to this end the provision or application of this Policy are declared severable.

**Procedure
History:**

Adopted 12-10-02; Amended 12-21-04

Date of Last Procedure Review: 12-21-2004