



CDBG-DR

MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE POLICY (M/WBE POLICY)

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PUERTO RICO DEPARTMENT OF HOUSING
CDBG-DR PROGRAM
MINORITY AND WOMEN OWNED BUSINESS ENTERPRISE POLICY
VERSION CONTROL

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1 Overview

The Puerto Rico Department of Housing (**PRDOH**) is the administering agency of a multifaceted effort to rebuild and restore the communities of Puerto Rico after the devastation sustained during Hurricanes Irma and María on September 2017. The recovery activities are funded by Community Development Block Grant - Disaster Recovery (**CDBG-DR**) funds received by PRDOH from the United States Department of Housing and Urban Development (**HUD**).

As a recipient of HUD financial assistance, regulations set forth in 2 C.F.R. § 200.321 require the non-Federal entity to take necessary steps to ensure that all Subrecipients, Contractors, subcontractors, and/or developers funded in whole or in part with CDBG-DR financial assistance ensure that, when possible, contracts and other economic opportunities are directed to small and minority firms, women-owned business enterprises (**WBEs**), and labor surplus area firms.

Consistent with Executive Orders No. 11625¹, 12138², and 12432³, PRDOH shall make every feasible effort to ensure that small businesses, minority-owned business enterprises (**MBEs**), WBEs, (together **M/WBEs**) and labor surplus area businesses participate in contracting.⁴

In accordance with Section 281 of the National Affordable Housing Act of 1990, 42 U.S.C. § 12831 and HUD Guide on procurement for CDBG-DR programs⁵, which require each participating jurisdiction to prescribe procedures acceptable to the Secretary to establish a minority outreach program,⁶ this PRDOH program area and policy guide will facilitate the provision of:

- A good faith, comprehensive and continuing endeavor;
- PRDOH has included M/WBE policy within this Policy and within their procurement policy, procedures and program template documents

¹ Executive Order No. 11,625 (1971), "Prescribing Additional Arrangements for Developing and Coordinating a National Program for Minority Business Enterprise", Federal Register, Vol. 36, No. 199, p.19967, 36 FR 19967 (October 14, 1971). <https://www.archives.gov/federal-register/codification/executive-order/11625.html>. Clarifies that the Secretary of Commerce has authority to implement policy in support of WBE programs.

² Executive Order No. 12,138 (1979) "Creating a National Women's Business Enterprise Policy and Prescribing Arrangements for Developing, Coordinating and Implementing a National Program for Women's Business Enterprise", Federal Register, Vol. 44, No. 100, p. 29637, 44 FR 29637 (May 22, 1979): <https://www.archives.gov/federal-register/codification/executive-order/12138.html>, recognized the significant role of small businesses and women entrepreneurs and provides for affirmative actions directed to support WBEs.

³ Executive Order No. 12,432 (1983), "Minority Business Enterprise Development", Federal Register, Vol. 48, No. 138, p. 32551, 48 FR 32551 (July 16, 1983): <https://www.archives.gov/federal-register/codification/executive-order/12432.html>, requests Federal agencies to encourage recipients of Federal grants to achieve a reasonable minority business participation in contracts that result of the grant.

⁴ U.S. Department of Housing and Urban Development.(February 2007). *Procurement Handbook for Public Housing Agencies*, HUD Handbook 7460.8 REV 2,p. 15-3. Retrieved from: https://www.hud.gov/sites/documents/DOC_10725.PDF .

⁵ U.S. Department of Housing and Urban Development, Office of Community Planning and Development, Community Development Block Grant Program. (September 2017). *Buying Right CDBG-DR and Procurement: A Guide to Recovery*. Retrieved from: <https://files.hudexchange.info/resources/documents/Buying-Right-CDBG-DR-and-Procurement-A-Guide-to-Recovery.pdf>

⁶ HUD provides guidance on M/WBE outreach through their website: <https://www.hudexchange.info/resource/248/guidance-on-minority-business-enterprise-and-womens-business-enterprise-outreach/>.

- PRDOH's compliance office will be implementing the outreach, reporting and review of efforts and waivers in addition to maintaining policies and procedures on the stated above.
- PRDOH will be engaging in outreach and advocacy of this federal requirement
- PRDOH will be monitoring and holding Subrecipients and Contractors responsible for following these federal requirements in their contracting.

2 Purpose

The purpose of this Policy is to establish minimum goals for M/WBE participation to be measured based on the total contract dollar value accrued to M/WBE firms and to promote equal opportunity for participation amongst M/WBE, in all phases of CDBG-DR contracting, across Subrecipients and Contractors. This Policy establishes the responsibilities for Subrecipients and Contractors using CDBG-DR funding and how Subrecipients as well as Contractors can comply with the requirements for M/WBE.

3 Scope

This policy, the outlined responsibilities, and resources apply to CDBG-DR funded development agreements and procurement contracts or subcontracts awarded by PRDOH or its Subrecipients, Contractors .

4 Definitions

- **Business Enterprise:** Any legal entity that is organized in any form other than as a joint venture (sole proprietorship, partnership, corporation, etc.) to engage in lawful commercial transactions.
- **Contractor:** Any person or legal entity providing goods, labor, or services to PRDOH or its Subrecipient or developer by contract for profit.
- **Developer:** Any Business Enterprise with ownership or site control of a housing project site that will arrange for all financing, oversee construction or rehabilitation, and be responsible for providing affordable housing units.
- **Ethnic minority groups:** African American, Asian American, Hispanic American, Native American, Hasidic Jew.⁷
- **Good faith efforts:** Steps taken to achieve a goal or other requirement which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.
- **HUD:** Housing and Urban Development Office.

⁷ Executive Order No. 11,625 (1971), 36 FR 19967: <https://www.archives.gov/federal-register/codification/executive-order/11625.html>, states that "socially or economically disadvantaged persons include, but are not limited to, Negroes, Puerto Ricans, Spanish-speaking Americans, American Indians, Eskimos, and Aleuts". HUD Form 2516 - Contract and Subcontract Activity: https://www.hud.gov/sites/documents/DOC_11712.PDF, on its column number 7d, provides for choosing from a listing of White Americans, Black Americans, Native Americans, Hispanic Americans, Asian Pacific Americans & Hasidic Jews.

- **Minority Business Enterprise:** A business which is at least fifty one percent (51%) owned, operated and controlled by one or more United States citizens who identify as members of an ethnic minority group. Means a business enterprise that is owned or controlled by one or more socially or economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such persons include, but are not limited to, Negroes, Puerto Ricans, Spanish-speaking Americans, American Indians, Eskimos, and Aleuts.⁸
- **Prime Bidder:** A company submitting a bid to PRDOH or its Subrecipient. For the purpose of this policy, a Developer is considered a Prime Bidder.
- **Subcontractor:** Any business providing goods, labor or services to a Contractor in fulfillment of the Contractor's obligations arising from a contract with PRDOH or its Subrecipient or developer.
- **Subrecipient:** A unit of state or local government or a nonprofit organization implementing a CDBG-DR funded program on behalf of PRDOH.
- **Woman:** United States citizens who identify as the female gender.
- **Women Business Enterprise:** A business which is at least fifty one percent (51%) owned, operated and controlled by one or more United States citizens who identify as women.

5 Participation Requirement

The M/WBE participation goal is twenty percent (20%) of the entire contract value, consisting of ten percent (10%) for MBE and ten percent (10%) for WBE).



This requirement is based on the total amount of each individual prime contract award by PRDOH or its Subrecipient. The participation requirement may be met either through

⁸ Executive Order No. 11,625 (1971), 36 FR 19967): <https://www.archives.gov/federal-register/codification/executive-order/11625.html>, https://www.hud.gov/sites/documents/DOC_11712.PDF, HUD 2516 Contract and Subcontract Activity OMB approved.

the initial contract award (if the prime Contractor is an MBE and is a WBE) or the requirement may be addressed through subcontracts specified within the Prime Bidder's proposal or bid.

5.1 Threshold Triggers

The M/WBE requirements of ten percent (10%) MBE and ten percent (10%) WBE apply to all procurement contracts of \$10,000 or more. This trigger of \$10,000 contract value applies to professional services contracts and construction work and is stated on the HUD Form 2516 Contract and Subcontract Activity Report.⁹

6 Identifying M/WBEs

In this section M/WBE firms are identified as per the federally recognized definitions.

6.1 Minority Business Enterprise

MBE is defined as a business which is at least fifty one percent (51%) owned, operated, and controlled on a daily basis by one or more (in combination) American citizens of the following ethnic minority¹⁰ and/or gender (e.g. woman-owned) and/or military veteran classifications:

- African American;
- Asian American;
- Hispanic American;
- Native American; and/or
- Hasidic Jew.

MBEs should maintain the size standards¹¹ that define a small business including the list below:

- Be a small business as per the size standards regulations in Title 13, Chapter I, Part 121 of the Electronic Code of Federal Regulations;¹²
- Not already have participated in the 8(a) program;
- Be at least fifty one percent (51%) owned and controlled by U.S. citizens who are economically and socially disadvantaged;
- Be owned by someone whose personal net worth is \$250,000 or less;
- Be owned by someone whose average adjusted gross income for (3) three years is \$250,000 or less;
- Be owned by someone with \$4 million or less in assets;
- Have the owner (who is a minority as defined in in this Policy) manage day-to-day operations and make long-term decisions;

⁹ HUD Form 2516 - Contract and Subcontract Activity: https://www.hud.gov/sites/documents/DOC_11712.PDF.

¹⁰ The Minority Business Development Agency defines eligible business in its website, under its "Eligible" tab: <http://www.puertoricombdcenter.com/>.

¹¹ The Small Business Administration establishes these standards: <https://www.sba.gov/federal-contracting/contracting-assistance-programs/8a-business-development-program#section-header-2>

¹² <https://www.ecfr.gov/cgi-bin/text-idx?SID=0ff5f0839abff4eec707b4478ed733c6&mc=true&node=pt13.1.121&rgn=div5>

- Have all its principals demonstrate good character; and
- Show potential for success and be able to perform successfully on contracts.

6.2 Women Business Enterprise

A WBE is a business concern that is at least fifty one percent (51%) owned and controlled by one or more women. The business must be owned by U.S. citizens or Legal Resident Aliens, whose business formation and principal place of business are in the U.S. or its territories and whose management and daily operation is controlled by women.

WBEs must meet the eligibility requirements for the women's contracting program:

- Be a small business;
- Be at least fifty one percent (51%) owned and controlled by women who are U.S. citizens or Legal Resident Aliens; and
- Have women manage day-to-day operations and make long-term decisions.

To qualify as an economically disadvantaged business within the women's contracting program¹³, your business must:

- Meet all the requirements of the women's contracting program;
- Be owned and controlled by one or more women, each with a personal net worth less than \$750,000;
- Be owned and controlled by one or more women, each with \$350,000 or less in adjusted gross income averaged over the previous three (3) years; and
- Be owned and controlled by one or more women, each \$6 million or less in personal assets.¹⁴

The Small Business Administration (**SBA**) offers information on their site regarding qualification requirements for:

- The 8(a) Business Development (**BD**) Program which offers assistance to firms that are owned and controlled, at least fifty one percent (51%), by socially and economically disadvantaged individual(s);
- The Women-Owned Small Business (**WOSB**) program which allows set-asides for WOSBs in industries where firms are underrepresented. WOSBs must be at least fifty one percent (51%) owned and controlled by women; or
- The Historically Underutilized Business Zone (**HUBZone**) Program allows federal contract set-asides for small businesses in economically depressed communities.

¹³ Title 13 Part 127 Subpart B, 13 C.F.R. §127.203 (a) states that "[a] woman is economically disadvantaged if she can demonstrate that her ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business. SBA does not take into consideration community property laws when determining economic disadvantage when the woman has no direct, individual or separate ownership interest in the property."

¹⁴ The eligibility requirements to qualify as a WOSB or an EDWOSB are fully defined in 13 C.F.R. §127.203.

This application process begins with a preliminary assessment located at <https://certify.sba.gov/am-i-eligible>.

For more information you can visit the local SBA district office for Puerto Rico and the US Virgin Islands: 273 Ponce de León Ave., Plaza 273, Suite, 510 San Juan, PR; Phone: 787-766-5572; Fax: 787-766-5309.

Puerto Rico's Minority Supplier Development Council (**PRMSDC**) additionally provides businesses technical assistance and has an MBE application and certification process which can be located at: <https://www.prmsdc.org/content.cfm?mhid=27&miid=83>.

PRMSDC is located : 1225 Ponce de León Ave. VIG Tower, Suite 1505, Santurce, PR 00907-3921; Phone: 787-627-7272; website address: <https://www.prmsdc.org/index.cfm>.

Certified Minority or Women Owned Businesses can also be those who have filed and approved Applications with the Environmental Protection Agency (**EPA**) the Office of Small Business Programs (**OSBP**). Applications can be obtained from EPA OSBP, from regional Disadvantaged Business Enterprise (**DBE**) Coordinators, and from EPA OSBP's website, www.epa.gov/osbp .

Businesses providing evidence and proof of these certifications completed and approved with SBA, MBDA or EPA will be formally acknowledged as Minority or Women Owned Business Enterprises for the purpose of implementing this policy for direct PRDOH Contractors and Contractors of any Subrecipients of CDBG-DR funding.

7 Responsibilities

7.1 PRDOH M/WBE Unit

PRDOH is tasked with completing the following objectives for this program area:

- Training Contractors and Subrecipients on the responsibilities of M/WBE implementation in all covered contracts using CDBG-DR funding.
- PRDOH M/WBE staff will engage Subrecipients and contractors to additionally provide them technical assistance and offer working sessions to enable successful compliance for M/WBE program requirements.
- PRDOH will create templates to facilitate Subrecipients and Contractors providing vital data regarding M/WBE utilization throughout the project lifecycle.
- PRDOH will require the submission of a Utilization Plan for Contractors being awarded a contract and Subrecipients signing a Subrecipient agreement (**SRA**).
- PRDOH will be reviewing Utilization Plans and providing feedback to entities on their submitted plans to maintain tracking of submitted plans.
- PRDOH will be adopting for its own procurement and utilization efforts the affirmative steps for implementing M/WBE Utilization:
 - Place qualified small and minority businesses and women's business enterprises on the PRDOH M/WBE solicitation list where practicable, indicating the area of

- qualification (MBE or WBE), and the types of contracting and subcontracting opportunities of interest to the M/WBE.
- Notify M/WBE firms on the M/WBE solicitation list of contracting opportunities in writing, when applicable, on the first day of the procurement solicitation.
 - When economically feasible, structure procurement solicitations so that the total requirements are divided into subsets consisting of smaller tasks or quantities for the purpose of retaining multiple firms or to facilitate subcontracting opportunities within the larger contract that would be suitable for small M/WBEs.
 - When feasible, establishing delivery schedules within procurements to encourage participation by small and M/WBE.
 - Recommend that M/WBE use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
 - Requiring the Prime Bidder or prime Contractor, if subcontracts are to be let, to take the affirmative steps listed in this policy for documenting efforts to implement requirements for M/WBE.
 - PRDOH will require all Contractors and Subrecipients to provide to PRDOH and, in the case of Contractors, to the contracting entity, be it PRDOH or a Subrecipient, a revised Utilization Plan when changes in contracting with M/WBE's occur of no later than **fifteen (15) days** from the date of a noted change.
 - PRDOH requires Contractors and Subrecipients to document their efforts for their contracting and subcontracting.
 - PRDOH has provided Subrecipients and Contractors a template to enable standardized documentation of efforts. PRDOH will request a quarterly ongoing submission of these efforts until project closeout to ensure ongoing actions are being taken by the entities.
 - PRDOH has established quarterly reporting from Subrecipients and Contractors for the purpose of being able to complete federal reporting on efforts to HUD as per the HUD Form 2516 Contract and Subcontract Activity form and data requested on this form.
 - PRDOH will be conducting a final project closeout file review for program areas to ensure quarterly submissions have been provided and supporting documentation is provided.

7.2 Subrecipients responsibilities of implementing requirements for M/WBE

Subrecipients of CDBG-DR should:

- Offer training to their Contractors on the responsibilities of M/WBE implementation in all covered contracts using CDBG-DR funding. This can also be coordinated with PRDOH.

- Engage Contractors to provide them technical assistance and offer working sessions to enable successful compliance for M/WBE program requirements.
- Adopt PRDOH templates to facilitate Contractors providing vital data regarding M/WBE utilization throughout the project lifecycle.
- Complete submission of a Utilization Plan to indicate expected utilization.
- Adopt and implement the affirmative steps for implementing M/WBE utilization:
 - Place qualified small and minority businesses and women's business enterprises on the PRDOH M/WBE solicitation list, indicating the area of qualification (MBE or WBE), and the types of contracting and subcontracting opportunities of interest to the M/WBE.
 - Notify M/WBE firms on the M/WBE solicitation list of contracting opportunities in writing on the first day of the procurement solicitation.
 - When economically feasible, structure procurement solicitations so that the total requirements are divided into subsets consisting of smaller tasks or quantities for the purpose of retaining multiple firms or to facilitate subcontracting opportunities within the larger contract that would be suitable for small M/WBEs.
 - When feasible, establishing delivery schedules within procurements to encourage participation by small and M/WBE.
 - Recommend that M/WBE use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
 - Requiring the Prime Bidder or prime Contractor, if subcontracts are to be let, to take the affirmative steps listed in this policy for documenting efforts implementing requirements for M/WBE.
- Comply with submission of submitting revised Utilization Plans when changes in contracting with M/WBE's occur of no later than **fifteen (15) days** from the date of a noted change.
- Document efforts for contracting M/WBE's and require Contractors to complete documentation of efforts for any subcontracting.
- Adopt PRDOH's template for documentation of efforts. Provide PRDOH an updated copy of these as part of the quarterly report until project closeout.
- Comply with PRDOH established quarterly reporting to enable PRDOH to complete federal reporting on all efforts to HUD as per the HUD Form 2516 Contract and Subcontract Activity and data requested on this form.
- Coordinate with PRDOH on final project closeout file review for all program areas to ensure all quarterly submissions have been provided and all supporting documentation is provided.

7.3 Contractors responsibilities of implementing requirements for M/WBE

Contractors of CDBG-DR should:

- Attend Recipient-offered training and require subcontractors to attend training to understand the responsibilities of M/WBE implementation in all covered contracts using CDBG-DR funding. This can also be coordinated with PRDOH.
- Attend technical assistance and working sessions to position yourself for successful compliance for M/WBE program requirements.
- Use PRDOH templates to facilitate streamlined data capture regarding M/WBE utilization throughout the project lifecycle.
- Complete and submit your Utilization Plan to indicate expected utilization.
- Adopt and implement the affirmative steps for implementing M/WBE Utilization:
 - Place qualified small and minority businesses and women's business enterprises on the PRDOH M/WBE solicitation list, indicating the area of qualification (MBE or WBE), and the types of contracting and subcontracting opportunities of interest to the M/WBE.
 - Notify M/WBE firms on the M/WBE solicitation list of contracting opportunities in writing on the first day of the procurement solicitation.
 - When economically feasible, structure procurement solicitations so that the total requirements are divided into subsets consisting of smaller tasks or quantities for the purpose of retaining multiple firms or to facilitate subcontracting opportunities within the larger contract that would be suitable for small M/WBEs.
 - When feasible, establishing delivery schedules within procurements to encourage participation by small and M/WBE.
 - Recommend that M/WBE use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 - Requiring the Prime Bidder or prime Contractor, if subcontracts are to be let, to take the affirmative steps listed this policy for documenting efforts implementing requirements for M/WBE.
- Comply with submission of submitting revised Utilization Plans when changes in contracting with M/WBE's occur of no later than **fifteen (15) days** from the date of a noted change.
- Document efforts for contracting M/WBE's and require subcontractors to complete documentation of efforts for any subcontracting.
- Adopt PRDOH's template for documentation of efforts. Provide PRDOH/and or your Subrecipient an updated copy of these as part of the quarterly report until project closeout.

- Comply with your recipient and/or PRDOH established quarterly reporting to enable PRDOH to complete federal reporting on all efforts to HUD as per the HUD 2516 form and data requested on this form.
- Coordinate with your Subrecipient and/or PRDOH on final project closeout file review for all program areas to ensure all quarterly submissions have been provided and all supporting documentation is provided.

8 Documentation of Efforts to contract with Minority and Women Owned Businesses.

All Contractors, subcontractors and Subrecipients will be required to provide evidence of efforts taken to fulfill the minimum goals for M/WBE. Efforts should include the type of action taken whether outreach, direct solicitation or training, any contact with M/WBE businesses and the outcome for that contracting opportunity.

PRDOH has created a template to facilitate the ability for Subrecipients and Contractors to document and report their efforts using the list provided below and on the quarterly report.

8.1 Efforts to Award Contracts to M/WBE Businesses Concerns

The following non-exhaustive list is provided as guidance and/or examples on the acceptable type of efforts which should be documented:

- Make frequent and timely advertisements in newspapers and periodicals that market to M/WBEs.
- Maintain a log of dates of advertisements and the name of the publication and/or maintain copies of the advertisement itself.
- Record copies of responses made by certified M/WBEs to your advertisement and/or make timely follow ups to responses received by M/WBEs.
- Log responses from M/WBEs. If you received responses to your solicitations but did not select the M/WBE, maintain records describing why a response from a certified M/WBE was not selected.
- Source and utilize lists of certified M/WBEs such as the ones located at the PRMSDC website (<https://www.prmsdc.org/advertising/html/men124/index.html>) or by requesting a listing from the PR SBA office.
- Advertise your requirements on your website, with PRDOH, where applicable and locally.
- Maintain a log of all communications, including names, contacts, and dates, as well as maintain records including, copies of notices/solicitations, dates of contact, letters, etc.
- Conduct pre-bid, pre-award, or other meetings to inform M/WBEs of available opportunities and maintain a record of the names of companies, dates, and locations of meetings attended.

- Contact community organizations and state/federal business assistance offices that provide support in the recruitment and placement of M/WBEs.
- Send written notification to M/WBEs and trade associations located within the region where the work will be performed.
- Provide documents/plans/bid specifications to certified M/WBEs, and allow adequate time for them to respond to bids.
- Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority/women's business enterprises.
- Establish delivery schedules which encourage participation by small and minority/women's business enterprises.
- Undertake specific steps to reasonably structure the contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified minority and women-owned business enterprises.
- Make efforts to solicit certified M/WBEs located outside the region where the scope of work is to be performed and evaluate their ability to participate.
- Document the evaluation you conducted to determine eligibility for participation.
- Provide the same subcontract terms and conditions to certified M/WBEs as the ones offered to other subcontractors in the ordinary course of business.
- Document the terms and conditions being offered to both entities and make efforts to engage in either telephone or direct, in-person negotiations with M/WBEs whose quotes were too high.

9 M/WBE Outreach

PRDOH, Subrecipients and Contractors should adopt and implement the affirmative steps for implementing M/WBE Utilization:

- Place qualified small and minority businesses and women's business enterprises on the PRDOH M/WBE solicitation list, indicating the area of qualification (MBE or WBE), and the types of contracting and subcontracting opportunities of interest to the M/WBE.
- Notify M/WBE firms on the M/WBE solicitation list of contracting opportunities in writing on the first day of the procurement solicitation.
- When economically feasible, structure procurement solicitations so that the total requirements are divided into subsets consisting of smaller tasks or quantities for the purpose of retaining multiple firms or to facilitate subcontracting opportunities within the larger contract that would be suitable for small M/WBEs.
- When feasible, establishing delivery schedules within procurements to encourage participation by small and M/WBE.
- Recommend that M/WBE use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

- Requiring the Prime Bidder or prime Contractor, if subcontracts are to be let, to take the affirmative steps listed in the Contractors' Responsibilities of implementing requirements for M/WBE Section of this Policy.

10 M/WBE Waivers

If, after the Subrecipient or Contractor takes the affirmative steps listed in this policy, and makes a good faith effort to subcontract to M/WBE firms, the Subrecipient or Contractor is unable to meet the M/WBE requirement, the Subrecipient or Contractor may submit, with either their bid or during the project implementation, a written M/WBE Waiver Request to PRDOH for evaluation. The request must set forth the reasons for the inability to meet any or all the M/WBE participation requirements together with an explanation of the good faith efforts undertaken.

The Subrecipient or Contractors must document all its good faith efforts towards meeting the minimum participation levels set by PRDOH. Evidence shall be attached to the M/WBE Waiver Request, and include, at a minimum¹⁵:

1. The Subrecipient, Contractor or Prime Bidder's solicitation list containing minority businesses and women's business enterprises to be contacted for subcontracting opportunities (as applicable).
2. Copies of notices to M/WBE firms on the PRDOH M/WBE solicitation list and on the Prime Bidder's solicitation list (letter, e-mail, or facsimile are acceptable forms). Such notification shall have provided at least five (5) business days to submit a proposal to the Prime Bidder.
3. A description of the structure of solicitations for subcontracts (e.g., if the total requirements were divided into subsets consisting of smaller tasks or quantities for the purpose of retaining multiple firms or to facilitate sub-tier contracting opportunities within the larger subcontract that would be suitable for small M/WBEs).
4. A description of the delivery schedules required by the Prime Bidder that encourage participation by M/WBE firms.
5. Copies of notices to M/WBE firms that include information about the services and assistance available from such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
6. Copies of M/WBE responses to written notifications and result or answer to them. If not selected, include specific reasons as to why.
7. Copies of any advertisement for the promotion of M/WBE opportunities.
8. Copies of meeting notes, minutes, attendance sheets of pre-bid, pre-award or other meetings or orientations.

¹⁵ These minimum efforts are established by HUD. See: <https://files.hudexchange.info/resources/documents/MBE-WBE-Outreach.pdf>.

9. Other information about the specific steps undertaken for the purpose of subcontracting with M/WBEs.

Other considerations PRDOH may consider when determining whether a Contractor practiced good faith efforts in its M/WBEs outreach are:

1. The number of certified M/WBEs in the region listed in the PRDOH M/WBE Solicitation List that provide the services required or perform the work required as indicated in the scope of work.
2. Actions taken by the Subrecipient, Contractor, or Prime Bidder to identify and access M/WBEs outside of the region in which the work is to be done in, that could provide the services or work required.
3. The timeframe of the actions taken and whether the specifications of the scope of work were provided with enough time for M/WBEs to assess and prepare an informed response to a request for participation.
4. Whether the terms and conditions set forth for M/WBEs are comparable with those offered to non-M/WBEs.
5. Any other relevant information appropriate to the determination of good faith efforts by a Subrecipient, Contractor or Prime Bidder.

PRDOH will notify the Subrecipient or Contractor on the status of their waiver request and whether it has been approved, denied or a request for information is presented.

11 Reporting Requirements

11.1 Initial Documentation

Recipients and Contractors should provide PRDOH their Utilization Plan indicating how they plan on achieving the use of M/WBEs in Puerto Rico.

The Utilization Plan template form will be available online at www.cdbg-dr.pr.gov. This form will be provided as part of the procurement package and can also be requested by written solicitation directed to PRDOH staff for a copy if needed. Utilization Plans should be provided to PRDOH for review from Subrecipients and direct Contractors. Contractors of Subrecipients should provide them to Subrecipients for initial review.

11.2 Quarterly Reporting

Subrecipients and Contractors will be required to complete quarterly reporting. Reports are due the fifth (5th) of each month following the quarter mark. The following image depicts quarter marks and report due dates:



PRDOH will provide ongoing training and collaborative workshops to ensure Subrecipients and Contractors are aware of where and how to provide information on PRDOH's reporting platform.

12 Corrective Actions

PRDOH will notify Subrecipients and Contractors via a written request for information notification when additional material or corrections need to be provided. Subrecipients and Contractors are required to follow the instructions contained within the notification to comply with the request from PRDOH.

13 PRDOH Authority to Monitor and Audit

The PRDOH has the discretion to perform ongoing monitoring of Subrecipients' and Contractors' performance in compliance with the requirements contained herein and audit at any time to ascertain compliance with this policy and applicable rules and regulations. Notice of monitoring and auditing efforts will be given to the Subrecipient or Contractor with reasonable time.

14 Project and Program Closeout

PRDOH will perform a review of the project file and notify the respective Subrecipient or Contractor on the project file containing all the appropriate documentation including:

1. M/WBE Utilization Plan
2. Quarterly Reporting
3. Documentation of Efforts
4. Other Supporting certifications needed on file

All Subrecipients and Contractors will comply with providing documentation needed to close their respective project files.

END OF POLICY.