

**SOUTHEAST WISCONSIN
PROFESSIONAL
BASEBALL PARK DISTRICT**

**TARGETED FIRM
PARTICIPATION PROGRAM
FOR DISTRICT OPERATIONS**

Adopted: September 18, 2012

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**SOUTHEAST WISCONSIN PROFESSIONAL BASEBALL
PARK DISTRICT
TARGETED FIRM PARTICIPATION PROGRAM FOR
DISTRICT OPERATIONS**

The Southeast Wisconsin Professional Baseball Park District (the “District”) is a special district that is a body corporate and politic, and a local governmental unit, separate and independent of the State of Wisconsin. Under Sec. 229.67, Wis. Stats., the jurisdiction of the District includes Milwaukee, Racine, Waukesha, Washington, and Ozaukee Counties (collectively, the “Jurisdiction”). The following policies and procedures (the “Program”) will be utilized for the inclusion of disadvantaged and emerging businesses (“Targeted Firms”) in ongoing completion of capital and discretionary improvements to the District’s baseball park facilities (“Improvement Projects”), as well as in its needs for professional, administrative and operations services (“Service Projects”) for the District (collectively, the “Operations”).

I. PROGRAM OVERVIEW

It is the District’s intent to utilize Contractors reflective of the diversity of its entire Jurisdiction. The District, therefore, notifies all Contractors that no one will be discriminated against in the awarding of any Operations contract or in subsequent Operations activities on the grounds of sex, race, color, national origin, ancestry, sexual orientation, marital status, religious belief, age or disability.

While the District has no statutory obligation mandating participation in its Operations contracting, the District’s policy will be to enforce full, good faith compliance with this Program by all Contractors, and to provide Targeted Firms a meaningful opportunity for substantive participation in ongoing District Operations. This Program has been designed to promote and encourage open competition and participation in Operations activities, to foster economic vitality within the Jurisdiction, and to enhance opportunities for Targeted Firms to successfully compete in Operations contracting. As a result, the District intends to enable Targeted Firms to enjoy not only immediate benefits of Operations participation, but endeavors to enhance their expertise and increase their capacity for future growth.

II. DEFINITIONS

In addition to those definitions set forth elsewhere in this document, when used in this Program, the following terms (whether used in singular or plural tense) shall have the meanings identified below:

1. **“Certified”** means a Targeted Firm that currently holds a certification from any certifying agency identified in Section IV C (1)-(3).
2. **“Contractor”** means all construction contractors and Service Providers (including Targeted Firms) hired directly by the District for 1) any Improvement Projects and/or 2) any Service Projects, related to operation and maintenance of District facilities and District Operations.

3. **“Participation Levels”** shall mean the percentage level goals for aggregate participation of Targeted Firms established in Section III.

4. **“Service Provider”** means any architect, engineer, surveyor, environmental analyst, developer, legal, accounting and audit, marketing/public communications or other professional service consultant, including District management and administrative staff, retained to perform services related to the Operations

5. **“Targeted Firm”** means a small or emerging business concern owned, operated and controlled by one or more disadvantaged individuals that have been Certified as a Disadvantaged Business Enterprise (DBE), Emerging Business Enterprise (EBE), Minority Business Enterprise (MBE), and/or Women’s Business Enterprise (WBE).

III. PARTICIPATION LEVEL

The District has established the following provisions for economic participation of Targeted Firms in its Operations. In implementing its Participation Levels, the District desires to increase substantive participation of Targeted Firms in District ongoing Operations, assisting in their development and working to eliminate barriers that deny them equal opportunity to perform on similar projects.

In fulfilling its policy toward improving economic vitality of the Jurisdiction, the District desires to increase the participation of business concerns that are independently owned, operated and controlled, are not dominant in their local field of operation, and which have been Certified as Targeted Firms. The District commits to the goals that:

1. 15% of the annual aggregate dollar value of Improvement Projects contracts, and
2. 10% of the annual aggregate dollar value of Service Projects contract awarded on District Operations shall be made to Targeted Firms (collectively, the “Participation Level”).

The District and Contractors will use best efforts to utilize Targeted Firms that have provided written evidence confirming their status as Certified for their performance of Operations contracts consistent with the District’s Participation Level goals. No credit will be given for the dollar value of materials, equipment, supplies and/or services provided by a Targeted Firm that operates as a pass through broker. The District reserves the right to set specific Targeted Firm percentage goals for each Operations project bid package, based on availability of Targeted Firms to perform the work necessary for the project, to maximize the District’s ability to meet its aggregate Participation Levels goals.

The Participation Levels goals may be reviewed by the District’s Participation Program Committee from time to time. The Committee shall make such recommendations for adjustment of the Participation Levels as are consistent with the opportunity for meaningful Targeted Firm participation based on Targeted Firm availability to perform the types of work and/or services for Improvement Projects and Service Projects required by the Board. The Board shall approve any

change in the Participation Level goals by resolution, and such resolution shall thereafter modify the Participation Level goals under this Program.

IV. CALCULATION OF PARTICIPATION LEVEL

A. BIDDING / PROPOSAL COMMITMENT

As a condition of submitting a bid or proposal for Operations work, each Contractor hereby agrees to:

1. not discriminate against any person or business on the basis of sex, race, color, national origin, sexual orientation, religious belief, age or disability;
2. take affirmative action to ensure that Targeted Firms have fair opportunity to compete for and substantively perform with them in completing Operations contracts;
3. commit best efforts to meet Participation Level goals (inclusive of all accepted alternates, actual allowance values, change orders, modifications and amendments) via Targeted Firms' participation with the Contractor; and
4. acknowledge that they have not required Targeted Firms to engage in exclusive relationships with them as a condition to their participation in the Operations activities being bid /proposed.

The District hereby places all bidders/proposers on notice that the District will not hire those that engage in restraint of trade or attempts to monopolize utilization of Targeted Firms to the exclusion of other Contractors.

B. COMPLIANCE OPTIONS

The Targeted Firm Participation Level commitment may be met by:

1. 100% of the aggregate dollar value of contracts where the **Contractor** is a Certified Targeted Firm, including a Joint Venture where the participation of the Certified Targeted Firm is equal to or greater than 51%; or
2. Where the Contractor is a joint venture between a Targeted Firm and a non-Targeted Firm, and participation by the Certified Targeted Firm in the **joint venture** is equal to or less than 50%, a prorated percentage of the aggregate dollar value of contracts equal to the percentage of substantive participation by the Targeted Firm(s) in the Joint Venture under its Operations contract; or
3. 100% of the aggregate dollar value of contracts **subcontracted** by a Contractor with a Certified Targeted Firm. The amount of supplies obtained and installed by a Targeted Firm subcontractor must be usual and customary and not disproportionate to the work being done by the Targeted Firm as compared to the Contractor's entire contract; or

4. 100% of the aggregate dollar value subcontracted by a Contractor for the purchase of materials or supplies from one or more Certified Targeted Firms, which are **manufacturers or fabricators** who substantially alter the material or supplies before sale; or

5. Unless otherwise specified at the time the District solicits bids for an Operations project, 100% of the aggregate dollar value of materials or supplies purchased by a Contractor from a bona fide, factory authorized Certified Targeted Firm **wholesale distributor or stocking retail distributor** who owns, operates and/or maintains a warehouse or store in which the same or similar materials, equipment, or consumable supplies required for the performance of the Operations are bought, kept in stock and are regularly sold in the usual course of the business.

C. CERTIFICATION

1. As part of the submittal of a bid/proposal proposing a Targeted Firm to perform all or a portion of an Operations contract, the bidder/proposer shall furnish written, current certification of DBE, EBE, MBE, and/or WBE status for each such Targeted Firm from one or more of the following entities:

a) any Wisconsin office of the United States Department of Commerce, Department of Transportation or other federal government certifying agency; or

b) any certifying agency within a department of the State of Wisconsin; or

c) the City of Milwaukee Office of Small Business Development Program; or

d) any similar County of Milwaukee, Racine, Waukesha, Washington, or Ozaukee certification program; or

e) any substantially similar certification program of a state other than Wisconsin.

Applications to any of the above entities in process at the time of bid/proposal submittal will not be counted as Certified unless and until certification is actually issued.

2. All joint ventures where the Targeted Firm(s) do not represent majority ownership shall provide to the District an affidavit regarding the joint venture for a determination under Section IV (D).

3. Bidders/proposers may submit Targeted Firm certification for consideration from programs other than those identified in Subsection (IV)(C)(1) to the District for a determination as to whether the District, in its sole discretion, will recognize the alternate certifying agency's determination of Targeted Firm status.

D. JOINT VENTURES

Credit for the participation of Targeted Firms as Joint Venture partners shall be based upon an analysis of the duties, responsibilities and risks undertaken by the Targeted Firms as specified by the Joint Venture's executed Joint Venture Agreement and verified by the District. The District reserves that right to deny or limit Targeted Firm Participation Level credit to the Contractor where any Targeted Firm joint venture partner is found to have duties, responsibilities, risks or loss, and management control over Operations work that are not commensurate with or in proportion to its Joint Venture ownership percentage.

E. TARGETED FIRM BID/PROPOSAL PACKAGES

The District periodically will identify opportunities to issue bid/proposal packages specifically for completion by Targeted Firms, enhancing Targeted Firms' ability to successfully participate as first tier contractors on portions of the Operations within their technical capabilities.

F. REDUCTION OR WAIVER OF PARTICIPATION LEVELS

If the Contractor asserts that it, in good faith, is unable to meet any or all of the Participation Levels percentage(s) it has committed to achieving in its Operations contract, then a written request for the reduction or complete waiver of the Participation Levels commitment must be made to the District as soon as such failure or potential failure is known by the Contractor.

The written request for reduction or complete waiver of Participation Levels will include a description of the unsuccessful solicitation for either subcontractors or joint venture partners with Certified Targeted Firms to perform any Operations identified or related to the District's bid request/contract or other documentation which demonstrates to the satisfaction of the District that the Targeted Firm's bid is excessively costly.

Miller Park Community Scholarship Fund

If a contractor is unable to meet their Targeted Firm Participation Level, they may consider making a contribution to the Brewers Community Foundation, Inc. to support the Miller Park Community Scholarship. This scholarship was created to provide educational and training opportunities to disadvantaged persons to help increase the pool of disadvantaged persons who are qualified to perform Operations work and services.

If, at any time during the performance of the Operations, the District has a reasonable basis to conclude that the Participation Level is or will not be met by a Contractor, then the District may request further information from the Contractor. If, upon receipt of additional information, the District is not satisfied that the Participation Level will be met and a reduction or waiver has not been requested, the District may refer the matter to the District's Participation Program Committee for further action for such noncompliance with Participation Level commitments.

Failure to meet the specified requirements for either Participation Level or a waiver or reduction is a material breach of a District contract and the District may consider termination for cause of the Contractor's contract, if such breach is not promptly cured.

V. PARTICIPATION LEVEL SUBMITTAL REQUIREMENTS

Each bidder/proposer shall comply with the following submittal requirements. Failure to submit complete information and/or provide documents in accordance with this Section V shall entitle the District to reject the bidder's bid as non-conforming.

A. UTILIZATION PLAN

1. Bidders/proposers must submit with their bid/proposal to the District a sworn statement committing them to use specific, listed Targeted Firms if their bid is accepted (a "Utilization Plan"). Except in cases where the bidder/proposer has submitted a request for a complete waiver of its Participation Levels commitment in accordance with Section IV, the Utilization Plan must commit to the expenditure of a specific dollar amount or percentage of final contract amount of participation by each such Targeted Firm included in the Utilization Plan. The Utilization Plan may include a reduction or waiver request supplying information as required in Section IV (F).

2. Utilization Plans must be confirmed and approved by the District prior to the District's award of a contract.

B. LETTERS OF CERTIFICATION

A copy of each proposed Targeted Firm's current Letter(s) of Certification shall be made available upon request to the District. All Letters of Certification will include a statement of the Targeted Firm's proposed bid area of specialty where the Letter of Certification does not otherwise identify one. The Targeted Firm's scope of work in the bidder's Utilization Plan must reasonably conform to their stated area of specialty.

VI. CONTRACTOR COMPLIANCE REQUIREMENTS

During performance of an Operations contract, each Contractor shall comply with the following requirements:

A. REPORTING

The Contractor shall prepare and submit to District with each payment application an accurate and timely Project Participation Reporting Form (attached as Exhibit A). Failure to submit the required report to the District may result in disqualification from submitting future bids, delay of payments, or other sanctions deemed appropriate by the District.

B. MAINTENANCE OF PARTICIPATION LEVEL

The Contractor will maintain the Participation Level approved in its contract, as may be amended from time to time in writing by the District during Contractor's performance of the Operations work or services.

C. DISCLOSURE OF CHANGES

Any changes in the certification status of the Targeted Firm shall be reported to the District immediately.

D. SUBCONTRACTS

The District shall be entitled to request, and the Contractor will submit to the District, copies of all its executed Targeted Firms' subcontracts within fifteen (15) days after the District makes a written request.

VII. AUDIT AND INSPECTION

The District may audit the records and inspect the facilities of the Contractor and any of its subcontractors for the purpose of verifying Targeted Firm participation. The Contractor and subcontractors will permit access to their records upon the request of the District. The District shall be entitled to examine, on three (3) business days notice, the Contractor's and Targeted Firms' books and records including, without limitation, payroll records, tax returns and records, and books of account, to determine whether the Contractor is in compliance with its Participation Level commitment and the status of any Targeted Firm performing any portion of the contract. Such rights are in addition to any other audit inspection rights contained in the contract.

VIII. NON-COMPLIANCE REMEDIES

A. COMPLIANCE AGREEMENT

The Contractor agrees, as a condition of receiving a contract with the District, that if it is found in violation of the District's Program provisions during the performance of its Operations contract, the District shall be entitled to enforce the remedies identified in this Section VIII (B) & (C) below.

B. COMPLIANCE REVIEWS

During the performance of an Operations contract, if the Contractor is not in compliance with the Program, the District may take one or more of the following actions:

1. Withholding payments on the contract and/or paying Contractor's subcontractors directly while withholding overhead and profit of the Contractor.

2. Terminating the Contractor's contract.
3. Any other remedy available to the District at law or in equity.

C. MISREPRESENTATION SANCTIONS

If any document or statement submitted to the District by a Contractor regarding a Targeted Firm contains false, misleading or fraudulent information, the District may impose one or more of the following sanctions.

1. Immediate termination of the contract, in whole or in part, for cause.
2. Denying participation on other portions of the Operations and/or in any future contracts awarded by the District.
3. Any other remedy available to the District at law or in equity.

In the event that the Contractor is determined not to have been involved in a misrepresentation made by a Targeted Firm, the District will require the Contractor to terminate the Targeted Firm and make reasonable efforts to identify and engage a qualified Targeted Firm as its replacement.

EXHIBIT A

Project Participation Reporting Form
(See attached)



**Southeast Wisconsin Professional Baseball Park District
Targeted Firm Participation Program for District Operations**



Targeted Firm Reporting Form

Purpose: For use by Prime Contractor when invoice contains Targeted Firm Participation. If this is an interim bill, only list the amount paid to the Targeted Firm during the invoice period. For questions please contact Kristi Kreklow at (414) 902-4045 or kkreklow@millerparkdistrict.com.

Your Company Name

**Contact Person Name,
Phone # and Email**

Targeted Firm Name

**Contact Person Name,
Phone # and Email**

**Description of Work
Performed**

**Amount Paid to
Targeted Firm**

I certify that the information contained in this document is accurate and that I have not required the Targeted Firm(s) to engage in an exclusive relationship with my company as a condition of their participation of providing services related to this project.

Signature: _____ Date: _____