

LOUISVILLE ARENA AUTHORITY, INC.

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Affirmative Action Policy

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It is and shall remain the policy of the Louisville Arena Authority, Inc. ("Authority") to promote the utilization of women and minorities in all phases of the design, development, construction, operation and maintenance of the Louisville Arena complex ("Arena Project"). In light of this policy, the Authority is adopting this Affirmative Action Plan (the "Plan") for the design, development and construction phase of the Arena Project. Prior to the start of the next phase of the Arena Project, which includes all endeavors related to post-construction, the Authority will adopt, upon the recommendation of the Minority Affairs Committee of the Authority, an affirmative action plan for the post-construction phase of the Arena Project.

The fundamental requirement of the Plan is that all contractors, vendors, and consultants, who engage in work for the Authority satisfy the Authority that they have made their "best effort" to involve in such work as many women and minorities or firms owned by women and minorities as possible. The burden of proving that a "best effort" has been made will be met if the level of participation in any particular phase of the work is deemed to be "meaningful and substantial" under criteria adopted by the Authority. The "best effort" requirement may also be satisfied if it can be demonstrated that "meaningful and substantial" levels of participation are not possible for a legitimate reason.

"Meaningful and substantial" shall be interpreted by the Authority as meaning a level of participation which reflects the overall relationship of minorities and women to the general population of the Louisville Standard Metropolitan Statistical Area. The Authority will consider the availability of bona fide minority and women businesses and potential workers in the various areas of contracting or employment opportunities. Participation shall be measured in terms of the actual dollars received by women and minority businesses (except in the case of a minority/female controlled joint venture), and dollars received and actual hours worked by minority and female workers. When a minority or a female performs as a participant in a minority or female controlled joint venture, respectively, only the total dollar value of the contract equal to the distinct,



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clearly defined portion of the work of the contract that the minority or female performs with its own forces will be counted toward participation.

SECTION I: FAIRNESS COMMITTEE

The Authority shall establish a Fairness Committee consisting of at least five (5) members, convened by the Louisville Urban League/Justice Resource Center, and including at least one union representative designated by the Trades Council.

SECTION II: M/WBE AND WORKFORCE POLICY AND PROGRAM / M/WBE GOALS

The Authority shall cause the Fairness Committee to provide oversight for the Authority's M/WBE and Workforce Policy and Program. The purpose of the M/WBE and Workforce Policy and Program shall be to:

(a) Provide MBEs and WBEs with the maximum opportunity to participate in the procurement of material and equipment and in the construction and its related professional services necessary to implement the Arena Project;

(b) Provide procedures for monitoring and enforcing compliance with the covenant to use best faith efforts to achieve the goals for MBE and WBE participation set forth in below (the "M/WBE Goals"):

(i) A goal of at least 20% minority participation for employees and contractors, respectively, on the Arena Project;

(ii) A goal of at least 5% women participation for employees and contractors, respectively, on the Arena Project

(iii) A goal that 75% of Arena Project jobs be reserved for Kentucky and Indiana residents and a goal that at least 60% of Arena Project jobs be reserved for residents of the Metro Louisville Standard Metropolitan Statistical Area.

(c) Provide minority and women workers the maximum opportunity to gain employment in the workforce on the Arena Project; and

(d) Provide procedures for monitoring and enforcing compliance with the covenant to use best faith efforts to achieve the goals for the employment of minorities and women and to monitor and enforce prevailing wage compliance under governing authorities.

The M/WBE and Workforce Policy and Program shall not impose obligations upon the Authority beyond the scope of obligations provided in this Agreement. The M/WBE and Workforce Policy and Program shall be adopted by the Authority as promptly as possible

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following approval by the Authority's Minority Affairs Committee, but not later than thirty (30) days following such approval.

It is agreed that, prior to the approval of the M/WBE and Workforce Policy and Program, the Authority may continue to incur fees, costs or expenses in connection with the implementation of the Arena Project in order to cause the Arena Project to continue to move forward in a timely manner; the parties understand, however, that such fees, costs and expenses incurred prior to the approval of the M/WBE and Workforce Policy and Program shall be incurred primarily in the areas of legal and other administrative services and design services. Such fees, costs and expenses incurred prior to the approval of the M/WBE and Workforce Policy and Program shall be excluded from the aggregate total of all sums paid in connection with the implementation of the Arena Project, and therefore shall not be included in the costs of the Arena Project that are subject to the M/WBE Goals.

It is also agreed that identified sole source expenditures shall also be excluded from the aggregate total of all sums paid in connection with the implementation of the Arena Project, and therefore shall not be included in the costs of the Arena Project that are subject to the M/WBE Goals. All designations as a sole source expenditure must be supported by data that indicates that only one company can perform. The following are examples of bases for sole source expenditures:

- (a) The supplies or services to be acquired are unique to a contractor.
- (b) Time is of the essence and only one known source can meet the Authority's needs within the required timeframe.
- (c) Data is unavailable for competitive procurement.
- (d) It is necessary that the item being acquired from the one source be compatible and interchangeable with existing equipment.

SECTION III: BEST FAITH EFFORTS

The Authority shall contractually obligate its contractors to use best faith efforts, as determined by the Authority upon recommendation and/or report of the Fairness Committee, and to comply with the terms of the M/WBE and Workforce Policy and Program, including reporting requirements thereunder, and the Authority shall make all reasonable efforts to enforce such obligations made by its contractors. If and to the extent that any failure to comply with the M/WBE and Workforce Policy and Program occurs by any contractor, such failure shall not constitute a failure by the Authority to use best faith efforts so long as the Authority has contractually obligated or required its program manager to contractually obligate such contractor, to use best faith efforts to comply with the M/WBE and Workforce Policy and Program, and the Authority has used reasonable efforts to cause all contractors with which it has a direct contract

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to comply with the requirements of the M/WBE and Workforce Policy and Program. *See Guidance Concerning Best Faith Efforts as attached Schedule "1".*

SECTION IV: M/WBE AND WORKFORCE PROGRAM FUNDING

The Authority shall provide the funds necessary to pay all costs in the implementation, monitoring and enforcement of the best faith efforts required to achieve the desired results of this Agreement and the M/WBE and Workforce Policy and Program. The Authority agrees to retain, through a competitive procurement process, an organization or organizations to serve as M/WBE and Workforce Coordinators for the implementation, monitoring and enforcement of the best faith efforts required to achieve the desired results of this Agreement and the M/WBE and Workforce Policy and Program.

SECTION V: WORKFORCE GOALS

As part of this M/WBE and Workforce Policy and Program and with respect to Workforce Goals for the Arena Project, the minimum Workforce Goals for employment of minorities and women shall be as provided in Section II hereof. The Authority shall further seek to extend those Workforce Goals by supporting the development of a introduction-to-construction careers training program. Major elements of this training program may include:

- o Recruitment: Sustained outreach and orientation with integrated support services to help more people access the program;
- o Training: Classroom and hands-on training in the basics of construction work;
- o Case management: Close contact with participants and help with needs such as counseling and tutoring;
- o Stipend and startup costs: Income support to cover the training period; help in paying for necessities such as tools and safety equipment;
- o Additional support services: Childcare planning and help with transportation;
- o Job placement: Coordination among all parties to find appropriate placements for program graduates; and
- o Mentoring: Help for workers from non-traditional backgrounds to navigate the transition to construction careers.

SECTION VI: MAXIMUM OPPORTUNITY / REPORTING

The Authority agrees that its program manager/owners representative charged with the responsibility of directing the M/WBE and Workforce Policy and Program shall have been granted necessary authority to do so. The program manager shall have sufficient authority, staff and resources to carry out the proper development and implementation of the M/WBE and Workforce Policy and Program. The program manager shall submit a report to the Fairness

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Committee and the governing body of the Authority on a monthly basis documenting the involvement of MBEs and WBEs in the design, development, procurement and construction of the Arena Project and including documentation of payments to MBEs and WBEs identified as being so involved. Such report shall also include a report on workforce utilization of minorities and women on the site.

SECTION VII: EXCLUDED EXPENDITURES

The Authority and its contractors shall use best faith efforts as set forth herein in order to progress towards the achievement of the M/WBE Goals and Workforce Goals, but the Authority shall not be required to pay any amounts in excess of the lowest responsible and responsive price or best evaluated bid to procure any goods or services, or to delay any design, development or construction activities in order to progress towards the achievement of the M/WBE Goals and Workforce Goals. The Authority agrees the bid requirements shall obligate a contractor to agree to execute a contract by which it is contractually obligated to use best faith efforts as set forth herein, and that for a bid or price to be responsible and responsive, it must have been prepared by a contractor that agrees to be so contractually obligated. In the event that the lowest price or best evaluated bid is not responsible and responsive because the contractor does not agree to be contractually obligated to use best faith efforts as set forth herein, the Authority shall, or shall cause its program manager to, either re-bid that contract or select the next lowest responsible and responsive price or best evaluated bid, if permitted by applicable law. The M/WBE and Workforce Coordinators shall be entitled to review any and all bids to examine whether they are responsible and responsive with regard to best faith efforts as set forth herein, but there shall be no obligation on the Authority to delay the Arena Project pending such review, and if any contractor that becomes contractually obligated to use best faith efforts as provided herein is ultimately determined to have not used such best faith efforts, the remedies of the Authority shall be as set forth in this Agreement with respect to such contractor.

SECTION VIII: CERTIFICATION

The M/WBE and Workforce Policy and Program shall designate the appropriate authorities or entities to provide certification (such as the Louisville Metro Human Relations Commission) of MBEs and WBEs and shall establish criteria for all requirements relating to qualifications for MBEs and WBEs. The Authority and its contractors may rely entirely upon the certification or lack of certification provided by the designated authorities or entities in determining whether any such person or entity is a certified MBE or WBE. In no event shall any criteria based upon amount of revenues or sales be used in the determination as to whether entities are qualified as MBEs or WBEs.

SECTION IX: CLAIMS

In the event any claim is made by the M/WBE and Workforce Coordinators, the program manager or the Authority that any of its contractors has not made a best faith effort to achieve the M/WBE Goals or the Workforce Goals, or that it or they have breached any provision (or failed

to perform under any provision) of this Agreement, such claim shall first be submitted to and investigated by the Authority's Minority Affairs Committee, which shall conduct a prompt investigation, consider all facts and evidence provided to it, provide status reports to the Fairness Committee, and make a recommendation to the full Board of Directors of the Authority for its consideration and determination. All final determinations of the Authority relating to such claims will be presented to the Fairness Committee by the Chairman of the Authority.

If the program manager or any contractor that is contractually obligated to use best faith efforts shall fail to do so, such failure shall not constitute a default by the Authority hereunder, and the Authority shall have the right to seek damages or specific performance directly against such program manager or other contractor.

SECTION X: INCORPORATION OF RECITALS AND EXHIBITS

The parties hereby agree that the Recitals, the M/WBE and Workforce Policy and Program and the Schedule attached hereto are hereby incorporated into this Agreement in full and form an integral part thereof.

SCHEDULE "1"

Guidance Concerning Best Faith Efforts

Standards to determine best faith efforts.

(1) Best faith efforts are efforts that, given all relevant circumstances, a bidder or proposer actively and aggressively seeking to meet the goals can reasonably be expected to make. In evaluating best faith efforts made toward achieving the goals, whether the bidder or proposer has performed the following may be considered, along with any other relevant factors:

(a) Advertised opportunities to participate in the contract in general circulation media, trade and professional association publications, small and minority business media, and publications of minority and women's business organizations not less than fifteen (15) days prior to the deadline for submission of bids to allow MBE and WBE firms to participate effectively;

(b) Provided notice to a reasonable number of minority and women's business organizations of specific opportunities to participate in the contract not less than fifteen (15) days prior to the deadline for submission of bids to allow MBE and WBE firms to participate effectively;

(c) Sent written notices, by certified mail, e-mail or facsimile, to qualified, certified MBEs and WBEs soliciting their participation in the contract not less than fifteen (15) days prior to the deadline for submission of bids to allow them to participate effectively;

(d) Attempted to identify portions of the work for qualified, certified MBE and/or WBE participation in order to increase the likelihood of meeting the goals, including breaking down contracts into economically feasible units;

(e) Requested assistance in achieving the goal from the M/WBE and Workforce Coordinator and acted on the M/WBE and Workforce Coordinator's recommendations;

(f) Conferred with qualified, certified MBEs and WBEs and explained the scope and requirements of the work for which their bids or proposals were solicited;

(g) Attempted to negotiate in good faith with qualified, certified MBEs and WBEs to perform specific subcontracts; not rejecting them as unqualified without sound reasons based on a thorough investigation of their capabilities;

(h) Within five working days after drawing the bid specifications, bidder sent certified letters, e-mails or facsimiles to qualified, certified MBEs and WBEs;

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(i) Followed up initial solicitations of interest by contacting MBEs and WBEs to determine whether the MBEs and WBEs were interested;

(j) Made efforts to refer interested MBEs and WBEs to entities who may be able to assist them in obtaining required bonding, lines of credit, or insurance; and

(k) Effectively used the services of available minority community organizations, minority contractors groups, local, state and Federal minority business assistance offices, and other organizations that provide assistance in the recruitment and placement of MBEs and WBEs.

(2) A bidder or proposer shall submit documentation of best faith efforts when requested by the M/WBE and Workforce Coordinator, the Fairness Committee or the Authority.