

BALLPARK COMMONS
COMMUNITY BENEFITS COMPLIANCE PLAN
Developer: BPC County Land LLC.

OVERVIEW

BPC County Land LLC (“DEVELOPER”) proposes to utilize this Community Benefits Compliance Plan with Milwaukee County to fulfill its obligations under the Development Agreement to provide perceptible community benefits for the taxpayers of Milwaukee County. It is the intent of DEVELOPER to successfully establish relationships with certified Targeted Business Enterprise (“TBE”) construction contractors and professional service providers to participate on contracts awarded for the completion of this Project. It is also the intent of DEVELOPER to provide apprenticeship opportunities for workers on the project. Thus, in an effort to provide such benefits, and to remain in compliance with the Development Agreement, DEVELOPER has set the following goals with respect to employing TBEs and members of the local workforce (residents):

TBE PARTICIPATION GOALS:

Hard Construction Project Costs: **25%**

Professional Services Project Costs: **17%**

ENHANCED APPRENTICESHIP/JOB TRAINING GOALS:

Project Hours by participants in Apprenticeship/Job Training Program: **10%**

SECTION ONE: TBE PARTICIPATION

General Information

The County’s Community Business Development Partners (CBDP) department ensures compliance with Chapter 42 of the Milwaukee County Ordinances, which requires good faith efforts (GFE) to achieve participation of certified Targeted Business Enterprise (TBE) firms. CBDP knows the TBE market, handles the certification of firms, can assist in the portioning out of contracts to increase TBE participation and be instrumental in the facilitation of contractor/TBE relationships.

CBDP reserves the right to reasonably adjust more or less participation to TBE categories, as it deems necessary to meet program requirements, based upon knowledge of the available TBE firms to perform on specific project work. CBDP will coordinate with DEVELOPER when it believes an adjustment to a goal could be made.

Commitment

In construction of the Project and performance of its duties and obligations hereunder, the Developer shall not discriminate against any employee or applicant for employment race, color, national origin or ancestry, age, sex, sexual orientation, gender identity and gender expression, disability, marital status, family status, lawful source of income, or status as a victim of domestic abuse, sexual assault or stalking which shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeships. The Developer will post in conspicuous places, accessible to employees, notices setting forth the provisions of the foregoing nondiscriminatory clause. The Developer will strive to implement the principles of equal employment opportunities through an effective affirmative action program, which program shall have as its objective to increase the utilization of women, minorities and handicapped persons, and other protected groups in the Developer's employment at the Project for so long as it is located there, and in construction of the Project. The Developer will include this requirement in any and all contracts and subcontracts entered into under this Compliance Plan. Prime contractors further agree to take affirmative action to ensure that TBE Firms have the maximum opportunity to compete for and substantively perform on the Project. Accordingly, each prime contractor shall commit to achieve the participation requirements established above.

All construction bidders further commit that they will not require TBE firms to engage in exclusive relationships with them (other than joint venture relationships approved by Milwaukee County) as a condition to their participation in the construction services being bid. Bidders who engage in such restraint of trade or attempts to monopolize utilization of TBE firms may have their bids rejected.

Certification

In reviewing the initial participation plan, firms must be certified prior to award. No TBE credit can be given for expenditures with a non-certified firm.

A TBE firm must be certified by one of the members of the Unified Certification Program Partners ("UCP"): the Wisconsin Department of Transportation, City of Madison, Dane County and Milwaukee County. The UCP applies only to TBE certification granted under federal USDOT regulation (49 CFR Part 26). Firms that do not have current certification can find instructions and the necessary application forms at the following site:
<http://www.county.milwaukee.gov/CertificationService12282.htm>

All TBE firms participating in the development must maintain TBE certification during the entire term of their contract. CBDDP will work with firms to assist in obtaining or updating TBE certification. If documented efforts to have uncertified firms receive certification through the UCP are unsuccessful, DEVELOPER may still receive participation credit, at the discretion of CBDDP, if the firm is certified under one of the following reputable programs: City of Milwaukee SBE, MMSD SWMBE, or State of Wisconsin Supplier Diversity Program (State of Wisconsin DOA). The CBDDP office should be contacted directly at 414-278-4747 with specific questions and concerns.

Participation Calculation

The TBE participation credited towards the contract goals for both TBE and non-TBE prime contractors is calculated on the following criteria:

1. One hundred percent (100%) participation credit will be allowed for all work self-performed where the **prime contractor is a TBE firm**. TBE firms at the first tier are encouraged to subcontract with other TBE firms.
2. One hundred percent (100%) participation credit will be granted for all contracts and purchase orders awarded to TBE firms if the identified scope of work has a **commercially useful function** in the actual work of the contract and is performed directly by the TBE firm with its own workforce. CBDP shall determine and evaluate whether or not the firm is performing a commercially useful function on the project.
 - a. To determine whether a firm is performing a commercially useful function, CBDP may evaluate the amount of work subcontracted, reasonable and customary industry practices, and other relevant factors. The participation credit allowed shall be based upon an analysis by CBDP of the specific duties that will be performed by the TBE firm(s). Each TBE firm shall be expected to actually manage and supervise the work contemplated for it by any subcontract or agreement through the use of its own employees and equipment and shall perform that portion of the actual work which is reasonable and customary within their industry.
 - b. CBDP reserves the right to deny or limit participation credit to the contractor where any TBE firm is found to be engaged in subcontracting without prior approval of CBDP. TBE firms must be independent businesses.
3. One hundred percent (100%) participation credit granted for contracts held with **lower tier TBE subcontractors** performing work with its own workforce.
4. One hundred percent (100%) participation credit will be granted for contracts held with **lower tier TBE subcontractors who subcontract with other TBE firms**. If TBE further subcontracts a portion of its work to another firm, the value of the subcontracted work will be counted towards TBE goal only if the work is performed by another TBE firm.
5. One hundred percent (100%) participation credit will be granted for the **cost of all materials and supplies purchased and installed by the TBE** for the work of the project. Credit shall also be given for the cost of leasing equipment provided the TBE subcontractor does not lease the equipment from the prime contractor, construction manager or affiliates thereof.
6. One hundred percent (100%) participation credit for all purchases for materials or supplies from **TBE manufacturers or fabricators**. A TBE manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises goods from raw materials or substantially alters the materials or supplies obtained by the contractor.
 - a. **CERTIFICATION ALONE IS NOT ACCEPTABLE**. Contractors should submit a copy of the official and legal wholesale distributor agreement(s) between the supplier and the manufacturer for all brands to be supplied by the wholesaler. If legal agreements are not provided, products supplied by the wholesaler may not be counted for participation credit, or at best, credit towards participation will be limited to the amount of profit actually realized by the supplier.

7. Sixty percent (60%) participation credit will be granted on expenditures for materials or supplies purchased from a TBE “Regular Dealer.” A **Regular Dealer** is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials or supplies are kept in stock, and regularly sold to the public in the usual course of business. A Regular Dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock, if it owns and operates distribution equipment.
 - a. Brokers, packagers and manufacturers’ representatives or other persons who arrange or expedite transactions are **not** regarded as Regular Dealers. TBE firms may be utilized to assist in the procurement of materials and supplies, but credit will be allowed only from the amount of fees or commissions realized by the TBE firm and not the full price of the merchandise provided under any circumstance.
8. One hundred percent (100%) participation credit will be granted for the **fees or transportation charges** for the delivery of materials or supplies by a TBE to a job site, provided the Developer determines that the fee is reasonable and not excessive as compared with fees customarily allowed for similar services. The cost of the material and supplies transported under this provision will not be considered towards TBE participation unless the materials or supplies are from TBE manufacturers as covered elsewhere in this document.
9. One hundred percent (100%) participation credit will be granted for **transportation expenditures with TBE trucking firms** provided the TBE firm is responsible for the management and supervision of the entire trucking operation for which it has contracted. The TBE must also use trucks it owns, insures, and operates using drivers it employs. The TBE may lease trucks from another TBE firm, including an owner- operator who is certified as a TBE. The TBE who leases trucks from another TBE receives credit for the total value of the transportation services the lessee TBE provides on the contract. The TBE may also lease trucks from a non-TBE firm, including an owner-operator. However, the TBE who leases trucks from a non-TBE firm is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The TBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a TBE. (Concrete ready- mix operators may not get credit for leased concrete delivery trucks from non-TBE firms).
10. TBE participation credit will be affected proportionately by **approved change orders**. On change orders, Contractor shall be expected to achieve the level of participation for the change order segment of work in the contract documents, i.e., if a scope of work is contracted at 25% TBE, then change orders for that scope of work should also have at least the 25% TBE participation. This applies equally to construction costs and professional services costs.
11. Prorated participation credit will be granted for contracts where the Contractor is a legal joint venture. Credit for participation of TBE firms as joint venture partners shall be based upon an analysis of the duties, responsibilities and risks undertaken by the TBE firms as specified by the joint venture’s executed joint venture agreement, as approved by CBDP prior to the bid due date. CBDP reserves the right to deny or limit TBE participation credit to the contractor where any TBE joint venture partner is found to have duties, responsibilities, risks or loss and management control over the joint venture that are not commensurate with or in proportion to its joint venture ownership percentage.

CBDP may request, and a proposer or prime contractor shall promptly furnish, additional information to assist in the making of participation credit determinations, including, without limitation: (1) specific information concerning any supplier's broker fees, mark-up, and/or commissions; (2) intended suppliers or other sources of labor, equipment, materials and/or services; (3) specific financial or other risks to be assumed by the TBE firm; and (4) identification of employees and supervisory personnel assigned to perform the project.

Reporting Forms

Throughout the excavation and construction period, DEVELOPER will issue several bid packages. The individual monitoring TBE participation shall inform CBDP and DAS-Economic Development of the bid release date, date of pre-bid meeting(s) and provide copies of the bid documents/specifications. This will allow CBDP to promote the event/opportunity with certified firms, and to attend the meeting to answer questions, if any. Prior to beginning the work specified in said bid documents, DEVELOPER shall submit to CBDP, with copies to DAS-Economic Development, forms TBE-14 (Commitment to Contract with TBE Firms) and TBE-02 (Subcontractor/Subconsultant/Supplier Information). Listing a TBE on these forms shall constitute a written representation and commitment that the prime contractor has communicated and negotiated directly with the TBE firm(s) listed and intends to utilize them. The prime contractor will be required to enter into subcontract agreements or execute purchase orders with the TBE firm(s) for the work and price set forth on the commitment form. Copies of agreements and/or purchase orders with all TBE firms shall be submitted to CBDP and DAS-Economic Development at least seven (7) days prior to the TBE firm beginning work on the project.

DEVELOPER must also maintain TBE participation and performance logs, which will be reported to the CBDP and DAS-Economic Development on a monthly basis using B2Gnow. If a TBE firm listed on TBE-14 cannot perform, or the DEVELOPER or prime contractor has a problem meeting the TBE goal, or any problem relative to this Compliance Plan's requirements, DEVELOPER shall immediately contact CBDP at 414-278-4747, or via email at rick.norris@milwaukeecountywi.gov. No TBE subcontractor shall be replaced without written approval from CBDP. Requests for substitution must be made in writing and include the reason for the request.

Project subcontractors under a prime contractor (whether TBE or non-TBE) must be paid, upon satisfactory performance of its subcontract, no later than seven (7) calendar days from the receipt of each payment the prime contractor receives. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written notice to CBDP. If CBDP determines there is no good cause for delaying or withholding payment, the prime contractor must pay the subcontractor within five (5) calendar days of such written decision from CBDP. All prime contractors are required to ensure that all subcontractors will include this prompt payment provision in all subcontracts at all level or tiers of subcontracting. The County reserves the right to require DEVELOPER to utilize B2Gnow, or other internet-based system for reporting purposes.

GOOD FAITH EFFORTS TO ACHIEVE COMPLIANCE

Developer pledges to undertake the following activities to reach its TBE participation goal:

- Utilize a public process to solicit bids

- Publish notice of the opportunity to bid in local publications, as well as contact the minority chambers of commerce with the submittal information
- Meet with CBDP prior to issuing bid packets to gain a better understanding of current TBE capacities and get assistance structuring project packages to encourage participation
- Hold pre-bid meetings so TBE firms are able to ask questions, connect with larger firms who may serve as primes (if the TBE would be a sub), or otherwise.

Compliance Review and Sanctions

DEVELOPER shall be subject to periodic compliance review by CBDP and DAS-Economic Development. In situations of noncompliance, the County may retain all or a portion of DEVELOPER'S compliance deposit, and/or prohibit the DEVELOPER from participating in future Milwaukee County contracting opportunities for a period of up to three (3) years. In the event DEVELOPER consistently submits late or incomplete reports, it shall be in the discretion of the County whether to seek remediation via withholding a portion of the performance deposit.

SECTION TWO: ENHANCED APPRENTICESHIP/JOB TRAINING

General Information

DAS-Economic Development administers the local workforce hiring provision of the Development Agreement, which requires good faith efforts on behalf of DEVELOPER to encourage enhanced apprenticeship and job training opportunities at levels consistent with their stated goal.

Good Faith Efforts

DEVELOPER has pledged to undertake the following activities, all of which shall be recorded on form ECD-01 if DEVELOPER anticipates that it will not achieve its participation goal. Unless otherwise approved by DAS-Economic Development in writing, DEVELOPER shall complete the following:

- Advertise in notices that Developer is looking for County resident participation
- All subcontractors must meet with a pre-apprenticeship program that is recognized by the State of Wisconsin to identify hiring opportunities.
- Connect with local organizations such as Employ Milwaukee, Esperanza Unida, Milwaukee Urban League and WRTP/Big Step to assist in locating resident workers

SECTION THREE: REPORTING SCHEDULE

All reports referenced in this Community Benefits Compliance Plan are attached hereto. Their submittal should be consistent with the following schedule. Should DEVELOPER desire to utilize different reports, written consent from DAS-Economic Development and CBDP is required.

The following reports required at any time DEVELOPER anticipates it will not meet a stated goal:

- ECD-01: Certificate of Good Faith Efforts – Enhanced Apprenticeship

The following reports are due 7 DAYS PRIOR TO BEGINNING WORK on the contract:

- TBE-14: Commitment to Utilize TBE
- TBE-02: Bidder Information
- Copies of agreements and/or purchase orders with all TBE firms listed in TBE-14

The following reports are due on a MONTHLY BASIS and shall be submitted within 7 days of the end of a month:

- TBE Utilization entered into B2Gnow

The following reports are due on a VARIABLE BASIS, as laid out below:

- Employee affidavits and proof of residency due when the employee commences work on the project

All reports shall be submitted to:

Community Business Development Partners
Milwaukee County Dept. of Admin. Services
633 W. Wisconsin Avenue, Suite 902
Milwaukee, WI 53203

With a copy to:

DAS-Economic Development
Milwaukee County Dept. of Admin. Services
633 W. Wisconsin Avenue, Suite 903
Milwaukee, WI 53203