

A SUMMARY OF RACE- AND GENDER-CONSCIOUS M/WBE PROGRAM ELEMENTS

The following program elements and policy approaches are considered to be race-conscious and gender-conscious and have been implemented by local governments to varying degrees of success in an effort to remedy the effects of various forms of marketplace discrimination:

1. ***Mandatory M/WBE Subcontracting Goals Program.*** Prior to the *Croson* decision, this was perhaps the most prevalent form of M/WBE program in the country. On any given contract, prime contractor bidders are required to subcontract a certain percentage of the overall contract dollar amount of work to certified M/WBE firms. Typically, this form of program includes a goal waiver process whereby prime contractors can request waivers or reductions in subcontracting goal requirements due to lack of M/WBE subcontractor availability or unreasonable price. Prime contractors not obtaining a waiver and not satisfying the minimum subcontracting goal are disqualified from contract award on the basis of being non-responsive to contract specifications.
2. ***Voluntary M/WBE Subcontracting Goals Program.*** This program is similar to the mandatory subcontracting goals program except that compliance is voluntary and prime contractors failing to satisfy subcontracting goals need not obtain waivers in order to remain eligible for contract awards. This remedial approach is widely perceived as ineffective.
3. ***M/WBE Set Asides.*** Certain prime contracts are reserved exclusively for bidding by certified M/WBE prime contractors. The lowest bidding M/WBE firm is awarded the contract. The federal 8(a) program has been the longest standing successful set-aside program. However, such set asides at the state and local government levels have proven to be highly vulnerable to legal attack. Few, if any, remain in the country.
4. ***Joint Venture Incentives.*** Non-minority M/WBE prime contractors are given either bidding preferences or credit towards M/WBE goals in return for agreement to joint venture with one or more M/WBEs. M/WBE contract participation credit is given for that proportion of the joint venture that is owned by the M/WBE. The City of Atlanta has successfully used this model for construction projects such as the Georgia Dome and City Hall in which 50% M/WBE participation has been achieved.
5. ***Price Preferences.*** The bids of M/WBE prime bidders are discounted by a certain percentage (typically between 5% and 10%) for purposes of ranking the lowest responsible bidder. However, if the contract is awarded to the M/WBE, it is awarded at the price actually bid. The U.S. Department of Defense has used this approach in the past. However, this kind of program is frequently criticized for stereotyping M/WBE firms as being more costly and less competitive. It also means that contracts awarded to M/WBE firms will result in the taxpayers paying a premium for goods and services.

6. ***Good Faith Efforts.*** Prime contractors are required to submit documentation of good faith efforts to subcontract with M/WBE firms. In the event that the prime contractors fail to submit such documentation, they are disqualified from bidding for a contract. The lowest responsible bidder that has demonstrated good faith efforts to subcontract to M/WBE firms is awarded the contract.
7. ***Linked Deposit Programs.*** Financial Institutions seeking to hold government deposits are required to participate in lending programs that increase access to capital for M/WBE firms. In the alternative, such institutions are evaluated and ranked based in part upon criteria regarding their lending patterns to M/WBE firms.
8. ***Evaluation Preferences.*** Proposals submitted by M/WBE professional services firms are awarded bonus evaluation points. In the alternative, prime proposals submitted by non-minority professional services firms are given bonus evaluation points on a proportionate basis to the level of participation by M/WBE firms on their team.
9. ***Targeted Solicitation or Bidding Rotation Preference.*** Typically on smaller contracts for which there is somewhat less than open competition required (e.g., only three bids or price quotes are required), the purchasing officer is required to solicit at least one or two M/WBE firms to bid.
10. ***Bonding and Insurance Waivers.*** Bonding and insurance requirements are waived for M/WBE firms only.