



THE CITY OF  
**COLUMBUS**  
ANDREW J. GINTHER, MAYOR

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OFFICE OF DIVERSITY  
AND INCLUSION

Minority and Women-  
Owned Business Enterprise  
& Small Local Business  
Enterprise Program Manual

# Minority and Women-Owned Business Enterprise & Small Local Business Enterprise Program Manual

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## SECTION I: OVERVIEW

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The City of Columbus is committed to ensuring meaningful opportunities for Minority-Owned and Women-Owned Business Enterprises (MBE/WBEs) and Small Local Business Enterprises (SLBEs) to participate in the City's construction, professional services, and goods and services contracts. In furtherance of these goals, the City Council has established, and the Office of Diversity and Inclusion hereby implements, the MBE/WBE Program and the SLBE Programs.

In order to establish a predicate for the MBE/WBE Program, the City commissioned a Disparity Study (Study) in 2017. Mason Tillman Associates, Ltd., a public policy consulting firm based in Oakland, California, conducted the Study, which was completed in 2019. The Study documented statistically significant disparity in the City's award of construction services, professional services, and goods and services contracts to MBE/WBEs at both the prime contract and subcontract levels. The results of the Study provide the factual predicate for the City to establish goals governing the participation of MBE/WBEs in City contracting.

This manual describes the standards that will be followed to address the statistical underutilization of MBE/WBEs in City contracts and provides the guidance needed to implement and maintain the MBE/WBE Program. Additionally, this manual provides the guidance needed to implement and maintain the SLBE Program.

April 2022

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## SECTION II: PROGRAM POLICY

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The Supplier Diversity Policy governs the Minority and Women-owned Business Enterprise and Small Local Business Enterprise Programs (herein referred to as the “Programs”). In implementing and administering this Supplier Diversity Policy, the City of Columbus will take all necessary and reasonable steps to ensure that business enterprises certified as MBE/WBEs shall have an equal opportunity to participate in city contracts. It is the policy of the City to create contracting opportunities for MBE/WBEs and SLBEs in its construction, professional services, and goods and services contracts. The MBE/WBE and SLBE Programs shall ensure that the City’s contracts are awarded in a manner that promotes the economic inclusion of MBE/WBEs and SLBEs. As part of this Supplier Diversity Policy commitment, the City will make every effort to achieve the following objectives:

- Ensure nondiscrimination in the award and administration of contracts
- Create a level playing field on which diverse suppliers can compete fairly for contracts
- Ensure that the Office of Diversity and Inclusion’s MBE/WBE and SLBE Programs are narrowly tailored in accordance with applicable law
- Ensure that only business entities that fully meet eligibility standards are permitted to participate as diverse suppliers
- Help remove barriers to the participation of diverse suppliers in contracts
- Provide opportunity for SLBEs located in the City to participate in a sheltered market as prime contractors on City construction, professional services, and goods and services contracts

Implementation and administration of the MBE/WBE Program is afforded the same priority as compliance with all other legal obligations incurred by the City of Columbus. The Mayor, Director and Chief Diversity Officer of the City of Columbus Office of Diversity and Inclusion, and the Director of Finance and Management are delegated the responsibility to ensure inclusion of MBE/WBEs in the City’s procurement process. Additionally, City Department Directors and their staff will share in the responsibility for making the City’s Supplier Diversity Policy a success.

The City’s Overall MBE/WBE participation goals will be disseminated to the Columbus City Council on an annual basis. The Supplier Diversity Policy shall also be distributed to the business communities that provide or seek to provide services or supplies on City contracts. The City of Columbus is committed to the Supplier Diversity Policy and shall take all reasonable steps to ensure achievement of its goals.

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The Office of Diversity and Inclusion has developed the procedures set forth herein to ensure that the MBE/WBE Program and the SLBE Programs are accurately and effectively implemented throughout all City departments. This manual describes the roles and responsibilities of the Office of Diversity and Inclusion and other City departments and the procedures and requirements for implementing and maintaining the Programs.

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## SECTION III: ROLES AND RESPONSIBILITIES

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- A. LEGISLATURE** – The City Council shall have oversight for ensuring that the goals and objectives of the MBE/WBE Program and SLBE Programs are met. The Council shall also receive annual MBE/WBE reports prepared by the Office of Diversity and Inclusion.
- B. LEADERSHIP** – The Administration shall take an active and positive role in building a culture for the City to effectively implement and maintain these Programs. The Administration shall:
1. Actively review the results of the performance of the MBE/WBE Program and SLBE Program with internal personnel on a periodic basis.
  2. Include achievement of the MBE/WBE Program objectives in the individual job performance evaluation of City Department Directors and key personnel with contracting and procurement responsibility for construction, professional services, and goods and services purchases.
  3. Articulate in written and verbal communication, internally and externally, the City's interest and development in MBE/WBE and SLBE procurement.
  4. Issue periodic reports on the effectiveness of the MBE/WBE Program and SLBE Program to the City Council and other internal and external stakeholders.
  5. Engage in other leadership activities to support the MBE/WBE Program and SLBE Program.
- C. ADVISORY** – The Office of Diversity and Inclusion Business Advisory Council shall provide guidance, review, and recommendations to implement the Programs. The Advisory Council will make recommendations to the Administration and City Council to enhance the MBE/WBE Program and SLBE Program in the following areas:
1. Increase access to procurement and contracting opportunities for MBE/WBEs and SLBEs.
  2. Propose initiatives, staff recommendations, and policies that impact MBE/WBE and SLBE participation.
  3. Improve the notification process regarding prospective procurement and contract opportunities for MBE/WBEs and SLBEs.

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4. The committee members should be appointed for two-year terms with an optional one-year renewal. The terms should be staggered. The members should be business owners and executives of business associations representing MBE/WBEs. The committee should meet at an interval determined by the Director of the Office of Diversity and Inclusion and shall provide guidance, review and recommendations for modification of Office of Diversity and Inclusion supplier diversity programs.

The ODI Advisory Council may be comprised of up to seven members and may be made up of the following:

- (A) The ODI director or her/his designee;
- (B) The procurement manager, or designee, within the Department of Finance and Management;
- (C) Up to three appointed minority-owned and/or women-owned business representatives; or
- (D) Up to three appointed community representatives with an understanding of supplier and workforce diversity.
- (E) The Chairperson of the City Council Small and Minority Business Committee, or her/his representative designated by that appointed city council member.

**D. OFFICE OF DIVERSITY AND INCLUSION** – The Office of Diversity and Inclusion shall have primary responsibility for the administration of the MBE/WBE Program and the SLBE Program. The day-to-day administration of the Programs is designated to the Assistant Director of the Office of Diversity and Inclusion and staff. The Office of Diversity and Inclusion is authorized by Title 39 of the Columbus City Codes to:

1. Establish written procedures, informal guidelines, and forms necessary to effectively implement Program requirements.
2. Monitor compliance with the requirements of the MBE/WBE Program and SLBE Program.
3. Analyze projects to determine subcontracting components and identify potential MBE/WBE subcontractors in consultation with the City Departments' fiscal/design/construction staff and other designated staff with procurement responsibilities.



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4. Review and approve bidder/proposer requests for MBE/WBE proposal credits and bid waivers.
5. Determine whether a bidder/proposer made good faith efforts to achieve the MBE/WBE subcontract goal.
6. Analyze and determine contracts eligible for inclusion in the SLBE Sheltered Market Program, in consultation with designated Department staff with procurement responsibilities.
7. Evaluate departments' requests for MBE/WBE waivers and make final determinations to grant or deny the waiver requests.
8. Serve as the point of contact and source of information for potential bidders and provide, upon request, the names and contact information of certified MBE/WBEs to reinforce and support outreach efforts by potential bidders.
9. Manage the certification of MBE/WBEs and SLBEs.
10. Develop and implement outreach to MBE/WBEs and SLBEs and provide technical assistance to assist the businesses in gaining the capacity to compete successfully for City contracting opportunities.
11. Track and report the effectiveness of the MBE/WBE Program and analyze MBE/WBE prime and subcontract utilization data maintained in the City's Compliance Tracking and Monitoring System.
12. Produce quarterly reports quantifying MBE/WBE and SLBE utilization on City contracts, contracts awarded based on good faith effort, and contracts advertised without goals.
13. Provide notices to contractors of noncompliance and investigations of alleged violations of the MBE/WBE Program.
14. Participate in pre-solicitation planning and design review meetings, to support the establishment of MBE/WBE goals, and identify opportunities for establishing bonding limits and unbundling larger contracts into smaller solicitations for bidding purposes.

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15. Review requests for bids, proposals, and statements of qualifications to ensure the inclusion of the MBE/WBE policy and procedures and to remove artificial barriers to MBE/WBE participation.
  16. Promote the MBE/WBE Program and SLBE Programs and their accomplishments through innovative initiatives, such as recognition programs and awards, annual reports, and newsletters.
  17. Train City employees on the procedures and requirements of the MBE/WBE Program and SLBE Programs.
- E. CITY DEPARTMENTS** – All City departments with the authority to award City contracts are responsible for promoting, supporting, monitoring, and assisting the implementation of the MBE/WBE Program and SLBE Programs policies and administrative procedures. All departments shall be accountable for exercising the appropriate functions to implement the goals and objectives of the MBE/WBE Program and SLBE Program. Each department director or designee shall be accountable for achieving the MBE/WBE Program goals and shall continually review all aspects of the Program’s operations to ensure that the objectives and requirements are being attained. The responsibilities shall include:
1. Ensure formal requests for bids and proposals are submitted to Vendor Services for publication at least twenty-one (21) business days prior to the submission due date, unless waived by the Director of Finance and Management.
  2. Send notices of advertisement to the Office of Diversity and Inclusion at least ten (10) business days before the publication date.
  3. Publish the advertisement on digital media platforms and utilize the services of minority/women community organizations, MBE/WBE contractor groups, MBE/WBE business assistance centers, and other organizations, when feasible.
  4. Incorporate the MBE/WBE and SLBE Program requirements in the department’s contract solicitations.
  5. Evaluate contracting opportunities and unbundle items of work to create reasonable opportunities for MBE/WBEs and SLBEs.
  6. Establish guidelines to ensure that a notice to proceed is not issued until letters of intent are executed by the listed MBE/WBE(s).

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7. Ensure all required MBE/WBE and SLBE utilization data and documentation are submitted to the Office of Diversity and Inclusion on a monthly basis.
8. Develop annually a contract forecast estimating the number, approximate contract value, type of contract, and estimated solicitation date for contracts to be awarded in the upcoming year.
9. Submit an annual report to the Office of Diversity and Inclusion before July 1<sup>st</sup> that includes the steps needed to achieve the MBE/WBE utilization goals in the forecast.
10. Incorporate into the job performance evaluation criteria, specific criteria to measure efforts of responsible personnel for achieving the contracting and procurement of the MBE/WBE Program objectives.

The Department of Finance and Management shall participate in drafting policies and procedures to support the MBE/WBE Program and SLBE Program. The Office of the City Attorney shall provide any necessary legal assistance to ensure that the MBE/WBE Program and SLBE Program policies and administrative procedures meet legal standards.

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## SECTION IV: DEFINITIONS

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The following words, terms, and phrases, when used in the MBE/WBE Program and/or SLBE Program, shall have the meanings ascribed to them in this section.

1. **Availability** means the calculated estimate of ready, willing, and able MBE/WBEs in a particular trade or profession.
2. **Bid** means a written quotation, proposal, or offer by a vendor or contractor to perform or provide labor, materials, equipment, supplies, or services to the City for a price submitted in response to a solicitation, bid, or request for proposal/qualifications issued by the City.
3. **Bidder/Proposer** means any business enterprise, including a joint venture, responding to a solicitation issued by the City of Columbus.
4. **Bid Discount** means a reduction in the bid amount on construction and goods and services procurements for evaluation purposes only. The maximum discount shall not exceed \$50,000. The discounted bid amount is used in the evaluation process to award the contract to the lowest, responsive, responsible, and best bidder. The bid discount is applied to eligible certified MBE/WBE bidders.
5. **Business Enterprise** means a corporation, partnership, sole proprietorship, professional association, or any other legal entity that is properly licensed and/or otherwise authorized to do business in the state of Ohio and is organized to engage in lawful commercial transactions that are directly or indirectly involved in providing goods and/or services to the City with the anticipated outcome of earning a profit.
6. **Commercially Useful Function** means work performed by an MBE/WBE or SLBE for which the MBE/WBE/SLBE is responsible for the execution of the contracted work and is performing its responsibilities by directly delivering, managing, and supervising the work involved. With respect to materials and supplies used on the contract, the MBE/WBE must negotiate the price, determine the quality and quantity, order the goods, supplies, and/or materials, and install and pay for the materials. An MBE/WBE that stocks or maintains sufficient quantities of supplies in direct inventory held for sale or resale to cover anticipated future demands for the supplies is performing a commercially useful function.
7. **Compliance Tracking and Monitoring System** is the Office of Diversity and Inclusion's database system used to record contract information needed to manage the MBE/WBE

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Program. Departments are required to record their prime and subcontract awards and payments in the application.

8. **Construction**, as it relates to public improvement, includes the following:
  - i. The construction of new buildings and structures, including site preparation.
  - ii. Additions, alterations, conversions, expansions, reconstruction, renovations, rehabilitations, and major replacements of a building or structure, including, but not limited to, the complete replacement of a roof.
  - iii. Major mechanical and electrical system installations and upgrades, including, but not limited to, plumbing, heating and central air conditioning, boilers, ventilation systems, fire suppression systems, pump systems, electrical work, elevators, escalators, and other similar building services that are built into the facility.
  - iv. New, fixed outside structures or facilities, including, but not limited to, sidewalks and trails, highways and streets, bridges, parking lots, utility connections, outdoor lighting, water supply lines, sewers, water and signal towers, electric light and power distribution and transmission lines, playgrounds and equipment, parks with features, retaining walls, and similar facilities that are built into or fixed to the land, including site preparation.
  - v. Major earthwork for land improvements for parks and recreation fields.
  - vi. Blasting, demolition, dredging, drilling, excavating, and/or shoring.
9. **Contract** means an agreement between the City and a business enterprise to provide or procure labor, materials, equipment, supplies, and services to, for, or on behalf of the City.
10. **Contract Compliance** means that City of Columbus contractors and subcontractors meet the requirements as set forth by state and federal affirmative action and equal employment opportunity (EEO) governing laws, as administered by the Office of Diversity and Inclusion.
11. **Contractor** means any individual or business enterprise that has a contract with the City.
12. **Good Faith Efforts** mean steps taken by a contractor to achieve the MBE/WBE Program goals, as set forth in this MBE/WBE Program Manual, including the required documentation demonstrating a contractor's efforts to meet the MBE/WBE subcontract goal.

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13. **Goods and Services** mean personal property and/or products including, but not limited to, equipment, fuel, leases on real property, printing, insurance, and necessarily associated non-professional services.
14. **Incentive Credit** means a percentage given during the evaluation process to certified MBE/WBE professional services prime consultants who are members of the ethnic and gender groups determined by the City's 2019 Disparity Study to have a statistically significant disparity in the awarding of City contracts or general goods and services contracts. The percentage is applied to counterbalance the competitive disadvantage experienced by these groups. The incentive credits are applied when scoring a Request for Proposals and/or Statement of Qualifications.
15. **Independently Owned, Operated, and Controlled** means the minority or women owners shall:
- Participate in the decisions affecting day-to-day operations of the business enterprise.
  - Ability to function and carry out daily business activities without assistance from the majority partners.
  - Proportionate interest in the capital assets, profits, and losses of the business enterprise.
- In determining if a partnership, corporation, or business enterprise is at least 51% independently owned, operated, and controlled by a minority group member(s) or by women, including determining if such owners have at least 51% control, the City will use discretion in weighing the foregoing factors as well as any other factor that in the City's judgement affects independent ownership and control.
16. **Informal Solicitation** means a competitive bid, price quotation, or proposal for goods or services valued at \$50,000 or less that does not require a formal sealed bid or proposal, public opening, or other formal procedures. In the informal solicitation process, the contracting department is required to solicit participation from no less than three (3) bidders, including at least one MBE/WBE-certified firm.
17. **Joint Venture** means the association of two or more business enterprises, when one or more is an MBE/WBE, established to carry on a single business activity that is limited in scope and duration. To constitute a joint venture, the MBE/WBE must be responsible for a distinct, clearly defined portion of the contract work, and share skills, knowledge,

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control, management, risks, costs, and profits of the joint venture that are commensurate with its ownership interest.

18. **Manufacturer** means a business enterprise that operates or maintains a factory or establishment that produces the materials or supplies obtained by the contractor.
19. **MBE/WBE Goal Waiver** means the Office of Diversity and Inclusion's approval to reduce or eliminate the obligation to comply with the MBE/WBE goal set forth in the solicitation.
20. **MBE/WBE Subcontract Goal** means the percentage of the prime contract to be subcontracted to eligible MBE/WBEs as set by the Office of Diversity and Inclusion. The MBE/WBE goal is to be achieved at the time of bid opening or a good faith effort must be made and documented.
21. **Minority Business Enterprise (MBE)** means a business enterprise that is at least 51% independently owned, operated, and controlled by a person or persons who are minority group members. Minority group members are African Americans, Native Americans, Hispanic Americans, and Asian Americans who are United States citizens, including naturalized citizens of the United States.
22. **Participation** means the percent of MBE/WBE utilization expressed in terms of total dollar value, number of contracts, and individual and overall percentage of City dollars spent with MBE/WBE- and SLBE-certified firms at both the individual contract level and the overall aggregate level across multiple contracts let by the City.
23. **Professional Services** mean services usually requiring advanced training and/or a significant degree of expertise, and often requiring official certification or authorization by the state to render the service. For example, professional services include services rendered by architects, attorneys, certified public accountants, financial consultants, city and regional planners, management consultants, and professional engineers.
24. **Public Improvement.** All buildings, roads, streets, alleys, sewers, ditches, sewage disposal plants, water works, and all other structures or works constructed by the city of Columbus or by any person or business entity who, pursuant to a contract with the city of Columbus, constructs any structure or works for the city of Columbus. For the purposes of this definition, "City of Columbus" means any public official of the city of Columbus authorized to enter into contract for the construction of a public improvement or to construct the same by the direct employment of labor, or any entity

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supported in whole or in part by funds from the city of Columbus and shall apply to such entities' expenditures made in whole or in part from such public funds.

25. **Small Local Business Enterprise (SLBE)** means a business enterprise that: (1) is a for-profit small local business concern that is not a subsidiary of another business and is independently owned, operated, and controlled, (2) is headquartered and domiciled in the City of Columbus, and (3) has average gross annual receipts in the prior three fiscal years that do not exceed \$1,000,000. If a business has not existed for three years, the employment and gross annual receipts will be based on the annual average over the life of the business.
26. **Subcontractor** means any business enterprise that performs any portion of work on a City project that is under contract with an entity other than the City.
27. **Supplier** means a business enterprise that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of a contract are bought, stocked, and regularly sold to the public in the usual course of business. The business must also be the owner's principal business, operated in its own name, and selling the products being procured by the City.
28. **Supplier Diversity Program Compliance** means the sufficient implementation of the specific diversity and inclusion program requirements, as delineated in the contract.
29. **Supplier Diversity Program Compliance Monitoring** means the oversight conducted by the Office of Diversity and Inclusion and contracting staff of the relevant City department to ensure that the contractor is in compliance with the MBE/WBE Program rules.
30. **Trucking Company** means a business enterprise that owns and operates at least one licensed, insured, and operational truck for transporting goods.
31. **Universal Term Contract** means an agreement authorized by ordinance of the City Council and established by the Director of Finance and Management or designee for the contractor to sell an unspecified amount of goods or services without additional competition at an agreed upon rate or price schedule for a specified time period.
32. **Women-owned Business Enterprise (WBE)** means a business enterprise that is at least 51% owned, operated, and independently controlled by a female or group of females who are United States citizens, including naturalized citizens of the United States.



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## SECTION V: PROGRAM CERTIFICATION REQUIREMENTS

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The MBE/WBE Program and SLBE Program have established eligibility and certification requirements.

### A. MBE/WBE ELIGIBILITY REQUIREMENTS

1. **Minority Business Enterprise Requirements** – The business enterprise must be at least 51% owned, operated, and independently controlled by a U.S. citizen, including naturalized citizens of the U.S., who are African American, Native American, Hispanic American, or Asian American.
2. **Women Business Enterprise Requirements** – The business enterprise must be at least 51% owned, operated, and independently controlled by a woman who is a United States citizen or a naturalized citizen of the United States.
3. **Business Residency Requirements** – The business enterprise must be headquartered inside the geographic boundaries of Franklin County, Ohio and possess all licenses and permits required by law to perform the scope of work within the work classification(s) requested for certification. The business enterprise must have been in operation for a minimum of six (6) months prior to applying for MBE/WBE certification.

### B. MBE/WBE CERTIFICATION REQUIREMENTS

1. A business enterprise will be certified as an MBE/WBE upon its submission of a complete MBE/WBE certification application, with the required supporting documentation that is determined by the Office of Diversity and Inclusion to meet the MBE/WBE eligibility criteria.
2. If requested by the Office of Diversity and Inclusion, the applicant must provide any and all materials and information necessary to demonstrate ownership and active participation in the control, operation, and management of the business enterprise.
3. The Office of Diversity and Inclusion will review and evaluate applications and supporting documentation, and will approve an application based on the following factors:
  - a. Applicant meets the MBE/WBE eligibility criteria
  - b. Application is satisfactorily completed
  - c. Application contains accurate and complete information required to make a certification determination during the certification process

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- d. Applicant has provided materials or information requested by the Director
4. The Office of Diversity and Inclusion will make a certification determination within thirty (30) days after the date the City receives a satisfactorily completed application from the applicant. If certification is granted, the Office of Diversity and Inclusion shall issue a certificate that will be valid for two years from the date of issuance. If certification is denied, the Director will notify the applicant in writing and specify the reason(s) for denial.
5. The City will not certify based solely upon another governmental agency's MBE/WBE certification. However, the Office of Diversity and Inclusion may provide rules, regulations, and other provisions for an expedited certification process when the business enterprise has a current certification from an agency/organization recognized by the Office of Diversity and Inclusion. MBE Certification by the State of Ohio will be accepted as evidence that the applicant is a member of the minority group indicated on the certification and an owner of at least fifty-one per cent of the business, including corporate stock if a corporation, and has control over the management and day-to-day operations of the business and an interest in the capital, assets, and profits and losses of the business proportionate to the individual's percentage of ownership. WBE Certification by the State of Ohio will be accepted as evidence that the applicant is a woman, that the individual owns and controls the individual's business, and that the individual has owned the individual's business for at least one year.

The Office of Diversity and Inclusion shall also provide the following:

- i. A comprehensive certification system that is regularly updated and an online listing of certified business enterprises classified into specific construction trades and lines of business for goods, services, and construction contracted by the City
  - ii. Annual update of the business enterprise's continued eligibility to participate in the program
  - iii. Recertification of the businesses at least every two (2) years, upon compliance with the re-certification requirements
  - iv. Random on-site visits to verify ownership, control, and compliance with certification requirements
6. MBE/WBEs in good standing may apply for re-certification no sooner than sixty (60) days prior to the expiration of their MBE/WBE certificate. Failure of an MBE/WBE to seek re-certification by filing the necessary forms required by the Office of Diversity and Inclusion within 60 days of expiration of its certificate shall result in automatic decertification.

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7. The Office of Diversity and Inclusion may suspend an MBE/WBE's certification if the business fails to maintain any of the eligibility requirements.
8. The Office of Diversity and Inclusion may decertify any previously certified MBE/WBE upon a final determination that the business enterprise is no longer satisfying the certification requirements. Any decertified MBE/WBE may appeal the determination of the Office of Diversity and Inclusion in accordance with the appeal procedures.

## C. MBE/WBE CERTIFICATION APPEAL PROCESS

1. **Appeal of Certification Denial or Suspension** – Applicants who are determined to be ineligible shall receive a letter from the Office of Diversity and Inclusion explaining the basis for the certification denial, citing applicable rules. The Office of Diversity and Inclusion shall notify the applicant by overnight mail with required signature and provide instructions on the right to appeal.
2. **Timeliness of Appeal** – An applicant who chooses to appeal a certification denial or suspension shall apply in writing to the Office of Diversity and Inclusion via postal or electronic mail no later than thirty (30) days from the date of the notice of denial. An acknowledgement of receipt shall be provided to the appellant applicant.
3. **Contents of Appeal** – The appeal shall minimally contain information concerning why the appellant's denial should be reversed and any additional documentation the applicant considers pertinent to the appeal.
4. **Processing of Appeal** – An administrative review will be conducted by the Director of the Office of Diversity and Inclusion. A denial that is upheld by the Director of the Office of Diversity and Inclusion shall be heard by an independent hearing officer. The hearing officer shall schedule and provide the appellant and the Office of Diversity and Inclusion the date, time, and location of the hearing. The hearing will be scheduled within thirty (30) days of receipt of the notice of appeal by the Office of Diversity and Inclusion but may be postponed to a later date at the request of the parties. The appellant shall incur no cost to have a hearing.
5. **Determination of Appeal** – If the applicant's appeal is sustained, an MBE/WBE certificate shall be issued to the applicant. The decision issued by the hearing officer is deemed final and subject to the right of further appeal, as may be provided by state law at the appellant's expense.

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## **D. MBE/WBE RE-CERTIFICATION**

The criteria for re-certification shall be the same as for MBE/WBE certification. MBE/WBEs seeking re-certification shall submit a completed MBE/WBE Re-certification Form (MBE/WBE-R) to the Office of Diversity and Inclusion no sooner than sixty (60) days prior to the expiration of their MBE/WBE certificate.

Failure of an MBE/WBE to seek re-certification by filing the necessary MBE/WBE-R form with the Office of Diversity and Inclusion within 60 days following the expiration of its certificate shall result in automatic decertification.

The Office of Diversity and Inclusion may conduct site visits or review documents to ensure continued compliance of an MBE/WBE. If there has been a change in operation, ownership, control, activities, or domicile, the MBE/WBE shall notify the Office of Diversity and Inclusion within thirty (30) days of any changes. Such changes must also be included on the application for re-certification. Supporting documentation may be required for continued certification. If the business enterprise fails to submit its application for re-certification and affidavit of continued eligibility to the Office of Diversity and Inclusion, the company will no longer be deemed certified for purposes of participation in the MBE/WBE Program. The applicant denied certification may not reapply for certification until one (1) year from the date of denial of the certification.

## **E. RECOGNIZED CERTIFICATION PROGRAMS**

The Office of Diversity and Inclusion currently recognizes a number of certifying agencies for the purposes of enabling an expedited certification process for MBE/WBEs that currently hold these certifications. The expedited certification process is intended to streamline the collection of supporting documentation required, reducing the amount of paperwork and expediting the City's approval process. The reciprocal certification agencies listed below may be updated as the Office of Diversity and Inclusion seeks to expand its partnerships.

- Women's Business Enterprise Council Ohio River Valley (WBEC-ORV)
- Ohio Minority Supplier Development Council
- State of Ohio MBE and WBE Programs

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## SECTION VI: GOOD FAITH EFFORT REQUIREMENTS

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The MBE/WBE Program has the following good faith effort requirements:

1. **Background** – A prime contractor/consultant who fails to submit a bid/proposal that meets the MBE/WBE subcontract goal for the contract at the time of bid opening/proposal submission must provide sufficient proof of a good faith effort to achieve the goal in the form of a good faith statement or be deemed non-responsive. All steps required to demonstrate a good faith effort must be documented in accordance with the Office of Diversity and Inclusion’s good faith effort criteria. The Office of Diversity and Inclusion is the only authorized reviewer of the good faith requirement criteria. The Office of Diversity and Inclusion shall determine whether the prime contractor has sufficiently demonstrated that a good faith effort was made to meet the overall subcontract goal based on the good faith effort criteria.
2. **Purpose** – The good faith effort requirements allow a prime contractor who fails to meet the subcontract goal to demonstrate that a bona fide effort was made to meet the goal. If the Office of Diversity and Inclusion determines a good faith effort was not made, the contractor’s bid, proposal, or statement of qualification will be deemed non-responsive and removed from further consideration for an award.
3. **Requirements** – The good faith effort criteria consists of seven (7) factors designed to enable the prime contractor to secure the MBE/WBEs needed to meet the contract goal. Each factor is quantifiable, and the prime contractor must achieve a minimum score of 80 to demonstrate a sufficient good faith effort.
4. The criteria demonstrating a good faith effort, their assigned scores, and the required documentation are as follows (See Table 1):

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**Table 1: Good Faith Effort Criteria**

Criterion	Effort	Documentation
Advertising (5 points)	<p>Publish the advertisement on digital media platforms, including ethnic-focused media publications. Utilize the services of available minority/women community organizations, MBE/WBE contractor groups, MBE/WBE business assistance centers and other organizations, when feasible. Publication shall occur 21 days prior to submission unless the Office of Diversity and Inclusion waives this requirement due to time constraints.</p> <p>Advertisement must be specific to a City of Columbus contract or procurement and not be generic. It must not be a plan holder advertisement provided by the publication.</p> <p>Advertisement must be worded to ensure it does not exclude or limit the number of potential respondents.</p>	Dated copies of the advertisement or an affidavit from the publication must be provided. The advertisement shall include the name and location of the project, location where plans and specifications can be viewed, subcontractor proposal due date, and items of work or specialties being solicited.
Outreach to Identify MBE/WBEs (15 points)	The prime contractor must list the names of the MBE/WBEs, contact information, and date of contact. Copies of correspondence received from subcontractors responding to the outreach or seeking subcontract work must be provided.	To receive the 15 points for outreach to identify MBE/WBEs, the prime contractor must provide a copy of the outreach mechanism used, such as telephone logs, email distribution lists, website postings, social media, and other announcements.

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Criterion	Effort	Documentation
Timely Written Notification (20 points)	<p>The prime contractor must solicit subcontract bids and material quotes from certified MBE/WBEs at least ten (10) business days prior to bid opening, in writing. The written solicitations must invite MBE/WBEs that can perform a commercially useful function, as defined in this manual, to participate in the contract as a subcontractor, or supplier, for specific items of work. The prime contractor's bid must include the following information:</p> <ul style="list-style-type: none"> <li>i. Prime contractor's name, address, telephone number and email address.</li> <li>ii. Project location and description.</li> <li>iii. Solicited items of work to be subcontracted or materials to be purchased, including a specific description of the work involved.</li> <li>iv. Place where bid, plans, and specifications can be reviewed.</li> <li>v. Date and time when MBE/WBE quotes must be received by the contractor.</li> </ul>	<p>To receive 20 points for a timely written notification, the prime contractor must provide written verification of transmission date, including copies of certified mail-return receipts or copies of emails.</p>
Contact Follow-up (15 points)	<p>The prime contractor must demonstrate follow-up efforts, including telephone calls, facsimiles, or emails during normal business hours.</p> <p>The contact must include direct written or oral communication with an executive representative of the MBE/WBE within a reasonable amount of time to allow the prospective subcontractor an opportunity to submit a competitive bid.</p>	<p>To receive 15 points for contact follow-up, the prime contractor must provide:</p> <ol style="list-style-type: none"> <li>1) A list of subcontractors who were contacted whether by phone, fax or email and their contact information, including email addresses, telephone numbers, contact person's name and title, and dates of contact.</li> <li>2) Documented results of that contact, such as a telephone log, email print-out, or automated facsimile journal/facsimile transmittal.</li> </ol>

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Criterion	Effort	Documentation
Items of Work Identification (20 points)	Prime contractors must attempt to break down items of work into smaller projects that MBE/WBEs may find economically feasible to perform. The smaller portions of work must constitute a commercially useful function that could reasonably be expected to produce a level of participation sufficient to meet the goals. Prime contractors must not deny a subcontract to a qualified and competitive MBE/WBE solely because the MBE/WBE cannot perform the entire package unless unbundling would jeopardize scheduling or increase costs by more than five (5) percent.	To receive 20 points for items of work identification, the prime contractor must provide a list of the specific items of work solicited and the eligible MBE/WBEs contacted regarding the specific items of work.
Negotiating in Good Faith (15 points)	Prime contractors must negotiate fairly with interested MBE/WBEs, even if selection of the MBE/WBE would increase costs. A prime contractor shall not unjustifiably reject bids prepared by eligible MBE/WBEs. However, the prime contractor may choose a low bid if two or more bids for the same item of work are received.	To receive 15 points for a good faith negotiation, the prime contractor must provide the name, address, email and telephone numbers of subcontractors contacted to negotiate prices or services, as well as the date and results of each negotiation. If an MBE/WBE bid is rejected because of price, at least two of the lower bids must be provided. The lower bids must be date stamped and include the contractor's name and contact information.
Assistance in Financing, Bonding, Insurance, or Mentoring (10 points)	Prime contractors must document efforts to provide technical assistance to MBE/WBEs in obtaining bonds, lines of credit, or. The prime contractor must not deny a subcontract solely because the certified MBE/WBE cannot obtain a bond. Assistance should be provided to facilitate securing a bond or the subcontract bond requirement should be waived by the City and the subcontractor carried under the prime contractor's bond.	To receive 10 points for offering assistance in financing, bonding, insurance, or mentoring, the prime contractor must provide written statements of the type of assistance offered. The name, contact person, and telephone number of the bonding company or financial institution offering assistance must also be provided.



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For the Request for Statements of Qualifications, Request for Proposal, or Invitation to Bid procurement, the City will provide an explanation of the evaluated criteria, including the rating factors to be used to evaluate, and then select the responsive bidder or proposer.

5. **Roles and Responsibilities** – In determining if a bidder has made adequate good faith efforts, the Office of Diversity and Inclusion must, at its sole discretion, consider any or all of the foregoing efforts. The review of the good faith efforts should assess the documentation required for each factor and quantify each one objectively. Bidders who fail to meet MBE/WBE goals or fail to demonstrate adequate good faith efforts will be deemed non-responsive to the City's solicitation.
6. The Contracting Department will provide the Office of Diversity and Inclusion the good faith effort documentation within 24 hours of the bid, proposal, or statement of qualifications being opened. The Office of Diversity and Inclusion will complete the review within three (3) business days to avoid impeding the evaluation of the responses for the solicitations. The award of the contract requires this authorization from the Office of Diversity and Inclusion.
7. If the prime contractor fails to meet the subcontractor goal or fails to show an adequate good faith effort by providing the necessary documentation and receiving a minimum score of 80 points, the Office of Diversity and Inclusion will notify the contracting department and the Purchasing Office of the Department of Finance and Management that the bid, proposal, or statement of qualification was non-responsive. The contracting department will immediately notify the bidder that the bid or proposal was non-responsive. Otherwise, the approval of the good faith effort will be transmitted to the contracting department and procurement department and/or recorded in Office of Diversity and Inclusion Compliance Tracking and Monitoring System.
8. When the bid or proposal is deemed non-responsive due to a failure to establish good faith efforts, the prime contractor may request a meeting with the contracting department and Office of Diversity and Inclusion within two (2) business days of receiving notice of the inadequacy of the good faith effort.
9. If a meeting is requested, the Office of Diversity and Inclusion shall explain the deficiencies in the good faith effort to the prime contractor. The bidder will be allowed to clarify the original documentation within 48 hours of being provided details relative to the deficiencies in the documentation. The Office of Diversity and Inclusion will not accept new information, documentation, certificates, subcontractors, joint ventures, suppliers, manufacturers, manufacturer's representatives, or brokers to be added to the contract

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or to the original good faith effort documentation, resulting in a material change to the original bid/proposal submission. After the meeting, if the Office of Diversity and Inclusion still finds the bid or proposal to be non-responsive, the decision shall be final.

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## SECTION VII: RACE AND GENDER-SPECIFIC PRIME CONTRACT REMEDIES

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Remedies are offered to address MBE/WBE disparity findings for prime contracts.

### A. PROFESSIONAL SERVICES INCENTIVE CREDIT

1. **Background** – The 2019 Disparity Study documented a statistical disparity in the City’s award of professional services prime contracts to minority and woman-owned businesses in specific ethnicity groups. Given the documented disparity, an incentive credit applied during the evaluation of requests for proposals and statements of qualifications could help to mitigate the disparity. Table 2 identifies the specific groups with disparity.

**Table 1: Disparity Summary: Professional Services Prime Contract Dollars  
January 1, 2012 to December 31, 2015**

Ethnicity/Gender	Professional Services	
	Prime Contracts Valued \$50,000 and Under	Prime Contracts Valued Over \$50,000 to \$420,000
African Americans	<i>Disparity</i>	<i>Disparity</i>
Asian Americans	No Disparity	No Disparity
Hispanic Americans	<i>Disparity</i>	<i>Disparity</i>
Native Americans	No Disparity	No Disparity
Caucasian Females	<i>Disparity</i>	<i>Disparity</i>

2. **Purpose** – An incentive credit of five (5) percent of the total evaluation points used to score the request for proposals and statements of qualifications shall be applied to MBE/WBE prime contractors in ranking the submittals. To be eligible for the incentive credit, the MBE/WBE prime contractor must be certified with the Office of Diversity and Inclusion at the time the requests for proposals and statements of qualifications are received by the City.
3. **Requirements** – To receive the incentive credit, the eligible MBE/WBE must submit with the proposal and statement of qualifications the Incentive Request Form issued by the

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Office of Diversity and Inclusion. The evaluation criteria and the eligibility requirements for the assignment of the incentive credit will be published in all public notices, and in the written request for proposals and statement of qualifications.

4. **Roles and Responsibilities** – The Office of Diversity and Inclusion shall review the request for the incentive credit during the evaluation process. A copy of each MBE/WBE prime contractor’s certification certificate and Incentive Request Form shall be retained and tracked by the contracting department. The evaluation documentation must include the Office of Diversity and Inclusion’s assignment of the five (5) percent incentive credit to the eligible MBE/WBE prime contractors.

## B. CONSTRUCTION AND GOODS AND SERVICES BID DISCOUNTS

1. **Background** – The 2019 Disparity Study documented a statistically significant disparity in the City’s award of construction and goods and service prime contracts to minority and woman-owned businesses when the selection was based on a low bid. Given the documented disparity, a bid discount applied during the ranking of the bids could mitigate the disparity.
2. **Purpose** – To offset the effects of discrimination manifested in the higher cost of doing business experienced by MBE/WBEs, a bid discount shall be applied to the MBE/WBE prime contractor’s bid during the bid ranking process. The bid discount shall be five (5) percent of the bid amount. The maximum discount shall not exceed \$50,000. The contract amount shall be the full value of the bid. To be eligible for the bid discount, the MBE/WBE prime contractor must be certified with the Office of Diversity and Inclusion at the time the bid is received by the City.
3. **Requirements** – The Bid/Incentive Request Form must be included with the bid. The eligibility criteria for the prime bid discount will be published in all public notices and in the written request for bids.
4. **Roles and Responsibilities** – The application of the bid discount shall be determined by the Office of Diversity and Inclusion upon review of the request form. A copy of each MBE/WBE prime contractor’s Bid/Incentive Request Form must be provided to the Office of Diversity and Inclusion within 24 hours of the date the bids are opened. The Office of Diversity and Inclusion shall ensure that the bid discount is applied during the bid ranking process on all construction and goods and other services prime contracts when the prime contractor is an eligible MBE/WBE. The evaluation documentation must include the Office of Diversity and Inclusion’s assignment of the five (5) percent bid discount when the prime contractor is a certified MBE/WBE.

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## C. BID DISCOUNTS AND INCENTIVE CREDITS FOR MBE/WBE JOINT VENTURES

1. **Background** – Joint ventures allow MBE/WBEs to be more competitive by creating a business relationship with another MBE/WBE or non-MBE/WBE. The bid discount or incentive credits shall be allowed for certified joint ventures.
2. **Purpose** – To facilitate more MBE/WBEs bidding as prime contractors, a construction business that is a certified joint venture shall receive the five (5) percent bid discount available to eligible MBE/WBE construction prime contractors. A prime professional services business partnership that is a certified joint venture shall receive the five (5) incentive credits available to eligible MBE/WBE prime consultants.
3. **Requirements** – To be eligible for the bid discount or incentive credit, the joint venture must be certified by the Office of Diversity and Inclusion at the time the submittal is due. All joint venture partners must perform a commercially useful function. The MBE/WBE joint venture partner must be certified in the trade, professional service, or in the provision of the goods or services that will be utilized in the performance of the prime contract. The work must be similar to the type of work the MBE/WBE performs in the normal course of its business. The term of the joint venture agreement must last for the duration of the contract. The Office of Diversity and Inclusion will verify the eligibility of the joint venture to receive either the bid discount or incentive credit.
4. **Roles and Responsibilities** – The Office of Diversity and Inclusion shall determine if the joint venture is eligible for the bid discount or incentive credit. The department shall submit the MBE/WBE Bid Discount/Incentive Credit Form and joint venture certification certificate to the Office of Diversity and Inclusion on the day that the bid, proposal, or statement of qualifications are opened. The Office of Diversity and Inclusion shall review the required documents and certify the application of the bid discount or incentive credit during the evaluation process. When the joint venture is an eligible MBE/WBE, the Office of Diversity and Inclusion shall ensure that the bid discount or incentive credit is applied during the evaluation process.

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## SECTION VIII: OVERALL MBE/WBE SUBCONTRACT GOALS

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1. **Background** – The Office of Diversity and Inclusion will establish an overall MBE/WBE goal. The overall goal will be achieved in the award of subcontracts on construction and professional services prime contracts to all MBE and WBE certified firms in the City of Columbus Office of Diversity and Inclusion certified directory.
2. **Requirements** – The overall MBE and WBE goals were derived from the subcontract disparity documented in the 2019 Disparity Study. The overall MBE goal is 25 percent representing 19 percent for construction and 6 percent for professional services. The overall WBE goal is 19 percent representing 11 percent for construction and 8 percent for professional services. The overall MBE and WBE goals will be achieved annually in the award of construction and professional service subcontracts.
3. **Roles and Responsibilities** – The Office of Diversity and Inclusion will be responsible for reviewing the overall MBE and WBE subcontract goals annually.

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## SECTION IX: MBE/WBE SUBCONTRACT-SPECIFIC GOAL SETTING

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1. **Background** – The Office of Diversity and Inclusion may set MBE/WBE subcontracting goals on all contracts of \$100,000 and greater, unless the Director of Diversity and Inclusion considers it expedient to not set a subcontract goal, or in case of emergency. Any MBE/WBE certified by the Office of Diversity and Inclusion shall be eligible to count toward subcontracting goals on City contracts. The goal setting module in the Tracking and Monitoring System will be used to set the contract-specific goals.
2. **Funding Source** – The Office of Diversity and Inclusion may establish subcontracting goals on any City of Columbus funded projects, including those projects funded in whole or in part by state and/or federal grants and loans to the extent that the terms of said state and/or federal grants/loans allow for City subcontracting goal setting. In the absence of conflicting federal or state grant/loan provisions, MBE/WBE contract-specific goals are applicable to: (i) City-funded contracts, excluding not-for-profit procurements and (ii) City blended funds contracts that include state and/or federal funds not otherwise subject to state/federal Disadvantaged Business Enterprise goals.
3. **MBE/WBE Waivers** – Waivers shall only be granted if the contractor has provided a documented good faith effort, as required by Section VII above. An MBE/WBE goal waiver is provided during the bid or proposal review process when the good faith effort is approved by the Office of Diversity and Inclusion to meet the MBE/WBE goal. If the Office of Diversity and Inclusion determines that an MBE/WBE waiver is supported by the good faith effort, the contracting department will be notified of the approved MBE/WBE waiver during the bid ranking and the proposal evaluation process. Before authorizing an MBE/WBE waiver, the Office of Diversity and Inclusion must first determine if there are certified MBE/WBEs available to meet the goals, or if other bidders or proposers met the goals.

For both professional services and construction subcontract goal setting, the following factors must be considered:

- i. number and type of contractors listed in previous contracts of similar scope
- ii. relevant availability data for MBE/WBEs and non-MBE/WBEs that perform the items of work or provide the goods specified in the prime contract
- iii. total dollar value and percentage of the subcontract work required to perform the prime contract

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4. **Requirements** – To set MBE/WBE contract-specific subcontract goals, the Office of Diversity and Inclusion shall work with the contracting department to establish the prime contract scope of services, value of each potential subcontracting opportunity, and prior subcontracting on the same or similar prime contract scope of work. If it is determined that the contract will not have subcontracting opportunities or no MBE/WBE availability exists to provide the goods or services required by the potential subcontracts, the contract shall not be assigned an MBE/WBE contract-specific goal.

A) For professional service contract goal setting, the department shall provide the Office of Diversity and Inclusion the following information, no less than 90 days prior to advertising the solicitation:

- prime contract scope of service and standard industrial codes
- estimated percentage for each service or commodity that can be subcontracted
- commodity code and work category for each service or commodity that can be subcontracted
- commodity code and work category for items subcontracted on previously awarded prime contracts with the same scope of work

B) For construction contracts, the departments shall provide the design documents to the Office of Diversity and Inclusion when the design project is no more than 75 percent completed. The design consultant's preliminary specifications will detail the items of work, materials, and supplies, along with the estimated cost for each construction project.

### Considerations:

When determining the goals on a contract, the Office of Diversity and Inclusion shall consider the following:

- A. Contract specifications;
- B. The extent to which the work to be performed can reasonably be segmented for MBEs or WBEs to participate;
- C. The availability in the particular industry classification of MBEs and WBEs that are ready, willing and able to provide the goods, services, and expertise required by the contract;
- D. The level of utilization of MBEs and WBEs in similar past contracts, where available;
- E. The adverse impact on non-MBEs and -WBEs; and
- F. Any other relevant factors.



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1. **Calculating the Contract Specific Goal** – Prior to advertising a contract, the total cost of which is estimated to be \$100,000 or more, the contracting department must submit either a Request for Goal or a Waiver Request to the Office of Diversity and Inclusion. Completing the Request for Goal worksheet requires a detailed listing of each specific work element or bid item in the contract, identified according to its primary NAICS or UNSPSC code. There are several ways to identify each bid item in a prime contract. For example, the engineer’s cost estimate in a construction contract is an excellent source.

The portion of the subcontracting goal to be fulfilled by MBE/WBEs will be determined by an availability analysis. The relative MBE/WBE and non-MBE/WBE availability will be calculated by enumerating the MBE/WBEs and non-MBE/WBEs in the relevant industries. Availability data will be compiled from the Tracking and Monitoring System, the City’s vendor database, and the City’s MBE/WBE certified list. The MBE/WBE goal will be determined by the groups’ percent of the total availability derived from the three sources.

2. **MBE/WBE Goal Setting Module** – The Tracking and Monitoring System captures and reports on awarded contracts and expenditures with certified MBE/WBEs and non-MBE/WBEs. All departments subject to MBE/WBE goals are required to use the System for tracking MBE/WBE and non-MBE/WBE utilization on all prime and subcontracts. The department should record the project name, name of the prime contractor/construction manager, number, award date and amount, scope of work, and industry classification. For each contract with either subcontractors or suppliers, the MBE/WBEs’ and non-MBE/WBEs’ names should be recorded, with their scope of service or type of goods, award amount, and bonding level. Prime contracts without subcontractors should be recorded and the fact noted. This information is the source of the historical data used in goal setting.
3. **Waivers** – A contracting department may request that ODI waive or reduce the contract goals by submitting the reasons for the request in writing before bids are solicited.

#### A. Criteria for Granting

The Office of Diversity and Inclusion may issue a contract goal waiver upon a determination that either:

- i. The reasonable and necessary requirements of the contract render subcontracting or other participation of businesses other than the bidder or proposer infeasible; or
- ii. At least two (2) qualified certified business enterprises capable of providing the goods or services required by the contract are unavailable in Franklin County despite every feasible attempt to locate them.

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## B. Emergency

A contracting department may request the Director of ODI to waive the contract goal requirements if the designated staff with purchasing responsibilities certifies in writing that an emergency exists that:

- i. Requires goods and services to be provided with such an immediacy that the contracting department is unable to comply with these requirements; and
- ii. The contract will require the prospective contractor to make every good faith effort to subcontract to certified MBEs and/or WBEs if subcontracting is feasible.

### Bidder's Pre-Award Request

- i. If a bidder is unable to comply with the contract goals, the bidder may submit a request for a waiver at the time of bid opening.
- ii. The request for a waiver must include documentation that demonstrates the bidder's attempts to meet the good faith efforts.

4. **Roles and Responsibilities** – The Office of Diversity and Inclusion is solely responsible for setting the contract-specific goals and issuing waivers.

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## SECTION X: DETERMINING COMMERCIALY USEFUL FUNCTION

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1. **Background:** To calculate the MBE/WBE subcontract participation, the listed businesses must be certified and perform a commercially useful function. At the time bid proposals are opened, an assessment shall be performed to determine if the eligible MBE/WBE is certified to provide the goods or services listed in the Declaration of Proposed MBE/WBE Utilization Plan. The following conditions shall be considered by the Office of Diversity and Inclusion to determine whether a proposed, certified MBE/WBE is listed to perform a commercially useful function:
  - i. Does the amount of work subcontracted conform to normal industry standards and practices?
  - ii. Does the amount the MBE/WBE is to be paid for the goods or services listed in the Declaration of Proposed MBE/WBE Utilization Plan conform to the portion of work that the business is listed to perform?
  - iii. Is the amount of the MBE/WBE credit claimed consistent with the amount of work to be performed?
  
2. **Requirements** – Normal industry standards and practices are central to evaluating the performance of a commercially useful function. An MBE/WBE performs a commercially useful function when its role is that of a central and critical participant in a transaction, contract, or project, as evidenced by the financial arrangement, management, and staffing. Although an MBE/WBE must perform the work based on normal industry practices, if those practices erode the ability of the MBE/WBE to control its work and remain independent, the practice shall not be considered a commercially useful function. If the MBE/WBE does not perform the total costs of the contract with its own workforce or the portion of the work is inconsistent with industry practices, the MBE/WBE is presumed not to perform a commercially useful function.
  - i. **Ownership** – MBE/WBE ownership shall be real, substantial, and continuing—going beyond *pro forma* titles, participating in the customary responsibilities of ownership, and sharing in the risks and profits commensurate with the ownership interest.
  - ii. **Control** – The criteria that shall be considered to determine if the MBE/WBE is in control of the business shall include:
    - Owner provides supervision of the work.
    - Key staff and personnel are under the control of the MBE/WBE.
    - MBE/WBE is aware of the progress or the performance of the contracted work.

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- Employees are paid by the MBE/WBE.

- iii. **Management** – The MBE/WBE owner must be responsible for the day to day operations either personally or by designating a full-time, skilled, and knowledgeable supervisor employed and paid by the MBE/WBE. The supervisor shall be present on the job site and under the MBE/WBE owner’s direct supervision. However, all operational and managerial decisions shall be made by the MBE/WBE owner consistent with the size, number of projects, and employees of a similar size company in the same industry.

The MBE/WBE shall be responsible for payroll and labor compliance requirements for its employees performing on the contract. The payroll shall be prepared and financed by the MBE/WBE. Any direct or indirect payments by another contractor shall not be allowed. The MBE/WBE shall not subcontract a greater portion of the work than would be expected under normal industry practice for the type of work involved.

- iv. **Equipment** – The MBE/WBE shall have written terms and conditions for leased equipment and the leasing agent shall not be the prime contractor. The lease shall be limited to a short period of time for a specialized piece of equipment to be used at the job site. The operator of the equipment must be an employee of the MBE/WBE unless it is not a generally accepted industry practice. In any event, the operation of the equipment shall be under the control of the MBE/WBE. The MBE/WBE shall operate nonspecialized equipment. Payment for leased equipment shall not be deducted by the prime contractor from the work performed by the MBE/WBE.

3. **Suppliers** – The ownership, control and management provisions shall also apply to the supplier. A supplier must operate under its own name and sell or lease products. The regular supplier shall own, operate, or maintain a store, warehouse, or other establishment in which the materials or supplies are regularly sold or leased in the usual course of business. An entity may be a supplier in such bulk items as petroleum products, steel, cement, gravel, stone, asphalt, or other supplies without owning, operating, or maintaining a place of business as provided herein, provided the person both owns and operates the distribution process to deliver the products. Any supplementation of the supplier’s own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. The MBE/WBE shall sell the product on a routine basis and shall furnish and install materials or supplies to multiple customers to be considered as engaging in normal industry practices as a supplier. In addition, the MBE/WBE material supplier shall: (i) negotiate price, (ii) determine quality and quantity,

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(iii) order materials, and (iv) pay for the materials. The function shall not be limited to simply furnishing the supplies or materials.

The criteria that the Office of Diversity and Inclusion shall consider when determining if the MBE/WBE supplier is performing a commercially useful function shall include:

- Supplies or materials that are paid for by the MBE/WBE and not by the prime contractor, or a two-party check issued by the prime contractor.
  - Supplies or materials delivered to the job site by the MBE/WBE.
  - Name on shipped supplies or materials is that of the MBE/WBE.
  - MBE/WBE controls the delivery method.
  - MBE/WBE has a distribution agreement.
  - Storage lease or drop shipping agreement includes terms showing an ongoing arrangement with the MBE/WBE for the product being procured to multiple customers.
4. **Truckers** – The ownership, control, and management provisions shall also apply to truckers. MBE/WBE truckers shall own and operate at least one licensed, insured, and operational truck. Leased trucks may only be used to supplement a fleet, but the MBE/WBE shall have exclusive use and control of the leased truck(s). Formal written lease agreements shall include the MBE/WBE’s name, list of trucks to be leased by vehicle identification number, and the cost and method of payment. The MBE/WBE shall be responsible for providing the fuel, maintenance, and insurance for all leased trucks. The leased rate and conditions shall meet normal industry practices. The drivers shall be listed on the MBE/WBE’s payroll.
5. **Manufacturers** – The ownership, control, and management provisions shall also apply to manufacturers. MBE/WBE manufacturers shall operate or maintain a factory or establishment that produces the materials, supplies, or equipment required under the contract. The MBE/WBE’s primary function is to manufacture the procured products and control the purchase and quality of the raw materials that are procured and fabricated.
6. **Roles and Responsibilities** – The Office of Diversity and Inclusion will be responsible for verifying the MBE’s and WBE’s performance of a commercially useful function and calculating the MBE/WBE subcontractor participation.

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## PART I: CALCULATING MBE/WBE PARTICIPATION

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### A. CALCULATING MBE/WBE SUBCONTRACTOR PARTICIPATION

1. **Credit for Self-Performance** – A certified MBE or WBE awarded a contract as a prime contractor may count 100% of the dollar value of the work it intends to perform with its own forces toward the applicable contract participation goal. The cost of supplies and materials obtained by the MBE or WBE for the work of the contract, including equipment leased, may be credited toward the goal. The MBE or WBE prime contractor must be certified for the services it intends to self-perform at the time of bid.
2. **Counting a Subcontractor** – A prime contractor is required to either meet the goal set forth in the solicitation or demonstrate a good faith effort to meet the goal. When calculating participation, MBE/WBE subcontractors, suppliers, and vendors listed to perform a commercially useful function must be first-tier through third-tier subcontractors, suppliers, and/or vendors. Payments to the first tier through third-tier MBE/WBE subcontractors/subconsultants for the value of the work performed shall be counted toward the goal, as follows:
  - i. The Office of Diversity and Inclusion shall count the entire amount of a construction or professional services contract that is performed by first-tier through third-tier MBE/WBE subcontractors in determining the goal attainment.
  - ii. The Office of Diversity and Inclusion shall count the cost of supplies and materials provided by the MBE/WBE contractor for the work of the contract, including supplies purchased or equipment leased by the MBE/WBE, except supplies and equipment that the MBE/WBE purchases or leases from the prime contractor or its affiliates.
  - iii. The Office of Diversity and Inclusion shall count the fees or commissions charged by a first-tier through third-tier MBE/WBE for services such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance contract toward MBE/WBE goals, provided the fee was determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  - iv. The MBE/WBE must also provide a commercially useful function.
3. **Counting the Joint Venture Participation** – When an MBE/WBE is a joint venture partner, the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the MBE/WBE performs with its own forces shall count toward the MBE/WBE goals, as set forth in Section VII C above.

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4. **Counting the Participation of Suppliers** – If the materials or supplies are purchased from an MBE/WBE supplier, the cost of the materials or supplies from the certified MBE/WBE supplier will be counted toward the MBE/WBE goal.
5. **Counting the Participation of Manufacturers** – If the materials or supplies are obtained from an MBE/WBE manufacturer, the Office of Diversity and Inclusion shall count 100% of the cost of the materials or supplies toward MBE/WBE goals.
6. **Counting the Participation of Truckers** – 100% of the amount contracted for trucking services shall be counted toward MBE/WBE goals, unless the MBE/WBE is a broker. If the trucker is a broker, 60% of the cost of the trucking will be counted toward the MBE/WBE goal.
7. **Counting the MBE/WBE Participation When the MBE/WBE Certification Expires** – The Office of Diversity and Inclusion shall count the dollar amount of work performed under a contract with an MBE/WBE whose certification was valid at the time of bid/award and whose participation was approved to count toward the subcontracting goals set by the Office of Diversity and Inclusion. If the certification expires during the term of the contract, the MBE/WBE participation may continue to count through the duration of the contract.

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## SECTION XI: REPORTING MBE/WBE PARTICIPATION

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1. **Background** – City departments that award contracts with MBE/WBE goals must submit MBE/WBE utilization reports to the Office of Diversity and Inclusion.
  
2. **Requirement** – The Office of Diversity and Inclusion shall evaluate and track each department's progress in meeting the approved subcontract goals on each contract. The Utilization Reporting Module shall be used to report the fulfillment of the Overall MBE/WBE goal. The Utilization Reporting Module will also be reviewed monthly by the Office of Diversity and Inclusion. The utilization reports shall be generated at the beginning of every quarter. The reports shall be produced on the following schedule:
  - i. Quarter 1 due May 1
  - ii. Quarter 2 due August 1
  - iii. Quarter 3 due November 1
  - iv. Quarter 4 due February 1

Training on the use of the Utilization Reporting Module will be provided by the Office of Diversity and Inclusion.

3. **Roles and Responsibilities** – The Office of Diversity and Inclusion will be responsible for producing timely and verified quarterly reports.



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## SECTION XII: SMALL LOCAL BUSINESS ENTERPRISE PROGRAM

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This section describes the SLBE Program policies.

### A. SMALL LOCAL BUSINESS ENTERPRISE POLICY

1. The City is committed to maximizing contracting opportunities for Small Local Business Enterprises (SLBEs) on construction, professional services, and goods and services contracts for small business enterprises located in the City of Columbus, Ohio. The program includes a sheltered market program and a requirement that all departments take affirmative steps to ensure that small local businesses participate on all City contracts either as prime contractors, subcontractors, or both.
2. **Eligibility Criteria** – For the purpose of the SLBE program, the Office of Diversity and Inclusion is responsible for the certification. Submission of a signed affidavit, stating the applicant meets all the SLBE eligibility criteria, is required. The eligibility criteria are set forth below:
  - i. An independently owned and operated for-profit business concern that is not a subsidiary of another business, is not dominant in its field of operation, and is performing a commercially useful function
  - ii. Headquartered and domiciled in the City of Columbus
  - iii. Established for at least one (1) year
  - iv. Personal net worth of the owner or controlling owners does not exceed \$750,000 or prior three-year adjusted gross income does not exceed \$1,000,000
3. **Location** – The small business located in a commercial office should have a current lease signed at least six (6) months prior to submitting a certification application. If the business has occupied a commercial space in more than one site in the 6 months prior to the certification date, a signed lease for each location shall be required. In the prior 6 months, if the business had its headquarters in a home-based office, the following criteria must be met:
  - i. Home-based businesses should have the owner's primary residence as the business' only location.
  - ii. The business operations should be in a defined area within the residence.

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- iii. Tax returns for both net profit and payroll taxes must be filed with the City of Columbus for no less than two (2) consecutive fiscal years before submitting the SLBE application or for the life of the business.
  - iv. Possession of a current contract compliance registration issued by the Office of Diversity and Inclusion.
  - v. A maximum 3-year annual average gross revenue of less than \$1,000,000 or, if the company is less than 3 years old, average annual gross revenue for the life of the company.
4. **SLBE Certification** – Certification will be granted for only the specific areas of work in which the SLBE has been found by the Office of Diversity and Inclusion to have the skills, knowledge, and ability to perform in the field of endeavor in which certification is sought, as defined by normal industry practices, including licensure.

Certification for specific areas of work does not mean the SLBE is prequalified to bid on any City contract, including contracts included in the SLBE program. Certification does not constitute a finding that the SLBE meets the requirements that the City may have for contract award. In addition, the City shall certify the eligibility of joint ventures for which the joint venture partners are SLBEs.

5. **SLBE Re-certification** – Certification as an SLBE expires two years after being granted. Applicants determined eligible to participate in the SLBE Program shall submit a completed re-certification form (SLBE-R) every two years to the Office of Diversity and Inclusion for review and continued certification.

Failure of an SLBE to seek re-certification by filing the necessary documentation with the Office of Diversity and Inclusion within 90 days of notification of the expiration of its certification shall result in automatic de-certification, until such time that the City is able to recertify the SLBE pursuant to its normal application process.

It is the responsibility of the SLBE to notify the Office of Diversity and Inclusion of any change in its circumstances affecting its continued eligibility for the SLBE Program. Failure to do so within a reasonable time of the change may result in the firm's de-certification.

The Director shall decertify a firm that does not continuously meet the eligibility criteria. Certification may be revoked when the Director finds that the SLBE:

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- i. Ceases to meet the certification requirements to be an SLBE.
  - ii. Provided materially false or misleading information to the City in seeking certification.
  - iii. Fails to perform a Commercially Useful Function under a contract, or if it allows its SLBE status to be fraudulently used for the benefit of a non-SLBE firm, or the owners of a non-SLBE firm provide the non-SLBE firm or firm owners benefits from the Program for which the non-SLBE firm and its owners would not otherwise be entitled.
6. **SLBE Certification Appeal Process** – Applicants who are determined to be ineligible shall receive a letter from the Office of Diversity and Inclusion explaining the basis for the certification denial, citing applicable rules. The Office of Diversity and Inclusion shall notify the applicant by certified mail and provide instructions on the right to appeal.

An applicant who chooses to appeal a certification denial shall do so in writing to the Office of Diversity and Inclusion via postal or electronic mail no later than thirty (30) days from the date of the notice of denial. An acknowledgement of receipt shall be provided to the appellant applicant.

The appeal shall contain information concerning the basis for a reversal of the appellant's denial and any additional documentation that the applicant considers pertinent to the appeal.

An administrative review will be conducted by the Director of the Office of Diversity and Inclusion. A denial that is upheld by the Director of the Office of Diversity and Inclusion shall be heard by an independent hearing officer. The hearing officer shall schedule and provide the appellant and the Office of Diversity and Inclusion notice of the date, time, and location of the hearing. The hearing will be scheduled within thirty (30) days of receipt of the notice of the appeal by the Office of Diversity and Inclusion but may be postponed to a later date at the request of the parties.

If the applicant's appeal is sustained, an SLBE certificate shall be issued to the applicant. The decision issued by the hearing officer is deemed final, subject to the right of further appeal as may be provided by state law.

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## B. SLBE SHELTERED MARKET PROGRAM

1. **Purpose** – The Sheltered Market Program will provide access for SLBEs to perform as prime contractors by limiting competition to similarly situated small businesses. All departments shall identify sheltered market contracts during the annual budget process and submit semi-annual projections to the Offices of Diversity and Inclusion and Finance and Management. All new formal construction projects valued at less than \$100,000 will be set aside for SLBEs.
2. **Contracts for the Sheltered Market Program** – A solicitation with an estimated value of less than \$100,000 shall be included within the sheltered market program if it is a contract for:
  - i. construction and repair work involving the expenditure of City of Columbus funds less than \$100,000
  - ii. architectural, engineering, or surveying services when the estimated contract price is less than \$100,000
  - iii. goods and services, with an estimated expenditure of less than \$100,000
  - iv. The Finance Director and ODI Director have, in their discretion, designated the contract for the SLBE Program.
  - v. The Procurement Manager has found a sufficient number, but not fewer than two certified SLBEs, offering the specific area of work and may be available to bid on the proposed contract.
3. **Roles and Responsibilities** – Contracting departments will annually identify contracts valued at less than \$100,000 to be sheltered for competition among SLBEs. The list of contracting opportunities will be provided to the Office of Diversity and Inclusion. In determining the contract opportunities to set aside for the Sheltered Market Program, the departments will consider the capabilities of the certified SLBEs in consultation with the Office of Diversity and Inclusion and the Purchasing Office. The Office of Diversity and Inclusion will at least annually review the prime contracts set aside for the Sheltered Market Program and target outreach to local small businesses that provide the goods and services identified by the departments.
4. **Requirements** – To register for the Sheltered Market Program, the business must be certified as an SLBE. Contracts within the Sheltered Market Program may be awarded on a contract rotation basis. When the contract rotation procurement method is used, SLBEs will be required to submit their hourly rates and mark-up for an advertised list of

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construction or design services. For goods and services, SLBEs will be required to submit their rate sheets. When the contract rotation procurement method is in use for a given industry, qualified businesses will be added to the rotation by industry category, and their services or goods will be requested in rotation.

5. **Contract Award Process** – For all contracts in the Sheltered Market Program, advertising and solicitation procedures specifying that respondents must be certified SLBEs is required. When an advertised solicitation does not yield a response from an SLBE, it will thereafter be advertised without the SLBE requirement. The contract award process for the Sheltered Market Program will include the following:
- i. Each solicitation is distributed to the registered businesses in the relevant industry category.
  - ii. The responses from the businesses are ranked by dollar amount.
  - iii. The user department is provided the ranked list for selection of an eligible business.

When the contract rotation procurement method is used, the process will also include:

- Eligible businesses will be placed on the rotation list according to the date on which they were considered eligible.
- Businesses with the same certification date will be placed on the list alphabetically according to their names.
- New businesses will be placed at the end of the eligibility list.
- Open enrollment periods for eligibility will occur on an annual basis.
- Listed businesses shall provide their hourly rates and percent of markup.

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## SECTION XIII: ADMINISTRATIVE REQUIREMENTS

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The MBE/WBE Program and SLBE Program shall meet the following administrative requirements.

### A. UNBUNDLE LARGE PROCUREMENTS

1. **Background** – Procurement methods that award numerous small work authorizations under a single contract and provide for services over multiple years limit the opportunities for small prime contracts to be awarded to MBE/WBEs and SLBEs. Unbundling these contracts could make more small contracts available to allow MBE/WBEs and SLBEs to perform as prime contractors.
2. **Purpose** – Procurements awarded as single large contracts, universal term contracts (UTCs), and best-value procurements shall be unbundled, when feasible, to create more prime contracting opportunities less than \$100,000 for competition among MBE/WBEs and SLBEs. The City’s construction, professional services, and goods and services contracts awarded as price agreements, best-value procurements, and universal-term contracts shall be considered for unbundling. Construction and design contracts that bundle specialty services—such as planning, environmental, and feasibility studies and preliminary design within a single solicitation for engineering and architectural services—shall also be considered for unbundling.
3. **Requirements** – UTCs, best-value procurements, and large design and construction projects shall be reviewed to determine the projects that can be divided into small prime contracts. Annually, during the budget cycle, the Office of Diversity and Inclusion shall meet with each department to review the funded contracts for unbundling opportunities. Existing UTCs shall be examined annually to determine those that might be divided into multiple contracts by type of trade or specialty, geographic area, or material specifications. In addition, UTCs shall be reviewed to identify task orders that could be awarded as separate small contracts under the Sheltered Market Program. An annual review of task orders issued the previous year shall be used to identify the types of design specialties frequently used by each department and the average size of the task orders. In consultation with the departments, the Office of Diversity and Inclusion will identify the types of multi-year contracts for design and construction services that could be unbundled and solicited as multiple single procurements.
4. **Criteria** – The criteria for unbundling large construction and design services procurements shall consider the number of sites where the work is to be performed and the type of

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work. Construction projects on multiple sites or with items of work that could be contracted directly—such as surveying, signage, landscaping, demolition, and site clearing—shall be reviewed for unbundling into multiple contracts. For example, large design contracts with planning studies, environmental reports, traffic studies, and community engagement research could be unbundled and awarded as separate contracts.

If a requisition meets the requirements for unbundling and the decision is made not to unbundle the solicitation, written justification must be prepared by the user department and submitted to the Office of Diversity and Inclusion for review and approval.

5. **Roles and Responsibilities** – The Office of Diversity and Inclusion and the Finance and Management Department, in consultation with the user departments, shall annually identify the large procurements, UTCs, and best-value procurements that could be unbundled to allow small contractors to bid as prime contractors.

## B. SOLICITATION ADVERTISEMENT REQUIREMENTS

1. **Purpose** – Businesses need ample time to prepare adequate responses to the City’s solicitations. Adequate time is especially important for contractors who are not currently under contract with the City. The seven (7)-day minimum advertisement requirement currently in use is insufficient for a contractor to prepare a response that requires soliciting subcontractors or suppliers or writing a technical proposal.
2. **Solicitation Publication Process** – Publication of a solicitation shall occur at least twenty-one (21) days prior to the submission due date, unless waived by the Director of Finance and Management. All formal contracts shall be published with Vendor Services, consistent with the formal publication requirements. The notice shall also be sent to the Office of Diversity and Inclusion at least ten (10) days before the publication date. In addition to fulfilling the formal publication requirements, the notice shall also be published in ethnic-focused publications.

Given the current widespread use of digital advertising, distribution through digital media channels is essential. Weekly postings shall be distributed to digital channels on the same day the notice is sent to Vendor Services. Digital channels include websites for business trade and professional organizations and technical assistance centers funded by the state and federal government. A current list of digital sources shall be maintained by the Office of Diversity and Inclusion. The list must be updated regularly to reach the maximum number of sources for digital distribution.

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3. **Requirements** – The notice, whether published in print media or digital media, or distributed by Office of Diversity and Inclusion, shall include:
  - i. Name of the contract and bid opening date
  - ii. Point of contact for bidding information
  - iii. Pre-bid conference date, time, and location
  - iv. Deadline for submission of written questions
  - v. MBE/WBE/SLBE subcontracting goals
  - vi. Reference to the Office of Diversity and Inclusion contact for technical assistance
4. **Waiver** – The option for a waiver of the twenty-one (21)-day advertisement requirement will be made available. The Finance and Management Department will review the advertisement waiver request. The user department will notify the Office of Diversity and Inclusion at the time the advertisement waiver request is submitted to the Finance and Management Department.
5. **Review** – The Office of Diversity and Inclusion shall review the notice before it is published to determine that the evaluation specifications for professional services are not unnecessarily restrictive or have the effect of giving an unfair advantage to the incumbent business. If necessary, the Office of Diversity and Inclusion shall advise the user department in writing to modify the solicitation to make it more inclusive.

**Roles and Responsibilities** – The department with responsibility for publishing contract notices for any given contract shall handle publication in both print and digital media. The user department shall also send the notice to the Office of Diversity and Inclusion at least ten (10) days prior to the publication date so that it can be distributed to a customized list of certified MBE/WBE/SLBEs that offer the services and/or goods required to perform either as a prime contractor or subcontractor on the advertised contract opportunity. The Office of Diversity and Inclusion will maintain a list of publication resources targeting the MBE/WBE population.

## C. BOND WAIVERS ON SMALL CONTRACTS

1. **Background** – Access to competitive pricing for surety bonds is not readily available to small businesses. The elimination of the requirement for a payment or performance bond on small construction and service contracts will allow SLBEs to be more competitive, without the City incurring significant exposure to liability.



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2. **Purpose** – Bonding requirements waived for construction and service projects requiring the performance of labor or the furnishing of materials for buildings, structures, or other improvements to real property owned by the City could serve as a significant incentive for small businesses to bid on City projects. The waiver could increase the number of SLBE contractors that are awarded small contracts.

Requirements – Payment and performance bonds on construction contracts with a value less than \$100,000 shall be waived. Service contracts valued less than \$100,000 requiring the performance of labor or the furnishing of materials for buildings, structures, or other improvements to real property owned by the City shall also be waived.

4. **Roles and Responsibilities** – The Office of Diversity and Inclusion, in conjunction with the departments, shall annually identify contracts eligible for the bond waiver.

## D. QUOTES FOR INFORMAL CONTRACTS SECURED FROM SLBEs and MBE/WBEs

1. **Background** – Solicitations for informal contracts for construction and professional services are not required to be advertised. Informal contracts offer an opportunity for SLBEs and MBE/WBEs to participate on City contracts as prime contractors.
2. **Purpose** – To increase the number of SLBE and MBE/WBE businesses awarded informal construction and professional services contracts. The solicitation process used to secure quotes for all informal construction and professional services contract opportunities shall include at least one MBE, one WBE, and one SLBE, subject to availability.
3. **Requirements** - At least one MBE/WBE/SLBE must be contacted when soliciting quotes for every informal contract. The industry classification of the MBE/WBEs and SLBEs contacted must be relevant to the scope of work set forth in the solicitation. The quote must be solicited no less than five (5) business days from its due date. If the MBE/WBE Directory does not list at least one MBE/WBE/SLBE with the relevant industry classification, the contracting department shall contact the Office of Diversity and Inclusion no less than seven (7) business days before the quotes are due for assistance in identifying relevant MBE/WBEs and SLBEs. If the minimum number of MBE/WBEs or SLBEs is not identified, the requirement to solicit quotes from at least one MBE/WBE/SLBE shall be waived, and the opportunity will simply be posted in vendor services. When the opportunity is posted, the Office of Diversity and Inclusion may also inform certified MBE/WBEs and SLBEs of the informal contract opportunity using email distribution.

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4. **Roles and Responsibilities** - The user department will coordinate with the Office of Diversity and Inclusion in ample time to allow for a full vetting of the informal opportunity. The Office of Diversity and Inclusion will endeavor to secure early notice of the anticipated informal construction and professional services contracts. The Department of Finance and Management shall submit a quarterly report on advertised Request for Proposals when the City does not receive a response from an MBE, WBE, or SLBE. The Office of Diversity and Inclusion will conduct research to determine if there are MBE/WBEs or SLBEs in the market area that provide the good or service solicited in the Request for Proposal to enhance the goal-setting process and expand its outreach strategies.

## E. POST-AWARD DEBRIEFING SERVICES

1. **Background** – A debriefing is a means whereby a contractor who responds to a solicitation can secure information that might inform future requests for proposal or statements of qualifications. All solicitations that are not awarded solely on low bid shall include a debriefing option.
2. **Purpose** – A debriefing session is available to all professional services prime contractors who are unsuccessful in responding to a solicitation for request for proposals or statement of qualifications. The option for a debriefing session will be included in the solicitation and Notice of Award published on the City’s website and sent to unsuccessful contractors prior to contract award. Unsuccessful contractors must submit the request for a debriefing session within thirty (30) days following the contract award. The price of the successful bidder for goods and supplies will be published on the City’s website.
3. **Requirements** – For solicitations for services, the evaluators' scores must include written explanations for the assignment of points to each evaluation criterion. For all other solicitations, the basis for scoring must be defined. The scoring document must be sent to the contractor at least five (5) days before the scheduled debriefing session. The debriefing session shall include the following, if applicable:
  - i. The evaluation of the significant weaknesses or deficiencies in the bidder’s proposal
  - ii. The overall evaluated cost or price (including unit prices) and technical rating of the successful bidder and the debriefed bidder
  - iii. Past performance information
  - iv. A summary of the rationale for the vendor selection
  - v. Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed

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4. **Protected materials** – The debriefing session will not include information regarding the successful bidder that describe: (a) trade secrets, privileged or confidential manufacturing processes, and techniques, (b) cost breakdowns, profit, indirect cost rates, and similar financial information, and (c) names of individuals providing reference information about a bidder's past performance.
5. **Roles and Responsibilities** – The debriefing session must be scheduled by the project manager no more than ten (10) days after the date the request is received. A record of the documents provided and the information discussed at each debriefing session must be maintained by the awarding department as part of the contract file.

## F. BI-ANNUAL REVIEW OF THE MBE/WBE CERTIFIED BUSINESS DIRECTORY

1. **Background** – The MBE/WBE Certified Business Directory lists certified businesses that are eligible to participate in the MBE/WBE Program. The directory is a centralized source of information about the certified businesses that are eligible to participate in the MBE/WBE Program. It contains current and relevant information about a business' industry and capabilities.
2. **Purpose** – The MBE/WBE Certified Business Directory is a reference document of certified businesses for prime contractors seeking MBE/WBE subcontractors, departments seeking MBE/WBE prime contractors for informal procurement, and the Office of Diversity and Inclusion for goal setting and managing the MBE/WBE Program functions. Listed are businesses certified by the Office of Diversity and Inclusion. The Directory shall be searchable and downloadable so the relevant information can be easily extracted and manipulated. Certified SLBEs will also be included in the Certified Business Directory.
3. **Requirements** – The MBE/WBE Certified Business Directory lists the address, telephone number, email, and the types of work a business has been certified to perform. An expanded Certified Business Directory portal will include a number of modules with more detailed information about a business' capacity. A capacity module will profile the business and thus serve as a digital tool for the MBE/WBE and SLBE to market its services to the City and other vendors. A single page capability form will be available for each certified vendor to build a profile that defines the business. The capability form, which the MBE/WBE and SLBE will be able to update, will capture the following company information: core competencies, client services, project experience, products, and testimonials.

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4. **Roles and Responsibilities** – The Office of Diversity and Inclusion will update the Certified Business Directory monthly to ensure that the information is current, adding newly certified MBE/WBEs and SLBEs and removing the MBE/WBEs and SLBEs with expired certifications. Certified businesses will be encouraged to update their profiles as their business services and products change.

To maximize the number of market area MBE/WBEs and SLBEs certified, the Office of Diversity and Inclusion will conduct quarterly promotional campaigns to identify new businesses not previously certified and recapture previously certified businesses. The outreach will be targeted to identify businesses that perform the services or provide the materials and equipment needed to perform the contracts forecasted to be advertised within the following 12-month period. To encourage businesses to certify, the campaign will promote the benefits of certification and the value of a listing in the Certified Business Directory and will describe upcoming contracts.

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## SECTION XIV: MONITORING AND COMPLIANCE

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### A. MONITORING AND COMPLIANCE

1. The City's B2GNOW software system tracks and reports procurement contracts and expenditures with certified MBE/WBEs, SLBEs, and all non-certified businesses. The contract module manages the Office of Diversity and Inclusion's compliance tracking and reporting needs, including MBE/WBE goal types, goal percentages, funding sources, subcontractor awards, and other relevant fields. The contract module stores a large amount of data that can be linked to other City financial management systems that maintain prime contractor and subcontractor records.
2. At any time, with or without notice, the Office of Diversity and Inclusion can monitor the prime contractor, subcontractor, supplier, trucker, and/or vendor performing the contract and make site visits to the vendors' and its MBE/WBE's respective business location.
3. The Office of Diversity and Inclusion will conduct an investigation, including an audit of the prime contractor's records, if there is reason to believe the prime contractor or any subcontractor, supplier, trucker, or vendor is not operating in compliance with the terms or requirements of the MBE/WBE Program. If the prime contractor, subcontractor,

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supplier, trucker, or vendor is not in compliance with the Program or its contract provisions, the Office of Diversity and Inclusion will notify the prime contractor, in writing. Upon receipt of the written notice, the prime contractor shall schedule a conference with the Office of Diversity and Inclusion to discuss corrective measures within the period set forth in the Office of Diversity and Inclusion's notice.

## B. PENALTIES FOR FAILURE TO FULFILL THE MBE/WBE GOAL

1. **Background** – The intent of the MBE/WBE Program is for prime contractors to utilize each contractor listed in the Declaration of Proposed MBE/WBE Utilization Plan and that each subcontractor performs a commercially useful function. Contract provisions are available for the prime contractor to substitute any non-performing or defunct subcontractor. Therefore, the prime contractor who self-performs work to be provided by the listed subcontractor will not be paid for the unauthorized work, supplies, or equipment.
2. **Purpose** – Compliance with the subcontract goals is required for the integrity of the MBE/WBE Program. The Program has been enacted to address the disparity in the utilization of available MBE/WBEs as subcontractors for the City's prime construction and professional services contracts.
3. **Requirements** – A prime contractor's failure to utilize the listed MBE/WBE(s) to meet the subcontract goal or secure an approved substitution during the term of the contract will constitute a breach of contract.
4. **Roles and Responsibilities** – The prime contractor is required to demonstrate good cause to terminate an MBE/WBE subcontractor. The prime contractor seeking to substitute an MBE/WBE subcontractor must inform the contracting department and Office of Diversity and Inclusion, in writing, of its intent to remove the subcontractor and provide a statement of good cause. The department that receives a request for substitution of an MBE/WBE should immediately provide the documentation to the Office of Diversity and Inclusion. The department, in consultation with the Office of Diversity and Inclusion, shall review the good cause statement for the removal of an MBE/WBE subcontractor and make the determination to approve or deny the substitution request.

The prime contractor's compliance with the MBE/WBE subcontract goal will be tracked by the Office of Diversity and Inclusion in the B2GNow contract compliance system. All MBE/WBEs and non-MBE/WBEs listed on the Declaration of Proposed MBE/WBE Utilization will be tracked.

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The Office of Diversity and Inclusion will monitor compliance on a monthly basis and determine whether monetary penalties are warranted at the project close-out. All monetary penalties assessed by the Office of Diversity and Inclusion will be reported to the awarding department and the City Attorney. The penalties will be deducted from the prime contractor's final payment.

## C. PUBLICATION OF PRIME CONTRACTOR PAYMENTS

1. **Background** – Considerable staff time is required to address both prime contractor and subcontractor inquiries regarding the status of the prime contractor's payment.
2. **Purpose** – Regular and timely posting of prime contractor payments promotes transparency in the procurement process. Postings made on the same day(s) each month will maximize the utility of the process for both the City and contractors.
3. **Requirements** – Prime contractor payments shall be posted on a scheduled day(s) each month. The reported prime contract payment information shall be searchable by contract number, project name, department name, and prime contractor name.
4. **Roles and Responsibilities** – The Finance and Management Department will be responsible for ensuring that payments are uploaded to the payment portal on the same day each month.

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## D. PROCEDURES TO PAY MOBILIZATION TO SUBCONTRACTORS

1. **Background** – Mobilization costs may be paid to construction prime contractors at the inception of the project. Generally, the fee is a percentage of the total contract amount. Subcontractors who work on the job site incur mobilization costs as well.
2. **Purpose** – The mobilization payment, when authorized, defrays the cost attendant to setting up the job site. When the prime contractor receives a percentage of the total project cost as the mobilization payment to begin work on the project, the subcontractor may be paid the same percentage when it is scheduled to mobilize. Provisions for the payment of mobilization shall be stipulated in the prime contract. The mobilization payment shall mitigate the adverse impact of the costs that are incurred by the subcontractor to mobilize.
3. **Requirements** – The subcontractor’s item(s) of work must require performance of the service on the job site. The service shall be provided with labor, material, and/or equipment. The prime contractor’s invoice must include the subcontractor’s portion of the mobilization costs. The subcontractor shall receive payment from the prime contractor within five (5) days of commencing work on the job site.
4. **Roles and Responsibilities** – The construction field inspector must verify when the subcontractor is scheduled to commence work on the job site. Each subcontractor’s items of work should be set forth on the project schedule and may also be reflected on the prime contract’s schedule of values. The Office of Diversity and Inclusion shall track the prime contractor’s payment of the subcontractor mobilization within the B2GNOW monitoring and payment tracking module.

## E. SUBCONTRACTOR SUBSTITUTION STANDARDS

1. **Background** – Prime contractors who have good cause for removing a subcontractor must seek the City’s approval before making the substitution with another subcontractor or self-performing the subcontract work.
2. **Purpose** – Contractors shall not terminate or change the terms of its MBE/WBE commitment after the contract award without adhering to the construction substitution standards. The substitution standard is a contract provision designed to ensure that the substitution of a MBE/WBE subcontractor is for good cause and approved by the awarding department and the Office of Diversity and Inclusion.

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3. **Requirements** – To establish good cause, the contractor must demonstrate that the subcontractor was deficient in any one of the following ways:
- i. Failed or refused to execute a written contract
  - ii. Failed or refused to meet the prime contractor’s reasonable bond requirements, absent a waiver by the City
  - iii. Declared bankruptcy, insolvency, or exhibited credit unworthiness
  - iv. Determined to be ineligible to work on City projects because of suspension and/or debarment proceedings
  - v. Voluntarily withdrew from the project and provided the Office of Diversity and Inclusion written notice of its withdrawal
  - vi. Exhibited other good cause, as determined by the Office of Diversity and Inclusion’s sole discretion

Good cause shall not include circumstances in which the contractor seeks to terminate an MBE/WBE so that the contractor can self-perform the work or substitute another MBE/WBE or non-MBE/WBE subcontractor to perform the work. The contractor must give the MBE/WBE written notice, with a copy to the Office of Diversity and Inclusion, of its intent to request substitution, including the reason(s) for the termination.

4. **Notice** – When a prime contractor submits a request for substitution or request to perform work for a listed subcontractor, the City Department shall give the listed subcontractor prompt, written notice of the prime contractor’s request and the reason for this request. The City shall provide the subcontractor a notification letter outlining the prime contractor’s allegations. The notification letter should be sent to the listed subcontractor by certified or registered mail to its last known street address. The letter must include a description of the scope of the work to be performed by the proposed substitute subcontractor and a copy of the contractor’s request for permission to substitute or remove a listed subcontractor. The notification letter must also advise the listed subcontractor that he or she has ten (10) days from the date of receipt of the notice to submit written objections to the substitution to the Office of Diversity and Inclusion. The prime contractor’s request may be consented to if:
- i. The listed subcontractor consents either expressly in writing or by not objecting within 10 days
  - ii. The requested substitution is in accordance with the proposed grounds for substitution, as set forth above.



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5. **Good Faith Effort** – If the substitution of the MBE/WBE subcontractor is approved, the prime contractor must make a good faith effort to find a substitute MBE/WBE subcontractor to meet its MBE/WBE contractual commitment. The good faith effort shall include documented steps to find another MBE/WBE to perform or provide the same amount of work, material, or service as set forth in the contract with the substituted MBE/WBE. The Office of Diversity and Inclusion must verify that the substitute MBE/WBE is certified to perform the scope of work or provide the goods that remain unfilled on the substituted MBE/WBE’s subcontract prior to their substitution.

## F. DEPARTMENT-WIDE TRAINING

1. **Background** – An effective MBE/WBE program requires informed and knowledgeable staff. Annual citywide training conducted by the Office of Diversity and Inclusion will ensure all personnel are knowledgeable about MBE/WBE Program requirements, its policies and objectives, and all modifications to the program. To ensure all employees are knowledgeable, the onboarding of new employees shall incorporate MBE/WBE Program training. Employees with goal-setting responsibility shall be trained on the relevant B2GNOW modules.
2. **Purpose** – Training shall have three core components to ensure uniformity in the application of the MBE/WBE Program requirements. The three core components are:
  - i. Annual Training Seminar – to inform staff of any changes to MBE/WBE Program policy and procedures and to promote program enhancements. An interactive portal on the City’s website will be set up for City staff to receive assistance, information, and responses to questions virtually.
  - ii. New Employee Training – to ensure new employees understand the established policies and procedures. A digital and printed copy of the MBE/WBE Program Training Manual shall be provided to each new City employee.
  - iii. MBE/WBE Program Training Manual – to describe the program’s mission, policies, and procedures. The manual will be available to new staff electronically and can be downloaded from the City’s website.

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Printed Name

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Signature  
[TITLE]  
[DEPARTMENT]

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Date