

# Procurement Enhancement Program Policies and Procedures Manual

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## Contract Compliance measures

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These Policies and Procedures apply only to the Procurement Enhancement Plan (“PEP”) which shall consist of the following components: MBE, WBE, and SBE Programs for Goods and Services; SBE, MBE, and WBE Programs for Construction; Joint Venture Program; Dayton Local and Certified Business Preference; and Dayton Local Small Business Program for Construction.



# **City of Dayton**

## **Human Relations Council**

It is the policy of the City of Dayton to promote full and equal business opportunity to all persons doing business with the City. The City must ensure that businesses seeking to participate in contracting and procurement activities with the City are not prevented from doing so on the basis of the race or gender of their owners. The City is committed to ensuring that it is not engaged in passive participation in any form of discrimination. This policy will apply to all expenditures of City funds, irrespective of source. This policy will also apply to all private-sector economic development projects, where feasible, in which City public funds and/or tax incentives are utilized, in part or in total. In addition, where feasible, this policy will apply to contracts or agreements between the City and any other political subdivisions, governmental, or quasi-governmental agencies under which entities receive money from or through the City for the purposes of contracting with businesses to perform projects in the City.

These Policies and Procedures apply only to the Procurement Enhancement Plan (“PEP”) which shall consist of the following components: MBE, WBE, and SBE Programs for Goods and Services; SBE, MBE, and WBE Programs for Construction; Joint Venture Program; Dayton Local and Certified Business Preference; and Dayton Local Small Business Program. The Executive Director of the Council shall also develop procedures for reciprocity of certifications between the City of Dayton and State of Ohio agencies.

These Policies and Procedures are promulgated, and shall be amended as may be required, by the City of Dayton Human Relations Council pursuant to the authority vested in it by the City of Dayton Commission.

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## **1. Non-Discrimination Policy for Contracting.**

- A. No bidder, proposer, vendor, and contractor doing business with the City (collectively referred to as “Bidders”) who competes for or is awarded a public contract may discriminate or retaliate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, female, or small business enterprise.
- B. A Bidder may be debarred or disqualified from contracting with the City if found to have violated subsection (1) of this section in the awarding of a subcontract in connection with a contract advertised by the City or a contract between the City and the Bidder.
- C. The City may not allege an occurrence of discrimination or retaliation in subcontracting as a basis for debarring or disqualifying a Bidder under subsection (B) of this section more than three (3) years after the alleged discriminatory or retaliatory conduct occurred or more than three (3) years after the City, in the exercise of reasonable diligence, should have discovered the conduct, whichever is later.
- D. A Bidder shall certify in the documents accompanying the Bidder’s offer to enter into a public contract that the Bidder has not discriminated or retaliated, and will not discriminate or retaliate, in violation of subsection (A) of this section, against any minority, female, disadvantaged, or small business in obtaining any required subcontract.
- E. After a Bidder is awarded a public contract, if the Bidder violates the certification made under subsection (D) of this section, the City may regard the violation as a breach of contract that permits one or more actions in Section 1.04, “Remedies.”
- F. Pursuant to this policy, Bidders must complete and return with bids a completed Non-Discrimination Certification Form (See Appendix A).

### **1.01 Complaints of Discrimination or Retaliation.**

- A. Any adult person, business entity, association, organization, or government agency may file a complaint with the Executive Director of the Council stating facts showing or tending to show that a Bidder has, within the preceding three (3) year period, engaged in discrimination or retaliation in connection with a City contract or solicitation.
- B. Within ten (10) business days, the Executive Director of the Council, or his/her designee, shall notify the Bidder against whom the complaint was filed that a complaint has been received.

## **1.02 Complaint Procedure, Initial Findings and Recommendations.**

The Executive Director of the Council, or his/her designee, shall be responsible for investigating discrimination and retaliation complaints filed under this section and following the procedures as included in Section 32.20 of the Revised Code of General Ordinances. In conducting its investigation, the Executive Director of the Council, or his/her designee, may enlist the assistance of a Hearing Examiner to participate as described in Section 32.16, Part L of the Revised Code of General Ordinances.

## **1.03 Mediation.**

- A. In the event that any dispute arises between the parties in relation to a complaint of discrimination or retaliation, and the dispute is not resolved by negotiation, the parties agree to submit the dispute to mediation. The parties further agree that their participation in mediation is a condition precedent to any party pursuing any other available remedy in relation to the dispute.
- B. Any party to the dispute may give written notice to the other party of his or her desire to commence mediation, and a mediation session must take place within thirty (30) days after the date that such notice is given.
- C. The parties must jointly appoint a mutually acceptable mediator. If the parties are unable to agree upon the appointment of a mediator within seven (7) days after a party has given notice of a desire to mediate the dispute, any party may apply to the City of Dayton's Dayton Mediation Center or such other organization or person agreed to by the parties in writing, for appointment of a mediator.
- D. The parties further agree to share equally the costs of the mediation, which costs will not include costs incurred by a party for representation by counsel at the mediation.

## **1.04 Mandatory Non-Discrimination Contract Clause.**

Every contract and subcontract shall contain a non-discrimination clause that reads substantially as follows:

As a condition of entering into this agreement, the company represents and warrants that it will fully comply with the City of Dayton's non-discrimination policies, as stated in Sections 35.14 and 35.36 of the Revised Code of General Ordinances, and consents to be bound by the award of any arbitration conducted thereunder. As part of such compliance, the company shall not discriminate on the basis of race, color, religion, sex, sexual orientation, gender identity, ancestry,

national origin, place of birth, age, marital status, or handicap in the solicitation, selection, hiring, or treatment of subcontractors, vendors, suppliers, or commercial customers in connection with a City of Dayton contract or contract solicitation process, nor shall the company retaliate against any person or entity for reporting instances of such discrimination. The company shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its subcontracting and supply opportunities on City of Dayton contracts, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace. The company understands and agrees that a violation of this clause shall be considered a material breach of this agreement and may result in termination of this agreement, disqualification of the company from participating in City of Dayton contracts, or other sanctions.

## **2. Definitions (Section 35.35)**

For the purposes of the Procurement Enhancement Plan, the following terms shall have the following meanings, as defined in Section 35.35 of the Ordinance:

*Annual receipts.* Total income (or in the case of a sole proprietorship, gross revenue) plus cost of goods sold as these terms are defined and reported on Internal Revenue Service tax return forms.

*Annual Eligible Spend for Construction.* The total amount spent annually on Construction projects, excluding money spent from State and Federal funds and other funding streams that limit or prohibit local goal setting. Funds excluded from the Annual Spend for Construction include, but are not limited to, as further clarified in the PEP Policies and Procedures: Federal DBE Program, State LPA, State Municipal Bridge Projects, Federal CMAQ, Federal TE, Federal STP, EPA Funds, FAA, and ODOT funds.

*Annual Eligible Spend for Goods and Services.* The total amount spent annually for Goods and Services, excluding funds expended for the following, as further clarified in the PEP Policies and Procedures: payments to governmental entities or governmental agents; payments made because of negotiated settlements and required by the court system or state or federal government; payments made to the following: regulated utilities: railroads, telephones, electric and natural gas; those purchases that are not for the following: equipment, materials, supplies, services; payments made because of prompt pay penalties; right-of-way payments made to owner for the purchase of land and/or property, and; sole source expenditures.

*Award.* Legislation or City Manager action authorizing the award of a contract by the City, provided, however, that the contract will not become binding upon the City, and the

City will incur no liability under it, until it has been duly executed by the contractor and the City with all required submittals, including insurance and bonding, if applicable.

*Bid.* Written quotations, proposals, or offers by a bidder or contractor to perform or provide labor, materials, equipment, Goods, or Services to the City for a price submitted in response to a competitive bidding solicitation issued by the City.

*Bidder.* Any individual, business enterprise, partnership, joint venture, or corporation that submits a bid to the City as defined herein.

*Certification.* The criteria and process for participation in the PEP.

*Certifying Agency.* A private or public entity designated by the Executive Director or the Human Relations Council as an agency eligible to certify businesses for the City as an MBE, WBE, and/or SBE.

*City.* The City of Dayton, Ohio.

*Commercially Useful Function.* The execution by a minority or women-owned business enterprise, which contracts with the City, or subcontracts with another business enterprise which contracts with the City, of a distinct element of the work of the contract by actually performing, managing, and supervising the work involved, excepting a business enterprise which serves as a conduit for another.

*Construction.* The process of building, altering, repairing, remodeling, improving or demolishing any public structure or building or other public improvements of any kind to any public real property, excepting the routine operation, routine repair or routine maintenance of structures, buildings or real property.

*Council.* The members of the Human Relations Council of the City of Dayton, Ohio, as appointed by the City Commission pursuant to Section 32.13 of the Revised Code of General Ordinances.

*Contract.* Any agreement between the City and a person or business enterprise to provide or procure labor, materials, equipment, Goods and/or Services to, for, or on behalf of the City. A “Contract” shall include an agreement between the City and a person or business enterprise to perform professional, architectural and engineering services, construction related services, or fund the performance of such services. Except as otherwise specifically defined in this section, a “Contract” shall not include:

- a) Awards made by the City with federal or state grant or City general fund monies to a non-profit entity to which the City offers assistance, guidance, or supervision on a project or program and the recipient of the grant award uses the grant monies to provide services to the community;
- b) Sales transactions where the City sells or purchases real or personal property; or,
- c) Donations of materials, equipment, Goods, or Services to or by the City.



*Contractor.* Any person or business entity that shall enter into a contract with the City, including all partners and all joint ventures of such person or entity.

*Counting Towards Goals.* The procedure for calculation of participation in the PEP as determined by the Program Policies and Procedures.

*Dayton Local Business.* A business located within the corporate limits of the City that has filed or paid a payroll or an earnings tax in the most recent tax quarter and is a taxpayer in good standing with the City of Dayton.

*Dayton Local Small Business.* A business that:

- a) Is certified by the Executive Director of the Council, or his/her designee, as a MBE, WBE, and/or SBE; and
- b) Is a Dayton Local Business; and
- c) Is a General Construction contractor which has annual average gross receipts for each of the preceding three (3) years of not more than fifteen million dollars (\$15,000,000); or,
- d) Is a business engaged in Specialty Trade and Services which has annual average gross revenue for each of the immediately preceding three (3) years of not more than five million dollars (\$5,000,000).

*Executive Director of the Council.* The individual appointed by the Commission pursuant to Section 32.18 of the Revised Code of General Ordinances of the City of Dayton.

*Good Faith Efforts.* The steps undertaken, prior to submission of a bid, to obtain MBE, WBE, and/or SBE participation for subcontracting opportunities related to the bid proposal, and submitted as defined in the Program Policies and Procedures.

*Goods.* All things, including specially manufactured goods, which are movable at the time of identification to the contract for sale, other than the money in which the price is to be paid, investment securities and things in action, and excluding land or a permanent interest in land.

*Joint Venture.* An association of two or more persons, partnerships, corporations, and any combination of them, whereby they combine their expertise, property, capital, efforts, skills and knowledge, which is also:

- a) Comprised of at least one certified MBE, WBE or SBE;
- b) Evidenced by a notarized, written agreement executed by all joint venture partners;
- c) Approved by the Executive Director of the Council, or his/her designee;
- d) Compliant with any additional criteria established by the Council in its Policies and Procedures; and
- e) Comprised of member businesses that have either different race ownership, different gender ownership, or both.

*Lower Tier Subcontractor.* A subcontractor who is not in privity of contract with a contractor but is in privity of contract with another subcontractor.

*Lower Tier Supplier.* A supplier who is not in privity of contract with a contractor but is in privity of contract with a subcontractor or a supplier.

*Minority Group.* Any of the following racial or ethnic groups which are referenced in the Second-Generation Disparity Study for the City of Dayton, including:

- a) African-Americans or Black Americans;
- b) Hispanic Americans;
- c) Asian-Americans; and
- d) Native Americans.

*Minority Business Enterprise (“MBE”).* A business:

- a) Which is at least fifty-one percent (51%) owned by one or more members of one or more Minority Groups, or, in the case of a publicly held corporation, at least fifty-one percent (51%) of the stock of which is owned by one or more members of one or more Minority Groups, whose management and daily business operations are controlled by one or more members of one or more Minority Groups;
- b) Which meets the industry size standards as approved by the SBA.
- c) Which meets the definition of the Small Business Enterprise in this program.
- d) Which has been certified as a MBE by the Executive Director of the Council or his/her designee.

*Personal net worth.* The net value of the assets of an individual remaining after total liabilities are deducted, not including the individual's ownership interest in an applicant or participating MBE, WBE or SBE firm or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

*Policies and Procedures.* The Policies and Procedures adopted by the Commission herein, including any future amendments, additions or deletions made by the Council pursuant to its authority and consistent with this Division.

*Procurement.* Buying, purchasing, renting, leasing or otherwise acquiring any Goods, Services and/or Construction. It also includes all functions that pertain to obtaining any Good, Service or Construction, including a description of requirements, selection and solicitation of sources, preparation and award of contracts and all phases of contract administration.

*Professional Services.* Those services within the scope of the practices of architecture, investment banking, professional engineering, planning, landscape architecture, land surveying, the medical arts, management and analysis, accounting or auditing, law, psychology or any other similar kind or type of professional practice. For purposes of this Division, professional services shall not include investment management services.

*Responsive Bid.* A quotation, proposal, solicitation, or offer that meets specifications, including, if applicable, any project participation goal as set out in the bid packet specifications.

*Services.* Those services within the scope of the practices included within professional services and general services.

*Small Business Enterprise (“SBE”).* A business that:

- a) Is an independent and continuing enterprise for profit, performing a commercially useful function;
- b) Has been in existence for not less than one (1) year;
- c) That the businesses gross revenues meet the requirements as defined in Section 35.35 of the Revised Code of General Ordinances; that the personal net worth of each owner does not exceed Seven Hundred Fifty Thousand Dollars (\$750,000) exclusive of the value of the owner’s interest in the SBE and the individual’s equity in his or her primary place of residence. For the purposes of this section, an individual’s personal net worth includes only his or her own share of assets held jointly or as community property with the individual’s spouse;
- d) That the SBE owner(s) listed on the certification application own and control the business. has annual average gross receipts for each of the preceding three (3) years of not more than Thirty-Three Million Five Hundred Thousand Dollars (\$33,500,000); or, in the case of a business engaged in a Specialty Trade and Services has annual average gross revenue over each of the immediately preceding three (3) years of not more than Fifteen Million Dollars (\$15,000,000); or, in the case of a business engaged in Goods and Services has an annual average employee count of one hundred (100) or less; In determining the average annual gross revenues of a small business enterprise, the Council shall include gross receipts of each of its affiliates. The gross revenue standard shall be adjusted from time to time consistent with the United States Small Business Administration (“SBA”) standards for small businesses.
- e) Certifies that its individual owner(s) whose ownership and control are relied upon for SBE certification has a personal net worth that does not exceed Seven Hundred Fifty Thousand Dollars (\$750,000); and,
- f) Has less than 100 employees
- g) Which has been certified as an SBE by the Executive Director of the Council or his/her designee.

*Subcontractor.* Any person or business enterprise providing goods, labor, or services to a contractor if such goods, labor or services are procured in fulfillment of the contractor’s obligations arising from a contract with the City. Subcontractor includes every level of subcontracting required to fulfill a contract with the City.

*Women Business Enterprise (“WBE”).* A business enterprise:

- a) Which is at least fifty-one percent (51%) owned by one or more women, or, in the case of a publicly held corporation, fifty-one percent (51%) of the stock of which is owned by one or more women, whose management and daily business operations are controlled by one or more women;

- b) Which meets the industry size standards as approved by the SBA.
- c) Which meets the definition of the Small Business Enterprise in this program.
- d) Which has been certified as a WBE by the Executive Director of the Council or his/her designee.

**3. Bid Submission Requirements for Contracts Subject to MBE/WBE/SBE Goals.**

- A. Where a contract provides a goal for MBE, WBE or SBE participation, the Executive Director of the Council, or his/her designee, shall recommend a bidder be awarded a contract only where the bidder has demonstrated good faith efforts to meet the designated goal. The award of the contract will be conditioned upon satisfaction of the requirements established by the City. A bidder has demonstrated good faith efforts if it does either of the following:
  - a. Documents sufficient commitments to meet the goal in accordance with these Program Policies and Procedures; or
  - b. Requests a waiver by documenting that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining sufficient commitments to do so, in accordance with these Program Policies and Procedures.
- B. Where a bidder fails to meet MBE, WBE or SBE goals, and fails to request a waiver and sufficiently demonstrate Good Faith Efforts to meet MBE, WBE or SBE goals, as defined in these Program Policies and Procedures, the Executive Director of the Council, or his/her designee, shall not recommend the bidder be awarded the contract.

### **3.01 Documentation of Sufficient Commitments to Meet MBE/WBE/SBE Goals.**

- A. For all contracts for which MBE, WBE or SBE contract goals have been established, the prime bidder shall be required to submit the appropriate MBE, WBE or SBE Participation Form to the City of Dayton with its bid. The award of the contract will be conditioned upon satisfaction of the requirements established by the city. The bidder shall submit, with its bid submission a completed Participation Form (See [Exhibit A](#)), which shall include:
  - a. The name, address, tax identification number and certification number, if applicable, of each MBE/WBE/SBE that will participate in the contract;
  - b. The description of the work each named MBE/WBE/SBE will perform;
  - c. The dollar amount of participation submitted by each named MBE/WBE/SBE;
- B. Within five (5) business days after request from the Executive Director of the Council, or his/her designee, bidders shall submit the following:
  - a. Written documentation of the bidder's commitment to use a MBE/WBE/SBE subcontractor whose participation it submits to meet a contract goal;
  - b. Written confirmation from the MBE/WBE/SBE that it is participating in the contract as provided in the prime contractor's commitment; and,

### **3.02 Waiver Request Procedure.**

- A. If the MBE/WBE/SBE participation submitted by the bidder does not meet the MBE/WBE/SBE contract goals, the bidder must submit, with its bid, a Waiver Request Form (See [Exhibit A](#)). The bidder shall indicate on the Waiver Request Form the good faith efforts it made, prior to the submission of its bid, to meet the MBE, WBE or SBE goals for the contract. The City will base its awards for contracts based on a responsive bidder approach. Additional submittals will not be permitted, with the exception of evidence requested by the Executive Director of the Council, or his/her designee pursuant to Section 3.02(B) of these Policies and Procedures.
- B. Upon receipt of a bid, the Executive Director of the Council, or his/her designee, may request the bidder provide documentary evidence to support the good faith efforts the bidder completed, as declared on the Waiver Request Form. No later than two (2) business days after the Executive Director of the Council, or his/her designee, requests additional evidence of the bidder's good faith efforts, the bidder shall submit documentary evidence demonstrating good faith efforts were made to meet the goals. The Executive Director of the Council, or his/her designee, shall make its request for additional evidence to the bidder by facsimile, electronic mail and regular mail. The Executive Director of the Council, or his/her designee, will review the documents submitted, and make its determination of good faith efforts based on those submitted documents.

### **3.021 Good Faith Efforts**

- A. To demonstrate sufficient “good faith efforts” to meet the MBE/WBE/SBE contract goals, upon request by the Executive Director of the Council, or his/her designee, a bidder shall document the steps it has taken to obtain MBE/WBE/SBE participation. Bidders must earn at least sixty-five (65) points from the good faith efforts listed below for their bid to be considered responsive. Partial points will not be granted. A representative sample of good faith efforts with point values included is in Appendix A on the Waiver Request Form.
- B. In determining whether a bidder has made good faith efforts, the Executive Director of the Council, or his/her designee, may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful lowest and best bidder fails to meet the contract goal, but others meet it, the Executive Director of the Council, or his/her designee, may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal.
- C. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average MBE/WBE/SBE participation obtained by other bidders, the Executive Director of the Council, or his/her designee, may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

### **4. Records and Reports for SBE, MBE, and WBE Programs.**

The effectiveness of the MBE/WBE/SBE Programs for Services and Supplies, and the MBE/WBE/SBE Programs for Construction will be measured by a review of data indicating prime and subcontractor spending with MBEs/WBEs/SBEs. Program effectiveness measurements will also include efforts by the City staff to provide prime contracting opportunities for MBEs/WBEs/SBEs. In order to ensure the effective tracking of these efforts, the following shall be done:

- A. Each contractor shall continuously maintain, compile, and provide to the Executive Director of the Council, or his/her designee, monthly information relating to its use of MBEs/WBEs/SBEs on each City contract. This information shall include without limitation the following information for each of the MBE/WBE/SBE subcontractors and suppliers utilized by the contractor:
  - a. A description of the categories of contracts awarded to MBEs/WBEs/SBEs;
  - b. The dollar value of contracts awarded to MBEs/WBEs/SBEs; and
  - c. Contact information for the MBEs/WBEs/SBEs.
- B. Additionally, the contractor shall provide information regarding its progress toward attaining the MBE/WBE/SBE goals for the contract.

- C. Within thirty (30) days after the completion of a contract in which there were MBE/WBE/SBE goals, each contractor shall provide the Executive Director of the Council, or his/her designee, with a report that summarizes the information provided pursuant to Section (A) above, including without limitation:
  - a. The identity of and contact information for each MBE/WBE/SBE to whom the contractor has awarded a subcontract or supplier agreement;
  - b. The type of work performed or supplies provided by each subcontractor/supplier; the dollar value of each of the subcontracts/supplier agreements; and
  - c. The total percentage of the value of the City contract subcontracted to MBE/WBE/SBE subcontractors and/or suppliers.
- D. The Purchasing department shall provide the Executive Director of the Council, or his/her designee, with information regarding every City contract on which the prime contractor is an MBE/WBE/SBE, or on which an MBE/WBE/SBE is part of a joint venture or strategic partnership team serving as the prime contractor. The information shall include the name and contact information of the MBE/WBE/SBE, the type of contract, and the dollar value of the contract.
- E. The Purchasing department and all other departments pertaining thereto, and/or the City's contracted Procurement Card vendor shall provide monthly reports of City spending with MBEs/WBEs/SBEs. The Executive Director of the Council, or his/her designee, will make available, and cause to be known to all City departments, MBE, WBE, and SBE directories for use specifically for Procurement Card purchases.
- F. The Council shall prepare and present to the City Commission quarterly consolidated reports based on a compilation and analysis of the reports submitted by each contractor and information from the relevant departments regarding the City's use of MBEs/WBEs/SBEs as prime contractors and subcontractors. The consolidated reports will identify and assess the awards and payments to MBEs/WBEs/SBEs of City contracts, prime contractors' use of MBE/WBE/SBE subcontractors and suppliers, prime contractors' progress in achieving MBE/WBE/SBE subcontract goals, and other MBE/WBE/SBE development and contracting efforts. Specifically, the Executive Director of the Council, or his/her designee, will maintain records and prepare reports showing information such as, but not limited to:
  - a. Awards and payments to MBEs/WBEs/SBEs prime contractors, subcontractors and suppliers, including names of contractors and subcontractors, nature of the work/services performed, and the percentage of MBE/WBE/SBE participation per contract. The Council will obtain regular reports from prime contractors on their progress in meeting contractual MBE/WBE/SBE commitments;
  - b. Specific efforts by contractors to identify and award contracts to SBEs/MBEs/WBEs;
  - c. Copies of direct mailings by contractors to MBEs/WBEs/SBEs;
  - d. City contracts awarded to MBE/WBE/SBE prime contractors in which a MBE/WBE/SBE was a joint venture partner or part of a mentor-protégé team. This information shall include, without limitation, the name and contact

information of the MBEs/WBEs/SBEs, the type of contract, and the dollar value of the contract;

- e. Pre-bid information as it relates to minority and female business opportunities;
  - f. Requests for assistance from MBEs/WBEs/SBEs interested in bidding/proposing on City contracts and subcontracts;
  - g. Workshops, seminars and training programs conducted for MBEs/WBEs/SBEs;
  - h. Efforts to assist MBEs/WBEs/SBEs in acquiring bonding and insurance; and
  - i. Any additional information gained through Outreach and Business Assistance by the Council.
- G. The Council will submit an annual MBE/WBE/SBE development report to the City Commission. These reports shall include a summary of the information described in Section (E) above, plus an analysis of the total dollar value of City contracts/subcontracts awarded to MBEs/WBEs/SBEs during the preceding year, categorized by prime contracting dollars, subcontracting dollars, and supplier dollars. The percentage of the total dollar value of contracts awarded to MBEs/WBEs/SBEs during the preceding year as compared to the total dollar value of all contracts awarded during the preceding year shall also be provided.
- H. Public Records Requests under the Freedom of Information Act are governed by the City's policy for these requests.
- 1) Format of the Request can be Written or Verbal

(NOTE: Public Information Request Forms can be obtained through the Public Affairs Office at 333-3614; through the City employee Intranet website at: [http://cityweb/sites/paf/Documents/Public%20Information%20Request%20Form\\_04-11.pdf](http://cityweb/sites/paf/Documents/Public%20Information%20Request%20Form_04-11.pdf); or through the City's external Internet website at: [http://www.cityofdayton.org/departments/pa/Documents/Public%20Information%20Request%20Form\\_04-11.pdf](http://www.cityofdayton.org/departments/pa/Documents/Public%20Information%20Request%20Form_04-11.pdf).)

To view the complete Public Information Policy, visit:

[http://cityweb/sites/paf/Documents/PIR%20Policy\\_08-09%20Intranet.pdf](http://cityweb/sites/paf/Documents/PIR%20Policy_08-09%20Intranet.pdf)

## **5. Outreach and Business Assistance to Subcontractors by the Council (Section 35.376).**

To ensure that opportunities to participate on City contracts are available to the widest feasible universe of interested, available, and qualified businesses, the Council shall develop and implement a written comprehensive outreach program aimed at increasing MBE/WBE/SBE business participation in the City's contracting and procurement process. This program may include, without limitation, any or all of the following:

- A. The Council may disseminate at community events, trade shows, and other appropriate business functions, and publish at regular intervals, in print and in electronic media (including publications or electronic media targeted to MBEs/WBEs/SBEs) information describing the PEP and the functions of the Council.



- B. The Council may establish a procedure to engage in continuous recruitment and outreach efforts directed at business assistance organizations, led by the Minority Business Assistance Center, the Associated General Contractors of Ohio (West Central Ohio Division), the South Central Ohio Minority Supplier Development Council, and others, to increase the pool of businesses available to do business with the City. The Council may identify suppliers through regional business development organizations and participation at various trade shows, supplier diversity groups, and work with various local, state, and national supplier development councils and organizations.
- C. The Council may disseminate at community events, trade shows, and other appropriate business functions, and publish at regular intervals, in print and in electronic media, information identifying ongoing contracting opportunities with the City, and providing contact information by which businesses may obtain additional information from the office of the Council. To the extent feasible, the Council may enter into arrangements to share data regarding upcoming City projects, and subcontracting opportunities on the projects, with other businesses and agencies or jurisdictions in the Dayton region.
- D. The Council may assist businesses in submitting bids for eligible projects by disseminating information in print and electronic form, by providing individualized counseling, and/or by conducting seminars regarding the process for submitting a bid and how to conduct business on a City project.
- E. The Council may actively encourage businesses to attend the pre-bid conferences, providing face-to-face and one-on-one meeting opportunities with employees of the City divisions and departments that are involved with the contracting and procurement process. The Council shall establish and implement training and awareness programs with the employees of City departments to educate them with regard to increasing utilization of a wide array of businesses. The Council will include training and awareness activities in its quarterly report to the Commission.
- F. The Council may provide information and advice to the various procurement departments regarding the effectiveness of current bidding procedures in facilitating bidding on eligible projects with the widest feasible universe of interested businesses. This information may include suggestions regarding how to arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules, in ways that facilitate the participation of all interested businesses. In this regard, the Council may provide and encourage feedback from contractors and subcontractors regarding every aspect of the City's procurement process, and may establish a system to allow for anonymous comments to be sent through the mail and gathered in other ways.
- G. The Council may create workshops for businesses located with the Dayton region on how to compete in the private sector, including advice on marketing, soliciting, and

- preparing a bid. The Council may establish a program that will incorporate business and entrepreneurial training and assistance mentoring, matchmaking, individual consulting, and regular training workshops and seminars. To accomplish this, the Council may reach out to and collaborate with the Minority Contractors Business Assistance Program, regional higher educational institutions, and local, state, and national supplier development councils and organizations.
- H. The Council may develop communications and other written materials that are meant to encourage and provide information to contractors to increase their utilization of subcontractors. In addition, the Council may sponsor networking events that allow businesses to meet each other and that create an opportunity for contractors to discuss with subcontractors their upcoming needs.
  - I. The Council may establish policies to prohibit discrimination in the provision of credit or bonding regarding City contracts.
  - J. The Council may work with existing service providers in the Dayton region to:
    - a. Develop a technical assistance program to prepare small businesses to compete for specific contracts;
    - b. Implement and monitor a supportive services program to develop and improve immediate and long term business management, record-keeping, and financial and accounting capability for businesses;
    - c. Develop and provide services to help businesses improve their long term development, increase their opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve self-sufficiency;
    - d. Establish a program to assist new, start-up, or emerging businesses; and,
    - e. Assist businesses in developing their capability to utilize technology and conduct business through electronic media.
  - K. The Council may create and maintain records on all subcontractor participation on City projects. The Council may perform investigations regarding the actual utilization of subcontractors during the term of the contract as compared to the anticipated use of subcontractors at the time of bid submittal. Subcontractors shall report the amount of work they anticipate performing on the contract and will report the actual work performed and the amount billed. The Council will allow subcontractors to confirm the status of their subcontracts and the payments received thereunder.
  - L. The Council may continue to develop its website to provide general information on doing business with the City, on the bid process, on how to get certified, a directory of MBEs/WBEs/SBEs, a calendar of events, bid lists, bid status reports, solicitation notices, and to provide downloadable forms and other appropriate information. In addition, names of contractors that have been awarded City contracts may be posted on the website to allow a business to target their marketing efforts to contractors that have worked with the City.

- M. The Council shall establish a mechanism by which a business can file an administrative complaint with the City if it believes that a prime contractor or the City is discriminating in the award of contracts or subcontracts.

## **6. Certification of MBEs, WBEs and SBEs (Section 35.40).**

The certification process is the responsibility of the Executive Director of the Council. All inquiries concerning the certification process shall be directed to the Executive Director of the Council or his/her designee.

- A. To ensure maximum availability and capacity of MBEs, WBEs and SBEs in the PEP, the Executive Director of the Council or his/her designee may accept cross-certification or reciprocity certification with State and other MBE, WBE, SBE, EDGE, or DBE programs. The Executive Director of the Council or his/her designee shall ensure that those State or other certification programs apply certification standards and review procedures which are not inconsistent with the PEP certification standards. Companies certified through these other certification programs shall be limited to companies located within the State of Ohio.
- B. Every business seeking certification has an affirmative duty to disclose all information material to the certification process to the Executive Director of the Council, or his/her designee. Each business is bound by the affirmative duty to disclose all information material to the certification process at all times during its participation in any and all PEP programs. The affirmative duty of disclosure includes, but is not limited to, changes in a business's circumstances regarding its continued eligibility for certification. Failure to disclose information material to the certification process as required by this section may result in the denial of or removal from certification in accordance with Sections 3.0.4 and/or 3.0.5.

### **6.01 Standard Certification Process for SBEs. (Section 35.40)**

- A. A business seeking certification as a SBE must submit an application to the City on a form approved and provided by the Council, affirming under penalty of perjury that the business qualifies as such. In order to qualify as an SBE, the potential SBE owner must demonstrate:
  - a. That the businesses gross revenues meet the requirements as defined in Section 35.35 of the Revised Code of General Ordinances;
  - b. That the personal net worth of each owner does not exceed Seven Hundred Fifty Thousand Dollars (\$750,000) exclusive of the value of the owner's interest in the SBE and the individual's equity in his or her primary place of residence. For the purposes of this section, an individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse;

- c. That the SBE owner(s) listed on the certification application own and control the business.
- B. The Executive Director of the Council, or his/her designee, may also, if it deems necessary, perform an on-site review of the potential SBE prior to approving an application for certification.
- C. The Executive Director of the Council, or his/her designee, will certify the applicant SBE, or provide the applicant with written justification of denial, within thirty (30) days after the date that the Executive Director of the Council, or his/her designee, receives a satisfactorily completed application from the applicant.
- D. The Executive Director of the Council, or his/her designee, will review and evaluate applications and may reject an application based on one or more of the following:
  - a. The applicant does not meet the requirements for certification as an SBE as set forth in Section 35.35 of the Revised Code of General Ordinances;
  - b. The application is not satisfactorily completed within a reasonable period of time, as determined by the Executive Director of the Council, or his/her designee;
  - c. The application contains false information; or,
  - d. The applicant does not provide required information in connection with the certification review conducted by the Executive Director of the Council, or his/her designee.

## **6.02 Standard Certification Process for MBEs and WBEs (Section 35.40)**

- A. A business seeking certification as a MBE or WBE must submit a written certification application on a form approved and provided by the Executive Director of the Council, or his/her designee.
  - a. In the case of an MBE, the owner must be a member of a minority group as defined in Section 35.35 of the Revised Code of General Ordinances, and the business must conform to the definition of an MBE as defined in Section 35.35 of the Revised Code of General Ordinances. In the case of a WBE, the business must conform to the definition for such as defined in Section 35.35 of the Revised Code of General Ordinances;
  - b. The business' gross receipts must not exceed the SBA Industry Standard or the Ohio Unified Certification Program threshold whichever is lower for General Construction, Fifteen Million Dollars (\$15,000,000) for Specialty Trades, and Fifteen Million Dollars (\$15,000,000) for Services. The business must have an employee count of one hundred (100) or less;
  - c. The personal net worth of each owner must not exceed Seven Hundred Fifty Thousand Dollars (\$750,000) exclusive of the value of the owner's interest in the MBE or WBE and the individual's equity in his or her primary place of residence. For the purposes of this section, an individual's personal net worth includes only

- his or her own share of assets held jointly or as community property with the individual's spouse;
- d. The MBE or WBE owner(s) listed on the certification application must own, manage and control the business.
- B. The Executive Director of the Council, or his/her designee, may also, if it deems necessary, perform an on-site review of the potential MBE or WBE prior to approving an application for certification.
- C. The Executive Director of the Council, or his/her designee, will certify the applicant MBE or WBE or provide the applicant with written justification of denial, within thirty (30) days after the date that the Executive Director of the Council, or his/her designee, receives a satisfactorily completed application from the applicant.
- D. The Executive Director of the Council, or his/her designee, will review and evaluate applications and may reject a MBE or WBE application based on one or more of the following:
  - a. The applicant does not meet the requirements for certification as a MBE or WBE as set forth in Section 35.35 of the Revised Code of General Ordinances;
  - b. The application is not satisfactorily completed within a reasonable period of time, as determined by the Executive Director of the Council, or his/her designee;
    - A. The application contains false information; or,
    - B. The applicant does not provide required information in connection with the certification review conducted by the Executive Director of the Council, or his/her designee.
- E. The term of certification will be for three years.

### **6.03 Registration Process for Dayton Local Small Business (Section 35.43)**

A business seeking registration as a Dayton Local Small Business Enterprise (DLSB) must submit a written application on a form approved and provided by the Executive Director of the Council, or his/her designee.

In order to qualify as a DLSB, the potential company must meet the certification standards of the MBE, WBE or SBE programs in Section 35.40 of the Revised Code of General Ordinances, and conform to the definition of a DLSB for such as defined in Section 35.35 of the Revised Code of General Ordinances; and, demonstrate that the business:

- A. Is certified by the Executive Director of the Council, or his/her designee, as a MBE, WBE, and/or SBE;
- B. Is a Dayton Local Business as defined by Section 35.35 of the Revised Code of General Ordinances; and
- C. Is a General Construction contractor which

- a. Has annual average gross receipts for each of the preceding three (3) years of not more than fifteen million dollars (\$15,000,000); or,
  - b. In the case of a business engaged in Specialty Trade and Services has annual average gross revenue for each of the immediately preceding three (3) years of not more than five million dollars (\$5,000,000);
- D. Demonstrate that the DLSB owner(s) listed on the registration application “owns” and “controls” the business.
- E. The Executive Director of the Council, or his/her designee, may also, if it deems necessary, perform an on-site review of the potential DLSB owner’s business prior to approving an application for registration.
- F. The Executive Director of the Council, or his/her designee, will register the applicant DLSB or provide the applicant with written justification of denial, within thirty (30) days after the date that the Executive Director of the Council, or his/her designee, receives a satisfactorily completed application from the applicant.
- G. The Executive Director of the Council, or his/her designee, will review and evaluate applications and may reject a DLSB application based on one or more of the following:
  - a. The applicant does not meet the requirements for certification as a MBE, WBE, SBE or registrant as a DLSB as set forth in this Section and Section 35.35 and 35.44;
  - b. The application is not satisfactorily completed within a reasonable period of time, as determined by the Executive Director of the Council, or his/her designee;
  - c. The application contains false information; or,
  - d. The applicant does not provide required information in connection with the certification review conducted by the Executive Director of the Council, or his/her designee.

The Council shall process DLSB applications and appeals and render determinations regarding DLSB registrations in a manner consistent with the other PEP certification categories (MBEs, WBEs and SBEs) as shown in Section 6.13.

#### **6.04 How are burdens of proof allocated in the certification process?**

- A. In determining whether to certify a business as eligible to participate as a MBE, WBE, or SBE, Executive Director of the Council or his/her designee applies the standards of this subpart.
- B. The business seeking certification has the burden of demonstrating to the Executive Director of the Council or his/her designee, by a preponderance of the evidence, that

it meets the requirements of the PEP Ordinance concerning group membership, business size, ownership, and control.

- C. The Executive Director of the Council or his/her designee must make determinations concerning whether individuals and firms have met their burden of demonstrating group membership, ownership and control by considering all the facts in the record, viewed as a whole.

#### **6.05 What rules govern minority group membership determinations?**

- A. If the Executive Director of the Council or his/her designee has reason to question whether an individual is a member of a minority group, the Executive Director of the Council or his/her designee must require the individual to demonstrate, by a preponderance of the evidence, that he or she is a member of the group.
- B. In making such a determination, the Executive Director of the Council or his/her designee must consider whether the person has held himself out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. HRC may require the applicant to produce appropriate documentation of group membership.
- C. HRC decisions concerning membership in a designated group are subject to the certification appeals procedure as shown in Section 6.13.

#### **6.06 What rules govern business size determinations?**

To be an eligible MBE, WBE, or SBE, a business (including its affiliates) must be conform to the definition of each, as stated in the PEP Ordinance.

#### **6.07 What rules govern determinations of ownership?**

- A. In determining ownership of a business, the Executive Director of the Council or his/her designee must consider all the facts in the record, viewed as a whole.
- B. To be an eligible MBE a business must be at least 51 percent owned by one or more members of a Minority Group.
  - a. In the case of a corporation, one or more members of a Minority Group must own at least 51 percent of the each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding, In the case of a corporation, one or more members of a Minority Group must own at least 51 percent of the each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding and the management and daily business operations of the corporation must be controlled by one or more members of a Minority Group.

- b. In the case of a partnership, 51 percent of each class of partnership interest must be owned by one or more members of a Minority Group. Such ownership must be reflected in the firm's partnership agreement.
  - c. In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by one or more members of a Minority Group.
- C. To be an eligible WBE a business must be at least 51 percent owned by one or more women.
  - a. In the case of a corporation, one or more women must own at least 51 percent of the each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding, and the management and daily business operations of the corporation must be controlled by one or more women.
  - b. In the case of a partnership, 51 percent of each class of partnership interest must be owned by one or more women. Such ownership must be reflected in the firm's partnership agreement.
  - c. In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by one or more women.
- D. The business' ownership by members of a Minority Group or women must be real, substantial, and continuing, going beyond pro forma ownership of the business as reflected in ownership documents. The Minority Group or women owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.
- E. All securities that constitute ownership of a business shall be held directly by one or members of a Minority Group or women. Except as provided in this paragraph (d), no securities or assets held in trust, or by any guardian for a minor, are considered as held one or members of a Minority Group or women in determining the ownership of a business. However, securities or assets held in trust are regarded as held by a one or members of a Minority Group or women for purposes of determining ownership of the business, if:
  - a. The beneficial owner of securities or assets held in trust is a one or members of a Minority Group or women, and the trustee is the same or another such individual; or
  - b. The beneficial owner of a trust is a one or members of a Minority Group or women who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the business. Assets held in a revocable living trust may be counted only in the situation where the same one or members of a Minority Group or women is the sole grantor, beneficiary, and trustee.
- F. The contributions of capital or expertise by one or members of a Minority Group or women to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the business or an owner who is not one or members of a Minority Group



or women, or mere participation in a business' activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a business ineligible, even if the debtor's ownership interest is security for the loan.

- G. The following requirements apply to situations in which expertise is relied upon as part of one or members of a Minority Group or women owner's contribution to acquire ownership:
  - a. The owner's expertise must be
    - ii. In a specialized field;
    - iii. Of outstanding quality;
    - iv. In areas critical to the business' operations;
    - v. Indispensable to the business' potential success;
    - vi. Specific to the type of work the business performs; and
    - vii. Documented in the records of the business. These records must clearly show the contribution of expertise and its value to the business.
  - b. The individual whose expertise is relied upon must have a significant financial investment in the business.
  - c. The Executive Director of the Council, or his/her designee shall deem as held by one or members of a Minority Group or women, for purposes of determining ownership, all interests in a business or other assets obtained by the individual:
    - i. As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or
    - ii. Through inheritance, or otherwise, because of the death of the former owner.
- H. The Executive Director of the Council, or his/her designee shall presume as not being held by one or members of a Minority Group or women, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-members of a Minority Group or a male who is:
  - a. Involved in the same business for which the individual is seeking certification, or an affiliate of that business;
  - b. Involved in the same or a similar line of business; or
  - c. Engaged in an ongoing business relationship with the business, or an affiliate of the business, for which the individual is seeking certification.
- I. To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate to HRC, by clear and convincing evidence, that:
  - a. The gift or transfer to one or members of a Minority Group or women was made for reasons other than obtaining certification as a MBE or WBE; and
  - b. One or members of a Minority Group or women actually controls the management, policy, and operations of the business, notwithstanding the continuing participation of a non-Minority Group or male individual who provided the gift or transfer.

- J. The Executive Director of the Council, or his/her designee must apply the following rules in situations in which marital assets form a basis for ownership of a firm:
  - a. When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, the Executive Director of the Council, or his/her designee must deem the ownership interest in the business to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. The Executive Director of the Council, or his/her designee shall not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the Minority Group or woman owner of the applicant firm.
  - b. A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for MBE, or WBE certification.
  
- K. The Executive Director of the Council or his/her designee, may consider the following factors in determining the ownership of a business. However, the Executive Director of the Council, or his/her designee must not regard a contribution of capital as failing to be real and substantial, or find a business ineligible, solely because:
  - a. One or more members of a Minority Group, or women, acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in paragraph (h) of this section;
  - b. There is a provision for the co-signature of a spouse who is not a member of a Minority Group or a woman on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or
  - c. Ownership of the business in question or its assets is transferred for adequate consideration from a spouse who is not a member of a Minority Group or a woman to a spouse who is such an individual. In this case, the Executive Director of the Council, or his/her designee must give particularly close and careful scrutiny to the ownership and control of a business to ensure that it is owned and controlled, in substance as well as in form, by one or more members of a Minority Group or women.

## **6.08 What rules govern determinations concerning control?**

- A. In determining whether minority or women owners control a business, HRC must consider all the facts in the record, viewed as a whole.

- B. Only an independent business may be certified as a MBE, WBE or SBE. An independent business is one the viability of which does not depend on its relationship with another business.
  - a. In determining whether a potential MBE, WBE or SBE is an independent business, HRC must scrutinize relationships with non-MBE, WBE, and SBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.
  - b. HRC must consider whether present or recent employer/employee relationships between the minority or female owner(s) of the potential MBE and non-MBE or WBE firms or whether persons associated with non-MBE or WBE firms compromise the independence of the potential MBE or WBE.
  - c. HRC must examine the business' relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential MBE, WBE or SBE.
  - d. In considering factors related to the independence of a potential SBE, MBE or WBE, HRC must consider the consistency of relationships between the potential MBE, WBE, or SBE and non-MBEs, WBEs and SBEs with normal industry practice.
- C. An MBE, WBE, or SBE must not be subject to any formal or informal restrictions which limit the customary discretion of the owners relied upon to obtain certification. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the owners whose status is relied upon to obtain certification, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents.
- D. The owners whose status is relied upon to obtain certification must possess the power to direct or cause the direction of the management and policies of the business and to make day-to-day as well as long-term decisions on matters of management, policy and operations.
  - a. An owner whose status is relied upon to obtain certification must hold the highest officer position in the company (e.g., chief executive officer or president).
  - b. In a corporation, an owner whose status is relied upon to obtain certification must control the board of directors.
  - c. In a partnership, one or more owners whose status is relied upon to obtain certification must serve as general partners, with control over all partnership decisions.
- E. Individuals whose status is not relied upon to obtain certification may be involved in an MBE, WBE or SBE as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power

to control the business, or be disproportionately responsible for the operation of the business.

- F. An owner whose status is relied upon to obtain certification may delegate various areas of the management, policymaking, or daily operations of the business to other participants in the business, regardless of whether these participants are minority or female. Such delegations of authority must be revocable, and the owner(s) whose status is relied upon to obtain certification must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the owner(s) whose status is relied upon to obtain certification in the business' overall affairs must be such that the recipient can reasonably conclude that those owners exercise control over the business' operations, management, and policy.
- G. An owner whose status is relied upon to obtain certification must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of work in which the business is engaged and the business' operations. An owner whose status is relied upon to obtain certification is not required to have experience or expertise in every critical area of the business' operations, or to have greater experience or expertise in a given field than managers or key employees. An owner whose status is relied upon to obtain certification must have the ability to intelligently and critically evaluate information presented by other participants in the business' activities and to use this information to make independent decisions concerning the business' daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal activities of the business is insufficient to demonstrate control.
- H. If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of business, then an owner whose status is relied upon to obtain certification of the MBE, WB or SBE must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a business, HRC must not deny certification solely on the ground that the person lacks the license or credential. However, HRC may take into account the absence of the license or credential as one factor in determining whether the owner whose status is relied upon to obtain certification actually controls the business.
  - a. HRC may consider differences in remuneration between the owner whose status is relied upon to obtain certification and other participants in the business in determining whether to certify a business as a MBE, WBE or SBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the business' policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the business. HRC may determine that a business is controlled by an owner whose status is relied upon to obtain certification although that owner's remuneration is lower than that of some other participants in the business.

- b. In a case where a non-minority or male individual formerly controlled the business, and a minority or female individual now controls it, HRC may consider a difference between the remuneration of the former and current controller of the business as a factor in determining who controls the business, particularly when that non-minority or male remains involved with the business and continues to receive greater compensation than the minority or female.
- I. In order to be viewed as controlling a business, an owner whose status is relied upon to obtain certification cannot engage in outside employment or other business interests that conflict with the management of the business or prevent the individual from devoting sufficient time and attention to the affairs of the business to control its activities. For example, absentee ownership of a business or part-time work in a full-time business does not constitute control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.
  - a. An owner whose status is relied upon to obtain certification may control a business even though one or more of the individual's immediate family members (whose status is not relied upon to obtain certification) participate in the business as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, HRC must make a judgment about the control the owner whose status is relied upon to obtain certification exercises vis-a-vis other persons involved in the business, without regard to whether or not the other persons are immediate family members.
  - b. If HRC cannot determine that the owner whose status is relied upon to obtain certification -- as distinct from the family as a whole -- control the business, then the owner whose status is relied upon to obtain certification has failed to carry their burden of proof concerning control, even though they may participate significantly in the business' activities.
- J. Where a business was formerly owned and/or controlled by a non-minority or woman individual (whether or not an immediate family member), ownership and/or control were transferred to a minority or woman, and that non-minority or woman remains involved with the business in any capacity, the minority or woman now owning the business must demonstrate to HRC, by clear and convincing evidence, that:
  - a. The transfer of ownership and/or control was made for reasons other than obtaining certification as a MBE or WBE; and
  - b. The minority or woman owner actually controls the management, policy, and operations of the business, notwithstanding the continuing participation of a non-minority or woman who formerly owned and/or controlled the business.
- K. In determining whether a business is controlled by its minority or women owners, HRC may consider whether the business owns equipment necessary to perform its work. However, HRC must not determine that a business is not controlled by minority or women owners solely because the business leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does

not involve a relationship with a prime contractor or other party that compromises the independence of the business.

- L. HRC must grant certification to a business only for specific types of work in which the minority or women owners have the ability to control the business. To become certified in an additional type of work, the business need demonstrate to HRC only that the minority and women owners are able to control the business with respect to that type of work. HRC may not, in this situation, require that the business be recertified or submit a new application for certification, but HRC must verify the minority or women owner's control of the business in the additional type of work.
- M. A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, HRC should generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.
- N. In order for a partnership to be controlled by minority or women individuals, no non-minority or women partners may have the power, without the specific written concurrence of the minority or women partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.
- O. The minority and women individuals controlling a business may use an employee leasing company. The use of such a company does not preclude the minority or women individuals from controlling the business if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

## **6.09 What are other rules affecting certification?**

- A. Consideration of whether a business performs a commercially useful function or is a regular dealer pertains solely to counting participation toward MBE, WBE, and SBE goals of businesses that have already been certified as MBEs, WBEs, or SBEs. HRC must not consider commercially useful function issues in any way in making decisions about whether to certify a business as a MBE, WBE, or SBE.
- B. HRC may consider, in making certification decisions, whether a business has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the MBE, WBE, or SBE programs.

- C. HRC must evaluate the eligibility of a business on the basis of present circumstances. HRC must not refuse to certify a business based solely on historical information indicating a lack of ownership or control of the business by minorities or women at some time in the past, or of the historical size of the business, if the business currently meets the certification standards and requirements. Nor must HRC refuse to certify a business solely on the basis that it is a newly formed business.
- D. SBE, MBE, and WBE businesses and businesses seeking MBE, WBE, SBE and DLSB certification shall cooperate fully with HRC requests for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.
- E. HRC must not require a business to be prequalified as a condition for certification unless the contracting City Department requires all businesses that participate in its contracts and subcontracts to be prequalified.

#### **6.10 Recertification Process**

- A. MBE, WBE or SBE certification is valid for a period of two (2) years from the date of certification. Prior to the expiration of the two-year period, a business that desires to be recertified shall:
  - a. Return a completed recertification form, as provided by the Council, to the office of the Executive Director of the Council, or his/her designee, sixty (60) days prior to the expiration of the certification; and
  - b. Meet the requirements specified in Sections 6.01 and/or 6.02 for certification as a MBE, WBE, or SBE.

#### **6.11 Certification Denials**

- A. When the Executive Director of the Council, or his/her designee, denies a request by an applicant business which is not currently certified by the Council, to be certified as a MBE, WBE, or SBE, the business must be provided a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based must be made available to the applicant, on request.
- B. When a business is denied certification, a time period of twelve (12) months must elapse before the business may reapply for certification. The time period for reapplication begins to run on the date the written explanation is received by the business.
- C. When the Executive Director of the Council, or his/her designee, makes a denial of certification concerning a business, the business may appeal the denial to the Council under Section 6.13.

#### **6.12 Certification Removals**

- A. Ineligibility complaints.
- a. Any person may file a written complaint alleging that a currently-certified MBE, WBE, or SBE is ineligible for certification. The complaint must specify the alleged reasons why the business is ineligible. The Executive Director of the Council, or his/her designee, is not required to accept a general allegation that a business is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the business is ineligible and should not continue to be certified.
  - b. The Executive Director of the Council, or his/her designee, must review records concerning the business, any material provided by the business and the complainant, and other available information. The Executive Director of the Council, or his/her designee, may request additional information from the business or conduct any other investigation that he/she deems necessary.
- B. If it is determined, based on this review, that there is reasonable cause to believe that the business is ineligible, the Executive Director of the Council, or his/her designee, must provide written notice to the business setting forth the reasons for the proposed determination. If it is determined that such reasonable cause does not exist, the Executive Director of the Council, or his/her designee, must notify the complainant and the business in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.



- C. Recipient-initiated proceedings.
  - a. A business has an affirmative duty to inform the Executive Director of the Council, or his/her designee, of any changes in its circumstances or other information that impacts its continued eligibility for certification.
  - b. If, based on notification by the business of a change in its circumstances or other information that comes to the Executive Director of the Council, or his/her designee's, attention, it is determined that there is reasonable cause to believe that a currently certified business is ineligible, the Executive Director of the Council, or his/her designee, will provide written notice to the business that it proposes to find the business ineligible, setting forth the reasons for the proposed determination.
  - c. The statement of reasons for the finding of reasonable cause will specifically reference the evidence in the record on which each reason is based.
- D. When the Executive Director of the Council, or his/her designee, notifies a business that there is reasonable cause to remove its eligibility, as provided in section (B) or (C) herein, the Executive Director of the Council, or his/her designee, will give the business an opportunity for an informal hearing, at which time the business may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified.
  - a. In such a proceeding, the Executive Director of the Council, or his/her designee, bears the burden of proving, by a preponderance of the evidence, that the business does not meet the certification standards.
  - b. The Executive Director of the Council, or his/her designee, must maintain and retain a complete record of the hearing, by any means acceptable under state law for the retention of a verbatim record of an administrative hearing.
  - c. The business may elect to present information and arguments in writing, without attending the hearing. In such a situation, the Executive Director of the Council, or his/her designee, bears the same burden of proving by a preponderance of the evidence that the business does not meet the certification standards as the Executive Director of the Council, or his/her designee, would during a hearing.
- E. Grounds for decision: The Executive Director of the Council, or his/her designee, must not base a decision to remove eligibility on a re-interpretation or changed opinion of information available at the time of its certification of the business. The Executive Director of the Council, or his/her designee, may base such a decision only on one or more of the following:
  - a. Changes in the business's circumstances since the certification of the business by the recipient that render the business unable to meet the eligibility standards of this part;
  - b. Information or evidence not available to the Executive Director of the Council, or his/her designee, at the time the business was certified;
  - c. Information that was concealed or misrepresented by the business in previous certification actions by a recipient; or

- d. A finding that the Executive Director of the Council, or his/her designee's, determination to certify the business was factually erroneous.
- F. Following a decision regarding removal of certification, the Executive Director of the Council, or his/her designee, must provide the business written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice must inform the business of the consequences of the decision.
- G. Upon removing a business's certification, the Executive Director of the Council, or his/her designee, must take the following actions:
  - a. When a prime contractor has made a commitment to use the ineligible business, or the City has made a commitment to use an ineligible MBE, WBE, or SBE prime contractor, but a subcontract or contract has not been executed before the issue of the decertification decision provided for in Section E herein, use of the ineligible business does not count toward the contract goal or overall goal. The Executive Director of the Council, or his/her designee, must direct the prime contractor to meet the contract goal with an eligible MBE/WBE/SBE business or demonstrate that it has made a good faith effort to do so.
  - b. If a prime contractor has executed a subcontract with the business before the Executive Director of the Council, or his/her designee, has notified the business of its ineligibility, the prime contractor may continue to use the business on the contract and may continue to receive credit toward its MBE/WBE/SBE goals for the business's work. In this case, or in a case where the City has let a prime contract to the MBE/WBE/SBE that was later ruled ineligible, the portion of the ineligible business's performance of the contract remaining after it issued the notice of its ineligibility shall not count toward the overall goal, but may count toward the contract goal.
    - i. Exception: If the MBEs/WBEs/SBEs ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, the Executive Director of the Council, or his/her designee, may continue to count its participation on that contract toward overall and contract goals.
- H. When a business is removed from certification, a time period of twelve (12) months must elapse before the business may reapply for certification. The time period for reapplication begins to run on the date the written explanation is received by the business.
- I. When the Executive Director of the Council, or his/her designee, makes an administratively final removal of certification, the business may appeal the denial to the Council under Section 6.13.

### **6.13 Certification Appeals**

- A. If a business is denied certification or has its eligibility removed by the Executive Director of the Council, or his/her designee, it may make an administrative appeal to the Council.
- B. A complainant in an ineligibility complaint may appeal to the Council if the Executive Director of the Council, or his/her designee, does not find reasonable cause to propose removing the business's eligibility, or, following a removal of eligibility proceeding, determines that the business is eligible.
- C. Appeals shall be sent by certified or express mail to the following address: Human Relations Council, 371 West Second Street, Suite 100, Dayton, Ohio 45202.
- D. Pending the Council's decision in the matter, the Executive Director of the Council, or his/her designee's, decision remains in effect. The Council does not stay the effect of the recipient's decision while it is considering an appeal.
- E. Appeals must be received by the Council within thirty (30) days of the date of the Executive Director of the Council, or his/her designee's, decision, and shall include information and arguments concerning why the Executive Director of the Council, or his/her designee's, decision should be reversed. The Council may accept an appeal filed later than thirty (30) days after the date of the decision only if the Council determines that there was good cause for the late filing of the appeal.
- F. The letter of appeal must state the name and address of any other entity which currently certifies the business, which has rejected an application for certification from the business, or removed the business's eligibility within one (1) year prior to the date of the appeal, or before which an application for certification or a removal of eligibility is pending.
- G. Upon receiving an appeal, the Council shall request a copy of the complete administrative record in the matter. The Executive Director of the Council, or his/her designee, must provide the administrative record, including a hearing transcript, within twenty (20) days of the Council's request. The Council may extend this time period on the basis of a showing of good cause. To facilitate the Council's review of the Executive Director of the Council, or his/her designee's, decision, the Executive Director of the Council, or his/her designee, must ensure that such administrative records are well organized, indexed, and paginated. Records that do not comport with these requirements are not acceptable and will be returned to the Executive Director of the Council, or his/her designee, to be corrected immediately. If an appeal is brought concerning the Executive Director of the Council, or his/her designee's, certification decision concerning a business, and the Executive Director of the Council, or his/her designee, relied on the decision and/or administrative record of

another entity, this requirement applies to both the Council and the other entity involved.

- H. The Executive Director of the Council, or his/her designee, shall also make any information s/he provides to the Council under this section available to the business and any third-party complainant involved, consistent with applicable federal or state laws concerning freedom of information and privacy. The Council shall make available, on request by the business and any third-party complainant involved, any supplementary information it receives from any source.
- I. The Council shall make its decision based solely on the entire administrative record. The Council does not make a de novo review of the matter and does not conduct a hearing.
  - a. The Council will affirm the Executive Director of the Council, or his/her designee's, decision unless it determines, based on the entire administrative record, that the decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification.
  - b. If the Council determines, after reviewing the entire administrative record, that the decision of the Executive Director of the Council, or his/her designee, was unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification, the Council will reverse the decision and direct the Executive Director of the Council, or his/her designee, to certify the business or remove its eligibility, as appropriate. The Executive Director of the Council, or his/her designee, must take the action directed by the Council's decision immediately upon receiving written notice of it.
  - c. The Council is not required to reverse the Executive Director of the Council, or his/her designee's, decision if the Council determines that a procedural error did not result in fundamental unfairness to the appellant or substantially prejudice the opportunity of the appellant to present its case.
  - d. If it appears that the record is incomplete or unclear with respect to matters likely to have a significant impact on the outcome of the case, the Council may remand the record to the Executive Director of the Council, or his/her designee, with instructions seeking clarification or augmentation of the record before making a finding. The Council may also remand a case to the Executive Director of the Council, or his/her designee, for further proceedings consistent with Council's instructions concerning the proper application of the provisions of this part.
  - e. The Council will not uphold the Executive Director of the Council, or his/her designee's, decision based on grounds not specified in the decision.
  - f. The Council's decision is based on the status and circumstances of the business as of the date of the decision being appealed.
  - g. The Council shall provide written notice of its decision to the Executive Director of the Council, the business, and the complainant in an ineligibility complaint. A copy of the notice shall also be sent to any other entity whose administrative record or decision has been involved in the proceeding as referenced in Section F herein.

- h. The Council's policy is to make its decision within one hundred eighty (180) days of receiving the complete administrative record. If the Council does not make its decision within this period, the Council shall provide written notice to concerned parties, including a statement of the reason for the delay, and a date by which its decision will be made.
- J. All decisions under this section are final and are not subject to petitions for reconsideration.

## **7. Prompt Payments to Subcontractors and Suppliers (Section 35.48).**

In accordance with Ohio Revised Code §4113.61, and the City's Construction and Materials Specification Handbook, if a subcontractor or material supplier requests payment in time to allow the contractor to include the request in the contractor's Contractor Payment Request, the contractor shall pay within ten (10) days after receipt of payment from the City:

- A. To a subcontractor an amount equal to percent of completion allowed by the City for the subcontractor's work;
- B. To a material supplier an amount equal to all or a portion of the material supplier's request for materials furnished.

## **8. Counting Toward Goals**

A prime bidder is required to meet the goal or demonstrate Good Faith Efforts for subcontracting of Minority-owned or Women-owned or Small Business Enterprises (MBE/WBE/SBE) as set by the Executive Director of the Council, or his/her designee. When a MBE/WBE/SBE participates in a contract, only the value of the work actually performed by the MBE/WBE/SBE toward the goals shall be counted towards the goal, in accordance with the following provisions:

- A. Where a prime bidder is a certified SBE/MBE/WBE, the Executive Director of the Council, or his/her designee, shall count that prime bidder's participation towards any goal established for the prime bidder's particular certification.
- B. The Executive Director of the Council, or his/her designee, shall count the entire amount of that portion of a Professional Services, Other Services, Supplies or Construction contract that is performed by the MBE/WBE/SBE's own forces. The Executive Director of the Council, or his/her designee, shall include the cost of supplies and materials obtained by the MBE/WBE/SBE for the work of the contract, including supplies purchased or equipment leased by the MBE/WBE/SBE (except supplies and equipment the MBE/WBE/SBE purchases or leases from the prime contractor or its affiliate).

- a. Required documentation from the Prime Contractor for utilization of a Certified Subcontractor for supplies:
  1. The P.O. with [Certified Subcontractor Name] and it must include the following information from [Owner of subcontracting company], owner of [Certified Subcontractor Name].
    - a. An itemized list of supplies, along with costs and the total
    - b. Identify any quantities that will be coming directly from [Certified Subcontractor Name]'s yard and any items that are intended to be drop shipped.
    - c. Explanation/justification for the need to drop ship and to what location
    - d. Indicate the quantities that will be delivered throughout the life of the project (will it be supplied at once, or will shipments be made throughout the life of the project)
    - e. Identify the name of the manufacturer that will be drop shipping (if applicable)
- C. The Executive Director of the Council, or his/her designee, shall count the entire amount of fees or commissions charged by a MBE/WBE/SBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance contract, toward MBE/WBE/SBE goals, provided the fee was determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- D. When a MBE/WBE/SBE subcontracts part of the work of its contract to another business it is subject to the goal for subcontracting as well, and the value of the subcontracted work may be counted toward the MBE/WBE/SBE goals only if the MBE/WBE/SBE's subcontractor is itself a MBE/WBE/SBE. Work that a MBE/WBE/SBE subcontracts to a non-MBE/WBE/SBE business does not count toward the MBE/WBE/SBE goals.
- E. When a MBE/WBE/SBE performs as a participant in a joint venture the Executive Director of the Council, or his/her designee, shall count a 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/SBE performs with its own forces toward the MBE/WBE/SBE goals.
- F. The Executive Director of the Council, or his/her designee, shall count expenditures to a MBE/WBE/SBE contractor toward MBE/WBE/SBE goals only if the MBE/WBE/SBE is performing a commercially useful function on that contract.
  - a. A MBE/WBE/SBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the MBE/WBE/SBE must also be responsible, with respect to materials and supplies used on the contract,

for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a MBE/WBE/SBE is performing a commercially useful function, the following factors must be considered:

- i. The amount of work subcontracted;
  - ii. That the work conforms to industry standards and practices;
  - iii. That the amount the MBE/WBE/SBE is to be paid under the contract is commensurate with the work it is actually performing;
  - iv. The amount of MBE/WBE/SBE credit claimed for its performance of the work, and;
  - v. Other relevant factors.
- b. An MBE/WBE/SBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of MBE/WBE/SBE participation. In determining whether a MBE/WBE/SBE is such an extra participant, the Executive Director of the Council, or his/her designee, will examine similar transactions, particularly those in which MBEs/WBEs/SBEs do not participate.
  - c. If an MBE/WBE/SBE does not perform or exercise responsibility for at least thirty (30) percent of the total cost of its contract with its own work force, or the MBE/WBE/SBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the Executive Director of the Council, or his/her designee, shall presume that it is not performing a commercially useful function.
  - d. When a MBE/WBE/SBE is presumed not to be performing a commercially useful function as provided in section 3 herein, the MBE/WBE/SBE may present evidence to rebut this presumption. The Executive Director of the Council, or his/her designee, may determine that the business is performing a commercially useful function given the type of work involved and normal industry practices.
- G. The Executive Director of the Council, or his/her designee, will use the following factors in determining whether a MBE/WBE/SBE trucking company is performing a commercially useful function:
- a. The MBE/WBE/SBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting MBE/WBE/SBE goals.
  - b. The MBE/WBE/SBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
  - c. The MBE/WBE/SBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
  - d. The MBE/WBE/SBE may lease trucks from another MBE/WBE/SBE business, including an owner-operator who is certified as a MBE/WBE/SBE. The MBE/WBE/SBE who leases trucks from another MBE/WBE/SBE receives credit

for the total value of the transportation services the lessee MBE/WBE/SBE provides on the contract.

- e. The MBE/WBE/SBE may also lease trucks from a non-MBE/WBE/SBE business, including from an owner-operator. The MBE/WBE/SBE who leases trucks from a non-MBE/WBE/SBE is entitled to credit for the total value of transportation services provided by non-MBE/WBE/SBE lessees not to exceed the value of transportation services provided by MBE/WBE/SBE-owned trucks on the contract. Additional participation by non-MBE/WBE/SBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the Executive Director of the Council, or his/her designee.
    - i. *Example to paragraph e):* MBE Business X uses two of its own trucks on a contract. It leases two trucks from MBE Business Y and six trucks from non-MBE Business Z. MBE credit would be awarded for the total value of transportation services provided by Business X and Business Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Business Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Business Z, MBE credit could be awarded only for the fees or commissions pertaining to those trucks Business X receives as a result of the lease with Business Z.
  - f. For purposes of this section, a lease must indicate that the MBE/WBE/SBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the MBE/WBE/SBE, so long as the lease gives the MBE/WBE/SBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the MBE/WBE/SBE.
- H. The Executive Director of the Council, or his/her designee, shall count expenditures with MBE/WBE/SBE for materials or supplies toward MBE/WBE/SBE goals as provided in the following:
- a. If the materials or supplies are obtained from a MBE/WBE/SBE manufacturer, the Executive Director of the Council, or his/her designee, shall count one hundred percent (100%) of the cost of the materials or supplies toward MBE/WBE/SBE goals.
  - b. For purposes of this section 1, a manufacturer is a business that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
  - c. If the materials or supplies are purchased from a MBE/WBE/SBE regular dealer, the Executive Director of the Council, or his/her designee, shall count sixty percent (60%) of the cost of the materials or supplies toward MBE/WBE/SBE goals.
  - d. For purposes of this section d, a regular dealer is a business that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the



specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

- i. To be a regular dealer, the business must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
    - ii. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this section 2(b) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
  - e. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this section d.
  - f. With respect to materials or supplies purchased from a MBE/WBE/SBE which is neither a manufacturer nor a regular dealer, the Executive Director of the Council, or his/her designee, shall count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward MBE/WBE/SBE goals, provided the Executive Director of the Council, or his/her designee, determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. However, the Executive Director of the Council, or his/her designee, shall not count any portion of the cost of the materials and supplies themselves toward MBE/WBE/SBE goals.
- I. If a business is not currently certified as a MBE/WBE/SBE at the time of the execution of the contract, the Executive Director of the Council, or his/her designee, shall not count the business's participation toward any MBE/WBE/SBE goals.
- J. The Executive Director of the Council, or his/her designee, shall not count the dollar amount of work performed under a contract with a MBE/WBE/SBE after it has ceased to be a certified MBE/WBE/SBE.
- K. The Executive Director of the Council, or his/her designee, shall not count the participation of a MBE/WBE/SBE subcontractor toward a contractor's final compliance with its MBE/WBE/SBE obligations on a contract until the amount being counted has actually been paid to the SBE/MBE/WBE.
- L. A prime contractor may replace a certified subcontractor named in a bid award for the causes listed herein. If the prime contractor chooses to replace a certified subcontractor, it must obtain the written consent from the Executive Director of the Council, or his/her designee.
- a. Cause for replacement may include:

- i. Failure to perform the scope of work to the specifications of the City of Dayton and those stipulated in the written contract between the prime contractor and the subcontractor.
- ii. Failure to provide a written invoice or statement including the scope of work and the quantities for the work completed, including terms not to exceed ten business days.
- iii. Other failures verified by the Executive Director of the Council, or his/her designee.

## 9. **Annual and Project-by-Project Goal-Setting Process**

The City of Dayton shall establish the **annual** PEP goals and **project-by-project** PEP goals for Construction and Goods and Services opportunities. In establishing the annual and project-by-project inclusion goals, the Oversight Committee, HRC, Purchasing Agent and the Department Directors shall consider factors that establish the availability and the capacity of certified minority, women and small business enterprises as well as other relevant factors outlined below.

- A. These factors include but are not limited to:
  - a. The availability of MBEs, WBEs and SBEs in the relevant market area willing and able to do business with the city;
  - b. Annual participation figures for qualified MBEs, WBEs and SBEs in both City contracting and the private marketplace;
  - c. The findings and conclusions contained in the Second-Generation Disparity Study and other reports undertaken by the City, organizations, and governmental entities relating to the Dayton market area;
  - d. The Source of Funding (FAA, FHWA, CDBG, HOME, General Cap., Water Rev., OPWC);
  - e. Competition in the bid process;
  - f. Insurance and bonding requirements;
  - g. Specialized/ technical complexity of the project or professional opportunity; and,
  - h. The material costs for the project versus the labor opportunity.
- B. The Annual Goal Setting Process by the HRC/Oversight Committee
  - a. The Annual Goals shall be set by a series of annual meetings of the HRC and PEP Oversight Committee, the HRC, Purchasing Division and the affected Department for planned projects or opportunities. They shall identify and establish bidding opportunities in certain commodity and industry areas. The Oversight Committee and the HRC shall give due consideration to the following tools which may aid greatly in furthering the PEP goals and local participation:
    - i. **Commodity Area analysis** of the City's spending for goods and services and comparison to ready and available certified MBEs, WBEs, and SBEs;
    - ii. Other **legally-defensible methods** that the HRC or Oversight Committee may develop in furtherance of the PEP inclusion goals.
  - b. Once the annual goals have been established, the HRC shall publish to all City departments the established annual goals for Construction and Goods and Services, the commodity and services areas with ready and available MBEs,

WBEs and SBEs, and any other methods established for maximizing MBE, WBE, and SBE participation.

- C. Ongoing Project-by-project Process by the HRC and the Requesting Department
  - a. The HRC shall set Project-by Project or Opportunity-by-Opportunity goals on individual projects or opportunities that arise throughout the year. The HRC shall regularly communicate information regarding newly certified companies in commodity areas not yet targeted under the annual goal-setting process as well as the increased capacity of certified companies to perform under certain commodity areas being considered for bidding.
- D. For **Construction** goal setting, the Council shall convene a meeting or series of meetings by November 15<sup>th</sup> of each year to review planned construction projects for the upcoming year and to continuously evaluate the opportunities for participation by MBEs, WBEs, and SBEs on upcoming projects. The annual goal setting process shall include consultation with the PEP Oversight Committee and affected Departments. Additionally, the HRC and departments shall meet on a project-by-project basis throughout the fiscal year to review construction projects and to continuously evaluate the opportunities for participation by MBEs, WBEs, and SBEs.
  - a. The HRC shall publish and provide written notice of the PEP goal to the affected Department Director and engineer, as well as the Public Works Department on its recommendations of the goals for all construction projects presented at the annual goal-setting. The HRC shall do the same on a project-by-project basis throughout the year.
  - b. On Sub-recipient and Special Economic Development Construction Projects (By RFPS and Agreements), the HRC shall work jointly with P&CD, ED and the Developer or Subrecipients to establish the goals on an annual and project-by-project basis.
  - c. The goal-setting for larger economic development and tax credit development projects shall consider Joint Ventures as a means for ensuring PEP inclusion (i.e., Tech town Project).
- E. For **Goods and Services** goal setting, the Council shall convene a meeting or series of meetings by September 15<sup>th</sup> of each year to review planned procurement opportunities and commodity areas for the upcoming year and to continuously evaluate the opportunities for MBE, WBE, and SBE contracting on upcoming purchases for Goods and Services, including Professional Services. The annual goal setting process shall include consultation with the PEP Oversight Committee and Purchasing Agent. Additionally, the Council, the Purchasing Agent, and City departments may meet on a contract-by-contract basis throughout the fiscal year to review procurement and contracting opportunities and evaluate the opportunities for SBEs, MBEs, and WBEs to bid on City procurements.

## **9.01 Goods**

A. The Annual Goal setting process for Goods is as follows:

- a. Each July a report summarizing the City's spend by Commodity shall be prepared by the ITS department for the previous twelve months spend and presented to HRC and Purchasing.
  - b. The report will be reviewed by HRC to determine the commodity areas in which there is capacity in the market through Certified Companies (MBE, WBE, SBE) and to scrub the data to determine which spend areas are not included in the total spend (i.e. County or State fees).
  - c. The analysis by HRC will be presented to the Division of Purchasing to review the upcoming known bidding opportunities and expiring Price Agreements.
  - d. The final review by HRC and Purchasing shall be presented to the PEP Oversight Committee for recommendation of the Annual Aspirational Goals for MBEs, WBEs, and SBEs.
  - e. The PEP Oversight committee will provide feedback and recommendations.
  - f. The HRC will then set the final Annual Goal for the following year's spend areas.
  - g. The Annual Goals will then be published to Departments, and added to the Purchasing Bid language.
- B) The Project-by-Project Goals for Goods shall be set each year on an as-needed basis when one of the following conditions occur:
- i. HRC notifies Purchasing of new capacity in the market.
  - ii. In this case, HRC would notify Purchasing of the new capacity in the Commodity area, to determine if there are any bidding opportunities now or in the future.
  - iii. Purchasing determines a new spend Commodity which was not reviewed during the Annual Goal setting process.
  - iv. In this case, Purchasing would notify HRC of the bid opportunity in order to determine the market capacity to either set a goal or provide inclusion of Certified companies in the bidding process.

## **9.02 Services (Including Professional Services)**

A. The Annual Goal setting process for Services is as follows:

- a. Each July a report summarizing the City's spend by Commodity shall be prepared by the IT Division of the Department of Central Services for the previous twelve months spend and presented to HRC and Purchasing.
- b. The report will be review by HRC to determine the commodity areas in which there is capacity in the market through Certified Companies (MBE, WBE, SBE).
- c. The analysis by HRC will be presented to the Division of Purchasing, and/or City Departments to review the upcoming known bidding opportunities and expiring Price Agreements or Contracts.

- d. The final review by HRC and Purchasing shall be presented to the PEP Oversight Committee for recommendation of the Annual Aspirational Goals for MBEs, WBEs, and SBEs.
  - e. The PEP Oversight committee will provide feedback and recommendations.
  - f. The HRC will then set the final Annual Goal for the following year's spend areas.
  - g. The Annual Goals will then be published to Departments, and added to the Purchasing Bid language.
- B. The Project-by-Project Goals for Services (including Professional Services) shall be set each year on an add needed basis when one of the following conditions occur:
- a. HRC notifies Purchasing or City Departments of new capacity in the market.
    - i. In this case, HRC would notify Purchasing of the new capacity in the Commodity area, to determine if there are any bidding opportunities now or in the future.
  - b. Purchasing or a City Department determines a new spend Commodity which was not reviewed during the Annual Goal setting process.
    - i. In this case, Purchase or the City Department would notify HRC of the bid opportunity in order to determine the market capacity to either set a goal or provide inclusion of Certified companies in the bidding process.

### **9.03 Bidding and RFP Policies and Procedures**

#### **A. CONSTRUCTION BIDDING POLICIES**

- a. The City conducts public-bid construction projects, subrecipient agreement projects, and special economic development projects by RFPs. The City of Dayton currently implements a centralized bidding process for all public construction projects, including projects from and for the Water Department, Aviation, Public Works, Housing Inspection, Planning and Community Development, and Economic Development. This centralized bidding for all City public bid construction projects is performed by the Department of Public Works.
- b. The Department of Public works conducts Pre-Bid meeting on Tuesdays at 11:00 AM and conducts Public bid Openings on Thursdays at 12:00 noon.
- c. The HRC, at all Pre-bid meetings, discusses the project Goals, Responsive Bidder Approach, Affirmative Action Worker utilization, Good Faith Waiver Policies, and Policy on Counting Materials and Goods by MBE, WBE, and SBE subcontractors, and provides a current and updated listing of all certified PEP companies based on the nature or type of project inclusion goal.
- d. The bidding Department discusses the technical and engineering aspects of the project, answers questions, and issues any addendum and instructions for the bid. The Public Bid Opening is conducted by Public Works Department and HRC.

## B. PUBLIC-BID CONSTRUCTION PROCESS

- a. Project Funding Secured by the Department.
- b. Department Engineer's Estimate and Scope of Work finalized; Determines if the Project requires Pre-qualifications of Prime Contractors.
- c. Department Engineer's Estimate and Scope of Work Sent to HRC for setting inclusion Goals on a Project-By-Project Basis.
- d. The HRC provides to Department Engineer its recommended MBE, WBE or SBE goals within three (3) days of receiving the Department Engineer's Estimate and Scope of Work.
- e. The Department Manager forwards a Request for Bidding Services and all project documents to the Department of Public Works for centralized bidding and advertising. Department Manager creates the project folder in City Bots and notifies Public Works of same.
- f. Public Works prepares the Invitation to Bid, the Legal Notice and Instructions to Bidders, the M/W/SBE Participation Forms, the Affirmative Action packages, and Worker Utilization Form and forwards them to the HRC for review and approval.
- g. The HRC approves the Invitation to Bid and the Legal Notice and forwards them to the Department of Public Works within three days for publication in newspaper of general circulation. Public Works Department and the bidding Department complete the Contract Compliance Software project folder and begin the process of notifying Plan Rooms, plan houses, its plan holders, and its customary bidders of the upcoming bid opportunity.
- h. The HRC gives notice to MBEs, WBEs and SBEs of the upcoming bid opportunity. MBEs, WBEs and SBEs are referred to resource partners such as the Small Business Development Center, and the Procurement Technical Assistance Center for cost estimating and other technical assistance prior to pre-bid and bid opening dates.
- i. Public Works also sends notice of invitation to workforce development agencies to attend the Pre-Bid meeting and to discuss their services to the pre-bid attendees.
- j. A mandatory Pre-bid meeting may be held, and the HRC discusses the projects Goals, Responsive Bidder Approach, Affirmative Action Worker utilization, Goals and Good Faith Waiver Policies, and Policy on Counting Materials and Goods by MBE, WBE, and SBE subcontractors.
- k. Bid Opening conducted by Public Works Department and HRC.
- l. HRC sends contract compliance communications to Prime contractor and all MBE, WBE, and SBE subcontractors regarding scope of work to be performed, applies Responsive bidder approach to any issues in the inclusion goal, and evaluate any Waiver/ Good Faith documentation.
- m. HRC conducts Contract Compliance evaluation for Public bid Construction Projects / Bid Submission Requirements for Projects Subject to MBE, WBE, and SBE Goals.
  - i. Evaluation of Bid Award to Lowest and Best Bid.
    1. Responsive Bidder Approach on City-funded projects.
  - ii. Good Faith Efforts/ Recommendation from HRC.

1. Documentation of Sufficient Commitments to Meet MBE/WBE/SBE Goals.
  2. Waiver Request Procedure/Form (Attached Appendix C).
  3. Good Faith Efforts Points and Grading System
  4. HRC Contract Compliance review of project Bids and pending award of Goods and Professional Services Contracts.
- iii. HRC Counting and Evaluation SBE, MBE, WBE & DLSB Participation and Efforts.
1. Responsive Bid Approach
  2. M/W/SBE as Material Suppliers
  3. Truckers [Sample Participation Counting and Evaluation]
  4. Joint Ventures and Others
- n. HRC and Department conduct a Pre-construction meeting with awarded Prime Contractor and inclusion subcontractors. HRC discusses MBE, WBE and SBE goals, Manpower utilization goals and monthly reports, job site visits by HRC, subcontractor drawdown/payment forms, and other compliance issues.
- o. HRC Monitoring and Reporting Requirements for Workforce, Prevailing Wages, Inclusion and subcontracting Goals (by Contract Compliance Software and Banner).
- p. HRC and Public Works monitor project until completion and resolve issues with MBE, WBE, and SBE performance, specifications, inspections and workforce.
- q. HRC intervenes on any complaint or issues relating to the performance and prompt payments to MBEs, WBEs and SBEs.

#### C. GOODS AND SERVICES PUBLIC BID PROCESS (Sec. 35.371)

Staff from the Human Relations Council and the Central Services Department Division of Purchasing worked to develop a policy and procedures manual and a training program for the implementation of the PEP for Goods and Services. It is recommended that buyers from all departments throughout the City of Dayton receive 90 minutes of training on these new processes designed to achieve the City's goal of promoting full and equal business opportunity.

Annual participation goals for goods and services.

- a. In an effort to remedy the present effects of past identified discrimination in the City of Dayton marketplace and contracting and procurement with the city, as found in the Second-Generation Disparity Study reported by MGT of America, Inc., August 8, 2008, and in order to provide MBEs, WBEs and SBEs equal opportunity and access to participate in all city procurement of goods and services, including professional services, the council shall annually establish aspirational goals for MBE, WBE and SBE participation in contracting for city goods and services.

- b. The following factors shall be utilized as part of the methodology for establishing annual aspirational MBE, WBE and SBE goals for the MBE, WBE and SBE programs for goods and services:
  - i. The number of minority, women and small businesses in the State of Ohio;
  - ii. The availability of minority, women and small businesses in the State of Ohio willing and able to do business with the city;
  - iii. Annual participation figures for minority, women and small businesses in both city contracting and the private marketplace;
  - iv. Analysis of disparities between the availability and participation of willing and able minority, women and small businesses in both the city and the private marketplace;
  - v. The findings and conclusions contained in the Second-Generation Disparity Study and other reports undertaken by the city, organizations, and governmental entities relating to the Dayton market area;
  - vi. Review and analysis of the reports generated by the Council or other city departments in accordance with Policies and Procedures for Outreach and Business Assistance to Subcontractors by the Council; and,
  - vii. Other relevant factors.
- c. The initial annual aspirational MBE, WBE and SBE goals for goods and services shall be as follows, indicated in percentage of annual eligible spend for goods and services.
  - i. Goals for goods: ten percent - MBE; five percent - WBE; 15 percent - SBE.
  - ii. Goals for services (including professional services and other services): 12 percent - MBE; three percent - WBE; 20 percent - SBE.
- d. These annual aspirational goals shall be reviewed each year by September 15 by the Council. The annual goal setting process shall include consultation with the PEP Oversight Committee.
- e. These goals are only intended to be benchmarks for evaluating overall performance of the program on an annual basis. These participation goals are not and shall not be quotas.
- f. For purposes of determining or satisfying annual participation goals, only participation of MBEs, WBEs and SBEs certified by the Executive Director of the Council or his/her designee, or a Council-approved certification agency, shall be considered.

## **10. Joint Ventures (Section 35.41)**

- A. The City will encourage and promote, where feasible, establishment of Joint Ventures to ensure prime contracting opportunities for all businesses, including MBEs, WBEs, and SBEs. Based upon the scope of work and market availability, the Executive Director of the Council, or his/her designee, will determine on a project-by-project basis whether a Joint Venture will be required for the project.
- B. On projects in which a Joint Venture is required, no bid shall be accepted unless submitted by an approved Joint Venture.



- C. On such eligible projects in which a Joint Venture is required, the Joint Venture member businesses must have either different race ownership, different gender ownership, or both. MBE, WBE, and/or SBE members of the Joint Venture must be qualified as defined for each in Section 35.35. A bid submitted by a Joint Venture/partnership comprised of bidders with both the same race and gender ownership shall be deemed non-responsive and rejected.
- D. A written Joint Venture agreement must be completed by all parties to the Joint Venture and executed before a notary public, which clearly delineates the rights and responsibilities of each member, complies with any requirements of the Council as set forth in bid documents or otherwise, and provides that the Joint Venture shall continue for, at a minimum, the duration of the project.
- E. Each member of the Joint Venture shall provide the Executive Director of the Council, or his/her designee, access to review all records pertaining to the agreement between the partners before and after the award of the contract in order to reasonably assess compliance with their agreement, to include agreements pertaining to:
  - a. The MBE, WBE or SBE venture partner's liability versus said partners percentage of revenue earned for the project.
  - b. The actual participation of the strategic partners on the project;
  - c. The method of and the responsibility for accounting, and;
  - d. The method by which disputes are resolved.
- F. The Executive Director of the Council, or his/her designee, shall review and approve all contractual Joint Venture agreements regarding the terms and provisions of each Joint Venture relationship prior to the award of a contract on an eligible project to the Joint Venture, including agreements pertaining to:
  - e. The initial capital investment of each venture partner;
  - f. The proportional allocation of profits and losses to each venture partner. No MBE, WBE, or SBE venture partner's liability shall ever exceed said partner's percentage of revenue earned while a participant in the Joint Venture.
  - g. The sharing of the right to control the ownership and management of the Joint Venture;
  - h. Actual participation of the venture partners on the project;
  - i. The method of and responsibility for accounting;
  - j. The method by which disputes are resolved; and
  - k. Any additional or further information required by the Executive Director of the Council, or his/her designee, as set forth in bid documents or otherwise.
- G. Joint Ventures may submit agreements for pre-approval no later than fourteen (14) calendar days prior to the date set for receipt of bids on an eligible project. Otherwise, agreements must be submitted on or before the date set for receipt of bids on an eligible project. A bid submitted by a Joint Venture that does not include a satisfactory written Joint Venture agreement in accordance with the requirements of this section shall be deemed non-responsive and rejected.

- H. The Joint Venture, and each member of the Joint Venture, shall provide the Executive Director of the Council, or his/her designee, access to review all records pertaining to Joint Venture agreements before and after the award of a contract in order to reasonably assess compliance with this subdivision.

**The principles outlined in this section (35.41) apply to Joint Ventures, Strategic Partnerships and Mentor-Protégé Relationships.**



## EXHIBIT A – PARTICIPATION FORM

### (Circle one: SBE/MBE/WBE/DLSB/DBE/HUD Section 3) PARTICIPATION FORM

**Project Name:** \_\_\_\_\_

This form may be used for more than one funding source. City of Dayton general fund and State of Ohio funds: The City of Dayton has adopted procurement programs for Minority-owned, Woman-owned, Small Business Enterprises, and Dayton Local Small Business in accordance with Sections 35.30 – 35.68 of the Revised Code of General Ordinances (R.C.G.O.), inclusively. Federal funds: The City of Dayton is committed to meeting HUD-established subcontracting and employment opportunities for HUD Section 3 companies certified with the Human Relations Council. This commitment applies to all projects funded through NSP/CDBG/HOME. The City of Dayton is a recipient of Department of Transportation funds and complies with the DBE program. Authorization for the program comes from 49 Code of Federal Regulations Part 26 (49 CFR 26). State Funds: When determining the level of participation the, only the total work performed by the certified subcontractor either singularly or severally, will be considered. This form must be utilized to indicate your subcontractors and must be fully completed and returned with your bid proposal, i.e., you must list the name(s), address, etc. of the subcontractor, type of work to be performed, dollar amount of the subcontract and percentage of the base bid. Use as many copies of this form as necessary to list all subcontractors. Should you have questions regarding this form, please contact the Human Relations Council (HRC) Office. (937) 333-1403.

		Please Check One					
Firm Name, Tax I.D. Number and Mailing Address	Prime Contract Bid <input type="checkbox"/>	Joint Venture Bid <input type="checkbox"/>	Supply or Service Subcontract <input type="checkbox"/>	Construction Subcontract <input type="checkbox"/>	Type of Service or Supply to be Provided	Type of Construction Work to be Performed	
Certified Business Firm Name: _____ Tax I.D. Number: _____ Street Address: _____ City/State/ Zip Code: _____ Phone (area code/#): _____ E-mail: _____							
Total \$ Amount of PRIME CONTRACTOR'S Base Bid: _____					Total \$ to subcontract _____ Total % subcontract: _____		
<b>PRIME CONTRACTOR'S REPRESENTATIVE</b>							
Print Name: _____					Street Address _____		
Sign Name: _____					City/State/Zip _____		



## EXHIBIT A – WAIVER REQUEST FORM

### WAIVER REQUEST DOCUMENTED ACTIVITY FORM

Date \_\_\_\_\_

Project: \_\_\_\_\_ Participation Goal (list only one): \_\_\_\_\_

Submit a separate form for each goal for which you are requesting a waiver. A Bidder Requesting a total or partial Waiver of the **(circle one: SBE/MBE/WBE/DLSB/DBE/HUD Section 3)** Participation Goal must maintain supporting documentation and will be required to provide such documentation within two days of its request. The City of Dayton Human Relations Council (HRC) shall review and evaluate the Bidder's efforts to meet and comply with the project participation goal. A bidder will be granted a Waiver for SBE/MBE/WBE/DLSB goals based on good faith efforts; DBE goals based on good faith efforts; HUD Section 3 goals based on efforts to the greatest extent feasible; and only where the HRC determines that the bidder has obtained at least Sixty-five (65) points from the following list of activities. **This form must be completed and submitted with your bid if you are requesting a waiver of any goal.**

#	Points Possible	Activity Description	Your Points?
1	15	Solicited the interest of all certified <b>MBE/WBE/SBE/DLSB or DBE or HUD3</b> having the capability to perform the work of the contract. The bidder must solicit this interest within ten (10) business days of the bid submittal deadline in order to allow the <b>MBE/WBE/SBE/DLSB or DBE or HUD3</b> sufficient time to respond to the solicitation.	
2	15	Divided contract work items into economically feasible units to facilitate <b>MBE/WBE/SBE/DLSB or DBE or HUD3</b> participation, even when the bidder might otherwise prefer to perform these work items with its own forces.	
3	10	Provided interested <b>MBE/WBE/SBE/DLSB or DBE or HUD3</b> with information about the plans, specifications, and requirements of the contract within ten (10) business days of the bid submittal deadline in order to assist them in responding to a solicitation.	
4	5	Negotiated with <b>MBE/WBE/SBE/DLSB or DBE or HUD3</b> subcontractors, and has taken the subcontractors' price and capabilities, as well as the contract goals, into consideration.	
5	5	Rejected <b>MBE/WBE/SBE/DLSB or DBE or HUD3</b> as being unqualified only with reasons based on a diligent investigation of their capabilities. The bidder's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the bidder's efforts to meet the project goal.	
6	20	Assisted interested <b>MBE/WBE/SBE/DLSB or DBE or HUD3</b> that responded to the bidder's solicitation in actually obtaining bonding, lines of credit, or insurance as required by the City or the bidder.	
7	10	Contacted the Human Relations Council and used the services of community organizations, contractors' groups, local, state and federal business assistance offices, and other organizations to find subcontractors certified as (circle one: <b>MBE/WBE/SBE/DLSB or DBE or HUD3</b> ).	
8	20	The bidder is actively participating in an ongoing Joint Venture or Strategic Partnership (R.C.G.O. § 35.41), documented mentor/protégé program or documented construction management program with a certified <b>MBE/WBE/SBE/DLSB or DBE or HUD3</b> in the assistance of their business growth and development.	
	<b>100</b>	<b>Bidding Company Name:</b> _____	