

CITY OF CINCINNATI
MINORITY AND WOMEN BUSINESS ENTERPRISE PROGRAM
RULES AND REGULATIONS



Approved

_____/s/
Harry Black, City Manager
Date: 12/22, 2015

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SECTION 1. GENERAL

1. Purpose

The purpose of these regulations is to carry out the City of Cincinnati's policy of supporting the fullest possible participation of firms owned by minorities and women (MBEs/WBEs) in the provision of goods and services to the City on a contractual basis. These regulations implement C.M.C. 324.

2. Program Authority

The authority to issue these regulations is found in Chapter 324 of the Cincinnati Municipal Code authorizing a Minority and Women's Business Enterprise Program.

3. Applicability

These regulations apply to all contracts for construction, professional services, and non-professional services and supplies valued at \$50,000 or more funded in whole or in part by City funds.

4. Policy

These regulations shall be construed in accordance with the policy of the City of Cincinnati that minority- and women-owned enterprises (MBEs and WBEs) shall have the maximum opportunity to participate in the provision of goods and services to the City on a contractual basis.

5. Effective Date

These regulations shall be effective upon approval by the City Manager.

SECTION 2. DEFINITIONS

1. "Affiliation" and "affiliate" shall have the same meaning as provided in Section 323-1-A of the Cincinnati Municipal Code.
2. "African-American" means a U.S. citizen or lawfully admitted permanent resident whose ancestry originates from any of the black racial groups of Africa.
3. "Asian-American" means a U.S. citizen or lawfully admitted permanent resident whose ancestry originates from the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.
4. "Bid" shall have the same meaning as provided in Section 321-1-B1 of the Cincinnati Municipal Code.
5. "Board" shall mean the Certification Appeal Board.

6. "Certification" or "recertification" shall mean a minority business enterprise ("MBE") or women business enterprise ("WBE") that meets the qualification criteria set forth herein for participation in the MBE or WBE programs in the appropriate construction, professional services, or supplies and non-professional service category which the contract is being awarded and is formally approved by the director or the director's designee as having met such criteria. Certification or recertification relate to qualifications regarding ownership and control of the business, and not the quality of the product or service provided.
7. "Cincinnati market area," as determined by the 2015 disparity study, includes all of Hamilton County, Ohio and is the area in which firms must have an operating office in order to be considered for certification as an MBE or WBE.
8. "City purchasing agent" shall have the same meaning as provided in Section 321-1-C of the Cincinnati Municipal Code.
9. "Commercially useful function" shall have the same meaning as provided in Section 323-1-C2 of the Cincinnati Municipal Code, except that the phrase "MBE or WBE" shall substitute for the phrase "SBE, SLBE or ELBE" wherever those terms appear in the definition.
10. "Compliance" shall mean a determination by the director that a utilization plan for MBE and WBE participation in a particular contract is in compliance with these regulations, that the contractor has managed the contract as provided in the MBE/WBE utilization plan, and that the contractor or prospective contractor has otherwise complied with these regulations.
11. "Contract" shall mean a contract in excess of \$50,000.00, except contracts listed by the city purchasing agent as exempt and approved by the city manager, for:
 - A. Construction;
 - B. Supplies;
 - C. Services; or
 - D. Professional Services.
12. "Construction" shall have the same meaning as provided by Section 332-1-C4 of the Cincinnati Municipal Code.
13. "Contracting agency" shall mean the City agency, department, independent board or authorized representative that issues an invitation to bid, RFP or RFQ.
14. "Contractor" shall mean an individual, joint venture, or legal entity with a written agreement to provide goods or services to the city.
15. "Control," as it relates to the control of a business by owners who are members of a minority group or women, means that such minority or women owners:

- A. Possess and actively and continuously exercise the legal authority and power to direct or cause the direction of the management and policies of the business and to make day-to-day and long-term decisions for the business on matters of management, policy and operations;
 - B. Are not subject to any formal or informal restrictions that limit the discretion customarily within the purview of a business owner; and
 - C. Are not restricted, whether by agreement, by-laws, resolutions or other arrangements from making business decisions without the cooperation or vote of any owner who is not a minority or a woman.
16. "Department" shall mean the Department of Economic Inclusion ("DEI").
17. "Director" shall mean the director of the Department of Economic Inclusion or his or her designee.
18. "Disparity study" means the study undertaken by Mason Tillman Associates, Ltd. that statistically analyzed the City of Cincinnati prime contracts and subcontracts during the period January 1, 2009 to December 31, 2013 to evaluate the use of willing and able minority- and women-owned business enterprises and that is reflected in the final report dated July 2015.
19. "Hispanic-American" means a U.S. citizen or lawfully admitted permanent resident whose ancestry originates from Mexico, Puerto Rico, Cuba, Central America, South America, or Portugal, regardless of race.
20. "Independent operating business" shall mean a business where ownership is direct, independent, and by individuals only. Businesses that are owned by other businesses that do not qualify under the MBE or WBE eligibility requirements shall not be eligible for certification unless the following conditions are met:
- A. The minority or women owners own and control the business through a parent company that is a holding company, established for tax, capitalization or other purposes consistent with industry practice, and the minority or women owners of the parent/holding company control the subsidiary through the parent/holding company; and
 - B. The cumulative ownership by the minority or women owners in the parent/holding company is at least 51%.
21. "Invitation to bid" shall have the same meaning as provided in Section 321-1-I of the Cincinnati Municipal Code.
22. "Joint venture" shall have the same meaning as provided in Section 323-1-J of the Cincinnati Municipal Code.

23. "Minority business enterprise" or "MBE" shall mean a business that meets each of the following criteria:
- A. Is an independent operating business;
 - B. Is a sole proprietorship that is independently owned and controlled by an individual who is a minority group member; a joint venture that is at least 51% independently owned and controlled by minority group members; or a partnership, limited liability company or corporation that is at least 51% independently owned and controlled by minority group members;
 - C. The minority owners have interest in capital and earnings commensurate with the minority group members' percentage of ownership;
 - D. Has been in operation for at least twelve months before applying for certification;
 - E. Has been at least 51% minority-owned for at least 12 months before applying for certification;
 - F. Has an operating office located in the Cincinnati market area; and
 - G. Performs a commercially useful function.
24. "Minority group member" shall mean a member of the following groups for which the disparity study found a statistically significant underutilization for the following types of contracts:
- A. For construction contracts and professional services contracts, African-Americans;
 - B. For non-professional services and supplies contracts, African-Americans and Asian-Americans.
 - C. Women regardless of race or ethnicity, construction, professional services, and non-professional services and supplies contracts.
25. "Native American" shall mean a U.S. citizen or lawfully admitted permanent resident whose ancestry originates from the original people of North America and who maintains cultural identification through tribal affiliation.
26. "NIGP" shall mean the National Institute of Governmental Purchasing coding structure for standardizing purchasing.
27. "Notice to proceed" means a communication from the contracting agency to a contractor stating the date the contractor can begin work subject to the contract conditions.
28. "Operating office" shall mean either a principal place of business or significant employee presence within the geographic limits of Hamilton County. For purposes of this definition, "significant employee presence" shall mean twenty-five percent or more of a firm's total number of full- and part-time employees are domiciled within the geographic limits of Hamilton County, Ohio.
29. "Points" shall mean the quantitative assignment of value for specific response evaluation criteria in the contractor selection process initiated by a request for proposal.

30. "Prime contractor" shall mean the vendor or contractor to which a purchase order or contract is issued by the City for purposes of providing goods or services to the City.
31. "Professional services" shall mean professional services as defined in Section 321-1-P of the Cincinnati Municipal Code.
32. "Request for proposal" or "RFP" shall have the same meaning as provided in Section 321-1-R3 of the Cincinnati Municipal Code.
33. "Request for qualifications" or "RFQ" shall have the same meaning as provided in Section 321-1-R4 of the Cincinnati Municipal Code.
34. "Services" shall mean service as defined in Section 321-1-S of the Cincinnati Municipal Code.
35. "Subcontractor" shall mean any vendor or contractor that is providing goods or services to a prime contractor in the furtherance of the prime contractor's performance under a purchase order or contract with the City.
36. "Subcontractor utilization plan" shall mean a document submitted by a bidder with its bid or by respondent to an RFP or RFQ with its response, on a form required by the director, in which the bidder or respondent commits to utilize specifically identified certified MBEs and/or WBEs in a percentage that equals or exceeds the applicable MBE and/or WBE goals for the contract.
37. "Supplier" shall mean a business that furnishes needed items to a contractor and either is involved in the manufacture or distribution of the supplies or materials or otherwise warehouses and ships the supplies or materials.
38. "Supplies" shall mean supplies as defined in Section 321-1-S2 of the Cincinnati Municipal Code.
39. "Women" and "woman" shall mean persons whose gender is female and those persons who meet the definition of "transgender" in Section 914-1-T of the Cincinnati Municipal Code and identify their gender as female.
40. "Women business enterprise" or "WBE" shall mean a business that meets each of the following criteria:
 - A. Is an independent operating business;
 - B. Is a sole proprietorship that is independently owned and controlled by a woman; a joint venture which is at least 51% independently owned and controlled by women; or a partnership, limited liability company or corporation that is at least 51% independently owned and controlled by women;

- C. The women owners have interest in capital and earnings commensurate with the women's percentage of ownership;
- D. Has been in operation for at least twelve months before applying for certification;
- E. Has been at least 51% women-owned for at least twelve months before applying for certification;
- F. Has an operating office located in the Cincinnati market area; and
- G. Performs a commercially useful function.

SECTION 3. CERTIFICATION CRITERIA

1. Burden of Proof

The firm seeking certification has the burden of demonstrating, by a preponderance of the evidence, that it meets the requirements of these regulations concerning group membership, ownership, and control.

2. Minority Group Member

An applicant for certification as a MBE or WBE must be a member of one of the following groups: African American, Asian American, Hispanic American, and any female regardless of race or ethnicity.

3. Ownership Requirements

- A. The Applicant must establish that either collectively or individually the minority and/or women owner(s):
 - i. If a corporation own at least 51% of each class of voting stock outstanding and 51% of the aggregate of all stock outstanding.
 - ii. If a partnership own at least 51% of each class of partnership interest.
 - iii. If a limited liability company, own at least 51% of each membership interest.
 - iv. That the minority and/or woman ownership is real, substantial, and continuing, and goes well beyond pro forma ownership of the firm as reflected in the ownership documents.
 - v. That the minority and/or woman owner(s) enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests.

- B. All securities that constitute ownership of a firm shall be held directly by the minority or woman owner. Where the beneficial owner of securities or assets held in trust is a minority or woman, the securities or assets may be regarded as held directly if:
 - i. The trustee is a minority or woman; or
 - ii. The beneficial owner exercises effective control over the management, policy making, and daily operations of the firm.

- C. The contribution of capital or expertise by the minority or woman owner(s) to acquire their ownership interests must be real and substantial.
 - i. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the business or its owners who are not minorities or women, or the mere participation in the firm's activities as an employee.
 - ii. The following requirements apply to situations in which expertise is relied upon by the minority or woman owner(s) to acquire ownership: The owner's expertise must be:
 - i. In a specialized field;
 - ii. Of outstanding quality;
 - iii. In areas critical to the firm's operations;
 - iv. Indispensable to the firm's potential success;
 - v. Specific to the type of work the firm performs; and
 - vi. Clearly documented in the records of the firm.

- D. DEI presumes as not being held by minority or woman, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as a result of a gift from an individual who is:
 - i. Substantially involved in the Applicant firm, or an affiliate of that firm;
 - ii. Substantially involved in the same or a similar line of business; or
 - iii. Engaged in an ongoing business relationship with the Applicant firm, or an affiliate of that firm.

To overcome this presumption and permit the gifted interests or assets to be counted, the minority or woman owner must demonstrate, by clear and convincing evidence, that:

- i. The gift or transfer to the minority or woman was made for reasons other than obtaining certification; and
- ii. The minority or woman owner actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of the relative who provided the gift or transfer.

4. Control Requirements

- A. In determining whether a minority or woman owner controls a firm, DEI will consider all the facts in the record, viewed as a whole. Only an independent business may be certified as an MBE or WBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.
 - i. In determining whether an applicant is an independent business, DEI will scrutinize relationships with non-MBE/WBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.

- ii. DEI will examine the firm's 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 or WBE firm.
- B. An MBE or WBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the minority or woman owner(s). 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-MBE/WBE partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the minority and women owners, without the cooperation or vote of any non-minority or -woman owner, from making any business decision of the firm.

The minority and woman owner(s) must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.

- i. A minority or woman owner must hold the highest officer position in the company (e.g., chief executive officer or president).
 - ii. In a corporation, minorities or women owners must control the board of directors.
 - iii. In a partnership, one or more minority or woman owners must serve as general partners, with control over all partnership decisions.
- C. Individuals who are not minorities or women may be involved in an MBE or WBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.
- D. The minority or woman owner(s) must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operation.
- E. If the State of Ohio requires the person(s) to have a particular license or other credential in order to own and/or control a certain type of firm, then the minority or woman owner must possess the required license or credential.
- F. DEI may consider the difference in remuneration between the minority or woman owner(s) and other participants in the firm in determining whether to certify a firm as an MBE or WBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning

reinvestment of income, and any other explanations for the differences proffered by the firm.

- G. A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchise or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, DEI will not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit its efforts and bears the risk of loss commensurate with ownership.
- H. Any of the following conditions creates an irrefutable presumption that the owners do not have control of the business that is applying for certification.
 - i. If the minority or women owners are current employees of a non-minority business corporation, individual, or partnership which has a significant ownership interest in the business applying for certification.
 - ii. If the directors and/or management of the applicant firm is substantially the same as the affiliated non-minority firm.
 - iii. If the applicant is a wholly-owned subsidiary of a non-minority firm.

5. Business Purpose

An applicant for certification must be an ongoing concern and in business for profit.

6. 12-Month Prerequisite

The operating arrangements and the ownership and control by the minority group members or women must have been in operation for at least 12 months before applying for certification.

SECTION 4. CERTIFICATION PROCESS AND PROCEDURES

1. Certification

- A. The City's MBE/WBE directory must be computerized and include the appropriate NIGP codes describing the products and services for which an MBE or WBE is certified to provide. The MBE/WBE certification shall be maintained on the internet and updated in real time.
- B. Certification shall be limited to the area(s) of services or specialty the firm has the in-house capacity to provide at the time of application. Until certified, an applicant shall not be counted toward achievement of MBE/WBE participation goals on City contracts. The absence of certification does not affect any applicant's right to bid or submit a proposal for any City contract.

- C. MBE and WBE certification with the City shall be valid for two (2) years from the effective date of the certification and only as to the area(s) of specialty or expertise specified therein.

2. Application Procedures

Applications for City of Cincinnati MBE/WBE certifications will be received and reviewed by the DEI. In order to be considered for certification, the applicant must supply all of the requested documentation and information. Failure to supply all requested documentation and information is grounds for denial of certification. Further a material misstatement of fact shall constitute grounds for a denial of certification.

A business will be reviewed and analyzed as it existed on the date the application was signed. Changes subsequent to submission of the application will not be considered.

A. Intake and Evaluation Procedures

An application may be obtained and completed online at <https://cincinnati.diversitycompliance.com>.

- i. The Development Manager (“Manager”) and/or representative of the DEI will review each application to determine if the applicant has submitted a complete application.
- ii. If the applicant has failed to submit all requested information, the applicant will be notified by e-mail or by mail at the address furnished by the applicant by the Manager what required information is missing from their application.
- iii. Any application for which all requested information is not received within a 30-calendar day period from the date of the notification will either be withdrawn and the applicant cannot reapply earlier than 60 days from the expiration of the 30-day period, or the application may be denied.
- iv. The Manager will evaluate the completed application and may conduct a site visit and complete a site visit report if further investigation of the applicant firm is warranted to determine whether the applicant meets the requirements of certification as an MBE or WBE. This evaluation will be completed within a reasonable time after receipt of the completed application, which shall not exceed sixty (60) days. (Note: While the office is awaiting additional information from the applicant, the sixty (60) day period for processing an application is suspended until all information requested from the applicant has been received.)
- v. No requests for withdrawal of an application will be considered once the report has been prepared by the Manager.

B. Administrative Closure

An administrative closure is a denial of certification under these regulations. An application for certification may be administratively closed for the following reasons:

- i. An applicant fails to submit a complete application and supporting documents;
- ii. Refuses to submit to a site visit by a Manager;
- iii. The business, by operation of law, is not eligible to do business in Ohio;
- iv. The business, or any of its owners, officers, and/or directors has made a material misstatement of fact related to eligibility of the business for certification as an MBE or WBE;
- v. The minority or woman owns less than 51% of the business entity, based on clearly presented information in the application; and
- vi. The applicant is not a citizen or lawfully admitted permanent resident of the United States.

When an application for certification is closed for any of the reasons in i through vi above, an applicant may not reapply to the DEI sooner than twelve (12) months from the date of the letter administratively closing the application.

C. Application Supporting Documentation

The list of documents that must be submitted for each specific type of business entity can be found online at <https://cincinnati.diversitycompliance.com>. Generally, documents requested in support of certification include, but are not limited to:

- i. Copy of current financial statement. Unless requested, a financial statement does not need to be prepared by a Certified Public Accountant (CPA);
- ii. Copies of firm's federal corporate tax returns, including all schedules, for the most current three years, signed;
- iii. Resumes of the principals and key individuals of a company to include the dates of education, training, names of employers with dates, duties and responsibilities of past employment. Key individuals shall include owners and directors;
- iv. Copy of license(s) to do business in Cincinnati if applicable (professional if required);
- v. Copy of Certification of Incorporation and/or registration in Cincinnati as a foreign corporation, if applicable;
- vi. Copy of Articles of Incorporation;
- vii. Copy of minutes of first corporate organizational meeting and most recent corporate meeting;
- viii. Copy of corporation by-laws;
- ix. Copy of each stock certificate issued (not a specimen copy);
- x. Copy of stock ledger;
- xi. Proof of stock purchase (e.g. canceled checks used to purchase stock or bank deposit slips reflecting money paid for stock or if goods/services were given for

- stock in lieu of cash, copies of appropriate corporate records reflecting this action);
- xii. Copies of third party agreements, such as rental or management service agreements or any other formal written agreement entered into by the owner(s) and any other party that may affect the operation of the business;
- xiii. Copies of titles and registrations and current insurance carriers and policy numbers for all vehicles used in the business;
- xiv. Copies of vehicle and business insurance in effect;
- xv. Copies of all MBE or WBE certifications/denials from other agencies/jurisdictions;
- xvi. Copies of three job contracts.

D. Investigative Process

- i. An investigation of each firm applying for certification will be conducted in accordance with the provisions of these regulations. The investigation will include an on-site visit at the business location, and/or a job site and warehouse if necessary, to evaluate the company in relation to the certification criteria.
- ii. A firm requesting certification is evaluated for particular areas of work identified by NIGP codes, supported by equipment, staffing, experience and/or other resources necessary to provide services or goods within the NIGP code. Certifications are approved for specific products and services encompassed by NIGP codes that DEI considers appropriate. The firm bears the burden of providing detailed company information the DEI needs to make an appropriate NIGP code designation.

3. Recertification

A. Required Notice of Change in Ownership and/or Control

Whenever there is any change in circumstances affecting an MBE or WBE's ability to meet ownership, control or market area requirements, the MBE/WBE shall submit a new application noting the effective changes with supporting documents. The failure of the MBE or WBE to do so within 30 days of the change(s) shall constitute grounds for loss of certification.

B. Recertification Process

The DEI will send a request for recertification information to each certified business approximately sixty (60) days prior to the anniversary date of certification. The business shall submit the appropriate and completed recertification documents to DEI within thirty (30) days of the date of recertification email/letter. If no response is received within 30 days, a second notice will be sent. If no response is received from the second notice within 30 days, a third notice is sent two (2) weeks prior to the firm's certification expiration date. If there is no response to the third notice by the date specified in the

correspondence, the firm's certification will lapse for failure to submit recertification documents.

If a business is found in compliance with the recertification requirements, it will be recertified, and DEI will notify the business owner in writing that certification has been continued.

4. Expansion of Services

A. Contents of Request

Any certified MBE or WBE that wishes to add one or more products and services and NIGP codes to its certification must submit in writing a request to DEI for an expansion of services for those additional codes. The written request shall include, but is not limited to the following:

- i. Items of work to be added including NIGP codes;
- ii. Explanation of the firm's ability to perform the additional services;
- iii. Copies of any contractual agreements wherein the firm has provided their services; and
- iv. If applicable, copies of appropriate licenses to provide these services.

B. On-Site Visit

DEI will conduct an on-site visit to determine if the business has the in-house capacity to perform the work. All of the certification processes and information requirements established in these regulations apply to the expansion of service process. An expansion of service process is necessary to determine that an MBE or WBE has the necessary resources or equipment, staff, expertise, etc., to carry out work in the NIGP codes for which it was not previously certified and that the MBE/WBE has the ability to exercise control over and critically evaluate the additional work area(s).

C. Approval of Request

If a request for expansion of services is approved, the applicant will receive a letter detailing the new areas of work for certification.

D. Denial of Request

If a request for expansion of services is denied, the applicant will receive a written denial within 60 days of the date the review process is completed. The appeals process for the denial of expansion of services is the same as the appeals process for the denial of initial certification pursuant to the procedures set forth in these regulations.

An MBE or WBE may not reapply for the same expansion of services for six (6) months following a denial of the expansion of services request, based on the date of the letter of denial, or if appealed six (6) months following the date of the upheld decision by the appeals board.

5. Loss of Certification

A. Reasons

DEI shall decertify any firm that does not meet the standards for certification as an MBE or WBE. Reasons for removal include, but are not limited to the following.

- i. The owners, directors, and/or their powers or the by-laws have changed from those as stated in the application and represented in the application and application process and the MBE/WBE has failed to inform DEI of the changes within thirty (30) days of the changes.
- ii. The business does not meet MBE/WBE eligibility criteria established for certification as a minority or women's business enterprise.
- iii. The business by operation of law is not eligible to do business in Ohio.
- iv. The business has refused to provide documents and/or information requested by DEI.
- v. The business, or any of its owners, directors, and/or officers, has made a material misstatement of fact related to eligibility of the business for certification and/or recertification as a minority business enterprise or women's business enterprise.
- vi. The business has failed to operate as an independent business concern.
- vii. The business has performed as a "conduit" or "pass through" on contracts.
- viii. The business has been debarred by the federal or Ohio state government or the City Of Cincinnati.
- ix. The business or any of its officers and/or directors has violated State or federal antitrust laws.

B. Appeal

If the Director determines that grounds exist to remove a firm's MBE/WBE eligibility, a notice of intent to remove eligibility will be sent to the firm. The notice shall include:

- i. The reasons for the removal of MBE/WBE eligibility;
- ii. The entitlement to appeal the matter to the appeals board; and
- iii. A statement that the MBE/WBE will lose its MBE/WBE eligibility if no request for hearing is received within fifteen (15) days of the date of the M/WBEs receipt of the notice.

If the MBE/WBE fails to request a hearing within the 15 days, the Director or his/her designee shall issue a letter of final decision decertifying the MBE/WBE.

C. Certification Appeals Board

The purpose of the Certification Appeals Board ("CAB") is to hear appeals by firms which have been denied minority or women's business enterprise status, which have had their certification revoked, which have been denied recertification, or denied expansion of

services. The CAB acts in an appellant capacity only to determine if DEI erred in its decision based on the information presented by the appellant and/or obtained by DEI.

i. Board Memberships and Tenure

The board shall be comprised of five (5) members, one of whom shall be appointed by the mayor and four of whom shall be appointed by the city manager. The members must be knowledgeable about the City's procurement laws, rules and regulations, and procedures, including these regulations. Board members shall serve for a period of two (2) years. A chairperson shall be elected by the members. Included on the board shall be:

- a. One member with demonstrated experience in the field of finance and accounting;
- b. At least one member with demonstrated experience in the field of construction;
- c. At least one member with demonstrated experience in MBE and WBE matters; and
- d. At least one member with demonstrated legal experience with business associations and business structures.

ii. Hearings

- a. The CAB will be notified by DEI of a written notice of appeal within three (3) working days of receipt. The board will set a hearing date not more than 28 days from the date of receipt of the notice of appeal forwarded by the Director.
- b. Notice of the hearing shall be served on all parties by certified mail. The notice shall set forth the adverse determination by the Director which the appeal was taken. The notice shall also state the date, time, and place of the hearing. If the certified mail notice is returned as refused or unclaimed, the notice shall be mailed by regular U.S. mail, postage pre-paid, and will be deemed received if not returned as undeliverable within ten days of mailing.
- c. All parties shall be provided a fair and impartial hearing and shall be allowed to produce any and all evidence that supports and substantiates the information submitted with the application for certification, recertification or expansion of services. New or revised informational shall not be considered by the CAB. The complete M/WBE application file will be provided each CAB member.
- d. The CAB will render its decision within seven (7) days of the conclusion of the hearing. The CAB's decision shall affirm, modify, or reverse the denial of certification, recertification, or expansion of services, or the revocation of certification by the Director, and shall state the reason(s) for such decision. The decision of the CAB shall be final and in writing.

SECTION 5. ANNUAL PARTICIPATION GOALS

1. Establishment

Annually, the city manager, with the advice of the Department of Economic Inclusion, must review and establish the participation goals for Minority Business Enterprises and for Women’s Business Enterprises.

2. Purpose

The purpose of the annual goals is to aid the City in its annual evaluation of the Minority and Women Business Program’s effectiveness.

3. Subcontract M/WBE Goals

The City’s 2015 Disparity Study found that African American and Caucasian female business enterprises experienced a statistically significant disparity on its construction and professional services subcontracts. Therefore, specific overall MBE and WBE subcontract goals shall be set to address the documented disparity. The MBE annual participation goal shall apply to African Americans while the WBE annual participation goal shall apply to Caucasian females. Based on the documented availability levels for each ethnic and gender group that was determined to be underutilized, the annual participation goals for the year beginning January 1, 2016 shall be as follows:

Construction

MBE 17%

WBE 10%

Professional Services

MBE 14%

WBE 16%

There is no legal requirement to set new goals every year since there will not be new availability data until the next disparity study. Thus, the annual goals adopted upon current evidence may continue until full and accurate data are analyzed in a future study.

SECTION 6. CONTRACT PARTICIPATION GOALS

1. Scope

The Director in consultation with the Chief Procurement Officer and/or the contracting agency shall establish appropriate MBE and/or WBE participation goals on each specific contract for construction and professional services valued at \$50,000 or more or determine that such contract is not appropriate for the MBE/WBE program.

2. Considerations

When determining the goals on a contract, the Director must consider the following:

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

3. Setting Contract-Specific Goals

A. Goal Information Sheet

Prior to advertising a contract, the total cost of which is estimated to be \$50,000 or more, the contracting agency must submit either a Goal Information Sheet or a Waiver Request to DEI. Completing the Goal Information Sheet is a two-step process. First, each specific work element or bid item in the contract must be identified according to its primary NIGP or City of Cincinnati code. There are several ways to identify each bid item in a prime contract. For example, the engineer's cost estimate in a construction contract is an excellent source.

For each bid item, the associated dollar cost must be converted into the percentage of total contract dollars accounted for by that bid item. This is achieved by dividing the estimated cost of the bid item by the total dollar cost of the contract. The sum of percentages across all bid items should equal 100 percent. See Attachment A.

B. DEI Goal Setting Procedures

DEI must calculate the MBE and/or WBE goal for a contract in the following manner: First, the MBE or WBE dollars for each bid item listed on the Goal Information Sheet is determined by multiplying the associated dollar cost of the bid item by the percentage of available MBEs or WBEs (ratio of certified firms to total available firms converted to a percentage). Second, MBE and/or WBE dollars are determined for each bid item on the Goal Information Sheet and then totaled to serve as the numerator of a fraction where the total estimated cost of the contract is the denominator. This fraction converted to a percentage is the estimated MBE and/or WBE goal for the contract. Finally, DEI will consider information and experience on similar projects to set the participation goal it believes is reasonable and achievable.

SECTION 7. COUNTING MBE AND WBE PARTICIPATION

1. Dual Certification

A business that is certified both as an MBE and a WBE (“M/WBE”) may be counted toward either the MBE or the WBE contract goal, but not towards both. The participation of the certified firm cannot be split between the MBE goal and the WBE goal.

2. Credit for Self-Performance

A certified MBE or WBE awarded a contract as a prime contractor may count 100% of the dollar value of the work it intends to perform with its own forces toward the applicable contract participation goal. The cost of supplies and materials obtained by the MBE or WBE for the work of the contract, including equipment leased, may be credited toward the goal (except supplies and equipment the MBE or WBE subcontractor purchases or leases from the prime contractor or its affiliate). The MBE or WBE prime contractor must be certified for the services it intends to self-perform.

3. Work Performed by MBE/WBE

- A. DEI will count toward the participation goal work that is performed by the MBE or WBE with its own forces. The MBE/WBE will receive credit for the purchase of supplies and materials needed to perform the work of the contract, including equipment leased by the MBE/WBE. Equipment purchased or leased from the prime contractor or its affiliate will not be counted.
- B. DEI will count the entire amount of fees or commissions charged by an MBE/WBE for providing a bone fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a City contract, toward MBE/WBE goals, provided the fee or commission is reasonable and not excessive as compared with fees customarily allowed for such services.

4. Commercially Useful Function

- A. An MBE or WBE performs a commercially useful function when it is responsible for real and distinct work for which the business enterprise has the skill, expertise, and actual responsibility to perform, manage, and supervise by an evaluation of:
 - i. The amount of work subcontracted;
 - ii. Normal industry practices;
 - iii. Whether the amount the firm is to be paid under the contract is commensurate with both the work it is actually performing and MBE/WBE credit claimed for its performance of the work; and
 - iv. Other relevant factors.

- B. To perform a commercially useful function, the MBE/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for:
 - i. Negotiating price;
 - ii. Determining quality and quantity;
 - iii. Ordering the material, and installing (where applicable); and
 - iv. Paying for the material itself.

- C. An MBE or WBE 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 M/WBE participation.

5. Joint Ventures

When an MBE/WBE performs as a participant in a joint venture, DEI shall count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the contract that the MBE/WBE performs with its own forces toward the MBE/WBE goals.

6. Manufacturers, Suppliers

- A. MBE and WBE manufacturers that operate or maintain a factory or establishment that produces on the premises the materials or supplies obtained by the prime contractor will be given 100 percent credit. The MBE/WBE is considered to be performing a commercially useful function if the requirements set forth in this section are met.

- B. Twenty-five percent (25%) of the payment to MBE/WBE suppliers that own, operate, or maintain a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business may be counted toward the goal.

7. Subcontracting by MBE or WBE

A bidder may not count toward its contract goal any agreements with certified business enterprise subcontractors who intend to subcontract more than 10% of the dollar amount of the services to be performed under the agreement between the bidder and the certified business enterprise.

8. Affiliation

The work performed by a certified MBE or WBE may not be counted toward the applicable contract participation goal if the bidder or respondent to an RFP or RFQ has a financial interest in, has an interest in the ownership or control, or is significantly involved in the operation of the certified MBE or WBE.

SECTION 8. SUBCONTRACTOR UTILIZATION

1. Subcontractor Utilization Plan

In response to an invitation to bid, RFP, and RFQ, a bidder/respondent must include in its bid or response a certified MBE/WBE subcontractor utilization plan in which the bidder or respondent commits to utilize certified MBEs and/or WBEs in a percentage that equals or exceeds the applicable contract goals.

- A. Bids and responses to RFPs or RFQs that do not include a certified MBE/WBE subcontractor utilization plan prior to bid opening or response to submission are non-responsive. See Attachment B.
- B. The certified MBE/WBE subcontractor utilization plan includes:
 - i. A statement of intent to utilize an MBE and/or WBE;
 - ii. MBE/WBE participation affidavit pledging to make a good faith effort to achieve the MBE and WBE participation goals,
 - iii. An MBE/WBE participation waiver request form; and
 - iv. A listing of all proposed MBEs and WBEs with contact information, scope of work and contract amounts.

2. Statement of Intent

Bidders/responders must submit an executed statement of intent for each certified business enterprise to whom the bidder intends to award a subcontract. The statement of intent must specify:

- A. The name of the certified business enterprise;
- B. Whether the subcontractor is an MBE or WBE;
- C. The dollar value of the subcontract;
- D. The scope of work to be performed under the subcontract; and
- E. Any other information the DEI requires when determining whether the contract goals have been satisfied.

3. Statement of Intent to Self-Perform

Bidders intending to count self-performance toward the MBE or WBE goal must document their intentions on the form provided by DEI.

4. MBE/WBE Participation Affidavit

Bidders/proposers must submit with their bids or responses a certified business enterprise participation affidavit in which the bidder commits to utilize certified business enterprises in a percentage that equals or exceeds the applicable contract goals.

- A. Any bid or response to an RFP or RFQ that does not include the business participation affidavit is non-responsive.

- B. The certified business participation affidavit must be signed by the contractor and notarized.
5. MBE/WBE Participation Waiver Request
If a bidder/proposer is unable to comply with the contract goals, the bidder may submit a request for a waiver at the time of bid opening using the approved form.
6. Verifying Certification
Each bidder is responsible for verifying that all MBEs and WBEs to be used on the contract have been certified by DEI before bid opening.
7. Maintaining Levels During Contract Term
During the term of the contract, any unjustified failure to comply with the levels of MBE and/or WBE participation identified in the bid is a material breach of contract.
8. Report for Final Payment
 - A. Before final payment may be made under the contract, the contractor must submit a list of all subcontractors utilized on the contract, both MBE/WBE and non-MBE/WBE.
 - B. The list must include as to each subcontractor:
 - i. Its name;
 - ii. The service or goods provided;
 - iii. The total amount paid to it; and
 - iv. Its owner's race/ethnicity and sex.
9. Bid Specifications
Bid conditions, requests for proposals or requests for quotations for contracts awarded by the City must require that, where a contract goal is applicable, the bidder must:
 - A. Make good faith efforts before opening of bids or submission of proposals to meet the contract goals; and
 - B. Keep records of its good faith efforts, as defined herein, to permit a determination of compliance with the requirements of these regulations.
10. Contract Specifications
Each contract must:
 - A. Incorporate C.M.C. 324 by reference;
 - B. Provide that the failure of any bidder, contractor, or subcontractor to comply with C.M.C. 324 is a material breach of contract; and
 - C. Require that during its term, the contractor will:
 - i. Fulfill Program commitments submitted with the bid;

- ii. Continue to make good faith efforts to utilize minority and women’s business enterprises; and
- iii. Maintain records reasonably necessary for monitoring compliance with C.M.C. 324 and these regulations.

SECTION 9. WAIVERS

1. Agency’s Pre-Solicitation Request

A contracting agency may request that DEI waive or reduce the contract goals by submitting the reasons for the request in writing before bids are solicited.

A. Criteria for Granting

The DEI determines that either:

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

B. Denial

If DEI denies a request to waive or reduce an MBE or WBE contract participation goal, the contracting agency may appeal that denial to the city manager.

C. Emergency

A contracting agency may request the city manager to waive the utilization requirements if the purchasing agent certifies in writing that an emergency exists that:

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

2. Bidder’s Pre-Award Request

- A. If a bidder is unable to comply with the contract goals, the bidder may submit a request for a waiver at the time of bid opening.
- B. The request for a waiver must include documentation that demonstrates the bidder’s good faith efforts to meet the goals. Good faith efforts means the bidder/proposer must show it took all necessary and reasonable steps to achieve the MBE and/or WBE goals which, by their scope, intensity, and appropriateness to the objective, could reasonably

be expected to obtain MBE/WBE participation. DEI will consider as part of the bidder's good faith efforts the types of actions listed below. This list is not intended to be exclusive or exhaustive.

- i. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising, and/or written notices) the interest of all certified MBE/WBEs who have the capability to do the work of the contract.
- ii. Unbundling the work into economically feasible units to facilitate MBE/WBE participation.
- iii. Providing interested MBE/WBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner.
- iv. Negotiating in good faith with interested MBE/WBEs.
- v. Not rejecting MBE/WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.
- vi. Making efforts to assist MBE/WBEs in obtaining bonding, lines of credit, or insurance as required by the contractor.

3. Contractor's Post-Award Request

A. Effort to Substitute Required

If, after award of a contract, the contractor is unable to meet the established MBE or WBE contract participation goal(s) by utilizing the MBE or WBE specified at bid opening, the contractor must seek a substitute certified business enterprise to fulfill its commitment.

- i. Any proposed substitution of a certified MBE/WBE listed on the contractor's MBE/WBE utilization plan requires the written approval of the director.
- ii. A contractor may seek the assistance of the director in finding a substitute.
- iii. The director's decision to permit or deny a proposed substitution and the basis of any denial must be communicated to the contractor in writing.

B. Request for Waiver

If, after reasonable good faith efforts, as defined by these regulations, the contractor is unable to find a substitute, the contractor must request a post-award waiver.

i. Documentation of Reasons

The request must be in writing and document the contractor's good faith efforts to secure, contact and negotiate with MBEs and WBEs including:

- a. The reasons the contractor is unable to secure sufficient MBE/WBE participation to meet the goals;
- b. The efforts made to select portions of the contract to be performed by MBEs and WBEs; and
- c. For each MBE or WBE that placed a bid considered unacceptable, a statement that explains the basis for that conclusion, including names, addresses, and telephone numbers of MBEs and/or WBEs that were

considered, and a description of the information provided regarding the plans and specifications for the work selected for subcontracting.

SECTION 10. CAPACITY BUILDING INITIATIVES

In an effort to remedy identified disparities in prime contracts historically awarded to MBEs or WBEs, preference points may be awarded to a response to an RFP or RFQ for professional services submitted by a qualified MBE or WBE firm. Price preferences may be applied to a bid submitted by an MBE or WBE for goods and services prime contracts.

1. Preference Points

- A. An MBE firm owned by African American(s), Asian American(s), Hispanic American(s) or non-minority WBE that submits a response to an RFP or RFQ for a professional services contract may be awarded one (1) to ten (10) evaluation preference points. The preference points apply to awards that are based on qualifications and not the lowest bid. The preference points do not change the proposer's actual proposal amount, and the proposer's actual proposal amount shall be used if awarded the contract.
- B. When an MBE or WBE performs as a participant in a joint venture, preference points must be allocated on a pro rata basis in the same proportion to the distinct, clearly defined portion of the work of the contract that the MBE or WBE performs with its own forces, and equal to its share in the ownership, risks, performance, management and control of the joint venture.

2. Price Preferences

The City may award a prime contract for non-professional services or supplies to an MBE firm owned by African American(s), Asian American(s) or non-minority WBE that submits a response to a bid that is no more than five (5) percent greater than the lowest and otherwise best bid unless either of the following applies:

- A. The award to the MBE or WBE would result in a total contract cost that is, on an annual basis, \$25,000 or more higher than the lowest and best bid; or
- B. The award to the MBE or WBE would exceed the City's budgeted funding for the contract.

MBE/ WBE Contract Goal Information Sheet

Contract Agency: _____ Contract No.: _____

Contract Description: _____

Agency Contact Person: _____ Phone #: _____

Total Estimated Contract Amount: _____

If a Term Contract, Annual Contract Amount: _____

Trades, Industries, Services or Supplies Required Under This Contract	Estimated Cost	Estimated % of Total Contract

Total Value of Work

Contract Title

Contract Number:

This Contract: will be awarded through competitive bidding.
 will be a direct award.
 is for professional services.

List services or supplies that the Prime Contractor will not be able to subcontract to another company and will be required to perform with its own workforce:

List services or supplies required under this contract that are available only from a sole source:

List services or supplies required under this contract that should be exempt from MBE and WBE subcontracting goals and give reasons:

Signature and Title of person completing form

Date

Action by Department of Economic Inclusion

The following goals are applied to this contract:

MBE/WBE Program Goals Apply:

MBE Goal: _____ % WBE Goal: _____ %

Comment: _____

SBE Program Goals Apply:

SBE Goal: _____ %

Comment: _____

No Goals Apply:

Reason: _____

Signature

Date



**City of Cincinnati
Department of Economic Inclusion**

**SUBCONTRACTOR INCLUSION BID SUBMISSION CHECKLIST
For use on ITBs, RFPs AND RFQs with MBE and WBE Subcontracting Goals**

Please be sure the following items are completed and included in your bid response for a bid with MBE and WBE subcontracting goals. Failure to submit all of the forms required below will result in a bid being deemed "Non-Responsive" by the Department:



here

Form no.	Form Name/Description	Required?	Completed
MWP-10	MBE/WBE Commitment Package Cover Sheet	YES	
MWP-20	Total MBE/WBE Participation Affidavit	YES	
2003	Subcontractor Utilization Plan (Complete a separate Form 2003 for each alternate bid. Use additional forms if all subs cannot fit on one form)	YES	
2004-1	Statement of Intent to Self-Perform (Complete only if the bidder is a certified MBE or WBE with the City of Cincinnati AND is requesting to count work that it will self-perform towards the applicable subcontracting goal)	If Applicable	
MWP-30	MBE/WBE Participation Waiver Request (only if a waiver is being requested) ALL SUPPORTING DOCUMENTATION MUST BE ATTACHED.	If Applicable	

REVIEW THE MBE/WBE INSTRUCTIONS CONTAINED WITHIN THIS PACKET PRIOR TO COMPLETING AND SUBMITTING THE REQUIRED FORMS.

FAILURE TO FULLY AND CORRECTLY COMPLETE AND SUBMIT ALL REQUIRED FORMS MAY RESULT IN REJECTION OF YOUR BID OR PROPOSAL.

INSTRUCTIONS

The requirements of C.M.C. Chapter 324, Minority and Women’s Business Program, are a part of this contract and are incorporated by reference. THE FAILURE OF ANY AWARDED BIDDER/ PROPOSER, CONTRACTOR, OR SUBCONTRACTOR TO COMPLY WITH C.M.C. CHAPTER 324 AND THE IMPLEMENTING REGULATIONS SHALL BE A BREACH OF CONTRACT.

Highlights of the City’s MBE/WBE program are noted below. A complete copy of C.M.C. Chapter 324 and the implementing regulations are available online at: <http://www.cincinnati-oh.gov/inclusion/ordinances-and-regulations/> or from the Department of Economic Inclusion by request.

1. BID/PROPOSAL REQUIREMENTS

Bid/Proposal MUST include a SPECIFIC commitment, **expressed as a dollar value**, to utilize SPECIFIC City-certified MBEs and WBEs for work the firms have been certified to perform. The amounts of the proposed subcontracts must be sufficient to meet or exceed the contract goals indicated in the bid, RFP or RFQ document. A percentage response without a stated dollar value or a "TBD" response for the proposed amount or the proposed subcontractor is not acceptable.

Bidder/Proposer must submit WITH THE BID/PROPOSAL each required or otherwise applicable document included on the Subcontractor Inclusion Bid Submission Checklist included with this packet.

Any bid/proposal that does not include complete MWP-10 MBE/WBE Commitment Packet Coversheet, MWP-20 MBE/WBE Participation Affidavit, Form 2003 Subcontractor Utilization Plan, and signed Statement of Intent to Self-Perform Form (if applicable) will be considered non-responsive (see C.M.C. 324-19) unless an MBE/WBE Participation Waiver is requested and approved.

A waiver request will be considered only if NO other responsive Bidder/Proposer eligible for award meets the inclusion goals.

Bidder/Proposer must provide evidence of its Good Faith efforts to obtain MBE and WBE participation if a MBE/WBE Participation Waiver is requested (see C.M.C. 324-21(b)). The failure to submit the required supporting documentation for an MBE/WBE Participation Waiver and/or the failure of the submitted documentation to demonstrate Good Faith efforts will result in denial of the request.

2. VERIFYING CERTIFICATION

Bidder/Proposer is responsible for verifying that each MBE and WBE to be used on a contract is certified by the Department of Economic Inclusion (DEI) at the time of the bid opening/proposal submission. The proposed MBEs and WBEs must be certified to provide the services described on the Form 2003, and those services must be a necessary element of the scope of this contract. A directory of certified MBE and WBE firms is available online at www.cincinnati.diversitycompliance.com or at <https://cincinnati-oh.gov/inclusion>.

3. COUNTING MBE AND WBE PARTICIPATION

a) Counting Spend with MBE and WBE Firms

A business enterprise that is certified both as an MBE and as a WBE (M/WBE) may not be counted toward both MBE and WBE goals for the same project (C.M.C. 324-27(a)). The Bidder/Proposer must identify the goal to which the business enterprise is to be counted.

b) Credit for Self-Performance

A Bidder/Proposer that is a City-certified MBE or WBE may count up to 100% of the dollar value of the work it intends to perform with its own forces toward the applicable MBE or WBE goal. (C.M.C. 324-27(b)). Intentions to count self-performance toward the MBE goal or the WBE goal must be indicated on the Form 2004-1 M/WBE Statement of Intent to Self Perform.

c) Commercially Useful Function

The Bidder/Proposer may count toward the contract goals only payments to MBEs and WBEs that perform a commercially useful function in the execution of the contract. Commercially useful function means the performance of a distinct scope of work for which the MBE or WBE has the skill, experience and actual responsibility to perform, manage and supervise. (C.M.C. 324-27(d))

d) Joint Ventures

A Bidder/Proposer may count toward the contract goal the portion of its payment to a joint venture that is equal to the percentage of the MBE or WBE participation in the joint venture. The MBE or WBE member of the joint venture must have an interest in the control, management, risks and operation of the joint venture commensurate with the member's percentage of ownership. The MBE or WBE member of the joint venture also must be responsible for a clearly defined portion of the work to be performed, equal to its share in the ownership, control and management of the joint venture. (C.M.C. 324-27(e))

e) Subcontracting by MBE or WBE

A Bidder/Proposer may not count toward the contract goal any agreement with a certified MBE or WBE subcontractor that intends to subcontract more than 10% of the dollar amount of the services performed under its agreement with the Bidder/Proposer. This restriction does not apply to MBE's or WBE's contracts for the purchase of materials, equipment or supplies that are incidental to the performance of services under its agreement with Bidder/Proposer. (C.M.C. 324-27(i))

f) Spend with Manufacturers and Suppliers

Manufacturers - Bidder/Proposer may count toward the contract goal its entire payment to a certified MBE or WBE firm that manufactures the goods supplied. (C.M.C. 324-27(f)) **A SIGNIFICANTLY LESSER CREDIT IS ALLOWED FOR SPEND WITH SUPPLIERS/WHOLESALERS/RESELLERS/DISTRIBUTORS (see below).**

Suppliers - Only 25% of the total payment to a certified MBE or WBE supplier that is not the manufacturer can be counted towards the contract goal. (C.M.C. 324-27(g))

g) Insurance Companies and Travel Agents

A Bidder/Proposer may count towards the contract goals only the fees or commissions charged by an MBE or WBE insurance company or travel agent. (C.M.C. 324-27(h))

h) Financial Institutions

Bidder/Proposer may count towards the contract goal only the fees charged and earned by an MBE or WBE financial institution.

i) Non Affiliation

A Bidder/Proposer may not use an MBE or WBE to meet the contract goal if the bidder has a financial interest in, has an interest in the ownership or control of, or is significantly involved in the operation of the MBE or WBE. (C.M.C. 324-27(j)).

4. **WAIVER REQUESTS**

If a bidder/proposer is unable to comply with the contract goal, the bidder/proposer may submit a waiver request with the bid. The waiver request must be made on the MBE/WBE Participation Waiver Request Form. Requests for waivers or reductions will only be considered in the event that no bid or proposal that is determined to be the lowest and best or most advantageous and therefore eligible for award meets the MBE or WBE contract participation goals. A waiver shall not be granted unless the waiver request includes documentation that demonstrates good faith efforts to meet the goals (C.M.C 324-21(b)).

5. **SUBSTITUTION OF MBE OR WBE**

The Department of Economic Inclusion must approve substitution of an MBE or WBE specified at bid opening/proposal submission. Any unjustified failure to comply with this requirement is a material breach of contract. Subcontract substitution requests must be made on Form 2006 (C.M.C 324-23).

**MBE AND WBE PARTICIPATION
COMMITMENT PACKAGE COVERSHEET**

THIS PACKAGE OF MBE AND WBE PARTICIPATION COMMITMENT FORMS, INCLUDING THIS COVERSHEET, FORM 2003, FORM 2004-1 (IF APPLICABLE) FORM MWP-20, & MWP-30 (IF APPLICABLE) MUST BE COMPLETED AND RETURNED WITH THE BID OR PROPOSAL.

Name of Bidder (Proposer): _____

Address: _____

Contracting Agency: _____

Bid/Proposal Title: _____ Bid/Proposal Number: _____

Indicate what part of the bid this form package is being submitted for:

- 1. Base Bid/Proposal Only: _____
- 2. Base Bid/Proposal with Alternates*: _____ (List Alternate #s _____)
- 3. Only Bid/Proposal Items*: _____ (List Item #s _____)

*If you are only bidding on certain items or alternates on a bid/proposal, indicate the alternates or item #s that correspond to the MBE/WBE participation information you are providing.

The Advertised MBE Goal is _____ % The Advertised WBE Goal is _____ %

THE BIDDER'S PROPOSED MBE AND WBE PARTICIPATION SUBMITTED WITH A WINNING BID, AS VERIFIED BY DEI AFTER BID OPENING AND REFLECTED BELOW, WILL BE INCORPORATED INTO THE CONTRACT AS THE MANDATORY GOALS FOR THE CONTRACT, SUPERCEDING THE ADVERTISED GOALS.

For Department of Economic Inclusion Use Only:
 Based on a review of the bidder's submitted MBE and WBE Participation Commitment Forms, DEI has determined that the bidder proposed the following MBE and WBE subcontractor utilization:

MBE Commitment: ___% WBE Commitment ___ %

FOR MORE INFORMATION OR ASSISTANCE WITH THESE FORMS CONTACT:

Department of Economic Inclusion
Two Centennial Plaza
805 Central Avenue, Suite 610
Cincinnati, OH 45202
(513) 352-3144

Total MBE/WBE Participation Affidavit

The Undersigned authorized representative of the Contractor does hereby make the following Affidavit: Contractor has read the Bidder Information and Instructions regarding the MBE/WBE Program. Contractor acknowledges the MBE Goal of ____% and the WBE Goal of ____% advertised for this contract. Contractor has committed to the following MBE and WBE participation: (Include self-performance if applicable)

Total MBE Utilization Amount - \$_____ and Total WBE Utilization Amount - \$_____ of the total contract bid/proposal amount of \$_____.

My firm has made good faith efforts to meet or exceed the advertised goals for this contract. I understand the Department of Economic Inclusion (DEI), using that portion of the amounts I have identified as the dollar value of my firm's proposed MBE and WBE spend for which DEI has determined credit is permitted under Chapter 324 of the Cincinnati Municipal Code, will calculate the actual inclusion percentages achieved by my firm's bid/proposal.

I understand that, if awarded the contract, ALL OF THE FOLLOWING WILL APPLY:

- I will be required to meet the inclusion percentages calculated by DEI from my bid/proposal not only on the original contract amount, but also on any amendments and/or change orders that, in the aggregate, increase the original contract amount by 10% or more.
- I will be required to submit to DEI copies of subcontract agreements with each of the MBE and WBE firms utilized to achieve the inclusion goals for the contract, and those subcontract agreements must be submitted prior to the issuance of a Notice to Proceed and before the subcontractor is permitted to perform work under the contract.
- My firm must submit to DEI canceled checks and any other documentation and reports required by DEI to verify payments made to the MBE and WBE firms utilized on the contract.
- If I find I am unable to utilize the MBEs or WBEs identified in my Subcontractor Utilization Plan (Form 2003), I must substitute other certified MBE or WBE firms to meet the participation goals and that I may not make a substitution until after I have submitted a complete Subcontractor Substitution Form (Form 2006) and I have obtained the written approval of DEI for the substitution.
- Authorized representatives of DEI may examine, from time to time, the books, records and files of my firm to the extent such material may be relevant to a determination of whether my firm is complying with the MBE and WBE participation requirements of this contract.

I do solemnly declare and affirm under penalty of perjury that the contents of the foregoing Affidavit are true and accurate to the best of my knowledge, information and belief.

Company Name: _____ Signature: _____
 Co. Address: _____ Printed Name _____
 and Title: _____

Sworn and subscribed before me this ____ day of _____, 20__.

Notary Public

This form is required for ALL bids. In the case of no subcontractor utilization, please write "N/A" in Section 2

SUBCONTRACTOR UTILIZATION PLAN (FORM 2003)

(Include all proposed subcontractors, including both certified and non-certified)

Failure to complete the Subcontractor Utilization Plan in its entirety could result in your bid being deemed non-responsive

SECTION 1: Bidder/Respondent Information

A. Bid/Proposal Name: _____ B. Bid/Proposal Reference ID: _____

C. Bidder/Proposer Name: _____ D. Total Bid/Proposal Amount: _____

E. Primary Contact Name: _____ Phone: _____ Email: _____

SECTION 2: Subcontractor Utilization Information - Attach additional forms if necessary.

Subcontractor Name	SBE, SLBE, ELBE, MBE, WBE or N/A	Federal Tax ID	Detailed description of work to be performed or supplies to be provided	Subcontract Amount	(DEI Use Only) Subcontract % of Total	(For DEI Use Only) DEI Approved?

SECTION 3: Clarification of Subcontract Amount Listed Above for Suppliers - YOU MUST SELECT ONE OPTION EVEN IF YOU ARE NOT UTILIZING SUPPLIERS

- _____ The listed amount(s) is/are 100% of the total proposed spend with each identified supplier.
- _____ The listed amount(s) is/are only 25% of the total proposed spend with each supplier. Total spend with the supplier(s) will be 4 times greater than shown.
- _____ Not Applicable. **No suppliers are listed in Section 2.**

- You must ensure that the firm is certified with the City of Cincinnati to perform the services or provide the supplies that you are proposing in your utilization plan at the time of the bid opening. You can confirm the services and supplies of City Certified firms through the public directory: <https://cincinnati.diversitycompliance.com/FrontEnd/SearchCertifiedDirectory.asp>
- Only 25% of the payment to a certified MBE/WBE supplier that is not a manufacturer may be counted toward an MBE/WBE participation goal (CMC 324-27). **An MBE/WBE contractor that only supplies laborers for use and direction by the prime contractor is considered a supplier and only 25% of that payment can be counted towards the MBE/WBE participation goal.**
- A business enterprise that is certified as both an MBE and WBE (M/WBE) may be counted toward either the MBE contract participation goal or the WBE contract participation goal, but not towards both. The participation of an MWBE also may not be allocated partially to the MBE contract participation goal and partially to the WBE contract participation goal (C.M.C. 324-27(a)). The bidder must select the goal to which the business enterprise is to be counted.



City of Cincinnati
STATEMENT OF INTENT TO SELF-PERFORM
Bid/Contract Reference No. _____

For City-certified MBE/WBE, SBE, or SLBE/ELBE Primes to be counted towards a subcontracting goal, this form must be completed and submitted with the bid or proposal
INFORMATION RECORDED HEREIN WILL BE INCORPORATED IN THE AWARDEES' CONTRACT.

PROJECT NAME	TOTAL BID AMOUNT.		
<u>Contracts with MBE/WBE Goals:</u> Self- Performance to be counted toward the MBE _____ or WBE _____ goal. <i>(Check One)</i>			
<u>Contracts with SBE Goals:</u> Self- Performance to be counted toward the SBE _____ goal. <i>(Check One)</i>			
<u>Contracts with ELBE/SLBE Goals:</u> Self- Performance to be counted toward the ELBE _____ or SLBE _____ goal. <i>(Check One)</i>			
Requesting Contractor	Federal Tax ID	Address	Zip Code
Authorized Representative	Title	Phone No.	
Prime Contractor Rep for Payments	Title	Phone No.	Email

ITEM NUMBER	DETAILED DESCRIPTION OF WORK	SELF-PERFORMANCE AMOUNT \$	(DEI USE ONLY) % OF TOTAL
Total Value of Work			

SIGNATURES

Bidder or Respondent	DATE
Economic Inclusion Staff	DATE
Director of Economic Inclusion	DATE

MBE/WBE PRE-AWARD PARTICIPATION WAIVER/REDUCTION REQUEST FORM

Name of Bidder (Proposer): _____

Bid/Proposal Title: _____ Bid/Proposal Ref Number: _____

Goals that have been set for this Bid/Proposal: MBE: _____ % and WBE: _____ %

Goals that I have achieved for this Bid/Proposal: MBE: _____ % and WBE: _____ %

Documentation of Good Faith Efforts (CMC 324-21(B)(3) & MBE/WBE Program Regulations):

The failure to attach requested documents may result in denial of the request for waiver/reduction.

1. **Did you identify sufficient subcontracting work to solicit from MBE/WBE firms?** _____(Y/N)
 - a. If "Yes," you must attach a sheet detailing the types of work for which you chose to seek subcontractors and the types of work you chose to self-perform.
2. **Did you conduct broad-based advertising to reach MBEs & WBEs including attendance at pre-bid meetings and submitting written notices to all certified MBEs and WBEs who have the capabilities to do the work of the contract?** _____(Y/N)
 - a. If "Yes," you must attach a sheet detailing the meetings and notices sent to solicit MBE and WBE participation including the specific firms contacted, the dates and times of such meetings, and attach copies of the written notices or communications.
3. **Did you follow-up on your initial meetings and solicitations to MBE/WBE firms and provide them with adequate notice of the opportunity prior to the bid opening?** _____(Y/N)
 - a. If "Yes," you must attach a sheet detailing your follow-up efforts to solicit bids from MBE/WBE firms including the contact information of these firms, the dates of contact, and method of contact (phone, email, etc) and attach copies of any written communications.
4. **Did you provide the plans and specifications for work in your meetings and solicitations to MBE/WBE firms?** _____(Y/N)
 - a. If "Yes," you must attach the plans and specifications that you provided in your meetings & solicitations.
5. **Did you make efforts to assist with bonding, insurance and credit lines where these items were a requirement of the subcontracting opportunity?** _____(Y/N)
 - a. If "Yes," you must attach information on the advice and assistance you offered.
6. **Did you rejected any bids from MBE/WBE firms that were submitted for this contract that you deemed to be unqualified to perform this work?**
 - a. If "Yes," you must provide a detailed explanation of your thorough investigation of their capabilities.

Requests for waivers or reductions will be considered ONLY in the event no bidder or respondent who is determined to be the lowest & best or most advantageous meets the MBE or WBE contract participation goals. Additionally, waivers that do not answer each question (1-6) above and document each "Yes" response as required will not be considered.

Signature of Authorized Company Representative

Date

Request is Approved: _____ Denied: _____

Authorized Signature: Economic Inclusion Date: _____