**OVERVIEW**

The City of Columbus is committed to ensuring meaningful opportunities for Minority-Owned and Women-Owned Business Enterprises (MBE/WBE) to participate in City funded contracts. In furtherance of this commitment, the City has established an MBE/WBE program for City funded contracts of $100,000 or more based upon the disparities found in the City’s 2019 Disparity Study. This Special Provision adds to and/or changes the terms and conditions in the Department of Public Service’s standard Request for Proposal (RFP) and associated contract documents to comply with the City’s MBE/WBE program.

**PROGRAM POLICY**

The City of Columbus has a long history of supporting businesses owned by minorities, women, and disadvantaged individuals, including small businesses. This Minority and Women Business Enterprise (MBE/WBE) Policy seeks to foster participation by MBE/WBE businesses in construction, architectural and engineering, and professional and non-professional services in contracting and procurement opportunities at the City of Columbus by increasing the capacities of such firms to perform as prime vendors, subcontractors, and suppliers (the “Policy”). The Policy shall allow the City of Columbus to more effectively target MBE/WBE participation and create greater opportunities relating to the City's contracting and procurement.

This Policy seeks to promote full and fair opportunities for MBE/WBE firms certified by the City of Columbus, and whose place of business is located in the City's relevant market service area.

The purpose of this Policy is:

1. To ensure nondiscrimination in the award and administration of contracts;
2. To create a level playing field on which diverse suppliers can compete fairly for contracts;
3. To ensure that the Office of Diversity and Inclusion’s MBE/WBE and SLBE Programs are narrowly tailored in accordance with applicable law;
4. To ensure that only business entities that fully meet eligibility standards are permitted to participate as certified diverse suppliers;
5. To help remove barriers to the participation of diverse suppliers in contracts; and.
6. To provide opportunity for SLBEs located in the City to participate in a sheltered market as prime contractors on City construction, professional services, and goods and services contracts.

**TERMS AND CONDITIONS**

1. **Documents and Order Of Precedence**

The Department of Public Service’s bid and contract documents include: the Advertisement; the Request for Proposal (RFP); all addenda issued to the RFP; Electronic Bidding Software file(s); Contract; Contract forms; Supplements; Special Provisions; Notice to Proceed; City Purchase Order; and any other document specifically designated as an RFP or contract document.

If there should be a conflict between this Special Provision and any other RFP or contract documents issued for this bid and contract, this Special Provision takes precedence over the other documents unless another Special Provision was issued as part of a bid document specifically stating it takes precedence over this Special Provision.

1. **MBE/WBE Contract Goal**

RFP’s containing this Special Provision will have an assigned MBE/WBE goal. The goal is listed near the bottom of the cover page of the RFP and is expressed as a percentage. This percentage defines the minimum percentage of the contracted dollar amount to be spent with City certified MBE/WBE companies performing a commercially useful function for the completion of this contract. The goal the consultant will be responsible for achieving will be confirmed or finalized as part of the proposal evaluation process and will be listed in the contract. The goal can be achieved with spend with City certified MBE companies, City certified WBE companies, or both.

Each City certified MBE/WBE company listed in the contract as a subconsultant approved for spend with them to count against the contract goal will also have a dollar amount or contract percentage assigned to them. In addition to achieving the overall contract MBE/WBE spend goal, the consultant will also be responsible for spending at least the indicated dollar amount, or the indicated contract percentage, with each of these companies.

1. **Determining City Of Columbus MBE/WBE Certified Companies**

The City’s Office of Diversity and Inclusion (ODI) is the City agency that certifies companies as eligible to participate in the City’s MBE/WBE Program. A list of MBE/WBE companies certified by ODI, along with the types of goods or services they provide that are eligible to be counted toward the program goals is available at [Columbus.diversitycompliance.com](https://columbus.diversitycompliance.com). Contact the Office of Diversity and Inclusion, Tia Roseboro, Contract Compliance and Certification Programs Manager, at THRoseboro@Columbus.gov with any questions concerning companies eligible to participate in the program including but not limited to certification, types of goods or services a certified company is eligible to provide, or commercially useful functions.

1. **Commercially Useful Function**

Commercially Useful Function means work performed by an MBE/WBE for which the MBE/WBE is responsible for the execution of the contracted work and is performing its responsibilities by directly delivering, managing, and supervising the work involved. With respect to materials and supplies used on the contract, the MBE/WBE must negotiate the price, determine the quality and quantity, order the goods, supplies, and/or materials, and install and pay for the materials. An MBE/WBE that stocks or maintains sufficient quantities of supplies in direct inventory held for sale or resale to cover anticipated future demands for the supplies is performing a commercially useful function.

The following will be considered when determining if an MBE/WBE is performing a commercially useful function:

1. Does the amount of work subcontracted conform to normal industry standards and practices?
2. Does the amount the MBE/WBE is to be paid for the goods and services listed in the Declaration of Proposed MBE/WBE Utilization form (see the Submitting FORM B11 section of this special provision for details concerning the utilization plan) conform to the portion of work that the business is listed to perform?
3. Is the amount of the MBE/WBE credit claimed consistent with the amount of work to be performed?

The City’s Office of Diversity and Inclusion will use the Information the offeror supplies on FORM B11 to determine if the MBE/WBE will be performing a commercially useful function.

1. **Counting MBE/WBE Spend Toward The Contract Goal**
	1. The spend must be with a firm that the City of Columbus Office of Diversity and Inclusion (ODI) has certified as an MBE/WBE firm and that has been listed as an MBE/WBE firm eligible to be counted toward the goal in the contract, a contract modification, or accepted by ODI as an addition to the contract.
	2. Spend with the MBE/WBE firm will be eligible to be counted toward the goal even if the MBE/WBE’s certification should expire during the contract term.
	3. Spend with certified MBE/WBE firms through the third tier will be counted toward the goal that meet the requirements of 5a.
	4. Only the value of the work actually performed by the certified MBE/WBE will be counted.
	5. A certified MBE/WBE company awarded a contract is also required to meet the contract’s MBE/WBE goals. Spend on work directly performed by a certified MBE/WBE company with its own forces as a prime consultant will count toward achieving the goal. The MBE or WBE prime contractor must be certified by ODI for the services it intends to self-perform.
	6. The City certified MBE/WBE must provide a commercially useful function for spend to be counted toward the participation goal.
	7. If the City certified MBE/WBE is a materials supplier or a trucking broker and is not the prime consultant, 60% of spend with that MBE/WBE will be counted toward the MBE/WBE goal. Spend with all other City certified MBE/WBE’s not in the prime consultant role will be counted at 100% toward the MBE/WBE goal.
	8. Supplies, materials, or leased equipment paid for by a certified MBE/WBE firm are eligible to be counted toward the goal as long as they were not purchased or leased from the prime consultant or its affiliates.
	9. ODI has the sole responsibility for determining what spend is eligible to be counted toward the contract MBE/WBE goals and how it will be counted. Contact ODI at 614-645-4764 with any questions concerning how spend will be counted to achieve contract goals.
2. **Documenting MBE/WBE Spend With RFP Submission**
	1. Offerors must demonstrate their plan for achieving the contract MBE/WBE spend goal in their proposal.
	2. Offerors must submit FORM B11 (Declaration of Proposed MBE/WBE Utilization) with their proposal detailing their plan for achieving the contract MBE/WBE spend goal or the proposal will be considered non-responsive and ineligible for contract award.
	3. If the offeror failed to meet the MBE/ WBE goal in their FORM B11 submission, FORM B12 (Request for MBE/WBE Goal Waiver and Documentation of Good Faith Effort) must also be submitted demonstrating a bona fide effort was made to meet the goals or the proposal will be considered non-responsive and ineligible for contract award.
	4. The City’s Office of Diversity and Inclusion (ODI) has the sole responsibility for determining if an offeror has met the MBE/WBE goals or has demonstrated a sufficient good faith effort to be considered for contract award.
	5. At the sole discretion of ODI as to matters pertaining to the City’s MBE/WBE Program, the offeror may be asked or allowed to clarify information in their response related to the MBE/WBE Program or may be asked or allowed to correct an obvious error in the information submitted in relation to the MBE/WBE Program.
3. **Submitting FORM B11 (Declaration of Proposed MBE/WBE Utilization)**

FORM B11 must be completed and uploaded to Bonfire with the proposal to document offeror’s plan to obtain the contract spend for the MBE/WBE goal assigned to the contract. FORM B11 consists of three pages:

* Page 1 is headed Declaration of Proposed MBE/WBE Utilization and contains the Schedule of MBE/WBE Participation. Page 1 summarizes the offeror’s plan to meet the MBE/WBE goal for this project. Only one copy of page 1 is submitted with each proposal.
* Pages 2 and 3 provide details on each MBE/WBE firm that will be used to achieve the MBE/WBE goal for the project. One set of pages 2 and 3 are submitted for each certified MBE/WBE firm that will be used to achieve the MBE/WBE goal. (If five companies will be used, one copy of page 1 is submitted with five sets of pages 2 and 3.)
* Only one section of page 3 is to be completed per MBE/WBE. The section to be completed depends upon the answer given on page 2 as to the type of work the MBE/WBE is to perform in connection with the project. (For example, if the MBE/WBE is to perform work as a subconsultant, only the subconsultant section is completed. If the MBE/WBE is to provide supplies, only the supplier section is completed.)

All FORM B11 pages are to be combined together as a PDF document and uploaded in Bonfire separate from all other proposal documents.

* This PDF document is to be named “FORM B11”.
* The document formatting requirements of the RFP (such as font type and size) will not apply to this document.
* This document will not apply to the proposal page limitation as long as it is limited to information requested on FORM B11.
* When submitting FORM B11, do not mix sets of pages 2 and 3 between firms. (If submitting four B11’s due to utilizing four City certified MBE/WBE’s to achieve the contract MBE/WBE goal, pages 2 and 3 of FORM B11 for the first firm will be in the PDF before pages 2 and 3 for the second firm, etc.)
* Failure to submit both parts of FORM B11 fully completed with all required signatures, and with pages 2 and 3 submitted for each MBE/WBE firm that is to be counted toward the goal, may constitute a material defect in your proposal submission and may result in a determination of your proposal being non-responsive.

A FORM B11 should have been included as one of the RFP documents posted to Bonfire. A copy of FORM B11 is also available at:

<https://www.columbus.gov/publicservice/Design-and-Construction/document-library/Consultant-Selection/>

1. **Submitting FORM B12 (Request for MBE/WBE Goal Waiver and Documentation of Good Faith Effort)**

This form is only to be completed and uploaded into Bonfire if the Proposed MBE/WBE Percentage submitted by the offeror on FORM B11 is less than the Project MBE/WBE Goal Percentage.

Proposals that fail to meet the contract MBE/WBE goal must demonstrate a good faith effort was made in an attempt to achieve the goal or will be deemed non-responsive. The steps required to demonstrate a good faith effort and how to document it are detailed on FORM B12.

If submitted, FORM B12 is to be uploaded in Bonfire as a PDF separate from all other proposal documents.

* This PDF document is to be named “FORM B12”.
* The document formatting requirements of the RFP (such as font type and size) will not apply to this document.
* This document will not apply to the proposal page limitation as long as it is limited to information requested on FORM B12.

ODI is the only authorized reviewer and scorer of the good faith requirement criteria. At the sole discretion of ODI as to matters pertaining to the City’s MBE/WBE Program, the offeror may be asked or allowed to clarify information in their response related to the MBE/WBE Program or may be asked or allowed to correct an obvious error in the information submitted in relation to the MBE/WBE Program.

Partial points may be awarded for a category. A score of 80 points of higher is considered to have demonstrated a good faith effort was made to achieve the project’s MBE/WBE goal. ODI, at is sole discretion, may deem a score of less than 80 demonstrated a good faith effort if there are extenuating circumstances. If ODI determines a good faith effort was not made, the proposal will be deemed non-responsive and removed from consideration for an award.

A FORM B12 should have been included as one of the RFP documents posted on Bonfire. A copy of FORM B12 is also available at:

[https://www.columbus.gov/publicservice/Design-and-Construction/document-library/Consultant-Selection/](https://www.columbus.gov/publicservice/Design-and-Construction/document-library/Consultant-Selection/%20)

1. **Determining Contract Award**

The process described in Section 9 (Selection Process) of the RFP document is changed to the following:

The Department of Public Service will appoint an Evaluation Committee (Committee) to evaluate proposals received. The Committee will be composed of at least three voting members. Voting members include staff from the Department of Public Service and may include staff from other City departments and/or representatives from other organizations as appropriate.

The Committee will evaluate all offerors and proposals received and rank the offerors based upon the evaluation criteria specified in the RFP. A certified MBE/WBE offeror's proposal may include a request for an incentive credit equal to five percent of the offeror's final evaluation score to be applied to the MBE/WBE offeror's final score. The Office of Diversity and Inclusion will review the request, and approve its application if the offeror is a certified MBE/WBE at the time the RFP was received by the City. The Committee may select two or more of the highest qualified offerors with which to hold additional discussions. Offerors not selected for further discussions may be excluded from further consideration for the contract upon notification by the Committee or city agency. The discussions may include, but are not limited to, presentations by the offerors to the Committee to elaborate upon their qualifications, proposals, and/or other pertinent information. The Committee may permit revisions of proposals so long as all offerors who are selected for additional discussions are given equal opportunity to revise their proposals.

Based upon the content of the proposals received including any revisions thereto, and upon any additional discussions with the offerors, the Committee will rank the remaining offerors based upon the evaluation criteria specified in the RFP. If an incentive credit was approved for a certified MBE/WBE offeror, it will also be applied to this ranking.

Proposals will be reviewed to determine if they met the contract’s MBE/WBE goal.

* Those that met the contract’s MBE/WBE goal will be eligible for contract award.
* The good faith effort (information provided with FORM B12) will be reviewed and scored for proposals that did not meet the contract’s MBE/WBE goal. Proposals that did not meet the MBE/WBE goal but scored 80 or more points on a good faith effort will still be eligible for contract award.
* If the good faith effort score is less than 80 points, the proposal could still be eligible for contract award if ODI determines unusual circumstances impacted the good faith effort.
* If ODI recommends a proposal be deemed non-responsive for failing to meet the MBE/WBE goal and/or for failing to document a sufficient good faith effort, the recommendation will be forwarded to the Director of Public Service and the Director of Finance and Management for review and concurrence. If they concur with ODI, the Department of Public Service will send a letter to the offeror informing the offeror of the decision and the proposal will be removed from contract award consideration.

The Committee will submit its ranking of the offerors along with a written explanation to the Director of Public Service. The Director has discretion consistent with appropriate departmental and/or citywide administrative rules in selecting the offeror with which to enter into contract negotiations. The department will enter into contract negotiations with the selected offeror to determine the terms and conditions of the contract, including compensation to be paid by the City. If negotiations fail, negotiations with this offeror will be terminated, and the department may enter into contract negotiations with another offeror as selected by the Director. This process may continue until a contract is successfully negotiated.

Columbus City Council must approve the contract via a legislative request submitted by the Department of Public Service before a contract can be executed.

Per City Code Section 329.11 (Issuance of addenda – Cancellation of invitation for bids, requests for statements of qualifications, and requests for proposals), the Director of Finance and Management (or designee) or the Department of Public Service may issue addenda to cancel any invitation for bids, request for statements of qualifications, and/or requests for proposals, and may reject any or all bids or proposals in whole or in part when it is in the best interests of the City.

1. **Appealing A Non-Responsive Decision For Failing To Meet the MBE/WBE Contract Goal**

If a proposal is deemed non-responsive due to a failure to meet the MBE/WBE contract goal, the company that submitted the proposal may request a meeting to appeal the decision. The meeting request must be made within two business days of receiving the letter stating the proposal was non-responsive by following the appeals contact information in the letter.

If a meeting is requested, the Office of Diversity and Inclusion (ODI) will explain why the non-responsive decision was made. The offeror may be allowed to clarify the original documentation, correct obvious mistakes in the documentation, or correct mistakes in the submission of the documentation within two City business days (City business days exclude weekend days and City recognized holidays) of being provided details relative to the deficiencies in the proposal documentation. The offeror will not be allowed to perform additional good faith effort tasks (to increase the good faith effort score) that were not performed prior to proposal submission. The clarifications, changes, corrections, etc., allowed or not allowed will be done solely at the discretion of ODI. If the Office of Diversity and Inclusion still finds the bid or proposal to be non-responsive, the decision shall be final.

1. **City Certified MBE/WBE Subconsultant Substitution Standards**

Consultants shall not terminate or change the terms of its MBE/WBE commitment after the contract award without adhering to the Office of Diversity and Inclusion’s (ODI) Subcontractor Substitution Standards summarized in this section. Consultants must have good cause for removing a City certified MBE/WBE subconsultant and must obtain the City’s approval before substituting another subconsultant or self-performing the subcontract work. To show good cause, the consultant must submit documentation to demonstrate the City certified MBE/WBE subconsultant was deficient in any of the following ways:

1. Failed or refused to meet the consultant’s reasonable bond requirements. (Not applicable if the City waived bond requirements for City certified MBE/WBE subconsultants for this contract.)
2. Determined to be ineligible to work on City projects because of suspension and/or debarment proceedings.
3. Voluntarily withdrew from the project and provided ODI written notice of its withdrawal.
4. Subconsultant name was listed in the proposal as the result of an inadvertent clerical error.
5. Failed or refused to perform contract work after reasonable opportunity to do so.
6. Failed or refused to execute a written contract.
7. Declared bankruptcy, insolvency, or exhibited credit unworthiness
8. Exhibited other good cause, as determined at ODI’s sole discretion.

Good cause will not include circumstances in which the consultant seeks to terminate a City certified MBE/WBE so the consultant can self-perform the work or substitute another City certified MBE/WBE or other subconsultant to perform the work.

The consultant must give the City certified MBE/WBE written notice, with a copy to ODI, of its intent to request substitution by submitting FORM B14 (Request For Approval Of Change To Original Schedule Of Subcontractors). This notice must include the reason(s) for the termination. ODI will investigate and approve or disapprove the request. If the substitution request is approved, the consultant must make a documented good faith effort to find a substitute City certified MBE/WBE subconsultant to meet or exceed the remaining MBE/WBE contractual commitment of the replaced company. ODI must approve any MBE/WBE proposed as a substitute. As part of this approval, ODI will need to verify the substitute MBE/WBE is City certified to perform the requested scope of work or to provide the goods that remain unfilled on the replaced MBE/WBE’s subcontract prior to their substitution, and will need to verify the substitute MBE/WBE is performing a commercially useful function.

FORM B14 is available at: [https://www.columbus.gov/publicservice/Design-and-Construction/document-library/Consultant-Selection/](https://www.columbus.gov/publicservice/Design-and-Construction/document-library/Consultant-Selection/%20%20%20%20%20%20)

1. **Publication Of Payments To Consultants**

Offeror acknowledges and agrees that, if awarded a contract, payments made to offeror for the contract may be published on a public website. Data to be published on the website may include, but will not be limited to: contract number; project name; department name; prime consultant name; date of payment; and dollar amount.

1. **Penalties For Non-Compliance**

The City has an expectation that if an offeror is awarded a contract, and offeror identified that it intends to utilize City certified MBE/WBE firms as subconsultants/subcontractors, then the offeror will actually utilize the stated City certified MBE/WBE firms for at least the dollar amount specified in the contract and will comply with the City’s MBE/WBE Program. Failure to comply with the City’s MBE/WBE Program, and/or failure to utilize the stated MBE/WBE firms for at least the dollar amount specified in the contract may result in:

* A finding of breach of contract.
* Disqualification of the offeror’s ability to bid on future contracts.
* Assessment of financial penalties.

Financial penalties that may be assessed are:

1. Not paying the prime consultant for work, supplies, and/or equipment specified in the contract to be provided by a City certified MBE/WBE firm if the consultant does not utilize the specified firm for them.
2. Deducting from future payments the amount previously paid to the prime consultant if it is discovered after-the-fact payment was made for work/supplies/equipment that was to have been provided by a City certified MBE/WBE.
3. Failure to achieve the contracted spend amount with City certified MBE/WBE’s. The prime consultant may be penalized up to the shortfall amount of the contracted spend with City certified MBE/WBE’s.

Any penalty amount assessed will either be deducted from the final payment due for the project or invoiced to the prime consultant. Any invoiced amount must be paid to the City within 30 days of the invoice date.

1. **Post Award Debriefing Services**

A debriefing session is available to all professional services prime contractors who are unsuccessful in responding to a solicitation for request for proposals or statement of qualifications. Unsuccessful contractors must submit the request for a debriefing session within thirty days following the contract award. Requests for a debriefing session for RFP’s issued by the Department of Public Services are to be emailed to capitalprojects@columbus.gov with the subject line “Debriefing Request”. The email is to also state the project name for which the debriefing session is requested. Public Service will respond to the request within ten days with the date, time, and location of the session.