**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 Invitation for Bid (IFB) 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 Invitation for Bid (IFB); Instructions to Bidders; all addenda issued to the IFB; Electronic Bidding Software file(s); Contract; Contract forms and required Guarantees; Specifications; Supplemental Specifications; Supplements; Special Provisions; Plans; Plan Notes; Standard Drawings; Technical Drawings; the Construction and Material Specifications Manual referenced in the IFB; “Accepted” and “Accepted as Noted Working Drawings”; Notice to Proceed; Notice of Commencement; City Purchase Order; and any other document specifically designated as a bid or contract document.

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

1. **MBE/WBE Contract Goal**

IFB’s containing this Special Provision will have an assigned MBE/WBE goal. The goal is listed near the bottom of the first page of the Invitation for Bid and is expressed as a percentage. This percentage defines the minimum percentage of the contracted dollar amount to be spent with Program Included City certified MBE/WBE companies performing a commercially useful function for the completion of this contract. The goal the contractor will be responsible for achieving will be confirmed or finalized as part of the bid 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 subcontractor 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 contractor 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](mailto: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 bidder 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 contractor 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 contractor, 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 contractor 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 contractor 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 Bid Submission**
   1. Bidders must demonstrate their plan for achieving the contract MBE/WBE spend goal in their bid submission.
   2. Bidders must submit FORM B11 (Declaration of Proposed MBE/WBE Utilization) with their bid submission detailing their plan for achieving the contract MBE/WBE spend goal or the bid will be considered non-responsive and ineligible for contract award.
   3. If the bidder 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 bid 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 a bidder has met the MBE/WBE goal or has demonstrated a sufficient good faith effort to be considered for bid award.
   5. At the sole discretion of ODI as to matters pertaining to the City’s MBE/WBE Program, the bidder 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.

1. **Submitting FORM B11 (Declaration of Proposed MBE/WBE Utilization)**

FORM B11 must be completed and uploaded through Bid Express with the bid to document bidder’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 bidder’s plan to meet the MBE/WBE goal for this project. Only one copy of page 1 is submitted with each bid.
* 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 subcontractor, only the subcontractor 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 Bid Express separate from all other bid documents.

* This PDF document is to be named “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 bid submission and may result in a determination of your bid being non-responsive.

A FORM B11 should have been included as one of the RFP documents posted to Bid Express. 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 Bid Express if the proposed MBE/WBE percentage submitted by the bidder on FORM B11 is less than the project MBE/WBE goal percentage.

Bids 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 Bid Express as a PDF separate from all other bid documents. This PDF document is to be named “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 bidder 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 bid will be deemed non-responsive and removed from consideration for an award.

A FORM B12 should have been included as one of the bid documents posted on Bid Express. A copy of FORM B12 is also available at <https://www.columbus.gov/publicservice/Design-and-Construction/document-library/Consultant-Selection/>

1. **Determining Bid Award**

The bid award process will be as follows to determine the lowest, responsive, responsible, and best bidder:

* Bids opened in Bid Express will be listed, stating the bidder name and total bid price. This list will be posted and emailed.
* Bids will then be evaluated for responsiveness factors and responsibility factors.
* Bids 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 bid award.
* The good faith effort (information provided with FORM B12) will be reviewed and scored for bids that did not meet the contract’s MBE/WBE goal. Bids that did not meet the MBE/WBE goal but scored 80 or more points on a good faith effort will still be eligible for bid award.
* If the good faith effort score is less than 80 points, the bid could still be eligible for award if ODI determines unusual circumstances impacted the good faith effort.
* If ODI recommends a bid 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 bidder informing the bidder of the decision and the bid will be removed from award consideration.
  + - Bids determined to be non-responsive or non-responsible will be removed from bid award consideration.
    - Bids that were approved for the bid discount will have the bid discount applied to their bid amount.
    - Bids deemed responsive and responsible will be ranked in order of lowest bid amount. This ranking will include the application of approved bid discounts.
    - A recommendation letter will be sent to the Director of Public Service recommending the lowest, responsive, responsible, and best bidder for bid award.
    - The Director will respond to the recommendation letter with an award decision.

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 bid is deemed non-responsive due to a failure to meet the MBE/WBE contract goal, the company that submitted the bid may request a meeting to appeal the decision. The meeting request must be made within two business days of receiving the letter stating the bid 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 bidder 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 bid documentation. The bidder will not be allowed to perform additional good faith effort tasks (to increase the good faith effort score) that were not performed prior to bid 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 Subcontractor Substitution Standards**

Contractors 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) City Certified Subcontractor Substitution Standards summarized in this section. Contractors must have good cause for removing a City certified MBE/WBE subcontractor and must obtain the City’s approval before substituting another subcontractor or self-performing the subcontract work. To show good cause, the contractor must submit documentation to demonstrate the City certified MBE/WBE subcontractor was deficient in any of the following ways:

1. For any of the reasons listed in the Changing Subcontractors section of the Invitation to Bid document for this contract.
2. Failed or refused to meet the contractor’s reasonable bond requirements. (Not applicable if the City waived bond requirements for City certified MBE/WBE subcontractors for this contract.)
3. Determined to be ineligible to work on City projects because of suspension and/or debarment proceedings.
4. Voluntarily withdrew from the project and provided ODI written notice of its withdrawal.
5. Exhibited other good cause, as determined by ODI’s sole discretion.

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

The contractor 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 contractor must make a documented good faith effort to find a substitute City certified MBE/WBE subcontractor 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/>

1. **Required Payment Reporting With Each Pay Estimate Submitted For Payment**

The contractor will submit a payment report with each invoice in a form, system, or format as required by the Department of Public Service. The primary purpose of the report is to allow tracking of payments to subcontractors but does include other information. The contractor will not be paid unless this report is completed and included with each invoice.

A copy of the form currently used for this reporting is available upon request. The information required to be provided may change during the term of the contract, and the report may become an online report that contractors will be required to access and complete.

1. **Publication Of Payments To Contractors**

Bidder acknowledges and agrees that, if awarded a contract, payments made to bidder 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 contractor name; date of payment; and dollar amount.

1. **Penalties For Non-Compliance**

The City has an expectation that if a bidder is awarded a contract, and the bidder identified that it intends to utilize City certified MBE/WBE firms as subcontractors, then the bidder 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 bidder’s ability to bid on future contracts.
* Assessment of financial penalties.

Financial penalties that may be assessed are:

1. Not paying the prime contractor for work, supplies, and/or equipment specified in the contract to be provided by a City certified MBE/WBE firm if the prime contractor does not utilize the specified firm for them.
2. Deducting from future payments the amount previously paid to the prime contractor 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 contractor 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 contractor. Any invoiced amount must be paid to the City within 30 days of the invoice date.

1. **Mobilization Payments To Subcontractors**

When the prime contractor receives a percentage of the total project cost as the mobilization payment to begin work on the project, the subcontractor may be paid the same percentage when it is scheduled to mobilize. Provisions for the payment of mobilization will be stipulated in the prime contract.

The prime contractor’s invoice/pay estimate must include the subcontractor’s portion of the mobilization costs. The subcontractor shall receive payment from the prime contractor within five (5) days of commencing work on the job site.