



City of Arlington
Minority & Woman Business Enterprise
POLICY AND PROCEDURES
MANUAL



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POLICY STATEMENT

This Minority Woman Business Enterprise (MWBE) Policy seeks to reduce race- and gender-based barriers and foster participation by minority and woman-owned businesses in contracting and procurement opportunities at the City of Arlington by increasing the capacities of such firms to perform as prime vendors and subcontractors and as suppliers.

This Policy will allow the City of Arlington to narrowly tailor its activities and to target MWBE participation more effectively to create opportunities relating to the City's contracting and procurement.

This Policy seeks to promote full and fair opportunities for MWBEs certified by an entity recognized by the City, and whose place of business is in the City of Arlington's relevant market area.

SCOPE OF THE MWBE PROGRAM

On April 13, 2019, the City contracted with Colette Holt & Associates (CHA) to conduct an Availability & Disparity Study to analyze the City's historical utilization of MWBEs when competing for City contracts and associated subcontracts. The study also assessed the availability of MWBE prime and subcontractors, based on market and industry sectors. The study further found disparities between the City's utilization of MWBEs compared to the availability of MWBEs. The study further analyzed the experiences of MWBEs throughout the Metroplex economy and in Texas as a whole, and likewise found large and significant disparities in opportunities for these firms. The study also gathered qualitative data on the experiences of MWBEs in seeking work with the City and other governments and the private sector and found that qualified and capable firms were encountering systemic and serious barriers on the basis of race and gender. Based on these findings, the study made recommendations to the City about possible strategies to increase opportunities for MWBEs and for all small firms.

It is in the best interest of the City of Arlington to ensure non-discrimination and equal opportunities for MWBEs by encouraging full participation in all phases of City procurement opportunities. Therefore, it is the City of Arlington's policy to equitably and conscientiously include MWBEs in the City's procurement process for all goods and services, construction, consulting, and professional services contracts. The Policy will provide the City with the tools to pursue initiatives that will support equal opportunity for competition on all City procurements.

This MWBE Program requires contractors to make good faith efforts to use MWBEs in certain contracting and procurement opportunities determined by the City. Compliance with requirements for bidders to exercise good faith efforts shall be measured utilizing guidance provided in this Policy.

The City of Arlington reaffirms that it will not, nor will its contractors, discriminate based on race, age, color, religion, sex, sexual orientation, gender identity, national origin, ancestry, gender, disability, or place of birth in the award and performance of contracts. The City also states that nothing herein shall be construed to authorize or require expenditure of funds for goods and services, construction, consulting, and professional services contracts apart from normal industry and statutory procurement processes.

Every locally funded contract will be evaluated by the City of Arlington's Office of Business Diversity (OBD) to determine the appropriate method for enhancing MWBE participation, including progress towards the achievement of the annual aspirational MWBE goal and other program objectives.

The criteria used to set a MWBE Contract Specific Goal shall include business availability, the nature of the contract, the City's past experiences with MWBE participation in similar contracts, price competitiveness, subcontracting opportunities, progress towards meeting the annual goal and other relevant factors.

Procedures for implementation, including good faith efforts requirements, information submitted with bid proposals, reporting procedures, etc., shall be consistent with the procedures utilized in this Procedures Manual.

DEFINITIONS

ANNUAL ASPIRATIONAL GOAL means the City's overall, annual total target for the participation of MBEs and WBEs in City contracts.

AVAILABILITY - The calculated estimate of qualified minority/woman-owned business enterprises in a particular trade and/or profession.

BIDDER/PROPOSER - Any person, firm, partnership, corporation, limited liability company, association or joint venture seeking to be awarded a City contract or lease by a competitive process.

BUSINESS ENTERPRISE - Any legal entity which is organized to engage in lawful commercial transactions and is actively engaged in such transactions as means of livelihood, such as a sole proprietorship, partnership, limited liability company or corporation, but not a joint venture except as hereinafter provided.

BUSINESS PROCESS - Any undertaking to enhance the participation of Minority and Woman-owned Businesses by the City in contracts/procurements including revenue generating contracts.

CERTIFICATION - The process by which a business enterprise is determined to be a bona-fide Minority-owned Business Enterprise or Woman-owned Business Enterprise by an entity recognized by the City.

COMMERCIALLY USEFUL FUNCTION - Responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing, and supervising the work involved, or fulfilling responsibilities.

COMPLIANCE - Refers to the fact that a Contractor has correctly implemented the requirements of the applicable MWBE Business process requirements

CONTRACT - An award by the City whereby the City expends or commits the expenditure of funds in return for work, labor, services, supplies, equipment, materials, or any combination of the foregoing. A legally binding relationship obliging a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them.

CONTRACT MODIFICATION - Any change (deductive or additive) to the scope of work or dollar amount in any City contract including but not exclusive of supplemental agreements, contract options renewal years and change orders.

CONTRACTOR - One who participates, through a contract /subcontract (at any tier) or any other contractual agreement with the City. A contractor includes but is not exclusive to a contractor, consultant, and vendors.

CONTRACT SPECIFIC GOAL- A numerically expressed objective for MWBE participation on a specific solicitation, which shall be based on the percentage availability of MBEs and/or WBEs to perform the specific weighted scopes of work of the entire contract, the City's utilization of MBEs and WBEs to date, the City's progress towards meeting the Annual Aspirational Goal, and other relevant factors, which contractors and consultants are required to make Good Faith Efforts to achieve. The MWBE goal will not be considered or construed as constituting a fixed quota. Goals in the MWBE Business process are considered aspirational.

GOOD FAITH EFFORTS - steps taken to achieve a MWBE goal or other requirements which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the business process requirement.

JOINT VENTURE- means an association of an MBE and/or WBE and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills, and knowledge, and in which the MBE or WBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

MARKET AREA- means the geographic area from which the City purchases the majority of its goods and services, as established by the 2020 City of Arlington Disparity Study.

MINORITY BUSINESS ENTERPRISE (MBE) - A for profit business concern which is at least 51 percent owned and controlled by one or more minority person(s), or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more minorities; and whose management and daily business operations are controlled by one or more of the minority individuals who own it; which has a place of business located within the City's Market Area; and which is Certified.

MINORITY PERSONS - Individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are:

- "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand,

Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands, Republic of Palau, the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong; along with "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka.;

- "Black Americans," which includes persons having origins in any of the Black racial groups of Africa.
- "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese cultures or origin, regardless of race.
- "Native Americans," which includes persons who are American Indians.

PRIME CONTRACTOR means a Contractor that awarded a City contract and is at risk for the completion of an entire City project, including purchasing all materials, hiring, and paying Subcontractors, and coordinating all the work.

SUBCONTRACTOR - Any named person, firm, partnership, corporation, limited liability company, association or joint venture as herein provided identified as providing work, labor, services, supplies, equipment, materials, or any combination of the foregoing, under contract to a prime contractor on a City contract at any tier.

UTILIZATION PLAN - means the plan, in the form specified by the City, which must be submitted by a Bidder listing the MBEs and/or WBEs that the Bidder intends to use in the performance of a contract, the scopes of the work and the dollar values or the percentages of the work to be performed.

WOMAN BUSINESS ENTERPRISE (WBE) - A for profit business concern which is at least 51 percent owned and controlled by one or more female person(s), or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more woman; and whose management and daily business operations are controlled by one or more of the female individuals who own it; which has a place of business located within the City's Market Area; and which is Certified as a WBE.

OVERALL ANNUAL ASPIRATIONAL MWBE GOAL

The City of Arlington's overall, Annual Aspirational MWBE Goal is **30%** and is based on the City's current Availability & Disparity Study, completed in 2020.

The Annual Goal shall be based on the total dollars spent annually for all expenditure contracts and the availability of MWBEs to perform as prime and subcontractors on contracts.

The Office of Business Diversity, from time to time, may recommend to City Management and Council the annual goal be reviewed or adjusted to ensure the goals are based upon strong evidence and that the program remains tailored to that evidence.

CONTRACT SPECIFIC GOALS

The City will utilize a contract specific MWBE goal process to identify goals on a contract-by-contract basis for the following solicitations:

- Goods
- General services
- Professional/consulting services
- Construction
- Architectural and Engineering

Contract Specific Goals are established to allow the City to consider the actual project scopes of work and the availability of MWBEs to perform those scopes.

ROLES AND RESPONSIBILITIES

FOR OFFICE OF BUSINESS DIVERSITY

The Office of Business Diversity is the primary administrator of the MWBE Policy and is responsible for the implementation, coordination, monitoring, and compliance of the MWBE Program Policy and Procedures.

The Office will consist of an MWBE Diversity Manager who is responsible for the overall progress and facilitation of the City's Program; an MWBE Coordinator who will lead the City's outreach initiatives; an MWBE Business Analyst who will review solicitations and define the contract specific goals; and an MWBE Contract Compliance Specialist who will handle all post award compliance for the City. Additional positions may be added at the City's discretion.

The general duties of The Office of Business Diversity are to:

1. Establish an Annual Aspirational MWBE Goal.
2. Develop and implement a Contract Specific Goal setting methodology.
3. Prepare and present periodic reports to City Council on compliance with the MWBE Program Policy and Procedures and progress towards meeting the Annual Aspirational MWBE Goal.
4. Review, monitor, and ensure compliance with the City's MWBE Program, along with the standards and procedures established by the City Council.
5. Provide listings of MWBE businesses using the City's IonWave Procurement Portal and other resources for City departments and businesses seeking prime and/or subcontracting opportunities.
6. Review and verify the certification status of MWBEs.
7. Review bids and solicitations to ensure that MWBEs have an equal opportunity to participate in City contracts, including, but not limited to reviewing the scope of work, bonding requirements, insurance requirements, the conditions in which retainage is held, etc.
8. Review bids and solicitations to identify Contract-Specific Goals for MWBE participation on City contracts.
9. Review bids/proposals and other solicitation documentation, including the evaluation criteria, to ensure inclusion of the MWBE Program Policy and Procedures and remove of any artificial barriers to potential M/WBE participation.
10. Serve on the selection/evaluation committees to ensure compliance with the City's MWBE Program.
11. Review Contract language as needed, in consultation with the City Attorney's Office, for appropriate Program language.
12. Participate in pre-solicitation discussions, including any design review meetings, to consider such factors as MWBE availability, bonding limits, and capabilities in the development of specifications.

13. Attend pre-bid/proposal and pre-construction/design conferences to explain the MWBE Program Policy and Procedures and its requirements, as well as respond to pertinent questions addressed via addendums.
14. Evaluate Contractors' achievement of Contract Specific Goals or Good Faith Efforts to meet Contract Specific Goals.
15. Monitor and ensure MWBE compliance on City procurements in the Contract closeout process.
16. Monitor and report the progress of MWBE business growth and demographics from the City's IonWave Procurement Portal and B2Gnow Supplier Diversity Portal.
17. Encourage and promote joint ventures, partnering, mentor-protégé, and teaming arrangements that include MWBEs to enhance innovative approaches to increase MWBE utilization.
18. Promote partnerships with local chambers of commerce and business assistance organizations that support the local and MWBE business communities.
19. Promote and conduct outreach functions to familiarize the MWBE business community with the City's MWBE Program Policy and Procedures and its solicitation and procurement processes.
20. Assist departments in providing post solicitation and event debriefings designed to help unsuccessful participants improve their responses for future solicitations.

ROLES AND RESPONSIBILITIES

FOR OFFICE OF PROCUREMENT

The Office of Procurement (OOP) is the primary administrator of the Procurement Policy and is responsible for the implementation, coordination, monitoring and compliance of the Procurement Policy and Procedures.

The general duties of The Office of Procurement in relation to the MWBE Program are summarized below:

1. Notification on all upcoming procurement solicitations to identify Contract Specific Goals.
2. Review all bids and solicitations to remove any potential barriers or obstacles that could restrict MWBE participation such as pre-qualification processes, use of certain products/brands, and unbundling of larger contracts into smaller ones when feasible.
3. Include OBD representative(s) as part of the principal selection and evaluation teams as a voting member to ensure review and consideration of MWBE participation and compliance with the MWBE Program Policy and Procedures.
4. Make available bid specifications to prospective bidders upon advertising the solicitation to maximize MWBE participation by utilizing the IonWave Procurement Portal.
5. Review all upcoming procurement solicitations for MWBE opportunities, including cooperative purchasing agreements, etc.
6. Include MWBE language, where applicable, and all appropriate MWBE documents for all formal solicitations.
7. Confirm MWBE committed goal from recommended awardee, before City Council approval, to ensure the contractor meets the City's MWBE goal
8. Conduct pre-bid or pre-proposal meetings to encourage networking opportunities for Prime Contractors and Subcontractors
9. Work with OBD to educate MWBEs and small businesses on the procurement process and networking opportunities with City staff.
10. Utilize OBD to provide listing of MWBEs for invitation to upcoming purchasing solicitations.
11. Review applicable insurance and bonding requirements with The City Attorney's Office and Risk Division to determine if the requirements are necessary, and whether such established risk/exposure limits hinder the ability of MWBEs and small firms to bid more competitively on projects.
12. Require each Prime Contractor to report its MWBE utilization monthly as part of the pay request process, or as otherwise directed by OBD.
13. Promote teaming arrangements as an opportunity to increase MWBE prime participation.
14. Notify OBD on contractual issues concerning MWBEs (i.e., performance, prime/subcontractor complaints, substitutions of listed MWBEs, etc.).
15. Contact OBD regarding change orders that would impact all subcontractor's utilization.

Race- and Gender-Neutral Measures to Ensure Equal Opportunities for All Contractors and Subcontractors

The City shall develop and use race- and gender-neutral measures to the maximum feasible extent in implementing the Program. These measures may include, but are not limited to:

1. Establishing schedules for submitting Bids with adequate time frames for identifying and contacting MWBEs qualified to participate in the procurement.
2. Arranging solicitation times for the presentations of bids, specifications, and delivery schedules to facilitate the participation of interested Prime contractors and subcontractors.
3. Segmenting procurements to facilitate the participation of MBEs, WBEs and other small businesses.
4. Providing timely information on Contracting procedures, bid preparation and specific Contracting opportunities, including through an electronic system and social media.
5. Assisting MBEs, WBEs and other small businesses with training seminars on the technical aspects of preparing a bid for a City contract.
6. Providing assistance to businesses in overcoming barriers such as difficulty in obtaining bonding and financing, and support for business development such as accounting, bid estimation, safety requirements, and quality control, etc.
7. Advertising solicitations within a sufficient period of time to allow MWBEs to submit Bids and non-MWBEs Bidders to solicit quotes from MBE and WBE Subcontractors.
8. Holding pre-Bid and pre-Proposal conferences, where appropriate, to explain the projects and to encourage Prime Contractors to use available qualified MBEs and WBEs.
9. Reviewing retainage, bonding and insurance requirements and their application to bid calculations to eliminate unnecessary barriers to contracting with the City.
10. Authorizing, where appropriate, mobilization payments to Prime Contractors and ensuring that Subcontractors receive their proportionate share of mobilization funds.
11. Adopting prompt payment procedures, including, requiring by contract that Prime Contractors promptly pay Subcontractors and investigating complaints or charges of excessive delay in payments.
12. Enforcing statutory and contractual prompt payment provisions, including the right to pay Subcontractors directly.
13. At the discretion of OBD, in cooperation with Procurement, periodically entering into a procurement process without Contract Specific Goals in order to determine MBE and WBE utilization in the absence of such Goals.
14. Collecting information from all Prime Contractors on City construction contracts detailing the bids received from all Subcontractors for City construction contracts and the expenditures to Subcontractors utilized by Prime Contractors on City construction contracts.

15. Referring complaints of discrimination against MBEs or WBEs to the appropriate authority for investigation.

OBD will work with Procurement and other Departments to adopt additional measures, as warranted.

MWBE CERTIFICATION

In order to credit the participation of MWBEs on City procurements toward the City's MWBE Annual Aspirational Goal and Contract Specific Goals, the City requires all MWBEs to be approved by a certification agency recognized by the City's Office of Business Diversity. The approved certification agencies are as followed:

- North Central Texas Regional Certification Agency (NCTRCA)
- State of Texas Historically Underutilized Business (HUB) Program
- Texas Unified Certification Program (TUCP) entities
- DFW Minority Supplier Development Council (DFW MSDC) and affiliates
- Woman's Business Council-Southwest (WBC-SW) and affiliates
- Small Business Administration (SBA) – 8a certification only.

A firm must be Certified as an MWBE at the time of bid or proposal submission to be counted towards meeting the Contract Specific Goal for purposes of determining Contract award.

COUNTING MWBE UTILIZATION TOWARDS CONTRACT SPECIFIC GOALS

A Bidder may achieve the Contract Specific Goals by its status as an MBE or WBE or by entering into a Joint Venture with one or more MBEs and/or WBEs or by subcontracting at any-tier a portion of the work to one or more MBEs and/or WBEs or by direct purchase of materials or services from one or more MBEs and/or WBEs or by any combination of the above.

When an MBE or WBE participates in a Contract, the City will count only the value of the work actually performed by the M/WBE toward Contract Specific Goal.

The participation of MBEs and/or WBEs will be counted as follows towards the Contract Specific Goal:

1. The Bidder may count the entire amount of that portion of the Contract that is performed by the MBE's or WBE's own forces, including the cost of supplies and materials obtained by the MBE or WBE for the work of the contract, such as supplies purchased, or equipment leased by the MBE or WBE. Supplies and equipment the MBE or WBE Subcontractor purchases or leases from the Prime Contractor or its affiliate does not count towards the Contract Specific Goal.
2. The Bidder that is an MBE or a WBE may count the entire amount of the Prime Contractor's self-performance that the MBE or WBE is performing with its own forces.
3. The Bidder may count the entire amount of fees or commissions charged by an MBE or WBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a Contract, provided the City determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
4. When an MBE or WBE Subcontracts part of the work of its Contract to another firm, the value of the Subcontracted work may be counted only if the MBE or WBE's Subcontractor is itself an MBE or a WBE. Work that an MBE or WBE Subcontracts to a non-certified firm does not count towards the Contract Specific Goal.
5. When a M/WBE performs as a participant in a Joint Venture, the Joint Venture Bidder may count only the portion of the total dollar value of the Contract equal to the distinct, clearly defined portion of the work of the contract that the M/WBE performs with its own forces. The MBE or WBE participant in the Joint Venture must be responsible for a clearly defined portion of the work to be performed equal to its share in the ownership, control, management responsibility, risks, and profits of the Joint Venture. OBD shall review the profits and losses, initial capital investment, actual participation of the MBE or WBE Joint Venture partner in the performance of the contract with its own forces and for which it is separately at risk, and other pertinent factors of the Joint Venture. The Joint Venture agreement must be approved by the Office of Business Diversity and it is required to operate in accordance with the approved Joint Venture agreement.

6. The Bidder may count the entire amount of expenditures with M/WBEs for materials or supplies, provided the MBE or WBE is responsible for ordering and paying for the materials and supplies in full, using its own credit and accepting all the risks of the purchase.

The dollar value of work performed under a Contract with a certified firm after it has ceased to be certified can count toward the Contract Specific Goal if the Bidder's Contract with the City was executed prior to removal of the firm's certification.

MBE or WBE Subcontractor participation only counts toward a Prime Contractor's compliance with its Utilization Plan when the amount being counted has actually been paid to the MBE or WBE.

Only expenditures to an MBE or WBE that is performing a Commercially Useful Function shall be counted towards the Contract Specific Goal. To perform a Commercially Useful Function, the MBE or WBE must also be responsible, with respect to materials and supplies used on the Contract, for negotiating price (if applicable), determining quality and quantity (if applicable), ordering the material, and installing and paying for the material itself. To determine whether an MBE or WBE is performing a Commercially Useful Function, the City will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the Contract is commensurate with the work it is actually performing and the MBE or WBE credit claimed for its performance of the work, and other relevant factors.

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 MBE or WBE participation. In determining whether an MBE or WBE is such an extra participant, the City will examine similar transactions, particularly those in which MBEs or WBEs do not participate. The Prime Contractor is responsible for ensuring that the firm is performing a commercially useful function. If the MBE or WBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the MBE or WBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the City will presume that it is not performing a Commercially Useful Function.

When an MBE or WBE is presumed not to be performing a Commercially Useful Function, the MBE or WBE may present evidence to rebut this presumption. OBD's determination that an MBE or WBE is not performing a Commercially Useful Function is not appealable and shall be final.

A contractor cannot require a MWBE to sign an exclusive arrangement for the purpose of a bid/proposal submittal or enter a non-compete arrangement post award.

Contractors are encouraged to include MWBE participation on all alternates and charged reimbursable expenses to ensure the original MWBE committed goal will be met.

GOOD FAITH EFFORTS TO MEET CONTRACT SPECIFIC GOALS

A Bidder must either meet the Contract Specific Goal or establish its Good Faith Efforts to do so. Failure to do either will render the Bid non-responsive and it will be rejected by the City. Responder must submit their Good Faith Efforts checklist and documentation to the City's Project Manager or Department Designee on the next City's business day after the bid opening or proposal due date.

A Bidder may request a partial or total reduction of the Contract Specific Goal in the manner and form specified in the solicitation based on its Good Faith Efforts to meet the Contract Specific Goal. All information must be complete and accurate and adequately documents the Bidder's Good Faith Efforts before the City commits to the performance of the Contract by the Bidder. The documentation of Good Faith Efforts must include copies of each MBE or WBE and non-MWBE Subcontractor quote submitted to the Bidder when a non-MWBE Subcontractor was selected over an MBE or a WBE for work on the Contract.

In making a determination that the Contractor has made a good faith effort (GFE) to meet the Contract Specific Goal, the City will consider several criteria set forth below. Contractor will furnish specific documentation concerning the steps taken to obtain MWBE utilization, with a consideration of the following factors:

1. Whether the Contractor attended any pre-bid or pre-proposal meetings scheduled by the City to acquaint Prime Contractors with MBEs and WBEs available to provide relevant goods and services and to inform MBEs and WBEs of subcontracting opportunities.
2. Whether the Contractor advertised in general circulation, trade, or professional association, and/or MWBE focused media regarding subcontracting opportunities.
3. Whether the Contractor used the services of ethnic chambers of commerce, available minority and/or woman organizations, community organizations, minority and woman contractor groups, local/state/federal business assistance offices, and other organizations that provide assistance identifying MWBEs.
4. Whether the Contractor provided written notice, ten (10) business days prior to bid due date, to a reasonable number of MWBEs that their interest in the contracts was being solicited with enough time allowed for MWBE firms to participate effectively.
5. Whether the Contractor followed up with initial solicitations of interest by contacting the MWBEs to determine, with certainty, their interest in responding.
6. Whether the Contractor selected portions of the work to be performed by MWBEs to meet the Contract Specific Goal, including breaking down the contract into smaller opportunities.
7. Whether the Contractor provided interested MWBEs with adequate information about the project's plans, specifications, scope of work and requirements.
8. Whether the Contractor negotiated in good faith with interested MWBEs and not rejected as unqualified without sound reasons based on a thorough investigation of their

capabilities. Evidence of such negotiations includes the names, email addresses and telephone numbers of MBEs and WBEs with whom the Bidder negotiated; a description of the information provided to MBEs and WBEs regarding the work selected for subcontracting; and explanations as to why agreements could not be reached with MBEs and/or WBEs to perform the work. The Bidder may not reject MBEs and WBEs as being unqualified without sound reasons. That there may be some additional costs involved in finding and using MBEs and WBEs is not in itself a sufficient reason for a Bidder's failure to meet the Contract Specific Goal, as long as such costs are reasonable.

9. Whether the Contractor made efforts to assist interested MWBEs regarding bonding, lines of credit insurance, etc. (includes waiving cost and assume subcontractor's risk).
10. Whether the Contractor made efforts to assist interested MWBEs obtain necessary equipment, supplies, materials, or access to manufacturer's pricing.

In determining whether a Bidder has made Good Faith Efforts, the levels of participation by MBEs and WBEs set forth in Utilization Plans submitted by other Bidders for the same procurement may be considered. For example, if the apparent successful Bidder fails to meet the Contract Specific Goal(s) but meets or exceeds the average MBE or WBE participation obtained by other Bidders, this may be evidence that the apparent successful Bidder made Good Faith Efforts.

If the City determines that the apparent successful Bidder has failed to meet the Good Faith Efforts requirements of the Program, the City must, before awarding the Contract, provide the Bidder an opportunity for administrative reconsideration. A Bidder's request for reconsideration must be received within two (2) business days of the Bidders' receipt of the City's determination that it did not make adequate Good Faith Efforts to meet the Contract Specific Goal.

As part of this reconsideration, the Bidder must have the opportunity to provide written documentation or argument concerning the issue of whether it met the Contract Specific Goal or made adequate Good Faith Efforts to do so. The City's decision on reconsideration must be made by an official who did not take part in the original determination that the Bidder failed to meet the Contract Specific Goal or make adequate Good Faith Efforts to do so. The Bidder must have the opportunity to meet in person with the City's reconsideration official to discuss the issue of whether it met the Contract Specific Goal or made adequate Good Faith Efforts to do so.

The City must send the Bidder a written decision on reconsideration with five (5) business days, explaining the basis for finding that the Bidder did or did not meet the Contract Specific Goal or make adequate Good Faith Efforts to do so. The result of the reconsideration process is not administratively appealable.

The Prime Contractor shall make available to OBD upon request a copy of all Subcontracts. All Subcontractors, regardless of their Subcontracting tier, shall adhere to the provisions of the Program.

MWBE COMPLIANCE PROCEDURES

PRE-AWARD COMPLIANCE:

The Contractor will provide for all solicitations, Bids, Proposals, and Cooperative Purchase Agreements, completed MWBE reporting documents as outlined below or as provided in the solicitation. Failure to do so will render the Bid or Proposal non-responsive and it will be rejected.

Each Bidder shall submit with its Bid a completed and signed Utilization Plan that lists the names, addresses, telephone numbers, email addresses, a description of the work, and the contact person of all of the businesses intended to be used as Subcontractors, including those firms proposed to meet the Contract Specific Goal; the type of work or service each Subcontractor will perform and the corresponding North American Industry Classification System code; and the dollar amount to be allocated to each Subcontractor. The Bidder's Utilization Plan shall commit to meeting or exceeding the Contract Specific Goal set forth in the solicitation or demonstrate its Good Faith Efforts to do so.

Provided that, in a negotiated procurement, including a design-build procurement, the Bidder may make a Contractually binding commitment to meet the Contract Specific Goal at the time of Bid submission or the presentation of initial proposals, but provide the information required before the final selection for the Contract is made by the City.

Competitively Sealed Bid (CSB) or Competitively Sealed Proposal (CSP) for Construction:

1. **MWBE Utilization Plan** will be submitted within the next business day after the bid opening or proposal due date. MWBE certifications for each firm should be included.
2. **Intent to Perform as a Subcontractor** A signed and executed form, between each Subcontractor and the Prime Contractor, must be submitted within three business days of notice of award to the apparent successful Bidder.
3. **Good Faith Effort** documentation and supporting documents must be submitted within two (2) business days after CSB or CSP submission, if the Contractor fails to meet the Contract Specific Goal.

Request for Proposals (RFP) or Request for Qualification (RFQ) for Professional Services:

1. **MWBE Utilization Plan** will be submitted at the time proposals are due. MWBE certifications for each firm must be included.
2. **Intent to Perform as a Subcontractor** A signed and executed form, between each subconsultant and the Prime Contractor, must be submitted within three business days of notice of award to the apparent successful Proposer.
3. **Good Faith Effort** documentation and supporting documents must be submitted next business days after RFP or RFQ submission, if the Proposer fails to meet the Contract Specific Goal.

Invitation to Bid (ITB) or Request for Proposal (RFP) for goods and services:

1. **MWBE Utilization Plan** will be submitted at the time bids are due. MWBE certifications for each firm must be included.
2. **Intent to Perform as a Subcontractor** • A signed and executed form, between each subcontractor and the Prime Contractor, must be submitted with within three business days of notice of award to the apparent successful Bidder.
3. **Good Faith Effort** documentation and supporting documents must submitted within two (2) business days after ITB or RFP submission, if the Bidder fails to meet the Contract Specific Goal.

POST-AWARD COMPLIANCE:

To ensure that the prime contractor meets all its MWBE obligations under the Contract, OBD will verify the contractor's MWBE involvement throughout the term of the contract including any term extensions from the original contract period, payments made to all subcontractors, and changes to original scope of work that would affect all subcontractor's project participation. If a contract includes a MWBE subcontracting commitment, the Contractor must report all subcontractor's payment activity with the Contractor's submission of payment requests with each invoice.

The information reflected on this report will be utilized to provide constant monitoring of the payments made to MWBE as well as non-MWBE subcontractors in relation to the percentage of work performed. Failure to include a required Monthly Payment Breakdown form with the invoice will result in the invoice being returned to the Contractor.

The Contractor is responsible for ensuring its employees who are processing payment requests on its company's behalf are trained on the City's Diversity Management System (B2Gnow). This includes all subcontractors utilized on the Contract and will be verifying reported sub payments online.

The Prime Contractor shall be required to submit status report of its progress towards meeting the Contract Specific Goal or other Program requirements in the form and at the time specified in the Solicitation or as otherwise directed by the City. The City will withhold all or part of any progress payments, otherwise due a contractor, if the contractor fails to make prompt payments as defined in the section herein to its subcontractors, supplier, material man or laborers or fails to comply with the City's MWBE Policy and Procedures or its contractual commitments.

All reports of noncompliance will be referred to the Contract Administrator, and if appropriate, to the City Attorney's Office.

City contract compliance officers and auditors, or their designees, shall have access to the Contractor's and Subcontractor's books and records, including certified payroll records, bank statements, employer business tax returns and all records including all computer records and books of account to determine the Prime Contractor's and MBE or WBE Subcontractor compliance with the Contract Specific Goal commitment. Audits may be conducted at any time and without notice in the total discretion of the City. A Prime Contractor must provide OBD any additional compliance documentation within 10 business days of such request. Audits may be conducted without notice at any time at the discretion of the City.

If City personnel observe that any purported MBE, or WBE Subcontractor other than those listed on the Utilization Plan are performing work or providing materials and/or equipment for those MBE and WBE Subcontractors listed on the Utilization Plan, the Prime Contractor will be notified in writing that an apparent violation is taking place and progress payments may be withheld. The

Prime Contractor will be given an opportunity to meet with the Office of Business Diversity prior to a finding of noncompliance.

The Contract Goal obligation extends to all Contract work covered by change orders, irrespective of the Contracting tier. The obligation to make Good Faith Efforts to meet the Contract Specific Goal extends to the entire performance of the Contract. When Contract work is added, the Prime Contractor must award that work to the MBE or WBE listed in its Utilization Plan, if the original scope of work is to be performed an MBE or WBE listed in the Utilization Plan. If the original listed MBE or WBE cannot perform the additional work, the Prime Contractor must make Good Faith Efforts to secure MBE or WBE Subcontractors to perform the additional Contract work so that the Contract Specific Goal percentage committed to in the Contract is maintained or the Contract Specific Goal is achieved.

When a scope of Contract work is deducted, the Prime Contractor must make Good Faith Efforts to achieve the Contract Specific Goal percentages committed to in the Contract.

The Prime Contractor is required to fill out the Supplemental Change Order Form or such other documents as the City may require which details the names of the Subcontractors impacted and provides a description of the work and dollar amount of the change and the amended Contract value. The Prime Contractor will submit the Supplemental Change Order Form along with any additional documents as required to OBD for approval.

MWBE GOAL EXEMPTIONS

While OBD will review all formal solicitations for subcontracting opportunities, there will be procurement(s) that will not require MWBE participation goals. It will be at OBD's discretion to waive contract-specific goals. Justification will be provided based on the project's scope of work and/or reason(s) for procurement. Included are these contracts:

- Self-Performance Contracts
- Emergency Contracts
- Sole Source Contracts

SELF-PERFORMANCE CONTRACTS:

In the event subcontracting opportunities are not available or the scope of work will be self-performed by the prime, the OBD will send notification to the soliciting department and the OOP that a project specific goal will be waived.

Requesting department must receive the Goal-Waiver Form before moving forward with the procurement process.

EMERGENCY CONTRACTS:

Local Government Code has exempted certain items from bidding due to emergency situations. These include but are not limited to:

1. A procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality
2. A procurement necessary to preserve or protect the public health or safety of the municipality's residents
3. A procurement necessary because of unforeseen damage to public machinery, equipment, or other property.

Valid emergencies are those that occur as a result of the breakdown of equipment which must be kept in operation to maintain the public's safety or health, or whose breakdown would result in the disruption of City operations. If OOP deems a purchase an emergency, MWBE goals will be waived for the contract.

SOLE SOURCE CONTRACTS:

Sole-source purchases are items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies as defined by local government code.

When a department has identified a specific item with unique features or characteristics essential and necessary to the requesting department and no alternate products are available, a detailed written justification must be provided to the OOP in advance for review and approval.

If OOP deems a purchase a sole source, MWBE goals will be waived for the contract.

MWBE CONTRACT SPECIFIC GOAL MODIFICATION OR SUBSTITUTIONS

After Contract award, a Prime Contractor cannot make any changes to the approved Utilization Plan or substitute or terminate an MBE or WBE Subcontractor listed in its approved Utilization Plan without prior written consent of OBD. This includes, but is not limited to, instances in which a Prime Contractor seeks to perform work originally designated for an MBE or WBE Subcontractor with its own forces or those of an affiliate, a non-M/WBE or another MBE or WBE. The City will include in each Contract a provision stating that the Prime Contractor shall utilize the specific MBE(s) and WBE(s) listed in the approved Utilization Plan to perform the work and supply the materials for which each is listed unless the Prime Contractor obtains OBD's written consent. The Prime Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the approved MBE or WBE.

If a prime contractor proposes to terminate a MWBE subcontractor or subconsultant for any reason, the Contractor will be required to establish good cause. Good cause includes the following circumstances:

1. The listed M/WBE Subcontractor fails or refuses to execute a written Subcontract.
2. The listed M/WBE Subcontractor fails or refuses to perform the work of its Subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the M/WBE Subcontractor to perform its work on the Subcontract results from the bad faith or discriminatory action of the Prime Contractor.
3. The listed M/WBE Subcontractor fails or refuses to meet the Prime Contractor's reasonable, nondiscriminatory bond requirements.
4. The listed M/WBE Subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness.
5. The listed M/WBE Subcontractor is ineligible to work on Public Works Projects because of suspension and debarment or applicable federal or state law.
6. The City has determined that the listed MBE or WBE Subcontractor is not a responsible Subcontractor.
7. The listed MBE or WBE Subcontractor voluntarily withdraws from the project and provides written notice to OBD of its withdrawal.
8. The listed MBE or WBE Subcontractor is ineligible to receive MWBE credit for the type of work required.
9. MBE or WBE owner dies or becomes disabled with the result that the listed MBE or WBE Subcontractor is unable to complete its work on the contract.
10. Other documented good cause that OBD determines compels the termination of the M/WBE Subcontractor.

Good cause does not include where the Prime Contractor seeks to terminate a listed MBE or WBE Subcontractor so that the Prime Contractor can self-perform the work for which the MBE or WBE

Subcontractor was engaged or so that the Prime Contractor can substitute another MBE or WBE or non-certified Subcontractor after Bid submission.

Prior to submitting a written request to OBD for substitution based on non-performance, the Contractor shall provide at least 5 days business notice to the Subcontractor of the performance issue and provide the Subcontractor an opportunity to correct the situation. If required in a particular case as a matter of public necessity (e.g., safety), OBD may require a response period shorter than five business days. The Contractor must submit documentation detailing the notice and the efforts made by the Contractor and the MWBE Subcontractor to cure the non-performance to OBD.

The Contractor will be notified, in writing, whether the substitution has been approved as expeditiously as possible.

When an MBE or WBE Subcontractor is terminated or fails to complete its work on the Contract for any reason, the Prime Contractor must make Good Faith Efforts, to find a substitute MWBE subcontractor and/or subconsultant for the original MWBE. The good faith effort shall be directed to find a similar MWBE to perform or provide at least the same amount of work, material, or service under the contract as the original MWBE contractor. The Prime Contractor must submit an MBE or WBE Subcontractor's Letter of Intent for each proposed new MBE or WBE subcontractor within 5 business days of the receipt of the approved substitution.

If the Prime Contractor is not successful in substituting another MBE or WBE, then its documented Good Faith Efforts to do so must be submitted within 14 calendar days of the approved substitution. OBD shall provide a written determination to the Prime Contractor stating whether or not Good Faith Efforts have been demonstrated.

If there is any MWBE participation performed by a firm that replaced a MWBE firm through a substitution or modification without prior approval by OBD, that participation will not be credited towards the Contract's MWBE commitment.

CONTRACT COMPLIANCE AND ENFORCEMENT

The City shall insert into each Contract a clause stating that the failure by the Contractor to carry out the requirements of the Program is a material breach of the Contract and may result in the termination of the Contract or such other remedies as the City deems appropriate. Violation of MWBE Policies and Procedures, or Contractual obligations, may result in any one or more of the following sanctions:

1. Administrative Warning: Issued for first-time violations or minor violations.
2. Withholding of funds payable under the Contract, including, but not limited to, funds payable for work self-performed by the Contractor or applicable retainage.
3. Temporarily suspending, at no cost to the City, Contractor's performance under the Contract.
4. Termination of the Contract.
5. Suspension/debarment of a Contractor for a period of time from participating in any solicitations issued by the City.

Any MBE or WBE that has misrepresented its MBE or WBE status and/or failed to operate as an independent business concern performing a Commercially Useful Function, shall be declared by the City to be ineligible to participate as an MBE or WBE in City contracts. A firm that has been declared ineligible may not participate as an MBE or WBE for a period of not less than one year and not more than three years.

Any sanctions imposed against an entity shall also apply personally to all officers and directors of the entity or partners of the entity, and their successors and assigns with knowledge of the acts and omissions that give rise to the sanctions against the entity.

The City may refer any matters to the appropriate law enforcement agencies for follow-up action.

APPEALS PROCESS

Bidders/proposers that cannot meet the City's contract specific goal must submit good-faith efforts documentation, along with GFE checklist, the next business day after the bid opening or proposal due date. GFE documentation will be sent to the Office of Business Diversity for review to determine if bid/proposal will be accepted, declined, or allow the bidder/proposer to withdraw. (days)

Should a bid/proposal be deemed non-responsive due to not meeting the GFE, the bidder/proposer can submit a letter requesting an appeal hearing within two (2) business days. Appeal hearing will be conducted within five (5) business after receipt of letter.

All appeal hearings will be assigned to the City Manager or his designee. Bidder/proposer will receive a final decision in five (5) business days.

The decision of the City Manager or designee is final in response to the specific appeal.

REPORTING

In order to monitor the progress of the MWBE Program Policy and Procedures, the Office of Business Diversity shall maintain a record-keeping system designed to:

- Assess monthly, quarterly, and annual overall MWBE utilization on City Contracts and Subcontracts.
- Identify and monitor monthly the Contractor's MWBE utilization on the Contract and report on Contracts not meeting the Contract Specific Goal.

OBD will prepare other MWBE related reports, as needed.

MWBE CONTRACT CLAUSES

1. PROMPT PAYMENT

It is City policy that all invoices, in compliance with contract payment terms and conditions, should be paid within 30 days from the date the original invoice is received to comply with the Prompt Payment Act, or sooner if required by the contract terms. All responsible departments must follow the policy and procedure in order that the City is in compliance with all necessary requirements.

The prime contractor, under a City contract, shall pay its subcontractors no later than the 5th business day after the date the prime contractor receives payment from the City. The prime contractor also agrees to promptly request the release of any retainage withheld from subcontractors within five (5) business days after the subcontractor's work is satisfactorily completed and receives partial acceptance, substantial completion or final completion/final acceptance as defined in the General Provisions of the contract. Furthermore, the prime contractor agrees to pay the subcontractor its retainage within five (5) business days after the date the prime contractor receives the subcontractor's retainage payment from the City.

A finding of non-payment shall be a material breach of this contract. The City may withhold progress payments until the Contractor demonstrates timely payment due all subcontractors. The City also reserves the right to exercise other breach of contract remedies.

2. NON-DISCRIMINATION ASSURANCES

To ensure non-discrimination in its Contracts and associated Subcontracts, the City will include the following or similar clause in every Contract and Subcontract.

During the performance of this Contract, the Contractor or Subcontractor agrees that it will not discriminate on the basis of on race, age, color, religion, sex, sexual orientation, gender identity, national origin, ancestry, gender, disability, or place of birth in the award. Failure by the Contractor to ensure non-discrimination is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as the City deems appropriate. The Contractor must insert the substance of this clause in all Subcontracts and purchase orders.

3. MWBE CONTRACT PROVISIONS

The City will include the following MWBE Contract Provisions in every Contract and Subcontract.

1. It is the City's policy to remove all barriers for MWBEs to compete and create a level playing field for MWBEs to participate in City contracts and related subcontracts.

2. The Contractor specifically shall comply with all applicable provisions of the City's MWBE Policy and Procedures and any amendments. MWBE and non-MWBE subcontractors also agree to comply with all applicable provisions of the City's MWBE Policy and Procedures and any amendments.
3. The Contractor shall appoint a high-level official with decision-making capabilities for the Contractor to administer and coordinate the Contractor's efforts to carry out the requirements and provisions of the City's MWBE Policy and Procedures and its Contractual commitments.

OUTREACH

The City's outreach efforts are designed to support full and equitable access to information and opportunities for MWBEs and small firms to compete for City Contracts and associated Subcontracts.

OBD shall established, in conjunction with appropriate City departments, procedures to enhance qualifications, competitiveness, and opportunities for MWBEs. OBD shall disseminate, analyze, and communicate City business opportunities, and address barriers to effective MWBE participation.

1. EXTERNAL COMMUNICATIONS

OBD shall ensure communication and participation by external MWBE related entities in maximizing the City's MWBE identification and solicitation efforts. OBD shall participate in MWBE sponsored activities and work with these organizations to generate support and participation by MWBEs.

2. MWBE DIRECTORY

OBD shall maintain an electronic directory of MWBEs by type of work and North American Industry Classification System codes. The Directory will be used to notify MWBEs of City Contract opportunities, provide Bidders with access to information about certified MWBEs and present information about training and technical assistance opportunities.

SUNSET FOR PROGRAM

It is not the intent for the City's MWBE Program to operate indefinitely. As such, the MWBE Program will be reviewed in seven years, after the City Council's adoption. This will allow an audit to determine if the program has met the City's goal, require improvements, or allow to expire. The expiration date for this program will be April 1, 2029.

ATTACHMENTS

- City of Arlington's MWBE Policy Resolution – Adoption of MWBE Program
- MWBE Utilization Plan
- Good Faith Effort (GFE) Checklist
- Letter of Intent to Subcontract
- Request for Approval of Change to MWBE Subcontracting Plan