



**THE CONSOLIDATED CITY OF INDIANAPOLIS  
AND MARION COUNTY  
MBE/WBE/VBE/DOBE BUSINESS UTILIZATION PLAN  
IN INDIANAPOLIS GOVERNMENT**

**A plan to assure that minority-, women-, veteran- and disabled-owned business enterprises have an equal opportunity to participate in the purchasing for public works, goods/supplies, services, and public/private partnerships in the Consolidated City of Indianapolis & Marion County Government.**

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## FOREWARD

Pursuant to Sec. 202-401 of the Revised Code of the Consolidated City of Indianapolis/Marion County (Revised Code), the City of Indianapolis and Marion County strive to utilize minority-owned business enterprises for public works projects, procurement of goods and supplies, and services for the City of Indianapolis and Marion County in a dollar amount equal to at least fifteen (15) percent of monies spent by the City of Indianapolis, Marion County.

Pursuant to Sec. 202-401 of the Revised Code, the City of Indianapolis and Marion County strive to utilize women-owned business enterprises for public works projects, procurement of goods and supplies, and services for the City of Indianapolis and Marion County in a dollar amount equal to at least eight (8) percent of monies spent by the City of Indianapolis, Marion County.

Pursuant to Sec. 202-401 of the Revised Code, the City of Indianapolis and Marion County strive to utilize disabled-owned business enterprises for public works projects, procurement of goods and supplies, and services for the City of Indianapolis and Marion County in a dollar amount equal to at least one (1) percent of monies spent by the City of Indianapolis, Marion County.

Pursuant to a Mayoral Executive Order, the City of Indianapolis and Marion County strive to utilize veteran-owned business enterprises for public works projects, procurement of goods and supplies, and services for the City of Indianapolis and Marion County in a dollar amount equal to at least three (3) percent of monies spent by the City of Indianapolis, Marion County.

Sec. 202-402 of the Revised Code established the Office of Minority and Women Business Development (hereinafter “OMWBD”) to administer the equal opportunity policy of utilizing minority-, women-, veteran-, and disabled-owned business enterprises (hereinafter “MBE/WBE/VBE/DOBE firms”) in public purchases, services, and work. The City of Indianapolis & Marion County (hereinafter “City”) shall utilize 49 CFR Part 26, as amended to exclude size standard, as a guide for MBE/WBE/VBE/DOBE (also known as “XBE”) certification on all contracts/projects and other issues related to MBE/WBE/VBE/DOBE participation.

BBC Research & Consulting, in January 2019, was retained to conduct a Disparity Study for the Consolidated City of Indianapolis and Marion County in order to determine whether or not disparities in utilization of minority, women, veteran, and disabled-owned businesses occurred in City procurement activities. BBC Research, using established data parameters, conducted a review of purchasing policies, programs, and practices; conducted market area and utilization analyses; determined the availability of qualified firms; analyzed utilization and availability data for disparity and statistical significance; conducted a analysis of market conditions in the private market; collected and analyzed anecdotal information; identified remedies; and prepared the final report of the Disparity Study. The final report was provided in January 2020.

Based on the 2019 City of Indianapolis and Marion County Disparity Study, In January 2020, the OMWBD was directed to revise the Consolidated City of Indianapolis and Marion County MBE/WBE/VBE/DOBE Business Utilization Plan in Indianapolis Government (“the Plan”) to incorporate remedies to address the findings of passive discrimination found in the study

## **INTRODUCTION**

The Consolidated City of Indianapolis and Marion County MBE/WBE/VBE/DOBE Business Utilization Plan is a management plan of action authorized by the Honorable Mayor of the City of Indianapolis. The authority for achieving the objectives of this Plan have been strengthened through ordinance legislated by the City-County Council and by Mayoral Executive Orders, which describes a goal of increased utilization of MBE/WBE/VBE/DOBE firms in City purchasing efforts.

The scope of this Plan is comprehensive, covering all aspects of purchasing by all departments and agencies of the City of Indianapolis. It has been developed to articulate a statement to Consolidated City departments and the business community (minority-, women-, veteran-, disabled- and majority-owned firms) that eradicating past discrimination of MBE/WBE/VBE/DOBE business enterprises (hereinafter “MBE/WBE/VBE/DOBE”), in City purchasing is a goal the City strives toward.

The Plan applies to:

1. all expenditures of City public funds, irrespective of source, with the exception of noted exclusions.
2. to certain public/private economic development projects, where feasible, in which City public funds and/or tax incentives are utilized, in part or in total.
3. where feasible, this Plan will apply to contracts or agreements between the City and any other political subdivisions, governmental, or quasi-governmental agencies under which entities receive money from or through the City for the purposes of contracting with businesses to perform projects in the City.

The Plan will, in addition, state the programs, the rules and requirements, which strive to increase utilization of MBE/WBE/VBE/DOBEs, and which may include the Mentor-Protégé and the Joint Venture Programs for certain projects and contracts of \$150,000.00 and greater.

The Plan is enacted pursuant to the home rule powers of the City. This Plan shall not apply to any contract to the extent that it is inconsistent with procedures or standards required by any law or regulation of the United States or the State of Indiana, to the extent such inconsistency is not permitted under the home rule powers of the City. In connection with any contract funded in whole or part from state or federal sources, this Plan shall not apply to the extent inconsistent with such state or federal requirements. It is not the intent of this program to include federally grant funded contracts subject to a federally promulgated affirmative action program.

This Plan is a practical “how-to” guide for City-County use. Information contained in this Plan has been designed to provide knowledge necessary for departments to perform equal opportunity purchasing.

## **EQUAL OPPORTUNITY POLICY**

It is the policy of the City that every contract to which one (1) of the parties is the City or the County, or any board, department or office of either the City or County, including franchises granted to public utilities, shall contain a provision requiring the governmental contractor and subcontractor not to discriminate against any employee or applicant for employment in the performance of the contract, with respect to hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, sex, sexual orientation, gender identity, religion, color, national origin, ancestry, age, disabled, and United States military service veteran status. Breach of this provision may be regarded as a material breach of the contract.

The establishment of the minority-, women-, veteran- and disabled-owned business enterprise plan and program, the City of Indianapolis and Marion County MBE/WBE/VBE/DOBE Business Utilization Plan, augments commitment to the equal opportunity policy in purchasing. This Program has been established under the auspices of OMWBD.

The City will do all that is possible to eliminate purchasing practices which exclude MBE/WBE/VBE/DOBE firms, due to discriminatory or other elements used that are not relevant to the specifications of the product or service required.

## **COMMUNICATION OF POLICY**

Every effort to communicate the City's policy of utilizing MBE/WBE/VBE/DOBE firms will be used. Communication of this policy will be done by OMWBD, the Equal Opportunity Advisory Board, the Office of Disabled Affairs, and the Contract Compliance Committee. The policy of utilizing MBE/WBE/VBE/DOBE firms will also be communicated to the City's Purchasing Administrator, Buyers, City representatives working with contractors, vendors, and departmental Equal Opportunity Liaisons.

Internally, the policy will be communicated through the City in the purchasing process. Reaffirmation of the "The City of Indianapolis and Marion County MBE/WBE/VBE/DOBE Business Utilization Plan in Indianapolis Government" will be done each year to assure internal communication of this policy annually.

Externally, the policy will be communicated to Municipal Corporations, representatives of MBE/WBE/VBE/DOBE business development centers, economic development councils and majority-owned companies. It will also be included in all solicitations of \$50,000 or greater and when the competitive purchasing process is used.

## **DEFINITIONS**

Administrator – is the Purchasing Administrator, who is the director of the Purchasing Division of the Office of Finance and Management.

African-American - is a U.S. citizen or lawfully admitted permanent resident whose ancestry originates from any of the black racial groups of Africa.

Agency – means any office, officer, board, commission, department, division, committee, or business unit of the Consolidated City of Indianapolis and/or Marion County. The term does not include the City/County council or any department of state government.

Asian Pacific Americans – is a U.S. citizen or lawfully admitted permanent resident whose ancestry originates from, but is not limited to, Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China (including Hong Kong), Taiwan, Laos, Cambodia, Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands.

Bidder – refers to any person, or company, who responds to a request for quotes, request to bid, request for purchase, or any other solicitation for the procurement of public works, goods/supplies or services, issued by the City.

Business Enterprise - means a firm, sole proprietorship, partnership, association, corporation, company, or other business entity of any kind including, but not limited to, a limited liability corporation, incorporated professional association, joint venture, estate, or trust.

Category Code – is a number assigned to each good or service which identifies the type of purchase and ensures that funds are drawn from the correct account.

Certification - means a minority-, women-, veteran-, or disabled-owned business enterprise that meets the qualification criteria set forth in this MBE/WBE/VBE/DOBE Business Utilization Plan for participation in the MBE/WBE/VBE/DOBE programs in the appropriate public works, goods and supplies, or services category for which the contract is being awarded and is formally approved by the director or the director's designee as having met such criteria. Certification or recertification relate to qualifications regarding ownership and control of the business, and not the quality of the service or product offered.

City - means the Consolidated City of Indianapolis and Marion County

Commercially Useful Function - means execution by a MBE/WBE/VBE/DOBE of a distinct element of the work in carrying out its responsibilities by actually performing, managing, and supervising the work involved by its personnel, materials, and assets. To determine whether a Business Enterprise is performing a Commercially Useful Function, the City will evaluate the amount of the contractor's work which is appropriate to be subcontracted and actually subcontracted, industry practices, and other relevant factors tending to demonstrate actual performance.

Compliance - means a determination by the director of OMWBD that a participation or utilization plan for MBE/WBE/VBE/DOBE participation in a particular contract has correctly implemented the requirements of the Consolidated City of Indianapolis and Marion County Business Utilization Plan.

Contract - means any contract awarded by a City agency for construction projects or the procurement of goods/supplies or services, including professional services.

Contractor - means a person or business entity that contracts with a City agency to provide goods or services.

Control - As it relates to the control of a business by owners who are members of a minority group, women, veterans, and disabled individuals means that such individuals: a) Possess and actively and continuously exercise the legal authority and power to direct or cause the direction of the management and policies of the business and to make day-to-day and long-term decisions for the business on matters of management, policy and operations; b) Are not subject to any formal or informal restrictions that limit the discretion customarily within the purview of a business owner; and c) Are not restricted, whether by agreement, by-laws, resolutions or other arrangements from making business decisions without the cooperation or vote of any owner.

Director - means the Director of the Office of Minority and Women Business Development.

Disabled - shall mean individuals with disabilities. An individual with a disabled is a person who: a) Has a physical or mental impairment that substantially limits one or more of his or her major life activities; b) Has a record of such an impairment; c) Is regarded as having such an impairment.

Disabled-owned Business Enterprise - shall mean a business that meets each of the following criteria: a) Is an independent operating business; b) Is a sole proprietorship that is independently owned and controlled by an individual (or individuals) who has disabilities; a joint venture that is at least 51% independently owned and controlled by an individual who is disabled; or a partnership, limited liability company or corporation that is at least 51% independently owned and controlled by an individual (or individuals) who has disabilities; a joint venture that is at least 51% independently owned and controlled by an individual who is disabled; c) The owners with disabilities have interest in capital and earnings commensurate with the individual (or individuals) who has disabilities percentage of ownership; a joint venture that is at least 51% independently owned and controlled by an individual who is ADA disabled; d) Has been in operation for at least two years before applying for certification;

e) Has been at least 51% disabled-owned for at least 2 years before applying for certification; f) Has an operating office and headquarter domiciled in the state of Indiana; g) Performs a commercially useful function; and, h) The owners with disabilities must be United States citizens or lawfully admitted permanent residents.

Front Organization - means any MBE/WBE/VBE/DOBE that is certified for a specific commercially useful function but the MBE/WBE/VBE/DOBE is not actually owned and operated by a MBE/WBE/VBE/DOBE individual.

Hispanic-American - shall means a U.S. citizen or lawfully admitted permanent resident whose ancestry originates from Mexico, Puerto Rico, Cuba, the Dominican Republic, Central America, South America, Spain, Portugal, or other Spanish or Portuguese culture, regardless of race.

Joint venture - means an association of two (2) or more persons or businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge.

MBE/WBE/VBE/DOBE Participation Plan - means a document submitted by a bidder with its bid or by respondent to an RFB, RFP, or RFQ with its response, on a form required by the director, in which the bidder or respondent commits to utilize specifically identified certified MBEs, WBEs, VBEs, and/or DOBEs in a percentage that equals or exceeds the applicable MBE, WBE, VBE, and/or DOBE goals for the contract.

Minority Business Enterprise - means a business that meets each of the following criteria: a) Is an independent operating business; b) Is a sole proprietorship that is independently owned and controlled by an individual who is a minority group member; a joint venture that is at least 51% independently owned and controlled by minority group members; or a partnership, limited liability company or corporation that is at least 51% independently owned and controlled by minority group members; c) The minority owners have interest in capital and earnings commensurate with the minority group members' percentage of ownership; d) Has been in operation for at least two years before applying for certification; e) Has been at least 51% minority-owned for at least 2 years before applying for certification; f) Has an operating office and headquarter domiciled in the state of Indiana; g) Performs a commercially useful function; and, must be United States citizens or lawfully admitted permanent residents.

Minority Person - means a United States citizen or lawful, permanent resident who is a member of a racial or ethnic group, such as African American, Hispanic American, Asian Pacific American, Subcontinent Asian American, or Native American.

Native American - means a U.S. citizen or lawfully admitted permanent resident whose ancestry originates from the original people of North America and who maintains cultural identification through tribal affiliation.

Operating Office – means a business which is domiciled and headquartered in the State of Indiana and has a principal place of business located within the State of Indiana, as registered in official documents filed with the Secretary of State of Indiana or County Recorder Office as a domestic for-profit corporation.

Pass-through – means an MBE/WBE/VBE/DOBE does not perform a commercially useful function and its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of MBE/WBE/VBE/DOBE participation.

Prime Contractor - means the vendor or contractor to which a purchase order or contract is issued by the City for purposes of providing goods or services to the City.



Purchasing Division – refers to the Purchasing Division of the Office of Finance and Management as established by Rev. Code 202-204.

Subcontinent Asian Americans – means a U.S. citizen or lawfully admitted permanent resident whose ancestry originates from Indian, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands or Nepal.

Subcontractor - means any vendor or contractor that is providing goods or services to a prime contractor in furtherance of the prime contractor's performance under a purchase order or contract with the City.

Veteran - means a veteran of the United States military, with a certificate of release or discharge from active duty with an honorable discharge DD214.

Veteran Business Enterprise - shall mean a business that meets each of the following criteria: a) Is an independent operating business; b) Is a sole proprietorship that is independently owned and controlled by an individual (or individuals) who is a veteran; a joint venture that is at least 51% independently owned and controlled by an individual who is a veteran; or a partnership, limited liability company or corporation that is at least 51% independently owned and controlled by an individual (or individuals) who is a veteran; a joint venture that is at least 51% independently owned and controlled by an individual who is a veteran; c) The owner, who is a veteran has interest in capital and earnings commensurate with the veteran's percentage of ownership; a joint venture that is at least 51% independently owned and controlled by an individual who is a veteran; d) Has been in operation for at least two years before applying for certification; e) Has been at least 51% minority-owned for at least 2 years before applying for certification; f) Has an operating office and headquarter domiciled in the state of Indiana; and g) Performs a commercially useful function.

Women Business Enterprise - shall mean a business that meets each of the following criteria: a) Is an independent operating business; b) Is a sole proprietorship that is independently owned and controlled by a woman; a joint venture which is at least 51% independently owned and controlled by women; or a partnership, limited liability company or corporation that is at least 51% independently owned and controlled by women; c) The women owners have interest in capital and earnings commensurate with the women's percentage of ownership; d) Has been in operation for at least 2 years before applying for certification; e) Has been at least 51% women-owned for at least 2 years before applying for certification; f) Has an operating office located in the state of Indiana; g) Performs a commercially useful function; and, h) The women owners must be United States citizens and lawfully admitted permanent residents.

## **PROGRAM OBJECTIVES**

Review of purchasing activities, as confirmed through the 2019 City of Indianapolis Disparity Study, concludes that minorities, women, veterans and individuals with disabilities, as a whole, have not participated in the public purchase of public works, goods/supplies, and services in proportion to majority-owned businesses, and that overall significant disparities exist. This is due in part to economic barriers, but other barriers have also been identified. MBE/WBE/VBE/DOBE firms frequently face barriers in the form of:

- A. Lack of information regarding purchasing opportunities with the City.
- B. Less frequent communication with prime contractors' networking groups regarding the need for subcontractors.
- C. Less capacity for meeting bonding requirements.
- D. Less experiences in business management techniques.



- E. Less ability to meet cash flow needs.
- F. Exclusive teaming
- G. Prequalification
- H. Contracts and subcontracts are too large to bid

In addition, the Disparity Study revealed that there are significant disparities with minorities, women, veterans, and individuals with disabilities in direct awards or prime contracting awards for construction, goods/supplies, and services. As a result, an objective of the City, in addition to utilizing means to improve subcontracting with MBE/WBE/VBE/DOBEs, will be to significantly increase prime contract awards through its efforts to grow MBE/WBE/VBE/DOBE capacity; efforts to create mentor-protégé relationships and joint ventures; efforts to unbundle very large contracts and very large subcontracts, where economically feasible, provided that the public bid and quote processes are maintained; and, increasing competitive opportunities, are some examples.

Consideration of these barriers has initiated program objectives for the “MBE/WBE/VBE/DOBE Business Utilization Plan in Indianapolis Government”. These objectives will generate program activities that will provide education to the City, MBE/WBE/VBE/DOBE, and majority businesses regarding equal opportunity purchasing. Each objective is an attempt to eliminate barriers for MBE/WBE/VBE/DOBE firms. The ultimate goal of obtaining significant utilization of MBE/WBE/VBE/DOBE firms in the City’s purchasing can be met, if specific objectives are formulated and filed each year.

## **IMPLEMENTATION OF RESPONSIBILITIES**

Implementation of this Plan, in order to meet its objectives, must be shared among several persons within the City’s structure. Individual responsibilities for this Plan’s implementation are outlined below:

- A. The Mayor: As chief executive officer of the City and County, the Mayor is responsible for and committed to the City’s adherence to equal opportunity laws in City and County government operations. Accordingly, the Mayor has made policy statements demonstrating the commitment of the Mayor’s Office. The Office of the Mayor, on an annual basis shall:
  - 1. Issue a statement of support for the “The City of Indianapolis and Marion County MBE/WBE/VBE/DOBE Business Utilization Plan in Indianapolis Government” and its objectives;
  - 2. Reaffirm commitment of the Office of the Mayor each fiscal year for the objectives of the Plan and its revisions; and,
  - 3. Assign responsibility for adherence to the objectives of this Plan to department directors and division administrators.
- B. Deputy Mayors: The Deputy Mayors shall:
  - 1. Assist the Mayor with responsibility for meeting the objectives of this Plan through review of reports and recommendations submitted by OMWBD; and,
  - 2. Review reports with appropriate recommendations to correct problems in meeting the objectives of this Plan and support any amendments which will enhance achieving the objectives.
- C. The Office of Minority and Women Business Development (OMWBD):
  - 1. In order to successfully carry out the City’s program objectives, appropriate support staff will be utilized in the implementation and monitoring of the MBE/WBE/VBE/DOBE program objectives.

2. OMWBD shall be responsible for the daily management, monitoring, and implementation of the City's MBE/WBE/VBE/DOBE Program.
3. The Director shall report to the Office of the Mayor.  
OMWBD's responsibilities shall be:
  - a. Review the implementation responsibilities to coordinate the efforts for meeting the objectives of this Plan.
  - b. Review reports outlining purchasing activities within the City; submit quantitative reports to the Mayor narrating the status of meeting the objectives of this Plan within the City.
  - c. Make recommendations to the Mayor regarding methods for improving the effectiveness of purchasing practices in meeting the objectives of this Plan.
  - d. Review the processing of City purchasing contracts for compliance with Federal, State, and Local laws regarding equal opportunity, and the objectives of this Plan.
  - e. Monitor purchasing practices for the elimination of non-relevant criteria used in departmental purchasing selection.
  - f. Conduct on-site compliance reviews and recommend appropriate action in correcting deficiencies and/or barriers to meeting the objectives of this Plan.
  - g. Provide technical assistance to contractors in meeting the requirements for equal opportunities and objectives of this Plan.
  - h. Serve as the City liaison to MBE/WBE/VBE/DOBE firms in:
    - i. Communicating the objectives of this Plan.
    - ii. Disseminating and enforcing certification requirements.
    - iii. Disseminating purchase opportunities.
    - iv. Monitoring and enforcing purchasing goals.
  - i. Maintain and update MBE/WBE/VBE/DOBE directory; distribute directories to City offices and other designated agencies.
  - j. Participate as a selection team member for contracts over \$10 million.

**D. City and County Agencies and Municipal Corporations – Each Agency Director and Municipal Corporation shall:**

1. Be responsible for achieving the goals of the MBE/WBE/VBE/DOBE Business Utilization Plan and each will be responsible for the review of all areas of their procedures to assure that the objectives of the MBE/WBE/VBE/DOBE Plan may be achieved.
2. Affirm personal support of this Plan and its objectives, within their respective operational units.
3. Develop an annual M/W/V/DOBE Inclusion Plan and submit to OMWBD for review.
4. Appoint Equal Opportunity liaisons to assist OMWBD in monitoring and reporting the implementation and accomplishment of this Plan.
5. Take appropriate action to correct problems that hinder efforts in meeting the objectives of this Plan, within their respective operational units.
6. Annually review department performance results and create corrective action plan where necessary.

**E. Administrator of Central Purchasing – The Administrator shall:**

1. Administer purchasing procedures in accordance with Federal, State, and Local laws and the objectives of this Plan.
2. Assure that Purchasing buyers perform duties in accordance with legal mandates and the objective(s) of this Plan.
3. Assist OMWBD in obtaining purchasing data that reflects purchasing activities of the City
4. Communicate the objectives of this Plan to contractors/vendors who bid or otherwise demonstrate an interest in doing business with the City.

- F. Equal Opportunity Advisory Board - by and through its Contract Compliance Committee – The responsibilities of the Committee shall be as follows:
1. Hear appeals of MBE/WBE/VBE/DOBE certification, and
  2. Hear challenges to MBE/WBE/VBE/DOBE certifications.

G. Office of Disabled Affairs – The Office shall:

1. Provide technical advice, assistance and support to the OMWBD staff regarding the disabled-owned business certification component of the DOBE certification process.
2. In collaboration with OMWBD, provide technical assistance and support to businesses seeking DOBE certification.
3. Communicate the objectives of this Plan to the disabled business community.
4. Provide advice and support to OMWBD as it provides technical assistance to contractors in meeting the requirements for equal opportunities and objectives of this Plan.

### **MBE/WBE/VBE/DOBE ANNUAL GOALS**

It is the policy of the Consolidated City of Indianapolis that Minority Business Enterprises (MBE), Women Business Enterprises (WBE), Veteran Business Enterprises (VBE), and Disabled-Owned Business Enterprises (DOBE) shall have the maximum feasible opportunity to participate in the performance of contracts. Rev. Code 202-401 establishes the annual goals of fifteen percent (15%) of the annual amount spent by the City of Indianapolis Marion County for public works, goods and supplies, and services for MBE participation, eight percent (8%) WBE participation, three percent (3%) VBE participation and one percent (1%) DOBE participation. To meet these goals, employees soliciting bids shall ensure that MBE, WBE, VBE and DOBE vendors are given an opportunity to participate in solicitations for public works, goods and supplies, and services.

### **MBE/WBE/VBE/DOBE CONTRACT GOALS**

The MBE/WBE/VBE/DOBE Business Utilization Plan applies to all competitively bid City-funded contracts of \$50,000 or more. At the City's sole discretion, these requirements may be waived in advance on projects deemed inappropriate for subcontracting participation at the specified level. When State and/or federal funding sources require affirmative action goals, those goals, as defined in the contract documents, replace the requirements of the Business Utilization Plan.

The City of Indianapolis is committed to maximizing prime contracting and subcontracting opportunities for all qualified and available MBE/WBE/VBE/DOBEs. Bidders should be fully informed of the MBE/WBE/VBE/DOBE Business Utilization Plan as set forth in the City document. The goals for all contracts shall be, for the amount of the contract, fifteen percent (15%) for MBE participation, eight percent (8%) for WBE participation, three percent (3%) for VBE participation, one percent (1%) for DOBE participation.

Overall Percentage Goals for Projects and Contracts by procurement area are:

<u>Procurement Area</u>	<u>MBE</u>	<u>WBE</u>	<u>VBE</u>	<u>DOBE</u>
Public Works	15%	8%	3%	1%
Professional Services	15%	8%	3%	1%
Goods/Supplies	15%	8%	3%	1%
Other Services	15%	8%	3%	1%

As such, public works contracts of \$150,000 or greater; goods and supplies, professional services, and services contracts \$50,000 or greater to be awarded competitively, shall be reviewed by The Office of Minority and Women Business Development (OMWBD) for MBE/WBE/VBE/DOBE utilization responsiveness. After its review of the submittal, to include all Business Utilization Plan documents, waiver application requests, and/or good faith efforts documentation, OMWBD shall make a recommendation to the Agency of the bidder's responsiveness.

Every agency must ensure that RFBs, RFPs or RFQs originating with the agency comply with the following:

All RFBs, RFPs, or RFQs shall include a requirement that, if an MBE/WBE/VBE/DOBE contract participation goal is applicable, the bidder or proposer must:

- A. With its bid, submit the ***MBE/WBE/VBE/DOBE Participation Goals For Construction, Goods/Supplies, and Services*** form, showing its commitment to meet or exceed the goals for the project or contract.
- B. Make good faith efforts, before the opening of bids or submittal of proposals, to meet the applicable contract participation goal(s); and
- C. Keep records of its good faith efforts adequate to permit a determination of compliance with the Plan. If a contract goal will not be met, a bidder will be required to submit with its bid the ***Application for MBE/WBE/VBE/DOBE Waiver Program*** form for approval by OMWBD. If the bidder receives an award notification, within three (3) business days of such notification the bidder must submit its good faith efforts documentation for review by OMWBD.
- D. Within three (3) business days of award notification, submit copies of signed agreements with MBE/WBE/VBE/DOBEs subcontractors, using the ***Letter Of Intent To Perform As A Subcontractor/Supplier*** form, before a notice to proceed may be issued or the contractor otherwise begins providing services under the contract. Failure to submit information that is complete and accurate, shall constitute grounds for rejection of the bid by the Agency as non-responsive. Falsely reporting the intended utilization or the actual utilization of a MBE/WBE/VBE/DOBE subcontractor shall result in penalties for false representation as stated in the Ind. Code 5-16-6.5-4.
- E. Within three (3) business days of award notification, the ***Subcontractors And Suppliers List Participation*** form must be submitted, and this document will be attached to the finalized contract.

## **PROCEDURES FOR ESTABLISHING PERCENTAGE GOALS**

The methodology for establishing the annual overall MBE/WBE/VBE/DOBE goals for the City's competitive dollar expenditure are inclusive of, but not limited to, the following review:

- A. The number and dollar value of contracting and purchasing opportunities projected to be awarded during the year.
- B. The number of MBE/WBE/VBE/DOBE firms available to compete for such contracts and service agreements based on the type of opportunity.
- C. Past results of the City's efforts to contract and/or award to MBE/WBE/VBE/DOBE firms during the previous three (3) year, and reasons for the results.
- D. The percentage of MBE/WBE/VBE/DOBE firms in the geographical area of Indianapolis.

## CONTRACT REQUIREMENTS

- A. Pursuant to Sec. 581-102 of the Revised Code, a non-discrimination clause shall be contained in every contract to which one (1) of the parties is the City or the County, or any board, department or office of either the City or County, including franchises granted to public utilities.
- B. Contracts let by the City will contain language regarding equal opportunity, affirmative action, the MBE/WBE/VBE/DOBE Business Utilization Plan, including MBE/WBE/VBE/DOBE utilization goals. Additionally, all bids or proposals specifications shall contain the same or similar standardized provisions.
- C. Contractors bidding on contracts in accordance with this Plan must submit the Equal Opportunity Form and an Affirmative Action Plan, (if contractor has 50 or more employees), MBE/WBE/VBE/DOBE Participation Goals for Construction, Goods/Suppliers, and Services form, the Application for MBE/WBE/VBE/DOBE Program Waiver form (if applicable), and good faith efforts documentation. Documents must be approved by OMWBD before the award is finalized. Failure to comply with the above requirements shall result in the bidder being deemed non-responsive.
- D. Bidders and contractors with excess to 15 or more employees must submit the Plan as their Affirmative Action Plan provided the plan includes total workforce analysis, goals and timetables; the MBE/WBE/VBE/DOBE Participation Goals for Construction, Goods/Suppliers, and Services form, the Application for MBE/WBE/VBE/DOBE Program Waiver form and good faith efforts documentation as required.
- E. Those bidders and contractors having fifteen (15) or fewer employees are not required to submit an Affirmative Action Plan to OMWBD, but must submit the MBE/WBE/VBE/DOBE Participation Goals for Construction, Goods/Suppliers, and Services form, the Application for MBE/WBE/VBE/DOBE Program Waiver form, and good faith efforts documentation as required. Any such contractor may be investigated by OMWBD to see what commitment, if any, said contractor has made to the goals and principles of Equal Employment Opportunities and Affirmative Action Plan workforce goals.

## NON-COMPLIANCE PROCEDURES AND PENALTIES

If OMWBD or the contracting Agency determines that a contractor has failed to comply with the terms of the MBE/WBE/VBE/DOBE Business Utilization Plan while operating under a City contract, or has been adjudged in violation of any applicable Federal, State, or Local laws, OMWBD shall serve written notice of such non-compliance on the contractor or the contractor's representative(s). The contractor shall be responsible for notifying any subcontractor or supplier that is not in compliance.

Upon request by OMWBD, the contractor determined to be in non-compliance, shall meet with OMWBD within five (5) working days of the written notice in order to determine a method of correcting the deficiencies within the required time period of thirty (30) calendar days. If the remedy is not agreed upon within five (5) working days following the meeting, OMWBD shall prescribe the remedy by which deficiencies shall be corrected and notify the contractor in writing of such determination. If the contractor does not correct the deficiencies in the manner prescribed by OMWBD within thirty (30) calendar days, OMWBD will make a recommendation for considered action(s) to the contracting Agency. The contracting Agency will then advise OCC of any impending action(s) that it will take from one or more of the following sanctions:

- A. Withhold 10% of all future payments for the eligible project until the OMWBD has determined that the vendor is in compliance;
- B. Withhold all future payment under the eligible project until it is determined by the OMWBD that the vendor is in compliance with the Utilization Plan;
- C. Place the vendor on the city's debarred vendor list preventing them from bidding or otherwise procuring any contract with the city or county for a designated period of time; or
- D. Terminate the agreement.

The remedies provided in this subsection are in addition to, not in place of, any other remedies available to the contracting agency under the law, including:

- A. Pursuing any remedies available to the city or county under the contract; or
- B. If appropriate, referring the matter to the appropriate authorities for potential criminal investigation and prosecution.

Any vendor aggrieved by a remedy imposed by an agency under Section 202-404(1)(d)(ii)(C) shall have the right to request a transcribed hearing before the Equal Opportunity Advisory Board's contract compliance committee.

- A. The contract compliance committee may hold a public hearing upon not less than ten (10) working days' written notice to the OMWBD director and the aggrieved vendor. If the aggrieved vendor has not previously filed a written response, he or she may file such response and serve a copy thereof the OMWBD director not later than five (5) working days prior to the date of the hearing.
- B. *Powers; rights of parties at hearing.* In connection with a hearing held under subsection (1)(d)(iii)(A) of this section, the adjudication committee or the hearing officer shall have the power, upon any matter pertinent to the complaint or response thereto, to subpoena witnesses and compel their attendance; to require the production of pertinent books, papers or other documents; and to administer oaths. The aggrieved vendor shall have the right to be represented by any attorney of his or her choice. The aggrieved vendor shall have the right to have a representative appear in person at the hearing, to subpoena and compel the attendance of witnesses, and to examine and cross examine witnesses. The board may adopt appropriate rules for the issuance of subpoenas and the conduct of hearings under this section. The contract compliance committee and the board shall have the power to enforce discovery and subpoenas by appropriate petition to the Marion County Circuit or Superior Courts.
- C. *Statement of evidence; exceptions; arguments.* Following the close of the hearing, the contract compliance committee shall prepare a report containing written recommended findings of fact and conclusions. The contract compliance committee shall make a good faith effort to complete the report within thirty (30) working days from the close of the hearing, but may extend the time for completing the report as needed, up to an additional thirty (30) working days. A copy of the report shall be furnished to the aggrieved vendor and the director of the OMWBD, each of whom shall have an opportunity to submit written exceptions within such time as the rules of the complaint adjudication committee shall permit. The contract compliance committee may, in its, his or her discretion, upon notice to each interested party, hear further evidence or argument upon the issues presented by the report and exceptions, if any.
- D. *Findings of fact; sustaining or dismissing complaint; remedies.* Upon the preponderance of the evidence, the contract compliance committee shall issue written findings of fact and conclusions, and shall and serve a copy thereof upon both parties. Findings and conclusions



made by the contract compliance committee shall be based solely upon the record of the evidence presented at the hearing and must either affirm or reverse the remedy imposed by the agency under Section 202-404(1)(d)(ii)(C).

Either party may appeal the contract compliance committee's decision to the full Equal Opportunity Advisory Board.

- A. *Appeal to the board.* Within thirty (30) working days after the issuance of findings and conclusions by the contract compliance committee, either party may file a written appeal of the decision of the committee. If no appeal is filed within thirty (30) working days, then the findings and conclusions are final. After considering the record of the evidence presented at the hearing and the findings and conclusions of the contract compliance committee, the board may affirm the decision of the committee and adopt the findings and conclusions of the contract compliance committee, or it may affirm the decision of the contract compliance committee and make supplemental findings and conclusions of its own, or it may reverse the decision of the contract compliance committee and make findings of fact and conclusions to support its decision. The board shall make a good faith effort to take any of the above actions within thirty (30) working days after the appeal is filed, but may extend the time as needed, up to an additional thirty (30) working days.
- B. *Members of board who are ineligible to participate.* No member of the board who has a financial interest in the underlying contract, as defined in Section 293-102, or who has an immediate family member with such an interest, shall participate in the adjudication of that complaint as a member of the contract compliance committee or the board. In the event of an appeal to the board, a board member's participation on the adjudication committee shall not be a basis for ineligibility.

A vendor aggrieved by the Board's findings and conclusions may file a verified petition to the superior or circuit court of Marion County for a review of that decision.

- A. The Consolidated City of Indianapolis and Marion County shall be the only appropriate defendant named in such a judicial review petition.
- B. The petition for review must be filed within thirty (30) calendar days after the date of issuance of the Equal Opportunity Advisory Board's decision under Section 202-404(1)(d)(v).
- C. Within seven (7) calendar days after the date the petition is filed, the petitioner must serve a written request on the Equal Opportunity Advisory Board asking for a true and complete copy of the transcript of the hearing. The petitioner is responsible for filing that transcript with the court.
- D. The court, without jury, shall review the record and determine whether the Equal Opportunity Advisory Board's decision was arbitrary and capricious or otherwise contrary to law as in other administrative reviews.

## **PROCEDURES TO ENSURE MBE/WBE/VBE/DOBEs HAVE AN EQUAL OPPORTUNITY TO PARTICIPATE**

### **1. ASSISTANCE TO MBE/WBE/VBE/DOBE FIRM**

It will be the function of the OMWBD staff to give as much direct assistance as practically possible to MBE/WBE/VBE/DOBE firms when considering the many barriers that hinder participation. Such assistance may include providing:

- A. Information on City's organization and contractual needs.



- B. Projected procurement opportunities.
- C. Instruction for preparation of bid specifications, procurement policy and procedures and general bid requirement.
- D. Opportunity to review and evaluate successful bid documents of previous similar procurement.
- E. Instruction on job performance requirements.
- F. Information on specific reasons for unsuccessful bids through debriefing sessions.
- G. Conduct outreach events to bring awareness to MBE/WBE/VBE/DOBE firms

This data will be disseminated through written material, seminars, workshops and specialized assistance to individual firms.

OMWBD shall maintain and provide a list of outside organizations and businesses, which can be referred to for financial management, personnel management and technical assistance beyond those services, which can be provided directly by the City.

Whenever possible, the City will include representatives of financial institutions, the insurance industry and bonding companies in conferences and training sessions for purposes of familiarizing them with the MBE/WBE/VBE/DOBE Program objectives and goals, and to provide them information on particular projects. In order to achieve the contract's MBE/WBE/VBE/DOBE participation goals, the City will encourage the prime contractor to provide bonding for subcontractors in an effort to alleviate financial barriers.

The City will encourage MBE/WBE/VBE/DOBE participation in both contract and subcontract bidding. MBE/WBE/VBE/DOBE participation goals will be made a part of the prime contractor's contract obligations. OMWBD, in conjunction with City departments, will implement the following procedures:

- A. Bid packages and requests for proposals will be developed to increase potential MBE/WBE/VBE/DOBE participation. Certain contracts, because of their size, will be reviewed on a case-by-case basis to determine if the contract may be broken down into subcontracting opportunities to allow MBE/WBE/VBE/DOBE firms the opportunity to competitively bid.
- B. The City shall encourage joint ventures between MBE/WBE/VBE/DOBE firms and majority-owned firms. These joint ventures will provide the MBE/WBE/VBE/DOBE firms with the opportunity to gain valuable experience and increases their capacities.
- C. Specifications will be distributed by the Purchasing Agent in a timely manner to allow minority- women-, veteran- and Disabled-owned firms adequate time for the preparation of the following documents:
  - a. Bids;
  - b. Proposals;
  - c. Quotations;
  - d. Professional Service Agreements
- D. Bid forms will be reduced to the simplest format feasible.

- E. Minimization of cash flow problems may be addressed on a case-by-case basis.
- F. Pre-bid conferences will:
  - a. Emphasize MBE/WBE/VBE/DOBE requirements;
  - b. Discuss the required forms;
  - c. Explain the documentation requirements, including efforts used to obtain MBE/WBE/VBE/DOBE subcontractors and joint venture partnerships;
  - d. Show how the MBE/WBE/VBE/DOBE directory can be used as an effective tool in finding eligible firms and their availability: [OMWBD@indy.gov](mailto:OMWBD@indy.gov).
  - e. Affirmative action plan requirements.

## **2. MBE/WBE/VBE/DOBE OUTREACH**

OMWBD will promote awareness, knowledge and understanding of its MBE/WBE/VBE/DOBE Program. Components will focus on an orderly process and outreach content.

- A. Workshops:

Before contracts of \$10,000,000.00 or more are let, workshops are held for the purpose of orientating the contracting community on the City's MBE/WBE/VBE/DOBE program. At least one (1) workshop will be scheduled on an annual basis, others may be held as required throughout the year. OMWBD shall be responsible for these workshops and will be assisted by other departments as required.
- B. Pre-Bid Conferences:

Pre-bid Conferences will include on its agenda an explanation of the conditions and requirements regarding the MBE/WBE/VBE/DOBE Program. It is the responsibility of the Agency to notify OMWBD of all Pre-bid conferences and to request any assistance to achieve the goals of the MBE/WBE/VBE/DOBE Business Utilization Plan. Other MBE/WBE/VBE/DOBE Business Utilization Plan program items covered will include:

  - a. MBE/WBE/VBE/DOBE goals of this specific contract;
  - b. MBE/WBE/VBE/DOBE definition;
  - c. MBE/WBE/VBE/DOBE joint venture opportunities;
  - d. Required bid documents;
  - e. Reporting and record keeping requirements;
  - f. MBE/WBE/VBE/DOBE substitutions;
  - g. MBE/WBE/VBE/DOBE assistance agencies; and
  - h. Assistance to MBE/WBE/VBE/DOBE firms by prime contractors.
- C. Bid Notices:

Publication of contracts to be awarded will be the function of the Purchasing Agent.

Advertisements will appear in newspapers of general circulation in the Indianapolis area which will carry bid notices.

### **3. EXCLUSIVE TEAMING**

It is the policy of the City that bidder requirements for subcontractors/suppliers, by agreements, through understandings, or any other means which prevent subcontractors/suppliers from bidding as subcontractors on multiple bids is not permitted. Exclusive teaming subcontracting requirements by bidders for MBE/WBE/VBE/DOBEs has the potential to reduce competition and to lessen the opportunities for MBE/WBE/VBE/DOBEs to participate in City contracts. Violation of this policy will result in the bid being deemed non-responsive by the Agency.

### **4. MBE/WBE/VBE/DOBE DIRECTORY**

The MBE/WBE/VBE/DOBE Directory will be maintained and updated quarterly as a comprehensive resource of certified MBE/WBE/VBE/DOBE firms. These businesses are listed according to:

- A. The type of their specialty, with telephone numbers, addresses, email address and names of contact persons.
- B. The certification type will identify MBE/WBE/VBE/DOBE firms.
- C. Trades and scopes of services utilization will be accounted on.
- D. Legal name of the firm.

The MBE/WBE/VBE/DOBE Directory is designed for, and will be available to, persons responsible for purchasing within City government and to prospective bidders on City contractors.

## **MBE/WBE/VBE/DOBE PROGRAM CERTIFICATION PROCEDURES**

### **GENERAL**

Each business that desires to become certified by the City of Indianapolis through its Office of Minority and Women Business Development (OMWBD) as a minority business enterprise (MBE), women business enterprise (WBE), veteran business enterprise (VBE), disabled-owned business enterprise (DOBE) shall complete and submit a City application and attachments to:

**Office of Minority & Women Business Development  
Attn: Certification Coordinator  
200 East Washington Street, Suite 1260  
Indianapolis, IN 46204**

The Certification Procedure is:

- A. Primarily conducted pursuant to Chapter 49 of the Code of Federal Regulations part 26 and part 26.55 for supplier/distributors.
- B. Subjected to the policies of the City of Indianapolis, Office of Minority and Women Business Development.
- C. The City will certify an entity as an MBE, WBE, VBE, and/or DOBE firm, for all of the categories for which it qualifies.

- D. A firm will only be counted in one of the following categories: MBE, WBE, VBE, or DOBE firm for goal compliance.
- E. Only a business that is domiciled and headquartered in the State of Indiana and has a physical place of business (principal place of business) located within the State of Indiana, as registered in official documents filed with the Secretary of State of Indiana or County Recorder Office as a domestic for-profit corporation, may be certified as a minority-, women-, veteran-, disabled-owned business enterprise with the City. The MBE, WBE, VBE, or DOBE must have a necessary valid license, if required, for its business that indicates where the place of business is located, within the State of Indiana.
- F. Only a firm that has been in business for two (2) full fiscal years prior to the date of application may be certified as a minority-, woman-, veteran-, Disabled-owned business enterprise with the City. The applicant must provide the income tax returns for each of the two (2) previous tax years showing operating revenues in the selected type of work for which the applicant is seeking certification. The OMWBD may waive the two (2) years in business requirement if one of the following conditions is met:
  - a. The qualifying member(s) has demonstrated management and technical expertise to carry out the type of business for which certification is sought;
  - b. The qualifying member(s) has a record of successful performance on contracts from governmental or non-governmental sources in its primary area of certification without the relationship or affiliation of others; or
  - c. The qualifying member can demonstrate its ability to timely obtain personnel, facility, equipment, finance, and any other requirement needed to perform work in the area for which it is seeking certification.
  - d. The qualifying member business is a result of a traditional acquisition of a business which has been in existence for a minimum of two (2) full fiscal years prior to the acquisition and performs the same commercial useful function.
- G. The City certifies MBE/WBE/VBE/DOBE applicants in seven trades:
  - a. Construction;
  - b. Retailer;
  - c. Professional Service;
  - d. Service;
  - e. Supplier/Distributor-Regular Dealer;
  - f. Manufacturer; and
  - g. Broker (manufacture representative, leasing agent, procurement specialist).

MBE/WBE/VBE/DOBE credit may only be counted for the commercial useful function for the work actually completed by the MBE/WBE/VBE/DOBE firms' own workforce and for work that the firm has been certified to perform. For example:

- A. An MBE/WBE/VBE/DOBE firm certified as a construction company may not be credited with work as an MBE/WBE/VBE/DOBE supplier.

- B. A broker may receive MBE/WBE/VBE/DOBE credit in any of the above trades, but the allowable credit given to that broker may not exceed the actual fee earned by the MBE/WBE/VBE/DOBE broker.

## **CITY OF INDIANAPOLIS CERTIFICATION PROCESS**

### **Certification Review:**

The initial review of the application is made to determine if all questions are properly answered and the proper documentation is submitted. Incomplete applications and/or omitted documentation will result in the application being returned to the sender with no action taken. Completed packets are reviewed for the applicant's compliance with 49 CFR part 26 and the requirements of the City..

Complete DOBE packets are forwarded to the Office of Disabled Affairs for disabled certification. Once it is determined that the applicant satisfies the federal regulations and the City certification guidelines, including disabled certification, the MBE/WBE/VBE/DOBE certification packet is placed into one of two areas: 1) Indianapolis, Marion County; and 2) Outside of Marion County, but in the State of Indiana. At that time, an on-site review is scheduled and performed.

OMWBD will conduct, or cause to be conducted, an on-site review of all MBE/WBE/VBE/DOBE applicants located in the following Indiana counties: Marion, Hamilton, Boone, Madison, Hancock, Hendricks, Shelby, Morgan, and Johnson. That review may be done by appointment or without notice. Applicants are required to allow this review, and any subsequent, reasonable review of their business. Failure to cooperate with, or refusing to allow, the on-site review(s) will result in rejection and or incomplete application. Applicants located outside the above listed counties shall apply for certification to the State of Indiana, Department of Administration (IDOA) and/or Department of Transportation (INDOT). The on-site review process requires approximately sixty (60) days. If for any reason INDOT and/or IDOA is unable to perform an onsite in 60 days, your application will be place in the inactive status with OMWBD.

Once the on-site review has been completed, a narrative report of the applicant's file and on- site review is prepared. The narrative report will summarize the reviewer's on-site review and desk audit and add any other pertinent facts from the reviewer. The Business Enterprise Officer will make a recommendation as to the certification of the applicant on that report. The narrative report and any on- site review forms are then attached to the applicant's entire file and forwarded to the Senior Manager of the City of Indianapolis, Office of Minority and Women Business Development for final determination.

Based upon review of the applicant's entire file, and the attached review documentation, the Senior Manager of the City of Indianapolis, Office of Minority and Women Business Development will approve the application, disapprove the application, or refer it back to the Business Enterprise Officer for further investigation or discussion. Applicants whose qualifications are in accordance with the foregoing rules and regulations and who have been approved by OMWBD's Senior Manager will receive a certification letter indicating a certification of MBE/WBE/VBE and/or DOBE, by the Business Enterprise Officer. The Certification Coordinator will then make the essential data entry to the OMWBD directory and file records.

Applicants whose qualifications are not in accordance with the foregoing rules and regulations and the negative determination have been approved by OMWBD's Senior Manager will receive a letter stating the reason(s) for the negative decision by the Business Enterprise Officer.

## **Certification Standards**

### **SECTION 1: 49 CFR 26.5**

To be certified as an MBE/WBE/VBE/DOBE by the City of Indianapolis, the minority, woman, or individual with a disabled must own and control, at least, fifty-one percent (51%) of a business. Those 51% owners must be a citizen, or a lawfully admitted permanent resident, of the United States who are:

- A. Black Americans – which includes persons having origins in any of the Black racial groups of Africa;
- B. Hispanic Americans – which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South America, or other Spanish or Portuguese culture or origin regardless of race;
- C. Native Americans – means a U.S. citizen or lawfully admitted permanent resident whose ancestry originates from the original people of North America and who maintains cultural identification through tribal affiliation;
- D. Asian Pacific Americans – which includes, but is not limited to, persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China (including Hong Kong), Taiwan, Laos, Cambodia, Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands;
- E. Subcontinent Asian Americans – which includes persons with origins from Indian, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands or Nepal;
- F. Women;
- G. Individuals with disabilities. An individual with a disabled is a person who:
  - a. Has a physical or mental impairment that substantially limits one or more of his or her major life activities;
  - b. Has a record of such an impairment;
  - c. Is regarded as having such an impairment; or
- H. Veterans – which includes persons with a certificate of release or discharge from active duty with an honorable discharge DD214.

### **SECTION 2: OWNERSHIP 49 CFR 26.69**

- A. To be certified as a minority -, women-, veteran-, and/or disabled-owned business enterprise by the City of Indianapolis, the 51% minority owner(s), woman owner(s), veteran owner(s) or owner(s) with a disabled must be a member of one of the groups designated above.
  - a. Firms seeking certification that have a current and valid certification from the SBA, under the 8a Program, or a State of Indiana IDOA or INDOT certification may request that the certifying agency submit to OMWBD copies of the certification file and the on- site review. OMWBD, in lieu of conducting its own certification review, may use the other certifying agency's review. OMWBD does reserve the right to conduct its own review to make determination. City of Indianapolis does not accept certifications/on-sites from national programs, non-profits or paid certification programs.

- b. The parent company must also meet the City of Indianapolis certification standards to certify a branch office or subsidiary.
- B. To be eligible for MBE/WBE/VBE/DOBE certification, a firm must be at least 51% owned by a minority -, women-, veteran-, and/or disabled individual(s).
  - a. In the case of a corporation, such individuals must own at least 51% of each class of voting stock and 51% of the aggregate of all stock outstanding.
  - b. In the case of a partnership, 51% of each class of partnership interest must be owned by minority -, women-, veteran-, and/or disabled individual(s). Such ownership must be reflected in the firm's partnership agreement.
  - c. In the case of a limited liability company, at least 51% of each class of member interest must be owned by the minority -, women-, veteran-, and/or disabled individual(s).
- C. The firm's ownership by a minority -, women-, veteran-, and/or disabled individual(s) must be real, substantial and continuing, going beyond the *pro forma* ownership of the firm as reflected in its ownership documents. The minority -, women-, veteran-, and/or disabled owner(s) must enjoy the customary incidents of ownership and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.
- D. All securities that constitute ownership of a firm shall be held directly by minority -, women-, veteran-, and/or disabled persons. Except as provided in this paragraph, no securities or assets held in trust, or by any guardian for a minor, are considered as held by a minority -, women-, veteran-, and/or disabled persons in determining the ownership of a firm. However, securities or assets held in trust are regarded as held by a minority -, women-, veteran-, and/or disabled individual for the purposes of determining ownership of the firm if:
  - a. The beneficial owner of securities or assets held in trust is a minority -, women-, veteran-, and/or disabled individual and the trustee is the same or another such individual, or
  - b. The beneficial owner of a trust is a minority -, women-, veteran-, and/or disabled individual who, rather than the trustee, exercises effective control over the management, policy making and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same minority -, women-, veteran-, and/or disabled individual is the sole grantor, beneficiary, and trustee.
- E. The contributions of capital or expertise by the minority -, women-, veteran-, and/or disabled owner(s) to acquire their ownership interest must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or any owner who is not a minority -, women-, veteran-, and/or disabled individual or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.
- F. The following requirements apply to situation in which expertise is relied upon as part of a minority -, women-, veteran-, and/or disabled owner's contribution to acquire ownership:
  - a. The owner's expertise must be:
    - i. In a specialized field;



- ii. Of outstanding quality;
    - iii. In areas critical to the firm's operation;
    - iv. Indispensable to the firm's potential success;
    - v. Specific to the type of work the firm performs;
    - vi. Documented in the records of the firm. Those records must clearly show the contribution of expertise and its value to the firm.
  - b. The individual whose expertise is relied upon must have a significant financial investment in the firm.
- G. The City will deem as held by minority -, women-, veteran-, and/or disabled individuals, for the purposes of determining ownership, all interest in a business or other assets obtained by the individual:
- a. As the result of a final property settlement, court order, or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or
  - b. Through inheritance, or otherwise because of death of the former owner.
- H. The City will presume as not being held by a minority -, women-, veteran-, and/or disabled individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual, as the result of a gift or transfer without adequate compensation, from any non-MBE/WBE/VBE/DOBE firm who is:
- a. Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;
  - b. Involved in the same or similar line of business/profession; or
  - c. Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.
- I. To overcome this presumption and permit the interests or assets to be counted, the minority -, women-, veteran-, and/or disabled individual must demonstrate, by clear and convincing evidence that:
- a. The gift or transfer to the minority -, women-, veteran-, and/or disabled individual was made for reasons other than obtaining MBE/WBE/VBE/ or DOBE certification, and
  - b. The minority -, women-, veteran-, and/or disabled individual actually controls the management, policy and operations of the firm notwithstanding the continuing participation of a non- minority -, women-, veteran-, and/or disabled individual who provided the gift or transfer.
- J. The City will apply the following rules in situations in which marital assets form a basis for ownership of the firm:
- a. When marital assets, other than assets of the business in question, are held jointly by both spouses, the City will deem that the ownership interest in the firm was acquired by the spouse with his or her own individual resources, provided that the other

spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state, in which either spouse or the firm is domiciled. The City will not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the minority -, women-, veteran-, and/or disabled owner of the applicant firm.

- b. A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for MBE/WBE/VBE or DOBE certification.
- K. The City may consider the following factors in determining the ownership of a firm. However, the City will not regard a contribution of capital as failing to be real and substantial, or find ineligible, solely because:
  - a. A minority -, women-, veteran-, and/or disabled individual acquired his or her interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in this section;
  - b. There is a provision for the co-signature of a spouse who is not a minority -, women-, veteran-, and/or disabled individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other domestic documents; or
  - c. Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a minority -, women-, veteran-, and/or disabled individual to a spouse who is such an individual. In this case, the City will give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as form, by a minority -, women-, veteran-, and/or disabled individual.

### SECTION 3: CONTROL – 49 CFR 26.71 and 13 CFR 124.106

- A. The City in determining whether a firm is controlled by one or more minorities, women, veteran, or persons with disabilities, will consider all the facts in the record, viewed as a whole, and shall use the following standards.
- B. Only an independent business may be certified. An independent business is one in which the viability does not depend on its relationship with another firm or firms.
  - a. In determining whether a potential MBE/WBE/VBE/DOBE is an independent business, the City will scrutinize relationships with non-MBE/WBE/VBE/DOBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support and other resources.
  - b. The City will consider whether present or recent employer/employee relationships between minority -, women-, veteran-, and/or disabled owner(s) of the potential MBE/WBE/VBE/DOBE and non- MBE/WBE/VBE/DOBE firms or persons associated with non-MBE/WBE/VBE/DOBE compromise the independence of the potential MBE/WBE/VBE/DOBE firm.
  - c. The City will examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential MBE/WBE/VBE/DOBE firm.
  - d. In considering factors related to the independence of a potential MBE/WBE/VBE/DOBE firm, the City will consider the consistency of relationships

between the potential MBE/WBE/VBE/DOBE and non- MBE/WBE/VBE/DOBE firm(s) with normal industry practice.

- e. The City will consider affiliations with some non-qualifying firm/Managing principals in determining who actually controls the firm (directly or indirectly).
- C. An MBE/WBE/VBE/DOBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the minority -, women-, veteran-, and/or disabled owner(s). There can be no restrictions through corporate charter provisions, by-laws provision, contract, or any other formal or informal devices (e.g. cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non minority -, women-, veteran-, and/or disabled partners, conditions precedent or subsequent, executor agreements, voting trusts, restriction on or assignments of voting rights) that prevent the minority -, women-, veteran-, and/or disabled owner(s), without the cooperation or vote of any non- minority -, women-, veteran-, and/or disabled individual, from making a business decision of the firm. This paragraph does not preclude a spousal co-signature as provided for above in Section 2 subsection 2(b).
- D. The minority -, women-, veteran-, and/or disabled owners must possess the power to direct or cause the direction of the management and policies of the firm and make day-to-day as well as long-term decisions on matters of management, policy and operations.
  - a. A minority -, women-, veteran-, and/or disabled owner must hold the highest office position in the company at its principal place of business (e.g. Chief Executive Officer or President).
  - b. In a corporation, minority -, women-, veteran-, and/or disabled owners must control the Board of Directors.
  - c. In a partnership, one or more of the minority -, women-, veteran-, and/or disabled owner(s) must serve as general partner with control over all partnership decisions (including non-qualifying members).
- E. Individuals who are not minority -, women-, veteran-, and/or disabled may be involved in an MBE/WBE/VBE/DOBE firm as an owner, manager, employee, stockholder, officer, and/or director. Such individuals must not, however possess or exercise the power to control the firm or be disproportionately responsible for the operations of the firm in any area of operation.
- F. The minority -, women-, veteran-, and/or disabled owner(s) of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are minority -, women-, veteran-, and/or disabled individuals. Such delegation of authority must be revocable, and the minority -, women-, veteran-, and/or disabled owner(s) must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the minority -, women-, veteran-, and/or disabled owner(s) in the firm's overall affairs must be such that the City can reasonably conclude that the minority -, women-, veteran-, and/or disabled owner(s) actually exercises control over the firm's operations, management and policy.
- G. The minority -, women-, veteran-, and/or disabled owner(s) must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The minority -, women-, veteran-, and/or disabled owner(s) is not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than manager(s) or other key employee(s). The minority -, women-, veteran-, and/or disabled owner(s) must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make

independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

- H. If State or Local law requires the person to have a particular license or credential, in order to own and/or control a certain type of firm, then the minority -, women-, veteran-, and/or disabled persons who own and control a potential MBE/WBE/VBE/DOBE firm of that type must possess the required license or credential. If State or Local law does not require such person to have such a license or credential to own and/or control a firm, the City will not deny certification solely on the ground that the person lacks the license or credential. However, the City may take into account the absence of the license or credential as one factor in determining whether the minority -, women-, veteran-, and/or disabled owner(s) actually controls the firm.
- I. The City must consider differences in remuneration between the minority -, women-, veteran-, and/or disabled owner(s) and other participants in the firm in determining whether to certify a firm as an MBE/WBE/VBE/DOBE.
  - a. Consideration shall be in the context of the duties of the person involved, normal industry practices, the firm's policy and practice, the firm's policy and practices concerning reinvestment of income, and any other explanations of the differences proffered by the firm. The City may determine that its minority -, women-, veteran-, and/or disabled owner controls a firm, although that owner's remuneration is lower than that of some other participants in the firm.
  - b. In a case where a non- minority -, women-, veteran-, and/or disabled individual formerly or informally controlled the firm, and a minority -, women-, veteran-, and/or disabled individual now controls the firm, then the City may consider a difference between the remuneration of the former and current controller of the firm as a factor used in determining who controls the firm. Particularly when the non- minority -, women-, veteran-, and/or disabled individual remains involved with the firm and continues to receive greater compensation than the minority -, women-, veteran-, and/or disabled individual.
- J. In order to be viewed as controlling a firm, a minority -, women-, veteran-, and/or disabled owner cannot engage in outside employment or other business interest that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full- time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on weekends and/or evenings, if the individual controls it all the time it is operating.
- K.
  - a. A minority -, women-, veteran-, and/or disabled individual may control a firm even though one or more of the individual's immediate family members (who themselves are not minority -, women-, veteran-, and/or disabled individuals) participate in the firm as manager, employee, owner or in another capacity. Except as otherwise provided in this paragraph, you must make a judgment about the control the minority -, women-, veteran-, and/or disabled owner exercises vis-à-vis other persons involved in the business as you do in other situations, without regard to whether or not the other persons are immediate family members.
  - b. If the City cannot determine that the minority -, women-, veteran-, and/or disabled owners- as distinct from the family as a whole-control the firm, then the minority -, women-, veteran-, and/or disabled owners have failed to carry their burden of proof

concerning control, even though they may participate significantly in the firm's activities.

- L. When a firm was formerly owned and/or controlled by a non- minority -, women-, veteran-, and/or disabled individual (whether or not an immediate family member), ownership and/or control were transferred to a minority -, women-, veteran-, and/or disabled, individual, and the non- minority -, women-, veteran-, and/or disabled individual remains involved with the firm in any capacity, the minority -, women-, veteran-, and/or disabled individual now owning the firm must demonstrate to the City, by clear and convincing evidence, that:
  - a. The transfer of ownership and/or control to the minority -, women-, veteran-, and/or disabled individual was made for reasons other than obtaining certification as MBE/WBE/VBE/DOBE; and
  - b. The minority -, women-, veteran-, and/or disabled individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non- minority -, women-, veteran-, and/or disabled individual who formerly owned and/or controlled the firm.
  - c. The minority -, women-, veteran-, and/or disabled individual can provide fiscal records of past financial transaction, IRS profit and loss statements, contract signature authority, other related official records.
- M. In determining whether a firm is controlled by its minority -, women-, veteran-, and/or disabled owners, the City may consider whether the firm owns equipment necessary to perform its work. However, the City will not determine that a firm is not controlled by qualified individual(s) solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm in untraditional lending practices.
- N. The City will grant certification to a firm only for specific types of work in which the minority-, women, veteran-, and/or disabled owners have the ability to control the firm. To become certified in an additional type of work, the firm needs to demonstrate to City only that its minority -, women-, veteran-, and/or disabled owners are able to control the firm with respect to that type of work. The City will not, in this situation, require that the firm be recertified or submit a new application for certification, but the City will verify the minority -, women-, veteran-, and/or disabled owner's control of the firm in the additional type of work.
  - a. OMWBD will not conduct a review of a firm's request to add an additional type of work to its MBE/WBE/VBE/DOBE certification until after one year has passed after the MBE/WBE/VBE/DOBE firm's initial certification or last onsite interview.
  - b. MBE/WBE/VBE/DOBE firms must inform OMWBD, in the form of a sworn affidavit, of any changes affecting the ability of the firm or its owners to meet the guidelines of the Plan with regards to ownership, control, or other certification requirements.
- O. A business operating under a franchise or license agreement may be certified if it meets the standards of this, subpart and the franchiser or licensor is not affiliated with the franchisee or licensee. The City, in determining whether affiliation exists, will generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensees by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears risk or loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of

the franchise interest or license.

- P. In order for a partnership to be controlled by minority -, women-, veteran-, and/or disabled individuals, any non- MBE/WBE/VBE/DOBE partners must not have the power, without the specific written concurrence of the minority -, women-, veteran-, and/or disabled partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.
- Q. The minority -, women-, veteran-, and/or disabled individuals controlling a firm may use an employee leasing company. The use of such a company does not preclude the minority -, women-, veteran-, and/or disabled individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

### **CERTIFICATION DENIAL**

When it is determined that an applicant does not meet the criteria for certification as an MBE/WBE/VBE/DOBE, a letter of denial will be issued from the Senior Manager and Director of OMWBD. That denial letter will be sent by certified mail, return receipt requested. The letter shall include the reason(s) for the denial with specific reference to the determination.

### **APPEALS OF MBE/WBE/DOBE CERTIFICATION DENIALS BY OMWBD**

An applicant, who has been denied MBE/WBE/VBE/DOBE certification by OMWBD under the above procedure, may use the following appeal procedure:

- A. Within seven (7) calendar days after receipt of notice of adverse determination an applicant or firm may request in writing an administrative hearing before the Equal Opportunity Advisory Board's Contract Compliance Committee. The Contract Compliance Committee is composed of members of the City of Indianapolis, Equal Opportunity Advisory Board, whose members are appointed by the Mayor of the City of Indianapolis and City-County Council.
- B. The written appeal request shall be addressed to: Office of Minority & Women Business Development, Attn: Director, 200 East Washington Street, Suite 1260, Indianapolis, Indiana 46204.
- C. The written appeal request shall include a summary of all objections to the initial decision of OMWBD ("Objection") and any evidence or documentation to substantiate the applicant's position.
- D. Upon receipt of a valid Objection, the Senior Manager will transmit the applicant's Objection to the Business Enterprise Officer for review. If the Business Enterprise Office finds merit in the applicant's Objection and substantiating documentation, the Senior Manager will review the Objection and substantiating documentation for reconsideration of the certification request.
- E. Otherwise, the Business Enterprise Officer will add any notes or memo pertinent to the appeal and file the appeal with the Contract Compliance Committee's Secretary to schedule an appeal.
- F. The Senior Manager or Director will cause the Contract Compliance Committee to convene to hear appeals of MBE/WBE/VBE/ DOBE certification denials. The Contract Compliance Committee shall hold a public hearing to hear the appeal no later than 180 days after the date of the denial of certification.



- G. The applicant shall be notified of the date, time and place of the hearing by the Contract Compliance Committee. Public hearings are held in the City County Building, 200 East Washington Street, Indianapolis, Indiana 46204.
- H. The applicant will bear the burden of proof to establish the factual basis for the Objection during the hearing. The applicant may be represented by counsel, subpoena witnesses, and examine (both direct and cross) witnesses. All witnesses testifying during the hearing will be sworn in by the Chair of the Contract Compliance Committee prior to giving any testimony.
- I. The appeal hearing will be conducted as follows:
- a. Each party shall be given 15 minutes to present its case. The parties need not use all their time.
  - b. The applicant will present its case first, and has the right to split their time in order to allow time to rebut any information presented by OMWBD.
  - c. After the applicant has completed its case to the Contract Compliance Committee, OMWBD shall have 15 minutes to present its case.
  - d. If the applicant reserved time to rebut OMWBD's case, the applicant will present its rebuttal.
  - e. The Contract Compliance Committee may or may not ask the parties questions.
  - f. At the conclusion of the cases, the Contract Compliance Committee will either vote to:
    - i. Affirm the decision of OMWBD and adopt the reasons listed in the denial letter;
    - ii. It may reverse the decision of OMWBD and make findings of fact and conclusions to support its decision; or
    - iii. It may take the matter under advisement.

### **WAITING PERIOD**

Should a firm apply for MBE/WBE/VBE/DOBE status and be denied, or decertified from the Program, a reapplication waiting period of one (1) year shall commence from the date of receipt of the final determination from the highest appeal request by the applicant. This means the applicant cannot apply for certification until after a one (1) year period has elapsed after the final denial was received.

### **CERTIFICATION RENEWAL**

It is the responsibility of the certified MBE/WBE/VBE/DOBE to submit its application for renewal. The renewal of an MBE/WBE/VBE/DOBE certification is not automatic and must not be assumed guaranteed based on prior certification. Any changes in the ownership or control of an MBE/WBE/VBE/DOBE will trigger a new application being required. City of Indianapolis's MBE/WBE/VBE/DOBE certifications are valid for three (3) years from the date of the certification. A request for renewal must be submitted within thirty (90) days before the expiration of the previous certification. Failure to meet this deadline will result in a new application being required, the MBE/WBE/VBE/DOBE firm's OMWBD file being purged, and the MBE/WBE/VBE/DOBE firm being deleted from the City's MBE/WBE/VBE/DOBE Vendor Listing.



## **RECERTIFICATION**

MBE/WBE/VBE/DOBE firms must provide OMWBD annually, on the anniversary date of the firm's certification, an affidavit by the owner affirming that there have been no changes in the circumstances affecting its ability to meet MBE/WBE/VBE/DOBE status, ownership, or control requirement of this part or any material changes in the information provided in its application; except changes that the firm previously provided to OMWBD. A recommendation by the Business Enterprise Officer that there is reason to believe that the applicant is not eligible for recertification shall follow the procedures outlined in sections Certification Standards, Certification Denial, and Appeals of MBE/WBE/VBE/DOBE Certification Denials By OMWBD above.

If the firm is an MBE/WBE/VBE/DOBE, the affidavit shall specifically affirm that the firm continues to meet the MBE/WBE/VBE/DOBE standards of this Part.

## **DECERTIFICATION**

Should the OMWBD, after the certification of an MBE/WBE/VBE/DOBE, determine that sufficient evidence exists that creates a reasonable doubt concerning the validity of the certification, OMWBD shall notify the firm regarding a challenge made to its certification. The Business Enterprise Officer will investigate or cause to be investigated the new evidence. After the investigation, the Business Enterprise Officer shall make a recommendation to the Senior Manager based on the results of its investigation. The Senior Manager shall review the Business Enterprise Officer's recommendation. After the review of the recommendation, the Senior Manager and Director shall issue the determination in writing, via certified mail, return receipt requested. If decertification is warranted and recommended, the decertification process shall follow the steps outlined in sections Certification Standards, Certification Denial, and Appeals of MBE/WBE/VBE/DOBE Certification Denials By OMWBD above.

## **JOINT VENTURE CERTIFICATIONS**

The certification process for a joint venture generally follows the guidelines outlined above. The verification process seeks to determine whether or not the MBE/WBE/VBE/DOBE partner in the joint venture has at least 51% of the responsibility for, and control of, the joint venture. If the MBE/WBE/VBE/DOBE partner does not have responsibility for, and control of, at least 51% of the joint venture, certification will not be granted.

## **MBE/WBE/VBE/DOBE CHALLENGE PROCEDURE**

Any third party may challenge the status of any individual presumed to be a minority -, women-, veteran-, and/or disabled, if that minority -, women-, veteran-, and/or disabled is the owner of a firm certified or seeking to be certified by the City of Indianapolis, Office of Minority and Women Business Development (OMWBD).

- A. The challenge shall be made in writing to the Senior Manager and Director of OMWBD. The challenging party ("Challenger") shall include as information available and relevant to a determination whether the challenged party ("Challenged") is, in fact, an SDI or if the challenged firm ("Challenged Firm") is, in fact, an MBE/WBE/VBE/DOBE.
- B. The Business Enterprise Officer shall investigate and determine, on the basis of the information provided by the Challenger, whether there is reason to believe the Challenged is, in fact, not a SDI or if the Challenged Firm is, in fact, a qualified MBE/WBE/VBE/DOBE.
- C. The Business Enterprise Officer shall advise the Senior Manager, in writing, of the findings and recommendation. The Senior Manager shall concur with or overrule the Business Enterprise

Officer's decision. Additionally, the Senior Manager can instruct the Business Enterprise Officer to do further investigating prior to making its decision.

- D. If the Senior Manager & Director determines that there is reason to believe that the challenged is not an SDI or does not meet the definition of an MBE/WBE/VBE/DOBE, the Senior Manager & Director shall notify the Challenged in writing that its status as an MBE, WBE, VBE, or DOBE has been challenged.
  - a. The notice shall identify the Challenger and summarize the grounds of the challenge;
  - b. The notice shall also require the Challenged to provide OMWBD sufficient information and documentation to evaluate its SDI, MBE, WBE, VBE, or DOBE status and rebuttal of the Challenger's objection;
  - c. The rebuttal and documentation must be provided to the OMWBD within thirty (30) days of receipt of the notice by certified mail; and
  - d. OMWBD may request further information and/or documentation from the Challenged or the Challenger beyond what was provided.
- E. Failure by the Challenged to respond to the OMWBD's Notice within 30 days may be grounds for a finding by OMWBD that the Challenged is not, in fact, MBE, WBE, VBE, or DOBE.
- F. The Senior Manager and the Business Enterprise Officer shall evaluate the information provided and shall make a proposed determination as to the status of Challenged as a MBE, WBE, VBE, or DOBE. The Senior Manager and Director shall then notify both the Challenger and Challenged of the proposed determination in writing, via certified mail, return receipt requested.
  - a. OMWBD shall set forth reasons for its proposal in that letter; and
  - b. Said letter shall permit both Challenger and Challenged the opportunity to request an informal hearing within seven (7) days of its receipt.
- G. The request for an informal hearing must set forth reasons for said request.
  - a. The Certification Manager will review said request and either confirm or deny the scheduling of an informal hearing;
  - b. If an informal hearing is granted, it shall be scheduled not less than fourteen (14) working days or more than thirty (30) working days after the determination; and
  - c. Both parties may attend the informal hearing or respond in writing.
- H. If OMWBD determines after an investigation that there is not sufficient reason to believe the Challenged is not an MBE, WBE, VBE, or DOBE, then the Senior Manager and Director of OMWBD shall inform the Challenger in writing of such a determination and terminate the challenge procedure.

## **PROCEDURES TO REQUIRE PARTICIPATING MBE/WBE/VBE/DOBEs BE IDENTIFIED BY BIDDERS**

In order for the City to monitor the level of MBE/WBE/VBE/DOBE participation, all bidders for public works, goods/supplies, and services (including professional services) which are competitively bid shall submit documentation of meeting the MBE/WBE/VBE/DOBE goals, as stated in the contract to be let, as required by this Plan. OMWBD must review this documentation for all such

public works contracts valued at \$150,000.00 or greater, and for all such goods/supplies and services, professional services contracts valued at \$50,000.00 or greater. With the submittal of their bid, all bidders shall submit the *MBE/WBE/VBE/DOBE Participation Goals For Construction, Goods/Supplies, And Services* Form. The bid specification shall note when this form is to be submitted to the City.

In addition, if the MBE/WBE/VBE/DOBE goals will not be achieved, the bidder must submit with the bid, the *Application for MBE/WBE/VBE/DOBE Program Waiver* Form. Failure to complete these forms and submittal with the bid shall result in the bidder being determined as non-responsive.

#### Substitution Procedures

In addition, the City shall require prime contractors to make a good faith effort to replace an MBE/WBE/VBE/DOBE subcontractor that is unable to perform successfully with another MBE/WBE/VBE/DOBE. All substitution of subcontracts requests shall be submitted, using the *MBE/WBE/VBE/DOBE Subcontractor Substitution Request* form, to the Agency and be approved by OMWBD. This will ensure that the substitute firm(s) is certified by the City of Indianapolis.

Substitution of an MBE/WBE/VBE/DOBE subcontractor may be in order should it be determined that the subcontractor is not a bona fide MBE/WBE/VBE/DOBE before the awarding of a contract. If, after the awarding of a contract, it is determined that an MBE/WBE/VBE/DOBE commitment cannot be fulfilled, the proposed substitution will be subject to approval according to the following procedures:

- A. OMWBD and the contracting department must be notified using the *MBE/WBE/VBE/DOBE Subcontractor Substitution Request* form immediately of an apparent necessity to reduce or cancel the participation of an MBE/WBE/VBE/DOBE subcontractor and to propose a substitute MBE/WBE/VBE/DOBE.
- B. The contractor's notification should include specific reasons for the proposed substitution.
  - a. Acceptable reasons, include but are not limited to:
    - i. An MBE/WBE/VBE/DOBE was found not to be able to perform;
    - ii. An MBE/WBE/VBE/DOBE was found to perform unacceptable work;
    - iii. An MBE/WBE/VBE/DOBE was later discovered to not be a bona fide MBE/WBE/VBE/DOBE; or
    - iv. An MBE/WBE/VBE/DOBE previously committed as a given price later demands an unreasonable escalation of prices.
  - b. Unacceptable reasons, include but are not limited to:
    - i. Dispute about performance, except in cases where unacceptable performance is documented and every effort to settle the dispute has been made and documented; or
    - ii. An MBE/WBE/VBE/DOBE has requested reasonable price escalation, which may be justified due to unforeseen circumstances.

- C. Contractors shall resubmit a revision to the *MBE/WBE/VBE/DOBE Participation Plan For Construction, Goods/Supplies, and Services* form, for each proposed substitute.
- D. OMWBD, in cooperation with the contracting Department, will evaluate the submitted documentation and respond to the request for a substitution within five (5) working days. OMWBD will make every effort to respond sooner in the case of an expressed emergency for the sake of job progress.
- E. Actual substitutions of replacement of MBE/WBE/VBE/DOBE firms will not be made before written approval from OMWBD is given to the contracting department. Once notified of OMWBD's approval, the substitute MBE/WBE/VBE/DOBE subcontract may be executed immediately, and a copy of the document with original signatures of all parties to the agreement will be submitted to OMWBD and the contracting Department.

#### Change Orders and Amendments

This rule applies to contracts valued at \$150,000.00 and greater. Whenever a contract is amended, any single change order is issued, or subsidiary agreement is authorized that increases the total original contract cost by more than ten percent (10%), the MBE/WBE/VBE, DOBE contract goal regarding the work, services, or supplies to be paid for through such amendment, modification, change order, or subsidiary agreement will remain the same; and, good faith efforts will be made to ensure that it maintains the same percentage of MBE/WBE/VBE/DOBE participation in performing the additional work, services, or supplies. A notice to the contractor authorizing the amendment, change order, and/or agreement must be communicated to OMWBD along with the contractor's amended MBE/WBE/VBE/DOBE Participation Goal form.

#### **GOOD FAITH EFFORTS REQUIREMENTS**

All bidders to a bid must document the good faith efforts it took to obtain MBE/WBE/VBE/DOBE participation. The City will determine if the bidder is a responsible and responsive bidder. As part of the selection process, a review of the bidder's *MBE/WBE/VBE/DOBE Participation Goals For Construction, Goods/Supplies, And Services* form is performed to determine the bidder's commitment to meeting the MBE/WBE/VBE/DOBE goals for the contract. If the bidder will not meet the MBE/WBE/VBE/DOBE participation goal, the *Application For MBE/WBE/VBE/DOBE Program Waiver* form must be submitted with the bid submittal.

Such good faith efforts may include, but is not limited to the following:

- A. Bidder's attendance at pre-bid conference;
- B. Advertisement in general circulation media, trade publications, and minority focused media for at least ten (10) working days before bids or proposals are due;
- C. Mailings to MBE/WBE/VBE/DOBE firms notifying them of contracting opportunities;
- D. Efforts made to select portions of the work proposed to be performed by MBE/WBE/VBE/DOBE firms in order to increase the likelihood of achieving the stated goal(s);
- E. Efforts to negotiate with MBE/WBE/VBE/DOBE firms for specific sub-bids, including at a minimum:
  - a. The names, addresses and telephone numbers of MBE/WBE/VBE/DOBE firms that were contacted;

- b. A description of the information provided to MBE/WBE/VBE/DOBE firms regarding the plans and specifications for portions of the work to be performed; and/or
  - c. A statement of why additional agreements with MBE/WBE/VBE/DOBE firms were not reached.
- F. If the bidder rejected any MBE/WBE/VBE/DOBE firm(s) as unqualified, they must submit the reason(s) for this conclusion.
- G. The bidder must also document technical assistance provided to the MBE/WBE/VBE/DOBE firms in obtaining bonding or insurance required by the City of Indianapolis.
- H. Providing interested MBE/WBE/VBE/DOBE with prompt access to the plans, specifications, scope of work, and requirements of the contract.
- I. Follow up to initial solicitations and copy of call logs.
- J. Has a joint venture agreement for the contract with an MBE/WBE/VBE/DOBE firm. Participation by the MBE/WBE/VBE/DOBE must be 30% or greater.
- K. Has a mentor-protégé agreement with an MBE/WBE/VBE/DOBE firm for the contract.

Failure to provide the application for waiver at the time of bid submission will result in the bid being determined to be non-responsive.

## **MAINTENANCE OF RECORDS AND REPORTING PROCEDURES**

OMWBD and the contracting Agency shall implement a comprehensive record-keeping procedure, whereby the City can identify and assess MBE/WBE/VBE/DOBE contract awards, prime contractor's progress in achieving MBE/WBE/VBE/DOBE subcontract goals, and other MBE/WBE/VBE/DOBE affirmative action efforts.

In implementing this record-keeping procedure, OMWBD and the contracting Agencies shall maintain files that document:

- A. Payments made to MBE/WBE/VBE/DOBE firms. This information will be supplied via reports from prime contractors on their progress in meeting its stated MBE/WBE/VBE/DOBE participation goals. OMWBD shall develop and institute applicable reporting forms and procedures to comply with this regulation.
- B. OMWBD shall also maintain data on recruitment, identification and award efforts to MBE/WBE/VBE/DOBE firms. Such data may include letters, public notices and advertisements, telephone notes and other communication efforts to this end.
- C. Any other records pertaining to federal or federally assisted projects shall be made available for review to authorized representatives.
- D. All reports required of the City by DOT/UMTA, EPA, HUD or any federal funding services shall be submitted in accordance with its grant agreement of such reports and shall include:
  - a. The number of contracts of payments made to MBE/WBE/VBE/DOBE firms;
  - b. A description of the categories of with payments made to MBE/WBE/VBE/DOBE firms;
  - c. The dollar value of contract with payments made to MBE/WBE/VBE/DOBE firms;

- d. The percentage of the dollar value of all contracts awarded during this period that were awarded to MBE/WBE/VBE/DOBE firms; and
  - e. An indication of whether and the extent of which the percentage met or exceeded the goal specified by the City in its application.
- E. All records and reports described in this section shall provide separate information on:
- a. Firms owned and controlled by minorities;
  - b. Firms owned and controlled by women;
  - c. Firms owned and controlled by veterans; and,
  - d. Firms owned and controlled by people with disabilities; and each contract file may include at least the following data:
    - i. Bid Worksheet – Bid openings of contracts with MBE/WBE/VBE/DOBE goals, may be attended by a Business Enterprise Officer or his designated representative. The Business Enterprise Officer or his designated representative may be present at all pre-bid conferences. Documentation may note attendance, minority, non-minority, women, veterans or persons with disabilities, bid respondents, contract award and comments.
    - ii. Minutes of Pre-Construction Conferences, copies of all relevant correspondence, memoranda, or telephone notes pertinent to a particular contract or the project as a whole.
    - iii. Copy of notification of contract award. This notification will be forwarded to the contractor as well as OMWBD. Direct mailings to known MBE/WBE/VBE/DOBE firms with capabilities of executing that particular contract will also occur.
    - iv. The City's advertising period for all contracts will be at least ten (10) days before bids or proposals are due. Assistance will be made available to MBE/WBE/VBE/DOBE firms in order to meet the bid advertisement period, if need be.
    - v. Bid Specification/Written specification will also clearly contain the MBE/WBE/VBE/DOBE program and its requirements. These documents will be made available to MBE/WBE/VBE/DOBE contractors and assistance agencies.
    - vi. List of Potential Bidders – The Purchasing Agent and OMWBD will make available to MBE/WBE/VBE/DOBE firms, upon request, a list of potential prime bidders who have taken out specifications and plans for that specific contract.

## **PROJECT CLOSE-OUT AND FINAL DISPOSITION OF EQUAL OPPORTUNITY PROGRAM REQUIREMENTS**

At the time of a project/contract close-out, each Department shall inform OMWBD of the event via a memorandum, the Department shall include in the contract file a final disposition form relative to the



project/contract close-out. The Department shall include the final disposition report in the close-out file on all projects. The Department file shall:

- A. Provide MBE/WBE/VBE/DOBE data relative to the project contract; and
- B. Contain information as to whether the contractor was in compliance with MBE/WBE/VBE/DOBE utilization and affirmative action during the run of the project/contract.

## **AGENCY REPORTING PROCEDURES**

An internal reporting procedure has been designed to assist in the evaluation of the City's efforts to increase utilization of MBE/WBE/VBE/DOBE firms. It is required that all City reporting units and Municipal Corporations report monthly information, as requested, to OMWBD.

Completed monthly reports will be used by the Office of Minority and Women Business Development to evaluate the progress of utilization efforts made by reporting units. Report preparation and submittal involves all City reporting units and Municipal Corporations, and information required by OMWBD for its monthly reports shall be submitted by to OMWBD no later than the 15<sup>th</sup> of each month. Prior to issuing the monthly reports, OMWBD will make a request to each Agency and Municipal Corporation to confirm that all information for the reporting period is complete; after which, the OMWBD will finalize its report for the month.

The status of progress made will be submitted to the Office of the Mayor, the Equal Opportunity Advisory Board, and reporting units.

In addition, the following guidelines are to be followed by the reporting units:

- A. The previous year's Monthly Status Report (MSR) data will not be accepted or reviewed by OMWBD after the last day of February of the current year.
- B. MSRs from all Agencies are due to OMWBD by the 15<sup>th</sup> of the month following the end of the reporting period. Any Agency unable to submit their MSR by the 15<sup>th</sup> of the month, must notify OMWBD.
- C. To allow for proper review and updates of each Agency, each MSR will have until the last day of each month following the end of the reporting period to amend its report.
- D. OMWBD provides MSR training, and it is up to each Agency to make a request if this is needed.
- E. If there is a change to the MSR reporting person, an Agency must notify OMWBD within 30 days of the change. In addition, an Agency MSR backup reporting person must be identified.
- F. All Agencies and Municipal Corporations are responsible for submitting subcontractor data with supporting documents to OMWBD to receive MBE/WBE/VBE/DOBE participation credit.

## **COUNTING MBE/WBE/VBE/DOBE PARTICIPATION TOWARD MEETING GOALS**

MBE/WBE/VBE/DOBE participation shall be counted toward meeting MBE/WBE/VBE/DOBE goals set in accordance with this subpart as follows:



- A. When an MBE/WBE/VBE/DOBE participates in a contract, you count only the value of the work actually performed by the MBE/WBE/VBE/DOBE toward MBE/WBE/VBE/DOBE goals. A commercial useful function must be provided to count utilization.
- a. Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (A)(a.) of this section) that is performed by the MBE/WBE/VBE/DOBE own forces. Include the cost of supplies and materials obtained by the MBE/WBE/VBE/DOBE for the work of the contract, including supplies purchased or equipment leased by the MBE/WBE/VBE/DOBE (except supplies and equipment the MBE/WBE/VBE/DOBE subcontractor purchases or leases from the prime contractor or its affiliate).
  - b. Count the entire amount of fees or commissions charged by a MBE/WBE/VBE/DOBE firm for providing a bona fide service, such as professional, technical, general contracting, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the contract, toward MBE/WBE/VBE/DOBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  - c. When a MBE/WBE/VBE/DOBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward MBE/WBE/VBE/DOBE goals only if the MBE/WBE/VBE/DOBE subcontractor is itself a MBE/WBE/VBE/DOBE. Work that an MBE/WBE/VBE/DOBE subcontracts to a non- MBE/WBE/VBE/DOBE firm does not count toward MBE/WBE/VBE/DOBE goals.
- B. When an MBE/WBE/VBE/DOBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the MBE/WBE/VBE/DOBE performs with its own fulltime forces toward MBE/WBE/VBE/DOBE goals.
- C. Count expenditures to an MBE/WBE/VBE/DOBE contractor toward MBE/WBE/VBE/DOBE goals only if the MBE/WBE/VBE/DOBE is performing a commercially useful function on that contract with its own fulltime forces.
- a. A MBE/WBE/VBE/DOBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involve (at least 30 percent of the total cost of project). To perform a commercially useful function, the MBE/WBE/VBE/DOBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a MBE/WBE/VBE/DOBE is performing a commercially useful function, you must 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/WBE/VBE/DOBE credit claimed for its performance of the work, and other relevant factors.
  - b. An MBE/WBE/VBE/DOBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of MBE/WBE/VBE/DOBE participation. In determining whether an MBE/WBE/VBE/DOBE is such an extra participant, you must examine similar transactions, particularly those in which MBE/WBE/VBE/DOBE do not participate.

- c. If a MBE/WBE/VBE/DOBE 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/WBE/VBE/DOBE 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, you must presume that it is not performing a commercially useful function.
  - d. When an MBE/WBE/VBE/DOBE is presumed not to be performing a commercially useful function as provided in paragraph (C)(c.) of this section, the MBE/WBE/VBE/DOBE may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
- D. Use the following factors in determining whether an MBE/WBE/VBE/DOBE trucking company is performing a commercially useful function:
  - a. The MBE/WBE/VBE/DOBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting MBE/WBE/VBE/DOBE goals.
  - b. The MBE/WBE/VBE/DOBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
  - c. The MBE/WBE/VBE/DOBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates, using drivers it employs.
  - d. The MBE/WBE/VBE/DOBE may lease trucks from another MBE/WBE/VBE/DOBE firm, including an owner-operator who is certified as an MBE/WBE/DOBE. The MBE/WBE/VBE/DOBE who leases trucks from another MBE/WBE/VBE/DOBE receives credit for the total value of the transportation services the lessee MBE/WBE/VBE/DOBE provides on the contract. Procurement of third-tier sub-contracting must be reviewed by OMWBD prior to bid award.
  - e. The MBE/WBE/VBE/DOBE may also lease trucks from a non-MBE/WBE/VBE/DOBE firm, including an owner-operator. The MBE/WBE/VBE/DOBE who leases trucks from a non-MBE/WBE/VBE/DOBE is not entitled to any credit for the total value of the transportation services. Procurement of third-tier sub-contracting must be reviewed by OMWBD prior to bid award.
  - f. For purposes of this paragraph (D), a lease must indicate that the MBE/WBE/VBE/DOBE has exclusive use of and control over the truck(s) per project. This does not preclude the leased truck from working for others during the term of the lease with the consent of the MBE/WBE/VBE/DOBE, so long as the lease gives the MBE/WBE/VBE/DOBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the MBE/WBE/VBE/DOBE at all time on each project.
- E. Count expenditures with MBE/WBE/VBE/DOBE for materials or supplies toward MBE/WBE/VBE/DOBE goals as provided in the following:
  - a. i. If the materials or supplies are obtained from an MBE/WBE/VBE/DOBE manufacturer, count 100 percent of the cost of the materials or supplies toward the

MBE/WBE/VBE/DOBE goals.

- ii. For purposes of this paragraph (E)(a.), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the raw materials, supplies, articles, delivery method, or equipment required under the contract and of the general character described by the specifications.
- b.
  - i. If the materials or supplies are purchased from an MBE/WBE/VBE/DOBE regular dealer(supplier/distributor), count 60 percent of the cost of the materials or supplies toward MBE/WBE/VBE/DOBE goals.
  - ii. For the purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, inventory of the material it supplies, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock at all time, and regularly sold or leased to the public in the usual course of business. A regular dealer takes responsibility of the equipment it sells through its own logistics and drop shipment to site. Refer to OMWBD for the complete guidelines.
  - iii. To be regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale, or lease of the products in question.
  - iv. A person may be a regular dealer in such bulk items as petroleum products, without owning, operating, or maintaining a place of business as provided in this paragraph (E)(b.) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad-hoc or contract-by-contract basis.
  - v. Packagers, brokers, manufacturers' representatives, procurement specialist, leasing, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph (E)(b.).
  - vi. Broker credit is appropriate when the DBE arranges or expedites the transaction of materials or supplies that it does not manufacture or deliver and is not in possession of the products. In this type of transaction, a DBE would serve as a third-party intermediary between the manufacturer and the contractor providing project driven sales. The DBE assumes little to no risk in this transaction and is awarded DBE credit for the "mark-up" of the product only. Drop ship transactions would only be eligible for broker credit. There is no maintained facility where inventory is kept on a regular basis for sale to the general public.
  - vii. For direction on how a specialty item can be eligible for supplier credit, see the discussion provided below. A specialty item that does not fully meet these requirements can only be credited at brokerage rates.
- c. With respect to materials or supplies purchased from a MBE/WBE/VBE/DOBE that is neither a manufacturer nor a regular dealer, count the entire amount of the fees or commissions charged for the assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward MBE/WBE/VBE/DOBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies

themselves toward MBE/WBE/VBE/DOBE goals, however.

- F. If a firm is not currently certified as an MBE/WBE/VBE/DOBE in accordance with the certification standards of OMWBD at the time of the execution of the contract, do not count the firm's participation toward any MBE/WBE/VBE/DOBE goals, except for the following:
  - a. If the MBE/WBE/VBE/DOBE ineligibility is caused solely by its having exceeded the size standards during the performance of the contract, you may continue to count its participation on that contract toward the overall and contract goals.
  - b. If a contractor has executed a contract with a certified firm prior to the MBE/WBE/VBE/DOBE firm being notified of its ineligibility, you may count the use of this firm on the contract and may continue to receive credit toward your MBE/WBE/VBE/DOBE goal for the firm's work.
- G. Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal.
- H. Do not count the participation of an MBE/WBE/VBE/DOBE subcontractor toward the contractor's final compliance with its MBE/WBE/VBE/DOBE obligations on a contract until the amount being counted has actually been paid to the MBE/WBE/VBE/DOBE.
- I. Only work with listed certified MBE/WBE/VBE/DOBE prior to the date of letting will count towards the goals. Credit towards contract goals will be given only for work performed by the certified MBE/WBE/VBE/DOBE's in the work area (scopes of services) for which they have been certified. The same requirements with respect to obtaining the goal apply for a contractor that is certified as a MBE/WBE/VBE/DOBE. An MBE/WBE/VBE/DOBE contractor must either achieve the goal utilizing other MBE/WBE/VBE/DOBE firms or demonstrate that the goals could not be met despite good faith efforts.

## **MBE/WBE/VBE/DOBE PROGRAM ELEMENTS**

### **Purchases Greater than \$500.00 but less than \$50,000.00 -Small Contract Enhancement Program**

For a procurement in excess of \$500.00 but less than \$50,000.00, at least three quotes must be provided that include at least two MBE/WBE/VBE/DOBEs who can perform the scope of work.

If there is no MBE/WBE/VBE/DOBE listed in the category code, no MBE/WBE/VBE/DOBE in the scope of work provides a quote, the Administrator determines that it is impractical or not in the best interest of the City to award the contract to the MBE/WBE/VBE/DOBE based on price, or the contracting department rejects all quotes from MBE/WBE/VBE/DOBEs, then three quotes should be obtained from non- MBE/WBE/VBE/DOBEs, and competitive bidding shall be conducted pursuant to policies promulgated by the Administrator.

If there is only one MBE/WBE/VBE/DOBE who can perform the scope of work or only one MBE/WBE/VBE/DOBE who can perform the scope of work responds to the City's request for quote, then at least three quotes in total, including the MBE/WBE/VBE/DOBE, must be obtained from non-MBE/WBE/VBE/DOBEs in the scope of work. The contract will be awarded to the lowest responsible and responsive quoter.

### **Mentor-Protégé Program: Purchases \$150,000.00 or more**

The Administrator and Director of OMWBD shall find eligible projects or contracts of \$150,000.00 or more where good faith efforts for MBE/WBE/VBE/DOBEs to enter into a mentor-protégé relationship shall be required. This determination will be made on a project-by-project (contract-by-contract) basis on and will be based upon the scope of work and market availability.

On such contracts in which good faith efforts to enter into a mentor-protégé relationship are required, no bid shall be accepted unless submitted by a mentor-protégé team, unless OMWBD has determined that good faith efforts to enter into a mentor-protégé relationship have been demonstrated. The OMWBD shall determine whether good faith efforts to enter into a mentor-protégé relationship have been adequately demonstrated based on a review of relevant facts, documents and circumstances.

On such eligible contracts for MBE/WBE/VBE/DOBEs in which good faith efforts to enter into a mentor-protégé relationship are required, the mentor and protégé team members must have different race ownership, different gender ownership, or both. MBE/WBE/VBE/DOBE members of the mentor-protégé team must be certified as such by OMWBD, and the mentor-protégé team shall include in its bid submittal the vendor number of each MBE/WBE/VBE/DOBE team member. The MBE/WBE/VBE/DOBE members should maintain its certification through the duration of the contract. A bid submitted by a mentor-protégé team comprised of bidders with both the same race and gender ownership shall be deemed nonresponsive and rejected.

As to each mentor-protégé relationship under this section, a written mentor-protégé agreement must be completed by both parties to the mentor-protégé relationship and executed before a notary public, which clearly delineates the rights and responsibilities of the mentor and protégé, complies with any requirements of OMWBD as set forth in bid documents or otherwise, and provides that the mentor-protégé relationship shall continue for, at a minimum, the duration of the project.

The OMWBD shall review and approve all contractual agreements regarding the terms and provisions of the mentor-protégé relationship prior to the award of a contract on an eligible project for MBE/WBE/VBE/DOBEs to the mentor protégé team. Agreements must be submitted on or before the date set for receipt of bids on an eligible project. A bid submitted by a mentor-protégé team that does not include a satisfactory written mentor-protégé agreement in accordance with the requirements of this section shall be deemed non-responsive and rejected.

During the term of the contract the mentor and protégé businesses must each provide to OMWBD a quarterly summary of the mentor skills provided to the protégé, which shall include:

- (1) The time spent between mentor and protégé businesses in furtherance of the mentor-protégé relationship;
- (2) The nature and extent of managerial, technical, financial and/or bonding assistance provided;
- (3) A summary and explanation of any projects bid on or undertaken by the mentor-protégé team in the private sector or for a governmental entity other than the city; and
- (4) Any additional or further information required by OMWBD as set forth in bid documents or otherwise.

No officer, director, employee or member of the mentor-protégé team shall be allowed to bid or otherwise participate independently on a contract where the mentor protégé team is bidding or otherwise participating.

Each member of the mentor-protégé team shall provide OMWBD access to review all records pertaining to mentor-protégé agreements before and after the award of a contract in order to reasonably assess compliance with this subdivision.

Penalties for noncompliance. Any responsible bidder who fails to comply with this section shall be subject to any or all of the penalties contained in IMC. \_\_\_\_\_

### **Joint Venture Program: Projects over \$10,000,000.00**

Based upon the scope of work and market availability, the Administrator and the Director of OMWBD shall determine on a project-by-project basis on eligible contracts where a contractor shall make good faith efforts with MBE/WBE/VBE/DOBEs.

Only projects valued over \$10,000,000.00 are eligible for consideration under this section. On such projects in which good faith efforts to enter into a joint venture relationship is required, no bid shall be accepted unless submitted by a joint venture, unless OMWBD has determined that good faith efforts to enter into a joint venture have been demonstrated. OMWBD shall determine whether good faith efforts to enter into a joint venture have been adequately demonstrated based on a review of relevant facts, documents and circumstances.

- A. On such eligible projects, in which good faith efforts to enter into a joint venture relationship is required, the joint venture member businesses must have different race ownership, different gender ownership, or both. MBE/WBE/VBE/DOBE members of the joint venture must be certified as such by the OMWBD, and the joint venture team shall include in its bid submittal the MBE/WBE/VBE/DOBE certification number of each MBE/WBE/VBE/DOBE joint venture member. A bid submitted by a joint venture comprised of bidders with both the same race and gender ownership shall be deemed non-responsive and rejected.
- B. As to each joint venture under this section, a written joint venture agreement must be completed by all parties to the joint venture and executed before a notary public, which clearly delineates the rights and responsibilities of each member or partner, complies with any requirements of the OMWBD as set forth in bid documents or otherwise, and provides that the joint venture shall continue for, at a minimum, the duration of the project.
- C. The Director of OMWBD shall review and approve all contractual agreements regarding the terms and provisions of each joint venture relationship prior to the award of a contract on an eligible project for MBE/WBE/VBE/DOBEs to the joint venture, including agreements pertaining to:
  - a. The initial capital investment of each venture partner;
  - b. The proportional allocation of profits and losses to each venture partner; no XBE
    - i. venture partner's liability should ever exceed said partners percentage of revenue
    - ii. earned while a participant in the joint venture.
  - c. The sharing of the right to control the ownership and management of the joint venture;
  - d. Actual participation of the venture partners on the project;



- e. The method of and responsibility for accounting;
  - f. The method by which disputes are resolved; and
  - g. Any additional or further information required by OMWBD as set forth in bid documents or otherwise.
- D. Agreements must be submitted on or before the date set for receipt of bids on an eligible project. A bid submitted by a joint venture that does not include a satisfactory written joint venture agreement in accordance with the requirements of this section shall be deemed non-responsive and rejected.
- E. The joint venture, and each member of the joint venture, shall provide OMWBD access to review all records pertaining to joint venture agreements before and after the award of a contract in order to reasonably assess compliance with this subdivision.
- F. Penalties for noncompliance. Any responsible bidder who fails to comply with this section shall be subject to any or all of the penalties contained in the Municipal Code.

## **PROMPT PAYMENTS TO SUBCONTRACTORS**

Vendors awarded City contracts shall ensure the prompt and full payment of any subcontractors working on the contract. Every contract by the City for the performance of work shall contain a provision requiring the prime contractor to certify in writing that all subcontractors and suppliers have been paid promptly for work and materials from previous progress payments received (less any retainage) by the prime contractor prior to receipt of any further progress payments. A contractor is required to pay subcontractors or suppliers funds due from progress payments within fifteen (15) business days of receipt of payment from the City. The City encourages that contractors make payments to subcontractors through a P-Card system, though this shall not be a criteria or a requirement for a subcontractor to provide services to a contractor.

During the contract and upon completion of the contract, the City may request documentation to certify payment to subcontractors or suppliers. This subsection in no way creates any contractual relationship between any subcontractor and the City or any liability on the City for contractor's failure to make timely payment to the subcontractor.

## **FALSE REPRESENTATION BY CONTRACTOR & BREACH OF CONTRACT**

- A. Ind. Code 5-16-6.5-4: False representations by contractor to public agency; breach of contract

A contractor who, knowingly or intentionally, falsely represents to a City Department or public agency that the contractor: (1) is a disadvantaged business enterprise or a women-owned business enterprise; or (2) will use the services or commodities of a disadvantaged business enterprise or a women-owned business enterprise, is in breach of contract.

- B. Ind. Code 5-16-6.5-5: Penalties for breach of contract

IC 5-16-6.5-5(a) If a breach of contract occurs under section 4 of this chapter, the public agency shall suspend all payments to the contractor under that contract unless it determines that the contractor made a good faith effort to avoid the breach but unable to do so.

IC 5-16-6.5.5(b) If the public agency determines that the contractor did not act to avoid the breach, it may:

- a. Rescind the contract and recover all amounts paid under it if the breach occurs under section 4(1) of this chapter;
- b. Recover all amounts paid to the contractor under the contract that were intended for expenditure with a disadvantaged business enterprise of a woman owned business enterprise if the breach occurred under section 4(2) of this chapter; or
- c. Employ any legal or administrative remedies that the agency prescribes by rule or in the contract.

C. Ind. Code 5-16-6.5-6: Bidding restrictions on contractors breaching contracts

If a contractor commits a breach of contract under section 4 of this chapter, the contractor is prohibited from bidding on contracts awarded by any public agency for up to thirty-six (36) months. The public agency shall determine the period of time during which the contractor is prohibited from bidding on contracts under this section.

D. IC 5-16-6.5-2 "Public agency" defined

As used in this chapter, "public agency" includes the following: (1) A political subdivision as defined in IC 36-1-2-13

## **MBE/WBE/VBE/DOBE COMPLAINT PROCEDURE**

Businesses certified as a Minority Business Enterprise (MBE), a Women Business Enterprise (WBE), a Veteran Business Enterprise (VBE) or a Disabled Owned Business Enterprise (DOBE) by the City of Indianapolis may file work related complaints with the Office of Minority and Women Business Development (OMWBD). The complaint may involve any factor related to a City contract, such as late payments or failure to receive payments for work performed by the affected MBE, WBE, VBE or DOBE.

While the OMWBD has no control over the other City/County/Municipal Departments, it will intercede on behalf of an affected MBE, WBE, VBE, or DOBE if it has been determined that the MBE, WBE, VBE, or DOBE has a justifiable complaint.

## **PENALTIES AND REMEDIES**

### **Discrimination or Retaliation**

When the City determines that discrimination or retaliation has occurred in violation of this Plan, the City shall order any one or more of the following actions (listed in ascending order of severity):

- A. Issuance of a finding that the respondent Bidder is not a responsive Bidder within the meaning of the bid statutes with respect to specific contracts that the City has put out for bids or intends to put out for bids at the time of such finding;
- B. Exercise of any other rights or remedies available to the City under any current contract between the Bidder and the City, other than rescission, suspension or termination of the contract, including but not limited to the assessment of liquidated damages;

- C. Rescission, suspension or termination of any current contract between the respondent business and the City under the terms thereof; or
- D. Disqualification of the respondent Bidder from bidding and receiving contract awards on City projects and from participating in City contracts as a subcontractor, vendor or supplier for a period of not more than two (2) years, provided that the respondent Business shall have the right to petition the City for reinstatement of its active bidder status by demonstrating to the City's reasonable satisfaction that the problems for which it was disqualified have been cured; and
- E. Referral of the matter for criminal investigation for fraud and other violations under Indiana law if appropriate under the circumstances.

### **Criminal Sanction for Fraud**

- A. OMWBD shall determine whether substantial evidence is available indicating that fraud or other unlawful activity has been committed by:
  - 1. An MBE/WBE/VBE/DOBE certification or recertification applicant;
  - 2. A certified MBE/WBE/VBE/DOBE or majority prime contractor falsely reporting the utilization of MBE/WBE/VBE/DOBE subcontractors;
  - 3. An individual or firm attempting to benefit from or participate in the MBE/WBE/VBE/DOBE program through fronting activity or false representation of a commercially useful function; or
  - 4. Whether other fraudulent or unlawful activity has occurred.
- B. If OMWBD determines that substantial evidence exists indicating fraud or other unlawful activity has occurred, the matter shall be referred to the Office of Corporate Counsel, who will refer the matter to the appropriate legal authorities for investigation; and, in the event a conviction or guilty plea is obtained stemming from such criminal prosecution, the business entity and its principals shall be barred from participation in City contracts for a minimum of one (1) year and may be barred permanently from participation in City contracts.

# APPENDIX -FORMS



## MBE/WBE/VBE/DOBE BUSINESS UTILIZATION PROGRAM SUMMARY

The Consolidated City of Indianapolis and Marion County ("City") is committed to maximizing subcontracting opportunities for all qualified and available MBE/WBE/VBE/DOBEs. The MBE/WBE/VBE/DOBE Business Utilization Program applies to City funded contracts of \$50,000.00 or more.

There are two components of the MBE/WBE/VBE/DOBE Business Utilization Program:

- **MBE/WBE/VBE/DOBE Participation Goals:** This component requires bidders to make subcontracting opportunities available to minority, women, veteran, and disabled-owned businesses certified in the City's MBE/WBE/VBE/DOBE program at the minimum percentage stated in the bid invitation. To count towards the MBE/WBE/VBE/DOBE participation goal, the MBE/WBE/VBE/DOBE must be certified in the category code(s) that will be used on the project. A list of City-certified MBE/WBE/VBE/DOBEs is available on the City's website at <https://www.indy.gov/activity/find-omwbd-contractor> or from the Office of Minority & Women Business Development.
- **Outreach/Good Faith Efforts:** The MBE/WBE/VBE/DOBE Participation Goals component. This component requires bidders to provide evidence of outreach efforts and good faith efforts made to subcontract with MBE/WBE/VBE/DOBEs.

To be eligible for an award of this project, the City will first determine whether a bidder meets the stated minimum percentage of MBE/WBE/VBE/DOBE participation. The percentage is clearly stated in the bid invitation. In the event that a bidder does not meet the stated minimum percentage, a request for program waiver must be submitted with the bid, using the [Application For MBE/WBE/VBE/DOBE Program Waiver Form](#) and the City will score the bidder's outreach/good faith effort.

**Pursuant to the MBE/WBE/VBE/DOBE Business Utilization Program requirements, the following items are included in the bid invitation and must be completed, signed and submitted in each bid;** failure to complete these forms with all the pertinent- requested information may cause a bid to be determined as non- responsive for MBE/WBE/VBE/DOBE review purposes:

1. [MBE/WBE/VBE/DOBE Participation Goals For Construction, Goods/Supplies, And Services Form.](#)
2. [Application For MBE/WBE/VBE/DOBE Program Waiver Form](#), if a bidder does not meet the stated minimum percentage

**The following forms are included in the bid invitation for information purposes only and do not have to be completed or returned with the bid.**

1. [Letter Of Intent To Perform As A Subcontractor/Supplier Form](#): (must be completed and submitted to the Agency with a copy to the Office of Minority & Business Development after bid opening and within three (3) business days of bidder's notification of award).
2. [Subcontractor and Suppliers List](#): (must be completed and submitted within three (3) business days of bidder's notification of award).
3. [MBE/WBE/VBE/DOBE Subcontractor Substitution Request Form](#): (must be submitted for advance approval for any proposed change in MBE/WBE/VBE/DOBE subcontractors).
4. [Subcontractor/Subconsultant Payment Report](#): (must be submitted at least monthly with each Contractor invoice for payment).

If you have any questions or need assistance in meeting these requirements, please feel free to contact the Office of Minority & Women Business Development at (317) 327-5262.



## MBE/WBE/VBE/DOBE PARTICIPATION GOALS FOR CONSTRUCTION, GOODS/SUPPLIES, AND SERVICES

Submittal Due Date: \_\_\_\_\_ Project/Contract Number: \_\_\_\_\_  
Project/Contract Name: \_\_\_\_\_ Bidder: \_\_\_\_\_  
Contact Name: \_\_\_\_\_ Bidder Address: \_\_\_\_\_  
Bidder Phone: \_\_\_\_\_ Bidder E-mail Address: \_\_\_\_\_

Bidder ☐ is ☐ is not a City-certified MBE/WBE/VBE/DOBE and will self-perform \_\_\_\_\_% of the total contract amount.

Does an exclusive contract or agreement exist between the bidder and any subcontractor/supplier listed?

☐ Yes ☐ No If yes, please explain): \_\_\_\_\_

Provide names of MBE/WBE/VBE/DOBE sub-contractors/suppliers with which bidder has not previously worked (if any): \_\_\_\_\_

If Bidder is awarded this contract, the MBE/WBE/VBE/DOBE City certified firms listed below will be utilized in the performance of the contract as a subcontractor/supplier.

Full Legal Name of Firm	MBE, WBE, VBE, or DOBE	Contact Person	Phone #	Description of Work	Dollar Amount	% of Total Contract Amount

Bidder must submit an *Application for MBE/WBE/VBE/DOBE Program Waiver* if it fails to meet the required utilization goals for the contract. Failure to provide the application for waiver at the time of submission **will** result in the disqualification and rejection of the bid/proposal.

It is the policy of the City that bidder requirements which prevent subcontractors/suppliers from bidding as subcontractors on multiple bids is not permitted. Violation of this policy **will** result in the disqualification and rejection of the bid/proposal.

Bidder's Signature: \_\_\_\_\_

Bidder's Name: \_\_\_\_\_

Date: \_\_\_\_\_



## APPLICATION FOR MBE/WBE/VBE/DOBE PROGRAM WAIVER

Pursuant to the Consolidated City of Indianapolis and Marion County Instructions To Bidders, this application for a (check each of the following which apply) ☐ MBE ☐ WBE ☐ VBE ☐ DOBE program waiver is hereby submitted for the Project/Contract listed below by Bidder/Applicant (hereinafter Bidder). (Use additional sheets if necessary.)

Date of Application: \_\_\_\_\_ Project/Contract Number: \_\_\_\_\_  
 Project/Contract Name: \_\_\_\_\_ Bidder: \_\_\_\_\_  
 Contact name: \_\_\_\_\_ Phone: \_\_\_\_\_  
 Address: \_\_\_\_\_ E-mail: \_\_\_\_\_

In attempting to meet the project goal Bidder made the following good faith efforts for the purpose of fulfilling that goal (**Check all that apply**). Minimum score required to establish “good faith” effort is 70 points.

<u>Item:</u>	<u>Weighting</u>	<u>Score</u>
<input type="checkbox"/> 1. Bidder (check one of the following) <input type="checkbox"/> did <input type="checkbox"/> did not attend all pre-bid or pre-solicitation meetings held by the City to inform MBEs, WBEs, VBEs, and DOBEs of contracting opportunities.	10	_____
<input type="checkbox"/> 2. Bidder placed advertisements in search of prospective MBEs/WBEs/VBE and DOBEs for the contract. Provide all such advertisements, including e-mail “send-to” section, if used.	10	_____
<input type="checkbox"/> 3. Bidder provided written notifications to MBEs/WBEs/VBEs/DOBEs notifying them of contracting opportunities in sufficient time to allow them to participate and to minority business assistance agencies for the purpose of locating prospective MBEs, WBEs, VBEs, and DOBEs for the contract. Bidder’s written notification to the Office of the Mayor’s Business Development Program for assistance in locating MBEs, WBEs, VBEs, and DOBEs must also be documented. Provide all such documents.	20	_____
<input type="checkbox"/> 4. Bidder made the following efforts to select portions of the work to be performed by MBE/WBE/VBEs/DOBEs in order to increase the likelihood of achieving the stated goals, including the division of contracts into economically feasible units/parcels to facilitate participation _____ _____ _____	10	_____
<input type="checkbox"/> 5. Bidder contacted and/or negotiated with MBEs/WBEs/VBEs/DOBEs for specific sub-bids and/or partnerships. Please include a description of the information provided to MBE/WBE/VBEs/DOBEs regarding the plans and specifications for portions of the work to be performed and a statement of why prospective agreements with MBE/WBE/VBEs/DOBEs were not reached. Provide detailed documentation of such contacts/ negotiations.	15	_____
<input type="checkbox"/> 6. Bidder provided the following technical assistance to MBEs/WBEs/VBEs/DOBEs in an effort to obtain MBE/WBE/VBE/DOBE participation, such as obtaining bonding, insurance, or a needed line of credit for the project, in an effort to obtain MBE/WBE/VBE/DOBE participation. Provide detailed documentation of such assistance.	15	_____
<input type="checkbox"/> 7. Provided interested MBE/WBE/VBE/DOBE certified to perform the solicited work with prompt access to the plans, specifications, scope of work and requirements of the contract	10	_____
<input type="checkbox"/> 8. Follow-up to initial solicitations. Provide copy of all e-mails and call logs.	10	_____

- ☐ 9. Has project joint venture agreement for this contract with a MBE/WBE/VBE/DOBE business or is a joint venture certified with the City as an MBE/WBE/VBE/DOBE business. MBE/WBE.VBE/DOBE minimum participation shall be 30% or greater (or as may be designated by OMWBD for this contract). 15 \_\_\_\_
- ☐ 10. Has a Mentor-Protégé Agreement with a MBE/WBE/VBE/DOBE business for this contract. MBE/WBE.VBE/DOBE minimum participation shall be 30% or greater (or as may be designated by OMWBD for this contract). 10 \_\_\_\_

TOTAL POINTS: \_\_\_\_

**YOU MUST SUBMIT YOUR SUPPORTING DOCUMENTATION WITHIN 3 BUSINESS DAYS OF NOTIFICATION OF AWARD.**

Bidder certifies that all information contained herein and attached hereto is true and accurate and that all good faith efforts were made by Bidder for the purpose of fulfilling the contract goals. Failure to sign this form will result in the bid being determined non-responsive.

Bidder's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

For Office of Minority & Women Business Development use only.

- ☐ Contract offers no opportunity to utilize subcontractors/suppliers.
- ☐ No MBE/WBE/VBE/DOBEs are certified in the category codes for which there are subcontractor/supplier opportunities.

This Application for Program Waiver is:

- ☐ Not Approved ☐ Approved

- ☐ Approved subject to the following conditions/restrictions: \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
 Camille Blunt, Director  
 Office of Minority & Women Business Development



## LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR/ SUPPLIER

**Instructions:** Within three (3) business days of notification by Owner, the apparent lowest responsive Bidder will be required to submit a "Letter of Intent to Perform as a Subcontractor" for each M/W/V/DOBE subcontractor listed on Bidder's Participation Goals for Construction, Goods/Supplies, and Services.

PROJECT/CONTRACT: \_\_\_\_\_

BIDDER: \_\_\_\_\_

M/W/V/DOBE FIRM FULL LEGAL NAME: \_\_\_\_\_

The M/W/V/DOBE Firm listed below affirms that they are currently certified as a Minority, Women, Veteran or Disability Owned Business Enterprise (M/W/V/DOBE), in its appropriate category code by the City of Indianapolis; YES\_\_ NO\_\_ as a M/W/V/DOBE (Circle One) Trade of Firm : \_\_\_\_\_. The Prime Bidder hereby states its intent to utilize this M/W/V/DOBE Firm on this Project/Contract. The Prime Bidder intends to enter into a contractual agreement with the listed M/W/V/DOBE Sub-Contractor Firm who will provide the following goods/services as agreed to as a tier one sub-contractor. Sub-Contractor agrees to not then sub-contract out services for this project without expressed written advance approval of the Office of Minority & Women Business Development:

SCOPE OF WORK (What Commercial Useful Function will be provided):

ESTIMATED VALUE OF SUBCONTRACT:	\$
---------------------------------	----

This document shall not serve in any manner as an actual subcontract between the two parties. A separate subcontract agreement will describe in detail the contractual obligations of the Bidder and the M/W/V/DOBE Firm.

The M/W/V/DOBE Firm affirms that it will self-perform, and the Bidder affirms it intends to utilize the M/W/V/DOBE to perform, the scope of work at the subcontract value amount stated above.

\_\_\_\_\_  
Bidder Representative's Signature

\_\_\_\_\_  
M/W/V/DOBE Representative's Signature

\_\_\_\_\_  
Print: Name & Title

\_\_\_\_\_  
Print: Name & Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

### **Falsification of Agreement**

Bidder's or MBE/WBE/VBE/DOBE's falsification or misrepresentation of this agreement as to company name, subcontract amount, and/or the scope of work performed by subcontractor will result in sanctions including assessment of penalty fines, termination of contract, and/or debarment.

## **SUBCONTRACTORS AND SUPPLIERS LIST**

*Instructions to Bidders: The Bidder shall submit a completed Subcontractor/Supplier list (see below)*

*The Bidder shall enter the names, the type of work to be done, and the amount, in the Subcontractors/Suppliers List for each subcontractor/supplier that the Bidder proposes to use for services that will be provided for the Project/Contract as part of the total amount bid.*

*Bidder shall also list **ALL** MBE/WBE/VBE/DOBEs to be utilized for the Project/Contract, including their amount, regardless of the amount. Any MBE/WBE/VBE/DOBE subcontractors/suppliers shall be identified as such in the righthand column. Bidder shall indicate below if the subcontractor/supplier has multiple certifications. Failure to list all required Subcontractors/Suppliers, required MBE/WBE/VBE/DOBE information, and required pricing may result in Bid being deemed non-responsive.*

*Only one subcontractor/supplier shall be listed for each line. Upon award of a contract, the named subcontractors/suppliers shall be contracted to perform the work, unless changes are specifically authorized by the Owner. Failure to furnish all information requested may render the bid non-responsive if it is determined that such omission materially affords the Bidder a substantial advantage over other Bidders.*

*Except as otherwise specifically stated by the Bidder in this Part, omission of any names of subcontractors/suppliers herein shall constitute an affirmative representation and statement that the Bidder proposes to use its own work force for that portion of the Contract.*

*Bidder's attention is directed to paragraphs 6.8, 6.9, and 6.11 of the City of Indianapolis Standard General Conditions for Construction Contracts as they relate to use of subcontractors/suppliers.*

(Check if applicable)

Full Subcontractor Name	Description of Work	Amount	MBE	WBE	VBE	DOBE
		\$				
		\$				
		\$				
		\$				
		\$				
		\$				
		\$				
		\$				
Full Supplier Name	Description of Work	Amount	MBE	WBE	VBE	DOBE
		\$				
		\$				
		\$				
		\$				
		\$				

(please duplicate and use this form, if additional sheets are necessary)



## MBE/WBE/VBE/DOBE SUBCONTRACTOR SUBSTITUTION REQUEST

Contract Name: \_\_\_\_\_

This form must be completed and submitted to the Office of Minority & Women Business Development prior to terminating the contract of a MBE/WBE/VBE/DOBE after the bids have been submitted or contract has been awarded. Information recorded herein will be incorporated in the awardee's contract. The contractor shall make a good faith effort to replace an MBE/WBE/VBE/DOBE subcontractor that is unable to perform successfully with another MBE/WBE/VBE/DOBE. If the proposed subcontractor for substitution is not an MBE/WBE/VBE/DOBE, the completed Application for MBE/WBE/VBE/DOBE Program Waiver request must be submitted with this MBE/WBE/VBE/DOBE Subcontractor Substitution Request.

Company Name: \_\_\_\_\_ Project Name: \_\_\_\_\_  
Address: \_\_\_\_\_ Date Submitted: \_\_\_\_\_

\_\_\_\_\_ will be substituted by \_\_\_\_\_  
(MBE/WBE/VBE/DOBE Subcontractor/Supplier) (Subcontractor/Supplier)

to perform work on the above project as (check one): ☐ a partnership; ☐ a corporation; ☐ sole proprietorship; or,  
☐ a joint venture.

Reason for substitution: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ will enter into a formal agreement for the work upon approval by the OMWBD.  
(Subcontractor/Supplier)

CONTRACT NUMBER	DESCRIPTION OF WORK	SUBCONTRACTOR/ SUPPLIER AMOUNT	% OF TOTAL CONTRACT AMOUNT	START DATE	COMPLETION DATE
	<b>Total Value of Work</b>				

Contractor Name: \_\_\_\_\_

Signature of Company Representative \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

Subcontractor/Supplier Name: \_\_\_\_\_

Signature of Company Representative: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CITY OF INDIANAPOLIS SUBCONTRACTOR / SUBCONSULTANT PAYMENT REPORT**  
**(Submit With All Payment Requests)**

PRIME VENDOR NAME					PAYMENT PERIOD DATE RANGE						
PRIME VENDOR INVOICE NO.					LABOR						
PROJECT NO./CONTRACT NO.					EXPENSES						
PURCHASE ORDER NO.					AMOUNT BILLED		\$0.00				
PRIME VENDOR	MBE (Y/N)	WBE (Y/N)	VBE (Y/N)	DOBE (Y/N)	DESCRIPTION OF WORK	INVOICED THRU DATE	PRIME CONTRACT AMOUNT	AMOUNT BILLED THIS PERIOD	AMOUNT PAID TO DATE	% PAID TO DATE	
SUBCONTRACTORS / SUPPLIERS (ADDRESS/ZIP CODE/TELEPHONE)	MBE (Y/N)	WBE (Y/N)	VBE (Y/N)	DOBE (Y/N)	DESCRIPTION OF WORK	INVOICED THRU DATE	TOTAL SUBCONTRACT AMOUNT	AMOUNT BILLED THIS PERIOD	AMOUNT PAID TO DATE	% PAID TO DATE	
PRIME VENDOR SIGNATURE	(Signature)					TOTALS	\$0.00	\$0.00	\$0.00		
PRIME VENDOR PRINTED NAME						MBE / WBE / VBE / DOBE SUBCONTRACTOR PARTICIPATION					
NOTES: 1. City of Indianapolis reserves the right to verify directly with the vendor / supplier the accuracy of this information. 2. % Paid To Date represents the percentage of the vendors contract amount that has been paid to date. 3. When a subcontractor or subconsultant has multiple disadvantaged business enterprise certifications, only check the one you are being counted as for the current contract by indicating a "Y" in the proper column for MBE / WBE / VBE / DOBE. 4. The Prime contract amount cannot be counted towards the MBE / WBE / VBE / DOBE goals for this particular report.							SUBCONTRACT AMOUNT	% of Contract	AMOUNT PAID THIS PERIOD	AMOUNT PAID TO DATE	% of Invoiced
						MBE	\$ -		\$ -	\$ -	
						WBE	\$ -		\$ -	\$ -	
						VBE	\$ -		\$ -	\$ -	
						DOBE	\$ -		\$ -	\$ -	

**\* ALL WHITE FIELDS ARE TO BE COMPLETED BY VENDOR.**

**\*\* ALL YELLOW FIELDS ARE COMPUTED BY A FORMULA.**