

ORDINANCE No. 10761-21

Passed by the Common Council of the City of South Bend, Indiana

May 10, 21
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Attest: Dawn M. Jones City Clerk
Dawn M. Jones

Attest: Karen L White President of Common Council

Presented by me to the Mayor of the City of South Bend, Indiana

May 10, 21
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Dawn M. Jones City Clerk
Dawn M. Jones

Approved and signed by me May 12 21
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Mayor

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF SOUTH BEND, INDIANA, REPEALING AND REPLACING CURRENT CHAPTER 14.5 OF THE SOUTH BEND MUNICIPAL CODE TO ADDRESS INCLUSIVE MINORITY AND WOMEN BUSINESS ENTERPRISE DEVELOPMENT PROGRAMS

STATEMENT OF PURPOSE AND INTENT

Consistent with the intent of Ordinance 10693-19, the City of South Bend (the "City") remains committed to reducing barriers to full and fair opportunities on City contracts for minority and women owned firms, including adopting mechanisms to capture and quantify minority and women business enterprise utilization in City contracting and procurement, developing opportunities for small local minority and women owned firms to participate in competing for City business, and creating a thriving and inclusive economic ecosystem.

As a tool for discerning the City's challenges and opportunities in this vein, in 2018, the City commissioned the City's first Minority and Women Business Enterprise Disparity Study ("Study"). Colette Holt & Associates ("CHA") was retained by the City to perform a study to determine its utilization of Minority-and-Women-Owned Business Enterprises (collectively "MWBEs"); the availability of MWBEs in its market area; any disparities between its utilization and MWBE availability; and to evaluate whether the use of race-conscious measures is supported by the results of this analysis. In 2020, CHA submitted a revised version of the Study (the "Revised Study") to correct errors CHA committed in the Study that supported the adoption of Ordinance 10693-19. Accordingly, based on the City's ongoing commitment to the objectives stated in this Ordinance and informed by the City's now-improved understanding of the specific time period examined by the Study and the Revised Study, the City is now positioned to develop and implement the most appropriate and effective measures – and to continue those efforts commenced following the adoption of Ordinance 10693-19 – to serve the objectives of this Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Common Council of South Bend, Indiana, as follows:

SECTION I. The current version of Chapter 14.5 of the South Bend Municipal Code is repealed and replaced to read in its entirety as follows:

CHAPTER 14.5 INCLUSIVE PROCUREMENT AND CONTRACTING WITHIN THE CITY

Sec. 14.5-1. Legislative Intent

The following regulations are enacted to promote equal opportunity for minority and women-owned businesses, including small local businesses, and to encourage utilization of such businesses in City contracting and procurement.

It is the City's policy to:

- a) Ensure nondiscrimination in the award and administration of City contracts and take affirmative steps to address past discrimination as allowed under *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989);
- b) Create a level playing field on which underutilized minority and women business enterprises can compete fairly for City contracts;
- c) Ensure that only firms that fully meet eligibility standards are permitted to participate as underutilized minority and women business enterprises;
- d) Help remove barriers to the participation of underutilized minority and women business enterprises in City contracts;
- e) Assist the development of minority and women owned businesses and facilitate the growth of business infrastructure to allow firms to compete successfully in the City's Marketplace outside any targeted minority and women business enterprise Program; and
- f) Ensure that the Minority and Women Business Enterprise Program is administered in accordance with applicable law; and
- g) Strive to increase both the availability and utilization of minority and women-owned businesses.

Sec. 14.5-2. Definitions

As used in this Chapter, the following terms shall have the following meanings:

- a) **City** means the City of South Bend, Indiana.
- b) **City's geographic marketplace** means the geographic area as defined by the City's most current MWBE Disparity Study that now includes all counties in the state of Indiana and Berrien County, Michigan.
- c) **Contract** means any procurement contract identified by the Program Plan as subject to this Chapter.
- d) **Contractor** means any person, partnership, corporation, limited liability company, association or joint venture that has been awarded a City contract.
- e) **Emergency contract** means a contract that is awarded on an emergency basis due to a threat of harm to person or property or threat of disruption of governmental services.
- f) **Inclusive Procurement and Contracting Board** means the eleven (11) member entity appointed by Common Council, the Mayor, Department of Public Works, Department of Community Investment, the AFL-CIO chapter serving the City of South Bend, and Regional Chamber of Commerce as established in this Chapter
- g) **Local business** means a small business located within the geographic area of St. Joseph County, Indiana, Elkhart County, Indiana, Porter County, Indiana, Lake County, Indiana, LaPorte County, Indiana, Marshall County Indiana, and Berrien County, Michigan where at least 30% of firm employees live within those geographic boundaries.
- h) **Mayor** means the Mayor of the City .
- i) **Program** means the Minority and Women Business Enterprise Inclusion Program established by this Chapter.
- j) **Program Administrator** means the person designated by and reporting directly to the Mayor to support the City's inclusion, diversity, equity, and access goals. At the passing of this ordinance, the designee shall be the Diversity and Inclusion Officer,

the title of whom is subject to future change. The Program Administrator shall work with the City's Inclusive Procurement and Contracting Board, Legal Department, and contracting agencies to assist in making recommendations, overseeing, implementing, and enforcing this Chapter.

- k) **Program Plan** means the Minority and Women Business Enterprise Inclusion Program Plan
- l) **Specialized Engineering Services** means engineering services beyond design or build of basic structures in which the services involve more specific emphasis on particular areas of applied mathematics, applied science, and narrow specific types of application. Specialized engineering services may include but are not limited to aquatic and environmental engineering; computer engineering (the combination of computer science and electronics engineering to develop hardware and software for governmental bodies); electrical power generation; geotechnical engineering; highway and transportation engineering (the safe, efficient, rapid, convenient, economic and environmentally compatible movement of people, goods and transportation); safety engineering; water resource & supply engineering (includes water supply, treatment, distribution, and management); sanitary engineering (includes wastewater treatment for sewage or industrial wastewater); robotics; thermodynamics; and telecommunications engineering
- m) **Subcontractor** means any person entering into a contract with a contractor to directly furnish services or supplies toward the contract.

Sec. 14.5-3. Establishment of Program Plan

The Program Administrator shall provide City-wide oversight and be responsible for working with affected departments to develop policies, procedures, metrics, and reporting mechanisms designed to achieve the goals of this Chapter 14.5. These policies, procedures, and reporting mechanisms shall be incorporated into the Minority and Women Business Enterprise Inclusion Program Plan ("Program Plan"). The City's Program Administrator shall be responsible for developing and maintaining the Program Plan.

Any changes made by the Program Administrator to the Program Plan (as incorporated in this ordinance) will be reviewed by the Inclusive Procurement and Contracting Board at the next regular meeting following the implementation of the change.

On an annual basis, the Program Administrator shall provide to Council and make public the current version of the Program Plan. In addition, on an annual basis, the Program Administrator shall present to Council an overview of the current version of the Program Plan, including any changes in policies, procedures, metrics, or reporting mechanisms.

Sec. 14.5-4. Inclusive Procurement and Contracting Board

- a) **Eleven-Member Board:** There is created a City Inclusive Procurement and Contracting Board to assist in the implementation of the goals and purposes of this Chapter. The Board shall consist of eleven (11) members. three (3) members shall be appointed by the Common Council, three (3) members shall be appointed by the Mayor, one (1) member shall be appointed by the AFL-CIO chapter serving the City of South Bend, one (1) member shall be appointed by the South Bend Regional Chamber of Commerce or another officially recognized Chamber of Commerce serving South Bend, one (1) member shall be the Program Administrator or her/his /their designee, one (1) member shall be the Executive Director of Community Investments or her/his/their designee, and one (1) member shall be the Director of Public Works or his/her/their designee.
- b) **Term of Appointments:** All Board appointments expire on December 31st of the second year for which they are made. Board members may be removed at the pleasure of the appointing authority prior to the expiration of their terms.
- c) **Board Officers:** The Board shall elect from its membership a President and a Vice- President, who shall act as the presiding officer in the absence of the President. The Board shall also elect from its membership a Secretary, who shall provide notice and maintain minutes of Board meetings as required under the Indiana Open Door Law.
- d) Board members shall serve without compensation
- e) The Board shall have the following duties and authority:
 - 1. The Board, in consultation with the Program Administrator, shall fix an annual utilization goal percentage for the utilization of MWBEs within the City's geographic marketplace. This annual utilization goal will be based on up-to-date data on weighted availability of MWBE firms in the City's geographic marketplace, gathered in compliance with the procedures outlined in the Program Plan.
 - 2. The Board shall conduct a formal review of the effectiveness of the City in meeting its annual contracting and procurement goals for MWBEs located within the City's defined geographic marketplace.
 - 3. The Board shall provide feedback and recommendations to the Program Administrator on changes to the Program Plan that would increase the effectiveness of the City in meeting its annual contracting and procurement goals.
 - 4. The Board, in consultation with the Program Administrator, shall provide input regarding all efforts employed by the City to foster inclusive procurement and contracting;
 - 5. The Board shall make recommendations to the Mayor and Common Council based on future needs and assessments;
 - 6. The Board shall consult with the Program Administrator regarding the Office of Diversity and Inclusion's budget prior to the annual budget cycle;
 - 7. The Board shall review the MWBE Inclusion Program Plan, in collaboration with the Program Administrator, City Director of Purchasing, and Legal Department annually to ensure legal compliance and adherence to legislative intent;
 - 8. The Board shall work with the City in furtherance of its efforts to eliminate barriers to participation in City contracts, and shall promote diversity and inclusion, by multiple means; and
 - 9. The Board shall take on additional duties as specified in the Program Plan

Sec. 14.5-5. Measures to ensure equitable opportunities for minority and women contractors and subcontractors;

The City shall develop and use measures designed to accomplish the goals and purposes of this Chapter. Specifically, these measures may include either or both of the following:

- a) **Race- and Gender-Neutral Measures:** Measures designed to remedy difficulties in accessing procurement opportunities that facilitate the participation of all firms in City contracting activities. These measures are designed to remedy difficulties such as restrictive bid specifications, excessive experience requirements, and overly burdensome insurance and/or bonding requirements. These measures do not require the City to use race or gender in its procurement decision-making. These race and gender neutral measures shall be detailed in the Program Plan, and shall include, but are not limited to:
 - 1. Implementation of an electronic contracting data collection, monitoring and notification system;

2. Providing resources to implement the Program;
 3. Adoption of a Small Business Enterprise target market; and
 4. Increase of vendor communication and outreach to MWBEs and small firms
- b) Race- and Gender-Conscious Measures: The City shall develop and use constitutionally appropriate, narrowly tailored race- and gender-conscious measures to facilitate the participation of minority and women owned firms in City contracting activities and affirmatively address past discrimination, as identified in a current disparity study or other evidentiary analysis. These measures shall be detailed in the Program Plan, and shall include, but are not limited to:
1. Goal Setting as an annual, overall target for MWBE utilization in City contracts (prime contracts and subcontracts combined);
 2. Goal setting for specific contracts that are narrowly tailored to the specifics of the project;
 3. Clearly delineated policies and forms by which a bidder or proposer can establish that it has either met the contract goal(s) or made good faith efforts to do so;
 4. A process to appeal adverse determinations under the program that meets due process standards;
 5. A full and thorough review of the evidentiary basis for the MWBE program conducted approximately every five to seven years in time to meet the sunset date; and
 6. A sunset date for the MWBE program, to occur seven years from the date of the most recent evidentiary review outlined in subsection (h), that is, when it will end unless reauthorized based upon the findings of an updated disparity study or other evidentiary review.

The specific measures utilized by the City shall be documented in the Program Plan and shall be updated and maintained by the Program Administrator.

Sec. 14.5-6. Nondiscrimination Provisions

- a) All contracts for the purchase of goods, supplies, services and construction awarded by the City shall contain provisions requiring the contractor and its subcontractors not to discriminate against any firm or employee or applicant for employment in the performance of the contract, with respect to hire, tenure, terms, conditions or privileges of contract or employment, or any matter directly or indirectly related to contracting or employment because of race, religion, color, sex, national origin, ancestry, sexual orientation, gender identity, or due to age or disability that does not affect that person's ability to perform the work.
- b) The City will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract on the basis of race, religion, color, sex, disability, national origin, ancestry, sexual orientation or gender identity.
- c) The City will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of its Program with respect to individuals of a particular race, religion, color, sex, national origin, ancestry, sexual orientation, gender identity, or due to age or disability that does not affect that person's ability to perform the work.
- d) In addition to the commitments to nondiscrimination outlined above, the City shall take affirmative steps to remedy historic discrimination as identified in a Disparity Study conducted from time to time by developing and using constitutionally appropriate, narrowly tailored race- and gender-conscious measures to facilitate the participation of minority and women owned firms in City contracting. Further, in connection with the City's narrowly tailored race- and gender-conscious measures, contractors and subcontractors may facilitate the utilization of MWBEs in goal-eligible contracts.

Sec. 14.5-7. Registration Required for All Vendors.

All vendors seeking contracting opportunities with the City shall complete the City's vendor registration process. Registration requirements shall include the provision of information related to a firm's status as a small, local, woman, or minority owned business in addition to general business information as established by the City.

Sec. 14.5-8. Violations and Sanctions

Violations by vendors of the procedures and policies established in the Program Plan may result in sanctions as defined in the Program Plan, including a determination that the violating party is non-responsive and subject to being barred from future City contracts.

Sec. 14.5-9. Maintenance of Records and Reporting Procedures

- a) The City shall implement a comprehensive tracking and reporting system whereby the City can identify and collect information on awards to and utilization of all firms, including MWBEs and other certified businesses as appropriate. The system shall also identify and track subcontractor participation and prompt payment compliance.
- b) The City will prepare and make public an annual report documenting minority and women-owned business participation, including but not limited to, the utilization of MBEs and WBEs on all City Contracts governed by this Program and other certified businesses as appropriate. This report will be presented to the Inclusive Contracting and Procurement Board and the Common Council and will be made publicly available.


Sec. 14.5-10. Emergency Contracts and Certain Professional Services Contracts Exceptions


- a) The provisions of this chapter shall not apply to Emergency Contracts.
- b) Because no attorney may be employed by the City without authorization of the City's Corporation Counsel (Ind. Code 36-4-9-12), legal services are excepted from contract-specific goal setting under the City's Program created by this Chapter.
- c) Specialized engineering services as defined in Section 14.5-2(k) of this Article require selection on a particularized need basis, which often requires a nationwide search in order to identify service providers with the requisite specialized skill set. Factors include the length and breadth of the service provider's experience in the specialty field, reputation for exceptional performance, and sufficiency and experience of service provider's workforce relative to the timing and complexity of the project, among others. At this time, specialized engineering services shall not require contract specific goal setting under the City's Program created by this Chapter.
- d) Notwithstanding exceptions (b) and (c) of this Section, due consideration shall always be given to any such qualified MWBE service provider within the City's geographic market area, and the City shall proactively identify and provide opportunities for MWBE's who perform engineering or legal services to expand into more specialized areas of expertise useful to the City.


SECTION II. Severability: If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason declared to be unconstitutional or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this ordinance.

SECTION III. This ordinance shall be in full force and effect from and after its passage by the Common Council, approval by the Mayor, and legal publication.


Karen White, Council President
South Bend Common Council

Attest:

Dawn M. Jones, City Clerk
Office of the City Clerk

10th Presented by me, the undersigned Clerk of the City of South Bend, to the Mayor of the City of South Bend, Indiana on the
day of May, 2021, at 2pm o'clock m.

Dawn M. Jones, City Clerk
Office of the City Clerk

Approved and signed by me on the 12th day of May, 2021, at 5 o'clock P m.

James Mueller, Mayor
City of South Bend, Indiana

CITY OF SOUTH BEND, INDIANA

MINORITY AND WOMEN BUSINESS ENTERPRISE INCLUSION PROGRAM PLAN

Effective _____, 2021

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1. POLICY STATEMENT

1.A. Objectives/Policy Statement

The following regulations are enacted to promote equal opportunity for minority and women-owned businesses, including small local businesses, and to encourage utilization of such businesses in City contracting and procurement.

It is the City's policy to:

1. Ensure nondiscrimination in the award and administration of City contracts and take affirmative steps to address past discrimination as allowed under *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989);
2. Create a level playing field on which underutilized minority and women business enterprises can compete fairly for City contracts;
3. Ensure that only firms that fully meet eligibility standards are permitted to participate as underutilized minority and women business enterprises;
4. Help remove barriers to the participation of underutilized minority and women business enterprises in City contracts;
5. Assist the development of minority and women owned businesses and facilitate the growth of business infrastructure to allow firms to compete successfully in the City's Marketplace outside any targeted minority and women business enterprise Program; and
6. Ensure that the Minority and Women Business Enterprise Program is administered in accordance with applicable law; and
7. Strive to increase both the availability and utilization of minority and women-owned businesses.

The City has appointed its Inclusive Procurement and Contracting Program Administrator ("Program Administrator") as the designee responsible for administration of the Minority and Women Business Enterprise Program ("Program"). Implementation of the Minority and Women Business Enterprise Program is accorded the same priority as compliance with all other legal obligations incurred by the City. Presently, the Program Administrator designee is the City's Diversity Compliance and Inclusion Officer.

The City has disseminated this Policy Statement to affected governing boards, officials, oversight committees, affected departments, and posted it publicly for reference on the City's website.

This Policy Statement is enacted and approved by the Mayor with the support and concurrence of the Common Council and the Inclusive Procurement and Contracting Board.

2. ANNUAL PARTICIPATION REPORT

The Program Administrator, with input from the Mayor's Office and City departments where necessary, will prepare and make public an annual report documenting minority and women-owned business enterprise participation, including the utilization of certified MWBEs, on all City contracts subject to this Program. The format, content, and timing of the annual report will be determined by the Program Administrator.

3. NON-DISCRIMINATION PROVISIONS

All contracts for the purchase of goods, supplies, services and construction awarded by the City shall contain provisions requiring the contractor and its subcontractors not to discriminate against any firm or employee or applicant for employment in the performance of the contract, with respect to hire, tenure, terms, conditions or privileges of contract or employment, or any matter directly or indirectly related to contracting or employment because of race, sex, religion, color, national origin, ancestry, sexual orientation, gender identity, or due to age or disability that does not affect that firm's or that person's ability to perform the work.

The City will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract on the basis of age, race, sex, religion, color, national origin, ancestry, disability, sexual orientation or gender identity.

In administering the MWBE Program, the City will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of its MWBE Program with respect to individuals based on race, sex, religion, color, national origin, ancestry, sexual orientation, gender identity, or due to age or disability that does not affect that firm's or that person's ability to perform the work.

In addition to the commitments to nondiscrimination outlined above, the City shall take affirmative steps to remedy historic discrimination as identified in a Disparity Study conducted from time to time by developing and using constitutionally appropriate, narrowly tailored race- and gender-conscious measures to facilitate the participation of minority and women owned firms in City contracting. Further, in connection with the City's narrowly tailored race- and gender-conscious measures, contractors and subcontractors may facilitate the utilization of MWBEs in goal-eligible contracts.

4. GENERAL REQUIREMENTS

4.A. Applicability

The Minority and Women Business Enterprise (MWBE) Program applies to any purchase order or contract over \$50,000 awarded by the City or any of its departments, boards or commissions for work, labor, services, supplies, equipment, materials or any combination of the foregoing; specifically including but not limited to, any purchase or lease of materials, any public works project, or contract in which public bids are not required by law. The MWBE Program requirements shall not apply to Emergency contracts, Legal consulting contracts, or Specialized Engineering Services.

4.B. Definitions

The following terms shall have the following meanings:

- 1) **Affiliate** of a person or entity means a person or entity that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person or entity. In determining affiliation, the City shall consider all appropriate factors, including common ownership, common management, and contractual relationships.
- 2) **Agency** means the City's "Purchasing Agency" as established in Ordinance No. 8956-98 which through its named agents has all powers and duties under Ind. Code 5-22, including purchasing for the City and adopting rules and policies for the City's purchases consistent with Indiana law.
- 3) **Annual city goal** means the overall target for MWBE utilization in City contracts (prime contracts and subcontracts combined) as defined by the calculation method used in the City's most recent MWBE Disparity Study, and should be the basis for consideration of overall, annual spending targets for City funds. This target can be the City's goal for its overall spending with certified firms across all industry categories.
- 4) **Bidder** means any person, partnership, corporation, limited liability company, association or Joint Venture seeking to be awarded a City contract.
- 5) **Certification standards** mean standards adopted by the City to determine the eligibility of businesses as Minority and Women Business Enterprises.
- 6) **City** means the City of South Bend, Indiana.
- 7) **City's geographic marketplace** means the geographic area as defined by the City's most current MWBE Disparity Study that now includes all counties in the state of Indiana, and Berrien County, Michigan.

- 8) **City's target marketplace** means the geographic area of St. Joseph County, Indiana, Elkhart County, Indiana, Porter County, Indiana, Lake County, Indiana, LaPorte, Indiana, Marshall County, Indiana, and Berrien County, Michigan.
- 9) **Commercially useful function** means responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing, and supervising the work involved, or fulfilling responsibilities as a joint venture partner.
- 10) **Contract** means any contract over \$50,000 that is awarded by the City, through any of its agents, boards or commissions for work, labor, services, supplies, equipment, professional services, goods, construction, or construction-related activities, and materials or any combination of the foregoing. The term specifically includes but shall not be limited to, any purchase or lease of materials pursuant to IC 36-1-9.5, any public work project authorized pursuant to IC 36-1-12-4, or contract in which public bids are not required by law.
- 11) **Contract goal** means a calculation prepared by the Contract Compliance Coordinator with Program Administrator approval that includes all the following factors: the detailed cost estimate of the work to be performed, or goods purchased; the City's marketplace as defined in this Section, and the availability of MWBEs/DBEs and non MWBEs/DBEs in the City's marketplace determined on a contract-by-contract basis.
- 12) **Contracting agency** means the City department, agency, board or commission, having the power to award a City contract.
- 13) **Contractor** means any person, partnership, corporation, limited liability company, association or Joint Venture that has been awarded a City contract.
- 14) **Disadvantaged Business Enterprise (DBE)** means for-profit small business concerns where socially and economically disadvantaged individuals own at least a 51% interest and also control management and daily business operations. African Americans, Hispanics, Native Americans, Asian-Pacific and Subcontinent Asian Americans, and women are presumed to be socially and economically disadvantaged. Other individuals can also qualify as socially and economically disadvantaged on a case-by-case basis. DBEs must receive DBE certification from the relevant state- generally through the state Uniform Certification Program (UCP). To be regarded as economically disadvantaged, an individual must have a personal net worth that does not exceed \$1.32 million. To be seen as a small business, a firm must meet SBA size criteria AND have average annual gross receipts not to exceed \$23.98 million. Size limits for the airport concessions DBE program are higher.
- 15) **Discriminatory practice** means the exclusion of a person or persons from equal business opportunity because age, race, sex, religion, color, national origin, ancestry, disability, sexual orientation or gender identity.
- 16) **Doing business** means engaging in for-profit activities in the scope of the expertise of the firm and having a physical location from which to do so.
- 17) **Emergency contract** means a contract that is awarded on an emergency basis due to a threat of harm to person or property or threat of disruption of governmental services.
- 18) **Emerging business** means a firm in a line of business formed around a new product, or idea that is in the early stages of development, and or a disadvantaged business that has been formed to meet a local market demand. An emerging industry typically consists of just a few companies and is often centered around new technology or new industry in the City's established geographic and target marketplace.
- 19) **Goal-Eligible Contract** refers to a contract that is able to be divided in a way that would allow a subcontractor to perform a commercially useful function AND that contains work represented by at least one of NAICS codes listed in Table 4-9 ("Unweighted Availability") in the 2019 City of South Bend Disparity Study. This Table 4-9 is reproduced as Attachment A to this Program Plan and will be updated quarterly with new availability estimates. Goal-Eligible Contracts must be bid through the Board of Public Works.

- 20) **Goal waiver** means the acceptance of the lowest responsive and responsible bidder, despite an inability to meet the established contract goals, as a result of the bidder's demonstration of good faith efforts to achieve the contract goals.
- 21) **Good faith efforts** means actions undertaken by a contractor to achieve a contract goal, which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the Program's goals.
- 22) **Inclusive Procurement and Contracting Board** means the board established by City of South Bend Ordinance No. _____.
- 23) **Joint venture** means an association of two or more persons, or any combination of types of business enterprises and persons numbering two or more, proposing to perform a single for-profit business enterprise, in which each joint venture partner contributes property, capital, efforts, skill and knowledge, and in which the MWBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are equal to its ownership interest. Joint ventures must have an agreement in writing specifying the terms and conditions of the relationships between the partners and their relationship and responsibility to the contract.
- 24) **Local business** means a small business located within the City's Target Marketplace, where at least 30% of firm employees live within the City's Target Marketplace geographic boundaries.
- 25) **Mayor** means the Mayor of the City of South Bend, Indiana.
- 26) **Minority and Women Business Enterprise (MWBE)** means a shorthand language combination of both minority and women business enterprise protocols established for both minority business enterprise (MBE) and women business enterprise (WBE).
- 27) **Minority individual** means a person who is a member of any of the following:
- a) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa, such as African-American, Sub-Saharan African, and Afro-Caribbean;
 - b) "Hispanic and Latino Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - c) "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;
 - d) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - e) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- 28) **Minority-Owned Business Enterprise (MBE)** means a sole proprietorship, partnership, corporation, limited liability company, Joint Venture or any other business or professional entity
- a) Which is at least 51% owned by one or more minority individuals, or in the case of a publicly owned business, at least 51% of all classes of the stock of which is owned by one or more minority individuals;
 - b) Whose management, policies, major decisions and daily business operations are independently managed and controlled by one or more such minority individuals;
 - c) For which minority individuals have an interest in the capital, assets, and profits and losses of the business proportionate to the percentage of ownership; and
 - d) Which has obtained certification as a MBE from a recognized certifying agency.
- 29) **Ordinance** means City of South Bend Ordinance Number _____.
- 30) **Program** means the Minority and Women Business Enterprise Inclusion Program established by the Ordinance.

- 31) **Program Administrator** means the person designated by, and reporting directly to, the Mayor to support the City's inclusion, diversity, equity and access goals. At the passing of this ordinance, the designee shall be the Diversity Compliance and Inclusion Officer, the title of whom is subject to future change. The Designee shall work with the City's Inclusive Procurement and Contracting Board, Legal Department, and contracting agencies to assist in overseeing, implementing, and enforcing this Chapter.
- 32) **Small business** means a Small Business as defined by the U.S. Small Business Administration size standard relevant to a firm's primary category of work.
- 33) **Small Local Emerging Business Enterprise (SLEBE)** means a Small Local Emerging Business Enterprise recognized as such by the City for purposes of this ordinance.
- 34) **Specialized Engineering Services** means engineering services beyond design or build of basic structures in which the services involve more specific emphasis on particular areas of applied mathematics, applied science, and narrow specific types of application. Specialized engineering services may include but are not limited to aquatic and environmental engineering; computer engineering (the combination of computer science and electronics engineering to develop hardware and software for governmental bodies); electrical power generation; geotechnical engineering; highway and transportation engineering (the safe, efficient, rapid, convenient, economic and environmentally compatible movement of people, goods and transportation); safety engineering; water resource & supply engineering (includes water supply, treatment, distribution, and management); sanitary engineering (includes wastewater treatment for sewage or industrial wastewater); robotics; thermodynamics; and telecommunications engineering.
- 35) **Subcontractor** means any person entering into a contract with a contractor to directly furnish services or supplies toward the contract.
- 36) **Utilization Plan** means the list of Minority and Women Business Enterprises that the bidder commits will be utilized to meet the contract goals, the scopes of the work and the dollar values or the percentages of the work to be performed.
- 37) **Waiver of Goal**. See goal waiver.
- 38) **Woman/Women** means a person or persons of the female gender.
- 39) **Woman-Owned Business Enterprise (WBE)** means a Small Local Business Enterprise, including a sole proprietorship, partnership, corporation, limited liability company, Joint Venture or any other business or professional entity:
- a) Which is at least 51% owned by one or more Women, or in the case of a publicly owned business, at least 51% of all classes of the stock of which is owned by one or more Women;
 - b) Whose management, policies, major decisions and daily business operations are independently managed and controlled by one or more such Women;
 - c) For which women have an interest in the capital, assets, and profits and losses of the business proportionate to the percentage of ownership; and
 - d) Which has obtained certification as a WBE from a recognized certifying agency.

4.C. Changes to this Program Plan

This program plan may be amended only by the Program Administrator, with the review and approval of the Mayor. Before making any proposed changes effective, the Program Administrator must solicit feedback on the proposed changes from the Legal Department, the Director of Public Works, the City Engineer, the City Controller, the Director of Purchasing, the Chief Innovation Officer, **the Common Council**, and the Inclusive Procurement and Contracting Board. The Program Administrator must also present the changes to the Inclusive Procurement and Contracting Board, and **the Common Council**, as well as other impacted City boards and commissions.

5. INCLUSIVE PROCUREMENT AND CONTRACTING BOARD

5.A. IPCB Board Composition

The City Inclusive Procurement and Contracting Board established in Section 14.5-4 of Ordinance No. _____ shall be comprised of:

- 1) Three members appointed by the Common Council;
- 2) Three members appointed by the Mayor;
- 3) One member appointed by the South Bend Regional Chamber of Commerce, or another officially recognized Chamber of Commerce serving South Bend;
- 4) One member appointed by the AFL-CIO chapter serving the City of South Bend; and
- 5) One member who is the Executive Director of Community Investments or his/her/their designee; and
- 6) One member who is the Program Administrator or that Administrator's designee; and
- 7) One member who is appointed by the Director of Public Works or that Director's designee.

5.B. Term of Appointments

All Board appointments expire on December 31st of the second year for which they are made. Board members may be removed at the pleasure of the appointing authority prior to the expiration of their terms.

5.C. IPC Board Officers

The Board shall elect from its membership a President and a Vice- President, who shall act as the presiding officer in the absence of the President. The Board shall also elect from its membership a Secretary, who shall provide notice and maintain minutes of Board meetings as required under the Indiana Open Door Law.

Board members shall serve without compensation and shall comply with the State of Indiana's conflict of interest law and all other applicable laws and policies.

5.D. IPC Board Duties

The Board shall have the following duties:

- 1) The Board, in consultation with the Program Administrator, shall fix an annual utilization goal percentage for the utilization of MWBEs within the City's geographic marketplace. This annual utilization goal will be based on up-to-date data on weighted availability of MWBE firms in the City's geographic marketplace, gathered in compliance with the procedures outlined in the Program Plan;
- 2) The Board shall conduct a formal review of the City's effectiveness in meeting its annual contracting and procurement goals for MWBEs located within the City's defined geographic marketplace;
- 3) The Board shall provide feedback and recommendations to the Program Administrator on changes to the Program Plan that would increase the effectiveness of the City in meeting its annual contracting and procurement goals;
- 4) The Board, in consultation with the Program Administrator, shall provide input regarding all efforts employed by the City to foster inclusive procurement and contracting;
- 5) The Board shall make recommendations to the Mayor and Common Council based on future needs and assessments;
- 6) The Board shall consult with the Program Administrator regarding the Office of Diversity and Inclusion's budget prior to the annual budget cycle;
- 7) The Board shall review the MWBE Inclusion Program Plan, in collaboration with the Program Administrator, City Director of Purchasing, and Legal Department annually to ensure legal compliance, and adherence to legislative intent; and
- 8) The Board shall work with the City in furtherance of its efforts to eliminate barriers to participation in City contracts, and shall promote diversity and inclusion, by multiple means.

6. RACE AND GENDER-NEUTRAL MEASURES

The City shall proactively develop and use race- and gender-neutral measures as the preferred means to facilitate the participation of all firms in City contracting activities. These measures shall include, but are not limited to:

1. Arranging solicitation times for the presentations of bids, quantities, specifications, and delivery schedules to facilitate the participation of interested firms;
2. In partnership with the Office of Diversity and Inclusion, the Public Works Engineering Division will create a list of *Community-Sized* project scopes to facilitate division bidding to increase local, small, emerging business participation. To achieve this end Engineering and the Office of Diversity and Inclusion shall hold project scope meetings;
3. Providing timely information on contracting procedures, bid preparation and specific contracting opportunities;
4. Hosting workshops, webinars and other outreach educational programs;
5. Providing current information regarding the SLEBE Inclusion Program;
6. Providing assistance to businesses in overcoming barriers such as difficulty in obtaining bonding and financing;
7. Holding pre-bid conferences and/or open discussions, where appropriate, to explain the projects and to encourage contractors to use all available firms as subcontractors;
8. Providing opportunities to review with any Bidder why its bid was rejected;
9. Adopting prompt payment procedures, including, requiring by contract that the City pay prime contractors promptly and the prime contractors pay subcontractors promptly;
10. In efforts specific to economic inclusivity, the Office of Diversity and Inclusion, Engineering Department, and Legal Department will convene to determine the City's risk tolerances to reduce bonding and insurance requirements, where possible with respect to thresholds defined in the Indiana Code and City Ordinances, to develop measures appropriate to the accomplishment the City's annual inclusion goals;
11. Maintaining firm and contract information on all firms awarded City prime contracts and associated subcontracts; and
12. Referring complaints of discrimination to the appropriate authority, for investigation; and
13. Implementing an SLEBE Target Market, whereby certain contracts are set aside for bids or proposals only by MWBEs in compliance with IC 5-22-14; and
 - a) As per IC 5-22-14-4, the City shall designate a small business purchase before the solicitation for the purchase is issued and the public notice of the purchase must state that the purchase is a MWBE set-aside.
 - b) The City may not designate a purchase as a SLEBE set-aside unless there is a reasonable expectation that offers will be obtained from at least three SLEBEs capable of furnishing the desired supplies or service at a fair and reasonable price.
 - c) A contract shall be awarded to the lowest responsible and responsive SLEBE bidder in accordance with the City's rules.
 - d) If the purchasing agent determines that acceptance of the lowest responsible and responsive offer will result in the payment of an unreasonable price, the purchasing agent shall reject all offers and may withdraw designation of the purchase as a SLEBE set-aside.
 - e) To be eligible for a SLEBE set aside, the SLEBE must fit within the qualification requirements of IC 5-22-14-3(d) as to the SLEBE and all its affiliates which the City hereby adopts as follows:

- (1) A wholesale business is not a small business if its annual sales for its most recently completed fiscal year exceed four million dollars (\$4,000,000).
- (2) A construction business is not a small business if its average annual receipts for the preceding three (3) fiscal years exceed four million dollars (\$4,000,000).
- (3) A retail business or business selling services is not a small business if its annual sales and receipts exceed five hundred thousand dollars (\$500,000).
- (4) A manufacturing business is not a small business if it employs more than one hundred (100) persons.
- (5) A business in any of the following sectors is not a small business if it employs more than one hundred (100) persons or if its annual sales exceed five million dollars (\$5,000,000):
 - (a) Information Technology
 - (b) Life Sciences
 - (c) Transportation
 - (d) Logistics

14. Collaborating with City Departments to develop a forecast of City spending.

7. RACE AND GENDER-CONSCIOUS MEASURES

In light of the City's recently completed Disparity Study and until remediated, the City shall develop and use constitutionally appropriate, narrowly tailored race and gender conscious measures to facilitate the participation of minority and women owned firms in City contracting activities. These measures shall be reviewed, updated, or amended only by approval of Program Administrator, who at the time of this drafting is the Diversity Compliance and Inclusion Officer with recommendations by the Inclusive Procurement and Contracting Board; and shall include, but are not limited to:

- a) Goal Setting as an annual, overall target for MWBE utilization in City contracts (prime contracts and subcontracts combined); where the availability estimates calculated and analyzed in the most current Disparity Study should be the basis for consideration of overall, annual spending targets for City funds. At the time of this Plan's approval, the overall weighted availability of MWBEs was found to be 6 percent. This target can be the City's goal for its overall spending with certified firms across all industry categories, and will be updated quarterly based on updated numbers as reported in Attachment A.
 - a. In addition to setting an overall, annual target, the City shall use the study's detailed unweighted availability estimates as the starting point for contract specific goals. As discussed in Chapter II of the Study, the City's constitutional responsibility is to ensure that goals are narrowly tailored to the specifics of the project. The detailed availability estimates in the Study can serve as the starting point for contract goal setting.
 - b. There shall be a goal setting module in the electronic system.
- b) Establishing Program Eligibility shall be limited to firms that have a business presence in the City's marketplace, as established by the most current disparity study. As of this replacement ordinance this consists of all counties in the state of Indiana, and Berrien County, Michigan. The City shall continue to accept MWBE and DBE certifications from the state of Indiana Department of Administration (IDOA), the City of Indianapolis, the state of Indiana Directory of Certified Disadvantaged Businesses Unified Certification Program (IUCP), Midstates National Minority Supplier Diversity Council Certification (MS-NMSDC), and Great Lakes Women's Business Enterprise National Council Certification (GL-WBENC) with the assurance that full and complete data will be collected on the firm's race and gender ownership, and the NAICS code(s).
- c) Clearly delineated policies and forms by which a bidder or proposer can establish that it has either met the contract goal(s) or made good faith efforts to do so.

- d) Rules for how participation by certified firms will be counted towards the goal(s). A firm must perform a "commercially useful function" in order to be counted for goal attainment. How various types of goods or services will be credited towards meeting goals must be clearly spelled out (for example, whether full credit will be given for purchases from certified regular dealers or suppliers).
- e) Criteria and processes for how non-performing, certified firms can be substituted during performance. The City may require firms to submit documentation to show the required activities were performed before substitution may be considered, as set forth in Section 8.B.3.f below.
- f) Contract closeout procedures and standards for sanctions for firms that fail to meet their contractual requirements under the program.
- g) A process to appeal adverse determinations under the program that meets due process standards.
- h) A full and thorough review of the evidentiary basis for the MWBE program to be conducted approximately every five to seven years in time to meet the sunset date.
- i) A sunset date for the MWBE program, to occur seven years from the date of the most recent evidentiary review outlined in subsection (h), that is, when it will end unless reauthorized based upon the findings of an updated disparity study or other evidentiary review.
- j) The development of quantitative performance measures for overall success of its race- and gender-conscious measures to evaluate the effectiveness of various approaches in reducing the systemic barriers identified by the study. In addition to meeting goals, benchmarks will be:
 - a. Progress towards meeting the overall, annual MWBE goal;
 - b. The number of bids or proposals, industry and the dollar amount of the awards and the goal shortfall, where the bidder was unable to meet the goals and submitted good faith efforts to do so;
 - c. The number and dollar amount of bids or proposals rejected as non-responsive for failure to make good faith efforts to meet the goals;
 - d. The number, industry and dollar amount of MWBE substitutions during contract performance;
 - e. Increased bidding by certified firms as prime vendors, including awards through a SBE target market.
 - f. Increased prime contract awards to certified firms;
 - g. Increased "capacity" of certified firms, as measured by bonding limits, size of jobs, profitability, complexity of work, etc;
 - h. Increased variety in the industries in which MWBEs are awarded prime contracts and subcontracts;
 - i. Number of new MWBE firms;
 - j. Increased availability of MWBE firms, especially in procurement categories in which the City does business; and
 - k. Maintenance and oversight of tracking outcomes regarding community anchor organizations community benefit agreements for the creation, support, development, and economic impact of minority and women businesses in South Bend's target small business marketplace.
- k) Maintenance and oversight of tracking outcomes regarding community anchor organizations and community benefit agreements for the creation, support, development, and economic impact of minority and women businesses in the City's target small business marketplace.

8. MWBE PROGRAM ADMINISTRATION

8.A. Program Oversight and Implementation

8.A.1. Program Administrator

The Program Administrator is responsible for implementation of the MWBE Program and oversight of compliance with Program requirements. The Program Administrator has direct, independent access to the Mayor concerning MWBE Inclusion Program matters.

The Program Administrator is responsible for reviewing and documenting processes and recommending changes to the MWBE Inclusion Program Plan. The Program Administrator is responsible for updating the MWBE Program Plan and presenting the proposed changes to affected internal City stakeholders.

The Program Administrator's duties and responsibilities shall include the following:

1. Advise the Mayor and the Common Council on MWBE matters and achievement;
2. Gather and report statistical data and other information as required by the City;
3. Work with the City's Purchasing Division to update availability estimates for MWBE firms by NAICS code, as listed in Attachment A.
 - a. This unweighted availability listing must be updated to always present the most up-to-date version of the following information:
 - i. List the most utilized NAICS codes such that the aggregate spending by the City in those codes accounts for at least 75 percent of all procurement spending over the past rolling year; and
 - ii. Identify the unweighted availability of each group for each NAICS Code by dividing the number of firms meeting the definition of that group by the total number of firms in that NAICS Code.
4. Work with appropriate City staff and others to develop and implement the Inclusion Program's race and gender-neutral measures;
5. Review departments' contracting and purchasing to ensure the timely provision of bid notices and requests for proposals to MWBEs;
6. Work with all departments to identify contracts and procurements for inclusion of MWBE contract goals, establishment of contract goals, or procurement through the Target market program element;
7. Participate in pre-bid meetings, as necessary;
8. Ensure that the contractor provides all necessary documents and information to close out the contract that provide a final accounting for MWBE and all subcontractor participation on the contract.
9. Analyze the City's utilization of minority and women owned businesses as contractors and subcontractors as a percentage of all firms awarded City contracts and subcontracts and identify ways to improve participation;
10. Plan and participate in minority and women owned business outreach, information and training activities;
11. Ensure that the City's Vendor Registration System and Directory is maintained and accessible to all minority and women owned vendors and prospective vendors, affected departments, contractors, and interested parties; and
12. Provide access to certification information

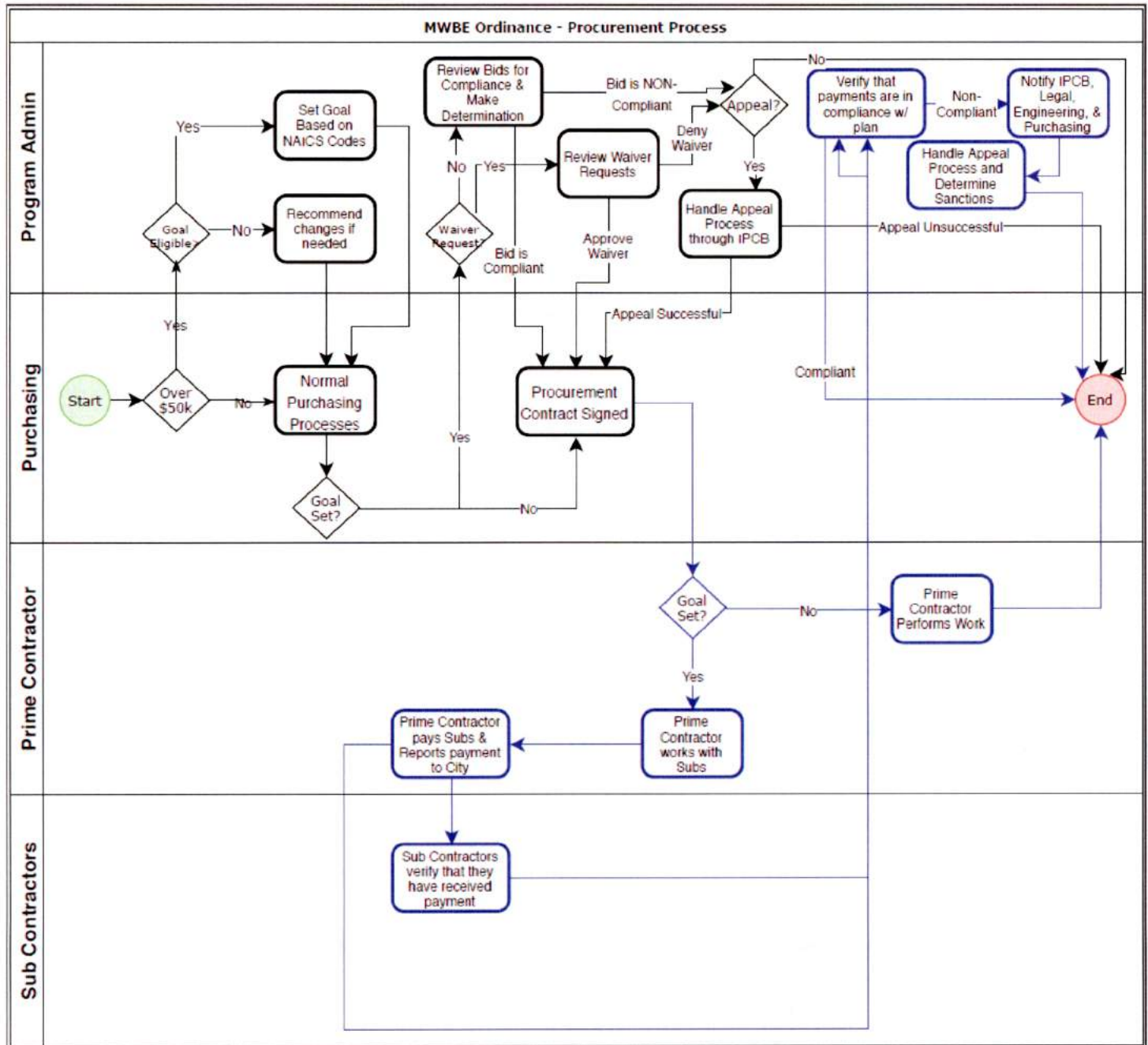
8.A.2. City Departments

In an effort to reduce barriers to minority and women-owned business participation on City procurements, all departments requesting bids, proposals or any other solicitation on behalf of the City shall:

1. Notify and provide to the Program Administrator upon departmental knowledge of an anticipated solicitation the necessary information to determine whether contract goals should be set including, but not limited to, the scope of work, budget, schedule, bid specifications and any other relevant information no later than (10) business days prior to the procurement announcement;
2. Evaluate anticipated solicitations to unbundle items or services to permit offers on quantities or scopes of work less than the total requirement or the performance of discreet portions of the project, subject to any legal or practical limitations of this unbundling;
3. Ensure that all applicable provisions of the ordinance and this Program Plan are included in bid specifications/proposals and contracts;
4. Assist in the development, monitoring and implementation of contract specific goals and commitments;
5. Manage contracts in a consistent manner to assure compliance with the utilization of MWBEs;
6. Assist in the compilation of contract data for MWBE availability and utilization;
7. Require that each contractor submit as part of its pay request process, the required MWBE contractual information to ensure an accurate accounting of MWBE contractual participation;
8. Assist and support the Program Administrator;
9. Assist and participate in workshops, trade fairs, outreach seminars, etc.; and
10. Report on anticipated percentage and dollar amount of opportunities for minority and women owned business spending, as well as on inclusive procurement activities such as matchmaking, unbundling, and SLEBE project spending

8.B. Procurement Procedures

8.B.1. Procurement Overview



Note: in the above diagram, each horizontal rectangle represents a "swim lane". The individuals or entities listed on the left side of the diagram are responsible for performing or facilitating the tasks that are located in their swim lane. Items outlined in a black line represent activities that take place before signing a procurement contract. Items outlined in a blue line represent activities that take place after signing a procurement contract.

Only contracts subject to this Program Plan follow this process (i.e. procurement contracts over \$50,000 that are not emergency purchases, procurements of legal services, or procurements of specialized engineering services). Once it is determined that a particular procurement contract is subject to the ordinance, the Director of Purchasing will ensure that the Program Administrator is notified of the procurement.

Once notified, the Program Administrator will determine whether the contract is goal-eligible, using the definition located in Section 4.B. of this Plan. If the contract is goal-eligible, the Program Administrator will follow the procedures in Section 8.B.3. of this Plan. If the contract is not goal-eligible, the Program Administrator will follow the procedures in Section 8.B.2. of this Plan.

8.B.2. Non-Goal-Eligible Contracts

If a contract is not goal-eligible, either because it is not able to be subdivided into commercially useful functions or because it does not contain any work described in the NAICS Codes in Attachment A, the Program Administrator will not set goals for that contract.

Instead of setting contract-specific goals, the Program Administrator will make recommendations to the contracting department on ways to increase the likelihood that MWBE's can be awarded the contract. For example, the Program Administrator may recommend that the department use a different purchasing mechanism (such as foregoing a QPA in favor of a competitive bid) or that the department reduce insurance or experience requirements. The Program Administrator may also identify and contact various MWBEs that may be qualified to perform the work in the contract.

After receiving recommendations from the Program Administrator and allowing the department to make adjustments to the contract as appropriate, the contract will be approved through standard purchasing processes as outlined in the City's Purchasing Policy.

8.B.3. Goal-Eligible Contracts

If a contract is goal-eligible, then the Program Administrator will facilitate the setting of contract-specific goals, the review of bids on that contract to determine whether a particular contract has a plan that would be compliant with these goals, and the post-award procedures designed to determine whether the winning contractor is following the compliant plan.

The activities involved in each of these steps are described in section 8.B.3.

8.B.3.a. Setting Contract Goals

If a contract is determined by the Program Administrator to be Goal-Eligible, the Program Administrator shall set contract goals. Contract goals should reflect the best estimate of the availability of MBEs and WBEs as a percentage of all firms available to perform the specific scopes of work of the contract. Separate goals for MBE and WBE participation may be set on a contract. Factors to be considered include, but are not limited to:

1. The number of registered MWBEs;
2. The specific scope of work estimated to be performed under the contract;
3. The estimated dollar amounts of each specific scope;
4. The complexity of the scopes of work of the contract; and
5. The City's progress towards meeting the Annual Aspirational Participation Goal

To set a goal, the Program Administrator uses only the portion of the project work that is defined by the NAICS codes identified in Attachment A. All other NAICS codes are not considered when setting a contract goal.

The goal setting methodology involves four steps:

1. Weight the estimated dollar value of the scopes of the contract by NAICS code, as determined during the process of creating the solicitation;
2. Determine the availability of MBEs and WBEs in those NAICS codes as presented in Attachment A and updated periodically by the Program Administrator;
3. Calculate weighted goals for MBE and WBE participation based upon the scopes and the availability of firms; and
4. Adjust the resulting percentages based on current considerations, including but not limited to the complexity of the scopes of work of the contract, the geographic location and expertise of available MWBEs, and the City's progress toward meeting the Annual Aspirational Participation Goal.

For example, say that the project weights by dollar value were estimated as follows:

NAICS Code	NAICS Description	Estimated Cost	Contract Weight (% of total)
238110	Poured Concrete Foundation and Structure Contractors	\$237,500	19.0%
238140	Masonry Contractors	\$50,000	4.0%
238160	Roofing Contractors	\$87,500	7.0%
238210	Electrical Contractors and Other Wiring Installation Contractors	\$250,000	20.0%
238220	Plumbing, Heating, and Air-Conditioning Contractors	\$175,000	14.0%
236220	Commercial and institutional building construction	\$325,000	26.0%
541310	Architectural Services	\$125,000	10.0%

To determine a MWBE Contract Goal, the Program Administrator should multiply the Contract Weight in each NAICS Code by the MWBE Availability in each NAICS Code from Attachment A, then sum all the weighted goals:

NAICS Code	NAICS Description	Estimated Cost	Contract Weight (% of total)	MWBE Availability	Weighted Contract Goal
238110	Poured Concrete Foundation and Structure Contractors	\$237,500	19.0%	4.8%	0.91%
238140	Masonry Contractors	\$50,000	4.0%	3.9%	0.16%
238160	Roofing Contractors	\$87,500	7.0%	2.7%	0.19%
238210	Electrical Contractors and Other Wiring Installation Contractors	\$250,000	20.0%	5.5%	1.1%
238220	Plumbing, Heating, and Air-Conditioning Contractors	\$175,000	14.0%	3.8%	0.53%
236220	Commercial and institutional building construction	\$325,000	26.0%	7.9%	2.05%
541310	Architectural Services	\$125,000	10.0%		0.00%

NAICS Code	NAICS Description	Estimated Cost	Contract Weight (% of total)	MWBE Availability	Weighted Contract Goal
				Contract Goal	4.94%

8.B.3.b. Reviewing Bids to Determine Compliance with Goal

After the Program Administrator sets contract goals, the contract will follow normal purchasing processes, including a solicitation through the Board of Public Works.

For all solicitations, the bidder shall submit a Utilization Plan detailing all subcontractors the contractor intends to utilize in its performance of the contract, and if contract goals have been established, its achievement of the goals or its good faith efforts to do so. The Utilization Plan shall be due at the time specified in the solicitation. Once bids are received and opened, the Program Administrator must review each bid to determine whether they meet the established goals for MWBE utilization.

A signed letter of intent from each listed MWBE, describing the work, materials, equipment or services to be performed or provided by the firm and the agreed upon dollar value, shall be due at the time specified in the solicitation.

There are only two ways in which a bid may be deemed to have met the requirements for MWBE utilization:

- 1) The contractor's plan utilizes MWBE subcontractors to perform commercially useful functions at a sufficient level to meet the goals (as described in Section 8.B.3.c); and
- 2) The contractor has demonstrated good faith efforts to meet the contract goals and has been granted a goal waiver (as described in Section 8.B.3.d.).

8.B.3.c. Counting MWBE Utilization to Demonstrate Goal Compliance

The entire amount of that portion of a contract that is performed by the MWBE's own forces shall be counted, including the cost of supplies and materials obtained for the work of the contract, supplies purchased, or equipment leased.

The entire amount of fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of a contract, shall be counted, provided the fee is reasonable and not excessive as compared with fees customarily charged for similar services.

When a MWBE performs as a participant in a joint venture, only the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the joint venture's contract that is performed by the MWBE with its own forces and for which it is separately at risk, shall be counted.

Only expenditures to a registered firm that is performing a commercially useful function shall be counted. To determine whether a MWBE is performing a commercially useful function, the City may evaluate the amount of work subcontracted, industry practices, whether the amount the registered firm is to be paid under the contract is commensurate with the work it is actually performing and other relevant factors. A MWBE does not perform a commercially useful function if its role is limited to that of an extra participant in the contract through which funds are passed in order to obtain the appearance of participation. When a MWBE is presumed not to be performing a commercially useful function, the firm may present evidence to rebut this presumption.

In determining achievement of a contract goal, the participation of a MWBE shall not be counted until that amount has been paid to the MWBE. This payment will be verified by the Program Administrator using the processes described in Section 8.B.3.f.

8.B.3.d. Good Faith Efforts & Goal Waiver

Where the bidder cannot achieve a contract goal, the bidder must provide proof of having made good faith efforts to meet the goal. In making the determination of whether to issue a goal waiver, the City will consider, at a minimum, the bidder's efforts to:

1. Solicit through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and written notices) the interest of all MWBEs in the scopes of work of the contract. The bidder shall provide interested MWBEs with timely,

adequate information about the plans, specifications, and requirements of the contract to allow such firms to respond to the solicitation. The bidder must follow up initial solicitations with interested MWBEs;

2. Select portions of the work to be performed by MWBEs in order to increase the likelihood that the contract goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate participation, even when the bidder would otherwise prefer to perform these work items with its own forces. It is the bidder's responsibility to make a portion of the work available to MWBEs and to select those portions of the work or material needs consistent with the availability of such firms to facilitate their participation;
3. Negotiate in good faith with interested MWBEs. Evidence of such negotiation includes the names, addresses, and telephone numbers of firms that were contacted; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and why agreements could not be reached. The bidder may not reject MWBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. That there may be some additional costs involved in finding and using MWBEs is not in itself sufficient reason for a bidder's failure to meet the contract goal, as long as such costs are reasonable. The ability or desire of a bidder to perform the work of a contract with its own organization does not relieve it of the responsibility to make good faith efforts on all scopes of work within which subcontracting opportunities are available;
4. Make efforts to assist interested MWBEs in obtaining bonding, lines of credit, or insurance as required by the City or the bidder, where appropriate; and
5. Make efforts to assist interested MWBEs in obtaining necessary equipment, supplies, materials, or related assistance or services, where appropriate.

In determining whether a bidder has made good faith efforts, the performance of other bidders in meeting the contract goal may be considered. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, it may be reasonably questioned whether, with additional reasonable efforts, the apparent successful bidder could have met the contract goal. Similarly, if the apparent successful bidder fails to meet the contract goal but meets or exceeds the average MWBE participation obtained by other bidders, this may be evidence that the apparent successful contractor made good faith efforts.

The determination of whether a bidder has made good faith efforts and should be granted a goal waiver will be made by the Program Administrator, in consultation with the City's Legal Department and Department of Public Works. All waivers granted will be presented to the Inclusive Procurement and Contracting Board for their review, including the rationale for granting this waiver. The review by the Inclusive Procurement and Contracting Board may take place either before or after the waiver has been granted by the Program Administrator.

If the goal waiver is granted, the contractor's bid will be considered to be in compliance with the contract utilization goal and will be eligible for award, if all other bid requirements are met.

8.B.3.e. Bid Non-Compliance Appeal Process

Once the Program Administrator has confirmed that the bid is either compliant or non-compliant with the contract goals, they will communicate their decision via letter to the Inclusive Procurement and Contracting Board, the City's Legal Department, the City's Director of Purchasing, the contracting department, and the Board of Public Works.

Bids that are determined to be non-compliant will be formally and publicly acknowledged as such by the Board of Public Works. In this situation, the contractor may request an appeal of the Program Administrator's decision within 15 days of the announcement of non-compliance by the Board of Public Works.

To request an appeal, the contractor must send a letter to the Program Administrator that clearly identifies the solicitation being appealed. The Program Administrator will acknowledge receipt of this letter to the contractor in writing.

All appeals will be scheduled to be presented to the Inclusive Procurement and Contracting Board at the first regularly scheduled meeting following receipt of the appeal request. The contractor will be invited to this Board meeting to present reasons supported by facts along with any written documentation as to why he/she believes the appeal should be approved. Following discussion, the Inclusive Procurement and Contracting Board will vote on whether to grant the contractor's appeal. Any City personnel serving on the Inclusive Procurement and Contracting Board who took part in the original decision shall not take part in this vote.

If the appeal is approved, the contractor's bid will be considered to be in compliance with the contract goals and will be eligible for award, if all other bid requirements are met. If the appeal is denied, the contractor's bid will formally be rejected by the City. A written decision shall be submitted to the contractor either approving or denying the appeal.

8.B.3.f. Post-Award Contract Compliance Procedures

Upon award of a contract by the City that includes contract goals, the contract goals become a covenant of performance by the contractor in favor of the City.

The contractor shall provide a listing of all subcontractors to be used in the performance of the contract, and detailed subcontractor information to the City with each request for payment submitted to the City or as otherwise directed by the City. The City shall monitor subcontractor participation and contract goal attainment during the course of the contract by communicating with both the Prime Contractor and any subcontractors to verify that work was performed and payments were made as described in the plan.

Within sixty (60) days of the execution of the contract, the contractor shall submit to the Program Administrator on a form prepared by the City, a statement under oath affirming that the contractor has complied with all financial, accounting, and other record keeping requirements that would show the contractor's compliance with its commitment to registered firm participation and the status of any registered firm performing any portion of the contract. The contractor must further affirm that such records exist and are properly maintained. The records covered by this requirement include but are not limited to payroll records, tax returns and records of books and accounts. The contractor shall also submit a similar statement within 30 days of completion of the contract. A false or misleading statement within this contractor affirmation of financial compliance shall be the basis for "Sanctions and Penalties" under this Plan. The Contractor shall cooperate fully with any City investigation of a violation of this provision, and the contractor shall further preserve and maintain all relevant records for at least three years from completion of the contract.

The contractor cannot make changes to the Utilization Plan or substitute MWBEs named in the Utilization Plan without the prior written approval of the Program Administrator. Unauthorized changes or substitutions shall be a violation of the Ordinance and a breach of contract, and may constitute grounds for rejection of the bid or cause termination of the executed contract for breach, the withholding of payment and/or subject the contractor to contract penalties or other sanctions.

A contractor shall not substitute a MWBE subcontractor or perform the work designated for a MWBE subcontractor with its own forces unless and until approval has been received in writing by the Program Administrator.

The facts supporting the request must not have been known nor reasonably should have been known by either party before the submission of the Utilization Plan. Bid shopping is prohibited. The contractor must negotiate with the MWBE subcontractor to resolve the problem. Where there has been a mistake or disagreement about the scope of work, the MWBE can be substituted only where an agreement cannot be reached for a reasonable price for the correct scope of work.

Substitutions of the MWBE subcontractor shall be permitted only on the following bases:

- 1) Unavailability after receipt of reasonable notice to proceed;
- 2) Failure of performance;
- 3) Financial incapacity;
- 4) Refusal by the subcontractor to honor the bid or proposal price;
- 5) Mistake of fact or law about the elements of the scope of work of a solicitation where agreement upon a reasonable price cannot be reached;
- 6) Failure of the subcontractor to meet insurance, licensing or bonding requirements; or
- 7) The subcontractor's withdrawal of its bid or proposal.

The City's final decision whether to permit or deny the proposed substitution, and the basis of any denial, shall be communicated to the parties in writing within 7 business days.

Where the contractor has established the basis for the substitution to the satisfaction of the City, the contractor shall make good faith efforts to fulfill the Utilization Plan. The contractor may seek the assistance of the City in obtaining a new MWBE. If the contract goals cannot be reached and good faith efforts have been made, the contractor may substitute with a non-MWBE.

Prior to contract closeout, the City shall evaluate the contractor's fulfillment of the contract goals, taking into account all approved substitutions, terminations and changes to the contract's scope of work. If the City determines that good faith efforts to meet commitments were not made, or that fraudulent misrepresentations have been made, or any other breach of the contract or violation of the Program has occurred, a remedy or sanction may be imposed, as provided in the contract.

8.B.3.g. Determination of Performance Non-Compliance

The following violations of the Program Ordinance or this Program Plan may result in a breach of contract:

1. Providing false or misleading information to the City in connection with submission of a bid, responses to requests for qualifications or proposals, Good Faith Efforts documentation, post-award compliance, or other Program operations;
2. Providing false or misleading information in connection with verification of ownership as submitted to State or other certifying agencies;
3. Committing any other violations of the Ordinance, the Program or other applicable rules and regulations; or
4. A contractor or subcontractor is subject to withholding of payments under the contract, termination of the contract for breach, contract penalties, or being barred or deemed non-responsive in future City solicitations and contracts, if it is found to have:
 - a. Provided false or misleading information in connection with an application for certification or recertification or colluded with others to do so;
 - b. Provided false or misleading information in connection with the submission of a bid or proposal or documentation of good faith efforts, post-award compliance, or other Program operations or colluded with others to do so;
 - c. Failed in bad faith to fulfill Project specific goals, thereby materially breaching the contract; or
 - d. Failed to comply in good faith with substantive provisions of the Ordinance.

The Program Administrator will be responsible for monitoring contracts and identifying cases of non-compliance. Once a suspected case of non-compliance identified, these cases should be communicated to the Legal Department, the Purchasing Department, and the contractor suspected of non-compliance. Cases of suspected non-compliance will be presented by the Program Administrator to the Inclusive Procurement and Contracting Board at the first scheduled meeting following the discovery of potential non-compliance. The contractor will be invited to attend this meeting to discuss the situation directly with the Board.

The Inclusive Procurement and Contracting Board will make the final decision of whether a contractor was non-compliant. This determination could result in inability to bid on future contracts or referral to the appropriate City, State and Federal enforcement agencies. A contractor may request reconsideration of an adverse determination within 15 calendar days of notice of such a determination.

8.C. Maintenance of Records and Reporting Procedures

The City shall implement a comprehensive tracking and reporting system whereby the City can identify and collect information on awards to and utilization of all firms, including WBEs and MBEs. The system shall also identify and track lower-tier participation and prompt payment compliance.

Contractors shall report MWBE utilization monthly via the City's tracking and reporting system. Contractors and suppliers shall be required to identify and include lower-tier subcontractors in monthly reporting and document compliance with prompt payment requirements.

MWBEs shall be required to confirm participation on City contracts via the City's tracking and reporting system. Subcontractors, including MWBEs, must notify contractors and the City of the use of lower-tier subcontractors and report payments to lower-tier

subcontractors via the City's tracking and reporting system. Subcontractors shall confirm the accuracy of payment data reported by prime contractors both with respect to dollar value reported and prompt payment compliance.

9. MWBE PROGRAM ELIGIBILITY AND REGISTRATION

9.A. MWBE Eligibility

Only businesses that meet the criteria for registration as set forth in the Ordinance may participate in the Program. The City encourages participation of MWBEs, and DBEs. Certified firms shall provide documentation as directed by the City to substantiate Program eligibility during the registration process. To register as a MWBE, the applicant must complete the online registration process. The applicant has the burden of persuasion by a preponderance of the evidence.

Eligible firms must be located within the City's Geographic Marketplace and qualify as a Small Business in accordance with U.S. Small Business Administration size standards.

The MWBE must be certified with an approved certifying agency and registered with the City at the time of bid or proposal submission to be counted towards a contract goal at the time of bid or proposal submission. Firms that are certified after award can count towards a contract goal once the certification process is complete.

Only an independent firm may be registered as a MWBE. An independent firm is one whose viability does not depend on its relationship with another firm. Recognition of a registrant as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is independent and non-affiliated. In determining whether an applicant is an independent business, the City may:

- 1) Scrutinize relationships with non-MWBEs in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources;
- 2) Consider whether present or recent employer/employee relationships between the owner(s) of the registrant and non-MWBEs or persons associated with non-MWBEs compromise the applicant's independence;
- 3) Examine relationships with non-MWBEs to determine whether a pattern of exclusive or primary dealings with non-MWBEs compromises independence; and
- 4) Consider the consistency of relationships between the applicant and non-MWBEs with normal industry practice.

The City shall verify the eligibility of joint ventures involving MWBEs and non-MWBEs.

In lieu of awarding its own MWBE certification, the City accepts the following formal certifications:

- 1) Disadvantaged Business Enterprise Certification as administered by the Indiana Unified Certification Program (INDOT);
- 2) Disadvantaged Business Enterprise Certification as administered by the Michigan Unified Certification Program;
- 3) Minority-Owned Business Certification as administered by the Indiana Department of Administration;
- 4) Women-Owned Business Certification as administered by the Indiana Department of Administration;
- 5) Small Business Concern certified firm by the U.S. Small Business Administration;
- 6) Minority-Owned Business Certification as administered by Mid-States National Minority Supplier Development Council;
- 7) Minority-Owned and or Women-Owned Business Enterprise Certification as administered by the City of Indianapolis; and

- 8) Women-Owned Business Certification as administered by the Great Lakes Women's Business Enterprise National Council.

The City shall provide an online registration system. The online registration system shall include:

- 1) A mechanism for interested firms to register with the City as a MWBE;
- 2) A mechanism for registered firms to access their registration record in order to ensure company information is current;
- 3) A searchable directory accessible to prime contractors, consultants, and vendors preparing MWBE inclusion plans; and
- 4) A searchable directory accessible to affected City departments for use in targeted, procurement-specific and overall outreach efforts.

The MWBE registration system shall be maintained by the Program Administrator with support from the City's Innovation and Information Technology Department.

The City shall periodically review registration records to ensure compliance with the Program's eligibility requirements. These reviews shall be conducted at the discretion of the City or in response to a third-party challenge of eligibility for a registered firm.

9.B. Third Party Eligibility Challenges

A third party may challenge the MWBE eligibility of a registered firm with and through the reported certifying agency or organization. If a MWBE's registration or MWBE eligibility is found to be fraudulent by the agency granting certification, the challenger may notify the City with a certified letter from the certifying agency of the findings.

The City may update the registered firm's eligibility status within the City ERP and the City MWBE tracking system when the certifying agency updates their public records list of certified agencies. At that time, the City may determine that a firm that is no longer certified by a recognized agency is ineligible for MWBE registration. A firm may appeal directly to the certifying agency that determined the firm's ineligibility. A challenged firm may submit a certified letter from the certifying agency confirming their eligibility and retention on the certified firms list of the certifying agency to the City. The written responses from certifying agencies to third party eligibility challenges must include the nature of the challenge to the determination, name of the firm, contact, title, address, email address, and telephone number. Written responses from certifying agencies must be submitted to:

Inclusive Procurement and Contracting Board
c/o Program Administrator (Office of Diversity and Inclusion)
City of South Bend
227 W. Jefferson Street Ste. 1400N
South Bend, Indiana 46601

The Inclusive Procurement and Contracting Board shall keep records of third party challenges including the challenger contact information, certifying agency challenged, type of certification challenged, dates for each challenge, amount of contract bid, number of City bid awards within a 3 year period of the challenger firm, number of City bid awards within a 3 year period of the challenged firm. The Program Administrator, and the Inclusive Procurement and Contracting Board may engage additional City personnel (i.e., legal or audit personnel) to review third party challenges. An annual report of third-party challenges shall be included in the Annual Inclusive Procurement and Contracting Report.

Effective _____, 2021

ATTACHMENTS

Attachment A: Unweighted MWBE Availability

NAICS	NAICS Title	NAICS Description	Black	Latino	Asian	Native American	White Women	MWBE	Non-MWBE
221310	Water Supply and Irrigation Systems	This industry comprises establishments primarily engaged in operating water treatment plants and/or operating water supply systems. The water supply system may include pumping stations, aqueducts, and/or distribution mains	0.30%	0.00%	0.00%	0.00%	0.90%	1.20%	98.80%
236220	Commercial and institutional building construction	This industry comprises establishments primarily responsible for the construction (including new work, additions, alterations, maintenance, and repairs) of commercial and institutional buildings and related structures, such as stadiums, grain elevators, and indoor swimming facilities. This industry includes establishments responsible for the on-site assembly of modular or prefabricated commercial and institutional buildings. Included in this industry are commercial and institutional building general contractors, commercial and institutional building operative builders, commercial and institutional building design-build firms, and commercial and institutional building project construction management firms.	1.60%	1.20%	0.30%	0.30%	4.50%	7.90%	92.10%
237110	Water and Sewer Line and Related Structures Construction	This industry comprises establishments primarily engaged in the construction of water and sewer lines, mains, pumping stations, treatment plants, and storage tanks. The work performed may include new work, reconstruction, rehabilitation, and repairs. Specialty trade contractors are included in this group if they are engaged in activities primarily related to water, sewer line, and related structures construction. All structures (including buildings) that are integral parts of water and sewer networks (e.g., storage tanks, pumping stations, water treatment plants, and sewage treatment plants) are included in this industry.	1.10%	0.00%	0.00%	0.00%	4.30%	5.50%	94.50%
237130	Power and Communication Line and Related Structures Construction	This industry comprises establishments primarily engaged in the construction of power lines and towers, power plants, and radio, television, and telecommunications transmitting/receiving towers. The work performed may include new work, reconstruction, rehabilitation, and repairs. Specialty trade contractors are included in this group if they are engaged in activities primarily related to power and communication line and related structures construction. All structures (including buildings) that are integral parts of power and communication networks (e.g., transmitting towers, substations, and power plants) are included.	2.00%	3.90%	0.00%	0.00%	5.90%	11.80%	88.20%
237310	Highway, Street, and Bridge Construction	This industry comprises establishments primarily engaged in the construction of highways (including elevated), streets, roads, airport runways, public sidewalks, or bridges. The work performed may include new work, reconstruction, rehabilitation, and repairs. Specialty trade contractors are included in this group if they are engaged in activities primarily related to highway, street, and bridge construction (e.g., installing guardrails on highways).	2.90%	0.70%	0.20%	0.50%	6.10%	10.40%	89.60%

NAICS	NAICS Title	NAICS Description	Black	Latino	Asian	Native American	White Women	MWBE	Non-MWBE
238110	Poured Concrete Foundation and Structure Contractors	This industry comprises establishments primarily engaged in pouring and finishing concrete foundations and structural elements. This industry also includes establishments performing grout and shotcrete work. The work performed may include new work, additions, alterations, maintenance, and repairs.	0.30%	0.50%	0.00%	0.10%	4.00%	4.80%	95.20%
238140	Masonry Contractors	This industry comprises establishments primarily engaged in masonry work, stone setting, brick laying, and other stone work. The work performed may include new work, additions, alterations, maintenance, and repairs.	0.30%	0.00%	0.00%	0.00%	3.60%	3.90%	96.10%
238160	Roofing Contractors	This industry comprises establishments primarily engaged in roofing. This industry also includes establishments treating roofs (i.e., spraying, painting, or coating) and installing skylights. The work performed may include new work, additions, alterations, maintenance, and repairs.	0.20%	0.30%	0.10%	0.00%	2.10%	2.70%	97.30%
238210	Electrical Contractors and Other Wiring Installation Contractors	This industry comprises establishments primarily engaged in installing and servicing electrical wiring and equipment. Contractors included in this industry may include both the parts and labor when performing work. These contractors may perform new work, additions, alterations, maintenance, and repairs.	0.70%	0.20%	0.10%	0.10%	4.30%	5.50%	94.50%
238220	Plumbing, Heating, and Air-Conditioning Contractors	This industry comprises establishments primarily engaged in installing and servicing plumbing, heating, and air-conditioning equipment. Contractors in this industry may provide both parts and labor when performing work. The work performed may include new work, additions, alterations, maintenance, and repairs.	0.60%	0.30%	0.10%	0.10%	2.70%	3.80%	96.20%
238290	Other Building Equipment Contractors	This industry comprises establishments primarily engaged in installing or servicing building equipment (except electrical, plumbing, heating, cooling, or ventilation equipment). The repair and maintenance of miscellaneous building equipment is included in this industry. The work performed may include new work, additions, alterations, maintenance, and repairs.	0.00%	0.00%	0.00%	0.00%	5.00%	5.00%	95.00%
238310	Drywall and Insulation Contractors	This industry comprises establishments primarily engaged in drywall, plaster work, and building insulation work. Plaster work includes applying plain or ornamental plaster, and installation of lath to receive plaster. The work performed may include new work, additions, alterations, maintenance, and repairs. Establishments primarily engaged in providing firestop services are included in this industry.	0.40%	0.30%	0.10%	0.00%	2.00%	2.70%	97.30%
238910	Site Preparation Contractors	This industry comprises establishments primarily engaged in site preparation activities, such as excavating and grading, demolition of buildings and other structures, and septic system installation. Earth moving and land clearing for all types of sites (e.g., building, nonbuilding, mining) is included in this industry. Establishments primarily engaged in construction equipment rental with operator (except cranes) are also included.	0.70%	0.40%	0.20%	0.00%	4.70%	6.10%	93.90%
238990	All Other Specialty Trade Contractors	This industry comprises establishments primarily engaged in specialized trades (except foundation, structure, and building exterior contractors; building equipment contractors; building finishing contractors; and site	0.50%	0.20%	0.00%	0.10%	3.10%	3.90%	96.10%

NAICS	NAICS Title	NAICS Description	Black	Latino	Asian	Native American	White Women	MWBE	Non-MWBE
		preparation contractors). The specialty trade work performed includes new work, additions, alterations, maintenance, and repairs.							
334514	Totalizing Fluid Meter and Counting Device Manufacturing	This U.S. industry comprises establishments primarily engaged in manufacturing totalizing (i.e., registering) fluid meters and counting devices. Examples of products made by these establishments are gas consumption meters, water consumption meters, parking meters, taxi meters, motor vehicle gauges, and fare collection equipment.	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%
423110	Automobile and Other Motor Vehicle Merchant Wholesalers	This industry comprises establishments primarily engaged in the merchant wholesale distribution of new and used passenger automobiles, trucks, trailers, and other motor vehicles, such as motorcycles, motor homes, and snowmobiles.	0.00%	0.00%	0.00%	0.00%	1.90%	1.90%	98.10%
423120	Automobile Parts and Other Motor Vehicle Parts Merchant Wholesalers	This industry comprises establishments primarily engaged in the merchant wholesale distribution of motor vehicle supplies, accessories, tools, and equipment; and new motor vehicle parts (except new tires and tubes).	0.40%	0.00%	0.20%	0.20%	2.20%	2.90%	97.10%
423810	Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers	This industry comprises establishments primarily engaged in the merchant wholesale distribution of specialized machinery, equipment, and related parts generally used in construction, mining (except oil well), and logging activities.	1.10%	0.00%	0.50%	0.00%	5.40%	7.00%	93.00%
423830	Industrial Machinery and Equipment Merchant Wholesalers	This industry comprises establishments primarily engaged in the merchant wholesale distribution of specialized machinery, equipment, and related parts generally used in manufacturing, oil well, and warehousing activities.	0.30%	0.30%	0.40%	0.00%	5.50%	6.40%	93.60%
441110	New Car Dealers	This industry comprises establishments primarily engaged in retailing new automobiles and light trucks, such as sport utility vehicles, and passenger and cargo vans, or retailing these new vehicles in combination with activities, such as repair services, retailing used cars, and selling replacement parts and accessories.	0.20%	0.20%	0.00%	0.10%	1.50%	1.90%	98.10%
484220	Specialized Freight (except Used Goods) Trucking, Local	This industry comprises establishments primarily engaged in providing local, specialized trucking. Local trucking establishments provide trucking within a metropolitan area that may cross state lines. Generally the trips are same-day return.	5.40%	0.60%	0.00%	0.30%	10.50%	16.90%	83.10%
511210	Software Publishers	This industry comprises establishments primarily engaged in computer software publishing or publishing and reproduction. Establishments in this industry carry out operations necessary for producing and distributing computer software, such as designing, providing documentation, assisting in installation, and providing support services to software purchasers. These establishments may design, develop, and publish, or publish only.	0.40%	0.00%	1.40%	0.00%	3.90%	5.70%	94.30%
541320	Landscape Architectural Services	This industry comprises establishments primarily engaged in planning and designing the development of land areas for projects, such as parks and other recreational areas; airports; highways; hospitals; schools; land subdivisions; and commercial, industrial, and residential	0.40%	0.20%	0.00%	0.10%	2.80%	3.40%	96.60%

NAICS	NAICS Title	NAICS Description	Black	Latino	Asian	Native American	White Women	MWBE	Non-MWBE
		areas, by applying knowledge of land characteristics, location of buildings and structures, use of land areas, and design of landscape projects.							
541330	Engineering Services	This industry is used when the requirements of the contract applies physical laws and principles of engineering in the design, development, and utilization of machines, materials, instruments, structures, processes, and systems. It may include the application of these principles for provision of advice, preparation of feasibility studies, preparation of preliminary and final plans and designs, provision of technical services during the construction or installation phase, inspection and evaluation of engineering projects, and related services.	1.30%	0.70%	1.70%	0.20%	3.70%	7.60%	92.40%
541511	Custom Computer Programming Services	This U.S. industry comprises establishments primarily engaged in writing, modifying, testing, and supporting software to meet the needs of a particular customer.	1.00%	0.10%	1.90%	0.10%	4.90%	7.90%	92.10%
541620	Environmental Consulting Services	This industry comprises establishments primarily engaged in providing advice and assistance to businesses and other organizations on environmental issues, such as the control of environmental contamination from pollutants, toxic substances, and hazardous materials. These establishments identify problems (e.g., inspect buildings for hazardous materials), measure and evaluate risks, and recommend solutions. They employ a multidisciplinary staff of scientists, engineers, and other technicians with expertise in areas, such as air and water quality, asbestos contamination, remediation, ecological restoration, and environmental law.	0.80%	0.60%	0.80%	0.00%	9.10%	11.40%	88.60%
561730	Landscaping Services	This industry comprises (1) establishments primarily engaged in providing landscape care and maintenance services and/or installing trees, shrubs, plants, lawns, or gardens and (2) establishments primarily engaged in providing these services along with the design of landscape plans and/or the construction (i.e., installation) of walkways, retaining walls, decks, fences, ponds, and similar structures.	0.70%	0.10%	0.00%	0.00%	2.60%	3.40%	96.60%
TOTAL			0.70%	0.30%	0.30%	0.10%	3.40%	4.70%	95.30%