

**Metropolitan Sewer District
of Greater Cincinnati
Small Business Enterprise
Program
Rules and Guidelines**



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Table of Contents

Section 1. Small Business Enterprise Program Overview	1
A. Statement of Policy	
B. Leadership of Small Business Enterprise Program	
C. Administration of the Small Business Enterprise Program	
D. Sunset Review Periods	
Section 2. Definitions	4
Section 3. Non-Discrimination	8
A. Non-Discrimination Policy Overview	
B. Non-Discrimination Policy for Contracting	
C. Complaints of Discrimination or Retaliation	
D. Complaint Procedure, Initial Findings and Recommendations	
E. Mandatory Non-Discrimination Contract Clause	
Section 4. Small Business Enterprise Program Components	10
A. Small Business Enterprise Goals	
B. Request for Waiver of Small Business Enterprise Goals	
C. Counting Towards Goals	
D. Good Faith Efforts	
E. Utilization of Small Business Enterprises	
F. Small Contract Rotation Pool	
G. Small Business Enterprise Program Records and Reports	
H. Small Business Enterprise Internal Review Process	
I. Database	
J. Payment to Contractors and Prompt Payment to Subcontractors	
K. Assistance to Small Business Enterprises by Contract Administration and MSD Staff	
L. Outreach to Small Business Enterprises by the Small Business Manager	
M. Small Business Enterprise Contractor and Subcontractor Assistance	
N. Small Business Enterprise Subcontractor Substitution	
Section 5. Small Business Enterprise Certification	27
A. Small Business Enterprise Definition and Requirements	
B. Brokers	
C. Joint Venture SBE Certification	
D. Small Business Enterprise Certification Process	
E. Recertification Process	

F. Certification Denials	
G. Certification Appeals	
H. Certification Termination due to Change in Ownership, Control, etc.	
I. Reciprocal Certification	
Section 6. Joint Venture Program	32
Section 7. Complaints	34
Section 8. Remedies	35
A. Falsification of Small Business Enterprise Subcontracts	
B. Penalties for Non-Compliance	
C. Remedies for Discrimination or Retaliation	
Signatures. Hamilton County Administrator and Cincinnati City Manager.....	36
Appendix I. Requirements for Bids, Proposals, Qualifications, and Submissions to MSD	37
Appendix II. Business/Corporate Application Requirements and Documentation for SBE Certification	38
Appendix III. Forms	43

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Section 1. Small Business Enterprise Program Overview

A. Statement of Policy

Hamilton County and the City of Cincinnati are committed to increasing business opportunities for small businesses, and continue to work together to fulfill that commitment for the betterment of Hamilton County's economy.

The Metropolitan Sewer District of Greater Cincinnati (MSD) has established the Small Business Enterprise Program (SBE Program) for the purpose of promoting equal business opportunity for small businesses. In addition, MSD aspires to increase the participation of small businesses in all aspects of contracting with MSD, to include contracting with Small Business Enterprises (SBE) directly or indirectly through contracting, subcontracting, and/or procurement activities. It is also the objective of MSD to seek out and certify businesses and to enhance the capacity of small businesses. The Small Business Enterprise Program, lastly, has been established to ensure non-discrimination in the award and administration of MSD contracts and procurements to SBE's.

Where procurement involves the expenditure of state or federal assistance or contract funds, MSD shall comply with such state or federal law and authorized regulations which are mandatorily applicable, and which are not presently reflected in these Rules and Guidelines. Where a procurement involves the expenditure of funds, which are the proceeds of bonds or certificates of participation, or other financing instruments or documents, MSD shall comply with the terms of such financing as they relate to the disbursement of funds and/or management of projects, insofar as such terms are mandatorily applicable and which are not presently reflected in these Rules and Guidelines.

B. Leadership of Small Business Enterprise Program

In support of MSD's desire to promote equal opportunity for small businesses, MSD leadership shall take an active role in building a culture for the MSD organization to understand and implement these Program Rules and Guidelines. The Executive Director of MSD ("Executive Director") and individuals who report directly to the Executive Director shall:

- 1) Participate in internal training (as designated in Section 4 Part L.5 of these Rules and Guidelines) in the use and value of the SBE Program Rules and Guidelines.
- 2) Actively review the results of the SBE Program performance with internal management personnel on a quarterly basis.
- 3) Include performance on SBE objectives into the evaluation of individual job performance among personnel responsible for or involved in contracting and procurement of construction, professional services, supplies/services, and general services for MSD.
- 4) Articulate in written and verbal communication, both internally and externally, MSD's interest, program and performance in SBE procurement.

- 5) Issue an annual “State of the SBE Program” report to internal and external stakeholders.
- 6) Engage in other leadership activities contributing to increasing the utilization of Small Business Enterprises.

C. Administration of the Small Business Enterprise Program

The MSD Small Business Manager shall be appointed by the Executive Director and shall have the authority to administer and enforce the Small Business Enterprise Program Rules and Guidelines, including:

- 1) Establishment of written procedures, informal guidelines, and forms as may be necessary to effectuate the SBE Program and requirements set forth in these Rules and Guidelines.
- 2) Development and implementation of outreach and technical assistance programs to assist businesses in gaining the ability to compete successfully in the marketplace and to promote equal contracting opportunities for all businesses who want to do business with MSD, regardless of SBE status.
- 3) Monitor compliance with the requirements of the SBE Program.
- 4) Provision of information to potential bidders, upon request by the potential bidder, which shall include names and contact information of certified SBEs to reinforce and support outreach efforts by potential bidders.
- 5) Promulgate, amend, and enforce such procedures consistent with the Rules and Guidelines as may be necessary and appropriate to promote the ethical practice of contracting and subcontracting and to carry out the provisions, intents, and purposes of this SBE Program.
- 6) Investigation of alleged violations of this SBE Program, and the issuance of written statements following any determination of such investigation, stating the reasons therefore and any penalty imposed.
- 7) Notification to an affected party by certified mail that it has the right to appeal a denial of certification as a SBE to MSD within seven (7) days of receipt of the notice of refusal to certify the affected party.
- 8) Promulgate tracking and reporting on the effectiveness of this SBE Program as measured by a review of data indicating Contractor and subcontractor spending with SBEs as required by Section 4, Part G.1-6.
- 9) Submit an annual report and scorecard to the Executive Director and to MSD management reviewing the performance of each division in meeting the goals established under the SBE Program.
- 10) Recommend to the Executive Director annual goals for the SBE Program.
- 11) Recommend to the Executive Director any further efforts needed to ensure participation by SBEs in contracting with MSD.

D. Sunset Review Periods

These Rules and Guidelines, including any resolutions, ordinances or other legislative acts approved and incorporated into the SBE Program following its initial inception shall be subject to review and/or modification in three (3)-year intervals following initial approval by the

Hamilton County Commissioners in 2010 (refer to effective date of Resolution). Should revisions be necessary to continue and/or improve the SBE Program, a resolution approving such action shall be passed by the County Commissioners prior to the last day of the 3-year review period, as determined by the date last approved. In the event no revisions or similar actions affecting continuation of the program are needed upon review, the program will continue to be in full force and effect, without action, for the duration of the next 3-year period following the review date.

Revisions, modifications, cancellations or other actions taken with the intent to affect the Rules and Guidelines or SBE Program, generally, shall not be made without prior notice to the Executive Director, in writing, and provided to the Executive Director no less than thirty (30) calendar days prior to any resolution being placed on the Commissioners' meeting agenda. The Executive Director shall be given the opportunity to review and respond to any proposed revision, modification, cancellation or other action within that 30-day period, and likewise may request his or her own changes by written request to the County Commissioners on behalf of MSD and the SBE Program.

Section 2. Definitions

Best Effort: That effort which demonstrates an exhaustive search of possible means to locate and contract with SBEs to achieve stated goals. (Proof of best efforts is required.)

Bid: A quotation, proposal, or offer by a bidder or contractor to perform or provide labor, material, or supplies to MSD for a price.

Brokerage or Broker: A firm or person who contracts with third parties on behalf of the broker's principal or a specialist who represents purchasers of goods without taking possession or ownership of those goods, or an agent employed to make bargains and contracts for compensation. A broker acts as a middleman in transactions between a buyer and a seller, generally receiving a commission or fee for work performed. An independent manufacturer's representative or distributor is not a broker.

Certification or Re-certification: The process by which MSD certifies that a SBE meets the qualification criteria set forth in these Rules and Guidelines formulated under the authority of MSD for participation in the Program in the appropriate construction, supply or service category for which the contract is being awarded and is approved by the Small Business Manager, or his/her designee. Certification or re-certification relate to qualifications regarding ownership and control, not the quality of the service or product.

Commercially Useful Function: A business that is directly responsible for providing the supplies or services to MSD as required by the solicitation or request for quotes, bids or proposals. A SBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing and supervising the work involved. A business that stocks sufficient quantities of supplies in direct inventory, held for sale or resale, to cover anticipated future demands for the supplies is performing a commercially useful function. SBEs that engage in the business of providing brokerage shall not be deemed to perform a "commercially useful function" unless the brokerage services are those required and sought by MSD.

Commodity / Commodity Codes: The City's system to describe a vendor's goods or services, including but not limited to the purchase of all construction, supplies and services, and professional services by City of Cincinnati departments. All vendors identify the commodity code associated with their business from the City's list of commodity codes.

Construction: Any type of newly-created infrastructure, demolition, alteration, rehabilitation or repair identified by Contract Administration as a common unit for purchasing purposes.

Contract: An agreement in excess of \$5,000.00, except for types of contracts listed by Contract Administration as exempt and approved by the Executive Director for: Construction, Supplies/Services, and Professional Services.

Contract Compliance Advisory Board: The City Manager appoints members to the Contract Compliance Advisory Board of the City of Cincinnati, Ohio, to include representatives of the City, labor, majority contractors, citizens, members of minority/women groups and members of the business community. The City Manager delegates to such Board the responsibility of serving as the appeal board for SBEs and applicants for SBE certification. The Board shall make recommendations to the City Manager regarding appeals. Board members shall serve for a period of two years.

Distributors: Individuals or companies that sell or disseminate a product of another company or corporation. They can hold title and/or take possession of the product(s) they are distributing, but it is not mandatory. The term “distributor” can be distinguished from “broker”. A distributor affects transactions of his own account and keeps inventory for resale; a broker affects transactions for the account of others.

Good Faith Effort: Those efforts set forth in these Rules and Guidelines inclusive of required documentation that demonstrates a contractor’s efforts to seek and utilize SBEs for contracts with MSD.

Gross Revenue: Total income or all resources contributing to enterprise income (or in the case of a sole proprietorship – gross income) plus the cost of goods sold as these terms are defined or reported on the Internal Revenue Service (IRS) Federal Tax return forms (Form 1120 for partnerships/limited liability companies; Form 1040, Schedule C, for other sole proprietorships). The term “revenue” includes the net capital gains or losses, taxes total income, proceeds from the transactions between a company and its domestic or foreign affiliates (if also excluded from gross or total income on a consolidated return filed with the IRS), and amounts collected for another by travel agent, real estate agent, advertising agent, or conference management service provider.

Independent Ownership: The degree to which SBEs own and participate in the management of the partnership, corporation or joint venture, by considering: 1) the SBE’s participation in the decisions affecting day-to-day operations of the business; 2) the ability of SBEs to function and carry out daily business activities without assistance from the majority partner, other than in ways specified in the partnership or corporation papers; and 3) the SBE’s proportionate interest in the capital, assets, profits and losses of the business. In determining whether a partnership or corporation is at least 51% independently owned and controlled by a SBE, and in determining whether such SBE has at least 51% independent ownership and control, the Small Business Manager may use discretion in weighing the foregoing factors, as well as any other factor which, in MSD’s determination, affects independent ownership and control.

Joint Venture: An association of two or more businesses established to carry on a single business activity that is limited in scope and duration. SBE participation in a joint venture shall be based on the sharing of real economic interests in the venture and shall include proportionate control over management, interest in capital acquired by the joint venture, and interest in earnings.

Limited Liability Company: An incorporated form of a business organization similar to a general or limited partnership, but possessing a limited shield which protects its owners from liability to the same extent that stockholders or a corporation are insulated from the debts and obligations of the corporation. If properly structured, the LLC will be treated as a partnership for federal and state income tax purposes. The LLC can offer flexibility, in the allocation of profits, losses and distributions, a factor that usually has great significance to investors. SBE certification requires the LLC to meet SBE ownership criteria and documentation of equity, and profit/loss distribution formula. The operation agreement must meet requirements reflecting SBE ownership, management and control.

Manufacturer's Representative: An independent sales agent for a manufacturer or a group of manufacturers (principal) in a described sales territory who takes neither title nor possession of the merchandise he or she sells. This person or individual may not be certified.

Net Worth: Net worth of an individual includes, but is not limited to, the degree of diminished credit and capital opportunities of a SBE individual. The Small Business Manager will consider factors relating both to the firm and to the individual. Individual owners must provide documentation of personal income to include all aspects of income resources such as copies of W-2s, stocks, bonuses, return on investments, private properties, if related to applicant firm. For the purpose of certification with the SBE program, the Small Business Manager excludes the individual's ownership interest in the applicant or participating SBE firm and in the equity in his/her primary personal residence. However, any portion of such equity in his/her primary residence attributable to excessive withdrawals from the participating SBE firm is not excluded. An individual owner whose personal net worth exceeds \$750,000 is not considered a SBE for purposes of the SBE Program.

Operate: To be actively involved in the day-to-day management of the business.

Own: To have possession of at least 51% of the business. Ownership is interpreted to ensure that the small business member(s) enjoy the normal and customary incidents of ownership.

Owner: An individual who has possession of at least 51% of the business. Ownership is interpreted to ensure that the small business member(s) enjoy the normal and customary incidents of ownership.

Participation: The rate of SBE utilization.

Site Visit: An inspection of the small business operation performed by the Small Business Manager or his/her designee, to ensure an existing business complies with the applicable requirements for SBE certification. To also review and confirm the make-up of the entity as detailed in the written application for certification.

Size Standard: Employees counted in determining size include all individuals employed on a full-time, part-time, temporary, or other basis. The Small Business Manager will consider the totality of the circumstances, including factors relevant for tax purposes, in determining whether individuals are employees of the concern in question.

Small Business Enterprise (SBE): A firm for which the gross revenues or number of employees averaged over the past three years, inclusive of any affiliates as defined by 13 C.F.R. Sec. 121.201, does not exceed the size standards as defined pursuant to Section 3 of the SBE Act and for which the net worth of each owner does not exceed \$750,000. The applicant for SBE certification must have been in business for at least one year, during which time it maintained a fixed office for the same period; the applicant(s) must be a citizen of the United States; such business must perform a commercially useful function; and such business has been certified by MSD.

Specialty Items: An area of construction where there are no certified SBEs or where no SBEs have the capacity, financial resources or experience, to perform.

Strategic Partnership: A type of contractual alliance between two commercial enterprises that is not a formal legal partnership.

Subcontractor: A vendor that receives work from another vendor under a contract with MSD. Generally, a prime contractor or developer contracts with another vendor (subcontractor) to perform or complete some construction craft trade work that the Contractor or developer cannot or will not be performing on a project or contract.

Vendor Registration: The making known to MSD those supplies or services a business wishes to provide to MSD. This entails completing a vendor registration form through the City of Cincinnati purchasing division vendor registration system. See vsscusercare@cincinnati-oh.gov.

Waiver: MSD approval relinquishing a contractor's obligation to comply with one or more provision(s) of the SBE Program.

Section 3. Non-Discrimination

A. Non-Discrimination Policy Overview

MSD is committed to a policy of non-discrimination.

Every contract for or on behalf of MSD, for the construction, alteration, or repair of any public building or public work in the state shall contain provisions by which the contractor agrees to both of the following:

(A) That, in the hiring of employees for the performance of work under the contract or any subcontract, no contractor, subcontractor, or any person acting on a contractor's or subcontractor's behalf, by reason of race, creed, sex, disability or military status as defined in section 4112.01 of the Revised Code, or color, shall discriminate against any citizen of the state in the employment of labor or workers who is qualified and available to perform the work to which the employment relates;

(B) That no contractor, subcontractor, or any person on a contractor's or subcontractor's behalf, in any manner, shall discriminate against or intimidate any employee hired for the performance of work under the contract on account of race, creed, sex, disability or military status as defined in section 4112.01 of the Revised Code, or color.

B. Non-Discrimination Policy for Contracting

No bidder, proposer, vendor, and/or Contractor doing business with MSD who competes for or is awarded a public contract may discriminate or retaliate against a SBE.

A bidder may be debarred or disqualified from contracting with MSD if found to have violated this policy in the awarding of a subcontract in connection with a contract advertised by MSD or a contract between MSD and the bidder.

MSD may not allege or investigate an allegation of an occurrence of discrimination or retaliation in subcontracting as a basis for debarring or disqualifying a bidder more than three (3) years after the alleged discriminatory or retaliatory conduct occurred or more than three (3) years after MSD, in the exercise of reasonable diligence, should have discovered the conduct, whichever is later.

A bidder shall certify in the documents accompanying the bidder's offer to enter into a public contract that the bidder has not discriminated or retaliated, and will not discriminate or retaliate against any SBE in obtaining any required subcontract.

After a bidder is awarded a public contract, if the bidder violates the certification provisions of these Rules and Guidelines, MSD may regard the violation as a breach of contract that permits one or more actions in Section 8, Remedies.

C. Complaints of Discrimination or Retaliation

Any adult person, business entity, association, organization, or government agency may file a complaint with the Small Business Manager stating facts showing or tending to show that a bidder has, within the preceding three (3) year period from the date of the alleged incident, engaged in discrimination or retaliation in connection with a MSD contract or solicitation. Within fourteen (14) days, the Small Business Manager, or his/her designee, shall notify the bidder against whom the complaint was filed that a complaint has been received.

D. Complaint Procedure, Initial Findings and Recommendations

The Small Business Manager, or his/her designee, shall be responsible for investigating discrimination and retaliation complaints filed under this section and following the procedures as adopted by Cincinnati Municipal Code (CMC) Section 321-159 (reordained by Ordinance No. 439-2002, eff. Jan. 17, 2003).

E. Mandatory Non-Discrimination Contract Clause

Every contract and subcontract shall contain a non-discrimination clause that reads substantially as follows:

(A) That, in the hiring of employees for the performance of work under the contract or any subcontract, no contractor, subcontractor, or any person acting on a contractor's or subcontractor's behalf, by reason of race, creed, sex, disability or military status as defined in section 4112.01 of the Revised Code, or color, shall discriminate against any citizen of the state in the employment of labor or workers who is qualified and available to perform the work to which the employment relates;

(B) That no contractor, subcontractor, or any person on a contractor's or subcontractor's behalf, in any manner, shall discriminate against or intimidate any employee hired for the performance of work under the contract on account of race, creed, sex, disability or military status as defined in section 4112.01 of the Revised Code, or color.

Section 4. Small Business Enterprise Program Components

A. Small Business Enterprise Goals

The annual goal for SBE participation is to award to SBEs, directly or indirectly through contracting, subcontracting and/or procurement activities of Contractors, contracts and procurements that represent at least 30% for Construction, 15% for Supplies/Services, and 10% for Professional Services, of the aggregate dollars spent annually by MSD (the “SBE Goal”). Attainment of the annual SBE Goal will be based on contract dollars spent and not contracts awarded. In order to achieve the SBE Goal, MSD will encourage Contractors to use small businesses in the performance of MSD contracts awarded to them.

The annual SBE Goal will be reviewed each year before March 1st by the Small Business Manager, or his/her designee, Contract Administration, and the Executive Director. These overall goals are only intended to be benchmarks for evaluating overall performance of the SBE Program on an annual basis. These participation goals are not and shall not be quotas.

The following factors may be used by MSD as part of its goal-setting methodology in establishing annual SBE goals: 1) the number of small businesses certified or eligible for certification; 2) the availability of small businesses eligible for certification that are willing to do business with MSD; 3) annual participation figures for qualified small businesses in both MSD contracting and the private marketplace; 4) analysis of disparities between the availability and participation of qualified small businesses; 5) the findings and conclusions contained in Procurement Disparity Studies and other reports undertaken by the City of Cincinnati, Hamilton County, and other governmental and quasi-governmental entities, which studies and reports may be relevant or beneficial to MSD and its SBE Program; 6) reviews and analysis of the reports generated by the Small Business Manager or other MSD divisions in accordance with Section 4 Part F; and 7) other relevant factors.

The following commodity categories are hereby established to identify the contracting and procurement activities covered by these SBE Rules and Guidelines, which categories may be amended from time-to-time by MSD:

Construction: Including, but not limited to, any and all contracts relating to new construction and the construction of commercial, industrial, sewage, water, power, for renovation and/or maintenance of buildings, facilities, underground utilities, and other erected structures owned or leased by MSD; and the rehabilitation, remodeling and repairs of roads and other non-building structures.

Supplies/Services: Including, but not limited to the purchase of all goods, equipment, office and other supplies, art, furniture, and other tangible personal property, and services such as the procurement of advertising, printing, non-construction repairs, janitorial services, training seminars and workshops, computer and information systems security, shipping and mailing, microfiche and microfilm, courier, storage, travel, consulting and other non-professional services.

Professional Services: Including, but not limited to, any and all services for which applicable selection criteria may require a bidder or Contractor to possess a license or other certificate of competency, such as in the areas of architecture and engineering, accounting and auditing, insurance, laboratory, legal, medical, and transportation, or as otherwise described as “consultants” in the Ohio Revised Code.

The Small Business Manager and the Contract Administration Supervisor, or his/her designee, will set SBE contracting and procurement goals for each specific prime contract, including those with subcontracting and/or supplier possibilities, and will include goals for SBE subcontracting where applicable. The Small Business Manager and the Contract Administration Supervisor, or his/her designee, on a contract-by-contract basis shall first reference the annual SBE Goal for the specific contract category and then shall also have the authority to maintain, increase, reduce or eliminate such SBE goals based on the type of contract, the type of subcontracting work that will be required, and the availability of SBEs. The bidders will also be subject to the contract goals for SBE subcontractors as well. These goals are based on the criteria cited above.

Every bidder shall be required to submit to MSD, with its bid, a plan for the engagement of small businesses in connection with the contract, known as the SBE Utilization Plan. The SBE Utilization Plan Form, which shall include, among other things, the names, addresses, phone number, Tax I.D. number, and certification numbers, if applicable, of certified SBEs or businesses that have applied for SBE certification at the time of bid submittal, and any other information required by the Small Business Manager or Contract Administration as set forth in the bid solicitation documents. If awarded a contract or procurement with MSD, a Contractor shall use its good faith efforts at all times to implement and accomplish the objectives with respect to the use of SBEs as set forth in the SBE Utilization Plan. Following the award, the SBE Utilization Plan shall become a part of the contract between the Contractor and MSD.

All contracts and procurements awarded by MSD, except those for professional services, will be awarded to the “lowest and best” bidder. While the inability of a bidder to meet goals established under the SBE Program may not alone exclude a bidder from award of a contract or procurement, the bidder's adequate Good Faith Efforts to meet the goal will be considered in determining whether the bid is the lowest and best bid. For the procurement of supplies/services, and/or the award of construction contracts valued at \$50,000 or more, public notice of the opportunity to bid on such procurements or contracts will be given and the procurement or contract will be awarded to the bidder that submits the “lowest and best” bid. For the procurement of professional services contracts, bid awards will be based on technical expertise and experience, using the established evaluated proposal process for contract awards, in accordance with Ohio Revised Code §153.65.

The requirements of the SBE Program do not apply to individual contracts and/or procurements valued at \$5,000 or less. MSD uses decentralized purchasing methods. For purchases of \$5,000 or less, notice and award must be given to a SBE listed for that particular commodity code, unless it is determined by the division to be impractical or not in the best interest of MSD to support an award to the SBE based on price. All decentralized purchasing documents are reviewed by the City's Purchasing staff prior to approval. Divisions must check if the supply or service is available via an existing City contract. If a contract exists, it should be used unless: a)

the contract item is different from the item required and does not meet the division's requirements or specifications; b) the required item is not available from the contract, or c) it is necessary to meet MSD's SBE program goals.

B. Request for Waiver of Small Business Enterprise Goals

If the bidder will not meet the SBE participation goals, in addition to its Subcontractor Utilization Plan Form, the bidder shall also submit with its bid: 1) a fully completed Waiver Request Form and Affidavit; and 2) a fully completed SBE Subcontractors Good Faith Efforts Summary Sheet (see Appendix III for applicable forms). The bidder shall indicate on a Waiver Request Form and Affidavit, the Good Faith Efforts that it made prior to submission of its bid, to meet the SBE goals for the contract. The bidder shall also submit with its bid all documentary evidence to support those Good Faith Efforts made by the bidder, as declared on the Waiver Request Form and Affidavit. The Small Business Manager, or his/her designee, will review the documents submitted and make its determination of adequate Good Faith Efforts based on those submitted documents. When considering whether a bidder made adequate Good Faith Efforts to meet the SBE participation goal, MSD will use a responsive bidder approach. Additional submittals will not be permitted, with the exception of evidence requested by the Small Business Manager or his/her designee, pursuant to Section 4 Part D or as provided in the Waiver Request Form and Affidavit.

C. Counting Towards Goals

A bidder is required to either meet the goal or demonstrate adequate Good Faith Efforts to meet the goal for subcontracting of SBEs as set by the Small Business Manager or his/her designee. When a SBE participates in a contract, only the payments to the SBE for value of the work actually performed shall be counted towards the goal, in accordance with the following provisions:

- 1) The Small Business Manager, or his/her designee, shall count the entire amount of that portion of a Construction, Supplies/Services, or Professional Services contract that is performed by the SBE's own forces. The Small Business Manager, or his/her designee, shall include the cost of supplies and materials obtained by the SBE for the work of the contract, including supplies purchased or equipment leased by the SBE (except supplies and equipment the SBE purchases or leases from the Contractor or its affiliate).
- 2) The Small Business Manager, or his/her designee, shall count the entire amount of fees or commissions charged by a SBE 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 contract toward SBE goals, provided the fee was determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- 3) When a SBE subcontracts part of the work of its contract to another business it is subject to the determined goal for subcontracting as well, and the value of the subcontracted work may be counted toward the SBE goals only if the SBE's subcontractor is itself a certified SBE. Work that a SBE subcontracts to a non-SBE business does not count toward the SBE goals.
- 4) When calculating participation, SBE subcontractors, suppliers, and/or vendors must be 1st or 2nd-tier subcontractors, suppliers, and/or vendors. When a SBE performs as

a participant in a joint venture, the Small Business Manager, or his/her designee, shall count a portion of the total dollar value of the contract equal to the distinct, clearly-defined portion of the work of the contract that the SBE performs with its own forces toward the SBE goals.

- 5) The Small Business Manager, or his/her designee, shall count expenditures to a SBE Contractor toward SBE goals only if the SBE is performing a commercially useful function on that contract. To determine whether a SBE is performing a commercially useful function the Small Business Manager, or his/her designee, will look at any relevant factors including those listed in this section. The following factors that must be considered in making this determination are:
 - a. A SBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the SBE must also be responsible with respect to materials and supplies used on the contract, negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a SBE is performing a commercially useful function, the following factors may be considered:
 - i. The amount of work subcontracted;
 - ii. That the work conforms to industry standards and practices;
 - iii. That the amount the SBE is to be paid under the contract is commensurate with the work it is actually performing; and
 - iv. The amount of SBE credit claimed for its performance of the work.
 - b. A SBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of SBE participation. In determining whether a SBE is such an extra participant, the Small Business Manager, or his/her designee, will examine similar transactions, particularly those in which SBEs do not participate.
 - c. If a SBE does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own work force, or the SBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the Small Business Manager, or his/her designee, shall presume that it is not performing a commercially useful function.
 - d. When a SBE is presumed to not be performing a commercially useful function as provided in Section 2 herein, the SBE may present evidence to rebut this presumption. The Small Business Manager, or his/her designee, may determine that the business is performing a commercially useful function given the type of work involved and normal industry practices.

- 6) The Small Business Manager, or his/her designee, shall count expenditures by SBEs for materials or supplies toward SBE goals as provided in the following:
- a.
 - i. If the materials or supplies are obtained from a SBE manufacturer, the Small Business Manager, or his/her designee, shall count 100% of the cost of the materials or supplies toward SBE goals.
 - ii. For purposes of this section, a manufacturer is a business that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications
 - b.
 - i. If the materials or supplies are purchased from a SBE regular dealer, the Small Business Manager, or his/her designee, shall count 60% of the cost of the materials or supplies toward SBE goals.
 - ii. For purposes of this section, a regular dealer is a business that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
 - aa. To be a regular dealer, the business must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
 - bb. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this section 2(b) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an *ad hoc* or contract-by-contract basis.
 - iii. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this Section.
 - c. With respect to materials or supplies purchased from a SBE which is neither a manufacturer nor a regular dealer, the Small Business Manager, or his/her designee, shall count only the amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, towards SBE goals, provided the Small Business Manager, or his/her designee, determines

the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. However, the Small Business Manager, or his/her designee, shall not count any portion of the cost of the materials and supplies themselves toward SBE goals.

- 7) If a business is not currently certified as a SBE at the time of the execution of the contract, the Small Business Manager, or his/her designee, shall not count the business's participation toward any SBE goals.
- 8) The Small Business Manager, or his/her designee, shall not count the dollar amount of work performed under a contract with a SBE after it has ceased to be a certified SBE.
- 9) The Small Business Manager, or his/her designee, shall not count the participation of a SBE subcontractor toward a Contractor's final compliance with its SBE obligations on a contract until the amount being counted has actually been paid to the SBE.

D. Good Faith Efforts

For all contracts and procurements for which SBE contract goals have been established, the bidder shall be required to submit the SBE Utilization Plan form. If the SBE goals will not be met, the bidder shall also submit the Waiver Request Form and Affidavit, and the SBE Subcontractors Good Faith Efforts Summary Sheet form to MSD with its bid. To be eligible for award of a contract or procurement in a case where the SBE goals will not be met, a bidder must submit all documentation of its SBE outreach efforts with its bid or proposal. Failure to submit required documentation may cause a bid to be rejected as non-responsive. Outreach and Good Faith Efforts include, but are not limited to, the following:

- 1) Identification of sufficient subcontracting work: Bidder has identified and selected specific work items to be performed and/or procurement to be filled by SBEs. Bidder subdivided total contract work requirements and/or procurements into smaller portions or quantities to permit maximum active participation by SBEs. Content of advertisements and written notices to subcontractors may demonstrate compliance with this objective.
- 2) Broad-based advertisement: Bidder conducted an advertising campaign designed to reach all segments of the community by advertising in newspapers, trade association publications, special interest publications, trade journals, community papers, or other media. Advertisement must be specific to the MSD contract or procurement, not generic, and may not be a plan holder advertisement provided by the publication. Advertisement must be worded to ensure it does not exclude or limit the number of potential respondents, and must include the project name; the name of the bidder; areas of work available for subcontracting; contact person's name and phone number; information on the availability of plans and specifications; date the subcontractor's interest and written bid/estimate are due to the bidder; and, bidder's policy concerning assistance to subcontractors, suppliers, and vendors in obtaining bonds, financing, and/or insurance. Bidders are encouraged to advertise not less than two weeks prior to the bid submittal due date, when time permits. Also, the due date for subcontractor written bid/estimate to the bidder should not be less than seventy-two(72) hours prior to the bidder's bid submittal due date to MSD. Documentation that may satisfy this requirement includes copies of advertisements and proof of publication dates.

- 3) Written notice to SBE subcontractors, suppliers, and vendors: Not less than fourteen (14) days prior to bid submittal, bidder provided written notice of its interest in receiving subcontractor, supplier, and vendor bids related to the MSD contract or procurement to small businesses with an interest in performing identified work items. Contents of the notice must include the project name; the name of the bidder; areas of work available for subcontracting and procurement opportunities; contact person's name and phone number; information on availability of plans and specifications; date the subcontractor's interest and written bid/estimate are due to the bidder; and, bidder's policy concerning assistance to subcontractors, suppliers, and vendors in obtaining bonds, financing, and/or insurance. Bidders are encouraged to go the MSD website at www.msdbg.org/listsbe_vendors to view a list of SBEs available for use to meet the SBE subcontractor participation goals. Documentation that will demonstrate satisfaction of this requirement includes, but is not limited to, a copy of each notice sent to subcontractors by the bidder for each item of work to be performed or each procurement. If there is only one master notification, the bidder should submit a copy with a list of its recipients. Faxed copies of the notice and copies sent by electronic transmission or e-mail must include fax transmittal confirmation slip or written confirmation of receipt by e-mail, as the case may be, from the recipient, showing the date of transmission.
- 4) Follow-up to initial solicitations: Bidder followed up to initial written notices to SBE subcontractors, suppliers, and vendors to determine interest in specific portions of project work and/or procurement; answered questions, recorded phone quotes; and recorded interest of subcontractors, suppliers, and/or vendors in bidding on any portion of subject project. Required documentation shall include a copy of telephone logs, including name of caller, name of and telephone number of subcontractor, supplier or vendor's contact person. Telephone logs must be submitted to demonstrate follow-up with all subcontractors, suppliers, and vendors to whom bidder sent written notices.
- 5) Provision of plans, specifications, and requirements: Bidder provided interested SBE subcontractors, suppliers, and/or vendors with access to plans, specifications, and requirements for the subject project. Documentation that will demonstrate compliance with this requirement includes the content of advertisements and written notices to subcontractors, suppliers, and vendors.
- 6) Assistance with bonds, financing, and insurance: Bidder made efforts to advise and assist interested subcontractors, suppliers, and vendors in obtaining information regarding bonds, financing, and insurance required for the subject project. Documentation that will demonstrate compliance with this requirement includes, but is not limited to, the content of advertisements and written notices to SBE subcontractors, suppliers, and vendors.
- 7) Not rejecting SBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the Contractor's efforts to meet the project goal.

- 8) Effectively using the services of community organizations; contractors' groups; local, state, and Federal business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of SBEs. Required documentation shall include a copy of telephone logs, including name of caller and name of and telephone number of the organization's and/or agency's contact person.

In determining whether a bidder has made adequate Good Faith Efforts, MSD may, in its sole discretion, consider any or all of the foregoing efforts as well as the performance of other bidders in meeting the SBE participation goals as submitted with their bids. For example, when the apparent low bidder fails to meet the contract goal, but other bidders meet it, it may reasonably raise the question of whether, with additional reasonable efforts, the apparent low bidder could have met the goal. If the apparent low bidder fails to meet the goal, but meets or exceeds the average SBE participation obtained by other bidders, MSD may view this, in conjunction with other factors, as evidence of the apparent low bidder having made adequate Good Faith Efforts. Bidders that fail to meet SBE goals or fail to demonstrate adequate Good Faith Efforts shall be deemed non-responsive to MSD's solicitation for bids and shall not be eligible to be awarded the contract.

E. Utilization of Small Business Enterprises

In order to achieve the SBE Goal, MSD encourages Contractors to use small businesses in the performance of contracts and procurements awarded to them. Contractors are required to maintain documentation regarding utilization of SBEs along with other pertinent records. A monthly small business enterprise utilization report regarding the use of SBEs (the SBE Utilization Report) shall be submitted each month to the Small Business Manager using the MSD Tracking and Reporting System (TRS). An executed paper copy of the SBE Utilization Report, as printed from the TRS, shall be submitted monthly to the Small Business Manager with the Contractor's request for payment. If complete and in compliance with these Rules and Guidelines, the information from the SBE Utilization Report shall be recorded by the Small Business Manager, or his/her designee, with a notation indicating compliance and authorizing payment to be made to the Contractor. If the SBE Utilization Report is not in compliance, the Small Business Manager, or his/her designee, shall contact the Contractor to discuss the reasons for non-compliance and possible solutions to such non-compliance. Payment to a Contractor may not be made until approval of its SBE Utilization Report by the Small Business Manager. A Contractor's failure to comply with the reporting requirements of this provision may result in the withholding of payment to the Contractor.

When a Contractor uses one or more subcontractors, suppliers, and/or vendors to satisfy the SBE Goal, only expenditures to SBEs that perform a commercially useful function in the satisfaction of the contract or procurement will be counted toward the SBE Goal (see Section 4, Part C). When calculating participation, SBE subcontractors, suppliers, and/or vendors must be first or second-tier subcontractors, suppliers, and/or vendors. Subcontractors, suppliers and/or vendors of subcontractors will not be included in the calculation of participation, except as specifically permitted herein (see Section 4, Part C). Their roles as subcontractors, suppliers, and/or vendors must be meaningful and must contribute positively to successful completion of the MSD contract or procurement.

All SBE subcontractors must be approved by the Small Business Manager, or his/her designee, before commencing work on a MSD contract. Failure to secure such prior approval may subject the Contractor to any and all of the following actions:

- 1) Withholding of 10% of all future payments under the contract or procurement until it is determined by the Small Business Manager that the Contractor is in compliance with these Rules and Guidelines;
- 2) Withholding of all future payments under the contract or procurement until it is determined by the Small Business Manager that the Contractor is in compliance with these Rules and Guidelines;
- 3) Rejection of other bids or proposals related to MSD contracts or procurements submitted by that Contractor; and/or
- 4) Declaring the contractor to be in breach or default, subject to specific performance of the terms of the contract or procurement.

As noted above, each bidder for a contract or procurement related to MSD must complete and submit with its bid a SBE Utilization Plan, signed by an authorized officer or representative of the bidder. If awarded a contract or procurement for MSD, a Contractor shall use its Good Faith Efforts to implement and accomplish the objectives with respect to the use of SBEs as set forth in the Contractor's SBE Utilization Plan. The SBE Utilization Plan shall be incorporated as part of the contract at the time of award.

F. Small Contract Rotation Pool

The Small Business Manager shall establish a Small Contract Rotation Pool for certified SBEs, including procedures applicable to construction, supplies/services, and professional services for contracts between \$5,000 and \$50,000. Each certified SBE will be grouped by commodity codes based on its type of business. The Executive Director or his/her designee will be responsible for selecting vendors from the appropriate commodity code.

1). For the procurement of construction and supplies/services in excess of \$5,000 but no greater than \$50,000:

a). Notice must be provided to SBEs listed in the applicable commodity code and at least two (2), but no more than three (3) quotes must first be obtained from SBEs listed in the commodity code unless one of the following occurs: 1) there are no SBEs in the commodity code; 2) no SBEs in the commodity code provided a quote; 3) MSD determines that it is impractical or not in the best interest of MSD to award the contract to a SBE based on price; or 4) MSD rejects all quotes received from SBEs. If any of the above circumstances occur, then quotes should be obtained from non-SBEs and competitive bidding shall be conducted pursuant to the policies promulgated by the Executive Director or his/her designee.

2). For the procurement of professional services in excess of \$5,000 but no greater than \$50,000:

a). Including architectural and engineering services, where the Contract Administration Supervisor is given authorization to use discretion in the selection of Contractors based on technical expertise or experience, the established Evaluated Proposals process may be used to select a qualified firm among the identified SBE's for the requested services. The contract must

be awarded to an SBE listed in the commodity code unless one of the following occurs: 1) there are no SBEs in the commodity code; 2) no SBEs in the commodity code responded; 3) MSD determines that it is impractical or not in the best interest of MSD to award the contract to a SBE based on price; or 4) MSD rejects all responses received from SBEs. If any of the above circumstances occur, then responses should be obtained from non-SBEs.

Equitable Award of Contracts:

Any SBE awarded contract(s) under this Section will not be eligible to bid on or be awarded a contract for other similar services designated for the Rotation Pool, beyond their second award, unless:

- 1) The contract term of the awarded SBE has expired or will expire prior to the award of the pending contract; or
- 2) No other SBE firms are available to perform the requested scope of work; or
- 3) No bids are received from available SBE firms; or
- 4) All other SBE firms in the available pool have been awarded at least one contract.

An SBE may participate in other MSD bid opportunities not associated with this Small Contract Rotation Pool, regardless of their status for contract awards under this Section.

G. Small Business Enterprise Program Records and Reports

The effectiveness of this program will be measured by a review of data indicating Contractor and subcontractor spending with SBEs. Program effectiveness measurements will also include efforts by the MSD staff to provide Contractor opportunities for SBEs. In order to ensure the effective tracking of these efforts, the following shall be done:

- 1) Each Contractor shall continuously maintain, compile, and provide to MSD monthly information relating to its use of SBEs as stated in Section 4 Part E. This information shall include without limitation the following information for each of the SBE subcontractors, suppliers, and/or vendors utilized by the Contractor: a description of the categories of contracts awarded to and spent with SBEs; the dollar value of contracts awarded to and spent with SBEs; the contract number(s), and contact information for the SBEs. Additionally, the Contractor shall provide information regarding its progress toward attaining the SBE goal for the contract.
- 2) Within thirty (30) days after the end of a contract in which there were SBE goals, each Contractor shall provide the Small Business Manager with a report that summarizes the information provided pursuant to Section 4 Part G.1 above, including without limitation: the identity of and contact information for each SBE to whom the contractor has awarded a subcontract or supplier agreement; the type of work performed or supplies provided by each subcontractor/supplier; the dollar value of each of the subcontracts/supplier agreements; and the total percentage of the value of the MSD contract subcontracted to SBE subcontractors, suppliers, and/or vendors.
- 3) Contract Administration shall provide the Small Business Manager, or his/her designee, with information regarding every MSD contract or procurement on which the Contractor is an SBE or on which an SBE is part of a joint venture or strategic partnership team serving as the Contractor. The information shall include the name

and contact information of the SBE, the type of contract, and the dollar value of the contract.

- 4) The Small Business Manager shall prepare and present to the Executive Director quarterly consolidated reports based on a compilation and analysis of the reports submitted by each Contractor and information from Contract Administration of procurement regarding MSD's use of SBEs as contractors and subcontractors. The consolidated reports will identify and assess the awards and payments to SBEs of MSD contracts; Contractors' use of SBE subcontractors and suppliers, and/or vendors; Contractors' progress in achieving SBE subcontract goals, and other SBE development and contracting efforts. Specifically, the Small Business Manager, or his/her designee, will maintain records and prepare reports showing information such as, but not limited to:
 - a. Awards and payments to SBE Contractors, subcontractors, suppliers, and/or vendors including the contract name and number, names of Contractors and subcontractors, contact persons, nature of the work/services performed, and the percentage of SBE participation per contract. The Small Business Manager, or his/her designee, will obtain regular reports from Contractors on their progress in meeting contractual SBE commitments;
 - b. Specific efforts by Contractors to identify and award contracts to SBEs;
 - c. Copies of all correspondence by Contractors to SBEs regarding SBE utilization and/or outreach;
 - d. MSD awards to SBE Contractors in which a SBE was a joint venture partner. This information shall include without limitation the contract name and number, the name and contact information of the SBEs, the type of contract, and the dollar value of the contract;
 - e. Pre-bid information as it relates to small business opportunities;
 - f. Requests for assistance from SBEs interested in bidding/proposing on MSD contracts and subcontracts;
 - g. Workshops, seminars and training programs conducted for SBEs;
 - h. Efforts to assist SBEs in acquiring bonding and insurance; and,
 - i. Any additional information gained in Assistance and Outreach by MSD from Section 4, Parts K and L.
- 5) The Small Business Manager will submit an annual SBE Utilization Report to the Executive Director. These reports shall include a summary of the information described in Section 4, Part G above, plus an analysis of the total dollar value of MSD contracts/subcontracts awarded and paid to SBEs during the preceding year, categorized by prime contracting dollars and subcontracting dollars. The percentage of the total dollar value of these contracts that were awarded and paid to SBEs during the preceding year shall also be provided.

H. Small Business Enterprise Internal Review Process

Purpose:

The SBE Internal Review Process is an assurance within MSD to add value and improve the organization's operation. It is intended to help the organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes.

Review Scope:

The scope of the SBE Internal Review function includes the examination and evaluation of the organization's governance, risk management process, internal controls, and the quality of performing assigned responsibilities to achieve the organization's goals and objectives, as designed and represented by management. This includes ensuring that:

- 1) Organizational risks are appropriately identified and managed.
- 2) Significant financial, managerial, and operational information are accurate, reliable, and timely.
- 3) Compliance is maintained by staff members with regards to policies, procedures, and applicable laws and regulations.
- 4) Quality and continuous improvement are sustained in the organization's control process.
- 5) Legislative or regulatory issues impacting the organization are recognized and addressed appropriately.

Opportunities for improving management control and operational effectiveness may be identified during reviews. They will be communicated to the appropriate level of management.

Independence:

To ensure that independence is maintained, the Internal Review, functionally and administratively, reports to the Executive Director of the MSD. Internal Review has no direct responsibility or authority over any of the activities or operations they review.

Responsibility:

The Internal Review shall:

- 1) Develop an annual report using an appropriate methodology and submit that report to the Executive Director for review and approval.
- 2) Implement and facilitate the approved SBE report, including any special tasks or projects as requested by management.
- 3) Issue periodic summary reports to the Executive Director and management on the results of reviewed activities and management plans.
- 4) For each project, report significant issues related to the processes for controlling the activities of the organization and its affiliates, including potential improvements to those processes.
- 5) Maintain sufficient knowledge, skills, and experience to meet the requirements of the annual review.

Authority:

The Internal Review has authority to:

- 1) Access, without restriction, all company functions, records, property and personnel as required to fulfill the scope of its review.
- 2) Obtain the necessary assistance of personnel in units of the organization where reviews are performed, as well as other specialized services from within or outside the organization.

I. Database

The Small Business Manager, or his/her designee, will maintain a database of SBEs to assist bidders in identifying SBEs with capabilities commensurate with general contracting and procurement requirements. The website for the database shall be developed and maintained. A list from the database will be made available to bidders to assist them in their efforts to use SBEs. This list is not exhaustive and will be frequently updated. Therefore, if a bidder desires to use a firm not listed in the database, the bidder should confer with the Small Business Manager or his/her designee, to ascertain whether the firm has been certified as an SBE in accordance with these Rule and Guidelines or whether the firm may be eligible for such SBE certification.

J. Payment to Contractors and Prompt Payment to Subcontractors

A Contractor shall be required to certify in writing that all of its subcontractors, suppliers, and/or vendors have been paid for work and materials by the Contractor for previous disbursements before additional disbursements of contract and/or procurement payments are made to the Contractor. The Prompt Payment System Ordinance 297-2002 requires: 1) MSD to make payments to Contractors within thirty (30) days of receipt of a complete and responsive invoice; 2) Contractors to pay subcontractors for complete and responsive invoices within ten (10) days after they receive payment from MSD; 3) MSD to pay an interest penalty on unpaid balances not paid within thirty (30) days, up to a maximum of 10% of the total contract amount; 4) Contractors to pay an interest penalty on unpaid balances not paid within ten (10) days to subcontractors; and 5) allows MSD to make partial payments for partial deliveries if authorized by the terms and conditions of the contract. During the contract and upon completion of the contract, MSD may request documentation to certify payment to subcontractors or suppliers. The subcontractor or supplier may be required to sign off on the certification of payment form or affidavit, by the subcontractor or supplier, to attest to the receipt of payment from the Contractor.

K. Assistance to Small Business Enterprises by Contract Administration and MSD Staff

MSD is committed to maximizing subcontracting and procurement opportunities for all qualified and available SBEs. MSD may establish an SBE subcontracting goal for each contract where there is an opportunity to do so. MSD considers information distributed and communicated with SBEs as an integral part of the SBE Program.

Contract Administration, MSD management, and MSD staff involved in any contracting and/or procurement activities shall do the following to assist in meeting the outcomes included in these Rules and Guidelines:

- 1) Establish direct notification of bid opportunities to SBEs.

- 2) Provide that Contract Administration management and MSD staff actively participate in trade fairs and association meetings for small, minority, and female businesses.
- 3) Maintain a tracking chart of the number of SBEs contacted, including the quotes received, which data can be classified into the different commodity categories.
- 4) Require public solicitations for small purchases over \$5,000.
- 5) Conduct bi-annual, in-house training sessions for MSD staff involved in contracting and procurement, including activities to ensure awareness of the SBE Program Rules and Guidelines.
- 6) Evaluate the effectiveness and performance of all MSD staff and managers involved in any contracting and/or procurement activities in utilizing SBEs in purchasing all services.
- 7) Implement procedures to include SBEs in all contracts and procurements funded by MSD, where feasible.
- 8) Provide feedback, where feasible, to unsuccessful SBE bidders about their proposal upon request. Conduct debriefing sessions with the cooperation of the functional unit involved to explain and analyze why certain SBE bids were unsuccessful.
- 9) Involve the Small Business Manager, or his/her designee, in the contract or procurement review process.
- 10) Develop a centralized list of all user divisions whereby all contracts and procurements are identified as the source from which solicitations can be made by contract or procurement category.
- 11) Permit SBEs, upon request, to review and evaluate successful bids.
- 12) Ensure that SBEs are contacted for solicitation lists at least fourteen (14) days prior to the bid date.

L. Outreach to Small Business Enterprises by the Small Business Manager

To ensure that opportunities to participate with MSD contracts and procurements are available to the widest feasible universe of interested, available, and qualified businesses, the Small Business Manager shall develop and implement a written comprehensive outreach program aimed at increasing SBE participation in MSD's subcontracting and procurement process. This program may include, without limitation, any or all of the following:

- 1) MSD may disseminate at community events, trade shows, and other appropriate business functions, and publish at regular intervals in print and in electronic media (including publications or electronic media targeted to SBEs), information describing the MSD SBE Program, and the functions of the Small Business Manager.
- 2) The Small Business Manager, or his/her designee, may establish a procedure to engage in continuous recruitment and outreach efforts directed at business assistance organizations, such as: Allied Construction Industries; South Central Ohio Minority Supplier Development Council; Greater Cincinnati & Northern Kentucky African American Chamber of Commerce; Cincinnati USA Hispanic Chamber of Commerce; Cincinnati USA Regional Chamber of Commerce; Small Business Administration; SCORE; Minority Contractors Business Assistance Program, and others, to increase the pool of businesses available to do business with MSD. The Small Business Manager, or his/her designee, may identify suppliers through regional business development organizations and participation at various trade shows, supplier diversity

- groups, and work with various local, state, and national supplier development councils and organizations.
- 3) The Small Business Manager, or his/her designee, may disseminate at community events, trade shows, and other appropriate business functions, and publish at regular intervals in print and in electronic media, information identifying ongoing contracting opportunities with MSD, and providing contact information by which businesses may obtain additional information from the Small Business Manager, or his/her designee. To the extent feasible, the Small Business Manager may enter into arrangements to share data regarding upcoming MSD projects and subcontracting opportunities on MSD projects, with other businesses and agencies or jurisdictions in the region.
 - 4) The Small Business Manager, or his/her designee, may assist businesses in submitting bids for eligible projects by disseminating information in print and electronic form, by providing individualized counseling, and/or by conducting seminars regarding the process for submitting a bid and how to do business on a MSD project.
 - 5) The Small Business Manager, or his/her designee, may actively encourage businesses to attend the pre-bid conferences, providing face-to-face and one-on-one meeting opportunities with employees of MSD with the divisions that are involved with the contracting and procurement process.
 - 6) The Small Business Manager shall establish and implement training and awareness programs with the employees of MSD to educate them with regard to increasing utilization of a wide array of businesses. The Small Business Manager, or his/her designee, will include training and awareness activities in its quarterly report as stated in Section 1 Part C and Section 4 Part I, above.
 - 7) The Small Business Manager, or his/her designee, may provide information and advice to the various procurement divisions regarding the effectiveness of current bidding procedures in facilitating bids on eligible projects with the widest feasible universe of interested businesses. This information may include suggestions regarding how to arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules, in ways that facilitate the participation of all interested businesses.
 - 8) The Small Business Manager, or his/her designee, may create workshops for businesses located within the region to instruct them on how to compete for bids, including advice on marketing, soliciting, and preparing a bid. The Small Business Manager, or his/her designee, may establish a program that will incorporate business and entrepreneurial training and assistance mentoring, matchmaking, individual consulting, and regular training workshops and seminars. To accomplish this, the Small Business Manager, or his/her designee, may reach out to and collaborate with the organizations mentioned in Part 2) above, as well as regional higher education institutions, state and national supplier development councils, and similar organizations.
 - 9) The Small Business Manager, or his/her designee, may develop communications and other written materials that are meant to encourage and provide information to Contractors to increase their utilization of SBE subcontractors. In addition, the Small Business Manager may sponsor networking events that allow businesses to meet each other and which create an opportunity for Contractors to discuss their upcoming needs with SBE subcontractors.

- 10) The Small Business Manager, or his/her designee, may recommend to the Executive Director policies to prohibit discrimination in the provision of credit or bonding for MSD contracts.
- 11) The Small Business Manager, or his/her designee may work with existing service providers in the region to:
 - a. develop a technical assistance program to prepare small businesses to compete for specific contracts;
 - b. implement and monitor a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for businesses;
 - c. develop and provide services to help businesses improve their long-term development, to increase their opportunities to participate in a variety of work, to handle increasingly significant projects, and to achieve self-sufficiency;
 - d. establish a program to assist new, start-up, or emerging businesses; and,
 - e. assist businesses in developing their capability to utilize technology and conduct business through electronic media.
- 12) The Small Business Manager, or his/her designee, may create and maintain records of all subcontractor participation on MSD projects. The Small Business Manager may perform investigations regarding the actual utilization of SBE subcontractors during the term of the contract as compared with the anticipated use of SBE subcontractors at the time of bid submittal. SBE subcontractors shall report the amount of work they anticipate performing on the contract, and will report the actual work performed and the amount billed. The Small Business Manager will allow SBE subcontractors to confirm the status of their subcontracts and the payments received thereunder.
- 13) The Small Business Manager, or his/her designee, may continue to develop its website to provide general information on: doing business with MSD, the bid process, how to get certified, a directory of SBEs to provide a calendar of events, bid lists, bid status reports, to post solicitation notices, and to provide downloadable forms and other appropriate information. In addition, Contractors that have been awarded MSD contracts may be posted on the website to allow a small business to target their marketing efforts to Contractors that have worked with MSD.
- 14) The Small Business Manager, or his/her designee, may be available to assist SBEs in gaining access to training and technical assistance in the areas of cost estimating and bonding. In addition, the Small Business Manager, or his/her designee, may provide some technical assistance to SBEs through the collection, organization, and dissemination of information regarding available capital or financing resources. The Small Business Manager, or his/her designee, may provide such other general assistance to SBEs to enhance the participation of SBEs in doing business with MSD.

M. Small Business Enterprise Contractor and Subcontractor Assistance

Assistance is available to Contractors and subcontractors with respect to compliance with the SBE Program. Such assistance includes:

- 1) Clear identification of the SBE provisions in all bid solicitations;
- 2) Pre-bid/proposal conferences to explain the SBE Program, when appropriate;
- 3) Identification of SBEs, including a list of SBEs available to all bidders and prospective bidders for contracts and/or procurements (see, www.msdcg.org); and,
- 4) List of bidders and prospective bidders for contracts and/or procurements.

N. Small Business Enterprise Subcontractor Substitution

Contractors shall request prior approval for any substitution of a SBE subcontractor, supplier, or vendor used or proposed to be used by a Contractor, by completing and submitting a copy of the SBE Subcontractor Substitution Form. Written request for approval shall provide the name of the listed SBE subcontractor, supplier, or vendor; the name of the replacement; the reason(s) for the proposed substitution; a brief description of the work to be performed by the substituted party; and, the dollar amount of the subcontract or procurement involved. The selection process for the substitute subcontractor, supplier, or vendor shall be evaluated by the Small Business Manager for fairness and outreach efforts.

Section 5. Small Business Enterprise Certification

A. Small Business Enterprise Definition and Requirements

Small Business Enterprises shall be defined as stated in Section 2, Definitions. To be eligible for certification by MSD, or for a certification from another agency to be accepted by MSD, a firm or business will be reviewed under the following criteria, which criteria are not exhaustive and shall be considered in conjunction with the additional provisions of these Rules and Guidelines:

- 1) Each qualified owner of the firm or business must be a citizen of the United States;
- 2) The firm or business must be at least 51% owned, operated, and controlled by the qualified owner(s);
- 3) The 51% or more ownership of the firm or business by the qualified owner(s) must not be the result of a loan from a person or entity who is a former employer or partner of the qualified owner(s) or a competitor of the firm or business;
- 4) The qualified owner(s) must have physical possession of stock certificates or similar documentation for the firm or business, as evidence of ownership;
- 5) The firm or business must not have a debtor/creditor relationship with a firm or business which is the same or a closely-related business and is not certified as an SBE, except for financial institutions in business for the purpose of lending money;
- 6) The qualified owner(s) must be knowledgeable, trained and/or experienced in business and management skills for the type of business to be certified;
- 7) The firm or business must not share onsite personnel (accountants, lawyers, secretaries, etc.), office space, equipment, and/or supplies with a firm or business which is not certified as a SBE and which is engaged in the same or a similar line of business;
- 8) The qualified owner(s), as officer(s) or member(s) of the Board of Directors or similar governing body of, or through ownership interests in the firm or business, must have the power to control the day-to-day operations of the firm or business;
- 9) The qualified owner(s) must have authority to manage or to direct the payroll, bank deposits, and bank account withdrawals for the firm or business, and must be at least 51% co-maker(s) on all loans made to the firm or business;
- 10) The qualified owner(s) must be responsible for maintaining the corporate books and records of the firm or business;
- 11) The qualified owner(s) must prepare or have prepared general financial statements and tax returns for the firm or business; and,
- 12) The qualified owner(s) must have the authority to hire and to fire any employee of the firm or business.

MSD follows the Federal Small Business Administration (SBA) size standards to determine whether a firm may be considered a Small Business Enterprise. A full table of Small Business Size Standards matched to the North American Industry Classification System (NAICS) may be obtained at www.sba.gov/size.

B. Brokers

The participation of brokers in the suppliers/non-professional services category is specifically prohibited. A firm is not considered a broker if it: a) provides documentation verifying that the firm or business is a distributor or an independent manufacturer's representative for another firm, or b) maintains, in the ordinary course of business, inventory for each commodity for which the firm or business is seeking certification that would be available for inspection during a site visit.

C. Joint Venture SBE Certification

Joint ventures between non-SBEs and SBEs may be certified for construction contracts in excess of \$1,000,000 where the SBE's participation is 30% or greater, and for supplies/services and professional services contracts in excess of \$100,000 where the SBE's participation is in excess of 20%. The SBEs must perform a clearly defined portion of the work equal to or greater than the SBE's share in the ownership, control, management, responsibility, risk, and profits of the joint venture.

D. Small Business Enterprise Certification Process

MSD will accept certifications from those certifying agencies that meet the requirements for SBE certification as stated in Section 5 Part A of these Rules and Guidelines. Any business seeking SBE certification must complete the designated forms and provide the latest copy of its certification or a copy of the letter of certification from the certifying agency to MSD. MSD will verify that the certifying agency meets its standards as stated above.

After it makes a certification acceptance decision, MSD will send a letter of certification acceptance or a letter of denial to the firm or business, in accordance with Section 5 Part D and Part F.

MSD may certify as SBEs those firms and businesses meeting the eligibility requirements documented in Section 5 Part A, above. The Small Business Manager, or his/her designee, may accept applications from firms or businesses seeking to be certified by MSD as a SBE, or from firms or businesses seeking to have a joint venture certified. Applications may be obtained at the office of the Metropolitan Sewer District, 1600 Gest Street, Cincinnati, OH 45204. Applications may also be obtained on the MSD website at <http://msdgc.org/>.

No application will be considered for review by the Small Business Manager until it is fully completed, properly signed with notary seal, and accompanied by required supporting documentation. In considering each application for certification, the Small Business Manager, or his/her designee, will determine whether the applicant is a SBE as defined above by reviewing the application and accompanying documentation, the results of staff investigations (which may include a site inspection), and other relevant information.

The Small Business Manager, or his/her designee, may certify the applicant or provide the applicant with written justification of denial, within sixty (60) days after the date the Small Business Manager receives a satisfactorily-completed application from the applicant.

The Small Business Manager, or his/her designee, will review and evaluate applications and may reject a SBE application based on one or more of the following: 1) the applicant does not meet the requirements for certification as a SBE as set forth in Section 5 Part A; 2) the application is not satisfactorily completed within ninety (90) days; 3) the application contains false information; and, 4) the applicant does not provide required information in connection with the certification review conducted by the Small Business Manager, or his/her designee. A firm that is denied certification by MSD may not reapply for certification for a period of twelve (12) months from the date of denial.

E. Recertification Process

Once certified as a SBE by the Small Business Manager, the certification is valid for a period of two (2) years from the date of certification by MSD. Prior to expiration of the two-year period, a business that desires to be recertified by MSD shall: 1) return a completed recertification form, as provided by the Small Business Manager, or his/her designee, to the office of the Small Business Manager, prior to expiration of the certification, and 2) meet the requirements specified in Section 5 Part A for certification as a SBE.

The Small Business Manager, or his/her designee, shall notify the SBE in writing sixty (60) days and thirty (30) days prior to the expiration date of the SBE's certification. A site inspection may be required for recertification.

F. Certification Denials

Any firm or business may be denied certification as a SBE based on any of the following grounds:

- 1) Failure to qualify as a SBE as required by these Rules and Guidelines;
- 2) Failure to provide sufficient information on which a determination of eligibility can be established;
- 3) Refusal to permit on-site inspection; or
- 4) Refusal to comply with a request from MSD for information, data, or access to records pertinent to the determination of eligibility for SBE certification.

When certification as a SBE is denied by MSD, the applicant shall be notified of the denial in writing by the Small Business Manager, or his/her designee, by certified mail, along with the reason(s) for denial. A firm or business that has been denied SBE certification by MSD may file an appeal pursuant to these Rules and Guidelines. Hearings shall be conducted in accordance with the procedures of the Contract Compliance Advisory Board and these Rules and Guidelines. If an applicant is denied SBE certification, the applicant cannot re-apply for SBE certification for a period of twelve (12) months from the date of the notice of denial, except as otherwise provided herein.

G. Certification Appeals

Any applicant denied SBE certification by MSD may appeal the determination of denial by filing a notice of appeal in writing to the Small Business Manager within ten (10) days of its receipt of the notice of denial of certification. Within five (5) days of receipt of the notice of appeal by the

Small Business Manager, or his/her designee, such notice shall be forwarded to the Contract Compliance Advisory Board.

The Contract Compliance Advisory Board shall set a hearing date not more than twenty-eight (28) days from the date of receipt of the notice. The Contract Compliance Advisory Board shall cause notice of the hearing to be served upon all parties by certified mail. Such notice shall set forth, with particularity, the charges filed by the aggrieved business and shall include the hearing date, time, and place. The hearing shall be open to the public. An electronic or court-type recording or transcript of the hearing shall be made, which shall be a part of the official record of the proceedings. A copy of the recording or transcript shall be made available to the applicant at cost, upon request.

At the hearing, all testimony shall be given under oath or affirmation. Any person may be excluded from the hearing for conduct that interferes with the hearing process. The Ohio Rules of Evidence shall not strictly apply; however, the Contract Compliance Advisory Board shall have the authority to exclude irrelevant or repetitive evidence or testimony. The official record of the hearing shall consist of the notice of hearing; written submittals of the applicant, if any; report(s) of the Small Business Manager; the proposed findings and conclusions filed by the parties; exceptions to the proposed findings and conclusions; and the recording or transcript of the hearing.

At the hearing, all parties shall be provided a fair and impartial hearing and shall be allowed to produce any and all evidence that clarifies or directly relates to the information supplied by the applicant which, upon review by the Small Business Manager, led to the determination for denial of certification. The Contract Compliance Advisory Board may not consider new or different evidence intended to replace or contradict information or documents supplied by the applicant that led to the denial of certification.

Within ten (10) days following the hearing, the Contract Compliance Advisory Board shall make a written recommendation to the Executive Director, or his/her designee, regarding the appeal, which must be supported by a preponderance of evidence. The recommendation shall affirm, modify, or reverse the denial of certification being appealed. If the finding is in favor of the aggrieved party, the business shall be certified as a SBE and added to the certified SBEs list maintained by MSD. The decision of the Executive Director shall be final, subject to the right of appeal as provided by law. The Executive Director's designee shall issue written notice of the decision to all parties after receiving the recommendation of the board. The notice of the decision shall be sent to all parties by certified mail and shall set forth the reasons for the decision. The Small Business Manager shall maintain the official record of proceedings, including the decision of the Executive Director, and of the actions of the Contract Compliance Advisory Board.

H. Certification Termination due to Change in Ownership, Control, etc.

Certified SBEs shall provide written notice to the Small Business Manager, or his/her designee, of any change in ownership or control of the SBE within ten (10) days of such change, to include sale, exchange, or transfer of ownership or change in control of the certified SBE as specified in the application which was the basis for the SBE's certification. Upon notification, their certification as an SBE by MSD shall be designated "under review", and the SBE shall have

thirty (30) days from the date of written notice to the Small Business Manager, or his/her designee, to apply for recertification. During the re-certification process, the SBE will remain in good standing as certified by MSD. Failure to apply for recertification within the 30-day period will result in the termination of the SBE's certification with MSD. If an applicant is denied SBE certification, the applicant cannot re-apply for SBE certification for a period of twelve (12) months from the date of notice of denial, except as otherwise provided herein.

I. Reciprocal Certification

MSD will accept reciprocal certifications from those certifying agencies that have the exact requirements for SBE certification as stated in Section 5 Part A of these Rules and Guidelines, and which employ the same process for certification as MSD, as stated in Section 6 Part D. The business seeking SBE reciprocal certification must complete the Reciprocal Certification form and provide the latest copy of certification or a copy of the letter of certification from the certifying agency to MSD. MSD will verify that the certifying agency meets its standards as stated above.

After it makes a certification decision, MSD will send a letter of certification or a letter of denial to the business which applied for certification, in accordance with Section 5 Part D and Part F.

Section 6. Joint Venture Program

For purposes of the Program, Joint Ventures must be pre-approved by MSD and at least one participant in the Joint Venture must be a SBE. Application for pre-approval will be made on a form provided by MSD for a specific contract. Joint Venture approval will terminate upon completion of the contract for which the Joint Venture was approved.

Based upon the scope of work and market availability, the Small Business Manager shall determine on a contract-by-contract and/or project-by-project basis, for all eligible projects valued over \$5,000,000 for construction and over \$100,000 for professional services or supplies/services, whether Good Faith Efforts to enter into a joint venture shall be required for such contract and/or project. On such projects in which Good Faith Efforts to enter into a Joint Venture relationship are required, no bid shall be accepted unless submitted by a Joint Venture, unless the Small Business Manager has determined that Good Faith Efforts to enter into a Joint Venture have been demonstrated. The Small Business Manager shall determine whether Good Faith Efforts to enter into a joint venture have been adequately demonstrated based on a review of relevant facts, documents and circumstances.

As to each Joint Venture under this section, a written joint venture agreement must be completed by all parties to the Joint Venture and executed before a notary public. Said agreement must clearly delineate the rights and responsibilities of each member or partner, must comply with any requirements of the Small Business Manager set forth in bid documents or otherwise, and must attest that the Joint Venture shall continue for, at a minimum, the duration of the contract or project.

The Small Business Manager shall review all contractual agreements regarding the terms and provisions of each Joint Venture relationship, prior to the award of a contract or project, including agreements pertaining to:

- 1) The initial capital investment of each venture partner;
- 2) The proportional allocation of profits and losses to each venture partner (no SBE venture partner's liability should ever exceed said partners percentage of revenue earned while a participant in the joint venture);
- 3) The sharing of the right to control the ownership and management of the Joint Venture;
- 4) Actual participation of the venture partners on the project;
- 5) The method of and responsibility for accounting;
- 6) The method by which disputes are resolved; and
- 7) Any additional or further information required by the Small Business Manager as set forth in bid documents or otherwise.

For Strategic Partnerships, each partner shall provide MSD access to review all records pertaining to the agreement between the partners, before and after the award of the contract, in order to reasonably assess compliance with their agreement, to include agreements pertaining to:

- 1) The SBE strategic partner's liability versus its partner percentage of revenue earned for the project (the SBE liability should not ever exceed the percentage of revenue);
- 2) The actual participation of the strategic partners on the project;
- 3) The method of and the responsibility for accounting; and

4) The method by which disputes are resolved.

Agreements must be submitted on or before the date set for receipt of bids on an eligible project. A bid submitted by a Joint Venture or Strategic Partnership that does not include a satisfactory written joint venture or strategic partnership agreement in accordance with the requirements of this section, may be deemed non-responsive and rejected.

The Joint Venture or Strategic Partnership and each member of the Joint Venture or Strategic Partnership shall provide the Small Business Manager access to review all records pertaining to joint venture or strategic partnership agreements, before and after the award of a contract in order to reasonably assess compliance with this subdivision.

Penalties for non-compliance: Any responsible bidder who fails to comply with this section shall be subject to any or all of the penalties contained in Section 8 Part B.

Section 7 . Complaints

MSD is committed to enforcing these Rules and Guidelines as written, and in turn encourages all SBEs, firms, or individuals to promptly report any suspected unlawful or illegal activities by others. Such activities may include, but are not limited to, falsification of information or documentation provided to MSD for purposes of obtaining SBE certification status or vendor registration, bidding on contracts, reporting SBE participation on contracts awarded, discrimination against others in whatever form or capacity, and any retaliation against others for any reason purpose associated with this Program.

Any person or organization with information which supports the unlawful or illegal participation by a business enterprise, firm, or individual in the SBE Program should provide a detailed statement in writing to the Small Business Manager, specifying such unlawful or illegal acts and explaining the basis for such claim or statement.

Section 8. Remedies

A. Falsification of Small Business Enterprise Subcontracts

Falsification or misrepresentation of a sub-agreement as to company name, contract amount and/or actual work performed by subcontractor, submitted on any contracts or forms required or otherwise requested by MSD, will result in sanctions including assessment of penalty fines, termination of contract, and/or debarment.

B. Penalties for Non-Compliance

- 1) The provisions of this section shall be incorporated into all MSD contracts. The Contractor shall agree that a breach of the provisions of these Rules and Guidelines or the contract shall subject the Contractor to any or all of the following penalties: Withholding of 10% of all future payments under the contract until it is determined that the Contractor is in compliance;
- 2) Withholding of all future payments under the contract until it is determined that the Contractor is in compliance;
- 3) Default; payment withheld under Section 321-155 of the Cincinnati Municipal Code; or Default; further bids or proposals refused under Section 321-153 of the Cincinnati Municipal Code.
- 4) A minimum of two (2) years' suspension from new awards to do business with MSD;
- 5) Permanent debarment from doing business with MSD.

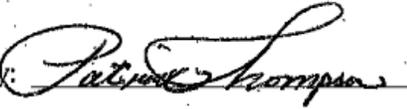
For good cause shown, the Small Business Manager may grant a stay of the penalty pending appeal. However, in no case shall the stay impede MSD's contracting authority.

C. Remedies for Discrimination or Retaliation

When an allegation is sustained, the Small Business Manager shall recommend to the Executive Director any one or more of the following actions (listed in the order of severity):

- 1) Finding that the respondent business is not a responsive bidder within the meaning of the bid statutes, with respect to specific contracts that MSD has put out for bids or intends to put out for bids at the time of such finding;
- 2) Exercise of any other rights or remedies available to MSD under any current contract between the respondent business and MSD other than rescission, suspension or termination of the contract, including but not limited to liquidated damages;
- 3) Rescission, suspension (for a period up to one year) or termination of any current contract between the respondent business and MSD under the terms thereof; or
- 4) Disqualification of the respondent business from bidding and contract awards on MSD projects and from participating in MSD contracts as a subcontractor, vendor or supplier, for a period of not more than two years, provided that the respondent business shall have the right to petition MSD for reinstatement of its active bidder status by demonstrating to MSD's reasonable satisfaction that the problems for which it was disqualified have been cured;
- 5) Permanent debarment from doing business with MSD; and
- 6) Referral of the matter for criminal prosecution of fraud and/or other violations of state law, if appropriate under the circumstances.

Approved for the County:

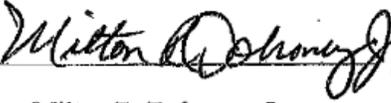
By: 

Name: Patrick Thompson

Title: County Administrator

Date: 9/2/10, 2010

Approved for the City:

By: 

Name: Milton R. Dohoney, Jr.

Title: City Manager

Date: 9/8, 2010

APPENDIX I

REQUIREMENTS FOR BIDS, PROPOSALS, QUALIFICATIONS, AND SUBMISSIONS TO MSD

Each bid submittal to MSD shall include the following documents:

- (A) The MSDGC SBE Goal Compliance Plan Cover Page
- (B) The MSDGC SBE Goal Compliance Plan Applicable Documents

The following forms may be included in the RFP/RFQ package:

- (A) MSDGC Consultant / Subconsultant Utilization Plan for RFQ / RFP
- (B) MSD 172 Annual S/M/WBE Utilization

The following forms are distributed during the contract award process:

- 1) **MSDGC SBE Monthly Report for Construction Projects** — Shows amounts paid to all subcontractors and suppliers (SBEs and non-SBEs), the work done, and dates of performance.
- 2) **MSDGC SBE Monthly Report for Professional Services** — Shows amounts paid to all subcontractors and suppliers (SBEs and non-SBEs), the work done, and dates of performance.
- 3) **MSDGC Subcontractor Substitution** — Used when one subcontractor is substituted for another. This form must be completed and submitted to MSD for approval before the change can be made.
- 4) **MSDGC Addition of New Subcontractor**—Used when a new subcontractor is added to the project that is not replacing a current subcontractor.

APPENDIX II

BUSINESS/CORPORATE APPLICATION REQUIREMENTS AND DOCUMENTATION FOR SBE CERTIFICATION

(A) Corporations must complete a Certification application and submit all required documents, as applicable, listed below:

- 1) Articles of Incorporation, By-Laws and/or Code of Regulations;
- 2) Minutes of the first and most recent shareholders, Board of Executive Directors, and/or corporate meetings;
- 3) Resumes of all Stockholders/or Executive Officers, including their education, training and dates of employment;
- 4) Copies of the front and back of all issued stocks of certificates and stock transfer journal voting shares (not a specimen copy);
- 5) Copy of complete personal tax return (Form 1040), signed and dated by principal(s) and/or a certified public accountant; business federal income tax return (Form 1120) from all owners for the three (3) previous years, or total number of years in business if less than three years, plus financial statements of any affiliates or subsidiaries for the same period of time;
- 6) Bank resolution card or signature card;
- 7) Copy of active loans (e.g. promissory notes) and any equipment rentals and or purchases;
- 8) Employee data to include total number of employees over the past three years (See size standard definition);
- 9) List of company locations owned or leased by the company;
- 10) Third party agreement (signed purchase and/or lease agreements and or equipment agreements; and/or Management Service Agreements or Buy/Sell Agreements (pertains to acquisition of business through purchase).

(B) Partnerships or Limited Liability Companies must complete a Certification application and submit all required documents, as applicable, listed below:

- 1) Partnership or Limited Liability Agreement;
- 2) Employee data, to include total number of employees for the past three (3) years (See Size Standard definition);
- 3) Resumes of each principal of the company, including their education, training, and employment, including dates of employment;
- 4) Copy of personal tax return (Form 1040) and partnership/LLC business tax return for the past three years, or total number of years in business if less, plus financial statement of any affiliates or subsidiaries for same period of time;
- 5) License(s) to do business in the state or city, as applicable;
- 6) Buy/Sell agreements and profit sharing agreements, as applicable;
- 7) Proof of initial investment for partnership;
- 8) Copy of Third Party agreements when applicable.

(C) Sole Proprietorships must complete a Certification application and submit all required documents, as applicable, listed below:

- 1) Registered Trade Name/Assumed Names Certificate;
- 2) Resume including the education, training and dates of employment;
- 3) Copy of personal taxes (Form 1040) and business taxes (Profit and Loss tax form);
- 4) Most recent financial income statement and balance sheet for previous three years, or
- 5) Total number of years in business if less than three years;
- 6) Equipment rental and purchase agreements;
- 7) Management Service agreements.

(D) Joint Ventures

The Small Business Manager will certify joint ventures under Section 6 Part C only between and among SBEs, except as provided in this section. Joint ventures between majority Contractors and SBEs may be certified for construction, supplies/services, or professional services contracts. The SBE must be responsible for the performance of a clearly-defined portion of the work to be performed equal to its share in the ownership, control, management, responsibility, risk and profits of the joint venture.

Information to be provided shall include:

- 1) Why the businesses are coming together;
- 2) The benefits each business will receive;
- 3) The specific duties of each entity;
- 4) The initial capital investment of each party;
- 5) At least one of the participants must have proof that it has been certified as a SBE in the appropriate commodity for the joint venture agreement.

(E) Ownership

Evidence of the SBE status, ownership and control of persons named in the application may be required. A business must be at least 51% unconditionally owned by an individual(s) who is a citizen of the United States and who is determined by the Small Business Manager to be a small business enterprise.

- 1) In the case of a corporation, 51% of each class of voting stock and 51% of the aggregate of all outstanding shares of stock must be unconditionally owned by an individual(s) determined by the Small Business Manager to be a SBE.
- 2) In case of a partnership or limited liability, 51% of the partnership interest must be unconditionally owned by an individual(s) determined by the Small Business Manager to be a SBE. Such unconditional ownership must be reflected in the firm's partnership or limited liability agreement.
- 3) The Small Business Manager does not consider a business to be unconditionally owned if the SBE individual(s) claims ownership of a firm based on unexercised stock options or other arrangements.
- 4) When determining ownership of a business for SBE program eligibility, the Small Business Manager may consider options to purchase stock held by non-SBE

- individual or entities. The right to convert non-voting stock or debentures held by non-SBE individuals or entities into exercised voting stock is also considered.
- 5) The individual(s) upon whom eligibility is based must receive at least 51% of the annual distribution of dividends paid on the voting stock of a corporate applicant firm.
 - a. In the event that the stock is sold, the individual(s) upon whom eligibility is based must be entitled to receive 100% of the value of each share of stock in his/her possession.
 - b. In the event of dissolution of the corporation, the individual(s) upon whom eligibility is based must be entitled to receive at least 51% of the retained earnings of the firm and 100% of the value of each share of stock in his/her possession.
 - 6) One firm may not hold more than 10% equity ownership interest in any other SBE firm.
 - 7) A non-SBE firm in the same or similar line of business is prohibited from having an equity ownership interest in a SBE firm which interest exceeds 49%.
 - 8) With prior approval, a SBE firm may continue participation in the program after a change of ownership. Prior Small Business Manager approval is not required when the change in ownership represents less than a 10% interest in the firm or when it results from the death or incapacity due to serious or long-term illness or injury of a disadvantaged principal. However, the firm shall notify Small Business Manager of such events as soon as possible.

(F) Control and Management

The management and daily business operations of a firm must be controlled by an owner(s) of the firm that has been determined to be a SBE. For a SBE individual to control the firm, that individual must have managerial or technical experience and competency directly related to the primary industry in which the firm is seeking SBE certification. One or more individuals identified as a SBE must manage the firm on a full-time basis. Such person(s) must possess requisite management or technical capabilities as determined by the Small Business Manager. For those industries requiring professional licenses, the Small Business Manager determines that the firm or individuals employed by the firm hold(s) the requisite license(s). At least one SBE full-time manager must hold the position of President and Chief Executive Officer. This precludes outside employment or other business interest by the individual that may conflict with the management of the firm or hinder it in achieving the objectives of its business development plan.

(G) Determining SBE Primary Industry

In determining the primary industry in which an applicant is to be certified, the Small Business Manager considers:

- 1) The distribution of gross revenues up to three years, or
- 2) The number of employees over the past three years, or
- 3) The cost of doing business in the different activities for business operations for the preceding three years, or total years in business if less; this includes any affiliates as

- defined by 13 C.F.R. Sec. 121.201, where it does not exceed the size standards as defined, pursuant to Section 3 of the SBE Act, or
- 4) The net worth of each owner does not exceed \$750,000.

The Small Business Manager will also consider other factors, such as the distribution of patents, contract awards, and assets. This procedure will assist in identifying the common commodity for the company under the Standard Industrial Classification (SIC) Codes.

Size Eligibility Provisions and Standards:

Calculation of Number of Employees.

- 1) Employees counted in determining size include all individuals employed on a full-time, part-time, temporary, or other basis. The Small Business Manager will consider the totality of the circumstances, including factors relevant for tax purposes, in determining whether individuals are employees of the concern in question.
- 2) Where the size standard is number of employees, the method for determining an applicant's size includes the following principles:
 - a. Including the employees of its domestic and foreign affiliates based upon numbers of employees for each of the pay periods for the preceding three years.
 - b. Part-time and temporary employees are counted the same as full-time employees.
 - c. If a company has not been in business for three years, the average number of employees is used for each of the pay periods during which it has been in business.
 - d. The treatment of employees of former affiliates or recently acquired affiliates is the same as for size determinations using annual revenues per the interim rules and guidelines for the City of Cincinnati.

Period of Measurement.

- 1) Annual receipts of a concern that has been in business for three or more years, divided by three.
- 2) Annual receipts of a business which has been in business for less than three complete fiscal years means the receipts for the period that the concern has been in existence is divided by the number of weeks in business, multiplied by 52.
- 3) Annual receipts of a concern which has been in business three or more complete fiscal years but has a short year as one of those years, means the receipts for the short year and the two full fiscal years are divided by the number of weeks in the short year and the two full fiscal years, multiplied by 52.
- 4) Use of information other than Federal tax return. Where other information gives the Small Business Manager reason to regard Federal income tax returns as false, the Small Business Manager may base its size determination on such other information.
- 5) Annual revenues of affiliates. (1) If an enterprise has acquired an affiliate or has been acquired as an affiliate during the applicable averaging period or before small business certification, the annual gross revenues for determining size status include

the revenues of both firms. Furthermore, this aggregation applies for the entire applicable period used in computing size, rather than only for the period after the affiliation arose. Revenues are determined for the enterprise and its affiliates in accordance with the Calculation of Net Worth, as defined below, although this may result in different periods being used to calculate annual revenue.

Calculation of Net Worth.

In determining the degree of net worth as it pertains to diminished credit and capital opportunities of the SBE individual(s), the Small Business Manager considers factors relating to both the firm and to the individual. An individual whose personal net worth exceeds \$750,000 is not considered a SBE for the purpose of SBE Program entry. When the Small Business Manager calculates the personal net worth of an individual claiming disadvantage status for purposes of the SBE Program, the Small Business Manager excludes the individual's ownership interest in the applicant or participating SBE firm and the equity in his/her primary personal residence. However, any portion of such equity in his/her primary residence attributable to excessive withdrawals from the applicant or participating SBE firm is not excluded.

Additional Requirements:

Immediate family members living in the same household may not each use their individual disadvantage status to qualify more than one business firm for SBE program participation if the firms are in the same line of business.

Ineligible Businesses:

- Brokers and Packagers
- Franchises
- Debarred or suspended person or firm
- Concerns owned by other SBE firms

APPENDIX III

FORMS

The following forms shall be used by Contractors for compliance with these Rules and Guidelines for the SBE Program. The forms may be amended by MSD from time to time, on an as-needed basis.

1. MSDGC SBE Goal Compliance Plan Cover Page
2. MSDGC SBE Goal Compliance Plan Applicable Documents:
 - a. MSDGC Subcontractor Utilization Plan (Statement of Intent to Utilize Firms)
 - b. MSDGC Waiver Request Form and Affidavit
 - c. MSDGC SBE Subcontractors Good Faith Efforts Summary Sheets
3. MSDGC Consultant / Subconsultant Utilization Plan for RFQ / RFP
4. MSD 172 Annual S/M/WBE Utilization
5. MSDGC SBE Monthly Report—Construction Projects
6. MSDGC SBE Monthly Report—Professional Services
7. MSDGC Subcontractor Substitution Form
8. MSDGC Addition of New Subcontractor