



AGENDA
CUYAHOGA COUNTY PUBLIC WORKS, PROCUREMENT & CONTRACTING
COMMITTEE MEETING
WEDNESDAY, OCTOBER 20, 2021
CUYAHOGA COUNTY ADMINISTRATIVE HEADQUARTERS
C. ELLEN CONNALLY COUNCIL CHAMBERS – 4TH FLOOR
10:00 AM

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. PUBLIC COMMENT**
- 4. APPROVAL OF MINUTES FROM THE OCTOBER 6, 2021 MEETING**
- 5. MATTERS REFERRED TO COMMITTEE**
 - a) R2021-0233: A Resolution authorizing the appropriation of real property for replacement of Old Rockside Road Bridge No. 00.42 over the Cuyahoga River in the City of Independence and Village of Valley View; authorizing the County Executive, through the Department of Public Works, to proceed with the acquisition of real property required for public highway purposes; authorizing the Fiscal Officer to issue the monetary warrants to be deposited with the Probate Court of Cuyahoga County in an amount that is equal to the fair market value of the property; and declaring the necessity that this Resolution become immediately effective.
 - b) O2021-0013: An Ordinance amending Chapter 503 of the County Code: Small Business Enterprise Program Policies and Procedures to approve revised Cuyahoga County Small Business Enterprise (SBE) Program Policies and Procedures, effective date TBD and adopt Minority Business Enterprise (MBE) & Women Business Enterprise

(WBE) Program Policies and Procedures, effective date TBD; and declaring the necessity that this Ordinance become immediately effective.

6. MISCELLANEOUS BUSINESS

7. ADJOURNMENT

**Complimentary parking for the public is available in the attached garage at 900 Prospect. A skywalk extends from the garage to provide additional entry to the Council Chambers from the 5th floor parking level of the garage. Please see the Clerk to obtain a complimentary parking pass.*

***Council Chambers is equipped with a hearing assistance system. If needed, please see the Clerk to obtain a receiver.*



MINUTES

CUYAHOGA COUNTY PUBLIC WORKS, PROCUREMENT & CONTRACTING COMMITTEE MEETING

WEDNESDAY, OCTOBER 6, 2021

CUYAHOGA COUNTY ADMINISTRATIVE HEADQUARTERS

C. ELLEN CONNALLY COUNCIL CHAMBERS – 4TH FLOOR

10:00 AM

1. CALL TO ORDER

Chairman Tuma called the meeting to order at 10:03 a.m.

2. ROLL CALL

Mr. Tuma asked Clerk Richardson to call the roll. Committee members Tuma, Miller, Conwell, Baker and Sweeney were in attendance and a quorum was determined.

3. PUBLIC COMMENT

There were no public comments given.

4. APPROVAL OF MINUTES FROM THE SEPTEMBER 22, 2021 MEETING

A motion was made by Mr. Sweeney, seconded by Ms. Conwell and approved by unanimous vote to approve the minutes from the September 22, 2021 meeting.

5. MATTERS REFERRED TO COMMITTEE

- a) R2021-0220: A Resolution authorizing the Director of Public Works to execute and submit a loan application in the amount of \$3,359,000.00 to State of Ohio, Ohio Public Works Commission to finance a portion of various Pleasant Valley Road Bridge Projects in various municipalities; authorizing the County Executive to accept

said loan, if approved, and to execute the agreement and all other documents required in connection with said loan and this Resolution; and declaring the necessity that this Resolution become immediately effective:

- 1) Rehabilitation of Bridge No. 09.03 over Riverview Road and an unnamed creek in the City of Independence.
- 2) Rehabilitation of Bridge No. 09.35 over Cuyahoga Valley Scenic Railroad in the City of Independence.
- 3) Replacement of Bridge No. 09.68 over Cuyahoga River in the City of Independence and Village of Valley View.

Ms. Nichole English, Planning and Program Administrator, addressed the Committee regarding Resolution No. R2021-0220. Discussion ensued.

Committee members asked questions of Ms. English pertaining to the item, which she answered accordingly.

On a motion by Mr. Tuma with a second by Ms. Baker, Resolution No. R2021-0220 was considered and approved by unanimous vote to be referred to the full Council agenda for second reading.

- b) R2021-0221: A Resolution making an award on RQ6721 to Sona Construction, LLC in the amount not-to-exceed \$2,320,000.00 for modernization of elevators in Jail II at the Justice Center Complex; authorizing the County Executive to execute Contract No. 1770 and all other documents consistent with said award and this Resolution; and declaring the necessity that this Resolution become immediately effective.

Mr. Matthew Rymer, Facilities and Maintenance Administrator with the Department of Public Works, addressed the Committee regarding Resolution No. R2021-0221. Discussion ensued.

Committee members asked questions of Mr. Rymer pertaining to the item, which he answered accordingly.

On a motion by Mr. Miller with a second by Ms. Conwell, Resolution No. R2021-0221 was considered and approved by unanimous vote to be referred to the full Council agenda with a recommendation for passage under second reading suspension of the rules.

6. MISCELLANEOUS BUSINESS

Mr. Tuma provided an update on pending legislation associated with The MetroHealth System, SBE, MBE and WBE Programs Policies and Procedures that has not been passed from Committee.

7. ADJOURNMENT

With no further business to discuss and on a motion by Mr. Tuma with a second by Mr. Sweeney the meeting was adjourned at 10:34 a.m., without objection.

County Council of Cuyahoga County, Ohio

Resolution No. R2021-0233

<p>Sponsored by: County Executive Budish/Department of Public Works/Division of County Engineer</p>	<p>A Resolution authorizing the appropriation of real property for replacement of Old Rockside Road Bridge No. 00.42 over the Cuyahoga River in the City of Independence and Village of Valley View; authorizing the County Executive, through the Department of Public Works, to proceed with the acquisition of real property required for public highway purposes; authorizing the Fiscal Officer to issue the monetary warrants to be deposited with the Probate Court of Cuyahoga County in an amount that is equal to the fair market value of the property; and declaring the necessity that this Resolution become immediately effective.</p>
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WHEREAS, on October 10, 2018, this Council adopted Resolution No. R2018-0184, which authorized the County Executive to acquire the necessary Right-of-Way to proceed with the replacement of Old Rockside Road Bridge No. 00.42 over the Cuyahoga River in the City of Independence and Village of Valley View; and,

WHEREAS, upon receiving the necessary authorization to proceed with acquisition of the Right-of-Way, a fair market analysis was conducted, and fee appraisals were made; and

WHEREAS, the County's agent, O. R. Colon, endeavored to acquire the necessary parcels through voluntary negotiation and settlement efforts with the property owners, but has reported that equitable settlement agreements could not be reached on the properties set forth below; and,

WHEREAS, the Department of Public Works has requested that the County appropriate certain property rights required for highway purposes for the above described improvement, identified as the following parcels of land:

Parcel 15 T (Temporary Easement)

Property Owner: Tony Ipsaro and Josephine Ipsaro, both deceased

Address: Vacant Land, Rockside Road, Independence, OH 44131

Mailing Address: National Park Service, 15610 Vaughn Road, Brecksville, OH 44141

Fair Market Value Estimate: \$350.00

Parcel 16 T (Temporary Easement)
Property Owners: Franck and Fric, Incorporated
Address: 7919 Old Rockside Road, Independence, OH 44131
Mailing Address: Franck & Fric, Inc., 7919 old Rockside Rd., Independence, OH 44131
Fair Market Value Estimate: \$40,292.00

Parcel 21 T (Temporary Easement)
Property Owner: Thornburg Station Holding, LLC, an Ohio Limited Liability Company
Address: Rockside Road, Valley View, Ohio
Mailing Address: 127 Public Square, 4000 Key Tower, Cleveland, OH 44114
Fair Market Value Estimate: \$17,572.00

WHEREAS, the necessity for the immediate effectiveness of this Resolution is established because federal funds are being utilized for Right-of-Way acquisition on this project and the County is required to progress on schedule for the project in order to maintain project funding deadlines; and,

WHEREAS, the Right-of-Way cannot be certified to the Ohio Department of Transportation as being ready for construction unless and until all Right-of-Way parcels have been acquired either by agreement or by the filing of a petition for appropriation together with a check in the amount of the Fair Market Value Estimate made payable to the Cuyahoga County Probate Court, in the Cuyahoga County Probate Court.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF CUYAHOGA COUNTY, OHIO:

SECTION 1. That certain real property as required for the replacement of Old Rockside Road Bridge No. 00.42 over the Cuyahoga River in the City of Independence and Village of Valley View; as described below be, and the same is, hereby declared necessary to appropriate for public use, more specifically for the purpose of making or repairing roads which shall be open to the public, without charge. Such property is described as follows:

Parcel 15 T (Temporary Easement)
Property Owner: Tony Ipsaro and Josephine Ipsaro, both deceased
Address: Vacant Land, Rockside Road, Independence, OH 44131
Mailing Address: National Park Service, 15610 Vaughn Road, Brecksville, OH 44141
Fair Market Value Estimate: \$350.00

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Fair Market Value Estimate: \$17,572.00

SECTION 2. That the County Executive, through the Department of Public Works, be, and is, hereby authorized to proceed with filing the necessary action to acquire the property as described above.

SECTION 3. That the County Fiscal Officer be, and is, hereby authorized to issue monetary warrants in the amount of the Fair Market Value Estimates listed above, made payable to the Cuyahoga County Probate Court, said warrants to be deposited with the Probate Court at the time of filing the petitions to appropriate.

SECTION 4. That the Clerk of Council is hereby directed to transmit copies of this Resolution upon its approval by the County Executive to Michael Dever, Director of Public Works and to Michael Chambers, County Fiscal Officer.

SECTION 5. That it is necessary that this Resolution become immediately effective in order that critical services provided by Cuyahoga County can continue and to assure that work on the improvement can commence during the prime construction season. Otherwise, any delay in commencement of the work may cause delay to the work and result in significant cost increases to the County. Provided that this Resolution receives the affirmative vote of eight members of Council, this Resolution shall become immediately effective upon the signature of the County Executive.

SECTION 6. That it is found and determined that all formal actions of this Council relating to the adoption of this Resolution were adopted in an open meeting of the Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

County Council of Cuyahoga County, Ohio

Ordinance No. O2021-0013

Sponsored by: County Executive Budish/Department of Equity and Inclusion	An Ordinance amending Chapter 503 of the County Code: Small Business Enterprise Program Policies and Procedures to approve revised Cuyahoga County Small Business Enterprise Program Policies and Procedures, effective TBD and adopt Minority Business Enterprise (MBE) & Women Business Enterprise (WBE) Program Policies and Procedures, effective TBD; and declaring the necessity that this Ordinance become immediately effective.
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WHEREAS, the Cuyahoga County Executive/Department of Equity and Inclusion has submitted a revised Cuyahoga County Small Business Enterprise (SBE) Program Policies and Procedures Manual, effective TBD, and Minority Business Enterprise (MBE) & Women Business Enterprise (WBE) Program Policies and Procedures, effective TBD; and

WHEREAS, the Cuyahoga County Small Business Enterprise (SBE) Program Policies and Procedures Manual was previously adopted by Council in Ordinance No. O2011-0054, as amended by Ordinance No. O2014-0002, as codified in Chapter 503 of the Cuyahoga County Code; and,

WHEREAS, in 2020 the firm of Griffin & Strong conducted a disparity study, resulting in recommendations to the County, which are being implemented in the amendment to the SBE Program Policies and Procedures and the adoption of the MBE & WBE Program Policies and Procedures; and,

WHEREAS, it is necessary that this Ordinance become immediately effective in order that critical services provided by Cuyahoga County can continue and to provide for the usual, daily operation of a County entity.

NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF CUYAHOGA COUNTY, OHIO:

SECTION 1. Chapter 503 of the Cuyahoga County Code is hereby amended to read as follows:

Section 503.01 Policies and Procedures Manual

First Reading/Referred to Committee: August 3, 2021
Committee(s) Assigned: Public Works, Procurement & Contracting

Journal _____
_____, 20

Exhibit A



COUNTY OF CUYAHOGA, OHIO

SMALL BUSINESS ENTERPRISE (SBE) PROGRAM
POLICIES AND PROCEDURES

July 2021

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APPENDIX A CUYAHOGA COUNTY SBE BIDDER'S MANUAL

I. POLICY STATEMENT

Policy Statement: It is the policy of Cuyahoga County to ensure that all businesses have the opportunity to participate fully and fairly in Cuyahoga County's procurement and contract awards.

In an effort to ameliorate the effects of past and present arbitrary barriers that small businesses have in contracting with Cuyahoga County, Cuyahoga County hereby adopts this Small Business Enterprise (SBE) Program to:

- promote and encourage full and open competition in the procurement of goods and services by Cuyahoga County;
- encourage all Cuyahoga County personnel involved with procurement and contracting activities to maintain good faith efforts and appropriate purchasing procedures; and
- protect Cuyahoga County from becoming a passive participant in any unlawful discrimination; and to otherwise spur economic development in the public and private sectors of the Cuyahoga County economy.

Moreover, no person shall be denied the benefit of, or otherwise discriminated against, on the basis of race, creed, color, national origin, handicap, sex, age, marital status, or sexual orientation in connection with the award or modification of a contract between a vendor or contractor and Cuyahoga County where said contract is paid for, in whole or in part, with monetary appropriations by Cuyahoga County.

II. PROGRAM SCOPE AND APPLICABILITY

The following categories provide an overview and summary of the nature and types of Cuyahoga County purchasing and contracting:

Category A – Construction, Architectural and Engineering: Includes any and all contracting relating to horizontal and vertical construction including architectural engineering, new construction, rehabilitation, remodeling, and repairs.

Category B - Commodities: Includes the purchase of all goods, equipment, food, office and other supplies, art, furniture, textbooks and other materials for education, and other tangible personal property not associated with the services identified in Categories A, B or C.

Category C - Professional Services: Includes the purchase of any or all services for which applicable selection criteria may require a Participant to possess a license or other certificate of competency such as accounting, auditing, landscape architecture, engineering, insurance, laboratory, legal, lifeguard, medical, dental, nursing, and student transportation.

Category D – Business Services: Includes 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, retail, and other non-professional services.

III. THE DEPARTMENT OF EQUITY AND INCLUSION

The Department of Equity and Inclusion (DEI) develops, administers, and enforces the SBE Program. DEI shall encourage equal business opportunities and achieve the policies and objectives of the SBE Program by:

- (1) Administering and enforcing Cuyahoga County policies;
- (2) Establishing written rules, regulations, and procedures consistent with the SBE Program;
- (3) Publishing and making public said rules, regulations, and procedures;
- (4) Maintaining outreach and assistance programs to promote equal contracting opportunities for SBE businesses that wish to contract with the Cuyahoga County and educating vendors and contractors on the SBE Program, SBE Goals, and Good Faith Efforts Criteria;
- (5) Establishing, enhancing, and maintaining relationships with agencies and stakeholders in the area;
- (6) Maintaining a current database of available SBEs and making this database accessible to interested parties;
- (7) Monitoring and collecting data and information on the utilization of SBEs in Cuyahoga County's procurement activities that allows a comprehensive review of the impact of the SBE Program;
- (8) Establishing and assessing the reasonableness of SBE participation goals for Cuyahoga County procurements;
- (9) Attending pre-bid/proposal conferences for all procurement solicitations by Cuyahoga County;
- (10) Attending kick-off meetings for major projects;
- (11) Participating on evaluation panels for request for proposals and requests for qualifications;
- (12) Investigating written complaints related to the SBE Program;
- (13) Mediating payment disputes between prime contractors and SBE sub-contractors
- (14) Notifying affected parties in writing as to the right to review and appeal an adverse decision by DEI;
- (15) Monitoring Cuyahoga County's purchasing activities and determining compliance with SBE program policies and procedures;
- (16) Preparing annual reports on the SBE Program;
- (17) Reviewing and determining whether a contractor or vendor has failed to implement its contractual agreements and commitments regarding this policy;
- (18) Developing and revising SBE Program policies and procedures to implement current best practices and maintaining records of SBE Program activities; and
- (19) Performing other tasks as may be required to fulfill the above-stated duties of DEI.

Authority to Investigate Discriminatory Practices: A Participant's written complaint of discrimination shall be forwarded to the Commission on Human Rights for investigation and determination under Title XV of the County Code. Further, such investigations may be initiated by referral to the Commission on Human Rights when DEI receives information, which provides a reasonable basis to believe that an individual contractor seeking to contract or contracting with Cuyahoga County may be engaging in public or private discriminatory conduct.

IV. CERTIFICATION

Certification: Certification is the process that ensures that a particular business may become a part of a pool of vendors identified for the purpose of increasing opportunities with respect to contracts and purchases awarded by Cuyahoga County.

All firms submitting applications for SBE consideration must be certified prior to submission of a bid or proposal.

Applications for certification will be on standard forms provided by Cuyahoga County and will include, but will not be limited to, primary business location, evidence of ownership, control, operation, and experience. The application shall be in the form of an affidavit and shall be signed by the applicant; such signature to be notarized by an officer duly authorized to notarize signatures. All certified SBE firms will be required to update their listing continually including changes of addresses, telephone numbers and changes of ownership, control, and operation. In addition to the applications for certification, vendors seeking SBE certification shall also submit documentation demonstrating eligibility for certification, managerial control, and operational control. This documentation includes, but is not limited to, federal business tax returns, federal personal tax returns, proof of capital investment or contribution, corporate documents (i.e., Articles of Incorporation, Share Ledger, Corporate Bylaws...), bank signature card, current lease/rental agreement or property taxes for business location, business licenses, worker's compensation certificate and proof of identification for all who own 5% or more of the business.

The Director of DEI shall grant certification of an approved SBE Business for a period of two (2) years. The Director may grant a provisional certification prior to specific bids or proposals. All companies must recertify their business depending on the expiration date of their certificate which in most instances is the anniversary of their certification. Should provisional certification be granted to a business and that business be awarded a prime contract and the provisional certification is later rescinded, that business is obligated to meet the SBE participation percentage goal of the original proposal or specifications.

If a business is denied certification on the basis of information submitted, the company cannot reapply for certification for a period of one (1) year from the date of the notice or denial, provided that such company shall have the right to appeal such denial and to be certified if such appeal is decided in its favor as provided herein. Certification records will be maintained by DEI for a period of five (5) years.

V. ELIGIBILITY STANDARDS FOR CERTIFICATION

The following standards will be used to determine whether a firm is eligible to be certified as a Small Business Enterprise:

1. To become eligible for the SBE Program, a business firm must demonstrate that it has been in continuous operation in the category or the related category for which it is requesting certification for one year and that majority ownership has at least one (1) year of work experience relevant to the business' certification category, and that its annual gross revenues or its' total workforce are at or less than the amounts established by the Small Business Administration.
2. A business applying for SBE certification must establish that it has a physical presence located within the geographical limits of Cuyahoga County. Mailbox facilities or other similar arrangements alone do not constitute a physical presence.

3. SBE ownership and control shall be real, substantial, and continuing and shall go beyond the “pro forma” ownership as reflected in the ownership document. The SBE owners shall share in the risks and profits commensurate with their ownership interest as demonstrated by an examination of the substance rather than form of arrangements.
4. SBE owners shall possess the power to direct or cause the direction of the management and policies of the firm and to make the day-to-day as well as major decisions on matters of management, policy, and operation. The firm shall not be subject to any formal or informal restrictions that limit the customary discretion of the SBE owners. There shall be no restrictions through, for example, by-law provisions, partnerships, arrangements, or charter requirements for cumulative voting rights or otherwise that prevent the business owners, without the cooperating or vote of any owner who is not listed, from making a business decision of the firm.
5. Where the actual management of the firm is contracted out to individuals other than the owner, those persons who have the ultimate power to hire and fire managers, for the purpose of this part, are deemed to be controlling the business.
6. All securities that constitute ownership and/or control of a corporation shall be held directly by the owners. No securities held in trust, or by any guardian for a minor, shall be considered as held by an owner in determining the ownership or control of a corporation. If a business denied certification due to securities held in trust appeals to and is granted a waiver of this eligibility requirement by the Grievance Hearing Board, then the waiver granted by the Grievance Hearing Board shall remain in effect for that business provided that the ownership structure remains unchanged.
7. The contribution of capital or expertise by the owners to acquire their interest in the firm shall be real and substantial. Examples of insufficient contributions include a promise to contribute capital, a note payable to firm, or the mere participation as an employee, rather than as a manager.
8. In addition to the above standards, special consideration shall be given to the following circumstances in determining eligibility for certification:
 - a. Newly formed firms and firms whose ownership and/or control has changed since the date of the advertisement of the contract are closely scrutinized to determine the reasons for the timing of the formation of or change in the firm.
 - b. A previous and/or continuing employer-employee relationship between or among present owners is carefully reviewed to ensure that the employee-owner has management responsibilities and capabilities discussed in this section.
 - c. Any relationship between a SBE and any other business which is not a SBE business or belonging to a non-SBE business, which has an interest in the SBE business is carefully reviewed to determine if the interest of the non- SBE business conflicts with the ownership and control requirements of this section.

VI. OPERATIONAL CONTROL

DEI shall review the extent of “operational” control. The primary consideration in determining operational control and the extent to which the applicant actually operates the business will rest upon the peculiarities in the industry of which the business is a part. For example, for small contractors, it is reasonable to expect the applicant to be knowledgeable of all aspects of the business. This may not apply to large contractors who have the assets and personnel to specialize. Accordingly, in order to clarify the level of operational involvement,

which an applicant must have in a business for it to be considered eligible, the following criteria are put forth, but are not intended to be all inclusive.

1. The applicant should have some experience in the industry for which certification is being sought.
2. The applicant should show that basic decisions pertaining to the daily operations of business can be independently made. This means the applicant must possess the knowledge to weigh all advice given and to make an independent determination.
3. The applicant should have some technical competence in the industry in which certification is being sought. Technical competence in this sense does not mean expert knowledge. It does mean the applicant should have a working knowledge of the technical requirements of the business needed to operate in the industry.

VII. MANAGERIAL CONTROL

DEI shall review the extent of “managerial” control. Managerial control means that the applicant has the demonstrable ability to make independent and unilateral business decisions needed to guide the future of the business. Managerial control may be demonstrated in many ways. For an applicant to demonstrate managerial control, the following criteria are put forth, but are not intended to be all-inclusive:

1. Articles of incorporation, corporate bylaws and partnership agreements or other agreements shall be free of restrictive language, which would dilute the applicant’s control, thereby preventing the applicant from making those decisions, which affect the future of the business.
2. The applicant shall be able to show clearly through production of documents the areas of applicant control, such as, but not limited to:
 - a) Authority and responsibility to initiate and sign checks, letters of credit, and loan agreements.
 - b) Authority to negotiate and signature authority for insurance and/or bonds.
 - c) Authority to negotiate for banking services.
 - d) Authority to hire and fire employees.
3. Agreements for support services that do not lessen the applicant’s control of the company are permitted as long as the applicant’s power to manage the company is not restricted or impaired.

VIII. THE PURPOSE AND USE OF GOALS

Definition and Purpose: Cuyahoga County maintains a compelling interest in providing equal business opportunities for all persons wishing to do business with it. Therefore, DEI will continue to encourage, monitor, and track SBE business participation in the procurement process through the SBE participation goals. Goals are not quotas, but rather a method enabling Cuyahoga County to encourage and promote inclusion of SBEs in the procurement process.

Procedure for Establishing Overall Goals: Cuyahoga County has established an overall thirty percent (30%) subcontracting goal for SBE Participation in County procurements. If desired, Cuyahoga County may establish a revised overall SBE Participation Goal for Cuyahoga County. To establish a revised SBE overall goal, Cuyahoga County shall conduct an analysis of SBE participation in county purchasing activities. First, Cuyahoga County shall evaluate the levels of SBE participation for the Cuyahoga County overall procurement program for the previous year. As part of the review, Cuyahoga County may also consider data regarding SBE participation for the past three (3) fiscal years for a more accurate portrayal of SBE participation. Secondly, DEI shall review available SBE totals and percentages for the Cuyahoga County area. Based on the data, DEI shall make a recommendation for a revised overall SBE Participation Goal for review and approval by the County Executive and County Council.

Procedure for Establishing Individual Goals: To achieve the overall goal for SBE participation, the Director of DEI will establish SBE goals on a contract-by-contract basis based on an analysis of market availability and a commercially useful function within the contract. The Director of DEI may also waive the SBE goals for particular procurements as outlined in Section IX. (1).

Cuyahoga County will use the following criteria to determine the types of participation toward Cuyahoga County's overall annual SBE goals:

- 1) The total dollar value of the subcontract may be counted toward determining the specified goals. This includes the fees and commissions charged for professional services, legal counsel, manufacturers, financial consultants, and insurance agents.
- 2) Contract goals will be used to meet any portion of the annual goal. Contract goals are established so that, over the period to which the goal applies, they will cumulatively result in meeting any portion of the goal projected to be met through the use of the different programs.
- 3) Contract goals will only be established on those contracts that have subcontracting opportunities for SBE participation. The size of contract goals will be adapted to the circumstances of each contract (e.g., type and location of work, availability of the SBEs to perform the particular type of work) and functionality within the contract.

SBE Participation in Meeting Goals: All Participants, including SBE Participants, shall make good faith efforts to attain goals through all subcontractor work.

- (1) Prime Contractors: A Prime Contractor should subcontract portions of its contract consistent with industry standards. However, all SBE subcontractors must perform a commercially useful function as defined herein. Only such participation by an SBE will be counted towards any goal.
- (2) Subcontractor Participation: Where a Prime utilizes one or more subcontractors or 2nd tier subcontractors to attain a SBE goal, the Participant may only count said SBE subcontractor or sub-subcontractor work once toward goals. In no way shall subcontractors' or sub-subcontractors' work or dollar amount be construed to count toward said goal more than once. Only expenditures to SBE subcontractors that perform a commercially useful function in the work of that project or contract will be counted.
- (3) Supplier Participation: Where a Participant utilizes suppliers or distributors to satisfy the goal(s) in whole or in part, the SBE suppliers must perform a commercially useful function. Supplier participation may be approved upon review of the following factors:
 - i) The nature and amount of supplies to be furnished;

- ii) Whether the SBE is a manufacturer, wholesaler or distributor of the supplies and has the capabilities to deliver same in accordance with its certification;
- iii) Whether the SBE actually performs, manages, and supervises the work to furnish the supplies; and
- iv) Whether the SBE business intends to purchase supplies from a non-SBE and simply resell same to the general or prime contractor for allowing those supplies to be counted towards fulfillment of the goal(s). Participants will receive no credit for the dollar amount of the supply contracted from brokers.

IX. WAIVERS AND WAIVER OF NON-COMPLIANCE WITH SBE GOAL

1. This SBE Program policy may be waived for the following:
 - a) “Sole Source” procurements under the Cuyahoga County ordinances which by their very nature limit the source of supply to one vendor.
 - b) County purchases from political subdivisions/government entities;
 - c) County purchases off state contracts, off federal contracts, and from joint purchasing programs;
 - d) The acquisition of any interest in real property including lease holdings;
 - e) Direct and indirect employee payments including payroll expenditures, pensions, and unemployment compensation and other employee-related expenditures;
 - f) Any other categories and subcategories of goods and services Cuyahoga County may from time to time establish as excluded contracts upon recommendation of the Director of the Department of Equity and Inclusion and approval by the Cuyahoga County Executive and Cuyahoga County Council;
 - g) Purchases and contracts being procured using Informal RFBs, RFPs, and RFQs (estimated total value \$1,000.01-\$49,999.99): As part of its solicitation process, the department shall also solicit bids/proposals from County certified SBEs when available. To determine SBE availability, at least two (2) business days in advance of the posting/advertisement period, the department shall check the list of County certified SBEs on the County’s website (<https://opd.cuyahogacounty.us/en-US/listing.aspx>) and/or contact the Department of Equity and Inclusion for a list of pertinent County certified SBEs. For these transactions, when the department solicits bids/proposal/qualifications through the vendor email notification system (currently the Infor Strategic Sourcing Module) in accordance with County Code Section 501.12 E, the department shall notify the pertinent available SBEs using the vendor email notification system of the purchasing and contracting opportunity. Also, if required, as part of the additional solicitation efforts, the department shall also notify the pertinent available SBEs.

2. Application for Waiver. If the Contractor, consultant, supplier, or vendor does not meet the project goals, the bidder or offer or may seek a partial or total waiver of the project goals. The application for waiver of all or part of the project goals shall include full documentary evidence of the Participant’s good faith efforts to meet the project goals and why the request for waiver should be granted. The application shall be notarized and submitted as a part of the bid or offer. Additional explanation, affidavits, exhibits or other materials may be required by the Diversity Program to substantiate good faith efforts. (See the Good Faith Effort Certification, SBE-3, 2 pages, in the attached Bidder’s Manual). Waivers may also be granted for an acceptable explanation as to why the goals should be waived.

3. Waiver for Detriment to Public Health, Safety or Financial Welfare. The Director of DEI may waive SBE Program goals if the same causes a detriment to public health, safety, or the financial welfare of the County. The SBE Program goals may also be waived in the event available SBEs provide price quotes which are unreasonably high in that they exceed competitive levels beyond amounts which can be attributed to cost, overhead and profit.

X. REQUIREMENTS OF PRIME CONTRACTORS

In consideration of the right and privilege to submit a bid or proposal on construction projects and other contracts with Cuyahoga County, at the time of submitting a proposal or bid, each participant shall be required to present appropriate documentation. The documents described below must be completed and signed by each Participant before a proposal or bid can be considered responsive:

- 1) Covenant of Non-Discrimination: Each Participant must submit a duly executed and attested Covenant of Non-Discrimination (SBE-1, found in the attached Bidder's Manual). This written instrument shall contain promises, declarations and/or affirmations made by the Participant. The completed document must contain an original signature and date of signature.
- 2) SBE Subcontractor Participation Plan: Each Participant must submit a duly executed Subcontractor Participation Plan (SBE-2, found in the attached Bidder's Manual) for each SBE subcontractor proposed. Copies and/or facsimiles of SBE-2 submitted with bids/proposals are acceptable BUT all required signatures must be dated as indicated. Also, please note the following:
 - a) Certified SBEs who are bidding as prime contractors **MUST** complete and submit the top portion of Form SBE-2 to guarantee the 20% SBE credit.
 - b) SBEs with multiple geographical locations shall enter the address and contact information for the geographical locations eligible for Cuyahoga County certification on Form SBE-2.
 - c) Prime vendors are **PROHIBITED** from using SBE(s) with whom the prime vendor has a familial relationship, joint or co-ownership, common partners, officers, or a shareholder relationship to meet the SBE Participation Goal. Hence, on Cuyahoga County projects/contracts, any portion of work subcontracted to a SBE vendor by a prime vendor that meets the above-mentioned criteria will **NOT** count towards the achievement of the established SBE Participation Goals.

Use of 2nd Tier Subcontractors: In the event that a subcontractor portions out work and utilizes the services of a sub-subcontractor or vendor, the prime contractor shall be required to report this use to DEI. For reporting purposes, the prime contractor shall report statistical data for the sub-subcontractor or sub-vendor, including race, gender, business size, area of specialization, dollar value, description of services or products purchased, and contact information. No SBE subcontractor will be permitted to subcontract more than 25% of their subcontract work (based on dollar value) without prior approval by DEI.

Other Information and Data: DEI may request additional information and data prior to a contract award. This information may include, but is not limited to, information regarding business ownership of all subcontractors to be utilized on the project, all of which shall reflect the race, gender, location, size, and area of specialization and structure of the identified businesses.

**A PARTICIPANT'S FAILURE OR REFUSAL TO PROVIDE INFORMATION AND DATA
REQUIRED BY THIS PROGRAM AND REQUESTED BY DEI SHALL SUBJECT THE
PARTICIPANT TO HAVING A
PROPOSAL OR BID DEEMED NON-RESPONSIVE.**

XI. GOOD FAITH EFFORTS

Aggressive “Good Faith Efforts” to include SBEs in the procurement process are required of all Participants. These Good Faith Efforts should be in addition to the Participant’s regular and customary solicitation process of contact with potential subcontractors and/or vendors.

Written Notice to SBEs: To demonstrate good faith efforts, a Participant shall deliver written or electronic notice to potential SBEs. SBEs should be contacted not less than one (1) week before the bid or proposal due date. Names, addresses, and telephone numbers for available SBEs may be obtained by contacting DEI or reviewing the database on the website at <https://opd.cuyahogacounty.us/en-US/listing.aspx>.

The written or electronic notice sent to potential subcontractors or vendors shall contain the following:

- (1) Sufficient information about the plans, specifications, and relevant terms and conditions of the solicitation. This should include information about the work which will be subcontracted or the goods which will be obtained from subcontractors and suppliers;
- (2) A contact person knowledgeable of the project scope documents, within the Participant’s office, to answer questions about the conditions of the contract;
- (3) Information as to the Participant’s bonding requirements (including any offers to assist interested SBEs in obtaining bonding or insurance); and
- (4) The deadline for price quotations.

Evaluation of Good Faith Efforts: In evaluating good faith efforts, DEI will determine whether the Participant has made reasonable good faith efforts to obtain SBEs participation as part of its bid or proposal. DEI may evaluate not only the different kinds of efforts made by a Participant, but also the quantity and intensity of those efforts.

DEI will consider a completed Good Faith Effort Certification (SBE-3, 2 pages, found in the attached Bidder’s Manual), as evidence of a Participant’s good faith in trying to obtain SBE participation in a bid or proposal.

Required Documentation: To demonstrate good faith efforts, Participants shall keep detailed records of all correspondences and responses thereto, emails, logs of all telephone calls made and received regarding the project or contract, confirmation receipts for fax transmissions, receipts from registered or certified mail, copies of advertisements in publications and other media, and other relevant papers required by this Program.

Good Faith Effort Certification: Participant must submit a completed Good Faith Certification (SBE-3, found in the attached Bidder’s Manual) ONLY if the SBE Participation Goal is not met. The completed document must contain an original signature, notarizations, and date of signature. Along with the completed Good Faith Effort Certification, participants shall also submit additional documentation demonstrating a good faith effort (as detailed above in *Required Documentation*).

Administrative Reconsideration: If DEI determines that the apparent successful vendor is non-compliant on meeting the SBE participation goal and has not demonstrated good faith efforts to obtain SBE participation, prior to awarding the contract/purchase, the user department shall notify the apparent successful vendor of the determination of non-compliance by emailing the primary contact detailed in the vendor's bid/proposal. The apparent successful vendor shall have the right to request an administrative reconsideration of the non-compliance determination. The administrative reconsideration can be a "no meeting" reconsideration or "meeting" reconsideration (virtual or in-person). The request for an administrative reconsideration must be submitted within three (3) business days of the notification of non-compliance and in the format of an email to DEI at dei@cuyahogacounty.us. Upon receipt of the request for the administrative reconsideration by the apparent successful vendor, DEI shall forward the request to the Administrative Reconsideration Panel. The panel shall consist of at least three (3) but not more than five (5) County employees appointed by the Cuyahoga County Executive. The request for administrative reconsideration shall detail the pertinent RFB/RFP/RFQ (i.e., title, description...), type of administrative reconsideration requested (i.e., no meeting or meeting), and any written documentation or arguments concerning the issue of non-compliance. DEI shall provide a summary of its Good Faith Effort evaluation and supporting documentation. The Administrative Reconsideration Panel shall publish a schedule that includes deadlines and provides for a frequency of no less than twice per calendar month. The Administrative Reconsideration Panel will evaluate the information provided by the apparent successful vendor and DEI and issue a written decision approving or disapproving of DEI's determination on non-compliance for the matter. A quorum for "no meeting" or "meeting" administrative reconsideration shall be the majority (i.e., greater than 50%) of the appointed panel and an affirmative vote by the majority (i.e., greater than 50%) of the panel present for the administrative reconsideration is required for action. The Administrative Reconsideration Panel shall adopt its own rules of procedure consistent with SBE Policies and Procedures. The result of the administrative reconsideration is not administratively appealable.

XII. AWARD OF CONTRACTS

Award of Contract: Proposals/bids may be rejected and projects re-submitted for the sole purpose of attaining goals where no "good faith effort" has been demonstrated. Cuyahoga County reserves the right to determine the action to be taken on the contract if a goal is not met, including rejecting any or all bids or proposals. For RFPs and RFQs, once the scope of work and/or price, terms, and conditions have been finalized but in advance of submission for approval by the pertinent contracting authority, the department shall confirm with DEI that the proposed contract/purchase is compliant with the SBE participation goals and/or Good Faith Efforts requirements. If an awarded contract is later amended for additional dollars, SBE subcontractor participation should still reflect the percentage of dollars originally contracted for.

When evaluating a bid to determine the lowest and best bid, the County may consider, in addition to all of the other factors set forth in the instructions to bidders, whether a bid is SBE compliant; provided, however, that such SBE compliance shall not be considered if the difference between the SBE-compliant bid and the lowest responsive bid is more than the price preference specified below.

Lowest Bid Received Range (\$)	Price Preference (%) & Limit	Price Preference (\$)
0 – 500,000	10%	0 – 50,000
500,000.01 – 1,000,000	10% up to max \$80,000 (10-8)	50,000.01 – 80,000
1,000,000.01 – 3,000,000	8% up to max \$210,000 (8-7)	80,000.01 – 210,000
3,000,000.01 – 5,000,000	7% up to max \$250,000 (7-5)	210,000.01 – 250,000
>5,000,000	\$250,000 maximum (≤5)	250,000 maximum

XIII. MONITORING AND POST-AWARD REPORTING

Department of Equity and Inclusion Authorization to Monitor: DEI shall be authorized to collect from all Participants such data and information as is necessary to monitor this Program. This information may include information as to business ownership, supplier information, subcontractor information, all of which shall reflect the contract information, race, gender, business location, and size of the identified businesses.

DEI shall monitor the participation of SBEs in the procurement of goods and services for Cuyahoga County. Such monitoring shall include, but is not necessarily limited to, a statistical analysis of each construction trade, business service, professional service, and commodity to determine whether there is utilization of SBEs in a manner that is proportionate to the established goal.

DEI will provide written reports on an annual basis. DEI’s report shall contain a summary of the purchases and contracts placed with SBEs for the period and the relative percentage to the total of purchases and contracts for that period.

Participant’s Post-Award Reporting: Participants who are awarded contracts must submit reports on a monthly basis during the course of, at the end of the contract, and as requested by DEI. Participants shall comply with all reporting requirements related to SBE utilization including, but not limited to, completing on-line reporting of payments made to SBE subcontractors and other subcontractors. These reports shall summarize the number and dollar amounts of payments made during the term of the contract to subcontractors. At the end of the contract, the final report shall summarize the number and dollar amounts of payments made during the term of the contract to all subcontractors and shall reflect the SBEs designation of the subcontractor if any. DEI reserves the right to audit a contract for SBE participation at its discretion during any phase of the project. An audit would include but not be limited to: on site reviews, desk reviews, requests for cancelled checks, requests for invoices, certified payroll reports, etc. Participants shall contact DEI if concerns arise related to its ability to meet the SBE goals and to seek guidance on available options to meet the goals.

SBE Subcontractor, Substitutions or Replacements: The prime contractor shall report any replacements or substitutions of the use of SBE subcontractors to DEI immediately. Prior approval by the Director of DEI is required for SBE substitutions/replacements. For reporting purposes, the prime contractor shall report to DEI statistical data pertaining to the new subcontractor, including race, gender, business size, area of specialization, and contact information on the SBE Subcontractor Participation Plan form (SBE-2).

DEI will require a Participant to make good faith efforts to replace a SBE that is terminated or has otherwise failed to complete its work on a contract with another SBE to the extent needed to meet the contract SBE Participation Goal. The Participant must notify DEI immediately, and in writing, of the SBE’s inability or unwillingness to perform and provide reasonable documentation. The request should include at a minimum: the name of the SBE firm, the contact, the phone number, the scope of work initially assigned to the SBE firm,

dollars paid to date, percent of scope completed, and the reason for the substitution request including documentation of the SBE's withdrawal.

The Participant will be given five (5) business days to find a SBE substitution if the request is granted. In this situation, the Participant will be required to obtain prior approval of the substitute SBE and to provide copies of SBE Subcontractor Participation Plan (SBE-2) or documentation of good faith efforts.

If the Participant fails or refuses to comply in the time specified, DEI may issue a recommendation to stop all or part of payment and/or work until satisfactory action has been taken. If the Participant still fails to comply, DEI may issue a recommendation of termination of the contract.

Contractors' Closeout Activity Reports: To further monitor SBE participation, closeout activity reports will be required from project prime contractors and prime consultants identifying activities of **all** subcontractors and sub-consultants (i.e., non-SBEs and SBEs). For all subcontractors and sub-consultants used, the prime contractor shall provide the following information: contact information, ethnicity/race/gender of ownership, summary of scope of work provided, and total payments for said scope of work. This report shall include all modifications/amendments/change orders. The prime contractors/consultants shall provide justification and documentation for SBE participation shortfalls.

XIV. GRIEVANCE PROCESS

Any Participant or other party allegedly aggrieved by the provisions of this program may submit a written complaint to DEI who will notify the Grievance Hearing Board. The Grievance Hearing Board is empowered to hear all grievances concerning certification, de-certification, goal complaints, good faith efforts not previously reviewed by the Administrative Reconsideration Panel, and any other grievances called by the provisions of this program.

Grievance Hearing Board: The Grievance Hearing Board consists of the following five (5) members:

- Three (3) appointed by the County Executive, from time-to-time;
- Two (2) County Council Members appointed by the President of County Council

The Grievance Hearing Board meets as required to hear grievances pertaining to the SBE Program. A meeting quorum of this board consists of four (4) members. An affirmative vote by at least three (3) members is required for action items.

Request for Review: An allegedly aggrieved party may seek review of the DEI determination or decision by filing a written Request for Review with DEI within five (5) days of receipt of the Determination of Non-Compliance, certification denial, recertification denial, or other SBE decision.

Scheduling the Hearing/Notice of Hearing: Upon receipt of the request for review from the allegedly aggrieved party, DEI shall forward the request for review to the Grievance Hearing Board within three (3) business days of receipt and proceed with scheduling the hearing. Every effort shall be made to hold the hearing no more than twenty (20) days from the date of receipt of the request for review. All external parties shall be sent a written notice by registered mail which shall state the date, time, and place of the hearing.

Hearing: The hearings shall be informal. Participants shall include DEI and the allegedly aggrieved person(s), or a representative of the allegedly aggrieved person. Said hearing shall comply with State of Ohio law relative to the Open Meetings Act.

Decision: The Grievance Hearing Board shall issue a decision at the conclusion of the hearing which may approve or disapprove of DEI's decision or determination.

Exhaustion of Legal Remedies: An aggrieved person or entity must comply with the review process as outlined herein. Once a person or entity has exhausted the administrative remedies outlined in the Program, that person or entity may seek any other statutory, legal, or equitable remedies that may be available. Failure to exhaust all administrative remedies listed above is an affirmative defense to any statutory, legal, or equitable proceeding that may arise.

XV. SANCTIONS AND PENALTIES FOR NON-COMPLIANCE

Cuyahoga County shall have the authority and power to enforce the provisions of this Program. Failure of a participant to comply with the requirements shall subject it to administrative sanctions. In addition, a violation of this Program shall constitute a material breach of contract enforceable at law or in equity, as will all other contract provisions, including the imposition of penalties. The following sanctions and penalties are established for the enforcement of this Program:

- (1) Determination of Non-Responsiveness: In addition to standard factors in its evaluation, Cuyahoga County may declare a bid or proposal non-responsive where it is determined that a Participant has not filed with Cuyahoga County a duly executed Covenant of Non-Discrimination or any other document as required by this Program.
- (2) Limited Suspension: For falsifications, misrepresentations, deception to obtain a contract, Cuyahoga County may remove a Participant from its list of eligible firms entitled to do business with Cuyahoga County.
- (3) Rejection of Future Proposals: Cuyahoga County may reject any or all future Proposals of a Participant until such time as the Participant demonstrates that it is or shall come into compliance.
- (4) Withholding Payment: Cuyahoga County may withhold payment, until such time as the Participant demonstrates that it is or shall come into compliance.
- (5) Cancellation of Contract: Cuyahoga County may declare a contract null and void where, after such contract has been awarded, an investigation determines that the Participant's documents contain false, fictitious, or fraudulent information.
- (6) Permanent Debarment: For repeated violations, Cuyahoga County may remove a Participant from its list of firms entitled to do business with Cuyahoga County indefinitely.

Guidelines for Imposition of Sanctions: The authority and power for imposition of sanctions and penalties shall lie with County authorities and elected/appointed officials as outlined in the County Charter, County Ordinances, state laws, and federal laws. The recommendation, however, may come from the Grievance Hearing Board or DEI.

- (1) General: Sanctions may be recommended if there is evidence of specific conduct on the part of the Participant that is inconsistent with or in direct opposition to the applicable provisions of this Program. Furthermore, the imposition and enforcement of sanctions shall be consistent with applicable County ordinances, state laws, and federal laws.

- (2) Severity of Sanctions: In determining the length of any suspension, Cuyahoga County shall consider the following factors:
- (i) Whether the failure to comply with applicable requirements involved intentional conduct or, alternatively, may be reasonably concluded to have resulted from a misunderstanding on the part of the Participant of the duties imposed on them by this Program;
 - (ii) The number of specific incidences of failure by the Participant to comply;
 - (iii) Whether the Participant has been previously suspended;
 - (iv) Whether the Participant has failed or refused to provide Cuyahoga County or DEI with any information required or requested by this Program;
 - (v) Whether the Participant has materially misrepresented any applicable facts in any filing or communication to Cuyahoga County or DEI; and
 - (vi) Whether any subsequent restructuring of the Participant's business or other action has been undertaken to cure the deficiencies in meeting applicable requirements.
- (3) Length of Suspension: Suspensions may be for any length of time. Cuyahoga County may impose suspensions in excess of one year in cases involving intentional or fraudulent misrepresentation or concealment of material facts, multiple acts in breach of the Program, cases where the Participant has been previously suspended, or other similarly situated misconduct.

Prohibition Against False Statements: It shall be unlawful for any person, knowingly and willfully and with intent to mislead or to make any false or fraudulent representations to Cuyahoga County. Cuyahoga County may impose sanctions against any person making such false representation in connection with the SBE Program.

XVI. TRAINING AND OUTREACH STRATEGIES

Training: Cuyahoga County remains committed to implementing a program that increases the participation of SBEs in Cuyahoga County's procurement opportunities. To ensure that all Cuyahoga County employees involved in purchasing decisions are appropriately informed, certain personnel would undergo training to increase sensitivity regarding the utilization of SBEs. Internal training shall ensure that all staff with purchasing authority have the capacity and capability to engage in a consistent, fair, and open procurement process. Training sessions shall occur periodically. The objective of the training is to effectively communicate the importance of the Program and the mechanics of how the Program operates. The training shall address the following topics, among others:

- (i) Understanding the purpose of the Program.
- (ii) Understanding the benefits of doing business with SBEs.
- (iii) Understanding how the Program is administered.
- (iv) Developing innovative techniques to increase SBE participation.

Outreach Program: To ensure that opportunities to participate in Cuyahoga County’s contracts are available to the widest feasible universe of willing, available, and qualified businesses, DEI shall develop and engage in outreach designed to increase public awareness of the SBE Program, SBE Participation Goals, and SBE Good Faith Effort Criteria. This outreach may consist of any of the following:

- (1) Public Awareness of the Program. To increase the visibility of DEI and to increase the awareness of the Program, DEI shall disseminate at community events, trade shows, and other appropriate business functions, and publish on its website information describing the Program. Any Program updates shall be published within five (5) business days. This information shall also identify ongoing contracting opportunities. DEI will actively participate in the various advocacy groups to provide constant feedback and to keep SBEs abreast of the Programs and contracting opportunities.
- (2) Outreach to Contractors and Vendors. DEI shall conduct outreach to vendors and contractors desiring to do business with Cuyahoga County. The intent of this outreach is to support the SBE Program and promote effective procurement by educating businesses on the SBE Program, SBE Goals, and SBE Good Faith Efforts Criteria
- (3) Outreach to SBEs. DEI shall assist the SBE businesses by providing workshops and seminars on the SBE Program, SBE Goals, SBE Good Faith Efforts Criteria, and Cuyahoga County’s procurement policies and procedures.
- (4) 24-month Purchasing and Contracting Forecast. DEI shall work with Cuyahoga County departments and agencies to prepare and update biannually a 24-month purchasing and contracting forecasts (including annually reoccurring purchases). For the initial forecast and each biannual update of the forecast, County departments/agencies shall compile a purchasing and contracting forecast for the upcoming 24-month period and submit said forecast to DEI. The forecast shall include for each item the originating/lead department, a brief description, estimated amount, and estimated solicitation/advertisement date. The forecast shall also detail purchases and/or contracts that will be procured using the Small Business Set Aside Program which enables County certified small business enterprises to compete against each other for the item award. DEI shall combine the individual forecasts into one forecast and post the combined forecast on the DEI website biannually.

In addition, County departments and agencies shall coordinate with DEI to expand the Small Business Set Aside Program. Specifically, as part of the creation and biannual updates of their forecasts, County departments and agencies shall provide a forecast of contracts and purchases that will be procured using the Small Business Set Aside Program. The County departments and agencies and DEI shall use the following criteria to evaluate and select the contracts and purchases for procurement using the Small Business Set Aside Program:

SELECTION CRITERIA	SUMMARY
FUNDING SOURCE REQUIREMENTS & RESTRICTIONS	County agencies leverage County funds with a multitude of other funding sources (i.e., federal, state, grants, loans...). This enables the County to maximize the return on its investments. However, some of the funding sources may have requirements that will limit the County's ability to fully enact its diversity/inclusion initiatives. When evaluating the eligibility of contracts or services for the SBE Set Aside Program, funding source requirements and restrictions will be assessed.
SCOPE OF WORK	When evaluating the eligibility of contracts or services for the SBE Set Aside Program, the scope of work will be assessed. Contracts or services selected will: <ul style="list-style-type: none"> • be typical of the industry in size and scope • be of simpler or of typical complexity • have typical/standard delivery requirements • have typical periods of performance for the industry
COMPETITIVE ENVIRONMENT	While providing opportunities for SBE vendors to participate in the County procurement process, the County must still maximize the return on its resources. As such, when evaluating the eligibility of contracts or services for the SBE Set Aside Program, at the time of selection, contracts or services must have at least three (3) County certified SBE vendors that provide the scope of work/goods being procured. The size of the pool of pertinent County certified SBE vendors will be re-confirmed at the time of advertisement.
PERFORMANCE BOND AND INSURANCE REQUIREMENTS	Performance bond and insurance requirements are frequently mentioned as obstacles to small businesses in participating in government contracts. When evaluating the eligibility of contracts or services for the SBE Set Aside Program, contracts, or services with lower than or typical performance bond and insurance requirements will be selected.

- (5) 30-day minimum Bid/RFP/RFQ Solicitation/Advertisement Period. All reasonable efforts shall be made to post formal bids/RFPs/RFQs for goods and/or services on the County website for no fewer than 30 days prior to the bid/RFP/RFQ opening. Reasonable efforts include, but are not limited to, County departments and agencies initiating the procurement process for bids, RFPs, and RFQs in ample time to complete pre-advertisement tasks (includes completion of procurement specifications, developing estimated costs by NIGP code for the pertinent scopes of work for the procurement, determination of diversity goals by DEI, finalizing the specification packet...) to enable the posting of bids, RFPs, and RFQs for no fewer than 30 days prior to the bid/RFP/RFQ opening date. Furthermore, reasonable efforts include, but are not limited to, County departments and agencies exhausting other options (such as working to accelerate the internal bid/proposal/qualification review process and contract negotiation) to meet contract and purchase award deadlines before shortening the solicitation/advertisement period. In brief, shortening the solicitation/advertisement period to less than 30 days shall not be the default, initial, or only option evaluated and/or exercised to accelerate the procurement timeline.

XVII. BOND WAIVER PROGRAM

Cuyahoga County's Department of Law's Risk Management Division administers a bond waiver program in accordance with County Code Section 508.02.

XVIII. GRADUATION BY SBE PROGRAM PARTICIPANTS

If a certified and otherwise eligible SBE achieves annual gross revenues or similar indicators of business size for three (3) consecutive years in its respective industry in excess of the pertinent SBA Size Standards for its certification category, then it shall be deemed to have overcome the effects of size and to have reached a competitive status in the marketplace. Upon achievement of such status, said firm(s) shall be graduated from the program and shall thereafter be ineligible for utilization to fulfill enforceable SBE Program participation goals. A graduated SBE may not subsequently re-enter the program unless, after the expiration of two calendar years, the SBE demonstrates:

1. that its annual gross receipts have declined to levels below those as set forth above and;
2. that during said two calendar years it was unable to achieve meaningful participation in Cuyahoga County contracts and/or in the public and private sectors of the larger local economy despite its good faith efforts to do so.

XIX. SEVERABILITY

If any of the provisions set forth in this Program or any section, subsection, paragraph, sentence, clause, phrase, or word thereof shall be found to be invalid, illegal, or unenforceable for any reason, the application of the remainder of this Program shall not be affected by such invalidity.

XX. DEFINITIONS

For the purpose of this Program, the following words, terms, phrases, and abbreviations shall have the following meanings:

“Administrative Reconsideration Panel”: shall mean the panel of County employees appointed by the County Executive that at the request of the apparent successful vendor reviews a non-compliance determination made by DEI.

“Certification”: shall mean the qualifying process that ensures buyers and local, state, and federal agencies that a particular business is eligible to become a part of a pool of vendors identified for the purpose of increasing opportunities with respect to contracts and purchases awarded by Cuyahoga County.

“Commercially Useful Function”: shall mean the performance of real and actual services by a Participant who contracts with Cuyahoga County, or subcontracts with another business enterprise which contracts with Cuyahoga County. A business enterprise serving as a “conduit”, “front” or “pass-through” for another business shall not be deemed to perform a commercially useful function. In determining whether a business is

performing a commercially useful function, factors, including but not limited to the following, will be considered:

- i) The nature and amount of work contracted;
- ii) Whether the SBE has the skill and expertise to perform work for which it has been certified;
- iii) Whether the SBE actually performs, manages, and supervises the work;
- iv) Whether the SBE intends to purchase commodities and/or services from a non-SBE and simply resell same to the general or prime contractor for the purpose of allowing those commodities and/or services to be counted towards the fulfillment of a goal;
- v) Standard industry practices relating to the use of the subcontractors. Consistent with standard industry practices, a SBE subcontractor may enter into second tier subcontracts. If a SBE subcontractor subcontracts a significantly greater portion of the work of its subcontract to a non-SBE inconsistent with standard industry practices, the SBE subcontractor shall be presumed not to be performing a commercially useful function.

“Compliance”: shall mean the condition existing when a Participant has met the requirements of this Program.

“Conduit”: shall mean a business which purchases goods or services that are not normally purchased or sold as part of its daily business from another business(es) for the sole purpose of resale to Cuyahoga County or a contractor doing business with Cuyahoga County.

“Contract”: shall mean any mutually binding legal obligation of Cuyahoga County created to acquire some good and/or service from one or more Participants, which is paid or which is to be paid for, in whole or in part, with monetary appropriations of Cuyahoga County. In this context, the terms “contracting”, “purchasing”, and “procurement” are synonymous and refer to the process or processes under which Cuyahoga County undertakes such acquisitions.

“Cuyahoga County”: shall mean the government agency which provides public contracting to increase quality of life in the County.

“Covenant of Non-Discrimination”: shall mean, collectively, one or more contractual affirmative promises (1) to adopt the policies of Cuyahoga County relating to the participation of SBEs in the procurement process; (2) to undertake certain good faith efforts to solicit SBEs participation; and (3) not to otherwise engage in discriminatory conduct against SBEs.

“DEI”: shall mean the Department of Equity and Inclusion, which is responsible for administration of the SBE Program.

“Department”: Shall mean a department, division or elected official’s office which solicits bids and/or proposals through the Purchasing Department.

“Goal”: shall mean an aspirational effort to attain a certain level of SBE participation on contracts awarded by the Cuyahoga County based on subcontracting opportunities and available SBEs to perform.

“Good Faith Efforts”: shall mean the aggressive actions of a Participant undertaken in earnest to achieve a SBE goal and ensure that it does not discriminate in its contracting practices.

“Independent”: shall mean that with respect to the ownership, control, and activity of a SBE, the business shall operate separate and apart from the ownership, control or undue influence of another business owned and controlled by one or more non-SBEs.

“Joint Venture”: shall mean an association of two or more independent persons, partnerships, corporations (or any combination of them) formed, consistent with the laws of the State of Ohio. This joint venture would carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills, and knowledge, and in which the SBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

“Minority Business Enterprise” (“MBE”): shall mean an individual, domestic corporation, sole proprietorship, partnership, joint venture, entity, or company that is at least 51% owned by one or more individuals who are African American, Hispanic American, Native American, Asian-Pacific American, or Asian-Indian American; and whose management and daily business operations are controlled by one or more of these owners as determined by DEI.

“Manufacturer”: shall mean an individual (or individuals) who owns, operates, or maintains a factory or establishment that produces on the premises the components, materials, or supplies obtained by the Participant or Cuyahoga County.

“Non-Compliance”: shall mean the condition that exists when a Participant has failed to meet the requirements of this Program.

“Office”: shall mean that a business enterprise with an established place of business in the Cuyahoga County area at which one or more of its employees is regularly based and that such place of business has a substantial role in the business’ performance of a commercially useful function as herein defined. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not constitute a significant business presence.

“Participant”: shall mean any contractor, vendor, supplier, or other person, partnership, joint venture, corporation, or other business entity that submits a bid or proposal to Cuyahoga County or expressed interest in submitting a bid or proposal in response to competitive solicitation issued by Cuyahoga County or who has been awarded a contract by Cuyahoga County.

“Project Owner”: shall mean the representative of Cuyahoga County that enters into agreement or contracts with a firm for services or supplies or any other item which shall cause a disbursement of funds from Cuyahoga County.

“Proposal”: shall mean a quotation, proposal, bid or offer by a Participant to perform or provide labor, materials, supplies, or services to Cuyahoga County in response to competitive solicitation issued by Cuyahoga County.

“Purchasing Department”: shall mean the Cuyahoga County department responsible for the purchase of goods and services required for all offices of Cuyahoga County, other than separate political subdivisions.

“Race/Gender-Conscious”: shall mean any governmental or legislative policy or programmatic action that uses race or gender as criteria for participation. The use of a MBE or WBE goal is a primary example of a race-conscious measure.

“Race/Gender-Neutral”: shall mean any governmental or legislative policy or a programmatic action in which race or gender is not among, or the specific criteria for participation. While benefiting MBEs and WBEs, it is

not solely focused on MBE or WBE firms and can be used to assist all small businesses. For example, small business outreach programs, technical assistance programs, mobilization fees, bonding assistance and prompt payment provisions can assist a wide variety of small businesses, not just MBEs and WBEs.

“Responsible”: shall reference a Participant’s integrity, compliance with public policy, and record of past performance and financial and technical resources. A Participant must meet certain requirements to be considered a responsible bidder.

“Responsive”: shall mean that a bid must comply in all material respects, both to the method and timeliness of submission and to the substance of any resulting contract, so that all Participants may stand on an equal footing and the integrity of the competitive bidding system may be maintained.

“Small Business Enterprise” (“SBE”): shall refer to a firm that is certified by DEI, submitted an application and has been accepted as a firm eligible to take advantage of affirmative action efforts established in the Small Business Enterprise Program.

“Underutilization”: shall mean the percentage of dollars spent by Cuyahoga County with SBEs which is less than would be expected based on SBE availability in the County.

“Women Business Enterprise” (“WBE”): means an individual, domestic corporation, sole proprietorship, partnership, joint venture, entity, or company that is at least 51% owned by one or more women and whose management and daily business operations are controlled by one or more of these owners as determined by DEI.

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BIDDERS' MANUAL

Small Business Enterprise (SBE) Program

The goal of the SBE Program is to support and encourage inclusion by creating positive partnerships in County contracting and other procurement opportunities. The SBE Program will achieve this goal by providing and supporting opportunities for SBEs to grow and thereby compete effectively in the general environment for contracting opportunities.

THE SBE SUBCONTRACTOR PARTICIPATION GOAL
FOR THIS BID/PROPOSAL IS

{ENTER SBE %} %

OF THE CONTRACT AWARD

Cuyahoga County
Is an Equal Opportunity Employer

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REQUIRED FORMS:

- Covenant of Non-Discrimination (SBE-1)
- SBE Subcontractor Participation Plan (SBE-2)
- Good Faith Effort Certification (SBE-3, 2 pages)
- Sample of Completed SBE forms (4 pages)

INSTRUCTIONS TO BIDDERS

I. SBE Certifications

Only those certified by the Cuyahoga County's Department of Equity and Inclusion (DEI) shall be eligible for the fulfillment of the SBE participation goal. SBE listings may be obtained from the Department of Equity and Inclusion (DEI). If a SBE elects to compete for County business without being certified by Cuyahoga County as such, they may do so, but any bid/proposal submitted will not be counted towards fulfillment of the SBE participation goal.

A SBE desiring certification with Cuyahoga County must complete the certification application. SBE applications may be obtained from the:

Department of Equity and Inclusion
2079 East Ninth St., 2nd Floor
Cleveland, Ohio 44115
(216) 443-7230

II. SBE Set Aside Program

The goal of the Small Business Enterprise Set Aside Program is to support small businesses by creating contracts and other procurement opportunities exclusively for participation by Cuyahoga County Certified small business enterprise. The Small Business Enterprise Set Aside Program will achieve and support opportunities for small firms to grow and thereby compete effectively in the general environment for contracting opportunities. This program may also include MBE/WBE goals.

III. SBE Participation Goal

The SBE Participation goal can be achieved in the following manner(s):

1. A prime vendor subcontracts with one or more certified SBEs to meet or exceed the goal;
2. A prime vendor subcontracts with one or more certified companies in an amount short of the goal, but submits a complete Good Faith Effort (further described below);
3. A certified SBE company who bids as a prime contractor subcontracts a portion of the work to another certified SBE. Certified SBEs who are bidding as prime contractors will receive a credit for up to 20% of the SBE participation goal. However, the certified SBE must secure additional certified SBE subcontractor participation and/or seek a waiver based on Good Faith Effort (further described below) for any remaining balance of the SBE goal.

IV. Mandatory Bidding Requirements for Prime Contractors

In consideration of the right and privilege to submit a bid or proposal on construction projects and other contracts with Cuyahoga County, at the time of submitting a proposal or bid, each participant shall be required to present appropriate documentation. The documents described below must be completed and signed by each Participant before a proposal or bid can be considered responsive:

- 1) **Covenant of Non-Discrimination**: Each Participant must submit a duly executed and attested Covenant of Non-Discrimination (SBE-1, found in the attached Bidder's Manual). This written instrument shall contain promises, declarations and/or affirmations made by the Participant. The completed document must contain an original signature and date of signature.
- 2) **SBE Subcontractor Participation Plan**: Each Participant must submit a duly executed Subcontractor Participation Plan (SBE-2, found in the attached Bidder's Manual) for each SBE subcontractor proposed. Copies and/or facsimiles of SBE-2 submitted with bids/proposals are acceptable BUT all required signatures must be dated as indicated. Also, please note the following:
 - a) Certified SBEs who are bidding as prime contractors MUST complete and submit the top portion of Form SBE-2 to guarantee the 20% SBE credit.
 - b) SBEs with multiple geographical locations shall enter the Cuyahoga County address and contact information on Form SBE-2.
 - c) Prime vendors are **PROHIBITED** from using SBE(s) with whom the prime vendor has a familial relationship, joint or co-ownership, common partners, officers, or a shareholder relationship to meet the SBE Participation Goal. Hence, on Cuyahoga County projects/contracts, any portion of work subcontracted to a SBE vendor by a prime vendor that meets the above-mentioned criteria will **NOT** count towards the achievement of the established SBE Participation Goal.

Use of 2nd Tier Subcontractors: In the event that a subcontractor portions out work and utilizes the services of a sub-subcontractor or vendor, **the prime contractor** shall be required to report this use to DEI. For reporting purposes, the prime contractor shall report statistical data for the sub-subcontractor or sub-vendor, including race, gender, business size, area of specialization, dollar value, description of services or products purchased, and contact information. No SBE subcontractor will be permitted to subcontract more than 25% of their subcontract work (based on dollar value) without prior approval by DEI.

Other Information and Data: DEI may request additional information and data prior to a contract award. This information may include, but is not limited to, information regarding business ownership of all subcontractors to be utilized on the project, all of which shall reflect the race, gender, location, size, and area of specialization and structure of the identified businesses.

A PARTICIPANT'S FAILURE OR REFUSAL TO PROVIDE INFORMATION AND DATA REQUIRED BY THIS PROGRAM AND REQUESTED BY DEI SHALL SUBJECT THE PARTICIPANT TO HAVING A PROPOSAL OR BID DEEMED NON-RESPONSIVE.

V. Good Faith Efforts

Aggressive “Good Faith Efforts” to include SBEs in the procurement process are required of all Participants. These Good Faith Efforts should be in addition to the Participant’s regular and customary solicitation process of contact with potential subcontractors and/or vendors.

Written Notice to SBEs: To demonstrate good faith efforts, a Participant shall deliver written or electronic notice to potential SBEs. SBEs should be contacted not less than one (1) week before the bid or proposal due date. Names, addresses, and telephone numbers for available SBEs may be obtained by contacting DEI or reviewing the database on the website at <https://opd.cuyahogacounty.us/en-US/listing.aspx> .

The written or electronic notice sent to potential subcontractors or vendors shall contain the following:

- (1) Sufficient information about the plans, specifications, and relevant terms and conditions of the solicitation. This should include information about the work which will be subcontracted or the goods which will be obtained from subcontractors and suppliers;
- (2) A contact person knowledgeable of the project scope documents, within the Participant’s office, to answer questions about the conditions of the contract;
- (3) Information as to the Participant’s bonding requirements; and
- (4) The deadline for price quotations.

Evaluation of Good Faith Efforts: In evaluating good faith efforts, DEI will determine whether the Participant has made reasonable good faith efforts to obtain SBE participation as part of its bid or proposal. DEI may evaluate not only the different kinds of efforts made by a Participant, but also the quantity and intensity of those efforts.

DEI will consider a completed Good Faith Effort Certification (SBE-3, 2 pages, found in the attached Bidder’s Manual), as evidence of a Participant’s good faith in trying to obtain SBE participation in a bid or proposal.

Required Documentation: To demonstrate good faith efforts, Participants shall keep detailed records of all correspondences and responses thereto, emails, logs of all telephone calls made and received regarding the project or contract, confirmation receipts for fax transmissions, receipts from registered or certified mail, copies of advertisements in publications and other media, and other relevant papers required by this Program.

Good Faith Effort Certification: Participant must submit a completed Good Faith Certification (SBE-3, found in the Bidder’s Manual) ONLY if the SBE Participation Goal is not met. Additional documentation demonstrating a good faith effort must accompany the checklist (as detailed above in *Required Documentation*). The completed document must contain an original signature, notarizations, and date of signature.

Administrative Reconsideration: If DEI determines that the apparent successful vendor is non-compliant on meeting the SBE participation goal and has not demonstrated good faith efforts to obtain SBE participation, prior to awarding the contract/purchase, the user department shall notify the apparent successful vendor of the determination of non-compliance by emailing the primary contact detailed in the vendor's bid/proposal. The apparent successful vendor shall have the right to request an administrative reconsideration of the non-compliance determination. The administrative reconsideration can be a "no meeting" reconsideration or "meeting" reconsideration (virtual or in-person). The request for an administrative reconsideration must be submitted within three (3) business days of the notification of non-compliance and in the format of an email to DEI at dei@cuyahogacounty.us. Upon receipt of the request for the administrative reconsideration by the apparent successful vendor, DEI shall forward the request to the Administrative Reconsideration Panel. The panel shall consist of at least three (3) but not more than five (5) County employees appointed by the Cuyahoga County Executive. The request for administrative reconsideration shall detail the pertinent RFB/RFP/RFQ (i.e., title, description...), type of administrative reconsideration requested (i.e., no meeting or meeting), and any written documentation or arguments concerning the issue of non-compliance. DEI shall provide a summary of its Good Faith Effort evaluation and supporting documentation. The Administrative Reconsideration Panel shall publish a schedule that includes deadlines and provides for a frequency of no less than twice per calendar month. The Administrative Reconsideration Panel will evaluate the information provided by the apparent successful vendor and DEI and issue a written decision approving or disapproving of DEI's determination on non-compliance for the matter. A quorum for "no meeting" or "meeting" administrative reconsideration shall be the majority (i.e., greater than 50%) of the appointed panel and an affirmative vote by the majority (i.e., greater than 50%) of the panel present for the administrative reconsideration is required for action. The Administrative Reconsideration Panel shall adopt its own rules of procedure consistent with SBE Policies and Procedures. The result of the administrative reconsideration is not administratively appealable.

VI. Award of Contracts

Award of Contract: Proposals/bids may be rejected and projects re-submitted for the sole purpose of attaining goals where no "good faith effort" has been demonstrated. Cuyahoga County reserves the right to determine the action to be taken on the contract if a goal is not met, including rejecting any or all bids or proposals. For RFPs and RFQs, once the scope of work and/or price, terms, and conditions have been finalized but in advance of submission for approval by the pertinent contracting authority, the department shall confirm with DEI that the proposed contract/purchase is compliant with the SBE participation goals and/or Good Faith Efforts requirements. If an awarded contract is later amended for additional dollars, SBE subcontractor participation should still reflect the percentage of dollars originally contracted for.

When evaluating a bid to determine the lowest and best bid, the County may consider, in addition to all of the other factors set forth in the instructions to bidders, whether a bid is compliant with the applicable SBE goals, provided, however, that such compliance shall not be considered if the difference between the SBE-compliant bid and the lowest responsive bid is more than the price preference specified below.

Lowest Bid Received Range (\$)	Price Preference (%) & Limit	Price Preference (\$)
0 – 500,000	10%	0 – 50,000
500,000.01 – 1,000,000	10% up to max \$80,000 (10-8)	50,000.01 – 80,000
1,000,000.01 – 3,000,000	8% up to max \$210,000 (8-7)	80,000.01 – 210,000
3,000,000.01 – 5,000,000	7% up to max \$250,000 (7-5)	210,000.01 – 250,000
>5,000,000	\$250,000 maximum (≤ 5)	250,000 maximum

VII. Monitoring and Post-Award Reporting

Department of Equity and Inclusion Authorization to Monitor: DEI shall be authorized to collect from all Participants such data and information as is necessary to monitor this Program. This information may include information as to business ownership, supplier information, subcontractor information, all of which shall reflect the contract information, race, gender, business location, and size of the identified businesses.

DEI shall monitor the participation of SBEs in the procurement of goods and services for Cuyahoga County. Such monitoring shall include, but is not necessarily limited to, a statistical analysis of each construction trade, business service, professional service, and commodity to determine whether there is utilization of SBEs in a manner that is proportionate to the established goal.

DEI will provide written reports on an annual basis. DEI's report shall contain a summary of the purchases and contracts placed with SBEs for the period and the relative percentage to the total of purchases and contracts for that period.

Participant's Post-Award Reporting: Participants who are awarded contracts must submit reports on a monthly basis during the course of, at the end of the contract, and as requested by DEI. Participants shall comply with all reporting requirements related to SBE utilization including, but not limited to, completing on-line reporting of payments made to SBE subcontractors and other subcontractors. These reports shall summarize the number and dollar amounts of payments made during the term of the contract to subcontractors. At the end of the contract, the final report shall summarize the number and dollar amounts of payments made during the term of the contract to all subcontractors and shall reflect the SBEs designation of the subcontractor if any. DEI reserves the right to audit a contract for SBE participation at its discretion during any phase of the project. An audit would include but not be limited to: on site reviews, desk reviews, requests for cancelled checks, requests for invoices, certified payroll reports, etc. Participants shall contact DEI if concerns arise related to its ability to meet the SBE goals and to seek guidance on available options to meet the goals.

SBE Subcontractor Substitutions or Replacements: The prime contractor shall report any replacements or substitutions of the use of SBE subcontractors to DEI immediately. Prior approval by the Director of DEI is required for SBE substitutions/replacements. For reporting purposes, the prime contractor shall report to DEI statistical data pertaining to the new subcontractor, including race, gender, business size, area of specialization, and contact information on the SBE Subcontractor Participation Plan form (SBE-2).

DEI will require a Participant to make good faith efforts to replace a SBE that is terminated or has otherwise failed to complete its work on a contract with another SBE to the extent needed to meet the contract SBE Participation Goal. The Participant must notify DEI immediately, and in writing, of the SBE's inability or unwillingness to perform and provide reasonable documentation. The request should include at a minimum: the name of the SBE firm, the contact, the phone number, the scope of work initially assigned to the SBE firm,

dollars paid to date, percent of scope completed, and the reason for the substitution request including documentation of the SBE's withdrawal.

The Participant will be given five (5) business days to find a SBE substitution if the request is granted. In this situation, the Participant will be required to obtain prior approval of the substitute SBE and to provide copies of SBE Subcontractor Participation Plan (SBE-2) or documentation of good faith efforts.

If the Participant fails or refuses to comply in the time specified, DEI may issue a recommendation to stop all or part of payment and/or work until satisfactory action has been taken. If the Participant still fails to comply, DEI may issue a recommendation of termination of the contract.

Contractors' Closeout Activity Reports: To further monitor SBE participation, closeout activity reports will be required from project prime contractors and prime consultants identifying activities of **all** subcontractors and sub-consultants (i.e., non-SBEs and SBEs). For all subcontractors and sub-consultants used, the prime contractor shall provide the following information: contact information, ethnicity/race/gender of ownership, summary of scope of work provided, and total payments for said scope of work. This report shall include all modifications/amendments/change orders. The prime contractors/consultants shall provide justification and documentation for SBE participation shortfalls.

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REQUIRED DOCUMENTS

The following forms regarding the SBE Program must be completed and submitted with bids/proposals:

- COVENANT OF NON-DISCRIMINATION (SBE-1)
- SBE SUBCONTRACTOR PARTICIPATION PLAN (SBE-2)
- GOOD FAITH EFFORT CERTIFICATION (SBE-3, 2 PAGES)

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COVENANT OF NON-DISCRIMINATION

(MUST be completed and submitted with ALL bids or proposals)

Know All Men By These Presents, that I/we, (_____),
Name(s)
(_____), (_____),
Title(s) Name of Company

(hereinafter "Company"), in consideration of the privilege to submit Bids/Proposals on contracts funded, in whole or in part, by Cuyahoga County, hereby consents, covenants, and agrees as follows:

(1) No person shall be excluded from participation in, denied the benefit of, or otherwise discriminated against on the basis of race, creed, color, national origin, handicap, sex, age, marital status, or sexual orientation in connection with any Bid/Proposal submitted to Cuyahoga County or the performance of any contract resulting from;

(2) That it is and shall be the policy of this Company to provide equal opportunity to all business persons seeking to contact or otherwise interested in contracting with this Company, including various eligible Small Business Enterprises (hereinafter "SBEs");

(3) In connection herewith, I/We acknowledge and warrant that this Company has been made aware of, understands, and agrees to make a Good Faith Effort to solicit SBEs to do business with this Company;

(4) That the Covenant of Non-Discrimination as made and set forth herein shall be continuing in nature and shall remain in full force and effect without interruption;

(5) That the Covenant of Non-Discrimination as made and set forth herein shall be and are hereby deemed to be made a part of, and incorporated by reference into, any contract or portion thereof which this Company may hereafter obtain; and

(6) That the failure of this Company to satisfactorily discharge any of the Covenant of Non-Discrimination as made and set forth herein shall constitute a material breach of contract entitling Cuyahoga County to declare the contract in default and to exercise any and all applicable rights and remedies, including but not limited to, cancellation of the contract, termination of the contract, suspension and debarment from future contracting opportunities, and withholding and/or forfeiture of compensation due and owing on a contract.

(Original Signature of Company Representative Identified Above)

(Date)

SBE SUBCONTRACTOR PARTICIPATION PLAN
(MUST be submitted for EACH SBE Subcontractor Proposed)

(A) TOTAL AMOUNT OF OVERALL CONTRACT BID/PROPOSAL \$ _____

BUSINESS NAME OF PRIME BIDDER _____

ADDRESS _____

CITY _____ STATE _____ ZIP CODE _____

TELEPHONE (____) _____ E-MAIL _____

PRIME FIRM OWNED BY: NON-MBE/WBE/SBE SBE SMALL BUSINESS ENTERPRISE
MBE MINORITY BUSINESS ENTERPRISE WBE WOMEN BUSINESS ENTERPRISE

(B) AMOUNT TO BE SUBCONTRACTED TO SBE (PLEASE CIRCLE ONE): \$ _____ PERCENT OF TOTAL OVERALL CONTRACT BID [(B)/(A)]: _____ %

SCOPE OF WORK PROVIDED BY SBE: _____

PRIME BIDDER'S NAME _____ TITLE _____
(TYPE OR PRINT)

PRIME BIDDER'S SIGNATURE _____
(DATE OF SIGNATURE)

SBE SUBCONTRACTOR TO BE UTILIZED
(MUST BE CERTIFIED BY THE CUYAHOGA COUNTY DEPARTMENT OF EQUITY AND INCLUSION)

NAME OF SUBCONTRACTOR _____

ADDRESS _____

CITY _____ STATE _____ ZIP CODE _____
TELEPHONE AREA CODE () _____
 SMALL BUSINESS SBE MINORITY BUSINESS MBE WOMEN BUSINESS WBE

*******NOTE: MUST BE A COUNTY CERTIFIED SBE *******

THE UNDERSIGNED HEREWITH AGREES TO SUBCONTRACT WITH THE ABOVE NAMED BIDDER FOR THE ABOVE SAID SERVICE(S) OR SUPPLY(IES) TO BE FURNISHED TO THE COUNTY.

SUBCONTRACTOR'S NAME _____ TITLE _____
(TYPE OR PRINT)

SUBCONTRACTOR'S SIGNATURE _____
(DATE OF SIGNATURE)

GOOD FAITH EFFORT CERTIFICATION

(Must be submitted with bids/proposals NOT meeting the SBE goal or requesting full or partial waiver)

Pursuant to the requirements for bidders under the SBE Program, and in consideration of the privilege to submit bids/proposals funded, in whole or in part, by Cuyahoga County,

I/We, (_____), (_____) of (_____)
Name(s) of Person(s) Signing Below Title(s) Company Name

attest that I/We have exercised the following good faith efforts in addition to my/our regular and customary solicitation process: (Check ALL that apply and complete as indicated)

- I/We are requesting a FULL/PARTIAL WAIVER of the SBE Participation Goal for the following reason(s): _____
- I/We are a non-profit agency and are requesting a FULL WAIVER of the SBE Goal. **(MUST SUBMIT/ATTACH PROOF)**
- I/We have contacted DEI or website to obtain a list of SBEs appropriate to the bid/proposal.
- I/We delivered written notice to available certified SBEs for each potential subcontracting or supply category in the contract AND all potential subcontractors or vendors which requested information on the contract. **(MUST SUBMIT/ATTACH PROOF)**
- I/We have provided all potential subcontractors or vendors with adequate information as to plans, specifications, relevant terms and conditions of the contract, bonding requirements, and the last date and time for receipt of price quotations. **(MUST SUBMIT/ATTACH PROOF)**
- I/We have attended the pre-bid/proposal conference.
- I/We have **provided a written explanation for rejection of any potential** SBE subcontractor or vendor to DEI. When the SBE subcontractor rejection is due to unreasonably high pricing, I/We have provided supporting documentation.
- I/We have actively solicited, through sending letters, emails or initiating personal contact, SBEs in all feasible and appropriate categories providing subcontracting opportunities for the contract under consideration. **(MUST SUBMIT/ATTACH PROOF)**
- I/We have utilized the services of available community organizations and associations, contractors' groups, and trade associations known to publicize contracting and procurement opportunities, for the purpose of obtaining assistance in the contacting and recruitment of SBEs for the Cuyahoga County contract under consideration. **(MUST SUBMIT/ATTACH PROOF)**
- I/We have conducted discussions with interested SBEs in good faith and provided the same willingness to assist SBEs as has been extended to any other similarly situated subcontractor.
- I/We have taken steps to ensure that all labor supervisors, superintendents, and other on-site supervisory personnel are aware of and carry out the obligation to maintain a non-discriminatory work environment, free of harassment, intimidation and coercion at all construction sites, offices and other facilities to which employees are assigned to work.

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**** SAMPLE FORMS ****

COVENANT OF NON-DISCRIMINATION

(MUST be completed and submitted with ALL bids or proposals)

Know All Men By These Presents, that I/we, (John Doe),
Name(s)
(President, Owner), (ABC Company, Inc.),
Title(s) Name of Company

(hereinafter "Company"), in consideration of the privilege to submit Bids/Proposals on contracts funded, in whole or in part, by Cuyahoga County, hereby consents, covenants, and agrees as follows:

(1) No person shall be excluded from participation in, denied the benefit of, or otherwise discriminated against on the basis of race, creed, color, national origin, handicap, sex, age, marital status, or sexual orientation in connection with any Bid/Proposal submitted to Cuyahoga County or the performance of any contract resulting from;

(2) That it is and shall be the policy of this Company to provide equal opportunity to all business persons seeking to contact or otherwise interested in contracting with this Company, including various eligible Small Business Enterprise (hereinafter "SBEs");

(3) In connection herewith, I/We acknowledge and warrant that this Company has been made aware of, understands, and agrees to make a Good Faith Effort to solicit SBEs to do business with this Company;

(4) That the Covenant of Non-Discrimination as made and set forth herein shall be continuing in nature and shall remain in full force and effect without interruption;

(5) That the Covenant of Non-Discrimination as made and set forth herein shall be and are hereby deemed to be made a part of, and incorporated by reference into, any contract or portion thereof which this Company may hereafter obtain; and

(6) That the failure of this Company to satisfactorily discharge any of the Covenant of Non-Discrimination as made and set forth herein shall constitute a material breach of contract entitling Cuyahoga County to declare the contract in default and to exercise any and all applicable rights and remedies, including but not limited to, cancellation of the contract, termination of the contract, suspension and debarment from future contracting opportunities, and withholding and/or forfeiture of compensation due and owing on a contract.

John Doe
(Original Signature of Company Representative Identified Above)

February 1, 2021
(Date)

SBE SUBCONTRACTOR PARTICIPATION PLAN
(MUST be submitted for EACH SBE Subcontractor Proposed)

(A) TOTAL AMOUNT OF OVERALL CONTRACT BID/PROPOSAL \$ 500,000.00

BUSINESS NAME OF PRIME BIDDER ABC COMPANY, INC

ADDRESS 111 MAIN STREET

CITY ANYWHERE STATE OHIO ZIP CODE 44000

TELEPHONE (216) 555-5555 E-MAIL ABCCOMPANY@YAHOO.COM

PRIME FIRM OWNED BY: NON-MBE/WBE/SBE SBE SMALL BUSINESS ENTERPRISE
MBE MINORITY BUSINESS ENTERPRISE WBE WOMEN BUSINESS ENTERPRISE

(B) AMOUNT TO BE SUBCONTRACTED TO SBE (PLEASE CIRCLE ONE): \$ 50,000.00 PERCENT OF TOTAL OVERALL CONTRACT BID [(B)/(A)]: 10 %

SCOPE OF WORK PROVIDED BY SBE: ELECTRICAL CONTRACTING SERVICES

PRIME BIDDER'S NAME JOHN DOE TITLE PRESIDENT/OWNER
(TYPE OR PRINT)

PRIME BIDDER'S SIGNATURE JOHN DOE FEBRUARY 1, 2021
(DATE OF SIGNATURE)

SBE SUBCONTRACTOR TO BE UTILIZED
(MUST BE CERTIFIED BY THE CUYAHOGA COUNTY DEPARTMENT OF EQUITY AND INCLUSION)

NAME OF SUBCONTRACTOR ELECTRIFYING ELECTRIC COMPANY

ADDRESS 456 MAIN STREET

CITY ANYWHERE STATE OHIO ZIP CODE 44000

TELEPHONE AREA CODE (216) 555-5551 SMALL BUSINESS SBE MINORITY BUSINESS MBE WOMEN BUSINESS WBE

*****NOTE MUST BE A COUNTY CERTIFIED SBE*****

THE UNDERSIGNED HEREWITH AGREES TO SUBCONTRACT WITH THE ABOVE NAMED BIDDER FOR THE ABOVE SAID SERVICE(S) OR SUPPLY(IES) TO BE FURNISHED TO THE COUNTY.

SUBCONTRACTOR'S NAME TOM EDISON TITLE PRESIDENT/OWNER
(TYPE OR PRINT)

SUBCONTRACTOR'S SIGNATURE TOM EDISON FEBRUARY 1, 2021
(DATE OF SIGNATURE)

GOOD FAITH EFFORT CERTIFICATION

(Must be submitted with bids NOT meeting Diversity goal or requesting full or partial waiver)

Pursuant to the requirements for bidders under the SBE Program, and in consideration of the privilege to submit bids/proposals funded, in whole or in part, by Cuyahoga County,

I/We, (John Doe), (President, Owner) of (ABC Company, Inc.)
Name(s) of Person(s) Signing Below Title(s) Company Name

attest that I/We have exercised the following good faith efforts in addition to my/our regular and customary solicitation process: (Check ALL that apply and complete as indicated)

- x I/We are requesting a FULL/PARTIAL WAIVER of the SBE Participation Goal for the following reason(s): We are requesting a partial waiver of the SBE Goal as we were only able to meet 10% of the 15% goal. We were unable to find a SBE to meet the additional 5% required.
- I/We are a non-profit agency and are requesting a FULL WAIVER of the SBE Participation Goal. **(MUST SUBMIT/ATTACH PROOF)**
- x I/We have contacted DEI or website to obtain a list of the Diversity listing to appropriate to the bid/proposal.
- x I/We delivered written notice to available certified SBEs for each potential subcontracting or supply category in the contract AND all potential subcontractors or vendors which requested information on the contract. **(MUST SUBMIT/ATTACH PROOF)**
- x I/We have provided all potential subcontractors or vendors with adequate information as to plans, specifications, relevant terms and conditions of the contract, bonding requirements, and the last date and time for receipt of price quotations. **(MUST SUBMIT/ATTACH PROOF)**
- x I/We have attended the pre-bid/proposal conference.
- x I/We have **provided a written explanation for rejection of any potential** SBE subcontractor or vendor to DEI. When the SBE subcontractor rejection is due to unreasonably high pricing, I/We have provided supporting documentation.
- x I/We have actively solicited, through sending letters, emails or initiating personal contact, SBEs in all feasible and appropriate categories providing subcontracting opportunities for the contract under consideration. **(MUST SUBMIT/ATTACH PROOF)**
- x I/We have utilized the services of available community organizations and associations, contractors' groups, and trade associations known to publicize contracting and procurement opportunities, for the purpose of obtaining assistance in the contacting and recruitment of SBEs for the Cuyahoga County contract under consideration. **(MUST SUBMIT/ATTACH PROOF)**
- x I/We have conducted discussions with interested SBEs in good faith and provided the same willingness to assist SBEs as has been extended to any other similarly situated subcontractor.
- x I/We have taken steps to ensure that all labor supervisors, superintendents, and other on-site supervisory personnel are aware of and carry out the obligation to maintain a non-discriminatory work environment, free of harassment, intimidation and coercion at all construction sites, offices and other facilities to which employees are assigned to work.

If applicable, identify all SBEs contacted to participate that declined or were not chosen:

1. Perfect Plumbing Company 222 Main Street, Anywhere, OH 44000 216-555-5553
Name of Subcontractor/Vendor Address Phone
Paul Perfect January 15, 2021 \$25,000 (5%) January 18, 2021
Name of Contact Date of Offer to Participate Bid Amount Date Offer Declined

Reasons Given for Declining Has other commitments at this time and is unable to work with us.

2. Dan's DuctWork Company 333 Main Street, Anywhere, OH 44000 216-555-5554
Name of Subcontractor/Vendor Address Phone
Dan Handy January 18, 2021 \$25,000 (5%) January 19, 2021
Name of Contact Date of Offer to Participate Bid Amount Date Offer Declined

Reasons Given for Declining They are no longer providing the required sub-contracting service as part of its business.

3. Dave's Landscapes Inc 444 Main Street, Anywhere, OH 44000 216-555-5556
Name of Subcontractor/Vendor Address Phone
Dave Curbappeal January 16, 2021 \$25,000 (5%) January 17, 2021
Name of Contact Date of Offer to Participate Bid Amount Date Offer Declined

Reasons Given for Declining Has other commitments at this time and is unable to work with us.

(Make additional copies to extend list of SBE contacts if needed)

I/We affix my/our signature to this document to attest that I/We have exercised the above-indicated Good Faith Efforts to promote Diversity participation on the Bid/Proposal and Contract under consideration and to comply fully with the provisions of the Cuyahoga County SBE Program.

John Doe
 Printed/Typed Name of Company Official

February 1, 2021
 Date

John Doe
 Signature (Must be Original)

President, Owner
 Title of Company Official

ABC Company, Inc.
 Full Company Name

111 Main Street
 Mailing Address

216-555-5555
 Area Code/ Phone Number

Anywhere, OH 44000
 City, State, Zip

Nancy Notarious
 Notary Public

December 31, 2023
 My Commission Expires

PLEASE NOTE: Failure to properly complete and submit **SBE-1, SBE-2, and SBE-3 (if applicable)** will result in bids/proposals being **ruled non-responsive**.

Exhibit B



COUNTY OF CUYAHOGA, OHIO

MINORITY BUSINESS ENTERPRISE (MBE)
& WOMEN BUSINESS ENTERPRISE (WBE)
PROGRAM
POLICIES AND PROCEDURES

July 2021

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APPENDIX A CUYAHOGA COUNTY MBE/WBE BIDDER'S MANUAL

I. POLICY STATEMENT

Policy Statement: It is the policy of Cuyahoga County to ensure that all businesses have the opportunity to participate fully and fairly in Cuyahoga County's procurement and contract awards.

In an effort to ameliorate the effects of past and present arbitrary barriers that minority- and women-owned businesses have in contracting with Cuyahoga County, Cuyahoga County hereby adopts this Minority Business Enterprise (MBE) and Women Business Enterprise (WBE) program to:

- promote and encourage full and open competition in the procurement of goods and services by Cuyahoga County;
- encourage all Cuyahoga County personnel involved with procurement and contracting activities to maintain good faith efforts and appropriate purchasing procedures; and
- protect Cuyahoga County from becoming a passive participant in any unlawful discrimination; and to otherwise spur economic development in the public and private sectors of the Cuyahoga County economy.

Moreover, no person shall be denied the benefit of, or otherwise discriminated against, on the basis of race, creed, color, national origin, handicap, sex, age, marital status, or sexual orientation in connection with the award or modification of a contract between a vendor or contractor and Cuyahoga County where said contract is paid for, in whole or in part, with monetary appropriations by Cuyahoga County.

II. PROGRAM SCOPE AND APPLICABILITY

The following categories provide an overview and summary of the nature and types of Cuyahoga County purchasing and contracting:

Category A – Construction, Architectural and Engineering: Includes any and all contracting relating to horizontal and vertical construction including architectural engineering, new construction, rehabilitation, remodeling, and repairs.

Category B - Commodities: Includes the purchase of all goods, equipment, food, office and other supplies, art, furniture, textbooks and other materials for education, and other tangible personal property not associated with the services identified in Categories A, B or C.

Category C - Professional Services: Includes the purchase of any or all services for which applicable selection criteria may require a Participant to possess a license or other certificate of competency such as accounting, auditing, landscape architecture, engineering, insurance, laboratory, legal, lifeguard, medical, dental, nursing, and student transportation.

Category D – Business Services: Includes 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, retail, and other non-professional services.

III. THE DEPARTMENT OF EQUITY AND INCLUSION

The Department of Equity and Inclusion (DEI) develops, administers, and enforces the MBE/WBE Program. DEI shall encourage equal business opportunities and achieve the policies and objectives of the MBE/WBE Program by:

- (1) Administering and enforcing Cuyahoga County policies;
- (20) Establishing written rules, regulations, and procedures consistent with the MBE/WBE Program;
- (21) Publishing and making public said rules, regulations, and procedures;
- (22) Maintaining outreach and assistance programs to promote equal contracting opportunities for MBE/WBE businesses that wish to contract with the Cuyahoga County and educating vendors and contractors on the MBE/WBE Program, MBE/WBE Goals, and Good Faith Efforts Criteria;
- (23) Establishing, enhancing, and maintaining relationships with agencies and stakeholders in the area;
- (24) Maintaining a current database of available MBE/WBEs and making this database accessible to interested parties;
- (25) Monitoring and collecting data and information on the utilization of MBE/WBEs in Cuyahoga County's procurement activities that allows a comprehensive review of the impact of the MBE/WBE Program;
- (26) Establishing and assessing the reasonableness of MBE/WBE participation goals for Cuyahoga County procurements;
- (27) Attending pre-bid/proposal conferences for all procurement solicitations by Cuyahoga County;
- (28) Attending kick-off meetings for major projects;
- (29) Participating on evaluation panels for request for proposals and requests for qualifications;
- (30) Investigating written complaints related to the MBE/WBE Program;
- (31) Mediating payment disputes between prime contractors and MBE/WBE sub-contractors
- (32) Notifying affected parties in writing as to the right to review and appeal an adverse decision by DEI;
- (33) Monitoring Cuyahoga County's purchasing activities and determining compliance with MBE/WBE program policies and procedures;
- (34) Preparing annual reports on the MBE/WBE Program;
- (35) Reviewing and determining whether a contractor or vendor has failed to implement its contractual agreements and commitments regarding this policy;
- (36) Developing and revising MBE/WBE Program policies and procedures to implement current best practices and maintaining records of MBE/WBE Program activities; and
- (37) Performing other tasks as may be required to fulfill the above-stated duties of DEI.

Authority to Investigate Discriminatory Practices: A Participant's written complaint of discrimination shall be forwarded to the Commission on Human Rights for investigation and determination under Title XV of the County Code. Further, such investigations may be initiated by referral to the Commission on Human Rights when DEI receives information, which provides a reasonable basis to believe that an individual contractor

seeking to contract or contracting with Cuyahoga County may be engaging in public or private discriminatory conduct.

IV. CERTIFICATION

Certification: Certification is the process that ensures that a particular business may become a part of a pool of vendors identified for the purpose of increasing opportunities with respect to contracts and purchases awarded by Cuyahoga County.

All firms submitting applications for MBE/WBE consideration must be certified prior to submission of a bid or proposal.

Applications for certification will be on standard forms provided by the Cuyahoga County and will include, but will not be limited to, primary business location, evidence of ownership, control, operation, and experience. The application shall be in the form of an affidavit and shall be signed by the applicant; such signature to be notarized by an officer duly authorized to notarize signatures. All certified MBE/WBE firms will be required to update their listing continually including changes of addresses, telephone numbers and changes of ownership, control, and operation. In addition to the applications for certification, vendors seeking MBE/WBE certification shall also submit documentation demonstrating eligibility for certification, managerial control, and operational control. This documentation includes, but is not limited to, federal business tax returns, federal personal tax returns, proof of capital investment or contribution, corporate documents (i.e., Articles of Incorporation, Share Ledger, Corporate Bylaws...), bank signature card, current lease/rental agreement or property taxes for business location, business licenses, worker's compensation certificate and proof of identification for all who own 5% or more of the business.

The Director of DEI shall grant certification of an approved MBE/WBE Business for a period of two (2) years. The Director may grant a provisional certification prior to specific bids or proposals. All companies must recertify their business depending on the expiration date of their certificate which in most instances is the anniversary of their certification. Should provisional certification be granted to a business and that business be awarded a prime contract and the provisional certification is later rescinded, that business is obligated to meet the MBE/WBE participation percentage goal of the original proposal or specifications. Cuyahoga County has a reciprocal certification agreement with the State of Ohio, Department of Administrative Services, on behalf of its Equal Opportunity Division for the Minority Business Enterprise Program.

If a business is denied certification on the basis of information submitted, the company cannot reapply for certification for a period of one (1) year from the date of the notice or denial, provided that such company shall have the right to appeal such denial and to be certified if such appeal is decided in its favor as provided herein. Certification records will be maintained by DEI for a period of five (5) years.

V. ELIGIBILITY STANDARDS FOR CERTIFICATION

The following standards will be used to determine whether a firm is eligible to be certified as a Minority Enterprise Business and/or Women Business Enterprise:

2. To become eligible for the MBE/WBE Program, a business firm must demonstrate that it has been in continuous operation in the category or the related category for which it is requesting certification for one year and that majority ownership has at least one (1) year of work experience relevant to the business' certification category. A business applying for MBE certification must establish that it is an

individual, domestic corporation, sole proprietorship, partnership, joint venture, entity, or company that is at least 51% owned by one or more individuals who are African American, Hispanic American, Native American, Asian-Pacific American, or Asian-Indian American. A business applying for WBE certification must establish that it is an individual, domestic corporation, sole proprietorship, partnership, joint venture, entity, or company that is at least 51% owned by one or more women.

9. A business applying for MBE/WBE certification must establish that it has a physical presence located within the geographical limits of Cuyahoga County, Geauga County, Lake County, Lorain County, and Medina County. Mailbox facilities or other similar arrangements alone do not constitute a physical presence.
10. MBE/WBE ownership and control shall be real, substantial, and continuing and shall go beyond the “pro forma” ownership as reflected in the ownership document. The MBE/WBE owners shall share in the risks and profits commensurate with their ownership interest as demonstrated by an examination of the substance rather than form of arrangements.
11. MBE/WBE owners shall possess the power to direct or cause the direction of the management and policies of the firm and to make the day-to-day as well as major decisions on matters of management, policy, and operation. The firm shall not be subject to any formal or informal restrictions that limit the customary discretion of the MBE/WBE owners. There shall be no restrictions through, for example, by-law provisions, partnerships, arrangements, or charter requirements for cumulative voting rights or otherwise that prevent the business owners, without the cooperating or vote of any owner who is not listed, from making a business decision of the firm.
12. Where the actual management of the firm is contracted out to individuals other than the owner, those persons who have the ultimate power to hire and fire managers can, for the purpose of this part, be deemed to be controlling the business.
13. All securities that constitute ownership and/or control of a corporation shall be held directly by the owners. No securities held in trust, or by any guardian for a minor, shall be considered as held by an owner in determining the ownership or control of a corporation. If a business denied certification due to securities held in trust appeals to and is granted a waiver of this eligibility requirement by the Grievance Hearing Board, then the waiver granted by the Grievance Hearing Board shall remain in effect for that business provided that the ownership structure remains unchanged.
14. The contribution of capital or expertise by the owners to acquire their interest in the firm shall be real and substantial. Examples of insufficient contributions include a promise to contribute capital, a note payable to firm, or the mere participation as an employee, rather than as a manager.
15. In addition to the above standards, special consideration shall be given to the following circumstances in determining eligibility for certification:
 - a. Newly formed firms and firms whose ownership and/or control has changed since the date of the advertisement of the contract are closely scrutinized to determine the reasons for the timing of the formation of or change in the firm.
 - d. A previous and/or continuing employer-employee relationship between or among present owners is carefully reviewed to ensure that the employee-owner has management responsibilities and capabilities discussed in this section.
 - e. Any relationship between a MBE/WBE and any other business which is not a MBE/WBE business or belonging to a non-MBE/WBE business, which has an interest in the MBE/WBE business is carefully reviewed to determine if the interest of the non-

MBE/WBE business conflicts with the ownership and control requirements of this section.

VI. OPERATIONAL CONTROL

DEI shall review the extent of “operational” control. The primary consideration in determining operational control and the extent to which the applicant actually operates the business will rest upon the peculiarities in the industry of which the business is a part. For example, for small contractors, it is reasonable to expect the applicant to be knowledgeable of all aspects of the business. This may not apply to large contractors who have the assets and personnel to specialize. Accordingly, in order to clarify the level of operational involvement, which an applicant must have in a business for it to be considered eligible, the following criteria are put forth, but are not intended to be all inclusive.

1. The applicant should have some experience in the industry for which certification is being sought.
4. The applicant should show that basic decisions pertaining to the daily operations of business can be independently made. This means the applicant must possess the knowledge to weigh all advice given and to make an independent determination.
5. The applicant should have some technical competence in the industry in which certification is being sought. Technical competence in this sense does not mean expert knowledge. It does mean the applicant should have a working knowledge of the technical requirements of the business needed to operate in the industry.

VII. MANAGERIAL CONTROL

DEI shall review the extent of “managerial” control. Managerial control means that the applicant has the demonstrable ability to make independent and unilateral business decisions needed to guide the future of the business. Managerial control may be demonstrated in many ways. For an applicant to demonstrate managerial control, the following criteria are put forth, but are not intended to be all-inclusive:

1. Articles of incorporation, corporate bylaws and partnership agreements or other agreements shall be free of restrictive language, which would dilute the applicant’s control, thereby preventing the applicant from making those decisions, which affect the future of the business.
4. The applicant shall be able to show clearly through production of documents the areas of applicant control, such as, but not limited to:
 - e) Authority and responsibility to initiate and sign checks, letters of credit, and loan agreements.
 - f) Authority to negotiate and signature authority for insurance and/or bonds.
 - g) Authority to negotiate for banking services.
 - h) Authority to hire and fire employees.
5. Agreements for support services that do not lessen the applicant’s control of the company are permitted as long as the applicant’s power to manage

the company is not restricted or impaired.

VIII. THE PURPOSE AND USE OF GOALS

Definition and Purpose: Cuyahoga County maintains a compelling interest in providing equal business opportunities for all persons wishing to do business with it. Therefore, DEI will continue to encourage, monitor, and track MBE/WBE business participation in the procurement process through the MBE/WBE participation goals. Goals are not quotas, but rather a method enabling Cuyahoga County to encourage and promote inclusion of MBE/WBEs in the procurement process.

Procedure for Establishing Overall Goals: Cuyahoga County has established an overall subcontracting goal for MBE/WBE Participation in County procurements that will vary by work categories based on the latest Disparity Study.

Procedure for Establishing Individual Goals: For each procurement, the County department/agency shall provide the NIGP code and estimated cost for each scope of work within a procurement as part of the specification packet for each bid, RFP, and RFQ to DEI in advance of the desired solicitation/award initiation date to enable DEI ample time to determine the MBE/WBE participation goals for the procurement. To achieve the overall goal for MBE/WBE participation, the Director of DEI will establish MBE/WBE participation goals on a contract-by-contract basis by determining the available MBEs/WBEs using the latest Disparity Study data for each scope of work within a procurement and weighting that availability based on the percentage that scope represents within the procurement. Separate goals will be set for MBEs and WBEs. The Director of DEI may also waive the MBE/WBE goals for particular procurements as outlined in Section IX. (1).

Cuyahoga County will use the following criteria to determine the types of participation toward Cuyahoga County's overall annual MBE/WBE goals:

- 4) The total dollar value of the subcontract may be counted toward determining the specified goals. This includes the fees and commissions charged for professional services, legal counsel, manufacturers, financial consultants, and insurance agents.
- 5) Contract goals will be used to meet any portion of the annual goal. Contract goals are established so that, over the period to which the goal applies, they will cumulatively result in meeting any portion of the goal projected to be met through the use of the different programs.
- 6) Contract goals will only be established on those contracts that have subcontracting opportunities for MBE/WBE Participation. The size of contract goals will be adapted to the circumstances of each contract (e.g., type and location of work, availability of the MBE/WBEs to perform the particular type of work) and functionality within the contract.

MBE/WBE Participation in Meeting Goals: All Participants, including MBE/WBE Participants, shall make good faith efforts to attain goals through all subcontractor work.

- (1) Prime Contractors: A Prime Contractor should subcontract portions of its contract consistent with industry standards. However, all MBE/WBE subcontractors must perform a commercially useful function as defined herein. Only such participation by an MBE/WBE will be counted towards any goal.
- (2) Subcontractor Participation: Where a Prime utilizes one or more subcontractors or 2nd tier subcontractors to attain a MBE/WBE goal, the Participant may only count said MBE/WBE

subcontractor or sub-subcontractor work once toward goals. In no way shall subcontractors' or sub-subcontractors' work or dollar amount be construed to count toward said goal more than once. Only expenditures to MBE/WBE subcontractors that perform a commercially useful function in the work of that project or contract will be counted.

- (3) Supplier Participation: Where a Participant utilizes suppliers or distributors to satisfy the goal(s) in whole or in part, the MBE/WBE suppliers must perform a commercially useful function. Supplier participation may be approved upon review of the following factors:
- i) The nature and amount of supplies to be furnished;
 - ii) Whether the MBE/WBE is a manufacturer, wholesaler or distributor of the supplies and has the capabilities to deliver same in accordance with its certification;
 - iii) Whether the MBE/WBE actually performs, manages, and supervises the work to furnish the supplies; and
 - iv) Whether the MBE/WBE business intends to purchase supplies from a non-MBE/WBE and simply resell same to the general or prime contractor for allowing those supplies to be counted towards fulfillment of the goal(s). Participants will receive no credit for the dollar amount of the supply contracted from brokers.

IX. WAIVERS AND WAIVER OF NON-COMPLIANCE WITH MBE/WBE GOAL

1. This MBE/WBE Program policy may be waived for the following:
- h) "Sole Source" procurements under the Cuyahoga County ordinances which by their very nature limit the source of supply to one vendor.
 - i) County purchases from political subdivisions/government entities;
 - j) County purchases off state contracts, off federal contracts, and from joint purchasing programs;
 - k) The acquisition of any interest in real property including lease holdings;
 - l) Direct and indirect employee payments including payroll expenditures, pensions, and unemployment compensation and other employee-related expenditures;
 - m) Any other categories and subcategories of goods and services Cuyahoga County may from time to time establish as excluded contracts upon recommendation of the Director of the Department of Equity and Inclusion and approval by the Cuyahoga County Executive and Cuyahoga County Council;
 - n) Purchases and contracts being procured using Informal RFBs, RFPs, and RFQs (estimated total value \$1,000.01-\$49,999.99): As part of its solicitation process, the department shall also solicit bids/proposals from County certified MBEs/WBEs when available. To determine MBE/WBE availability, at least two (2) business days in advance of the posting/advertisement period, the department shall check the list of County certified MBEs/WBEs on the County's website (<https://opd.cuyahogacounty.us/en-US/listing.aspx>) and/or contact the Department of Equity and Inclusion for a list of pertinent County certified MBEs/WBEs. For these transactions, when the department solicits bids/proposal/qualifications through the vendor email notification system (currently the Infor Strategic Sourcing Module) in accordance with County Code Section 501.12 E, the department shall notify the pertinent available MBEs/WBEs using the vendor email notification system of the purchasing and contracting opportunity. Also, if required, as part of the additional solicitation efforts, the department shall also notify the pertinent available MBEs/WBEs.

4. Application for Waiver. If the Contractor, consultant, supplier, or vendor does not meet the project goals, the bidder or offer or may seek a partial or total waiver of the project goals. The application for waiver of all or part of the project goals shall include full documentary evidence of the Participant's good faith efforts to meet the project goals and why the request for waiver should be granted. The application shall be notarized and submitted as a part of the bid or offer. Additional explanation, affidavits, exhibits or other materials may be required by the MBE/WBE Program to substantiate good faith efforts. (See the Good Faith Effort Certification, DIV-3, 2 pages, in the attached Bidder's Manual). Waivers may also be granted for an acceptable explanation as to why the goals should be waived.
5. Waiver for Detriment to Public Health, Safety or Financial Welfare. The Director of DEI may waive MBE/WBE Program goals if the same causes a detriment to public health, safety, or the financial welfare of the County. The MBE/WBE Program goals may also be waived in the event available MBE/WBEs provide price quotes which are unreasonably high in that they exceed competitive levels beyond amounts which can be attributed to cost, overhead and profit.

X. REQUIREMENTS OF PRIME CONTRACTORS

In consideration of the right and privilege to submit a bid or proposal on construction projects and other contracts with Cuyahoga County, at the time of submitting a proposal or bid, each participant shall be required to present appropriate documentation. The documents described below must be completed and signed by each Participant before a proposal or bid can be considered responsive:

- 3) Covenant of Non-Discrimination: Each Participant must submit a duly executed and attested Covenant of Non-Discrimination (DIV-1, found in the attached Bidder's Manual). This written instrument shall contain promises, declarations and/or affirmations made by the Participant. The completed document must contain an original signature and date of signature.
- 4) MBE/WBE Subcontractor Participation Plan: Each Participant must submit a duly executed Subcontractor Participation Plan (DIV-2, found in the attached Bidder's Manual) for each MBE/WBE subcontractor proposed. Copies and/or facsimiles of DIV-2 submitted with bids/proposals are acceptable BUT all required signatures must be dated as indicated. Also, please note the following:
 - a) Certified MBE/WBEs who are bidding as prime contractors **MUST** complete and submit the top portion of Form DIV-2 to guarantee their portion of MBE credit or WBE credit and this can be up to 20% of the MBE participation goal or up to 20% of the WBE participation goal.
 - b) MBE/WBEs with multiple geographical locations shall enter the address and contact information for the geographical locations eligible for Cuyahoga County certification on Form DIV-2.
 - c) Prime vendors are **PROHIBITED** from using MBE/WBE(s) with whom the prime vendor has a familial relationship, joint or co-ownership, common partners, officers, or a shareholder relationship to meet the MBE/WBE Participation Goals. Hence, on Cuyahoga County projects/contracts, any portion of work subcontracted to a MBE/WBE vendor by a prime vendor that meets the above-mentioned criteria will **NOT** count towards the achievement of the established MBE/WBE Participation Goals.

Use of 2nd Tier Subcontractors: In the event that a subcontractor portions out work and utilizes the services of a sub-subcontractor or vendor, the prime contractor shall be required to report this use to DEI. For reporting purposes, the prime contractor shall report statistical data for the sub-subcontractor or sub-vendor, including race, gender, business size, area of specialization, dollar value, description of services or products purchased,

and contact information. No MBE/WBE subcontractor will be permitted to subcontract more than 25% of their subcontract work (based on dollar value) without prior approval by DEI.

Other Information and Data: DEI may request additional information and data prior to a contract award. This information may include, but is not limited to, information regarding business ownership of all subcontractors to be utilized on the project, all of which shall reflect the race, gender, location, size, and area of specialization and structure of the identified businesses.

**A PARTICIPANT’S FAILURE OR REFUSAL TO PROVIDE INFORMATION AND DATA
REQUIRED BY THIS PROGRAM AND REQUESTED BY DEI SHALL SUBJECT THE
PARTICIPANT TO HAVING A
PROPOSAL OR BID DEEMED NON-RESPONSIVE.**

XI. GOOD FAITH EFFORTS

Aggressive “Good Faith Efforts” to include MBE/WBEs in the procurement process are required of all Participants. These Good Faith Efforts should be in addition to the Participant’s regular and customary solicitation process of contact with potential subcontractors and/or vendors.

Written Notice to MBE/WBEs: To demonstrate good faith efforts, a Participant shall deliver written or electronic notice to potential MBE/WBEs. MBE/WBEs should be contacted not less than one (1) week before the bid or proposal due date. Names, addresses, and telephone numbers for available MBE/WBEs may be obtained by contacting DEI or reviewing the database on the website at <https://opd.cuyahogacounty.us/en-US/listing.aspx>.

The written or electronic notice sent to potential subcontractors or vendors shall contain the following:

- (5) Sufficient information about the plans, specifications, and relevant terms and conditions of the solicitation. This should include information about the work which will be subcontracted or the goods which will be obtained from subcontractors and suppliers;
- (6) A contact person knowledgeable of the project scope documents, within the Participant’s office, to answer questions about the conditions of the contract;
- (7) Information as to the Participant’s bonding requirements (including any offers to assist interested MBE/WBEs in obtaining bonding or insurance); and
- (8) The deadline for price quotations.

Evaluation of Good Faith Efforts: In evaluating good faith efforts, DEI will determine whether the Participant has made reasonable good faith efforts to obtain MBE/WBEs participation as part of its bid or proposal. DEI may evaluate not only the different kinds of efforts made by a Participant, but also the quantity and intensity of those efforts.

DEI will consider a completed Good Faith Effort Certification (DIV-3, 2 pages, found in the attached Bidder’s Manual), as evidence of a Participant’s good faith in trying to obtain MBE/WBE participation in a bid or proposal.

Required Documentation: To demonstrate good faith efforts, Participants shall keep detailed records of all correspondences and responses thereto, emails, logs of all telephone calls made and received regarding the project or contract, confirmation receipts for fax transmissions, receipts from registered or certified mail, copies of advertisements in publications and other media, and other relevant papers required by this Program.

Good Faith Effort Certification: Participant must submit a completed Good Faith Certification (DIV-3, found in the attached Bidder's Manual) ONLY if the MBE Participation Goal and/or the WBE Participation Goal is not met. The completed document must contain an original signature, notarizations, and date of signature. Along with the completed Good Faith Effort Certification, participants shall also submit additional documentation demonstrating a good faith effort (as detailed above in *Required Documentation*).

Administrative Reconsideration: If DEI determines that the apparent successful vendor is non-compliant on meeting the MBE/WBE participation goals and has not demonstrated good faith efforts to obtain MBE/WBE participation, prior to awarding the contract/purchase, the user department shall notify the apparent successful vendor of the determination of non-compliance by emailing the primary contact detailed in the vendor's bid/proposal. The apparent successful vendor shall have the right to request an administrative reconsideration of the non-compliance determination. The administrative reconsideration can be a "no meeting" reconsideration or "meeting" reconsideration (virtual or in-person). The request for an administrative reconsideration must be submitted within three (3) business days of the notification of non-compliance and in the format of an email to DEI at dei@cuyahogacounty.us. Upon receipt of the request for the administrative reconsideration by the apparent successful vendor, DEI shall forward the request to the Administrative Reconsideration Panel. The panel shall consist of at least three (3) but not more than five (5) County employees appointed by the Cuyahoga County Executive. The request for administrative reconsideration shall detail the pertinent RFB/RFP/RFQ (i.e., title, description...), type of administrative reconsideration requested (i.e., no meeting or meeting), and any written documentation or arguments concerning the issue of non-compliance. DEI shall provide a summary of its Good Faith Effort evaluation and supporting documentation. The Administrative Reconsideration Panel shall publish a schedule that includes deadlines and provides for a frequency of no less than twice per calendar month. The Administrative Reconsideration Panel will evaluate the information provided by the apparent successful vendor and DEI and issue a written decision approving or disapproving of DEI's determination on non-compliance for the matter. A quorum for "no meeting" or "meeting" administrative reconsideration shall be the majority (i.e., greater than 50%) of the appointed panel and an affirmative vote by the majority (i.e., greater than 50%) of the panel present for the administrative reconsideration is required for action. The Administrative Reconsideration Panel shall adopt its own rules of procedure consistent with MBE/WBE Policies and Procedures. The result of the administrative reconsideration is not administratively appealable.

XII. AWARD OF CONTRACTS

Award of Contract: Proposals/bids may be rejected and projects re-submitted for the sole purpose of attaining goals where no "good faith effort" has been demonstrated. Cuyahoga County reserves the right to determine the action to be taken on the contract if a goal is not met, including rejecting any or all bids or proposals. For RFPs and RFQs, once the scope of work and/or price, terms, and conditions have been finalized but in advance of submission for approval by the pertinent contracting authority, the department shall confirm with DEI that the proposed contract/purchase is compliant with the MBE/WBE participation goals and/or Good Faith Efforts requirements. If an awarded contract is later amended for additional dollars, MBE/WBE subcontractor participation should still reflect the percentage of dollars originally contracted for.

When evaluating a bid to determine the lowest and best bid, the County may consider, in addition to all of the other factors set forth in the instructions to bidders, whether a bid is MBE/WBE compliant; provided, however, that such MBE/WBE compliance shall not be considered if the difference between the MBE/WBE-compliant bid and the lowest responsive bid is more than the price preference specified below.

Lowest Bid Received Range (\$)	Price Preference (%) & Limit	Price Preference (\$)
0 – 500,000	10%	0 – 50,000
500,000.01 – 1,000,000	10% up to max \$80,000 (10-8)	50,000.01 – 80,000
1,000,000.01 – 3,000,000	8% up to max \$210,000 (8-7)	80,000.01 – 210,000
3,000,000.01 – 5,000,000	7% up to max \$250,000 (7-5)	210,000.01 – 250,000
>5,000,000	\$250,000 maximum (≤5)	250,000 maximum

XIII. MONITORING AND POST-AWARD REPORTING

Department of Equity and Inclusion Authorization to Monitor: DEI shall be authorized to collect from all Participants such data and information as is necessary to monitor this Program. This information may include information as to business ownership, supplier information, subcontractor information, all of which shall reflect the contract information, race, gender, business location, and size of the identified businesses.

DEI shall monitor the participation of MBE/WBEs in the procurement of goods and services for Cuyahoga County. Such monitoring shall include, but is not necessarily limited to, a statistical analysis of each construction trade, business service, professional service, and commodity to determine whether there is utilization of MBE/WBEs in a manner that is proportionate to the established goal.

DEI will provide written reports on an annual basis. DEI’s report shall contain a summary of the purchases and contracts placed with MBE/WBEs for the period and the relative percentage to the total of purchases and contracts for that period.

Participant’s Post-Award Reporting: Participants who are awarded contracts must submit reports on a monthly basis during the course of, at the end of the contract, and as requested by DEI. Participants shall comply with all reporting requirements related to MBE/WBE utilization including, but not limited to, completing on-line reporting of payments made to MBE/WBE subcontractors and other subcontractors. These reports shall summarize the number and dollar amounts of payments made during the term of the contract to subcontractors. At the end of the contract, the final report shall summarize the number and dollar amounts of payments made during the term of the contract to all subcontractors and shall reflect the MBE/WBEs designation of the subcontractor if any. DEI reserves the right to audit a contract for MBE/WBE participation at its discretion during any phase of the project. An audit would include but not be limited to: on site reviews, desk reviews, requests for cancelled checks, requests for invoices, certified payroll reports, etc. Participants shall contact DEI if concerns arise related to its ability to meet the MBE/WBE goals and to seek guidance on available options to meet the goals.

MBE/WBE Subcontractor, Substitutions or Replacements: The prime contractor shall report any replacements or substitutions of the use of MBE/WBE subcontractors to DEI immediately. Prior approval by the Director of DEI is required for MBE/WBE substitutions/replacements. For reporting purposes, the prime contractor shall report to DEI statistical data pertaining to the new subcontractor, including race, gender, business size, area of specialization, and contact information on the MBE/WBE Subcontractor Participation Plan form (DIV-2).

DEI will require a Participant to make good faith efforts to replace a MBE/WBE that is terminated or has otherwise failed to complete its work on a contract with another MBE/WBE to the extent needed to meet the contract MBE/WBE Participation Goal. The Participant must notify DEI immediately, and in writing, of the

MBE/WBE's inability or unwillingness to perform and provide reasonable documentation. The request should include at a minimum: the name of the MBE/WBE firm, the contact, the phone number, the scope of work initially assigned to the MBE/WBE firm, dollars paid to date, percent of scope completed, and the reason for the substitution request including documentation of the MBE/WBE's withdrawal.

The Participant will be given five (5) business days to find a MBE/WBE substitution if the request is granted. In this situation, the Participant will be required to obtain prior approval of the substitute MBE/WBE and to provide copies of MBE/WBE Subcontractor Participation Plan (DIV-2) or documentation of good faith efforts.

If the Participant fails or refuses to comply in the time specified, DEI may issue a recommendation to stop all or part of payment and/or work until satisfactory action has been taken. If the Participant still fails to comply, DEI may issue a recommendation of termination of the contract.

Contractors' Closeout Activity Reports: To further monitor MBE/WBE participation, closeout activity reports will be required from project prime contractors and prime consultants identifying activities of **all** subcontractors and sub-consultants (i.e., non-MBE/WBEs and MBE/WBEs). For all subcontractors and sub-consultants used, the prime contractor shall provide the following information: contact information, ethnicity/race/gender of ownership, summary of scope of work provided, and total payments for said scope of work. This report shall include all modifications/amendments/change orders. The prime contractors/consultants shall provide justification and documentation for MBE/WBE participation shortfalls.

XIV. GRIEVANCE PROCESS

Any Participant or other party allegedly aggrieved by the provisions of this program may submit a written complaint to DEI who will notify the Grievance Hearing Board. The Grievance Hearing Board is empowered to hear all grievances concerning certification, de-certification, goal complaints, good faith efforts not previously reviewed by the Administrative Reconsideration Panel, and any other grievances called by the provisions of this program.

Grievance Hearing Board: The Grievance Hearing Board consists of the following five (5) members:

- Three (3) appointed by the County Executive, from time-to-time;
- Two (2) County Council Members appointed by the President of County Council

The Grievance Hearing Board meets as required to hear grievances pertaining to the MBE/WBE Program. A meeting quorum of this board consists of four (4) members. An affirmative vote by at least three (3) members is required for action items.

Request for Review: An allegedly aggrieved party may seek review of the DEI determination or decision by filing a written Request for Review with DEI within five (5) days of receipt of the Determination of Non-Compliance, certification denial, recertification denial, or other MBE/WBE decision.

Scheduling the Hearing/Notice of Hearing: Upon receipt of the request for review from the allegedly aggrieved party, DEI shall forward the request for review to the Grievance Hearing Board within three (3) business days of receipt and proceed with scheduling the hearing. Every effort shall be made to hold the hearing no more than twenty (20) days from the date of receipt of the request for review. All external parties shall be sent a written notice by registered mail which shall state the date, time, and place of the hearing.

Hearing: The hearings shall be informal. Participants shall include DEI and the allegedly aggrieved person(s), or a representative of the allegedly aggrieved person. Said hearing shall comply with State of Ohio law relative to the Open Meetings Act.

Decision: The Grievance Hearing Board shall issue a decision at the conclusion of the hearing which may approve or disapprove of DEI's decision or determination.

Exhaustion of Legal Remedies: An aggrieved person or entity must comply with the review process as outlined herein. Once a person or entity has exhausted the administrative remedies outlined in the Program, that person or entity may seek any other statutory, legal, or equitable remedies that may be available. Failure to exhaust all administrative remedies listed above is an affirmative defense to any statutory, legal, or equitable proceeding that may arise.

XV. SANCTIONS AND PENALTIES FOR NON-COMPLIANCE

Cuyahoga County shall have the authority and power to enforce the provisions of this Program. Failure of a participant to comply with the requirements shall subject it to administrative sanctions. In addition, a violation of this Program shall constitute a material breach of contract enforceable at law or in equity, as will all other contract provisions, including the imposition of penalties. The following sanctions and penalties are established for the enforcement of this Program:

- (7) Determination of Non-Responsiveness: In addition to standard factors in its evaluation, Cuyahoga County may declare a bid or proposal non-responsive where it is determined that a Participant has not filed with Cuyahoga County a duly executed Covenant of Non-Discrimination or any other document as required by this Program.
- (8) Limited Suspension: For falsifications, misrepresentations, deception to obtain a contract, Cuyahoga County may remove a Participant from its list of eligible firms entitled to do business with Cuyahoga County.
- (9) Rejection of Future Proposals: Cuyahoga County may reject any or all future Proposals of a Participant until such time as the Participant demonstrates that it is or shall come into compliance.
- (10) Withholding Payment: Cuyahoga County may withhold payment, until such time as the Participant demonstrates that it is or shall come into compliance.
- (11) Cancellation of Contract: Cuyahoga County may declare a contract null and void where, after such contract has been awarded, an investigation determines that the Participant's documents contain false, fictitious, or fraudulent information.
- (12) Permanent Debarment: For repeated violations, Cuyahoga County may remove a Participant from its list of firms entitled to do business with Cuyahoga County indefinitely.

Guidelines for Imposition of Sanctions: The authority and power for imposition of sanctions and penalties shall lie with County authorities and elected/appointed officials as outlined in the County Charter, County Ordinances, state laws, and federal laws. The recommendation, however, may come from the Grievance Hearing Board or DEI.

- (1) General: Sanctions may be recommended if there is evidence of specific conduct on the part of the Participant that is inconsistent with or in direct opposition to the applicable provisions of this Program. Furthermore, the imposition and enforcement of sanctions shall be consistent with applicable County ordinances, state laws, and federal laws.
- (2) Severity of Sanctions: In determining the length of any suspension, Cuyahoga County shall consider the following factors:
 - (i) Whether the failure to comply with applicable requirements involved intentional conduct or, alternatively, may be reasonably concluded to have resulted from a misunderstanding on the part of the Participant of the duties imposed on them by this Program;
 - (ii) The number of specific incidences of failure by the Participant to comply;
 - (iii) Whether the Participant has been previously suspended;
 - (iv) Whether the Participant has failed or refused to provide Cuyahoga County or DEI with any information required or requested by this Program;
 - (v) Whether the Participant has materially misrepresented any applicable facts in any filing or communication to Cuyahoga County or DEI; and
 - (vi) Whether any subsequent restructuring of the Participant's business or other action has been undertaken to cure the deficiencies in meeting applicable requirements.
- (4) Length of Suspension: Suspensions may be for any length of time. Cuyahoga County may impose suspensions in excess of one year in cases involving intentional or fraudulent misrepresentation or concealment of material facts, multiple acts in breach of the Program, cases where the Participant has been previously suspended, or other similarly situated misconduct.

Prohibition Against False Statements: It shall be unlawful for any person, knowingly and willfully and with intent to mislead or to make any false or fraudulent representations to Cuyahoga County. Cuyahoga County may impose sanctions against any person making such false representation in connection with the MBE/WBE Program.

XVI. TRAINING AND OUTREACH STRATEGIES

Training: Cuyahoga County remains committed to implementing a program that increases the participation of MBE/WBEs in Cuyahoga County's procurement opportunities. To ensure that all Cuyahoga County employees involved in purchasing decisions are appropriately informed, certain personnel would undergo training to increase sensitivity regarding the utilization of MBE/WBEs. Internal training shall ensure that all staff with purchasing authority have the capacity and capability to engage in a consistent, fair, and open procurement process. Training sessions shall occur periodically. The objective of the training is to effectively communicate the importance of the Program and the mechanics of how the Program operates. The training shall address the following topics, among others:

- (v) Understanding the purpose of the Program.
- (vi) Understanding the benefits of doing business with MBEs/WBEs.

- (vii) Understanding how the Program is administered.
- (viii) Developing innovative techniques to increase MBE/WBE participation.

Outreach Program: To ensure that opportunities to participate in Cuyahoga County's contracts are available to the widest feasible universe of willing, available, and qualified businesses, DEI shall develop and engage in outreach designed to increase public awareness of the MBE/WBE Program, MBE/WBE Participation Goals, and MBE/WBE Good Faith Effort Criteria. This outreach may consist of any of the following:

- (6) Public Awareness of the Program. To increase the visibility of DEI and to increase the awareness of the Program, DEI shall disseminate at community events, trade shows, and other appropriate business functions, and publish on its website information describing the Program. Any Program updates shall be published within five (5) business days. This information shall also identify ongoing contracting opportunities. DEI will actively participate in the various advocacy groups to provide constant feedback and to keep MBE/WBEs abreast of the Programs and contracting opportunities.
- (7) Outreach to Contractors and Vendors. DEI shall conduct outreach to vendors and contractors desiring to do business with Cuyahoga County. The intent of this outreach is to support the MBE/WBE Program and promote effective procurement by educating businesses on the MBE/WBE Program, MBE/WBE Goals, and MBE/WBE Good Faith Efforts Criteria
- (8) Outreach to MBE/WBEs. DEI shall assist the MBE/WBE businesses by providing workshops and seminars on the MBE/WBE Program, MBE/WBE Goals, MBE/WBE Good Faith Efforts Criteria, and Cuyahoga County's procurement policies and procedures.
- (9) 24-month Purchasing and Contracting Forecast. DEI shall work with Cuyahoga County departments and agencies to prepare and update biannually a 24-month purchasing and contracting forecasts (including annually reoccurring purchases). For the initial forecast and each biannual update of the forecast, County departments/agencies shall compile a purchasing and contracting forecast for the upcoming 24-month period and submit said forecast to DEI. The forecast shall include for each item the originating/lead department, a brief description, estimated amount, and estimated solicitation/advertisement date. The forecast shall also detail purchases and/or contracts that will be procured using the Small Business Set Aside Program which enables County certified small business enterprises to compete against each other for the item award. DEI shall combine the individual forecasts into one forecast and post the combined forecast on the DEI website biannually.

In addition, County departments and agencies shall coordinate with DEI to expand the Small Business Set Aside Program. Specifically, as part of the creation and biannual updates of their forecasts, County departments and agencies shall provide a forecast of contracts and purchases that will be procured using the Small Business Set Aside Program. The County departments and agencies and DEI shall use the following criteria to evaluate and select the contracts and purchases for procurement using the Small Business Set Aside Program:

SELECTION CRITERIA	SUMMARY
FUNDING SOURCE REQUIREMENTS & RESTRICTIONS	County agencies leverage County funds with a multitude of other funding sources (i.e., federal, state, grants, loans...). This enables the County to maximize the return on its investments. However, some of the funding sources may have requirements that will limit the County's ability to fully enact its diversity/inclusion initiatives. When evaluating the eligibility of contracts or services for the SBE Set Aside Program, funding source requirements and restrictions will be assessed.
SCOPE OF WORK	When evaluating the eligibility of contracts or services for the SBE Set Aside Program, the scope of work will be assessed. Contracts or services selected will: <ul style="list-style-type: none"> • be typical of the industry in size and scope • be of simpler or of typical complexity • have typical/standard delivery requirements • have typical periods of performance for the industry
COMPETITIVE ENVIRONMENT	While providing opportunities for SBE vendors to participate in the County procurement process, the County must still maximize the return on its resources. As such, when evaluating the eligibility of contracts or services for the SBE Set Aside Program, at the time of selection, contracts or services must have at least three (3) County certified SBE vendors that provide the scope of work/goods being procured. The size of the pool of pertinent County certified SBE vendors will be re-confirmed at the time of advertisement.
PERFORMANCE BOND AND INSURANCE REQUIREMENTS	Performance bond and insurance requirements are frequently mentioned as obstacles to small businesses in participating in government contracts. When evaluating the eligibility of contracts or services for the SBE Set Aside Program, contracts, or services with lower than or typical performance bond and insurance requirements will be selected.

- (10) 30-day minimum Bid/RFP/RFQ Solicitation/Advertisement Period. All reasonable efforts shall be made to post formal bids/RFPs/RFQs for goods and/or services on the County website for no fewer than 30 days prior to the bid/RFP/RFQ opening. Reasonable efforts include, but are not limited to, County departments and agencies initiating the procurement process for bids, RFPs, and RFQs in ample time to complete pre-advertisement tasks (includes completion of procurement specifications, developing estimated costs by NIGP code for the pertinent scopes of work for the procurement, determination of diversity goals by DEI, finalizing the specification packet...) to enable the posting of bids, RFPs, and RFQs for no fewer than 30 days prior to the bid/RFP/RFQ opening date. Reasonable efforts include, but are not limited to, County departments and agencies exhausting other options (such as working to accelerate the internal bid/proposal/qualification review process and contract negotiation) to meet contract and purchase award deadlines before shortening the solicitation/advertisement period. In brief, shortening the solicitation/advertisement period to less than 30 days shall not be the default, initial, or only option evaluated and/or exercised to accelerate the procurement timeline.

XVII. BOND WAIVER PROGRAM

Cuyahoga County's Department of Law's Risk Management Division administers a bond waiver program in accordance with County Code Section 508.02.

XVIII. SEVERABILITY

If any of the provisions set forth in this Program or any section, subsection, paragraph, sentence, clause, phrase, or word thereof shall be found to be invalid, illegal, or unenforceable for any reason, the application of the remainder of this Program shall not be affected by such invalidity.

XIX. DEFINITIONS

For the purpose of this Program, the following words, terms, phrases, and abbreviations shall have the following meanings:

“Administrative Reconsideration Panel”: shall mean the panel of County employees appointed by the County Executive that at the request of the apparent successful vendor reviews a non-compliance determination made by DEI.

“Certification”: shall mean the qualifying process that ensures buyers and local, state, and federal agencies that a particular business is eligible to become a part of a pool of vendors identified for the purpose of increasing opportunities with respect to contracts and purchases awarded by Cuyahoga County.

“Commercially Useful Function”: shall mean the performance of real and actual services by a Participant who contracts with Cuyahoga County, or subcontracts with another business enterprise which contracts with Cuyahoga County. A business enterprise serving as a “conduit”, “front” or “pass-through” for another business shall not be deemed to perform a commercially useful function. In determining whether a business is performing a commercially useful function, factors, including but not limited to the following, will be considered:

- i) The nature and amount of work contracted;
- ii) Whether the MBE/WBE has the skill and expertise to perform work for which it has been certified;
- iii) Whether the MBE/WBE actually performs, manages, and supervises the work;
- iv) Whether the MBE/WBE intends to purchase commodities and/or services from a non-MBE/WBE and simply resell same to the general or prime contractor for the purpose of allowing those commodities and/or services to be counted towards the fulfillment of a goal;
- v) Standard industry practices relating to the use of the subcontractors. Consistent with standard industry practices, a MBE/WBE subcontractor may enter into second tier subcontracts. If a MBE/WBE subcontractor subcontracts a significantly greater portion of the work of its

subcontract to a non-MBE/WBE inconsistent with standard industry practices, the MBE/WBE subcontractor shall be presumed not to be performing a commercially useful function.

“Compliance”: shall mean the condition existing when a Participant has met the requirements of this Program.

“Conduit”: shall mean a business which purchases goods or services that are not normally purchased or sold as part of its daily business from another business(es) for the sole purpose of resale to Cuyahoga County or a contractor doing business with Cuyahoga County.

“Contract”: shall mean any mutually binding legal obligation of Cuyahoga County created to acquire some good and/or service from one or more Participants, which is paid or which is to be paid for, in whole or in part, with monetary appropriations of Cuyahoga County. In this context, the terms “contracting”, “purchasing”, and “procurement” are synonymous and refer to the process or processes under which Cuyahoga County undertakes such acquisitions.

“Cuyahoga County”: shall mean the government agency which provides public contracting to increase quality of life in the County.

“Covenant of Non-Discrimination”: shall mean, collectively, one or more contractual affirmative promises (1) to adopt the policies of Cuyahoga County relating to the participation of MBE/WBEs in the procurement process; (2) to undertake certain good faith efforts to solicit SBEs participation; and (3) not to otherwise engage in discriminatory conduct against MBE/WBEs.

“DEI”: shall mean the Department of Equity and Inclusion, which is responsible for administration of the MBE/WBE Program.

“Department”: Shall mean a department, division or elected official’s office which solicits bids and/or proposals through the Purchasing Department.

“Goal”: shall mean an aspirational effort to attain a certain level of MBE/WBE participation on contracts awarded by the Cuyahoga County based on subcontracting opportunities and available MBE/WBEs to perform.

“Good Faith Efforts”: shall mean the aggressive actions of a Participant undertaken in earnest to achieve MBE/WBE goals and ensure that it does not discriminate in its contracting practices.

“Independent”: shall mean that with respect to the ownership, control, and activity of a MBE/WBE, the business shall operate separate and apart from the ownership, control or undue influence of another business owned and controlled by one or more non-MBE/WBEs.

“Joint Venture”: shall mean an association of two or more independent persons, partnerships, corporations (or any combination of them) formed, consistent with the laws of the State of Ohio. This joint venture would carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills, and knowledge, and in which the MBE/WBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

“Minority Business Enterprise” (“MBE”): shall mean an individual, domestic corporation, sole proprietorship, partnership, joint venture, entity, or company that is at least 51% owned by one or more individuals who are African American, Hispanic American, Native American, Asian-Pacific American, or Asian-Indian American; and whose management and daily business operations are controlled by one or more of these owners as determined by DEI.

“Manufacturer”: shall mean an individual (or individuals) who owns, operates, or maintains a factory or establishment that produces on the premises the components, materials, or supplies obtained by the Participant or Cuyahoga County.

“Non-Compliance”: shall mean the condition that exists when a Participant has failed to meet the requirements of this Program.

“Office”: shall mean that a business enterprise with an established place of business in the Cuyahoga County area at which one or more of its employees is regularly based and that such place of business has a substantial role in the business’ performance of a commercially useful function as herein defined. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not constitute a significant business presence.

“Participant”: shall mean any contractor, vendor, supplier, or other person, partnership, joint venture, corporation, or other business entity that submits a bid or proposal to Cuyahoga County or expressed interest in submitting a bid or proposal in response to competitive solicitation issued by Cuyahoga County or who has been awarded a contract by Cuyahoga County.

“Project Owner”: shall mean the representative of Cuyahoga County that enters into agreement or contracts with a firm for services or supplies or any other item which shall cause a disbursement of funds from Cuyahoga County.

“Proposal”: shall mean a quotation, proposal, bid or offer by a Participant to perform or provide labor, materials, supplies, or services to Cuyahoga County in response to competitive solicitation issued by Cuyahoga County.

“Purchasing Department”: shall mean the Cuyahoga County department responsible for the purchase of goods and services required for all offices of Cuyahoga County, other than separate political subdivisions.

“Race/Gender-Conscious”: shall mean any governmental or legislative policy or programmatic action that uses race or gender as criteria for participation. The use of a MBE or WBE goal is a primary example of a race-conscious measure.

“Race/Gender-Neutral”: shall mean any governmental or legislative policy or a programmatic action in which race or gender is not among, or the specific criteria for participation. While benefiting MBEs and WBEs, it is not solely focused on MBE or WBE firms and can be used to assist all small businesses. For example, small business outreach programs, technical assistance programs, mobilization fees, bonding assistance and prompt payment provisions can assist a wide variety of small businesses, not just MBEs and WBEs.

“Responsible”: shall reference a Participant’s integrity, compliance with public policy, and record of past performance and financial and technical resources. A Participant must meet certain requirements to be considered a responsible bidder.

“Responsive”: shall mean that a bid must comply in all material respects, both to the method and timeliness of submission and to the substance of any resulting contract, so that all Participants may stand on an equal footing and the integrity of the competitive bidding system may be maintained.

“Small Business Enterprise” (“SBE”): shall refer to a firm that is certified by DEI, submitted an application and has been accepted as a firm eligible to take advantage of affirmative action efforts established in the Small Business Enterprise Program.

“Underutilization”: shall mean the percentage of dollars spent by Cuyahoga County with MBE/WBEs which is less than would be expected based on MBE/WBE availability in the County.

“Women Business Enterprise” (“WBE”): means an individual, domestic corporation, sole proprietorship, partnership, joint venture, entity, or company that is at least 51% owned by one or more women and whose management and daily business operations are controlled by one or more of these owners as determined by DEI.

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BIDDERS' MANUAL

Minority Business Enterprise (MBE) and Women Business Enterprise (WBE) Program

The goal of the MBE/WBE Program is to support and encourage inclusion by creating positive partnerships in County contracting and other procurement opportunities. The MBE/WBE Program will achieve this goal by providing and supporting opportunities for MBE/WBEs to grow and thereby compete effectively in the general environment for contracting opportunities.

THE MBE/WBE PARTICIPATION GOALS FOR THIS BID/PROPOSAL:

MARK "X" for applicable category	CATEGORY	GOALS
	Construction	MBE: % WBE: %
	Architecture & Engineering	MBE: % WBE: %
	Professional Services	MBE: % WBE: %
	Other Services	MBE: % WBE: %
	Goods and Supplies	MBE: % WBE: %

Cuyahoga County
Is an Equal Opportunity Employer

MBE/WBE BIDDERS' MANUAL

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REQUIRED FORMS:

- Covenant of Non-Discrimination (DIV-1)
- MBE/WBE Subcontractor Participation Plan (DIV-2)
- Good Faith Effort Certification (DIV-3, 2 pages)
- Sample of Completed MBE/WBE forms (4 pages)

INSTRUCTIONS TO BIDDERS

II. MBE/WBE Certifications

Only those certified by the Cuyahoga County's Department of Equity and Inclusion (DEI) shall be eligible for the fulfillment of the MBE/WBE participation goal. MBE and/or WBE listings may be obtained from the Department of Equity and Inclusion (DEI). If a MBE and/or WBE elects to compete for County business without being certified by Cuyahoga County as such, they may do so, but any bid/proposal submitted will not be counted towards fulfillment of the MBE/WBE participation goals.

A MBE/WBE desiring certification with Cuyahoga County must complete the certification application. MBE/WBE applications may be obtained from the:

Department of Equity and Inclusion
2079 East Ninth St., 2nd Floor
Cleveland, Ohio 44115
(216) 443-7230

II. SBE Set Aside Program

The goal of the Small Business Enterprise Set Aside Program is to support small businesses by creating contracts and other procurement opportunities exclusively for participation by Cuyahoga County Certified small business enterprise. The Small Business Enterprise Set Aside Program will achieve and support opportunities for small firms to grow and thereby compete effectively in the general environment for contracting opportunities. This program may also include MBE/WBE goals.

III. MBE/WBE Participation Goal

The MBE/WBE Participation goals can be achieved in the following manner(s):

4. A prime vendor subcontracts with one or more certified MBE/WBEs to meet or exceed the goal;
5. A prime vendor subcontracts with one or more certified companies in an amount short of the goal, but submits a complete Good Faith Effort (further described below);
6. A certified MBE/WBE company who bids as a prime contractor subcontracts a portion of the work to another certified MBE/WBE. Certified MBE/WBEs who are bidding as prime contractors will receive a credit for up to 20% of the MBE participation goal or for up to 20% of the WBE participation goal. However, the certified MBE/WBE must secure additional certified MBE/WBE subcontractor participation and/or seek a waiver based on Good Faith Effort (further described below) for any remaining balance of the MBE/WBE goals.

IV. Mandatory Bidding Requirements for Prime Contractors

In consideration of the right and privilege to submit a bid or proposal on construction projects and other contracts with Cuyahoga County, at the time of submitting a proposal or bid, each participant shall be required to present appropriate documentation. The documents described below must be completed and signed by each Participant before a proposal or bid can be considered responsive:

- 3) **Covenant of Non-Discrimination**: Each Participant must submit a duly executed and attested Covenant of Non-Discrimination (DIV-1, found in the attached Bidder's Manual). This written instrument shall contain promises, declarations and/or affirmations made by the Participant. The completed document must contain an original signature and date of signature.
- 4) **MBE/WBE Subcontractor Participation Plan**: Each Participant must submit a duly executed Subcontractor Participation Plan (DIV-2, found in the attached Bidder's Manual) for each MBE/WBE subcontractor proposed. Copies and/or facsimiles of DIV-2 submitted with bids/proposals are acceptable BUT all required signatures must be dated as indicated. Also, please note the following:
 - a) Certified MBE/WBEs who are bidding as prime contractors MUST complete and submit the top portion of Form DIV-2 to guarantee their portion of MBE credit or WBE credit and this can be up to 20% of the MBE participation goal or up to 20% of the WBE participation goal.
 - b) MBE/WBEs with multiple geographical locations shall enter the Cuyahoga County address and contact information on Form DIV-2.
 - c) Prime vendors are **PROHIBITED** from using MBE/WBE(s) with whom the prime vendor has a familial relationship, joint or co-ownership, common partners, officers, or a shareholder relationship to meet the MBE/WBE Participation Goals. Hence, on Cuyahoga County projects/contracts, any portion of work subcontracted to a MBE/WBE vendor by a prime vendor that meets the above-mentioned criteria will **NOT** count towards the achievement of the established MBE/WBE Participation Goals.

Use of 2nd Tier Subcontractors: In the event that a subcontractor portions out work and utilizes the services of a sub-subcontractor or vendor, **the prime contractor** shall be required to report this use to DEI. For reporting purposes, the prime contractor shall report statistical data for the sub-subcontractor or sub-vendor, including race, gender, business size, area of specialization, dollar value, description of services or products purchased, and contact information. No MBE/WBE subcontractor will be permitted to subcontract more than 25% of their subcontract work (based on dollar value) without prior approval by DEI.

Other Information and Data: DEI may request additional information and data prior to a contract award. This information may include, but is not limited to, information regarding business ownership of all subcontractors to be utilized on the project, all of which shall reflect the race, gender, location, size, and area of specialization and structure of the identified businesses.

A PARTICIPANT'S FAILURE OR REFUSAL TO PROVIDE INFORMATION AND DATA REQUIRED BY THIS PROGRAM AND REQUESTED BY DEI SHALL SUBJECT THE PARTICIPANT TO HAVING A PROPOSAL OR BID DEEMED NON-RESPONSIVE.

V. Good Faith Efforts

Aggressive “Good Faith Efforts” to include MBE/WBEs in the procurement process are required of all Participants. These Good Faith Efforts should be in addition to the Participant’s regular and customary solicitation process of contact with potential subcontractors and/or vendors.

Written Notice to MBE/WBEs: To demonstrate good faith efforts, a Participant shall deliver written or electronic notice to potential, MBE/WBEs. MBE/WBEs should be contacted not less than one (1) week before the bid or proposal due date. Names, addresses, and telephone numbers for available MBE/WBEs may be obtained by contacting DEI or reviewing the database on the website at <https://opd.cuyahogacounty.us/en-US/listing.aspx> .

The written or electronic notice sent to potential subcontractors or vendors shall contain the following:

- (5) Sufficient information about the plans, specifications, and relevant terms and conditions of the solicitation. This should include information about the work which will be subcontracted or the goods which will be obtained from subcontractors and suppliers;
- (6) A contact person knowledgeable of the project scope documents, within the Participant’s office, to answer questions about the conditions of the contract;
- (7) Information as to the Participant’s bonding requirements; and
- (8) The deadline for price quotations.

Evaluation of Good Faith Efforts: In evaluating good faith efforts, DEI will determine whether the Participant has made reasonable good faith efforts to obtain MBE/WBE participation as part of its bid or proposal. DEI may evaluate not only the different kinds of efforts made by a Participant, but also the quantity and intensity of those efforts.

DEI will consider a completed Good Faith Effort Certification (DIV-3, 2 pages, found in the attached Bidder’s Manual), as evidence of a Participant’s good faith in trying to obtain MBE/WBE participation in a bid or proposal.

Required Documentation: To demonstrate good faith efforts, Participants shall keep detailed records of all correspondences and responses thereto, emails, logs of all telephone calls made and received regarding the project or contract, confirmation receipts for fax transmissions, receipts from registered or certified mail, copies of advertisements in publications and other media, and other relevant papers required by this Program.

Good Faith Effort Certification: Participant must submit a completed Good Faith Certification (DIV-3, found in the Bidder’s Manual) ONLY if the MBE Participation Goal and/or the WBE Participation Goal is not met. Additional documentation demonstrating a good faith effort must accompany the checklist (as detailed above in *Required Documentation*). The completed document must contain an original signature, notarizations, and date of signature.

Administrative Reconsideration: If DEI determines that the apparent successful vendor is non-compliant on meeting the MBE/WBE participation goals and has not demonstrated good faith efforts to obtain MBE/WBE participation, prior to awarding the contract/purchase, the user department shall notify the apparent successful vendor of the determination of non-compliance by emailing the primary contact detailed in the vendor's bid/proposal. The apparent successful vendor shall have the right to request an administrative reconsideration of the non-compliance determination. The administrative reconsideration can be a "no meeting" reconsideration or "meeting" reconsideration (virtual or in-person). The request for an administrative reconsideration must be submitted within three (3) business days of the notification of non-compliance and in the format of an email to DEI at dei@cuyahogacounty.us. Upon receipt of the request for the administrative reconsideration by the apparent successful vendor, DEI shall forward the request to the Administrative Reconsideration Panel. The panel shall consist of at least three (3) but not more than five (5) County employees appointed by the Cuyahoga County Executive. The request for administrative reconsideration shall detail the pertinent RFB/RFP/Rfq (i.e., title, description...), type of administrative reconsideration requested (i.e., no meeting or meeting), and any written documentation or arguments concerning the issue of non-compliance. DEI shall provide a summary of its Good Faith Effort evaluation and supporting documentation. The Administrative Reconsideration Panel shall publish a schedule that includes deadlines and provides for a frequency of no less than twice per calendar month. The Administrative Reconsideration Panel will evaluate the information provided by the apparent successful vendor and DEI and issue a written decision approving or disapproving of DEI's determination on non-compliance for the matter. A quorum for "no meeting" or "meeting" administrative reconsideration shall be the majority (i.e., greater than 50%) of the appointed panel and an affirmative vote by the majority (i.e., greater than 50%) of the panel present for the administrative reconsideration is required for action. The Administrative Reconsideration Panel shall adopt its own rules of procedure consistent with MBE/WBE Policies and Procedures. The result of the administrative reconsideration is not administratively appealable.

VI. Award of Contracts

Award of Contract: Proposals/bids may be rejected and projects re-submitted for the sole purpose of attaining goals where no "good faith effort" has been demonstrated. Cuyahoga County reserves the right to determine the action to be taken on the contract if a goal is not met, including rejecting any or all bids or proposals. For RFPs and RFQs, once the scope of work and/or price, terms, and conditions have been finalized but in advance of submission for approval by the pertinent contracting authority, the department shall confirm with DEI that the proposed contract/purchase is compliant with the MBE/WBE participation goals and/or Good Faith Efforts requirements. If an awarded contract is later amended for additional dollars, MBE/WBE subcontractor participation should still reflect the percentage of dollars originally contracted for.

When evaluating a bid to determine the lowest and best bid, the County may consider, in addition to all of the other factors set forth in the instructions to bidders, whether a bid is compliant with the applicable MBE/WBE goals, provided, however, that such compliance shall not be considered if the difference between the MBE/WBE-compliant bid and the lowest responsive bid is more than the price preference specified below.

Lowest Bid Received Range (\$)	Price Preference (%) & Limit	Price Preference (\$)
0 – 500,000	10%	0 – 50,000
500,000.01 – 1,000,000	10% up to max \$80,000 (10-8)	50,000.01 – 80,000
1,000,000.01 – 3,000,000	8% up to max \$210,000 (8-7)	80,000.01 – 210,000
3,000,000.01 – 5,000,000	7% up to max \$250,000 (7-5)	210,000.01 – 250,000
>5,000,000	\$250,000 maximum (≤ 5)	250,000 maximum

VII. Monitoring and Post-Award Reporting

Department of Equity and Inclusion Authorization to Monitor: DEI shall be authorized to collect from all Participants such data and information as is necessary to monitor this Program. This information may include information as to business ownership, supplier information, subcontractor information, all of which shall reflect the contract information, race, gender, business location, and size of the identified businesses.

DEI shall monitor the participation of MBE/WBEs in the procurement of goods and services for Cuyahoga County. Such monitoring shall include, but is not necessarily limited to, a statistical analysis of each construction trade, business service, professional service, and commodity to determine whether there is utilization of MBE/WBEs in a manner that is proportionate to the established goal.

DEI will provide written reports on an annual basis. DEI's report shall contain a summary of the purchases and contracts placed with MBE/WBEs for the period and the relative percentage to the total of purchases and contracts for that period.

Participant's Post-Award Reporting: Participants who are awarded contracts must submit reports on a monthly basis during the course of, at the end of the contract, and as requested by DEI. Participants shall comply with all reporting requirements related to MBE/WBE utilization including, but not limited to, completing on-line reporting of payments made to MBE/WBE subcontractors and other subcontractors. These reports shall summarize the number and dollar amounts of payments made during the term of the contract to subcontractors. At the end of the contract, the final report shall summarize the number and dollar amounts of payments made during the term of the contract to all subcontractors and shall reflect the MBE/WBEs designation of the subcontractor if any. DEI reserves the right to audit a contract for MBE/WBE participation at its discretion during any phase of the project. An audit would include but not be limited to: on site reviews, desk reviews, requests for cancelled checks, requests for invoices, certified payroll reports, etc. Participants shall contact DEI if concerns arise related to its ability to meet the MBE/WBE goals and to seek guidance on available options to meet the goals.

MBE/WBE Subcontractor Substitutions or Replacements: The prime contractor shall report any replacements or substitutions of the use of MBE/WBE subcontractors to DEI immediately. Prior approval by the Director of DEI is required for MBE/WBE substitutions/replacements. For reporting purposes, the prime contractor shall report to DEI statistical data pertaining to the new subcontractor, including race, gender, business size, area of specialization, and contact information on the MBE/WBE Subcontractor Participation Plan form (DIV-2).

DEI will require a Participant to make good faith efforts to replace a MBE/WBE that is terminated or has otherwise failed to complete its work on a contract with another MBE/WBE to the extent needed to meet the contract MBE/WBE Participation Goal. The Participant must notify DEI immediately, and in writing, of the MBE/WBE's inability or unwillingness to perform and provide reasonable documentation. The request should

include at a minimum: the name of the MBE/WBE firm, the contact, the phone number, the scope of work initially assigned to the MBE/WBE firm, dollars paid to date, percent of scope completed, and the reason for the substitution request including documentation of the MBE/WBE's withdrawal.

The Participant will be given five (5) business days to find a MBE/WBE substitution if the request is granted. In this situation, the Participant will be required to obtain prior approval of the substitute MBE/WBE and to provide copies of MBE/WBE Subcontractor Participation Plan (DIV-2) or documentation of good faith efforts.

If the Participant fails or refuses to comply in the time specified, DEI may issue a recommendation to stop all or part of payment and/or work until satisfactory action has been taken. If the Participant still fails to comply, DEI may issue a recommendation of termination of the contract.

Contractors' Closeout Activity Reports: To further monitor MBE/WBE participation, closeout activity reports will be required from project prime contractors and prime consultants identifying activities of **all** subcontractors and sub-consultants (i.e., non-MBE/WBEs and MBE/WBEs). For all subcontractors and sub-consultants used, the prime contractor shall provide the following information: contact information, ethnicity/race/gender of ownership, summary of scope of work provided, and total payments for said scope of work. This report shall include all modifications/amendments/change orders. The prime contractors/consultants shall provide justification and documentation for MBE/WBE participation shortfalls.

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REQUIRED DOCUMENTS

The following forms regarding the MBE/WBE Program must be completed and submitted with bids/proposals:

- COVENANT OF NON-DISCRIMINATION (DIV-1)
- MBE/WBE SUBCONTRACTOR PARTICIPATION PLAN (DIV-2)
- GOOD FAITH EFFORT CERTIFICATION (DIV-3, 2 PAGES)

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COVENANT OF NON-DISCRIMINATION

(MUST be completed and submitted with ALL bids or proposals)

Know All Men By These Presents, that I/we, (_____),
Name(s)
(_____), (_____),
Title(s) Name of Company

(hereinafter "Company"), in consideration of the privilege to submit Bids/Proposals on contracts funded, in whole or in part, by Cuyahoga County, hereby consents, covenants, and agrees as follows:

(1) No person shall be excluded from participation in, denied the benefit of, or otherwise discriminated against on the basis of race, creed, color, national origin, handicap, sex, age, marital status, or sexual orientation in connection with any Bid/Proposal submitted to Cuyahoga County or the performance of any contract resulting from;

(2) That it is and shall be the policy of this Company to provide equal opportunity to all business persons seeking to contact or otherwise interested in contracting with this Company, including various eligible Minority Business Enterprises and Women Business Enterprises (hereinafter "MBE/WBEs");

(3) In connection herewith, I/We acknowledge and warrant that this Company has been made aware of, understands, and agrees to make a Good Faith Effort to solicit MBE/WBEs to do business with this Company;

(4) That the Covenant of Non-Discrimination as made and set forth herein shall be continuing in nature and shall remain in full force and effect without interruption;

(5) That the Covenant of Non-Discrimination as made and set forth herein shall be and are hereby deemed to be made a part of, and incorporated by reference into, any contract or portion thereof which this Company may hereafter obtain; and

(6) That the failure of this Company to satisfactorily discharge any of the Covenant of Non-Discrimination as made and set forth herein shall constitute a material breach of contract entitling Cuyahoga County to declare the contract in default and to exercise any and all applicable rights and remedies, including but not limited to, cancellation of the contract, termination of the contract, suspension and debarment from future contracting opportunities, and withholding and/or forfeiture of compensation due and owing on a contract.

(Original Signature of Company Representative Identified Above)

(Date)

MBE/WBE SUBCONTRACTOR PARTICIPATION PLAN
(MUST be submitted for EACH MBE/WBE Subcontractor Proposed)

(A) TOTAL AMOUNT OF OVERALL CONTRACT BID/PROPOSAL \$ _____

BUSINESS NAME OF PRIME BIDDER _____

ADDRESS _____

CITY _____ STATE _____ ZIP CODE _____

TELEPHONE (____) _____ E-MAIL _____

PRIME FIRM OWNED BY: NON-MBE/WBE/SBE SBE SMALL BUSINESS ENTERPRISE
MBE MINORITY BUSINESS ENTERPRISE WBE WOMEN BUSINESS ENTERPRISE

(B) AMOUNT TO BE SUBCONTRACTED TO MBE/WBE (PLEASE CIRCLE ONE): \$ _____ PERCENT OF TOTAL OVERALL CONTRACT BID [(B)/(A)]: _____ %

SCOPE OF WORK PROVIDED BY MBE/WBE: _____

PRIME BIDDER'S NAME _____ TITLE _____
(TYPE OR PRINT)

PRIME BIDDER'S SIGNATURE _____
(DATE OF SIGNATURE)

MBE/WBE SUBCONTRACTOR TO BE UTILIZED
(MUST BE CERTIFIED BY THE CUYAHOGA COUNTY DEPARTMENT OF EQUITY AND INCLUSION)

NAME OF SUBCONTRACTOR _____

ADDRESS _____

CITY _____ STATE _____ ZIP CODE _____
TELEPHONE AREA CODE (____) _____
 SMALL BUSINESS SBE MINORITY BUSINESS MBE WOMEN BUSINESS WBE

*******NOTE: MUST BE A COUNTY CERTIFIED MBE/WBE *******

THE UNDERSIGNED HEREWITH AGREES TO SUBCONTRACT WITH THE ABOVE NAMED BIDDER FOR THE ABOVE SAID SERVICE(S) OR SUPPLY(IES) TO BE FURNISHED TO THE COUNTY.

SUBCONTRACTOR'S NAME _____ TITLE _____
(TYPE OR PRINT)

SUBCONTRACTOR'S SIGNATURE _____
(DATE OF SIGNATURE)

GOOD FAITH EFFORT CERTIFICATION

(Must be submitted with bids/proposals NOT meeting the MBE/WBE goals or requesting full or partial waiver)

Pursuant to the requirements for bidders under the MBE/WBE Program, and in consideration of the privilege to submit bids/proposals funded, in whole or in part, by Cuyahoga County,

I/We, (_____), (_____) of (_____)
Name(s) of Person(s) Signing Below Title(s) Company Name

attest that I/We have exercised the following good faith efforts in addition to my/our regular and customary solicitation process: (Check ALL that apply and complete as indicated)

- I/We are requesting a FULL/PARTIAL WAIVER of the MBE WBE Participation Goal for the following reason(s): _____

- I/We are a non-profit agency and are requesting a FULL WAIVER of the MBE/WBE Goal. **(MUST SUBMIT/ATTACH PROOF)**
- I/We have contacted DEI or website to obtain a list of MBE/WBEs appropriate to the bid/proposal.
- I/We delivered written notice to available certified MBE/WBEs for each potential subcontracting or supply category in the contract AND all potential subcontractors or vendors which requested information on the contract. **(MUST SUBMIT/ATTACH PROOF)**
- I/We have provided all potential subcontractors or vendors with adequate information as to plans, specifications, relevant terms and conditions of the contract, bonding requirements, and the last date and time for receipt of price quotations. **(MUST SUBMIT/ATTACH PROOF)**
- I/We have attended the pre-bid/proposal conference.
- I/We have **provided a written explanation for rejection of any potential** MBE/WBE subcontractor or vendor to DEI. When the MBE/WBE subcontractor rejection is due to unreasonably high pricing, I/We have provided supporting documentation.
- I/We have actively solicited, through sending letters, emails or initiating personal contact, MBE/WBEs in all feasible and appropriate categories providing subcontracting opportunities for the contract under consideration. **(MUST SUBMIT/ATTACH PROOF)**
- I/We have utilized the services of available community organizations and associations, contractors' groups, and trade associations known to publicize contracting and procurement opportunities, for the purpose of obtaining assistance in the contacting and recruitment of MBE/WBEs for the Cuyahoga County contract under consideration. **(MUST SUBMIT/ATTACH PROOF)**
- I/We have conducted discussions with interested MBE/WBEs in good faith and provided the same willingness to assist MBE/WBEs as has been extended to any other similarly situated subcontractor.
- I/We have taken steps to ensure that all labor supervisors, superintendents, and other on-site supervisory personnel are aware of and carry out the obligation to maintain a non-discriminatory work environment, free of harassment, intimidation and coercion at all construction sites, offices and other facilities to which employees are assigned to work.

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**** SAMPLE FORMS ****

COVENANT OF NON-DISCRIMINATION

(MUST be completed and submitted with ALL bids or proposals)

Know All Men By These Presents, that I/we, (John Doe),
Name(s)
(President, Owner), (ABC Company, Inc.),
Title(s) Name of Company

(hereinafter "Company"), in consideration of the privilege to submit Bids/Proposals on contracts funded, in whole or in part, by Cuyahoga County, hereby consents, covenants, and agrees as follows:

(1) No person shall be excluded from participation in, denied the benefit of, or otherwise discriminated against on the basis of race, creed, color, national origin, handicap, sex, age, marital status, or sexual orientation in connection with any Bid/Proposal submitted to Cuyahoga County or the performance of any contract resulting from;

(2) That it is and shall be the policy of this Company to provide equal opportunity to all business persons seeking to contact or otherwise interested in contracting with this Company, including various eligible Minority Business Enterprise & Women Business Enterprise (hereinafter "MBE/WBEs");

(3) In connection herewith, I/We acknowledge and warrant that this Company has been made aware of, understands, and agrees to make a Good Faith Effort to solicit MBE/WBEs to do business with this Company;

(4) That the Covenant of Non-Discrimination as made and set forth herein shall be continuing in nature and shall remain in full force and effect without interruption;

(5) That the Covenant of Non-Discrimination as made and set forth herein shall be and are hereby deemed to be made a part of, and incorporated by reference into, any contract or portion thereof which this Company may hereafter obtain; and

(6) That the failure of this Company to satisfactorily discharge any of the Covenant of Non-Discrimination as made and set forth herein shall constitute a material breach of contract entitling Cuyahoga County to declare the contract in default and to exercise any and all applicable rights and remedies, including but not limited to, cancellation of the contract, termination of the contract, suspension and debarment from future contracting opportunities, and withholding and/or forfeiture of compensation due and owing on a contract.

John Doe
(Original Signature of Company Representative Identified Above)

February 1, 2021
(Date)

**MBE/WBE SUBCONTRACTOR PARTICIPATION PLAN
(MUST be submitted for EACH MBE/WBE Subcontractor Proposed)**

(A) TOTAL AMOUNT OF OVERALL CONTRACT BID/PROPOSAL \$ 500,000.00

BUSINESS NAME OF PRIME BIDDER ABC COMPANY, INC

ADDRESS 111 MAIN STREET

CITY ANYWHERE STATE OHIO ZIP CODE 44000

TELEPHONE (216) 555-5555 E-MAIL ABCCOMPANY@YAHOO.COM

PRIME FIRM OWNED BY: NON-MBE/WBE/SBE SBE SMALL BUSINESS ENTERPRISE
 MBE MINORITY BUSINESS ENTERPRISE WBE WOMEN BUSINESS ENTERPRISE

(B) AMOUNT TO BE SUBCONTRACTED TO MBE/WBE (PLEASE CIRCLE ONE): \$ 50,000.00 PERCENT OF TOTAL OVERALL CONTRACT BID [(B)/(A)]: 10 %

SCOPE OF WORK PROVIDED BY MBE/WBE: ELECTRICAL CONTRACTING SERVICES

PRIME BIDDER'S NAME JOHN DOE TITLE PRESIDENT/OWNER
 (TYPE OR PRINT)

PRIME BIDDER'S SIGNATURE JOHN DOE FEBRUARY 1, 2021
 (DATE OF SIGNATURE)

**MBE/WBE SUBCONTRACTOR TO BE UTILIZED
(MUST BE CERTIFIED BY THE CUYAHOGA COUNTY DEPARTMENT OF EQUITY AND INCLUSION)**

NAME OF SUBCONTRACTOR ELECTRIFYING ELECTRIC COMPANY

ADDRESS 456 MAIN STREET

CITY ANYWHERE STATE OHIO ZIP CODE 44000

TELEPHONE AREA CODE (216) 555-5551 X SMALL BUSINESS MINORITY BUSINESS WOMEN BUSINESS
 SBE MBE WBE

*******NOTE MUST BE A COUNTY CERTIFIED MBE/WBE*******

THE UNDERSIGNED HERewith AGREES TO SUBCONTRACT WITH THE ABOVE NAMED BIDDER FOR THE ABOVE SAID SERVICE(S) OR SUPPLY(IES) TO BE FURNISHED TO THE COUNTY.

SUBCONTRACTOR'S NAME TOM EDISON TITLE PRESIDENT/OWNER
 (TYPE OR PRINT)

SUBCONTRACTOR'S SIGNATURE TOM EDISON FEBRUARY 1, 2021
 (DATE OF SIGNATURE)

GOOD FAITH EFFORT CERTIFICATION

(Must be submitted with bids NOT meeting Diversity goal or requesting full or partial waiver)

Pursuant to the requirements for bidders under the MBE/WBE Program, and in consideration of the privilege to submit bids/proposals funded, in whole or in part, by Cuyahoga County,

I/We, (John Doe), (President, Owner) of (ABC Company, Inc.)
Name(s) of Person(s) Signing Below Title(s) Company Name

attest that I/We have exercised the following good faith efforts in addition to my/our regular and customary solicitation process: (Check ALL that apply and complete as indicated)

- x I/We are requesting a FULL/PARTIAL WAIVER of the MBE/WBE Participation Goal for the following reason(s): We are requesting a partial waiver of the SBE Goal as we were only able to meet 10% of the 15% goal. But we are able to meet the MBE and WBE goal We were unable to find an SBE to meet the additional 5% required.
- I/We are a non-profit agency and are requesting a FULL WAIVER of the MBE/WBE Participation Goal. **(MUST SUBMIT/ATTACH PROOF)**
- x I/We have contacted DEI or website to obtain a list of the Diversity listing to appropriate to the bid/proposal.
- x I/We delivered written notice to available certified MBE/WBEs for each potential subcontracting or supply category in the contract AND all potential subcontractors or vendors which requested information on the contract. **(MUST SUBMIT/ATTACH PROOF)**
- x I/We have provided all potential subcontractors or vendors with adequate information as to plans, specifications, relevant terms and conditions of the contract, bonding requirements, and the last date and time for receipt of price quotations. **(MUST SUBMIT/ATTACH PROOF)**
- x I/We have attended the pre-bid/proposal conference.
- x I/We have **provided a written explanation for rejection of any potential** MBE/WBE subcontractor or vendor to DEI. When the MBE/WBE subcontractor rejection is due to unreasonably high pricing, I/We have provided supporting documentation.
- x I/We have actively solicited, through sending letters, emails or initiating personal contact, MBE/WBEs in all feasible and appropriate categories providing subcontracting opportunities for the contract under consideration. **(MUST SUBMIT/ATTACH PROOF)**
- x I/We have utilized the services of available community organizations and associations, contractors' groups, and trade associations known to publicize contracting and procurement opportunities, for the purpose of obtaining assistance in the contacting and recruitment of MBE/WBEs for the Cuyahoga County contract under consideration. **(MUST SUBMIT/ATTACH PROOF)**
- x I/We have conducted discussions with interested MBE/WBEs in good faith and provided the same willingness to assist SBEs as has been extended to any other similarly situated subcontractor.
- x I/We have taken steps to ensure that all labor supervisors, superintendents, and other on-site supervisory personnel are aware of and carry out the obligation to maintain a non-discriminatory work environment, free of harassment, intimidation and coercion at all construction sites, offices and other facilities to which employees are assigned to work.

If applicable, identify all MBE/WBEs contacted to participate that declined or were not chosen:

1. Perfect Plumbing Company 222 Main Street, Anywhere, OH 44000 216-555-5553
Name of Subcontractor/Vendor Address Phone
Paul Perfect January 15, 2021 \$25,000 (5%) January 18, 2021
Name of Contact Date of Offer to Participate Bid Amount Date Offer Declined

Reasons Given for Declining Has other commitments at this time and is unable to work with us.

2. Dan's DuctWork Company 333 Main Street, Anywhere, OH 44000 216-555-5554
Name of Subcontractor/Vendor Address Phone
Dan Handy January 18, 2021 \$25,000 (5%) January 19, 2021
Name of Contact Date of Offer to Participate Bid Amount Date Offer Declined

Reasons Given for Declining They are no longer providing the required sub-contracting service as part of its business.

3. Dave's Landscapes Inc 444 Main Street, Anywhere, OH 44000 216-555-5556
Name of Subcontractor/Vendor Address Phone
Dave Curbappel January 16, 2021 \$25,000 (5%) January 17, 2021
Name of Contact Date of Offer to Participate Bid Amount Date Offer Declined

Reasons Given for Declining Has other commitments at this time and is unable to work with us.

(Make additional copies to extend list of MBE/WBE contacts if needed)

I/We affix my/our signature to this document to attest that I/We have exercised the above-indicated Good Faith Efforts to promote Diversity participation on the Bid/Proposal and Contract under consideration and to comply fully with the provisions of the Cuyahoga County MBE/WBE Program.

John Doe
 Printed/Typed Name of Company Official

February 1, 2021
 Date

John Doe
 Signature (Must be Original)

President, Owner
 Title of Company Official

ABC Company, Inc.
 Full Company Name

111 Main Street
 Mailing Address

216-555-5555
 Area Code/ Phone Number

Anywhere, OH 44000
 City, State, Zip

Nancy Notarious
Notary Public

December 31, 2023
My Commission Expires

PLEASE NOTE: Failure to properly complete and submit **DIV-1, DIV-2, and DIV-3 (if applicable)** will result in **bids/proposals being ruled non-responsive.**

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