LOH
06/17/10
Item #4

AN ORDINANCE 2010-06-17-0531

AMENDING THE SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY ORDINANCE AND ESTABLISHING A COMPREHENSIVE ECONOMIC INCLUSION PROGRAM TO ENCOURAGE THE FULL AND EQUITABLE UTILIZATION AND DEVELOPMENT OF SMALL BUSINESS ENTERPRISES AND SMALL MINORITY / WOMEN BUSINESS ENTERPRISES IN THE SAN ANTONIO MARKETPLACE; AND REPEALING PART II, CHAPTER 2, SECTION 2.8 OF THE CITY CODE.

* * * * *

WHEREAS, in November 2006, MGT of America, Inc., (MGT) was retained to conduct a minority and women business enterprise Disparity Study for the City of San Antonio to determine whether there was a compelling interest for the City to establish a narrowly-tailored minority- and women-owned business enterprise (M/WBE) program; and

WHEREAS, MGT's Disparity Study was completed and released for public comment in April 2009; and

WHEREAS, MGT completed a Disparity Study Update on March 26, 2010 that summarized additional electronic payment data from the relevant study period and provided revised utilization and disparity analyses based upon the newly-analyzed data; and

WHEREAS, MGT's Disparity Study Update, its methodology and findings were thoroughly reviewed by Dr. Thomas Boston, a third-party disparity study expert and economist hired by the City of San Antonio for purposes of undertaking an independent review of MGT's Disparity Study Update; and

WHEREAS, Dr. Thomas Boston's review found that MGT's methodology and findings from its Disparity Study Update were valid and defensible; and

WHEREAS, MGT's Disparity Study and Disparity Study Update (hereinafter "MGT studies") findings from the contracting period between September 2004 and December 2007 confirm that although the City's Small Business Economic Development Advocacy (SBEDA) Ordinance has significantly improved the participation of small and M/WBE firms in City contracts beyond the level reflected in a 1987 study which found that less than 2 percent of City contracts were awarded to small and M/WBE firms, nevertheless, significant disparities in the City's utilization of M/WBE firms continue to persist in a number of industry segments; and

WHEREAS, the 2009 Disparity Study found, based upon regression analysis and other firm evidence, that private sector discrimination adversely affects M/WBE access to small business credit markets, and that such discrimination also contributes to gross patterns of exclusion of M/WBE firms from private sector contract opportunities and significantly lowers earnings for M/WBE firms as compared to similarly situated non-minority firms; and

WHEREAS, public testimony and comments received during the public comment period following release of the 2009 Disparity Study further corroborated study findings with additional evidence that some prime contractors and vendors engaged in business with the City had purposely avoided contracting with M/WBE firms that they had represented to the City they would be utilizing; and

WHEREAS, the City is relying upon a strong basis in evidence in concluding that there are ongoing effects of marketplace discrimination adversely affecting the utilization of M/WBE firms in City contracts and in the City's relevant marketplace; and

WHEREAS, the 2009 Disparity Study was reviewed and formally recommended for acceptance by an Oversight Committee comprised of official representatives from a consortium of nine public entities that participated in the selection of MGT to perform the Study; and

WHEREAS, the 2009 Disparity Study was also reviewed and formally recommended for acceptance for purposes of reliance in the formulation of public policy by the Small Business Advocacy Committee (SBAC) as appointed by the City Council, and by the Economic and Community Development Council Committee (ECDC) of the City Council of San Antonio; and

WHEREAS, on June 25, 2009, after a considerable period of public review and comment, the San Antonio City Council voted to formally accept the 2009 Disparity Study findings for purposes of policy formulation; and

WHEREAS, on May 13, 2010, the San Antonio City Council voted to formally accept the MGT Disparity Study Update, which reviewed additional data and largely corroborated initial findings, and for which an independent third-party review validated the reliability of data and methodology used for the purposes of policy development; and

WHEREAS, decades of small business programs and other race- and gender-neutral remedies have failed to fully eliminate statistically significant underutilization of ready, willing and able M/WBE firms; and

WHEREAS, the City of San Antonio has a compelling interest to remedy the ongoing effects of marketplace discrimination against minority- and women-owned businesses and to avoid becoming a passive participant in private sector discrimination; and

WHEREAS, the significant underutilization of available M/WBE firms is also a drain on the local economy and undermines the economic vitality and development of the San Antonio region; and

WHEREAS, the City of San Antonio is fully committed to not only remedying the ongoing effects of marketplace discrimination, but to also using its spending powers in a manner that promotes a robust and inclusive economy that fully utilizes all segments of its business population regardless of race or gender; and

WHEREAS, based upon an extensive factual predicate, the City Council has determined that a narrowly-tailored combination of race- and gender-neutral and race- and gender-conscious remedies and programs are necessary to serve these compelling interests and needs of the City of San Antonio; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The policies, definitions, procedures, Affirmative Procurement Initiatives and contract compliance measures outlined in Attachment "A" to this Ordinance shall replace the provisions contained in ATTACHMENTS "A, B, C and D" of prior SBEDA Ordinance No. 2007-04-12-0396. Accordingly, the following portions of the prior SBEDA Ordinance No. 2007-04-12-0396 are deleted:

ATTACHMENT "A" (Contracting Category FY 04-05 and FY 05-06 Goals), ATTACHMENTS "B1 through B4", (List of Subcontractors/Suppliers; Good Faith Effort Plan; Request for Approval of Change to Original Affirmed List of Subcontractors/Suppliers; and Letter of Intent for Contracts Utilizing Small Business Contracting Goals); ATTACHMENT "C" (Policy for DBE/ACDBE Participation in Federally-Assisted Aviation Contracts and Concessions); and ATTACHMENT "D" (Small Business Contract Compliance Measures on Non-Federally Funded Projects for Alternative Construction Delivery Methods). Documentation and forms necessary for the implementation of the policies, procedures, Affirmative Procurement Initiatives and contract compliance measures will be included in the SBEDA Program Procedures Manual, and may be amended at the sole discretion of the SBO Office Manager.

SECTION 2. Scope and Exclusions: Attachment "A" of this Ordinance shall apply to all contracts for the purchase of services, goods or supplies awarded by, or on behalf of, the City; including, but not limited to, every contract or other agreement between the City of San Antonio and any governmental agency, quasi-governmental agency, corporation, developer or contractor, under which the agency, corporation, developer or contractor receives any fiscal assistance from or through the City for the purpose of contracting with businesses to perform real estate development, renovation, maintenance or other services and as such, the City shall require the agency, corporation, developer or contractor to comply with this Ordinance in awarding and administering that contract or agreement; provided, however, that the following categories of contracts shall be excluded from the scope and application of this Ordinance:

(a) Contracts that are subject to the U.S. Department of Transportation Disadvantaged Business Enterprise Program and Airport Concessions Disadvantaged Business Enterprise Program as set forth in 49 CFR Parts 23 and 26 or any successor regulations or legislation;

(b) Any expenditure or revenue contract with a value that is less than the amount that is required to be bid pursuant to state law (Chapter 252, Texas Local Government Code, and as amended), currently $50,000 or less;

(c) Contracts for the purchase of goods or supplies of a unique nature for which the City Originating Department determines there is only a sole source of supply;

(d) Contracts for electricity or water and sewage services from a municipal utility district or governmental agency;

(e) Emergency contracts for goods or supplies that the City Manager or designee determines are necessary for the preservation of public health or safety and whose immediacy of need is so great that it is impractical for the City to apply the terms of this Ordinance to the contract;

(f) Contracts for the City's lease or purchase of real property where City is lessee or purchaser;

(g) Agreements for Tax Abatements and Chapter 380 Grant Agreements; and

(h) Personal Services involving the unique abilities or style of a particular individual.

SECTION 3. Part II, Chapter 2, Section 2.8 of the City Code is repealed.

SECTION 4. Funding for this ordinance is contingent upon approval of the Fiscal Year 2011 Budget at which time the Fund, Cost Center and General Ledger combination will be identified.

SECTION 5. This Ordinance shall be effective on January 1, 2011.

PASSED AND APPROVED THIS 17th day of June 2010.

MAYOR
Julián Castro

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

for Michael D. Bernard, City Attorney

ATTACHMENT "A"

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I. Purpose

A. The following Ordinance is adopted to establish a Small/Minority/Women Business Enterprise (S/M/WBE) Policy to remedy the ongoing effects of marketplace discrimination that the City of San Antonio has found continue to adversely affect the participation of S/M/WBEs in City of San Antonio contracts.

B. To exercise the spending powers of the City of San Antonio in a manner that promotes economic inclusion of all segments of the business population, regardless of race or gender, so as to maximize the economic vitality and development of the San Antonio region.

C. To provide for the phased-in implementation of all Policy elements contained within the S/M/WBE Program as provided for within this Ordinance.

D. To clearly communicate the City's S/M/WBE Policy to internal stakeholders within the City and to the external stakeholders within the broader community served by the City.

II. Policy Statements

A. The Policy herein and procedures established pursuant to this Ordinance serve the City's compelling interest to remedy the various ongoing effects of marketplace discrimination against small, minority- and women-owned business enterprises (S/M/WBEs) that are ready, willing and able to sell goods and services to the City.

B. The narrowly-tailored remedial efforts established in this Ordinance are designed to promote greater availability, capacity development and contract participation by S/M/WBEs in City of San Antonio contracts.

C. The Policy established in this Ordinance is intended, in part, to further the City of San Antonio's compelling interest in ensuring that it is neither an active nor passive participant in private sector marketplace discrimination, and to actively promote equal opportunity for all segments of the contracting and business community to participate in City of San Antonio contracts.

D. The City shall resort to the use of race- and gender-conscious means for addressing disparities within its contract participation only when it is apparent that the use of neutral means alone will likely be insufficient to remedy the effects of identified discrimination.

E. Having found that it has a compelling governmental interest to remedy the effects of discrimination upon City of San Antonio contracts, the City Council directs the City Manager or designee, the City Attorney, and the Small Business Office Manager to collaborate in recommending to the City Council possible future amendments necessary to fully effectuate the purposes and Policy established in this Ordinance. Such proposed amendments shall be consistent with the Policy direction established above in this Ordinance, and shall also be narrowly-tailored in accordance with applicable law and the specific barriers to S/M/WBE participation identified within the City's factual predicate as described below in Section III.A of this Ordinance.

F. It is the Policy of the City to take all necessary, reasonable and legal action to prevent discrimination and to ensure that all businesses, including M/WBEs, are afforded the maximum

practicable opportunity to participate in the City's purchasing and contracting processes.

G. It is the Policy of the City to ensure that the firms it engages in business with do not discriminate in the solicitation, selection or treatment of Subcontractor, suppliers, vendors or commercial customers on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's or commercial customer's employees or owners.

H. The Small Business Office shall have primary oversight responsibility with the full support and cooperation of all other City of San Antonio offices and departments in the establishment and administration of the Policy and procedures established herein and pursuant to this Ordinance.

III. S/M/WBE Program

A. Overview and Factual Predicate

Over the years since the inception of its first M/WBE program, the City has undertaken a number of extensive fact-finding studies, data gathering efforts and public hearings to examine its marketplace and the effects of marketplace discrimination on its purchases of Construction services, Architectural and Engineering services, Professional Services, Other Services, and Goods and Supplies. As a result, there have been a number of revisions to the City's SBEDA and M/WBE Program since its inception in 1989. The most recent revision of the SBEDA Program is embodied in Ordinance No. 2007-04-12-0396. Since Ordinance No. 2007-04-12-0396 was established, the City has undertaken additional fact-finding and disparity studies. Most recently, in 2009, MGT of America, Inc. updated the City's factual predicate by providing a comprehensive Disparity Study, and subsequently issued an addendum to its 2009 Disparity Study in 2010 (the "Update"). These two MGT studies utilized various methodologies in gathering relevant quantitative and qualitative data and performing various analyses relating to the City's Relevant Markets for goods and services. The following findings of the City are based upon the totality of this factual predicate; including, but not limited to, a 1987 study that found that less than 2 percent of COSA contracts were awarded to S/M/WBEs; a 1992 San Antonio Consortium Study that found that there was substantial disparity in the utilization of certain segments of available M/WBE firms in all Industry Categories of City contracting; and the most recent studies of disparities in City contract awards and payments spanning the time frame from September 2004 through December 2007 which reflected the following:

1. **Discrimination has affected the Relevant Marketplace and City of San Antonio in the past.** A number of studies have documented the discrimination against minority and women business owners in the San Antonio marketplace in the past.

2. **There is evidence of ongoing effects of past discrimination in the local marketplace and in City of San Antonio purchases of goods and supplies.** The present opportunities for M/WBE participation in the local marketplace and in City of San Antonio contracts are affected by past discrimination. For example, Public Use Micro Sample data from 2002 for the San Antonio Metropolitan Statistical Area indicates that there were statistically significant disparities in entry into, and earnings from, self-employment by women and minorities even after controlling for factors such as education, age, wealth and other variables as compared to non-minority males. Moreover, an econometric analysis of data in the 2003 National Survey of Small Business Finance found a statistically significant positive relationship between the probability of loan denial and African American ownership. The data also found that African American-owned businesses paid

approximately 30 to 150 percent more in interest rate charges than similarly-situated non-minority firms. The ongoing effects of such discrimination are also reflected in analysis reflecting significant underutilization of M/WBE firms in City contracts and in the overall marketplace from 1987 through 2007.

3. **There is contemporary evidence of discrimination against minority- and women-owned firms in the Relevant Marketplace.** Some practices within the marketplace have the effect of causing disadvantage to M/WBE firms. MGT found evidence of negative stereotypes against M/WBEs and public testimony confirmed fraud and exclusionary practices of Prime Contractors to avoid utilizing M/WBE Subcontractors and sub-consultants that they had committed to use on City contracts. Such practices adversely affect M/WBE contract participation, growth and competitiveness. There was also evidence of discrimination against M/WBE business owners when seeking commercial credit within the local market. Credit is needed for a firm to be successful in each of the Industries from which the City makes purchases; especially in the Construction Industry. In addition, public forum testimony provided particularized evidence of discrimination against a minority contractor by a bank.

4. **There is evidence that the M/WBE opportunities for participation in City of San Antonio contracts are affected by discrimination in the marketplace.** M/WBE firms appear to be at a disadvantage in certain types of City of San Antonio purchases because of discrimination that keeps them smaller and less experienced than they otherwise would be. As a result of these effects, they are less able to compete on the basis of price or qualifications. There are well-documented reports from smaller M/WBE firms that they were unable to compete against larger firms.

5. **The evidence indicated some Prime Contractors that are doing business with the City of San Antonio discriminated against M/WBE Subcontractors.** Anecdotal evidence (and some statistical evidence) suggests that some Prime Contractors discriminate against minority- and women-owned Subcontractors on City of San Antonio projects, other public sector contracts and in private sector contracts. Whenever this occurs, City of San Antonio's contract dollars reinforce a discriminatory scheme by rewarding those bad actors that have excluded legitimate M/WBE firms from the subcontracting process and thereby make it more difficult for those M/WBE firms to grow and become competitive on future contracts.

6. **In some areas of City of San Antonio purchasing and contracting, race- and gender-neutral programs alone may be effective but, in other areas, race- and gender-neutral programs alone are not likely to be effective.** In certain areas of City contracting, under the SBEDA Program, most recent data suggests that some segments of the M/WBE population are no longer experiencing significant disparity in utilization. (For example, non-minority WBEs did not experience a disparity in utilization in City Construction subcontracts during the Study period of September 2004 through December 2007, but continued to experience disparities in the award of Prime contracts.) Accordingly, the City should retain the authority to implement narrowly-tailored race- and gender-conscious programs on a limited basis in the event that the neutral programs prove to be inadequate to fully remedy disparities in the award of Prime contracts and subcontracts.

B. Definitions

Affirmative Procurement Initiatives (API) – Refers to various S/M/WBE Program tools and Solicitation Incentives that are used to encourage greater Prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint

venture incentives. (For full descriptions of these and other S/M/WBE Program tools, see Section III.D of Attachment A to this Ordinance).

Annual Aspirational Goal – a non-mandatory annual aspirational percentage goal for overall M/WBE Prime and subcontract participation in City of San Antonio contracts is established each year for Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contract Industry Categories. This Annual Aspirational Goal is to be set (and thereafter adjusted) by the Goal Setting Committee (GSC) on an annual basis based upon relative M/WBE availability data to be collected by the City through its Centralized Vendor Registration ("CVR") system. Annual Aspirational Goals are not to be routinely applied to individual contracts, but are intended to serve as a benchmark against which to measure the overall effectiveness of the S/M/WBE Program on an annual basis, and to gauge the need for future adjustments to the mix and to the aggressiveness of remedies being applied under the Program. Percentage Goals for S/M/WBE participation may be established by the GSC on a contract-by-contract basis based upon similar data and analysis for the particular goods and services being purchased in a given contract.

Award – the final selection of a Respondent for a specified Prime Contract or subcontract dollar amount. Contract awards are made by the City to Prime Contractors or vendors and by Prime Contractors or vendors to Subcontractor or sub-vendors, usually pursuant to a solicitation process. (Contract awards are to be distinguished from contract payments in that they only reflect the anticipated dollar amounts instead of actual dollar amounts that are paid to a contractor under an awarded contract).

Best Value Contracting – a purchasing solicitation process which may evaluate factors other than price. Evaluation criteria for selection may include a Respondent's previous experience and quality of product or services procured, and other factors identified in the applicable statute.

Centralized Vendor Registration System (CVR) – a mandatory electronic system wherein the City requires <u>all</u> prospective Respondents and Subcontractors that are ready, willing and able to sell goods or services to the City to register. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.

Certification – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBE) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, the City accepts any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in this Ordinance in Section III.E.6.

Certification Application – this form shall be completed by vendors when applying for Certification and/or re-Certification status for participation in the City of San Antonio's S/M/WBE Program. This form shall be submitted, to the City's certifying agency, every two years by each certified vendor by the anniversary date of its original Certification.

City – refers to the City of San Antonio, TX.

Commercially Useful Function – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed.

Control – the authority of a person or business owner to sign responses to solicitations and contracts, make price negotiation decisions, sell or liquidate the business and have the primary authority to direct the day-to-day management and operation of a business enterprise without interference from others.

Economic Inclusion – efforts to promote and maximize commercial transactions within, between and among all segments of the business population, regardless of race or gender, within the Relevant Marketplace.

Emerging SBE (ESBE) – a certified SBE corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is independently owned and operated by Individuals legally residing in, or that are citizens of, the United States or its territories, that is no more than five years old at the time of its original certification as an ESBE or whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, that is actively enrolled in the Mentor-Protégé Program for its Industry (once established by the City), and meets the Significant Business Presence requirements as defined herein.

Emerging M/WBE – a certified M/WBE firm that is no more than five years old at the time of its original certification as an Emerging M/WBE that is actively enrolled in the M/WBE or SBE Mentor-Protégé Program for its industry (once established by the City), whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined herein.

Evaluation Preference – an API that may be applied by the Goal Setting Committee to Construction, Architectural & Engineering, Professional Services, Other Services, and Goods and Supplies contracts that are to be awarded on a basis that includes factors other than lowest price, and wherein responses that are submitted to the City by S/M/WBE firms may be awarded additional Points in the evaluation process in the scoring and ranking of their proposals against those submitted by other prime Respondents.

Formal Solicitation – an invitation for bids, request for proposals, request for qualifications or other

solicitation document issued by a City department for a contract that requires City Council approval, in accordance with the procurement rules adopted by the City Manager or designee through a memorandum issued by the City Manager or designee, an Administrative Directive or a procurement manual issued under the authority of the City Manager or designee, and/or pursuant to statutory requirements.

Goal Setting Committee (GSC) – a committee, or series of committees, appointed and chaired by the City Manager or designee from the Executive Team that includes, at a minimum, the Small Business Office Manager or designee, and the Director of Purchasing & General Services (P&GS) or Director of Capital Improvement Management Services (CIMS) or their designees, and the Director or designee of the Originating Department (if the Originating Department is neither P&GS nor CIMS,) all without duplication of designees. The City Manager or designee may also appoint two ex-officio members of the Small Business Advocacy Committee to serve on any GSC purely in an advisory and non-voting capacity. The GSC establishes S/M/WBE Program Goals for the City of San Antonio (e.g., Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals) based upon Industry Categories, vendor availability and project-specific characteristics. The GSC also makes determinations about which Affirmative Procurement Initiatives (APIs) are to be applied to specific contracts based upon various criteria.

Good Faith Efforts – documentation of the Respondent's intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting the Respondent's commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office's directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor's posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.)

Graduation – an SBE firm permanently graduates from the City of San Antonio SBE program when it meets the criteria for graduation set forth in Section III.E.7 of this Ordinance. A firm's graduation or temporary suspension from the SBE program does not necessarily affect its eligibility to be certified and to participate in the City's S/M/WBE Program as an M/WBE. An M/WBE firm permanently graduates from the M/WBE program when it meets the criteria for graduation as set forth in this Ordinance in Section III.E.7 An M/WBE firm that graduates from the M/WBE program is no longer eligible to participate in the Race-Conscious APIs as described herein at Sections III D.2, D.4, D.6, D.8 & D.10 and is also ineligible to participate in the SBE program APIs at Sections III D.1, D.3, D.5, D.7 & D.9 of this Ordinance. However, a graduated M/WBE firm may continue to participate in and benefit from other Race-Neutral non-industry-specific remedies of the S/M/WBE Program as described in Section III.C of this Ordinance.

HUBZone Firm – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business

Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

Independently Owned and Operated – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

Individual – an adult person that is of legal majority age.

Industry Categories – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering (A&E), Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale and retail distribution of commodities). This term may sometimes be referred to as "business categories."

Informal Solicitations – solicitations for contracts that exceed $3,000, but do not require Formal Solicitations.

Joint Venture Incentives – an API that provides inducements for non-SBE and non-M/WBE firms to collaborate with SBE or M/WBE partners in responses to solicitations and performing a Prime Contract to supply goods to, or to perform non-Construction services on behalf of, the City. Joint ventures are manifested by written agreements between two or more Independently Owned and Controlled business firms to form a third business entity solely for purposes of undertaking distinct roles and responsibilities in the completion of a given contract. Under this business arrangement, each joint venture partner shares in the management of the joint venture and also shares in the profits or losses of the joint venture enterprise commensurately with its contribution to the venture. Incentives under this API may include Evaluation Preferences that are tied to the percentage of SBE or M/WBE participation in the joint venture, expedited issuance of building permits and extra contract option years in certain Other Services contracts.

Leases and Concessions: the renting of City-owned space on a contractual basis for the purpose of making a profit by selling a commodity/service.

Minority/Women Business Enterprise (M/WBE) – firm that is certified as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.

M/WBE Directory – a listing of minority- and women-owned businesses that have been certified for participation in the City's M/WBE Program APIs.

M/WBE Subcontracting Program – an API in which Prime Contractors or vendors are required to make Good Faith Efforts to subcontract a specified percentage of the value of prime contract dollars to certified M/WBE firms. Such subcontracting goals may be set and applied by the GSC on a contract-by-contract basis to those types of contracts that provide subcontract opportunities for performing

Commercially Useful Functions wherein:

(1) There have been ongoing disparities in the utilization of available M/WBE Subcontractors; or

(2) Race-Neutral efforts have failed to eliminate persistent and significant disparities in the award of prime contracts to M/WBEs in a particular Industry Category or industry segment (e.g., Construction contracts, Professional Services contracts, and Architectural and Engineering contracts), and subcontract opportunities are limited outside of City contracts.

When specified by the GSC, the M/WBE Subcontracting Program may also be required to reflect Good Faith Efforts that a Prime Contractor or vendor has taken (or commits to taking in the case of solicitations that do not include a detailed scope of work or those in which price cannot be considered a factor in evaluation), toward attainment of subcontracting goals for M/WBE firms.

M/WBE Evaluation Preference – an API that the City may apply to requests for proposals or qualifications (RFPs or RFQs) on City Architectural & Engineering and Professional Services contracts that are issued pursuant to a Best Value Contracting method or other methods of procurement wherein criteria other than lowest price are factored into the selection process. M/WBEs that submit responses for these kinds of solicitations are awarded additional Points in the scoring of their responses when evaluating and ranking their responses against those submitted by non-minority firms. Where specified in contract specifications as approved by the Goal Setting Committee, the M/WBE Evaluation Preference may be limited to Emerging M/WBE firms.

Minority Business Enterprise (MBE) – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified as being at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the City. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term "MBE" as used in this Ordinance is not inclusive of women-owned business enterprises (WBEs).

Minority Group Members – African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as defined below:

African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.

Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.

Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

Originating Department – the City department or authorized representative of the City which issues solicitations or for which a solicitation is issued.

Payment – dollars actually paid to Prime Contractors and/or Subcontractors and vendors for City

contracted goods and/or services.

Points – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Architectural & Engineering, Professional Services, and Other Services contracts (e.g., up to 10 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).

Prime Contractor – the vendor or contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City.

Race-Conscious – any business classification or API wherein the race or gender of business owners is taken into consideration (e.g., references to M/WBE programs and APIs that are listed herein under the heading of "Race-Conscious").

Race-Neutral – any business classification or API wherein the race or gender of business owners is not taken into consideration (e.g., references to SBE programs and APIs that are listed herein under the heading of "Race-Neutral").

Relevant Marketplace – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the MGT Studies, and for determining eligibility for participation under various programs established by this Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

Respondent – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City.

Responsible – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.

Responsive – a firm's submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.

San Antonio Metropolitan Statistical Area (SAMSA) – also known as the Relevant Marketplace, the geographic market area from which the City's MGT Studies analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

Segmented M/WBE Goals – the application of multiple goals for M/WBE participation within Annual Aspirational Goals or for M/WBE Subcontracting Goals on an individual City contract wherein an overall combined M/WBE goal is accompanied by subsets of one or more smaller goals. Such segmented goals specifically target the participation of a particular segment of business enterprises owned and Controlled by WBEs or certain Minority Group Members (e.g., African-Americans or Hispanic-Americans) based upon relative availability. The application of Segmented M/WBE Goals is intended to ensure that those segments of M/WBEs that have been most significantly and persistently underutilized receive a fair measure of remedial assistance.

SBE Directory – a listing of small businesses that have been certified for participation in the City's SBE Program APIs.

Significant Business Presence – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful Function is conducted. 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 be construed to constitute a significant business presence.

Small Business Advocacy Committee (SBAC) – an eleven-member citizens committee made up of trade groups and members of the general business community, and appointed by the City Council as an advisory group to: (a) assist the Director of the International and Economic Development Department (IEDD) or designee, the City Manager or designee, and City Council in reviewing the continuing programs for contractors and Prime Contractors and Subcontractors that promote S/M/WBE participation; (b) coordinate activities and actions with the City Council Economic and Community Development Committee (ECDC) or corresponding committee designated by the Mayor and/or City Council; and (c) make recommendations to the Director of IEDD or designee, the City Manager or designee, and City Council concerning modifications of such programs and procedures established pursuant to this Ordinance. Committee members may participate as advisory non-voting members of Goal Setting Committees.

Small Business Enterprise (SBE) – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.

Small Business Office (SBO) – the office within the International and Economic Development Department (IEDD) of the City that is primarily responsible for general oversight and administration of the S/M/WBE Program.

Small Business Office Manager – the Assistant Director of the IEDD of the City that is responsible for the management of the SBO and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO Manager is also responsible for enforcement of contractor and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.

Small Minority Women Business Enterprise Program (S/M/WBE Program) – the combination of SBE Program and M/WBE Program features contained in this Ordinance.

Solicitation Incentives – additional inducements or enhancements in the solicitation process that are designed to increase the chances for the selection of S/M/WBE firms in competition with other firms. Such inducements and enhancements may include such terms as additional contract option years, increased quantities in supply contracts, and evaluation preferences, where not prohibited by law. These solicitation incentives may be applied as appropriate to solicitations, contracts, and letter agreements for Architecture and Engineering services, Construction, Goods & Supplies, Professional Services, and Other Services contracts, including change orders and amendments.

Subcontractor – any vendor or contractor that is providing goods or services to a Prime Contractor in furtherance of the Prime Contractor's performance under a contract or purchase order with the City. A

copy of the binding agreement between the Prime Contractor and the Subcontractor shall be submitted to prior to contract execution.

Suspension – the temporary stoppage of an SBE or M/WBE firm's beneficial participation in the City's S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7, or pursuant to the Penalties and Sanctions set forth in Section III.E.13.

Tax Increment Finance (TIF) – a form of public finance typically used to fund real estate/ community development projects and infrastructure improvements wherein the City raises funding based upon projected future increased tax revenues that are to be paid over time by property owners located within a certain geographic area that are the beneficiaries from such publicly-financed improvements.

Utilization Documentation – a binding part of the contract which includes the name of all Subcontractors to be utilized in the contract, specifying the S/M/WBE Certification category for each, as approved by the SBO Manager. Additions, deletions or modifications of the utilization amounts or substitutions or deletions of S/M/WBE Subcontractors requires an amendment to be approved by the IEDD Director or designee.

Women Business Enterprises (WBEs) - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of this Ordinance as being at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term "WBE" as used in this Ordinance is not inclusive of MBEs.

C. Procurement Reform & Non-Industry-Specific Remedies

In furtherance of the policies and objectives of this Ordinance, the City Manager or designee shall be responsible for implementing the following procurement policy reforms and non-industry-specific remedies to address ongoing effects of discrimination that adversely affect M/WBE access to public and private sector contracting opportunities, and that will further facilitate the efficient implementation and successful enforcement of the S/M/WBE Program:

1. Commercial Nondiscrimination Policy

a. Statement of Policy

It is the policy of the City not to enter into a contract or to be engaged in a business relationship with any business entity that has discriminated in the solicitation, selection, hiring or commercial treatment of vendors, suppliers, Subcontractors or commercial customers on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's or commercial customer's employees or owners; provided that nothing in this policy shall be construed to prohibit or limit otherwise lawful efforts to remedy the effects of discrimination that have occurred or are occurring in the Relevant Marketplace.

b. Policy Implementation

The Small Business Office shall implement this policy by periodically conducting outreach and distributing educational materials to the City's contracting and vendor community and related trade associations to advise such contractors, vendors and prospective Respondents of this policy and the procedures to be followed in submitting complaints alleging violations of this policy. In addition, the City Manager or designee, the Director of Purchasing & General Services, the Director of Capital Improvement Management Services and the City Attorney's Office shall insure that the following commercial nondiscrimination clause language is set forth in and incorporated into all the City contracts that result from Formal Solicitations:

Every contract and subcontract shall contain a nondiscrimination clause that reads as follows:
"As a condition of entering into this agreement, the company represents and warrants that it will comply with the City's Commercial Nondiscrimination Policy, as described under Section III.C.1 of the SBEDA Ordinance. As part of such compliance, the company shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the City's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this agreement and may result in termination of this agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party."

All Formal Solicitations issued for City contracts shall include the following certification to be completed by the Respondent:
"The undersigned Respondent hereby certifies and agrees that the following information is correct:
In preparing its response on this project, the Respondent has considered all proposals submitted from qualified, potential Subcontractors and suppliers, and has not engaged in "discrimination" as defined in the City's SBEDA Ordinance, Section III.C.1; to wit: discrimination in the solicitation, selection or commercial treatment of any Subcontractor, vendor, supplier or commercial customer on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or on the basis of disability or other unlawful forms of discrimination. Without limiting the foregoing, "discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination". Without limiting any other provision of the solicitation for responses on this project, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the City to reject the response submitted by the Respondent on this project, and terminate any contract awarded based on the response. As part of its response, the Respondent shall provide to the City a list of all instances within the immediate past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Texas that the Respondent discriminated against its Subcontractors, vendors, suppliers or commercial customers, and a description of the status or resolution of that complaint, including any remedial action taken. As a condition of submitting a response to the City, the Respondent agrees to comply with the City's Commercial Nondiscrimination Policy as described under its SBEDA Ordinance, Section III.C.1."

2. Centralized Vendor Registration Policy

The City shall establish an electronic Centralized Vendor Registration (CVR) system to provide the elements and functionalities necessary to advance and facilitate the Program Objectives of the S/M/WBE Program stated herein. The CVR system shall be implemented as soon as practicable, and in no event shall it be implemented later than one year after the effective date of this Ordinance. The CVR shall, at a minimum, include the following:

a. The CVR shall allow a prospective vendor to electronically enter, maintain, and update its vendor registration and profile data. The CVR shall capture relevant vendor contact information, nationally- recognized industry/commodity identification codes, ownership status, length of time in business, number of employees, and the unique identifiers deemed necessary by the City. Vendors shall be required to update critical fields, as defined by the SBO Manager, within 72 hours of any changes. Vendors shall be required to update any changes to their entire registration and profile and confirm their interest in performing work for the City annually.

b. ***Every*** vendor that seeks to respond to City solicitations, to receive a City prime contract or subcontract, or to receive payment for work performed, and/or to receive payment for goods or services delivered on behalf of the City, shall be required to register through the CVR System. The City shall designate the acceptable methods for the unique identification of vendors. Each Respondent/vendor must complete registration on the CVR to be eligible to respond to any City solicitations, to receive a contract award, or to receive a payment from the City.

c. The City shall use the CVR for electronic outreach purposes and send alerts to CVR registrants of upcoming solicitation opportunities based upon the identified industry/commodity codes of CVR registrants or vendor-identified areas of interest, unless such notification is declined.

d. The CVR shall track all payments, by industry/commodity classification code, that are made to each CVR registrant.

e. Upon payment by the City to a vendor for goods or services provided, vendors shall be required to provide and aver at such times and in the format required by the City:

    1. Their City vendor identifiers;
    2. The City vendor identifiers for all Subcontractors and suppliers;
    3. The claimed value of the respective goods or services provided by the vendor and any Subcontractor or supplier; and
    4. The nationally-recognized industry/commodity identification codes for all goods or services provided by the vendor and any Subcontractors or suppliers.

    The City shall electronically notify such identified Subcontractors and suppliers and require that they confirm and aver payment from Prime Contractors for goods and services for which the City has paid the prime contractor.

f. The CVR shall provide users the ability to identify prospective Respondents, Subcontractors, and vendors that are ready, willing and able to sell specific types of goods or services. Consistent with applicable law regarding privacy and public records, the City may establish policies regarding the access and use of the CVR system by vendors and by the general public.

g. The City shall strive to ensure this registration process is integrated with any other registrations required by law or available by common practice. The City Manager or designee is hereby authorized to enter into interlocal, intergovernmental, and data-sharing agreements, as necessary for the development of this CVR, in a manner that promotes integration with other registrations. The CVR shall contain links to such other mandatory on-line business registration systems, business licensing applications, and business ownership status Certification applications that are not directly integrated with the CVR, as deemed appropriate by the City.

h. The City Manager or designee shall convene an advisory group for input on the functionality, design, development and management of the CVR. The user group members appointed by the City Manager or designee for this purpose shall examine and evaluate similar systems, including any federal, state and local government best practices and successful models in the field, in making their recommendations to the City.

3. Solicitation Specification Review

Each Formal Solicitation issued by the City shall be referred to the Small Business Office (SBO) and the Director of Purchasing & General Services (P&GS) or the Director of Capital Improvement Management Services (CIMS) in advance of publication to determine whether it contains any specifications that may unnecessarily restrict competition or adversely impact the ability of S/M/WBE firms to respond or participate as Subcontractors. If such objectionable specifications are identified through this review process, the Director of P&GS or the Director of CIMS, the SBO Manager, and the contracting officer for the Originating Department shall seek consensus in developing an acceptable modification to the specification. In the event consensus cannot be reached, the City Manager or designee shall make a final determination regarding the proposed modifications to the specification.

4. Respondent De-briefings

For any contract in which the City has undertaken a Formal Solicitation and subsequent evaluation of responses in accordance with a "Best Value Contracting" method of procurement, the Director of the department issuing the solicitation, or of the department on whose behalf the solicitation was issued, or their designees, shall provide a de-briefing to any non-recommended Respondent., upon request At a minimum, debriefings shall include disclosures of scoring criteria and scores from the evaluation panel responsible for making the selection for each response that was evaluated. To the extent possible, the de-briefing should also identify for each non-recommended Respondent those areas where its submittal was as not as competitive as others, with an explanation as to why.

D. Industry-Specific Affirmative Procurement Initiatives

The GSC shall be established by the City Manager or designee in accordance with this Ordinance and shall have the responsibility of evaluating categories of Informal Solicitations and each prospective Formal Solicitation document in advance of posting an advertisement to the public to determine which of the following APIs it should apply to a given contract within a particular industry:

1. Race – Neutral Construction Programs

The GSC shall consider the application of one or more of the following Race-Neutral APIs for each Formal Solicitation for a City Construction contract:

a. SBE Prime Contract Program

For Construction contracts that are estimated by the City to be below $1,500,000 in value, the City may establish an SBE Prime Contractor capacity-building initiative to enhance long-term competition and to provide the City with its "Best Value" on Construction projects using alternative construction delivery methods of contracting in accordance with Texas Local Government Code, Chapter 271. Each SBE Prime Contractor that participates in this program must also be actively enrolled in the SBE Mentor-Protégé Program (once established by the City) under Subsection III.D.1.g below. Under this program, the City may allocate up to 20% of weighted selection criteria in favor of the selection of a Respondent that is a certified SBE firm. An SBE Prime Contractor that is awarded a prime contract under this program may not subcontract more than 49% of the contract value to a non-SBE firm. In determining whether the SBE Prime Contract Program should be applied to a particular contract, the GSC shall consider: a) whether there are at least three SBEs that are available and capable to perform as Prime Contractors for the contract; and b) the degree of underutilization of the SBE Prime Contractors in the specific Industry Categories.

b. ESBE Prime Contract Program

For Construction contracts that are estimated by the City to be below $250,000 in value, the City may establish an Emerging Small Business Enterprise (ESBE) Prime Contract capacity-building initiative to enhance long-term competition and to provide the City with its "Best Value" on Construction projects using alternative construction delivery methods of contracting in accordance with Texas Local Government Code, Chapter 271. Each ESBE that participates in this Program must also be actively enrolled in the SBE Mentor-Protégé Program (once established by the City) under Subsection III.D.1.g below. Under this program, the City may allocate up to 20% of weighted selection criteria in favor of the selection of a Respondent that is a certified ESBE. An ESBE that is awarded a prime contract under this program may not subcontract more than 49% of the contract value to a non-ESBE firm. In determining whether a particular contract is eligible for this program, the GSC shall consider: a) the relative availability of ESBEs to participate in this prime contract; and b) the degree of underutilization of ESBEs in the specific Industry Categories.

c. SBE Subcontracting Program

The GSC may, at its discretion and on a contract-by-contract basis, require that a predetermined percentage of a specific contract, up to 40%, be subcontracted to eligible SBEs. Factors to be considered by the GSC in making this determination shall include the relative availability of SBE firms to perform Commercially Useful Functions on the specific contract.

A prospective Respondent, to a City solicitation for which price and scope are defined, shall submit at the time of response such documentation as required by the City that provides:

i. The name(s) of the SBE Subcontractor(s) it intends to use on the project;

ii. The percentage of prime contract dollars and the projected absolute dollar value of subcontracting services to be provided by each SBE;

iii. A description of the work that each SBE Subcontractor shall perform; and

iv. Documentation confirming Subcontractor commitment to perform the work.

A prospective Respondent on a City solicitation for which Respondents are not initially evaluated based on price or for which the project scope is not predefined, shall submit at the time of response such documentation as required by the City to affirm its intent to meet the subcontracting requirements indicated in the solicitation. Failure of a Respondent to commit in its response to satisfying the SBE subcontracting goal shall render its response non-Responsive.

During the price proposal negotiation phase, Respondents shall be required to submit:

i. Subcontractor(s) it intends to use on the project;

ii. The percentage of prime contract dollars and the projected absolute dollar value of subcontracting services to be provided by each SBE;

iii. A description of the work that each SBE Subcontractor shall perform; and

iv. Documentation confirming subcontractor commitment to perform the work.

A Respondent may request a full or partial waiver of this mandatory subcontracting requirement for good cause by submitting the appropriate form(s) and documentation to the SBO no less than 7 days prior to the solicitation closing date. Under no circumstances shall a waiver of a mandatory subcontracting requirement be granted without submission of adequate documentation of Good Faith Efforts by the Respondent and careful review by the SBO. The SBO shall base its determination of a waiver request on the following criteria:

i. Whether the requestor of the waiver has made Good Faith Efforts to subcontract with qualified and available SBEs;

ii. Whether subcontracting would be inappropriate and/or not provide a "Commercially Useful Function" under the scope of the contract; and

iii. Whether there are no certified SBE firms that are qualified and available to provide the goods or services required.

In the absence of a waiver granted by the SBO, failure of a Prime Contractor to commit in its response to satisfying the SBE subcontracting goal shall render its response non-Responsive.

In the absence of a waiver granted by the SBO, the failure of a Prime Contractor to attain a subcontracting goal for SBE participation in the performance of its contract shall be considered a material breach of contract, grounds for termination of that contract with the City, and may result in debarment from performing future City contracts, and/or shall be subject to any other remedies available under the terms of its contract with the City or by law.

A Prime Contractor is required to notify and obtain prior written approval from the SBO in advance of any reduction in subcontract scope, unless such reduction in scope is the direct and immediate result of a City-mandated change order or contract amendment, or the City has mandated the de-Certification, suspension, graduation or termination of a designated SBE Subcontractor However, under such circumstances, the Prime Contractor shall undertake Good Faith Efforts to replace the de-certified,

suspended, graduated or terminated SBE s with one or more other certified SBE Subcontractors and shall submit a waiver request to the SBO in the event such Good Faith Efforts are unsuccessful.

Upon award of the prime contract to a Respondent, the Prime Contractor shall be required to submit accurate progress payment information with each invoice regarding each of its Subcontractors, including SBE Subcontractors. The SBO shall audit 100% of the reported payments to SBE and non-SBE Subcontractors to ensure that the Prime Contractor's reported subcontract participation is accurate. City contracts with Prime Contractors shall include clauses requiring Prime Contractors to pay Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act"), and such clauses shall mandate that in the event of Prime Contractor non-compliance regarding such payments, no final retainage on the Prime Contract shall be released to the Prime Contractor, and no new City contracts should be issued to the Prime Contractor until the audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

d. HUBZone Program

For any Construction contract estimated by the City to be below $750,000 in value, the City may establish a HUBZone Prime Contractor capacity-building initiative to enhance long-term competition, to better utilize local firms and residents from the SAMSA HUBZone, and to thereby provide the City with its "Best-Value Contracting" on Construction projects using alternative construction delivery methods of contracting in accordance with Texas Local Government Code, Chapter 271. In such contracts, the GSC may reserve up to 20% of evaluation criteria Points for those firms that are certified HUBZone prime Respondents. An SBE Prime Contractor that is awarded a prime contract under this program may not subcontract more than 49% of the contract value to a non-SBE firm. In determining whether a particular contract is eligible for the HUBZone Program, the GSC shall consider:

i. Whether there are at least three HUBZone firms that are available and capable of performing the prime contract; and

ii. The degree of underutilization of HUBZone firms in the specific Industry Categories.

For any Construction contract, the GSC may, on a contract-by-contract basis, require that a predetermined percentage of a specific contract, up to 40%, be subcontracted to certified HUBZone firms. Factors to be considered by the GSC in making this determination shall include:

i. The relative availability of HUBZone firms to perform Commercially Useful Functions on the specific contract; and

ii. The degree of underutilization of HUBZone firms in the specific Industry Categories.

A prospective Respondent to a City solicitation, for which price and scope are defined, shall submit at the time of response such documentation as required by the City that provides:

i. The name(s) of the HUBZone Subcontractor(s) it intends to use on the project;

ii. The percentage of prime contract dollars and the projected absolute dollar value of subcontracting services to be provided by each HUBZone Subcontractor;

iii. A description of the work that each HUBZone Subcontractor shall perform; and

iv. Documentation confirming HUBZone Subcontractor commitment to perform the work.

A prospective Respondent to a City solicitation, for which Respondents are not initially evaluated based on price or for which the project scope is not predefined, shall submit at the time of response such documentation as required by the City to affirm its intent to meet the subcontracting requirements indicated in the solicitation. Failure of a Respondent to commit in its response to satisfying the HUBZone subcontracting goal shall render its response non-Responsive.

During the price proposal negotiation phase, Respondents shall be required to submit:

i. Subcontractor(s) it intends to use on the project;

ii. The percentage of prime contract dollars and the projected absolute dollar value of subcontracting services to be provided by each HUBZone Subcontractor;

iii. A description of the work that each HUBZone Subcontractor shall perform; and

iv. Documentation confirming HUBZone Subcontractor commitment to perform the work.

A Respondent may request a full or partial waiver of this mandatory subcontracting requirement for good cause by submitting the appropriate form(s) and documentation to the SBO no less than 7 days prior to the solicitation closing date. Under no circumstances shall a waiver of a mandatory subcontracting requirement be granted without submission of adequate documentation of Good Faith Efforts by the Respondent and careful review by the SBO. The SBO shall base its determination of a waiver request on the following criteria:

i. Whether the requestor of the waiver has made Good Faith Efforts to subcontract with qualified and available SBEs;

ii. Whether subcontracting would be inappropriate and/or not provide a "Commercially Useful Function" under the scope of the contract; and

iii. Whether there are no certified SBE firms that are qualified and available to provide the goods or services required.

In the absence of a waiver granted by the SBO, failure of a Prime Contractor to commit in its response to satisfying the HUBZone subcontracting goal shall render its response non-Responsive.

In the absence of a waiver granted by the SBO, the failure of a Prime Contractor to attain a subcontracting goal for HUBZone participation in the performance of its contract shall be a material breach of contract, shall be grounds for termination of the contract with the City, and may result in debarment from performing future City contracts, and/or shall be subject to any other remedies available under the terms of its contract with the City or by law.

A Prime Contractor is required to notify and obtain prior written approval from the SBO in advance of any reduction in subcontract scope, unless such reduction in scope is the direct and immediate result of a City-mandated change order or contract amendment, or the City has mandated the de-Certification,

suspension, graduation or termination of a designated HUBZone Subcontractor. However, under such circumstances, the Prime Contractor shall undertake Good Faith Efforts to replace the de-certified, suspended, graduated or terminated HUBZone Subcontractor(s) with one or more other certified HUBZone Subcontractor(s) and shall submit a waiver request to the SBO in the event such Good Faith Efforts are unsuccessful.

Upon award of the prime contract to a Respondent, the prime contractor Prime Contractor shall be required to submit accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors. The SBO shall audit 100% of the reported payments to HUBZone and non-HUBZone Subcontractors to ensure that the Prime Contractors' reported subcontract participation is accurate. City contracts with Prime Contractors shall include clauses requiring Prime Contractors to pay Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act"), and such clauses shall mandate that in the event of Prime Contractor non-compliance regarding such payments, no final retainage on the Prime Contract shall be released to the Prime Contractor, and no new City contracts should be issued to the Prime Contractor until the audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

e. Small Developer Ownership Construction Program

The SBO Manager or designee is authorized and directed to establish a workgroup consisting of selected members of the SBO staff and the Small Business Advocacy Committee (SBAC) to research "best practices" in small developer program models, and to then recommend to the City Manager the establishment of a Small Developer Ownership Construction Program. At a minimum, this workgroup shall consider inclusion of the following elements for this program:

i. Partnerships with local financial institutions to jointly participate with the City in economic development loans to SBE firms that are real estate developers with limited development experience;

ii. Reservation of certain smaller development projects that are financed by the City through Tax Increment Financing (TIFs) for SBE real estate development firms that have prime contracting experience; and

iii. Specifications in solicitations for City-financed development projects that require Respondents to submit Economic Inclusion plans that outline their strategies for, and demonstrated prior success in, including all segments of the business community including, but not limited to, SBEs into development projects at every level from equity partners and ownership, to operational management and construction opportunities.

f. Bonding Assistance Program

The SBO Manager or designee is authorized and directed to establish a workgroup consisting of selected members of the SBO staff and the SBAC, representatives of the surety industry and representatives of local construction trade associations to research "best practices" in bonding assistance program models and to then recommend to the City Manager the establishment of a Bonding Assistance Program. At a minimum, this workgroup shall consider inclusion of the following elements for this program:

i. Partnerships with local financial institutions to jointly participate with the City in establishing a pool of funds that can be used for providing bonding assistance to SBE construction firms;

ii. Technical and financial assistance to SBE prime Respondents to minimize risk of loss and ensure proper management of funds during projects;

iii. Provide partial bond guarantees supplied by the established pool of funds to assist SBE Respondents in obtaining surety bonds at a competitive rate; and

iv. Establishment of procedures to segment City Construction projects, where feasible, in a manner that reduces required bonding limits for Respondents.

g. SBE Mentor-Protégé Program

The SBO Manager or designee is authorized and directed to establish a workgroup consisting of selected members of the SBO staff and the SBAC, representatives of the surety industry and representatives of local construction trade associations to research "best practices" in Mentor-Protégé Program models and to then recommend to the City Manager the establishment of an SBE Mentor-Protégé Program and, at a minimum, this workgroup shall consider inclusion of the following elements for this program:

i. Establishment of program guidelines and a formal process for teaming of more-established and successful construction firm owners and managers with less-established SBE construction firms to provide management guidance and training in such areas as office procedures, estimating and bidding, bookkeeping and accounting, management of funds, project management, supplier relationships, bonding and insurance, etc.;

ii. Submission of written mentor-protégé team plans outlining the expectations and responsibilities of each team member;

iii. Consideration of Solicitation Incentives for City-approved mentor-protégé teams including such incentives as eligibility for participation in the ESBE Prime Contract Program and the SBE Prime Contract Program, and evaluation preferences for mentor-protégé team members on "Best Value Contracting" projects

iv. Periodic reports from mentors and protégés regarding progress in achieving objectives and elements of mentor-protégé plans.

2. Race-Conscious Construction Programs

The GSC shall consider establishment of an overall M/WBE Annual Aspirational Goal in accordance with subsection 'a' below and, in addition, shall review each prospective City Construction Formal Solicitation in advance of its public release and advertisement, and shall make a determination whether to apply any of the other Race-Conscious APIs ('b' through 'f' below) to those Construction solicitations based upon the following criteria:

i. Whether the most recent data on M/WBE utilization in the absence of Race-Conscious APIs indicate that Construction contracts of this type have exhibited significant disparities in the utilization of M/WBE Subcontractors and/or M/WBE Prime Contractors;

ii. Whether race- and/or gender-neutral remedies alone are likely to fully eliminate any such disparities in the utilization of M/WBE Subcontractors and/or M/WBE Prime Contractors based upon past contract Award and Payment data;

iii. Whether a particular API is the least burdensome available remedy to non-MBE Respondents that is narrowly-tailored and that can effectively eliminate the disparities in the utilization of M/WBEs in Construction contracts; and

iv. Whether the particular API is appropriate for the specific type of Construction contract being procured. Whenever the GSC uses its discretion to apply any of the following Race-Conscious APIs to Construction solicitations, it shall provide an explanation in the solicitation documents of its reasons for doing so based upon its determinations pursuant to these criteria. In making such determinations, the GSC may also take into consideration the experiences of other jurisdictions within the City's Relevant Marketplace for Construction services.

a. M/WBE Annual Aspirational Goals

For each fiscal year, the GSC may establish a non-mandatory annual aspirational percentage goal for overall M/WBE prime and subcontract participation on City Construction contracts.

This Annual Aspirational Goal for M/WBE participation in City Construction contracts (prime and subcontract dollars combined) has initially been established at 29% based upon the combined M/WBE availability by industry in accordance with the City's 2010 Disparity Study Update findings.

This Annual Aspirational Goal is to be adjusted hereafter by the GSC on an annual basis based upon the relative M/WBE availability data to be collected by the City through its CVR system.

Annual Aspirational Goals are not to be routinely applied to individual solicitations, but are intended to serve as a benchmark against which to measure the overall effectiveness of the S/M/WBE Program on an annual basis, and to gauge the need for future adjustments to the mix and aggressiveness of remedies and APIs being applied pursuant to this Policy.

Annual Aspirational Goals may be stated only in those City solicitations that do not contain contract-specific M/WBE goals and when provided, shall be advisory only, and must also be accompanied by the full definition of the term as stated in this Ordinance.

b. M/WBE Subcontracting Program

The GSC may, on a contract-by-contract basis, at its discretion, require that a predetermined percentage of a specific Construction contract, up to 40%, be subcontracted to eligible M/WBEs. Factors to be considered by the GSC in making this determination shall include the relative availability of M/WBE firms to perform Commercially Useful Functions on the specific contract.

A prospective Respondent on a City solicitation, for which price and scope are defined, shall submit at the time of response such documentation as required by the City that provides:

i. The name(s) of the M/WBE Subcontractor(s) it intends to use on the project;

ii. The percentage of prime contract dollars and the projected absolute dollar value of subcontracting services to be provided by each M/WBE;

iii. A description of the work that each M/WBE Subcontractor shall perform; and

iv. Documentation confirming Subcontractor commitment to perform the work.

A prospective Respondent to a City solicitation, for which Respondents are not initially evaluated based on price or for which project scope is not predefined, shall submit at the time of response such documentation as required by the City to affirm its intent to meet the subcontracting requirements indicated in the solicitation. In the absence of a waiver granted by the SBO, failure of a Respondent to commit in its response to satisfying the M/WBE subcontracting goal shall render its response non-Responsive.

During the price proposal negotiation phase, Respondents shall be required to submit:

i. The name(s) of the M/WBE Subcontractor(s) it intends to use on the project;

ii. The percentage of prime contract dollars and the projected absolute dollar value of subcontracting services to be provided by each M/WBE; and

iii. A description of the work that each M/WBE Subcontractor shall perform.

A Respondent may request a full or partial waiver of this mandatory subcontracting requirement from the SBO for good cause by submitting unavailability documentation to the SBO no less than 7 days prior to the solicitation closing date. Under no circumstances shall a waiver of a mandatory subcontracting requirement be granted without submission of adequate documentation of Good Faith Efforts by the Respondent and careful review by the SBO. The SBO shall base its determination on a waiver request on the following criteria:

i. Whether the requestor of the waiver has made Good Faith Efforts to subcontract with qualified and available M/WBEs;

ii. Whether subcontracting would be inappropriate and/or not provide a "Commercially Useful Function" under the scope of the contract; and

iii. Whether there are no certified M/WBE firms that are qualified and available to provide the goods or services required.

In the absence of a waiver granted by the SBO, failure of a Prime Contractor to commit in its response to satisfying the M/WBE subcontracting goal shall render its response non-Responsive.

In the absence of a waiver granted by the SBO, failure of a Prime Contractor to attain a subcontracting goal for M/WBE participation in the performance of its contract shall be considered a material breach of contract, shall be grounds for termination of the contract for which it fails to attain its subcontracting goals with the City, and may result in debarment from performing future City contracts, and/or any other remedies available under the terms of its contract with the City or by law.

A Prime Contractor is required to notify and obtain prior written approval from the SBO in advance of any reduction in subcontract scope, unless such reduction in scope is the direct and immediate result of a City-mandated change order or contract amendment, or the City has mandated the de-Certification, suspension, graduation or termination of a designated M/WBE Subcontractor However, under such circumstances, the Prime Contractor shall undertake Good Faith Efforts to replace the de-certified, suspended, graduated or terminated M/WBE Subcontractor(s) with one or more other certified M/WBE Subcontractor(s) and shall submit a waiver request to the SBO in the event such Good Faith Efforts are unsuccessful.

Upon award of the prime contract to a Respondent, the Prime Contractor shall be required to submit accurate progress payment information with each invoice regarding each of its Subcontractors, including M/WBE Subcontractors. The SBO shall audit 100% of the reported payments to M/WBE and non-M/WBE Subcontractor to ensure that the Prime Contractors' reported subcontract participation is accurate. Absent a waiver from the SBO, a Prime Contractor's failure to reach the required level of M/WBE subcontracting shall be considered a material breach of contract. City contracts with Prime Contractors shall include clauses requiring Prime Contractors to pay Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act"), and such clauses shall mandate that in the event of Prime Contractor non-compliance regarding such payments, no final retainage on the Prime Contract shall be released to the Prime Contractor, and no new City contracts should be issued to the Prime Contractor until the audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

c. M/WBE Participation Requirements for TIF Economic Development Projects

On any City economic development projects that are financed through Tax Increment Financing (TIF), the GSC may impose any M/WBE participation requirements and APIs described herein under Section III.D.2 of this Ordinance.

Failure on the part of any developer to comply with such APIs shall subject the developer to loss of part or all of Tax Increment Financing (TIF) provided by the City. The initial determination to invoke this sanction shall be made by the Director of International and Economic Development or designee in consultation with the SBO Manager, and shall be approved by the City Manager or designee.

d. Segmented M/WBE Goals

The GSC may establish Segmented M/WBE Goals within the Annual Aspirational Goal for Construction contracts, or within M/WBE Subcontracting Goals on an individual City contract wherein an overall combined M/WBE goal is accompanied by subsets of one or more smaller goals that specifically target the participation of a particular segment of Minority Group Members or the WBE segment based upon relative availability. For Construction contracts, the GSC may establish Segmented Goals for construction subcontracting for the following Minority Group Members:

i. African-American Business Enterprises (AABEs); and

ii. Asian-American Business Enterprises (ABE);

For Construction contracts, the GSC may establish Segmented Goals for prime contracting APIs applied under subsection III. D. 2. "e" for the following Minority Group Members:

i. African-American Business Enterprises (AABEs);

ii. Asian-American Business Enterprises (ABE);

iii. Native American Business Enterprise (NABE); and

iv. Women Business Enterprise (WBE).

e. M/WBE Mentor-Protégé Program

The SBO Manager or designee is authorized and directed to establish a workgroup consisting of selected members of the SBO staff and the SBAC, representatives of the surety industry and representatives of local construction trade associations to research "best practices" in Mentor-Protégé Program models, and to then recommend to the City Manager the establishment of an M/WBE Mentor-Protégé Program and, at a minimum, this workgroup shall consider inclusion of the following elements for this program:

i. Establishment of program guidelines and a formal process for teaming of more-established and successful Construction firm owners and managers with less-established M/WBE Construction firms to provide management guidance and training in such areas as office procedures, estimating and bidding, bookkeeping and accounting, management of funds, project management, supplier relationships, bonding and insurance, etc.;

ii. Submission of written mentor-protégé team plans for City approval outlining the expectations and responsibilities of each team member;

iii. Consideration of incentives for City-approved mentor-protégé teams including such incentives as eligibility for participation in the M/WBE evaluation preferences for mentor-protégé team members on "Best Value" projects, extended option years for maintenance and repair job order or task order contracts, accelerated permitting and/or expedited payment of invoices; and

iv. Periodic reports from mentors and protégés regarding progress in achieving objectives and elements of mentor-protégé plans.

f. Emerging M/WBE Prime Contract Program

For Construction contracts that are estimated by the City to be below $250,000 in value, the City may establish an Emerging M/WBE Prime Contractor capacity-building initiative to enhance long-term competition and to provide the City with its "Best Value" on Construction projects using alternative construction delivery methods of contracting in accordance with Texas Local Government Code, Chapter 271. Each Emerging Contractor that participates in the Emerging M/WBE Prime Contractor Program must also be actively enrolled in the M/WBE Mentor-Protégé Program (once established by the City) under Subsection III.D.2e. above. Under this Emerging M/WBE Prime Contract Program, the City may allocate up to 20% of weighted selection criteria in favor of the selection of a Respondent that is a certified Emerging M/WBE firm. An Emerging M/WBE that is awarded a prime contract under this program may not subcontract more than 49% of the contract value to a non-M/WBE firm. In determining whether a particular contract is eligible for the Emerging M/WBE Prime Contract Program, the GSC shall consider: a) whether there are at least three Emerging M/WBE firms that are available and

capable to participate in this prime contract; and b) the degree of underutilization of the Emerging M/WBE in the specific Industry Categories.

3. Race – Neutral Architectural & Engineering (A&E) Programs

The GSC shall consider the application of one or more of the following Race-Neutral APIs for each City Architectural & Engineering (A&E) contract:

a. SBE Subcontracting Program

The GSC may, at its discretion and on a contract-by-contract basis, require that a predetermined percentage of a specific contract, up to 40%, be subcontracted to eligible SBEs. Factors to be considered by the GSC in making this determination shall include the relative availability of SBE firms to perform Commercially Useful Functions on the specific contract.

A prospective Respondent on a City solicitation shall submit at the time of response such documentation as required by the City to affirm its intent to meet the subcontracting requirements indicated in the solicitation. In the absence of a waiver granted by the SBO, failure of a Respondent to commit in its response to satisfying the SBE subcontracting goal shall render its response non-Responsive.

During the price proposal negotiation phase, Respondents will be required to submit:

i. The name(s) of the SBE Subcontractor(s) it intends to use on the project;

ii. The percentage of prime contract dollars and the projected absolute dollar value of subcontracting services to be provided by each SBE;

iii. A description of the work that each SBE Subcontractor shall perform; and

iv. Documentation confirming Subcontractor commitment to perform the work.

Failure of a Respondent to satisfy the SBE subcontracting requirement shall cause the City to formally terminate negotiations and move to the next-most-qualified Respondent.

A Respondent may request a full or partial waiver of this mandatory subcontracting requirement from the SBO for good cause by submitting unavailability documentation to the SBO no less than 7 days prior to the solicitation closing date. Under no circumstances shall a waiver of a mandatory subcontracting requirement be granted without submission of adequate documentation of Good Faith Efforts by the Respondent and careful review by the SBO. The SBO shall base its determination on a waiver request on the following criteria:

i. Whether the requestor of the waiver has made Good Faith Efforts to subcontract with qualified and available SBEs;

ii. Whether subcontracting would be inappropriate and/or not provide a "Commercially Useful Function" under the scope of the contract; and

iii. Whether there are no certified SBE firms that are qualified and available to provide the goods or services required.

In the absence of a waiver granted by the SBO, failure of a Prime Contractor to attain a subcontracting goal for SBE participation in the performance of its contract shall be considered a material breach of contract, shall be grounds for termination of the contract for which it fails to attain its subcontracting goals with the City, and may result in debarment from performing future City contracts, and/or any other remedies available under the terms of its contract with the City or by law.

A Prime Contractor is required to notify and obtain prior written approval from the SBO in advance of any reduction in subcontract scope, unless such reduction in scope is the direct and immediate result of a City-mandated change order or contract amendment, or the City has mandated the de-Certification, suspension, graduation or termination of a designated SBE Subcontractor However, under such circumstances, the Prime Contractor shall undertake Good Faith Efforts to replace the de-certified, suspended, graduated or terminated SBE Subcontractors with one or more other certified SBE Subcontractors and shall submit a waiver request to the SBO in the event such Good Faith Efforts are unsuccessful.

b. SBE Prime Contract Program

The GSC may apply this API to Formal Solicitations on City A&E contracts that are issued pursuant to a method of procurement under Chapter 2254 of the Texas Local Government Code wherein criteria other than price such as demonstrated competence and qualifications are factored into the selection process. Under the terms of this Evaluation Preference, the GSC shall require that evaluation panels assign Point preferences for SBE prime Respondents equal up to 20% of the total Points assigned for the evaluation, scoring and ranking of A&E responses submitted by those certified SBE A&E firms.

An SBE that is awarded a prime contract under this program may not subcontract more than 49% of the contract value to a non-SBE firm. In determining whether a particular contract is eligible for this Program, the GSC shall consider: (a) the relative availability of SBEs to participate in this prime contract; and (b) the degree of underutilization of the SBEs in the specific Industry Categories.

c. ESBE Prime Contract Program

The GSC may apply this API to Formal Solicitations on City A&E contracts below $250,000 that are issued pursuant to a method of procurement under Chapter 2254 of the Texas Local Government Code wherein criteria other than price such as demonstrated competence and qualifications are factored into the selection process. Under the terms of this Evaluation Preference, the GSC shall require that evaluation panels assign Point preferences for ESBE prime Respondents equal up to 20% of the total Points assigned for the evaluation, scoring and ranking of A&E responses submitted by those certified ESBE A&E firms.

An ESBE that is awarded a prime contract under this program may not subcontract more than 49% of the contract value to a non-ESBE firm. In determining whether a particular contract is eligible for this Program, the GSC shall consider: a) the relative availability of ESBEs to participate in this prime contract; and b) the degree of underutilization of the ESBEs in the specific Industry Categories.

4. Race-Conscious Architectural & Engineering (A&E) Programs

The GSC shall consider establishment of an overall M/WBE Annual Aspirational Goal in accordance with subsection 'a' below and, in addition, shall review each prospective City Formal Solicitation for A&E services in advance of its public release and advertisement and shall make a determination whether to apply the other Race-Conscious API ('b' below) to those A&E services Formal Solicitation documents based upon the following criteria:

i. Whether the most recent data on M/WBE utilization in the absence of Race-Conscious APIs indicate that A&E contracts of this type have exhibited significant disparities in the utilization of M/WBE Subcontractor and/or M/WBE Prime Contractors;

ii. Whether race- and/or gender-neutral remedies alone are likely to fully eliminate any such disparities in the utilization of M/WBE Subcontractor and/or M/WBE Prime Contractors based upon past contract Award and Payment data;

iii. Whether a particular API is the least burdensome available remedy to non-M/WBE Respondents that is narrowly-tailored and that can effectively eliminate the disparities in the utilization of M/WBEs in A&E contracts; and

iv. Whether the particular API is appropriate for the specific type of A&E contract being solicited. Whenever the GSC uses its discretion to apply any of the following Race-Conscious APIs to A&E contracts, it shall provide an explanation in the solicitation documents of its reasons for doing so based upon its determinations pursuant to these criteria. In making such determinations, the GSC may also take into consideration the experiences of other jurisdictions within the City's Relevant Marketplace for A&E services.

a. Annual Aspirational M/WBE Goals

For each fiscal year, the GSC may establish a non-mandatory annual aspirational percentage goal for overall M/WBE prime and subcontract participation on City A&E contracts.

The Annual Aspirational Goal for M/WBE participation in the City A&E contracts has initially been established at 34% based upon the combined M/WBE availability by industry in accordance with the City's 2010 Disparity Study Update findings.

This Annual Aspirational Goal is to be adjusted hereafter by the City on an annual basis based upon the relative M/WBE availability data to be collected by the City through its CVR system.

Annual Aspirational Goals are not to be routinely applied to individual contracts or solicitation documents, but are intended to serve as a benchmark against which to measure the overall effectiveness of the S/M/WBE Program on an annual basis, and to gauge the need for future adjustments to the mix and aggressiveness of remedies and APIs being applied pursuant to this Policy.

Annual Aspirational Goals may be stated only in those City solicitations that do not contain contract-specific M/WBE goals and, when provided, shall be advisory only and must also be accompanied by the full definition of the term as stated in this Ordinance.

b. M/WBE Prime Contract Program

The GSC may apply this API to Formal Solicitations on City A&E contracts that are issued pursuant to a method of procurement under Chapter 2254 of the Texas Local Government Code wherein criteria other than price, such as demonstrated competence and qualifications, are factored into the selection process. Under the terms of this Evaluation Preference, the GSC shall require that evaluation panels assign Point preferences equal to up to 20% of the total Points assigned for the evaluation, scoring and ranking of A&E responses submitted by those certified M/WBE A&E firms.

An M/WBE that is awarded a prime contract under this program may not subcontract more than 49% of the contract value to a non-M/WBE firm. In determining whether a particular contract is eligible for this Program, the GSC shall consider: (a) the relative availability of M/WBEs to participate in this prime contract; and (b) the degree of underutilization of the M/WBEs in the specific Industry Categories.

5. Race-Neutral Professional Services Programs

The GSC shall consider the application of one or more of the following Race-Neutral APIs for each City Professional Services solicitation:

a. SBE Subcontracting Program

On large Professional Services contracts estimated by the City to be valued in excess of $500,000, the GSC may, at its discretion and on a contract-by-contract basis, require that a predetermined percentage of a specific Professional Services contract, up to 40%, be subcontracted to eligible and qualified SBEs. A factor to be considered by the GSC in making this determination shall include the relative availability of SBE firms to perform Commercially Useful Functions on the specific contract. A Respondent on such a City solicitation shall submit within its proposal such documentation as required by the City that provides:

i. The name(s) of the SBE Subcontractor(s) it intends to use on the project;

ii. The percentage of Prime Contract dollars and the absolute dollar value of subcontracting services to be provided by each SBE;

iii. A description of the work that each SBE Subcontractor shall perform; and

iv. Documentation confirming Subcontractor commitment to perform the work.

A Respondent may request a full or partial waiver of this mandatory subcontracting requirement from the SBO for good cause by submitting unavailability documentation to the SBO no less than 7 days prior to the solicitation closing date. Under no circumstances shall a waiver of a mandatory subcontracting requirement be granted without submission of adequate documentation of Good Faith Efforts by the Respondent and careful review by the SBO. The SBO shall base its determination of a waiver request on the following criteria:

i. Whether the requestor of the waiver has made Good Faith Efforts to subcontract with qualified and available SBEs;

ii. Whether subcontracting would be inappropriate and/or not provide a "Commercially Useful Function" under the scope of the contract; and

iii. Whether there are no certified SBE firms that are qualified and available to provide the goods or services required.

In the absence of a waiver granted by the SBO, failure of a Prime Contractor to commit in its proposal to satisfying the SBE subcontracting goal shall render its proposal non-responsive.

In the absence of a waiver granted by the SBO, failure of a Prime Contractor to attain a subcontracting goal for SBE participation in the performance of its contract shall be considered a material breach of the contract, shall be grounds for termination of the contract for which it fails to attain its subcontracting goals with the City, and may result in debarment from performing future City contracts and/or any other remedies available under the terms of its contract with the City or by law.

A Prime Contractor is required to notify and obtain prior written approval from the SBO in advance of any reduction in subcontract scope, unless such reduction in scope is the direct and immediate result of a City-mandated change order or contract amendment, or the City has mandated the de-Certification, suspension, graduation or termination of a designated SBE Subcontractor However, under such circumstances, the Prime Contractor shall undertake Good Faith Efforts to replace the de-certified, suspended, graduated or terminated SBE Subcontractors with one or more other certified SBE Subcontractors and shall submit a waiver request to the SBO in the event such Good Faith Efforts are unsuccessful.

b. SBE Joint Venture Program

For Professional Services contracts procured through Formal Solicitation valued by the City in excess of $500,000, and for which the City will undertake a "Best Value Contracting" method of procurement and subsequent evaluation of proposals, the GSC may, on a contract-by-contract basis, apply an Evaluation Preference for SBE joint venture partners equal to up to 20% of the total Points assigned for purposes of evaluating and ranking prospective proposals. Allocation of Points for SBE Joint Venture Incentives shall be as follows:

i. 20% of total Points for joint ventures wherein the SBE joint venture partner is performing 50% or greater of the overall contract value;

ii. 15% of total Points for joint ventures wherein the SBE joint venture partner is performing from 40% up to 49% of the overall contract value;

iii. 10% of total Points for joint ventures wherein the SBE joint venture partner is performing from 25% up to 39 % of the overall contract value;

iv. 5% of total Points for joint ventures wherein the SBE joint venture partner is performing from 10% up to 24% of the overall contract value; and

v. 0% of total Points for joint ventures wherein the SBE joint venture partner is performing less than 10% of the overall contract value.

A factor to be considered by the GSC in selecting this API shall include the relative availability of SBE firms to perform Commercially Useful Functions on the specific contract.

A prospective joint venture Respondent on such a City Professional Services contract shall submit within its proposal such documentation as required by the City that includes, but is not limited to:

i. The name of the SBE joint venture partner that will participate on the project;

ii. The percentage of prime contract dollars and the absolute dollar value of the services to be provided by the SBE joint venture partner; and

iii. A description of the work that each SBE joint venture partner shall be responsible for performing under the terms of the joint venture agreement.

c. ESBE Prime Contract Program

The GSC may apply this API to Formal Solicitations for City Professional Services valued at or below $250,000 that are issued pursuant to a "Best Value" method of procurement wherein criteria other than price are factored into the selection process. Under the terms of this Evaluation Preference, the GSC shall require that evaluation panels assign Point preferences equal to up to 20% of the total Points assigned for the evaluation, scoring and ranking of Professional Services proposals submitted by those certified ESBE Professional Services firms.

An ESBE that is awarded a prime contract under this program may not subcontract more than 49% of the contract value to a non-ESBE firm. In determining whether a particular contract is eligible for this Program, the GSC shall consider: (a) the relative availability of ESBEs to participate in this prime contract; and (b) the degree of underutilization of the ESBEs in the specific Industry Categories.

d. SBE Prime Contract Program

The GSC may apply this API to Formal Solicitations on City Professional Services contracts that are issued pursuant to a method of procurement under Chapter 2254 of the Texas Local Government Code wherein criteria other than price such as demonstrated competence and qualifications are factored into the selection process. Under the terms of this Evaluation Preference, the GSC shall require that evaluation panels assign Point preferences for SBE prime Respondents equal to up to 20% of the total Points assigned for the evaluation, scoring and ranking of professional services responses submitted by those certified SBE firms.

An SBE that is awarded a prime contract under this program may not subcontract more than 49% of the contract value to a non-SBE firm. In determining whether a particular contract is eligible for this Program, the GSC shall consider: (a) the relative availability of SBEs to participate in this prime contract; and (b) the degree of underutilization of the SBEs in the specific Industry Categories.

6. Race-Conscious Professional Services Programs

The GSC shall consider establishment of an overall M/WBE Annual Aspirational Goal in accordance with subsection 'a' below and, in addition, shall review each prospective City Professional Services Formal Solicitation in advance of its public release and advertisement, and shall make a determination whether to apply any of the other Race-Conscious APIs ('b' through 'f' below) to those Professional

Services solicitation documents based upon the following criteria:

i. Whether the most recent data on M/WBE utilization in the absence of Race-Conscious APIs indicates that Professional Services contracts of this type have exhibited significant disparities in the utilization of M/WBE Subcontractors and/or M/WBE Prime Contractors;

ii. Whether race- and/or gender-neutral remedies alone are likely to fully eliminate any such disparities in the utilization of M/WBE Subcontractor and/or M/WBE Prime Contractors based upon past contract award and payment data;

iii. Whether a particular API is the least burdensome available remedy to non-M/WBE Respondents that is narrowly-tailored and that can effectively eliminate the disparities in the utilization of M/WBEs in Professional Service contracts of this type; and

iv. Whether the particular API is appropriate for the specific type of Professional Services contract being solicited. Whenever the GSC uses its discretion to apply any of the following Race-Conscious APIs to Professional Services contracts, it shall provide an explanation in the solicitation documents of its reasons for doing so based upon its determinations pursuant to these criteria. In making such determinations, the GSC may also take into consideration the experiences of other jurisdictions within the City's Relevant Marketplace for Professional Services.

a. M/WBE Annual Aspirational Goals

For each fiscal year, the GSC may establish a non-mandatory annual aspirational percentage goal for overall M/WBE prime and subcontract participation on City Professional Services contracts.

The Annual Aspirational Goal for M/WBE participation in City Professional Services contracts has initially been established at 45% based upon the combined M/WBE availability by industry in accordance with its 2010 Disparity Study Update findings.

This Annual Aspirational Goal is to be adjusted hereafter by the City on an annual basis based upon the relative M/WBE availability data to be collected by the City through its CVR system.

Annual Aspirational Goals are not to be routinely applied to individual contracts, but are intended to serve as a benchmark against which to measure the overall effectiveness of the S/M/WBE Program on an annual basis, and to gauge the need for future adjustments to the mix and aggressiveness of remedies and APIs being applied pursuant to this Policy.

Annual Aspirational Goals may be stated only in those City solicitations that do not contain contract-specific M/WBE goals and, when provided, shall be advisory only and must also be accompanied by the full definition of the term as stated in this Ordinance.

b. M/WBE Subcontracting Program

On large Professional Services contracts estimated by the City to be valued at or above $500,000, the GSC may, at its discretion and on a contract-by-contract basis, require that a predetermined percentage of a specific Professional Services contract, up to 40%, be subcontracted to eligible M/WBEs. A factor to be considered by the GSC in making this determination shall include the relative availability of

M/WBE firms to perform Commercially Useful Functions on the specific contract. A prospective Respondent on such a City contract shall submit within its proposal such documentation as required by the City that provides:

i. The name(s) of the M/WBE Subcontractor(s) it intends to use on the project;

ii. The percentage of prime contract dollars and the projected absolute dollar value of subcontracting services to be provided by each M/WBE;

iii. A description of the work that each M/WBE Subcontractor shall perform; and

iv. Documentation confirming Subcontractor commitment to perform the work.

A Respondent may request a full or partial waiver of this mandatory subcontracting requirement from the SBO for good cause by submitting unavailability documentation to the SBO no less than 7 days prior to the solicitation closing date. Under no circumstances shall a waiver of a mandatory subcontracting requirement be granted without submission of adequate documentation of Good Faith Efforts by the Respondent and careful review by the SBO. The SBO shall base its determination on a waiver request on the following criteria:

i. Whether the requestor of the waiver has made Good Faith Efforts to subcontract with qualified and available M/WBEs;

ii. Whether subcontracting would be inappropriate and/or not provide a "Commercially Useful Function" under the scope of the contract; and

iii. Whether there are no certified M/WBE firms that are qualified and available to provide the goods or services required.

In the absence of a waiver granted by the SBO, failure of a Respondent to commit in its proposal to satisfying the M/WBE subcontracting goal shall render its response non-Responsive.

In the absence of a waiver granted by the SBO, failure of a Respondent to attain a subcontracting goal for M/WBE participation in the performance of its contract shall be considered a material breach of contract, shall be grounds for termination of its contract for which it fails to attain its subcontracting goals with the City, and may result in debarment from performing future City contracts, and/or any other remedies available under the terms of its contract with the City or by law.

A successful Respondent is required to notify and obtain prior written approval from the SBO in advance of any reduction in M/WBE subcontract scope unless such reduction in scope is the direct and immediate result of a City-mandated change order or contract amendment, or the City has mandated the de-Certification, suspension, graduation or termination of a designated M/WBE Subcontractor However, under such circumstances, the Prime Contractor shall undertake Good Faith Efforts to replace the de-certified, suspended, graduated or terminated M/WBE Subcontractor(s) with one or more other certified M/WBE Subcontractor(s) and shall submit a waiver request to the SBO in the event such Good Faith Efforts are unsuccessful.

c. M/WBE Joint Venture Program

For Professional Services contracts valued by the City in excess of $500,000, the GSC may, at its discretion and on a contract-by-contract basis, apply an Evaluation Preference for M/WBE joint venture partners equal to up to 20% of the total Points assigned for purposes of evaluating and ranking prospective proposals. Allocation of Points for M/WBE Joint Venture Incentives shall be as follows:

i. 20% of total Points for joint ventures wherein the M/WBE joint venture partner is performing 50 % or greater of the overall contract value;

ii. 15% of total Points for joint ventures wherein the M/WBE joint venture partner is performing from 40% up to 49% of the overall contract value;

iii. 10% of total Points for joint ventures wherein the M/WBE joint venture partner is performing from 25% up to 39% of the overall contract value;

iv. 5% of total Points for joint ventures wherein the M/WBE joint venture partner is performing from 10% up to 24% of the overall contract value; and

v. 0% of total Points for joint ventures wherein the M/WBE joint venture partner is performing less than 10% of the overall contract value.

A factor to be considered by the GSC in selecting this API shall include the relative availability of M/WBE firms to perform Commercially Useful Functions on the specific contract.

A prospective joint venture Respondent on such a City Professional Services contract shall submit within its proposal such documentation as required by the City that includes, but is not limited to:

i. The name of the M/WBE joint venture partner that will participate on the project;

ii. The percentage of prime contract dollars and the absolute dollar value of the services to be provided by the M/WBE joint venture partner; and

iii. A description of the work that each M/WBE joint venture partner shall be responsible for performing under the terms of the joint venture agreement.

d. M/WBE Prime Contract Program

The GSC may apply this API to Formal Solicitations for City Professional Services solicitations that are issued pursuant to a "Best Value" method of procurement wherein criteria other than price are factored into the selection process. Under the terms of this Evaluation Preference, the GSC shall require that evaluation panels assign Point preferences equal to up to 20% of the total Points assigned for the evaluation, scoring and ranking of Professional Services proposals submitted by those certified M/WBE Professional Services firms.

An M/WBE that is awarded a prime contract under this program may not subcontract more than 49% of the contract value to a non-M/WBE firm. In determining whether a particular contract is eligible for this Program, the GSC shall consider: (a) the relative availability of M/WBEs to participate in this prime contract; and (b) the degree of underutilization of the M/WBEs in the specific Industry Categories.

e. M/WBE Mentor-Protégé Program

The SBO Manager or designee is authorized and directed to establish a workgroup consisting of selected members of the SBO staff, the SBAC, representatives of business-oriented educational institutions and Chambers of Commerce to research "best practices" in Mentor-Protégé Program models and to then recommend to the City Manager the establishment of an M/WBE Mentor-Protégé Program and at a minimum, this workgroup shall consider inclusion of the following elements for this program:

i. Establishment of program guidelines and a formal process for teaming of more-established and successful Professional Services firm owners and managers with less-established M/WBE Professional Services firms to provide management guidance and training in such areas as office procedures, marketing and proposal writing, bookkeeping and accounting, management of funds, project management, human resources management, etc.;

ii. Submission of written mentor-protégé team plans for City approval outlining the expectations and responsibilities of each team member;

iii. Consideration of Solicitation Incentives for City-approved mentor-protégé teams including such incentives as eligibility for participation in the M/WBE Evaluation Preferences for mentor-protégé team members on "Best Value" projects, and expedited payment of invoices.

iv. Periodic reports from mentors and protégés regarding progress in achieving objectives and elements of mentor-protégé plans.

f. Segmented M/WBE Goals

The GSC may establish Segmented M/WBE Goals within the Annual Aspirational Goal for Professional Services contracts, wherein an overall combined M/WBE goal is accompanied by subsets of one or more smaller goals that specifically target the participation of a particular segment of Minority Group Members or the WBE segment based upon relative availability. For Professional Services contracts, the GSC may establish Segmented M/WBE Goals for the participation of the following Minority Group Members categories:

i. African-American Business Enterprises (AABEs);

Asian-American Business Enterprise (ABE);

Native American Business Enterprise (NABE); and

Women Business Enterprise (WBE).

7. Race-Neutral Other Services Programs

The GSC shall consider the application of one or more of the following Race-Neutral APIs for each City "Other Services" (nonprofessional services) contract:

a. SBE Prime Contract Program

The GSC may apply this API to Formal Solicitations on City Other Services contracts that are issued pursuant to a "Best Value" method of procurement wherein criteria other than price are factored into the selection process. Under the terms of this Evaluation Preference, the GSC shall require that evaluation panels assign Point preferences equal to up to 20% of the total Points assigned for the evaluation, scoring and ranking of Other Services proposals submitted by those certified SBE Other Services firms.

An SBE that is awarded a prime contract under this program may not subcontract more than 49% of the contract value to a non-SBE firm. In determining whether a particular contract is eligible for this Program, the GSC shall consider: (a) the relative availability of SBEs to participate in this prime contract; and (b) the degree of underutilization of the SBEs in the specific Industry Categories.

b. ESBE Prime Contract Program

The GSC may apply this API to Formal Solicitations on City Other Services contracts valued at or below $250,000 that are issued pursuant to a "Best Value" method of procurement wherein criteria other than price are factored into the selection process. Under the terms of this Evaluation Preference, the GSC shall require that evaluation panels assign Point preferences equal to up to 20% of the total Points assigned for the evaluation, scoring and ranking of Other Services proposals submitted by those certified ESBE Other Services firms.

Each ESBE that participates in this program must also be actively enrolled in the SBE Mentor-Protégé Program (once established by the City) under Subsection III.D.7.c. An ESBE that is awarded a prime contract under this program may not subcontract more than 49% of the contract value to a non-ESBE firm. In determining whether a particular contract is eligible for this Program, the GSC shall consider: a) the relative availability of ESBEs to participate in this prime contract; and b) the degree of underutilization of the ESBEs in the specific Industry Categories.

c. SBE Mentor-Protégé Program

The SBO Manager or designee is authorized and directed to establish a workgroup consisting of selected members of the SBO staff and the SBAC, representatives of business-oriented educational institutions, technical assistance organizations, and Chambers of Commerce to research "best practices" in Mentor-Protégé Program models, and to then recommend to the City Manager the establishment of an SBE Mentor-Protégé Program and, at a minimum, this workgroup shall consider inclusion of the following elements for this program:

i. Establishment of program guidelines and a formal process for teaming of more-established and successful Other Services firm owners and managers with less-established SBE Other Services firms to provide management guidance and training in such areas as office procedures, marketing and bidding, bookkeeping and accounting, management of funds, project management and customer relations, etc.;

ii. Submission of written mentor-protégé team plans for City approval outlining the expectations and responsibilities of each team member;

iii. Consideration of Solicitation Incentives for City-approved mentor-protégé teams including such incentives as Evaluation Preferences for mentor-protégé team members on "Best Value" projects, and accelerated payment of invoices; and

iv. Periodic reports from mentors and protégés regarding progress in achieving objectives and elements of mentor-protégé plans.

d. SBE Joint Venture Incentives

For Other Services contracts valued by the City in excess of $500,000, the GSC may, on a contract-by-contract basis, when allowable by law, apply the following Joint Venture Incentives for joint venture Respondents wherein SBE joint venture partners are responsible for supplying no less than 40% of the total value of the contract:

i. The extension of one additional option year for any requirements supply contract wherein the SBE joint venture partner has successfully delivered no less than 40% of the value of the joint venture supply contract during the contract's initial year, provided that the initial solicitation provided for possible extensions;

ii. Accelerated payment of invoices by the City (i.e., electronic funds transfers).

A factor to be considered by the GSC in selecting this API shall include the relative availability of SBE firms to perform Commercially Useful Functions as suppliers on the specific contract.

A prospective SBE joint venture Respondent on such a City Other Services contract shall submit within its response such documentation as required by the City that includes, but is not limited to:

i. The name of the SBE joint venture partner that will participate on the contract;

ii. The percentage of Prime Contract dollars and the absolute dollar value of the services to be provided by the SBE joint venture partner; and

iii. A description of the work and responsibilities that each joint venture partner shall perform under the terms of its joint venture agreement.

e. SBE Subcontracting Program

On large Other Services contracts estimated by the City to be valued in excess of $500,000, the GSC may, at its discretion and on a contract-by-contract basis, require that a predetermined percentage of a specific Other Services contract, up to 40%, be subcontracted to eligible and qualified SBEs. A factor to be considered by the GSC in making this determination shall include the relative availability of SBE firms to perform Commercially Useful Functions on the specific contract. A Respondent on such a City solicitation shall submit within its proposal such documentation as required by the City that provides:

i. The name(s) of the SBE Subcontractor(s) it intends to use on the project;

ii. The percentage of Prime Contract dollars and the absolute dollar value of subcontracting services to be provided by each SBE;

iii. A description of the work that each SBE Subcontractor shall perform; and

iv. Documentation confirming Subcontractor commitment to perform the work.

A Respondent may request a full or partial waiver of this mandatory subcontracting requirement from the SBO for good cause by submitting unavailability documentation to the SBO no less than 7 days prior to the solicitation closing date. Under no circumstances shall a waiver of a mandatory subcontracting requirement be granted without submission of adequate documentation of Good Faith Efforts by the Respondent and careful review by the SBO. The SBO shall base its determination of a waiver request on the following criteria:

i. Whether the requestor of the waiver has made Good Faith Efforts to subcontract with qualified and available SBEs;

ii. Whether subcontracting would be inappropriate and/or not provide a "Commercially Useful Function" under the scope of the contract; and

iii. Whether there are no certified SBE firms that are qualified and available to provide the goods or services required.

In the absence of a waiver granted by the SBO, failure of a Prime Contractor to commit in its proposal to satisfying the SBE subcontracting goal shall render its proposal non-responsive.

In the absence of a waiver granted by the SBO, failure of a Prime Contractor to attain a subcontracting goal for SBE participation in the performance of its contract shall be considered a material breach of the contract, shall be grounds for termination of the contract for which it fails to attain its subcontracting goals with the City, and may result in debarment from performing future City contracts and/or any other remedies available under the terms of its contract with the City or by law.

A Prime Contractor is required to notify and obtain prior written approval from the SBO in advance of any reduction in subcontract scope, unless such reduction in scope is the direct and immediate result of a City-mandated change order or contract amendment, or the City has mandated the de-Certification, suspension, graduation or termination of a designated SBE Subcontractor. However, under such circumstances, the Prime Contractor shall undertake Good Faith Efforts to replace the de-certified, suspended, graduated or terminated SBE Subcontractors with one or more other certified SBE Subcontractors and shall submit a waiver request to the SBO in the event such Good Faith Efforts are unsuccessful.

f. Bonding Assistance Program

The SBO Manager or designee is authorized and directed to establish a workgroup consisting of selected members of the SBO staff and the SBAC, representatives of the surety industry and representatives of local trade associations to research "best practices" in bonding assistance program models and to then recommend to the City Manager the establishment of a Bonding Assistance Program. At a minimum, this workgroup shall consider inclusion of the following elements for this program:

i. Partnerships with local financial institutions to jointly participate with the City in establishing a pool of funds that can be used for providing bonding assistance to SBE Other Services firms;

ii. Technical and financial assistance to SBE prime Respondents to minimize risk of loss and ensure proper management of funds during projects;

iii. Provide partial bond guarantees supplied by the established pool of funds to assist SBE Respondents in obtaining surety bonds at a competitive rate; and

iv. Establishment of procedures to segment City Other Services projects, where feasible, in a manner that reduces required bonding limits for Respondents.

8. Race-Conscious Other Services Programs

The GSC shall consider establishment of an overall M/WBE Annual Aspirational Goal in accordance with subsection 'a' below and, in addition, shall review each prospective City Other Services (i.e., non-Professional Services) contract solicitation document in advance of its public release and advertisement, and shall make a determination whether to apply any of the other Race-Conscious APIs ('b' through 'd' below) to those Other Services solicitation documents based upon the following criteria:

i. Whether the most recent data on M/WBE utilization in the absence of Race-Conscious APIs indicate that Other Services contracts of this type have exhibited significant disparities in the utilization of M/WBE Subcontractors and/or M/WBE Prime Contractors;

ii. Whether race- and/or gender-neutral remedies alone are likely to fully eliminate any such disparities in the utilization of M/WBE Subcontractors and/or M/WBE Prime Contractors based upon past contract award and payment data;

iii. Whether a particular API is the least burdensome available remedy to non-M/WBE Respondents that is narrowly-tailored and that can effectively eliminate the disparities in the utilization of M/WBEs in Other Services contracts; and

iv. Whether the particular API is appropriate for the specific type of Other Services contracts being solicited. Whenever the GSC uses its discretion to apply any of the following Race-Conscious APIs to "Other Services" contracts, it shall provide an explanation in the solicitation documents of its reasons for doing so based upon its determinations pursuant to these criteria. In making such determinations, the GSC may also take into consideration the experiences of other jurisdictions within the City's Relevant Marketplace for Other Services.

a. M/WBE Annual Aspirational Goals

For each fiscal year, the GSC may establish a non-mandatory annual aspirational percentage goal for overall M/WBE Prime Contract participation on the City Other Services contracts.

The Annual Aspirational Goal for M/WBE participation in the City Other Services contracts has initially been established at 30% based upon the combined M/WBE availability by industry in accordance with its 2010 Disparity Study Update findings.

This Annual Aspirational Goal is to be adjusted hereafter by the GSC on an annual basis based upon the relative M/WBE availability data to be collected by the City through its CVR system.

Annual Aspirational Goals are not to be routinely applied to individual contracts or solicitation documents, but are intended to serve as a benchmark against which to measure the overall effectiveness of the S/M/WBE Program on an annual basis, and to gauge the need for future adjustments to the mix and aggressiveness of remedies and APIs being applied pursuant to this Policy.

Annual Aspirational Goals may be stated only in those City solicitations that do not contain contract-specific M/WBE goals and, when provided, shall be advisory only and must also be accompanied by the full definition of the term as stated in this Ordinance.

b. M/WBE Mentor-Protégé Program

The SBO Manager or designee is authorized and directed to establish a workgroup consisting of selected members of the SBO staff and the SBAC, and representatives of business-oriented educational institutions and Chambers of Commerce to research "best practices" in Mentor-Protégé Program models and to then recommend to the City Manager the establishment of an M/WBE Mentor-Protégé Program and, at a minimum, this workgroup shall consider inclusion of the following elements for this program:

i. Establishment of program guidelines and a formal process for teaming of more-established and successful Other Services firm owners and managers with less-established M/WBE Other Services firms to provide management guidance and training in such areas as office procedures, marketing and proposal writing, bookkeeping and accounting, management of funds, project management, human resources management, etc.;

ii. Submission of written mentor-protégé team plans outlining the expectations and responsibilities of each team member;

iii. Consideration of Solicitation Incentives for City-approved mentor-protégé teams on "Best Value" Contracting" projects, and expedited payment of invoices; and

iv. Periodic reports from mentors and protégés regarding progress in achieving objectives and elements of mentor-protégé plans.

c. Segmented M/WBE Goals

The GSC may establish Segmented M/WBE Goals within the Annual Aspirational Goal for Other Services contracts, wherein an overall combined M/WBE goal is accompanied by subsets of one or more smaller goals that specifically target the participation of a particular segment of Minority Group Members or the WBE segment based upon relative availability. For Other Services contracts, the GSC may establish Segmented M/WBE Goals for the participation of the following Minority Group Members categories:

i. African-American Business Enterprises (AABEs);

ii. Asian-American Business Enterprise (ABE);

iii. Native American Business Enterprise (NABE); and

iv. Women Business Enterprise (WBE).

d. M/WBE Subcontracting Program

On large Other Services contracts estimated by the City to be valued at or above $500,000, the GSC may, at its discretion and on a contract-by-contract basis, require that a predetermined percentage of a specific Other Services contract, up to 40%, be subcontracted to eligible M/WBEs. A factor to be considered by the GSC in making this determination shall include the relative availability of M/WBE firms to perform Commercially Useful Functions on the specific contract. A prospective Respondent on such a City contract shall submit within its proposal such documentation as required by the City that provides:

i. The name(s) of the M/WBE Subcontractor(s) it intends to use on the project;

ii. The percentage of prime contract dollars and the projected absolute dollar value of subcontracting services to be provided by each M/WBE;

iii. A description of the work that each M/WBE Subcontractor shall perform; and

iv. Documentation confirming Subcontractor commitment to perform the work.

A Respondent may request a full or partial waiver of this mandatory subcontracting requirement from the SBO for good cause by submitting unavailability documentation to the SBO no less than 7 days prior to the solicitation closing date. Under no circumstances shall a waiver of a mandatory subcontracting requirement be granted without submission of adequate documentation of Good Faith Efforts by the Respondent and careful review by the SBO. The SBO shall base its determination on a waiver request on the following criteria:

i. Whether the requestor of the waiver has made Good Faith Efforts to subcontract with qualified and available M/WBEs;

ii. Whether subcontracting would be inappropriate and/or not provide a "Commercially Useful Function" under the scope of the contract; and

iii. Whether there are no certified M/WBE firms that are qualified and available to provide the goods or services required.

In the absence of a waiver granted by the SBO, failure of a Respondent to commit in its proposal to satisfying the M/WBE subcontracting goal shall render its response non-Responsive.

In the absence of a waiver granted by the SBO, failure of a Respondent to attain a subcontracting goal for M/WBE participation in the performance of its contract shall be considered a material breach of contract, shall be grounds for termination of its contract for which it fails to attain its subcontracting goals with the City, and may result in debarment from performing future City contracts, and/or any other remedies available under the terms of its contract with the City or by law.

A successful Respondent is required to notify and obtain prior written approval from the SBO in advance of any reduction in M/WBE subcontract scope unless such reduction in scope is the direct and immediate result of a City-mandated change order or contract amendment, or the City has mandated the de-Certification, suspension, graduation or termination of a designated M/WBE Subcontractor. However, under such circumstances, the Prime Contractor shall undertake Good Faith Efforts to replace the de-certified, suspended, graduated or terminated M/WBE Subcontractor with one or more other certified M/WBE Subcontractor(s) and shall submit a waiver request to the SBO in the event such Good Faith Efforts are unsuccessful.

9. Race-Neutral Goods and Supplies Programs

The GSC shall consider the application of one or more of the following Race-Neutral APIs for each City "Goods & Supplies" contracts:

a. SBE Mentor-Protégé Program

The SBO Manager or designee is authorized and directed to establish a workgroup consisting of selected members of the SBO staff, the SBAC, representatives of local trade associations and Chambers of Commerce to research "best practices" in Mentor-Protégé Program models and to then recommend to the City Manager the establishment of an SBE Mentor-Protégé Program and at a minimum, this workgroup shall consider inclusion of the following elements for this program:

i. Establishment of SBE supplier / distributorship development program guidelines and a formal process for teaming of more-established and successful Good & Supplies manufacturing and/or distributorship firm owners and managers with less-established SBE Good & Supplies firms to provide management guidance and training in such areas as office procedures, marketing and proposal writing, bookkeeping and accounting, management of funds, project management, human resources management, inventory management and control, customer service, order and delivery systems, etc.;

ii. Submission of written mentor-protégé team plans for City approval outlining the expectations and responsibilities of each team member;

iii. Consideration of Solicitation Incentives for City-approved mentor-protégé teams including such incentives as eligibility for participation in the SBE Evaluation Preferences for mentor-protégé team members on "Best Value" contracts, additional option years in supply contracts, and expedited payment of invoices.

iv. Periodic reports from mentors and protégés regarding progress in achieving objectives and elements of mentor-protégé plans.

b. Bonding Assistance Program

The SBO Manager or designee is authorized and directed to establish a workgroup consisting of selected members of the SBO staff and the SBAC, representatives of the surety industry and representatives of local trade associations to research "best practices" in bonding assistance program models and to then recommend to the City Manager the establishment of a Bonding Assistance Program. At a minimum, this workgroup shall consider inclusion of the following elements for this program:

i. Partnerships with local financial institutions to jointly participate with the City in establishing a pool of funds that can be used for providing bonding assistance to SBE Goods & Supplies firms;

ii. Technical and financial assistance to SBE prime Respondents to minimize risk of loss and ensure proper management of funds during projects;

iii. Provide partial bond guarantees supplied by the established pool of funds to assist SBE Respondents in obtaining surety bonds at a competitive rate; and

iv. Establishment of procedures to segment City Goods & Supplies projects, where feasible, in a manner that reduces required bonding limits for Respondents.

c. SBE Prime Contract Program

The GSC may apply this API to Formal Solicitations on City Goods & Supplies contracts that are issued pursuant to a "Best Value" method of procurement wherein criteria other than price are factored into the selection process. Under the terms of this Evaluation Preference, the GSC shall require that evaluation panels assign Point preferences equal to up to 20% of the total Points assigned for the evaluation, scoring and ranking of Goods & Supplies proposals submitted by those certified SBE Goods & Supplies firms.

An SBE that is awarded a prime contract under this program may not subcontract more than 49% of the contract value to a non-SBE firm. In determining whether a particular contract is eligible for this Program, the GSC shall consider: (a) the relative availability of SBEs to participate in this prime contract; and (b) the degree of underutilization of the SBEs in the specific Industry Categories.

d. ESBE Prime Contract Program

The GSC may apply this API to Formal Solicitations on City Goods & Supplies contracts valued at or below $250,000 that are issued pursuant to a "Best Value" method of procurement wherein criteria other than price are factored into the selection process. Under the terms of this Evaluation Preference, the GSC shall require that evaluation panels assign Point preferences equal to up to 20% of the total Points assigned for the evaluation, scoring and ranking of Goods & Supplies proposals submitted by those certified ESBE Goods & Supplies firms.

Each ESBE that participates in this program must also be actively enrolled in the SBE Mentor-Protégé Program (once established by the City) under Subsection III.D.9.a. An ESBE that is awarded a prime contract under this program may not subcontract more than 49% of the contract value to a non-ESBE firm. In determining whether a particular contract is eligible for this Program, the GSC shall consider: a) the relative availability of ESBEs to participate in this prime contract; and b) the degree of underutilization of the ESBEs in the specific Industry Categories.

e. SBE Joint Venture Incentives

For Goods & Supplies contracts valued by the City in excess of $500,000, the GSC may, on a contract-by-contract basis, when allowable by law, apply the following Joint Venture Incentives for joint

venture Respondents wherein SBE joint venture partners are responsible for supplying no less than 40% of the total value of the contract:

i. The extension of one additional option year for any requirements supply contract wherein the SBE joint venture partner has successfully delivered no less than 40% of the value of the joint venture supply contract during the contract's initial year, provided that the initial solicitation provided for possible extensions;

ii. Accelerated payment of invoices by the City (i.e., electronic funds transfers).

A factor to be considered by the GSC in selecting this API shall include the relative availability of SBE firms to perform Commercially Useful Functions as suppliers on the specific contract.

A prospective SBE joint venture Respondent on such a City Goods & Supplies contract shall submit within its response such documentation as required by the City that includes, but is not limited to:

i. The name of the SBE joint venture partner that will participate on the contract;

ii. The percentage of Prime Contract dollars and the absolute dollar value of the services to be provided by the SBE joint venture partner; and

iii. A description of the work and responsibilities that each joint venture partner shall perform under the terms of its joint venture agreement.

10. Race-Conscious Goods & Supplies Programs

The GSC shall consider establishment of an overall M/WBE Annual Aspirational Goal in accordance with subsection 'a' below and, in addition, shall review each prospective Formal Solicitation for City Goods & Supplies contract solicitation document in advance of its public release and advertisement, and shall make a determination whether to apply the other Race-Conscious API ('b' through 'c' below) to those Goods & Supplies solicitation documents based upon the following criteria:

i. Whether the most recent data on M/WBE utilization in the absence of Race-Conscious APIs indicate that Goods & Supplies contracts of this type have exhibited significant disparities in the utilization of M/WBE Subcontractors and/or M/WBE Prime Contractors;

ii. Whether race- and/or gender-neutral remedies alone are likely to fully eliminate any such disparities in the utilization of M/WBE Subcontractors and/or M/WBE Prime Contractors based upon past contract award and payment data;

iii. Whether a particular API is the least burdensome available remedy to non-M/WBE Respondents that is narrowly-tailored and that can effectively eliminate the disparities in the utilization of M/WBEs in Goods & Supplies contracts; and

iv. Whether the particular API is appropriate for the specific type of Goods & Supplies contract being solicited. Whenever the GSC uses its discretion to apply any of the following Race-Conscious APIs to "Goods & Supplies" contracts, it shall provide an explanation in the solicitation documents of its reasons for doing so based upon its determinations pursuant to these criteria. In making such determinations, the GSC may also take into consideration the

experiences of other jurisdictions within the City's Relevant Marketplace for Goods & Supplies.

a. Annual M/WBE Aspirational Goals

For each fiscal year, the GSC may establish a non-mandatory annual aspirational percentage goal for overall M/WBE prime contract participation on the City Goods & Supplies contracts.

The Annual Aspirational Goal for M/WBE participation in the City "Goods & Supplies" contracts has initially been established at 23% based upon the combined M/WBE availability by industry in accordance with its 2010 Disparity Study Update findings.

This Annual Aspirational Goal is to be adjusted hereafter by the GSC on an annual basis based upon the relative M/WBE availability data to be collected by the City through its CVR system.

Annual Aspirational Goals are not to be routinely applied to individual contracts or solicitation documents, but are intended to serve as a benchmark against which to measure the overall effectiveness of the S/M/WBE Program on an annual basis, and to gauge the need for future adjustments to the mix and aggressiveness of remedies and APIs being applied pursuant to this Policy.

Annual Aspirational Goals may be stated only in those City contract solicitation specifications that do not contain contract-specific M/WBE goals and, when provided, shall be advisory only and must also be accompanied by the full definition of the term as stated in this Ordinance.

b. M/WBE Joint Venture Incentives

For Goods & Supplies contracts valued by the City in excess of $500,000, the GSC may, on a contract-by-contract basis, when allowable by law, apply the following Joint Venture Incentives for joint venture Respondents wherein M/WBE joint venture partners are responsible for supplying no less than 40% of the total value of the contract:

i. The extension of one additional option year for any requirements supply contract wherein the M/WBE joint venture partner has successfully delivered no less than 40% of the value of the joint venture supply contract during the contract's initial year, provided that the initial solicitation provided for possible extensions;

ii. Accelerated payment of invoices by the City (i.e., electronic funds transfers).

A factor to be considered by the GSC in selecting this API shall include the relative availability of M/WBE firms to perform Commercially Useful Functions as suppliers on the specific contract.

A prospective M/WBE joint venture Respondent on such a City Goods & Supplies contract shall submit within its response such documentation as required by the City that includes, but is not limited to:

i. The name of the M/WBE joint venture partner that will participate on the contract;

ii. The percentage of Prime Contract dollars and the absolute dollar value of the services to be provided by the M/WBE joint venture partner; and

iii. A description of the work and responsibilities that each joint venture partner shall perform under the terms of its joint venture agreement.

c. M/WBE Mentor-Protégé Program

The SBO Manager or designee is authorized and directed to establish a workgroup consisting of selected members of the SBO staff, the SBAC, representatives of local trade associations and Chambers of Commerce to research "best practices" in Mentor-Protégé Program models and to then recommend to the City Manager the establishment of an M/WBE Mentor-Protégé Program and at a minimum, this workgroup shall consider inclusion of the following elements for this program:

i. Establishment of a M/WBE supplier / distributorship development program guidelines and a formal process for teaming of more-established and successful Good & Supplies manufacturing and/or distributorship firm owners and managers with less-established M/WBE Good & Supplies firms to provide management guidance and training in such areas as office procedures, marketing and proposal writing, bookkeeping and accounting, management of funds, project management, human resources management, inventory management, customer service, order and delivery systems, etc.;

ii. Submission of written mentor-protégé team plans for City approval outlining the expectations and responsibilities of each team member;

iii. Consideration of Solicitation Incentives for City-approved mentor-protégé teams including such incentives as eligibility for participation in the M/WBE Evaluation Preferences for mentor-protégé team members on "Best Value" contracts, additional option years in supply contracts, and expedited payment of invoices;

iv. Periodic reports from mentors and protégés regarding progress in achieving objectives and elements of mentor-protégé plans.

E. S/M/WBE Program Administration

1. Small Business Office Duties and Responsibilities

The SBO will be administered and managed by the SBO Manager, who shall report to the Director of IEDD or designee. The Director of IEDD or designee shall attend all City Council agenda meetings to address any S/M/WBE issues. The SBO shall be responsible for the overall administration of the City's S/M/WBE Program. At a minimum, the SBO **shall:**

a. Report to the City and the public, based on available data, on at least an annual basis as to the City's progress toward satisfying the S/M/WBE Program purposes and policy objectives. During the first two years following Ordinance effective date, this reporting will be conducted semi-annually.

b. Formulate, establish, distribute and implement additional forms, rules and procedures for S/M/WBE Program waivers, improvements and adjustments to the goal-setting methodologies and other Program features;

c. Have advance substantive input in a contract specification review process consistent with this Ordinance to ensure that contract solicitation specifications are not unnecessarily restrictive and unduly burdensome to S/M/WBE firms;

d. Receive and analyze external and internal information, including statistical data and anecdotal testimony regarding the barriers encountered by S/M/WBE firms in attempting to obtain contract opportunities at the City, and the relative effectiveness of various APIs in addressing those barriers;

e. Monitor and support the implementation of the S/M/WBE Program and propose modifications to appropriate City officials as necessary to fully achieve the purpose and objectives of the Policy;

f. Provide public education and advocacy internally and externally regarding the purposes and objectives of the S/M/WBE Program;

g. Develop, maintain and distribute directories of certified SBEs, ESBEs and M/WBEs;

h. Provide seminars and technical assistance to S/M/WBE firms to enhance their ability to effectively compete for City contracts;

i. Investigate alleged violations of this Ordinance and provide written recommendations to appropriate authorities for remedial action and imposition of sanctions and penalties when necessary;

j. Determine Prime Contractor compliance with S/M/WBE Program requirements prior to contract award presentation to City Council and prior to Originating Department release of final retainage;

k. Oversee the maintenance of an accurate contract performance reporting system; and

l. Provide staff support for the SBAC and the GSC.

2. Goal Setting Committee

The Goal Setting Committee (GSC) is to be appointed and chaired by the City Manager or designee from the Executive Team. The GSC shall include, at a minimum, the SBO Manager or designee, the Director of P&GS or the Director of CIMS (or their designees), and the Director or designee of the City Originating Department whose contract(s) are under consideration by the GSC (if the Originating Department is neither P&GS nor CIMS,) all without duplication of designees. The City Manager or designee may also appoint two ex-officio members of the SBAC to serve on any GSC purely in an advisory and non-voting capacity. On a quarterly basis for the first year following the effective date of this Ordinance, GSC ex-officio members shall report on the goal-setting process to the SBAC; in turn, the SBAC shall report to City Council. Said ex-officio members shall be required to adhere to all confidentiality and conflict of interest disclosure requirements imposed on voting members. At the City Manager's discretion, one or more GSCs may be appointed to serve in this capacity. The GSC establishes S/M/WBE Program goals (e.g., Annual Aspirational Goals and contract-by-contract subcontracting goals) based upon Industry Categories, vendor availability and project-specific characteristics. The GSC also makes

determinations about which APIs are to be applied to specific contracts based upon various criteria.

At a minimum, the GSC **shall:**

a. Meet as often as it deems necessary to accomplish its duties as outlined in this Ordinance, but not less than once monthly;

b. Formulate, recommend to the City Manager or designee and implement additional rules and procedures for S/M/WBE Program goal-setting and other aspects of its duties in selecting and applying specific APIs to City solicitations and contracts in an efficient and effective manner; and

c. Monitor and support the implementation of the S/M/WBE Program.

3. Annual Aspirational Goals

The GSC shall establish non-mandatory annual aspirational percentage goals for overall M/WBE prime and subcontract participation for each major category of contracting at the City. Annual Aspirational Goals are to be established each fiscal year for Construction, Architecture & Engineering, Professional Services, Other Services and Goods & Supplies contracts. These Annual Aspirational Goals for M/WBE participation in the City contracts shall be established in each of these categories based upon the combined M/WBE availability by industry in accordance with its related factual predicate. These Annual Aspirational Goals are to be adjusted hereafter by the City on an annual basis based upon the relative M/WBE availability data to be collected by the City through its CVR. Annual Aspirational Goals are not to be routinely applied to individual contracts, but are intended to serve as a benchmark against which to measure the overall effectiveness of the S/M/WBE Program on an annual basis, and to gauge the need for future adjustments to the mix and aggressiveness of remedies and APIs being applied pursuant to this Policy.

4. Contract-by-Contract Subcontracting Goal-Setting

All subcontracting goals authorized under this Ordinance are intended to be established by the GSC and implemented only on a contract-by-contract basis. It is intended that such goal-setting will be based upon careful analysis of the availability of Commercially Useful subcontracting opportunities within a given contract and the relative availability of S/M/WBE firms to perform required tasks on such subcontract opportunities. Such contract-by-contract goal-setting shall be based upon reasonably reliable Respondent and Subcontractor availability data.

5. Periodic Review of Factual Predicate

Beginning no later than July 31, 2013, and every four years thereafter, the City shall issue a Request For Proposals to undertake a comprehensive update of the full disparity study, and upon completion of each disparity study, present disparity study results to the City, and following City review and a public comment period regarding those study findings and recommendations, the City shall consider any proposed modifications to, or sunset of, this Ordinance. As part of this review process, the City Manager or designee shall make, or recommend to City Council as appropriate, modifications to the procedures or substantive provisions of this Ordinance, and submit any necessary draft legislation to

the City Council for adoption as appropriate to effectuate the continuation, modification or termination of the SBE and M/WBE Programs.

6. Certification

Certification of all SBE, ESBE, M/WBE, and Emerging M/WBE firms shall be the responsibility of the SBO. The SBO shall be responsible for developing, issuing and reviewing all SBE, ESBE, M/WBE and Emerging M/WBE Certification and re-Certification forms and applications in a manner that is consistent with the standards, definitions and intent established by this Ordinance. The SBO shall also maintain an automated and up-to-date registry of all certified SBE, ESBE, M/WBE and Emerging M/WBE firms that are readily available to the general public, as well as City personnel.

(a) In executing its responsibility in connection with these Certifications, the SBO may contract with a regional Certification agency/organization for the purpose of issuing Certifications in a manner that is consistent with the standards established under this Ordinance.

(b) A firm eligible for Certification(s) under this S/M/WBE Program shall be an Independently Owned and Operated business. The ownership and Control by Minority Group Members or Women shall be real and substantial, and shall be indicated by customary incidents of ownership as demonstrated by an examination of the substance, rather than the form, of ownership and operating arrangements. In determining whether a potential firm is an Independently Owned and Operated business, the certifying agency considers all relevant factors including, but not limited to:

i) The date the business was established;

ii) The adequacy of its resources for the work of the contract; and

iii) The degree to which financial, equipment leasing, supplier and other relationships with non-minority businesses vary from industry practice.

(c) The Minority Group Member or women owners must possess and exercise the power to direct the management and policies of the firm and to make day-to-day decisions, as well as any decisions on matters of management policy, and operations. The firm shall not be subject to any formal or informal restrictions which limit the customary discretion of the Minority Group Member or women owners. There shall be no restrictions by partnership agreements, charter requirements, operating agreements or other arrangements which prevent the Minority Group Member or women owners from making business decisions of the firm without the cooperation or vote of any owner that is not minority or female.

(d) Recognition of the business as a separate entity for tax or corporate purposes is not necessarily sufficient for recognition as an M/WBE. Certification as SBE, ESBE, M/WBE and Emerging M/WBE firms will be in accordance with the definitions established in Section III.B of this Ordinance.

(e) A claim of minority status as a Minority Group Member must be directly related to the applicant's parents' status. Neither birthplace nor marriage has any bearing on minority

status of the Certification applicant. All Minority Group and women owners of certified firms must be Individuals that are lawfully residing in, or are citizens of, the United States or its territories.

(f) A firm seeking Certification or re-Certification status under this Ordinance shall cooperate fully with the City in supplying additional information and in facilitating a site visit of the enterprise which may be requested in order to make a determination. Failure or refusal to cooperate shall result in denial or repeal of Certification.

(g) Proof of Certification by another certifying entity may be accepted by the City in lieu of the City's own Certification process if the certifying entity adheres to the same or similar policies and standards as those established by the City. To the extent the City's factual predicate for its S/M/WBE Program requires, under applicable law, a narrower definition of M/WBE firm categories (e.g., due to ethnicity / gender of ownership or relevant geographic market considerations), the City shall limit the categories of M/WBE firms certified by other jurisdictions that shall be eligible for participation in the City's S/M/WBE Program as necessary to ensure that the Race-Conscious remedial relief provided by the City's Program remains appropriately narrowly-tailored.

(h) Before accepting another jurisdiction's S/M/WBE Certification program, the SBO shall examine the definitions, standards and Certification practices of the program to ensure that it adheres to established City Certification guidelines.

(i) If the owners of the business who are not Minority Group Members or women are disproportionately responsible for the operation of the firm, the firm is not Controlled by minorities and/or women and may not be considered an M/WBE within the meaning of this Ordinance. Where the actual management of the business is contracted out to Individuals other than the owner, those persons who have the ultimate power to hire and fire the managers may, for the purposes of this Ordinance, be considered as Controlling the business.

(j) All securities that constitute ownership or Control of a corporation for purposes of establishing it as an M/WBE under this Ordinance shall be held directly by Minority Group Members or women. Securities held in trust, or by any guardian for a minor, may not be considered as held by Minority Group Members or women in determining the ownership or Control of a corporation.

(k) The contributions of capital or expertise by the Minority Group Member or women owners to acquire their interests in the business shall be real and substantial. Examples of insufficient capital contributions include:

i) A promise to contribute capital;

ii) A note payable to the business or its owners who are not socially and economically disadvantaged, Minority Group Members or Women; and

iii) Contributions in labor or expertise that result solely in employee compensation, without participation in business profits as an owner.

(l) Special consideration of the following additional circumstances in determining eligibility:

i) Newly-formed businesses and businesses whose ownership or Control has changed since the date of the advertisement of the contract shall be closely scrutinized to determine the reasons for the timing of the formation of, or change in, the businesses;

ii) A previous or continuing employer–employee relationship between or among present owners shall be carefully reviewed to ensure that the employee–owner has management responsibilities and capabilities discussed in this Ordinance; and

iii) Any relationship between an M/WBE and a business that is not an M/WBE, but that has an interest in the M/WBE, shall be carefully reviewed to determine if the interest of the non-minority business conflicts with the ownership and Control requirements of this Ordinance.

iv) Once certified, an SBE, ESBE, M/WBE and/or Emerging M/WBE firm shall update its status biennially by submitting a Certification affidavit. If ownership or Control of the firm has changed, the SBE, ESBE, M/WBE and/or Emerging M/WBE firm shall submit a new Certification affidavit to the SBO, or its contracted Certification agency within thirty (30) days of the change.

v) The certifying entity will notify applicants of staff's determinations on Certification and re-Certification status.

(m) Once denied Certification, a firm may not re-apply for Certification until the time indicated in the Certification entity's policy.

(n) A firm shall be de-certified when it no longer meets the eligibility requirements for Certification, and such de-certified firms shall not be eligible to re-apply for Certification except in accordance with the graduation and suspension provisions of this Ordinance.

(o) Complaints regarding the Certification status of a firm shall be forwarded to the SBO for investigation of any possible violations of this Ordinance.

7. Graduation and Suspension

The SBO shall graduate, suspend or terminate an SBE, ESBE, M/WBE or Emerging M/WBE firm from the S/M/WBE Program established by this Ordinance if, under Program guidelines, the firm no longer is eligible for the Program's assistance or qualifies for its remedial benefits. The SBO shall be responsible for monitoring and conducting periodic reviews of the size, City contract participation levels and conduct of all certified SBE, ESBE, M/WBE and Emerging M/WBE firms to determine when they should be graduated, suspended or terminated from the respective programs in a manner consistent with the standards, definitions and intent established by this Ordinance. The SBO shall also ensure that its directory of certified SBE, ESBE, M/WBE and Emerging M/WBE firms accurately and timely reflects the graduation, suspension or termination of certified firms. In making the

determination required by this paragraph, the SBO shall, to the extent practicable, adhere to the following guidelines:

(a) SBE, ESBE, M/WBE and Emerging M/WBE firms shall be graduated from participation under the S/M/WBE Program's APIs when the firms are no longer eligible based upon the Certification standards and definitions set forth in this Ordinance.

(b) Certified SBE firms shall be graduated from the SBE Program when re-Certification documents reflect that the SBE firm's annual revenues or number of employees exceed the U.S. Small Business Administration size standards for the relevant Industry Category.

(c) Certified M/WBE firms shall be temporarily suspended from participation under any race- or gender-conscious APIs for the remainder of any calendar year in which the firm has cumulatively received more than $15 million in City contract or resulting subcontract payments. Provided the suspended firm has not exceeded the size standards and still meets other Certification requirements for an M/WBE, such firms may resume participation in race-and gender-conscious APIs the following calendar year.

(d) ESBE and Emerging M/WBE firms shall be permanently graduated from the ESBE and Emerging M/WBE Programs upon whichever of the following events occurs first:

i) Completion of their fifth year of Certification status; or

ii) Upon submission of re-Certification documents that reflect the firm's annual revenues or number of employees have exceeded 25% of the SBA's small business size standards for annual revenues or number of employees for the relevant Industry Category in each of two consecutive years.

(e) M/WBE firms shall be graduated from the M/WBE Program upon whichever of the following events occurs first:

i) The M/WBE firm cumulatively receives $15 million in City prime contract and subcontract payments in each of two consecutive calendar years; or

ii) Upon submission of re-Certification documents that reflect the firm's annual revenues or number of employees have exceeded the SBA's small business size standards for annual revenues or number of employees for the Relevant Industry in each of two consecutive years.

Provided, however, that graduated M/WBE firms shall be eligible to apply one time for M/WBE re-Certification following the expiration of the two-year period immediately following graduation. Such application for M/WBE re-Certification shall only be granted on condition that the graduated M/WBE firm presents documentation as required by the SBO that establishes that the M/WBE firm's annual revenues and number of employees have fallen below the SBA's small business size standards for the Relevant Industry for two consecutive years of the post-graduation period. Each graduated M/WBE firm shall be entitled to only one such opportunity to apply for re-Certification, and all second graduations of M/WBE firms shall be permanent.

(f) For SBE and M/WBE firms that are certified by an agency that is recognized by the City, but does

not have graduation provisions, the City will periodically audit these SBE and M/WBE firms to ensure that they meet the Certification criteria contained within this Ordinance.

8. Compliance Responsibilities of Small Business Office

(a) The SBO, along with contracting staff of each City department, shall monitor compliance with these requirements during the term of the contract. If it is determined that there is cause to believe that a Prime Contractor or Subcontractor has failed to comply with any of the requirements of this Ordinance, or with the contract provisions pertaining to S/M/WBE utilization, the SBO Manager shall so notify the Originating Department and the contractor. The Director of IEDD or designee may require such reports, information and documentation from contractors, Respondents and the head of any City department, division or office as are reasonably necessary to determine compliance with the Ordinance requirements, within fifteen (15) calendar days after the notice of noncompliance. If the requested materials are not received within fifteen (15) calendar days, then a finding of noncompliance is determined and appropriate penalties and sanctions will apply as stated in Section III.E.13 of this Ordinance.

(b) Joint responsibility by the Director of IEDD or designee and the Originating Department or designee shall attempt to resolve the noncompliance with the requirements of this Ordinance, or the contract provisions pertaining to S/M/WBE utilization, within fifteen (15) calendar days. If noncompliance cannot be resolved within the fifteen (15) calendar days, the Director of IEDD or designee and the Director of the Originating Department or designee shall submit written recommendations to the City Manager or designee and if the City Manager or designee concurs with the finding, such sanctions as stated in Section III.E.13 of this Ordinance shall be imposed.

(c) Whenever the Director of IEDD or designee finds, after investigation, that an Originating Department has failed to comply with the provisions of this Ordinance or the contract provisions pertaining to S/M/WBE utilization, a written finding specifying the nature of the noncompliance shall be transmitted to the Originating Department and the Director of IEDD or designee shall attempt to resolve any noncompliance through conference and conciliation. Should such attempt fail to resolve the noncompliance, the Director of IEDD or designee shall transmit a copy of the finding of noncompliance, with a statement that conciliation was attempted and failed, to the City Manager or designee who shall take appropriate action under this Ordinance to secure compliance.

(d) The Director of IEDD or designee, through the City Manager or designee, shall submit a written annual report to the SBAC and City Council on the progress of the City toward the utilization goals established by this Ordinance together with an identification of problems and specific recommendations for improving the City's performance. The report shall be semi-annually during the first two years following this Ordinance effective date, based on available data, and then annually thereafter.

(e) The terms of this Ordinance shall apply to all Respondents, as well as S/M/WBEs specified in Section III that receive funds from the City subject to the scope and exclusions in Section 2.

(f) The SBO Manager and Originating Departments shall work closely with the City Attorney's Office to include language in all City contracts that ensures compliance with the S/M/WBE Program. This language should also include a time period for the contractor to correct any and all deficiencies not later than fifteen (15) calendar days after notification of non-compliance.

9. Vendor Responsibilities

To facilitate the SBO completing its responsibilities in administering S/M/WBE Program elements, a vendor shall:

(a) Permit the SBO to inspect any relevant matter, including records and the jobsite, and to interview Subcontractors and workers (field compliance).

(b) If performing a City Construction contract, ensure that all Subcontractors are paid any undisputed amount to which the Subcontractor is entitled within 10 calendar days of receiving a progress or final payment from the City and otherwise comply with City's contract terms and conditions which sets forth the obligations of the Prime Contractor and Subcontractors and the remedies for delinquency or nonpayment of undisputed amounts.

(c) Notify the City in writing of any changes to their utilization and/or subcontracting plan. All changes (substitution and/or termination) must be approved in advance and in writing by the SBO.

(d) Amendment for unforeseen circumstances: If at any time after submission of a solicitation response and before execution of a contract, the apparent successful Respondent determines that a certified SBE or M/WBE listed on the participation schedule has become or will become unavailable, then the apparent successful Respondent shall immediately notify the SBO. Any desired change in the SBE or M/WBE participation schedule shall be approved in advance by the SBO and shall indicate the Prime Contractor's Good Faith Efforts to substitute another certified SBE or M/WBE Subcontractor (as appropriate) to perform the work. Any desired changes (including substitutions or termination and self-performance) must be approved in writing in advance by the SBO.

(e) Notify the Originating Department and SBO of transfer or assignment of contract with the City.

(f) Shall retain record of all Subcontractor payments for a minimum of four years following project termination date.

10. Reporting Requirements – Small Business Office Manager

The SBO Manager shall monitor the implementation of this Ordinance and the progress of the S/M/WBE Program. On at least a semi-annual basis during the first two years following the effective date of this Ordinance, and on an annual basis thereafter, the SBO Manager shall report to the City Council on the implementation and, as data becomes available, progress on achieving the goals and objectives of the S/M/WBE Program, including the achievement of contract participation goals for SBEs and M/WBEs by ethnicity and gender of ownership, by industry, by location and by API. The SBO Manager shall also issue a written report on an annual basis that summarizes contract awards and actual contract payments to Prime Contractors and all Subcontractors for each of these categories. This written report should also address stated S/M/WBE Program objectives including, but not limited to, enhancement of competition as reflected in solicitation response activity, growth in availability and business capacity for SBE and M/WBE firms, removal of barriers to SBE and M/WBE contract participation, reduction or elimination of disparities in contract awards and contract payments to M/WBE firms in City contracts. Other specific performance measures by which the success of the S/M/WBE Program might be evaluated (depending upon the availability of data) include: (a) growth in the numbers of SBE and M/WBE firms winning their first contract awards from COSA; (b) growth

in the overall SBE and M/WBE Prime Contracting dollar volume; (c) growth in the numbers of SBE and M/WBE firms that are bondable and in the collective bonding capacity of SBE and M/WBE firms; (d) growth in the numbers of SBE and M/WBE firms that successfully graduate from the programs and remain as viable competitors after the passage of two years; (e) growth in the numbers of graduated SBE and M/WBE firms that successfully compete for COSA contracts; (f) growth in the size of the largest COSA contracts won and successfully performed by SBE and M/WBE firms; (g) comparability in the annual growth rates and median sales of SBE firms and M/WBE firms as compared to other firms; and (h) growth in the percentage of contract dollar participation of M/WBE firms in the private sector of the Relevant Marketplace. The written report should also contain any recommendations for modifications, suspension or termination of any portion of this Ordinance, with justifications for each such recommendation.

11. Exceptions and Waivers

(a) If a Respondent is unable to comply with the API requirements imposed by the GSC under the terms of this Ordinance, such Respondent shall submit, as part of the response, a request for exception at the time of response submittal. The exception request shall include specified documentation which demonstrates a Good Faith Effort to comply with the requirements as described under the selected APIs.

(b) If, after award of a contract, the contractor is unable to meet the participation requirements for S/M/WBEs specified at response submittal, the contractor must seek substitute S/M/WBEs to fulfill the requirements; the requested substitution must be approved by the Director of IEDD or designee and the Originating Department Director or designee. If, after reasonable Good Faith Efforts, the contractor is unable to find a substitute S/M/WBE, a post-award waiver may be requested. The request shall document the reasons for the contractor's inability to meet the goal requirement. In the event the contractor is found not to have performed Good Faith Efforts in its attempt to find a suitable substitute for the initial S/M/WBE proposed utilization, the contract may, in the City's sole discretion, be terminated for material breach. If the City terminates the contract, the City may then award the contract to the next lowest Responsible and Responsive Respondent or, in the alternative, re-solicit the contract with the terminated vendor being disqualified from participation in the re-solicitation.

(c) Prior to submission of a prospective solicitation to the GSC, and prior to the public release of solicitations, a City Originating Department may request the Director of IEDD or designee to waive or modify the application of API requirements for S/M/WBE participation by submitting its reasons in writing. The Director of IEDD or designee may grant such a waiver or modification upon determination that:

i) The extraordinary and necessary requirements of the contract render application of the APIs infeasible or impractical;

ii) The nature of the goods or services being procured are excluded from the scope of this Ordinance; or

iii) Sufficient qualified S/M/WBEs providing the goods or services required by the contract are unavailable in the Relevant Market area of the project despite every reasonable attempt to locate them.

Otherwise, such solicitations shall be forwarded to the GSC for review and possible application of APIs. Any further requests from a City Originating Department for modification of Goal amounts or other APIs as established by the GSC shall be presented to the City Manager or designee, whose decisions on such requests shall be final.

(d) The GSC may waive the application of APIs to enhance S/M/WBE utilization for a specific contract under the following circumstances:

i) Whenever the needed goods or services are available only from a sole source and the prospective contractor is not currently disqualified from doing business with the City, or the procurement is necessary to preserve or protect the health and safety of the City's residents; and

ii) The Originating Department certifies to the GSC and City Manager or designee:

a) That an emergency exists which requires goods or supplies to be provided with such immediacy that it is unable to comply with the requirements of this Ordinance; and

b) That the prospective contractor is an S/M/WBE or, if not, that the prospective contractor will make a Good Faith Effort to utilize S/M/WBEs.

Final approval of all such waivers shall be made by the City Manager or designee.

12. Originating Departments - Duties and Responsibilities

It shall be the responsibility of each Originating Department to ensure that solicitations emanating from the department adhere to the procedures and provisions set forth in this Ordinance.

(a) The Originating Department Director or designee shall assume primary responsibility for achieving the objectives of this S/M/WBE Program within the Originating Department and shall review, on a continuing basis, all aspects of the Program's operations to assure that the purpose is being achieved.

(b) Originating Departments shall maintain accurate records for each contract awarded, including unsuccessful Respondents, dollar value, the nature of the goods or services to be provided, the name of the contractor awarded the contract, the efforts it employed to solicit responses from S/M/WBEs, and all subcontracts awarded by the Prime Contractor identifying for each its dollar value, the nature of the goods or services provided and the name of the Subcontractor(s).

(c) The Originating Department shall take the following actions to ensure that S/M/WBEs have the maximum practible opportunity to participate on City contracts:

i) Advertise Formal Solicitations in minority-targeted media before responses are due for specific contracting opportunities for no less than the length of the solicitation period required by state law;

ii) Post all Formal Solicitations on the City website, for the solicitation period required by state law for the type of procurement, and then direct targeted e-mail alerts containing links to the webpage where such City solicitations are posted. Such e-mail alerts should

be directed to all Respondents that have registered with the appropriate commodity/industry codes on the City's CVR system;

iii) Encourage all prospective Prime Contractor Respondents to City solicitations to post their subcontract opportunities on the City webpage where the solicitation specifications have been posted by the City.

iv) Send notification before solicitations are due to minority and women trade associations and contractor's associations regarding pending Formal Solicitations in accordance with state law;

v) Include the Commercial Non-Discrimination Policy statement, compliance language and any materials required by this Ordinance in all contracts and solicitation documents;

vi) Preview and evaluate all contracting opportunities in an effort to de-bundle the total requirements of a contract into smaller units to promote maximum and reasonable opportunities for S/M/WBE participation, without making separate, sequential or component purchases in violation of state purchasing laws;

vii) Establish procedures to ensure that all contractors submitting correct invoices are paid within thirty (30) days and that Subcontractor are paid within ten (10) days after the City pays the Prime Contractor;

viii) Ensure that a City contract is not executed and a Notice to Proceed is not issued until binding agreements between the Prime and subcontracting S/M/WBEs have been executed by all parties and submitted to the Originating Department;

ix) Ensure that all required statistics and documentation are submitted to the SBO as requested; and

x) If circumstances prevent the Originating Department from meeting notification requirements contained herein, the Originating Department shall engage in direct and extensive outreach to S/M/WBE associations or other relevant organizations to inform them of the contracting opportunity, <u>unless the circumstances are exigent and an emergency exists that requires immediate action</u>.

xi) Notify the SBO Manager of all change orders and amendments to contracts that are subject to this Ordinance and take necessary steps to ensure that APIs applied to the contract by the GSC are also extended and enforced, to the maximum practical extent, with regard to any modified scope of work under the terms of such change orders and contract amendments.

13. Penalties and Sanctions

(a) Upon determination and recommendation of sanctions by the City Manager or designee regarding the failure of a contractor, vendor, Respondent or other business representative to comply with any portion of this Ordinance, the non-complying party shall be subject to any or all of the following penalties:

i) Suspension of contract;

ii) Withholding of funds;

iii) Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;

iv) Refusal to accept a response or proposal; and

v) Disqualification of a Respondent, contractor or other business from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).

(b) It is a violation of this Ordinance to:

i) Fraudulently obtain, retain or attempt to obtain, retain or aid another in fraudulently obtaining, retaining or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, Emerging M/WBE or ESBE for purposes of this Ordinance.

ii) Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of this Ordinance.

iii) Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE.

iv) Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of this Ordinance.

v) Make false statements to any entity that any other entity is or is not certified as an S/M/WBE for purposes of this Ordinance.

(c) Any person who violates the provisions of this section shall be subject to the provisions of Section 13 of the Ordinance and to the maximum penalty provided by law.

14. Small Business Advocacy Committee (SBAC)

A citizens' committee, made up of trade groups and members of the general business community, herein referred to as the SBAC has been established to function as an advisory group only and shall: (a) assist the Director of IEDD or designee, the City Manager or designee, and City Council in reviewing the continuing programs for contractors and Subcontractors that promote S/M/WBE participation; (b) coordinate activities and actions with the City Council Economic and Community Development Committee (ECDC) or corresponding committee designated by the Mayor and/or City Council; and (c) make recommendations to the Director of IEDD or designee, the City Manager or designee, and City Council concerning modifications of such programs and procedures established

pursuant to this Ordinance. The SBAC consists of 11 members appointed to two-year terms by the City Council.

15. S/M/WBE Program Review, Modification and Sunset

Beginning no later than July 31, 2013, and every four years thereafter, the City shall issue a Request For Proposals to undertake a comprehensive update of the full disparity study, and upon completion of each disparity study, the Director of IEDD or designee shall present the disparity study findings and recommendations to the SBAC and the City Council. Following City review and a public comment period regarding those study findings and recommendations, the City Council shall consider any proposed modifications to, or sunset of, this Ordinance, and shall direct the City Manager or designee to propose modifications to this Ordinance and to submit any necessary draft legislation to the City Council for adoption as appropriate to effectuate the continuation, modification or termination of the SBE and M/WBE Programs. Absent an extension in the enabling legislation for this amended SBEDA Ordinance by the City Council, the provisions of this Ordinance shall be void and may not be enforced after November 30, 2015.

F. Severability Clause

If any section, paragraph, sentence, clause, phrase or word of this S/M/WBE Program Policy, or the application thereof, to any person or circumstance is for any reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, invalid or void, such holding shall not affect the remainder of this Policy or the application of any other provisions of this Ordinance which can be given effect without the invalid provision or application, and to this end, all the provisions of this Ordinance are hereby declared to be severable.