



City of San Antonio
Economic Development Department

Small Business Economic Development
Advocacy (SBEDA)
Draft Ordinance

August 27, 2009

AN ORDINANCE [8-26-09 Final Preliminary Draft]

No. 2009-

AMENDING THE SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY ORDINANCE AND ESTABLISHING AN ECONOMIC INCLUSION PROGRAM TO ENCOURAGE THE FULL AND EQUITABLE UTILIZATION AND DEVELOPMENT OF SMALL BUSINESS ENTERPRISES AND MINORITY / WOMEN BUSINESS ENTERPRISES IN THE SAN ANTONIO MARKETPLACE.

* * * * *

WHEREAS, in November 2006, MGT of America, Inc. 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 business enterprise (M/WBE) program;

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

WHEREAS, MGT's disparity study findings from the period between September 2004 and December 2007 confirm that although the City's Small Business Economic Advocacy 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;

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 contributes to gross patterns of exclusion of M/WBE firms from private sector contract opportunities;

WHEREAS, public testimony and comments received during the public comment period following release of the 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;

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;

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

WHEREAS, the 2009 disparity study was also reviewed and formally recommended for acceptance and for purposes of reliance in the formulation of public policy by the City Council-appointed Small Business Advocacy Committee and by the Economic and Community Development Committee of the City Council of San Antonio;

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;

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;

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;

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;

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;

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, 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 repealed: Attachment A (“CONTRACTING CATEGORY FY 04-05 and FY 05-06 Goals”), ATTACHMENT “B” (Section I through Section XIII), and ATTACHMENT “D” (“Small Business Contract Compliance Measures on Non-Federally Funded Projects For Alternative Construction Delivery Methods”). The following forms included with prior SBEDA Ordinance No. 2007-04-12-0396 are amended in accordance with the terms contained in this Amended SBEDA Ordinance,

and are hereby attached and incorporated by reference into this Amended SBEDA Ordinance: ATTACHMENT B-2 (“GOOD FAITH EFFORT PLAN”), ATTACHMENT B-3 (“REQUEST FOR APPROVAL OF CHANGE TO ORIGINAL AFFIRMED LIST OF SUBCONTRACTORS/SUPPLIERS”), and ATTACHMENT B-4 (“CITY OF SAN ANTONIO LETTER OF INTENT FOR CONTRACTS UTILIZING SMALL BUSINESS CONTRACTING GOALS”). ATTACHMENT “C” of the prior SBEDA Ordinance No. 2007-04-12-0396 , entitled “POLICY FOR DBE/ACDBE PARTICIPATION IN FEDERALLY-ASSISTED AVIATION CONTRACTS AND CONCESSIONS” is preserved and re-enacted without amendment with this Ordinance.

SECTION 2. Scope and Exclusions: Attachment “A” of this Ordinance shall apply to all contracts for the purchase of goods or services 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 of this Ordinance:

- (a) Contracts that are subject to the U.S. Department of Transportation Disadvantaged Business Enterprise Program as set forth in 49 CFR Parts 23 and 26 or any successor legislation;
- (b) Any expenditure contract with a value of \$3,000 or less;
- (c) Any revenue contract with a value of \$50,000 or less;
- (d) Contracts for the purchase of goods or services of a unique nature for which the City contracting department determines there is only a sole source of supply;
- (e) Contracts for electricity or water and sewage services from a municipal utility district or governmental agency;
- (f) Contracts and grant agreements for social services that are issued by the City to non-profit charitable organizations or other governmental agencies;
- (g) Emergency contracts for goods or services that the City Manager determines are necessary for the preservation of public 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; and
- (h) Contracts for the City’s lease or purchase of real property.

SECTION 3. This ordinance shall be effective on the thirtieth (30th) day after passage.

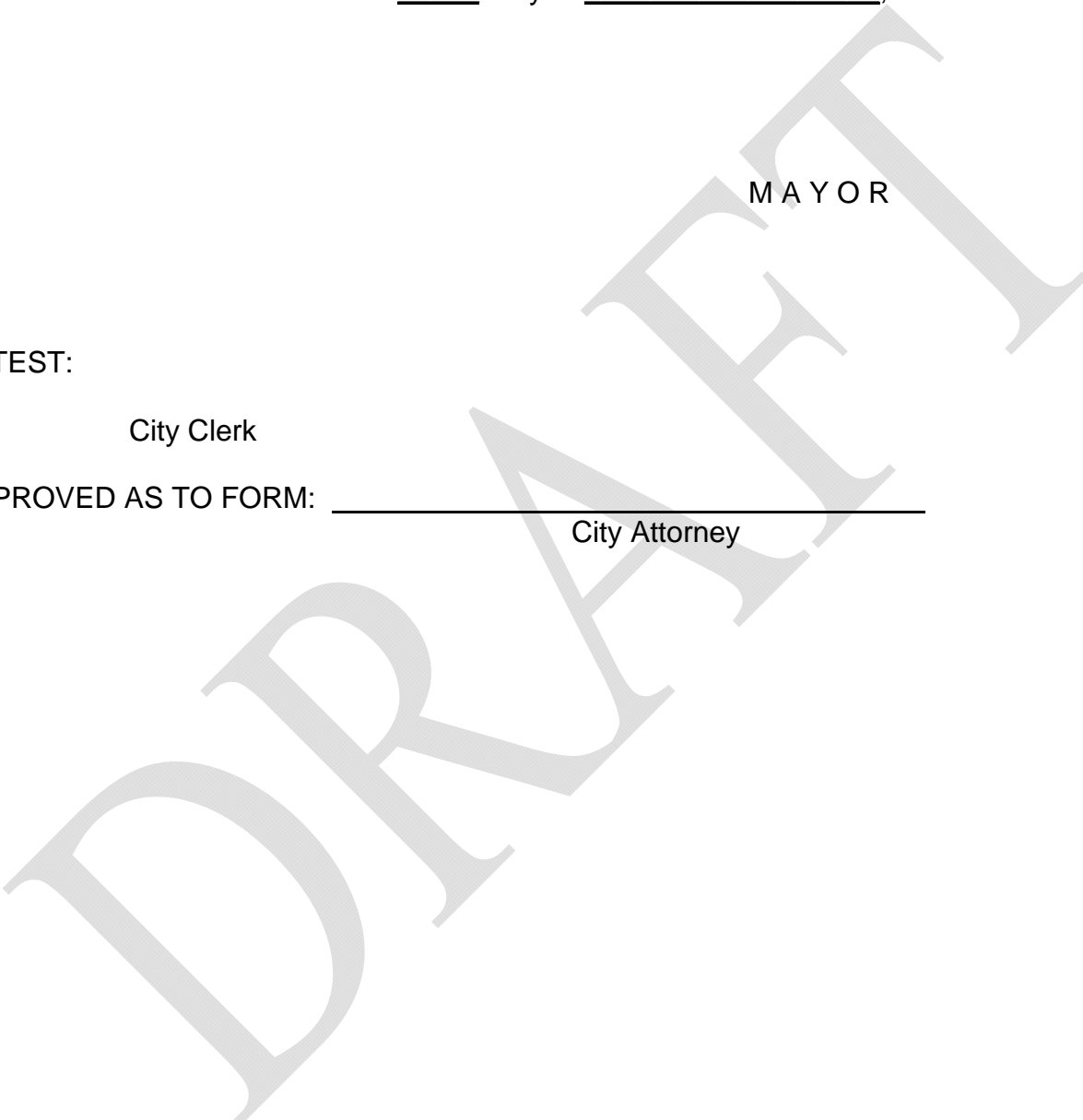
PASSED AND APPROVED THIS _____ day of _____, 2009.

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM: _____
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 small, minority, and women-owned businesses 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 procedures and policies established herein 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 policies established in this ordinance are 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 directs the Small Business Program Manager, the City Manager, and the City Attorney to collaborate in recommending to the City 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 S/M/WBE Program 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 subcontractors, 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 all policies 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 MBE 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 19___. 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., provided an updated disparity study to the City's factual predicate by gathering 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 categories of City contracting; and a most recent study 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 services.** The present opportunities for MBE 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 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 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 disadvantaging MBE firms. MGT found evidence of negative stereotypes against MBEs, 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 MBE contract participation, growth, and competitiveness. There was also evidence of discrimination against MBE 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, and 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.** MBE firms appear to be at a disadvantage in certain types of City of San Antonio purchases because of discrimination that makes 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 MBE 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 MBE 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, gender-neutral programs alone are not likely to be effective.** In certain areas of 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, Hispanic-American and Non-minority women business enterprises did not experience a disparity in utilization in City construction contracts during the study period of September 2004, through December 2007, but continued to experience disparities in the award of prime contracts and near total exclusion in similar private sector contracting.). 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 – refers to various S/M/WBE program tools that are used to encourage greater prime and subcontract participation by S/M/WBE firms, including bonding assistance, bid specification review, bid incentives, evaluation preferences, SBE prime contract program, subcontracting goals, joint venture incentives, bid de-briefings, and vendor rotations.

(For full descriptions of these and other S/M/WBE program tools, see Section III.D. of this ordinance).

Award – the final selection of a bidder or proposer 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 subcontractors or sub-vendors, usually pursuant to an open invitation for bid (“IFB”) or request for proposal (“RFP”) 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 bidder or proposer under an awarded contract.)

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

Bid Incentives – additional inducements or enhancements in the bidding 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. These bid 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.

Bidder – a firm submitting a price or proposal in response to an Invitation for Bid (“IFB”) or Request for Proposal (“RFP”).

Centralized Bidder Registration System (“CBR”) – a mandatory automated web-based system wherein the City requires all prospective bidders, contractors, vendors, and subcontractors that are ready, willing, and able to sell goods or services to the City to register online. The CBR system assigns a unique vendor ID number to each registrant that is then required for the purpose of submitting bids and invoices, and for receiving payments from the City. The CBR-assigned ID numbers 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 staff determines a firm to be a bona-fide small, minority, and/or women business enterprise as set forth herein. The Small Business Office staff may contract these services to a Regional Certification Agency or other governmental entity.

City of San Antonio or “The 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, 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.

Contracting Agency – the City agency or Department or authorized representative of the City which issues invitations to bid or requests for proposals.

Control – the authority of a person or business owner to sign bids 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.

Emerging Contractor – a small construction firm that is no more than five years old, that is actively enrolled in the SBE Mentor-Protégé program for construction firms, and whose annual revenues and number of employees are no greater than 25% of the small business size standards for construction firms established by the U.S. Small Business Administration.

Emerging M/WBE – a certified M/WBE firm that is also no more than five years old, that is actively enrolled in the M/WBE or SBE Mentor-Protégé program for its industry, and whose annual revenues and number of employees are no greater than 25% of the small business size standards as established by the U.S. Small Business Administration.

Evaluation Preferences– An Affirmative Procurement Initiative that may be applied by the Goal Setting Committee to architectural & engineering, professional services, and other services contracts that are to be awarded on a basis that includes factors other than lowest price, and wherein proposals 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 bidders.

Formal Solicitation – An invitation for Bids, Request for Proposals 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 through a memorandum issued by the City Manager, an Administrative Directive, or a procurement manual issued under the authority of the City Manager.

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 categories. This annual aspirational goal is to be set (and thereafter adjusted) by the City on an annual basis based upon relative M/WBE availability data to be collected by

the City through its centralized bidder registration 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 subcontract participation may be established by the Goal Setting Committee on a contract-by-contract basis based upon similar data and analysis for the particular goods and services being purchased in a given contract.

Goal Setting Committee (“GSC”) – a committee, or series of committees, appointed and chaired by the City Manager (or the City Manager’s designee) that includes, at a minimum, the Small Business Office Manager (or the Small Business Office Manager’s designee), and the Director of Purchasing & General Services (or a representative of the contracting department for a given contract that is designated by the City Manager). The Goal Setting Committee 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 Goal Setting Committee also makes determinations about which Affirmative Procurement Initiatives are to be applied to specific contracts based upon various criteria.

Good Faith Efforts – documentation of the bidder’s intent to comply with S/M/WBE Program goals and procedures, including, but not limited to, the following: (1) documentation within a bid submission or proposal reflecting the bidder’s commitment to comply with SBE or M/WBE Program goals as established by the Goal Setting Committee for a particular contract; or (2) documentation of efforts made towards 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 web site; solicitations of bids from all qualified SBE or M/WBE firms listed in 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 bidder; and documentation of consultations with trade associations and consultants that represent the interests of small and / or minority- and women-owned businesses 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 Affirmative Procurement Initiatives as described herein at Sections III.D.6-10 and is also ineligible to participate in the SBE program Affirmative Procurement Initiatives at Sections III.D.1-5 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 MBE eligibility requirements for ownership and control as specified herein in Section III.E.6 (“Certification”). 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.

Industry Categories – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering, 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.”

Joint Venture Incentives – An Affirmative Procurement Initiative that provides inducements for non-SBE and non-M/WBE firms to collaborate with SBE or M/WBE partners in bidding on 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 Affirmative Procurement Initiative 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 goods & supplies contracts.

Minority/Women Business Enterprises (“M/WBE”) – firms that are certified as either Minority Business Enterprises and/or as Women Business Enterprises, and which are 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 Subcontracting Plans – an Affirmative Procurement Initiative 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 commercially useful subcontract opportunities 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 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 Goal Setting Committee, M/WBE Subcontracting Plans may also be required to reflect good faith efforts towards attainment of subcontracting goals for Emerging M/WBE Contractors and/or attainment of subcontracting goals for M/WBE firms.

M/WBE Evaluation Preference – an Affirmative Procurement Initiative that the Goal Setting Committee may apply to requests for proposals (“RFPs”) on City of San Antonio Architectural & Engineering, Professional Services, or Other Services contracts that are issued pursuant to a Best Value Contracting method of procurement wherein criteria other than price are factored into the selection process. M/WBEs that submit proposals or bids for these kinds of contracts are awarded additional Points in the scoring of their proposals when evaluating and ranking their proposals or bids against those submitted by non-minority firms.

M/WBE Joint Venture -- an association of two or more persons or businesses carrying out a single business enterprise for which purpose they combine their capital, efforts, skills, knowledge and/or property. M/WBE Joint Ventures must be established by written agreement, and must satisfy all of the eligibility requirements for M/WBE certification that are established under this ordinance in Section III.E.6. (“Certification”).

M/WBE Joint Venture Incentives – an Affirmative Procurement Initiative that the Goal Setting Committee may apply to designated contracts to encourage joint ventures with M/WBE firms for City of San Antonio non-construction prime contracts. Incentives may take the form of either percentage participation requirements on prime contracts wherein the M/WBE joint venture partner’s ownership share in the joint venture is credited towards attainment of the M/WBE percentage participation requirements, or in the alternative, evaluation preferences that are afforded to joint ventures in accordance with the level of M/WBE ownership in the joint venture.

Minority Business Enterprise (“MBE”) – any legal entity, except a joint venture, that is organized to engage in commercial 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 of San Antonio. To qualify as an MBE, the enterprise shall be headquartered in the SAMSA, or for any length of time shall be engaged in business in the Relevant Marketplace. Unless otherwise stated, the term “MBE” as used in this ordinance is not inclusive of women-owned business enterprises (“WBEs”). For purposes of certification of MBEs, the City accepts any firm that is certified as an MBE by local government entities and other organizations identified herein that have adopted certification standards and procedures similar to those followed by the Small

Business Office, provided the prospective MBE firm satisfies the eligibility requirements set forth in this ordinance in Section III.E.6. (A list of such acceptable MBE certification authorities is available from the Small Business Office).

Minority Group Members – African-Americans, Hispanic Americans, Asian Americans, Native Americans, and Disabled Individuals 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.

Disabled Individuals: persons with (a) one or more disabilities as defined by 42 U.S.C. §12102, known as the Americans with Disabilities Act (the “ADA”) and amendments thereto, (b) having a record of such disabilities, and (c) regarded as having such disabilities.

Points – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some 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 of San Antonio.

Principal Place of Business – a location wherein a firm maintains a physical office and through which it obtains no less than fifty percent of its overall customers or sales dollars, or through which at least 25 percent of its total employees are located and domiciled.

Relevant Marketplace – the geographic market area defined as the San Antonio Metropolitan Statistical Area (“SAMSA”), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina, and Wilson.

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

Responsive - a firm’s bid or proposal conforms in all material respects to the invitation to bid 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 defined as the principal areas from which the City purchases its goods and services (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 that specifically target the participation of a particular segment of Minority Group Members (e.g., African-American) or Women Business Enterprise segment based upon relative availability. The application of Segmented Goals by the Goal Setting Committee 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 Reserve – An Affirmative Procurement Initiative designed to reserve a portion of the City of San Antonio’s bid solicitations for small and informal procurements and contracts exclusively with SBEs.

SBE Plan Execution Certification - The form certifying the general contractor’s intent to use a SBE subcontractor, verifying that an agreement has been executed between the prime and the SBE.

SBE Directory - A listing of small businesses that have been certified for participation in the SBE Program.

SBE Certification/Re-certification Application – This form shall be completed by Small Business Enterprises (SBEs) when applying and/or recertifying SBE status for participation in City of San Antonio’s Small Business Enterprise Program. This form shall be submitted every two years by certified Small Business Enterprises by the anniversary date of their original certification.

SBE Schedule for Subcontractor Participation – This form must be completed by all non-SBE firms that subcontract to SBE firms. A form must be submitted for each SBE subcontractor. This form(s) must be reviewed and approved by the Small Business Office before contract award.

SBE Unavailability Certification - This form demonstrates a bidder’s unsuccessful good faith effort to meet the small business participation requirements of the contract. This form will only be considered after proper completion of the outreach and compliance efforts and methods used to notify and inform SBE firms of contracting opportunities have been fully exhausted.

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 and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry or industries. All firms meeting these thresholds will be considered an “SBE.” To qualify as an SBE, the enterprise shall be headquartered in the SAMSA.

Small Business Office (“SBE Office”) – the office within the City that is primarily responsible

for implementing and administering the S/M/WBE Program.

Small Business Program Manager (“Small Business Manager”) - the City of San Antonio employee that is responsible for the management of the Small Business Office within the Department of Economic Development, and ultimately responsible for oversight, tracking, monitoring, administration, and implementation of the S/M/WBE program. The Small Business Program 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. The Small Business Program Manager is also a member of the Goal Setting Committee.

Small Minority Women Business Enterprise Program (“S/M/WBE Program”) – the combination of SBE Program and M/WBE Program features and Affirmative Procurement Initiatives contained in this ordinance.

Spend Dollars – dollars actually paid to prime and / or subcontractors and vendors for City of San Antonio contracted goods and/or services.

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 of San Antonio.

Suspension – the temporary stoppage of an SBE or and M/WBE firm’s participation in City of San Antonio’s contracts pursuant to Affirmative Procurement Initiatives under the S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE received during a fiscal year that exceed a certain dollar threshold.

Two-tiered Certification – a dual status of certification for Emerging Contractors that are automatically eligible for certification as SBEs, and a similar dual status of certification for Emerging M/WBEs that are automatically eligible for certification as M/WBEs. While certified Emerging Contractors that enjoy Two-tiered Certification status are also eligible to participate under all Affirmative Procurement Initiatives designated for SBEs, certified SBE firms that do not enjoy dual certification status are not eligible to participate in Affirmative Procurement Initiatives designated for Emerging Contractors. Similarly, while certified Emerging M/WBEs that enjoy Two-tiered Certification status are also eligible to participate under all Affirmative Procurement Initiatives designated for M/WBEs, certified M/WBE firms that do not enjoy dual certification status are not eligible to participate under Affirmative Procurement Initiatives designated for Emerging M/WBEs. Any firm may apply for multiple certifications that cover each and every status category (e.g., SBE , Emerging Contractor, MBE, Emerging M/WBE, or WBE) for which it is able to satisfy eligibility standards.

Women Business Enterprises (“WBEs”) - any legal entity, except a joint venture, that is organized to engage in commercial transactions, which is certified as being at least fifty-one percent (51%) owned, managed, and Controlled by one or more women, and that is ready, willing, and able to sell goods or services that are purchased by the City of San Antonio. To qualify as a WBE, the enterprise shall be headquartered in the SAMSA, or for any length of time shall be engaged in business in the Relevant Marketplace. Unless otherwise stated, the term

“WBE” as used in this ordinance is not inclusive of minority business enterprises (“MBEs”). For purposes of certification of WBEs, the City accepts any firm that is certified as a WBE by local government entities and other organizations identified herein that have adopted certification standards and procedures similar to those followed by the Small Business Office, provided the prospective WBE firm satisfies the eligibility requirements set forth in this ordinance in Section III.E.6. (A list of such acceptable WBE certification authorities is available from the Small Business Office).

C. Procurement Reform & Non-industry-specific Remedies

In furtherance of the policies and objectives of this ordinance, the City Manager 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

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 marketplace.

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 bidders of this policy and the procedures to be followed in submitting complaints alleging violations of this policy. In addition, the City Manager and the Director of Purchasing & General Services shall insure that the following commercial nondiscrimination clause language is set forth in and incorporated into all City of San Antonio Formal Solicitations 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 of San Antonio's Commercial Nondiscrimination Policy, as described under Section III.C.1 of the amended SBEDA Ordinance. As part of such compliance, the company may 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 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 of San Antonio 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 of San Antonio contracts shall include the following certification to be completed by the bidder:

"The undersigned bidder hereby certifies and agrees that the following information is correct:

In preparing its bid on this project, the bidder has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in "discrimination" as defined in City of San Antonio amended 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 bids on this project, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the City of San Antonio to reject the bid submitted by the bidder on this project, and terminate any contract awarded based on the bid. As part of its bid or proposal, the bidder shall provide to the City of San Antonio 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 bidder 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 bid or proposal to the City, the bidder agrees to comply with the City of San Antonio's Commercial Nondiscrimination Policy as described under its amended SBEDA ordinance, Section III.C.1."

1. Centralized Bidder Registration Policy

The City Manager shall convene an appropriate City of San Antonio work group for establishing

and implementing a fully automated mandatory centralized bidder registration system (“CBR System”) for all contracts issued by the City of San Antonio. The CBR System shall be effective as soon as practicable, and in no event shall it be implemented later than one year after the effective date of this ordinance. The work group appointed by the City Manager for this purpose shall examine and evaluate similar models already in existence, including the CCR process currently in use by the U.S. Department of Defense at: <https://www.ccr.gov>. At a minimum, the CBR Process established by this work group shall provide the following elements and functionalities to further advance and facilitate the Program Objectives of the S/M/WBE Program stated herein:

- a. The CBR Process shall be at no cost to the bidder firms and shall be internet web-based and accessible for on-line application and editing by prospective bidder firms.
- b. **Every** business that seeks to bid on City of San Antonio contracts, to receive a City of San Antonio prime contract or subcontract, or to receive payment for work performed and / or for goods or services delivered on behalf of the City of San Antonio, shall be required to register through the CBR System. Each such business firm must have a current and valid unique vendor identification number that has been assigned by the CBR System prior to being eligible to submit a bid, to receive a contract award, or to receive a payment from the City of San Antonio. The City shall be able to use the CBR system’s database of registered firms for outreach purposes by sending targeted e-mail alerts of upcoming contract bid opportunities based upon the identified commodity codes of CBR registrants. Prime contractors that submit invoices or bills to the City of San Antonio shall be required to identify their City of San Antonio vendor identification numbers, as well as the City of San Antonio vendor identification numbers for all subcontractors and suppliers and the claimed value of their respective goods or services provided for which the invoice seeks reimbursement or payment.
- c. The centralized bidder registration form should include, at a minimum, the following data fields:
 1. Firm name;
 2. Address;
 3. Phone number;
 4. Fax number;
 5. E-mail address;
 6. Web site address;
 7. Firm point of contact;
 8. NAICS or NIGP codes for classifications of goods and services sold by the firm;
 9. Ownership status (e.g., MBE, DBE, SBE, WBE, or other business enterprise);
 10. Number of employees
 11. Length of time in business

12. Taxpayer identification number
13. Business license number; and
14. Contractors' license numbers (if applicable).

- d. The bidder profile information submitted by prospective bidders should be password protected for editing purposes only. Upon completion of the CBR registration form, a bidder shall be assigned a unique vendor identification number by the CBR system. The vendor identification numbers should expire after one year. On an annual basis, each vendor or prospective bidder should be notified (by e-mail and by hard copy mail) and advised in advance of the expiration to renew or edit the information in its centralized bidder registration form in order to maintain a valid vendor identification number.
- e. The data and software configuration for this CBR System should be compatible and integrated with the financial software used by the City of San Antonio for accounting and vendor payment purposes. Each payment made by the City of San Antonio to a vendor should also be tracked in the automated system by vendor identification number and by NAICS or NIGP codes representing the services or product types delivered and paid for. Similarly, each payment to a prime contractor should be tracked in the automated system with subtotals for each subcontractor's portion (by NAICS or NGIP code) of the overall invoice, as well as the overall payment amount made directly to the prime contractor.
- f. The software used for this CBR System should include the functionality for searching, sorting, and randomly selecting vendors by firm name, by NAICS or NIGP codes, by ownership status, by address, by e-mail address, and by vendor identification number. The on-line form for the CBR system should contain links to on-line application forms for SBE certification, M/WBE certifications, DBE certifications, and other ownership status applications.
- g. The CBR Process database should be backed up at least once a week.

2. Bid Specification Review

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

3. Bid De-briefings

For any contract in which the City has undertaken a Formal Solicitation and subsequent evaluation of bids or proposals in accordance with a “best value contracting” method of procurement, the Director of the Department Issuing the Solicitation, or Director of the Department on whose behalf the solicitation was issued, or their designees, shall offer a bid debriefing to any losing bidder or proposer. At a minimum, bid-debriefings shall include disclosures of scoring criteria and scores from the evaluation panel responsible for making the bidder selection for each bid or proposal that was evaluated. To the extent possible, the de-briefing should also identify for each losing bidder or proposer those areas where its bid or oroposal was not as competitive as others, with an explanation as to why.

D. Industry-specific Affirmative Procurement Initiatives

The Goal Setting Committee shall be established by the City Manager 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 Affirmative Procurement Initiatives it should apply to a given contract within a particular industry:

1. Race – Neutral Construction Programs

The Goal Setting Committee shall consider the application of one or more of the following race-neutral Affirmative Procurement Initiatives 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 competitive sealed proposal methods of contracting in accordance with Texas Local Government Code, Chapter 252, Sec. 252.043 (d) and (d-1). Each SBE prime contractor that participates in the SBE Prime Contract Program must also be actively enrolled in the SBE Mentor-Protégé program established in Subsection III.D.1.f. below. Under this SBE Prime Contract Program, the City may allocate up to 25 percent of weighted selection criteria in favor of the selection of a bidder or proposer 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 Goal Setting Committee 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. Emerging Contractor Prime Contract Program

For construction contracts that are estimated by the City to be below \$500,000 in value, the City may establish an Emerging Contractor prime contractor capacity-building initiative to enhance long-term competition and to provide the City with its “best value” on construction projects using competitive sealed proposal methods of contracting in accordance with Texas Local Government Code, Chapter 252, Sec. 252.043 (d) and (d-1). Each Emerging Contractor that participates in the Emerging Contractor Prime Contractor Program must also be actively enrolled in the SBE Mentor-Protégé program established in Subsection III.D.1.f. below. Under this Emerging Contractor Prime Contract Program, the City may allocate up to 25 percent of weighted selection criteria in favor of the selection of a bidder or proposer that is a certified Emerging Contractor firm. An Emerging 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 Emerging Contractor Prime Contract Program, the Goal Setting Committee shall consider: a) whether there are at least three Emerging Contractor firms that are available and capable to participate in this prime contract; and b) the degree of underutilization of the Emerging Contractors in the specific industry categories.

c. SBE Subcontracting Program

- i) The Goal Setting Committee may, on a contract-by-contract basis, at its discretion, 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.
- ii) A prospective bidder on a City of San Antonio contract shall submit at the time of bid such documentation as required by the City that provides:
 - (a). the name of the SBE subcontractor or SBE subcontractors it intends to use on the project;
 - (b). the percentage of prime contract dollars and the absolute dollar value of subcontracting services to be provided by each SBE; and
 - (c). a description of the work that each SBE subcontractor shall perform.
- iii) A bidder may request a full or partial waiver of this mandatory subcontracting requirement from the Small Business Office for good cause by submitting the S/M/WBE Unavailability Certification form to the Small Business Office at the time of bid. Under no circumstances shall a waiver of a mandatory subcontracting requirement be granted without submission of adequate documentation of Good Faith Efforts by the bidder and careful review by the

Small Business Office. The Small Business Office shall base its determination on a waiver request on the following criteria:

- (a) Whether the requestor of the waiver has made Good Faith Efforts to subcontract with qualified and available SBEs;
 - (b) Whether subcontracting would be inappropriate and/or not provide a “Commercially Useful Function” under the circumstances of the contract; and
 - (c) Whether there are no certified SBE firms that are qualified and available to provide the goods or services required.
- iv) In the absence of a waiver granted by the Small Business Office, failure of a Prime Contractor to commit in its bid or proposal to satisfying the SBE subcontracting goal shall render its bid or proposal non-responsive.
- v) In the absence of a waiver granted by the Small Business Office, failure of a Prime Contractor to attain a subcontracting goal for SBE participation in the performance of its contract shall be grounds for termination of the its contract for which it fails to attain its subcontracting goals with the City of San Antonio, debarment from performing future City of San Antonio contracts for a period of up to three years,, and / or any other remedies available under the terms of its contract with the City of San Antonio or under the law.
- vi) A Prime Contractor is required to notify and obtain written approval from the Small Business Office in advance of any reduction in subcontract scope, termination, or substitution for a designated SBE Subcontractor.

d. HUBZone Program

- i). 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 competitive sealed proposal methods of _____contracting in accordance with Texas Local Government Code, Chapter 252, _____Sec. 252.043 (d) and

(d-1). In determining whether a particular contract is eligible for the HUBZone Program, the Goal Setting Committee shall consider:

- (a) Whether there are at least three HUBZone firms that are available and capable of performing the prime contract; and

- (b) The degree of underutilization of HUBZone firms in the specific industry categories.
- ii) For any construction contract, the Goal Setting Committee 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:
 - (a) The relative availability of HUBZone firms to perform commercially useful functions on the specific contract; and
 - (b) The degree of underutilization of HUBZone firms in the specific industry categories.

e. Small Developer Ownership Construction Program

The Director of Economic Development is authorized and directed to establish a work group consisting of selected members of the Small Business Office staff and the Small Business Advocacy Committee to research “best practices” in small developer program models, and to then establish a Small Developer Ownership Construction Program that, at a minimum, provides for the following:

- 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 TIFs for SBE real estate development firms that have prime contracting experience; and
- iii) Specifications in Request for Proposals for City-financed development projects that require offerors 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 Director of Economic Development is authorized and directed to establish a work group consisting of selected members of the Small Business Office staff and the Small Business Advocacy Committee, representatives of the surety industry, and representatives of local construction trade associations to research “best practices” in bonding assistance program models, and to then establish a Bonding Assistance Program that, at a minimum, provides for the following:

- 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 bidders 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 enable SBE bidders to obtain 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 bidders.

g. SBE Mentor- Protégé Program

The Director of Economic Development is authorized and directed to establish a work group consisting of selected members of the Small Business Office staff and the Small Business Advocacy Committee, representatives of the surety industry, and representatives of local construction trade associations to research “best practices” in mentor-protégé program models, and to then establish an SBE Mentor-Protégé Program that, at a minimum, provides for the following:

- 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 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 Emerging Contractor 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 plan.

2. Race – Neutral Architectural & Engineering Programs

The Goal Setting Committee shall consider the application of one or more of the following race-neutral Affirmative Procurement Initiatives for each City Architectural & Engineering contract:

a. SBE Vendor Rotation

For City architectural & engineering contracts that are not procured by Formal Solicitation, the Goal Setting Committee may require that only SBE architectural & engineering firms are solicited to submit proposals. The SBE firms selected for solicitation shall be determined through rotation of SBE architectural & engineering firms from the City's directory of SBE firms for each contract. The sequential SBE Vendor Rotation shall ensure that no SBE receives repeat solicitations before all other SBE firms have been solicited at least once.

b. Evaluation Preference for SBE Prime Bidders

The Goal Setting Committee may apply this Affirmative Procurement Initiative to Formal Solicitations on City of San Antonio Architectural & Engineering contracts that are issued pursuant to a "Best Value Contracting" method of procurement wherein criteria other than price are factored into the selection process. Under the terms of this Evaluation Preference, the Goal Setting Committee 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 architectural & engineering proposals submitted by those certified SBE architectural & engineering firms.

c. SBE Reserve Program

- i) The Goal Setting Committee may apply the SBE Reserve Program to architectural & engineering contracts that are not procured by Formal Solicitation for solicitation of proposals exclusively from SBE architectural & engineering firms. In determining whether a particular contract is eligible for the SBE Reserve Program, the Goal Setting Committee shall consider whether the "best value" to be obtained by the City includes the following factors:
 - (a) Whether there is a need to increase the capacity of certified SBEs that are likely to enhance competition for future contracts of this type;
 - (b) Whether there are at least three SBEs that are available and capable to participate in the SBE Reserve Program for this contract;
 - (c) The degree of underutilization of the SBE prime contractors in the specific industry category; and
 - (d) The extent to which the City of San Antonio's SBE prime contractor utilization goals are being achieved for this category of contracting.
- ii) If a responsive and responsible bid or response is not received for a contract that has been designated for the SBE Reserve Program, or the parties cannot negotiate a price after selection, the contract shall be removed from the SBE Reserve Program and re-bid.

- iii) Any SBE awarded a contract under this SBE Reserve Program shall not subcontract in excess of 49% of the prime contract to non-SBE firms.

3. Race-Neutral Professional Services Programs

The Goal Selection Committee shall consider the application of one or more of the following race-neutral Affirmative Procurement Initiatives for each City professional services contracts:

a. SBE Reserve (Contracts That Do Not Require a Formal Solicitation)

- i) The Goal Setting Committee may apply the SBE Reserve Program to professional services contracts that do not require a Formal Solicitation for solicitation of proposals exclusively from SBE professional services firms. In determining whether a particular contract is eligible for the SBE Reserve Program, the Goal Setting Committee shall consider whether the “best value” to be obtained by the City includes the following factors:
 - (a) Whether there is a need to increase the capacity of certified SBEs that are likely to enhance competition for future contracts of this type;
 - (b) Whether there are at least three SBEs that are available and capable to participate in the SBE Reserve Program for this contract;
 - (c) The degree of underutilization of the SBE prime contractors in the specific industry category; and
 - (d) The extent to which the City of San Antonio's SBE prime contractor utilization goals are being achieved for this category of contracting.
- ii) If a responsive and responsible bid or response is not received for a contract that has been designated for the SBE Reserve Program, or the apparent low bid is determined to be too high, the contract shall be removed from the SBE Reserve Program and re-bid.
- iii) Any SBE awarded a contract under this SBE Reserve Program shall not subcontract in excess of 49% of the prime contract to non-SBE firms.

b. SBE Preference for Small Financial Services Consulting Contracts

The evaluation criteria for requests for proposals issued on behalf of the City Finance

Department for the selection of firms providing such financial services as investment banking and management of investment portfolios, funds management, etc., shall include evaluation preferences for SBE financial services consulting firms equal to 10 percent of the total Points available for purposes of scoring and ranking of proposals.

c. SBE Subcontracting Goals on Large Contracts

- i) The Small Business Office in association with the City contracting agencies issuing Formal Solicitations for professional services shall:
 - (a) Conduct periodic seminars and workshops to advise all prospective bidders of upcoming professional services contract opportunities at the City;
 - (b) Absent a waiver issued by the City Manager for extraordinary circumstances, post all formal RFPs for professional services contracts on the City of San Antonio web-site at least three weeks before the proposal due date;
 - (c) Send e-mail alerts regarding Formal Solicitations for professional service contract opportunities to all professional services firms that are registered on the City's Centralized Bidder Registration System and are listed under the appropriate NAICS or NIGP industry codes for the contract. These e-mail alerts shall contain brief descriptions of the contract opportunities and links to the web page where the full text of the RFPs are posted for downloading purposes.
- ii) On large professional services contracts estimated by the City to be valued in excess of \$500,000, the Goal Setting Committee may, 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 prospective offeror on such a City of San Antonio contract shall submit within its proposal such documentation as required by the City that provides:
 - (a). The name of the SBE subcontractor or SBE subcontractors it intends to use on the project;
 - (b). The percentage of prime contract dollars and the absolute dollar value of subcontracting services to be provided by each SBE; and
 - (c). A description of the work that each SBE subcontractor shall perform.
- iii) A bidder or offeror may request a full or partial waiver of this mandatory subcontracting requirement from the Small Business Office for good cause by submitting the S/M/WBE Unavailability Certification form to the Small Business Office at the time of bid. Under no circumstances shall a waiver of a mandatory subcontracting requirement be granted without submission of adequate documentation of Good Faith Efforts by the bidder and

careful review by the Small Business Office. The Small Business Office shall base its determination on a waiver request on the following criteria:

- (a) Whether the requestor of the waiver has made Good Faith Efforts to subcontract with qualified and available SBEs;
 - (b) Whether subcontracting would be inappropriate and/or not provide a “Commercially Useful Function” under the circumstances of the contract; and
 - (c) Whether there are no certified SBE firms that are qualified and available to provide the goods or services required.
- iv) In the absence of a waiver granted by the Small Business Office, failure of a Prime Contractor to commit in its bid or proposal to satisfying the SBE subcontracting goal shall render its bid or proposal non-responsive.
 - v) In the absence of a waiver granted by the Small Business Office, failure of a Prime Contractor to attain a subcontracting goal for SBE participation in the performance of its contract shall be grounds for termination of its contract with the City of San Antonio, debarment from performing future City of San Antonio contracts for a period not to exceed 3 years, and / or any other remedies available under the terms of its contract with the City of San Antonio or under the law.
 - vi) A Prime Contractor is required to notify and obtain written approval from the Small Business Office in advance of any reduction in subcontract scope, termination, unless the reduction or termination is changed in overall contract scope, initiated by City, or substitution for a designated SBE Subcontractor.

d. SBE Joint Venture Incentives

- i) For professional services Formal Solicitation contracts valued by the City in excess of \$500,000, and for which the City will undertake request for proposals (“RFP”) or “Best Value Contracting” method of procurement and subsequent evaluation of bids or proposals, the Goal Setting Committee may, on a contract-by-contract basis, apply an Evaluation Preference for SBE joint venture partners equal to up to 20 percent 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:
 - (a) Twenty percent of total Points for joint ventures wherein the SBE joint venture partner is performing 50% or greater of the overall contract value;
 - (b) Fifteen percent of total Points for joint ventures wherein the SBE joint venture partner is performing from 40% up to 49% of the overall contract value;
 - (c) Ten percent of total Points for joint ventures wherein the SBE joint venture partner is performing from 25 percent up to 39 percent of the overall contract value;

- (d) Five percent of total Points for joint ventures wherein the SBE joint venture partner is performing from 10 percent up to 24 percent of the overall contract value; and
 - (e) Zero percent of total Points for joint ventures wherein the SBE joint venture partner is performing less than 10 percent of the overall contract value.
- ii) A factor to be considered by the GSC in selecting this Affirmative Procurement Initiative shall include the relative availability of SBE firms to perform commercially useful functions on the specific contract.
 - iii.) A prospective joint venture offeror on such a City of San Antonio professional services contract shall submit within its proposal such documentation as required by the City that includes, but is not limited to:
 - (a) the name of the SBE joint venture partner that will participate on the project;
 - (b) the percentage of prime contract dollars and the absolute dollar value of the services to be provided by the SBE joint venture partner; and
 - (c) a description of the work that each SBE joint venture partner shall be responsible for performing under the terms of the joint venture agreement.

e. SBE Qualified Panel Rotation

- i) For repetitive City professional services contracts that do not require Formal Solicitation, the Goal Setting Committee may require the City contracting agency to establish a pre-selected panel of qualified SBE professional services firms that are on standby to perform such contracts. For this Affirmative Procurement Initiative, the selection process shall be as follows:
 - (a) The City contracting agency shall establish a panel of qualified SBE professional services firms by issuing a Request for Qualifications (RFQ) to those SBE professional services firms that have registered their availability to provide such services on the Centralized Bidder Registration system;
 - (b) The City contracting agency shall then review and evaluate the RFQ responses to select a panel of no less than three, but no more than ten, of the most qualified SBE professional services firms;
 - (c) Each SBE professional services firm serving on the pre-qualified panel shall commit to remaining available to provide such professional services on an on-call basis for at least two years;

- (d) As professional services needs arise for the City contracting agency, it shall rotate through the SBE qualified panel of professional services firms to solicit the next SBE firm on the panel list for purposes of negotiating an informal contract to perform the professional services. The sequential SBE Qualified Panel Rotation shall be administered in a fashion such that no SBE firm receives repeat solicitations until all other SBE Qualified Panel members have been solicited in order.
- ii) In determining categories of informal professional services contracts to be designated for this Affirmative Procurement Initiative, the Goal Setting Committee shall consider the following factors:
- (a) Whether the particular type of professional service (e.g., surveying, real estate services, accounting, lab analysis) is typically contracted for in increments below that requiring Formal Solicitation;
 - (b) Whether there is ample availability of at least three to ten qualified SBE professional services firms that can provide the services;
 - (c) Whether the nature of the needed professional services is routine enough that a minimally qualified firm could adequately perform such services.

4. Race-Neutral Other Services Programs

The Goal Selection Committee shall consider the application of one or more of the following race-neutral Affirmative Procurement Initiatives for each City “Other Services” contracts:

a. SBE Vendor Rotations

For informal City Other Services contracts that do not require Formal Solicitation, the Goal Setting Committee may require that the City contracting agency only solicit SBE Other Services firms to submit proposals. The SBE firms selected for solicitation for each contract shall be determined through rotation of Other Services firms from the City’s directory of SBE firms. The sequential SBE Vendor Rotation shall be administered in a fashion such that no SBE firm receives repeat solicitations until all other SBE Other Services firms have been solicited.

b. SBE Evaluation Preference for Prime Bidders

The Goal Setting Committee may apply this Affirmative Procurement Initiative 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 Goal Setting Committee 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.

c. SBE Mentor-Protégé Program

The Director of Economic Development is authorized and directed to establish a work group consisting of selected members of the Small Business Office staff and the Small Business Advocacy Committee, representatives business-oriented educational institutions, technical assistance organizations, and Chambers of Commerce to research “best practices” in mentor-protégé program models, and to then establish an SBE Mentor-Protégé Program that, at a minimum, provides for the following:

- 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 incentives for City-approved mentor-protégé teams including such incentives evaluation preferences for mentor-protégé team members on “best value” projects, and accelerated payment of invoices.
- iv) Periodic reports from mentors and protégés regarding progress in achieving objectives and elements of mentor-protégé plan.

5. Race-Neutral Goods and Supplies Programs

The Goal Selection Committee shall consider the application of one or more of the following race-neutral Affirmative Procurement Initiatives for each City “Goods & Supplies” contracts:

a. SBE Vendor Rotations

For City Goods & Supplies contracts valued above \$3,000, but below that amount required to be bid by state law, the Goal Setting Committee may require that the City contracting agency only solicit SBE Goods & Supplies firms to submit bids or quotes. The SBE firms selected for solicitation for each contract shall be determined through rotation of Goods & Supplies firms listed in the City’s directory of SBE firms. The sequential SBE Vendor Rotation shall be administered in a fashion such that no SBE firm receives repeat solicitations until all other SBE Supplies & Goods firms have been solicited.

b. SBE Reserve for Prime Supply Contracts

- i) The Goal Setting Committee may apply the SBE Reserve for Prime Supply Contracts Program to Goods & Supplies contracts valued at greater than \$3,000, but less than the amount required to be bid by state law, for solicitation of bids or quotes exclusively from SBE Goods & Supplies firms. In determining whether a particular contract is eligible for the SBE Reserve Program, the Goal Setting Committee shall consider whether the “best value” to be obtained by the City includes the following factors:
 - (a) Whether there is a need to increase the capacity of certified SBEs that are likely to enhance competition for future contracts of this type;
 - (b) Whether there are at least three SBEs that are available and capable to participate in the SBE Reserve Program for this contract;
 - (c) The degree of underutilization of the SBE supply firms in the specific industry category; and
 - (d) The extent to which the City of San Antonio's SBE Goods & Supplies utilization goals are being achieved for this category of contracting.
- ii) If a responsive and responsible bid or quote is not received for a contract that has been designated for the SBE Reserve Program, or the apparent low bid is determined to be too high, the contract shall be removed from the SBE Reserve Program and re-bid.
- iii) Any SBE awarded a contract under this SBE Reserve Program shall not subcontract in excess of 49% of the prime contract to non-SBE firms.

c. SBE Joint Venture Incentives

- i) For Goods & Supplies contracts valued by the City in excess of \$500,000, the Goal Setting Committee may, on a contract-by-contract basis, apply the following Joint Venture Incentives for joint venture bidders wherein SBE joint venture partners are responsible for supplying no less than 40 percent of the total value of the contract:
 - (a) 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 percent of the value of the joint venture supply contract during the contract's initial year; provided that the initial solicitation provided for possible extensions;

- (b) Accelerated payment of invoices by the City (i.e., electronic funds transfers and significant reduction in processing time of invoices).
- ii) A factor to be considered by the GSC in selecting this Affirmative Procurement Initiative shall include the relative availability of SBE firms to perform commercially useful functions as suppliers on the specific contract.
- iii.) A prospective SBE joint venture bidder on such a City of San Antonio Goods & Supplies contract shall submit within its bid such documentation as required by the City that includes, but is not limited to:
 - (a) The name of the SBE joint venture partner that will participate on the contract;
 - (b) The percentage of prime contract dollars and the absolute dollar value of the services to be provided by the SBE joint venture partner; and
 - (c) A description of the work and responsibilities that each joint venture partner shall perform under the terms of its joint venture agreement.

6. Race-Conscious Construction Programs

The Goal Setting Committee shall review each prospective City construction contract Formal Solicitation in advance of its public release and advertisement, and shall make a determination whether to apply any of the race-conscious Affirmative Procurement Initiatives ('a.' through 'c.' below) to those construction bid documents based upon the following criteria:

- (a) Whether the most recent data on M/WBE utilization in the absence of race-conscious Affirmative Procurement Initiatives indicate that construction contracts of this type have exhibited significant disparities in the utilization of M/WBE subcontractors and/or M/WBE prime contractors;
- (b) 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;
- (c) Whether a particular Affirmative Procurement Initiative is the least burdensome available remedy to non-MBE bidders that is narrowly tailored and that can

effectively eliminate the disparities in the utilization of M/WBEs in construction contracts; and

- (d) Whether the particular Affirmative Procurement Initiative is appropriate for the specific type of construction contract being bid. Whenever the Goal Setting Committee uses its discretion to apply any of the following race-conscious Affirmative Procurement Initiatives to construction contracts, it shall provide an explanation in the bid documents of its reasons for doing so based upon its determinations pursuant to these criteria. In making such determinations, the Goal Setting Committee may also take into consideration the experiences of other jurisdictions within the City of San Antonio's relevant market for construction services.

a. Annual M/WBE Aspirational Goals

- i) The Goal Setting Committee may establish a non-mandatory annual aspirational percentage goal for overall M/WBE prime and subcontract participation on City of San Antonio construction contracts.
- ii) The Annual Aspirational Goal for M/WBE participation in City of San Antonio contracts has initially been established at 36 percent based upon the combined minority- and women-owned business enterprise availability by industry in accordance with its 2009 disparity study findings.
- iii) 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 centralized bidder registration system.
- iv) 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 Affirmative Procurement Initiatives being applied pursuant to this Policy.
- v) Annual aspirational goals may be stated only in those City contract bid 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 Subcontracting Plans

- i) The Goal Setting Committee may, on a contract-by-contract basis, require that a predetermined percentage of a specific contract, be subcontracted to eligible

M/WBEs and/or Emerging M/WBEs. Factors to be considered by the GSC in making this determination shall include the relative availability of M/WBE firms or Emerging M/WBEs to perform commercially useful functions on the specific contract. [For purposes of the remainder of this subsection of the Ordinance only, the term “M/WBE” shall be inclusive of “Emerging M/WBE”].

- ii) A prospective bidder on a City of San Antonio contract shall submit at the time of bid such documentation as required by the City that provides:
 - (a). the name of the M/WBE subcontractor or M/WBE subcontractors it intends to use on the project;
 - (b). the percentage of prime contract dollars and the absolute dollar value of subcontracting services to be provided by each M/WBE; and
 - (c). a description of the work that each M/WBE subcontractor shall perform.
- iii) A bidder may request a full or partial waiver of this mandatory subcontracting requirement from the Small Business Office for good cause by submitting the S/M/WBE Unavailability Certification form to the Small Business Office at the time of bid. Under no circumstances shall a waiver of a mandatory subcontracting requirement be granted without submission of adequate documentation of Good Faith Efforts by the bidder and careful review by the Small Business Office. The Small Business Office shall base its determination on a waiver request on the following criteria:
 - (a) Whether the requestor of the waiver has made Good Faith Efforts to subcontract with qualified and available M/WBEs;
 - (b) Whether subcontracting would be inappropriate and/or not provide a “Commercially Useful Function” under the circumstances of the contract; and
 - (c) Whether there are no certified M/WBE firms that are qualified and available to provide the goods or services required.
- iv) In the absence of a waiver granted by the Small Business Office, failure of a Prime Contractor to commit in its bid or proposal to satisfying the M/WBE subcontracting goal shall render its bid or proposal non-responsive.
- v) In the absence of a waiver or subcontractor substitution pre-approval granted by the Small Business Office, failure of a Prime Contractor to attain a subcontracting goal for M/WBE participation in the performance of its contract shall be grounds for termination of its contract with the City of San Antonio, debarment from performing future City of San Antonio contracts for a period not to exceed 3 years, and / or any other remedies available under the terms of its contract with the City of San Antonio or under the law.

- vi) A Prime Contractor is required to notify and obtain written approval from the Small Business Office in advance of any reduction in subcontract scope unless such reduction in scope is the direct and immediate result of a change in scope mandated by the City, termination, or substitution for a designated M/WBE Subcontractor.
- vii) Upon award of the prime contract to a bidder, 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 Small Business Office shall audit 100% of the reported payments to M/WBE and non-MBE subcontractors to ensure that the prime contractors' reported subcontract participation is accurate. Absent a waiver from the Small Business Office, a prime contractor's failure to reach the required level of MBE subcontracting shall be considered a material breach of contract. No final retainage on the prime contract shall be released to the prime contractor, and no new City of San Antonio 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

- i) On any City economic development projects that are financed through Tax Increment Financing, the Goal Setting Committee may impose any M/WBE participation requirements and Affirmative Procurement Initiatives described herein under Section III.D.6. of this Ordinance.
- ii) Failure on the part of any developer to comply with such Affirmative Procurement Initiatives shall subject the developer to loss of part or all of Tax Increment Financing provided by the City. The initial determination to invoke this sanction shall be made by the Director of Economic Development in consultation with the Manager of the Small Business Office, and shall be approved by the City Manager.

d. Segmented M/WBE Goals

The Goal Setting Committee 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 Women Business Enterprise segment based upon relative availability. For construction contracts, the Goal Setting Committee may establish Segmented Goals for construction subcontracting for the following Minority Group Members:

- (a) African-Americans Business Enterprises (AABEs);
- (b) Asian Business Enterprises (ABE); and

- (c) Native American Business Enterprises (NABE).

e. M/WBE Mentor-Protégé Program

The Director of Economic Development is authorized and directed to establish a work group consisting of selected members of the Small Business Office staff and the Small Business Advocacy Committee, representatives of the surety industry, and representatives of local construction trade associations to research “best practices” in mentor-protégé program models, and to then establish an M/WBE Mentor-Protégé Program that, at a minimum, provides for the following:

- 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 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 Emerging M/WBE Subcontracting Program and the M/WBE evaluation preferences for mentor-protégé team members on “best value” projects, and accelerated permitting and / or expedited payment of invoices.
- iv) Periodic reports from mentors and protégés regarding progress in achieving objectives and elements of mentor-protégé plan.

7. Race-Conscious Architectural & Engineering Programs

The Goal Setting Committee shall review each prospective City Formal Solicitation for Architectural & Engineering services in advance of its public release and advertisement, and shall make a determination whether to apply any of the race-conscious Affirmative Procurement Initiatives (‘a’ through ‘d’ below) to those Architectural and Engineering services Formal Solicitation documents based upon the following criteria:

- (a) Whether the most recent data on M/WBE utilization in the absence of race-conscious Affirmative Procurement Initiatives indicate that architectural & engineering contracts of this type have exhibited significant disparities in the utilization of M/WBE subcontractors and/or M/WBE prime contractors;
- (b) 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;

- (c) Whether a particular Affirmative Procurement Initiative is the least burdensome available remedy to non-MBE bidders that is narrowly tailored and that can effectively eliminate the disparities in the utilization of M/WBEs in architectural & engineering contracts; and
- (d) Whether the particular Affirmative Procurement Initiative is appropriate for the specific type of architectural & engineering contract being bid. Whenever the Goal Setting Committee uses its discretion to apply any of the following race-conscious Affirmative Procurement Initiatives to architectural & engineering contracts, it shall provide an explanation in the bid documents of its reasons for doing so based upon its determinations pursuant to these criteria. In making such determinations, the Goal Setting Committee may also take into consideration the experiences of other jurisdictions within the City of San Antonio's relevant market for architectural & engineering services.

a. Annual Aspirational M/WBE Goals

- i) The Goal Setting Committee may establish a non-mandatory annual aspirational percentage goal for overall M/WBE prime and subcontract participation on City of San Antonio Architectural & Engineering contracts.
- ii) The Annual Aspirational Goal for M/WBE participation in City of San Antonio architectural & engineering contracts has initially been established at 34 percent based upon the combined minority- and women-owned business enterprise availability by industry in accordance with its 2009 disparity study findings.
- iii) 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 centralized bidder registration system.
- iv) 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 Affirmative Procurement Initiatives being applied pursuant to this Policy.
- v) Annual aspirational goals may be stated only in those City contract bid 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 Vendor Rotation

For City Architectural & Engineering contracts that do not require Formal Solicitation, the Goal

Setting Committee may require that the City contracting agency only solicit M/WBE Architectural & Engineering firms to submit bids or proposals. The M/WBE firms selected for solicitation for each contract shall be determined through rotation of Architectural & Engineering firms listed in the City's directory of M/WBE firms. The sequential M/WBE Vendor Rotation shall be administered in a fashion such that no M/WBE firm receives repeat solicitations until all other M/WBE Supplies & Goods firms have been solicited in order.

c. M/WBE Evaluation Preferences for Prime Bidders

The Goal Setting Committee may apply this Affirmative Procurement Initiative to Formal Solicitations for City Architectural & Engineering contracts that are issued pursuant to a "Best Value Contracting" method of procurement wherein criteria other than price are factored into the selection process. Under the terms of this Evaluation Preference, the Goal Setting Committee 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 Architectural & Engineering proposals submitted by those certified M/WBE Architectural & Engineering firms.

d. Segmented M/WBE Goals

The Goal Setting Committee may establish Segmented M/WBE Goals within the Annual Aspirational Goal for architectural & engineering 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 Women Business Enterprise segment based upon relative availability. For architectural & engineering contracts, the Goal Setting Committee may establish Segmented M/WBE Goals for the participation of the following Minority Group Members and women-owned business categories:

- (a) African-Americans Business Enterprises (AABEs);
- (b) Hispanic American Business Enterprises (HABEs);
- (c) Native American Business Enterprises (NABE); and
- (d) Women Business Enterprises (WBE).

8. Race-Conscious Professional Services Programs

The Goal Setting Committee 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 race-conscious Affirmative Procurement Initiatives ('a' through 'f' below) to those Professional Services bid documents based upon the following criteria:

- (a) Whether the most recent data on M/WBE utilization in the absence of race-

conscious Affirmative Procurement Initiatives indicate that professional services contracts of this type have exhibited significant disparities in the utilization of M/WBE subcontractors and/or M/WBE prime contractors;

- (b) 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;
- (c) Whether a particular Affirmative Procurement Initiative is the least burdensome available remedy to non-MBE bidders 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
- (d) Whether the particular Affirmative Procurement Initiative is appropriate for the specific type of professional services contract being bid. Whenever the Goal Setting Committee uses its discretion to apply any of the following race-conscious Affirmative Procurement Initiatives to professional services contracts, it shall provide an explanation in the bid documents of its reasons for doing so based upon its determinations pursuant to these criteria. In making such determinations, the Goal Setting Committee may also take into consideration the experiences of other jurisdictions within the City of San Antonio's relevant market for professional services.

a. Annual M/WBE Aspirational Goals

- i) The Goal Setting Committee may establish a non-mandatory annual aspirational percentage goal for overall M/WBE prime and subcontract participation on City of San Antonio Professional Services contracts.
- ii) The Annual Aspirational Goal for M/WBE participation in City of San Antonio architectural & engineering contracts has initially been established at 28 percent based upon the combined minority- and women-owned business enterprise availability by industry in accordance with its 2009 disparity study findings.
- iii) 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 centralized bidder registration system.
- iv) 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 Affirmative Procurement Initiatives being applied pursuant to this Policy.

- v) Annual aspirational goals may be stated only in those City contract bid 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 Pre-qualified Panel Rotation

- i) For repetitive City professional services contracts that do not require Formal Solicitation, the Goal Setting Committee may require the City contracting agency to establish a pre-selected a panel of qualified M/WBE professional services firms that are on standby to perform such contracts. For this Affirmative Procurement Initiative, the selection process shall be as follows:
 - (a) The City contracting agency shall establish a panel of qualified M/WBE professional services firms by issuing a Request for Qualifications (RFQ) to those M/WBE professional services firms that have registered their availability to provide such services on the Centralized Bidder Registration system;
 - (b) The City contracting agency shall then review and evaluate the RFQ responses to select a panel of no less than three, but no more than ten, of the most qualified M/WBE professional services firms;
 - (c) Each M/WBE professional services firm serving on the pre-qualified panel shall commit to remaining available to provide such professional services on an on-call basis for at least two years;
 - (d) As professional services needs arise for the City contracting agency, it shall rotate through the M/WBE qualified panel of professional services firms to solicit the next M/WBE firm or firms on the panel list for purposes of negotiating a contract to perform the professional services. The sequential M/WBE Qualified Panel Rotation shall be administered in a fashion such that no M/WBE firm receives repeat solicitations until all other M/WBE Qualified Panel members have been solicited in order.
- ii) In determining categories of informal professional services contracts to be designated for this Affirmative Procurement Initiative, the Goal Setting Committee shall consider the following factors:
 - (a) Whether the particular type of professional service (e.g., surveying, real estate services, accounting, lab analysis) is typically contracted for in increments that do not require Formal Solicitation;
 - (b) Whether there is ample availability of at least three to ten qualified M/WBE professional services firms that can provide the services;
 - (c) Whether the nature of the needed professional services is routine enough that a minimally qualified firm could adequately perform such services.

c. M/WBE Subcontracting Goals on Large Contracts

- i) The Small Business Office in association with the City contracting agencies issuing Requests for Proposals (“RFPs”) or other Formal Solicitations for professional services shall:
 - (a) Conduct periodic seminars and workshops to advise all prospective bidders of upcoming professional services contract opportunities at the City;
 - (b) Post all formal RFPs for professional services contracts on the City of San Antonio web site at least three weeks before the proposal due date;
 - (c) Send e-mail alerts regarding formal requests for proposals for professional service contract opportunities to all professional services firms that are registered on the City’s Centralized Bidder Registration System and are listed under the appropriate NAICS or NIGP industry codes for the contract. These e-mail alerts shall contain brief descriptions of the contract opportunities and links to the web page where the full text of the RFPs are posted for downloading purposes.
- ii) On large professional services contracts estimated by the City to be valued at or above \$500,000, the Goal Setting Committee may, on a contract-by-contract basis, require that a predetermined percentage of a specific professional services contract 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 offeror on such a City of San Antonio contract shall submit within its proposal such documentation as required by the City that provides:
 - (a). The name of the M/WBE subcontractor or M/WBE subcontractors it intends to use on the project;
 - (b). The percentage of prime contract dollars and the absolute dollar value of subcontracting services to be provided by each M/WBE; and
 - (c). A description of the work that each M/WBE subcontractor shall perform.
- iii) A bidder or offeror may request a full or partial waiver of this mandatory subcontracting requirement from the Small Business Office for good cause by submitting the S/M/WBE Unavailability Certification form to the Small Business Office at the time of bid. Under no circumstances shall a waiver of a mandatory subcontracting requirement be granted without submission of adequate documentation of Good Faith Efforts by the bidder and

careful review by the Small Business Office. The Small Business Office shall base its determination on a waiver request on the following criteria:

- (a) Whether the requestor of the waiver has made Good Faith Efforts to subcontract with qualified and available M/WBEs;
 - (b) Whether subcontracting would be inappropriate and/or not provide a “Commercially Useful Function” under the circumstances of the contract; and
 - (c) Whether there are no certified M/WBE firms that are qualified and available to provide the goods or services required.
- iv) In the absence of a waiver granted by the Small Business Office, failure of a Prime Contractor to commit in its bid or proposal to satisfying the M/WBE subcontracting goal shall render its bid or proposal non-responsive.
 - v) In the absence of a waiver granted by the Small Business Office, failure of a Prime Contractor to attain a subcontracting goal for M/WBE participation in the performance of its contract shall be grounds for termination of its contract with the City of San Antonio, debarment from performing future City of San Antonio contracts for a period not to exceed 3 years, and / or any other remedies available under the terms of its contract with the City of San Antonio or under the law.
 - vi) A Prime Contractor is required to notify and obtain written approval from the Small Business Office in advance of any reduction in subcontract scope, termination, or substitution for a designated M/WBE Subcontractor.

d. M/WBE Joint Venture Incentives

- i) For professional services contracts valued by the City in excess of \$500,000, and for which the City will undertake Formal Solicitations, the Goal Setting Committee may, on a contract-by-contract basis, apply an Evaluation Preference for M/WBE joint venture partners equal to up to 20 percent 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:
 - (a) Twenty percent of total Points for joint ventures wherein the M/WBE joint venture partner is performing 50% or greater of the overall contract value;
 - (b) Fifteen percent 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;

- (c) Ten percent of total Points for joint ventures wherein the M/WBE joint venture partner is performing from 25 percent up to 39 percent of the overall contract value;
 - (d) Five percent of total Points for joint ventures wherein the M/WBE joint venture partner is performing from 10 percent up to 24 percent of the overall contract value; and
 - (e) Zero percent of total Points for joint ventures wherein the M/WBE joint venture partner is performing less than 10 percent of the overall contract value.
- ii) A factor to be considered by the GSC in selecting this Affirmative Procurement Initiative shall include the relative availability of M/WBE firms to perform commercially useful functions on the specific contract.
 - iii.) A prospective joint venture offeror on such a City of San Antonio professional services contract shall submit within its proposal such documentation as required by the City that includes, but is not limited to:
 - (a) the name of the SBE joint venture partner that will participate on the project;
 - (b) the percentage of prime contract dollars and the absolute dollar value of the services to be provided by the SBE joint venture partner; and
 - (c) a description of the work that each SBE joint venture partner shall be responsible for performing under the terms of the joint venture agreement.

e. Evaluation Preference for M/WBE Prime Bidders

The Goal Setting Committee may apply this Affirmative Procurement Initiative to Formal Solicitations for City Professional 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 Goal Setting Committee 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.

f. M/WBE Mentor-Protégé Program

The Director of Economic Development is authorized and directed to establish a work group consisting of selected members of the Small Business Office staff and the Small Business Advocacy Committee, and representatives of local trade associations and Chambers of Commerce to research “best practices” in mentor-protégé program models, and to then establish an M/WBE Mentor-Protégé Program that, at a minimum, provides for the following:

- 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 incentives for City-approved mentor-protégé teams including such incentives as eligibility for participation in the Emerging M/WBE Subcontracting Program and 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 plan.

9. Race-Conscious Other Services Programs

The Goal Setting Committee shall review each prospective City Other Services (i.e., non-professional services) contract bid document in advance of its public release and advertisement, and shall make a determination whether to apply any of the race-conscious Affirmative Procurement Initiatives (‘a’ through ‘d’ below) to those Other Services bid documents based upon the following criteria:

- (a) Whether the most recent data on M/WBE utilization in the absence of race-conscious Affirmative Procurement Initiatives 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;
- (b) 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;
- (c) Whether a particular Affirmative Procurement Initiative is the least burdensome available remedy to non-MBE bidders that is narrowly tailored and that can effectively eliminate the disparities in the utilization of M/WBEs in Other Services contracts; and
- (d) Whether the particular Affirmative Procurement Initiative is appropriate for the specific type of Other Services contract being bid. Whenever the Goal Setting Committee uses its discretion to apply any of the following race-conscious Affirmative Procurement Initiatives to “other services” contracts, it shall provide an

explanation in the bid documents of its reasons for doing so based upon its determinations pursuant to these criteria. In making such determinations, the Goal Setting Committee may also take into consideration the experiences of other jurisdictions within the City of San Antonio's relevant market for professional services.

a. Annual M/WBE Aspirational Goals

- i) The Goal Setting Committee may establish a non-mandatory annual aspirational percentage goal for overall M/WBE prime contract participation on City of San Antonio Other Services contracts.
- ii) The Annual Aspirational Goal for M/WBE participation in City of San Antonio other services contracts has initially been established at 20 percent based upon the combined minority- and women-owned business enterprise availability by industry in accordance with its 2009 disparity study findings.
- iii) 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 centralized bidder registration system.
- iv) 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 Affirmative Procurement Initiatives being applied pursuant to this Policy.
- v) Annual aspirational goals may be stated only in those City contract bid 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 Mentor-Protégé Program

The Director of Economic Development is authorized and directed to establish a work group consisting of selected members of the Small Business Office staff and the Small Business Advocacy Committee, and representatives of local trade associations and Chambers of Commerce to research "best practices" in mentor-protégé program models, and to then establish an M/WBE Mentor-Protégé Program that, at a minimum, provides for the following:

- 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 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 Pre-qualified Panel Rotation 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 plan.

c. M/WBE Pre-qualified Panel Rotation

- i) For repetitive City Other Services contracts valued at greater than \$3,000, but below the amount required to be bid by Formal Solicitation under state law, the Goal Setting Committee may require the City contracting agency to establish a pre-selected a panel of qualified M/WBE Other Services firms that are on standby to perform such contracts. For this Affirmative Procurement Initiative, the selection process shall be as follows:
 - (a) The City contracting agency shall establish a panel of qualified M/WBE Other Services firms by issuing a Request for Qualifications (RFQ) to those M/WBE Other Services firms that have registered their availability to provide such services on the Centralized Bidder Registration system;
 - (b) The City contracting agency shall then review and evaluate the RFQ responses to select a panel of no less than three, but no more than ten, of the most qualified M/WBE “Other Services” firms;
 - (c) Each M/WBE Other Services firm serving on the pre-qualified panel shall commit to remaining available to provide such professional services on an on-call basis for at least two years;
 - (d) As Other Services needs arise for the City contracting agency, it shall rotate through the M/WBE qualified panel of Other Services firms to solicit the next M/WBE firm on the panel list for purposes of negotiating an informal contract to perform the other services. The sequential M/WBE Pre-qualified Panel Rotation shall be administered in a fashion such that no M/WBE firm receives repeat solicitations until all other M/WBE Pre-Qualified Panel members have been solicited in order.
- ii) In determining categories of informal professional services contracts to be designated for this Affirmative Procurement Initiative, the Goal Setting Committee shall consider the following factors:
 - (a) Whether the particular type of other service (e.g., landscaping services, courier services, custodian services) is typically contracted for in increments that do not require

Formal Solicitation;

- (b) Whether there is ample availability of at least three to ten qualified M/WBE “Other Services” firms that can provide the services;
- (c) Whether the nature of the needed services is routine enough that a minimally qualified firm could adequately perform such services.

d. Segmented M/WBE Goals

The Goal Setting Committee 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 Women Business Enterprise segment based upon relative availability. For Other Services contracts, the Goal Setting Committee may establish Segmented M/WBE Goals for the participation of the following Minority Group Members categories:

- (a) African-Americans Business Enterprises (AABEs);
- (b) Asian Business Enterprises (ABEs); and
- (c) Native American Business Enterprises (NABE);

10. Race-Conscious Goods & Supplies Programs

The Goal Setting Committee shall review each prospective Formal Solicitation for City Goods & Supplies contract bid document in advance of its public release and advertisement, and shall make a determination whether to apply any of the race-conscious Affirmative Procurement Initiatives (‘a’ through ‘d’ below) to those Goods & Supplies bid documents based upon the following criteria:

- (a) Whether the most recent data on M/WBE utilization in the absence of race-conscious Affirmative Procurement Initiatives 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;
- (b) 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 vendors based upon past contract award and payment data;
- (c) Whether a particular Affirmative Procurement Initiative is the least burdensome

available remedy to non-MBE bidders that is narrowly tailored and that can effectively eliminate the disparities in the utilization of M/WBEs in Goods & Supplies contracts; and

- (d) Whether the particular Affirmative Procurement Initiative is appropriate for the specific type of Goods & Supplies contract being bid. Whenever the Goal Setting Committee uses its discretion to apply any of the following race-conscious Affirmative Procurement Initiatives to “goods & supplies” contracts, it shall provide an explanation in the bid documents of its reasons for doing so based upon its determinations pursuant to these criteria. In making such determinations, the Goal Setting Committee may also take into consideration the experiences of other jurisdictions within the City of San Antonio’s relevant market for goods & supplies.

a. Annual M/WBE Aspirational Goals

- i) The Goal Setting Committee may establish a non-mandatory annual aspirational percentage goal for overall M/WBE prime contract participation on City of San Antonio Goods & Supplies contracts.
- ii) The Annual Aspirational Goal for M/WBE participation in City of San Antonio “Goods & Supplies” contracts has initially been established at 27 percent based upon the combined minority- and women-owned business enterprise availability by industry in accordance with its 2009 disparity study findings.
- iii) 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 centralized bidder registration system.
- iv) 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 Affirmative Procurement Initiatives being applied pursuant to this Policy.
- v) Annual aspirational goals may be stated only in those City contract bid 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 Vendor Rotation

For informal City Goods & Services contracts that do not require a Formal Solicitation , the Goal Setting Committee may require that the City contracting agency only solicit M/WBE Goods & Services firms to submit bids or proposals. The M/WBE firms selected for solicitation for each contract shall be determined through rotation of Goods & Services firms listed in the City’s

directory of M/WBE firms. The sequential M/WBE Vendor Rotation shall be administered in a fashion such that no M/WBE firm receives repeat solicitations until all other M/WBE Supplies & Goods firms have been solicited in order. .

c. M/WBE Joint Venture Incentives

- i) For Goods & Supplies contracts valued by the City in excess of \$500,000, the Goal Setting Committee may, on a contract-by-contract basis, apply the following Joint Venture Incentives for joint venture bidders wherein M/WBE joint venture partners are responsible for supplying no less than 40 percent of the total value of the contract:
 - (a) 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 percent of the value of the joint venture supply contract during the contract's initial year, if the initial solicitation included option years;
 - (b) Accelerated payment of invoices by the City (i.e., electronic funds transfers and significant reduction in processing time of invoices).
- ii) A factor to be considered by the GSC in selecting this Affirmative Procurement Initiative shall include the relative availability of M/WBE firms to perform commercially useful functions as suppliers on the specific contract.
- iii.) A prospective M/WBE joint venture bidder on such a City of San Antonio Goods & Supplies contract shall submit within its bid such documentation as required by the City that includes, but is not limited to:
 - (a) The name of the M/WBE joint venture partner that will participate on the contract;
 - (b) 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
 - (c) A description of the work and responsibilities that each joint venture partner shall perform under the terms of its joint venture agreement.

d. Segmented M/WBE Goals

The Goal Setting Committee may establish Segmented M/WBE Goals within the Annual Aspirational Goal for Goods & Supplies 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 based upon relative availability. For Goods & Supplies contracts, the Goal Setting Committee may establish Segmented M/WBE Goals for the participation of the following Minority Group Members categories:

- (a) Hispanic American Business Enterprises (HABE); and

- (b) Native American Business Enterprises (NABE).

E. S/M/WBE Program Administration

1. Small Business Office Duties and Responsibilities

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

- (1) Report to the City of San Antonio and the public on at least an annual basis as to the City of San Antonio's progress towards satisfying the S/M/WBE Program purposes and policy objectives;
- (2) 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;
- (3) Have advance substantive input in a contract specification review process consistent with this Ordinance to ensure that contract bid specifications are not unnecessarily restrictive and unduly burdensome to small, and minority/women-owned businesses;
- (4) 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 of San Antonio, and the relative effectiveness of various Affirmative Procurement Initiatives in addressing those barriers;
- (5) Monitor and support the implementation of the S/M/WBE Program Policy, and propose modifications to appropriate City officials as necessary to fully achieve the purpose and objectives of the Ordinance;
- (6) Provide public education and advocacy internally and externally regarding the purposes and objectives of the S/M/WBE policy;
- (7) Develop, maintain, and distribute directories of certified SBEs, Emerging Contractors, M/WBEs, and Emerging M/WBEs;
- (8) Provide seminars and technical assistance to S/M/WBE firms to enhance their ability to effectively compete for City contracts;

- (9) Investigate alleged violations of this Ordinance and provide written recommendations to appropriate authorities for remedial action and imposition of sanctions and penalties when necessary;
- (10) Determine prime contractor compliance with S/M/WBE program requirements prior to contract award presentation to City Council and prior to contracting agency release of final retainage;
- (11) Oversee the maintenance of an accurate contract performance reporting system; and
- (12) Providing staff support for the Small Business Advisory Committee (SBAC) and the Goal Setting Committee (GSC).

2. Goal Setting Committee

The Goal Setting Committee (GSC) is to be appointed and chaired by the City Manager (or the City Manager's designee). The GSC shall include the Small Business Office Manager, and the Director of Purchasing & General Services (or designee), and a representative of the City contracting agency (as appointed by the City Manager) whose contract(s) are under consideration by the GSC. At a minimum, the Goal Setting Committee **shall**:

- (1) Meet as often as it deems necessary to accomplish its duties as outlined in this Ordinance, but not less than once monthly;
- (2) Formulate, recommend to the City Manager, and implement additional rules and procedures for S/M/WBE Program goal setting and other aspects of its duties in selecting and applying specific Affirmative Procurement Initiatives to City bids and contracts in an efficient and effective manner; and
- (3) Monitor and support the implementation of the S/M/WBE Policy.

3. Annual Aspirational Goals

The Goal Setting Committee 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 of San Antonio. This Annual Aspirational Goal is to be established each year for Construction, Architecture & Engineering, Professional Services, Other Services, and Goods & Supplies contracts. The Annual Aspirational Goal for M/WBE participation in City of San Antonio contracts shall be established in each of these categories based upon the combined minority- and women-owned business enterprise availability by industry in accordance with its related factual predicate. These annual aspirational goal 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 centralized bidder registration 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 Affirmative Procurement Initiatives 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 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 subcontract 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 bidder data.

5. Periodic Review of Factual Predicate

No later than October 30, 2011, and every four years thereafter, the City shall undertake an independent assessment of its factual predicate for this S/M/WBE Policy by issuing an RFP for the performance of a disparity study update regarding the relevant marketplace (including public sector and private sector contracting) from which the City purchases its goods and services. The selected consultant(s) shall conduct such disparity study updates in accordance with relevant and current case law and industry standards regarding the selection of best available data sources and appropriate methodologies in analyzing the relevant marketplace and any barriers to M/WBE participation in City of San Antonio contracts. The disparity study updates shall render findings regarding the ongoing need, if any, for the remedies contained in this Ordinance, and shall also make recommendations, as appropriate, for modifications to this Ordinance consistent with the law and the City's overriding public interest of implementing any such remedies in a narrowly tailored and effective fashion.

6. Certification

Certification of all SBE, Emerging Contractor, M/WBE, and Emerging M/WBE firms shall be the responsibility of the Small Business Office. The Small Business Office shall be responsible for developing, issuing, and reviewing all SBE and 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 Small Business Office shall also maintain an automated and up-to-date registry of all certified SBE, M/WBE, Emerging Contractor, and Emerging M/WBE firms that is fully integrated with the Centralized Bidder Registration system established under Section III.C.2. of this Ordinance, and that is readily available to the general public, as well as City personnel.

- (a). In executing its responsibility in connection with these certifications, the Small Business Office may contract with a regional certification agency/organization, through an interlocal agreement, 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 program shall be an independent, operating 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.
- (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 is not minority or female.
- (d). Certification of SBE, Emerging Contractor, 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 U.S. citizens.
- (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 of San Antonio 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 of San Antonio. 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 M/WBE certification program, the Small Business Office shall examine the definitions, standards, and certification practices of the program to ensure that it adheres to established City certification guidelines including, but not limited to, the following:
- i. An eligible M/WBE shall be an independent business;
 - ii. The ownership and control of the eligible M/WBE by Minority Group Members or Women shall be real, substantial, and continuing and shall go beyond the pro forma ownership of the business as reflected in its ownership documents;
 - iii. The Minority Group Member or Women owners shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurately with their ownership interests as demonstrated by an examination of the substance rather than form of arrangements.
 - iv. Recognition of the business as a separate entity for tax or corporate purposes is not necessarily sufficient for recognition as a minority business enterprise.
 - v. In determining whether a potential M/WBE is an independent business, the certifying agency considers all relevant factors, including but not limited to:
 - a) The date the business was established;
 - b) The adequacy of its resources for the work of the contract; and
 - c) The degree to which financial, equipment leasing, supplier, and other relationships with non-minority businesses vary from industry practice.
 - vi. The Minority Group Members and Women owners also shall possess the power to direct or cause the direction of the management and policies of the business and to make the day-to-day as well as major decisions on matters of management, policy, and operations. The business may not be subject to any formal or informal restrictions, through bylaw provisions, partnership agreements, or charter requirements for cumulative voting rights or otherwise that prevent the Minority Group Member or Women owners, without the cooperation or vote of any owner who is not a minority or woman,

from making a business decision on behalf of the business.

- vii. If the owners of the business who are not minorities 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.
- viii. All securities that constitute ownership or control of a corporation for purposes of establishing it as a Minority / Women Business Enterprise 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.
- ix. 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:
 - a) A promise to contribute capital;
 - b) A note payable to the business or its owners who are not socially and economically disadvantaged; and
 - c) Mere participation as an employee, rather than as a manager.
- x. Special consideration of the following additional circumstances in determining eligibility:
 - a) Newly formed businesses and business 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;
 - b) 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
 - c) Any relationship between a Minority/Women Business

Enterprise 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.

- (i). Once certified, an SBE, Emerging Contractor, M/WBE, or Emerging M/WBE shall update its status biennially by submitting a recertification affidavit. If ownership or control of the firm has changed, the SBE, Emerging Contractor, M/WBE, or Emerging M/WBE shall submit a new certification affidavit to the Small Business Office within thirty (30) days of the change.
- (j). The Director of Economic Development or designee will notify applicants of staff's determinations on certification status.
- (k). A business that claims that it has been wrongly denied certification or recertification under this Ordinance may request within thirty (30) days of the City's determination a hearing with the Director of Economic Development to present any additional information, facts, or argument pertaining to the application. The Small Business Office shall notify the applicant in writing of the outcome of such appeal.
- (l). If ruling of the Director of Economic Development is adverse to the certification or recertification applicant, the applicant may make a second appeal within 30 days to the Small Business Advisory Committee ("SBAC"). The SBAC will then conduct a hearing at which time all relevant information to be considered shall be entered into the record. Oral arguments of the applicant will be heard by the SBAC, which will ask questions and conduct such inquiry as deemed appropriate. The SBAC's recommendation will then be submitted to the City Manager for final determination, which shall be conveyed to the applicant in writing with an explanation of the basis of the determination.
- (m). Once denied certification, a firm may not re-apply for certification until one year after the date of the final determination denying certification.
- (m). A firm shall be de-certified when it no longer meets the eligibility requirements for certification.
- (n). Complaints regarding the certification status of a firm shall be forwarded to the Small Business Office for investigation of any possible violations of this Ordinance.

7. Graduation and Suspension

The Small Business Office shall graduate, suspend or terminate an SBE, Emerging

Contractor, M/WBE, or Emerging M/WBE firm from the S/M/WBE program established by this Ordinance if the firm no longer requires the program's assistance or qualifies for its remedial benefits. The Small Business Office shall be responsible for monitoring and conducting periodic reviews of the size, City of San Antonio contract participation levels, and conduct of all certified SBE, Emerging Contractor, 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 Small Business Office shall also ensure that its directory of certified SBE, Emerging Contractor, 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 Small Business Office shall, to the extent practicable, adhere to the following guidelines:

- (a). SBE, Emerging Contractor, M/WBE, and Emerging M/WBE firms shall be graduated from participation under the S/M/WBE Program's Affirmative Procurement Initiatives 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 recertification 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.
- (c). Certified M/WBE and Emerging M/WBE firms shall be temporarily suspended from participation under any race- or gender-conscious Affirmative Procurement Initiatives for the remainder of any calendar year in which the firm has cumulatively received more than \$15 million (for M/WBEs) or \$5 million (for Emerging M/WBEs) in City contract or subcontract payments. Provided the suspended firm has not exceeded the size standards and still meets other certification requirements for an M/WBE or Emerging M/WBE, such firms may resume participation in race-and gender-conscious Affirmative Procurement Initiatives the following calendar year.
- (d). Emerging M/WBEs shall be permanently graduated from the Emerging M/WBE program upon whichever of the following events occurs first:
 - i.) completion of their fifth year of certification status; or
 - ii) upon submission of recertification 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 for two consecutive years.

- (e) M/WBE firms shall be permanently 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 contract or subcontract payments for two consecutive calendar years; or
 - ii) upon submission of recertification 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 for two consecutive years.
- (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 Small Business Office, along with Contracting Officers of each 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 contractor or subcontractor has failed to comply with any of the requirements of this ordinance, or the contract provisions pertaining to S/M/WBE utilization, the Division Manager shall so notify the contracting department and the contractor. The Director of Economic Development or designee may require such reports, information and documentation from contractors, bidders, contracting agencies and the head of any City of San Antonio department, division or office as are reasonably necessary to determine compliance with the 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 Economic Development and Managing 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 the noncompliance cannot be resolved within the fifteen (15) calendar days, the Director of Economic Development or designee and the Director of the contracting department shall submit written recommendations to the City Council through the City Manager or designee and if the City Council concurs with the finding, it shall impose such sanctions as stated in Section III.E.13. of this Ordinance.

- (c) Whenever the Director of Economic Development or designee finds, after investigation, that a contracting 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 department and the Director of Economic Development or designee shall attempt to resolve any noncompliance through conference and conciliation. Should such attempt fail to resolve the noncompliance, the Director of Economic Development or designee shall transmit a copy of the finding of noncompliance, with a statement that conciliation was attempted and failed, to the City Manager who shall take appropriate action under Section III.D. to secure compliance.
- (d) Contracting departments shall maintain accurate records for each contract awarded including 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 bids from S/M/WBEs, and all subcontracts awarded by the contractor identifying for each its dollar value, the nature of the goods or services provided and the name of the subcontractor.
- (e) The Director of Economic Development or designee, through the City Manager, shall submit an 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.
- (f) The conditions of this Ordinance shall apply to all bidders/proposers, as well as S/M/WBEs specified in Section III that receive funds from the City of San Antonio.
- (g) The Division Manager 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.

9. Field Compliance Responsibilities of Contractors

To facilitate the Small Business Office completing its responsibilities in administering SBE or M/WBE program elements, a contractor shall:

- (a) Permit the Small Business Office 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, contractors, and subcontractors and the remedies for delinquency or nonpayment of undisputed amounts;
- (c) Notify the City in writing of any changes to their SBE or M/WBE Utilization form and/or subcontracting plan. All changes (substitutions and or termination) must be approved in advance and in writing by the Small Business Office.
- (d) Amendment for unforeseen circumstances: If at any time after submission of a bid or proposal and before execution of a contract, the apparent successful bidder or offeror determines that a certified SBE or M/WBE listed on the participation schedule has become or will become unavailable, then the apparent successful bidder or offeror immediately shall notify the Small Business Office. Any desired change in the SBE or M/WBE participation schedule shall be approved in advance by the Small Business Office and shall indicate the contractor's 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 Small Business Office.

10. Reporting Requirements – Small Business Program Manager

The Small Business Program Manager shall monitor the implementation of this Ordinance and the progress of the S/M/WBE Policy. On at least an annual basis, the Small Business Program Manager shall report to the City Council on the progress of achieving the goals and objectives of the S/M/WBE Policy, including the achievement in contract participation goals for SBEs and M/WBEs by ethnicity and gender of ownership, by industry, and by location. The Small Business Program 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 on an annual basis for each of these categories. This written report should also address stated program objectives including, but not limited to, enhancement of competition as reflected in bidding 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 of San Antonio contracts. The written report should also contain any recommendations for modifications, suspension, or termination of any portion of this Ordinance and with justifications for each such recommendation.

11. Exceptions and Waivers

- (a) If a bidder/proposer is unable to comply with the Affirmative Procurement Initiative requirements imposed by the Goal Setting Committee under the terms of this Ordinance, such bidder/proposer shall submit, as part of the bid/proposal, a request for exception at the time of bid/proposal opening. The exception shall include specified documentation which demonstrates a good faith effort to comply with the requirements as described under the selected Affirmative Procurement Initiatives.
- (b) If, after award of a contract, the contractor is unable to meet the participation requirements for S/M/WBEs specified at bid opening, the contractor must seek substitute S/M/WBEs to fulfill the requirements; the requested substitution must be approved by the Director of Economic Development (or designee) and the Managing Department Director. If, after reasonable good faith efforts, the contractor is unable to find a substitute, 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 substitute the initial S/M/WBE request, 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 bidder, or in the alternative, the re-bid the contract with the terminated contractor being disqualified from participation in the re-bid.
- (c) A contracting City department may request the Director of Economic Development or designee to waive or modify (waivers for advertising, posting, etc.) the Affirmative Procurement Initiative requirements for S/M/WBE participation by submitting the reasons in writing prior to solicitation of bids or proposals. The Director of Economic Development or designee may grant such a waiver or reduction upon determination that:
 - (1) The reasonable and necessary requirements of the contract render subcontracting or other participation of business other than the bidder or proposer infeasible; or
 - (2) Sufficient qualified S/M/WBEs providing the goods or services required by the contract are unavailable in the market area of the project despite every feasible attempt to locate them.

Any modification of Goal amounts granted by the Director of Economic Development or designee shall specify the amount to which the Goal has been modified. Whenever the Director of Economic Development or designee denies a request to waive or modify a goal, the contract authority may appeal that denial to the City Manager whose decision on the request shall be final.

- (d) The Goal Setting Committee may waive the application of Affirmative Procurement Initiatives to enhance S/M/WBE utilization for a specific contract under the following circumstances:
 - (1) Whenever the Managing Department finds that 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. Final approval of a waiver request shall be made by the City Manager or designee; and
 - (2) If the contracting department certifies to the GSC and City Manager:
 - a) That an emergency exists which requires goods or services 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 every good faith effort to utilize S/M/WBEs.

12. Contracting Departments - Duties and Responsibilities

It shall be the responsibility of each contracting agency or department to ensure that bids or proposals emanating from the department adhere to the procedures and provisions set forth in this Ordinance.

- (a) The contracting department director or designee shall assume primary responsibility for achieving the objectives of this S/M/WBE program within the contracting department and shall review, on a continuing basis, all aspects of the program's operations to assure that the purpose is being achieved.
- (b) The contracting department shall take the following action to ensure that S/M/WBEs have the maximum opportunity to participate on City contracts:
 - i) The advertisements for Formal Solicitations shall appear in minority-targeted media no less than thirty (30) days (for Purchasing Department procurement only – fifteen [15] days) before bids are due for specific contracting opportunities;
 - ii) At least 20 days before bids are due, post all formal bids on the City web site, and then direct targeted e-mail alerts containing links to the web page where such City bid specifications are posted. Such e-mail alerts should be directed to all bidders that have registered with the appropriate commodity / industry codes on the City's Centralized Bidders Registration system;

- iii) Encourage all prospective prime bidders for City contracts to post their subcontract opportunities on the City web page where the bid specifications have been posted by the City at least 15 days prior to bid opening.
- iv) A notification shall be sent to minority and women trade associations and contractor's associations (that the Economic Development Department has in its Plans Room/Library for viewing) of the availability of Formal Solicitations no less than thirty days (for Purchasing Department procurement only - fifteen [15] days) before bids are due;
- v) All contract solicitations shall include the S/M/WBE policy statement and any materials required by this Ordinance in bid documents;
- vi) All contracting opportunities shall be previewed and evaluated 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 bidding laws;
- vii) Establish procedures to ensure that all contractors submitting correct invoices are paid within thirty (30) days and that subcontractors are paid within ten (10) days after the City pays the general contractor;
- viii) Ensure that a notice to proceed is not issued until signed Letters of Intent (Attachment B-4) or agreements with the S/M/WBEs have been executed by all parties and submitted;
- ix) Ensure that all required statistics and documentation are submitted to the Small Business Office as requested; and
- x) If circumstances prevent the contracting department from meeting the thirty (30) day advertising (fifteen [15] days for Purchasing Department procurement bids) and notification requirements, the contracting department shall perform extensive outreach to S/M/WBE associations or other relevant organizations to inform them of the contracting opportunity.

13. Penalties and Sanctions

- (a) A determination by the Director of Economic Development or designee that the contractor, vendor, bidder, or other business representative has failed to comply with any portion of this Ordinance, as herein provided and described, shall subject the offending party to any or all of the following penalties:
 - (1) Suspension of contract;

- (2) Withholding of funds;
 - (3) Rescission of contract based upon a material breach of contract pertaining to S/M/WBE program compliance;
 - (4) Refusal to accept a proposal;
 - (5) Disqualification of a bidder, contractor or other business from eligibility for providing goods or services to the City for a period not to exceed two years; and
 - (6) Imposition of a fine, applicable to each day not in compliance.
- (b) It is a violation of this Ordinance to:
- (1) Fraudulently obtain, retain, and attempt to obtain or retain or aid another in fraudulently obtaining or retaining or attempting to obtain or retain certification as an SBE, MBE, WBE, Emerging Contractor, or Emerging M/WBE or for the purpose of this Ordinance.
 - (2) 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 to make use of any false writing or document knowing the same to contain any false, fictitious or fraudulent state or entry.
 - (3) 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.
 - (4) 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 this attachment.
 - (5) Make false statements to any entity that any other entity is or is not certified as an S/M/WBE for purposes of this attachment.
- (c) Any person who violates the provisions of this Section shall be subject to the maximum penalty provided by law.

14. Small Business Advocacy Committee (SBAC)

A citizens committee hereto referred as the Small Business Advocacy Committee has been established to function as an advisory group only, to assist the Director of Economic Development or designee, the City Manager and City Council in reviewing the continuing programs for contractors and subcontractors concerning S/M/WBE participation, shall hear appeals and challenges concerning certification status as granted by the City of San Antonio,

shall coordinate activities and actions with the City Council Economic and Community Development Committee or corresponding committee designated by the Mayor and/or City Council, and shall make recommendations to the Director of Economic Development or designee, the City Manager and City Council concerning such programs. The SBAC consists of 11 members appointed by the City Council. Members of the committee shall serve two-year terms. The membership of the committee shall include representatives of the Chambers of Commerce and the general business community.

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

No later than July 31, 2011, and every four years thereafter, upon completion of a disparity study update, presentation of disparity study update 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, and direct the City Manager to make modifications to this ordinance and to submit any necessary draft legislation to the City of San Antonio 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 of San Antonio City Council, the provisions of this ordinance shall be void and may not be enforced after November 30, 2013.

G. Severability Clause

If any section, paragraph, sentence, clause, phrase or word of this Policy, or the application thereof, to an 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.