

**Attachment A**

**Executive Orders MJL 10-02 and MJL 10-03**

MITCHELL J. LANDRIEU, MAYOR  
**CITY OF NEW ORLEANS**

**OFFICE OF THE MAYOR**

**MITCHELL J. LANDRIEU  
MAYOR**

**EXECUTIVE ORDER  
MJL 10-02**

**WHEREAS**, it is in the interest of the City to maximize the use of socially and economically disadvantaged business enterprises and local businesses in accordance with applicable law;

**WHEREAS**, it is in the interest of the City to create a process that is open, honest, fair, transparent, just and inclusive;

**WHEREAS**, the City of New Orleans established a Disadvantaged Business Enterprise ("DBE") Program to provide contracting opportunities for businesses owned by socially and economically disadvantaged individuals;

**WHEREAS**, to accomplish the stated goals of the DBE program, it is necessary to reform and strengthen the program;

**WHEREAS**, to achieve a DBE program that is in the best interests of the City, it is necessary to follow the national best practice of conducting a disparity study;

**WHEREAS**, during the time the disparity study is being conducted, it is essential to create an alternate certification method to provide increased and immediate opportunities for eligible DBE firms;

**WHEREAS**, a contract review committee will be able to enforce compliance with DBE performance goals;

**WHEREAS**, a contract review committee is able to ensure that procurements are structured to provide the maximum opportunity for DBE bidders by ensuring purchases are unbundled to the extent feasible; and

**WHEREAS**, to maximize the ability of small and disadvantaged business enterprises to compete, the City must explore creation of a Surety fund to provide bonding assistance for minority and small contractors doing business with the City;

**NOW, THEREFORE, I, MITCHELL J. LANDRIEU**, by the authority vested in me as Mayor of the City of New Orleans by the Constitution and laws of the State of Louisiana and the Home Rule Charter and laws of the City of New Orleans, **HEREBY ORDER AS FOLLOWS:**

1. Effective Date

This Executive Order is effective upon the date of its issuance.



2. Purpose

The purpose of this Executive Order is to establish a provisional certification program for Disadvantaged Business Enterprises ("DBE"), create an advisory committee to reform and strengthen the City's DBE program, create a contract review committee for procurements, commission a disparity study, and explore the creation of a Surety fund for bonding DBEs.

3. Provisional Certification

The City of New Orleans shall hereby grant a Provisional Certification as a DBE to any business that is certified as a valid DBE by the Louisiana Unified Certification Program, the New Orleans Sewerage & Water Board, the Regional Transit Authority, or the New Orleans Aviation Board.

Such Provisional Certification shall entitle a business to be considered a valid DBE by the City of New Orleans with all the rights associated with such certification until the DBE program is reformed and a centralized Diversity and Inclusion program and office are functional and adequately staffed as determined by the Mayor of New Orleans.

4. Contract Review Committee

The Director of Supplier Diversity is directed to establish a contract review committee that shall review Requests for Proposals and Requests for Certifications, bid solicitations, and other procurements prior to their release to ensure that appropriate DBE performance goals are included and that projects and purchases are unbundled to the extent feasible. This committee shall be formed and operate pursuant to written rules and procedures drafted by the Director of Supplier Diversity.

5. Disparity Study and Advisory Committee

The Director of Supplier Diversity is hereby directed to conduct a study to determine the disparity that exists between the availability of ready, willing, and able socially and economically disadvantaged business enterprises and the utilization of such businesses by the City of New Orleans.

The study and subsequent DBE reform is to be advised and monitored by a volunteer committee to be established by the Mayor. Upon completion of the study, the First Deputy Mayor - Chief Administrative Officer, Director of Supplier Diversity, and Chief Procurement Officer are directed to revise the City's DBE program.

6. Bonding and Financial Assistance

The Director of Supplier Diversity is directed to explore the creation of a Surety fund to provide bonding assistance for DBEs doing business with the City.

7. Duration

This Executive Order will remain in effect until amended or suspended by a subsequent order approved in accordance with Section 4-206(3)(c) of the Charter.

**WITNESS MY HAND AND SEAL THIS 3<sup>rd</sup> DAY OF JUNE, 2010 AT NEW ORLEANS, LOUISIANA.**



**Mitchell J. Landrieu, Mayor  
City of New Orleans**

MITCHELL J. LANDRIEU, MAYOR  
**CITY OF NEW ORLEANS**

**OFFICE OF THE MAYOR**

**MITCHELL J. LANDRIEU  
MAYOR**

**EXECUTIVE ORDER  
MJL 10-03**

**WHEREAS**, it is in the interest of the city to maximize the use of socially and economically disadvantaged business enterprises in accordance with applicable law;

**WHEREAS**, the City of New Orleans established a Disadvantaged Business Enterprise ("DBE") Program to provide contracting opportunities for businesses owned by socially and economically disadvantaged individuals;

**WHEREAS**, to accomplish the stated goals of the DBE program, it is necessary to reform and strengthen the program; and

**WHEREAS**, to achieve a DBE program that is in the best interests of the City, it is necessary to appoint a Director of Supplier Diversity who shall be responsible for developing a model program and implementing it;

**NOW, THEREFORE, I, MITCHELL J. LANDRIEU**, by the authority vested in me as Mayor of the City of New Orleans by the Constitution and laws of the State of Louisiana and the Home Rule Charter and laws of the City of New Orleans, **HEREBY ORDER AS FOLLOWS:**

1. Effective Date

This Executive Order is effective upon the date of its issuance.

2. Purpose

The purpose of this Executive Order is to create the position of Director of Supplier Diversity.

3. Director of Supplier Diversity

The position of Director of Supplier Diversity is hereby created in the Procurement Office. The responsibilities of the Director of Supplier Diversity shall include but not be limited to developing



and implementing a model supplier and contractor diversity program that incorporates national best practices.

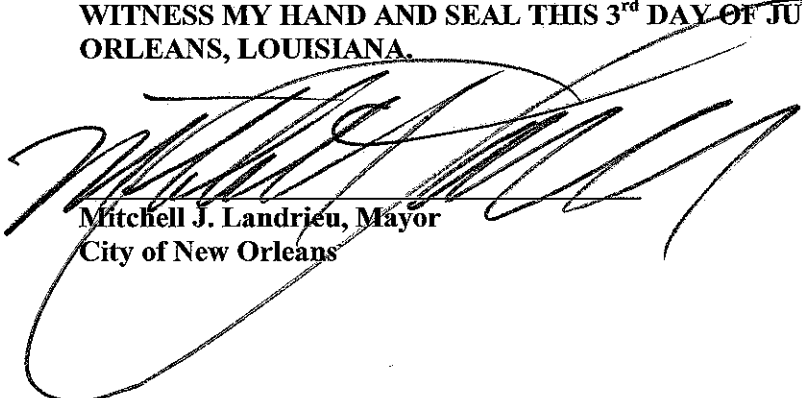
4. Meetings with Financial Institutions and Partner Entities

The Director of Supplier Diversity shall meet regularly with leaders of banks, community development financial institutions and other financial entities to seek resources to support financing for DBEs and gain advice on developing and operating the City's DBE program. The Director of Supplier Diversity shall also identify organizations and entities that will serve as partners in delivering technical assistance and capacity-building services to DBEs. The Director of Supplier Diversity shall provide a semi-annual report to the Mayor on the meetings held and partnerships developed.

5. Duration

This Executive Order will remain in effect until amended or suspended by a subsequent order approved in accordance with Section 4-206(3)(c) of the Charter.

**WITNESS MY HAND AND SEAL THIS 3<sup>rd</sup> DAY OF JUNE, 2010 AT NEW ORLEANS, LOUISIANA.**



**Mitchell J. Landrieu, Mayor  
City of New Orleans**

**Attachment B**  
**2013 City of New Orleans DBE Ordinance**

**ORDINANCE**  
**CITY OF NEW ORLEANS**

**CITY HALL: June 6, 2013**

**CALENDAR NO. 29,591**

**NO. \_\_\_\_\_ MAYOR COUNCIL SERIES**

**BY: COUNCILMEMBERS  HEDGE MORRELL, CANTRELL AND GRAY (BY REQUEST)**

**AN ORDINANCE** to amend and reordain the entirety of Division 2 of Article IV, Chapter 70, of the Code of the City of New Orleans, to establish and create a disadvantaged business policy, definitions, applications, procedures and requirements relative thereto; and otherwise to provide with respect thereto.

**SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS,** That Division 2 of Article IV of Chapter 70, of the Code of the City of New Orleans be and the same is hereby amended and reordained to read as follows:

**“Division 2. – Disadvantaged Businesses.**

**Sec. 70-456 - Definitions.**

The following definitions shall apply to this division:

JUN 5 3 56

“Disadvantaged Business Enterprise” or “DBE” means an entity or individual certified as a socially and economically disadvantaged business through one or more certification program(s) designated by the City.

“DBE Goal” means the anticipated aggregate portion of work to be performed by DBEs in connection with a contract subject to this division.

“Vendor” means any individual or entity in a contract, or seeking to be in a contract, with the City involving public spending, public funding, and/or public incentives, including tax credits or waivers through which the City forgoes its normal taxes and fees, except as otherwise provided in this division.



16    **Sec. 70-457 – Policy.**

17    The City shall provide opportunities to businesses owned and controlled by socially and  
18    economically disadvantaged persons to participate meaningfully in the contracting activities of the  
19    City that involve public spending or private projects that utilize public funding or incentives.

20    **Sec. 70-458 - DBE Registry.**

21    The City shall create and maintain a publicly-available registry of all businesses or individuals  
22    certified as DBEs through a certification program or programs designated by the City.

23    **Sec. 70-459 - Overall Goal**

24    There is an overall goal of thirty-five percent (35%) for the utilization of DBEs for all public  
25    spending or private projects that utilize public funding or incentives, subject to any DBE Goal  
26    established pursuant to this division.

27    **Sec. 70-460 - DBE Goal Setting.**

28    The City shall implement a procedure for establishing individual DBE Goals for each contract  
29    subject to this division based on the availability of DBEs in the relevant market sector.

30    **Sec. 70-461 - Contracting Requirements.**

31    The City shall reject any bid subject to this division and shall not award, enter into or amend any  
32    contract subject to this division that is not supported by documentation establishing that the Vendor  
33    has met the applicable DBE Goal or made good faith efforts to meet the applicable DBE Goal.  
34    Standards and criteria for evaluation and documentation of good faith efforts shall be established in  
35    writing by the Chief Administrative Officer and may include the following:

- 36           1. Solicitation of DBEs through reasonable and available means;  
37           2. Identification of work to be performed by DBEs;  
38           3. Provision of information about the requirements of work to be performed by DBEs;  
39           and  
40           4. Negotiation with DBEs in good faith.

41    **Sec. 70-462 - Reporting.**

- 42           a. The Chief Administrative Officer shall submit with its annual budget request to the City  
43           Council a report identifying the City's DBE Goals and attainment rates for the prior year.

- b. Other boards and commissions to which this division applies shall submit with their annual budget request to the Chief Administrative Officer a report identifying DBE Goals and attainment rates for the prior year.

**Sec. 70-463 - Remedies for Non-Compliance.**

In addition to any other corrective action allowed by law, contract, or City policy, any Vendor in contract with the City that fails to comply with the provisions of this division may be subject to corrective action, which may include but need not be limited to:

1. Withholding of all or any portion of payments due to the Vendor until the non-compliance is cured;
2. Liquidated damages;
3. Termination of any or all of the Vendor's contracts with the City; and
4. Suspension, debarment, or determination of non-responsibility.

**Sec. 70-464 - Authority.**

The Chief Administrative Officer shall have authority to implement this division and shall promulgate policies to implement the provisions of this division, including without limitation establishing procurement and contract requirements that shall address but need not be limited to:

1. Designation of representative(s) to implement this division;
2. Determination of DBE Goals;
3. Vendor reporting of DBE utilization;
4. Standards and criteria for the evaluation and documentation of Vendors' good faith efforts;
5. The prompt payment of DBEs in accordance with law;
6. The modification of DBE utilization by Vendors;
7. Subcontracting by DBEs; and
8. Monitoring Vendor compliance.

**Sec. 70-465 - Application.**

- a. Except as otherwise provided and subject to all local, state, and federal laws affecting the City's procurement of goods and services or use of funds, this division shall apply to all contracts of the City, including all departments, agencies, corporations, and attached and unattached boards and commissions, that utilize any public spending, public funding, and/or public incentives, including tax credits, Payment In Lieu of Taxes (PILOT) incentives or waivers through which the City forgoes its normal taxes and fees.
- b. New Orleans Redevelopment Authority (NORA) will work to implement policies and procedures consistent with its enabling legislation and the objectives of this division as it

relates to the utilization of DBEs when disposing of property in the aggregate of twenty-five (25) or more residential properties in connection with a program funded by the City. These policies and procedures must be approved by the Board of Commissioners of NORA as deemed appropriate subject to Louisiana Revised Statute 33:4720.55 and prior to implementation.

c. Exempt Contracts. This division shall not apply to:

1. The procurement of immovable property;
2. The resolution of any legal claim;
3. Cooperative endeavor agreements;
4. Any procurement to satisfy declared emergency needs;
5. Restoration tax abatement credits for owner-occupied residential properties not exceeding six (6) residential units;
6. Any procurement or contract, except those for public works, valued at less than the applicable formal competitive procurement threshold; and
7. Any procurement or contract valued at \$15,000.00 or less.

**Secs. 70-466 – 70-495 – Reserved.”**

**ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS** \_\_\_\_\_

\_\_\_\_\_  
**PRESIDENT OF THE COUNCIL**

**DELIVERED TO THE MAYOR ON** \_\_\_\_\_

**APPROVED:**

**DISAPPROVED:** \_\_\_\_\_

\_\_\_\_\_  
**MAYOR**

**RETURNED BY THE MAYOR ON** \_\_\_\_\_ **AT** \_\_\_\_\_

\_\_\_\_\_  
**CLERK OF COUNCIL**

**ROLL CALL VOTE:**

**YEAS:**

**NAYS:**

**ABSENT:**

**ORDINANCE  
CITY OF NEW ORLEANS**

**CITY HALL: June 6, 2013**

**CALENDAR NO. 29,592**

**NO. \_\_\_\_\_ MAYOR COUNCIL SERIES**

**BY: COUNCILMEMBERS  HEDGE MORRELL, CANTRELL AND GRAY (BY REQUEST)**

**AN ORDINANCE** to repeal the entirety of Article II of Chapter 46 of the Code of the City of New Orleans relative to Interim Disadvantaged Small Business Development, its policy, purpose, general administration and all requirements relative thereto; and otherwise to provide with respect thereto.

1       **SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY**  
2       **ORDAINS,** That Article II of Chapter 46 of the Code of the City of New Orleans is hereby  
3       repealed in its entirety.

**ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS \_\_\_\_\_**

\_\_\_\_\_  
**PRESIDENT OF THE COUNCIL**

JUN 5 3 56 PM '13

**DELIVERED TO THE MAYOR ON \_\_\_\_\_**

**APPROVED:  
DISAPPROVED: \_\_\_\_\_**

\_\_\_\_\_  
**MAYOR**

**RETURNED BY THE MAYOR ON \_\_\_\_\_ AT \_\_\_\_\_**

\_\_\_\_\_  
**CLERK OF COUNCIL**

**ROLL CALL VOTE:  
YEAS:**

**NAYS:**

**ABSENT:**

**ORDINANCE**  
**CITY OF NEW ORLEANS**

**CITY HALL: June 6, 2013**

**CALENDAR NO. 29,593**

**NO. \_\_\_\_\_ MAYOR COUNCIL SERIES**

**BY: COUNCILMEMBERS  MORRELL, CANTRELL AND GRAY (BY REQUEST)**

**AN ORDINANCE** to repeal Sections 70-432 and 70-432.1 of the Code of the City of New Orleans relative to contract set-asides and procurement for small businesses; preference to disadvantaged businesses and woman owned businesses; and local and disadvantaged business enterprise (DBE) goals for the City of New Orleans; and otherwise to provide with respect thereto.

- 1        **SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY**  
2        **ORDAINS**, That Sections 70-432 and 70-432.1 in Division I of Article IV of Chapter 70 of the  
3        Code of the City of New Orleans are hereby repealed in their entirety.

**ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS \_\_\_\_\_**

JUN 5 3 55 PM '13

\_\_\_\_\_  
**PRESIDENT OF THE COUNCIL**

**DELIVERED TO THE MAYOR ON \_\_\_\_\_**

**APPROVED: \_\_\_\_\_**  
**DISAPPROVED: \_\_\_\_\_**

\_\_\_\_\_  
**MAYOR**

**RETURNED BY THE MAYOR ON \_\_\_\_\_ AT \_\_\_\_\_**

\_\_\_\_\_  
**CLERK OF COUNCIL**

**ROLL CALL VOTE:**  
**YEAS:**

**NAYS:**

**ABSENT:**

**ORDINANCE**

**CITY OF NEW ORLEANS**

**CITY HALL: June 6, 2013**

**CALENDAR NO. 29,594**

**NO. \_\_\_\_\_ MAYOR COUNCIL SERIES**

**BY: COUNCILMEMBERS  HEDGE MORRELL, CANTRELL AND GRAY (BY REQUEST)**

**AN ORDINANCE** to repeal the entirety of Division 3 of Article IV of Chapter 70 of the Code of the City of New Orleans relative to set-aside and participation programs for women and minorities for professional service contracts; and otherwise to provide with respect thereto.

1       **SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY**  
2       **ORDAINS**, That Division 3 of Article IV of Chapter 70 of the Code of the City of New Orleans  
3       is hereby repealed in its entirety.

**ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS \_\_\_\_\_**

\_\_\_\_\_  
**PRESIDENT OF THE COUNCIL**

JUN 5 3 55 PM '13

**DELIVERED TO THE MAYOR ON \_\_\_\_\_**

**APPROVED:**  
**DISAPPROVED:** \_\_\_\_\_

\_\_\_\_\_  
**MAYOR**

**RETURNED BY THE MAYOR ON \_\_\_\_\_ AT \_\_\_\_\_**

\_\_\_\_\_  
**CLERK OF COUNCIL**

**ROLL CALL VOTE:**  
**YEAS:**

**NAYS:**

**ABSENT:**

**Attachment C**

**2013 City of New Orleans DBE Reporting Ordinance**

**ORDINANCE  
(AS AMENDED)  
(AS CORRECTED)  
CITY OF NEW ORLEANS**

**CITY HALL: December 11, 2014**

**CALENDAR NO. 30,497**

**NO. 26367 MAYOR COUNCIL SERIES**

**BY: COUNCILMEMBERS BROSSETT, HEAD, WILLIAMS, CANTRELL, GRAY,  
GUIDRY AND RAMSEY**

AN ORDINANCE to amend and reordain and Section 70-462 of the Code of the City of New Orleans to specify the appropriate Disadvantaged Business Enterprise reporting requirements for all city departments, agencies, corporations, as well as all attached and unattached boards and commissions that utilize public funding and/or incentives; and otherwise provide with respect thereto.

**SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY  
ORDAINS,** That Section 70-462 of the Code of the City of New Orleans, be, and the same is hereby amended and reordained to read as follows:

**“Sec. 70-462. - Reporting.**

(a) The Chief Administrative Officer shall submit with its annual budget request to the City Council a report identifying the City’s DBE Goals and attainment rates for the prior two years.

(b) All city departments, agencies, corporations, as well as all attached and unattached boards and commissions to which this division applies shall prepare and submit an annual report to the City Council by October 15<sup>th</sup> of each year identifying their DBE participation goals and attainment rates for the prior two years. The DBE report shall include the following information:

- a. The total number and value of all contracts awarded during the reporting period;
- b. The total number and value of all contracts awarded to DBEs as prime contractors (expressed as a percentage and dollar value of (a));



- 17 c. The total number and value of all contracts awarded by non-DBE prime  
18 contractors to DBEs as subcontractors (expressed as a percentage and dollar  
19 value of (a));  
20 d. The overall number and value of all contracts awarded to DBEs during the  
21 reporting period (the sum of (b) and (c)); and  
22 e. Whether the contract is a procurement, professional services, personal  
23 services, or construction contract.  
24 (c) Other boards and commissions to which this division applies shall submit with their  
25 annual budget request to the Chief Administrative Officer a report identifying DBE  
26 Goals and attainment rates for the prior year. ”

**ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS April 23, 2015**

**Stacy Head  
PRESIDENT OF THE COUNCIL**

**DELIVERED TO THE MAYOR ON April 24, 2015**

**APPROVED:**

**~~DISAPPROVED:~~ April 28, 2015**

**Mitchell J. Landrieu  
MAYOR**

**RETURNED BY THE MAYOR ON April 29, 2015 AT 11:05 A.M.**

**Lora W. Johnson  
CLERK OF COUNCIL**

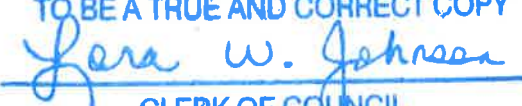
**ROLL CALL VOTE:**

**YEAS: Brossett, Cantrell, Gray, Guidry, Head, Ramsey, Williams - 7**

**NAYS: 0**

**ABSENT: 0**

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THE FOREGOING IS CERTIFIED  
TO BE A TRUE AND CORRECT COPY  
  
CLERK OF COUNCIL

**Attachment D**  
**DBE Rules and Regulations**

## **DBE RULES AND REGULATIONS**

### **I. Authority.**

Pursuant to Section 6-308 of the Home Rule Charter of the City of New Orleans, the City is required to maintain a Disadvantaged Business Enterprise (DBE) program and Section 70-464 of the City Code provides that the Chief Administrative Officer (CAO) has authority to implement Division 2 of Article IV of Chapter 70 of the Code of the City of New Orleans, and to promulgate Rules, Regulations and policies to implement the provisions of this division.

### **II. Applicability.**

These regulations apply to applicable individuals, business entities, and non-profits that enter into certain contracts with the City of New Orleans, not excluded by Section 70-465 of the Code of the City of New Orleans.

### **III. Designation of Representative.**

Pursuant to Section 70-464 of the City Code, the Chief Administrative Officer (CAO) designates the Office of Supplier Diversity (OSD) to oversee certification, compliance, training, and outreach for local, small and disadvantaged businesses in the City of New Orleans and otherwise manage the DBE Program in accordance with Section 70-464 of the City Code.

### **IV. Grant Funding**

Any City grant that incorporates DBE sub-contracting opportunities as identified by OSD shall be subject to the Regulations contained herein, excluding contracts provided in Section 70-465 of the Code of the City of New Orleans.

**V. Determination of DBE Goals for Construction Projects.**

- 1) Pursuant to Section 70-459 of the City Code, an overall goal of thirty-five percent (35%) DBE participation is established for all public spending or private projects that utilize public funding and/or incentives.
- 2) In accordance with Section 70-460 of the City Code, a Construction Review Committee (CRC) is appointed. The CRC will assign a specific contract DBE participation goal for each construction project based on the availability of DBE businesses in the relevant market sector. The use of such a committee is intended to provide opportunities for members of the business and professional community to work with government in achieving the City's DBE program goals.

**VI. Counting DBE Participation towards the Contract Goal**

- (1) Vendors may only utilize certified State and Local Disadvantaged Business Enterprises (SLDBE) and/or Louisiana Unified Certification Program (LAUCP) DBE business entities to meet the City's DBE Program goals. Information on locating these directories may also be requested from the OSD.
  - a. Vendors agree to utilize the City of New Orleans SLDBE directory of certified firms as a first source when searching for certified DBE businesses entities. (The SLDBE directory includes entities certified through Sewerage and Water Board of New Orleans, New Orleans Aviation Board, and Harrah's New Orleans)

- b. Should a DBE fail to maintain their DBE certification after procurement, but before work commences, the Contractor shall make Good Faith Efforts to secure another DBE as provided herein upon OSD's notice.
- (2) Whether and to what extent a Contractor's efforts shall count toward the meeting of their DBE contract goal shall depend on the following considerations:
- a. Only business entities certified as SLDBE or LAUCP-DBE are counted toward the contract DBE participation goal. DBEs must be certified by the bid opening date or proposal deadline date.
  - b. The Bidder/Proposer may count only the total dollar value of the subcontract awarded to certified DBE subcontractor/supplier(s) toward the contract DBE participation goal. The cost of supplies and materials obtained by the DBE for the work on the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate), shall be included in the total dollar value. The entire amount of fees or commissions charged by a DBE for providing a bona fide service, such as professional, technical, consultant, or managerial services specifically required for the performance of the contract, shall count toward fulfillment of DBE goals.
  - b. Bidder/Proposer may count one hundred percent (100%) of DBE Manufacturer Supplier's participation and sixty percent (60%) of DBE Non-Manufacturer supplier's participation toward its contract DBE participation goal. A manufacturer is a natural or juridical person that creates, makes, processes, or

fabricates a product or something of value, which changes a raw material or commodity from one form to another or creates a new product or commodity.

- c. When the Bidder/Proposer is in a joint venture with one or more DBE business entities, the OSD, after reviewing the joint venture agreement, shall determine the percent of participation that will be counted toward the achievement of the contract DBE participation goal.
- d. A DBE can be a Prime (Bidder/Proposer) and count as one hundred percent (100%) of the contract DBE participation goal, provided that the Prime DBE has met the contract goal and will perform at least thirty percent (30%) of the work with its own forces. DBE as Prime contractors that fail to maintain DBE certification throughout the term of the contract are required to use and document Good Faith Efforts to achieve a reasonable amount of DBE participation on the remaining work on the Contract.
- e. Bidder/Proposer may count toward its contract goal only those DBE subcontractors/suppliers performing a Commercially Useful Function.
  - i. "Commercially Useful Function" is defined as a discrete task or group of tasks, the responsibility for performance of which shall be discharged by the DBE firm by using its own forces or by actively supervising on-site the execution of the tasks by another entity for whose work the DBE firm is responsible.
  - ii. In determining whether a certified firm is performing a commercially useful function, the factors include, but are not limited to:

- a. Whether the business entity has the skill and expertise to perform the work for which it is being utilized and possesses all necessary licenses;
- b. Whether the firm is in the business of performing, managing, or supervising the work for which it has been certified and is being utilized;
- c. Whether the DBE subcontractor is performing a real and actual service that is a distinct and verifiable element of the work called for in a contract.
- d. Whether the DBE subcontractor work performed constituted at least fifty-one percent (51%) of the value of the sub-contract with their own forces.

**VII. Evaluating DBE Participation.**

- 1) The OSD evaluates DBE participation to assess DBE certification status, percentage of DBE participation, the value of sub-contract dollars committed to a DBE, and whether the DBE will perform a commercially useful function under the contract to conclude one of the following:
  - a. The Bidder/Proposer met the goal;
  - b. The Bidder/Proposer did not meet the goal, but did make Good Faith Efforts to meet the goal; or
  - c. The Bidder/Proposer did not meet the goal and did not make Good Faith Efforts to meet the goal.

- 2) OSD may also examine a Bidder/Proposer's past DBE goal performance to make recommendations regarding the responsibility of any Bidder/Proposer.

#### **VIII. Required DBE Forms.**

- 1) DBE Compliance Form-1: This form is used to establish a bidder/proposer/contractor's DBE commitment on a City of New Orleans bid, RFP or solicitation response. The Bidder shall provide a list of all proposed DBE subcontractor(s). If the Bidder has and will attain the amount of DBE participation to meet the contract goal, only submit DBE Compliance Form-1.
- 2) DBE Compliance Form-2: This form is used to document Good Faith Efforts when the amount of DBE participation committed on DBE Compliance Form-1 is less than the contract goal. The Bidder shall provide all required supporting documentation of demonstrated Good Faith Efforts as specified in section IX(2).
- 3) DBE Participation Plan: A completed DBE Participation Plan shall be considered a methodology as to how the Proposer plans to meet the contract DBE participation goal if awarded the project.
- 4) All DBE Compliance forms are maintained by the OSD and are subject to change. DBE Compliance forms are available on [www.nola.gov](http://www.nola.gov) or by request at [supplierdiversity@nola.gov](mailto:supplierdiversity@nola.gov).

#### **IX. Documentation of Good Faith Efforts.**

- (1) In accordance with Sec.70-461 of the City Code, and unless waived pursuant to Policy Memorandum 46(R), the City shall reject any bid and shall not award, enter into or amend any contract that is not supported by documentation establishing that the



Bidder/Proposer has met the contract DBE participation goal or made Good Faith Efforts (GFE) to the contract DBE participation goal.

- (2) The OSD shall be responsible for determining whether a vendor has made Good Faith Efforts to achieve the DBE Program contracting objectives. In making this determination, the DBE Compliance Officer shall consider the following factors:

a. SPECIFIC PORTIONS OF WORK IDENTIFIED FOR DBE SUBCONTRACTOR:

- i. Bidder/Proposer listed all selected scopes or portions of work to be performed by DBEs in order to increase the likelihood of meeting the contract goal for the project
- ii. Bidder/Proposer listed the estimated value of each scope or portions of work identified.

b. NOTIFYING CERTIFIED DBEs OF CONTRACTING OPPORTUNITIES:

- i. Bidder/Proposer contacted the OSD to request submission of subcontracting opportunities on the DBE Opportunities page.
- ii. Bidder/Proposer included a copy of each announcement or notification.

c. INITIAL SOLICITATION AND FOLLOW-UP:

- i. Bidder/Proposer listed all certified DBE firms that received written notification of work items to be subcontracted and documented the certified firm's response.
- ii. Bidder/Proposer included copies of the written notice(s) sent to certified firms.

d. NEGOTIATE IN GOOD FAITH:

- i. Bidder/Proposer provided an explanation for any rejected DBE bid or price quotation.
- ii. Bidder/Proposer included a copy of the written rejection notice including the reason for rejection to the rejected DBE firm.

When required, if a Bidder/Proposer fails to submit DBE Compliance Form-2 and the required GFE documentation, the bid shall be considered non-responsive.

The OSD may take into account the performance of other Bidders/Proposers in meeting the contract DBE participation goal and may, if deemed advisable, request further information, explanation or justification from any Bidder/Proposer.

Good Faith Efforts shall be monitored throughout the life of the contract and evaluated on a case-by-case basis in making a determination whether a Bidder or Proposer is in compliance with the DBE program requirements.

**X. Vendor Reporting of DBE Utilization.**

Contractors are required to post monthly payments and submit regular reports (“DBE Utilization Reports”) to the OSD as required via the online Contract Compliance Monitoring System or other means approved by the OSD.

- a. The initial report outlining DBE participation shall be submitted no later than thirty (30) days after OSD’s initial request for said report , thereafter DBE Utilization reports are due on or before the fifteenth (15<sup>th</sup>) day of each month until all DBE subcontracting or material supply activity is completed.

- b. The total dollar amount of the contract shall include approved change orders, amendments and for requirements contracts shall be based in actual quantities ordered.
- c. Reports are required even when no activity has occurred in a monthly period.
- d. If the established percentage is not being met, the monthly report shall include a narrative description of the progress being made in DBE participation.
- e. The Contractor may also attach or upload copies of canceled checks or bank statements that identify payer, payee and amount of transfer to verify payment information as indicated on the form.

**XI. Prompt Payment.**

Payment(s) shall be dictated by the contract terms.

**XII. Modification of DBEs by Vendors.**

Vendors are required to conform to the established percentage as approved by the OSD. Changes to the established percentage and DBE entities submitted on DBE Compliance Form-1 require approval by the OSD. The City will not adjust the contract for any increase in cost due to replacement of a DBE Subcontractor/Supplier. The same criteria used for establishing Good Faith Efforts in maximizing the participation of DBEs prior to awarding the contract will also apply to the termination or substitution of DBE subcontractors, or suppliers during the performance of the contract.

The OSD may grant a post-award modification request if:

- a. For a reason beyond the Contractor's control, the Contractor is unable to use the certified DBE submitted on DBE Compliance Form-1 to perform the specified work.

In such cases, the Contractor shall use and document Good Faith Efforts to find a similarly qualified, certified DBE business entity to perform such specified work. In instances of DBE Subcontractor/Supplier non-performance, the Contractor shall promptly provide written notice and reasonable documentation to the OSD.

- b. The Contractor reasonably believes that, due to a change of scope, execution of the work in accordance with the directions from the contracting department is unlikely to meet the established percentage or terms. In such cases, the Contractor shall use and document Good Faith Efforts to achieve DBE participation on the remaining work on the Contract to the extent needed to meet the contract goal.
- c. The written notice of non-performance by a DBE from the contractor must include the following:
  - 1. The date the contractor determined the certified DBE to be unwilling, unable or ineligible to perform work on the contract;
  - 2. The projected date that the contractor shall require a substitution or replacement DBE to commence work if consent is granted by the OSD;
  - 3. Documentation of facts that describe and cite specific actions or inactions on the part of the affected DBE that led to the contractor's conclusion that the DBE is unwilling, unable, or ineligible to perform work on the contract;
  - 4. A brief statement of the affected DBE's capacity and ability or inability to perform the work as determined by the contractor;

5. Documentation of contractor's good faith efforts to enable affected DBE to perform the work;
6. The current percentage of work completed on each contract item by the affected DBE;
7. The total dollar amount currently paid per contract item for work performed by the affected DBE;
8. The total dollar amount per contract item remaining to be paid to the DBE for work completed but for which the DBE has not received payment, and with which the contractor has no dispute; and
9. The total dollar amount per contract item remaining to be paid to the DBE for work completed, for which the DBE has not received payment, and with which the contractor and DBE have a dispute.

### **XIII. Subcontracting by DBEs**

A DBE subcontractor can further subcontract their work, however only the work subcontracted to certified DBEs will count towards the goal. DBE subcontractor(s) are to perform at least fifty-one percent (51%) of the value of the sub-contract with their own forces.

### **XIV. Monitoring Vendor Compliance.**

To ensure compliance with DBE requirements, the OSD will monitor all Contractors' use of DBE Subcontractors/Suppliers during the term of a City of New Orleans contract, including, but not limited to:

1. Job site visits,

2. Electronic payment tracking via the Contract Compliance Monitoring System or other means as approved by the OSD,
3. Routine audits of contract payments to all subcontractor and suppliers,
4. Reviewing of records and reports; and/or
5. Interviews of selected personnel.

Such inspections and on-site visits may be conducted with or without prior notice to the Contractor or DBE Subcontractor/Supplier.

**XV. Remedies for Non-Compliance**

Compliance with the provisions of Division 2 of Article IV, Chapter 70, of the Code of the City, including the fulfillment of any DBE commitments, is material to the contract. Failure to comply shall subject the Contractor to any corrective action allowed by law or governed by the contract, including but not limited to:

- termination of the contract;
- withholding payment; and/or
- any other damages permitted by law.

**XVI. Effective Date.** These regulations shall be effective as provided in Section 2-1000(g) of the City Code.