

# EQUITABLE BUSINESS OPPORTUNITIES (EBO) PROGRAM

City of New Orleans





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## GENERAL REQUIREMENTS

### I. Purpose

This policy memorandum establishes the policies and procedures necessary for the implementation and administration of the City's Equitable Business Opportunities (EBO) program as required by Division 2 of Article IV of Chapter 70 of the Code of the City of New Orleans.

### II. 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. Section 70-465 of the City Code provides that the Chief Administrative Officer (CAO) has the 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.

### III. Applicability

In accordance with City Code Section 70-466, 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 policy will 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.

- A. Exempt Contracts** – This policy does not apply to the following contracts:
  - 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 residential units.
  - 6. Any procurement or contract, except those for public works, valued at less than the applicable formal competitive procurement threshold.
  - 7. Any procurement or contract valued at \$15,000.00 or less.
- B. Grant Funding** – Any City provided grant that incorporates DBE sub-contracting opportunities as identified by the OSD will be subject to the policy contained herein.
- C. Waiver of DBE Participation** – DBE waiver consideration is an internal function and will only be requested by a head of a City department, agency, board, commission or corporation, who must provide specific reasons for the requested waiver along with supporting documentation of good faith efforts to procure DBE participation.



Agency and department heads are required to review and sign each waiver request prior to submission to the Office of Supplier Diversity (OSD) for approval. When applicable, a waiver of DBE participation should be requested prior to the solicitation of the good or service.

Examples of possible reasons for waivers include:

- No DBEs available in the market to perform the scope of work identified for the contract; or
- Services or goods requested are of such a specialized, technical or unique nature as to require the City department or agency to be able to select its Contractor without application of DBE provisions (e.g. Sole-Source: Only one firm has a product that will meet the project's needs or only one firm can do the work).

The CAO, at his or her sole discretion, may approve or disapprove the request.

## ADMINISTRATIVE

### I. Policy and Objectives

It is the policy of the City to practice nondiscrimination based on social and economic disadvantage, race, color, gender, disability and national origin in the award and performance of contracts.

The City is committed to providing opportunities to businesses owned and controlled by socially and economically disadvantaged persons and is charged with ensuring their meaningful participation in the contracting activities of the City that involve public spending or private projects that utilize public funding or incentives.

The objectives of the DBE program are to:

- Increase the number of available, qualified and capable City certified DBEs.
- Increase the number and the dollar amount of contracts with DBEs.
- Ensure compliance and monitoring of DBE participation on City contracts.
- Create a level playing field upon which DBEs can compete fairly for City contracts.
- Assist certified DBEs to build more competitive and sustainable businesses for the benefit of the City and its residents.

### II. Designation of Representative

Pursuant to Section 70-465 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 EBO Program in accordance with the requirements of the City Code.



### III. Department Cooperation and Compliance

Heads of all City departments, agencies, boards, commissions and public benefit corporations, when exercising any contracting power on behalf of the City, will consult and cooperate with the OSD in achieving the DBE program goals and work with the OSD to implement this policy.

- A. **Chief Financial Officer** - The Chief Financial Officer will assist in assuring adherence to the prompt payment provision in City contracts.
- B. **Bureau of Purchasing** – Bureau of Purchasing will:
  - 1. Provide the scope of work for Invitations to Bid (ITBs), Requests for Proposals (RFPs) and Requests for Qualifications (RFQ) to the OSD on a timely basis to enable goal setting, outreach and, where applicable, development of appropriate DBE language;
  - 2. Ensure that the OSD has adequate time to review “good faith efforts” on all procurements with DBE contract goals when the goal is not met through participation;
  - 3. Ensure that the OSD is kept abreast of all procurement policies and procedures, and changes thereto;
  - 4. Offer instruction on bid/proposal specifications, procurement policies and procedures, and general bidding requirements to DBEs and prime contractors, when requested;
  - 5. Support the OSD with workshops, seminars, written material and specialized assistance to individual firms in order to facilitate DBE knowledge about procurement activities and business opportunities with the City;
  - 6. Ensure that a reasonable number of DBEs are listed on all bidders’ lists;
  - 7. Permit DBEs to review and evaluate successful bid and proposal documents, subject to applicable law and confidentiality requirements;
  - 8. Support and assist the OSD with debriefing sessions to explain to DBEs why certain proposals were successful;
  - 9. Hold and attend pre-bid conferences and pre-contract award meetings to assist the OSD in giving instructions and explanations of DBE and procurement requirements in the solicitation;
  - 10. Ensure that all procurement bid lead times are reasonable and in accordance with normal industry practice;
  - 11. Review with the OSD certain types of procurements to determine whether the contracts may be broken down to be of a more advantageous size for DBE participation; and
  - 12. Provide the OSD with access to City procurement data on a periodic basis for completion of EBO program required reports.
- C. **Law Department** - The Law Department will:
  - 1. Provide legal advice with respect to interpreting and implementing the DBE regulations;
  - 2. Advise the OSD regarding matters dealing with the imposition of administrative sanctions against contractors who violate any part of the EBO program requirements; and
  - 3. Represent the City in all legal actions involving DBE issues.



- D. **Pre-Bid and Pre-Proposal Meetings** – The OSD should be invited by every Department to all pre-bid meetings and all City selection committee meetings where proposals are evaluated.
- E. **Departmental Outreach and Training** - Departments should work with the OSD to conduct seminars, training programs and outreach activities for DBEs to improve DBE opportunities to participate in City procurements and to encourage potential DBE's to become certified with the City.
- F. **Contract Compliance Monitoring System** - All City departments, agencies, boards, commissions and public benefit corporations are required to utilize the City's Contract Compliance Monitoring System to track and monitor contracts that include DBE participation. The OSD is available to help gain access to the system. An electronic training manual and a customer support center is available to provide assistance.
- G. **Departmental Contract Routing** - In accordance with City Code Section 70-461, prior to the City's consideration of any new contract or amendment, including term-extension, close-out, or change order, all departments must ensure that the required supporting documentation is included as an attachment(s) in a request for contract approval.
  - 1. New contracts require a DBE Validation form or an approved waiver signed by the CAO; and
  - 2. Contract amendments or change orders require a new DBE Validation form or the approved waiver from the original contract.

#### IV. DBE Registry

Pursuant to Section 70-458 of the City Code, the OSD maintains a publicly available registry of all businesses certified through the state and local DBE program. The certification directory can be accessed at <https://neworleans.dbesystem.com>.

#### V. Reporting

Pursuant to Section 70-462 of the City Code, the following reporting requirements will be adhered to:

- A. The CAO will submit an EBO program report to the city council by October 15th of each year identifying the City's equity goals and attainment rates for the prior two years.
- B. OSD will prepare and submit an annual report on all contracts executed by the City pursuant to section 6-308(1) of the Home Rule Charter, sorted by department, to the CAO by October 1st of each year identifying equity goals and attainment rates for the prior two years. The EBO Program report will include the following information:
  - 1. The total number and value of all contracts awarded during the reporting period;
  - 2. The total number and value of all contracts awarded to DBEs as prime contractors (expressed as a percentage and dollar value of (1));



3. The total number and value of all contracts awarded by non-DBE prime contractors to DBEs as subcontractors (expressed as a percentage and dollar value of (1));
4. The overall number and value of all contracts awarded to DBEs during the reporting period (the sum of (2) and (3)); and
5. Whether the contract is a procurement, professional services, personal services, or construction contract.
6. Documentation of waivers requested from the provisions of this section for any City contract, with the recommendations of OSD and CAO determination on the waiver request outcome.

## VI. DBE Capacity Building

The City is committed to the growth and development of the DBE community and its ability to compete in the general marketplace. In this interest, the OSD has developed a Mentor-Protégé Program to enhance the capacity and capabilities of SLDBE firms and thereby increase the opportunities for SLDBE participation on City contracts. On at least an annual basis, the OSD shall review the Mentor-Protégé Program to evaluate the program's effectiveness. The full details of the Mentor-Protégé Program are provided in **Appendix A**.

The City will also establish a DBE Advisory Council to advise, assist, support, and advocate strategies and initiatives that will support the EBO Program and contracting opportunities for the State and Local DBE community. The Council will be comprised of DBE-certified firms, prime non-certified firms, and technical assistance agencies.

## VII. Set-asides or Quotas

The EBO Program is a goal-oriented program. The City will not use set-asides or quotas in any way in the administration of the EBO Program.

## VIII. Race Neutral Measures

The City will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The City will use the following race-neutral means to increase DBE participation:

- A. Solicit invitations for bids/proposals that are publicly advertised from an adequate number of known small businesses, providing them sufficient bid submittal time prior to the date set for opening bids/proposals;
- B. Ensure that unreasonable requirements are not placed on firms in order for them to qualify to do business, such as unnecessary experience and excessive bonding. The City will also ensure establishment of delivery schedules, quantities and specifications, where the solicitation permits, that encourage participation by small and DBE businesses;



- C. Unbundle large contracts to make them more accessible to small businesses;
- D. Encourage prime contractors to subcontract portions of work that they might otherwise perform with their own forces;
- E. Provide assistance to DBEs in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bidding process, reducing bonding requirements, using progress payments when appropriate requirements are met, eliminating the impact of surety costs from bids, and providing services to help DBEs and other small businesses obtain bonding and financing);
- F. Provide technical assistance and other services;
- G. Carry out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs and other small businesses on the City's mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; and providing information in languages other than English, where appropriate); and,
- H. Ensure distribution of the DBE directory, through electronic means, to the widest feasible universe of potential prime contractors.

## CERTIFICATION

### I. State and Local Disadvantaged Business Enterprise (SLDBE) Program

The OSD will consider an entity or individual certified in the SLDBE program to be eligible to participate as a DBE in the EBO program. To be certified in the SLDBE program, an entity or individual must meet all certification eligibility standards and requirements as more fully detailed in **Appendix B – SLDBE Certification Program**, attached hereto. The OSD will make certification decisions based on the facts as a whole.

- A. **SLDBE Program Certification Standards** - In determining whether to certify a firm as eligible to participate as a SLDBE, the following standards are applied:
  - 1. The firm seeking certification has the burden of demonstrating, by a preponderance of the evidence, that it meets the requirements of certification related to individual social and economic disadvantage, business size, ownership, and control.
  - 2. Applicants for certification have the obligation to provide information concerning their economic disadvantage.
  - 3. Determinations concerning whether individuals and firms have met their burden of demonstrating ownership, control, and social and economic disadvantage (where disadvantage must be demonstrated on an individual basis) are made by considering all the facts in the record, viewed as a whole.





- B. **Requirements for Certification in the SLDBE Program** - In order to qualify for certification as a SLDBE, a firm must demonstrate all of the following:
1. The firm must be a “for-profit” enterprise, must be domiciled in the United States of America, and must possess the proper certificates and licensure to conduct business within the State of Louisiana.
  2. The firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards.
  3. The firm must be at least 51% owned and controlled by one or more socially and economically disadvantaged persons who are U.S. Citizens or lawfully admitted permanent residents.
  4. The firm must also demonstrate that the business’s ability to compete has been restricted due to industry practices, limited access to capital and/or restricted credit opportunities that are beyond its control.
- C. **Certification Renewal** – Renewal of DBE certification in the SLDBE program is required annually on the anniversary of the most recent certification approval, unless otherwise specified.

For a SLDBE certification to be renewed and for continued SLDBE program eligibility, the DBE must submit an “Affidavit of No Change” form to the OSD along with the required business and personal financial statement information and all other requested documentation. The “Affidavit of No Change” form provides notarized attestation from the SLDBE owner that the firm continues to meet the eligibility criteria for the program.

## II. Louisiana Unified Certification Program (LAUCP)

Firms certified with the LAUCP are granted provisional certification as a DBE for EBO program purposes. Such provisional certification will entitle a business to be considered as a valid DBE by the City of New Orleans.

Out-of-state firms that currently hold Unified Certification Program (UCP) certification within their home state can apply for reciprocity through an LAUCP certifying agency.

## III. Other Certification Programs

Pursuant to Section 70-456 of the City Code, the City will only designate certification programs that are substantially consistent with the certification standards and requirements of the SLDBE program or the LAUCP. The OSD does not recognize self-certifications.



## COMPLIANCE AND ENFORCEMENT

### I. Determination of Equity Goals

Pursuant to Section 70-459 of the City Code, an overall equity goal of thirty-five percent (35%) DBE participation is established for all public spending or private projects that utilize public funding and/or incentives.

### II. Equity Goal Setting

Contract specific goals are established based on the relative availability of certified DBEs to perform work that is considered a commercially useful function on the contract. Proposed contracts that are routed to OSD without a stated equity goal will have a default goal of 35%.

### III. Calculating DBE Participation

Whether and to what extent a Contractor's efforts will count toward the meeting of their DBE contract goal will 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 only count the total dollar value of the subcontract awarded to certified DBE subcontractors/suppliers toward the contract DBE participation goal as long as the DBE subcontractor performs at least 51% of the sub-contracted work with their own forces. 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), should 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, will count toward fulfillment of DBE goals.
- C. The Bidder/Proposer may count one hundred percent (100%) of a 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 person or company that creates, makes, processes, or fabricates a product or something of value that changes a raw material or commodity from one form to another or creates a new product or commodity.
- D. When the Bidder/Proposer is in a joint venture with one or more DBE business entities, the OSD, after reviewing the joint venture agreement, will determine the percentage of



participation that will be counted toward the achievement of the contract DBE participation goal.

- E. A DBE can be a Prime (Bidder/Proposer) and count its participation 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. Work that a DBE prime subcontracts to a non-DBE firm does not count toward the DBE goal. 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.
- F. A DBE subcontractor can further subcontract their work; however, only the work subcontracted to certified DBEs will count towards the goal. DBE subcontractor(s) must perform at least fifty-one percent (51%) of the value of the subcontract with their own forces.
- G. Bidder/Proposer may count toward its contract goal only those DBE subcontractors/suppliers performing a Commercially Useful Function (CUF).

**Commercially Useful Function** is defined as a discrete task or group of tasks, the responsibility for performance of which will 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.

In determining whether a certified firm is performing a commercially useful function, the factors considered include, but are not limited to the following:

1. Whether the business entity has the skill and expertise to perform the work for which it is being utilized and possesses all necessary licenses;
2. Whether the firm is in the business of performing, managing, and supervising the work for which it has been certified and is being utilized;
3. Whether the DBE subcontractor is performing a real and actual service that is a distinct, meaningful, and verifiable element of the work called for in a contract.
4. Whether the DBE subcontractor performs work that constitutes at least fifty-one percent (51%) of the value of the subcontract with their own forces, or the DBE only subcontracts a portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved.

#### IV. Good Faith Efforts

In accordance with Sec. 70-461 of the City Code, and unless waived, the City will reject any bid and will 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.



The OSD will be responsible for determining whether a vendor has made Good Faith Efforts to achieve the DBE participation goal. In its Good Faith Efforts evaluation, the OSD will consider the quality, quantity, and intensity of the different kinds of efforts that the bidders/proposers have made, and will determine if the efforts employed by the bidders/proposers were those that one could reasonably expect a bidder/proposer to take if the bidder/proposer was actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. In making this determination of a Good Faith Effort, OSD will consider the following factors:

- A. The specific portions of work identified for DBE subcontractors, including whether the bidder/proposer identified 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, and the bidder/proposer provided the estimated value of each scope or portions of work identified.
- B. Sufficient notification was provided of DBE contracting opportunities, including the following:
  - 1. The Bidder/Proposer attended all pre-bid and/or outreach meetings scheduled by the City;
  - 2. The Bidder/Proposer submitted subcontracting opportunities to OSD for publication on the DBE Opportunities webpage; or
  - 3. The Bidder/Proposer identified and provided confirmation of all announcements or notifications of subcontracting opportunities, including where and when published.
- C. The Bidder/Proposer provided sufficient documentation of all certified DBE firms that received written notification of work items to be subcontracted and the certified firm's response.
- D. The Bidder/Proposer negotiated in good faith and provided an explanation for any rejected DBE bid or price quotation and included a copy of the written rejection notice (including the reason(s) for rejection) to the rejected DBE bidder.

When required, if a Bidder/Proposer fails to submit the required GFE documentation, the bid/proposal will 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 request further information, explanation, or justification from any Bidder/Proposer.

Good Faith Efforts will 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.



## **V. Modification of DBE Utilization by Vendors**

Vendors are required to conform to the contract equity goal established and approved by the OSD. Changes to the established equity goal and the DBE entities committed to on the DBE Responsiveness Form require prior 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 for the following:

- A. For a reason beyond the Contractor's control, the Contractor is unable to use the certified DBE submitted on the DBE Responsiveness Form to perform the specified work. In such cases, the Contractor should 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 should 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 should 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 will 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.

## **VI. Vendor Reporting of DBE Utilization**

Contractors are required to post monthly payments and submit regular DBE utilization reports to the OSD. The monthly reports should be made via the online Contract Compliance Monitoring System or other means approved by the OSD.

- A. The initial report outlining DBE participation should 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 (15th) day of each month until all DBE subcontracting or material supply activity is completed.
- B. The total dollar amount of the contract should include approved change orders, amendments and for requirements contracts should be based in actual quantities ordered. Reports are required even when no activity has occurred in a monthly period.
- C. If the established percentage is not being met, the monthly report should include a narrative description of the progress being made in DBE participation.
- D. 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.

## **VII. Prompt Payment**

Contractors are required to pay each first tier subcontractor for all work that the subcontractor has performed to the satisfaction of the City no later than fourteen (14) calendar days after the Contractor has received payment from the City for that work, and each tier of subcontractors must likewise pay the next lower tier of subcontractors within fourteen (14) calendar days after receiving payment. The Contractor should agree to include these assurances in all subcontracts and require its subcontractors to include these assurances in their subcontracts.

## **VIII. Monitoring Vendor Compliance**

To ensure compliance with EBO requirements, the OSD will monitor all Contractors' use of DBE Subcontractors/Suppliers during the term of a City of New Orleans contract. Monitoring activities may include, but are not limited to the following:



- A. OSD staff will attend Pre-bid/proposal meetings to inform potential respondents of EBO program requirements.
- B. The OSD will issue DBE validations based on review of DBE Responsiveness Forms.
- C. OSD staff may attend pre-design and/or pre-construction meetings and remind contractors of the EBO program requirements and DBE commitments.
- D. OSD staff will perform job site visits, announced and unannounced, to document DBE utilization.
- E. OSD will perform routine audits of contract payments to all subcontractors and suppliers.

## **IX. 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 with the provisions will subject the Contractor to any corrective action allowed by law or governed by the contract, including but not limited to:

- A. Withholding of all or any portion of payments due to the vendor until the non-compliance is cured;
- B. Liquidated damages;
- C. Termination of any or all of the vendor's contracts with the City; and
- D. Suspension, disqualification, debarment, or determination of non-responsibility.



## APPENDIX A – Mentor Protégé Program

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### Purpose

The City of New Orleans is committed to the growth and development of the State and Local Disadvantaged Business Enterprise (SLDBE) community and its ability to compete in the general marketplace. In this interest, The Office of Supplier Diversity (OSD) has developed a Mentor-Protégé Program (“Program”) to enhance the capacity and capability of SLDBE firms and thereby expand opportunities for DBE participation on municipal contracts.

Through hands-on and classroom training experience, the Program strives to develop working relationships between SLDBE firms and prime contracting firms that have successfully participated in and/or completed municipal contracts.

### Program Summary

Participation in the Program is voluntary. Eligible prime contractor firms that wish to mentor a SLDBE firm under the Program must work collaboratively to achieve the agreed upon outcomes outlined in a Relationship Plan that is submitted by the prime contractor with its bid or proposal for a contract. The requirements and format for the Relationship Plan are attached as **Exhibit A** and will be used by the Mentor and Protégé to identify specific areas of training for the Protégé.

In order to remain compliant with the Commercially Useful Function (CUF) requirements of the Equitable Business Opportunities (EBO) Program, each firm must have distinct, specific roles and responsibilities, but work together to successfully deliver a completed contract. This may require a relationship that will last through the completion of the contract or a predetermined timeframe if, for example, the relationship is specific to a trade that will not be required for the entire contract.

The Relationship Plan must be submitted for review with the prime contractor’s bid or proposal in which it plans to use the Mentor-Protégé relationship.

On at least an annual basis, the OSD shall review the Mentor-Protégé Program to evaluate the program’s effectiveness.

### Program Benefits

- Create and strengthen working relationships between established and emerging companies
- Expand opportunities for DBE firms to participate in City contracts
- Enhance SLDBE firms’ capabilities
- Expand the pool of qualified DBEs for various types of work on City projects
- Encourage SLDBEs to bid as prime contractors on future City contracts

### Incentives

If a contract is procured through a competitive proposal process, submission of a Relationship Plan may





## APPENDIX A – Mentor Protégé Program

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be evaluated as part of a DBE Participation Plan to determine the proposal that is most advantageous to the City.

If a contract is procured through a sealed bid process, the lowest responsive and responsible bidder who submits an approved Relationship Plan will be paid on a net 15 basis.

### Eligibility Requirements

Mentor requirement:

- The firm must have at least five (5) years of public contracting experience, preferably as a prime contractor
- The firm must agree to a minimum of 8 hours per month of coaching, including but not limited to classroom training, one-on-one meetings, small group seminars, and/or on-the-job training with the protégé
- The firm must assign qualified key personnel to administer training and supervision of the program

Protégé requirement:

- The firm must be DBE certified in the State and Local Disadvantaged Business Enterprise (SLDBE) directory at the time of opening of bids or proposals
- The firm must remain DBE certified and in good standing throughout the duration of the Relationship Plan
- The firm must agree to a minimum of 8 hours per month of coaching, including but not limited to classroom training, one-on-one meetings, small group seminars, and/or on-the-job training with the mentor

### Relationship Plan

Prime contractors wishing to participate in the Program must submit a Relationship Plan with their bid or proposal to be approved by the OSD. Content and format for the Relationship Plan can be found in **Exhibit A**. Only participants with an approved Relationship Plan can participate in the Program. The Relationship Plan must include a specific training curriculum for the Protégé in areas such as business, financial, technical, and bidding/estimating. The Relationship Plan must also include measurable benchmarks to be met by both parties, a training schedule, and a reporting schedule.

The Relationship Plan delineates the specific responsibilities and obligations of each party in the Mentor-Protégé relationship and must include the timeline by which stated obligations will be completed. The Relationship Plan must be signed by both parties. Only Relationship Plans approved by the OSD will be considered for scoring as part of a Plan criterion on an RFP procurement.

The relationship between Mentor and Protégé is a business partnership. The Mentor cannot exercise management control over the Protégé or have any direct or indirect ownership interest in the Protégé,



## APPENDIX A – Mentor Protégé Program

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and the Protégé cannot be dependent on the Mentor. Both are independent entities who will be responsible for their own tasks and management of their own staff. The Protégé must perform a CUF and not be required to work exclusively with the Mentor.

### Termination of Mentor-Protégé Relationship

Once a Relationship Plan has been approved, written notice of any change in its status must be sent to the OSD on a timely basis. In order to terminate a Relationship Plan, one of the parties must submit a request, in writing, to the OSD explaining why they feel the Relationship Plan should be terminated. The request should include any documentation and correspondence between the two parties to show a failure to meet the obligations of the Relationship Plan. The OSD will concur in the termination of the Relationship Plan for cause for any of the following reasons, documented to the satisfaction of the OSD:

- failure of the either party to submit reports
- failure of either party to attend quarterly meetings
- failure to meet task deadlines
- lack of cooperation by either party; or
- any material breach of the Program requirements.

**Termination may affect the ability to receive DBE participation credit on the contract.**

### Reporting

Reports of activities such as completed tasks, trainings, and progress toward planned goals must be submitted to the OSD on a quarterly basis for the duration of the Relationship Plan. The report must be signed and approved by both parties before submittal.

### Monitoring

Oversight of the Program will be performed by the OSD. The OSD will review all monthly reports and schedule quarterly meetings with both parties to discuss progress and/or any goal shortfalls. Mentor and Protégé must attend all quarterly meetings.

The Compliance unit will evaluate reports to ensure both parties are adhering to the Relationship plan. The evaluation will focus on stated objectives in the plan and the overall relationship between Mentor and Protégé.

The following will be a guide to evaluate the overall vitality of the Mentor-Protégé relationship:

- Satisfactory progress toward the stated goals in the Relationship Plan
- Quality of training provided by the Mentor
- Working relationship between Mentor and Protégé



## APPENDIX A – Mentor Protégé Program

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- Protégé's improved competency in specific target areas
- Decreased reliance on the Mentor by the Protégé

### Site Visit

The OSD may conduct site visits (scheduled or unscheduled) at project sites or field locations where classes and hands-on training are conducted. The purpose of site visits is for a first-hand observation of the progress made by both parties and to verify concurrence with monthly reports.



## APPENDIX A – Mentor Protégé Program

### Mentor Protégé Relationship Plan

Project Name: \_\_\_\_\_

Contract No.: \_\_\_\_\_

Bid/Proposal Due Date: \_\_\_\_\_

Start Date of Relationship: \_\_\_\_\_

Estimated End Date of Relationship: \_\_\_\_\_

Mentor Firm: \_\_\_\_\_

Protégé Firm: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Address 1: \_\_\_\_\_

Address 1: \_\_\_\_\_

Address 2: \_\_\_\_\_

Address 2: \_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Email: \_\_\_\_\_

1. Overall description of purpose for the Mentor-Protégé relationship (Attach additional pages as needed)

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2. Key personnel (include resumes for Mentor staff responsible for training and program deliverables)

Mentor:

Protégé:

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_



## APPENDIX A – Mentor Protégé Program

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### 3. Training Categories (Attach additional pages as needed)

**Training Category:** \_\_\_\_\_

**Objective:** \_\_\_\_\_

\_\_\_\_\_

**Specific responsibilities:** \_\_\_\_\_

\_\_\_\_\_

**Training Goals:** \_\_\_\_\_

\_\_\_\_\_

**Training Category:** \_\_\_\_\_

**Objective:** \_\_\_\_\_

\_\_\_\_\_

**Specific responsibilities:** \_\_\_\_\_

\_\_\_\_\_

**Training Goals:** \_\_\_\_\_

\_\_\_\_\_

**Training Category:** \_\_\_\_\_

**Objective:** \_\_\_\_\_

\_\_\_\_\_

**Specific responsibilities:** \_\_\_\_\_

\_\_\_\_\_

**Training Goals:** \_\_\_\_\_

\_\_\_\_\_

**Training Category:** \_\_\_\_\_

**Objective:** \_\_\_\_\_

\_\_\_\_\_

**Specific responsibilities:** \_\_\_\_\_

\_\_\_\_\_

**Training Goals:** \_\_\_\_\_

\_\_\_\_\_



## APPENDIX A – Mentor Protégé Program

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Attach the following items:

4. Training schedules for hands-on and classroom training
5. Milestone timelines
6. Reporting template: Describe the evaluation criteria the Mentor will use to evaluate the Protégé's progress in each category

Mentor Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Protégé Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Approved by:

\_\_\_\_\_  
OSD Director

\_\_\_\_\_  
Date



## APPENDIX B – SLDBE Certification Program

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### Overview

#### I. Policy Statement

It is the policy of the City of New Orleans and its partners in the State and Local Disadvantaged Business Enterprise (SLDBE) Program, namely the Sewerage & Water Board of New Orleans (SWBNO) and the New Orleans Aviation Board (NOAB), to encourage participation of DBEs as defined herein, in contracts that are financed, in whole or in part, by the City of New Orleans or other local and state funding sources. By adopting this policy provision, the City of New Orleans affirms that it will not engage in any contracting activities that discriminate on the basis of race, ethnicity, color, national origin or gender. The intent of this policy is to identify businesses that are owned by persons who are socially and economically disadvantaged and to better ensure that these businesses have equitable access to economic opportunity created or supported by local government spending.

#### II. Definitions

**Affiliation** has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121. Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:

- One concern controls or has the power to control the other; or
- A third party or parties controls or has the power to control both; or
- An identity of interest between or among parties exists such that affiliation may be found.

In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

**Assets** mean all the property of a person available for paying debts or for distribution, including one's respective share of jointly held assets. This includes, but is not limited to, cash on hand and in banks, savings accounts, IRAs or other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, and personal property.

**Business, business concern or business enterprise** means an entity organized for profit with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor.

**Compliance** means that an applicant has correctly implemented the requirements of the certification standards.

**Contingent Liability** means a liability that depends on the occurrence of a future and uncertain event. This includes, but is not limited to, guaranty for debts owed by the applicant concern, legal claims and judgments, and provisions for federal income tax.



## APPENDIX B – SLDBE Certification Program

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**Contract** means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this program, a lease is considered to be a contract.

**Contractor** means one who participates, through a contract or subcontract (at any tier), with the City of New Orleans involving public spending, public funding, and/or public incentives, including tax credits or waivers through which the City forgoes its normal taxes and fees.

**Days** mean calendar days. In computing any period of time described in the certification standards, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where the recipient's offices are closed for all or part of the last day, the period extends to the next day on which the agency is open.

**Disadvantaged business enterprise or DBE** means a for-profit small business concern—

- That is at least 51% owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 % of the stock is owned by one or more such individuals; and
- Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

**Good faith efforts** means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

**Immediate family member** means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law, and domestic partner in civil unions recognized under State law.

**Joint venture** means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

**Liabilities** mean financial or pecuniary obligations. This includes, but is not limited to, accounts payable, notes payable to banks or others, installment accounts, mortgages on real estate, and unpaid taxes.

**Noncompliance** means that a recipient has not correctly implemented the requirements of this part.

**Personal net worth** means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include the individual's ownership interest in an applicant or participating DBE firm or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.





## APPENDIX B – SLDBE Certification Program

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**Primary industry classification** means the most current North American Industry Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the [North American Industry Classification Manual—United States](#).

**Principal place of business** means the business location where the individuals who manage the firm's day-to-day operations spend most working hours. If the offices from which management is directed and where the business records are kept are in different locations, the recipient will determine the principal place of business.

**Small Business Administration or SBA** means the United States Small Business Administration.

**Socially and economically disadvantaged individual** means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

**Spouse** means a married person, including a person in a domestic partnership or a civil union recognized under State law.

## Certification

### I. Certification Standards

In determining whether to certify a firm as eligible to participate as a SLDBE, the following standards will be applied:

- The firm seeking certification has the burden of demonstrating, by a preponderance of the evidence, that it meets the requirements of certification related individual social and economic disadvantage, business size, ownership, and control.
- Applicants for certification have the obligation to provide information concerning their economic disadvantage.
- Determinations concerning whether individuals and firms have met their burden of demonstrating ownership, control, and social and economic disadvantage (where disadvantage must be demonstrated on an individual basis) are made by considering all the facts in the record, viewed as a whole.

### II. Requirements for Certification

In order to qualify for certification as a SLDBE, a firm must demonstrate all of the following:

1. The firm must be a “for-profit” enterprise, must be domiciled in the United States of America, and must possess the proper certificates and licensure to conduct business within the State of Louisiana.



## APPENDIX B – SLDBE Certification Program

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2. The firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards.<sup>1</sup>
3. The firm must be at least 51% owned and controlled by one or more socially and economically disadvantaged persons who are U.S. Citizens or lawfully admitted permanent residents.
4. The firm must also demonstrate that the business's ability to compete has been restricted due to industry practices, limited access to capital and/or restricted credit opportunities that are beyond its control.

### III. Business Size Determination

To be an eligible SLDBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards.

Even if it meets the requirements of this section, a firm is not an eligible SLDBE in any fiscal year if the firm (including its affiliates) has had average annual gross receipts, over the firm's previous three fiscal years, in excess of \$26.29 million.

### IV. Rules Governing Determination of Social and Economic Disadvantage

A firm will only be certified if it can demonstrate that it is at least 51% owned and controlled by persons who are socially and economically disadvantaged. All owners who assert that they are disadvantaged and who hold an interest comprising a portion of the 51% ownership required for certification, regardless of whether the interest is actual (e.g.: by partnership, stock ownership, or membership) or is one created by operation of law (e.g. by community property laws), must produce evidence of social and economic disadvantage.

#### A. Social Disadvantage

For the purposes of SLDBE certification, social disadvantage is defined as a set of circumstances (historic and/or current and created by forces outside the applicant's control) which have prevented the applicant's business from successfully competing for contracts as compared to other similarly situated businesses.

Evidence of individual social disadvantage must include the following:

1. At least one objective distinguishing feature outside of one's control, such as race, ethnic origin, gender or gender identification, physical handicap, service in the military, long-term residence in

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<sup>1</sup> The current SBA business size standard(s) found in [13 CFR part 121](#) appropriate to the type(s) of work the firm seeks to perform in City assisted contracts, including the primary industry classification of the applicant, are applied.



## APPENDIX B – SLDBE Certification Program

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an environment isolated from the mainstream of society<sup>2</sup>, or other similar causes not common to individuals who are not socially disadvantaged;

2. Personal experiences of substantial and chronic social and economic disadvantage; and,
3. Negative impact on the individual's entrance into the business world or advancement in the business world because of the stated disadvantage(s).

### B. Economic Disadvantage

Economic disadvantage of the applicant is demonstrated by a limited capacity to compete in the public and private marketplace due to diminished capital and credit opportunities.

Each individual owner of a firm applying to participate as a SLDBE, whose ownership and control are relied upon for SLDBE certification, must certify that he or she has a personal net worth that does not exceed \$1.32 million.

Each individual who makes this certification is required to support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation.

In determining an individual's net worth, the following requirements will be observed:

1. An individual's ownership interest in the applicant firm is excluded;
2. The individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm) is excluded. The equity is the market value of the residence less any mortgages and home equity loan balances. The home equity loan balances are included in the equity calculation and not as a separate liability on the individual's personal net worth form. Exclusions for net worth purposes are not exclusions for asset valuation or access to capital and credit purposes.
3. Contingent liabilities are not used to reduce an individual's net worth.
4. With respect to assets held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time, are included.

### C. Rebuttal of Economic Disadvantage

An individual's assertion of economic disadvantage may be rebutted in two ways.

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<sup>2</sup> This would include individuals who have been convicted of, or pled guilty to, a felony under state or federal statutes, to the extent not expressly prohibited by Section 2-8 of the Code of the City of New Orleans; La. Rev. Stat. §38:2227; or other state or federal laws and regulations.



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1. If the statement of personal net worth and supporting documentation that an individual submits shows that the individual's personal net worth exceeds \$1.32 million, the individual's presumption of economic disadvantage is rebutted.

*Example to paragraph (c)(i): An individual with very high assets and significant liabilities may, in accounting terms, have a PNW of less than \$1.32 million. However, the person's assets collectively (e.g., high income level, a very expensive house, a yacht, extensive real or personal property holdings) may lead a reasonable person to conclude that he or she is not economically disadvantaged. The UCOC may rebut the individual's presumption of economic disadvantage under these circumstances, as provided in this section, even though the individual's PNW is less than \$1.32 million.*

2. If the statement of personal net worth and supporting documentation that an applicant submits demonstrates that the individual is able to accumulate substantial wealth, the individual's presumption of economic disadvantage is rebutted. In making this determination, factors that include, but are not limited to the following may be considered:
  - a. Whether the average adjusted gross income of the owner over the most recent three year period exceeds \$350,000;
  - b. Whether the income was unusual and not likely to occur in the future;
  - c. Whether the earnings were offset by losses;
  - d. Whether the income was reinvested in the firm or used to pay taxes arising in the normal course of operations by the firm;
  - e. Other evidence that income is not indicative of lack of economic disadvantage; and
  - f. Whether the total fair market value of the owner's assets exceeds \$6 million.

When an individual's presumption of social and/or economic disadvantage has been rebutted, his or her ownership and control of the firm in question cannot be used for purposes of SLDBE eligibility unless and until he or she makes an individual showing of social and/or economic disadvantage. If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds \$1.32 million, the individual is no longer eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage so long as his or her PNW remains above that amount.

### D. Transfers within two years

1. Except as set forth in paragraph (D)(2) of this section, the certifying agency will attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, to a trust a beneficiary of which is an immediate family member, or to the applicant firm for less than fair market value, within two years prior to a concern's application for participation in the SLDBE program or within two years of the review of the firm's annual renewal certification, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.



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2. The certifying agency will not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

### V. Rules Governing Determination of Ownership

In determining whether the socially and economically disadvantaged participants in a firm own the firm, all the facts in the record viewed as a whole, including the origin of all assets and how and when they were used in obtaining the firm, are considered. All transactions for the establishment and ownership (or transfer of ownership) must be in the normal course of business, reflecting commercial and arms-length practices.

#### A. 51% Ownership

To be an eligible SLDBE, a firm must be at least 51% owned by socially and economically disadvantaged individuals. For different business types, ownership is determined as follows:

1. In the case of a corporation, such individuals must own at least 51% of each class of voting stock outstanding and 51% of the aggregate of all stock outstanding.
2. In the case of a partnership, 5% of each class of partnership interest must be owned by socially and economically disadvantaged individuals. Such ownership must be reflected in the firm's partnership agreement.
3. In the case of a limited liability company, at least 51% of each class of member interest must be owned by socially and economically disadvantaged individuals.

#### B. Real, Substantial, and Continuing

The firm's ownership by socially and economically disadvantaged individuals, including their contribution of capital or expertise to acquire their ownership interests, must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents.

1. Proof of contribution of capital should be submitted at the time of the application. When the contribution of capital is through a loan, there must be documentation of the value of assets used as collateral for the loan.
2. Insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, mere participation in a firm's activities as an employee, or capitalization not commensurate with the value for the firm.
3. The disadvantaged owners must enjoy the customary incidents of ownership, share in the risks, and be entitled to the profits and loss commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements. Any terms or practices



## APPENDIX B – SLDBE Certification Program

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that give a non-disadvantaged individual or firm a priority or superior right to a firm's profits, compared to the disadvantaged owner(s), are grounds for denial.

4. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

### *Examples:*

- i. *An individual pays \$100 to acquire a majority interest in a firm worth \$1 million. The individual's contribution to capital would not be viewed as substantial.*
- ii. *A 51% disadvantaged owner and a non-disadvantaged 49% owner contribute \$100 and \$10,000, respectively, to acquire a firm grossing \$1 million. This may be indicative of a pro forma arrangement that does not meet the requirements of paragraph (B)(2) of the section.*
- iii. *The disadvantaged owner of a SLDBE applicant firm spends \$250 to file articles of incorporation and obtains a \$100,000 loan, but makes only nominal or sporadic payments to repay the loan. This type of contribution is not of a continuing nature.*

### **C. Ownership by Disadvantaged Persons**

All securities that constitute ownership of a firm must be held directly by disadvantaged persons. Except as provided in this section (C), no securities or assets held in trust, or by any guardian for a minor, are considered as held by disadvantaged persons in determining the ownership of a firm. However, securities or assets held in trust are regarded as held by a disadvantaged individual for purposes of determining ownership of the firm, if—

1. The beneficial owner of securities or assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual; or
2. The beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.
3. The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.
4. The following requirements apply to situations in which expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership:



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- a. The owner's expertise must be —
    - (1) In a specialized field;
    - (2) Of outstanding quality;
    - (3) In areas critical to the firm's operations;
    - (4) Indispensable to the firm's potential success;
    - (5) Specific to the type of work the firm performs; and
    - (6) Documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.
  - b. The individual whose expertise is relied upon must have a significant financial investment in the firm.
5. For purposes of determining ownership, all interests in a business or other assets obtained by the individual will be deemed as held by a socially and economically disadvantaged individual, including when
  - a. As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or
  - b. Through inheritance, or otherwise because of the death of the former owner.
6. The following factors are considered where questions of ownership arise:
  - a. A presumption of not being held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-SLDBE firm who is—
    - (1) Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;
    - (2) Involved in the same or a similar line of business; or
    - (3) Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.
  - b. To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate, by clear and convincing evidence, that—
    - (1) The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a SLDBE; and
    - (2) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.
7. The following rules will be applied in situations in which marital assets form a basis for ownership of a firm:



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- a. When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, it will be deemed that the ownership interest in the firm is acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. A greater portion of joint or community property assets will not be counted toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm.
  - b. A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for SLDBE certification.
8. The following factors may be considered in determining the ownership of a firm. However, a contribution of capital will not be counted as failing to be real and substantial, or find a firm ineligible, solely because—
  - a. A socially and economically disadvantaged individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in paragraph 8 of this section;
  - b. There is a provision for the co-signature of a spouse who is not a socially and economically disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or
  - c. Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a socially and economically disadvantaged individual to a spouse who is such an individual. In this case, particularly close and careful scrutiny will be given to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

### VI. Rules Governing Determinations of Control

In determining whether socially and economically disadvantaged owners control a firm, all the facts in the record, viewed as a whole, will be considered.

#### A. Independent Business

Only an independent business may be certified as an SLDBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms. The following factors will be used to determine if a business is independent:

1. Relationships with non-SLDBE firms will be scrutinized, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.





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2. Consideration will be given to whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential SLDBE and non-SLDBE firms or persons associated with non-SLDBE firms compromise the independence of the potential SLDBE firm.
3. The firm's relationships with prime contractors will be examined to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential SLDBE firm.
4. The consistency of relationships between the potential SLDBE and non-SLDBE firms with normal industry practice will be considered.

### B. Formal or Informal Restrictions

An SLDBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents as provided for in Section (V)(8)(b).

### C. Power to Direct Management of the Firm

The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day, as well as, long-term decisions on matters of management, policy, and operations.

1. A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).
2. In a corporation, disadvantaged owners must control the board of directors.
3. In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.

### D. Control of the Firm

Individuals who are not socially and economically disadvantaged or immediate family members may be involved in an SLDBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.



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### E. Delegation of Duties

The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that one could reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.

### F. Expertise and Experience

The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

### G. Licensure and Credentials

If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and control a potential SLDBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, certification will not be denied solely on the ground that the person lacks the license or credential. However, the absence of the license or credential may be taken into account as one factor in determining whether the socially and economically disadvantaged owners actually control the firm.

### H. Differences in Remuneration

Differences in remuneration between the socially and economically disadvantaged owners and other participants in the firm may be considered in determining whether to certify a firm as an SLDBE.

1. Such consideration should be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. A determination may be made that a firm is controlled by its socially and economically disadvantaged owner although that owner's remuneration is lower than that of some other participants in the firm.



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2. In a case where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, a difference between the remuneration of the former and current controller of the firm may be considered as a factor in determining who controls the firm, particularly when the non-disadvantaged individual remains involved with the firm and continues to receive greater compensation than the disadvantaged individual.

### I. Outside Employment

In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.

### J. Involvement of Immediate Family Members

A socially and economically disadvantaged individual may control a firm even though one or more of the individual's immediate family members who themselves are not socially and economically disadvantaged individuals participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, a determination about the control the socially and economically disadvantaged owner exercises vis-a-vis other persons involved in the business shall be made as in other situations, without regard to whether or not the other persons are immediate family members.

If a determination cannot be made that the socially and economically disadvantaged owners (as distinct from the family as a whole) control the firm, then the socially and economically disadvantaged owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.

### K. Presumption of Control

Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the non-disadvantaged individual remains involved with the firm in any capacity, there is a rebuttable presumption of control by the non-disadvantaged individual unless the disadvantaged individual now owning the firm demonstrates, by clear and convincing evidence, that:

1. The transfer of ownership and/or control to the disadvantaged individual was made for reasons other than obtaining certification as an SLDBE; and
2. The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who formerly owned and/or controlled the firm.



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### L. Ownership of Equipment

In determining whether a firm is controlled by its socially and economically disadvantaged owners, consideration may be given to whether the firm owns equipment necessary to perform its work. However, a determination cannot be made that a firm is not controlled by socially and economically disadvantaged individuals solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.

### M. Certification of Specific Types of Work

Certification will be granted to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm will need to demonstrate that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work.

1. The types of work a firm can perform (whether on initial certification or when a new type of work is added) must be described in terms of the most specific available NAICS code for that type of work. In addition to applying the appropriate NAICS code, a description of the specific types of work will also be applied. A correct NAICS code is one that describes, as specifically as possible, the principal goods or services which the firm would provide. Multiple NAICS codes may be assigned where appropriate. The plain meaning of NAICS code descriptions will be strictly relied upon in determining the scope of a firm's certification.
2. Firms must check carefully to make sure that the NAICS codes cited in a certification are kept up-to-date and accurately reflect work that the SLDBE's owners can control. The firm bears the burden of providing detailed company information needed to make an appropriate NAICS code designation.
3. If a firm believes that there is not a NAICS code that fully or clearly describes the type(s) of work in which it is seeking to be certified as an SLDBE, the firm may request that the certifying agency, in its certification documentation, supplement the assigned NAICS code(s) with a clear, specific, and detailed narrative description of the type of work in which the firm is certified. A vague, general, or confusing description is not sufficient for this purpose, and the partnering agencies should not rely on such a description in determining whether a firm's participation can be counted toward SLDBE goals.
4. A certifying agency is not precluded from changing a certification classification or description if there is a factual basis in the record. However, a certifying agency cannot make after-the-fact statements about the scope of a certification, if they are not supported by evidence in the record of the certification action.



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### N. Franchises or License Agreements

A business operating under a franchise or license agreement may be certified if it meets the standards in this part and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, the certifying agency will generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.

### O. Control of Partnerships

In order for a partnership to be controlled by socially and economically disadvantaged individuals, any non-disadvantaged partners must not have the power, without the specific written concurrence of the socially and economically disadvantaged partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.

### P. Use of Employee Leasing Company

The socially and economically disadvantaged individuals controlling a firm may use an employee leasing company. The use of such a company does not preclude the socially and economically disadvantaged individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

## VII. Other Rules Affecting Certification

### A. Good Faith Efforts Consideration

Consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward SLDBE goals the participation of firms that have already been certified as SLDBEs. Except as provided below in this section, commercially useful function issues may not be considered in any way in making decisions about whether to certify a firm as a DBE.

In making certification decisions, consideration may be given as to whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the SLDBE program.

### B. Present Circumstances

The eligibility of a firm will be evaluated on the basis of present circumstances.



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Refusal to certify a firm will not be based solely on historical information indicating a lack of ownership or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the firm currently meets the ownership and control standards of this part.

Refusal to certify a firm will not be based solely on the fact that it is a newly formed firm, has not completed projects or contracts at the time of its application, has not yet realized profits from its activities, or has not demonstrated a potential for success. If the firm meets the disadvantaged, size, ownership, and control requirements of this program, the firm is eligible for certification.

### C. Requests for Information

SLDBE firms and firms seeking SLDBE certification shall cooperate fully with the requests for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.

### D. Not-For-Profit Organizations

Only firms organized for profit may be eligible SLDBEs. Not-for-profit organizations, even though controlled by socially and economically disadvantaged individuals, are not eligible to be certified as SLDBEs.

### E. Individual Ownership

An eligible SLDBE firm must be owned by individuals who are socially and economically disadvantaged. Except as provided in this paragraph, a firm that is not owned by such individuals, but instead is owned by another firm—even a SLDBE firm—cannot be an eligible SLDBE.

1. If socially and economically disadvantaged individuals own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, the subsidiary may be certified if it otherwise meets all requirements of this part. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.
2. Such a subsidiary may be certified only if there is cumulatively 51% ownership of the subsidiary by socially and economically disadvantaged individuals. The following examples illustrate how this cumulative ownership provision works:

*Example 1: Socially and economically disadvantaged individuals own 100% of a holding company, which has a wholly-owned subsidiary. The subsidiary may be certified, if it meets all other requirements.*

*Example 2: Disadvantaged individuals own 100% of the holding company, which owns 51% of a subsidiary. The subsidiary may be certified, if all other requirements are met.*

*Example 3: Disadvantaged individuals own 80% of the holding company, which in turn owns 70% of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is 56%*



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(80% of the 70%). This is more than 51%, so the subsidiary may be certified, if all other requirements are met.

*Example 4: Same as Example 2 or 3, but someone other than the socially and economically disadvantaged owners of the parent or holding company controls the subsidiary. Even though the subsidiary is owned by disadvantaged individuals, through the holding or parent company, it cannot be certified because it fails to meet control requirements.*

*Example 5: Disadvantaged individuals own 60% of the holding company, which in turn owns 51% of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is about 31%. This is less than 51%, so the subsidiary cannot be certified.*

*Example 6: The holding company, in addition to the subsidiary seeking certification, owns several other companies. The combined gross receipts of the holding companies and its subsidiaries are greater than the size standard for the subsidiary seeking certification and/or the gross receipts cap. Under the rules concerning affiliation, the subsidiary fails to meet the size standard and cannot be certified.*

### F. Independent Business

Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business owned and controlled by socially and economically disadvantaged individuals.

## Certification Procedures

### I. Certification Procedures

All SLDBE applications are received electronically. Applications are submitted to the Office of Supplier Diversity via the B2GNow Compliance Management System at [neworleans.dbesystem.com](https://neworleans.dbesystem.com). Applications are reviewed upon receipt and applicants are notified of receipt and that the eligibility review process is underway.

Within two to five business days of receipt, the application will be reviewed for completeness and accuracy and the applicant will be notified of any material deficiency or additional documentation required to complete the application.

Within fifteen (15) business days of receipt of a complete application, which includes all material documentation requirements noted in the application checklist and a completed site visit interview with the disadvantaged business owner(s), the applicant will be notified of the certification decision via e-mail.

The SLDBE database is updated in real time. Within twenty-four (24) hours of a certification decision, the applicant's firm is added to the database.

Applications that are incomplete or missing required documentation will be held active for a period of 60 days after the applicant is notified of the material deficiency or additional document requirements. If the





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needed information is not received in 30 days, a reminder notice will be sent requesting the additional documentation. If there is no response in 60 days, a final notice will be sent, advising the applicant that the application review will be closed in 10 days unless all needed information and documentation is submitted to the OSD.

If a certification application is closed by the OSD, the applicant may restart the process at a later date and the fifteen(15) day review period restarts upon receipt of all needed information and documentation and the successful completion of the site visit.

### **II. Renewal Requirements**

Certification renewal is required annually on the anniversary of the most recent certification approval, unless otherwise specified. Certified SLDBE firms will receive a notice of expiration of certification 30-60 days prior to the renewal date.

For a SLDBE certification to be renewed and for continued SLDBE program eligibility, the renewal “Affidavit of No Change” form must be submitted to the OSD along with the business and personal tax returns and financial statements for the previous year and all other requested documentation. The “Affidavit of No Change” form provides notarized attestation from the SLDBE owner that the firm continues to meet the eligibility criteria for the program.

A renewal site visit may be conducted at the discretion of the OSD based on the information received.

### **III. Appeal of A Certification Decision**

Any firm that believes that it has been wrongly denied certification as an SLDBE firm or as a Joint Venture that includes an SLDBE firm certified under this program may file an appeal with the Office of Supplier Diversity for a review of the denial decision and an opportunity to present additional explanations, both written and verbal.

The appeal shall be written, dated and signed no later than ten days after the date of the letter of notification of denial from the SLDBE Certification Coordinator and should be addressed to:

SLDBE Certification Appeals Panel  
c/o City of New Orleans Office of Supplier Diversity  
1340 Poydras Street, Suite 1800  
New Orleans, LA 70112

The firm to which certification was denied will have the opportunity to respond in writing and to present information, documents, and written and oral arguments to the Certification Appeals Panel.

Requests for appeals are reviewed by an Appeals Panel, which consists of the DBE Directors from partner agencies. The Appeals Panel, having no involvement in the original certification decision, will review the original certification application and supporting documents along with written and oral arguments presented during the appeals hearing. After a review of all relevant documents and arguments, the Certification Panel will render a decision based on the requirements and standards of the SLDBE





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Certification Program. The Certification Appeals Panel will notify the applicant of its decision within five (5) business days of an appeals hearing.

Additionally, third parties who have reason to believe that a firm has been wrongly granted certification must lodge a written third-party complaint to the SLDBE Appeals Panel. Third party challenges to SLDBE certification are also reviewed by the Certification Appeals Panel.

Decisions by the Certification Appeals Panel are final.

### IV. Decertification Procedures

When the OSD has reason to believe that a currently certified firm is no longer eligible for certification, the firm will be afforded due process prior to revoking its eligibility. The process for decertification includes:

- Written notification to the SLDBE firm that decertification is being contemplated and a brief description of the reasons for the proposed decertification action.
- Written response from the SLDBE firm, including information and arguments to support certification (or decertification as proposed).
- If written response is received requesting and supporting continued eligibility in the SLDBE program and the OSD is satisfied that the firm meets the SLDBE program eligibility requirements, the firm will be notified in five business days that the decertification action has been voided.
- If the OSD is not satisfied that the documentation supports continued eligibility in the SLDBE Program, then the Certification Appeals Panel will be convened to review the additional documentation and hear oral arguments from the certified firm.
- The firm will be notified in writing within five business days of the decision of the Certification Appeals Panel.

The decision of the Certification Appeals Panel is final.

### V. Confidentiality and Record Retention

The information contained in and attached to the SLDBE application is used only for the purposes of determining eligibility in the SLDBE program and is accessible only to the City of New Orleans and its partners for operations of the SLDBE program, namely Sewerage & Water Board of New Orleans (SWBNO) and the New Orleans Aviation Board (NOAB). Submission of the application authorizes the release of this information to the City of New Orleans and the partner agencies. All applications and attached information and documentation are housed physically and electronically with the City of New Orleans Office of Supplier Diversity.