

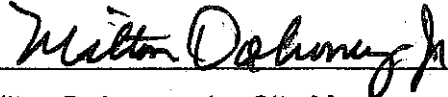
CITY OF CINCINNATI
SMALL BUSINESS DIVISION
OFFICE OF CONTRACT COMPLIANCE



SMALL BUSINESS ENTERPRISE PROGRAM
RULES AND REGULATIONS

SMALL BUSINESS ENTERPRISE PROGRAM RULES AND REGULATIONS

Approved



Milton Dohoney, Jr., City Manager

Date: 9/13, 2013

SECTION 1: THE SMALL BUSINESS ENTERPRISE PROGRAM ("SBEP")

Purpose

The purpose of the Small Business Enterprise Program ("SBEP") of the City of Cincinnati is to promote the economic welfare of the people of the City, to mitigate the effects of discrimination against Small Business Enterprises (SBEs) and to promote full and equal business opportunity for all persons doing business with the City of Cincinnati by assisting SBEs to actively participate in the City procurement process, and by working to eliminate SBE discrimination in public markets. (CMC Section 323-3, Purpose).

Goals

This SBEP is designed to include all segments of the region's business community by increasing the competitiveness and profitability of all small businesses. The City of Cincinnati's Aspirational Annual Goals for SBE participation shall be 30% of the City's total dollars spent for construction, 15% for supplies/services, and 15% for professional services. The SBE, MBE, and WBE participation rates will be monitored, tracked internally, and reported quarterly and annually to city council. (CMC Section 323-7, Program Goals).

Administration of SBEP

As recommended by the City Manager and approved by City Council, the Office of Contract Compliance ("OCC") shall be responsible for the administration and enforcement of the SBEP Rules and Regulations.

The OCC staff shall have the following functions and duties, in accordance with CMC Section 323-15, Office of Contract Compliance:

- (a) The OCC shall act as a resource for small business information.
- (b) Information dissemination and communication with SBEs are integral parts of the City of Cincinnati's SBEP.

As a part of its outreach program, OCC staff will solicit input from representatives of SBEs, trade associations, and community organizations. The OCC shall hold quarterly outreach events for SBEs and owners of small businesses eligible to participate in the City of Cincinnati's SBE program; publish a biannual newsletter on small business matters; and produce video programming geared toward small businesses. In cooperation with the City of Cincinnati's Purchasing Division and other appropriate City departments, the OCC shall publicly inform SBEs and owners of eligible small businesses of the City of Cincinnati's procurement forecast in a timely manner to allow such parties to make appropriate planning decisions.

- (c) The OCC shall be responsible for certification, recertification, decertification and recommendation of certification denials of SBEs pursuant to Chapter 323 of the Cincinnati Municipal Code.
- (d) The OCC will assist SBEs in overcoming barriers to program participation. This assistance will be offered directly by the City of Cincinnati, as well as by referral to other assistance agencies through established, comprehensive, and continuous programs. Businesses requiring management and technical assistance will be identified through a questionnaire, personal experience with these businesses, and requests for assistance.
- (e) The OCC shall maintain records and reports submitted by contractors in accordance with the provisions of Chapter 323.
- (f) The OCC in conjunction with other City agencies will monitor SBE participation levels on projects throughout the duration of a contract.
- (g) The OCC shall investigate alleged violations of Chapter 323 and the SBE Program Rules and Regulations and shall issue written determinations of the results of such investigation, stating the reasons for the determination and any penalty imposed pursuant to Chapter 323.
- (h) The OCC will determine whether a bidder or Offeror made good faith efforts as defined in the SBE Program Rules and Regulations to include SBEs in its bid or proposal and its work on the contract.
- (i) Upon request by the potential bidder/Offeror on City contracts, the OCC will provide information regarding SBEs which shall include names and contact information.
- (j) The OCC will notify the appropriate City departments of its determination that a contractor has not complied with Chapter 323 or the SBE Program Rules and Regulations and the result of any appeal from that determination.
- (k) The OCC will provide ongoing monitoring and oversight functions to determine

successful bidders'/Offerors' continuing compliance with Chapter 323 and the SBE Program Rules and Regulations and their utilization of SBEs, MBEs, and WBEs.

Responsibility of Other City Departments

The success of the SBEP is contingent upon the cooperation of all City departments and agencies. If the City is to realize its SBEP goals, the OCC and all other City departments must develop a mutually agreeable working relationship. Each department and division head is responsible and accountable for helping to meet the City's SBEP goals. Goal attainment will be based on dollars spent and not contracts awarded.

SECTION 2: COMPONENTS OF SBEP

Decentralized Purchases \$5,000 or Less

For those purchases of \$5,000 or less, notice and award must be given to an SBE for that particular commodity code. If there are no SBEs for the particular commodity, then the award can be made to a non-SBE. Prior to soliciting quotes from SBEs, or making a direct award to an SBE, the department may review the listing of City requirement contracts to see if items required are available through an existing contract. The department may choose to use the existing contract or the department or division may proceed with a request for quotes or making a direct award to an SBE. The City Purchasing Agent, having the approval of the City Manager, has decentralized purchases of \$5,000 or less and has delegated this authority to the department, directors, and their designees. (CMC Section 321-11, Procurement).

Bid/Proposal Notification

For the procurement of supplies, services, and construction in excess of \$5,000, SBEs in the commodity code will receive email notifications of bid/proposal opportunities. (CMC Sections 321-13 and 321-15).

Procurement; Supplies, Services and Construction in Excess of \$5,000 But Not Greater Than \$50,000

For the procurement of supplies, services, and construction in excess of \$5,000.00 but not greater than \$50,000.00, notice must be provided to SBEs in the commodity code, and at least two, but no more than three, quotes must first be obtained from SBEs listed in the commodity code.

For purchases of \$50,000.00 or less, the contract must be awarded to an SBE listed in the commodity code, unless there is no SBE listed in the commodity code, no SBE in the commodity code provides a quote, the City Purchasing Agent determines that it is impractical or not in the best interest of the City to award the contract to the SBE based on price, or the City Purchasing Agent rejects all quotes from SBEs. If one of these four situations occurs, then three quotes should be obtained from non-SBEs, and competitive bidding shall be conducted pursuant to policies promulgated by the City Purchasing Agent.

If there is only one SBE in the commodity code or only one SBE in the commodity code responds to the City's request for quote, then two quotes must also be obtained from non-SBEs in the commodity code. If the quote from the SBE is not the lowest and best quote of the three received by the City, the SBE will be awarded the contract if it agrees to match the lowest and best quote. If the SBE does not agree to match the lowest and best quote within three (3) business days after the City offers the SBE the opportunity to match the lowest and best quote, then the contract will be given to the non-SBE that submitted the lowest and best quote.

Surety may be required in an amount deemed necessary by the City Purchasing Agent or designee. The Purchasing Agent will have discretion on bonding for both bid and surety. (CMC Section 321-13)

Non-Discrimination Policy

The City of Cincinnati is committed to a policy of non-discrimination pursuant to Section 1 of the Fourteenth Amendment to the United States Constitution, which guarantees equal protection of the laws to all citizens. It is further the policy of the City of Cincinnati that its purchasing and contracting practices not implicate the City as a passive participant in discriminatory practices engaged in by private contractors or vendors who seek to obtain business with the City. In furtherance of these policy objectives, the City seeks to afford to its citizens equal opportunities to do business on City contracts and to ensure that all bidders, proposers, vendors and contractors (collectively referred to herein as "bidders") doing business with the City provide businesses opportunities to participate on contracts which are paid, in whole or in part, with monetary appropriations from the City of Cincinnati without discrimination on the basis of race, color, sex, religion, disability or national origin.

The City of Cincinnati prohibits discrimination against any person or business in pursuit of these opportunities on the basis of race, color, sex, religion, disability or national origin. The City will conduct its contracting and purchasing programs so as to discourage any discrimination and will vigorously seek to resolve all claims of discrimination.

Pursuant to this policy, if bidders/Offerors subcontract any work, they must complete and return with bids/proposals signed Subcontractor Utilization Plan (Form 2003), Statement of Good Faith Efforts (Form 2007), and Outreach/Good Faith Efforts Form (Form 2007-a).

Contract Progress and SBE Utilization Records and Reports

Contractors are required to maintain documentation regarding their utilization of SBE firms, along with all other pertinent records. These records may be subject to audits and/or other forms of monitoring. Contractors are required to report on a monthly basis all payments to subcontractors using the City's online reporting site -- SubConTrak.com -- or any successor site or system the City uses for this purpose. Contractors shall contact the OCC to obtain instructions, the proper internet link, login information and password to access the site and set up the necessary reports. The OCC enforces the contractor's use of this online reporting site. Not reporting as required or falsifying information may result in penalties as delineated in Sec 323-99.

The project manager of the City department responsible for the contract and overseeing the project is required to contact the OCC for approval prior to processing invoices for payments from the contractor(s). Departments must seek written approval from OCC prior to processing invoices.

Minority Business Enterprises ("MBE") and Women Business Enterprises ("WBE")

The City tracks the use of minority and women-owned businesses on City projects.

Database

The OCC will maintain an electronic database to assist bidders/proposers in identifying SBEs with capabilities commensurate with general contracting requirements. A list from the database is available to contractors to assist them in their efforts to meet the SBEP's

aspirational goals. The list prepared from the database specifies which firms the City has determined meet the requirements necessary for designation as SBEs. This list is not exhaustive and is frequently updated; therefore, if a bidder desires to utilize a firm not listed in the database, the bidder should confer with the OCC to ascertain the eligibility of the SBEs under consideration.

Compliance, Monitoring and Auditing

The City of Cincinnati reserves the right to conduct a random audit of contract awardees to ensure compliance with the provisions of the SBEP.

Reporting Allegations of Discrimination

Businesses awarded City contracts shall prohibit discrimination against any person or business on the basis of race, color, sex, religion, disability or national origin. Such businesses shall develop a policy statement to be communicated regularly to all persons and entities involved in performance of their contracts, and shall conduct their contracting and purchasing programs so as to discourage any discrimination and to resolve all allegations of discrimination.

The OCC shall review and investigate all allegations of discrimination claiming that prohibited forms of discrimination have occurred. Allegations of discrimination that are determined to have merit may be subject to penalties decided upon by the OCC.

Subcontracting Outreach Program (CMC Section 323-31)

The Subcontracting Outreach Program applies to City-funded contracts of \$100,000.00 or more, with the exception of those which are subject to CMC Section 321-19, Procurement; Professional Services; CMC 321-85, Contract; Sole Source; CMC 321-95, Contract: Ohio Department of Administrative Services; CMC 321-97, Contracts: Ohio Departments, Divisions, Agencies or other Political Subdivisions; CMC 321-98, Contract: U.S. Communities Government Purchasing Alliance; and CMC 321-89, Contract; Emergency Procurement. With the approval of the Contract Compliance Officer, and at the City's sole discretion, these requirements may be waived in advance on projects deemed inappropriate for subcontracting participation at the specified level. When State and/or federal funding sources require

affirmative action goals, those goals as defined in the contract documents replace requirements of this Subcontracting Outreach Program.

The City of Cincinnati is committed to maximizing subcontracting opportunities for all qualified and available SBEs. Bidders/Offerors shall be fully informed of the Subcontracting Outreach Program as set forth in this document.

Subcontractor Outreach and Participation Goals

This Subcontracting Outreach Program strongly encourages bidders/Offerors to make subcontracting opportunities available to a broad base of qualified subcontractors and establishes an aspirational goal of achieving a minimum SBE subcontractor participation of 30% for construction contracts (which may be altered for construction of buildings), 15% for supplies/services contracts, and 15% for professional services contracts. The City will periodically evaluate the subcontractor participation goal to ensure the appropriateness of the goal. The bidder/Offeror must list all subcontractors on its Subcontractor Utilization Plan, regardless of amount paid to the subcontractor. A bid/proposal may be rejected as non-responsive if the bidder/proposer fails to list subcontractors and subcontracting amounts (and all the pertinent required information as requested by the various SBE forms) with its bid/response to meet or exceed the subcontracting participation level. The goal may be adjusted prior to advertising by department request, with the prior approval of the Contract Compliance Officer. The OCC will make determinations of SBE availability upon request, using the data on certified SBEs which it shall routinely capture on actual bidders/Offerors.

Submit Outreach/Good-Faith Documentation

To be eligible for award of a contract where the invitation to bid or request for proposal specifies a subcontracting goal, the bidder/Offeror must submit documentation of its subcontractor outreach effort with the bid/proposal. Failure to submit required documentation may cause a bid/proposal to be rejected as non-responsive.

It is the policy of the City of Cincinnati to provide all subcontractors an equal opportunity to participate in performance of City contracts. Bidders/Offerors assist the City in implementing this policy by taking reasonable steps to ensure all qualified

businesses, including SBEs, have equal opportunity to compete for and participate in City contracts.

The OCC will review submitted Statement of Good Faith Outreach Efforts (Form 2007), and Outreach/Good Faith Summary Sheet (Form 2007-a), and determine whether a Bidder's/Offeror's outreach/good-faith efforts were adequate only in the event that no Bidder/Offeror meets the 30% SBE subcontractor aspirational goal for construction, 15% for supplies/services, or 15% for professional services.

Adequacy Outreach/Good Faith Efforts includes but is not limited to the following:

1. Identification of sufficient subcontracting work: Bidder/Offeror identified and selected specific work items in the project to be performed by subcontractors. Bidder/Offeror subdivided total contract work requirements into smaller portions or quantities to permit maximum active SBE participation. Content of advertisements and written notices to subcontractors will demonstrate compliance with this objective.

2. Broad-based Advertisement: Bidder/Offeror conducted an advertising campaign designed to reach all segments of the Cincinnati community by advertising in newspapers, trade association publications, special interest publications, trade journals, community papers or other media. Advertisement must be specific to the project, not generic, and may not be a plan holder advertisement provided by the publication. Advertisement must be worded to ensure it does not exclude or limit the number of potential respondents, and must include:
 - (1) City of Cincinnati's project name;
 - (2) Name of bidder/Offeror;
 - (3) Areas of work available for subcontracting;
 - (4) Contact person's name and phone number;
 - (5) Information on availability of plans and specifications; and
 - (6) Bidder's/Offeror's policy concerning assistance to subcontractors in obtaining bonds, credit lines and/or insurance.

Bidders/Offerors are encouraged to advertise for not less than two weeks when time permits. Documentation that will satisfy this requirement includes submittal of copies of advertisements and proof of publication dates.

3. Written notice to Subcontractors: Not less than ten (10) days prior to bid/proposal submittal, bidder/Offeror provided written notice to SBEs of its interest in receiving subcontractor bids on subject contract for performance of identified work items. Contents of letters must include:

- (1) City of Cincinnati's project name;
- (2) Name of bidder/Offeror;
- (3) Areas of work available for subcontracting;
- (4) Contact person's name and phone number;
- (5) Information on availability of plans and specifications; and
- (6) Bidder's/Offeror's policy concerning assistance to subcontractors in obtaining bonds, credit lines and/or insurance.

Documentation that will demonstrate satisfaction of this requirement includes submittal of a copy of each letter sent to subcontractors for each item of work to be performed. If only one master notification is used, submit letter with list of recipients. Faxed copies must include fax transmittal confirmation slip showing date and transmission. Mailed letters must include copies of metered envelopes or certified mail receipts. Electronic mailings must show to, from, date, time, subject line and any attachments.

4. Follow-up to initial solicitations: Bidder/Offeror followed up initial solicitations of written notice to subcontractors to determine interest in specific portions of project work, answered questions, recorded phone quotes, and recorded subcontractor's interest in bidding or providing services on any portion of the project. Required documentation shall include a copy of telephone logs including name of caller, name of company called, phone number, contact person, time, date and result of conversation. Telephone logs must be submitted to demonstrate follow-up with all contractors to whom written notices were sent.

5. Provision of plans, specifications and requirements: Bidder/Offeror provided interested subcontractors with access to plans, specifications and requirements for the project. Required documentation shall include copies of all advertisements, and written notices to subcontractors will demonstrate compliance with this indicator.

6. Assistance with bonds, credit lines and insurance: Bidder/Offeror made efforts to advise and assist interested subcontractors in obtaining bonds, credit lines and insurance required for subject project. Required documentation includes content of advertisements, and written notices to subcontractors will determine compliance with this objective.

Subcontractor Substitution

The level of listed subcontractor participation shall be maintained for the duration of the contract. Contractor must request prior approval from the OCC for all substitutions of subcontractors. Written request shall provide name of listed subcontractor, name of replacement subcontractor, reason for substitution, work type, and dollar amount. The selection process for a substitute subcontractor shall be evaluated for fairness and outreach efforts.

Falsification of Sub-Agreement

Bidder/Offeror's falsification or misrepresentation of a sub-agreement as to company name, contract amount, and/or actual work performed by subcontractor will result in sanctions including assessment of penalty fines, termination of contract, and/or debarment.

Small Business Enterprise Certification Components:

1. Eligible Firms
2. Application Procedures
3. Certification
4. Appeals

Eligible Firms

Certification may be obtained for the following for-profit types of business enterprises: sole proprietorships; partnerships; corporations; limited liability companies; or joint ventures between or among SBEs. Joint ventures between non-SBEs and SBEs may be certified for construction, services or professional service contracts in excess of one million dollars. For the joint venture to be eligible for certification, the SBE must be responsible for the performance of a clearly defined portion of the work which is proportionate to its share in the ownership, control, management, responsibility, risk and profits of the joint venture, and the SBE must meet the requirements regarding independent ownership and control contained in CMC 323-1-I and these Rules.

Small Business Enterprise (CMC Section 323-1-S)

Small Business Enterprise or "SBE" shall mean a firm for which the gross revenues or the number of employees averaged over the past three years, inclusive of any affiliates (as defined by 13 C.F.R. Section 121.103) does not exceed the size standards (as defined pursuant to 15 U.S.C. Section 632 and 13 C.F.R. Section 121.101, *et. seq.*) and for which the personal net worth of each owner does not exceed \$750,000.

1. The applicant for SBE certification must have been in business for at least one year prior to filing an application for participation in the SBE program;
2. The applicant(s) and each owner must be a citizen of the United States;
3. Such business shall have maintained a fixed office located within the geographical boundaries of Hamilton County at least one year prior to filing an application for participation in the SBE program;
4. Such business must perform a commercially useful function;
5. Such business has been certified by the City; and
6. The personal net worth of each owner of such business cannot exceed \$750,000 at initial and continued participation in the program. The OCC will follow 13 C.F.R. Paragraph 124.104(c)(2) in making adjustments to net worth as follows: do not include equity in primary residence as an asset; do not include ownership interest in the applicant business as an asset; do not include retirement accounts subject to a significant withdrawal penalty as assets; and include any transfers to immediate family members within two years as an asset. In order to properly assess whether funds invested in a retirement account may be excluded from an individual's net worth, the individual must

provide information about the terms and restrictions of the account with the application and provide information sufficient to determine that the account would be subject to a significant withdrawal penalty. Another way to state the net worth calculation is as follows: equity in the owner's primary residence, the value of the owner's ownership interest in the business applying for SBE certification or recertification, and the value of retirement accounts subject to a significant withdrawal tax penalty are deducted from net worth; contingent liabilities, transfers to immediate family members within two years of the application for SBE certification or recertification, and the value of retirement accounts not subject to a significant withdrawal tax penalty are included in net worth.

Each individual upon whom eligibility is based must file a separate, detailed personal financial statement. The spouse of the individual upon whom eligibility is based must also file a separate, detailed personal financial statement. Fifty percent (50%) of jointly-held assets of a married couple must be included on each individual's financial statement.

7. Such business or joint venture must meet the definition of independent ownership and control.

8. Franchisees and brokers are not eligible to be certified as SBEs.

Joint Venture (CMC Section 323-1-J)

The OCC will certify joint ventures under CMC Chapter 323 only between and among SBEs except as provided in CMC 323-1-J and this section. Joint ventures between non-SBE contractors and SBEs may be certified for construction, services, or professional services contracts in excess of one million dollars. The SBE must be responsible for the performance of a clearly defined portion of the work which is proportionate to its share in the ownership, control, management, responsibility, risk and profits of the joint venture, and the SBE must meet the requirements regarding independent ownership and control contained in CMC 323-1-I and these Rules. The certification of a joint venture will terminate upon completion of the City contract for which the joint venture was formed.

Eligibility Requirements (CMC Section 323-9)

To be eligible for certification as an SBE, each applicant must meet the definition of an SBE as defined in CMC Section 323-1-S. The requirements for certification with the City of

Cincinnati as a SBE and evidence of fulfilling these requirements are, depending on the form of the business enterprise, as follows:

- ✓ 1. The SBE firm must be owned, operated and controlled by the applying SBE owner(s);
2. The applicant for SBE certification must have been in business for at least one year in Hamilton County, where it maintained a fixed office for the same period;
3. The applicant(s) and business owners must be a citizen of the United States;
4. The SBE must not be the result of a loan or gift from a non-SBE who is a former employer, partner or competitor;
5. The owner(s) of a business applying for SBE certification must have physical possession of stock certificates, Articles of Incorporation and by-laws as evidence of ownership; [323-9(b)(2)]
6. The SBE firm must have a separate public listing in the local telephone directory, web page or another social media outlet from the listing of a non-SBE; [323-9(b)(2)]
7. A SBE firm must not have a debtor/creditor relationship with a non-SBE individual or firm, except financial institutions in business for the purpose of lending money; [323-5]
- ✓ 8. The owner(s) of a business applying for SBE certification should be knowledgeable, trained or experienced in business and management skills for the business which they own; [323-9(b)(2); 323-1-S(c)]
- ✓ 9. An SBE should never share personnel (accountants, lawyers, secretaries, etc.), office space, equipment and supplies with non-SBE firms engaged in the same or a similar line of business; [323-5; 323-9(b)(2)]
- ✓ 10. The owner(s) of a business applying for SBE certification must have the power to control day-to-day operations of the SBE. For a corporation, the owner(s) must have this power as an officer of the corporation, member of the Board of Directors, or through stock ownership; (323-1-S (g) if adopted; [323-9(2); 323-5]
11. The owner(s) of a business applying for SBE certification should prepare or direct the preparation of the payroll, bank deposits, withdrawals and should be maker on all loans for the SBE;
12. The owner(s) of a business applying for SBE certification should maintain the corporate books and records of the SBE;
13. The owner(s) of a business applying for SBE certification should prepare or have prepared, general financial statements and tax returns for the SBE; [(323-9(b)(2)] and,

14. The owner(s) of a business applying for SBE certification must have the authority to hire and fire the employees of the SBE. [323-1-S (g) if adopted; 323-5]

Application Procedure

The OCC will accept applications from a business seeking to be certified as a SBE or from a business seeking to have a Joint Venture certified. Application forms may be obtained between 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding holidays, from the OCC, Suite 222, 805 Central Avenue, Two Centennial Plaza, Cincinnati, Ohio 45202. The application forms also may be obtained online at <http://www.cincinnati-oh.gov/purchasing/registration/small-business-enterprise-certification/>. The OCC will certify SBEs which meet the requirements of CMC Chapter 323 and these rules. No application will be considered for review by OCC until it is completed, properly signed and notarized, and submitted with required back-up documentation. In considering each application for certification, the OCC will determine whether the business qualifies for certification as an SBE, as defined in CMC Chapter 323, based on the review of the application and accompanying documentation, the results of staff investigations, and other relevant information. Other relevant information may include, but is not limited to, the following: driver's licenses; business federal income tax returns; personal federal income tax returns; personal financial statements or net worth statements; bank resolution card or signature card; copy of any active business loans; and Vendor Registration Form.

Certification

SBEs are required to be certified with the City before the bid or contract award. For good cause shown, the Contract Compliance Officer may modify this requirement. SBE Certification is for a period of two years unless certification is revoked or terminated for any reason. The SBE approval provided through the approved streamlined process may be for less than two years and will be for the period stated on the certificate.

Acceptance of Other Certifications: Firms certified by other government agencies must be certified under Chapter 323 regardless of other certifications. Such firms may be eligible for the OCC's streamlined certification process. CMC Chapter 323 specifically prohibits the participation of "brokers" in the supplies/non-professional services category. A company will not be considered a broker if it does one of the following: a) provides documentation verifying

that the company is a distributor or a manufacturer's representative for another firm; b) maintains inventory for each commodity for which the company is seeking certification that is available for review during a site visit; or c) demonstrates loss or risk from obtaining products.

Self-Certification

SBEs may complete the Self-Certification Application/Affidavit for bids/proposals up to \$50,000 subject to penalties for perjury/falsification.

Denial of Certification

The OCC will deny certification as a SBE to any business entity which fails to meet the requirements of CMC Chapter 323 as interpreted by these Rules and Regulations. The OCC may base its denial of certification on any of the following grounds:

1. Failure to qualify as a SBE under CMC Chapter 323 (in its current form or as it may be amended) as interpreted by these Rules and Regulations;
2. Failure to provide sufficient information to the OCC on which a determination of eligibility can be established;
3. Refusal to permit on-site inspection by the OCC; or
4. Refusal to comply with an OCC request for information, data, or access to records pertinent to the determination of eligibility for certification.

When certification is denied, the OCC will notify the applicant of the denial, in writing, by U.S. certified mail, along with the reason(s) for the denial. A business that has its certification denied may file an appeal pursuant to CMC Section 323-13 and these Rules and Regulations. Hearings shall be conducted in accordance with the procedures set forth in CMC 323-13 and these Rules and Regulations. If a prospective SBE is denied certification, the business cannot reapply for certification for a period of one (1) year from the date of the notice of denial, provided that such company shall have the right to appeal such denial, and to be certified if such appeal is decided in its favor.

Recertification

Applications for recertification must be submitted to the OCC at least 30 days before the date of expiration of the existing certification to ensure uninterrupted certification. Submitting applications 29 days or fewer before the expiration of the existing certification may lead to a

period of interruption of certification. Applications for recertification shall meet all of the requirements of the application for certification set forth herein, updated to the date of the application for recertification. For an SBE to remain certified with the City, it must be recertified at least every two years by the OCC to determine continued compliance as a qualified SBE under CMC Chapter 323, these Rules and Regulations promulgated under the authority of Chapter 323, and related ordinances. Those businesses certified under the City's streamlined process must apply for recertification upon the expiration of the certification upon which their City certification is based.

Denial of Recertification

The OCC may deny recertification of an SBE on one or more of the grounds set forth in Chapter 323 and these Rules and Regulations. If recertification is denied, the OCC shall notify the applicant of the denial, in writing, by certified mail, along with the grounds and specific reasons for the denial. Notice of the denial of recertification shall include notice of the right to a hearing. An SBE that has its recertification denied may file an appeal pursuant to CMC Section 323-13 and these Rules and Regulations. Hearings shall be conducted in accordance with the procedures set forth in CMC Section 323-13 and these Rules and Regulations.

Revocation/Decertification

The OCC may revoke the certification of a business that it finds is no longer a bona fide or eligible SBE. Reasons which could lead to revocation/decertification procedures include, but are not limited to, the following: (1) the SBE has changed to the extent that the business no longer satisfies the requirements of independent ownership and control; (2) the SBE fails to submit, in a timely manner, information requested by OCC; (3) the SBE has violated any provision of CMC Chapter 323 or these Rules and Regulations; and, (4) any other reason(s) determined by the City Manager or his designee. A business that has its certification revoked may file an appeal pursuant to CMC Section 323-13 and these Rules and Regulations. Hearings shall be conducted in accordance with the procedures set forth in CMC Section 323-13 and these Rules and Regulations.

A business that has its certification revoked for reasons other than its voluntary request and whose appeal is denied may not apply for recertification for such time as may be specified, up to one year.

Appeal Procedure (CMC Section 323-13)

Any applicant denied certification or recertification as a SBE or whose SBE certification is revoked may appeal the determination by filing a notice of appeal with the Contract Compliance Officer in writing, within seven (7) days of the receipt of the notice of the certification denial. Upon receipt of the notice of appeal from the aggrieved party the Contract Compliance Officer shall, within three (3) working days of receipt of the notice, forward the notice to the Contract Compliance Advisory Board.

The Contract Compliance Advisory Board shall set a hearing date not more than twenty-eight (28) days from the date of receipt of the notice from the Contract Compliance Officer. The Contract Compliance Advisory Board shall cause notice of the hearing to be served upon all parties, by certified mail. Such notice shall set forth, with particularity, the claims asserted by the aggrieved business and shall include the hearing date, time and place. The hearing shall be open to the public. An electronic or court-type recording of the hearing shall be made which shall be a part of the official record of the proceedings. A copy of the recording or transcript shall be made available to the applicant at cost, upon request. All testimony shall be given under oath or affirmation. Any person may be excluded from the hearing for conduct that interferes with the hearing process. The rules of evidence shall not strictly apply; however, the Contract Compliance Advisory Board shall have the authority to exclude irrelevant or repetitive evidence or testimony. The official record of the hearing shall consist of the notice of the hearing; the written submissions of the applicant, if any; the report(s) of the OCC staff; the proposed findings and conclusions filed by the parties; exceptions to the proposed findings and conclusions; and the recording of the hearing.

At the hearing, all parties shall be provided a fair and impartial hearing and shall be allowed to produce any and all evidence that clarifies or directly relates to the information supplied by the applicant that, upon review by OCC staff, led to the determination of non-compliance with the requirements of CMC Chapter 323 as interpreted by these Rules and Regulations. The Contract Compliance Advisory Board may not consider new or different evidence intended to

replace or contradict information or documents supplied to the OCC by the applicant that led to the determination of non-compliance. The Contract Compliance Advisory Board shall within seven (7) days of the hearing make a written recommendation on the appeal, which must be supported by a preponderance of evidence, to the City Manager or the City Manager's designee. The recommendation shall affirm, modify or reverse the determination of non-compliance or the denial of certification or recertification or the revocation of certification. If the City Manager or the City Manager's designee finds for the aggrieved party, the business shall be certified as a SBE, and added to the certification list maintained by the City. The decision of the City Manager or the City Manager's designee shall be final, subject to the right of appeal as provided by law. The City Manager or the City Manager's designee shall issue written notice of the decision on the appeal to all parties after receiving the recommendation of the board. The notice of the decision shall be sent to all parties by certified mail and shall set forth the reasons for the decision. The OCC shall maintain the office record of the proceedings and the actions of the Contract Compliance Advisory Board.

Streamlined Certification Process

The City of Cincinnati has adopted a streamlined SBE certification process whereby it will accept certifications from approved certifying agencies, as authorized by the Contract Compliance Officer. The approved certification agencies must use the same requirements as the City's SBE certification requirements for a business to be certified and approved for the City's SBE program. The Contract Compliance Officer shall have the authority to approve a certifying agency which meets most of the City's requirements so long as the applicant business provides all additional information that is required by the City in order for it to meet the City's requirements for SBE certification. In such cases, the Contract Compliance Officer will not proceed with the application process until all additional required information submitted by the business is received by the OCC.

If the City's SBE certification requirements or any approved certifying agency's requirements change, the Contract Compliance Officer must review all approved certifying agency requirements to verify that the approved certifying agency still qualifies for the streamlined SBE certification process. If any approved certifying agency is found to no longer qualify, the OCC will notify all SBEs who were approved using that agency's certification within thirty (30)

days that its City SBE certification will remain in effect until its termination date but that it will not be able to use that agency's certification to be recertified as an SBE by the City.

All businesses requesting streamlined certification must meet the following requirements:

A. Applicants must submit an application requesting certification by the City of Cincinnati and an affidavit attesting to the authenticity and truthfulness of the documentation presented (sample affidavit can be found on the City of Cincinnati website at <http://www.cincinnati-oh.gov/purchasing/registration/small-business-enterprise-certification/>). The City may request a copy of the application which the applicant submitted to the approved certifying agency (i.e. State of Ohio EDGE Program, SBA 8(a) Program). A copy of a current approved certifying agency's certificate must accompany the letter and affidavit.

B. All applicants for streamlined certification must be in current good standing with all other jurisdictions under which they are certified or recognized.

C. No business which is currently under suspension or debarment or which has been denied certification or recertification by the City of Cincinnati in less than one year preceding its request for streamlined certification with the City of Cincinnati SBE program may use this streamlined certification process. D. The Contract Compliance Officer will verify that the information provided by the applicant meets the requirements of the City. If any additional information is required from the applicant, the Contract Compliance Officer will request this information, in writing, from the business, which will have 30 days to respond. If the business does not respond in a timely manner to the request, the Contract Compliance Officer will determine how he or she will proceed with the SBE application. The City will require a site visit for all applications prior to approval.

A business certified as an SBE through the streamlined process shall receive certification for a maximum period of 2 years; however, that certification shall not be effective beyond the termination of its certification with the approved certification agency on which its City streamlined SBE certification is based.

Important: Applicants requesting streamlined certification must be approved for SBE certification by the Contract Compliance Officer prior to bidding on contracts where they wish their participation to be counted towards the City's SBE goals. No credit for SBE participation

will be given until the business's SBE certification is approved by the Contract Compliance Officer.

SECTION 3: LIST OF SBE CONTRACTORS

The OCC shall establish and maintain a list of certified SBE contractors. Certified SBEs on the list shall receive invitations to bid/propose on contracts advertised by the Purchasing Division of the Finance Department for SBE participation. Invitations to bid/propose shall be sent to all certified SBEs that qualify under the commodity code for which the contract will be let.

Declaration of Commodities

During the application process for certification, a prospective SBE must submit a vendor registration form, which identifies the commodity code(s) in which the SBE wishes to be certified, along with proof of performance in those commodities. SBE Certification is contingent upon the OCC's determination that the commodity codes identified by the prospective SBE meet the definition of a commercially useful function. For businesses in the supplies/non-professional services category, the business must have either inventory on hand or inventory available to the company because of a distributorship or manufacturer's representative agreement for each commodity in which it seeks certification.

Expansion of Commodities

If an SBE decides to expand to a new commodity code other than that in which its SBE certification was originally granted, an additional vendor registration form and proof of performance must be submitted and approved by OCC prior to bid/contract award that is based on or includes the SBE's participation in that commodity code.

SECTION 4: CONTRACTOR AND SUBCONTRACTOR ASSISTANCE

The OCC and Purchasing Division of the Finance Department staffs are available to assist contractors and subcontractors in implementing this program. As a standard procedure, such assistance includes:

1. Clear identification of the City of Cincinnati's SBE provisions in all City of Cincinnati solicitations.
2. Pre-bid/proposal conference (as appropriate) to explain the City of Cincinnati's SBEP.
3. Identification of certified SBEs per the City of Cincinnati solicitation, including a list of certified SBEs available to those who received bid solicitation or RFP packets.
4. Providing interested SBEs with a list of companies that requested bid or RFP documents.
5. The OCC in conjunction with other City agencies will monitor SBE participation levels on projects throughout the duration of a contract.

Where a contractor utilizes one or more subcontractors to satisfy SBE goals, the contractor may count toward its SBE performance only expenditures to SBE contractors that perform a commercially useful function in the work of the contract.

The preference is to have the SBE subcontractors as first tier/primary subcontractors and not subcontractors of subcontractors. At any tier, SBE roles as subcontractors must be meaningful and contribute positively to the successful completion of the project. Subcontracting is permitted on contracts in construction, services and professional services.

The OCC must approve all subcontractors **prior** to their commencing performance on a City project. Failure to secure prior approval may subject the contractor to any or all of the following actions being taken by the City:

1. Withholding of ten percent (10%) of all future payments under the contract until it is determined that the contractor is in compliance;
2. Withholding of all future payments under the contract until it is determined that the contractor is in compliance;
3. Default; payment withheld under Section 321-155 of the Cincinnati Municipal Code; or
4. Default; further bids or proposals refused under Section 321-153 of the Cincinnati Municipal Code.

SECTION 5: SMALL BUSINESS ASSISTANCE

Small Business Assistance (CMC Section 323-23)

To qualify for these services, the business must be certified or be in the process of becoming certified with the City's SBEP. The goal is to facilitate the development of technical and management skills of the certified SBE so that these businesses will not only exist, but at some point will exhibit maturity and growth.

These efforts are intended to raise the consciousness of the SBE communities regarding City business opportunities and how to take advantage of the program benefits. The OCC will, in addition, assist SBEs in gaining access to training and technical assistance in the areas of estimating and bonding.

The OCC may also facilitate the collecting, organizing and disseminating of information regarding the availability of capital or financing sources in the Cincinnati area. The OCC will facilitate access to markets, especially the Cincinnati market, and provide such general assistance to the SBE communities as may be necessary to effectively improve the participation of SBEs in the City procurement process.

SECTION 6: COMPLAINTS AND SANCTIONS

Complaints

Any person or organization with information indicating unjust participation by a business enterprise or individual under these Rules and Regulations or CMC Chapter 323 should contact the OCC and provide a detailed statement, in writing, providing the basis for the complaint.

Sanctions (CMC Section 323-11)

The Contract Compliance Officer shall apply penalties against certified SBEs for violations of the provisions of CMC Chapter 323 or of these Rules and Regulations, and shall apply penalties against any non-SBE firms which assist, participate or initiate SBEs in misleading the City about ownership and control of a would-be SBE. The nature and extent of penalties applied shall be reviewed on appeal to the Contract Compliance Advisory Board that acts as

an advisor to the City Manager. Penalties that are applied against firms shall be considered in making future contract awards to such firms. Penalties for a violation of CMC Chapter 323 or these Rules and Regulations shall be as set forth in Section 323-99.

For good cause shown, the Contract Compliance Officer may grant a stay of the sanction pending appeal; however, in no case shall the stay impede the City's contracting authority.

SECTION 7: MISCELLANEOUS

Change in Ownership, Control, Etc.

Certification as a SBE shall terminate upon the sale, exchange, or transfer of ownership or change in control of the certified SBE as identified in the application which was the basis for certification approval.

Payment to Subcontractors

City departments shall require contractors to certify in writing that all subcontractors and suppliers have been paid for work and materials by the contractor prior to disbursement of contract payments. The Prompt Payment System in CMC Chapter 319 requires the City of Cincinnati to make payments to contractors within thirty days of receipt of a complete and responsive invoice; requires contractors to pay subcontractors for complete and responsive invoices within ten days after they receive payment from the City; requires the City to pay an interest penalty on unpaid balances not paid within thirty days, up to a maximum of 10% of the total contract amount; requires contractors to pay an interest penalty on unpaid balances not paid within ten days, to subcontractors; and allows the City to make partial payments for partial deliveries if authorized by the terms and conditions of the contract. During the contract and upon completion of the contract, the City of Cincinnati may request documentation to certify payment to subcontractors or suppliers. The subcontractor or supplier may be required to sign off on the certification of payment form or affidavit to attest to the receipt of payment from the contractor.

Amendments to Rules and Regulations

These Rules and Regulations may be revised at any time by the City without notice to any applicant, potential applicant, or certified SBE.

GLOSSARY

Affiliation or Affiliated: Means the relationship between or among businesses where one business controls or has the ability or power to control another or when one or more parties control or have the ability or power to control both businesses. Control may arise through an ownership interest or management of both businesses or other relationships or interactions between or among the businesses or parties.

Assigned Subcontractor: A firm that has bid on specific aspects, but generally not all, of the scope of work of a construction project, such as electrical, plumbing, etc. and has been chosen by the City to perform certain parts of a project. The prime or general contractor does not need approval of the assigned subcontractor. An administrative fee is paid to the prime or general contractor for coordinating and managing the work of the assigned subcontractor.

Best Effort: That effort which demonstrates an exhaustive search of possible means to locate and contract with SBEs in an effort to achieve stated goals. (Proof of best efforts is required.)

Bid: A quotation, proposal, or offer by a bidder, vendor, or contractor to perform or provide labor, material, or supplies to the City of Cincinnati for a price.

Brokerage or Broker: A person or firm which contracts with third parties on behalf of the broker's principal, or a specialist who represents buyers of goods without taking possession or ownership of these goods, or an agent employed to make bargains and contracts for compensation. A broker acts as middleman in transactions between a buyer and a seller, generally receiving a commission or fee for work performed. A broker typically has only lines of credit, instead of contracts or agreements as a distributor for a particular business or product. An independent manufacturer's representative or distributor is not a broker.

Certification or Recertification: "Certification" or "Recertification" shall apply to a Small Business Enterprise (SBE) that meets the qualification criteria set forth in CMC Chapter 323 and in these Rules and Regulations for participation in the SBEP in one or more particular construction, professional services, supply, or service categories in which the contract is

being awarded and is approved by the Contract Compliance Officer or the Contract Compliance Officer's designee. "Certification" or "Recertification" relates to meeting the criteria of the SBE Program, not the quality of the service or product.

Commercially Useful Function: A business provides a commercially useful function when it meets all of the following: when it is directly responsible for providing the supplies or services to the City as required by the solicitation or request for quotes, bids or proposals; when it is responsible for the execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing and supervising the work involved; and when it performs work that is normally or usually performed by a business within the industry in which the business operates. A business does not provide a commercially useful function if it subcontracts a portion of the work that is greater than that expected to be subcontracted by normal industry practices. A business which stocks sufficient quantities of supplies in direct inventory, held for sale or resale, to cover anticipated future demands for the supplies performs a commercially useful function. SBEs that are brokers shall not be deemed to perform a "commercially useful function" unless the brokerage services are those required and sought by the City.

Commodity: Goods and services sought by the City. Any type of supplies, materials, equipment or services identified by a common commodity code number by the Purchasing Division as a common unit for purchasing purposes.

Construction: Any type of building activity or demolition, alteration, rehabilitation or repair of a building or structure, including without limitation roads and bridges, identified by the Purchasing Division as a common unit for purchasing purposes.

Contract: A legal agreement in excess of \$5,000, except types of contracts listed by the City purchasing agent as exempt and approved by the City Manager, for:

- (a) Construction
- (b) Supplies
- (c) Services
- (d) Professional Services

Contract Compliance Advisory Board: The City Manager appoints members to the Contract Compliance Advisory Board of the City which serves as the appeal board for SBEs and applicants for SBE certification and recertification, revocation of certification, and sanctions. The Board makes recommendations to the City Manager regarding appeals.

Distributors: Individuals or companies which sell or disseminate a product of another company or corporation exclusively. They can hold title to, demonstrate investment risk, and/or take possession of the product(s) they are distributing, but it is not mandatory. The term "distributor" is distinguishable from "broker". A distributor effects transactions on his own account and keeps inventory for resale, and a broker effects transactions for the account of others.

Employees: "Employees" means all individuals employed on a full-time, part-time, temporary, or other basis. The OCC will consider the totality of the circumstances, including factors relevant for tax purposes, in determining whether individuals are employees of the business in question. (See calculation of employees in Appendix 1.)

Fixed Office: A constant or permanent office location within Hamilton County, owned or leased by the business, in an established, non-portable building where the regular business function (commerce) of a firm is carried out or performed, where the firm's owner, management, or the firm's employees are present and conduct the firm's business on a regular and frequent basis, and where supporting documentation can be provided for the office location such as: deed, lease agreements, utility bills, rent receipts and/or cancelled checks for rent payments. In addition, the firm must have evidence of paying local taxes (property taxes, payroll taxes, sales taxes, earnings taxes, etc.) as applicable. Appropriate documentation demonstrating the payment of taxes must be provided when requested.

A residence may qualify as a fixed office provided that all the following conditions are met: (a) the business conducted in the residence complies with the local zoning regulations relating to Home Occupations; (b) the residence is the primary (main) business location of the business (c) the residence is owned or leased by an owner of the business; and (d) the residence is used on a full-time basis during typical business hours for the specific industry of the business. A fixed office can also be a fixed distribution point. A fixed distribution point is a

non-portable warehouse or an outside shipping yard owned or leased by the local business, where shipping and receiving of goods and commodities on behalf of the business occurs and the owner and employees regularly conduct distribution of goods and commodities on behalf of the business.

Post Office boxes, temporary locations, and moveable work sites are not fixed offices within Hamilton County. Further, a local office that principally serves to market the firm locally does not meet the definition of fixed office within Hamilton County, unless the office is used full-time by principals and employees of the firm, the firm pays local taxes, and the office is used for the current performance of work in the local area. A firm that is doing business from a local telework center (virtual office) or similar facility in which businesses share facilities, such as receptionists or copiers, on a short or long term basis will not meet the definition of having a fixed office within Hamilton County, unless the firm's principals and employees use it on a full-time basis.

Good Faith Effort: Good Faith Effort means that effort set forth in these Rules and Regulations inclusive of required documentation that demonstrates a contractor's efforts. (Also see page 8.)

Gross Receipts: "Gross Receipts" means the total revenue a company or organization receives during its annual accounting period before subtracting any costs or expenses. This does not include income from the sale of fixed assets.

Independent Ownership and Control: "Independent Ownership and Control" or "Independently Owned and Controlled" applies to both individual SBEs and to SBEs engaged in a venture with other businesses. For an individual SBE, "Independent Ownership and Control" means the degree to which owners of the SBE participate in and are capable of participating in the decisions affecting day-to-day operations of the business, by considering the ability of the owners of the SBE to function and carry out daily business activities without relying upon others who are not owners or employees of the SBE, such as consultants, advisers, accountants, or owners' relatives. In determining the ability of the owners of the SBE to operate the business, the OCC may consider the owners' work experience, including

experience in the primary industry in which the firm is seeking SBE certification; specialized training; education; and any other relevant factors.

For SBEs involved in a joint venture with a non-SBE as permitted by 323-1-J, "Independent Ownership and Control" is determined by considering the participation of the owners of the SBE in the decisions affecting day-to-day operations of the business, by considering the ability of the owners of the SBE to function and carry out those daily business activities assigned to the SBE by agreement of the parties to the joint venture without assistance from the non-SBE business. "Independent Ownership and Control" also may be determined by considering the proportionate interest of the owners of the SBE in the capital, assets, profits and losses of the joint venture. In determining whether joint venture is independently owned and controlled by the owners of the SBE, the Contract Compliance Officer may use discretion in weighing the foregoing factors, as well as any other factor, which, in the City's opinion affects independent ownership and control.

Joint Venture: An association of two or more businesses established to carry on a single business activity, which is limited in scope and duration. SBE participation in a joint venture shall be based on the sharing of real economic interest in the venture and shall include proportionate control over management, interest in capital acquired by the joint venture and interest in earnings. (CMC Section 323-1-J)

Limited Liability Company: A limited liability company (LLC) is an incorporated form of a business organization, similar to a general or limited partnership, but possessing a limited "shield" which protects its owners from liability to the same extent that stockholders or a corporation, are insulated from the debts and obligations of the corporation. If properly structured, the LLC will be treated as a partnership (or pass-through entity) for federal and state income tax purposes. The LLC can offer flexibility, in the allocation of profits, losses and distributions, a factor that usually has great significance to investors. SBE certification requires the LLC to meet SBE ownership criteria and documentation of equity, and profit/loss distribution formula. The operation agreement must meet requirements reflecting SBE ownership, management and control.

Manufacturer's Representative: An independent sales agent for a manufacturer or a group of manufacturers (principal) in a described sales territory who takes neither title nor

possession of the merchandise he or she sells. This person or individual may not be certified.

Net Worth: As defined in CMC 323-1-S (e).

Operate: To be actively involved in the day-to-day management of the business.

Own: To have possession of the business. Ownership is interpreted to ensure that the small business member(s) enjoy the normal and customary incidents of ownership.

Participation: The rate of SBE utilization.

Recertification: (See Certification.)

Small Business Enterprise: or "SBE" shall mean a business or firm that meets the definition in CMC 323-1-S.

Site Visit: A personal inspection of the small business operation of the applicant for SBE certification, performed by a representative from the OCC to ensure the existence and operation of the business at the specified location and to review and confirm the make-up of the entity as detailed in the written application for SBE certification.

Size Standard: Employees counted in determining size include all individuals employed on a full-time, part-time, temporary, or other basis. SBDOCC will consider the totality of the circumstances, including factors relevant for tax purposes, in determining whether individuals are employees of the concern in question.

Specialty Items: An area of construction where there are no certified SBEs or where no SBEs have the capacity, financial resources or experience to perform.

Streamlined Certification Process: The shortened or abbreviated process that includes the acceptance of documentation from an approved outside certifying agency where such agency's certification process is very similar to the City of Cincinnati's SBE Program

requirements. It is not a reciprocal process. All enterprises seeking certification through the Streamlined Certification Process must meet all of the requirements of the City of Cincinnati's SBEP.

Subcontracting: Work given out to another vendor. Generally, a prime contractor or developer contracts with another vendor to perform or complete some construction craft trade work that they cannot or will not be performing on a project or contract. Subcontracting may also be permissible on professional and service contracts.

Vendor Registration: Identifying to the City those goods or services a business wishes to provide to the City by completing a vendor registration form through the Purchasing Division of the Finance Department.

Waiver: City approved relinquishing of a contractor's obligation to comply with one or more provision(s) of the SBEP.

APPENDIX I

APPLICATION REQUIREMENTS AND DOCUMENTATION

For the City's reporting and monitoring purposes only, applicants will be asked to provide information about their race and/or gender.

Corporations must complete the application and submit all required documents as applicable listed below:

1. Articles of Incorporation, by-laws and/or Code of Regulations.
2. Minutes of the first and most recent shareholders, board of directors, and corporate meetings.
3. Resumes of all stockholders/or Executive Officers including education, training, and employment, with dates.
4. Copies of front and backs of all issued stocks of certificates and stock transfer journal voting shares (not a specimen copy).
5. Copy of complete personal tax return (Form 1040) signed and dated by principal(s) and/or certified public accountant, business federal income tax (Form 1120) returns from all owners for three (3) previous years or total number of years in business if fewer than three, and financial statements of any affiliates or subsidiaries for the same period of time.
6. A completed copy of all owners' Personal Financial Statement or Net Worth Statement. When married, a separate Personal Financial Statement must be submitted for each owner's spouse as well, unless the owner and spouse are legally separated. If legally separated, owners must provide a certified copy of the legal separation decree.
7. Bank resolution card or signature card.
8. Copy of active loans (e.g. promissory notes) and any equipment rental and/or purchase agreements.
9. Employee data to include total number of employees over past three years (See Employee definition).
10. List of company locations owned or leased by company.

11. Third party agreements (signed purchase and/or lease agreements and/or equipment agreements).

12. Management Service Agreements or Buy/Sell Agreements (pertains to acquisition of business through purchase).

Partnerships or Limited Liability Company must complete the application and submit documents listed below as applicable:

1. Partnership or Limited Liability Agreement.
2. Employee data to include total number of employees over past three years (See Employees definition).
3. Resumes of each principal of the company, including education, training, and employment, with dates.
4. Copy of personal tax (Form 1040) and partnership/LLC business tax returns for previous three years or total number of years in business if fewer than three, signed and dated, and financial statement of any affiliates or subsidiaries for same period of time.
5. A completed copy of all owners' Personal Financial Statement or Net Worth Statement. When married, a separate Personal Financial Statement must be submitted for each owner's spouse as well, unless the owner and spouse are legally separated. If legally separated, owners must provide a certified copy of the legal separation decree.
6. Licenses to do business in the State or City as applicable.
7. Buy/Sell agreements and profit sharing agreements where applicable.
8. Proof of initial investment for partnership.
9. Copy of Third Party agreements when applicable.

Sole Proprietorship must complete the application and submit documents listed below where applicable:

1. Registered Trade Name/Assumed Names Certificate.
2. Resume including the education, training and employment dates.

1. In the case of a corporation, all outstanding shares of stock must be unconditionally owned by the individual(s) seeking certification of that business as an SBE by the OCC.
2. In case of a partnership or limited liability company, all of the partnership or ownership interest must be unconditionally owned by the individual(s) seeking certification for that particular business as an SBE by the OCC. Such unconditional ownership must be reflected in the firm's partnership or limited liability agreement.

Control and Management

The management and daily business operations of a firm must be controlled by the owner(s) of the firm who applied for certification of the business as an SBE. For an SBE owner to control the firm, that owner must have managerial or technical experience and competency directly related to the primary industry in which the firm is seeking SBE certification. One or more individuals identified as an owner must manage the firm on a full-time basis. Such owner(s) must possess requisite management or technical capabilities as determined by the OCC. For those industries requiring professional licenses, the OCC will confirm that the firm or individuals employed by the firm hold the requisite license(s). At least one owner of the SBE must hold the position full-time of President and Chief Executive Officer (CEO). The President and CEO may not have outside employment or other business interests that conflict with the management of the SBE or hinders it in achieving the objectives of its business development plan.

Determining SBE Primary Industry

In determining the primary industry in which an applicant is to be certified, the OCC considers:

1. The distribution of gross revenues up to three years, or
2. The number of employees over the past three years, or
3. The cost of doing business regarding the different activity for business operations that occurred over the most recently completed three years or total years in business, if less; this includes any affiliates as defined by 13 C.F.R. Sec. 121.201, whereas it does not exceed the size standards as defined pursuant to Section 15 U.S.C. Section 632 and 13 C.F.R. Section 121.101 seq.

The OCC will also consider other factors, such as the distribution of patents, contract awards, and assets. This procedure will assist in identifying the common commodity for the company under the North American Industry Classification System (NAICS) Codes.

Size Eligibility Provisions and Standards

Size of a business applying for SBE certification may be determined by either the number of employees or the business's gross receipts. The OCC will determine which basis is appropriate to determine the size of an applicant business as directed by the federal government.

Calculation of the number of employees

1. Employees counted in determining size include all individuals employed on a full-time, part-time, temporary, or other basis. The OCC will consider the totality of the circumstances, including factors relevant for tax purposes, in determining whether individuals are employees of the concern in question.
2. Where the size standard is number of employees, the method for determining an applicant's size includes the following principles:
 - a. Including the employees of its domestic and foreign affiliates based upon numbers of employees for each of the pay periods for the preceding completed three years.
 - b. Part-time and temporary employees are counted the same as full-time employees.
If a company has not been in business for three years, the average number of employees is used for each of the pay periods during which it has been in business.
 - c. Calculation of employees includes counting the employees of any affiliates.

Calculation of Gross Receipts

- a) Gross receipts of a concern that has been in business for 3 or more years divided by three.
- b) Gross receipts of a business that has been in business for fewer than 3 complete fiscal years means the receipts for the period the concern has

been in existence divided by the number of years in business, minimum period 1 year

- c) Gross receipts of a concern which has been in business 3 or more complete fiscal years but has a short year as one of those 3 years means the receipts for the short year and the two full fiscal years divided by the number of weeks in the short year and the two full fiscal years, multiplied by 52.
- d) Use of information other than Federal tax return. Where other information gives the OCC reason to regard Federal Income Tax returns as false, the OCC may base its gross receipts determination on such other information.
- e) Annual revenues of affiliates. If an enterprise has acquired an affiliate or been acquired as an affiliate during the applicable averaging period or before SBE certification, the annual gross receipts in determining size status include the revenues of both firms. Furthermore, this aggregation applies for the entire applicable period used in computing size rather than only for the period after the affiliation arose. Revenues are determined for the enterprise and its affiliates in accordance with the Calculation of Net Worth as defined below, although this may result in different periods being used to calculate annual revenue.

Calculation of Owner's Net Worth

A business is not eligible for SBE certification if the personal net worth of any of its owners exceeds \$750,000. Net worth shall be adjusted as follows: equity in the owner's primary residence, the value of the owner's ownership interest in the business applying for SBE certification or recertification, and the value of retirement accounts subject to a significant withdrawal tax penalty are deducted from net worth; contingent liabilities, transfers to immediate family members within two years of the application for SBE certification or recertification, and the value of retirement accounts not subject to a significant withdrawal tax penalty are included in net worth.

▪ Ineligible Businesses

Brokers

Franchises

Debarred or Suspended person or firm

APPENDIX II

BID/RFP PACKAGE REQUIREMENTS

Each bid package developed by the City of Cincinnati will include the following documents:

1. **Policy Statement—City of Cincinnati Non-Discrimination Policy**
2. **Outreach/Good Faith Summary Sheet (2007-a)**—lists names of firms contacted to bid as subcontractors.
3. **Statement of Good Faith Efforts (Form 2007)**—Offeror will provide a detailed description of the techniques used to obtain participation of SBEs including segmenting of the work into two or more smaller units (areas for subcontracting), attending pre-bid conferences, soliciting specific SBEs soliciting trade associations that focus on small (including minority and women-owned) businesses, advertising efforts, and other methods used.
4. **Subcontractor Utilization Plan (Form 2003)**—lists subcontractors who the Offeror plans to utilize at the time the bid is submitted. This form is used to determine if the SBE participation goal is met at bid time and will be included as part of the contract (when processed by the Purchasing Division of the Finance Department).

The following forms are included in the bid package for information purposes. These forms are required to be utilized after the contract has been awarded and work has begun:

5. **Subcontractor Approval Request (Statement of Intent to Utilize Firms Form 2004)**—this is the final listing of subcontractors who will be utilized on the project. This form must be submitted within 48 hours of bid opening. It indicates firms who will actually execute a formal agreement with the awardees when the awardees execute a contract with the City.
6. **Subcontractor Monthly Business Utilization Report (Form 2005)**—shows amounts paid to subcontractors and suppliers, the work done and dates of performance, currently done online.
7. **Subcontractor Substitution (Form 2006)**—used when terminating a subcontractor and substituting another. This form must be completed and submitted to the City for approval before the change can be made.

APPENDIX III

SAMPLE FORMS