

<b>Authorized by:</b>	
<b>Effective Date:</b>	

**CITY OF SAVANNAH  
MINORITY AND WOMEN BUSINESS ENTERPRISE PROGRAM (M/WBE) POLICY  
JUNE 2009**

**I. M/WBE IMPLEMENTATION OF THE POLICY**

The City Manager shall implement and administer the City’s M/WBE Policy through the City’s M/WBE Program

**II. M/WBE POLICY STATEMENT**

The Mayor and Aldermen of the City of Savannah (hereinafter referred to as “the City”) shall provide equal business opportunities to all persons seeking to do business with the City. The goal of the Minority/Women-Owned Business Enterprise (hereinafter referred to as “M/WBE”) Policy is to increase the utilization of minority and women-owned firms in all areas of procurement of the City including small contract purchases, materials and equipment, and in professional services, so as to remedy past patterns of discrimination and achieve equal opportunity.

The M/WBE Program will be administered by the City Manager with the support of all other departments of the City that are engaged in the procurement of goods and services. Further, the provisions of the M/WBE policy shall apply to all contracts awarded by the City, subject to the requirements of controlling Federal and State law and except as specifically exempted herein, with special emphases on construction contracts to promote the inclusion of M/WBE subcontractors and suppliers.

**III. M/WBE PROGRAM BACKGROUND**

The City of Savannah has achieved economic growth in part by acting consciously to shed the vestiges of a history of racial and gender discrimination, thereby increasing the participation of all members of the business community in the local economy. However, there remain in Savannah real barriers to equal participation by minority- and women-owned businesses (M/WBEs) in the market. A Disparity Study conducted in 1994<sup>1</sup> confirmed the continued existence of these barriers, showing that M/WBE construction, professional services and supply firms in the Chatham County area have seen disproportionately low levels of participation in City of Savannah contracts. The purpose of this Policy is to redress a history of racial and gender discrimination toward the end of achieving equal opportunity and access to City contracts by M/WBE businesses.

The City’s M/WBE Policy will achieve this end by establishing M/WBE participation goals, defined below, on City contracts that approximate the market share of available

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<sup>1</sup> A Disparity Study is currently under way to determine whether to continue this program, and if so, how to improve its effectiveness toward promoting equal opportunity of participation in City contracts.

M/WBEs, and also by providing assistance to new, inexperienced and small businesses generally, because many M/WBEs fall into such otherwise race- and gender-neutral categories. The City can thus achieve its goal of promoting equal access to City contracting opportunities in a way that benefits the entire Savannah business community (i.e., not just M/WBEs), thereby allowing the M/WBE-specific provisions of the Policy to be as narrowly tailored as possible.

The City's M/WBE Policy shall be the guiding for the City's M/WBE Program and its components that are paramount to the city's effort to achieve equal access, to increase support, and to sustain minority and women owned business in City contracting activities.

To this end, the M/WBE Policy provides the following:

- Policy Statement
- Purpose
- Definitions
- Tasks
- Responsibilities

#### **IV. PURPOSES AND OBJECTIVES OF THE M/WBE PROGRAM**

The purposes of the City's M/WBE Program are to:

1. Advocate and promote equal opportunity and access to contracting and procurement opportunities with the City;
2. Develop programs that will increase the participation of M/WBE businesses in city contract and procurement activities in order to achieve equal opportunity;
3. Monitor and assess the utilization of M/WBE businesses in all City contract and procurement activities;
4. Monitor and assess the compliance by contractors with the M/WBE policy on all City contracts;
5. Identify M/WBE businesses and promote their awareness of City contracting opportunities;
6. Develop and implement programs that provide assistance and training to less experienced small businesses, as well as established small businesses working to expand their present capacity;
7. Recommend revisions and changes to policies or procedures that are an impediment or barrier to equal opportunity of participation for M/WBE businesses in City contracting and procurement activities.

The objectives of the Ci

ty's M/WBE Program are to:

1. Continue a practice of nondiscrimination in the award and administration of City contracts;
2. Remove barriers to the participation of M/WBEs in City contracts;
3. Assist the development of M/WBE firms and their capacities so that they can compete in the market successfully outside of the M/WBE program, and
4. Increase the number of M/WBE firms and the volume of their business with the City, so as to approximate their population and market share in a given business sector.

## **V. IMPLEMENTATION OF THE M/WBE POLICY**

The City Manager shall implement and administer the City's M/WBE Policy through the City's M/WBE Program.

Several methods may be used to increase the opportunity for M/WBE participation. The methods include but are not limited to:

- Conducting pre-bid conferences
- Creating and distributing pamphlets/literature on doing business with the City
- Conducting workshops and/or seminars for vendors, primes and subcontractors
- Attending community workshops and meetings
- Advertising bids in minority and women focused media
- Allowing all vendors to register on the vendor bid list
- Establishing a program of non-restrictive pre-qualification of vendors and contractors
- Providing information on access to small business assistance programs
- Establishing M/WBE participation (utilization) goals on a project-by-project basis
- Establishing separate goals for minority and gender participation (MBE% and WBE%)
- Categorizing M/WBE firms by business sector, sub-sector and specialty firms, and assessing their relative participation levels, to most efficiently achieve the goals of this program by the most narrowly tailored means.
- Provide project management on a project by project basis.

## **VI. DEFINITIONS**

**Best Value Contracting** – A procurement method that provides the City the opportunity to consider factors in addition to price in awarding a contract.

**Bid** - A written quotation, proposal or offer by a bidder or contractor to perform or provide labor, materials, equipment, supplies or services to the City of Savannah for a price certain, submitted in response to competitive bidding solicitation issued by the City of Savannah.

**Bidder** – A business enterprise that submits a Bid as defined herein.

**Business Enterprise** – A legal entity existing for the purpose of engaging in business for profit, including but not limited to a corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private, legally recognized entity.

**Certification** – The process by which M/WBEs verify their status to the City of Savannah in order to be considered an M/WBE. Certification is a requirement of all M/WBEs that are registered with the City and is a prerequisite to participation in the M/WBE Program.

**City and City Limits** – The incorporated city limits of the City of Savannah, Georgia and its annexed boundaries, as the same may be amended from time to time.

**Classification** – The designation which best describes the ownership (MBE or WBE) of a business enterprise.

**Commercially Useful Function** - Real and actual service in the discharge of any contractual endeavor, including the execution of a distinct element of work by actually performing, managing and/or supervising the work, in accordance with normal business practices, when the firm receives due compensation for the work performed; a supplier is considered to have performed a commercially useful function when it is a manufacturer or a regular dealer.

**Compliance** – The condition or status of a prime contractor whose bid demonstrates that it complies with the M/WBE contract goals.

**Construction** – The process of building, altering, repairing, improving or demolishing any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair or routine maintenance of existing structures, buildings or real property.

**Contract** – Any and all agreements, regardless of what they may be titled, for the procurement of supplies, services, or construction.

**Contract Compliance Officer**- The city official responsible for insuring compliance with and adherence to M/WBE goals in a given contract.

**Contractor** – Any business enterprise that has entered into a contract with the City or agency thereof.

**Control or Controlled** – As used in this Policy, this term refers to an individual's relationship with a M/WBE enterprise and shall mean to actually possess and exercise the legal authority

and power to manage business assets and/or daily operations of the business and to actively and continuously exercise such managerial authority and power in determining the policies and directing the operations of the business, as opposed to a nominal relationship existing only to create the appearance of minority or woman ownership.

**Exclusive Prime/Subcontractor Relations** – Agreements made between or among a Contractor and an M/WBE in which the M/WBE promises not to provide subcontracting quotations to other bidders or potential bidders in exchange for preferential treatment from the Contractor. Such practice is prohibited by the City of Savannah; Contractors engaging in such practice risk suspension or debarment from performing or bidding on future City contracts.

**Goal** – The percentage of M/WBE participation on a given project. Goals are established on a per project basis based on trade types involved and their history of discriminatory under participation relative to their market share.

**Joint Venture** – An association of an M/WBE firm and one or more other firms to carry out a single, for profit business enterprise, for which the venture will be recognized as partially M/WBE (based on the proportion of M/WBE ownership and participation in the joint venture).

**Local** – A business that is located within the incorporated city-limits of the City of Savannah and, at the time of bid submission, has a current City of Savannah business tax certificate which authorizes the bidder or business to sell the particular item(s) offered in the bid or quotation.

**Mayor and Aldermen of the City of Savannah** – The official name of the municipal corporation known informally as the City of Savannah or Savannah; as used herein the term “the City” shall have the same meaning.

**Minority** – A citizen of the United States or a lawfully admitted resident alien, who is a member of any of the following groups:

- a. African American – All persons having origins in any of the Black racial groups of African descent as well as those identified as Jamaican, Trinidadian, and West Indian;
- b. Asian or Pacific Islander – All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands and Samoa;
- c. Asian-Indian – All persons whose origins are from India, Pakistan and Bangladesh;
- d. Hispanic – All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;

- e. American Indian and Alaskan Native – All persons having origins in any of the original peoples of north America, and who maintain cultural identification through tribal affiliation or community; to include Aleuts and Eskimo and
- f. Other – All persons belonging to an ethnic or minority group identified by the Georgia or U.S. Supreme Court as a “discrete and insular” minority afforded special protection under the Equal Protection Clause of the U.S. Constitution because of inherent personal characteristics, legislation about who is subject to strict scrutiny.

**Minority Business Enterprise or MBE** – An entity or institution that is certified as at least 51% owned and controlled by one or more minority individuals, or, in the case of a publicly owned business, at least 51% of the stock is owned by one or more minority individuals. The ownership interest must be real, and continuous, and not created solely to meet the minority-owned business or contractor provisions of this Policy. This definition shall include educational and other non-profit entities, designated as such under section 501(c) of the U.S. Tax Code, that have a recognized historical association with a Minority.

**M/WBE Compliance Plan** – The document submitted by the prime contractor during the prequalification process which demonstrates how the contractor will meet the M/WBE goals of the contract it is bidding on.

**M/WBE Coordinator** – The City official that is assigned the responsibility for developing, managing, implementing, evaluating the M/WBE program, and promoting minority and women-owned business enterprises.

**M/WBE Project Manager** – A Project Management firm will be hired on projects of \$500,000 or more on a project by project basis. This firm will provide services that will assist the M/WBE Program to include recruitment, management and monitoring of all M/WBE contractors on construction projects.

**Non-Compliance** – The status of a bid or bidder who fails to comply with the M/WBE contract goals upon submission of a bid or proposal.

**Non-Discrimination Statement** – The statement made by a bidder relating to its conduct prior to submission of a bid, as well as after the award of a contract, that the bidder agrees to:

- a. Follow the policies of the City of Savannah relating to the participation of M/WBEs;
- b. Undertake measures to ensure the maximum practicable participation by M/WBE; and
- c. Not engage in discriminatory conduct against M/WBEs inconsistent with the policy.

**Non Local** – Any business that does not meet the definition of “Local,” recited above.

**Non-Responsive Bidder** – A bidder who has submitted a bid which does not conform in all material respects to the requirements set forth in the invitation for bids.

**Offeror** – Any person, firm, corporation, or partnership that submits a bid or proposal to provide labor, goods or services to the City where funds are expended; the term includes bidder and proposer.

**Prequalification** -- The process whereby potential bidders submit their qualifications to the City for evaluation to determine if they are capable of performing the work that is being solicited and therefore, eligible to bid on the project or submit a proposal. Prequalification is a prerequisite to submitting bids or proposals, but not a guarantee of being awarded a contract.

**Procurement** – The process of buying, renting, leasing or otherwise obtaining or acquiring any real or personal property, supplies, materials, equipment or services.

**Professional Services** – Services which require licensure as a prerequisite to participation for a profit and which involve predominantly mental or intellectual labor and skills, including but not limited to, architects, engineers, surveyors, doctors, attorneys, and accountants.

**Proposed Schedule of Minority Participation** – A formal bid document (1310-4) which expresses how a contractor will meet the M/WBE goals of a contract by listing the proposed M/WBE subcontractors and/or suppliers it will use on the City project on which it is bidding.

**Purchasing** – The buying, renting, leasing or otherwise obtaining or acquiring any real or personal property, supplies, materials, equipment or services.

**Purchasing Director** –The City Official appointed by the City Manager to be the head of and administer the City’s Purchasing Department.

**Qualifier** – An offeror who has submitted required documentation to become eligible to submit a bid on a specified project.

**Responsible Bidder or Offeror** – A bidder who has the capacity, in all respects, to fully perform the contract and all of its requirements and the demonstrated experience, reliability, facilities, equipment and credit to reasonably assure performance.

**Responsive Bidder** – An offeror that has submitted a bid which conforms in all material respects to the requirements set forth in the invitation for bids.

**Small Business Enterprise Development Program** – A program administered by the City that assists and supports the development of local small and new businesses.

**Subcontract** – An agreement between the contractor (prime) and another business entity (subcontractor) for the performance of work that is part of the prime contractor’s contract with the City.

**Subcontractor/Supplier Opportunity** – An area of business or work necessary for the performance of a City contract in which there is one or more M/WBE subcontractor/sub consultant/supplier.

**Verification** – The process by which businesses are determined to be Minority or Women owned businesses by the City of Savannah. For the purposes of bidding on City of Savannah contracts, the bidder must verify the subcontractor’s claimed status as a MBE or WBE.

**Women-Owned Business Enterprise or WBE** – A business entity that is certified as at least 51% owned and controlled by one or more Women who are not members of a Minority group, or in the case of a publicly owned business, at least 51% of the stock is owned by one or more women who are not members of a Minority group, and certified as such. The ownership interest must be real, and continuous, and not created solely to meet the woman-owned business or contractor provisions of this Policy. This definition shall include educational and other non-profit entities, designated as such under section 501(c) of the U.S. Tax Code, that have a recognized historical association with women.

## **VII. IMPLEMENTATION OF THE M/WBE POLICY**

The City Manager shall implement and administer the City’s M/WBE Policy through the City’s M/WBE Program. The City Manager may delegate authority to execute components of the M/WBE Program.

### **M/WBE ENHANCEMENT SERVICES**

Under this M/WBE policy, the City shall:

1. Conduct vendor certification to verify that self-identified M/WBEs meet the definition of such enterprises as set forth in this Policy. Documentation may be requested for certification. The Office may accept certifications from other recognized government agencies or entities which conduct M/WBE certification and whose defining criteria satisfy the City’s definition.
2. Maintain a current directory of M/WBEs and the commodities and/or services they offer. The Office shall regularly update the M/WBE Directory on the City’s website ([www.savannahga.gov](http://www.savannahga.gov)) and provide links to other M/WBE certified directories; the Office will also publish an annual M/WBE Directory listing all certified M/WBEs and the respective commodities and/or services they offer.
3. Provide technical assistance to City departments relating to the implementation of the Program.
4. Provide technical assistance related to meeting the requirements of this Policy to bidders on City contracts, including how to identify qualified M/WBE subcontractors, how to contact them and how to solicit subcontract bids from such M/WBEs.

5. Provide and make available and/or disseminate information regarding contract and/or procurement opportunities with the City via flyer mailings, post cards, faxes and/or other methods, to contractors and subcontractors.
6. Provide technical assistance to prospective and current contractors and bidders concerning steps necessary to bring them into compliance with M/WBE program requirements.
7. Review and approve all of the City's invitations to bid, requests for proposals, specifications and plans, prior to formal advertising or solicitation, to ensure they comply with and promote the goals of this M/WBE Policy.
8. Conduct pre-bid/pre-proposal conferences to review with prospective bidders the M/WBE program generally, the specific M/WBE goals, and to respond to questions and/or concerns.
9. Review and evaluate bids prior the award to verify M/WBE goal compliance.
10. Certify that all bids and contracts awarded by the City meet all requirements of the M/WBE program.
11. Identify and evaluate specific barriers that have limited M/WBE participation in City procurement opportunities and develop possible solutions to eliminate or ameliorate the impact of these barriers on M/WBE participation; e.g., worker's compensation, insurance and bonding requirements.
12. Provide technical assistance to concerning joint ventures between M/WBEs and non-minority firms and/or between two or more M/WBEs.
13. Collect and maintain accurate and up-to-date data and records demonstrating M/WBE efforts and accomplishments under this Policy, and generate reports to City staff, as needed or upon request, which document the same, the progress of this Policy, and any suggestions to improve it.

### **3. CERTIFICATION**

The City desires that minority and women-owned businesses (M/WBEs) have an equal opportunity to participate in its procurement process and provide their goods and services to the City, including as subcontractors who do not themselves bid directly on City contracts. It is therefore necessary that the City have credible and reliable means of identifying "legitimate" MBE and WBE firms. To this end, the City will manage and maintain a formal certification process to substantiate the legitimacy of the firm's ownership and control as an M/WBE firm doing business in this market. The certification

will be for a period of three years per application cycle with an opportunity to renew and remain certified.

Eligibility standards, criteria and the procedures for certification as an M/WBE by the City of Savannah will be set forth in a document titled Minority and Women-Owned Business Enterprise Certification Guidelines. The guidelines will include the following:

- (a) Only businesses that meet the criteria and definition of M/WBEs may be certified for participation in this program.
- (b) The applicant for certification as an M/WBE has the burden of demonstrating by a preponderance of evidence that it meets the eligibility standards and criteria.
- (c) The City will make all eligibility determinations.
- (d) All applications for certification must be accompanied by a sworn affidavit attesting to the accuracy and truthfulness of the information provided.
- (e) Only a firm owned by a woman or a minority, as defined above, may be certified as an M/WBE. The firm's ownership by a woman or a minority must be real, substantial and continuing, going beyond proforma ownership of the firm as reflected in the ownership documents, and must not have been created solely to meet the minority business or minority contractor provisions of this Policy. The capital or other contributions used to acquire the ownership interest in the applicant-M/WBE shall be verified.
- (f) Only a firm that is owned and controlled by the woman or minority owner(s) may be certified as M/WBE. A firm must not be subject to any formal or informal restrictions that limit the authority of the woman or minority owner(s). The woman or minority owner(s) may delegate various areas of the management, policy making or daily operations of the firm to persons who are not women or minorities, but such delegations of authority must be revocable and the woman or minority owner(s) must retain the power to hire and fire any such person. It is expected that, in the absence of unique circumstances, the woman or minority owner(s) will have an overall understanding of the firm's operations and managerial and technical competence, experience and expertise directly related to the firm's operations and work. If any law requires the owners to have a particular license or other credential to operate, own and/or control a certain type of business, then the license or credential must be held in the name of the woman or minority owner(s) of the M/WBE.
- (g) In order to be certified, an M/WBE must have a valid business tax certificate recognized as authorizing the M/WBE to do business in the City of Savannah (though not necessarily issued by the City).

(h) In order to be certified as an M/WBE, a firm must be a Small Business, as defined by the City's Small Business Enterprise Development Program, and must engage in for-profit activities (i.e. must be interested in performing or providing goods and services to the public for a profit). A firm whose average annual gross receipts exceed the SBA size standards for three consecutive years will not or no longer be eligible to participate in this program.

An M/WBE firm must cooperate fully with the City during the certification process; failure to do so could result in the denial of certification. The City may consider a formal M/WBE certification by another entity, provided that the City determines that the eligibility standards and criteria of such entity are comparable to those of the City.

An M/WBE firm's certification is granted for a period of **three years**. As a condition of eligibility and maintenance of certification, an M/WBE is required to notify the City in writing, by certified mail with return receipt, within 30 days of any relevant changes in the firm, such as size, ownership, control and location, telephone/fax numbers, licenses and work category, etc. The City will certify the eligibility of joint ventures in which the participants are a combination of M/WBEs and non-M/WBEs, so long as the total M/WBE component is greater than 50%.

M/WBEs will be certified in the general types of work which the firm has the ability and expertise to perform (e.g., construction, retail, etc.). Applicants are encouraged to be as specific as possible in the categorization of their specialties so as to maximize the City's ability to match contractors' needs with M/WBEs' capabilities.

#### **4. MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE DIRECTORY**

The City will maintain a directory identifying all firms registered and certified as M/WBEs. The directory shall list the firm's name, address, phone and fax numbers, email and/or website addresses, and the type of work the firm performs as an M/WBE. The directory will be regularly updated. The directory will be made available at the City's M/WBE office, by calling the M/WBE office, and on the City of Savannah's website at [www.savannahga.gov](http://www.savannahga.gov). Additionally the City will provide links to other M/WBE certified directories.

#### **5. METHODOLOGY FOR SETTING M/WBE GOALS**

M/WBE goals shall be established by the City for construction projects that exceed \$100,000, annual contracts for services that exceed \$100,000, and Consultant services that exceed \$75,000. The City may establish M/WBE goals on other contracts and projects.

The MWBE goals shall be calculated based upon specific contracting, subcontracting, and/or (sub) supplier opportunities and the availability of M/WBEs registered as certified in the City's W/MBE directory.

The City will consider the following factors in establishing project specific M/WBE goals:

- 1) the number of M/WBEs registered or certified in the City's vendor directory;
- 2) the availability of M/WBEs registered or certified in the City's vendor directory that are willing to do business with the City;
- 3) the availability of M/WBEs registered or certified in the City's vendor directory having the capacity and/or requisite skills to perform on a related contract; and
- 4) the nature of the project (scope of work)

The M/WBE goal is determined by a mathematical calculation that compares the number of M/WBE firms certified in a given trade to the total (majority and minority) number of firms in the same trade for a given project. The resulting ratio is used as the basis for the specific M/WBE goal for that trade on that project.

## **6. COUNTING M/WBE PARTICIPATION**

The process by which the City determines whether an Offeror has met the City's M/WBE goal will be set forth in a document titled Minority and Women-Owned Business Enterprise Certification Guidelines. The guidelines will include the following:

- a) If a qualifier is determined to be non-responsive for failure to comply with the requirements of this Program, the qualifier will be allowed to submit additional documentation to establish M/WBE participation. If submitted documentation satisfies the requirement(s), the qualifier shall then be considered responsive and therefore eligible to be awarded a contract. In no way shall the award of a contract be delayed beyond three business days in order to allow a non-responsive qualifier to meet M/WBE Program requirements.
- b) The bidder may count toward the goal any tier of M/WBE subcontractors and/or suppliers that will be utilized in the contract work. However, when an M/WBE subcontracts part of the work, the value of the subcontracted work may be counted toward the goal only if the subcontractor is itself an M/WBE. Work that an M/WBE subcontracts to a non-M/WBE firm does not count toward the M/WBE goal.
- c) The bidder will be given credit toward the goal when the M/WBE subcontractor performs a commercially useful function, as defined in this policy.
- d) Regardless of whether an agreement between a contractor and an M/WBE is standard industry practice, if the arrangement created thereby sufficiently erodes the ownership, control or independence of women or minority owners of the M/WBE so as to destroy its status as a bona fide M/WBE, or if the work to be performed there under does not meet the commercially useful function requirement, the bidder shall receive no credit toward the goal.

- e) The percentage of the total dollar value of a contract with a certified M/WBE joint venture that is equal to the percentage of the M/WBE joint venturer's actual participation in the work on the Contract (commercially useful function) shall be counted toward the goal.
- f) A bidder who is itself an M/WBE may count toward the goal the portion work or services on a City contract that is actually performed by the M/WBE, including but not limited to the cost of supplies and materials purchased or equipment leased by the M/WBE for the work of the contract (commercially useful function) and/or fees or commissions for providing a bona fide services, such as professional or technical services, or for providing bonds or insurance specifically required for the performance of a City contract.

## 7. M/WBE POLICY COMPLIANCE and GOAL ACHIEVEMENT

The City requires general contractors and other prime businesses that bid on and participate in City contracts to be diligent in pursuing the involvement of M/WBEs as subcontractors, sub-consultants and sub-suppliers and to follow both the letter and spirit of this Policy. The City has developed procedures that outline how bidders can comply with this Policy and demonstrate measurable and documented efforts to involve and seek the participation of M/WBE businesses in the general community for the provision of services, materials and equipment. **It is the responsibility of the bidder to comply with this Policy.**

If the bidder is itself an M/WBE, then the participation goal for the classification of said bidder (MBE or WBE) shall be deemed met in that classification if the prime contractor is actually performing the work (see above); participation goals for classifications other than its own classification (MBE or WBE) are not deemed met. To be counted toward the goal, the bidder must specify the type and amount of work to be performed on the project.

Once a bid has been accepted and a contract awarded, the successful bidder/contractor is also responsible for achieving the participation goal as established by the City of Savannah and reflected in its Bid submission and for maintaining said goals for the duration of the project. **It is the responsibility of the contractor to comply with this Policy.**

## 8. SANCTIONS

The failure of a bidder to adequately document its compliance with this Policy and to subcontract with M/WBE firms or to purchase material supplies from M/WBEs, where the same are available, shall be considered non-compliant with this Policy. A firm that does not meet the M/WBE goal or satisfy the procedural requirements of this policy shall not be eligible to bid on or be awarded a contract. A firm that establishes a pattern of not meeting the M/WBE goals shall not be considered pre-qualified and therefore may not submit a bid. A firm that establishes a pattern of not meeting M/WBE goals may be disqualified in subsequent best value contracting solicitations. The City reserves the right to debar or

suspend any contractor as a sanction Pursuant to Sec. 2-4111 of the City of Savannah Code of Ordinances.

## **VII. M/WBE PROGRAM REQUIREMENTS IN PURCHASING ACTIVITIES**

### **1. PRE-QUALIFICATION**

In the first step of best value contracting, the City shall require contractors/vendors to pre-qualify for all projects estimated to exceed \$500,000. The pre-qualification process will examine the qualifications of prospective bidders and based on this evaluation, the project team shall make a determination as to whether or not the contractor is qualified to submit a bid. The M/WBE Officer shall participate on all pre-qualification teams.

### **2. BID PROCESS**

The City has a two-envelope system where bids are required to be submitted in two separate sealed envelopes.

One sealed envelope shall contain the **Minority Employment Provisions** and shall be clearly marked with the Project Name, Bid Number and the phrase “Section 01310 Minority Employment Provisions.” The other sealed envelope shall contain all other Bid requirements and shall be clearly marked with the Project Name and Bid Number. The envelope containing the Minority Employment Provisions shall be attached to the outside of the bid envelope and delivered to the Purchasing Director.

The Purchasing Director will submit the M/WBE envelopes to the M/WBE Coordinator for review and will securely retain the contractor’s bids in a locked file.

The M/WBE Coordinator will conduct a review and an evaluation of the Minority Employment Provision submittals for compliance with the M/WBE Program and contract requirements. The Coordinator will notify the Purchasing Director of bid submittals that are in compliance with the M/WBE Program goal, and therefore deemed eligible for consideration.

The Purchasing Director will post on the City website the list of bidders who are considered to be compliant and will notify those bidders deemed non-compliant and therefore non-responsive with the contract requirements.

#### **2.1 BID - CONSTRUCTION PROJECTS**

The City encourages and supports the award of contracts to local vendors and local M/WBEs (located within the incorporated limits of the City of Savannah and who have in their possession at the time of a bid, a valid business tax certificates issued by the City of

Savannah). The following provisions shall govern the participation of M/WBEs in bid-construction projects:

- a. Construction projects under \$100,000 will be subject to the *Local Preferences* provisions in the City's Procurement Ordinance.
- b. Construction contracts over \$100,000 shall require the bidder to subcontract with or purchase supplies from M/WBE firms; the bidder shall be required to meet or exceed the established M/WBE participation goal.
  - a. Section 1310 - Minority Employment Provisions shall be included in each construction Bid specification and contract.
  - b. Bidders shall be required to submit with their bid in a separate sealed envelope the following:
    1. Non-Discrimination Statement; and
    2. Proposed Schedule of Minority/Women-Owned Business Participation (1310).
- c. Construction contracts over \$100,000.00 shall be awarded and administered in accordance with the following standards and procedures:
  1. Competitive bids for applicable contracts shall include the M/WBE requirements and documentation in the Bid Specifications. M/WBE documentation consists of Section 1310 (Special Instructions to Bidders). Bidder shall provide additional information where applicable.
  2. Competitive bids where the bidder meets or exceeds the project goal must submit Section 01310 documentation.
  3. Competitive bids where the bidder does not have subcontracting and/or supplier opportunities must submit Section 01310 documentation indicating "N/A."
- d. Construction contracts over \$500,000 shall be awarded based on a "Best Value" analysis and pre-qualification. The bid package shall involve a two step process: pre-qualification of bidders and the sealed bid. The criteria established for evaluation of submissions will be rated by a pre-determined point system. In addition, the two step bidding process takes into consideration the past performance of bidders, the bidder's past M/WBE participation, and past litigation history. In this method of procurement, only pre-qualified bidders are allowed to submit bids for consideration.

Examples of evaluation criteria used in the pre-qualification analysis include, but are not limited to, the following:

1. Qualifications based on past performance
2. Relevant Experience
3. M/WBE Compliance Plan and history of meeting same

4. Davis-Bacon Requirements
  5. Bonding and Insurability
  6. Basic Employee Benefit Plan or Stipend in Lieu of Benefit Plan
- e. The City will require bid bonds and performance bonds on all contracts; however, as permitted by State law, the City may waive this requirement for projects under \$100,000.

Any and all requests to replace an M/WBE subcontractor with a non-M/WBE subcontractor must be submitted by the contractor in writing to the M/WBE Office for approval. All written requests for M/WBE substitutions must include an explanation for the requested change and must be documented. Any unauthorized substitution of M/WBE subcontractors will result in the withholding of payment to the general contractor for up to 30 days until compliance is reestablished; if compliance is not reached after this period, the contract shall be considered breached and terminated.

### **3. PROFESSIONAL SERVICES**

The City will utilize the Request for Proposal (RFP) process to secure the services of an outside contractor for professional services (i.e. engineering, technology, surveying, audit services, etc.) that are estimated to exceed \$75,000.

The following sets forth the procedure to ensure M/WBE firms have adequate opportunity to participate in the RFP process.

- a. Once the user department finalized the scope of work and the RFP has been completed, the Purchasing Director will forward to the M/WBE Office for review and to set a goal for the project based on the availability of M/WBE firms.
- b. The M/WBE Office and the Purchasing Department will implement outreach activities and send the RFP opportunity out to M/WBE firms capable of providing the service.
- c. The M/WBE Office will be attend the pre-proposal conference to advise attendees of project M/WBE requirements
- d. The M/WBE Office will create and maintain a service-specific list of M/WBE firms capable of performing given professional services and provide the same to the user department and the Purchasing Director.

Respondents shall be required to submit the following in a separate envelope:

- Non-Discrimination Statement; and
- Proposed Schedule of Minority/Women-Owned Business Participation (1310).

All respondents who submit a bid and demonstrate inclusion of M/WBE firms will be assessed utilization points. A total of ten (10) points shall be assessed and made part of the evaluation criteria and included in the basis for award. Minority participation can be demonstrated at either the consultant or sub consultant level.

#### **4. GENERAL GOODS & SERVICES AND MATERIALS & SUPPLIES**

- 4.1** The City shall ensure that project specifications for goods and services as well as specifications for materials and supplies do not impede M/WBE participation in the Bid process. All specifications for goods, services, materials and supplies will be reviewed and a determination shall be made as to whether or not the specifications are written in a manner that would impede the participation of M/WBEs in the procurement of the items and/or services. A current listing of known M/WBE firms from the vendor directory qualified to provide the requested goods, services, materials and supplies shall be provided.
- 4.2** The Purchasing Director shall solicit bids from M/WBE firms that engage in the business of supplying the required materials, equipment, supplies or services. The M/WBE Office shall provide the Purchasing Director with an up-to-date directory listing of M/WBE firms that are qualified to provide materials, equipment, supplies or services required by the City. Individual lists of M/WBE firms for a specific trade(s) shall be kept current, and provided by the M/WBE Office.
- 4.3** Purchasing Director will include such M/WBEs in bid/quote solicitation lists.
- 4.4** Bid conditions, requests for proposals, and all other specifications for contracts awarded by the City will require that, where subcontracting is utilized in performing the contract, the bidder will subcontract with or purchase supplies from M/WBE firms as provided in this policy. Bid specifications will require the bidder to keep records of and submit documentation to verify compliance with this requirement.
- 4.5** With the bid, each bidder will be required to state if it intends to subcontract any part of the work. Prior to an award of a contract where the low bidder indicated plans to subcontract, the bidder shall be required to meet or exceed the M/WBE goal for subcontractors or suppliers, the names of M/WBEs and other subcontractors to whom it intends to award subcontracts, the dollar value of the subcontracts, and the scope of the work to be performed.
- 4.6** Contracts will require that during the term of the contract, the contractor will:
- a. Fulfill the M/WBE participation commitments that were submitted in connection with the bid; and
  - b. Maintain records necessary to verify compliance.
- 4.7** Before advertising and soliciting bids, the Purchasing Director, M/WBE Office, and the user department will assess if large contracts can be segmented into multiple contracts to increase M/WBE participation. Methods to be considered include, but are not limited to, shortening the term of a contract or grouping the work according to geographic location within the City. (Example: contracts may be awarded by building or department.).

#### **5. JOINT VENTURES/ SUBCONTRACTING/ SUPPLIER PARTICIPATION**

Joint ventures and subcontracting may be utilized to create opportunities for M/WBE firms to improve managerial and technical expertise, thereby increasing their opportunities to bid on City future contracts.

- a) **Joint Ventures:** When an MBE or WBE has insufficient experience to pre-qualify for an advertised City project, it can form a joint venture with a more experienced firm that is qualified to bid on the project; in this context the joint venture is deemed qualified. When bidders engage in a joint venture seek to use the same to satisfy the M/WBE goal, the bidder shall demonstrate that the M/WBE joint venturer's participation is real and legitimate. The City's M/WBE Office shall review all contractual agreements and other supporting documentation and make a determination of the percentage of actual M/WBE participation based on established criteria. The percentage of actual M/WBE participation shall be counted toward satisfaction of that project's M/WBE goal.
- b) **Subcontracting:** A prime contractor may use M/WBE subcontractors to satisfy the M/WBE goal provided the M/WBE subcontractor performs a commercially useful function.
- c) **Supplier Participation:** A prime contractor may utilize M/WBE suppliers to satisfy the M/WBE goal provided the M/WBE supplier performs a commercially useful function and is regularly engaged in the sale of the supplies to be furnished under the contract.

## 6. POST-AWARD COMPLIANCE:

In addition to such other requirements as may be set forth elsewhere, the following shall apply to applicable contracts awarded by the City:

1. Contracts shall provide that the contractor's violation of this policy shall constitute a breach of such contract and may result in debarment in accord with the procedures outlined in the City Ordinance.
2. Following the date and time of bid opening, any proposed change or deletion in M/WBE participation from that identified in the bid as submitted shall be submitted in writing by the contractor for approval by the City's M/WBE office; the contractor shall submit therewith a detailed explanation to justify the change and an explanation of how the requested change or deletion will affect the M/WBE goal. Any unjustified change or deletion shall be deemed a material breach of contract and may result in recommendation for debarment or suspension in accordance with the City Ordinance.
3. The M/WBE Office shall request M/WBE Participation Reports, whose contents shall include, but not be limited to, a listing of M/WBE subcontractors, sub-consultants and/or sub-suppliers' applications for payment and/or invoices,

as appropriate, and proof of payment; the M/WBE Office may require additional documentation to assist in its analysis of compliance with this Policy and the efficacy of the Policy.

4. The following are examples of justifications for a requested change or deletion of an M/WBE subcontractor:
  - a. An M/WBE's failure to provide evidence of worker's compensation insurance, as required by state law; or
  - b. An M/WBE's failure to provide evidence of general liability or other insurance under the same or similar terms as contained in the contract documents with limits of coverage no greater than the lower of 1) the limits required of the Contractor by the City; or 2) the limits contained in the Contractor's standard agreements used on other projects of similar size and scope and within the contractor's normal business practice with non-M/WBE subcontractor's/sub-consultant's or suppliers; or
  - c. An M/WBE's failure to execute the contractor's standard subcontract form, if entering such a subcontract is required by the contractor as part of its normal business practice with non-M/WBE subcontractor's/sub-consultant's or suppliers, unless such failure is due to:
    1. A change in the amount of the previously agreed to bid or scope of work; or
    2. The contract presented provides for payment once a month or longer and the contractor is receiving payment from the City twice a month; or
    3. Any requirements being placed on the ability of the M/WBE to violate this Policy or any Ordinance or any state or federal law or to provide notice of any claim to the contractor's Surety Company or insurance company.
  - d. Any other legitimate business-related reason found to be acceptable by the City and/or the M/WBE Office.

In the event an M/WBE defaults in the performance of the executed subcontract, the contractor shall:

1. Request bids from all M/WBE subcontractors that had previously submitted bids for the work,
2. If reasonably practicable, request bids from previously non-bidding M/WBEs, and
3. Provide to the M/WBE Office documentation of compliance with (a) and (b) above.

5. Whenever contract amendments, change orders, purchase orders or extra work orders are made individually or in the aggregate, the contractor shall make a good faith effort to maintain compliance with the M/WBE goal for the project with respect to the alternates, amendments, change orders, or extra work orders.
  - a. If the amendment, change order, purchase order or extra work affects the subcontract of an M/WBE already performing like or similar work on the contract, the M/WBE shall be given the opportunity to perform such amendment, change order, purchase order or extra work.
  - b. If the amendment, change order, purchase order or extra work is not covered by an M/WBE subcontractor already performing like or similar work on the contract, and the amount of such amendment, change order, purchase order or extra work is \$100,000.00 or more, the contractor shall make a good faith effort to complete the work while remaining compliant with the M/WBE goal as stated in the bid document.
  - c. If the bidder included any second- or lower-tier subcontractor, sub-consultant or sub-supplier towards meeting the goal, it is the sole responsibility of the bidder to report and document all subcontractor, sub-consultant or sub-supplier participation dollars counted towards the goal, irrespective of tier level. Failure to comply with the City's request to provide the required documentation shall entitle the City to withhold payments and/or to reject future bids from the bidder until compliance with this Policy is attained.
6. Upon completion of the contract, the contractor shall make prompt payment to all subcontractors and shall fully comply with all rules, regulations, ordinances and laws governing the payment of subcontractors in the context of public sector contracting.

## **7. M/WBE PROGRAM RECORDS AND MONITORING**

1. The Purchasing Director shall compile and maintain data on M/WBE participation, including data concerning prime and sub- contracts awarded to M/WBEs. Information concerning construction contracts shall be maintained by the Purchasing Director. M/WBE Procurement statistics shall be maintained in the following manner:
  - a. Contracts and purchases shall be grouped into four categories: construction, professional services, general services and commodities
  - b. Statistics shall measure overall awards to M/WBEs by category of purchase: construction, professional services, general services and commodities
2. Quarterly reports shall be submitted to the City Manager who shall report quarterly to the Mayor and Aldermen from the data compiled by the M/WBE Office. The data to be submitted shall include the following:

- a. Regarding purchases of professional services, general services and commodities made through the competitive bid and quotation process:
  - Total value of purchases
  - Total value of purchases from M/WBEs
- b. Regarding small purchases by operating departments using agency purchase orders:
  - Total value of small purchases by City department
  - Total value of small purchases from M/WBEs by City Department
- c. Regarding construction purchases:
  - Total value of construction contract awards
  - Total value of prime construction contracts awarded to MBEs and WBEs
  - Total value of construction subcontracts awarded to MBEs and WBEs
- d. Regarding achievement of M/WBE participation goals (construction projects only): Comparison of proposed M/WBE participation versus actual participation.

The City Manager is responsible for the administration of the City's M/WBE Program and the effective utilization of M/WBEs in City procurement opportunities and will be responsible for evaluating program compliance and efficacy on a continuing basis. The City Manager may amend the reporting requirements recited above from time to time at his/her discretion as deems appropriate and give prior notice to the Mayor and Aldermen with reasons for the amendment before he/she takes action.

Contractors will be required to submit periodic reports of subcontracting on City projects and the participation of M/WBEs in such form and manner and at such time as the City may prescribe in the contract, and to report all suspected instances of companies fraudulently claiming M/WBE status in order to unjustly benefit from this program.

## **8. DISPUTE RESOLUTION**

The City expects all parties involved in the procurement process, including City personnel and vendors/contractors, to act in good faith in all aspects of process. If any vendor or contractor has a concern or complaint related to the application of this Policy, whether by City personnel or a contractor, that party is expected to seek cooperative voluntary resolution. If the effected parties are unable to resolve their dispute, the offended party shall report their concerns to the user department for the project; if the complaint involves the performance of an M/WBE prime or sub-contractor, the user department shall immediately notify the M/WBE Office for appropriate action.

The M/WBE Office will initiate an investigation of the complaint. Except in indisputable cases, the parties will be encouraged to mediate their dispute; the M/WBE Office may facilitate mediation or recommend mediators. If the mediation is successful, the agreement reached will be reduced to writing, signed by the participating parties and made a part of the contract or subcontract and a part of the project file; failure to comply with the agreed outcome of the mediation may result in contract termination, debarment or other punitive action by the City.

If mediation fails to resolve the dispute, or if the parties refuse to mediate, either party may within ten business days appeal to the Assistant City Manager for Public Development for resolution of disputes that involve M/WBEs. The Assistant City Manager for Public Development shall hear the dispute and render a decision. Should either party not agree with the decision of the Assistant City Manager for Public Development, the matter may within ten business days from the decision of the Assistant City Manager, be appealed to the City Manager. The decision of the City Manager is final.

Specific procedures regarding the appeals related to the M/WBE Program shall be developed by and maintained in the M/WBE Office.

#### **9. DEPARTMENTAL PURCHASE REQUIREMENTS (Small Purchases)**

Subject the requirements of applicable City ordinances, the City's departments are authorized to make small purchases using agency purchase orders. Without setting specific goals, departments are encouraged to utilize M/WBEs on small purchases to affect the purpose of this Policy, *to wit*, to redress a history of racial and gender discrimination toward the end of achieving equal opportunity and access to City procurement opportunities, regardless of the size, by M/WBE businesses. The City Manager shall be given quarterly reports prepared by the Purchasing Director as to their utilization of M/WBEs via agency purchase orders. The City will provide a directory of certified minority vendors to every department on an annual basis.

### **VIII. ENTREPRENEURIAL BUSINESS ASSISTANCE**

Providing assistance to small, emerging, and established local businesses is an important City objective. The City will continuously research and implement "best practices" that lead to successful small businesses. While these programs are race- and gender-neutral, they are included here because the M/WBEs sought to be assisted by this Policy are mainly small, emerging, and/or local businesses, and thus these programs will serve the purpose of this Policy through an otherwise race- and gender-neutral mechanism. The following programs are offered:

1. **Business Development Programs** - The City funds small business lending programs through the Department of Economic Development and other community partners.

2. **Entrepreneurial Training, Workshops, & Technical Assistance** - This initiative provides business-training resources where there is an unmet need. Members of the business community can receive one-on-one technical assistance or participate in formal classes at the Savannah Entrepreneurial Center. The City's M/WBE Program also facilitates workshops on a variety of topics from marketing to writing a plan for business expansion.
3. **Small Business Program** - This program provides more intensive concentrated assistance to the small businesses, many of which are M/WBE firms. This program provides a resource to business owners to help them further develop their businesses and increase capacity. The Small Business Program facilitates linkages to available training/workshops, assistance in getting operating capital, bonding assistance, business tax assistance, location assistance, product/service pricing, and marketing assistance.
4. **Contractor's Drawings Room** -The City has established a Contractor's Drawings Room for viewing Plans and Specification. The Drawings Room will enhance the capacity of the local contracting community and increase the flow of technical information from the City and/or user department and contractors.

## **IX. SEVERABILITY**

If any provision of this Policy or the application thereof to any person or circumstance is held invalid for any reason by a court of competent jurisdiction, such invalidity shall not affect the validity of other provisions of the Policy nor its application to other persons or circumstances nor any other component of City Procurement. The Policy is hereby declared to be severable.