

**MODIFYING** the provisions of the Administrative Code of the City of Cincinnati (“Administrative Code”) by **ORDAINING** new Article XXXI, “Department of Economic Inclusion and Procurement”; **MODIFYING** the provisions of Chapter 320, “Compliance Guidelines for Construction Contracts Issued By Water Works and the Department of Sewers,” of the Cincinnati Municipal Code (“CMC”) by **ORDAINING** new Section 320-1-C3, “City Purchasing Agent,” **AMENDING** Sections 320-5, “Apprenticeship Requirements,” and 320-9, “Monitoring and Reporting,” and **REPEALING** Section 320-1-D, “Director”; **MODIFYING** the provisions of Chapter 321, “Procurement and Disposal of Supplies, Services and Construction,” of the CMC by **AMENDING** Section 321-118, “Applicability of Prevailing Wage Rates to City Development Agreements”; **MODIFYING** the provisions of Chapter 323, “Small Business Enterprise and Local Business Enterprise Programs,” of the CMC by **AMENDING** Sections 323-1-C, “Certification,” 323-1-C2, “Commercially Useful Function,” 323-1-D, “Department,” 323-1-I, “Independent Ownership and Control,” 323-3, “Purpose; Scope and Limitations,” 323-7, “SBE Certification,” 323-9, “SLBE or ELBE Certification,” 323-11, “SBE Program Goals,” 323-17, “Mandatory Subcontracting to SLBEs/ELBEs,” 323-19, “SLBE/ELBE Sheltered Market Program,” 323-21, “Sanctions,” 323-23, “Appeal,” 323-25, “Duties of the Department of Economic Inclusion,” 323-27, “City Maintained Records and Reports,” 323-29, “SBE, SLBE and ELBE Resource Information,” 323-31, “SBE, SLBE and ELBE Directory,” 323-33, “SBE, SLBE and ELBE Assistance to Provide an Equitable Opportunity to Compete for Contracts and Subcontracts,” 323-35, “Contractor and Subcontractor Assistance to Support Compliance with Applicable SBE, SLBE and ELBE Requirements,” and 323-99, “Penalties,” and **REPEALING** Section 323-1-D1, “Director”; **MODIFYING** the provisions of Chapter 324, “Minority and Women Business Enterprise Program,” of the CMC by **AMENDING** Sections 324-1-C, “Certification,” 324-1-C4, “Compliance,” 324-1-C7, “Contract Participation Goals,” 324-1-D, “Department,” 324-1-G, “Good Faith Efforts,” 324-1-S1, “Solicitation Goal,” 324-1-S3, “Subcontractor Utilization Plan,” 324-11, “MBE and WBE Certification,” 324-13, “Annual Participation Goals for the MBE/WBE Program,” 324-15, “MBE and WBE Participation Goals,” 324-19, “Subcontractor Utilization,” 324-21, “City Agency Pre-Solicitation Goal Waiver or Reduction Requests,” 324-22, “Vendor Good Faith Efforts to Meet Goals,” 324-23, “Requests for Post-Award Waivers or Reductions of Contract Participation Goals; Substitution of MBEs or WBEs,” 324-27, “Counting MBE and WBE Participation,” 324-35, “Request for Reconsideration and Appeal of Denial of Certification,” 324-37, “Duties of the Department of Economic Inclusion,” 324-39, “City Maintained Records and Reports,” 324-41, “MBE and WBE Resource Information,” 324-43, “MBE and WBE Directory,” 324-45, “MBE and WBE Assistance to Provide an Equitable Opportunity to Compete for Contracts and Subcontracts,” 324-47, “Enforcement,” and 324-49, “Economic Inclusion Advocacy and Accountability Board,” and **REPEALING** Section 324-1-D1, “Director”; **MODIFYING** the provisions of Chapter 325, “Equal Employment Opportunity Program,” of the CMC by **AMENDING** Sections 325-5, “Duties of the Department of Economic Inclusion,” 325-7, “Requirements for Execution of City

Contracts,” 325-9, “Equal Employment Opportunity Clause,” 325-11, “Notice to and Requirements of Bidders and Offerors,” and 325-13, “Enforcement and Appeal”; **MODIFYING** the provisions of Chapter 326, “Wage Enforcement,” of the CMC by **AMENDING** Sections 326-5, “Contract or Agreement Provisions,” and 326-7, “Wage Theft Monitoring, Investigation and Compliance”; **MODIFYING** the provisions of the Administrative Code by **REPEALING** Sections 23, “Division of Purchasing; City Purchasing Agent; Duties,” 24, “City Purchasing Agent; Duties,” and 25, “City Purchasing Agent: Combined Purchases; Authorization to Sign Contracts,” of Article IX, “Department of Finance”; and **MODIFYING** the provisions of the Administrative Code by **REPEALING** Article XXIX, “Department of Economic Inclusion.”

WHEREAS, Council wishes to create a new Department of Economic Inclusion and Procurement by combining the Office of Procurement and the Department of Economic Inclusion; and

WHEREAS, the Office of Procurement and the Department of Economic Inclusion share complementary responsibilities involving procurement processes, vendor engagement, contract administration, and outreach to diverse and local business enterprises; and

WHEREAS, combining the Office of Procurement and the Department of Economic Inclusion will streamline procurement operations, reduce duplication of administrative efforts, and promote more effective delivery of services to the public and business community; and

WHEREAS, the City remains committed to addressing disparities in the City’s contracting identified by the 2023 Croson study and recognizes the importance of integrating equitable economic opportunity initiatives into the City’s procurement and contracting practices to enhance participation by small, minority-owned, and women-owned businesses; and

WHEREAS, the new Department of Economic Inclusion and Procurement will be responsible for monitoring and oversight of the City’s contracting requirement and processes, including the Minority Business Enterprise and Women Business Enterprise inclusion programs; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio, with three-fourths of its members concurring:

Section 1. That new Article XXXI, “Department of Economic Inclusion and Procurement,” of the Administrative Code of the City of Cincinnati (“Administrative Code”) is ordained as follows:

**Sec. 1. Department of Economic Inclusion and Procurement.**

There is hereby established a department of economic inclusion and procurement. The city manager shall appoint a city purchasing agent who shall be the principal officer in such department and may appoint in the employment classifications established by ordinance such other persons necessary to carry out the work assigned to said department.

The department of economic inclusion and procurement, under the leadership of the city purchasing agent, shall take appropriate actions to identify local business suppliers who can provide needed services at a cost savings to the city, maximize participation from local businesses, and assist such local business owners in obtaining access to full participation in the city's contracting processes.

## **Sec. 2. City Purchasing Agent; Duties.**

Except as otherwise permitted under the Cincinnati Municipal Code, the city purchasing agent shall be responsible for the purchase of all supplies, materials, equipment, and nonprofessional services required by the various departments, boards, commissions, and offices of the city, and with the supervision and inspection of the same. Through consultation with departments, officers, boards, and commissions, the city purchasing agent shall prepare standard specifications for the supplies, materials, equipment, and nonprofessional services needed.

The city purchasing agent shall, with the approval of the city manager, promulgate rules and regulations for the implementation of the procurement practices of the City of Cincinnati to assure fair and reasonable application of the competitive bidding processes and to protect the public interest.

The city purchasing agent shall have primary responsibility for the monitoring and oversight of all of the city's contracting requirements and processes contained within the Cincinnati Municipal Code or city ordinances or otherwise imposed upon the city under state or federal law, or upon the direction of the city manager pursuant to the policies established by city council. The city purchasing agent shall carry out all duties previously assigned to the position of director of economic inclusion, including monitoring of the city's prevailing wage responsibilities under federal and state law. All responsibilities of the department of economic inclusion are transferred in their entirety to the city purchasing agent.

The city purchasing agent shall administer the disposal of the personal property of the city no longer needed for public use in consultation with the department, office, board, or commission controlling such property.

The city purchasing agent shall have charge of such storerooms and storehouses of the city as may be established for supplies and materials purchased by the city and not delivered directly to the various departments, offices, boards, and commissions. The city purchasing agent shall be informed of and maintain records as to the sources of supply for all classes of purchases, trends of prices and other materials pertinent to the functions of the department of economic inclusion and procurement.

The city purchasing agent shall, when authorized by the city manager and director of finance, execute contracts processed by the purchasing division on behalf of the city manager or the various departments, boards, and commissions of the city. The city purchasing agent shall perform all the duties assigned by ordinances of council and by the city manager.

**Sec. 3. City Purchasing Agent: Combined Purchases; Authorization to Sign Contracts.**

When requests for materials, equipment, supplies, or services by independent boards or commissions of the City can be handled more efficiently, the city purchasing agent may combine such requests with similar requests by departments under the jurisdiction of the city manager for the purpose of purchasing the items requested by a single contract. The city manager, or the city purchasing agent when authorized by the city manager, shall execute such contract on behalf of all of the branches of the government of the City.

Section 2. That new Section 320-1-C3 of Chapter 320, “Compliance Guidelines for Construction Contracts Issued By Water Works and the Department of Sewers,” of the Cincinnati Municipal Code (“CMC”) is ordained as follows:

**Sec. 320-1-C3. City Purchasing Agent.**

“City purchasing agent” shall have the same meaning as provided in Section 321-1-C of the Cincinnati Municipal Code.

Section 3. That Sections 320-5 and 320-9 of Chapter 320, “Compliance Guidelines for Construction Contracts Issued By Water Works and the Department of Sewers,” of the CMC are amended as follows:

**Sec. 320-5. Apprenticeship Requirements.**

Where not otherwise prohibited by or in conflict with federal, state or local law or the terms of federal or state grants applicable to the construction contract, each bidder shall certify that:

- (a) For the duration of the project, the bidder will maintain or participate in an apprenticeship program for the primary apprenticeable occupation on the project; and
- (b) For the duration of the project, the bidder’s subcontractor(s) who perform work in the primary apprenticeable occupation for the project will maintain or participate in an apprenticeship program for that primary apprenticeable occupation
- (c) Subsection (b) shall not apply to a subcontractor whose subcontract is less than \$350,000.00, including labor and materials, at the time the subcontract is executed and that is any of the following:
  - (1) A small business enterprise or a small or emerging local business enterprise certified by the city as set forth in CMC Chapter 323; or
  - (2) A minority business enterprise or women business enterprise certified by the city as set forth in CMC Chapter 324.

Prior to the city's executing a construction contract, the city purchasing agent ~~director~~ shall require the bidder to produce documentation relating to the requirements of subsection (a) above. Such documentation shall include the following information regarding the apprenticeship program the bidder plans to maintain or participate in during the project: the occupation code, apprentice identification number, and indenture date for at least one apprentice that has graduated from the apprenticeship program for each of the past five (5) years. Such documentation shall be in a form as provided by the applicable registration entity. The bidder shall supply the same documentation described above for the bidder's subcontractor(s) under subsection (b) of this section, as soon as practicable after the bidder has identified the subcontractor(s) for the project and prior to the subcontractor(s) beginning work on the project. If the bidder requests an exemption for a subcontractor under subsection (c), the bidder must supply documentation that shows that the value of the executed subcontract with that subcontractor is under \$350,000.00 and that the subcontractor is a small business enterprise or a small or emerging local business enterprise certified by the city as set forth in CMC Chapter 323 or a minority business enterprise or women business enterprise certified by the city as set forth in CMC Chapter 324. If requested, the bidder shall also provide documentation supporting the bidder's determination of the primary apprenticeable occupation.

A construction contract shall not be executed with a bidder who fails to make the certifications and/or provide the documentation required by this section. Failure of a contractor to comply with the requirements of this section during the performance of the construction contract shall constitute a material breach and may subject the contractor to all remedies available to the city at law, including, but not limited to, disqualification of the contractor from bidding on current or future contracts, suspension of payments to the contractor under the construction contract, and termination of the construction contract for cause.

#### **Sec. 320-9. - Monitoring and Reporting.**

- (a) The city purchasing agent or agent's director ~~or his~~ designee shall monitor the use of apprentices on all projects.
- (b) The contractor shall prepare and submit accurate and timely worker utilization forms and reports to the city. Time reports shall be submitted with each payment application. The reports shall identify the name, address, work classification, whether the worker is an apprentice, and the hours worked of all employees utilized by the contractor and subcontractor on the project.
- (c) The contractor shall maintain all personnel records relating to the requirements of this chapter for a period of at least three (3) years after final completion of the work. This retention period may be extended in writing by the city purchasing agent or agent's director ~~or his~~ designee based upon audit irregularities.

Section 4. That Section 321-118 of Chapter 321, "Procurement and Disposal of Supplies, Services and Construction," of the CMC is amended as follows:

**Sec. 321-118. Applicability of Prevailing Wage Rates to City Development Agreements.**

- (a) Every development agreement must, as a condition of disbursement of city funds or the receipt of any other incentive or benefit, include a provision that:
- (1) Requires the payment of the wage rates set forth pursuant to Ohio's Prevailing Wage Law, Ohio Revised Code Chapter 4115 ~~sections 4115.03 to 4115.16~~, with respect to every component of the development, whether public or private, and whether or not such wage rates would otherwise be required to be paid pursuant to Ohio's Prevailing Wage Law;
  - (2) Provides that violations of Ohio's Prevailing Wage Law on a development, or violations of the provision that must be included in development agreements pursuant to clause (a)(1) of this section, that remain unresolved or uncured after the city provides notice thereof and a reasonable opportunity to resolve and cure the same shall result in the forfeiture of all benefits, incentives, and subsidies provided under the development agreement, whether said benefits, incentives, and subsidies have been previously disbursed or provided or have yet to be disbursed or provided; provided that (i) forfeiture of benefits, incentives or subsidies under this provision shall only apply with respect to the portion of the benefits, incentives, or subsidies that the development agreement does not obligate the developer to repay or reimburse, such as in the case of public infrastructure improvements benefiting a development constructed by the city but paid for by the developer, and (ii) if the city has provided non-monetary benefits, incentives or subsidies, such as the construction of public infrastructure improvements, prior to the date of forfeiture, then the development agreement shall stipulate that, in lieu of the forfeiture of such non-monetary benefits, incentives or subsidies, the forfeiting party shall remit funds to the city in an amount equal to the total value of any such non-monetary benefits, incentives, or subsidies;
  - (3) Authorizes the city to review and audit project records of the developer and requires the developer to cause any construction contractors or subcontractors to likewise agree to permit the city's review and audit of project records as may be needed to ensure compliance with this section and Ohio's Prevailing Wage Law; and
  - (4) Grants the city the authority to take such actions, request such documentation, conduct such investigations, and make such determinations with respect to the compliance with or enforcement of this section as may be taken, requested, conducted or made by the Director of the Ohio Department of Commerce with respect to the compliance with or enforcement of the provisions of Ohio's Prevailing Wage Law.
- (b) The city manager or the city manager's designee will determine the wage rates that must be paid pursuant to the provisions described in clause (a)(1) on an individual development basis, premised on its review of the scope of the development and any

public improvements undertaken in connection therewith. Each development agreement must include and identify the applicable residential or commercial prevailing wage rates that apply to each component of the work undertaken as a part of the development, regardless of whether such component consists of private improvements. Notwithstanding anything to the contrary in this clause (b), the city manager or the city manager's designee will apply (i) commercial rates to a residential component of a development if such residential component is five stories or greater and (ii) residential rates to a residential component of a development if such residential component is below five stories. Without limitation or modification of any obligations the city may be subject to under applicable state and federal law, this clause (b) shall apply only with respect to development agreements, as defined in this Chapter 321, and shall not operate to require the city to determine the applicability of Ohio's Prevailing Wage Law or any other prevailing wage laws or regulations to any agreements or contracts other than development agreements, as defined in this Chapter 321.

- (c) The city manager or the city manager's designee may issue any rules or regulations necessary to implement and administer this section.
- (d) The department of economic inclusion and procurement will assist the city manager or the city manager's designee in fulfilling its obligations under clause (a) of this section by providing information on the applicable prevailing wage rates with respect to each development agreement. For all developments which are subject to development agreements, the city manager or city manager's designee is responsible for monitoring compliance with and enforcing the requirements of this section and Ohio's Prevailing Wage Law. In furtherance of this clause (d), the city manager or the city manager's designee, with the cooperation and assistance of the department of economic inclusion and procurement shall prepare and submit to the city manager an annual report summarizing the compliance of all developments subject to this section.
- (e) This Section 321-118 shall be construed as being in addition to, and not in limitation of, the requirements of Ohio's Prevailing Wage Law.

Section 5. That Sections 323-1-C, 323-1-C2, 323-1-D, 323-1-I, 323-3, 323-7, 323-9, 323-11, 323-17, 323-19, 323-21, 323-23, 323-25, 323-27, 323-29, 323-31, 323-33, 323-35, and 323-99 of Chapter 323, "Small Business Enterprise and Local Business Enterprise Programs," of the CMC are amended as follows:

**Sec. 323-1-C. - Certification.**

"Certification" or "Recertification" shall mean the designation provided to an SBE, SLBE or ELBE that meets the qualification criteria set forth in this chapter and in the rules and regulations promulgated under the authority of this chapter for participation in the SBE, SLBE or ELBE programs in the appropriate construction, professional services, or supplies and non-professional

services category for which the contract is being awarded and formally approved by the city purchasing agent or agent's director or the director's designee as having met such criteria. Certification or recertification relate to qualifications regarding ownership and control of the business, not the quality of the service or product offered.

#### **Sec. 323-1-C2. - Commercially Useful Function.**

- (a) “Commercially useful function” shall mean that the business is directly responsible for providing the supplies or services to the city as required by the solicitation or request for quotes, bids or proposals. An SBE, SLBE or ELBE is considered to perform a commercially useful function 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, taking into consideration the amount of work subcontracted, industry practices, and other factors determined by the city purchasing agent director to be relevant. A business which stocks sufficient quantities of supplies in direct inventory, held for sale or resale, to cover anticipated future demands for the supplies provides a “commercially useful function.”
- (b) SBEs, SLBEs or ELBEs that engage in the business of providing brokerage shall not be deemed to perform a “commercially useful function” unless the brokerage services are those required and sought by the city. An SBE, SLBE or ELBE does not perform a “commercially useful function” if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of meaningful and useful SBE, SLBE or ELBE participation, when no such role is performed in similar transactions in which SBE, SLBE or ELBE firms do not participate.

#### **Sec. 323-1-D. - Department.**

“Department” shall mean the ~~department of economic inclusion~~ department of economic inclusion and procurement.

#### **Sec. 323-1-I. - Independent Ownership and Control.**

“Independent ownership and control” or “independently owned and controlled” applies both to individual SBEs, SLBEs and ELBEs and to SBEs and SLBEs engaged in a joint venture with other businesses. For an individual SBE, SLBE or ELBE, “independent ownership and control” shall mean the degree to which owners of the SBE, SLBE or ELBE 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, SLBE or ELBE to function and carry out daily business activities without relying upon others who are not owners or employees of the SBE, SLBE or ELBE, such as consultants, advisers, accountants, or owners’ relatives. In determining the ability of the owners of the SBE, SLBE or ELBE to operate the business, the city purchasing agent department may consider the owners’ work experience, including experience in the primary industry in which the firm is seeking SBE, SLBE or ELBE certification, specialized training, education, and any other factors the city purchasing agent director deems relevant.

For SBEs involved in a joint venture with a non-SBE as permitted by this chapter, “independent ownership and control” shall be determined by considering the participation of the owners of the SBE in the decisions affecting day-to-day operations of the joint venture, 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 a joint venture is independently owned and controlled by the owners of the SBE, the city purchasing agent ~~director~~ may use discretion in weighing the foregoing factors, as well as any other factor, which, in the city purchasing agent’s ~~director’s~~ opinion, affects independent ownership and control.

### **Sec. 323-3. - Purpose; Scope and Limitations.**

The purpose of the SBE, SLBE and ELBE programs of the city is to promote the economic welfare of the people of the city of Cincinnati, to mitigate the effects of discrimination against SBEs, SLBEs and ELBEs, and to promote full and equal business opportunity for all persons doing business with the city of Cincinnati, through race- and gender-neutral means, by assisting SBEs, SLBEs and ELBEs to actively participate in the city’s procurement process and by working to eliminate SBE, SLBE and ELBE discrimination in public markets.

It is also the intent and purpose of the SLBE and ELBE components of the program to encourage the use of small local business enterprises and emerging local business enterprises in order to directly benefit the local economy of the city of Cincinnati, support local job creation, and further the city’s commitment to be neither an active nor passive participant in private sector marketplace discrimination.

The SBE, SLBE and ELBE programs may be applied by the ~~director, in consultation with the~~ city purchasing agent, on a contract-by-contract basis to the maximum extent permissible under federal and state law.

### **Sec. 323-7. - SBE Certification.**

- (a) *Requirements.* To be eligible for certification as an SBE, each applicant must meet the definition of an SBE in Section 323-1-S3.
- (b) *Certification Process.*
  - (1) A business seeking certification as an SBE must:
    - (A) Submit an application to the city purchasing agent ~~department~~ on the prescribed form, affirming under penalty of perjury that the business qualifies as a city of Cincinnati SBE, as that term is defined in Section 323-1-S3; and
    - (B) If requested by the city purchasing agent ~~department~~, the applicant must provide any and all materials and information necessary to

demonstrate active participation in the control, operation, and management of the business.

- (2) The city purchasing agent department will review and evaluate applications, and may reject an application based on one or more of the following: the applicant does not meet the requirements of the definition of an SBE, the application is not satisfactorily completed, the application contains false information, or the applicant has not provided materials or information requested by the city purchasing agent director.
  - (3) The city purchasing agent director will make a certification determination within 90 days after the date the city receives a satisfactorily completed application from the applicant. If certification is denied, the city purchasing agent director will notify the applicant in writing and specify the reason(s) for the denial. Unless the applicant is successful in a timely appeal of the denial of certification, the applicant may not reapply to be certified as an SBE for a period of one year from the date of the notice of denial.
  - (4) Firms certified as an SBE by other government agencies will be required to be certified under this chapter regardless of previous certification.
- (c) *Period of Certification.* The certification is valid for a two-year period beginning on the date the city certifies the applicant as an SBE.
- (d) *Recertification.* Upon expiration of the two-year certification period, a business that desires recertification must return a completed recertification form as provided by the city purchasing agent director and comply with the requirements of subsections (b)(1)(A) and (b)(1)(B) of this section.
- (e) *Revocation of Certification.*
- (1) The city purchasing agent director shall revoke the certification of a business if it is determined that the business was certified in error, the business no longer meets the definition of an SBE, or the business fails to provide requested information in connection with a certification review conducted by the city purchasing agent department.
  - (2) The city purchasing agent director shall permanently revoke the certification of a business if it is determined that the certification was fraudulently obtained or that the business allows its certified SBE status to be fraudulently used to obtain the benefits of SBE certification for a firm that is not a certified SBE or for the benefit of the owners of a firm that is not a certified SBE. In addition to certification revocation, any participant in the fraudulent use of certified SBE status for the benefit of another person or entity that is not a certified SBE shall be guilty of a misdemeanor of the first degree, punishable by imprisonment for up to six months and/or a fine of up to \$1,000.00.

- (3) Prior to taking formal action, the city purchasing agent department shall provide the business with written notice of the proposed revocation. The city purchasing agent department staff shall then prepare a recommendation regarding the proposed revocation for review by the director, who shall make a recommendation regarding revocation to the city manager for decision. The decision of the city manager or the city manager's designee is final.
  
- (f) *Certification Reviews.* The city purchasing agent department will conduct random certification reviews of certified businesses by auditing them to verify that the information submitted by a business is accurate, and that the business remains eligible during the certification period. Certification reviews may be conducted for any business for which the city determines a certification review is warranted. Businesses subject to certification reviews must provide the city purchasing agent department with any information requested to verify the certification eligibility of the business within seven days of the request. Audits may include one or all of the following as reasonably necessary to ensure that all eligibility standards are satisfied:
  - (1) Business owner interviews;
  - (2) Employee and/or subcontractor interviews;
  - (3) Record and document review; or
  - (4) Job site inspection.
  
- (g) *Joint Ventures.* On a contract-by-contract basis, an SBE may apply for certification of a joint venture with another SBE or, for contracts in excess of \$1,000,000.00, an SBE may apply for certification of a joint venture with a non-SBE. The certification of such a joint venture will be limited to the duration of the contract for which certification as a joint venture was requested and shall terminate upon completion of the city contract for which the joint venture was formed.

**Sec. 323-9. SLBE or ELBE Certification.**

- (a) *Requirements.* To be eligible for certification as an SLBE, each applicant must meet the definition of an SLBE in Section 323-1-S4 of this chapter. To be eligible for certification as an ELBE, each applicant must meet the definition of an ELBE in Section 323-1-E1 of this chapter.
  
- (b) *Ineligible Firms.*
  - (1) A firm is ineligible for certification as an SLBE if:
    - (A) It is owned by another entity that does not meet the definition of an SLBE as defined in Section 323-1-S4 of this chapter; or

- (B) Any of its principals or owners are also the principals or owners of another entity that does not meet the definition of an SLBE as defined in Section 323-1-S4 of this chapter.
- (2) A firm is ineligible for certification as an ELBE if:
    - (A) It is owned by another entity that does not meet the definition of an ELBE as defined in Section 323-1-E1 of this chapter; or
    - (B) Any of its principals or owners are also the principals or owners of another entity that does not meet the definition of an ELBE as defined in Section 323-1-E1 of this chapter.
  - (3) A firm that has graduated from the SLBE or ELBE program under Section 323-9(j) of this chapter is no longer eligible for certification or recertification under that same program, even if it otherwise meets the definition of the particular type of local business enterprise (SLBE or ELBE) from which it has graduated.
- (c) *Certification Process.*
- (1) A business seeking certification as an SLBE or ELBE must:
    - (A) Submit an application to the city purchasing agent department on the prescribed form, affirming under penalty of perjury that the business qualifies either as a city of Cincinnati SLBE, as that term is defined in Section 323-1-S4 of this chapter, or as a city of Cincinnati ELBE, as that term is defined in Section 323-1-E1 of this chapter, and is not ineligible under Section 323-9(b) of this chapter;
    - (B) Provide any and all supporting materials and information required by the city purchasing agent director; and
    - (C) Attend an SLBE/ELBE orientation provided by the city purchasing agent department to become familiar with the policies and procedures of doing business within the city. An applicant with prior experience doing business with the city may be exempted by the city purchasing agent director from attending the orientation.
  - (2) The city purchasing agent department will review and evaluate applications and may reject an application based on one or more of the following:
    - (A) The applicant does not meet the requirements of the definition of the type of local business enterprise (SLBE or ELBE) for which it has applied for certification or is ineligible for certification as provided in Section 323-9(b) of this chapter;
    - (B) The application is not satisfactorily completed;

- (C) The application contains false information; or
  - (D) The applicant has not provided materials or information requested by the city purchasing agent director.
- (3) The city purchasing agent director will make a certification determination within 90 days after the date the city receives a satisfactorily completed application from the applicant. If certification is denied, the city purchasing agent director will notify the applicant in writing and specify the reason(s) for the denial. Unless the applicant is successful in a timely appeal of the denial of certification, the applicant may not reapply for the same type of certification (SLBE or ELBE) for a period of one year from the date of the notice of denial.
  - (4) Firms certified by the city as an SLBE may also be eligible for certification as an SBE.
  - (5) Firms denied certification as an ELBE on the basis that they do not meet the criteria of an ELBE as defined in Section 323-1-E1 of this chapter may submit an application for certification as an SLBE or SBE.
  - (6) An applicant for SLBE or ELBE certification or recertification that, during the certification or recertification process or during any certification review process, makes any deceptive or fraudulent statement or omission, or otherwise intentionally misrepresents any fact that may be considered in making a certification determination, in addition to any other penalties provided therefore, may be denied certification or recertification by the city purchasing agent director for a period not to exceed three years.
- (d) *Period of Certification.* The certification is valid for a two-year period beginning on the date the city certified the applicant as an SLBE or ELBE.
  - (e) *Recertification.* Upon expiration of the two-year certification period, a business that desires recertification must return a completed recertification form as provided by the city and comply with the requirements of subsections (c)(1)(A) through (C) of this section.
  - (f) *Suspension of Certification.*
    - (1) *Temporary Suspension from the SLBE Program.*
      - (A) The city purchasing agent director shall suspend a certified SLBE from further participation in SLBE economic inclusion initiatives for the remainder of the fiscal year once the SLBE receives, as a prime contractor or subcontractor on city-funded contracts, payments in that fiscal year totaling at least \$500,000.00.

- (B) An SLBE suspended under subsection (f)(1)(A) of this section may be eligible to continue to participate in the SBE program for the remainder of that fiscal year.
- (2) *Temporary Suspension from the ELBE Program.*
  - (A) The city purchasing agent ~~director~~ shall suspend a certified ELBE from further participation in ELBE economic inclusion initiatives for the remainder of the fiscal year once the ELBE receives, as a prime contractor or subcontractor on city-funded contracts, payments in that fiscal year totaling at least \$250,000.00.
  - (B) An ELBE suspended under subsection (f)(2)(A) of this section may be eligible to continue to participate in the economic inclusion initiatives as an SLBE for the remainder of that fiscal year.
- (g) *Revocation of Certification.*
  - (1) The city purchasing agent ~~director~~ shall revoke the certification of a business if it is determined that the business was certified in error, the business no longer meets the definition of the type of local business enterprise (SLBE or ELBE) for which it had been certified, or the business fails to provide requested information in connection with a certification review conducted by the city purchasing agent ~~department~~.
  - (2) The city purchasing agent ~~director~~ shall permanently revoke the certification of a business if it is determined that the certification was fraudulently obtained or that the firm allows its certified SLBE or ELBE status to be fraudulently used to obtain economic inclusion initiative benefits for a firm that is not a certified SLBE or ELBE or for the benefit of the owners of a firm that is not a certified SLBE or ELBE. In addition to certification revocation, any participant in the fraudulent use of certified SLBE or ELBE status for the benefit of another person or entity that is not a certified SLBE or ELBE shall be guilty of a misdemeanor of the first degree, punishable by imprisonment for up to six months and/or a fine of up to \$1,000.00.
  - (3) Prior to taking formal action, the city purchasing agent ~~department~~ shall provide the business with written notice of the proposed revocation. The city purchasing agent ~~department~~ staff shall then prepare a recommendation regarding the proposed revocation for review by the director who shall make a recommendation regarding revocation to the city manager for decision. The decision of the city manager or the city manager's designee is final.
- (h) *Certification Reviews.* The city purchasing agent ~~department~~ will conduct random certification reviews of certified businesses by auditing them to verify that the information submitted by a business is accurate and that the business remains eligible after certification has been granted. Certification reviews may be conducted for any business for which the city purchasing agent ~~director~~ determines a

certification review is warranted. Businesses subject to certification reviews must provide the city purchasing agent ~~director~~ with any information requested to verify the certification eligibility of the business. Audits may include one or all of the following as reasonably necessary to ensure that all eligibility standards are satisfied:

- (1) Business owner interviews;
- (2) Employee and/or subcontractor interviews;
- (3) Record and document review; or
- (4) Job site inspection.

(i) *Joint Ventures.*

- (1) SLBEs may apply for certification of a joint venture only with other certified SLBEs on a contract-by-contract basis;
- (2) The specific responsibilities of each participating SLBE in the joint venture must be set forth in writing and submitted with the certification application;
- (3) Certified SLBE joint ventures are not subject to the size limitations imposed by Section 323-1-S4 of this chapter;
- (4) For purposes of Section 323-1-S4(h) of this chapter, payments made by the city to a certified SLBE joint venture shall be credited to each participating SLBE in the same proportion as each participating SLBE's contribution to the total contract performance;
- (5) The certification of an SLBE joint venture will be limited to the duration of the contract for which certification as a joint venture was requested and shall terminate upon completion of the city contract for which the joint venture was formed.

(j) *Graduation from SLBE or ELBE Program.*

- (1) An SLBE firm must be permanently graduated from the SLBE program after either of the following has occurred:
  - (A) It has received a cumulative total of \$2,500,000.00 of city-funded prime contract and/or subcontract payments in at least five separate contracts since its initial certification as an SLBE firm; or
  - (B) Its three most recent fiscal year average annual gross revenues exceed the size standards as defined by subsection (e) of Section 323-1-S4 of this chapter.

- (2) An ELBE firm must be permanently graduated from the ELBE program after either of the following has occurred:
  - (A) It has received a cumulative total of \$500,000.00 of city-funded prime contract and/or subcontract payments in at least five separate contracts since its initial certification as an ELBE firm; or
  - (B) Its annual gross revenues, averaged over the life of the firm, exceed \$250,000.00.

**Sec. 323-11. - SBE Program Goals.**

- (a) The city of Cincinnati's aspirational annual goal for SBE participation shall be 30% of the city's total dollars spent for construction, 15% of the city's total dollars spent for supplies/services, and 15% of the city's total dollars spent for professional services. The SBE participation rates will be monitored, tracked internally, and reported quarterly and annually to city council.
- (b) SBE participation is counted as follows:
  - (1) Once a firm has been certified as an SBE as provided in Section 323-7 of this chapter, the total dollar value of the contract awarded to the SBE is counted toward the SBE participation rate.
  - (2) If the prime contractor is an SBE, it shall be entitled to count the dollar value of the work performed by its own labor force toward satisfaction of the SBE participation rate.
  - (3) The city of Cincinnati or a contractor may count toward its SBE rate a portion of the total dollar value of a contract with an eligible joint venture equal to the percentage of the ownership and contract performance of the SBE partner in the joint venture.
  - (4) The city of Cincinnati or a contractor may count toward its SBE rate only expenditures to SBEs that perform a commercially useful function in the work of a contract as defined in Section 323-1-C2 of this chapter. To determine whether an SBE is performing a commercially useful function, the city of Cincinnati shall evaluate the amount of work subcontracted, industry practices, and other relevant factors.
  - (5) Consistent with normal industry practices, an SBE may enter into subcontracts. If an SBE prime contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the SBE shall be presumed not to be performing a commercially useful function under the contract. In such circumstance, the SBE shall not be permitted to count toward the SBE participation goals for the contract the amounts paid to the SBE prime contractor. The SBE

may present evidence to rebut this presumption to the city purchasing agent director.

**Sec. 323-17. - Mandatory Subcontracting to SLBEs/ELBEs.**

- (a) The city purchasing agent director may, on a contract-by-contract basis, require that a predetermined percentage of a specific contract, up to 30%, be subcontracted to certified SLBEs or ELBEs.
- (b) Each bidder must include with its bid a subcontractor utilization plan (Form 2003) in which the bidder commits to utilize certified SLBEs or ELBEs in a percentage that equals or exceeds the applicable contract goals unless it submits a request for waiver as set forth in subsection (c) of this section. Any bid that does not include either a completed Form 2003 or a request for waiver shall be deemed non-responsive.
  - (1) Each bidder is responsible for verifying that all SLBEs and ELBEs to be used as subcontractors have been certified by the city purchasing agent department.
  - (2) If the prime contractor is a certified SLBE, it shall be entitled to count the dollar value of the work performed by its own labor force toward satisfaction of the mandatory SLBE subcontracting percentage for the contract.
  - (3) An SLBE prime contractor may not subcontract more than twenty-five percent of the total contract value to a non-SLBE.
- (c) A bidder may submit with its bid a request for a full or partial waiver by the city purchasing agent director of the mandatory subcontracting percentage for good cause by submitting evidence of SLBE or ELBE unavailability along with adequate documentation of good faith efforts, as defined in the program rules and regulations, to obtain SLBE or ELBE participation in the form required by the city purchasing agent director. If the bidder requests a partial waiver, it shall also be required to submit a completed subcontractor utilization plan (Form 2003) as provided in subsection (b) of this section.
  - (1) Requests for waiver will be evaluated by the city purchasing agent director on a case-by-case basis; and
  - (2) The determination of whether a waiver will be granted shall be based on the availability of certified SLBEs or ELBEs who can provide a commercially useful function under the circumstances.
- (d) In the absence of a waiver, the failure of a contractor to maintain the SLBE or ELBE participation percentage established for the contract shall be grounds for termination of the contract in addition to any other remedies available under the terms of the contract or under the law.

- (e) It shall be a material breach of contract if a contractor fails to notify the city purchasing agent ~~director~~ and fails to obtain prior written approval from the city purchasing agent ~~director~~ of any of the following:
  - (1) Reduction in SLBE or ELBE subcontractor participation;
  - (2) Termination of an SLBE or ELBE subcontract; or
  - (3) Substitution of a new SLBE or ELBE for an SLBE or ELBE listed on the subcontractor utilization plan (Form 2003).

**Sec. 323-19. SLBE/ELBE Sheltered Market Program.**

The city shall implement and maintain a sheltered market program to identify a portion of its procurements and contracts for bidding or response exclusively by SLBEs and ELBEs. Sheltered market procurements shall be contracts that SLBEs and ELBEs are fully capable of performing at the customary and usual market rate.

- (a) The city purchasing agent ~~director~~, in consultation with ~~the purchasing agent and~~ the contracting agency, may select certain contracts which have a value of \$250,000.00 or less for award to an SLBE, or a joint venture with SLBEs, through the sheltered market program.
- (b) The city purchasing agent ~~director~~, in consultation with ~~the purchasing agent and~~ the contracting agency, may select certain contracts which have a value of ~~fifty thousand dollars~~ \$50,000.00 or less for award to an ELBE through the sheltered market program.
- (c) The city purchasing agent ~~director~~, in consultation with ~~the purchasing agent and~~ the contracting agency, must consider the following factors when determining whether a particular contract is eligible for the sheltered market program:
  - (1) Whether there are at least three certified SLBEs or ELBEs that are available to participate in the sheltered market program for the selected contract and that have the capacity to perform the contract;
  - (2) The degree of underutilization of SLBEs and ELBEs in such contracts in the specific industry category during the immediately prior twelve months; and
  - (3) The extent to which the city's SLBE and ELBE prime contractor utilization goals, as set annually by the ~~director in consultation with the~~ city purchasing agent, are being met.
- (d) If, in the case of an invitation to bid, there is no response to a bid solicitation or the apparent low bid is determined by the city purchasing agent to be fiscally

unacceptable, then the contract shall be removed from the sheltered market program.

- (e) If, in the case of an RFP or RFQ, there is no satisfactory responsive proposal, then the contract shall be removed from the sheltered market program.

### **Sec. 323-21. Sanctions.**

The city purchasing agent ~~director~~ shall apply penalties against certified SBEs, SLBEs and ELBEs for violations of the provisions of this chapter or of the rules and regulations promulgated under the authority of this chapter, and shall apply penalties against any non-SBE, non-SLBE or non-ELBE firms which request or assist SBEs, SLBEs or ELBEs in misleading the city about ownership and control of a business purporting to be an SBE, SLBE or ELBE, or otherwise participate in such conduct. The nature and extent of penalties applied shall be reviewable on appeal to the contract compliance advisory board, which acts as an advisor to the city manager. Penalties applied against firms under this section or under Section 323-99 of this chapter shall be considered in making future decisions about contract awards to such firms. Penalties for a violation of this chapter or the rules and regulations under the authority of this chapter shall be as set forth in Section 323-99.

### **Sec. 323-23. Appeal.**

- (a) *Noncompliance and Denial of Certification.* Upon a determination of noncompliance with the requirements of this chapter or a denial of certification or recertification as an SBE, SLBE or ELBE by the city purchasing agent ~~director~~, the city purchasing agent ~~director~~ shall notify the affected party in writing by certified mail at the address provided by the applicant on the application, setting forth the reasons for the determination of noncompliance or denial of certification or recertification.
- (b) *Time for Filing Notice of Appeal.* Any applicant who has been denied certification or recertification as an SBE, SLBE or ELBE, or any person or entity against whom a determination of noncompliance with the requirements of this chapter has been found by the city purchasing agent ~~director~~ may appeal the determination of noncompliance or denial of certification or recertification by filing a written notice of appeal with the city purchasing agent ~~director~~ within fourteen days of the date of mailing the notice of the determination of noncompliance or denial of certification or recertification. In the event such a notice of determination that has been sent by certified mail is returned as refused or unclaimed, the city purchasing agent ~~director~~ shall send the notice via regular U.S. mail, postage pre-paid, and, provided the notice sent by regular mail is not returned as undeliverable within ten days, the notice shall be presumed to have been delivered and a request for reconsideration of an adverse determination must be filed with the city purchasing agent ~~director~~ in writing within ten days.
- (c) *Contract Compliance Advisory Board.* The city manager shall structure a contract compliance advisory board composed of five members, including representatives of the city, labor, SBEs, and citizens, all of whom shall be appointed by the city

manager. The board shall make recommendations to the city manager for the disposition of appeals. Board members shall serve for a period of two years.

(d) *Notice of Hearing Date and Hearing.*

(1) Within three working days of receipt of a written notice of appeal, the city purchasing agent ~~director~~ shall forward the notice to the contract compliance advisory board.

(2) The board shall set a hearing date not more than twenty-eight days from the date of receipt of the notice of appeal forwarded by the city purchasing agent ~~director~~. The board shall cause notice of the hearing to be served upon all parties, by certified mail. Such notice shall set forth the adverse determination by the city purchasing agent ~~director~~ from which the appeal was taken and the errors identified by the applicant or other aggrieved party, and shall also state the date, time, and place of the hearing. In the event such a notice of determination that has been sent by certified mail is returned as refused or unclaimed, the city purchasing agent ~~director~~ shall send the notice via regular U.S. mail, postage pre-paid, and, provided the notice sent by regular mail is not returned as undeliverable within ten days, the notice shall be presumed to have been delivered.

(3) All parties shall be provided a fair and impartial hearing but shall not be permitted to introduce any new evidence not previously submitted.

(e) *Decision.* Within seven days of the conclusion of the hearing, the board shall make a written recommendation to the city manager or the city manager's designee on the disposition of the appeal, which recommendation shall be to affirm, modify, or reverse the determination of noncompliance or the denial of certification or recertification by the city purchasing agent ~~director~~, and shall state the reason(s) for such recommendation. The board shall advise whether the determination of noncompliance was in accordance with the law. If the city manager finds for the party denied certification or recertification by the city purchasing agent ~~director~~, the business shall be certified or recertified as an SBE, SLBE or ELBE and added to the appropriate certification list maintained by the city purchasing agent ~~department~~. If the city manager finds for the party for whom the city purchasing agent ~~director~~ had made a determination of noncompliance with this chapter and the rules and regulations issued thereunder, the business shall be found in compliance with the requirements of this chapter and permitted to submit a bid or proposal in response to the city's solicitation if the submission deadline has not yet passed, and to continue to participate in the economic inclusion initiatives available for the firm's particular certification (SBE, SLBE, or ELBE). The decision of the city manager or the city manager's designee shall be final, subject to the right of further appeal as may be provided by law.

(f) *Notice of Decision.* The city manager shall issue written notice of the decision on the appeal to all parties within ten days 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.

**Sec. 323-25. Duties of the City Purchasing Agent ~~Department of Economic Inclusion~~.**

The city purchasing agent and the department shall have the following functions and duties associated with the programs set forth in this chapter:

- (a) The department shall act as a resource for small business information;
- (b) Information dissemination and communication with SBEs, SLBEs and ELBEs are integral parts of the city of Cincinnati's SBE, SLBE and ELBE programs. As a part of its outreach program, the department will solicit input from representatives of SBEs, SLBEs, ELBEs, trade associations, and community organizations. The department shall hold quarterly outreach events for SBEs, SLBEs, ELBEs, and owners of small businesses eligible to participate in the SBE, SLBE or ELBE programs; 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 department shall publicly inform SBEs, SLBEs, ELBEs, 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 department will assist SBEs, SLBEs and ELBEs in overcoming barriers to program participation by including referrals to other agencies offering established, comprehensive, and continuous programs to assist small businesses. Businesses requiring management and technical assistance will be identified through a questionnaire, the department's prior experience with these businesses, and requests by businesses for assistance;
- (d) The department shall maintain for a period of three years records and reports submitted by contractors in accordance with the provisions of this chapter;
- (e) The department, in conjunction with other city agencies, will monitor SBE, SLBE and ELBE participation levels on projects throughout the duration of a contract;
- (f) The department shall investigate alleged violations of this chapter and the SBE, SLBE and ELBE program rules and regulations, and the city purchasing agent ~~director~~ shall issue written determinations of the results of such investigations, stating the reasons for the determination and any penalty imposed pursuant to this chapter;
- (g) The department will determine whether a bidder or offeror made good faith efforts, as defined in the SBE, SLBE and ELBE program rules and regulations, to include SBEs, SLBEs or ELBEs as required by the city purchasing agent ~~director~~ in its bid or proposal and its work on the contract subject to this chapter;

- (h) Upon request by a potential bidder on city contracts, the department will provide information regarding SBEs, SLBEs and/or ELBEs, which shall include names and contact information;
- (i) The department will notify the appropriate city departments of the city purchasing agent's ~~director's~~ determination that a contractor has not complied with this chapter or the SBE, SLBE and ELBE program rules and regulations and the result of any appeal from that determination; and
- (j) The department will provide ongoing monitoring and oversight functions to determine successful bidders' continuing compliance with this chapter and the SBE, SLBE and ELBE program rules and regulations and their utilization of SBEs, SLBEs and ELBEs.

### **Sec. 323-27. City Maintained Records and Reports.**

- (a) The effectiveness of this program will be measured by a review of data indicating prime and subcontract awards to SBEs, SLBEs, and ELBEs. Program effectiveness measurements will also include efforts by the city to provide prime contracting opportunities for SBEs, SLBEs, and ELBEs. At the end of each contract, the department will prepare a report on the utilization of firms in the SBE, SLBE, and ELBE programs. Data in this report will include information on the gross income size of the firms participating on each contract. Each project manager and the ~~procurement~~ department staff will continuously maintain, and compile monthly, information relating to the city's departments' use of SBEs, SLBEs, and ELBEs, including information regarding subcontractors and efforts toward SBE program participation.
- (b) At the end of a contract, the city purchasing agent ~~director~~ shall require a contractor to report to the department the identity of each SBE, SLBE, and ELBE to whom the contractor has awarded a subcontract for the purchase of services, professional services, supplies, materials, and equipment.
- (c) The city purchasing agent ~~director~~ shall prepare quarterly a consolidated report based on a compilation and analysis of the reports submitted by each project manager and the ~~procurement~~ department staff, information provided by the finance department, and the reports submitted by prime contractors. This record-keeping system will identify and assess SBE, SLBE, and ELBE contract awards, prime contractors' progress in achieving SBE, SLBE and ELBE subcontract participation, and other SBE, SLBE and ELBE development and contracting efforts. Specifically, the city purchasing agent ~~department~~ in conjunction with all city agencies will maintain records showing:
  - (1) Awards to SBEs, SLBEs and ELBEs including names of contractors and subcontractors, nature of the work and services performed, and the percentage of SBE, SLBE and ELBE participation per contract. The city of Cincinnati will obtain regular reports from prime contractors on their progress in meeting contractual SBE, SLBE and ELBE commitments;

- (2) Specific efforts to identify and award contracts to SBEs, SLBEs and ELBEs;
  - (3) Copies of direct mailings to SBEs, SLBEs and ELBEs;
  - (4) Pre-bid conference information as it relates to the SBE, SLBE and ELBE programs;
  - (5) Requests for assistance from the SBEs, SLBEs and ELBEs interested in bidding or proposing on city of Cincinnati contracts and subcontracts;
  - (6) Workshops, seminars and training programs conducted for SBEs, SLBEs and ELBEs;
  - (7) Efforts to assist SBEs, SLBEs and ELBEs in acquiring bonding and insurance; and
  - (8) Contracts for which a full or partial waiver of SLBE or ELBE participation was granted pursuant to Section 323-17 of this chapter.
- (d) ~~The city purchasing agent~~ ~~director~~ will submit quarterly SBE, SLBE and ELBE development reports to city council. These reports shall include:
- (1) The number of contracts awarded to SBEs, SLBEs and ELBEs;
  - (2) A description of the general categories of contracts awarded to SBEs, SLBEs and ELBEs;
  - (3) The dollar value of contracts awarded to SBEs, SLBEs and ELBEs; and
    - (A) The percentage of the dollar value of all contracts awarded to SBEs, SLBEs and ELBEs during the preceding year;
    - (B) The actual dollar amount paid to SBE, SLBE, ELBE and all other vendors as prime or subcontractors; and
    - (C) The percentage of dollar amount paid to SBEs, SLBEs and ELBEs compared to the total.
- (e) The city of Cincinnati does not discriminate against any company or group of companies in its contracting and procurement activities on the basis of race, color, age, religion, sex, national origin, disability, or veteran status. The SBE, SLBE and ELBE opportunity does not propose any numeric goals determined by the rate of program participation by minorities or women but will require this information at the end of city contracts. The program is designed to include all segments of the region's business community by increasing the competitiveness and profitability of all small businesses as defined within this program.

**Sec. 323-29. SBE, SLBE and ELBE Resource Information.**

The city purchasing agent and department and purchasing division will make the following available:

- (a) Procedures outlining specific steps on how to bid;
- (b) Prerequisites for bidding on contracts;
- (c) Information on how plans and specifications can be obtained;
- (d) Names of persons to contact concerning questions on bid documents;
- (e) Names of relevant ~~office of procurement~~ department staff and office hours;
- (f) Types of supplies and services purchased; and
- (g) Explanations of standard contract implementation procedures and requirements, concerning such matters as timely performance of work, contract changes, and payment schedules.

**Sec. 323-31. SBE, SLBE and ELBE Directory.**

The city purchasing agent and department and purchasing division will create an SBE, SLBE and ELBE directory that lists SBEs, SLBEs and ELBEs, categorized by types of firms, to facilitate identifying businesses with capabilities relevant to a particular specification. Each business listing will contain the business name, contact person, address, phone number, legal structure of the business, and details concerning the company's business specialty(ies). The directory will be continuously updated and maintained electronically. In compiling this directory, the city of Cincinnati will identify and certify as many SBEs, SLBEs and ELBEs as possible that have the potential of doing business with the city of Cincinnati. The city of Cincinnati will maintain and have available updated SBE, SLBE and ELBE directories and source list(s) for each bid/proposal solicitation to facilitate identifying SBEs, SLBEs and ELBEs with capabilities relevant to general contracting requirements and to particular solicitations. The city of Cincinnati will make the directory and source list(s) available to bidders and offerors in their efforts to meet the SBE, SLBE and ELBE commitments.

**Sec. 323-33. SBE, SLBE and ELBE Assistance to Provide an Equitable Opportunity to Compete for Contracts and Subcontracts.**

Specific affirmative procedures to be utilized by the ~~department staff and procurement~~ staff to encourage maximum practicable opportunities for SBE, SLBE and ELBE participation include the following:

- (a) Review individual solicitations to ensure that insurance and bonding provisions are not excessive; assist SBEs, SLBEs and ELBEs in obtaining insurance and surety bonds where necessary in the performance of contracts, including, but not limited

to doing the following: package contracts so that dollar amounts do not require bonding; encourage prime contractors to waive bonding or assist SBE, SLBE and ELBE subcontractors in obtaining bonding; and encourage staged bonding where feasible, when bonding is carried over from one project stage to the next;

- (b) Encourage the formation of joint ventures among SBEs and SLBEs and between SBEs, SLBEs and firms which provide opportunity for the SBE or SLBE to gain experience. The department staff will assist prime contractors in identifying interested SBEs, SLBEs and ELBEs for subcontracts and joint ventures; provide information on the city of Cincinnati's organization and contractual needs; and offer instructions on bid specifications, procurement policy, procedures, and general bidding requirements;
- (c) Provide, ~~in conjunction with the city purchasing division,~~ specifications and requests for proposals to the SBE, SLBE and ELBE community in a timely manner to allow them adequate time to develop responsible and responsive bids, quotations, and proposals. In instances where the cost of obtaining specifications or requests for proposal is prohibitive, copies of the material will be made available at no charge to SBE, SLBE and ELBE development agencies;
- (d) Establish, in conjunction with the city finance department and affected city departments, prorated payment and delivery schedules where feasible, to minimize cash flow problems faced by small businesses. The department will provide guidance to SBE, SLBE and ELBE contractors regarding maintenance of a positive cash flow so current obligations can be met;
- (e) Wherever feasible, use the least complicated bid forms appropriate for each procurement solicitation;
- (f) Hold pre-bid/proposal conferences to explain SBE, SLBE and/or ELBE commitments and to answer questions about forms that must be submitted with a bid or proposal;
- (g) Permit bidders/offerors to review and evaluate successful bid/proposal documents of prior similar procurement(s) and, upon request, use debriefing sessions to explain why certain bids were unsuccessful;
- (h) Provide projected procurement information and contracting schedules through the City Bulletin and other outreach efforts;
- (i) Conduct internal information workshops to inform and acquaint the city of Cincinnati staff with the goals and objectives of the city of Cincinnati's SBE, SLBE and ELBE plans, and to sensitize them to the problems faced by SBEs, SLBEs and ELBEs;
- (j) Maintain records showing specific efforts to identify and award contracts to SBEs, SLBEs and ELBEs and establish a monitoring system to ensure that all contractors,

subcontractors, consultants, and vendors comply with contract specifications related to SBE, SLBE and ELBE utilization;

- (k) Inform SBEs, SLBEs and ELBEs of bid notices and specifications related to their capability by placing bid notices in the City Bulletin, major local newspapers, and other periodicals. Bid notices will also be sent to local trade associations, technical assistance agencies, economic development groups, and SBEs, SLBEs and ELBEs with capabilities relevant to the bid notice as identified by the city of Cincinnati's SBE, SLBE and ELBE data banks. Bid specifications will be made available to SBE, SLBE and ELBE contractor associations and technical assistance agencies. Lists of potential firms bidding as primes also will be available to SBEs, SLBEs and ELBEs;
- (l) Provide coordination and referral to existing business development organizations;
- (m) Provide workshops and training sessions on identified SBE, SLBE and ELBE problem areas, i.e., pricing and estimating, joint venture formation, accounting principles, marketing, etc.; and
- (n) Disseminate information on the city of Cincinnati's SBE, SLBE and ELBE programs through written materials, seminars, workshops, and specialized assistance to individual firms.

**Sec. 323-35. Contractor and Subcontractor Assistance to Support Compliance with Applicable SBE, SLBE and ELBE Requirements.**

The department ~~staff shall be and purchasing department staffs are~~ available to assist contractors and subcontractors in implementing these programs. As a standard procedure, such assistance includes, as appropriate, the following:

- (a) Clear identification of the city of Cincinnati's SBE, SLBE and ELBE provisions in all the city of Cincinnati's solicitations;
- (b) Pre-bid/proposal conference to explain the city of Cincinnati's SBE, SLBE and ELBE programs;
- (c) Identification of certified SBEs, SLBEs and ELBEs per the city of Cincinnati solicitation; and
- (d) Monitor, in conjunction with other city departments, SBE, SLBE and ELBE participation levels on projects throughout the duration of a contract.

**Sec. 323-99. Penalties.**

The provisions of this section shall be incorporated into city contracts. The contractor shall agree that a breach of the provisions of this chapter or the contract terms regarding SBE, SLBE and/or ELBE participation in the contract shall subject the contractor to any or all of the following penalties:

- (a) Withholding all or part of future payments under the contract until it is determined that the contractor is in compliance;
- (b) Refusing further bids or proposals as provided in Section 321-153 of the Cincinnati Municipal Code;
- (c) Suspending the contractor for a minimum of two years from new awards to do business with the city; and
- (d) Permanently debaring the contractor from doing business with the city.

For good cause shown, the city purchasing agent ~~director~~ may grant a stay of the penalty pending appeal; however, in no case shall the stay impede the city's contracting authority.

Section 6. That Sections 324-1-C, 324-1-C4, 324-1-C7, 324-1-D, 324-1-G, 324-1-S1, 324-1-S3, 324-11, 324-13, 324-15, 324-19, 324-21, 324-22, 324-23, 324-27, 324-35, 324-37, 324-39, 324-41, 324-43, 324-45, 324-47, and 324-49 of Chapter 324, "Minority and Women Business Enterprise Program," of the CMC are amended as follows:

**Sec. 324-1-C. Certification.**

"Certification" or "recertification" shall mean a minority business enterprise ("MBE") or women business enterprise ("WBE") that meets the qualification criteria set forth in this chapter and in the rules and regulations promulgated under the authority of this chapter for participation in the MBE or WBE programs in the appropriate construction, professional services, other services, or supplies category for which the contract is being awarded and is formally approved by the city purchasing agent or agent's director ~~or the director's~~ designee as having met such criteria. Certification or recertification relates to qualifications regarding ownership and control of the business and not the quality of the service or product offered.

**Sec. 324-1-C4. Compliance.**

"Compliance" shall mean a determination by the city purchasing agent ~~director~~ that a utilization plan for MBE and WBE participation in a particular contract complies with this chapter, that the contractor has managed the contract as provided in the MBE/WBE utilization plan, and that the contractor or prospective contractor has otherwise complied with this chapter.

**Sec. 324-1-C7. Contract Participation Goals.**

"Contract participation goals" shall mean the actual commitment made by an awarded vendor to utilize MBE and WBE firms in the performance of the work, as determined by the city purchasing agent ~~director~~ upon review and verification of the information on the subcontractor

utilization plan submitted with the awarded vendor's bid or response to an RFP or RFQ. The contract participation goals shall be incorporated into the awarded vendor's contract.

**Sec. 324-1-D. - Department.**

“Department” shall mean the ~~department of economic inclusion~~ department of economic inclusion and procurement.

**Sec. 324-1-G. Good Faith Efforts.**

“Good faith efforts” means the documented efforts of bidders, respondents, and contractors, as applicable, proactively to take all reasonably necessary steps to achieve the MBE and WBE solicitation goals or the MBE and WBE contract participation goals, as applicable. In determining whether a bidder, respondent, or contractor made good faith efforts to achieve the applicable MBE and WBE solicitation goals or MBE and WBE contract participation goals, the city purchasing agent ~~director~~ shall consider:

- (a) Evidence of timely attempts and follow-ups, using all reasonable and available means, to solicit all MBE and WBE firms certified by the city to provide goods or services under the applicable commodity codes for which subcontracting opportunities exist;
- (b) Evidence of the unbundling of work into economically feasible components or units to facilitate MBE and WBE participation and solicitation of the work in its unbundled form;
- (c) Evidence that interested MBE and WBE firms were provided adequate and timely information about the plans, specifications, and requirements of the contract to enable them to submit thorough bids or proposals in response to solicitations;
- (d) Evidence of good faith negotiations with interested MBE and WBE firms;
- (e) Evidence that the rejection of any MBE and WBE firms as being unqualified was based on both a thorough investigation of their capabilities and capacity to perform the work and an objective analysis; and
- (f) Evidence of efforts to assist MBE and WBE firms in obtaining bonding, lines of credit, or insurance as required by the contractor where those requirements create an obstacle to MBE and WBE participation.

Acceptable types of documentation of good faith efforts shall be identified in the rules and regulations for this chapter.

**Sec. 324-1-S1. Solicitation Goals.**

“Solicitation goals” shall mean the MBE and WBE participation goals established by the city purchasing agent ~~director~~ in accordance with sections 324-15(a) and 324-15(b) of this chapter for advertisement as part of the specifications of an ITB, RFP, or RFQ covered by this chapter.

### Sec. 324-1-S3. Subcontractor Utilization Plan.

“Subcontractor utilization plan” shall mean a document submitted by a bidder with its bid or by a respondent to an RFP or RFQ with its response, on a form required by the city purchasing agent director, in which the bidder or respondent commits to utilize specifically identified city-certified MBEs and/or WBEs in a percentage that equals or exceeds the applicable MBE and/or WBE solicitation goals for the contract, except as otherwise noted in this chapter.

### Sec. 324-11. MBE and WBE Certification.

- (a) *Requirements.* To be eligible for certification as an MBE, each applicant must meet the definition of an MBE in section 324-1-M of this chapter. To be eligible for certification as a WBE, each applicant must meet the definition of a WBE in section 324-1-W1 of this chapter.
- (b) *Certification Process.*
  - (1) A business seeking certification as an MBE or WBE must:
    - (A) Submit an application to the city purchasing agent department on the prescribed form, affirming under penalty of perjury that the business qualifies as a city of Cincinnati MBE or WBE as those terms are defined in section 324-1-M or section 324-1-W1 of this chapter, respectively; and
    - (B) If requested by the city purchasing agent department, provide any and all materials and information necessary to demonstrate active participation in the control, operation, and management of the business.
  - (2) The city purchasing agent department will review and evaluate applications and may reject an application based on one or more of the following:
    - (A) The applicant does not meet the requirements of the definition of an MBE or WBE, as applicable;
    - (B) The application is not complete;
    - (C) The application contains false information; or
    - (D) The applicant has not provided materials or information requested by the city purchasing agent director.
  - (3) The city purchasing agent director will make a certification determination within ninety days after the date the city receives a satisfactorily completed application from the applicant. If certification is denied, the city purchasing agent director will notify the applicant in writing and specify the reason(s) for the denial.

- (4) Firms certified as an MBE or WBE by other public or private agencies must also be certified under this chapter regardless of other certification. The city manager may provide by rules and regulations for an expedited or summary process for certification by the city if the business has a current MBE or WBE certification from agencies specifically identified in those rules and regulations and shall provide for such expedited or summary process for certification as may be required by state or federal law.
- (c) *Period of Certification.* The certification is valid for a two-year period beginning on the date the city certifies the applicant as an MBE or WBE.
- (d) *Recertification.* Prior to expiration of the two-year certification period, a business that desires recertification must return a completed recertification form as provided by the city and comply with the requirements of subsections (b)(1)(A) and (b)(1)(B) of this section.
- (e) *Revocation of Certification.*
- (1) The city purchasing agent director shall revoke the certification of a business if it is determined that the business was certified in error; the business no longer meets the definition of an MBE or WBE, as applicable; or the business fails to provide requested information in connection with a certification review conducted by the city purchasing agent department.
- (2) The city purchasing agent director shall permanently revoke the certification of a business if it is determined that the certification was fraudulently obtained or that the firm allows its certified MBE or WBE status to be fraudulently used to obtain economic benefits for a firm that is not a city-certified MBE or WBE or for the owners of a firm that is not a city-certified MBE or WBE.
- (3) The city purchasing agent director shall provide the MBE or WBE with written notice of the revocation of certification, subject to the right to request reconsideration and to request a hearing as provided in section 324-35 of this chapter.
- (4) In addition to certification revocation, any participant in the fraudulent use of city-certified MBE or WBE status for the benefit of another person or entity that is not a city-certified MBE or WBE shall be guilty of a first degree misdemeanor, punishable by imprisonment for up to six months and/or a fine of up to \$1,000.
- (f) *Certification Reviews.* The city purchasing agent department will conduct random certification reviews of certified businesses by auditing them to verify that the information submitted by a business is accurate and that the business remains eligible after certification has been granted. Certification reviews may be conducted for any business for which the city determines a certification review is warranted.

Businesses subject to certification reviews must provide the city purchasing agent department with any information requested to verify the certification eligibility of the business within seven days of the city purchasing agent's department's request. Audits may include one or more of the following as reasonably necessary to ensure that all eligibility standards are satisfied:

- (1) Business owner interviews;
- (2) Employee and/or subcontractor interviews;
- (3) Interviews with bidders, contractors, vendors, or suppliers involved in a joint venture or contractual relationship with the MBE or WBE;
- (4) Interviews with any other person who may have knowledge or relevant information relating to a business enterprise's eligibility for certification as an MBE or WBE;
- (5) Record and document review; or
- (6) Job site inspection.

(g) *Joint Ventures.*

- (1) On a contract-by-contract basis, a city-certified MBE or WBE may apply for certification of a joint venture with another MBE or WBE or with a non-MBE or non-WBE firm.
- (2) The MBE or WBE joint venture participant must be certified by the city in the area of work to be undertaken as a participant in the joint venture.
- (3) A holding company cannot be an MBE or WBE participant in a joint venture.
- (4) The MBE or WBE participant in the joint venture must not be an affiliate of the non-MBE or non-WBE firm.
- (5) The joint venture must have a business structure set forth in a signed written agreement that clearly and specifically defines the participation of each party in the contribution of property, capital, efforts, skills, and knowledge.
- (6) The city-certified MBE or WBE participant in the joint venture must have an interest in the control, management, risks, and operation of the joint venture commensurate with the MBE's or WBE's percentage of participation in the joint venture, and the profit or loss of the joint venture should be distributed between the participants in proportion to their respective interests in the joint venture.
- (7) The city-certified MBE or WBE that is a participant in the joint venture must be responsible for a distinct, clearly defined portion of the work to be

performed with its own forces, equal to its share in the ownership, control, and management of the joint venture.

- (8) The certification of a joint venture will be limited to the duration of the contract for which certification as a joint venture was requested and shall terminate upon the earlier of completion of the city contract for which the joint venture was formed or the expiration without renewal or the revocation of certification of the MBE or WBE participant.

**Sec. 324-13. Annual Participation Goals for the MBE/WBE Program.**

- (a) By July 30 of each year, ~~the director, in consultation with~~ the city purchasing agent, shall review and establish the participation goals for MBEs and WBEs in city contracts.
- (b) The purpose of the annual review is to aid the city in its evaluation of the effectiveness of the MBE and WBE program and to identify areas in which the program may need to be modified in order to meet the stated purpose of the program.
- (c) The annual participation goals are not and may not be treated as mandatory quotas.
- (d) By July 30 of each year, the city purchasing agent ~~director~~ shall review MBE and WBE participation on all contracts and procurements covered by this chapter to determine the city's progress toward meeting the annual goals, and the city purchasing agent ~~director~~ shall report the findings to the city manager.

**Sec. 324-15. MBE and WBE Participation Goals.**

- (a)
  - (1) Except as provided in section (a)(2) below, the city purchasing agent ~~director~~, in consultation with ~~the city purchasing agent and/or~~ the contracting agency, must establish appropriate goals for MBE and/or WBE participation on each specific solicitation for a contract covered by this chapter or determine that a contract is not appropriate for the MBE/WBE program.
  - (2) The city purchasing agent ~~director~~ may establish standard solicitation goals for MBE and WBE participation to be used for solicitations of specifically identified construction, professional services, or other services the city solicits regularly and repetitively and that also involve the same components of work in substantially the same proportion to the overall value of the contract.
    - (A) The ~~director, in consultation with~~ the city purchasing agent, shall consider the following in determining which, if any, repetitive construction, professional services, or other services contracts are appropriate for standard solicitation goals:

- (i) The historical volume and frequency of the solicitations for those services;
    - (ii) The consistency in availability of city-certified MBEs and WBEs to perform the various components of the work; and
    - (iii) The consistency of MBE and WBE participation historically achieved under city contracts for those services.
  - (B) The standard solicitation goals will apply to all solicitations for those identified construction, professional services, or other services until the goals are reassessed by the city purchasing agent ~~director~~. The city purchasing agent ~~director~~ shall reassess the standard solicitation goals, including the continued appropriateness for establishing standard solicitation goals for those services, at least quarterly.
- (b) The city purchasing agent ~~director~~ must consider each of the following elements in determining the appropriateness of including a contract solicitation in the MBE and WBE program and setting the solicitation goals:
- (1) The availability in the particular industry classification and industry of the MBEs and WBEs that are qualified and willing to provide goods, expertise, and services required by the contract;
  - (2) The level of utilization of MBEs and WBEs in past contracts awarded by the city;
  - (3) The contract specifications;
  - (4) The extent of any adverse impact on non-MBEs and non-WBEs; and
  - (5) Any other factor deemed by the city purchasing agent ~~director~~ to be relevant to the determination.
- (c) Once established, the MBE and WBE solicitation goals must be clearly published as part of the contract specifications in the invitation to bid or in the RFP or RFQ.
- (d) The MBE and WBE participation goals specified in the awarded vendor's contract shall be the contract participation goals determined by the city purchasing agent ~~director~~ and as defined in section 324-1-C7 of this chapter. The MBE and WBE contract participation goals may be greater than, equal to, or, only in accordance with section 324-22(b)(2)(B) of this chapter, less than the MBE and WBE solicitation goals. The MBE and WBE contract participation goals shall apply to the initial contract amount, to any alternates, and to all subsequent amendments, supplements, extra work orders, change orders, or other modifications that, either

individually or in the aggregate, increase the dollar value of the contract by ten percent or more.

**Sec. 324-19. Subcontractor Utilization.**

- (a) In addition to any other applicable requirements, invitations to bid, RFPs, and RFQs must include a requirement that the bidder or respondent include in its bid or response one of the following:
  - (1) A certified MBE/WBE subcontractor utilization plan in which the bidder or respondent commits to utilize city-certified MBEs and/or WBEs in a percentage that equals or exceeds the applicable solicitation goals; or
  - (2) If a bidder or respondent is unable to meet the solicitation goals, a subcontractor utilization plan that reflects the highest MBE and WBE participation the bidder or respondent was able to achieve and documentation of its good faith efforts to meet the advertised solicitation goals.
- (b) The subcontractor utilization plan must include the following information:
  - (1) The name of each certified MBE or WBE to which the bidder or respondent intends to award a subcontract;
  - (2) Whether the subcontractor is a city-certified MBE or WBE;
  - (3) The dollar value of each subcontract;
  - (4) The scope of work to be performed under that subcontract; and
  - (5) Any other information the city purchasing agent ~~director~~ requires in order to determine whether the city-certified MBE or WBE will be performing a commercially useful function or whether the contract participation goals have been satisfied.
- (c)
  - (1) Bids are non-responsive if they do not include a certified MBE/WBE subcontractor utilization plan that meets or exceeds the solicitation goals or a subcontractor utilization plan that reflects the highest MBE and WBE participation the bidder or respondent was able to achieve and documentation of its good faith efforts to meet the solicitation goals in compliance with section 324-22(a) of this chapter prior to bid opening.
  - (2) Responses to RFPs or RFQs that do not include a certified MBE/WBE subcontractor utilization plan that meets or exceeds the solicitation goals or a subcontractor utilization plan that reflects the highest MBE and WBE participation the bidder or respondent was able to achieve and documentation of its good faith efforts to meet the solicitation goals in compliance with section 324-22(a) of this chapter prior to the deadline for

submission of responses may be considered only as provided in section 324-22(b) of this chapter.

- (3) The city purchasing agent ~~director~~ may allow bidders and respondents to submit corrections to subcontractor utilization plans that do not meet the solicitation goals due solely to the following errors in the subcontractor utilization plan, and those bids or responses shall be deemed responsive provided the bidder or respondent corrects only these errors and returns the subcontractor utilization plan to the city purchasing agent ~~director~~ within two business days following the city purchasing agent's ~~director's~~ notification of the error:
  - (A) Obvious mathematical errors;
  - (B) Typographical errors in a subcontractor's city certification type (MBE or WBE); or
  - (C) Errors in either firm names or firm FEIN numbers where those two pieces of information are not associated with the same firms.

No other modifications, changes, or corrections to the subcontractor utilization plan or other documentation submitted with the responses are permitted.

- (d) Each bidder or RFP or RFQ respondent is responsible for verifying that all MBEs and WBEs it identifies as MBE or WBE subcontractors on its subcontractor utilization plan have been certified by the city purchasing agent ~~director~~ before bid opening or the deadline for submission of responses.
- (e) During the term of the contract, any failure to comply with the MBE or WBE contract participation goals or to utilize the MBE and WBE firms as specified in the subcontractor utilization plan submitted with the bid or response is a material breach of the contract unless the city purchasing agent ~~director~~ has approved a waiver or reduction of contract participation goals and/or a request for substitution of MBE and/or WBE firms as set forth in section 324-23 of this chapter.

#### **Sec. 324-21. City Agency Pre-Solicitation Goal Waiver or Reduction Requests.**

- (a) A contracting agency may make a written request to the director for a waiver or reduction of the MBE and/or WBE solicitation goals established by the city purchasing agent ~~director~~ before bids are solicited or RFPs or RFQs are published.
- (b) The city purchasing agent ~~director~~ may grant the waiver or reduction if the director determines that either:
  - (1) The reasonable and necessary requirements of the contract make subcontracting or other participation of businesses other than the bidder or respondent infeasible; or

- (2) There are not at least two qualified and certified MBEs or WBEs in the Cincinnati market area capable of providing the goods or services, despite feasible attempts to locate them.
- (c) If the city purchasing agent ~~director~~ denies a request to waive or reduce an MBE or WBE solicitation goal, the contracting agency may appeal that denial to the city manager.

**Sec. 324-22. Vendor Good Faith Efforts to Meet Goals.**

- (a) A bidder or respondent that is unable to meet the established MBE and/or WBE solicitation goals must submit at the time of bid opening or at or before the deadline for submission of responses to an RFP or RFQ a subcontractor utilization plan that reflects the highest MBE and WBE participation the bidder was able to achieve and documentation of its good faith efforts to meet the advertised goals.
- (b) The city purchasing agent ~~director~~ will review submitted documentation of good faith efforts only in the event no bid or response that is determined by the city purchasing agent to be lowest and best or most advantageous and therefore eligible for award meets the MBE or WBE contract participation goals.
  - (1) For RFPs and RFQs for which no respondent met the goals, the city purchasing agent may allow all respondents an additional three business days after notice to submit documentation of good faith efforts each made prior to the deadline for submission of responses to the RFP or RFQ. Respondents that fail to submit such documentation of good faith efforts within that period shall be nonresponsive and ineligible for award.
  - (2) The city purchasing agent ~~director~~ shall evaluate each bidder's and respondent's documentation of their good faith efforts considering the factors in section 324-1-G of this chapter, ~~and the director shall report the results of that evaluation and the maximum MBE and WBE participation achieved by each bidder and respondent to the city purchasing agent.~~
    - (A) A contract shall not be awarded to a bidder or respondent whose documentation does not demonstrate good faith efforts to meet the solicitation goals as determined by the city purchasing agent ~~director~~.
    - (B) If no other bidder or respondent met the solicitation goals, the city purchasing agent may award a contract to a bidder or respondent for which the city purchasing agent ~~director~~ made a determination that the bidder or respondent demonstrated good faith efforts to meet the goals.
      - (i) For an invitation to bid, the contract participation goals shall be those the city purchasing agent ~~director~~ determined to be

the maximum commitment achieved by the awarded bidder on its subcontractor approval plan.

- (ii) For an RFP or RFQ, the contract participation goals shall be the higher of the goals the city purchasing agent ~~director~~ determined to be the maximum commitment achieved by the awarded respondent on its subcontractor approval plan or the goals negotiated with the awarded vendor by the city purchasing agent ~~in consultation with the director~~.

**Sec. 324-23. Requests for Post-Award Waivers or Reductions of Contract Participation Goals; Substitution of MBEs or WBEs.**

- (a) After award of a contract, if the contractor is unable to meet the established MBE and/or WBE contract participation goal(s) through the use of the MBEs and WBEs specified by the contractor in the subcontractor utilization plan submitted with its bid or response, the contractor must seek a substitute certified MBE or WBE to fulfill its commitment.
  - (1) Any proposed substitution of a city-certified MBE listed on the contractor's subcontractor utilization plan with another city-certified MBE or proposed substitution of a city-certified WBE listed on the contractor's subcontractor utilization plan with another city-certified WBE shall require the written approval of the city purchasing agent ~~director~~.
  - (2) If a contractor has established the basis for a substitution to the satisfaction of the city purchasing agent ~~director~~, the contractor may seek the assistance of the city purchasing agent ~~director~~ in obtaining a new applicable certified MBE or WBE as a substitute.
- (b) If, after making good faith efforts, the contractor is unable to find a qualified, city-certified MBE or WBE substitute, as applicable, that is capable of performing the work on the contract, the contractor must request a post-award waiver from the city purchasing agent ~~director~~, which, if granted, will permit the contractor to substitute another MBE or WBE that is not certified by the city or a non-MBE or non-WBE for the city-certified firm.
- (c) A request for approval of an MBE or WBE substitute or a post-award waiver must meet all of the following criteria:
  - (1) Be in writing;
  - (2) Document the reasons for the contractor's inability to meet its original MBE or WBE subcontractor utilization commitment with an MBE or WBE listed on the contractor's MBE/WBE subcontractor utilization plan; and

- (3) Document either the name and qualifications of the proposed substitute certified MBE or WBE or the good faith efforts made to find a substitute qualified and certified MBE or WBE.
- (d) The city purchasing agent's ~~director's~~ decision to permit or deny a proposed substitution or waiver, and the basis of any denial, shall be communicated to the contractor, the MBE or WBE originally listed on the subcontractor utilization plan, and any proposed substitute MBE or WBE in writing.

### **Sec. 324-27. Counting MBE and WBE Participation.**

A bidder, a respondent to an RFP or RFQ, or a contractor may only be credited with MBE or WBE participation as follows:

- (a) Only city-certified MBEs and WBEs may be counted toward solicitation goals and only as follows:
  - (1) A certified MBE or WBE that submits a bid or proposal as a prime contractor may count 100 percent of the dollar value of the work it intends to perform with its own forces toward the applicable MBE or WBE solicitation goal.
  - (2) Only businesses that were certified by the city purchasing agent ~~director~~ as an MBE or WBE prior to bid opening or the deadline for submission of a response to an RFP or RFQ and were certified at that time to perform the work described in the subcontractor utilization plan submitted with the bid or response may be counted toward the applicable solicitation goal.
  - (3) Only that portion of the work to be performed by a joint venture that is equal to the percentage of the certified MBE or WBE participant's ownership, control, and identified contract performance may be counted toward the applicable MBE or WBE solicitation goal.
  - (4) The entire value of the identified utilization of a certified WBE manufacturer or a certified WBE supplier that also manufactures the goods supplied may be counted toward the WBE solicitation goal.
  - (5) Twenty-five percent of the value of the identified utilization of a certified WBE supplier that is a wholesaler warehousing the goods supplied may be counted toward the WBE solicitation goal.
  - (6) The fees or commissions charged by a certified MBE or WBE insurance company or travel agent may be counted toward the applicable solicitation goal, provided the fee is reasonable and not excessive as compared with fees or commissions customarily allowed for similar services.
  - (7) No planned utilization of a certified MBE or WBE that intends to subcontract more than ten percent of the dollar amount of the services to be

performed under a subcontract with the bidder or with a respondent to an RFP or RFQ may be counted toward the applicable MBE or WBE solicitation goal. An MBE's or a WBE's necessary expenditures for the purchase of materials, equipment, or supplies that are incidental to the performance of its services shall not be counted toward this ten percent limitation.

- (8) A certified MBE or WBE may not be counted toward the applicable MBE or WBE solicitation goal if the prime contractor has a financial interest in, has an interest in the ownership or control of, or is significantly involved in the operation of the certified MBE or WBE.
- (b) Only city-certified MBEs and WBEs may be counted toward contract participation goals and only as follows:
- (1) A certified MBE or WBE awarded a contract as a prime contractor may count 100 percent of the dollar value of the work it actually performs with its own forces toward the applicable MBE or WBE contract participation goal.
  - (2) Only payments to certified MBEs or WBEs that perform a commercially useful function in the performance of work for which they are certified may be counted toward the applicable contract participation goal.
    - (A) To determine whether a certified MBE or WBE is performing a commercially useful function, the city purchasing agent ~~director~~ must evaluate:
      - (i) The amount of work subcontracted;
      - (ii) Industry practices;
      - (iii) Whether the amount the MBE or WBE is to be paid under the contract is commensurate with the work it actually performs and with the MBE or WBE credit claimed for its performance of the work; and
      - (iv) Any other factors deemed by the city purchasing agent ~~director~~ to be relevant to the determination.
    - (B) If the city purchasing agent ~~director~~ initially determines that an MBE or WBE is not performing a commercially useful function, the city purchasing agent ~~director~~ shall give written notice to the MBE or WBE, and the MBE or WBE may provide written documentation to the city purchasing agent ~~director~~ within seven days that evidences it is or will be performing a commercially useful function for work it has been certified by the city to perform.

- (C) The decision of the city purchasing agent ~~director~~ after submission of such additional evidence by the MBE or WBE, or seven days after written notice of the initial determination if no additional evidence is submitted, shall be final and conclusive.
- (3) Only that portion of the payment to a joint venture that is equal to the percentage of ownership, control, and contract performance of the certified MBE or WBE participant in the joint venture may be counted toward the applicable MBE or WBE contract participation goal.
  - (4) The entire expenditure with a certified WBE manufacturer or a certified WBE supplier that also manufactures the goods supplied may be counted toward the WBE contract participation goal.
  - (5) Twenty-five percent of the payment to a certified WBE supplier that is a wholesaler warehousing the goods supplied may be counted toward the WBE contract participation goal.
  - (6) The fees or commissions charged by a certified MBE or WBE insurance company or travel agent may be counted toward the applicable contract participation goal, provided the fee is reasonable and not excessive as compared with fees or commissions customarily allowed for similar services.
  - (7) No payments made to a certified MBE or WBE that subcontracts more than ten percent of the dollar amount of the services to be performed under a subcontract with the prime contractor may be counted toward the applicable MBE or WBE contract participation goal. An MBE's or a WBE's expenditures for the purchase of materials, equipment, or supplies that are incidental to the performance of its services under its subcontract shall not be counted toward this ten percent subcontracting limitation.
  - (8) A certified MBE or WBE may not be counted toward the applicable MBE or WBE contract participation goal if the prime contractor has a financial interest in, has an interest in the ownership or control of, or is significantly involved in the operation of the certified MBE or WBE.

**Sec. 324-35. Request for Reconsideration and Appeal of Denial of Certification.**

- (a) *Noncompliance and Denial of Certification.* Upon a denial by the city purchasing agent ~~director~~ of an application for certification or recertification as an MBE or WBE under this chapter, the city purchasing agent ~~director~~ shall notify the affected party in writing by certified mail at the address provided by the applicant on the application, setting forth the reasons for the denial of certification or recertification.

(b) *Request for Reconsideration.*

(1) Any applicant denied certification or recertification as an MBE or WBE or whose certification has been revoked may request the city purchasing agent ~~director~~ to reconsider the denial or revocation by filing a written request for reconsideration with the city purchasing agent ~~director~~ within fourteen days of the date the notice of denial or revocation decision is mailed, which request shall state with specificity the factual grounds supporting certification.

(A) In the event such notice sent by certified mail is returned as refused or unclaimed, the city purchasing agent ~~director~~ shall send the notice via regular U.S. mail, postage pre-paid. Provided the notice sent by regular U.S. mail is not returned as undeliverable within ten days, the notice shall be presumed to have been delivered, and a written request for reconsideration must be filed with the city purchasing agent ~~director~~ within ten days of the date the notice was mailed.

(B) The request for reconsideration may be accompanied by any supporting documents the applicant believes supports approval of the application or supports continued certification.

(2) Within thirty days of receipt of a request for reconsideration, the city purchasing agent ~~director~~ must review the request and all relevant documents submitted in support thereof and render a written decision that states with specificity the reasons for the decision. The decision on reconsideration shall be sent by certified mail to the address provided by the applicant on the application.

(3) If, upon reconsideration, the city purchasing agent ~~director~~ affirms the denial of certification or recertification or affirms the revocation of certification, the applicant may request a hearing before the certification appeals board by filing a written notice of appeal with the city purchasing agent ~~director~~ within fourteen days of the date the notice of decision on reconsideration is mailed. In the event such notice sent by certified mail is returned as refused or unclaimed, the city purchasing agent ~~director~~ shall send the notice via regular U.S. mail, postage pre-paid. Provided the notice sent by regular U.S. mail is not returned as undeliverable within ten days, the notice shall be presumed to have been delivered and a written request for hearing must be filed with the city purchasing agent ~~director~~ within ten days of the date the notice was mailed.

(c) *Certification Appeals Board.* The city manager shall establish a certification appeals board for the purpose of reviewing and either affirming or overruling the city purchasing agent's ~~director's~~ disposition of an application for certification or recertification as an MBE or WBE or the city purchasing agent's ~~director's~~ revocation of MBE or WBE certification. The board shall be comprised of five members, one of whom shall be appointed by the mayor and four of whom shall be

appointed by the city manager. The members must be knowledgeable about the city's procurement laws, rules and regulations, and procedures, including this chapter, and shall serve for a period of two years. A chairperson shall be elected by the members of the board. Included on the board shall be:

- (1) At least one member with demonstrated experience in the field of finance and accounting;
  - (2) At least one member with demonstrated experience in the field of construction;
  - (3) At least one member with demonstrated experience with MBE and WBE matters; and
  - (4) At least one member with demonstrated legal experience with business associations and business structures.
- (d) *Notice of Hearing Date and Hearing.*
- (1) Within three business days of receipt of a written notice of appeal, the city purchasing agent ~~director~~ shall forward the notice to the certification appeals board.
  - (2) The board shall set a hearing date not more than 28 days from the date of receipt of the notice of appeal forwarded by the city purchasing agent ~~director~~. The board shall cause notice of the hearing to be served upon all parties by certified mail. Such notice shall set forth the adverse determination by the city purchasing agent ~~director~~ from which the appeal was taken and the errors identified by the applicant. The notice also shall state the date, time, and place of the hearing. If the certified mail notice is returned as refused or unclaimed, the notice of hearing shall be mailed by regular U.S. mail, postage pre-paid, and will be deemed to have been received if it is not returned as undeliverable within ten days of mailing.
  - (3) All parties shall be provided a fair and impartial hearing and shall be allowed to produce any evidence that supports and substantiates the information submitted with the application for certification or recertification or the decision made by the city purchasing agent ~~director~~.
- (e) *Decision.* Within seven days of the conclusion of the hearing, the board shall render its decision, which shall be to affirm, modify, or reverse the denial of certification or recertification or the revocation of certification by the city purchasing agent ~~director~~, and shall state the reason(s) for such decision. The board shall decide whether the city purchasing agent's ~~director's~~ determination was in accordance with the law. If the board finds for the applicant, the business shall be certified or recertified as an MBE or WBE and added to the appropriate certification list maintained by the city purchasing agent ~~department~~. The decision of the board shall be final, subject to the right of further appeal as may be provided by law.

**Sec. 324-37. Duties of the ~~Department of Economic Inclusion~~ Department of Economic Inclusion and Procurement.**

The city purchasing agent and the department ~~or, as applicable, the director~~ shall have the following functions and duties associated with the programs set forth in this chapter:

- (a) Review and make determinations on applications for certification of MBEs and WBEs;
- (b) Maintain a directory of MBEs and WBEs certified under this chapter;
- (c) Provide information and needed assistance to MBEs and WBEs;
- (d) Investigate alleged violations of this chapter and, when appropriate, make written recommendations to the city manager for remedial action;
- (e) Develop and distribute all forms, applications, and documents necessary to comply with this chapter;
- (f) Maintain statistics on and regularly review the progress toward achieving the annual goals for the utilization of MBEs and WBEs;
- (g) Monitor contractors throughout the duration of their contracts to ensure that all efforts are made to comply with this chapter; and
- (h) Certify compliance with this chapter before contracts are submitted to the city manager for execution.

**Sec. 324-39. City Maintained Records and Reports.**

- (a) The effectiveness of this program will be measured by a review of data indicating prime and subcontract awards to city-certified MBEs and WBEs. Program effectiveness measurements also will include efforts by the city's contracting agencies to provide prime contracting opportunities for city-certified MBEs and WBEs. At the end of each contract, after receipt of the information required by subsection (b) of this section, the city purchasing agent ~~department~~ will prepare a report on the utilization of firms in the MBE and WBE program. Data in this report will include information on the gross income size of the firms participating on each contract, the race and gender of each contractor and subcontractor performing work under the contract, and the total payments made to each contractor and subcontractor performing work under the contract.
- (b) At the end of a contract, the city purchasing agent ~~director~~ shall require the prime contractor to report to the department the identity of each city-certified MBE and/or WBE to which the contractor awarded a subcontract for the purchase of construction services, professional services, other services, and supplies and the total payments made to each city-certified MBE and/or WBE.

- (c) The city purchasing agent ~~director~~ shall prepare a quarterly consolidated report based on a compilation and analysis of the reports submitted by each project manager and department staff ~~procurement officer~~, information provided by the finance department, and the reports submitted by prime contractors. This record-keeping system will identify and assess MBE and WBE contract awards, prime contractors' progress in achieving MBE and WBE subcontract participation, and other MBE and WBE development and contracting efforts. Specifically, the city purchasing agent, ~~department~~ in conjunction with all city contracting agencies, will maintain records showing:
- (1) Awards to MBEs and WBEs, including names of contractors and subcontractors, nature of the work and services performed, and the percentage of MBE and WBE participation per contract. The department will obtain regular reports from prime contractors on their progress in meeting contractual MBE and WBE commitments;
  - (2) Specific efforts to identify and award contracts to MBEs and WBEs;
  - (3) Copies of direct mailings to MBEs and WBEs;
  - (4) Pre-bid conference information;
  - (5) Requests for assistance from the MBEs and WBEs interested in bidding or proposing on city contracts and subcontracts;
  - (6) Workshops, seminars, and training programs conducted for MBEs and WBEs;
  - (7) Efforts to assist MBEs and WBEs in acquiring bonding and insurance; and
  - (8) Contracts for which a waiver of MBE or WBE participation has been obtained.
- (d) The city purchasing agent ~~director~~ will prepare quarterly MBE and WBE development reports for submission to city council. These reports shall be disaggregated by minority group as defined in Section 324-1-M1 of this chapter and shall include:
- (1) The number of contracts awarded to MBEs and WBEs;
  - (2) A description of the general categories of contracts awarded to MBEs and WBEs;
  - (3) The dollar value of contracts awarded to MBEs and WBEs;
  - (4) The percentage of the dollar value of all contracts awarded to MBEs and WBEs during the preceding year;

- (5) The actual dollar amount paid to MBE, WBE and non-M/WBE vendors as prime or subcontractors; and
- (6) The percentage of the dollar amount paid to MBEs and WBEs compared to the total amount paid under the contracts.

**Sec. 324-41. MBE and WBE Resource Information.**

The ~~department and purchasing division~~ will make the following available to MBEs and WBEs upon request:

- (a) Procedures outlining specific steps on how to bid;
- (b) Prerequisites for bidding on contracts;
- (c) Information on how plans and specifications can be obtained;
- (d) Names of persons to contact concerning questions on bid documents;
- (e) Names of department staff ~~procurement officers~~ and office hours;
- (f) Types of supplies and services purchased by the city; and
- (g) Explanations of standard contract implementation procedures and requirements concerning such matters as timely performance of work, contract changes, and payment schedules.

**Sec. 324-43. MBE and WBE Directory.**

The ~~city purchasing agent department~~ will create a city-certified MBE and WBE directory that lists city-certified MBEs and WBEs categorized by certification type and the work for which the firms are certified to perform to facilitate identifying businesses with capabilities relevant to a particular specification. Each business listing will contain the business name, contact person, address, phone number, legal structure of the business, and details concerning the company's business specialty(ies). The directory will be continuously updated and maintained electronically. In compiling this directory, the city will identify and attempt to certify as many MBEs and WBEs as possible that have the potential of doing business with the city. The city will maintain and have available an updated MBE and WBE Directory for each bid/proposal solicitation to facilitate identifying city-certified MBEs and WBEs with capabilities relevant to general contracting requirements and to particular solicitations. The city will make the directory available to bidders and respondents in their efforts to meet the MBE and WBE commitments under this chapter.

**Sec. 324-45. MBE and WBE Assistance to Provide an Equitable Opportunity to Compete for Contracts and Subcontracts.**

The ~~city purchasing agent and department staff director and the procurement staff~~ may utilize any of the same specific affirmative procedures set forth in section 323-33 of the Cincinnati

Municipal Code or its successor for SBEs, SLBEs, and ELBEs to encourage maximum practicable opportunities for MBE and WBE participation in city contracts.

#### **Sec. 324-47. Enforcement.**

- (a) During the term of a contract subject to this chapter, the city purchasing agent department must monitor continued compliance with the chapter, and the city purchasing agent director may require contractors, bidders, respondents, MBEs, WBEs, and contracting agencies to submit any reports, documents, or other information reasonably necessary to determine compliance with this chapter.
- (b) If the city purchasing agent director finds cause to believe that a contractor or subcontractor has failed to comply with any requirement of this chapter or with any contract provision relating to utilization of MBEs or WBEs, the city purchasing agent director shall notify the contracting agency and the contractor of the noncompliance and shall attempt to resolve the noncompliance by agreement.
  - (1) If the noncompliance cannot be resolved, the city purchasing agent director and the contracting agency must submit written findings and recommendations to the city manager.
  - (2) The city manager may impose penalties for noncompliance as provided in section 324-99 of this chapter.
- (c) If the city purchasing agent director finds that a contracting agency has failed to comply with a provision of this chapter, the city purchasing agent director shall send the contracting agency written findings that specify the nature of the noncompliance and attempt to resolve the noncompliance through conciliation. If the noncompliance cannot be resolved, the city purchasing agent director must submit written findings and recommendations for further action to the city manager.

#### **Sec. 324-49. Economic Inclusion Advocacy and Accountability Board.**

- (a) *Mission, duties of Board.*
  - (1) The mission of the economic inclusion advocacy and accountability board shall be to promote economic inclusion, ~~serve as a public advocate for the department,~~ assist the city purchasing agent department in fulfilling the recommendations of the economic inclusion advisory council, and measure the impact of the economic inclusion programs and initiatives within the city of Cincinnati.
  - (2) The economic inclusion advocacy and accountability board shall have the following functions and duties associated with economic inclusion and the programs set forth in this chapter:
    - (A) Recommending policies to implement the city's economic inclusion programs and services;

- (B) Recommending strategies to implement recommendations of the economic inclusion advisory council or its successor advisory group;
  - (C) Measuring the community impact of the city's ~~and the department's~~ economic inclusion programs and initiatives;
  - (D) Preparing and distributing to the community an annual report on the city's inclusion efforts; and
  - (E) Ensuring that minority- and women-owned business inclusion programs and initiatives continue in the future.
- (b) *Board members; appointment.* The economic inclusion advocacy and accountability board shall consist of up to twenty-five members appointed by the mayor of the city of Cincinnati with the approval of city council. The following organizations each may recommend three members to the mayor: Urban League of Greater Southwestern Ohio, African American Chamber of Commerce, Hispanic Chamber of Commerce, and Asian Chamber of Commerce. The members shall be diverse in terms of race, ethnicity, gender, and age, shall have knowledge of minority-owned or women-owned business growth and development issues, and shall be residents of Hamilton County, Ohio.
- (c) The city purchasing agent ~~director~~ shall be an ex-officio board member and shall not count as one of the 25 appointed board members required in paragraph (b) of this section.
- (d) *Term.* In the economic inclusion advocacy and accountability board's first year, up to eight members of the board shall be appointed for a term of one year, up to eight members shall be appointed for a term of two years, and up to nine members shall be appointed for a term of three years. Upon the expiration of the initial term of each member, each member's appointment may be renewed for two additional three-year terms. The terms of the board members shall be staggered so that each year, up to eight or nine members will be eligible for either renewal of their terms or replacement by a new board member.
- (e) *Frequency of meetings.* The economic inclusion advocacy and accountability board shall meet on a quarterly basis, or more frequently as needed.
- (f) *By-laws.* The economic inclusion advocacy and accountability board is authorized to pass by-laws or other regulations governing the board as long as such by-laws or regulations do not conflict with any provision of this section 324-49.
- (g) *Committees.* The economic inclusion advocacy and accountability board, through its bylaws, shall establish a structure of standing committees with specific areas of responsibility for accomplishing its mission and duties.

- (h) *Severability.* The provisions of this section 324-49 are severable from the other provisions in this chapter. If any other provision is held invalid, this section 324-49 shall not be made invalid as well.
- (i) *Board to exist indefinitely.* The expiration of the provisions of this chapter shall not apply to the provisions of this section 324-49. This section 324-49 shall remain in effect indefinitely. It is the intent of this ordinance to create an economic inclusion advocacy and accountability board that shall continue in existence regardless of the status of the other provisions of this chapter.

Section 7. That Sections 325-5, 325-7, 325-9, 325-11, and 325-13 of Chapter 325, “Duties of the Department of Economic Inclusion,” of the CMC are amended as follows:

**Sec. 325-5. - Duties of the ~~Department of Economic Inclusion~~ City Purchasing Agent.**

The city purchasing agent ~~department of economic inclusion~~ shall have the following functions and duties:

- (a) Administration and enforcement of the equal employment opportunity program set forth in this chapter.
- (b) Establishment of procedures to effectuate the equal employment opportunity program set forth in this chapter.
- (c) Determination in writing, with reasons thereof, whether potential contractors are in compliance with the equal employment opportunity program set forth in this chapter before the award of any bid or proposal or the execution of any city contract.
- (d) Approval of affirmative action programs submitted by potential contractors.
- (e) Investigation of alleged violations of this chapter and the issuance of written determinations following such investigations, stating the reason thereof.
- (f) Maintenance of statistical data showing the demographic characteristics of the available pool of labor skills on which the city relies for determinations of compliance by contractors with this chapter.
- (g) Provision of all necessary forms, applications, documents and papers necessary to comply with this chapter.
- (h) Determination of whether a potential contractor has met the requirements of this chapter. If bids are submitted, this determination must be made within 15 days by the city purchasing agent ~~director of economic inclusion~~.
- (i) Review cases where a contractor fails to implement previously made affirmative action agreements to determine whether there should be further efforts or alternative approaches, including but not limited to, contacts with industry, related

labor unions, and requests for the assistance of any pertinent federal agency for further negotiations.

- (j) Determination of whether any penalty set forth in § 325-99 Penalties for Noncompliance is appropriate.
- (k) Notification to an affected party by certified mail of a determination of noncompliance with this chapter and that the party has the right to appeal such determination of noncompliance with this chapter. Such request for an appeal shall be sent by the affected party to the city purchasing agent ~~director of economic inclusion~~ within seven days of receipt of the notice of noncompliance.

### **Sec. 325-7. - Requirements for Execution of City Contracts.**

No contract shall be executed on behalf of the city or its boards and commissions unless at least one of the following requirements is met:

- (a) Reflection of labor pool demographics with a workforce of 15 or more employees. The contractor has demonstrated that the contractor's local workforce, if consisting of 15 or more employees, reflects the demographic characteristics of the available pool of labor skills normally utilized by the contractor, according to the Office of Federal Contract Compliance Programs ("OFCCP") guidelines, as amended, for the Metropolitan Statistical Area ("MSA") in which the contractor's workforce is based. If a contractor has a Cincinnati MSA workforce of 15 or more employees, the contractor shall meet this requirement if the contractor's Cincinnati MSA workforce reflects the demographic characteristics of the Cincinnati MSA.
- (b) The contractor has demonstrated good faith efforts to comply with the contractual requirement of this chapter. Such good faith is to be demonstrated by an existing Affirmative Action Program, including but not limited to training programs, advertising, recruitment efforts, goals, and timetables, to be approved by the city purchasing agent ~~contract compliance officer~~. An Affirmative Action Program shall be approved if it is pursuant to an order of a federal court with jurisdiction over the contractor's employment practices or if it meets the standard of the EEOC and OFCCP guidelines, as amended, provided that certification by the EEOC or OFCCP shall be accepted as fulfillment of this subsection only when issued within 30 days of the submission of the contractor's program to the city.
- (c) The contract has been determined to be an emergency procurement pursuant to Sec. 321-65 C.M.C., or to be available only through a sole source pursuant to § 321-89 C.M.C.
- (d) The contractor has fourteen or less employees.

**Sec. 325-9. - Equal Employment Opportunity Clause.**

- (a) For purposes of this section 325-9, “contract” shall mean all written agreements between the city and another party, whereby the city expends or receives funds in excess of \$5,000 to:
  - (1) Employ such party for the construction of any public improvements; or
  - (2) Purchase services; or
  - (3) Lease any real or personal property to or from such other party.

“Contract” does not include written agreements between the city and another party whereby:

- (1) Real or personal property is purchased by or from the city;
  - (2) The city agrees to provide services to another party;
  - (3) The city contracts with another governmental agency; or
  - (4) The city enters a contract for commodities, such as utility services.
- (b) For purposes of this section, “contractor” shall mean a party that enters into a contract or lease with the city or performs any work under such contract.
  - (c) “Gender identity” shall mean the gender-related identity, appearance, or mannerisms or other gender-related characteristics of an individual, with or without regard to the individual’s designated sex at birth.
  - (d) Except where prohibited by federal, state, or local law or the terms of federal or state grants, the Equal Employment Opportunity (“EEO”) clause is required to be included or incorporated by reference in all city contracts, and shall read as follows:

“This Contract is subject to the City of Cincinnati’s Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. During the term of this Contract, the Contractor agrees as follows:

- (a) The Contractor shall not discriminate against any employee, or applicant for employment, because of race, religion, color, sex, sexual orientation, gender identity, or national origin. As used here, the words ‘shall not discriminate’ applies without limitation to the following:
  - (1) Recruitment, whether by advertising or other means;
  - (2) Compensation, whether in the form of rates of pay, or other forms of compensation;

- (3) Selection for training, including apprenticeship;
  - (4) Promotion; upgrading; demotion; downgrading; transfer; laying off; and termination.
- (b) The Contractor agrees to and shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officers setting forth the provisions of the EEO clause.
  - (c) The Contractor shall, in all solicitations or advertisements for employees, placed by or on behalf of the contractor, state that qualified applicants will receive consideration for employment without regard to race, religion, color, sex, sexual orientation, gender identity, or national origin.
  - (d) The Contractor shall furnish all information and reports required by the city purchasing agent ~~contract compliance officer~~ pursuant to this chapter, and shall permit access to the books, records, and accounts of the Contractor during normal business hours by the city purchasing agent ~~contract compliance officer~~ for the purpose of investigation so as to ascertain compliance with the program.
  - (e) The Contractor shall take such action with respect to any subcontractor as the city may direct as a means of enforcing the provisions herein, including penalties and sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in or is threatened with litigation as a result of such direction by the city, the city may enter into such litigation as is necessary to protect the interest of the city and to effectuate the Equal Employment Opportunity Program of the city; and, in the case of contracts receiving federal assistance, the contractor or the city may request the United States to enter into such litigation to protect the interests of the United States.
  - (f) The Contractor shall file compliance reports at reasonable times and intervals with the city in the form and to the extent prescribed by the city purchasing agent ~~contract compliance officer~~. Compliance reports filed shall contain information as to employment practices, policies, programs, and statistics of the contractor.
  - (g) The Contractor shall include the provisions of this equal employment opportunity clause in every subcontract, sublease, or purchase order so that such provisions will be binding upon each subcontractor, sublessee, or vendor.
  - (h) A finding, as hereinafter provided, that a refusal by the Contractor to comply with any portion of this Equal Employment Opportunity Program, may subject the offending party to any or all of the following penalties:
    - (1) Refusal of all future bids or proposals for any contract with the city or its boards or commissions until such time as the Contractor demonstrates that there has been established and there shall be carried out all of the provisions of the program as provided in this chapter;

- (2) Cancellation of the contract;
- (3) In a case in which there is substantial or a material violation of the compliance procedures herein set forth or as may be provided for by the contract, appropriate proceedings may be brought to enforce those provisions, including the enjoining, within applicable law, of contractors, subcontractors or other organizations, individuals or groups who prevent or seek to prevent directly or indirectly compliance with the policy as herein provided.”

(The terms “Contract” and “Contractor” in this EEO clause may be replaced with similar terms used in a contract and the paragraphs may be lettered or numbered similar to those in a contract.)

**Sec. 325-11. - Notice to and Requirements of Bidders and Offerors.**

- (a) The city shall include, as a part of any contract specifications published for the use of prospective bidders and offerors, a notice that all bidders or offerors will be required to comply with this chapter.
- (b) Each bidder or offeror shall submit any information required by this chapter in duplicate to the contract compliance officer. Each bidder or offeror shall file, as part of the documents of such contract, employment information in such form as may be required by the city purchasing agent ~~contract compliance officer~~ and shall ensure that each subcontractor also files such information.

**Sec. 325-13. - Enforcement and Appeal.**

- (a) If there is substantial or material violation of the compliance procedure set forth in this chapter or as may be provided for by the contract, appropriate proceedings may be brought by the city to enforce those provisions, including the enjoining, within applicable law, of contractors, subcontractors or other organizations, individuals or groups who prevent or seek to prevent, directly or indirectly, compliance with the policy provided in this chapter.
- (b) If the city purchasing agent ~~contract compliance officer~~ determines that the contractor has violated or has failed to comply with the equal employment opportunity requirements of the contract, after affording such contractor a reasonable time to correct such situation and where negotiations have been of no avail, such officer shall make a finding of noncompliance and shall transmit the findings and recommendations thereon to the city manager or the city manager’s designee and to the contract compliance advisory board, which shall hold a hearing thereon if requested by the contractor.

Section 8. That Sections 326-5 and 326-7 of Chapter 326, “Contract or Agreement Provisions,” of the CMC are amended as follows:

## Sec. 326-5. - Contract or Agreement Provisions.

All agreements subject to this chapter shall contain all of the following provisions, or substantially similar language:

- (a) This contract is or may be subject to the Wage Enforcement provisions of the Cincinnati Municipal Code. These provisions require that any Person who has an Agreement with the city or with a Contractor or Subcontractor of that Person shall report all Complaints or Adverse Determinations of Wage Theft and Payroll Fraud (as each of those terms is defined in Chapter 326 of the Cincinnati Municipal Code) against the Person, Contractor or Subcontractors to the city purchasing agent ~~Department of Economic Inclusion~~ within 30 days of notification of the Complaint or Adverse Determination.
- (b) If this contract is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this contract is required to include provisions in solicitations and contracts regarding a Development Site that all employers, Contractors or Subcontractors performing or proposing to perform work on a Development Site provide an initial sworn and notarized “Affidavit Regarding Wage Theft and Payroll Fraud” on a form prescribed by the city manager or ~~his or her~~ city manager’s designee and, within 30 days of an Adverse Determination or Complaint of Wage Theft or Payroll Fraud, shall provide an “Amended Affidavit Regarding Wage Theft and Payroll Fraud” on a form prescribed by the city manager or ~~his or her~~ city manager’s designee.
- (c) If this contract is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this contract is required to authorize, and does hereby specifically authorize, any local, state or federal agency, court, administrative body or other entity investigating a complaint of Wage Theft or Payroll Fraud against the Person (collectively “investigative bodies”) to release to the city purchasing agent ~~City’s Department of Economic Inclusion~~ any and all evidence, findings, complaints and determinations associated with the allegations of Wage Theft or Payroll Fraud upon the City’s request and further authorizes such investigative bodies to keep the City advised regarding the status of the investigation and ultimate determination. If the investigative bodies require the Person to provide additional authorization on a prescribed form or in another manner, the Person shall be required to provide such additional authorization within 14 days of a request by the City.
- (d) If this Agreement is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this Agreement shall include in its contracts with all contractors language that requires the contractors to provide the authorizations set forth in subsection (c) above and that further requires each contractor to include in its contracts with subcontractors those same obligations for each subcontractor and each lower tier subcontractor.
- (e) If this Agreement is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this Agreement shall post

a conspicuous notice on the Development Site throughout the entire period work is being performed pursuant to the Agreement indicating that the work being performed is subject to Cincinnati Municipal Code Chapter 326, “Wage Enforcement,” as administered by the city purchasing agent ~~City of Cincinnati Department of Economic Inclusion~~. Such notice shall include contact information for the city purchasing agent ~~Department of Economic Inclusion~~ as provided by the ~~department~~.

- (f) Under the Wage Enforcement provisions, the city shall have the authority, under appropriate circumstances, to terminate this contract or to reduce the incentives or subsidies to be provided under this contract and to seek other remedies, including debarment.

**Sec. 326-7. - Wage Theft Monitoring, Investigation and Compliance.**

- (a) The city manager shall develop rules and regulations for the following:
  - (1) Review of agreements to ensure that language required by this chapter is included;
  - (2) Monitoring of agreements to ensure compliance with this chapter, including reviewing complaints, referring complaints to an appropriate agency for investigation, and monitoring the outcome of complaints, for any complaints about the practices of any person, contractor or subcontractor relating to the provisions of this chapter; and
  - (3) Recommendations for the pursuit of remedies or imposition of sanctions in the event of an adverse determination.
- (b) Whenever the city becomes aware of any complaint against a person or the person’s contractor or subcontractor for wage theft or payroll fraud with respect to any work done on a development site:
  - (1) The city manager or ~~his or her~~ city manager’s designee shall report the complaint to the appropriate state or federal agency responsible for investigation and enforcement of a particular type of violation;
  - (2) The city manager or ~~his or her~~ city manager’s designee may investigate wage theft or payroll fraud complaints and take appropriate action;
  - (3) The city will provide a written notice to the person stating that, if an adverse determination is rendered against the person or the person’s contractor or subcontractor, the city will pursue any available legal, contractual, or equitable remedies, which may include without limitation any or all of the penalties listed in subsections (c) and (d) of this section. The notice also will state that the person, contractor or subcontractor may provide the city with information showing that the adverse determination is under review, contested, or appealed; and

- (4) The city will attempt to take action as described in subsection (b)(1) of this section and, if appropriate, to initiate an investigation as described in subsection (b)(2) of this section, within 30 days of the city's receipt of the complaint.
- (c) Whenever any adverse determination is rendered against a person or the person's contractor for wage theft or payroll fraud with respect to any work done on a development site, or, if the adverse determination is appealed, then whenever the final decision on appeal confirms the adverse determination, the city will pursue any available legal, contractual or equitable remedies, which may include without limitation any or all of the following remedies whether or not provided for in the agreement:
- (1) Termination of the agreement with the person or unilateral reduction of the incentive or benefit to be provided under the agreement by up to 100% of the yet to be paid or provided incentive or benefit;
  - (2) Deeming the person or the person's contractor ineligible for future agreements or other contracts with the city until all wage theft and payroll fraud penalties have been paid in full;
  - (3) Debarment of the person or the person's contractor from future agreements or other contracts with the city; and
  - (4) Informing the relevant city departments of the adverse determination, including but not limited to the tax commissioner, the department of finance, and the city prosecutor, in order to determine if further action is necessary.
- (d) Whenever any adverse determination is rendered against a person's subcontractor, if there is no resolution of the wage theft violation or payroll fraud satisfactory to the city within 30 days of the city's receipt of notification of the adverse determination or final decision of an appeal, the city will pursue any available legal, contractual or equitable remedies, which may include without limitation the following remedies whether or not provided for in the agreement:
- (1) Termination of the agreement with the person or unilateral reduction of the incentive or benefit to be provided under the agreement by up to 100% of the yet to be paid or provided incentive or benefit;
  - (2) Deeming the person, the person's contractor, and/or the subcontractor ineligible for future agreements or other contracts with the city until all wage theft and payroll fraud penalties have been paid in full;
  - (3) Debarment of the person, the person's contractor, and/or the subcontractor from future agreements or other contracts with the city; and

- (4) Informing the relevant city departments, including but not limited to the tax commissioner, the department of finance, or the city prosecutor, in order to determine if further action is necessary or available.
- (e) Any remedies available to the city under this section are in addition to, and not in replacement of, any remedies available to the city under an agreement or otherwise. The pursuit of any remedy or remedies by the city shall not exclude the city's pursuit of any other remedy or remedies.
- (f) The ~~Department of Economic Inclusion~~ department of economic inclusion and procurement shall be the department with primary responsibility for investigation, recordkeeping, and enforcement of this chapter.

Section 9. That existing Sections 23, "Division of Purchasing; City Purchasing Agent; Duties," 24, "City Purchasing Agent; Duties," and 25, "City Purchasing Agent: Combined Purchases; Authorization to Sign Contracts," of Article IX, "Department of Finance, of the Administrative Code; existing Article XXIX, "Department of Economic Inclusion," of the Administrative Code; existing Section 320-1-D of Chapter 320, "Compliance Guidelines for Construction Contracts Issued By Water Works and the Department of Sewers," of the CMC; existing Section 323-1-D1 of Chapter 323, "Small Business Enterprise and Local Business Enterprise Programs," of the CMC; and existing Section 324-1-D1 of Chapter 324, "Minority and Women Business Enterprise Program," of the CMC are repealed.

Section 10. That this ordinance shall take effect and be in force September 1, 2026.

Passed: \_\_\_\_\_, 2026

\_\_\_\_\_  
Aftab Pureval, Mayor

Attest: \_\_\_\_\_  
Clerk

\_\_\_\_\_  
Deletions are indicated by strikethrough; additions are indicated by underline.