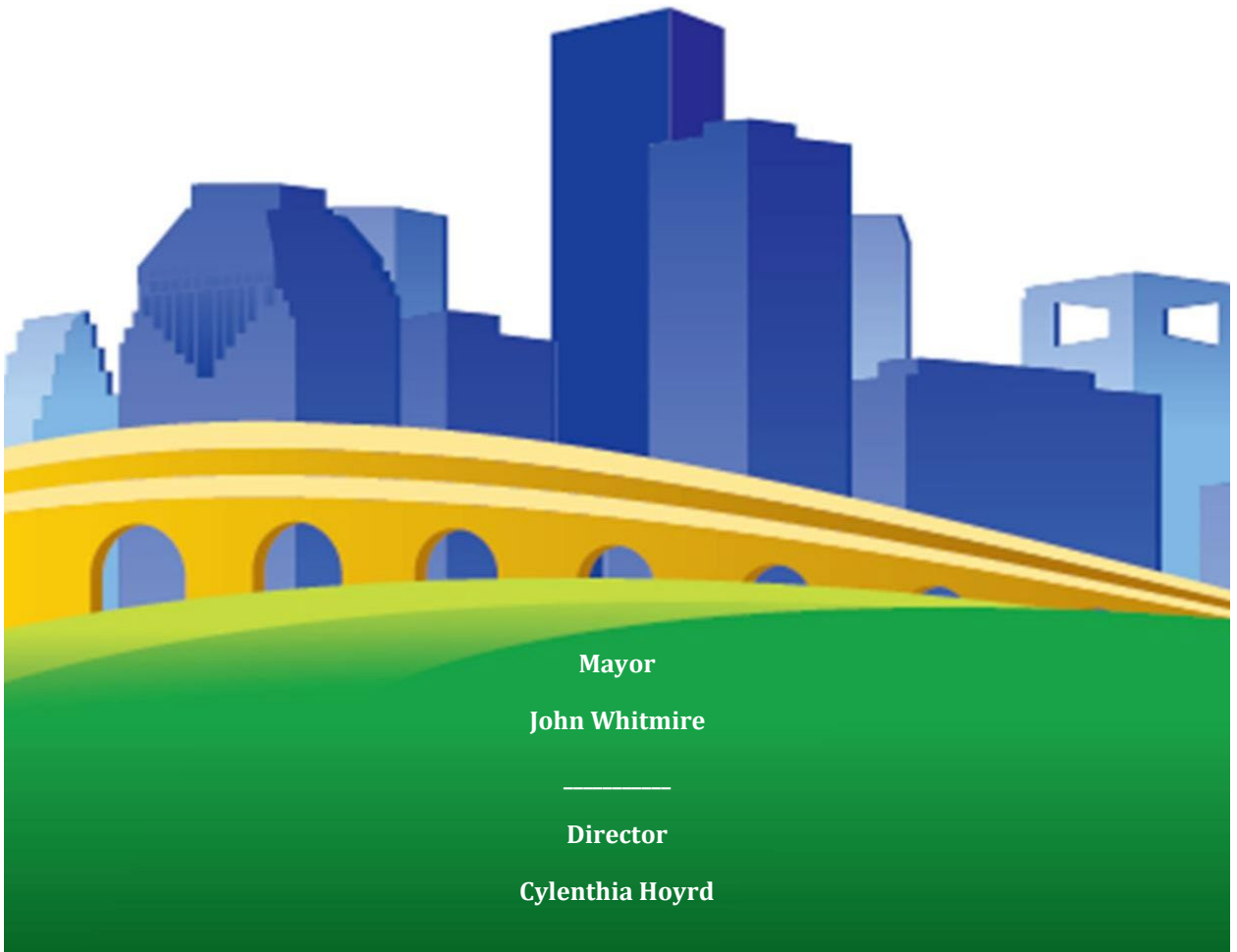


**CITY OF HOUSTON**  
OFFICE  
*of*  
**BUSINESS OPPORTUNITY**

**Policies and Procedures**



**Mayor**

**John Whitmire**

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**Director**

**Cylenthia Hoyrd**

Approved by Mayor John Whitmire on 4/14/2026 and the City Attorney on 4/14/2026

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## I. AUTHORITY

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The City of Houston Code of Ordinances (Code), Chapter 15, Articles II, V, VI and XI, as amended, authorizes the creation of the Minority, Women, Small Business Enterprise (MWSBE), Persons with Disabilities Enterprise (PDBE), Veteran-Owned Small Business (VOSB) and Service-Disabled Veteran-Owned Small Business (SDVOSB) Programs. As required in the Code, the Office of Business Opportunity (OBO) has established policies and procedures for the implementation of Chapter 15, Articles II (Anti-Discrimination Provisions in City Contracts), V, VI and XI.

Under the Texas Unified Certification Program, OBO is authorized to process Certifications on behalf of the United States Department of Transportation (DOT) Disadvantaged Business Enterprise and Airport Concessionaire Disadvantaged Business Enterprise Program recipients, subrecipients, and grantees included in the Houston Metropolitan Statistical Area (MSA) pursuant to Title 49 of the Code of Federal Regulations, Parts 23 and Part 26. In addition, as a recipient and sub-recipient of U.S. DOT funds, OBO monitors U.S. DOT contracts in compliance with Title 49 of the Code of Federal Regulations, Parts 23 and Part 26.

This Policies and Procedures Manual supersedes all previously published Program Manuals.

## II. SCOPE

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The procedures herein apply to all Departments (unless expressly excluded) and all Contractors doing business with the City of Houston, unless the provisions herein are in conflict with State or Federal law or rules and regulations.

## III. DEFINITIONS

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***Airport Concession Disadvantaged Business Enterprise - (ACDBE)***, as defined in 49 C.F.R., Part 23, means a Disadvantaged Business Enterprise participating in the Federal Aviation Administration's (FAA) ACDBE Program.

***Armed Forces*** as defined in Section 15-184 of the Code means the United States Army, Navy, Air Force, Marine Corps, or Coast Guard.

***Bidder*** as defined in Section 15-82 of the Code means any person or legal entity which submits a bid or proposal to provide labor, goods or services to the City by contract for profit.

***Categorical Goals*** means subcontracting goals established by contract category for Departments that have a high volume of repetitive types of contracts.

***Commercially Useful Function*** as defined in Section 15-82 of the Code means a discrete task or group of tasks, the responsibility for performance of which shall be discharged by the MWSBE by using its own forces or by actively supervising on-site the execution of the tasks by another entity for whose work the MWSBE is responsible.

***Contract*** means a mutually binding legal document under which an entity provides goods, labor or services to the City for profit. For purposes of the City's program, a lease is considered to be a contract.

**Contract Compliance Commission** means a panel composed of five Houston-area citizens, appointed by the Mayor, who presides over selected City contract related issues, with the duties and powers as specified in Chapter 15 of the Code.

**Contracting Department** or *Department* means a Department who is the procurer of goods or services on a particular contract or the Department or City division responsible for managing a multi-department contract.

**Contractor** as defined in Section 15-82 of the Code means any person or legal entity providing goods, labor, or services to the City by contract for profit.

**Contract-Specific Goals** means the subcontracting goals for MBE, WBE and SBE participation established for a particular contract based on the divisibility of the contract and the availability of MBE, WBE and SBE firms to perform that divisible work.

**Certification Directory** means either the online Directory of MWSBE, PDBE, VOSB, SDVOSB, and LGBTBE certified companies or the online Directory of DBE and ACDBE companies certified through the Texas Unified Certification Program.

**Citywide Aspirational Goals** means goals for specific contract types that mirror the Houston Metropolitan Statistical Area or other geographic area availability percentages of MBE and WBE companies as established by the most recent availability data for each contract type.

**Director** means the head of a City of Houston Department.

**Disabled Veteran** as defined in Section 15-184 of the Code means an individual who served on active duty in the Armed Forces, separated from the Armed Forces under honorable conditions, and has a disability rating letter issued by the Department of Veterans Affairs establishing a service-connected disability rating between zero and one-hundred percent, or a disability determination from the Department of Defense.

**Disadvantaged Business Enterprise (DBE)**, as defined in 49 C.F.R. Part 26, means a for-profit small business concern— (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged; and (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

- a. Must be a small business as defined by the Small Business Administration (SBA).
- b. Personal Net Worth is below the Personal Net Worth Threshold.

**Disparity Study** means a study that reviews and analyzes the utilization and availability of disadvantaged businesses, MBEs and WBEs in a particular market area to determine if disparity exists in the awarding of contracts to MBEs and WBEs by a public entity. A study that analyzes the availability of small, minority-, and women-owned businesses in a market and compares it to their actual utilization in government contracts. The goal is to determine whether any disparities exist, identify potential causes (such as discrimination or barriers to entry), and provide data-driven recommendations for improving fair access to contracting opportunities.

**Document 00470, Document 00471, and Document 00472** refers to a construction Bidder's MWSBE Participation Plan, Pre-Bid Good Faith Efforts, and MWSBE Goal Deviation Request respectively.

**Document 00800** means the City of Houston's Supplementary Conditions document found in solicitation packages. In reference to OBO, this document summarizes the Good Faith Efforts Policy and highlights any applicable MWSBE goal(s).

**Document 00808** means the City of Houston's requirements for the City of Houston's MWSBE and PDBE Program including the Good Faith Efforts Policy.

**Established Business Enterprise** as defined in Section 15-82 of the Code means a MWSBE or any business applying for Certification as a MWSBE that, by virtue of its size meets or exceeds the standards promulgated by the U.S. Small Business Administration for that category of business, as determined by the procedures described in Section 15-87(a) of Chapter 15.

**Functional Mission** means the types of core goods or services a business provides.

**Goal-Oriented Contract** as defined in Section 15-82 of the Code means any, contract, agreement or other undertaking anticipated for construction work in excess of \$1,000,000.00 and for the supply of goods or non-personal or nonprofessional services in excess of \$100,000.00: (a) for which competitive bids are required by law; (b) which is not within the scope of the Disadvantaged Business Enterprise Programs of the United States Environmental Protection Agency or the United States Department of Transportation or any other federal or state agency having jurisdiction; and (c) the initiating Department, in consultation with the OBO director, determines has significant subcontracting potential in fields in which there are adequate numbers of known MWSBEs to compete for and perform the necessary subcontracted services.

**Good Faith Efforts** as defined in Section 15-82 of the Code shall refer to steps taken to achieve a MWSBE goal or other requirements which, by their scope, intensity and usefulness demonstrate a bidder's responsiveness to fulfill the business opportunity objective prior to the award of a contract and a Contractor's responsibility to put forth measures to meet or exceed a MWSBE goal throughout the duration of the contract.

**Good Faith Efforts Policy** refers to the OBO's document defining and outlining how a Contractor's Good Faith Efforts to achieve their certified firm participation goal(s) are assessed by the City.

**Joint Venture** as defined in Section 15-82 of the Code means an association of a MWSBE and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the MWSBE(s) is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

**Legal Resident Alien** means a lawfully permanent alien as defined in 26 C.F.R. §301.7701(b)-1(b), which requires an individual to be lawfully granted the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws.

**LGBT Business Enterprise (LGBTBE)** means an eligible business that is majority-owned by LGBT individuals as determined by the NGLCC.

**Local Firm, Local MWSBE, or Locally Based when describing a firm or entity seeking certification** means a sole proprietorship, partnership, corporation or any other business entity with a significant business presence in the metropolitan statistical area that includes the City of Houston (“MSA”), as defined by the Office of Management and Budget within the Executive Office of the President of the United States. A significant business presence includes the requirement that a MWSBE have an established place of business in the MSA that has a substantial role in the MWSBE's performance of a Commercially Useful Function.

**Major Life Activities** as defined in Section 15-91 of the Code mean functions significantly affecting a person's quality of life, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

**Medical Doctor** means an individual licensed to practice medicine in the State of Texas.

**Medically Determined** as defined in Section 15-91 of the Code means determined by a medical doctor.

**MWBE** means, collectively, MBEs and WBEs.

**MWSBE** means, collectively, MBEs, WBEs, and SBEs.

**Minority Business Enterprise (MBE)** as defined in Section 15-82 of the Code means a business which is:

- a. A sole proprietorship in which the owner is a minority person who owns, controls and manages the business; or
- b. A corporation in which at least 51 percent of the stock or of the assets of such corporation is owned, controlled and managed by one or more minority persons; or
- c. A partnership in which at least 51 percent of the assets of such partnership is owned, controlled and managed by one or more minority persons; or
- d. Any other business or professional entity in which at least 51 percent of the assets in such business or professional entity is owned, controlled and managed by one or more minority persons; or
- e. A business which has been certified as an MBE by OBO.

**Minority Person** who has a Personal Net Worth that is below the Personal Net Worth Threshold and is as defined in Section 15-82 of the Code which means a citizen or legal resident alien of the United States is:

- a. Black American, which includes persons having origins in any of the Black racial groups of Africa;
- b. Hispanic American, which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- c. Asian-Pacific American, which includes persons having origins from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, the Federated States of Micronesia, or Hong Kong, or the region generally known as the Far East;
- d. Native American, which includes persons having origins in any of the original peoples of

- North America, American Indian, Eskimo, Aleut, Native Hawaiian; or
- e. Subcontinent Asian American, which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka.

Origin or descent can be regarded as the ancestry, nationality group, lineage or country in which the person or persons' parents or ancestors were born before their arrival in the United States.

**NAICS** stands for the North American Industry Classification System.

**NGLCC** stands for the National Gay and Lesbian Chamber of Commerce.

**OBO** refers to the Office of Business Opportunity.

**Owned, Controlled and Managed** as defined in Section 15-82 of the Code means that the one or more minority persons or women who own the requisite interests in or assets of a business applying for certification possesses equivalent incidents of such ownership, including an equivalent interest in profit and loss, and has contributed an equivalent percentage of capital and equipment to the business at inception. Contributions of capital and equipment must be real and substantial. In instances where expertise is relied upon to demonstrate ownership, control, and management, in addition to the initial real and substantial capital contribution, it must be shown that the expertise is: (1) in a specialized field; (2) in an area critical to the firm's operation and performance of a Commercially Useful Function; (3) critical to the firm's continued success; and (4) documented in the records of the firm, including but not limited to documentation showing the particular expertise and its value to the firm. The individual whose expertise is relied upon must have a significant financial investment in the business.

Ownership shall be measured as though not subject to the community property interest of a spouse, if both spouses certify in writing that the nonparticipating spouse relinquishes control over his or her community property interest in the subject business (but by doing so is not required to transfer to his or her spouse his or her community property ownership interest or to characterize the property as the separate property of the spouse).

[As it relates to controlled and managed,] the one or more minority person or woman owners shall have recognized ultimate control over all day-to-day business decisions affecting the MBE or WBE and shall hold a title commensurate with such control. Such ultimate control shall be known to and at least tacitly acknowledged in day-to-day operations by employees of the business and/or external parties.

**Personal Net Worth (PNW)** means, as defined in 49 C.F.R. §26.5, the net value of an individual's reportable assets and liabilities per the calculation rules in 49 C.F.R. §26.68.

**Personal Net Worth Threshold** as defined in Article II means the current threshold as set forth in 49 C.F.R. Parts 23 and 26.

**Personal Property** means any movable or intangible thing that is subject to ownership and not classified as real property.

**Person with a Disability** who has a Personal Net Worth that is below the Personal Net Worth Threshold and meets the definition in Section 15-91 of the Code which means a disabled veteran or a citizen or legal resident alien of the United States who has a presently existing, medically determined physical or mental impairment of a chronic or permanent character which substantially limits one or more of his or her major life activities. The term persons with disabilities shall not include individuals currently engaging in the illegal use of drugs or currently engaging in the abuse of alcohol. However, the term persons with disabilities does not exclude individuals who have successfully completed a supervised drug or alcohol rehabilitation program and are no longer engaging in the illegal use of drugs or the abuse of alcohol and who otherwise qualify as persons with disabilities under the criteria set forth in Chapter 15, Article VI of the Code.

**Persons with Disabilities Business Enterprise (PDBE)** as defined in Section 15-91 of the Code means a business that is:

- a. A sole proprietorship in which the owner is a person with a disability who owns, controls and manages the business; or
- b. A corporation in which at least 51 percent of the stock or of the assets of the corporation is owned, controlled and managed by one or more persons with a disability; or
- c. A partnership in which at least 51 percent of the assets of the partnership is owned, controlled and managed by one or more persons with a disability; or
- d. A Joint Venture in which at least 51 percent of the interests of the Joint Venture is owned, controlled and managed by one or more persons with a disability; or
- e. Any other business or professional entity, in which at least 51 percent of the assets in the business or professional entity is owned, controlled and managed by one or more persons with a disability.

**Prime Contractor** shall mean the party who directly contracts with the City of Houston to provide the goods, labor or services in fulfillment of terms of a contract with the City of Houston.

**Professional Services**, for the purposes of these Policies and Procedures, means services that contemplate labor and skill that are predominantly mental or intellectual rather than physical or manual and includes services of members of disciplines requiring licenses, special knowledge or attainment and a high order of learning, skill and intelligence.

**Regulated Contract** as defined in Section 15-82 of the Code means any contract, agreement or other undertaking:

1. For which competitive bids are not required by law, [typically professional services in nature];
2. That is not covered by the MBE/WBE programs of any state or federal agency having jurisdiction [which expressly prohibits application of the City of Houston's local program]; and
3. That the recommending Department has determined, in consultation with the Director of OBO either: (a) has significant subcontracting potential in fields in which there are sufficient known MWSBEs to perform the particular subcontract service(s); or (b) is a type for which there are sufficient known MWSBEs who have represented their ability to perform the prime contract service to afford effective competition for the prime contract.

**Service-Disabled Veteran**, as defined in 13 CFR §128.102, as amended, is a veteran who is registered in the Beneficiary Identification and Records Locator Subsystem or successor system, maintained by Department of Veterans Affairs' Veterans Benefits Administration as a service-disabled veteran.

**Service-Disabled Veteran-Owned Small Business (SDVOSB)** means, as found in 13 CFR Part 128, as amended, a SBE that is not less than fifty-one (51) percent owned, controlled and managed by one or more service-owned veterans, or in the case of any publicly owned business, not less than fifty-one (51) percent of the stock of which is owned by one or more service-disabled veterans.

**Small Business** means a firm whose gross revenues or number of employees, averaged of the past five years, inclusive of any affiliates as defined by 13 CFR Section 121.103, does not exceed the size standards defined in Section 3 of the Federal Small Business Act and applicable Small Business Administration regulations related to the size standards found in 13 CFR Part 121. [For gross revenue calculation, an average over the past five years will be considered if the firm has been in business for over five years. For number of employee calculation, it is an average for each of the pay periods for the most recently completed 12 calendar months.] The term also includes a certified Minority/Women Business Enterprise, as defined in the Code, whose eligibility-determining owner has a Personal Net Worth below the applicable Personal Net Worth Threshold.

**Subcontractor** as defined in Section 15-82 of the Code means any business providing goods, labor or services to a Contractor if such goods, labor or services are procured or used in fulfillment of the Contractor's obligations arising from a contract with the City of Houston.

**Veteran**, as defined in 13 CFR Part 128, as amended, is a person who served on active duty with the Armed Forces for any length of time and at any place and who was discharged or released under conditions other than dishonorable. Reservists or members of the National Guard called to federal active duty or disabled from a disease or injury incurred or aggravated in line of duty or while in training status also qualify as a veteran.

**Veteran-Owned Small Business (VOSB)** means, as found in 13 CFR Part 128, as amended, a SBE that is not less than fifty-one (51) percent owned, controlled and managed by one or more veterans, or in the case of any publicly owned business, not less than fifty-one (51) percent of the stock of which is owned by one or more veterans.

**Woman** means a person who has a Personal Net Worth that is below the Personal Net Worth Threshold and meets the definition and is a citizen or legal resident alien of the United States and who is of the female gender.

**Women Business Enterprise (WBE)** as defined in Section 15-82 of the Code means a business which is:

- a. A sole proprietorship in which the owner is a woman who owns, controls and manages the business; or
- b. A corporation in which at least 51 percent of the stock or assets of such corporation is owned, controlled and managed by one or more women; or
- c. A partnership in which at least 51 percent of the assets of such partnership is owned, controlled and managed by one or more women; or
- d. Any other business or professional entity in which at least 51 percent of the assets in such business or professional entity is owned, controlled and managed by one or more women; or
- e. A business which has been certified as a WBE by OBO.

## IV. THE MWSBE PROGRAM

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In furtherance of the City policy set forth in Section 15-81 of the Code, OBO provides equal representation and advocacy for all small businesses by creating pathways to education, partnerships, capacity expansion, and growth.

In addition to complying with the applicable provisions of this Policies and Procedures Manual, City Contractors and potential Contractors and their Subcontractors must also comply with any other specific MWSBE requirement(s) set forth by various laws and Executive Orders resulting from local, State or Federal initiatives.

OBO also has responsibility for establishing procedures for the implementation of Chapter 15, Article V of the Code and reviewing and approving procedures established by Departments. Such procedures are to be narrowly designed to attain the purposes and objectives specified in the Code without unduly limiting non-minority-owned, nonwoman-owned, or established business enterprises. Such procedures must be reviewed and approved by the Mayor and by the City Attorney prior to implementation.

OBO has three key objectives:

1. **Educate** businesses;
2. **Connect** businesses to opportunities; and
3. **Grow** the small business ecosystem in the region.

OBO uses several methods to increase participation of historically underutilized businesses in government contracting, including, but not limited to:

1. Maintaining a compliant Certification program which attracts qualified applicants and is administered using a streamlined process;
2. Maintaining the Certification Directory of certified companies that includes information about each company's services and contact information;
3. Ensuring that Prime Contractors are adhering to Federal, State, and City rules and regulations and are consistently meeting or exceeding MWSBE utilization goals on contracts;
4. Providing businesses with capacity building resources; and
5. Encouraging department-level accountability for realizing the City's policy to stimulate the growth of local MWSBEs.

### A. CERTIFICATION

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OBO processes Certification applications and renewals from firms interested in four (4) City of Houston Certification categories (Minority, Woman-Owned, Small Business Enterprises, and Persons with Disabilities Business Enterprises) and two (2) Federal Certifications (Disadvantaged Business Enterprises and Airport Concessionaire Disadvantaged Business Enterprises).

OBO also accepts certification of LGBTBEs as further described below in Article VI and certifications of VOSBs and SDVOSBs as further described in Article VII.

## B. CONTRACT COMPLIANCE

The Contract Compliance Division of OBO is responsible for monitoring the utilization of certified firms on City of Houston contracts with goals, for educating and enforcing applicable labor standard rules by auditing payrolls and other Contractor documents and ensuring compliance with Equal Employment Opportunity laws.

## C. HIRE HOUSTON FIRST

OBO is the administrator of the Hire Houston First Program. It is the policy of the City of Houston as defined in the Hire Houston First Ordinance Chapter 15, Article XI of the Code, to use the City's spending powers in a manner that promotes fiscal responsibility and maximizes the effectiveness of local tax dollars by ensuring City spending provides business opportunities to city and local businesses as a measure to support the local economy.

## D. PAY OR PLAY

Executive Order 1-7 governs the City's Pay or Play Program, OBO manages the City's efforts to level the playing field during the bid process for vendors, as the cost of providing insurance or failure to provide insurance to employees may influence the bids submitted by vendors for City work. Further, the City seeks to offset the cost of caring for uninsured residents in Houston and Harris County.

It is the policy of the City to require certain Contractors to either contribute a designated amount to be used to offset the costs of providing healthcare to uninsured people in the Houston/Harris County area (PAY) or provide to certain employees a minimum level of healthcare benefits (PLAY). OBO serves as the Administrator of the Pay or Play (POP) Program. Please view the POP Presentation and Pay or Play Program Requirements available on OBO's website for more details about the program.

## V. THE DBE and ACDBE PROGRAM

The City of Houston has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26, which is administered and managed by OBO. OBO also certifies DBE and ACDBE firms for USDOT funded projects (see 49CFR. Part 26 and Part 23).

It is the policy of the COH to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also the COH's policy to engage in the following actions on a continuing basis:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. Help remove barriers to the participation of DBEs in DOT-assisted contracts;

6. Promote the use of DBEs in all types of federally-assisted contracts and procurement activities;
7. Assist the development of firms that can compete successfully in the marketplace outside the DBE Program; and
8. Make appropriate use of the flexibility afforded to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

See Appendix A: *The DBE Program Plan*.

See Appendix B: *The ACDBE Program Plan*.

## **VI. MWSBE, VOSB and SDVOSB CERTIFICATION**

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OBO processes Certification applications and renewals from firms interested in becoming designated as an MWSBE, VOSB, and/or SDVOSB.

For the local certifications, OBO reviews each application to ensure the applicant is an independent, currently functioning business, which is owned, controlled and managed by U.S. citizen(s) or Legal Resident Alien(s) who are Minority, Women or Small Business entrepreneurs and meets or exceeds the size standards established by the U.S. Small Business Administration as referenced in Section 15-87 of the Code. In addition, the minority or woman owner(s)/applicant(s) must have the expertise to perform the Functional Mission for which the business seeks Certification and must hold all applicable permits, registrations, and licenses in his/her own name. A business may use an employee's license in lieu of the owner's for purposes of determining whether the entity is performing a Functional Mission only when the owner has a documented disability, relevant, specific, and directly related to the required license, making licensure impossible, when allowed under federal and state law, and otherwise still possesses the skill and expertise to perform the work for which the entity is being utilized. Any business seeking Certification must provide all documentation required. Failure to comply with requests for additional information or documentation may result in a determination to reject or deny an application.

Certification as an MWSBE is not required for a business enterprise to participate in the City of Houston's contracting process; however, Certification is required to credit the participation of minority, women-owned or small businesses on City contracts with goals and for those businesses to be counted towards the overall citywide goals. OBO reserves the right to review, accept or reject any MWSBE Certification applications. When responding to City solicitation before City Council award, certified businesses used for MWSBE goal credit must be certified at the time of bid or proposal submission date.

OBO provides an online, on-demand pre-Certification workshop. OBO also provides these workshops live, as needed, and at local City and community events. These workshops provide an invaluable opportunity for potential applicants to learn about the eligibility criteria for Certification and the application process as well as receive information on doing business with the City. Businesses seeking to apply for Certification and/or get additional information about Certification may do so at [www.houstontx.gov/obo](http://www.houstontx.gov/obo).

## A. APPLICATION SCREENING

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Certification staff reviews the submitted applications to determine completeness. Upon receipt of an application, staff will:

- Document the day the file was received and date of screening.
- Complete the online Application Screening Checklist.
- Document which items are missing, if any, and send the applicant a list of the missing documents via the Certification management system.
- Reject and return an incomplete application package to the applicant within 15 days of application package receipt by OBO. The applicant may re-apply any time after 90 days from the date OBO rejects the application.
- Assign complete applications to a Certification Officer to conduct a financial review and, if necessary, a field audit.

## B. FINANCIAL REVIEW

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The Certification Officer conducts a financial review for the purpose of determining whether a business is a functioning entity and verifies the business's independence and size.

Documentation required for Financial Review includes, but is not limited to:

- Proof of Ownership.
- Invoices and proof of payment.
- Tax Returns.
- Equity/Capital Contribution – as aid to confirm ownership.
- Income Statements.
- Balance Sheet.
- Inventory (if supplier.)
- Physical Assets (equipment owned).
- Notes Payable – for discussion at field audit.
- Depreciation – asset ownership.
- Rental expenses.

## C. FIELD AUDIT

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The Certification Officer conducts a field audit at applicant's local office, or virtually if appropriate, at which time an interview with the applicant takes place to discuss ownership, management, control, independence, and type and function of the business. At the conclusion of the interview, the applicant reviews the field audit written responses and is given the opportunity to acknowledge and sign off on all responses documented by the Certification Officer. OBO may conduct random field audits of certified businesses.

## D. CERTIFICATION AND APPLICATION REVIEW

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The Certification Officer reviews the entire application, which includes the documents submitted with and notes from the desk audit, financial review, and field audit. The Certification Officer assesses whether the applicant has the requisite ownership interest and management and control of the business, whether the business is functioning independent of other businesses, and whether

the applicant can perform the Functional Mission of the business, including possessing all applicable permits, registrations, and licenses in the applicant's name, except as outlined below. In assessing whether the applicant meets the requirements for each of the criteria listed above, the Certification Officer will examine information and documentation, including, but not limited to the items listed below.

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## 1. OWNERSHIP

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- Consideration/Contributions (what capital (i.e. money/resources) were used to secure ownership interest in the business seeking Certification).
- Compensation/Profit Loss.
- Tax Returns (verify ownership, salary, and share in profit & loss).
- Ownership Documents (i.e. stocks certificates, stock transfer ledger, assumed name certificate, partnership agreement, and LLC agreement).
- Trusts.

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## 2. MANAGEMENT AND CONTROL

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- Corporate Documents (i.e. bylaws, LLC operating agreement, partnership agreement).
- Checks (signature authority, restrictions, if two signatures required etc.).
- Financial (corporate authorization resolution form, notes payable from financial statements, bank signature cards, business loan agreements, promissory notes, etc.).
- Reference checks (Desk Audit).
- Trusts.

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## 3. INDEPENDENCE

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Independence means the business seeking Certification is not dependent upon or connected with another business, as evidenced by such items as multiple shared resources, common employees, common Directors, or the payment of the MWDBE's payroll by a non-MWDBE company. While OBO may consider other factors, the following factors are typically considered in assessing independence:

- Office space, equipment, employee sharing etc.
- Contracts (exclusive).
- Payroll mechanisms.

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## 4. FUNCTIONAL MISSION

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Functional Mission means the types of core goods or services a business provides. For Certification purposes, the applicant owner(s) must be able to perform the business's Functional Mission. The applicant owner(s) must have the necessary experience, expertise,

credentials and regulatory authority to conduct the type of business for which the business is certified. The following non-exhaustive factors are considered in assessing Functional Mission:

- Experience and education in the specific products or services the business provides.
- Licensure/Permit, where required to provide the products or to perform the services of the business.
- Percentage of work subcontracted.

For PDDB certification, a business may use an employee's license in lieu of the owner's for purposes of determining whether the entity is performing a Functional Mission only when the owner has a documented disability, relevant and specific to the required license, making licensure impossible, when allowed under federal and state law, and otherwise still possesses the skill and expertise to perform the work for which the entity is being utilized.

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#### 5. SIZE OF BUSINESS ENTERPRISE

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- Gross revenue, number of employees, etc.
- If an affiliation exists, examine gross receipts of the non-applicant affiliated business(es).

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#### 6. EVIDENCE OF CURRENTLY FUNCTIONING BUSINESS

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- Invoices and proof of payment for all areas requested for Certification if business is less than 6 months old.
- If appropriate, evidence of inventory.

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#### 7. GEOGRAPHIC SCOPE

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- Established place of business in the local area.
- Local office has a substantial role in the company's performance of a Commercially Useful Function.

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### E. CERTIFICATION OFFICER RECOMMENDATION

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After a review of the seven (7) factors discussed above, the Certification Officer makes a recommendation to the Certification Review Committee to approve or tentatively deny Certification.

## F. REVIEW COMMITTEE

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The Review Committee consists of the Certification Manager and a senior staff member.

If the Certification Officer recommends approval and the Review Committee concurs, the applicant(s) is notified of the approval and is listed in the Certification Directory. Formal certificates of approved Certification type(s) will be issued shortly after the written decision to certify. If the Certification Officer recommends denial and the Review Committee concurs, the applicant is notified of the tentative denial and is provided with an opportunity to appeal the decision.

Upon review by the Review Committee, if a decision cannot be rendered with the available information, the file may be returned to a Certification Officer for further clarification or further review.

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### 1. APPEALS PROCESS

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#### A) DENIAL OF CERTIFICATION

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The Review Committee will tentatively deny Certification if, based on the documentation submitted, the Review Committee determines that Ownership, Control and/or Management, are not real, substantial and continuing and/or that the Ownership, Control, and/or Management do not go beyond the pro forma as reflected in its ownership documents. The Review Committee shall send the applicant a letter detailing the specific reasons for the tentative denial.

The applicant may appeal to the OBO Director within twenty-one (21) calendar days of the date of the tentative denial letter. The applicant may either:

1. Request an informal hearing with the OBO Director. Applicant may submit corrections to their original application with the request for an informal hearing or at the informal hearing, but not new information; or
2. Applicant may submit a written appeal with supporting documentation to the OBO Director.

The OBO Director or designee will issue a final decision, via letter, upholding or overturning the denial.

If applicant does not timely appeal the tentative denial, it becomes final. A business that is denied Certification may not reapply for a period of six (6) months from the date of denial unless otherwise stated in the denial letter.

If tentative denial is overturned, OBO will issue formal certificates of approved Certification type(s) after the written decision to certify.

## B) CLASSIFICATION AS AN ESTABLISHED BUSINESS ENTERPRISE

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As set forth in Sec. 15-88 of the Code, in order to appeal a classification as an Established Business Enterprise, an MBE, SBE, or WBE, applicant must submit to the OBO Director a written notice of appeal no later than 60 days following the date of mailing of the notice of classification. The sole basis for an appeal shall be that OBO has incorrectly calculated the size of the business according to SBA standards based upon incorrect information or error in computation. The notice of appeal shall be accompanied by any documentation necessary to demonstrate the asserted error.

If the OBO Director finds that an error or errors were made in calculating the size of the business and that any such error resulted in an incorrect classification as an Established Business Enterprise, the classification shall be withdrawn and the business promptly notified of the withdrawal.

If the OBO Director finds that no error was made, or that any error would not materially alter the classification, the business shall be notified that the classification is not altered, by certified mail, return receipt requested. The business may, within ten days of the date of mailing of the notice, submit to the OBO Director a written request for a hearing, which hearing shall be conducted under the procedures set forth in Subsections 15-88(e) through (g) of the Code.

## C) WAIVER OF CLASSIFICATION

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As set forth by Section 15-88 of the Code, to seek a waiver of a classification as an Established Business Enterprise, a MBE, WBE, or SBE applicant must submit to the OBO Director a written request for a hearing no later than 60 days following the date of mailing of the notice of classification. The written request shall include documentary evidence, including but not limited to financial statements and tax records, relevant to the following criteria:

1. Profitability of the enterprise;
2. Sales of the enterprise, including whether the enterprise has 55 percent or more of enterprise's sales, within the period utilized by OBO in its classification determination, that are not related to city contracts;
3. Ability of the MBE, SBE, or WBE applicant to obtain bonding, if the enterprise acts as a Prime Contractor or in a category in which obtaining bonding is required; and
4. Positive comparison of the enterprise's business and financial profile with those of non-MBE/SBE/WBE firms in the same business category based on an objective industry standard.

The OBO Director or designee will issue a final decision, via letter, upholding or overturning the waiver.

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## 2. CERTIFICATION DIRECTORY

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If certified, the business is listed by its approved North American Industry Classification System code(s) in the Certification Directory for three (3) years. Certification by OBO

relates solely to the Ownership, Control, Management and Independence of the business, and not to its capacity to perform work on a specific contract.

OBO issues four types of local Certification:

1. Minority Business Enterprise (MBE) for businesses Owned, Managed, and Controlled by one or more Minority persons.
2. Women Business Enterprise (WBE) for businesses Owned, Managed and Controlled by one or more Women.
3. Small Business Enterprises (SBE) for businesses that fall under the Small Business Administration Size Standards set forth in Title 13 Code of Federal Regulations (CFR) Part 121.
4. Persons with Disabilities Business Enterprise (PDBE) for businesses Owned, Managed, and Controlled by a Person with a Disability.

OBO also processes and issues two types of Certifications on behalf of the United States Department of Transportation:

1. Disadvantaged Business Enterprise (DBE) for businesses Owned, Managed, and Controlled by one or more socially and economically disadvantaged persons.
2. Airport Concessions Disadvantaged Business Enterprise (ACDBE) for businesses Owned, Managed, and Controlled by one or more socially and economically disadvantaged persons that provide concession services at federally funded airports.

The criteria and requirements for DBE and ACDBE Certification can be found in Title 49 Code of Federal Regulations Part 26 and Part 23.

See Appendix A: *DBE Program Plan*.

See Appendix B: *ACDBE Program Plan*.

OBO also accepts certifications for LGBTBEs as certified by the NGLCC as described in Article VI and certifications of VOSBs and SDVOSBs as further described in Article VII.

## G. TRIANNUAL CERTIFICATION UPDATES

Once a firm or business has been certified, the MWSBE and PDBE Certifications are effective for three (3) years, unless Certification is suspended. After three years, each business is subject to a Certification review to ensure that the certified business is still eligible to maintain its Certification as a locally certified MWSBE and/or PDBE. OBO will review the 3- year *Update Form and Affidavit* to determine if there are changes in size, ownership, management, or control. OBO reviews tax returns for MWSBE and PDBE eligibility and documents all activity on the 3-Year *Update Form and Affidavit*. If there are substantive changes, a field audit may be necessary.

**Note:** OBO may conduct random field audits throughout the life of a Certification.

## H. SUSPENSION OF CERTIFICATION

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OBO may suspend a MWSBE/PDBE/VOSB/SDVOSB's Certification when there is adequate evidence, as determined by OBO, to believe that there has been a material change in circumstances that may affect the eligibility of the MWSBE/PDBE/VOSB/SDVOSB's company to remain certified. Upon suspending the firm, OBO shall immediately notify the MWSBE/PDBE/VOSB/SDVOSB's of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the firm.

The suspended MWSBE/PDBE/VOSB/SDVOSB's company will be listed in the Certification Directory with a note stating that "This firm has been suspended per organization policy," pending a final determination of its continued eligibility for Certification. The firm will have 30 days from the date of notification to demonstrate its continued eligibility for Certification or voluntarily withdraw from the Program.

Suspension is a temporary status of ineligibility pending a final determination. If the suspended company fails to timely respond, OBO will begin the decertification process. Please note that the firm may avail itself of the appeals process indicated in Section G. 1., above.

For DBE and ACDBE suspension of certification, refer to 49 C.F.R. Part 23 and Part 26.

## I. DECERTIFICATION AND REVOCATION

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The OBO Director may decertify an MWSBE, PDBE, VOSB, and SDVOSB business listed in the City's Certification Directory for any of the following reasons:

1. The business entity has changed to the extent that the business is no longer Owned, Controlled and Managed by Minorities, Women or Persons with Disabilities as required by the Code and these policies and procedures.
2. The business is no longer an operating business entity.
3. The business fails to submit required documents as part of the Certification update process.
4. Any other reasons that OBO determines reasonably indicates that the MWSBE, VOSB, SDVOSB, PDBE has failed to maintain eligibility for Certification.

A business that OBO decertifies for any of the reasons listed above may not reapply for Certification for a period of up to six (6) months.

The OBO Director may revoke the Certification of an MWSBE, PDBE, VOSB, and SDVOSB listed in the Certification Directory for a period of up to five (5) years, based on the severity of the infraction, for any of the following reasons:

1. OBO finds that the business provided false or misleading information for the purpose of Certification during the original application process or as part of the regular update process.
2. During the course of the contract, OBO finds that the business has allowed its name to be submitted towards satisfying the MWSBE/PDBE/VOSB/SDVOSB goal for a scope of work for which the firm is not certified. The MWSBE, PDBE, VOSB, or SDVOSB used the Prime Contractor's workforce and misrepresented them as their own employees.
3. OBO has evidence of the MWSBE, PDBE, VOSB, or SDVOSB or its owner's involvement in fraud or other serious criminal activity.

4. OBO has evidence that the continued certification of the MWSBE, PDBE, VOSB, or SDVOSB poses a substantial threat to the integrity of the City's MWSBE, PDBE, VOSB, or SDVOSB program.
5. An owner upon whom the MWSBE, PDBE, VOSB, or SDVOSB relies for eligibility does not timely file the *Update Form and Affidavit* as set forth in Article VI.G.
6. OBO has evidence that the business entity has been debarred or sanctioned by the City of Houston.
7. Any such other reasons that OBO determines reasonably indicates that the MWSBE, PDBE, VOSB, or SDVOSB has failed to maintain eligibility for Certification.

A revocation based on the above listed reasons will apply to the business and the business owner(s). Please note that the firm and owner may avail itself of the appeals process indicated in Section G. 1., above.

For DBE and ACDBE decertification and revocation, refer to 49 C.F.R. Part 23 and Part 26.

#### J. ESTABLISHED BUSINESS AND GRADUATION

The process for determination of Established Business Enterprise status is governed by Section 15-87 of the Code. OBO shall determine the size of each MWSBE/PDBE firm or applicant by determining the average of the gross receipts for the prior five (5) years and the average number of employees for the 12 calendar months immediately preceding the review, as applicable. Calculation of size shall be based solely upon the size standards and methods of calculation identified by the U.S. Small Business Administration (SBA).

Once a certified MWSBE/PDBE firm is classified as an Established Business Enterprise pursuant to Section 15-87 of the Code, OBO shall notify the business of the action. The classification as an Established Business Enterprise is effective as of the date of the notice. The firm may appeal the classification or seek a waiver of the classification and request a hearing before the OBO Director, pursuant to Section 15-88.

#### K. MEMORANDA OF UNDERSTANDING FOR CERTIFICATION

The City periodically enters into Memoranda of Understanding (MOU) with various certifying entities whose Certification requirements and procedures conform, in part, with the standards and procedures for Certification established in Chapter 15, Article V of the Code. MOUs have been entered into with certain entities to expedite the processing of their applications with the City of Houston or include their certified firms in the Certification Directory. Copies of these MOUs are on file with OBO.

### VII. LGBTBE CERTIFICATION

The NGLCC is the exclusive, third-party certification body that verifies that eligible businesses are majority-owned by LGBT individuals and subsequently grants Certified LGBT Enterprise® (Certified LGBTBE®) designation to such businesses as part of its LGBT Supplier Diversity Initiative. OBO recognizes certifications as a LGBTBE processed through the National Gay and Lesbian Chamber of Commerce for Houston-area businesses. These firms shall be identified in the Certification Directory.

## VIII. VETERAN-OWNED SMALL BUSINESS PROGRAM

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The City's Veteran-Owned Small Business Program is set forth in Chapter 15, Article XII of the Code.

### A. ELIGIBILITY REQUIREMENTS

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In order to qualify for a VOSB or SDVOSB designation, a business must meet the requirements for certification as set forth in 13 C.F.R. Part 128.

### B. VETERAN-OWNED SMALL BUSINESS PROGRAM-EXCEPTIONS

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1. *Federally Funded Project*: This program does not apply to any contract in which the Federal government participates in the form of a grant or loan, or the City acts as a conduit for Federal money.
2. *Contracts where implementation would be unduly burdensome*: This program does not apply to contracts in which the Department has determined that it would unduly interfere with contract needs. In cases of purchases over \$100,000.00, such determination shall be made in writing, expressly approved by the Department Director, and furnished in advance to OBO.

### C. CONTRACTING DEPARTMENT RESPONSIBILITIES & ENFORCEMENT

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1. In accordance with Chapter 15, Article XII of the Code and the solicitation documents, the contracting or evaluating department shall award additional points to a local business in any bid based on a "best value" evaluation.
2. Department Directors shall maintain written records of all departmental actions under the Veteran-Owned Small Business Program and provide quarterly reports to OBO.

### D. APPLICATION PROCESS

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OBO processes applications for VOSB and SDVOSB certification. An applicant shall submit a signed affidavit of non-interest, a signed affidavit of certification, proof of local presence, and a copy of the applicant's VOSB/SDVOSB certification with the U.S. Small Business Administration. A Certification Officer shall then review such application for completeness and accuracy and verify the applicant's U.S. Small Business Administration certification. If verified, the business is listed by its approved North American Industry Classification System code(s) in the Certification Directory for three (3) years.

### E. DENIAL

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OBO will deny Certification if OBO determines that the VOSB and/or SDVOSB does not meet the Local Firm requirement and/or does not possess a current and active SBA certification.

### F. DECERTIFICATION AND REVOCATION

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The OBO Director may decertify a VOSB/SDVOSB as provided in Section VI.I.

## G. TRIANNUAL CERTIFICATION UPDATES

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Once a firm or business has been certified, the VOSB and/or SDVOSB Certifications are effective for three (3) years. After three years, each business is subject to a Certification review to ensure that the certified business is still eligible to maintain its Certification as a VOSB and/or SDVOSB. OBO will review signed *Update Form and Affidavit* containing an affidavit of certification, proof of local presence, and a copy of the applicant's VOSB/SDVOSB certification with the U.S. Small Business Administration to determine if there are any changes.

## IX. HIRE HOUSTON FIRST PROGRAM

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Texas statutes authorize municipalities to apply local preferences in city contracting in certain situations. The City's policy, called Hire Houston First, is established in Chapter 15, Article XI of the Code.

### A. ELIGIBILITY REQUIREMENTS

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In order to qualify for a Hire Houston First designation, a business must have a principal place of business in either the City or Local area. Principal Place of Business means a company must either:

1. Be headquartered in the incorporated limits of the City or the Local area. Headquartered means the location where an entity's leadership directs, controls, and coordinates the entity's activities; **or**
2. Have an established place or places of business in the incorporated limits of the City or the Local Area, as applicable, from which 20% or more of the entity's workforce are regularly based, and from which a substantial role in the entity's performance of a Commercially Useful Function or a substantial part of its operations is conducted.

A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed as a principal place of business.

### B. BUSINESS STRUCTURES ELIGIBLE FOR DESIGNATION

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The types of business structures eligible for designations include:

1. Corporation;
2. Limited Liability Company;
3. Limited Partnership;
4. General Partnership;
5. Limited Liability Partnership; AND
6. Sole Proprietorship

### C. HIRE HOUSTON FIRST PROGRAM-EXCEPTIONS

1. *Professional Services*: This program does not apply to the procurement of architectural, engineering or land surveying services covered under the Professional Services Procurement Act, Tex. Gov't Code, § 2254.004. In procuring these services, the applicable Department shall, when appropriate, consider knowledge of local conditions as part of the qualification's determination.
2. *Federally Funded Project*: This program does not apply to any contract in which the Federal government participates in the form of a grant or loan, or the City acts as a conduit for Federal money.
3. *Contracts where implementation would be unduly burdensome*: This program does not apply to contracts in which the Department has determined that it would unduly interfere with contract needs. In cases of purchases over \$100,000.00, such determination shall be made in writing, expressly approved by the Department Director, and furnished in advance to OBO.
4. *Information Technology*: In accordance with Local Government Code Section 271.9051, this program does not apply to the purchase of telecommunications services or information services, as those terms are defined by 47 U.S.C Section 153.

### D. CONTRACTING DEPARTMENT RESPONSIBILITIES & ENFORCEMENT

1. In accordance with Chapter 15, Article XI of the Code and the solicitation documents, the contracting or evaluating department shall award additional points to a local business in any bid based on a "best value" evaluation.
2. Department Directors shall maintain written records of all departmental actions under the Hire Houston First Program and provide quarterly reports to OBO.

## X. HIRE HOUSTON FIRST APPLICATION PROCESS

Hire Houston First applications are processed by OBO.

### A. INTAKE PROCESS

The intake process consists of the following steps:

1. Application is submitted to OBO.
2. Application is then reviewed to confirm all required fields are answered appropriately.
3. If the application is incomplete, the applicant is notified and advised to complete the required fields in order for the application to be reviewed for designation under the Hire Houston First Program.

#### 1. APPLICATION REVIEW

The review process consists of determining applicant's eligibility for designation under the Hire Houston First program. Generally, the review of each application is conducted in order of date submitted and each review includes, but is not limited to, the following:

1. Confirm the application is signed and dated by the applicant.
2. Determine the applicant's principal place of business is either:
  - a. Headquartered in the Local area **or**
  - b. Confirm that at least 20% of the entity's workforce is regularly based in the Local area and from which a substantial role in the entity's performance of a Commercially Useful Function or a substantial part of its operations is conducted.
3. If additional information is required, the applicant will be notified.

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## 2. RECOMMENDATION

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After a review is completed, a decision shall be made whether to "approve" or "deny" the application. If the decision is to approve a firm for a City Business (CB) and/or Local Business (LB) designation, OBO shall notify the firm and enter their HHF designation (s) in the Hire Houston First Registry in the contract management database.

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## 3. DENIALS

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When applications fail to meet the "Principal Place of Business" requirement, the applications, along with supporting staff research and a cover sheet explaining the reason for the denial recommendation, are submitted to the Certification Division Manager or designee for review. The Division Manager's review shall result in one of the following options:

### A) DENIAL

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If the Division Manager concurs with the recommendation to deny, the company is then notified of its ineligibility for the program in writing.

### B) DESIGNATION APPROVAL

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If the Certification Division Manager does not concur with the recommendation to deny, s/he notifies the firm of designation approval and enters the firm's Hire Houston First designation(s) in the Hire Houston First Registry in the contract management database.

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## 4. APPEALS

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Applicants who wish to appeal the denial of a Hire Houston First designation(s) must provide written notice within ten (10) business days of the date of the denial letter to the Director of OBO. The applicant may either:

- a. Submit corrections to the original application to the OBO Director. Corrections to the original application package will be reviewed, but new information or changes of circumstances will not be reviewed; or
- b. Request an informal hearing with the OBO Director. Documentary evidence may be submitted with the request for an informal hearing or at the informal hearing.

Corrections and documentary evidence must include an explanation setting forth the reason the denial should be overturned, supporting evidence, and a written statement confirming that the contents of the appeal submission is true and correct.

After the informal hearing and at the conclusion of the appeals process, OBO may reverse a denial for various reasons including, but not limited to, those instances where a firm shows that the denial was based on incomplete or inaccurate information. OBO will not overturn a denial if only one or some of the denial reasons are correct. If at the conclusion of the appeals process OBO determines there is no basis to overturn the denial, OBO will provide a letter to the firm explaining the rationale for upholding the denial.

## **XI. ESTABLISHING MWSBE GOALS, DBE GOALS & ASSESSING PRE-AWARD COMPLIANCE**

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Each Department is responsible for reviewing each procurement to determine whether a MWSBE, DBE, and/or ACDBE goal is required. If a MWSBE, DBE, and/or ACDBE goal is required, the department must go through the process of either determining a contract-specific goal or assigning a Categorical Goal used for procurement types that are regularly let. Alternatively, the department may elect to request a waiver of the goal on the procurement. In either case, the department shall submit the contract specific goal or waiver to OBO for review and approval. Departments may request a goal waiver when there are limited MWSBEs available in the market to perform the scope of work identified for the contract or the contract does not lend itself to divisibility. OBO will review all solicitations and make final determinations with respect to maximizing potential MWSBE participation opportunities.

Department Services is a team of OBO employees dedicated to making the City's procurement process as competitive and diverse as possible by assessing Bidders' MWSBE, DBE and/or ACDBE Participation Plans for compliance with pre-award Good Faith Efforts with respect to any applicable MWSBE, DBE and/or ACDBE goal, after an initial determination by the City contracting department of MWSBE Participation Plan non-compliance. Department Services also trains Departments on matters related to the following:

1. Contracts Requiring Goals
2. Contract-Specific Goal Setting
3. Goal Waivers
4. Good Faith Effort

Departments are responsible for the following:

1. Designating specific personnel to review MWSBE, DBE, and/or ACDBE Participation Plans submitted in response to a solicitation and complete forms promulgated by OBO regarding the review of MWSBE Participation Plans.
2. Determining whether the required MWSBE and/or DBE plans are submitted with bids/proposals/ submissions for the purpose of assessing whether Bidders are responsive.
3. Reviewing MWSBE, DBE, and/or ACDBE Participation Plans submitted with bids/proposals/submissions to determine compliance with Executive Orders, the City Charter, the Code, and guidance provided by OBO. The contracting department must review the plan to ensure the following:

- a. All MWSBEs, DBEs, and/or ACDBEs are certified by the City of Houston at the time of bid submission;
  - b. All MWSBEs, DBEs, and/or ACDBEs are certified in the North American Industry Classification System (NAICS) code for the work they are listed to perform on the contract;
  - c. The work listed to be performed by each MWSBE, DBE, and/or ACDBE is germane to the contract;
  - d. A percentage and/or dollar value is associated with the work that will be performed by each MWSBE, DBE, and/or ACDBE; and
  - e. The total percentages/dollar value of all work performed by the MWSBEs and/or DBEs meet or exceed the advertised MWSBE, DBE, and/or ACDBE goal. When price is a component of the selection criteria, the MWSBE, DBE, and/or ACDBE Participation Plan must include both a percentage and dollar amount for each MWSBE, DBE, and/or ACDBE, otherwise only a percentage is required for each MWSBE, DBE, and/or ACDBE on the plan.
4. If a MWSBE, DBE, and/or ACDBE Participation Plan does not meet all of the aforementioned elements, the contracting department must forward the plan to OBO for a pre-award Good Faith Efforts review.

#### A. CITY CONTRACTS REQUIRING GOALS

The City may assign goals to cooperative purchasing and interlocal agreements as well as the following contracts and procurements:

##### 1. CONTRACTS FOR GOODS, NON-PERSONAL, OR NON-PROFESSIONAL SERVICES

1. Any contract, agreement or other undertaking anticipated for construction work in excess of \$1,000,000.00.
2. Any contract, agreement or other undertaking for the supply of goods or non-personal or non-professional services in excess of \$100,000.00.
  - i. All of the following requirements must also be met to qualify as a goal-oriented contract:
    1. Competitive bids are required by law;
    2. Not within the scope of the DBE programs of the U.S. Environmental Protection Agency (EPA) or U.S. Department of Transportation (DOT) or any other Federal or state agency having jurisdiction;
    3. Initiating Department, in consultation with the OBO Director or designee, determines the work is divisible and there are adequate numbers of known MWSBEs, DBEs, and/or ACDBEs to compete for and perform the subcontract services.

Departments may, at their discretion, apply goals to the following contracts:

1. Any contract, agreement or other undertaking anticipated for construction work valued at \$1,000,000.00 or less.
2. Any contract, agreement or other undertaking for the supply of goods or non-personal or non-professional services valued at \$100,000.00 or less.

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## 2. REGULATED CONTRACTS (PROFESSIONAL SERVICES)

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Any contract that meets the following requirements:

1. Competitive bids are not required by law;
2. Contracts not covered by the MBE/WBE/DBE/ACDBE programs of the U.S. EPA or the U.S. DOT or any other Federal or state agency having jurisdiction; and
3. Initiating Department, in consultation with OBO Director, determined the work is divisible and there are sufficient known MWSBEs, DBEs and/or ACDBEs to perform the particular subcontract service(s); or
4. Initiating Department, in consultation with the OBO Director, determined there are sufficient known MWSBEs, DBEs and/or ACDBEs to compete as a Prime Contractor, such that a subcontracting goal is not required.

While goals must be assessed for professional services contract valued at \$50,000.00 or greater, contracting departments may, at their discretion, apply goals to any professional services contracts valued at less than \$50,000.00.

### B. MWSBE and DBE GOAL TYPES

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The following are the two types of MWSBE goals:

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#### 1. CITYWIDE GOALS

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In compliance with Chapter 15 of the Code, City Council will set Citywide MWSBE participation goals based on the most recent MWSBE availability data for each contract type as set forth in the City's current Disparity Study. As appropriate, the goals may be adjusted to ensure that they are narrowly-tailored to meet the mandates of the City's Business Enterprise Program as needed, based on new market data or on contract-specific goal setting throughout the year.

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#### 2. CONTRACT-SPECIFIC GOALS

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Based on industry practices, OBO has a standardized contract-specific MWSBE, DBE and ACDBE goal setting process for all eligible contracts, as detailed below.

In instances where Departments have identified multiple contracts that lend themselves to goal setting by category or type of contracts, Departments, in consultation with OBO, may establish Categorical Goals for solicitations occurring before December 31, 2025.

OBO will work with the departments to include specific instructions regarding goals in their bid documents.

## C. GOAL SETTING

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### 1. METHODOLOGY FOR SETTING CONTRACT-SPECIFIC GOALS

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Departments must complete the *Contract Specific Goal Setting Form*. The following elements comprise the *Contract-Specific Goal setting process*:

- A. Identify all work elements in the *Scope of Work* or *Scope of Services*.
- B. Identify the NAICS Code(s) that matches the identified work element(s) by using data provided by the U.S. Census Bureau.
- C. Identify dollar value for each work element.
- D. Obtain the number of City of Houston-Certified Minority Business Enterprises (MBE), Women Business Enterprises (WBE), Small Business Enterprises (SBE) and combined MWSBE for each work element by utilizing the City Certification Directory.

*\*Note that MBE, WBE and SBE Goals are listed separately in construction-related solicitations and are combined in professional services and goods and services solicitations.*

*\*Note that Disadvantaged Business Enterprise certified firm availability is found by utilizing the Texas Unified Certification Program (TUCP) directory.*

Obtain number of total firms for each work element by using the MWSBE availability sheet or the TUCP directory.

- E. Adjust the weighted availability goal to be as precise as possible using factors such as past participation or known project- specific circumstances that would affect the weighted goal.

### 2. GOAL WAIVERS

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Departments may request a goal waiver when there are a limited number of MWSBEs, AC DBEs available in the market to perform the scope(s) of work identified in the procurement or when the procurement does not lend itself to divisibility.

Departments may request a goal waiver by submitting a request through MWBE Goals2Go. OBO will review all solicitations to determine whether MWSBE, DBE and/or ACDBE participation is maximized.

Circumstances in which OBO may grant a goal waiver include, but are not limited to the following:

1. A public or administrative emergency exists which requires the goods or services to be provided with unusual immediacy.
2. If goods and services are specialized, technical, or unique nature as to require the Department to select its Contractor without application of MWSBE and/or DBE provisions (such as contracts for expert witnesses, certain financial advisors or technical consultants).
3. If application of MWSBE, DBE, and/or ACDBE provisions would impose an unwarranted economic burden or risk on the City or unduly delay acquisition of the goods or services or is not in the best interest of the City.
4. If the product, good or service is non-divisible or sole source.
5. If goods are only available for purchase via drop shipping.
6. The level of MWSBE, DBE and/or ACDBE availability would produce minimal MWSBE, DBE, and/or DBE participation.

If the contracting department director determines that any one or more of the above conditions exist, the contracting department shall certify that determination in writing prior to the award of the contract, specifying the conditions which led to the determination, and submit the determination to the OBO Director for review and approval.

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### 3. GOAL WAIVER REQUEST

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Requests for goal waivers or reduced goals must be submitted in MWBE Goals2Go and include the following information:

1. Estimated dollar amount of contract.
2. History of goal compliance on last or similar solicitation, if applicable.
3. Detailed justification for request and provides any supporting documents.
4. Specifications (Scope of Service or Scope of Work).
5. Sole Source Letter, if applicable.

OBO shall review each request for procurement-related goal waivers.

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### D. GOOD FAITH EFFORTS

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As defined in Section 15-82 of the Code, Good Faith Efforts are steps taken to achieve a Contract Goal or other requirements which, by their scope, intensity and usefulness demonstrates the Bidder's responsiveness to fulfill the business opportunity objective prior to the award of a contract, as well as the Contractor's responsibility to put forth measures to meet or exceed the Contract Goal(s) throughout the duration of the contract.

Good Faith Efforts are required to be made and demonstrated by an apparent successful Bidder on goal-oriented contracts or proposer on a regulated contract prior to award of a contract. Good Faith Efforts are required on professional services and construction contracts and on procurement of goods and non-professional service contracts with goals. If a Bidder, when submitting a Participation Plan at the time of bid or proposal submission, anticipates it cannot or will not meet the Contract Goal(s) prior to the award, the Bidder must demonstrate to OBO that it has made Good Faith Efforts to meet the Contract Goal(s) to be eligible for the contract award.

OBO reviews Bidders' and proposers' Good Faith Efforts in accordance with the City's Good Faith Efforts Policy, as amended. The City's Good Faith Efforts Policy outlines a list of efforts that may be taken by vendors to meet the advertised Contract Goal. The current Good Faith Efforts Policy may be found on the City of Houston OBO's website.

**Fuel and Fleet Cards:** Fuel and fleet cards are generally not a CUF; however, a Bidder may submit documentation with its Bid detailing how it will quantify use of fuel for purposes of the subject contract. The OBO Director shall determine whether the documentation is sufficient to allow use of fuel to be counted for goal credit.

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## 1. GOOD FAITH EFFORTS REVIEW PRIOR TO AWARD OF NON-CONSTRUCTION CONTRACTS

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A Bidder or proposer must submit a Participation Plan to the Department at the time the Bidder or proposer submits the bid or proposal. If the MWSBE, DBE, and/or ACDBE Participation Plan meets the contract goal, the Department must verify that all listed certified businesses are performing a Commercially Useful Function. If a firm is not certified as a MWSBE, DBE, and/or ACDBE at the time of bid/proposal submission, the firm's participation will not be counted towards achieving the MWSBE, DBE, and/or ACDBE contract goals, except as allowed in accordance with the OBO deviation process later in this policy.

If the Participation Plan does not meet the advertised goal, then a Bidder or proposer must submit documentation of Good Faith Efforts with the bid or proposal.

In making a determination that the Bidder has made Good Faith Efforts to meet the Contract Goal(s), OBO shall consider specific documentation concerning the steps taken to obtain MWSBE and/or DBE participation, with a consideration of, by way of illustration and not limitation, whether the Bidder demonstrated a genuine effort to comply with the factors set forth in the City's written Good Faith Efforts Policy in effect.

**Fuel and Fleet Cards:** Fuel and fleet cards are generally not a CUF; however, a Bidder may submit documentation with its Bid detailing how it will quantify use of fuel for purposes of the subject contract. The OBO Director shall determine whether the documentation is sufficient to allow use of fuel to be counted for goal credit.

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## 2. GOOD FAITH EFFORTS REVIEW PRIOR TO AWARD OF CONSTRUCTION CONTRACTS

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A Bidder must submit a MWSBE and/or DBE Participation Plan to the City at the time bids are due. If the MWSBE and/or DBE Participation Plan meets the contract goal, the contracting department must verify that all listed certified businesses are performing a Commercially Useful Function. If a firm is not certified as a MWSBE and/or DBE at the time of bid/proposal submission, their participation will not be counted towards achieving the MWSBE and/or DBE contract goals, except as allowed in accordance with the OBO deviation process explained in this policy.

All Contractors must submit a complete and compliant MWSBE and/or DBE Participation Plan with their bid submission setting their MWSBE and or DBE plan. The Participation Plan must

comply with the standards listed below:

1. LGBTBE, PDBE, SDVOSB, and VOSB percentage is limited to 4% for purposes of meeting the goal in lieu of MBE, WBE, or a combination of the two goals MBE Percentage for Hispanic-American firms is limited to 16% for the purposes of meeting the goal on Construction contracts.
2. MBE Percentage for Asian-American firms is limited to 6% for the purposes of meeting the goal on Professional Services contracts.
3. MBE Percentage for Hispanic-American firms is limited to 7% for the purposes of meeting the goal on Professional Services contracts.
4. WBE Percentage is limited to 8% for the purposes of meeting the goal on Goods contracts.
5. MWSBE suppliers account for less than 50% of the Bidder's Participation Goal.
6. Listed MWSBEs and/or DBEs are currently certified for the type of work listed to perform in the Participation Plan.
7. The Bidder's Participation Plan must be completed, signed and dated.
8. Departments should review the Bidder's Plan to ensure the participation is justified per the scope of work.
9. Bidders using Prime-level goal credit cannot account for more than 50% of the total advertised goal.

The contracting department will review the Bidder's MWSBE and/or DBE Participation Plan to ensure compliance with the standards listed above, using the Project Managers Checklist. If the Participation Plan does not meet the advertised goal, then a Bidder or proposer must submit documentation of Good Faith Efforts with the bid or proposal.

If the Participation Plan does not meet or exceed the advertised MBE, WBE, SBE and/or DBE goals, the bid, proposal, or submission must include Pre-Bid Good Faith Efforts, Bidder's MWSBE and/or DBE Goal Deviation, and supporting documents.

**Fuel and Fleet Cards:** Fuel and fleet cards are generally not a CUF; however, a Bidder may submit documentation with its Bid detailing how it will quantify use of fuel for purposes of the subject contract. The OBO Director shall determine whether the documentation is sufficient to allow use of fuel to be counted for goal credit.

If the Participation Plan fails to meet any criterion above, the contracting department will submit the completed Project Manager's Checklist and all supporting documentation to OBO for review.

The contracting department's submission must include the following documents:

1. Project Scope of Services, Scope of Work, or Technical Specifications from Solicitation.
2. Previous Contract #, if applicable.
3. Project Advertised Date.
4. Project Pre-Bid Meeting Date.
5. Project Pre-Bid Meeting Sign In Sheet.
6. Project Bid Date.
7. Project Advertised MWSBE and/or DBE Contract Goal.

8. Dollar amount of the vendor's bid/proposal.
9. City of Houston department for which the services will be performed.
10. Bidder's Good Faith Efforts request.
11. Any Letters of Clarification.
12. Document 00800: Supplementary Conditions and Document 00808: Bidder / Subcontractor Requirements for MWSBE, VOSB, SDVOSB, PDBE Construction Contracts.

OBO will evaluate all documents submitted for compliance with the City's Good Faith Efforts Policy. Evaluation of these documents includes, but is not limited to, the following:

1. Confirm the advertised goal in the advertisement.
2. Confirm listed firms will perform a Commercially Useful Function (CUF), in consultation with contracting department and a review of project scope.
3. Confirm the Certification status of listed MWSBEs and/or DBEs.
4. Confirm that Hispanic-American firms are used to meet no more than 16% of the MBE goal on Construction contracts.
5. Confirm that Asian-American firms are used to meet no more than 6% of the goal on Professional Services contracts as an MBE.
6. Confirm that Hispanic-American firms are used to meet no more than 7% of the goal on Professional Services contracts as an MBE.
7. Confirm that Women Business Enterprise certified firms are used to meet no more than 8% of the goal on Goods contracts as a WBE.
8. Confirm that the use of MWSBE suppliers does not exceed 50% of the total advertised goal.
9. Confirm that MWBE prime-level credit does not exceed 50% of the total advertised goal.
10. Check form for overall completeness.
11. If needed, reach out to Bidder and/or contracting department for clarification

Evaluation of Documents 00471: Pre-Bid Good Faith Efforts and 00472: Bidder's Goal Deviation Request includes, but is not limited to, the following:

1. Contact a sample of listed companies to confirm solicitation/outreach by Bidder.
2. Assess method of solicitation/outreach and follow-up.
3. Assess timeliness of solicitation/outreach.
4. Assess quality of outreach efforts based on divisible work on project.
5. Check form for completeness.
6. If needed, reach out to Bidder for clarification.

If a Bidder needs to make changes to the approved Document 00470: Bidder's MWSBE Participation Plan, prior to City Council approval, the Bidder must submit the *Contractor's Revised MWSBE Participation Plan* (Document 00570), *Record of Post- Award Good Faith Efforts* (Document 00571), and *Contractors Request for Plan Deviation* (Document 00572) with an approved plan or Good Faith Efforts evaluation. OBO will review the revised plan using the standards discussed for Document 00470, 00471 and 00472 above.

OBO will notify the Department of its determination to approve or deny a Bidder's Participation Plan and/or Good Faith Efforts request. The OBO Director's decision is final.

Grace Period: From March 16, 2026 until July 1, 2026, in order to institute the changes in these Policies and Procedures, OBO shall follow the procedure set forth below with respect to the non-compliance of Bidder's Participation Plan and/or Good Faith Efforts request with respect to the updated MWBE participation caps. If OBO determines that a Bidder's Participation Plan and/or Good Faith Efforts request will be initially denied, OBO shall provide the Bidder and the Department with a letter of initial denial with explanation for the initial denial with respect to the updated MWBE participation caps. Bidder shall have a one-time opportunity to correct and resubmit within 72 hours to OBO the Participation Plan and/or Good Faith Efforts with respect to the updated MWBE participation caps only. OBO will notify the Department of its final determination to approve or deny the Bidder's Participation Plan and/or Good Faith Efforts. If the determination is a final denial, OBO will notify the Bidder of the denial. The Director's decision is final.

OBO reviews and determines the sufficiency of Bidders' and proposers' Good Faith Efforts in accordance with the City's Good Faith Efforts Policy located on OBO's website.

In making a determination that the Bidder has made Good Faith Efforts to meet the Contract Goal(s), OBO shall consider specific documentation concerning the steps taken to obtain MWSBE and/or DBE participation, with a consideration of, by way of illustration and not limitation, whether the Bidder demonstrated a genuine effort to comply with the factors set forth in the City's written Good Faith Efforts Policy in effect.

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### 3. OBO EXCEPTION TO DEPARTMENT'S RECOMMENDATION TO AWARD

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In accordance with Section 15-84(b) (5) of the Code, the final recommendation to City Council for award of work shall be the contracting department's, although OBO may take exception. OBO may add language to the Request for Council Action raising an exception to the award if the contracting department decides to recommend that City Council award a contract to a Bidder or vendor who OBO determined failed to make Good Faith Efforts or failed to submit a compliant MWSBE and/or DBE Participation Plan in connection with the proposed award.

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### 4. POST-AWARD GOOD FAITH EFFORTS REVIEW

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If the Contractor is awarded the contract and fails to achieve the established Participation Percentage(s) as set forth in the approved MWSBE and/or DBE Participation Plan, the Contractor must demonstrate to OBO its Good Faith Efforts to meet the Participation Percentage(s) and that its failure to do so was based on circumstances that the Contractor could not reasonably control. In determining whether the Contractor made Good Faith Efforts to ensure full participation and achievement of the Participation Plan Percentage, OBO shall consider the factors set forth in the City's Good Faith Efforts Policy in effect.

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## E. DEPARTMENTAL UTILIZATION PLANS

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In compliance with Section 15-84.1(b) of the Code, each Department whose procurement of goods and services exceeded \$3 million in the immediately preceding fiscal year is responsible for creating and implementing an annual departmental MWSBE and/or DBE Utilization Plan. Departments must submit each Utilization Plan to OBO by June 15<sup>th</sup> of each calendar year, unless otherwise agreed by the OBO Director. OBO will assist the departments, as needed, with developing their submissions.

## F. DEPARTMENT SERVICES TRAINING INSTITUTE

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OBO offers trainings/informational sessions through its Department Services Training Institute (DSTI) as a resource for the City's procurement staff. In conjunction with subject matter experts from various departments, OBO covers a variety of topics that play a role in making the City's procurement process as competitive and diverse as possible. The target audiences for these trainings/informational sessions are all City procurement, contract compliance and buying staff.

## XII. CONTRACT COMPLIANCE

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The Contract Compliance Division, in accordance with City, State, and Federal rules and regulations, is responsible for monitoring City of Houston construction, goods and non-personal and professional services related contracts, with the exception of the Houston Airport System and Housing and Community Development Department contracts.

The Contract Compliance Division is mandated by Chapter 15, Articles II and V of the Code, and the Code of Federal Regulations (CFR), Title 49, Part 23 and Part 26, as amended.

The Contract Compliance Division also monitors City of Houston construction contracts to ensure Prevailing Wage requirements are applied in compliance with Chapter 2258 of the Texas Government Code and other applicable law(s).

For example, the Davis-Bacon and Related Acts (29 CFR Part 1, 3 and 5) require Contractors to pay "prevailing wage rate" for the corresponding classes of laborers and mechanics on projects in the area which are of a character like the proposed contract work to which the determination will be applied. This applies to State Revolving Funds and Texas Department of Transportation-funded contracts.

This Division performs the following core functions:

- Monitors the utilization of certified firms on goal-oriented and regulated contracts with goals;
- Ensures that applicable labor standard rules are being adhered to on contracts by auditing payrolls and other Contractor documents, performing on-site visits, and interviews with construction workers; and
- Ensures compliance with Equal Employment Opportunity laws.

The policies set forth in this document are applicable to City of Houston contracts with MWSBE DBE, and/or ACDBE goal(s) associated and no goal projects.

Before work begins on each project OBO monitors, the Prime Contractor must provide a list of all Subcontractors (certified and non-certified), suppliers and professional service workers who will be performing work on the project detailing the start date of each Subcontractor, the estimated payment amount and the type of Certification of the company (where applicable).

## A. MWSBE GOAL COMPLIANCE MONITORING

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### 1. COUNTING MWSBE PARTICIPATION

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The Contract Compliance Division monitors MWSBE utilization on goal-oriented contracts to ensure Contractors certified by the City of Houston are performing a Commercially Useful Function for the Prime Contractor to receive full goal credit. OBO and the Department will monitor the Contractor's performance in meeting the MWSBE Participation Goal, as set forth in their City-approved MWSBE Participation Plan. Contractors must also have subcontracting agreements outlining terms of engagement, including mediation and prompt payment clauses, between Contractors and MWSBEs used for goal credit. Prime Contractor must provide subcontracting agreements with goal credit subcontractors to OBO prior to contract execution for Subcontractors listed on the original Participation Plan or prior to work starting for Subcontractors added after the notice to proceed date (or the date the Prime begins work pursuant to the contract if the City does not issue a notice to proceed) on City projects.

Only MWSBEs certified by OBO and that are performing a Commercially Useful Function (CUF) will be counted towards the MWSBE goal. Additionally, only the MWBE classifications that have been approved by City Council or as designated by the OBO Director based on criteria to narrowly tailor the goals will count towards the MBE or WBE goal. Credit for participation will be given for MWSBEs performing work in the specific NAICS code(s) in which they are certified. In order to determine if an MWSBE is performing a CUF, OBO performs random desk and/or on-site audits.

Unless exceptions are expressly approved by the OBO Director or designee, certified suppliers cannot account for more than 50% of the overall MWSBE goal and a certified MWSBE can only be used to meet one goal type (MBE, WBE, or SBE) on each project. Exceptions are made on a case-by-case basis taking into consideration such factors as the Prime Contractor's Good Faith Efforts, availability of MWSBEs and circumstances outside the Prime Contractor's control. In the event that the electronic monitoring system shows credit for more than fifty (50) percent of the MWSBE credit throughout the project, it is the responsibility of the Prime Contractor to track participation, as OBO may reduce the supplier participation at the end of the project to adhere to the fifty (50) percent MWSBE supplier cap unless the OBO Director or designee previously granted an express exception to the cap.

### 2. COUNTING DBE and ACDBE PARTICIPATION

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See 49 C.F.R. Part 26

See 49 C.F.R. Part 23

### 3. COMMERCIALLY USEFUL FUNCTION (CUF)

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A MWSBE, DBE and/or ACDBE performs a CUF when the MWSBE, DBE and/or ACDBE is responsible for performing a discrete task or group of tasks by using its own forces or by actively supervising on-site the execution of the tasks by another entity for whose work the MWSBE, DBE and/or ACDBE is responsible.

In determining whether a MWSBE, DBE and/or ACDBE is performing a Commercially Useful Function, factors including but not limited to the following shall be considered:

1. Whether it has the skill and expertise to perform the work for which it is being utilized and possesses all the necessary licenses;
2. Whether it is certified in the NAICS code in which it is performing;
3. Whether it is in the business of performing, managing or supervising the work for which it has been certified and is being utilized; and
4. Whether it is performing a real and actual service that is a distinct and verifiable element of the work called for in a contract. MWSBEs, DBEs and/or ACDBEs shall be responsible for performing more than fifty percent of the task or group of tasks being counted toward the applicable participation goal and cannot subcontract more than fifty percent of the task or group of tasks, unless subcontracting such task or group of tasks in excess of fifty percent has been expressly authorized via a waiver by the OBO Director.

It is the duty of the Prime Contractor to review the criteria above, prior to submitting a Participation Plan, to assess the level of credit the MWSBEs, DBEs and/or ACDBEs will yield while participating on the project.

OBO will periodically and randomly perform desk or on-site CUF audits of MWSBEs DBE, and/or ACDBEs, utilizing the criteria above, to assess the level of credit the Prime Contractor should receive for the MWSBEs, DBEs and/or ACDBEs performance.

#### A. DISPUTING A COMMERCIALLY USEFUL FUNCTION DETERMINATION

If OBO determines that a MWSBE, DBE and/or ACDBE is not performing a Commercially Useful Function on the contract, OBO will send a letter to Prime Contractor notifying them that either of the following will occur:

- No goal credit will be given for the MWSBE's, DBE's and/or ACDBE's work; or
- The originally anticipated goal credit will be reduced.

The letter will detail the reason(s) for the initial determination and provide the Prime Contractor with information about how to submit a written appeal of the reduction. A copy of the letter will be sent to the affected Subcontractor(s), however, only the Prime Contractor may appeal.

OBO will review the written appeal submitted by the Prime Contractor and notify the Prime Contractor in writing of its final determination to uphold or reverse its initial determination.

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#### 4. DETERMINING MWSBE, DBE and ACDBE GOAL CREDIT

The way in which a certified firm performs on a contract will determine the level of MWSBE, DBE and/or ACDBE credit the Prime Contractor will receive for their work.

## MWSBE

Below are the various categories of Contractors used for MWSBE goal credit on projects along with the role they must play on a project in order for a Prime Contractor to receive full credit for their work.

- **Subcontractor/Subconsultant:** Any named person, firm partnership, corporation, association or Joint Venture identified as performing specific work items with its own forces pursuant to a contract agreement with the Prime Contractor.
- **Manufacturer:** An individual (or individuals) who owns, operates, or maintains a factory or establishment that produces on the premises the components, materials or supplies obtained by the Contractor or consultant.
- **Supplier:** A firm that supplies goods on a project. The full value of their services will be counted towards the MWSBE goal if they meet the following criteria:
  - Negotiate Price;
  - Determine quality and quantity;
  - Order the materials;
  - Receive the invoice in the certified firm's name;
  - Pay for the material itself;
  - Control delivery; and
  - Be certified to provide the supplies in the appropriate NAICS code.
- **Trucker:** A Contractor who is responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular project. In order to receive credit towards the MWSBE goal, the MWSBE trucker must itself own and operate at least one fully licensed, insured, and operational truck used on the project. The following are instances in which MWSBE credit will be granted:
  1. MWSBE credit is received for the total value of the transportation services the MWSBE trucker provides on the project using trucks it owns, insures, and operates using drivers it employs.
  2. MWSBE may lease trucks from another MWSBE firm, including an owner- operator who is certified as a MWSBE. The MWSBE who leases trucks from another MWSBE receives credit for the total value of the transportation services the lessee MWSBE provides on the project.
  3. MWSBE may also lease trucks from a MWSBE firm, including from an owner- operator. The MWSBE that leases trucks equipped with drivers from a non-MWSBE is entitled to credit for the total value of transportation services provided by non-MWSBE leased trucks equipped with drivers not to exceed the value of transportation services on the project provided by MWSBE- owned trucks or leased trucks with MWSBE employee drivers. Additional participation by non-MWSBE

owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement.

4. The MWSBE may lease trucks without drivers from a non-MWSBE truck leasing company. If the MWSBE leases trucks from a non-MWSBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.

A lease must indicate that the MWSBE has exclusive use of and control over the truck.

- **Broker:** A third-party intermediary between consumers of items and manufacturers, suppliers, service providers or other entities.
  1. Brokers must submit documentation supporting actual amount paid for services; and
  2. Brokers will only receive credit for the monetary value for fees or commission paid for their services.
- **Joint Venture:** An association of at least one MWSBE and one or more other firms, whether certified or non-certified, to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the MWSBE(s) is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the Joint Venture are commensurate with its ownership interest.

A Joint Venture receives MWSBE Participation Goal credit for the portions of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the MWSBE Joint Venture partner performs with its own forces. Profit payments made to MWSBE partner(s) can be used for MWSBE goal credit if expressly approved by the OBO.

#### DBE and/or ACDBE

OBO will determine goal credit for DBE goal in accordance with 49 CFR, Part 26, Subpart C, §26.55 and goal credit for ACDBE goal in accordance with 49 CFR, Part 23, §23.55.

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## 5. CREDIT FOR SELF-PERFORMANCE BY MWBE CERTIFIED FIRMS

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Where expressly allowed in procurement solicitations, Prime Contractors certified as MWBE can receive MWSBE participation credit for self-performing outside of a Joint Venture. MWBE firms may receive MWBE credit up to 50% of the total MWBE goal. Prime Contractors certified as both MBEs and WBEs may only receive credit in one (1) category, which will be selected at the firm's election at the time of bid or proposal submission. SBE-certified Prime Contractors are not allowed to count self-performance for goal credit.

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## 6. CREDIT FOR SELF-PERFORMANCE BY DBE CERTIFIED FIRMS

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See 49 C.F.R. Part 23

See 49 C.F.R. Part 26

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## 7. CHANGE IN CERTIFICATION STATUS DURING CONTRACT

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If the Certification status of a MWSBE and/or DBE Subcontractor changes during the course of the contract due to circumstances beyond the control of the Prime Contractor (ex: a change in size, ownership or control in the MWSBE, DBE and/or ACDBE, rendering them ineligible for Certification), OBO may count the total participation of the MWSBE, DBE and/or ACDBE throughout the life of the contract or agreement towards the Contract Utilization Goal.

If the Certification status of a MWSBE, DBE and/or ACDBE Subcontractor changes during the course of a contract due to circumstances that are deemed by the OBO to be fraudulent in nature, based on but not limited to, the reasons for revocation of Certification included in the Certification section of this document, OBO may take appropriate steps to address the ineligible firms through its sanctioning authority. The Prime Contractor may receive credit for MWSBE, DBE and/or ACDBE participation up to the time/date that OBO declares the firm ineligible, to be determined on a case-by-case basis. Under no circumstances will payment to the MWSBE, DBE and/or ACDBE count towards the goal beyond 30 days after the ineligibility determination or beyond the conclusion of the current payment cycle, whichever occurs first. The Prime Contractor shall make Good Faith Efforts to meet the original MWSBE, DBE and/or ACDBE participation commitment by replacing the firm, through the required deviation process, with another certified MWSBE, DBE and/or ACDBE.

If a firm is not certified as an MWSBE, DBE and/or ACDBE at the time of bid/proposal submission or prior to being added via the deviation process, the firm's participation will only be counted prospectively towards achieving the MWSBE, DBE and/or ACDBE contract goals after the date the firm becomes a certified MWSBE, DBE and/or ACDBE and is added to the contract through the OBO deviation process.

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## 8. CONTRACT NON-COMPLIANCE

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The City uses an online contract monitoring system to monitor and track payments to all Contractors on projects. This system stores all City of Houston vendors' contact information as well as their current Certification status and Certification details. OBO's Contract Compliance Division leverages the contract management system to track MWSBE, DBE and/or ACDBE compliance on each project.

Based on the MWSBE Utilization Schedule, the Contract Compliance Division sends notices to Prime Contractors that are not meeting the requirements and obligations as set forth in these Policies and Procedures. OBO sends a notification requesting follow-up information related to the use of listed goal credit MWSBE, DBE and/or ACDBE Subcontractors when a Prime Contractor is below the awarded participation goal, in accordance with the Division's Standard Operating Procedures in effect.

If the OBO Director determines that Prime Contractor is not in compliance with these Policies and Procedures, the OBO Director may:

- a. After consultation with the Department Director and the Chief Procurement Officer, determine whether any of the following actions should be taken and notify Prime Contractor of such determination:
  - i. Enter a written agreement with Prime Contractor allowing Prime Contractor to cure the noncompliance matter;
  - ii. Suspend Prime Contractor from engaging in any contract with the City for a period up to, but not to exceed, five years, pursuant to Section 15-86 of the City's Code of Ordinances, as may be amended from time to time; or
  - iii. Take any other appropriate remedy.

The determination of the OBO Director is final.

- b. Make a recommendation to the Department Director and the Chief Procurement Officer, to:
  - i. Withhold payment or reimbursement under this Agreement;
  - ii. Make a finding that Prime Contractor is in default or has breached this Agreement;
  - iii. Determine not to renew this Agreement;
  - iv. Terminate for cause this Agreement; or
  - v. Take any other appropriate remedy.

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## 9. NON-BINDING MEDIATION OF DISPUTES BETWEEN PRIME CONTRACTORS AND CERTIFIED FIRMS

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Pursuant to Section 15-84(b) of the Code, OBO provides non-binding mediation services in an attempt to facilitate the resolution of contract disputes between the Prime Contractor and its certified subcontracting firm listed for MWSBE, DBE and/or ACDBE goal credit. OBO provides a trained mediator to conduct the mediation. The Prime Contractor, certified firms, or the City may request mediation as set forth in OBO's written mediation process.

If an agreement can be reached between the parties, the OBO mediator will draft a settlement agreement and present it to both parties for signatures. If a dispute occurs after the parties sign a settlement agreement, a party may pursue any legal remedies available to a party without the need to return to OBO.

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## 10. POST-AWARD DEVIATION REQUEST

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As set forth in Section 15-85 of the Code, after execution of a contract, the Prime Contractor shall comply with the submitted Participation Plan, unless it has received approval from OBO to deviate from the submitted Plan. Approvals for deviations shall not be unreasonably withheld by OBO. The funding sources of each project will determine which deviation process is applied.

**Fuel:** If a Prime Contractor adds a fuel subcontractor for goal credit, the Prime Contractor must submit documentation to OBO detailing how it will quantify use of fuel for purposes of

the subject contract. OBO shall determine whether the documentation is sufficient to allow use of fuel to be counted for goal credit.

## B) LOCAL/STATE- FUNDED PROJECTS

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A Prime Contractor must submit a completed Deviation Request form and an updated MWSBE Utilization Plan to OBO in order to request the addition, removal, or substantial reduction (by 50% or more) of any listed certified Subcontractors/Sub- Consultants/Suppliers on their approved MWSBE Participation Plan. Removal for the purposes of the deviation process includes the active termination of a goal credit MWSBE, the non-use of the goal credit MWSBE, and the substantial reduction of participation of the goal credit MWSBE by 50% or more. Deviation requests do not apply to request to add, remove, or reduce the use of a company not being used toward MWSBE participation goal. However, the work performed by firms not being used for MWSBE goal credit must not limit or negatively impact the opportunities available to the MWSBE firms listed for goal credit.

MWSBE firms may be removed for the following:

1. The affected MWSBE fails or refuses to execute a written subcontracting agreement with reasonable terms.
2. The affected MWSBE fails or refuses to perform the work of its subcontract or fails to perform its work in an acceptable way.
3. The affected MWSBE becomes bankrupt, insolvent or exhibits credit unworthiness.
4. The affected MWSBE is ineligible to work on projects because of sanction or debarment proceedings or applicable state law.
5. The affected MWSBE voluntarily withdraws from the project and provides written notice of its withdrawal.
6. The affected MWSBE is ineligible to receive credit for the type of work required.
7. Other documented good cause not listed above that compels the removal of the affected MWSBE.

See the Post-Award Deviation Request form available on OBO's website.

The Prime Contractor must give the affected MWSBE five (5) business days to respond to the written notice of removal or reduction.

The Prime must provide OBO with a copy of the notice to the affected MWSBE along with any objections, a completed Deviation Request form, and an updated MWSBE Utilization Schedule.

***OBO or its designee will contact the affected MWSBE to confirm their consent or objection to the removal or reduction.***

***The affected MWSBE must provide a written response consenting to the removal or reduction, or a detailed written response objecting to the removal or reduction.***

### **State Revolving Funds (SRF) Projects**

Prime Contractors submitting deviation requests for SRF (state revolving funds) projects must

complete this document as well as provide an accompanying letter stating the reason for the addition, removal or substantial reduction of a subcontractor(s).

**Notification of Final Determination**

The Prime Contractor will be notified of the final determination via a letter signed by the OBO Director or designee. If the determination is to approve the addition, removal, or substantial reduction of participation of a goal credit MWSBE firm, the appropriate adjustments will be made to the project in the contract management system.

Within 14 business days of the date of OBO's approval letter to add an MWS for goal credit, the Prime Contractor must provide OBO with a copy of an executed subcontracting agreement with the new MWSBE.

**C) FEDERAL PROJECTS**

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The steps for deviation on United States Department of Transportation projects can be found at 49 C.F.R. §26.53(f).

**D) LABOR STANDARDS MONITORING AND ENFORCEMENT**

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OBO is responsible for monitoring and enforcing the wage requirements on all city projects except those projects let by the Houston Airport System and the Housing and Community Development Department.

**1. PREVAILING WAGE**

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The source of funding and funding type on City of Houston contracts will determine which Prevailing Wage Scales, listed below, will apply to each project. City projects with Federal funding are governed by Federal Davis-Bacon Act, 40 U.S. Code § 3141, while City projects that are solely locally funded are governed by Texas Little Davis- Bacon, Title 10, Subtitle F, Chapter 2258 of the Texas Government Code. Failure to abide by the Prevailing Wage Scales, as set forth by Federal or State law, will lead to penalties and possible sanctions. If a classification does not appear on the wage scale, contact your contract compliance officer. The following identifies the applicable City of Houston Prevailing Wage Rates monitored by OBO:

**A) TYPES OF WAGE SCALES**

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**(1) HEAVY & HIGHWAY SCALES**

This Prevailing Wage Scale is applied to Federally funded contracts, as determined by the Federal Department of Labor (DOL) pursuant to the Federal Davis-Bacon Act.

**(2) ENGINEERING WAGE SCALE**

The Prevailing Wage Scale for engineering construction is determined by DOL but adopted by the City of Houston. This wage scale is to be applied to

all site work greater than 5 feet from an exterior wall of new building under construction or from an exterior wall of an existing building. This wage rate does not pertain to professional positions, i.e. foremen or surveyors who may work on the project.

(3) BUILDING WAGE SCALE

The Prevailing Wage Scale is for engineering construction and is determined by DOL but adopted by the City of Houston. This wage scale is to be applied to work on buildings, including the area within 5 feet of the exterior wall.

See the current Prevailing Wage Scales on the OBO website.

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2. APPRENTICE PROGRAM

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- A. If an employee is classified as an apprentice on payrolls, an approved apprenticeship certificate from the U.S. Department of Labor Bureau of Apprenticeship Training or an agency authorized by the Bureau must be submitted with the payrolls. The apprenticeship certificate indicates that the employee is officially registered in a Department of Labor approved training program. In addition to the certificate, an apprentice wage form is needed to determine the period of training and the ratio of pay an apprentice must be paid in relation to a journeyman.

The apprentice certificate and wage form must be approved in the labor compliance system, through an enrollment process, before they may be included on a payroll for reduced wages. Approval must take place otherwise the Contractor will receive an underpayment and associated penalty.

- B. The ratios of apprentice to journeyman as listed in contract must be followed. If the Department of Labor approved apprenticeship program has a different ratio than set forth in the contract, it is permissible to use the program's ratio. A copy of the program's signed agreement with DOL must be provided to OBO.

For example, if the ratio is 3 journeyman plumbers to 1 apprentice plumber, then a second apprentice cannot be listed in that craft until the fourth journeyman plumber appears on the payroll for that day. The payrolls will be checked to make sure they are in compliance each day or an underpayment must be written to upgrade one of the apprentices to a journeyman, so they conform to the ratios of the contract.

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3. FRINGE BENEFITS

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Pursuant to 40 U.S. Code § 3141, fringe benefits can be paid in cash per hour and/or through benefits the Contractor provides to its employees such as: vacation pay, paid holidays, and paid sick time off. Other fringe benefits paid to a third party include health insurance, pension provisions, life insurance and other benefits paid directly on the employee's behalf. The fringe

benefit package should include the following:

1. Name of employee.
2. Name and nature of the benefit.
3. Name, address and phone number of the third-party providers.
4. Value breakdown of vacation pay, sick time, insurance, 401K, retirement accounts, pension, etc.

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#### 4. EMPLOYEE PAYROLL DEDUCTION FORM

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The Employee Payroll Deduction form ensures that Contractors are in compliance with the Copeland “Anti-Kickback” Act, 18 U.S. Code § 874. This form is submitted by Contractors for upload to the City’s labor compliance payroll system. The payroll deduction authorization forms are required to be submitted for any deduction other than taxes and court ordered payments. Employees must sign the form giving authorization to the employer to deduct designated funds from their pay and state the frequency of the deduction except when court ordered. If this form is not signed and submitted to the Contract Compliance Division, the Prime Contractor may be required to repay all unauthorized deductions.

Categories of payroll deductions include, but are not limited to, the following:

1. Loans
2. Retirement
3. Advance on Wages
4. Direct Deposits to Banking Accounts
5. Savings Bonds
6. Uniforms (with approval of U.S. Department of Labor)
7. Donations to Agencies
8. Insurance Premiums
9. Union Dues
10. Stock Options

Where applicable, the Copeland “Anti-Kickback” Act prohibits a Contractor or Subcontractor from inducing an employee to give up any part of his/her compensation to which he/she is entitled under his/her contract of employment. The Act’s implementing regulations require a Contractor to submit a weekly statement of the wages paid to each employee performing covered work during the preceding payroll period.

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#### 5. OTHER LAWS APPLICABLE TO PREVAILING WAGE CONTRACTS

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##### A) THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (CWHSSA)

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The CWHSSA requires Contractors and Subcontractors on Federal contracts to pay laborers and mechanics at least one and one-half times their basic rate of pay for all hours worked over 40 in a work week. This Act also prohibits unsanitary, hazardous, or dangerous working conditions in the construction industry on Federal projects.

## B) THE WALSH-HEALEY PUBLIC CONTRACTS ACT

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The Walsh-Healey Public Contracts Act requires payment of minimum wage rates and overtime pay on certain Federal contracts to manufacture or furnish materials, supplies, or equipment.

### 6. CERTIFIED PAYROLLS

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OBO uses an online labor compliance system for certified payroll tracking for Prevailing Wage reporting. After a contract is awarded, the Prime Contractor provides a list of authorized payroll signers for the project. OBO and HCD must be promptly notified if the authorized payroll signer has changed by submitting an updated authorized payroll signer in the labor compliance system. OBO and/or HCD then adds each identified signer to the labor compliance system to allow each signer to upload certified payrolls. The electronic submittal of certified payrolls is required unless otherwise approved by the OBO Director or designee.

Certified payrolls must be completed for all City of Houston construction contracts that are \$2000 and above based on the Prime Contractor's contract with the City of Houston. Certified payrolls consist of two parts: (1) Statement of Compliance and (2) Detailed record of employees' hours and wages on the project. Certified payrolls must be submitted weekly and reviewed to ensure accuracy before submittal. Prime Contractor must ensure that its Subcontractor payrolls are submitted as required.

A completed payroll must contain the following;

- Name of Contractor or Subcontractor
- Address of Subcontractor
- Payroll Number
- Payroll Week Ending Date
- Project and Location
- Project Number/Name or description, employee name, address, and last four digits of social security number or another personal identifying number. The City is not precluded from requesting full address and social security information, as needed.
- Employee classification- only classifications in the contract's wage schedules are to be used.
- Classification can only be added to the wage schedules by written request to the Contract Compliance Division.
- Date and Day(s) Worked
- Hours Each Day
- Total Hours
- Rate of Pay- Employee's wage must be no lower than the Prevailing Wage Rates listed in the contract. All hours worked over (40) for one week is overtime; non-exempt employees must be paid time-and-a half for overtime.
- Gross Amounts Earned on All Projects
- Federal Tax Withholdings
- Other Deductions
- Total Deductions

- Net Wages Paid for Week Ending Period

The Statement of Compliance of the payroll certifies that the following information is correct:

- Week Ending Date
- Name of Signatory and Title (should match authorized signer on the APS form)
- List the name of company that administers the fringe benefit plan, if appropriate.

#### A) CERTIFIED PAYROLL SUBMITTAL

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1. Prime Contractor is required to start submitting certified payrolls after the Notice to Proceed date once applicable work has started.
2. Subcontractors' certified payrolls must be submitted one week after Subcontractors' work begins on project.
3. If there is more than one wage schedule, the wage scale being used must be designated by the Contractor in the Labor Monitoring System.
4. Payrolls must reflect the exact classification of the worker from the wage schedule. (Example: Common Laborer or Plumbers Helper).
5. If there is no work performed for a week, the Contractor is still required to submit a Compliance Statement, via the system, indicating "No Work Performed."
6. All personnel should be listed on payrolls, including salaried supervisors; however, pay information is not required.
7. All apprentices must be approved by the Contract Compliance Officer before they appear on the first certified payroll. If an employee will be classified as an "apprentice" on payrolls, an approved apprenticeship certificate from the Department of Labor Bureau of Apprenticeship Training or an agency authorized by the Bureau must be uploaded to Labor Monitoring System. The Contract Compliance Officer must be notified of when the trainee is due to be upgraded and track that on the project as well.
8. Employees covered by Prevailing Wage rules must be paid weekly.
9. Employees working in the crafts listed on the Prevailing Wage Rate table must be paid overtime for all hours worked over forty (40) hours a week. These employees cannot be listed as "salaried."
10. Workers must be paid at least the Prevailing Wage Rate or the Contractor will be penalized \$60.00 a day for each worker who is underpaid, in addition to the back wages owed.
11. A payroll deduction form must be submitted for any deductions other than

withholdings, and those that are court ordered.

12. Owner-operators with a single truck should appear on payroll of the Contractor that hired them. The owner-operator should submit tax liability statements to the Contractor accepting responsibility for paying all required Federal taxes.
13. Trucking companies, with several trucks, are required to submit weekly payrolls.

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## 7. SITE VISITS

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Contract Compliance Officers periodically make site visits to each active project assigned. On the job site, the Officer will perform CUF audits, wage and labor interviews, and ensure the wage schedule and labor posters are properly displayed, when applicable.

### A) CUF AUDITS

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CUF audits are used to determine if subcontractors provide the goods or service as originally listed on the Participation Plan.

Reference the Determining MWSBE, DBE and/or ACDBE Goal Credit Section, of these policies, above, as a guide for Commercially Useful Function descriptions by Contractor type.

### B) INTERVIEWS

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OBO will observe the duties and tools used by employees participating on City projects. Employees working on jobsites with Prevailing Wage requirements can randomly be chosen by OBO to be interviewed confidentially with a focus on wages and labor conditions.

### C) WAGE AND LABOR POSTERS

---

Wage schedules and required labor standards posters are to be displayed in an area visible by all employees as well as the public from the day work begins until the completion of the project. The Prime Contractor's EEO Officer's contact information must also be displayed. OBO will verify the aforementioned items are properly posted during site visits.

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## 8. CERTIFIED PAYROLL AUDITING

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The Contract Compliance Division is responsible for auditing the required weekly payrolls submitted by Contractors for all City of Houston construction contracts that are valued at \$2,000 and above.

When auditing certified payrolls, a Contract Compliance Officer must:

1. Verify statement of compliance signature with the authorized officer signature on Authorized Payroll signer Form.

2. Verify payrolls were submitted by active and non-active Contractors unless the last submission was marked "Final".
3. Review payrolls for the following: classifications, pay rate, fringe benefits, overtime pay, and payroll deductions are permissible and authorized.
4. Conduct site visits and verify employee wages via interviews to determine if employees are classified and paid correctly.
5. Check apprentice ratios to verify the apprentice listed matches the ratio of the program they are enrolled in, or the Prevailing Wage rate classifications.
6. Ensure Owner Operators drive their own trucks and provide a completed tax liability statement to the Prime Contractor and OBO.

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## 9. UNDERPAYMENTS

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Underpayments occur when employee(s) are paid below the Prevailing Wage Rates outlined in the contract. All Contractors must pay the prevailing wage rates and use only the labor classifications as determined under the contract unless otherwise approved.

The Contractor will be penalized \$60.00 a day, per infraction, for each employee who is underpaid per Texas Government Code 2258.023(b) for all contracts except Federal Highway Administration funded contracts. Prime Contractors will be notified of any findings of underpayments by audit of certified payrolls, site visits or complaints from employees and will be required to take necessary steps to cure.

The Contract Compliance Officer will address underpayments as follows.

If OBO receives a complaint of an alleged underpayment by a worker, OBO shall handle such complaint in accordance with Texas Government Code 2588.052.

On discovery by OBO concerning an underpayment by a contractor or subcontractor, OBO shall notify the contractor or subcontractor of OBO's determination of underpayment. Contractor or subcontractor shall have 15 days from receiving notification to dispute with the provision of supporting documentation or cure the underpayment determination. If contractor or subcontractor does not dispute, disputes but does not provide supporting documentation, or cures within 15 days, OBO's determination shall be final. Contract Compliance Division shall have up to 15 days to make a final determination. Once the Contract Compliance Division issues a final determination, contractor or subcontractor shall pay the amount established to cure the underpayment within 30 days of the date of the final determination. At any time during this process, OBO may retain any amount due under the contract or withhold sufficient amounts to satisfy liabilities and/or any penalties for underpayment pending a final determination of the underpayment of wages. Additionally, the OBO Director may exercise the remedies listed in Section XII.A.7.

## A) PREVAILING WAGE MISCLASSIFICATION

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Misclassification often results in lower pay for the worker and could also reduce benefits and protections. Exempt workers are not paid for all hours worked including not being paid overtime or the minimum wage. Independent Contractors, for example, are generally not paid for all hours worked, not compensated with required benefits, and not covered by workers compensation or social security payments.

The classification of work performed is key to determining the proper rate an employee must be paid. Prevailing Wage law requires that workers involved in public works projects be paid according to the rates set for their job classification. One of the most common violations of Prevailing Wage law is misclassification of workers.

For example, an employer may classify a worker as a general Laborer instead of an Operator because a Laborer is paid at a lesser rate. However, if the worker is operating a piece of equipment covered under the Operator classification, then the employee must be paid the Operator rate for the time spent as an operator.

It is common for a worker to perform work covered by multiple classifications in a single day. A Cement Mason or Concrete Finisher may also spend time as an Iron Worker setting rebar or a Carpenter when building forms. This means that the hours worked that day must be tallied by classification and paid at the respective rate for each classification. If the employer insists on paying all hours at the lowest wage rate classification, there could be a Prevailing Wage Rate violation and back wages owed for Prevailing Wage work performed and not paid.

## B) WAGE THEFT

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The steps for filing a wage theft complaint related to City of Houston contracts can be found in Chapter 15, Article IV of the Code.

## C) SANCTIONS UNDER CWHSSA AND DAVIS BACON

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Contract payments may be withheld by the City in sufficient amounts to satisfy liabilities for underpayment of wages and for liquidated damages for overtime violations under the Contract Work Hours and Safety Standards Act (CWHSSA). In addition, violations of the Davis-Bacon contract clauses may be grounds for contract termination, Contractor liability for any resulting costs to the government, and debarment from future contracts for a period up to five years.

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## 10. INDEPENDENT CONTRACTOR ORDINANCE

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Pursuant to Chapter 15, Article X of the Code, it is the policy of the City to encourage fair competition for City contracts by requiring all Contractors to comply with applicable employment laws, statutes and Ordinances. To this end, Contractor employees must be properly classified on City projects. OBO's Contract Compliance Division is responsible for monitoring payrolls and validating if persons for whom Contractors do not deduct tax withholdings are indeed Independent Contractors as defined in Article X. The Contract Compliance Division monitors payrolls to ensure that persons classified as Independent

Contractors are registered appropriately with the Internal Revenue Service and other applicable entities. Companies that do not deduct taxes from their employees, must submit a copy of the submitted SS-8 form to the Contract Compliance Officer.

If Contractors fail to submit certified payroll for Independent Contractors, the Contract Compliance Division can refer these instances to OIG for possible wage theft.

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## 11. PROMPT PAY REQUIREMENT

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Section 2251.022 of the Texas Government Code requires that Contractors who receive a payment from a governmental entity shall pay their Subcontractors the appropriate share of the payment not later than the 10th day after the date the Contractor receives the payment.

Section 2251.023 of the Texas Government Code requires that a Subcontractor who receives a payment from a vendor shall pay a person who supplies goods or a service for which the payment is made the appropriate share of the payment not later than the 10th day after the date the Subcontractor receives the payment.

The steps for calculating interest on overdue payments are discussed in Section 2251.025 of the Texas Government Code. OBO monitors City contracts and Contractors to ensure Contractors comply with their contractual requirements relating to the prompt payment provisions in Chapter 2251 of the Texas Government Code.

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## E) EQUAL EMPLOYMENT OPPORTUNITY

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City of Houston Contractors and Subcontractors are protected under applicable federal law, from discrimination on the following bases: race, color, religion, sex, national origin, disability and retaliation. Contractors must ensure that they comply with the terms of each contract and prescribed actions to ensure equal employment opportunity.

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## F) PAY OR PLAY PROGRAM

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OBO is responsible for monitoring and enforcing the Pay or Play (POP) requirements on all city projects. The Office of Business Opportunity (OBO) has citywide administrative oversight of the program, including audit responsibilities. Vendor's compliance with POP requirements will be directly managed by the City Department with whom Vendor has contracted (Contracting Department).

Executive Order 1-7 (2007) mandates that City of Houston (COH) professional service, construction, or service contracts comply with the Pay or Play Program (POP) if the contract amount is over \$100K for prime-contractors or \$200K for sub-contractors.

Prime-contractors and sub-contractors should submit POP submissions to B2GNow. Prime contractors must ensure their POP sub-contractors comply with POP by monitoring their Workforce Audit submissions in the B2GNow.

A: **PLAY** - If the consultant offers/provides health insurance, Workforce Craft submissions are due quarterly to B2GNow. Consultants must offer employees working on COH contracts with health insurance coverage no less than 75% of the monthly premium toward the total premium cost covered employee per month.

B: **PAY** - If the consultant does not offer/provide health insurance, Workforce Audit submissions are due weekly to B2GNow. The Workforce audit should include the employees' total weekly hours for the firm, as well as the total hours they worked on the COH contract.

A dollar an hour fee is assessed to the consultant if the employee(s) worked a total of 30 hours or more per week for their company and ANY amount of time on a COH contract.

## G) CONTRACTOR PERFORMANCE EVALUATION

OBO initiates a project closeout process when it receives notification from the Department that the project has ended and a request for a performance evaluation. The performance evaluation includes OBO's rating of the Prime Contractor's performance regarding labor standards and MWSBE compliance.

### 1. POST-AWARD GOOD FAITH EFFORTS

Good Faith Efforts are steps taken, which by their scope, intensity and usefulness, demonstrates the Contractor's responsibility to put forth measures to meet or exceed the Contract Goal throughout the duration of the contract. In determining whether the Contractor made Good Faith Efforts to ensure full participation and achievement of the MWSBE, DBE and/or ACDBE Participation Plan percentages, OBO applies the City's Good Faith Efforts Policy, which can be found on OBO's website.

### 2. RATINGS

#### A) LABOR STANDARDS COMPLIANCE

- **Satisfactory Rating**
  - If a Prime Contractor submits required documentation prior to actual project completion and clears all outstanding underpayment issues prior to accept work by City Council.
- **Unsatisfactory Rating**
  - If Prime Contractor fails to submit required documentation prior to actual project completion and/or fails to clear all outstanding underpayment issues prior to accept work by City Council.

## B) MWSBE, DBE and ACDBE GOAL COMPLIANCE

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While specific circumstances on a project may require a deviation from the rating guidelines, when OBO evaluates the Prime Contractor 's performance at the close of a project, the Contractor is evaluated based on the established rating guidelines.

OBO will send a letter informing the Prime Contractor of their labor standards and/or MWSBE, DBE and/or ACDBE goal rating(s). Unsatisfactory rating notifications will, where appropriate, include language discussing possible sanctions and sent via certified mail to the Prime Contractor.

A Contractor who exhibits patterns of non-compliance with the MWSBE, DBE and/or ACDBE goal(s) may be subject to sanctions imposed by OBO which may include suspension from participating in future City contracts for a period not to exceed five years as stated by Chapter 15, Article V of the Code.

## H) MEETINGS

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### 1. PRE-AWARD MEETINGS

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Pre-Bid and Pre-Proposal meetings are held for prospective Bidders/proposers/responders, before bids are due and contract(s) are awarded to discuss the project's requirements. Based on the dollar value of the contract, OBO assists the Buyer with providing the following contract compliance information, when applicable, at these meetings:

- MWSBE /DBE Goal Participation
- Good Faith Efforts
- Commercially Useful Function
- Notice of Intent
- Prevailing Wage
- Electronic Payroll
- Hire Houston First Program and/or
- Pay or Play Requirement

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## 2. POST-AWARD MEETINGS

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### A) PRE-CONSTRUCTION MEETING

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Following the award of a construction-related contract, a Pre-Construction meeting is conducted by the contracting department and/or OBO to discuss compliance requirements with the Prime Contractor. The Pre-Construction meeting provides the Contract Compliance Division with an opportunity to meet the Prime Contractor, their team (Field and Office Contact), and key City contacts (Project Managers, Inspectors, etc.) and to reinforce the Prime Contractor's compliance obligations under the contract and how their performance will be monitored and rated by the City.

### B) KICKOFF MEETING

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Professional Services and Goods and Services contracts are generally monitored for MWBE/DBE compliance only. The Contract Compliance Officer reviews all applicable compliance requirements of the contract agreement.

Contract Compliance Officers discuss the following information during kickoff meetings, where applicable:

1. MWSBE, DBE and/or ACDBE Utilization and Deviation Requests
2. Good Faith Efforts & Documentation
3. Prevailing Wage Requirements
4. Subcontractor Agreements
5. Reporting of Subcontractor, Sub-Consultant and/or Supplier Payments in the Contract Monitoring System
6. Commercially Useful Function Audits
7. Compliance with all Federal, State and local laws and regulation

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## XIII. NONCOMPLIANCE AND SANCTIONS

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If the OBO Director determines that Prime Contractor and/or subcontract, if applicable, fails to comply with these Policies and Procedures, the OBO Director may:

- a. Determine whether any of the following actions should be taken and notify Prime Contractor of such determination:
  - i. Enter a written agreement with Prime Contractor allowing Prime Contractor to cure the noncompliance matter;
  - ii. Suspend Prime Contractor from engaging in any contract with the City for a period up to, but not to exceed, five years, pursuant to Section 15-86 of the City's Code of Ordinances, as may be amended from time to time; or
  - iii. Take any other appropriate remedy.

The determination of the OBO Director is final.

- b. Make a recommendation to the Department Director and the Chief Procurement Officer, to:
  - i. Withhold payment or reimbursement under this Agreement;
  - ii. Make a finding that Prime Contractor is in default or has breached this Agreement;
  - iii. Determine not to renew this Agreement;
  - iv. Terminate for cause this Agreement; or
  - v. Take any other appropriate remedy

Pursuant to Section 15-86 of the Code, the OBO Director is authorized to recommend the suspension of any Contractor who has failed to make Good Faith Efforts to meet any goal established under this article from engaging in any contract with the City for a period up to, but not to exceed, five years.

The OBO Director is also authorized to suspend any MWSBE, DBE and/or ACDBE who has failed to make Good Faith Efforts to meet all requirements necessary for participation as a MWSBE, DBE and/or ACDBE from engaging in any contract affected by Chapter 15, Article V of the Code for a period up to, but not to exceed, five years.

The imposition of sanctions against a City Contractor for violations described in Section 15-86 shall be in accordance with Sections 15-22, 15-23, 15-24 and 15-84 of the Code.

#### A) SANCTION FOR FALSE, MISLEADING, FRAUDULENT, OR CRIMINAL ACTIVITY

The OBO Director may sanction Prime Contractor and/or subcontractor for the following reasons:

1. OBO has evidence of the prime contractor and/or subcontractor or its owner's involvement in fraud or other serious criminal activity;
2. OBO has evidence of false or misleading statements relating to an impeding investigation;
3. OBO has evidence of the Prime Contractor and/or subcontractor poses a substantial threat to the integrity of the City's MWSBE, PDBE, VOSB, SDVOSB, DBE and/or ACDBE program(s); and/or
4. OBO has evidence that the Prime Contractor and/or subcontractor has engaged in similar malfeasance, falsity, fraudulence, or misleading or illegal activities.

#### B. NON-COMPLIANCE WITH ARTICLE V, CHAPTER 15

##### 1. NOTIFICATION, HEARING AND APPEAL

If the OBO Director determines that there is cause to believe that a Contractor has failed to comply with any of the requirements of the Chapter 15, Article V of the Code, Minority, Women and Small Business Enterprises, the Good Faith Efforts Policy or contract provisions pertaining to MWSBE participation, OBO will send a Notice of Non-Compliance and Proposed Recommendation of Sanction to the Contractor and the affected contracting department(s).

The notice from the OBO Director shall be in accordance with Section 15-22 of the Code and attempt to resolve the non-compliance through conference and conciliation.

The Contractor shall have 14 days after receipt of the notice described above to show cause why the imposition of sanctions should not be instituted.

If the non-compliance is not resolved through conference and conciliation, the OBO Director shall conduct an investigation and, where the Director so finds, issue a notice of proposed recommendation of sanctions to the Contractor and to the Contract Compliance Commission. The Contractor shall have 14 days from receipt of a notice of proposed recommendation of sanctions to file an answer and to make a request for a hearing with the Contract Compliance Commission.

If the Contractor requests a hearing within the specified time limit, a hearing shall be provided for the Contractor as set forth in Section 15-22 of the Code. If the Contractor does not require a hearing, the Contractor shall be deemed to have consented to the making of a decision by the Contract Compliance Commission on the basis of available information.

Hearings before the Contract Compliance Commission shall be conducted in accordance with Section 15-23 of the Code.

If the Commission finds that a violation of the Code, Federal regulations or Executive Order exists, the Commission shall submit its recommendation to the mayor and City Council. The mayor and City Council shall review the Contract Compliance Commission's recommendations in accordance with Section 15-24 of the Code.

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## 2. SANCTIONS FOR NON-COMPLIANCE WITH ARTICLE V, CHAPTER 15

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In determining the length of any recommendation for suspension of a Contractor for failure to comply with any of the requirements of the Chapter 15, Article V of the Code, Minority, Women and Small Business Enterprises, the Good Faith Efforts Policy or contract provisions pertaining to MWSBE participation, the Director shall consider the following non- exhaustive list of factors:

1. Whether the failure to comply with applicable requirements involved intentional conduct, as determined by the Director or, alternatively, may be reasonably concluded to have resulted from a misunderstanding on the part of the Contractor, MWSBE, VOSB, SDVOSB, and/or PDDBE of the duties imposed on them by Chapter 15, Article V of the Code and these Procedures;
2. The number of incidences of noncompliance by the Contractor or MWSBE,, VOSB, SDVOSB, and/or PDDBE;
3. Whether the Contractor, MWSBE, VOSB, SDVOSB, and/or PDDBE has been suspended in the last five years;
4. Whether the Contractor, MWSBE, VOSB, SDVOSB, and/or PDDBE has failed or refused to provide the Director with any requested information;
5. Whether the Contractor, MWSBE, VOSB, SDVOSB, and/or PDDBE has materially misrepresented any applicable facts in any filing or communication

- to the City of Houston; and
6. Whether any subsequent restructuring of the subject business or other action has been undertaken to cure the deficiencies in meeting applicable requirements.

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### 3. CONTRACTOR DEBARMENT

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Pursuant to Section 15-100 of the Code, debarment of Contractors is a remedy available to the City separate and apart from sanctions that may be imposed under Chapter 15, Article V of the Code.

The imposition of debarment against a City Contractor shall be in accordance with Chapter 15, Article VII of the Code.

### C. NON-COMPLIANCE: DBE AND ACDBE

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In reference to sanctions for DBE and ACDBE non-compliance, see 49 CFR §§26.107 and 26.109 and Appendix A and Appendix B.

## **XIV. GRIEVANCES**

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Persons adversely affected by decisions of OBO made pursuant to its authority under Chapter 15, Article V of the Code may submit a written request to the OBO Director or designee seeking a review of OBO's decision. Upon receipt of a written grievance, OBO may, where appropriate, attempt to resolve the matter during a period not to exceed 30 calendar days. Failing an informal resolution, an impartial individual or body, selected by the mayor or designee, shall preside over an impartial hearing of the grievance. The aggrieved person will be provided with notice of the impartial hearing in writing.

Following the conclusion of the Hearing, the Hearing Officer shall issue a report and recommendation (the "Recommendation") to the OBO Director, who shall cause a copy of the Recommendation to be transmitted to the aggrieved party. The Recommendation shall be implemented as long as it does not conflict with the City of Houston Code of Ordinances, including but not limited to Article V, Chapter 15 (the "Code") and the OBO Policies and Procedures, and applicable Texas or federal law, including but not limited to case law, statutes, rules, and regulations ("Applicable Law"), as amended from time to time. In any instance in which the Director determines that the Recommendation conflicts with the Code, the OBO Policies and Procedures, and/or Applicable Law, then the Director shall not implement that portion of the Recommendation and document the reasons for the conflict in writing and promptly furnish a copy to the mayor.

The Recommendation and the Director's implementation of such report and recommendation shall be final and exhaust all available administrative remedies.

## **XV. EXTERNAL AFFAIRS AND WORKFORCE DEVELOPMENT**

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OBO's External Affairs and Workforce Development team is responsible for outreach to and recruitment of firms for Certification, marketing the benefits of the business opportunity program through consistent interaction with the communities served by the program, developing relationships with community partners and stakeholders, developing educational programs to assist certified firms, and serving as resource for all local businesses through the OBO Solutions Center. External Affairs and Outreach also serves as a source of information and ombudsman to answer questions from Contractors, MWSBE, DBE, ACDBE, PDDBE, VOSB and SDVSOB participants and to assist such persons in navigating the City's procurement process, including identifying certified firms for projects. OBO's Public Information Officer and liaison to City Council and OBO's Advisory Board are components of OBO's External Affairs and Outreach Division.

### **A. BUSINESS DEVELOPMENT PROGRAMS**

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OBO has a Business Development Manager who serves as the primary point of contact for certified companies. The services provided by the Manager include the following business development programs and services:

1. Offer individual customized consultations with certified firms who are seeking assistance with researching opportunities to do business with the City of Houston;
2. Coordinates workshops/events such as "I'm Certified, What's Next" and "Meet the Buyer", and participates in forums that promote access to contracting opportunities with the City of Houston and its partners;
3. Facilitates capacity building programs and supportive services for internal and external partners.
4. Represents OBO at business-focused community events.

### **B. WORKFORCE DEVELOPMENT PROGRAMS**

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OBO's Workforce Development Manager manages OBO's workforce development program including, but not limited to:

- Turnaround Houston Job & Readiness Fairs
- City of Houston Youth Internship Program

### C. OBO BUSINESS CENTER

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The OBO Business Center (OBOSC) is a clearinghouse of information and resource center for established and aspiring entrepreneurs. OBOSC provides information on city, county, state and Federal regulations affecting the operation of Houston area businesses. In addition, OBOSC provides the following services at no-cost to assist small business owners:

1. Information on permits, licenses, and fee schedules.
2. Arranging one-on-one business counseling with SCORE Business Advisors.
3. Hosting business seminars and workshops.
4. General information on MWSBE and DBE Certification.
5. Referrals to external resources and disseminating business planning materials.

### D. CITY COUNCIL LIAISON

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OBO's External Affairs Manager serves as the liaison between OBO and the members of the Houston City Council. In this role, the External Affairs Manager's duties include, but are not limited to:

1. Monitoring and researching the City Council Agenda on a weekly basis.
2. Responding in a timely fashion to any questions from City Council Members and their staffs regarding departmental reports and the City Council Agenda.
3. During presentations made to City Council and Committee Meetings, take note of any questions posed by City Council and work with members of the department to form a response in a timely fashion.
4. Communicate directly with City Council staff to promote OBO events in order to increase department visibility and maximize participation from the community.

## **XVI. BOARDS and COMMISSIONS**

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### A. OBO ADVISORY BOARD

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In accordance with City of Houston Executive Order 1-3, an OBO employee will serve as the liaison to the OBO Advisory Board and facilitate presentations during Advisory Board Meetings.

Persons interested in serving as a member of the Advisory Board should contact the Director of Boards and Commissions for the City of Houston.

## **B. CONTRACT COMPLIANCE COMMISSION**

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In accordance with Section 15-19 of the Code, a Contract Compliance Commission was created and established to perform the duties as set forth in Chapter 15, Article II of the Code.

Persons interested in serving as a member of the Commission should contact the Director of Boards and Commissions for the City of Houston.

## **XVII. OBO REPORTING**

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Pursuant to Sections 15-84 and 15-180 of the Code, OBO shall compile reports for the MWSBE/DBE/ACDBE, HHF, and VOSB/SDVOSB Program respectively.

### **A. MWSBE/DBE/ACDBE REPORTING**

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OBO will compile a report of the progress of Departments, by department, in attaining the city-wide MWSBE /DBE/ACDBE goals set by City Council. This report shall be based upon MWSBE/DBE/ACDBE Contractor, Subcontractor and Joint Venture information, to be specified by OBO. This report will be submitted on a quarterly basis to City Council members, the mayor and all affected Department Directors for their information. In compliance with 49 CFR. Parts 26 and 23, the OBO Director/DBELO to the FAA shall ensure the submittal of all reports in the FAA Civil Rights Connect portal on behalf of the DBE/ACDBE Programs as required by the applicable federal register.

### **B. HIRE HOUSTON FIRST REPORTING**

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In compliance with Section 15-180 of the Code, OBO shall submit semi-annual reports summarizing the dollar amount of procurements awarded to City Businesses and Local Businesses under the Hire Houston First Program. Contracting departments will facilitate the provision of data needed to compile the information for these semi-annual reports.

### **C. VETERAN-OWNED SMALL BUSINESS REPORTING**

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In compliance with Section 15-185 of the Code, OBO shall submit semi-annual reports summarizing the dollar amount of procurements awarded to VOSBs and SDVOSBs under the Veteran-Owned Small Business First Program. Contracting departments will facilitate the provision of data needed to compile the information for these semi-annual reports.

## **XVIII. OPEN RECORDS**

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Texas Government Code, Chapter 552, entitles each person to complete information about the affairs of government and the official acts of public officials and employees. Certain exceptions may apply to the disclosure of the information. The City of Houston is committed to providing customer-friendly service when responding to requests for public information.

## **A. TEXAS PUBLIC INFORMATION ACT (TPIA)**

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OBO's External Affairs Manager serves as the Department's Public Information Officer and is the point of contact for the department for all TPIA requests. OBO processes requests for information in accordance with Texas Public Information Act and City of Houston Administrative Procedure 2-9, as amended.

## **XIX. PROCEDURAL AMENDMENTS**

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The OBO Director may amend these Policies and Procedures, as needed, provided that such amendments are consistent with Chapter 15 of the Code and state law and are approved by the City Attorney, pursuant to Section 15-84 of the Code.

## **XX. SEVERABILITY**

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The provisions of these Policies and Procedures are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of these policies and procedures, or the invalidity of the application thereof to any person or circumstances shall not affect the validity of the remainder of these policies and procedures, or the validity of their application to other persons or circumstances.



Educate. Connect. Grow.



# CITY OF HOUSTON

**John Whitmire**

Mayor

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Telephone – Dial 311  
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## Re: Approval of Policies and Procedures per City of Houston Code of Ordinances, Section 15-84

This serves to document the review and approval, by the City Attorney’s Office or his designee and the Mayor of the City of Houston, of the Office of Business Opportunity’s Policies and Procedures prior to publication as shown by their dated signatures below.

Signed by:

4/14/2026

John Whitmire  
Mayor

Date Signed

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074157848964440...

Arturo G. Michel  
City Attorney

4/14/2026

Date Signed