



We Are Columbia

COLUMBIA

SOUTH CAROLINA

Columbia Disadvantaged Business Enterprise (CDBE)

Program Guidelines

CDBE Program Guidelines¹

City of Columbia, South Carolina

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It is the policy of the City of Columbia to prohibit and discourage commercial discrimination on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, disability or any other form of unlawful discrimination in any City procurement or contract.

¹ Updated 4/8/2019 Office of Business Opportunities

I. INTRODUCTION

The City of Columbia ("City") is determined to establish and firmly enforce a clear policy against discrimination in City-related business on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability. As a result, the City has established a policy not to engage in City-related business with firms that discriminate in their solicitation, selection, or treatment of vendors, suppliers, contractors, subcontractors, or business customers.

The City had a Disparity Study completed in 2006 that found that minority and women owned businesses (MWBEs) were substantially underutilized in prime contracting in a majority of procurements in the following areas: (1) construction, (2) architecture and engineering consultants, (3) professional services, (4) goods and supplies, and (5) other services. The 2006 Disparity Study also found that MWBEs were substantially underutilized in subcontracting in a majority of procurements in those same five areas.

Prior to the Disparity Study being completed, the City implemented the Subcontracting Outreach Program (SOP) in 2003 as a race and gender neutral method to increase the utilization of MWBE subcontractors. However, the program has not met the suggested aspirational goals of the 2006 Disparity Study. The City also implemented the Mentor Protégé Program (MPP) in 2008 as a race and gender neutral method to increase the utilization of MWBE prime contractors. However, the MPP program has not met the suggested aspirational goals of the 2006 Disparity Study.

The City implemented a Local Business Enterprise Program (LBE) in 2010 to show its commitment to utilizing local businesses in the procurement process. This program provides a preference for businesses with their principal place of business in the Columbia-Orangeburg-Newberry Metropolitan Statistical Area.

In addition to the SOP, MPP, and LBE programs, the City has implemented many of the recommendations outlined in the 2006 Disparity Study to increase MWBE utilization including, but not limited to, setting aspirational goals, changing insurance requirements so that smaller firms can be more competitive, requiring prime contractors to make good faith efforts to utilize MWBEs in their fulfillment of City contracts, and providing technical assistance to MWBE firms. Despite the City's extensive efforts for many years to implement race and gender neutral methods to increase MWBEs utilized in city procurement, the City has not met the aspirational goals recommended by the 2006 Disparity Study.

As a result, the Mayor and City Council adopted Resolution 2016-079 creating the CDBE Program in December 2016.

II. CDBE UTILIZATION POLICY STATEMENT

It is the policy of the City that Disadvantaged Business Enterprises (DBEs) shall be afforded the opportunity to participate fully in its overall procurement process. The objectives of the CDBE Policy are to: (a) take specific steps to ensure non-discriminatory practices and results in the future and (b) fully involve CDBEs in the City's procurement process.

The CDBE Utilization Policy shall be used when the City Manager has placed a CDBE subcontractor goal on a project.

This CDBE Utilization Policy shall be effective for the remainder of the current fiscal year and shall continue for four (4) subsequent fiscal years unless extended or rescinded by City Council.² Council shall annually review the CDBE Utilization Policy and its overall goals.

III. RESPONSIBLE DEPARTMENT

The City Manager has designated the Office of Business Opportunities (OBO) to administer this policy. OBO is responsible for developing, managing and implementing the CDBE Utilization Policy and such other responsibilities as set forth in the CDBE policy. The City has available resources, including directories and/or lists, to facilitate in the identification of CDBEs available to perform City contracts. The City shall make such resources available to bidders in their efforts to meet the DBE requirements.

IV. CDBE SUBCONTRACTING GOALS

- A. Under Resolution 2016-079(9), the City Manager has the authority to determine goals for CDBE utilization on any prime contract estimated at \$200,000.00 or more.
Established goals shall be included in the solicitation.
- B. Bidders and proposers must identify and select specific work items in subject project to be performed by subcontractors. Bidders and proposers are expected to subdivide total contract work requirements into smaller economically feasible portions or quantities to permit maximum active utilization of CDBEs.
- C. The CDBE subcontractor goal must apply throughout the duration of the contract, including, where appropriate, any change orders, contract modifications, and substitutions.
- D. Bidders and proposers must include documentation of certification of subcontractors being used toward the CDBE goal at the time of submitting response (CDBE Certification Letter). If a proposed subcontractor has not been certified through the city at the time of response, the bidder must include the **CDBE Certification Application** with necessary supporting documentation in the response.
- E. The CDBEs must self-perform a minimum of 50% percent of their portion of the project. Bidders and proposers should not use a CDBE as a pass-thru for the purchase of suppliers or contracting of firms that otherwise would be a direct subcontractor of

² This policy will remain in place through the FY2019-2020.

- D. Socially and/or Economically Disadvantaged Individuals.
1. Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities as defined by the small business administration. (As defined by the SBA)
 2. Economically disadvantaged individuals are those whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities. (As defined by the SBA)
- E. A Socially and/or economically disadvantaged enterprise is any business concern that:
1. Is at least fifty-one (51%) percent owned and controlled by one or more citizens of the United States who are determined to be socially and/or economically disadvantaged.
 2. In the case of a concern that is a corporation, fifty-one (51%) percent of all classes of voting stock of such corporation must be owned and controlled by an individual determined to be socially and/or economically disadvantaged.
 3. In the case of a concern which is a partnership, fifty-one (51%) of the partnership Interest must be owned by an individual or individuals determined to be socially and/or economically disadvantaged and whose management and daily business operations are controlled by individuals determined to be socially and/or economically disadvantaged. Such individuals must be involved in the daily management and operations of the business concerned. (As defined by the SBA)
- F. Minority and women-owned businesses are presumed socially disadvantaged. "Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:
- (a) Black (a person having origins in any of the black racial groups of Africa);
 - (b) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
 - (c) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); and/or,
 - (d) American Indian and Alaskan Native (a person having origins in any of the original peoples of North America). (As defined by the SBA)

VI. METHODOLOGY

- A. The Office of Business Opportunities will use the methodology below in calculating subcontracting goals. The Purchasing Department and department that is implementing the project will have input on the goal before it is submitted to the City Manager for final approval.

- B. The goal will be established based upon the relative availability and use of CDBEs who will be able to assist the City of Columbia in completion of a specific project. This is calculated using the following method:
1. Determining Relative Availability
 - Determine ready, willing, and able CDBEs in your market area from City of Columbia Bidder System
 - Determine ready, willing, and able firms in the market area from the Census Data
 - $\text{Number of DBEs} \div \text{Number of all firms} = \text{Base figure for relative availability}$
 2. Weight is determined by the proportion of dollars spent within each industry/trade: resulting percentage is more heavily influenced by availability in industries/trades where more dollars are spent
 3. Calculate goal utilizing availability and weight.³
- C. Final goal may require adjustments to take into account previous projects, information from disparity study, and any other data affecting likely CDBE participation.
- D. The cost of equipment purchased or leased by a CDBE from a prime contractor does not count for DBE credit. If a charge for the use of the equipment is part of the cost of the CDBE's contract, it would be deducted from the CDBE's credit allowed for the contract.

VII. GOOD FAITH EFFORTS

- A. If there is a CDBE goal in a solicitation, bidders and proposers must achieve the CDBE goal, or provide documentation of good faith efforts (below) where the goal has not been achieved.
- B. Bidders are expected to take reasonable steps to ensure all willing and available businesses, including Columbia Disadvantaged Business Enterprises (CDBEs), have equal opportunity to compete for and participate in Columbia City contracts.
- C. After review by Compliance, a committee of at least three will review good faith efforts submitted to ensure that the bidder has used good faith efforts despite not reaching the stated goal. The Committee is comprised of representatives from Purchasing, OBO, and the relevant department.
- D. This review will verify that the bidder made CDBE subcontracting opportunities available to a broad base of willing and available CDBE subcontractors, negotiated in

³ See Appendix 1 for an example of how goals are calculated.

good faith with interested CDBE subcontractors, and did not reject any bid for unlawful discriminatory reasons.

E. All Primes are required to do the following as evidence of good faith efforts to meet CDBG goals. The necessary documentation is noted below.

1. Attend all Pre-solicitation meetings, Pre-bid meetings and outreach events hosted by the City

Bidder must attend pre-bid meeting scheduled by the City to inform all bidders of requirements for subject project.

Required documentation (1): a) Sign attendance sheet; or b) Submit letter requesting waiver prior to pre-bid meeting.

2. Broad-based advertisement

Not less than ten (10) calendar days prior to bid submittal, Bidder needs to conduct an advertising campaign designed to reach all segments of the Columbia community by advertising in ONE of the following: newspapers, trade association publications, special interest publications (such as SMWBE focused media outlets), trade journals, community papers or other media. Advertisements must be specific to the project, not generic, and may not be a plan holder advertisement provided by the publication. Advertisements shall be published on at least three (3) separate days in newspapers of general circulation; one of the newspapers selected shall be of daily circulation. Advertisements must be worded to ensure it does not exclude or limit the number of potential respondents and must include:

City of Columbia's project name;
Name of bidder;
Areas of work available for subcontracting;
Contact person's name and phone number;
Information on availability of plans and specifications;
Bidder's policy concerning assistance to subcontractors in obtaining bonds and credit lines and/or insurance

Required documentation (2): Submit copies of advertisements and proof of publication dates.

3. Written notice to CDBE subcontractors

Not less than ten (10) calendar days prior to bid submittal, bidder needs to provide written notice to a reasonable number of relevant CDBEs of its interest in receiving sub-bids on subject contract. Contents of letters must include:

City of Columbia's project name;
Name of bidder;
Areas of work available for subcontracting;
Contact person's name and phone number;
Information on availability of plans and specifications; and
Bidder's policy concerning assistance to subcontractors in obtaining bonds and credit lines and/or insurance.

Required documentation (3): Submit copy of each letter sent to CDBEs for

each item of work to be performed.

- a) If one master notification, submit letter with list of recipients.
- b) Faxed copies must include fax transmittal confirmation slip showing date and time of transmission.
- c) Mailed letters must include copies of metered envelopes or certified mail receipts.
- d) Emails must include the date sent, time, and email address to which the letter was emailed.

4. Follow-up to initial solicitations

Bidder must follow up on initial solicitations of written notice to CDBEs to determine their interest in specific portions of project work, answered questions, recorded phone quotes, and recorded subcontractor's interest in bidding on any portion of subject project.

Required documentation (4): Submit copy of telephone logs including name of caller, name of company called, phone number, contact person, time, date, and result of conversation. Telephone logs must be submitted to demonstrate follow-up with all contractors to whom written notices were sent. It is recommended that the bidder provide a spreadsheet showing each sub-bidder contact required above.

5. Good faith negotiation

Bidders must negotiate in good faith with interested CDBEs and cannot reject any bid for other than legitimate business reasons.

Required documentation (5): Submit a) Provide written documentation of all CDBE bids or quotes received, including the bid or quote amount, the date obtained and the name and the telephone number of the person providing the bid or quote amount; b) Summary sheet organized by work type listing subcontractor company names with bid amounts for each work type; and (c) a notarized statement from the owner or a principal of the bidder stating that the bidder does not hold a financial interest in, does not have ownership of or a controlling interest in or is not significantly involved in the operation of the subcontractor. Identify selected subcontractor for each work type. If bidder elects to use own forces to perform a work type, include bid to show own costs for the work.

6. Request for assistance

Not less than fifteen (15) calendar days prior to bid submittal, bidder must request and retain assistance from **AT LEAST ONE** relevant agency that recruits and places DBEs. Such agencies include, but are not limited to, SBA HUB Zone; MBDA Business Center; SC DOT Disadvantaged Business Programs/Unified Certification Program; Division of small and Minority Business Contracting and Certification; U.S. Dept. of Veteran Affairs (Vetbiz.gov); Associated General Contractors (AGC); The Dodge Project Center; SC National Association of Minority Contractors; and the Minority Business Development Agency. Other organizations and trade associations that promote subcontractor participation may also be contacted.

Required documentation (6): Submit copy of each letter sent to outreach agency requesting assistance in recruiting DBEs. Faxed copies must include fax transmittal confirmation slip showing date and time of transmission.

Mailed letters must include copies of metered envelopes or certified mail receipts. Content of letters must include City of Columbia's project name, name of bidder, and contact person's name and phone number.

7. Utilizing certified businesses not located in the CSA

Good faith efforts may also be demonstrated by the use of CERTIFIED DBE firms with offices outside of the CSA. Using a certified DBE not located in the CSA is not a requirement of the program.

Required documentation 7: Submit a copy of each DBE's certification documentation and signed DBE Certification Application.

F. Provisions of plans, specifications, and requirements: Bidders must provide interested sub-bidders with access to plans, specifications, and requirements for subject project in a reasonable time frame to respond.

VIII. RESPONSIVENESS REGARDING CDBE REQUIREMENTS

Where a CDBE goal is included in a solicitation, compliance will determine if the response meets the minimum. The following determinations will be made based on documentation provided:

- A. Requirement met (RESPONSIVE)
- B. Requirement not met, requirement waived due to good faith efforts (RESPONSIVE)
- C. Requirement not met, no waiver granted (NON-RESPONSIVE)

IX. COMPLIANCE

OBO will monitor pay applications throughout the entire contract to ensure the CDBE subcontractor goal is maintained for the duration of the contract. The successful bidder must attach a **Monthly Subcontracting Report** using Form 100 with all Payment Applications submitted to the City of Columbia. This form shall include expenditures made to any subcontractors working on the project, regardless of amount.

X. CDBE SUBCONTRACTOR SUBSTITUTION

- A. The CDBE subcontractor goal shall be maintained for duration of the contract. No substitutions are allowed without prior approval from the Office of Business Opportunities.
- B. To request a substitution, the Contractor must submit a written request to the Office of Business Opportunities that includes the name of listed subcontractor, name of replacement subcontractor, reason for substitution, work type and dollar amount. A change form (form 100B) must also be accompanied with the current Pay Application. The selection process for a substitute subcontractor shall be evaluated for fairness and outreach efforts.
- C. Substitution of any subcontractor without the prior written approval by the Office of Business Opportunities shall be deemed to constitute a material breach of contract. The harm that shall accrue to the public is difficult to accurately estimate in advance. Consequently, the Contractor and the City shall jointly agree that a reasonable forecast of such damages is not less than ten (10%) percent of the subcontract price, and that the parties intend that such sum shall constitute liquidated damages as the best estimate of the harm accruing to the City.

XII. PROTESTED SOLICITATIONS AND AWARDS

A. Protests must be made in accordance to Procurement Regulation 1.22 under Appendix G.⁴

XIII. IMPACT ON OTHER CITY PROGRAMS

- A. This policy does not to apply to Mentor Protégé Projects due to the limited subcontractor opportunities.
- B. When this policy is applied to Subcontracting Outreach Programs, CDBE subcontractor firms WILL NOT be counted toward the bidder's SOP subcontractors.
- C. Where there is a Local Business Preference goal, CDBE subcontractor firms WILL NOT be counted toward the bidder's LBE subcontractors.
- D. However, where the goals are to be cumulative it will be outlined in the solicitation.

⁴ See Appendix for Protest Regulations.

XIV. Office of Business Opportunities Contacts:

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EXAMPLE FOR GOAL METHODOLOGY

	Anticipated Project Cost	Percentage of Weight	Number of DBE firms	Total Firms	Relative Availability	Weight	Relative Availability (multiplied by weight)
Construction	\$2,000,000	80.00%	29	328	0.08841463	0.8	0.070731707
Trucking	\$500,000	20.00%	30	60	0.5	0.2	0.1
Total Project	\$2,500,000		59	388	0.152061856	1	0.170731707

Goal Using
Relative
Availability
and Weight

17.07%