



**ADMINISTRATIVE  
PROCEDURES  
MANUAL**

CHARLOTTE BUSINESS INCLUSION | CITY OF CHARLOTTE | [Charlottenc.gov](https://www.charlottenc.gov)

# TABLE OF CONTENTS



- 1.0** Purpose
- 2.0** Certification and Registration
- 3.0** Goals
- 4.0** Good Faith Efforts
- 5.0** Responsibilities After Contract Award
- 6.0** Remedies and Liquidated Damages
- 7.0** Administration
- 8.0** Definitions

## 1.0 Purpose

The CBI Program Administrative Procedures Manual memorializes the operational policies for the CBI Program.

## 2.0 Certification & Registration

### 2.1 Small Business Enterprise Eligibility

#### 2.1.1 For Profit

Only for-profit Business Enterprises shall be eligible for Small Business Enterprise certification. Non-profit corporations, as defined by North Carolina General Statutes Section 55A-1-40(17), cannot become certified as SBEs.

#### 2.1.2 Licensed

A Business Enterprise must be authorized to do business in the State of North Carolina by the North Carolina Secretary of State.

#### 2.1.3 Eligible Owner Criteria

A person shall: (i) own at least fifty-one percent (51%) of the legal and equitable interest in the Business Enterprise; (ii) demonstrate that the legal and equitable interest in the Business Enterprise is owned in the person's own name; (iii) have acquired the legal and equitable interest with financial or equivalent resources; (iv) not exceed the cap for Personal Net Worth; (v) have Management and Control over the Business Enterprise; and (vi) be a United States citizen, United States permanent resident, or holder of a valid work visa from the United States government.

#### 2.1.4 Threshold Size

**2.1.4.1** A Business Enterprise and all of its Affiliates cannot exceed twenty-five percent (25%) of the applicable size standards for the Small Business Administration set forth in 13 CFR § 121.201 *et. seq.* as amended or successor regulation or classification system.

**2.1.4.2** Threshold size must be determined by: (i) the average of annual receipts over the three (3) preceding fiscal years; (ii) the number of employees; and/or (iii) other criteria established by the Business Inclusion Officer.

#### 2.1.5 Duration of Certification

Any certification of a Small Business Enterprise shall be valid for four (4) years from the date of issuance. A Business Enterprise may seek to be certified again but must comply with all applicable requirements of Section 2 before being issued a new certification. Prior certifications shall not entitle a Business Enterprise to a new and subsequent certification.

### **2.1.6 Graduation**

If a Small Business Enterprise and all of its Affiliates exceed the standard set forth in Section 2.1.4 at the time of its application, then the Small Business Enterprise and all of its Affiliates will be deemed ineligible for certification.

## **2.2 Minority-Owned Business Enterprise Registration**

### **2.2.1 Certification by the State of North Carolina**

A Business Enterprise must be certified by the State of North Carolina as a historically underutilized business within the meaning of North Carolina General Statutes § 143-128.4.

### **2.2.2 Duration of Registration**

Any registration of a Minority-Owned Business Enterprise shall be valid for the same duration as its certification by the State of North Carolina.

## **2.3 Women-Owned Business Enterprise Registration**

### **2.3.1 Certification by the State of North Carolina**

A Business Enterprise must be certified by the State of North Carolina as a historically underutilized business within the meaning of North Carolina General Statutes § 143-128.4.

### **2.3.2 Duration of Registration**

Any registration of a Women-Owned Business Enterprise shall be valid for the same duration as its certification by the State of North Carolina.

## **2.4 Commercially Useful Function**

**2.4.1** MWBE registration or SBE certification shall be denied if the Business Enterprise cannot perform a Commercially Useful Function.

**2.4.2** Factors for determining any Commercially Useful Function: (i) the amount of work performed by the Business Enterprise; (ii) industry practices; (iii) whether the amount the Business Enterprise is to be paid under the Contract is commensurate with the work it is actually performing; (iv) the MWSBE credit claimed for its performance of the work; and (v) other relevant factors.

**2.4.3** No Commercially Useful Function is demonstrated by a Business Enterprise if it merely acts as a Conduit.

**2.4.4** No Commercially Useful Function is demonstrated where the MWSBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force or where the MWSBE subcontracts a greater portion of the work of a Contract than would be expected on the basis of normal industry practice for the type of work involved.

## **2.5 Relevant Market**

**2.5.1** A Business Enterprise must be in the SBE Relevant Market if seeking SBE certification under Section 2.1 and/or must be in the MWBE Relevant Market if seeking MWBE registration under Section 2.2 or Section 2.3.

**2.5.2** For any Business Enterprise seeking SBE certification or MWBE registration, factors for determining whether the Business Enterprise is in the SBE Relevant Market or MWBE Relevant Market include, but are not limited to: (i) where the Business Enterprise is located or headquartered; (ii) the number of full-time employees; (iii) the location of managerial or decision-making personnel; (iv) any lease agreement; (v) any previous work awarded or performed; (vi) any previous Contract awarded or performed; and (vii) the percentage of income or revenue earned.

## **2.6 Affiliate Relationship**

**2.6.1** A totality of the circumstances test will be used by the Business Inclusion Officer to render a determination.

**2.6.2** Factors that will be considered include but are not limited to: (i) whether fifty percent (50%) or more of one Business Enterprise's annual gross revenue over the prior three (3) years was derived from the other Business Enterprise and (ii) whether there is common ownership, common management, shared facilities, shared assets, family relationships or other significant connections between the Business Enterprises.

## **2.7 Ineligibility**

A Business Enterprise shall not be registered as an MBE or WBE or certified as a SBE if a current official, officer or employee of the City has any ownership interest.

## **2.8 National Institute of Government Purchasing (NIGP) Commodity Code**

### **2.8.1 Current Standard**

When registering with or being certified by the CBI Program, the NIGP commodity codes shall be used by any Business Enterprise to describe all of its business activity that generates income.

### **2.8.2 Sustained Documented Business Activity**

A Business Enterprise must demonstrate that it possesses the skills, necessary licenses, experience and resources to perform in the NIGP commodity codes identified by the Business Enterprise. The burden shall be on the Business Enterprise to produce such documentation, including references, resumes, customer lists, contracts or other relevant documents. The City does not represent the qualification of any MWSBE based on its sustained documented business activity.

### **2.8.3 Voluntary Amendment of NIGP Commodity Codes**

A Business Enterprise may request to amend its designation of NIGP commodity codes if the Business Enterprise can fulfill the requirement of Section 2.8.2. The City does not represent the qualification of any Business Enterprise based on its voluntary amendment of any NIGP commodity code.

### **2.8.4 Involuntary Amendment of NIGP Commodity Codes**

Any NIGP commodity code listed for a Business Enterprise may be modified by the Business Inclusion Officer if (i) the Business Enterprise regularly fails to submit a Bid for work in a particular area or (ii) it becomes apparent that the Business Enterprise is not qualified to perform the work in a particular area. The City does not represent the qualification of any Business Enterprise based on its involuntary amendment of any NIGP commodity code.

### **2.8.5 Work Performed Outside NIGP Commodity Code Designation**

Nothing in Section 2.8 shall prohibit a Business Enterprise from engaging in work that has not been designated pursuant to Section 2.8.2 or from counting toward any Contract Goal as long as the Business Enterprise demonstrates that it will be performing the work in question.

### **2.8.6 Future Transition From NIGP to North American Industry Classification System (NAICS) Commodity Codes.**

In the future, should the CBI Program transition from NIGP commodity codes, all Business Enterprises shall seek registration or certification in specific subindustry commodity codes using the NAICS commodity codes. Business Enterprises may be registered or certified in more than one NAICS commodity code.

## 3.0 GOALS

### 3.1 Contract Goals

#### 3.1.1 Annual Aspirational Goal

A non-mandatory Annual Aspirational Goal shall be established for Contracts in the areas of (i) Construction; (ii) Goods & Commodities; (iii) Professional Services; and (iv) Services.

#### 3.1.2 Contract Goals

One or more Contract Goals may be established for all Contracts of \$100,000 or more.

#### 3.1.3 Types of Contract Goals

A Contract Goal can be a (i) MWSBE Goal, (ii) MBE Goal, (iii) SBE Goal, (iv) WBE Goal, (v) MSBE Goal, (vi) WSBE Goal or (vii) MWBE Goal.

#### 3.1.4 Participation Plan for Specific City Agreements

**3.1.4.1** Participation Plans shall be used for Contracts using the Infrastructure Reimbursements Agreements, Developer Agreements, Financial Partner agreements, design-build construction delivery method, construction manager at-risk delivery method, and public-private partnership construction delivery method. The Business Inclusion Officer may require a Participation Plan for other Contracts not specified in this section.

**3.1.4.2** The Business Inclusion Officer shall draft a Participation Plan describing what outreach and other efforts the Contractor will be required to undertake to meet the Contract Goals established for the Contract. Any revisions to a Participation Plan after submission shall be approved in writing by the Business Inclusion Officer.

#### 3.1.5 Negotiated Contract Goals

**3.1.5.1** The City may negotiate with a Business Enterprise regarding prospective MWSBE utilization on a Contract prior to its Solicitation. In such instances, the negotiation regarding any Contract Goals may involve scopes of work that are undefined prior to Solicitation but will consist of an overall City expenditure of funds that is known.

**3.1.5.2** The City's use of Section 3.1.5 will be on a case-by-case basis.

**3.1.5.3** Final approval of any negotiated Contract Goal will be made by the Business Inclusion Officer.

### **3.1.6 No Contract Goals**

Contract Goals will not be established on a Contract if (i) there are no MWSBEs to perform the work for the Contract (ii) it is an Exempt Contract.

## **3.2 Exempted Performance**

### **3.2.1 Contract with an MWSBE Goal**

A Business Enterprise that intends to perform 100% of the work on a Contract may submit an affidavit stating that the Bidder: (i) does not customarily Subcontract any element of work and (ii) normally performs, has the capability to perform, and will perform all elements of work on this Contract with its own current workforces. The affidavit shall be in a form provided by the City as part of the Solicitation. After approval by the Business Inclusion Officer, the Bidder shall not be required to comply with Section 3.

### **3.2.2 Grounds for Denial**

The Business Inclusion Officer may reject a Bid for non-compliance if (i) the Business Enterprise is not licensed to perform each and every type of work included in the Contract; (ii) based on past practice or other grounds, the Business Enterprise will not be performing all of the work under the Contract with its own current workforce; (iii) the request for approval is submitted more than three (3) Days of Bid Opening ; (iv) insufficient documentation is received to support the request; (v) any special skill-based qualification is available to and/or possessed by MWSBEs; or (vi) there is no significant increase in the cost to the Business Enterprise for an MWSBE to perform the scope of work.

## **3.3 Meeting Contract Goals**

### **3.3.1 Counting MWSBE Participation Toward Any Contract Goal (Generally)**

**3.3.1.1** MWSBEs will count toward an applicable Contract Goal if the MWSBE has fulfilled the requirements of Section 2.

**3.3.1.2** Any MWSBE Bidder may count the entire amount of the MWSBE's self-performance.



**3.3.1.3** When an MWSBE Subcontracts any part of the work to another Business Enterprise, the value of the Subcontract may be counted only if the MWSBE's Subcontractor is itself an MWSBE. Work that an MWSBE Subcontracts to a non-MWSBE does not count toward the Contract Goal.

**3.3.1.4** Any Bidder may count the entire amount of any MWSBE Subcontractor, including the cost of supplies and materials purchased or leased by any MWSBE Subcontractor for use on the Contract so long as the MWSBE is responsible for ordering and paying for the materials and supplies in full, using its own credit and accepting all the risks of the purchase. Supplies and equipment purchased or leased by any MWSBE Subcontractor from the Contractor or its Affiliate does not count toward the Contract Goal.

**3.3.1.5** Any Bidder may count the entire amount of fees or commissions charged by an MWSBE for providing a bona fide service. Examples include but are not limited to (i) professional, technical, consultant, or managerial services or (ii) providing bonds or insurance specifically required for the performance of a Contract. Any fee must be reasonable and not excessive as compared with fees customarily allowed for similar services.

### **3.3.2 Counting MWSBE Participation Toward Any Contract Goal for Hauling**

**3.3.2.1** Fees or commissions charged by an MWSBE hauler for providing a Commercially Useful Function shall count toward meeting the applicable Contract Goals. The costs of a hauler's materials or supplies shall not count as part of the fees or commissions.

### **3.3.3 Counting MWSBE Participation Toward Any Contract Goal for Joint Venture**

**3.3.3.1** The MWSBE participant in the Joint Venture must be responsible for a clearly defined portion of the work to be performed equal to its share in the ownership, control management, responsibility, risks and profits of the Joint Venture.

**3.3.3.2** The Business Inclusion Officer shall review the profits and losses, initial capital investment, actual participation of the MWSBE Joint Venture participant, and other pertinent factors of the Joint Venture.

**3.3.3.3** Any request to count a Joint Venture toward any Contracting Goal shall be received at least fourteen (14) Days before Bid Opening by the Business Inclusion Officer. A decision on the request shall be made no later than five (5) Days before Bid Opening.

### **3.3.4 No Double-Counting**

If a Business Enterprise is registered as an MBE or WBE and also certified as an SBE, then the Contractor shall select which Contract Goal the Business Enterprise shall count toward. No Business Enterprise shall count toward an MBE Goal or WBE Goal and also count toward a SBE Goal.

### **3.3.5 Recruitment of MWSBEs**

**3.3.5.1** Nothing shall prohibit the recruitment of MWSBEs who have not previously fulfilled the requirements of Section 2 to meet the Contract Goals so long as the MWSBE fulfills the requirements of Section 2 prior to Bid Opening.

**3.3.5.2** No Bidder shall require any MWSBE firm to exclusively bid with that Bidder.

## **3.4 Contract Goals Methodology**

**3.4.1** Weight the estimated dollar value of the scopes by the NIGP commodity codes, as determined during the process of creating the Solicitation.

**3.4.2** Determine the unweighted availability of MWSBEs in those scopes, as estimated in the Disparity Study.

**3.4.3** Calculate a weighted goal based upon the scopes and the availability of at least three (3) available Business Enterprises in each scope. Examples include (i) at least three (3) firms available that are MBEs or WBEs for a combined MWBE Goal and (ii) at least three (3) firms available that are WBEs for a WBE Goal.

**3.4.4** Adjust the resulting percentage based on current market conditions and progress toward the Annual Aspirational Goal, if appropriate.

## **3.5 MWSBE Participation Documentation**

### **3.5.1 Utilization and Good Faith Effort Affidavit**

The City shall be provided with an affidavit (i) capturing the MWSBEs and/or other Business Enterprises that will be used on the Contract and (ii) providing all Good Faith Effort Documentation set forth in Section 4.

### **3.5.2 Letter of Intent**

The City shall be provided with a letter of intent for each MWSBE listed in Section 3.5.1. and each letter of intent shall be executed by the MWSBE and Contractor.

### 3.5.3 Submission Deadline

The Utilization and Good Faith Effort Affidavit shall be submitted within one (1) Day of Bid Opening or as otherwise specified by the CBI Office. Any letter of intent shall be submitted within three (3) Days of Bid Opening or as otherwise specified by the CBI Office.

## 4.0 GOOD FAITH EFFORTS

### 4.1 Good Faith Efforts Categories

#### 4.1.1 Contacts (10 Points)

Any communication with MWSBEs must be through personal, frequent and persistent contact and by promptly returning telephone calls, facsimiles and emails. MWSBEs shall be contacted in a manner reasonably calculated to meet each Contract Goal established for the Contract. Factors considered may include, but are not limited, to:

- 4.1.1.1 The number of MWSBEs contacted in the Relevant Market;
- 4.1.1.2 Whether MWSBEs perform scopes of work sufficient to meet each Contract Goal;
- 4.1.1.3 Whether the contacts were made for the first time at least ten (10) Days before the Bid Opening;
- 4.1.1.4 How the contacts were made;
- 4.1.1.5 Whether the contacts were documented in a verifiable way (and in compliance with any forms provided by the City);
- 4.1.1.6 Whether the substance of the Vendor Documents was reasonably sufficient to generate a response from MWSBEs;
- 4.1.1.7 Whether prompt and adequate responses were provided to MWSBE inquiries;
- 4.1.1.8 Whether follow-up contacts were made to MWSBEs that did not respond to the initial contact;
- 4.1.1.9 Whether the Bidder provided the project name and Vendor Documents;

**4.1.1.10** And whether a written or electronic correspondence log was maintained that listed the names of MWSBEs contacted, telephone or fax numbers, email addresses, dates of contact, scope of work for each MWSBE that was asked to provide a bid, and the results of that contact.

#### **4.1.2 Making Plans Available (10 Points)**

The Solicitation and Vendor Documents shall be available at least ten (10) Days before the Bid Opening for inspection by any MWSBE contacted under Section 4.1.1. MWSBEs may access the Solicitation and Vendor Documents at no cost to them either (i) through an email address or electronic document storage, (ii) on a website, (iii) at a physical address, (iv) by a mailing address, and/or (v) by a telephone/fax number.

#### **4.1.3 Breaking Down Work (10 Points)**

Any work for MWSBEs should be broken down or combined to facilitate MWSBE participation and provided to any MWSBE contacted under Section 4.1.1. The breakdown or combination of work may be shown through active negotiations with MWSBEs or by placing the scopes of work in the Vendor Documents and expressing a willingness to negotiate with MWSBEs about the scope of work. No points shall be awarded for simply restating the scopes of work listed in the Solicitation.

#### **4.1.4 Working with Assistance Organizations (10 Points)**

Any outreach to an MWSBE Assistance Organization for the recruitment of MWSBEs must occur at least ten (10) Days before Bid Opening. No points shall be awarded for only posting the Vendor Documents on the website of the MWSBE Assistance Organization. Examples of working with assistance organizations include, but are not limited to, holding a project-specific information session with an organization, presenting at a member meeting or holding an outreach event with the organization.

#### **4.1.5 Attendance at Pre-Bid (10 Points)**

The name and signature of the Business Enterprise's representative must be placed on the City's sign-in sheet for any Solicitation meeting or attendance recorded by the City if any Solicitation meeting is held virtually.

#### **4.1.6 Bonding or Insurance Assistance on Construction Contract (20 Points)**

MWSBEs should receive significant and meaningful bonding, insurance, or an alternative to bonding and insurance requirements and any corresponding verification shall provide (i) the MWSBE's contact information; (ii) a description of what was provided; (iii) when it was provided; and (iv) any additional information requested by the City. No points shall be awarded for any assistance provided to an Affiliate.

#### **4.1.7 Negotiating in Good Faith with MWSBEs (10 Points)**

Frequent communications must demonstrate an ongoing good faith negotiation with any MWSBE about performing a scope of work. If the MWSBE is not utilized, then any corresponding verification shall provide (i) the MWSBE's contact information; (ii) a description of the scope of work discussed during the negotiation; (iii) the price for the scope of work; (iv) when the negotiation occurred; (v) the results of the negotiation; (vi) any legitimate reason for not utilizing the MWSBE; and (vii) the responses to the Vendor Documents from other Business Enterprises. No points shall be awarded for any assistance provided to an Affiliate, for reasons deemed to be illegitimate by the City, or for failure to fulfill Section 4.1.1.

#### **4.1.8 Financial Assistance (25 Points)**

MWSBEs should receive significant and meaningful financial assistance and any corresponding verification shall provide (i) the MWSBE's contact information; (ii) a description of what was provided; (iii) when it was provided; and (iv) any additional information requested by the City. No points shall be awarded for any assistance provided to an Affiliate.

#### **4.1.9 Entering into a Joint Venture (20 Points)**

Any Business Enterprise negotiating to create a Joint Venture shall provide the following corresponding verification: (i) the MWSBE's contact information; (ii) a description of the proposed Joint Venture; (iii) when it was offered; and (iv) any additional information requested by the City. No points shall be awarded for any assistance provided to an Affiliate.

#### **4.1.10 Quick Pay Commitment on Contracts Up for Award (20 Points)**

A written Quick Pay Commitment must be provided to all MWSBEs contacted under Section 4.1.1 and must be provided prior to Bid Opening. No points shall be awarded if (i) no points were awarded for Section 4.1; (ii) the Quick Pay Commitment has a statement indicating that the Bidder will consider entering into a Quick Pay Commitment; or (iii) the Bidder only verbally communicated the Quick Pay Commitment to the Subcontractor.

### **4.2 Modified Good Faith Efforts**

#### **4.2.1 Applicability**

A Contractor shall comply with Section 4.2 after the occurrence of an event listed in Section 5.3 and Section 5.4.

#### **4.2.2 Modified Contacts**

The Contractor must solicit at least seven (7) MWSBEs for the respective Contract Goal if the scope of work has seven (7) or more MWSBEs. If the scope of work has six (6) or less MWSBEs, Contractor must solicit at least three (3) MWSBEs for the respective Contract goal, unless the Business Inclusion Officer agrees in writing to a lower number

#### **4.2.3 Applicability of Section 4.1**

With the exception of Section 4.1.1 and Section 4.1.5, all remaining provisions of Section 4.1 shall be applicable for Modified Good Faith Efforts.

### **4.3 Good Faith Efforts Documentation**

Good Faith Efforts Documentation must be submitted within the time specified by the City and may be requested from all Bidders, one Bidder or specific Bidders. Regardless of when the Good Faith Effort Documentation is due, all actions necessary to earn the points under Section 4.1 must be undertaken prior to the Bid Opening.

### **4.4 Demonstration of Good Faith Efforts**

#### **4.4.1 Minimum Points**

A minimum of fifty (50) points must be awarded from the available Good Faith Efforts Categories in Section 4.1.

#### **4.4.2 Failure to Achieve Minimum Points**

Good Faith Efforts have not been demonstrated if forty-nine (49) or less points have been awarded. The Business Inclusion Officer shall recommend rejection of a Bid if Good Faith Efforts have not been demonstrated.

#### **4.4.3 Additional Considerations**

The Business Inclusion Officer can take into consideration the performance of the other Bidders and their achievement toward the Contract Goal when determining if a Bidder has achieved Good Faith Efforts. Additionally, the Business Inclusion Officer can take into consideration the Bidder's past performance toward meeting Contract Goals on past City contracts.

## **5.0 Responsibilities After Contract Award**

### **5.1 Contract Goal**

#### **5.1.1 Ongoing Affirmative Obligation**

Contractors shall have an affirmative, ongoing obligation to meet or exceed any Contract Goal for the duration of the Contract.

#### **5.1.2 Exception to Ongoing Affirmative Obligation**

A Contractor shall not be deemed to be in violation of the CBI Program for failure to meet any Contract Goal if the (i) City has eliminated any prospective work to be performed by an MWSBE; (ii) City has reduced any prospective work to be performed by an MWSBE; or (iii) MWSBE Subcontractor voluntarily withdrawals from the Contract for any reason not within the Contractor's reasonable control.

### **5.2 Change in Status of an MWSBE**

#### **5.2.1 Expiration or Graduation**

**5.2.1.1** If an MWBE registration expires or SBE certification expires, then the dollars already paid to the MWSBE on the Contract, prior to the event, shall count toward any Contract Goal.

**5.2.1.2** If an SBE graduates, then the dollars paid to the SBE on the Contract shall count toward any Contract Goal for the duration of that Contract. Any Contract awarded after an SBE graduates will not count toward any Contract Goal.

### **5.2.2 Affiliate**

If an MWSBE is found to be an Affiliate of the Contractor, then the dollars paid to the MWSBE shall not count toward any Contract Goal.

### **5.2.3 Commercially Useful Function**

Any dollars paid to the MWSBE not performing a Commercially Useful Function shall not count toward any Contract Goal on or after the date that the Contractor knew, should have known, or had constructive notice of that the MWSBE was not performing a Commercially Useful Function.

### **5.2.4 Suspension or Termination by Business Inclusion Officer**

If the Business Inclusion Officer suspends or terminates an SBE's certification or MWBE's registration for any reason, then any dollars paid to the MWSBE shall not count toward any Contract Goals after the date of suspension or termination.

## **5.3 MWSBE's Termination, Replacement or Reduction of Work**

### **5.3.1 Ongoing Obligation**

A Contractor shall not terminate, replace or reduce the work of any MWSBE counting toward any Contract Goal without approval by the Business Inclusion Officer.

### **5.3.2 Written Notice of Request**

**5.3.2.1** A Contractor shall provide notice of its request to terminate, replace or reduce the work of any MWSBE Subcontractor and shall give it to the Department Head, Business Inclusion Officer and any affected MWSBE Subcontractor.

**5.3.2.2** Such notice must (i) identify the MWSBE Subcontractor and the Contract; (ii) state the reason for the request; (iii) state when the requested action would occur; (iv) be provided at least ten (10) Days in advance of when the requested action would occur; and (v) provide documentation (if applicable) to substantiate the reason for the request.

### **5.3.3 Limited Justification for Request**

**5.3.3.1** The Business Inclusion Officer shall grant the Contractor's request if the MWSBE Subcontractor fails or refuses to execute a Subcontract consistent with the MWSBE Subcontractor's letter of intent under Section 3.5.2.



- 5.3.3.2** The Business Inclusion Officer shall grant the Contractor's request if the MWSBE Subcontractor voluntarily withdraws from the Contract for any reason not within the Contractor's reasonable control.
- 5.3.3.3** The Business Inclusion Officer shall grant the Contractor's request if the MWSBE Subcontractor materially breaches its contract with the Contractor.
- 5.3.3.4** The Business Inclusion Officer shall grant the Contractor's request if the City has eliminated any prospective work to be performed by the MWSBE Subcontractor.
- 5.3.3.5** The Business Inclusion Officer shall grant the Contractor's request if the listed MWSBE Subcontractor fails or refuses to perform the work of its Subcontract in a way consistent with normal industry standards. Good cause does not exist, however, if the failure or refusal of the MWSBE Subcontractor to perform its work on the Subcontract results from the bad faith or discriminatory action of the Contractor.
- 5.3.3.6** The Business Inclusion Officer may grant the Contractor's request if the listed MWSBE Subcontractor becomes bankrupt, insolvent or exhibits credit unworthiness.
- 5.3.3.7** The Business Inclusion Officer may grant the Contractor's request if (i) the listed MWSBE Subcontractor is ineligible to work on any Contract because of debarment; (ii) the SBE Subcontractor's certification and MBE's registration is suspended or terminated by the Business Inclusion Officer; or (iii) by applicable federal or state law.
- 5.3.3.8** The Business Inclusion Officer may grant the Contractor's request if the owner of the MWSBE dies or becomes disabled with the result that the listed MWSBE Subcontractor is unable to complete its work on the Contract.

## **5.4 New Subcontracting Opportunities**

### **5.4.1 Ongoing Obligation**

If a Contract has a previously unidentified opportunity for MWSBE participation or if a scope of work has been enlarged or increased, then the Contractor shall notify the Department Head.

### 5.4.2 Notice

Contractor shall promptly notify the Department Head of the new opportunity for MWSBE participation and whether existing MWSBE Subcontractors on the Contract can and/or will perform the new work.

### 5.4.3 Response

Upon receipt of the notice under Section 5.4.2, the Department Head shall notify the Contractor that (i) there will be no Supplemental Goal or (ii) there will be a Supplemental Goal based on MWSBE availability.

## 5.5 Quick Pay Commitment

Any Business Enterprise that offers a Quick Pay Commitment to any MWSBE Subcontractor in its Vendor Documents shall not rescind the Quick Pay Commitment.

## 6.0 Remedies and Liquidated Damages

### 6.1 Remedies

#### 6.1.1 Violations by Contractor

A violation of the CBI Program by a Contractor is deemed to be a material breach of the Contract.

#### 6.1.2 Rights

The City shall be entitled to (i) exercise all rights and remedies at law or at equity; (ii) terminate the Contract for default; (iii) suspend the Contract for default; (iv) withhold all payments due to the Contractor until the violation has been fully cured; (v) withhold all payments due to the Contract until a mutually agreeable resolution has been reached with the City; and/or (vi) assess any liquidated damages under Section 6.2. The remedies set forth herein shall be deemed cumulative and not exclusive, and may be exercised successively or concurrently, in addition to any other available remedy.

### 6.2 Liquidated Damages

#### 6.2.1 Failure to Meet Contract Goal

If a Contractor will not or did not meet a Contract Goal and such failure is not excused pursuant to Section 5.1.2, then the City may assess the lesser of (a) \$200,000 or (b) the dollar difference between the Contract Goal and the Contractor's actual MWSBE utilization. This may be assessed only once per Contract.

### **6.2.2 Use of a Conduit**

If the Contractor lists an MWSBE for a Contract Goal with knowledge that the MWSBE will be acting as a Conduit or will not be performing a Commercially Useful Function, the City may assess the lesser of (a) \$100,000 per incident or (b) the dollar amount stated on the MWSBE's letter of intent.

### **6.2.3 Wrongful Termination or Replacement of an MWSBE Subcontractor**

If the Contractor terminates or replaces an MWSBE Subcontractor in violation of Section 5.3.1, then the City may assess the lesser of (a) \$50,000 per incident or (b) the dollar amount of the prospective work to be performed by the MWSBE Subcontractor.

### **6.2.4 Failure to Perform Modified Good Faith Efforts**

If the Contractor fails to comply with Section 4.2, then the City may assess the lesser of (a) \$50,000 per incident or (b) the dollar amount of the prospective work to be performed by the MWSBE Subcontractor.

### **6.2.5 False Statements and Misrepresentations**

If the Contractor makes a false statement, material misrepresentation, or material misleading omission regarding any matter, then the City may assess the lesser of (a) \$50,000 per incident or (b) the dollar difference between the Contractor represented as payment and what was actually paid. In the event of any overlap between Section 6.2.5 and Section 6.2.2, then the damages set forth in Section 6.2.2 shall apply.

### **6.2.6 Failure to Respond to Request for Information**

If the Contractor fails to provide any report, documentation, affidavit, certification or written submission required under the CBI Program within the time period set forth therein, the City may assess \$40 per Day until receipt of the item.

### **6.2.7 Use of An Affiliate to Meet the Contract Goal**

If the Contractor listed an MWSBE for a Contract Goal with knowledge that the MWSBE is an Affiliate and the City cannot invoke Section 5.2.2, then the City may assess the lesser of (a) \$75,000 per incident or (b) the dollar amount paid to the MWSBE Affiliate. In the event of any overlap between Section 6.2.7 and Section 6.2.2, then the damages set forth in Section 6.2.2 shall apply.

### **6.2.8 Quick Pay Commitment**

If a Quick Pay Commitment is offered to any MWSBE Subcontractor in the Vendor Documents but is not subsequently honored, then the City may assess the lesser of (a) \$50,000 or (b) ten percent (10%) of the dollar amount listed on the MWSBE Subcontractor's letter of intent.

### **6.2.9 Violation of Exempt Performance Allowance**

If a Contractor submits an affidavit under Section 3.2 but Subcontracts thereafter, then the City may assess the lesser of (a) \$25,000 per incident or (b) the dollar amount of the work performed by any and all Subcontractors.

## **6.3 Flow Down**

The City shall be entitled to exercise all remedies and recover all damages set forth in Section 6 directly from each Contractor that the City enters into a Contract with, regardless of whether such remedies or damages are due to a breach by that Contractor or by a Subcontractor on the applicable project. Each Contractor on a Contract shall be responsible for taking appropriate measures to enable it to exercise all remedies and recover all damages set forth in Section 6 directly from each Subcontractor. Additionally, the City shall be a third-party beneficiary to each Contract for the purpose of seeking injunctive relief and other remedies to the extent necessary to enforce the CBI Program directly against Contractors, though the City shall have no obligation to do so.

## **7.0 Administration**

### **7.1 Expectations**

MWSBEs are responsible for (i) promoting themselves and taking the initiative to obtain work on Contracts; (ii) monitoring any City website for posting of any Solicitation; (iii) making every effort to establish contacts and relationships with prospective Bidders for potential future business; (iv) responding promptly to any Solicitation; and (v) attending any seminar, class and workshop designed to facilitate networking and/or enhance business skills.

### **7.2 Business Inclusion Officer's Roles and Responsibilities (Additional)**

**7.2.1** Review, monitor and ensure compliance with the requirements of the CBI Program, including developing rules, regulations, policies and procedures to implement the CBI Program.

**7.2.2** Develop and maintain procedures to ensure that MWSBEs are able to compete on all City contracts and provide technical assistance to increase MWSBEs' ability to effectively compete for Contracts.

- 7.2.3** Develop appropriate CBI Program language in consultation with the Office of the City Attorney.
- 7.2.4** Set any Contract Goal on all appropriate Contracts, including Contract modifications, and implement the narrowly tailored Contract Goal setting methodology set forth in this Manual in consultation with Departments.
- 7.2.5** Monitor and report the progress of MWSBE participation and non-MWSBE participation in all Solicitations and Contracts by Department by evaluating a Contractor's achievement of a Contract Goal or Good Faith Efforts.
- 7.2.6** Work with Departments to ensure prompt payments to all Contractors and Subcontractors and compliance with applicable Contract Goals.
- 7.2.7** Assess and recommend periodically any process changes that may be necessary to improve the overall effectiveness of the CBI Program.
- 7.2.8** Assist all Departments, Contractors and Subcontractors with the implementation and/or application of the CBI Program.
- 7.2.9** Facilitate and supervise regularly scheduled training to City employees on the CBI Program.
- 7.2.10** Manage the collection of data related to the operations and outcomes of the CBI Program.

### **7.3 Department's Roles and Responsibilities**

- 7.3.1** Designate any City personnel who shall be the point of contact for monitoring and reporting CBI Program compliance to the Business Inclusion Officer.
- 7.3.2** Notify and provide the Business Inclusion Officer of any anticipated Solicitation and the necessary information to determine whether a Contract Goal should be set.
- 7.3.3** Evaluate anticipated Solicitations to unbundle items or services to permit quotes on quantities or scopes of work less than the total requirement or the performance of discreet portions of the work where feasible.
- 7.3.4** Ensure that all applicable provisions of the CBI Program are included in Solicitations and Contracts.
- 7.3.5** Assist the Business Inclusion Officer in identifying potential MWSBEs for participation in any Contract.
- 7.3.6** Assist in the development, monitoring and implementation of Contract Goals.

- 7.3.7** Assure compliance with the CBI Program by managing Contracts in a consistent manner and by assisting in the compilation of Contract data for MWBE availability and utilization.

## **7.4 Utilization Reports and Documentation of Payments**

### **7.4.1 Minimum Dollar Threshold**

For all Contracts of \$10,000 or more, Contractors (i) shall report to the City the total dollars paid to each MWSBE and all other Subcontractors on each Contract and (ii) shall provide such payment affidavits, certifications or other documentation regarding payment to Subcontractors as may be requested by the City from time to time. The absence of any Contract Goal on a Contract shall not relieve the Contractor of the Contractor's obligation to submit Payment Affidavits.

### **7.4.2 Submission Deadline**

If the Contract will be performed within six (6) months or less, then the Payment Affidavit may be submitted with the final deliverable into the Compliance System designated under Section 7.5. If the Contract will not be performed within six (6) months, then the Payment Affidavit shall be submitted into its Compliance System designated under Section 7.5 at such times as required by the City.

## **7.5 Compliance, Reporting and Investigations**

### **7.5.1 Compliance System and Reporting**

The City has designated InclusionCLT as its B2GNow compliance and monitoring system for the CBI Program. Any Solicitation shall specify InclusionCLT and require it to be used by any Contractor to submit payment records and other compliance related activities as required by the City.

### **7.5.2 Annual Report**

On an annual basis, the Business Inclusion Officer will issue a report showing and comparing the availability and utilization of MWSBEs on Contracts, and any information requested by the City Manager or the Charlotte City Council.

### **7.5.3 Requests for Information**

If the Business Inclusion Officer or Department Head requests information, documents or other materials from a Contractor for the purpose of determining whether the Contractor is in compliance with the CBI Program, then the Contractor shall promptly comply within three (3) Days, unless otherwise agreed to by the City in writing.

#### **7.5.4 Filing a Complaint**

If an MWSBE has a complaint, then a written complaint can be filed in writing. Such complaints must specify the reasons underlining the complaint and may include any information, documents or arguments supporting the complainant's assertion. Please email any complaint to [CBIComplaint@charlottenc.gov](mailto:CBIComplaint@charlottenc.gov) for review.

#### **7.5.5 Investigations**

The Business Inclusion Officer may investigate complaints and/or allegations involving compliance, eligibility for certification, eligibility for registration and/or other matters. The Business Inclusion Officer may also initiate its own investigation without a complaint or allegation and may conduct onsite visits.

#### **7.5.6 Burden of Proof**

The burden of proof shall be on the party asserting that it is or was compliant with the CBI Program. Any ambiguity or conflict shall be construed against the party asserting that it is or was compliant.

#### **7.5.7 Consultation with Department Head**

If the Business Inclusion Officer determines a Contractor is violating or has violated the CBI Program, the Business Inclusion Officer shall consult with the appropriate Department Head about the appropriate remedies. Thereafter, the Business Inclusion Officer shall make the decision.

### **7.6 Mediation of Disputes**

**7.6.1** Should a dispute arise on a Contract, any Business Enterprise has a right to request mediation between the parties involved. The Business Enterprise shall contact the Department issuing the Contract in order to request mediation.

**7.6.2** The Department and the Business Inclusion Officer may conduct a non-binding mediation of the dispute. If the parties achieve a favorable outcome from their mediation, then it can be memorialized for signature.

**7.6.3** The Business Inclusion Officer nor the City will not and cannot guarantee a successful outcome if mediation is sought by any Business Enterprise.

**7.6.4** No right of appeal exists for any mediation conducted under Section 7.6.

### **7.7 Mandatory Contract Provisions**

All Contracts shall include the provisions set forth below, subject to such minor revisions as may be necessary to achieve consistent terminology:

**CBI Program. The parties acknowledge and agree that:**

- (a) The Charlotte Business Inclusion Program Policy (“CBI Policy”) and its Administrative Procedures Manual (“CBI Manual”) are posted on the City’s website and available in hard copy form upon request. Both the CBI Policy and CBI Manual comprise the CBI Program.
- (b) The terms of the CBI Program, as revised from time to time, are incorporated into this Agreement by reference.
- (c) A violation of the CBI Program shall constitute a material breach of this Agreement and shall entitle the City to exercise any of the remedies set forth in the CBI Program, including but not limited to liquidated damages.
- (d) The City will incur damages if the Contractor violates the CBI Program, including but not limited to loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources. The parties further acknowledge and agree that the damages the City might reasonably be anticipated to incur as a result of such failures are difficult to ascertain due to their indefiniteness and uncertainty. Accordingly, the Contractor agrees to pay the liquidated damages assessed by the City at the rates set forth in the CBI Program for each specified violation. The Contractor further agrees that for each specified violation the agreed upon liquidated damages are reasonably proximate to the loss the City will incur as a result of such violation.
- (e) Without limiting any of the other remedies the City has under the CBI Program, the City shall be entitled to withhold periodic payments and final payment due to the Contractor under this Agreement until the City has received in a form satisfactory to the City all claim releases, payment affidavits and other documentation required by the CBI Program. In the event payments are withheld under this provision, the Contractor waives any right to interest that might otherwise be warranted on such withheld amount under North Carolina General Statutes Section 143-134.1.
- (f) The remedies set forth in the CBI Program shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.
- (g) The Contractor agrees to participate in any dispute resolution process specified by the City from time to time for the resolution of disputes arising from the CBI Program.
- (h) Nothing in this Section shall be construed to relieve a Contractor from any obligation it may have under North Carolina General Statutes Section 143-134.1 regarding the payment of subcontractors.



- (i) **Payment Reporting:** As a condition for receiving payments under this Agreement, the Contractor agrees to submit any payment record into InclusionCLT, or any subsequent system designated by the City, detailing the amounts paid by the Contractor to all subcontractors and suppliers receiving payment in connection with this Contract.

## 7.8 Anti-Discrimination

The City is committed to promoting equal opportunities in City contracting. The City has adopted a Commercial Non-Discrimination Policy that prohibits discrimination on the basis of race, color, gender, religion, national origin, ethnicity, age, familial status, sex (including sexual orientation, gender identity and gender expression), veteran status, pregnancy, natural hairstyle or disability in connection with City Contracts, including discrimination in the solicitation, selection, hiring, or treatment of vendors, suppliers, subcontractors, or commercial customers on the basis of a protected class, or on the basis of any otherwise unlawful use of characteristics regarding such vendor's, supplier's, or commercial customer's employees or owners in connection with a City contract or solicitation. The City further prohibits retaliation against any person, Business Enterprise, or other entity for reporting any incident of prohibited discrimination.

## 7.9 Contractor Payments to MWSBEs

### 7.9.1 Statutory Requirement

N.C. General Statutes § 143-134.1(b) states “Within seven days of receipt by the prime contractor of each periodic or final payment, the prime contractor shall pay the subcontractor based on work completed or service provided under the subcontract. If any periodic or final payment to the subcontractor is delayed by more than seven days after receipt of the periodic or final payment by the prime contractor, the prime contractor shall pay the subcontractor interest, beginning on the eighth day, at the rate of one percent (1%) per month or fraction thereof on such unpaid balance as may be due.”

### 7.9.2 Quick Pay Commitment

If a Contractor has made a Quick Pay Commitment, then the Contractor shall comply with any provisions of the Quick Pay Commitment that are more stringent than N.C. General Statutes § 143-134.1(b) but shall also remain bound by N.C. General Statutes § 143-134.1(b).

## **7.10 Outreach**

### **7.10.1 Engagement**

The Business Inclusion Officer will develop programs and activities including, but not limited to, networking opportunities, workshops, professional development, financial management and continuing education.

### **7.10.2 Directory**

MWSBEs shall be listed in either an electronic database or electronic directory and be accessible to the public. Each MWSBE will have the following information displayed: (i) name; (ii) contact person; (iii) contact information; (iv) National Institute of Government Purchasing commodity code or North American Industry Classification System commodity code; and (v) certification type.

### **7.10.3 CBI Advisory Committee**

The Charlotte City Council established this committee and its charge. In addition, the Business Inclusion Officer may also consult with the CBI Advisory Committee regarding SBE Goals, MBE Goals, WBE Goals, MWBE Goals, MSBE Goals, WSBE Goals and MWSBE Goals for various Contracts.

## **7.11 Small Business Market Strategy**

**7.11.1** The Business Inclusion Officer may develop a market strategy for SBEs that may consist of setting aside certain classes or sizes of contracts for targeted Solicitations to SBEs.

**7.11.2** In the event that a non-SBE submits a Bid if the market strategy is used, then the Department shall not reject the Bid of the non-SBE and must consider the Bid of the non-SBE in response to the Solicitation.

## **7.12 Financial Partners**

### **7.12.1 Exemption**

If a Financial Partner currently administers a program for MWSBEs, then the Financial Partner may seek an exemption from the Business Inclusion Officer by communicating an intent to use the Financial Partner's existing program in lieu of adhering to the CBI Program. Determinations are made on a case-by-case basis by Business Inclusion Officer.

### **7.12.2 Contract Goals**

A Financial Partner shall be subject to Section 3 and Section 4 if the Financial Partner has not been exempted pursuant to Section 7.11.1.

## **7.13 Planning and Development**

### **7.13.1 Goals Committee**

One or more Goals Committees may be established to advise and assist the Business Inclusion Officer in determining SBE Goals, MBE Goals, WBE Goals, MWBE Goals, MSBE Goals, WSBE Goals and/or MWSBE Goals for any Contract. Goals Committees, if appointed, shall consist of individuals with first-hand knowledge of the applicable service or industry.

### **7.13.2 Procurement Forecast**

Each Department Head shall submit a forecast of Contracts into EarlyBird or other system designated by the City, to be awarded within the next twelve (12) months and identify the MWSBE opportunities by industry, scope of work, and estimated project cost.

### **7.13.3 Project Notification**

At least ten (10) Days before Bid Opening, each Department should provide a project notification to MWSBEs to inform them of (i) the applicable Contractor Goal; (ii) the description of work being solicited; (iii) date, time and location where a Bid has to be submitted; (iv) contact information for any City personnel who could answer questions about the Contract; (v) how to access the Solicitation; and (vi) any special requirements that may exist.

## **7.14 Extension**

The Business Inclusion Officer may grant a written extension of any deadline set forth in this Section 7. No extension shall be valid unless documented in writing by the City.

## **7.15 Waivers**

### **7.15.1 Minor Non-Compliance**

The Business Inclusion Officer may, but is not obligated to, waive non-compliance if (i) it is minor in nature, (ii) waiving the non-compliance would not put other Business Enterprises at a competitive disadvantage for the Contract, and (iii) the Business Enterprise seeking the waiver has not exhibited a pattern or practice of non-compliance.

### **7.15.2 Good Faith Efforts**

The Business Inclusion Officer may, but is not obligated to, waive Good Faith Efforts where (i) the lowest responsible, responsive Bidder did not meet the requirements of Section 4 and (ii) the lowest responsible, responsive Bidder has MWSBE utilization that is greater than the next lowest responsible, responsive Bidder that meets the requirements of Section 4. Factors that will be taken into account include (i) the difference in costs between the Bids; (ii) the difference in MWSBE utilization between the Bids; (iii) the difference in points demonstrating Good Faith Efforts between the Bids; and (iv) any prior MWSBE utilization by the lowest responsible, responsive Bidder that did not meet the requirements of Section 4.

### **7.15.3 Validity**

No waiver under Section 7.15.1 and Section 7.15.2 shall be valid until issued in writing either by the Business Inclusion Officer. No oral representation by any City employee, official, agent or representative shall be effective or bind the City.

### **7.15.4 Notice**

The Business Inclusion Officer may issue a waiver for non-compliance without notice to or approval by the City Manager.

## **7.16 Suspension, Revocation or Modification**

A Business Enterprise may have its certification and/or registration suspended, revoked or modified for any violation of the Charlotte Business Inclusion Program.

## **7.17 Administrative Reconsideration Reviews**

### **7.17.1 Written Notice of Appeal**

The notice of appeal must identify the decision being appealed and state why the person or Business Enterprise disagrees with the decision. This must be submitted within three (3) Business Days of the initial determination via e-mail to [CBIAppeal@charlottenc.gov](mailto:CBIAppeal@charlottenc.gov) for review by the Business Inclusion Officer.

### **7.17.2 Administrative Reconsideration – General Deadline**

Any person or Business Enterprise, who is directly and adversely affected by a determination under the CBI Program Administrative Procedures Manual, may appeal such decision to the Business Inclusion Officer within five (5) Business Days after receiving notice of the decision. This paragraph shall not be construed to create a right of standing that does not otherwise exist under North Carolina law.

### 7.17.3 Administrative Reconsideration – Recommendation on Awarding a Contract Deadline

Any person or Business Enterprise, who is directly and adversely affected by a recommendation for the awarding of a Contract, may appeal such decision to the Business Inclusion Officer within three (3) Business Days after the person or Business Enterprise first learned of the decision for which review is sought. For example, if a Bidder learns at 10 a.m. on Monday, March 1, that the City is rejecting its Bid due to non-compliance with the CBI Program, and the Bid Award is set for the following Monday, March 8, the Bidder must request a review in writing to the Business Inclusion Officer by 10 a.m. Thursday, March 4. This paragraph shall not be construed to create a right of standing that does not otherwise exist under North Carolina law.

### 7.17.4 Administrative Reconsideration - City Manager Review

Any person or Business Enterprise may seek a review of the Business Inclusion Officer's decision and must notify the Business Inclusion Officer within three (3) Business Days after the person or Business Enterprise first learned of the decision for which review is sought. A Department Head may seek a review of the Business Inclusion Officer's decision at any time. Any determination made by the City Manager is final.

## 8.0 Definitions

Capitalized terms used in the CBI Program shall have the meanings set forth below:

- 8.1 Affiliate:** A connection between two or more Business Enterprises wherein (i) one Business Enterprises controls or has the power to control a second Business Enterprise; (ii) a third party or group of parties controls or has the power to control two or more Business Enterprises; or (iii) there is a significant relationship between the two or more Business Enterprises.
- 8.2 Annual Aspirational Goal:** The City's overall, annual total target for the participation of MWBEs in City contracts. This non-mandatory goal shall be for MWSBE participation based on the MWBE availability by industry in accordance with the Disparity Study, along with such data to be collected by the Business Inclusion Officer reporting on the utilization of MWSBE firms.
- 8.3 Bid:** A Bidder's response to any Solicitation for the purpose of obtaining a Contract including, without limitation, responses to requests for qualification, requests for proposals and invitations to bid.
- 8.4 Bidder:** A Business Enterprise that submits a Bid for a Contract.

- 8.5 Bid Opening:** The date that any Bid is opened by the City for any Contract subject to the requirements of North Carolina General Statutes § 143-129 and § 143-131, or the date where a Bid is received by the City for any Contract not subject to requirements of North Carolina General Statutes § 143-129 and § 143-131.
- 8.6 Business Day:** Any day on which the administrative offices of the City of Charlotte located at 600 E. Fourth St., Charlotte, North Carolina, 28202 are open for the public.
- 8.7 Business Enterprise:** Any corporation, limited liability company, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association, or any other legal entity, other than the City or any other unit of federal, state, or local government.
- 8.8 Business Inclusion Officer:** The person who oversees, manages and is responsible for the CBI Program. This term shall include any designee of the Business Inclusion Officer.
- 8.9 CBI Program:** The Charlotte Business Inclusion Program.
- 8.10 Charlotte Business Inclusion Office:** The city office charged with administering and enforcing the CBI Program. Also referred to as the “CBI Office.”
- 8.11 City:** The City of Charlotte, North Carolina, a North Carolina municipal corporation.
- 8.12 Commercially Useful Function:** The responsibility of a Business Enterprise for the execution of a distinct element of the work of the Contract, which is carried out by actually performing, managing, supervising the work involved, or fulfilling responsibilities in accordance with normal industry practices.
- 8.13 Contract Goal:** An MBE Goal, SBE Goal, WBE Goal, MWBE Goal, MSBE Goal, WSBE Goal and/or MWSBE Goal that is set forth in any Solicitation or Contract.
- 8.14 Conduit:** Any MWSBE that knowingly agrees to pass its scope of work and/or receipt of funds onto a non-MWSBE, thereby limiting its role to that of an extra participant in the Contract in order to obtain the appearance of MWSBE participation.
- 8.15 Contract:** Any written agreement between the City and Business Enterprise, or any modification thereof, obligating the Business Enterprise to furnish goods or services to the City or perform construction activities for the City. This term shall not include Exempt Contracts.
- 8.16 Contractor:** A Business Enterprise that enters into a Contract with the City.
- 8.17 Days:** Any reference shall mean calendar days.
- 8.18 Department:** A division of the City.

- 8.19 Department Head:** Any person who manages a Department. This term shall include any designee of the Department Head.
- 8.20 Developer Agreement:** A Contract to provide City funding of \$200,000 or more for a “public-private development project” as defined in Section 7-109 of the City of Charlotte Charter.
- 8.21 Exempt Contracts:** The following Contracts are exempt from all aspects of the CBI Program unless a Department elects otherwise:
- 8.21.1 Federal Funded Agreements:** Contracts that are subject to the U.S. Department of Transportation Disadvantaged Business Enterprise Program as set forth in 49 CFR Part 26 or any successor legislation.
  - 8.21.2 Financial Partner Agreements:** Contracts with a Financial Partner that has an existing MWSBE program or DBE program that the Financial Partner uses regularly and can provide evidence thereof.
  - 8.21.3 Interlocal Agreements:** Contracts with other units of federal, state, or local government.
  - 8.21.4 Legal Services:** Contracts to provide legal services on behalf of the City or its employees or elected officials.
  - 8.21.5 No Competitive Process:** Contracts that are entered into without a competitive process, or entered into based on a competitive process administered by an entity other than the City, including but not limited to agreements that are entered into by sole sourcing, piggybacking, buying off the North Carolina State contract, buying from a competitive bidding group purchasing program as allowed under North Carolina General Statutes § 143-129(e)(3), or using the emergency procurement procedures established by the North Carolina General Statutes.
  - 8.21.6 Real Estate Leasing and Acquisition:** Contracts for the acquisition or lease of real estate.
  - 8.21.7 Special Exemptions:** Contracts where the Department and the Business Inclusion Officer agree that there was no discretion to hire an MWSBE including, but not limited to, payments or reimbursements to City employees or the procurement of utilities.
  - 8.21.8 State Funded Agreements.** Contracts that are subject to an MWBE Goal set by the State of North Carolina pursuant to North Carolina General Statutes § 143-128.2.

- 8.22 Financial Partner:** A Business Enterprise with a Contract to receive City funds to carry out a public purpose. These partnerships can address strategic priorities, focus areas, economic development, and concerns of the community.
- 8.23 Infrastructure Reimbursement Agreements:** A Contract to reimburse the design and construction cost of municipal infrastructure included in the City’s Capital Improvement Plan. This agreement must be approved by the City pursuant to Section 2-2 of Charlotte City Code and must serve the developer or property owner.
- 8.24 Management and Control:** A daily operations of the Business Enterprise (i) are specifically demonstrated to be real, substantial, and continuing and goes beyond the pro-forma ownership of the Business Enterprise as reflected in its ownership documents; (ii) are not subject to formal or informal restrictions that are inconsistent with the customary discretion of majority owners; (iii) include both routine and major decisions on matters of management, policy, and operations; and (iv) are handled by any person who possesses the power to and actually direct the management and policies of the Business Enterprise.
- 8.25 MBE:** A Business Enterprise that (a) is certified by the State of North Carolina as a historically underutilized business within the meaning of North Carolina General Statutes § 143-128.4; (b) is at least fifty-one percent (51%) owned by one or more persons who are members of one of the groups set forth below; and (c) is in the Relevant market:

MBE Category	Owned or Controlled by a Person or Persons
<b>African American or Black</b>	Having origins in any of the black racial groups of Africa
<b>Hispanic</b>	Of Spanish or Portuguese culture having origins in Mexico, South or Central America, or the Caribbean islands, regardless of race
<b>Asian</b>	Having origins in any of the original peoples of the Far East, Southeast Asia, Asia, Indian continent, or Pacific islands
<b>Native American or American Indian</b>	Having origins in any of the original Indian peoples of North

- 8.26 MBE Goal:** A goal established by the City for MBE utilization on a Contract.
- 8.27 MSBE:** It is used to refer collectively to MBEs and SBEs.



- 8.28 MSBE Goal:** The City may set one combined goal for MBEs and SBEs on a Contract, in which event the term MSBE Goal refers to that one, combined goal.
- 8.29 MWBE:** It is used to refer collectively to MBEs and WBEs.
- 8.30 MWBE Goal:** The City may set one combined goal for MBEs and WBEs on a Contract, in which event the term MWBE Goal refers to that one, combined goal.
- 8.31 MWSBE:** It is used to refer collectively to SBEs, MBEs and WBEs. In some context it means all SBEs, MBEs and WBEs, and in other contexts it means one or more categories of SBEs, MBEs or WBEs.
- 8.32 MWSBE Assistance Organization:** Any organization, other than the City, that accelerates the successful development of start-up and fledgling Business Enterprises by providing them with an array of targeted resources and services. MWSBE organizations may provide management guidance, technical assistance and consulting tailored to MWSBEs. The CBI Business Inclusion Officer shall have sole discretion to determine whether a particular organization constitutes an MWSBE Assistance Organization for purposes of the CBI Program.
- 8.33 MWSBE Goal:** The City may set one combined goal for MBEs, WBEs and SBEs on a Contract, in which event the term MWSBE Goal refers to that one, combined goal.
- 8.34 MWBE Relevant Market:** All one hundred counties within the State of North Carolina and York County, South Carolina, as specified in the Disparity Study.
- 8.35 Personal Net Worth:** A value of \$750,000 or less, excluding (i) \$500,000 of the equity in the primary residence of the person regardless of the person's marital status; (ii) the person's ownership interest in the Business Enterprise; and (iii) the value of person's retirement savings account as defined by the United States Tax Code and the Internal Revenue Service.
- 8.36 Quick Pay Commitment:** An agreement or policy commitment that a Contractor makes to pay all MWSBEs participating in a Contract within twenty (20) Days after the Contractor confirms that the MWSBE has properly performed the subcontracted work and the MWSBE's work has been properly completed.
- 8.37 SBE:** A Business Enterprise that is certified by the Business Inclusion Officer as meeting all of the requirements set forth in Section 2.
- 8.38 SBE Goal:** A goal established by the City for SBE utilization on a Contract.
- 8.39 SBE Relevant Market:** The Charlotte Metropolitan Statistical Area as designated by the United States Census Bureau.
- 8.40 Solicitation:** The documents issued by the City to solicit Bids/Proposals for a Contract, including but not limited to invitations to bid, requests for qualifications, requests for proposals, requests for quotes, plans and specifications and proposed agreement provisions.

- 8.41 Subcontract:** Any Business Enterprise that enters into an agreement with a Contractor or Subcontractor to perform work or provide materials on a Contract.
- 8.42 Subcontractor:** A Business Enterprise that enters into an agreement with a Contractor or Subcontractor to provide goods or services or perform work in connection with a Contract. The term also includes subconsultants and suppliers.
- 8.43 Supplemental Goal:** A Contract Goal established for a renewal, amendment or change order to an existing Contract.
- 8.44 Vendor Documents:** Any paperwork or documentation provided by a Bidder to any potential Subcontractor that provides all of the following: (i) the Bidder's name; (ii) any Subcontract opportunities; (iii) name, phone number, email address and mailing address of the Bidder's primary contact; (iv) how to access any plans or specifications; and (v) deadline to submit a quote.
- 8.45 WBE:** A Business Enterprise that (a) is certified by the State of North Carolina as a historically underutilized business within the meaning of North Carolina General Statutes § 143-128.4; (b) is at least fifty-one percent (51%) owned by one or more persons who are female; and (c) is in the Relevant market.
- 8.46 WBE Goal:** A goal established by the City for WBE utilization on a Contract.
- 8.47 WSBE:** It is used to refer collectively to SBEs and WBEs.
- 8.48 WSBE Goal:** The City may set one combined goal for SBEs and WBEs on a Contract, in which event the term WSBE Goal refers to that one, combined goal.



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