

Title 39
DIVERSITY AND INCLUSION CODE

Chapter 3901 DEFINITIONS

3901.01 Definition of terms.

For the purpose of Title 39, the following words, phrases and terms shall be defined as set forth below:

- (A) "Commercially useful function" shall mean the performance of real and actual services in the discharge of any contractual endeavor. Services are real and actual if such services would be provided in the normal course of conducting business or trade activities. The contractor must perform a distinct element of work which the business has the skill and expertise as well as the responsibility of actually performing, managing and supervising.
- (B) "Construction" shall have the same meaning as set forth in Chapter 329.
- (C) "Contract" shall have the same meaning as set forth in Chapter 329.
- (D) "Contracting agency" shall have the same meaning as set forth in Chapter 329.
- (E) "Contractor" shall have the same meaning as set forth in Chapter 329.
- (F) "Controlled" for purposes of determining whether a business is minority-owned or women-owned means the owner(s) shall:
 - 1) Possess and exercise the legal authority and power to manage business assets, goodwill and daily operations of the business; and
 - 2) Actively and continuously exercise such managerial authority and power in determining the policies and directing the operations of the business.
- (G) "Diversity and Inclusion Code" means Title 39 of the Columbus City Codes.
- ~~(H) "Emerging Business Enterprise" shall mean a business enterprise that is an independent and continuing for profit operation located outside of the geographic boundaries of Franklin County, Ohio and is independently and directly owned, operated and controlled by one or more eligible minority group members or a certified women business enterprise owner(s) as defined by this code.~~
- ~~(H)~~(H) "Employee Stock Ownership Plan (ESOP)" has the same meaning as that term is defined under 26 U.S.C. § 4975(e)(7).
- ~~(I)~~(I) "Minority Group Members" shall mean Black or African Americans, Asian Americans, Hispanic Americans and Native Americans, that are eligible to do business or perform work in the state of Ohio.
 - 1) Black or African American means all persons having origins in any of the black racial groups of Africa.
 - 2) Native American means all persons who maintain culture and have origins in a federally recognized Indian tribe as listed in the current "Federal Register Notice of Indian Entities Recognized by and Eligible to Receive Services" from the U.S. Bureau of Indian Affairs.
 - 3) Asian American means all persons having origins in any of the original people of the Far East, including China, Japan and Southeast Asia.

- 4) Hispanic American means all persons of Spanish or Portuguese culture with origins in Mexico, South or Central America or the Caribbean Islands, regardless of race.
- ~~(K)~~(J) "Minority-Owned Business Enterprise (MBE)" shall mean a business which is not a subsidiary of another business and is an independent and continuing for profit operation, performing a commercially useful function, and is independently and directly owned, operated, and controlled by one or more eligible minority group members as defined by this code.
- ~~(L)~~(K) "Owned" shall mean:
- 1) At least fifty-one percent (51%) of the business is independently and directly owned, operated, and controlled by individuals eligible to do business or perform work in the state of Ohio;
 - 2) The ownership shall be real and continuing, and shall go beyond the mere indicia of ownership of the business reflected in the ownership document; and
 - 3) The owner(s) shall enjoy the customary incidence of ownership and shall share in the risks and profits commensurate with their ownership interest, as demonstrated by an examination of the substance, rather than the form of ownership arrangements.
 - 4) Ownership may not be through another business entity or trust (including through an Employee Stock Ownership Plan); and
 - 5) Notwithstanding section (L)(4) of this division, ownership by a trust, such as a living trust, may be treated as the functional equivalent of ownership by a Minority Group Member or woman if the trust is revocable and the owner is the grantor, the trustee, and the sole current beneficiary of the trust.
- ~~(M)~~(L) "Physical presence" means business operations that are conducted out of a building by at least one (1) full-time employee or full-time employee equivalent.
- (M) "Program" means the supplier initiatives authorized by City Council pursuant to Section 3907.08 which entitle program members to receive benefits such as bid discounts and/or incentive credits in the City's supplier or procurement processes.
- (N) "Program member" means a business certified as an MBE, RBE, SRBE, or WBE, as applicable, which may be eligible to receive benefits such as bid discounts and/or incentive credits in the City's supplier or procurement processes pursuant to City Council authorization of the applicable program under Section 3907.98.
- (O) "Regional Business Enterprise (RBE)" means an independently and directly owned, operated, and controlled for-profit business concern that has been certified by the Office of Diversity and Inclusion as having met the RBE eligibility requirements as provided for in the Diversity and Inclusion Code and with a physical presence in the state of Ohio.
- ~~(N)~~(P) "Small Regional Business Enterprise (SRBE)" means an independently and directly owned, operated, and controlled for-profit business concern that has been certified by the Office of Diversity and Inclusion as having met the SRBE eligibility requirements as provided for in the Diversity and Inclusion Code and with a physical presence in one or more of the following counties: Delaware, Fairfield, Fayette, Franklin, Licking, Madison, Pickaway, or Union.
- ~~(O)~~(Q) "Veteran" shall mean a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.
- ~~(P)~~(R) "Women-Owned Business Enterprise (WBE)" shall mean a business which is not a subsidiary of another business and is an independent and continuing for profit operation,

performing a commercially useful function, and is independently and directly owned, operated, and controlled by one or more women that are eligible to do business or perform work in the state of Ohio.

Chapter 3902 ORGANIZATION

3902.01 Office of Diversity and Inclusion.

There is hereby created the Office of Diversity and Inclusion. The Office of Diversity and Inclusion is dedicated to creating and implementing programs, policies and procedures that will deliver and capture value through supplier and workforce diversity. Additionally, the office will assist underserved, under-utilized and economically disadvantaged small, regional businesses with gaining greater access to procurement opportunities and resources to build viable and sustainable businesses.

The Office of Diversity and Inclusion may exercise the following duties, responsibilities and authority:

- (A) Administration and enforcement of compliance with the Diversity and Inclusion Code;
- (B) Establishment of written policy and procedures to execute the Diversity and Inclusion Code;
- (C) Development and refinement of workforce policy and procedures;
- (D) Development, refinement and coordination of supplier ~~diversity~~ development and procurement activities such as outreach, solicitation for small contracts, bid specification review and prompt payment/contract dispute resolution procedures;
- (E) Development, refinement and coordination of assistance programs such as financing, bonding/insurance and technical assistance;
- (F) Development and coordination of mentor/protégé and on-the-job training demonstration projects;
- (G) Development, refinement, and implementation of MBE/WBE and SRBE/RBE certification procedures and coordination of such procedures with the Purchasing vendor registration system;
- (H) Consideration of ~~price preference and~~ sheltered market solicitation, based upon criteria set forth in the applicable sections of the Diversity and Inclusion Code;
- (I) Investigation of alleged violations of the Diversity and Inclusion Code;
- (J) Analysis and review of programs in accordance with the review and reporting requirements contained in the Diversity and Inclusion Code;
- (K) Analysis, review and recommendation for adjustments to the city's annual participation goals;
- (L) Establish and review of all applicable specific contract participation goals;
- (M) Establishment of committees and advisors to further the goals of the Diversity and Inclusion Code;
- (N) Recommendations to the mayor and city council regarding additional efforts necessary to ensure the effective operation of this office pursuant to periodic review and reporting requirements contained in the Diversity and Inclusion Code.

The Office of Diversity and Inclusion may hire staff or contract with outside firms or organizations to perform these and other duties as necessary to expand the role of the Office.

3902.02 Duties of the Director.

The Director of the Office of Diversity and Inclusion shall be appointed by the Mayor and shall serve at the pleasure of the Mayor at a salary fixed by ordinance of Council. The Director shall be responsible for the administration and enforcement of the Diversity and Inclusion Code, the policies, rules and regulations issued hereunder, and for other duties pertinent thereto, including:

- (A) Investigating complaints, making inspections, and observing employment conditions related to City contracts;
- (B) Reviewing all submittals required by the Diversity and Inclusion Code and ensuring all contractors who are in compliance with its requirements;
- (C) Certifying qualified business enterprises and monitoring their participation on city contracts to ensure compliance with the Diversity and Inclusion Code;
- (D) Reviewing ordinances authorizing the entry into contracts and certifying the proposed contractor's compliance prior to the ordinance being submitted to council;
- (E) Promulgating and enforcing rules and regulations in the form of a Programs Manual to carry out the meaning and purpose of the MBE/WBE and SRBE/RBE ~~programs~~ Programs as authorized by Council pursuant to Section 3907.98 ~~this chapter~~;
- (F) Monitoring the workforce of contractors by desk audits and on-site inspections, as needed, to determine if any contractor is in violation of any applicable law related to contract compliance;
- (G) Receiving and reviewing all rules and regulations issued by the State of Ohio or the federal government relevant to contract compliance, and assuring that the City is conforming to those rules or regulations.

~~3902.04 Workforce diversity.~~

~~The City of Columbus believes that a diverse workforce drives economic growth, fosters greater creativity and creates a more dynamic and innovative workforce. Additionally, the ethnic and gender workforce composition of the City of Columbus should reflect the diversity of the residents that make up the population of the City of Columbus. As the City attracts, retains, and develops talent, the City will focus on new and innovative ways to help ensure that diversity is a part of that process and that the diversity of the City workforce reflects that of the City population.~~

~~The Office of Diversity and Inclusion Director, in conjunction with City departments and management, may develop guidelines, initiatives and programs to help advance the objectives of this section.~~

3902.04 Workforce development.

The City of Columbus believes that a dynamic workforce drives economic growth, fosters greater creativity and creates a more innovative workforce. Additionally, the workforce composition of the City of Columbus should reflect the socioeconomic makeup of the residents it serves. As the City attracts, retains, and develops talent, the City will focus on new and innovative ways to help ensure that representation is a part of that process and that the City workforce is reflective of the City population. The Office of Diversity and Inclusion Director, in conjunction with City departments and management, may develop guidelines, initiatives and programs to help advance the objectives of this section.

Chapter 3903 ASSISTANCE ACTIVITIES

3903.01 Outreach.

The Office of Diversity and Inclusion may provide for outreach efforts to solicit and encourage program members ~~MBE/WBEs~~ to bid on city contracts. Specific outreach efforts may be developed and coordinated by the Office of Diversity of Inclusion, in conjunction with the appropriate departments and divisions, and may include, but not be limited to, the following:

- (A) The mailing, electronically or through the U.S. Postal Service, of opportunity alerts of upcoming procurement and contract bids by the city through utilization of the vendor registration system and the certification listing;
- (B) Advertisement of upcoming city contracts and procurement on government television; the city bulletin; the City webpage, targeted newspapers, magazines, social media or other publications;
- (C) Seminars to familiarize program members ~~MBE/WBEs~~ with city procurement and bidding procedures and with upcoming business opportunities;
- (D) The establishment of plan rooms, as necessary, at several locations around the city to provide bid plans and specifications;
- (E) Active and sustained encouragement of program members ~~MBE/WBEs~~ to apply for certification and registration;
- (F) Develop partnerships with small business organizations and other supplier ~~diversity~~ development organizations to enhance the effectiveness of outreach efforts.

3903.02 ~~Certification of~~ MBE/WBEs Program; Certification.

(A) Operability. The MBE/WBE Program for certified MBE/WBEs shall be operative solely during a five-year period of extension reauthorized by Council as provided for in Section 3907.98.

~~(A)~~(B) Eligibility Criteria for MBE/WBE Certification. A business enterprise that wishes to make application to the Office of Diversity and Inclusion to be certified as an MBE/WBE shall submit a completed MBE/WBE Certification Form, a signed affidavit, and supporting documentation affirming that the MBE/WBE meets all of the following minimum eligibility criteria:

- 1) Is a for-profit business that is licensed to do business in the state of Ohio performing a commercially useful function that is not a subsidiary of another business and is either:
 - a. For an MBE: at least 51% independently and directly owned, operated, and controlled by an individual who is eligible to do business or perform work in the state of Ohio and who is an African American, Native American, Hispanic American, or Asian American;
 - b. For a WBE: at least 51% independently and directly owned, operated, and controlled by a female who is eligible to do business or perform work in the state of Ohio.
- 2) Has a physical presence inside Franklin County in one of the following counties: Delaware, Fairfield, Fayette, Franklin, Licking, Madison, Pickaway, or Union;

- 3) Has been established for at least one (1) year;
- 4) Possesses all licenses and permits required by law to perform the scope of work within the classification requested for certification.

~~(B)~~(C) Ineligible businesses. A business enterprise is ineligible for consideration for MBE/WBE Certification if:

- 1) The business enterprise has been placed on the adverse determination list by the ~~Wage Theft Prevention and Enforcement~~ Labor Commission in accordance with Chapter 377 of the Columbus City Codes.
- 2) It has been determined by the Office of Diversity and Inclusion that a representative of the business enterprise previously made a materially deceptive or fraudulent statement or omission or otherwise intentionally misrepresented any fact that may have been considered in making a certification determination during any certification process provided for in the Diversity and Inclusion Code within the prior three years.
- 3) The business enterprise has been or is currently facing suspension or debarment in accordance with provisions of Chapter 329 of the Columbus City Codes.

~~(C)~~(D) Certification.

- 1) Upon receipt of a submitted MBE/WBE Certification Application, the Office of Diversity and Inclusion will review and evaluate applications based upon the following criteria:
 - a. The applicant meets the MBE/WBE eligibility criteria;
 - b. The application is satisfactorily completed;
 - c. The application contains accurate and complete information of required in making a certification determination during the certification process; or
 - d. The applicant has provided materials or information as requested by the Director.
- 2) Once it is determined that a business enterprise meets the minimum eligibility requirements and is not otherwise ineligible for certification as an MBE/WBE, the Office of Diversity and Inclusion will determine the scope of the MBE/WBE's certification.
 - a. Certification will be granted for only the specific areas of work in which the MBE/WBE has been found by the Office of Diversity and Inclusion to have the requisite skills, knowledge, and ability to perform in the field of endeavor in which certification is sought, as defined by normal industry practices, including licensure where required.
 - b. Certification for specific areas of work does not mean the MBE/WBE is prequalified to bid on any city contract, including contracts included in the MBE/WBE program. Certification does not constitute a finding that the MBE/WBE meets the requirements that the City may have for any given contract award.
- 3) Upon receipt of a submitted MBE/WBE Certification Application, the Office of Diversity and Inclusion will review and evaluate applications based upon the following criteria:
 - a. The applicant meets the MBE/WBE eligibility criteria;
 - b. The application is satisfactorily completed;
 - c. The application contains accurate and complete information of required in making a certification determination during the certification process; or
 - d. The applicant has provided materials or information as requested by the Director.

- 4) The Director will make a final certification determination within 90 days after the date the Office of Diversity and Inclusion receives a satisfactorily completed application from the applicant. If certification is denied, the Director will notify the applicant in writing and specify the reason(s) for the denial. Unless the applicant is successful in a timely appeal of the denial of certification, the applicant may not reapply for the same type of certification for a period of one year from the date of the notice of denial.
- 5) A business entity that has received a denial of certification from the Office of Diversity and Inclusion shall have a right of appeal in accordance with section 3907.03.
- 6) Certification as an MBE/WBE expires two years from the date of certification. MBE/WBEs have a continuing, affirmative obligation to notify the Office of Diversity and Inclusion of any change in its circumstances affecting its continued eligibility for the MBE/WBE program.

~~(D)~~(E) Re-Certification, De-Certification, and Suspension.

- 1) Re-Certification.
 - a. MBE/WBEs seeking re-certification shall submit a completed MBE/WBE Re-certification Form (MBE/WBE-R) to the Office of Diversity and Inclusion no sooner than 60 days prior to the expiration of their MBE/WBE certificate.
 - b. Failure of an MBE/WBE to seek re-certification by filing the necessary MBE/WBE-R form with the Office of Diversity and Inclusion within 60 days following the expiration of its certificate shall result in automatic decertification.
- 2) De-Certification and Suspension.
 - a. An MBE/WBE may be De-Certified upon a finding by the Director that the MBE/WBE:
 - i. Ceases to meet the eligibility and/or certification requirements for their MBE/WBE Certificate; or
 - ii. Has provided materially false or misleading information to the city in seeking certification or re-certification; or
 - iii. Has failed to perform a Commercially Useful Function under a contract, or
 - iv. The MBE/WBE allows its MBE/WBE status to be fraudulently used for the benefit of a non-MBE/WBE firm or the owners of a non-MBE/WBE firm so as to provide the non-MBE/WBE firm or firm owners benefits from the Program for which the non-MBE/WBE firm and its owners would not otherwise be entitled; or
 - v. Has exhibited gross negligence, incompetence, financial irresponsibility, or misconduct in the operation of the business enterprise.
 - b. Where the Director has reasonable grounds to believe, based upon information obtained by the Office of Diversity and Inclusion that an MBE/WBE may be subject to De-Certification, the Director may suspend the certification of the MBE/WBE while the De-Certification matter is pending. The Director shall provide the MBE/WBE with written notice of suspension and during the period of suspension, the MBE/WBE shall be prohibited from bidding upon or entering into City contracts as a certified MBE/WBE. Upon a finding that an MBE/WBE has failed to re-certify in accordance with ~~section~~ division ~~(DE)~~(1) or has violated any provisions of ~~section~~ division ~~(DE)~~(2)(a), the Director shall provide the MBE/WBE with written notice of De-Certification.
 - c. A business entity that has received a notice of suspension or de-certification from the Office of Diversity and Inclusion shall have a right of appeal in accordance with section 3907.03.

- d. Unless the suspension or de-certification decision of the Director is reversed on appeal, a business entity that has received a notice of suspension or de-certification from the Office of Diversity and Inclusion shall not apply for re-certification for one (1) year from the date of the notice of suspension or de-certification.
- ~~(E)~~(F) MBE/WBEs certified by other government agencies will be required to be certified by the Office of Diversity and Inclusion regardless of other certification. However, the Director may promulgate rules and regulations allowing for an expedited process for MBE/WBE certification by the city if the business entity has a current certification from agencies/organizations specifically approved by the Director.

3903.03 Bid specifications review.

City departments shall be encouraged by the Office of Diversity and Inclusion to eliminate any unnecessarily restrictive bid specifications that may adversely affect the participation of program members ~~MBE/WBE participation~~. A bid specification review process may be developed and coordinated by the Office.

3903.04 Prompt payment/contract dispute resolution

The Office of Diversity and Inclusion Director, in conjunction with the procurement manager, shall seek to streamline payment procedures and facilitate contract dispute resolution in accordance with ORC 4113.61, in order to enhance the ability of certified program members ~~MBE/WBE businesses~~ to have the necessary liquidity to maintain operations.

3903.05 Financing assistance.

A lack of access to capital, credit, and other financial tools limits the ability of small businesses ~~MBE/WBEs~~ to compete in the open marketplace. Therefore, the city may provide for financing assistance to certified SBREs or RBEs firms. A "Financing Assistance" program may be developed and coordinated by the Office of Diversity and Inclusion to provide for the following:

- (A) A clearinghouse to inform certified SBREs or RBEs ~~MBE/WBEs~~ of existing forms of financing;
- (B) Examination and implementation of alternative and innovative programs to assist certified SBREs or RBEs ~~MBE/WBEs~~ in obtaining financing;
- (C) Examination of the feasibility of developing a linked deposit program, in conjunction with local area banks, which may require the banks that the city deposits funds with to establish comprehensive financing programs for SBREs or RBEs ~~MBE/WBEs~~. These financing programs may include, but not be limited to, special lending programs for equipment purchase and leasing, contract financing, lines of credit, inventory financing, and receivables financing.

3903.06 Bonding/insurance assistance.

A "Bonding/Insurance Assistance" program may be developed and coordinated by the Office of Diversity and Inclusion in conjunction with the Department of Finance and Management, and may provide assistance to program members ~~firms~~ including, but not limited to, the following:

- (A) Waiver of certain bonds for selected contracts to the extent permitted by federal, state and local law. Criteria for this bonding waiver shall be developed by the Office of Diversity and Inclusion for contracts under \$100,000 and shall include an assessment of the associated risks, liability and exposure to the city;

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- (B) Unbundle selected large contracts into smaller parts and permit contractors/vendors to roll over their bonding limits for each phase or part of the contract;
- ~~(C) The Office of Diversity and Inclusion may examine the feasibility of permitting contractors/vendors to specify and document their expenses for bonding and insurance and deduct those expenses from their bids and provide for the city to pay those expenses directly as and to the extent permitted by federal, state and local law;~~
- ~~(D) The Office of Diversity and Inclusion shall examine the feasibility of establishing an independent bonding and insurance program that utilizes MBE/WBE-owned A-rated sureties and insurance companies or brokers to provide bonding and insurance to MBE/WBEs on public and private sector contracts;~~
- ~~(E)~~ (C) The Office of Diversity and Inclusion shall examine the feasibility of using public funds to leverage private resources to establish a bonding pool for the issuance of bonds to certified SRBEs or RBEs ~~MBE/WBEs~~ on city contracts as and to the extent permitted by federal, state and local law;
- ~~(F)~~ (D) The Office of Diversity and Inclusion may partner with other organizations to provide resources to assist certified SRBEs or RBEs ~~MBE/WBEs~~ with bonding assistance.

3903.07 Repealed.

3903.08 Mentor/Protégé Program.

The parameters of a Mentor/Protégé program may be established by the Office of Diversity and Inclusion to actively encourage ~~majority~~ construction firms to mentor program member ~~MBE/WBE~~ construction firms in an effort to grow capacity and increase sustainability.

3903.09 Joint ventures.

- (A) The Office of Diversity and Inclusion, in conjunction with the City Departments, shall promote, where economically feasible, the formation of joint ventures to facilitate additional prime contracting opportunities for certified program members ~~MBE/WBEs~~ on eligible projects or contracts. A joint venture shall be defined as an association of two (2) or more business enterprises, one or more of which is a program member ~~an MBE/WBE~~, established as a single business enterprise to carry on a single business activity that is limited in scope and duration. The Office of Diversity and Inclusion shall promulgate rules and regulations pertaining to the certification of project-specific ~~MBE/WBE~~ joint ventures, including the establishment of criteria for certification. The criteria shall include, but not be limited to:
- 1) The initial capital investment of each venture partner;
 - 2) The proportional allocation of profits and losses to each venture partner;
 - 3) The sharing of the right to control the ownership and management of the joint venture;
 - 4) Actual participation of the venture partners in the performance of the contract;
 - 5) The method of and responsibility for accounting;
 - 6) The methods by which disputes are resolved; and
 - 7) Other pertinent factors of the joint venture.

- (B) The certification of a joint venture will be limited to the duration of the contract for which certification as a joint venture was requested and shall terminate upon completion of the city contract for which the joint venture was formed.
- (C) An Employee Stock Ownership Plan (ESOP) or similar defined benefit or defined contribution plan shall not be eligible for certification as a joint venture.

3903.10 Good Faith Efforts.

Good Faith Efforts are those steps taken by a bidder/proposer to achieve targets the MBE/WBE Program goals as set forth in the MBE/WBE Office of Diversity and Inclusion Programs Manual, including the required documentation demonstrating a contractor's efforts to meet the MBE/WBE subcontractor goal, and that are subject to the following:-

- (A) All terminations, substitutions, and reduction in scope by the prime contractor must be approved in writing by the Office of Diversity and Inclusion.
- (B) The prime contractor must demonstrate good faith efforts to replace a committed MBE/WBE program member subcontractor firm, which does not perform as intended, with another committed MBE/WBE program member subcontractor firm to perform at least the same amount of work under the contract as the DBE subcontractor that was terminated or replaced, to the extent needed to meet the contract goal target established for the project.
- (C) Replacement of program member subcontractor MBE/WBEs without the Office of Diversity and Inclusion's prior written approval is a material breach of the contract.

Chapter 3904 SMALL REGIONAL BUSINESS ENTERPRISE PROGRAM AND REGIONAL BUSINESS ENTERPRISE PROGRAM

3904.01 Small Regional Business Enterprise Program and Regional Business Enterprise Program.

- (A) The City is committed to maximizing contracting opportunities for Small Regional Business Enterprises (SRBEs) on construction, professional services, and goods and services contracts for SRBEs located in the following counties: Delaware, Fairfield, Fayette, Franklin, Licking, Madison, Pickaway, or Union. The City is further committed to maximizing contracting opportunities for Regional Business Enterprises (RBEs) on construction, professional services, and goods and services contracts for RBEs located in the state of Ohio. The SRBE Program and RBE Program ~~is~~ are intended to further the City's compelling interests in stimulating economic development through the support and empowerment of the region, ~~ensuring that the City is neither an active nor passive participant in marketplace discrimination, and promoting equal opportunity for all segments of the contracting community.~~
- (B) The SRBE Program and RBE Program ~~provides a~~ provide ~~unique opportunity~~ opportunities for eligible ~~regional small~~ businesses to engage in the City's procurement process. The programs includes a sheltered market program and a requirement that all departments shall take active affirmative steps to ensure that small regional businesses and regional businesses are able to participate in City contracts as prime contractors, subcontractors, or both.

3904.02 Certification of SRBEs Program, RBE Program; Certification

(A) Authority. The Program for Certified SRBEs and the Program for Certified RBEs shall be operative solely during a five-year period of extension reauthorized by Council as provided for in Section 3907.98.

~~(A)~~(B) Eligibility Criteria for SRBE Certification. A business enterprise that wishes to make application to the Office of Diversity and Inclusion to be certified as an SRBE shall submit a completed SRBE Certification Application, a signed affidavit, and supporting documentation affirming that the SRBE meets all of the following minimum eligibility criteria:

- 1) Is an independently and directly owned, operated, and controlled for-profit business that is licensed to do business in the state of Ohio performing a commercially useful function that is not a subsidiary of another business and is not dominant in its field of operation;
- 2) Has a physical presence in one of the following counties: Delaware, Fairfield, Fayette, Franklin, Licking, Madison, Pickaway, or Union;
- 3) Has been established for at least one (1) year;
- 4) Has fewer than twenty-five (25) full-time employees or full-time employee equivalents; Has fewer than 50% of the number of employees as calculated per the United States Small Business Administration employee size standards, in accordance with 13 C.F.R. Part 121, based on the average number of employees over twelve (12) months; OR
Has an average gross annual receipt in the prior three fiscal years that does not exceed \$1,000,000. If a business has not existed for three years, the gross annual receipts will be based upon the annual averages over the course of the existence of the business. Has an average gross annual receipt in the prior three fiscal years that does not exceed 25% of the United States Small Business Administration revenue size standards, in accordance with 13 C.F.R. Part 121, based on the gross annual receipts averaged over five (5) years; and
- 5) Possesses all licenses and permits required by law to perform the scope of work within the classification requested for certification.

(C) Eligibility Criteria for RBE Certification. A business enterprise that wishes to make application to the Office of Diversity and Inclusion to be certified as an RBE shall submit a completed RBE Certification Application, a signed affidavit, and supporting documentation affirming that the RBE meets all of the following minimum eligibility criteria:

- 1) Is an independently and directly owned, operated, and controlled for-profit business that is licensed to do business in the state of Ohio performing a commercially useful function that is not a subsidiary of another business and is not dominant in its field of operation;
- 2) Has a physical presence in the State of Ohio;
- 3) Has been established for at least one (1) year;
- 4) Possesses all licenses and permits required by law to perform the scope of work within the classification requested for certification.

~~(B)~~(D) Ineligible businesses. A business enterprise is ineligible for consideration for SRBE or RBE Certification, as applicable, if:

- 1) Any of its principals or owners are also the principals or owners of another entity that does not meet the eligibility criteria for an SRBE or RBE.

- 2) The business enterprise has been placed on the adverse determination list by the ~~Wage Theft Prevention and Enforcement~~ Labor Commission in accordance with Chapter 377 of the Columbus City Codes.
- 3) It has been determined by the Office of Diversity and Inclusion that a representative of the business enterprise previously made a materially deceptive or fraudulent statement or omission or otherwise intentionally misrepresented any fact that may have been considered in making a certification determination during any certification process provided for in the Diversity and Inclusion Code within the prior three years.
- 4) The business enterprise has been or is currently facing suspension or debarment in accordance with provisions of Chapter 329 of the Columbus City Codes.
- 5) Certification. Upon receipt of a submitted SRBE or RBE Certification Form, the Office of Diversity and Inclusion will review and evaluate applications and may reject an application based on one or more of the following:
 - a. The applicant does not meet the SRBE or RBE eligibility or the applicant is ineligible for certification as otherwise provided in division (~~BD~~);
 - b. The application is not satisfactorily completed;
 - c. The application contains false information or a representative of the business enterprise has made a materially deceptive or fraudulent statement or omission or otherwise intentionally misrepresented any fact that may be considered in making a certification determination during the certification process; or
 - d. The applicant has not provided materials or information requested by the Director.
- 6) Once it is determined that a business enterprise meets the minimum eligibility requirements and is not otherwise ineligible for certification as an SRBE or RBE, the Office of Diversity and Inclusion will determine the scope of the SRBE's or RBE's certification.
 - a. Certification will be granted for only the specific areas of work in which the SRBE or RBE has been found by the Office of Diversity and Inclusion to have the requisite skills, knowledge, and ability to perform in the field of endeavor in which certification is sought, as defined by normal industry practices, including licensure where required.
 - b. Certification for specific areas of work does not mean the SRBE or RBE is prequalified to bid on any city contract, including contracts included in the SRBE program or RBE program. Certification does not constitute a finding that the SRBE or RBE meets the requirements that the City may have for any given contract award.
- 7) The Director will make a final certification determination within 90 days after the date the Office of Diversity and Inclusion receives a satisfactorily completed application from the applicant. If certification is denied, the Director will notify the applicant in writing and specify the reason(s) for the denial. Unless the applicant is successful in a timely appeal of the denial of certification, the applicant may not reapply for the same type of certification for a period of one year from the date of the notice of denial.
- 8) A business entity that has received a notice of denial of certification from the Office of Diversity and Inclusion shall have a right of appeal in accordance with ~~s~~Section 3907.03.
- 9) Certification as an SRBE or RBE expires two years from the date of certification. SRBEs and RBEs have a continuing, affirmative obligation to notify the Office of Diversity and Inclusion of any change in ~~its~~ circumstances affecting ~~its~~ their continued eligibility for the SRBE program or RBE program.

~~(C)~~(E) Re-Certification, De-Certification and Suspension.

1) Re-Certification.

- a. SRBEs or RBEs seeking re-certification shall submit a completed SRBE Re-certification Form (SRBE-R) or RBE Re-certification Form (RBE-R) to the Office of Diversity and Inclusion no sooner than 60 days prior to the expiration of their certificate.
- b. Failure of an SRBE or RBE to seek re-certification by filing the necessary SRBE-R form or RBE-R form with the Office of Diversity and Inclusion within 60 days following the expiration of its certificate shall result in automatic decertification.

2) De-Certification and Suspension.

- a. An SRBE or RBE may be De-Certified when the Director finds that the SRBE or RBE:
 - i. Ceases to meet the eligibility and/or certification requirements for their SRBE Certificate or RBE Certificate; or
 - ii. Has provided materially false or misleading information to the city in seeking certification or re-certification; or
 - iii. Has failed to perform a Commercially Useful Function under a contract, or
 - iv. Has allowed its SRBE or RBE status to be fraudulently used for the benefit of a non-SRBE or non-RBE firm or the owners of a non-SRBE firm or non-RBE firm so as to provide the non-SRBE firm or non-RBE firm or firm owners benefits from the Program for which the non-SRBE firm or non-RBE firm and its owners would not otherwise be entitled; or
 - v. Has exhibited gross negligence, incompetence, financial irresponsibility, or misconduct in the operation of the business enterprise.
- b. Where the Director has reasonable grounds to believe, based upon information obtained by the Office of Diversity and Inclusion, that an SRBE or RBE may be subject to De-Certification, the Director may suspend the certification of the SRBE or RBE while the De-Certification matter is pending. The Director shall provide the SRBE or RBE with written notice of suspension and during the period of suspension, the SRBE or RBE shall be prohibited from bidding upon or entering into City contracts as a certified SRBE or RBE.
- c. Upon a finding that an SRBE or RBE has failed to re-certify in accordance with section ~~(DE)~~(1) or has violated any provisions of section ~~(DE)~~(2)(a), the Director shall provide the SRBE or RBE with written notice of De-certification.
- d. A business entity that has received a notice of suspension or de-certification from the Office of Diversity and Inclusion shall have a right of appeal in accordance with ~~s~~Section 3907.03.
- e. Unless the suspension or de-certification decision of the Director is reversed on appeal, a business entity that has received a notice of suspension or de-certification from the Office of Diversity and Inclusion shall not apply for re-certification for one (1) year from the date of the notice of suspension or de-certification.

Chapter 3906 DEPARTMENT/CONTRACTING AGENCY RESPONSIBILITY

3906.02 Equal opportunity clause.

- (A) The contracting agencies of the City are directed to include the following equal opportunity clause in all contracts. The inclusion of this clause may be waived by the Office of Diversity and Inclusion Director where it is appropriate due to a similar clause requirement by state or federal law. The requirements contained in this clause will be considered by the Office of Diversity and Inclusion Director in determining whether a contractor is in compliance with Title 39.
- (B) Equal Opportunity Clause:
- 1) The contractor/vendor/bidder will not unlawfully discriminate against any employee or applicant for employment because of race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, familial status or military status. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, familial status or military status. Such action shall include, but not be limited to, the following: employment up-grading, demotion, or termination; rates of pay or other forms of compensation; and selection for training. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices summarizing the provisions of this Equal Opportunity Clause.
 - 2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that the contractor is an equal opportunity employer.
 - 3) It is the policy of the City of Columbus that ~~program members business concerns independently and directly owned, operated, and controlled by MBE/WBEs~~ shall have the maximum practicable opportunity to participate in the performance of contracts awarded by the city.
 - 4) The contractor shall permit access to any relevant and pertinent reports and documents by the Office of Diversity and Inclusion Director for the sole purpose of verifying compliance with this Title 39 and the Office of Diversity and Inclusion regulations. All such materials provided to the Office of Diversity and Inclusion Director by the contractor shall be considered confidential.
 - 5) The contractor will not obstruct or hinder the Office of Diversity and Inclusion Director or his/her deputies, staff and assistants in the fulfillment of the duties and responsibilities imposed by Title 39 of the Columbus City Codes.
 - 6) The contractor and each subcontractor will include a summary of this Equal Opportunity Clause in every subcontract. The contractor will take such action with respect to any subcontractor as is necessary as a means of enforcing the provisions of the Equal Opportunity Clause.
 - 7) The contractor agrees to refrain from subcontracting any part of this contract or contract modification thereto to a contractor not holding a valid certification number as provided for in Title 39.
 - 8) Failure or refusal of a contractor or subcontractor to comply with the provisions of Title 39 may result in cancellation of this contract.

3906.03 Department/agency reporting responsibilities.

Each City department has a vested interest in ensuring that the city of Columbus is a diverse and inclusive city. Therefore, each department will have the following responsibilities:

- (A) Department Directors or designees shall participate in a cross functional process, to track and report supplier diversity development and workforce diversity development initiatives.
- (B) Regular reports shall be filed by all City agencies on forms provided by the Office of Diversity and Inclusion Director for the purpose of monitoring compliance with the provisions of Title 39.
- (C) Department Directors will designate staff who will utilize the designated Office of Diversity and Inclusion diversity tracking systems for the purposes of reporting on subcontractor participation and utilization within their department.
- (D) The Office of Diversity and Inclusion Director will be notified of all professional services evaluation committees as defined in Title Chapter 329, of the city's procurement code. The Office of Diversity and Inclusion shall have the option to be a voting member on each evaluation committee. Departments will give due notice to the Office of Diversity and Inclusion via electronic means so proper staff can be allocated to participate on the selected evaluation committees.
- (E) The Office of Diversity and Inclusion Director shall be notified by the department Director, contract administrator or department designee of any proposed subcontracting changes or contract issues that impact program members MBE/WBEs during the term of a contract. Additionally, the contract administrator shall notify the Office of Diversity and Inclusion if the work of a subcontractor has been inspected and approved and the subcontractor, after a valid invoice has been submitted, has not been paid for more than 10 days after the prime has received payment.
- (F) The Office of Diversity and Inclusion Director in conjunction with department Directors may create subcommittees to develop additional accountability measures, benchmarks and goals targets.

Chapter 3907 OTHER PROVISIONS

3907.02 Determination of compliance and non-compliance.

The Office of Diversity and Inclusion, along with the contracting staff of each City department, shall monitor contractor compliance requirements during the term of the contract. If it is determined that there is cause to believe that a prime contractor or subcontractor has failed to comply with applicable requirements of Title 39, the Office of Diversity and Inclusion shall so notify the originating department and the contractor. The Office of Diversity and Inclusion Director, or designee, may require such reports, information and documentation from contractors, respondents and the head of any City department, division or office as are reasonably necessary to determine compliance within fifteen (15) calendar days after a preliminary finding of non-compliance.

If non-compliance cannot be resolved, the Director of the contracting agency/department or designee shall submit written recommendations to the Office of Diversity and Inclusion Director or

designee. If the Director agrees, the recommendation of the contracting agency/department shall be implemented. The contractor will be afforded a reasonable time to correct the situation.

If the Director is not in agreement, the reasons shall be stated.

If the Director makes a final determination that the contractor has violated or has failed to comply with this Title and the contractor has been given reasonable time to correct such situation and/or where negotiations have been of no avail, the Director shall transmit a finding of noncompliance thereon to the Director of Finance and Management in accordance with Section 329.16. A contractor that has received a notice of non-compliance from the Office of Diversity and Inclusion shall have a right of appeal in accordance with section 3907.03.