

NOTICE OF RULE ADOPTION**R161-23.26****ADOPTION DATE: December 14, 2023**

By: Edward Campos, Director
Small & Minority Business Resources Department

The Director of the Small & Minority Business Resources Department has adopted the proposed rules for the Minority-Owned and Women-Owned Business Enterprise Procurement Program. Notice of the proposed rule and request for public comment was published on October 10, 2023. The adoption of a rule may be appealed to the City Manager in accordance with Section 1-2-10 of the City Code, as explained below. This notice is issued under Chapter 1-2 of the City Code.

EFFECTIVE DATE OF THE ADOPTED RULE

The rule adopted by this notice is effective on December 14, 2023.

TEXT OF THE ADOPTED RULE

A copy of the complete adopted rule is attached hereto. This document along with the complete adopted rules are also available for public inspection and copying at the following locations. Hardcopies of the adopted rules may be purchased at the locations:

SMBR Office, located at 505 Barton Springs Rd., 5th Floor, Austin, TX 78704

Office of the City Clerk, located at 301 W. 2nd Street, Austin Texas, 78701

TEXT OF THE ADOPTED RULE

The adopted rule contains no changes from the proposed rule and the entire rule to be adopted is attached.

R161-23.26: The revised rules adopt administrative procedures related to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program. These new rules reflect the revisions outlined in the revised Minority-Owned Business Enterprise and Women-Owned Business Enterprise (MBE/WBE) Procurement Program Ordinance (City Code Chapter 2-9A and B), adopted by the Austin City Council on July 20, 2023. In addition, the revisions incorporate recommendations outlined in the 2022 Disparity Study and recommendations from the Inclusive Procurement Working Group. Lastly, the revisions repeal Chapters 2-9C and 2-9D.

SUMMARY OF COMMENTS

No comments were received on the proposed rule.

AUTHORITY FOR ADOPTION OF RULE

The authority and procedure for adoption of a rule to assist in the implementation, administration, or enforcement of a provision of the City Code is provided in Chapter 1-2 of the City Code. The authority to adopt proposed rule R161-23.26 is established in City Code Chapter 2-9A-6 and 2-9B-6.

APPEAL OF ADOPTED RULE TO CITY MANAGER

A person may appeal the adoption of a rule to the City Manager. AN APPEAL MUST BE FILED WITH THE CITY CLERK NOT LATER THAN THE 30TH DAY AFTER THE DATE THIS NOTICE OF RULE ADOPTION IS POSTED. THE POSTING DATE IS NOTED ON THE FIRST PAGE OF THIS NOTICE. If the 30th day is a Saturday, Sunday, or official city holiday, an appeal may be filed on the next day which is not a Saturday, Sunday, or official city holiday.

An adopted rule may be appealed by filing a written statement with the City Clerk. A person who appeals a rule must (1) provide the person's name, mailing address, and telephone number; (2) identify the rule being appealed; and (3) include a statement of specific reasons why the rule should be modified or withdrawn.

Notice that an appeal was filed will be posted by the City Clerk. A copy of the appeal will be provided to the City Council. An adopted rule will not be enforced pending the City Manager's decision. The City Manager may affirm, modify, or withdraw an adopted rule. If the City Manager does not act on an appeal on or before the 60th day after the date the notice of rule adoption is posted, the rule is withdrawn. Notice of the City Manager's decision on an appeal will be posted by the city clerk and provided to the City Council.

On or before the 16th day after the City Clerk posts notice of the City Manager's decision, the City Manager may reconsider the decision on an appeal. Not later than the 31st day after giving written notice of an intent to reconsider, the City Manager shall make a decision.

CERTIFICATION BY THE CITY ATTORNEY

By signing this notice, the City Attorney certifies that the proposed rules have been reviewed by the City Attorney and are a valid exercise of the Director's administrative authority.

REVIEWED AND APPROVED:

Edward Campos

Digitally signed by Edward Campos
Date: 2023.12.08 11:14:35 -06'00'

Edward Campos, Director
Small & Minority Business Resources Department

12/8/2023
Date



Anne L. Morgan
City Attorney

12/8/23
Date

City of Austin
Minority-Owned and Women-Owned Business Enterprise
Procurement Program Rules
Effective December 14, 2023

Table of Contents

Section 1: General Guidelines.....	6
1.1 Authority, Purpose, and Applicability	6
1.2 Program Exemptions.....	6
1.3 Sanctions.....	7
1.4 Effective Date.....	7
Section 2: Certification Eligibility	7
2.1 General Guidelines.....	7
2.2 Ownership and Control.....	8
2.3 Viability and Independence	10
2.4 Scopes of Work	12
2.5 Ethnic and Gender Identity.....	12
2.6 Determination of Business Size	12
2.7 Business Location.....	13
2.8 Determination of Economic Disadvantage	13
2.9 Certification by Other Governmental Agencies.....	13
2.10 Certification of Joint Ventures	13
Section 3: Procedures for Certification and Continued Eligibility Update.....	14
3.1 General Guidelines for Certification and Continued Eligibility Update	14
3.2 Application for Certification.....	14
3.3 Continued Eligibility Update Review.....	16
3.4 Individual Determinations of Social and Economic Disadvantage.....	16
Section 4: Procedures for Third Party Challenges to Certification	17
Section 5: Procedures for Appealing Certification Decisions.....	18
Section 6: Graduation from the Program	18
6.1 Graduation Guidelines	18
6.2 Graduation Procedure	19
Section 7: Goals for MBE and WBE Participation	19
Section 8: Solicitation Documents	19
Section 9: Pre-Award Compliance	20
9.1 Good Faith Efforts.....	20
3.5 Elements of Compliance Plans.....	21
3.6 Evaluation of Compliance Plans.....	21
3.7 Letters of Intent and Award of Contract.....	22
3.8 Procedure for Protesting Denial of Compliance Plan for Lack of Good Faith Efforts.....	23
Section 10: Monitoring Contract Performance	23

10.1	Verification of Compliance	23
Section 11:	Requests for Changes in Compliance Plans	23
11.1	Submission and Evaluation of Requests for Changes in Compliance Plan	23
11.2	Good Faith Efforts on Substitutions and Additions or Deletions of Subcontractors and Subconsultants.....	24
11.3	Change Orders	24
11.4	Procedures for Appealing Violations and Denial of Requests to Substitute, Add or Delete Subcontractors/Subconsultants	25
11.5	Sanctions for Noncompliance	25
Section 12:	Contract Closeout	26

Section 1: General Guidelines

1.1 Authority, Purpose, and Applicability

1.1.1 These rules are implemented pursuant to Chapters 2-9A and 2-9B of the Austin City Code, authorizing a Minority-Owned and Women-Owned Business Enterprise Procurement Program ("Program").

1.1.2 These rules shall apply to all actions related to the City's Program, which is administered by the Small and Minority Business Resources Department ("SMBR").

1.1.3 The timelines established in Chapters 2-9A and 2-9B of the City Code are mandatory. The timelines and procedures established only in these rules are guidelines, and the failure of City staff to comply shall not be grounds for invalidating any City action.

1.1.4 These rules incorporate by reference the definitions set out in City Code §§2-9A-4 and 2-9B-4. Except where specifically noted otherwise, "days" refers to calendar days.

1.1.5 The program and rules shall apply to procurements that are competitively bid as allowed by applicable state laws specifically with a total contract value of \$50,000 or greater and in which the department has established MBE/WBE participation goals.

1.2 Program Exemptions

1.2.1 The MBE/WBE Procurement Program applies to all binding legal agreements between the City and the contractor/consultant with the exception of the following contracts:

- A) Awards made by the City with federal/state grants or City general fund monies to a non-profit entity where the City offers assistance, guidance, or supervision on a project or program and the recipient of the grant award uses the grant monies to provide services to the community;
- B) Sales transactions where the City sells its personal or real property;
- C) Loan transactions where the City is acting as a debtor or a creditor;
- D) Lease and franchise agreements;
- E) Agreements to use City real property;
- F) Gifts of materials, equipment, supplies or services to the City;
- G) Interlocal or intergovernmental agreements between or among political subdivisions, including cooperative agreements;
- H) Procurements of commodities or services that are sole source by virtue of intellectual property rights or other exclusive rights for which there are no other subcontracting opportunities; or
- I) Public health and safety emergency purchases or services, as described in Chapter 252 of the Texas Local Government Code.

- J) Critical Business Needs procurements for Austin Energy (Resolution No. 040610-02)
- K) Ratification to existing contracts
- L) Transactions that are not a direct result of contracts identified in Chapter 2-9A or 2-9B.

1.2.2 The Contract Awarding Authority or the sole source vendor is encouraged to solicit offers from MBEs and WBEs, and to encourage prime contractors/consultants to utilize MBE and WBE subcontractors, where appropriate.

1.3 Sanctions

If at any time following appropriate investigation, the Director or designee has reason to believe that any person or firm has knowingly and willfully provided incorrect information related to, or made false representations in connection with any aspect of the Program or these rules, such matter shall be immediately referred to the Financial Services Department (FSD) and the City Attorney for consideration of sanctions as provided by the Program and other applicable laws.

1.4 Effective Date

These regulations shall be effective as of December 14, 2023. All items pending before the Director or designee as of the effective date of these rules shall be handled as provided herein and in Chapters 2-9A and 2-9B of the City Code. Solicitations issued by the City on or after December 14, 2023, shall also be administered in accordance with these rules and Chapters 2-9A and 2-9B of the City Code.

Section 2: Certification Eligibility

2.1 General Guidelines

2.1.1 An applicant's current and continued eligibility for certification as a minority-owned business enterprise ("MBE") and/or women-owned business enterprise ("WBE") shall be thoroughly investigated and reviewed. Complete applications will be reviewed in the order in which they are received. The review will include some or all of the following, as appropriate:

- A) Review of the application and supporting documentation;
- B) Individual interviews of owners, principal managers, and key personnel of the applicant;
- C) In-person or virtual Site visits to the applicant's facilities;
- D) Information from individuals, organizations, and agencies having knowledge of the applicant and its management, ownership and preferred scopes of work.

2.1.2 False, erroneous or misleading statements by an applicant regarding its performance on any contracts, or involvement in contracting or certification-related irregularities with any entity, and non-compliance with reasonable requests of the City for information concerning eligibility shall be accorded substantial weight in determining the applicant's certification, continued eligibility update, or decertification.

2.1.3 No determination of certification eligibility shall be made until all required

documents are provided to SMBR.

2.1.4 A determination of certification eligibility does not mean or imply that the City warrants the work, experience, capabilities, or qualifications of the firm seeking to be certified.

Certification of an applicant other than a Joint Venture shall be valid from the effective date of the certification and only as to the area(s) of specialty specified therein, contingent upon the establishment by the certified firm of continued eligibility, as provided in Section 3.3 of these Rules. Certification of a Joint Venture shall be valid for the performance of a specific contract.

2.1.5 Until an applicant has been certified, its participation in City contracts shall not be counted toward fulfillment of MBE or WBE goals or sub-goals. The absence of certification, however, shall in no way affect any applicant's right to register as a City vendor or to submit a bid or proposal for a City contract or subcontract as a non-certified vendor.

2.2 Ownership and Control

2.2.1 In order to verify ownership and control and to avoid shams, pass-throughs and fronts, it is the applicant's responsibility to establish, by preponderance of the evidence, that either collectively or individually the minority and/or women owner(s):

- A) Possess demonstrated financial resources to acquire ownership, and past experience that verifies demonstrated capability to engage in business in the area(s) of specialty for which certification is sought. The fact that other non-majority partners/owners, spouses, or employees have these resources shall not be considered.
- B) Exercise responsibility for the critical areas of the applicant's operations and make independent and unilateral business decisions;
- C) Possess adequate assets or resources to operate self-sufficiently in areas of financing, bonding (if applicable), supervision, personnel, equipment, materials and facilities;
- D) Accept risks and profits commensurate with their ownership interests and receive at least 51 % of any dividends paid;
- E) If a corporation, exercise control of the board of directors;
- F) If a partnership, exercise control of the business enterprise as documented in a partnership agreement;
- G) If a limited liability company, exercise control of the company, as documented in the articles of organization or the regulations.

2.2.2 Ownership by minority persons and/or women shall be real, continuing and go beyond the *pro forma* ownership of the applicant as reflected in ownership documents. The minority and/or women owners shall enjoy all customary incidents of actual and beneficial ownership and shall share in all risks and profits commensurate with their ownership interests, as demonstrated by a detailed examination of the substance of their business arrangements with others. Documentation must be found in the business records of the applicant. The records must clearly show the contribution of expertise and its value to the applicant.

2.2.3 Ownership is demonstrated by verifiable assets for acquisition derived from independently owned holdings. A transfer of assets may be considered independently owned holdings if supported by payment of fair and adequate consideration. The Department will review transactions that include a transfer or gifting of assets and/or business ownership to determine program eligibility.

- A) If the applicant is a corporation, ownership is demonstrated by the ability to transfer stock, title, and possession of securities that (1) represent ownership of the applicant by minorities and/or women and (2) are directly and physically held by those owners. Securities held in trust or by any guardian for a minor or incompetent person or, in the appropriate case, pledged as collateral to secure any principal indebtedness of the applicant, shall be excluded from the determination of whether the applicant is owned and controlled by minorities and/or women.
- B) If the applicant is a limited liability company, ownership is demonstrated by membership in the company and ownership of membership interest.

2.2.4 Contributions of capital or expertise by minority and/or women owners to acquire their ownership interests in the applicant shall be real and substantial and be in proportion to the interest(s) acquired. Insufficient contributions shall include:

- A) Promises by the minority and/or women owners to contribute capital in the future; The Director or designee shall have the authority to review and consider future payment arrangements to determine eligibility.
- B) Notes payable from minority and/or women owners to the applicant;
- C) Participation by minority and/or women owners as mere employees; and
- D) Provision by any owner of goods, services, or equipment having an actual or estimated value based upon industry standards substantially less than the value attributed in the applicant's certification application.

2.2.5 Minority and/or women owners shall, either collectively or individually, possess the power to direct or cause the direction of management, policies and objectives of the applicant and to make all substantive day-to-day decisions on the applicant's major and essential operations. Those persons who have the ultimate power to hire and fire the managers can be considered as controlling the business. No formal or informal restrictions of any kind shall exist which limit the customary discretion necessary to control the applicant by the minorities and/or women. Unless mandated by law, no restrictions shall exist which limit the minority and/or women owners from effective and continuous control of the applicant, or which prevent minority persons and/or women, without the cooperation of any owner who is a non-minority and/or man, from making any operational business decision for the applicant. In all cases, any business relationship between the applicant and its minority and/or women owners and non-minorities and/or men shall be given close scrutiny.

2.2.6 It shall be presumed, unless conclusively established otherwise, that the status of any minority and/or woman as an owner/manager of the applicant shall require active and substantial participation by such person in the management of the applicant's day-to-day activities. Ownership interests of minority and/or women owners not participating in the applicant's operations on an active and substantial basis shall be excluded from the determination of whether the applicant business enterprise is owned and controlled by minority persons and/or women. In

addition, employment histories of all owners and managers shall be reviewed to determine the expertise and involvement by such persons in activities and employment that may contradict any representation of active and substantial management participation. Absentee management or ownership by any minority and/or woman owner who does not exercise an active and substantial role in the applicant's day-to-day management shall be excluded from the determination of whether the applicant is owned and controlled by minority persons and/or women.

2.2.7 Owners of the applicant who are non-minorities and/or men shall not be vested with the primary responsibility or ability to direct its day-to-day management operations. In cases where evidence indicates that major management activities (e.g., hiring and firing of management personnel, acquiring and purchasing major equipment and supplies and negotiating and approving contracts) of the applicant are performed by owners other than the minority and/or women owners, persons performing such duties shall be presumed to control those aspects of the applicant's business. Where business documents vest an officer of the applicant with the primary responsibility or ability to direct the applicant's day-to-day management operations, that officer must be a minority and/or woman owner.

2.2.8 The intra-family transfer of ownership in an existing firm or on-going business to a minority and/or woman may be considered. Factors related to the intra-family transfer of ownership shall be reviewed by the Director or designee to determine eligibility.

2.2.9 A verification of ownership and control does not mean or imply that the City warrants the quality of work performed by the firm or the experience, capacity, and qualifications claimed by the firm's owners.

2.3 Viability and Independence

2.3.1 The applicant must be a viable business. Viability shall be determined by audited or auditable financial statements, or income projections when the applicant is a new business. Additional considerations may include a review of the following:

- A) Possession by the applicant of insurance, bonds, and/or licenses mandated by applicable governmental agencies to perform the work the applicant represents as its area(s) of specialty;
- B) Access to real properties and facilities from which to conduct day-to-day business operations;
- C) Employment of persons in sufficient numbers and with expertise essential to satisfactory contract performance in its area(s) of specialty; and
- D) The applicant's ownership of and/or access to equipment, goods and supplies essential to its satisfactory performance in its area(s) of specialty.

2.3.2 The applicant must be an independent business.

- A) Independence shall be determined by considering the ability of the applicant to perform satisfactorily in its area(s) of specialty without substantial reliance upon finances, resources, expertise, staff, facilities, or equipment of non-minorities and/or men. Recognition of the applicant as a separate and distinct entity by governmental taxing authorities is not indicative of the applicant's assertion of independence.
- B) Independence will be established by the degree to which financial, equipment leasing, business and other relationships with non-minorities and/or men vary from normal industry practices, and other appropriate factors.
- C) Independence will be evaluated as of the date the applicant was established.

2.3.3 Based on the following and other appropriate cases, the applicant shall be reviewed to determine its true abilities to operate viably and independently of non-minorities or men, or to otherwise be viable and/or independent:

- A) The applicant's status as a party to any long-term (i.e., more than three-year) contract, lease, or lease agreements other than for real property, equipment or employment with non-minorities and/or men;
- B) The applicant's status as a party to any contract, lease, or lease agreements on terms that vary from industry standards or prudent business practices;
- C) Interlocking stock ownership of the applicant and non-minority- and/or men- owned businesses in the same or a related industry;
- D) Common directors or officers between the applicant and non-minority- and/or men-owned businesses;
- E) The applicant's use of employees, equipment, expertise, or facilities shared with or obtained at less than fair market value from non-minority- and/or men-owned businesses;
- F) The receipt by the applicant's non-minority and/or men owners of financial benefits (e.g., dividends, loans, salaries, and distributions) from the applicant which exceed their proportionate ownership interests;
- G) Newly established firms and firms whose ownership and/or control has changed since the date of the advertisement of a solicitation or the date the applicant has indicated that a bid response will be submitted; and
- H) Any previous and/or continuing employer-employee relationship among or between present minority and/or women owners and non-minorities and/or men to ensure that all minority and/or women owners have the requisite independent ownership and management responsibilities and capabilities.

- I) A determination that a firm is viable and/or independent does not mean or imply that the City warrants the quality of work performed by the firm or the experience, capabilities, and qualifications claimed by the firm's owners.

2.4 Scopes of Work

2.4.1 An applicant must seek certification in specific scopes of work. A scope of work certification by SMBR does not create any warranty by the City of Austin regarding the work performed by a MBE or WBE, nor is a certification a guarantee that a MBE or WBE will be able to satisfactorily perform the scope(s) of work on their SMBR vendor profile.

2.4.2 An applicant must self-report the scope(s) of work in which it is qualified to participate. MBEs and WBEs may be certified in more than one scope of work, as long as the eligibility criteria is met. Certification in a scope of work qualifies a MBE or WBE to participate in all closely related areas of the specialty. Possession by minority and/or women owners of individual licenses or other relevant certifications shall be required for certification of the applicant, according to standard industry practices or if otherwise required by law.

2.4.3 A firm desiring to be certified in additional scopes of work may update their City of Austin profile or submit a request in writing. Until certification is awarded, participation on a contract in an uncertified area shall not be counted toward fulfillment of MBE or WBE goals or sub-goals. The request shall contain information sufficient to establish that certification in the additional area(s) of specialty is warranted.

2.4.4 MBEs and WBEs must inform SMBR in writing of any changes in certified scopes of work within 30 days. Failure to do so may result in decertification or denial of continued eligibility update of the firm.

2.5 Ethnic and Gender Identity

2.5.1 Bona fide minority group membership by the proposed minority owner shall be established on the basis of the individual's claim that they are a member of a minority group, has held themselves out to be a member of the group over a long time prior to applying for certification and is so regarded by that particular minority community. If an individual has not maintained identification with the minority group to the extent that they are commonly recognized as a member of that minority group, it is unlikely that they have in fact suffered the social disadvantage that a member of the minority group is presumed to have suffered.

2.5.2 The presumption that a member of a minority group has suffered social and economic disadvantage may be challenged and rebutted pursuant to the procedures contained in these rules.

2.5.3 A firm owned by a minority woman may be certified as both a MBE and a WBE upon demonstration that the certification criteria have been independently met for both MBE and WBE certification, but such a firm may be counted only towards either the MBE or the WBE goal.

2.6 Determination of Business Size

- 2.6.1 Only a firm that is a small business is eligible for certification and program

participation, even if the firm meets all other eligibility criteria.

2.6.2 In determining whether an applicant is a small business, the City will apply the standards established by the United States Small Business Administration, in 13 C.F.R. Part 121.

2.7 Business Location

A firm must have a facility or other accepted location, based on industry practices, in the state of Texas from which it maintains adequate personnel, equipment, materials and facilities to perform its area(s) of specialty for at least three months before the date of its application to be eligible for certification.

2.8 Determination of Economic Disadvantage

Only a firm owned by a socially and economically disadvantaged person(s) may be certified as a MBE/WBE. Economic disadvantage shall be established by submitting a sworn Personal Net Worth Statement provided by the City or submitting alternative sworn documentation as determined by the Director or designee.

The City will utilize the following indices for the evaluation of the annual Personal Net Worth (PNW) threshold:

2.8.1 South Consumer Price Index

2.8.2 The S&P 500 (S&P)

2.8.3 Texas A&M Real Estate Research Center (A&M)

2.8.4 Austin Board of Realtors

2.8.5 The Bureau of Labor Statistics/Texas Workforce Commission

The indices will be evaluated on a periodic basis to determine that they continue to reflect the Austin economic marketplace and conditions.

2.9 Certification by Other Governmental Agencies

Evidence of an applicant's certification as a MBE, WBE, Airport Concession Disadvantaged Business Enterprise (ACDBE), or Disadvantaged Business Enterprise ("DBE"), pursuant to 49 C.F.R. Part 26 or 49 C.F.R. Part 23, by another governmental agency shall be a factor, but is not conclusive, in the determination of the applicant's eligibility for certification by the City as a MBE or WBE.

2.10 Certification of Joint Ventures

Joint Ventures shall only be certified for participation in a specific contract. To be counted toward achieving a participation goal, a Joint Venture must be certified before the bid submission deadline for the specific contract. Any Joint Venture must include a City of Austin certified MBE/WBE.

Section 3: Procedures for Certification and Continued Eligibility Update

3.1 General Guidelines for Certification and Continued Eligibility Update

3.1.1 The application shall be dated and time-stamped upon receipt by SMBR or its designee, which conclusively establishes the receipt date. SMBR or its designee shall make a final certification decision within 60 days of receipt of a complete application unless extended by the Director or designee for good cause. SMBR shall inform the applicant in writing of any such extension.

3.1.2 An application containing omissions, inaccuracies, or deficiencies shall be deemed incomplete, and SMBR or its designee shall notify the applicant in writing of the nature of the omissions, inaccuracies, or deficiencies. An incomplete application shall not be subject to the 60-day decision requirement.

3.1.3 As a condition of certification or continued eligibility update, SMBR or its designee may request at any time additional information relevant to the applicant's eligibility, including an updated application. Any request for additional information shall be in writing and direct the applicant to respond within a specified time. An applicant may request additional time if it consents to a corresponding extension of the 60-day decision deadline. Failure to request a timely extension shall result in SMBR or its designee denying or decertifying the applicant .

3.1.4 The applicant must report any changes in its ownership, management, officers, or financial relationships during the pendency of its application to SMBR in writing within 10 days. A certified firm is required to report any change in ownership, control or available scopes of work within 30 days of such change if that change occurs when an application is not pending. Failure to report such change(s) may result in the denial of certification or . continued eligibility update.

3.1.5 A certified firm shall inform SMBR in writing within 30 days of any changes in its management or ownership. Failure to inform SMBR may constitute grounds for decertification or denial of continued eligibility update.

3.2 Application for Certification

3.2.1 A certification application shall be executed under oath by the owner or duly authorized officer of the applicant. If such form is signed by any party other than the president or secretary of a corporation, general partner of a partnership, managing member of a limited liability company or owner of a sole proprietorship, such party must also submit evidence of his or her authority. Material factual representations must be based upon the personal knowledge of the person executing the application.

3.2.2 An applicant shall affirm that no principal, officer, owner, or any person having decision-making authority or any direct or indirect interest in the applicant has, within five years of the date of such application, owned a direct or indirect interest in, or been financially affiliated with, any firm to which MBE, WBE or DBE certification has been denied or withdrawn by any governmental entity where such denial or withdrawal was based, in whole or in part, upon false information contained in an application for certification.

3.2.3 During any period for which certification shall be effective, all books and records

in the applicant's or its agent's possession, which may prove or disprove eligibility, shall be open for inspection and examination by the Director or designee upon reasonable notice.

3.2.4 An applicant's refusal to accept an in-person or virtual site visit, schedule a personal interview with SMBR or provide additional information as requested shall be grounds for denial of certification or decertification.

3.2.5 Certification applications shall include authorization to permit the Director or designee to obtain from a third party (e.g., utility companies, business references, and lessors/lessees) information relevant to any applicant's eligibility for certification.

3.2.6 The following materials must be provided as a part of the certification application:

A) Ownership and control:

- i) Work history of the applicant;
- ii) Resumes of owners, managers and key personnel;
- iii) Evidence of all owners' capital contribution to start up or to acquire ownership;
- iv) Partnership agreement (if applicable);
- v) Joint Venture agreement (if applicable);
- vi) Corporation documents (articles of incorporation and by-laws; minutes of board of directors and stockholders' meetings; stock certificates or ledgers; shareholder agreements) (if applicable);
- vii) Limited liability company documents (articles of organization and regulations).
- viii) Titles to or leases for major equipment and/or vehicles;
- ix) Past and current loan agreements of applicant or between any owners;
- x) Financial records, including the applicant's tax returns (including returns from each partner of a Joint Venture) for the current year and four previous years or, in the case of a newly formed business, a balance sheet and/or business plan and current and previous two years individual tax returns of the owners; and
- xi) Bank signature authorization cards.

B) Economic Disadvantage

- i) Sworn Personal Net Worth Statement
- ii) Alternative sworn documentation as determined by the Director or designee

C) Proof of membership in a socially disadvantaged group:

- i) Birth certificate;
- ii) Naturalization papers (if applicable);
- iii) Resident card (if applicable);
- iv) Passport (if applicable);
- v) Driver's license;
- vi) Tribal membership (if applicable);
- vii) Affidavits (if applicable); and

- viii) Other documentation as deemed appropriate.
- D) Scope(s) of work:
 - i) Evidence of contracts with clients or suppliers;
 - ii) References; and
 - iii) Licenses (if applicable).
- E) Certification by other agencies (if applicable); and
- F) Other documents as required by SMBR.

3.3 Continued Eligibility Update Review

3.3.1 Continued eligibility for certification shall be affirmed by the certified firm in a sworn affidavit, along with supporting documentation as requested by SMBR, on an annual basis. Failure to submit a complete affidavit of continued eligibility may result in decertification.

3.3.2 The City or its designee may, at its discretion, conduct a review of a certified firm's continued eligibility. Such a review may include, but is not limited to, an in-person or virtual site visit, audit, or a statement of fact regarding current business structure. Failure to respond to such a request shall be grounds for denial of continued certification.

3.3.3 Failure to submit required affidavit affirming a firm's certification eligibility within 60 days from the date of receipt of written notification shall result in decertification.

3.3.4 SMBR shall consider all relevant factors in determining the firm's continued eligibility, including non-compliance with reasonable requests by the City for information concerning Program eligibility and submission of false, erroneous, or misleading information to SMBR regarding the firm's business activities.

3.3.5 Decertification or denial of certification shall not affect the firm's right to remain an active City of Austin vendor and retain registration on FSD's registered vendor list as a non-certified vendor.

3.4 Individual Determinations of Social and Economic Disadvantage

3.4.1 Social Disadvantage: Socially disadvantaged individuals are those who are Minority Persons as defined in City Code §§ 2-9A-4(32) and 2-9B-4(32), and who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. Social disadvantage must stem from circumstances beyond their control. Evidence of individual social disadvantage must include the following:

- A) At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, disability, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged;
- B) Personal experiences of substantial and chronic social disadvantage in

American society, not in other countries; and

- C) Negative impact on entry into or advancement in the business world because of the disadvantage. The City will consider education, employment and business history, where applicable, to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.
1. Education. The City will consider such factors as denial of equal access to institutions of higher education and vocational training, exclusion from social and professional association with students or teachers, denial of educational honors rightfully earned, and social patterns or pressures that discouraged the individual from pursuing a professional or business education.
 2. Employment. The City will consider such factors as unequal treatment in hiring, promotions, and other aspects of professional advancement, pay and fringe benefits, and other terms and conditions of employment; retaliatory or discriminatory behavior by an employer or labor union; and social patterns or pressures which have channeled the individual into non-professional or non-business fields.
 3. Business history. The City will consider such factors as unequal access to credit or capital, acquisition of credit or capital under commercially unfavorable circumstances, unequal treatment in opportunities for government contracts or other work, unequal treatment by potential customers and business associates, and exclusion from business or professional organizations.

3.4.2 Economic Disadvantage: Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged. Economic disadvantage is defined at City Code §§ 2-9A-4(20) and 2-9B-4(20).

- A) Except as set forth in subparagraph (B), the City will attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, or to a trust, a beneficiary of which is an immediate family member, for less than fair market value, within two years prior to a firm's application for participation in the MBE/WBE Program, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.
- B) The City will not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

Section 4: Procedures for Third Party Challenges to Certification

4.1 A Third Party may challenge the eligibility of a certified firm.

4.2 The challenge shall be made in writing under oath and shall include all information relied upon by the challenging party.

4.3 The Director or designee shall provide an opportunity to the parties for an informal hearing.

Section 5: Procedures for Appealing Certification Decisions

5.1 The Director or designee shall inform the applicant in writing of the basis for the denial of certification, continued eligibility update, or decertification as required by City Code §§ 2-9A-16, 2-9B-16, 2-9C-16 or 2-9D-16.

5.2 If the firm desires to appeal the Director or designee's decision, it must do so in writing within seven calendar days of the date the firm receives a notice of intent to impose an adverse certification decision. The written notice must be submitted to the Director or designee. Failure to file a written notice of intent to appeal within this time waives all rights to appeal or protest the adverse certification decision.

5.3 After filing a notice of intent to appeal, a firm may file a written appeal of an adverse certification decision or notice of intent to impose an adverse certification decision. The appeal must contain a statement of the grounds for appeal, including the reasons that the firm believes the adverse certification decision to be inappropriate. The appeal must be submitted to the Director or designee within 21-days of the date the firm receives notice of intent to impose an adverse certification decision.

5.4 The Director or designee 's final decision on the written appeal shall be made in writing after an informal hearing and shall be communicated to the firm within 10 days of the hearing.

5.5 A firm that is subject to an adverse certification decision after appeal may protest the Adverse Decision to an independent hearing examiner appointed by the City. The firm must submit a notice of intent to protest to the Financial Services Department within five calendar days of receipt of the final adverse certification decision, in accordance with the procedures established by the Financial Services Department.

5.6 A firm denied certification, or a firm which has been decertified may not apply for certification for 180 days from the effective date of denial or decertification.

Section 6: Graduation from the Program

6.1 Graduation Guidelines

6.1.1 The Continued Eligibility Update review shall include an evaluation of whether the firm is a small business.

6.1.2 If the average gross receipts, or the average number of employees of the firm and its affiliates exceed the federal small business size standard for that industry code as promulgated in 13 CFR Part 121, the firm shall graduate from the Program.

6.2 Graduation Procedure

6.2.1 The Director or designee shall notify the firm in writing that its average gross receipts or average number of employees exceed the federal small business size standard.

6.2.2 The firm may appeal the decision pursuant to these rules.

6.2.3 The firm shall not be eligible to apply for certification for at least one year from the effective date of its graduation, and it must establish that its gross receipts or number of employees during that year did not exceed the applicable federal size standard.

Section 7: Goals for MBE and WBE Participation

7.1 MBE and WBE subcontracting goals for a solicitation shall be based on the dollar value of the solicitation; the type and scopes of work of the solicitation; the availability of MBEs and WBEs to perform the scopes of work anticipated in the solicitation.

7.2 Goals may be set if there are at least two separate and distinct scopes of work and a mix of three certified MBEs or certified WBEs currently available to provide the commodities or services identified in the solicitation. SMBR may also establish goals if historically MBEs and WBEs have participated in prior similar solicitations.

7.3 For non-construction related solicitations SMBR may look at overall MBE and WBE availability, in addition to the number of scopes of work, to establish a combined MBE/WBE goal.

7.4 In certain circumstances, SMBR may elect not to set goals for a solicitation. The Department may elect not to set goals when there is insufficient availability of MBEs or WBEs to provide the commodities or services identified in the solicitation, or when there are insufficient subcontracting opportunities, or when it is in the best interest of the City to do so. In addition, SMBR may elect not to set goals on certain solicitations with availability when it determines that is in the best interest of the City.

Section 8: Solicitation Documents

8.1 For solicitations that must be approved by City Council and for which project specific goals have been established, the Contract Awarding Authority shall include in its solicitation and contract documents:

- A) A description of the Chapter and the Program;
- B) The goals or sub-goals for the specific solicitation;
- C) The requirements related to achieving the goals or sub-goals;
- D) The requirements and deadlines to submit a Compliance Plan either (1) to document that the goals are met or (2) to document that the Respondent has made good faith efforts as described at Section 9.1, including all instructions and forms; and

- E) An availability list of MBEs and WBEs identified for possible subcontracting opportunities.

8.2 If a Respondent identifies one or more scopes of work that are appropriate subcontracting/subconsulting opportunities for the solicitation that are not included on the availability list, the Respondent must solicit available certified firms for those scopes of work, in accordance with Section 9.1. The Respondent may contact SMBR or use the City of Austin's vendor database, if available, for a supplemental list of MBEs and WBEs for the identified work. Scopes of work not included on the availability list must be approved by the Project Sponsor and/or City Project Manager.

8.3 For all solicitations for contracts that must be approved by the City Council and for which there is insufficient availability of MBEs and WBEs or insufficient scopes to set subcontracting/subconsulting goals, the Contract Awarding Authority shall include in its solicitation documents a description of the Program, a statement that no goals have been established for the solicitation, and a statement that the City encourages Respondents to contract with MBEs and WBEs should subcontracting opportunities be identified.

Section 9: Pre-Award Compliance

9.1 Good Faith Efforts

9.1.1 A Respondent to a solicitation on a project for which project specific goals have been established must meet the goals or demonstrate its good faith efforts to do so. The Respondent can meet this requirement by either:

- A) Documenting commitments for participation by MBEs and WBEs sufficient to meet the goal(s); or
- B) Documenting good faith efforts to meet the goal(s). The Respondent must show that it took all necessary and reasonable steps to achieve the goal(s), to obtain MBE or WBE participation, even if they were not fully successful. The Respondent must document its response to a solicitation with supporting evidence it has made adequate good faith efforts. SMBR is specifically prohibited from ignoring bona fide good faith efforts.

9.1.2 The Respondent must use reasonable and acceptable efforts to obtain MBE and WBE participation sufficient to meet the contract goals. Mere pro forma efforts are not good faith efforts to meet the MBE and WBE contract goals.

9.1.3 The specific requirements that SMBR will consider as part of the Respondent's good faith efforts to obtain MBE and WBE participation are identified in City Code §§2-9A-21 and 2-9B-21.

9.1.4 The Good Faith Effort Program will be utilized in certain cases. In those cases, SMBR, rather than the Respondents, will initially notify firms of bidding opportunities, pursuant to §2-9A-21 (E)(1) of the City Code.

- A) SMBR will conduct such notifications on certain solicitations meeting the

following criteria:

- i. The solicitation is a Capital Improvement Project (CIP) identified in the Capital Improvement Program or otherwise defined by the City; or
- ii. The solicitation is issued by the Financial Services Department or is related to economic development.
- iii.
- iv. SMBR shall endeavor to make the initial notification to firms required under the City Code as determined by SMBR and the Contract Award Authority.

B) When SMBR undertakes the responsibility of notifying certified firms of procurement opportunities, the firms must submit responses directly to prime respondents by the date and time established by the prime.

C) When SMBR makes first contact with certified firms, prime respondents must still comply with all additional good faith effort requirements pursuant to City Code §2-9A-21(E)(3)-(7) and these Rules.

9.2 Elements of Compliance Plans

9.2.1 In order to be responsive to a solicitation for which goals or subgoals have been established, the Respondent must submit a completed Compliance Plan that demonstrates achievement of the goals or its good faith efforts.

9.2.2 Respondents must notify MBEs and WBEs of subcontracting/subconsulting opportunities at least 10 business days before submission of the response.

9.2.3 The Compliance Plan shall be due by the deadline established in the solicitation documents. Failure to submit a timely and complete Compliance Plan shall result in rejection of the response as being non-responsive.

9.2.4 City-certified MBE and WBE Respondents may count their own participation, less any amount subcontracted, toward a goal for which they qualify but may not divide their own participation between two goals. If ethnic specific sub-goals are established, the participation of a MBE ethnic group cannot be counted toward another ethnic group's sub-goal.

9.2.5 Respondents may count only the participation of City-certified MBEs and WBEs for the scopes of work for which they are certified on or before the date the response is submitted. If the MBE/WBE firm ceases to be certified during the contract, participation will only be counted for the value of the work that was performed while the firm was certified.

9.2.6 Respondents may count the MBE or WBE participation of every level of subcontracting toward the project goal(s). In order to count the participation of every level of subcontracting, the MBEs and WBEs must be listed on the compliance plan.

9.3 Evaluation of Compliance Plans

9.3.1 The Contract Awarding Authority shall initially forward the Compliance Plans of the three lowest Respondents to SMBR (for Invitations for Bids (IFBs)) in response to solicitations for competitive bids. Subsequent Compliance Plans may be forwarded as needed. SMBR reviews the apparent low Respondent or until a compliant Respondent is determined.

9.3.2 The Contract Awarding Authority shall forward all Compliance Plans received in response to Request for Proposals (RFPs) and Requests for Qualifications (RFQs) to SMBR. SMBR reviews all Compliance Plans for RFPs and RFQs.

9.3.3 Each goal listed in the solicitation shall be evaluated separately. If a Respondent fails to meet any goal or sub-goal or make good faith efforts with respect to any goal or sub-goal, the response is non-compliant with the Program and will be deemed non-responsive.

9.3.4 Where the solicitation requires the Respondent to submit a base bid and one or more alternates, the Compliance Plan must demonstrate the Respondent's achievement of the goals or good faith efforts to achieve the goals on the base bid. SMBR's evaluation of the Respondent's achievement of the goals shall be calculated on the base bid.

9.3.5 SMBR shall verify that the MBE or WBE (1) is certified in the scope(s) of work listed by the Respondent in the Compliance Plan; and (2) agrees with the price and scope as stated in the Plan.

9.3.6 Within seven business days of receiving the Compliance Plans, SMBR shall inform the Contract Awarding Authority whether the Compliance Plan(s) meet the goals or establish good faith efforts to meet the goals and the reasons for the determinations, or if additional time is required to evaluate the Compliance Plan(s), SMBR shall inform the Contract Awarding Authority of the reason(s) and the anticipated date for completion of the review.

9.4 Notification of Respondent

9.4.1 The Contract Awarding Authority shall notify a Respondent of the basis of the non-responsive determination. Should the Respondent be one of the two lowest bids, the Contract Awarding Authority shall retain any bid bond or other required bid guarantee instruments until the expiration of the period for filing a protest of the denial of the Compliance Plan, as described in Section 9.6 , or until a filed protest is resolved.

9.4.2 The Contract Awarding Authority shall notify the lowest Respondent or highest-ranking Respondent of the City's determination.

9.5 Letters of Intent and Award of Contract

9.5.1 For all solicitations, letters of intent from MBEs and WBEs to be utilized on the contract must be submitted to the Contract Awarding Authority by the Respondent on the form provided with the solicitation documents no later than three business days after written notification of its status as apparent low or successful Respondent. Failure to provide such letters shall be grounds for rejection of the response. If a MBE or WBE fails to sign a letter of intent after one is requested by the contractor/consultant, the contractor/consultant may request approval to substitute the subcontractor/subconsultant after contract execution.

9.5.2 After receiving the letters of intent, the Contract Awarding Authority may recommend award of the contract to the lowest Respondent or highest-ranking Respondent .

9.5.3 The Contract Award Authority's recommendation for City Council action shall include reasons for recommending any Respondent whose response did not meet the goals, or who did not make good faith efforts to meet the goals.

9.6 Procedure for Protesting Denial of Compliance Plan for Lack of Good Faith Efforts

If a Compliance Plan is denied on the grounds that the good faith efforts requirement has not been met, the Contract Awarding Authority shall inform the Respondent in writing of the basis for the denial. To protest such a decision, the Respondent shall follow the Financial Services Central Procurement protest process described in the City of Austin's Financial Services Solicitation Instructions.

Section 10: Monitoring Contract Performance

10.1 Verification of Compliance

10.1.1 Prime contractors and prime consultants are required to submit monthly subcontract a payment data to SMBR no later than the 15th calendar day of each month. The reporting mechanism shall be in the format provided by the City.

10.1.2 Procedures for monitoring compliance may include: in-person visits, virtual site visits, or telephone audits; consideration of requests for changes, amendments or change orders; and review and verification of payments to subcontractors as documented by subcontractor monthly submissions.

Section 11: Requests for Changes in Compliance Plans

11.1 Submission and Evaluation of Requests for Changes in Compliance Plan

11.1.1 The prime contractor or prime consultant must seek in writing and obtain the prior approval of changes to the original Compliance Plan on the form provided by SMBR. The Director or designee has sole authority to approve or deny changes or substitutions to the Compliance Plan.

11.1.2 Prior to submitting a request for the deletion or substitution of a subcontractor or subconsultant, the prime contractor or prime consultant must provide written communication to the subcontractor or subconsultant with a copy to SMBR informing the subcontractor or subconsultant of the basis for the requested change and providing an opportunity for the subcontractor or subconsultant to resolve the problem. The prime contractor or prime consultant must immediately request a meeting with the subcontractor or subconsultant in a good faith attempt to resolve any outstanding issues. If requested by either party, the City shall facilitate such a meeting and monitor the process. The prime contractor or prime consultant must verify in a written communication that a meeting with the subcontractor or subconsultant has taken place. The written communication must be submitted to SMBR at the same time the Request for Change is submitted.

11.1.3 The prime contractor or prime consultant may submit a request for change to SMBR upon a showing that the written communication referenced in 11.1.2 has been sent as required and after the meeting with the subcontractor or subconsultant referenced in 11.1.2 has occurred. However, notwithstanding the above, if the subcontractor or subconsultant has not responded to the prime contractor or prime consultant's written communication or the prime contractor or prime consultant's request for a meeting by the eighth day after written

communication sent , the prime contractor shall be allowed to submit a request for change for consideration by SMBR.

11.1.4 The written request must state specific reasons for the proposed addition, deletion or substitution of a subcontractor or subconsultant. The facts supporting the request must not have been known by the contractor/consultant and proposed subcontractor/subconsultant prior to the submission of the Compliance Plan. The contractor/consultant must submit documentation to substantiate its request for a change of the Compliance Plan. Such documentation may include, but is not limited to the materials listed in Subsections A-D below:

- A) Documentation from the project manager or contract manager, City inspector or other appropriate City staff assigned to oversee the project.
- B) Correspondence between the prime contractor/consultant and the subcontractor or subconsultant.
- C) Field notes, laboratory reports, photographic evidence or other materials.
- D) A copy of the written communication from the prime contractor or prime consultant to the subcontractor or subconsultant required by Section 11.1.2 above.

11.1.5 If a contractor/consultant proposes to add an MBE or WBE to the Compliance Plan after the contract has been awarded, confirmation regarding the scope of work and/or cost must be submitted with the request.

11.1.6 Within seven business days of receiving the completed and signed Request for Change of Compliance Plan and documentation, the Director or designee shall notify all parties whether the request was approved or denied and, if denied, the basis for the denial. If additional time is required to evaluate the Request for Change, SMBR shall notify all parties outlining the reason(s) and the anticipated date for completion of the review.

11.2 Good Faith Efforts on Substitutions and Additions or Deletions of Subcontractors and Subconsultants

When goals are not met on a project, the contractor/consultant shall first make Good Faith Efforts to add or substitute a non-certified subcontractor/subconsultant in these circumstances:

11.2.1 When a new scope(s) of work is added to the project

11.2.2 Adding a non-certified subcontractor/subconsultant

11.2.3 Substituting a certified subcontractor/subconsultant with a non-certified subcontractor/subconsultant

11.2.4 When Documentation demonstrating good faith efforts, as described in Section 9.1 above, must be submitted with each request for substitution or addition, the Director or designee will determine whether good faith efforts have been satisfactorily met to approve the request for change to compliance plan. If good faith efforts to substitute or add a MBE or WBE have been made to the satisfaction of the Director or designee, then the contractor/consultant may substitute or add a non-certified firm.

11.3 Change Orders

Change orders issued on competitively bid contracts and amendments to contracts solicited through a proposal or qualifications process that do not alter the scopes of work originally required to perform the contract shall be undertaken using the subcontractors/subconsultants and suppliers listed in the Compliance Plan.

If a change order requires that the contractor/consultant add a subcontractor/subconsultant to the project, it is the responsibility of the contractor/consultant to submit a Request for Change of Compliance Plan for SMBR review and the recalculation of goal(s).

11.3.1 If a change order involves an increase or decrease in the amount of work, it is the responsibility of the contractor/consultant to submit a Request for Change of Compliance Plan for SMBR review and the recalculation of goal(s)

11.3.2 If a change order results in the deletion of a scope of work to be performed by a MBE or WBE, the City's contract manager or project manager shall notify in writing the prime contractor/consultant and the MBE or WBE. It is the responsibility of the contractor/consultant to submit a Request for Change of Compliance for SMBR review and to recalculate the contract goals.

11.4 Procedures for Appealing Violations and Denial of Requests to Substitute, Add or Delete Subcontractors/Subconsultants

11.4.1 Within seven calendar days of the date the prime contractor/consultant receives a Violation Letter or a denial of a Request for Change of Compliance Plan, the prime contractor/consultant may file a written notice of intent to appeal with the Director or designee. Failure to file a timely notice waives all rights to appeal or protest the adverse decision.

11.4.2 After filing a notice of intent to appeal, a prime contractor/consultant may file a written appeal of the adverse decision. The appeal must be in writing and must contain a statement of the grounds for appeal, including the reasons that the prime contractor/consultant believes the violation or denial of the Request for Change of Compliance Plan. The appeal must be submitted to the Director or designee within 21 days of receipt of the Violation Letter or the denial of a Request for Change of Compliance Plan.

11.4.3 The Director or designee's final decision on the written appeal shall be made after an informal hearing and shall be communicated to the prime contractor/consultant within 10 days of the hearing.

A firm may protest the adverse decision to an independent hearing examiner appointed by the City. The firm must submit a notice of intent to protest to the Financial Services Department within four calendar days of receipt of the final decision.

11.5 Sanctions for Noncompliance

11.5.1 Failure to obtain prior authorization for substitutions, additions or deletions of subcontractors as provided for in this Section is a violation of the MBE/WBE Ordinance. SMBR may recommend to the Financial Services Department that the City enforce the following sanctions for each violation within a rolling twenty-four month period:

- 1st Violation: Probation for a period of up to 6 months
- 2nd Violation: Suspension for a period of up to 24 months
- 3rd Violation: Debarment for a period of up to 5 years

If the prime contractor/consultant engages in more than one of the above actions (*i.e.*, unauthorized substitutions, additions, and deletions) at any given time, the Director or designee has the discretion to determine whether such actions should be counted as multiple violations of the MBE/WBE Ordinance.

11.5.2 In order to dispute a finding of a violation, the prime contractor or prime consultant must submit a written request for an appeal to the Director or designee within four (4) days of receipt of written notice of the violation. Dispute of a violation will follow the Adverse Decision appeal process as outlined in the MBE/WBE Ordinance.

Section 12: Contract Closeout

12.1 Within seven business days of receipt of complete contract close-out documents the Director or designee shall notify in writing the Contract Awarding Authority that the contractor/consultant has paid all uncontested amounts to subcontractors/subconsultants and has fulfilled the contract's terms related to the MBE and WBE commitments, or that additional time is required to determine whether the contractor/consultant has fulfilled the contract's terms.

12.2 If the Director or designee determines that the contract's terms have been fulfilled, the Contract Awarding Authority, contract manager or project manager may authorize final payment and close out the contract in accordance with City's procedures.

12.3 If the Director or designee determines that the contractor's/consultant's terms have not been fulfilled, the Director or designee shall inform the Contract Awarding Authority and the contractor/consultant in writing of the reasons for the determination, the sanctions recommended, and the procedures to appeal the determination. If the recommended sanction contains any fine or liquidated damages, the Contract Awarding Authority, contract manager, or project manager shall retain from any payment due the amount of such sanction during the pendency of an appeal.