



Shelby County Schools
MWBE PROGRAM
ADMINISTRATIVE PROCEDURES
MANUAL

August 2018





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SECTION I. PROGRAM OVERVIEW

I.1. DECLARATION OF POLICY STATEMENT

In accordance with policy 2010 Minority, Women and Small Business Enterprise Participation ([click for Policy](#)), the School Board of the Shelby County Schools, hereinafter referred to as the School Board shall: (1) take necessary affirmative steps to provide small business enterprises, minority-owned business enterprises, and women-owned business enterprises equal opportunity to participate in all aspects of the School Board contracting and purchasing programs, including but not limited to, participation in procurement contracts for materials, services, construction and repair work activities and lease agreements; (2) prohibit discrimination against any person or business in pursuit of these opportunities on the basis of race, color, sex, religion, national origin, age, disability, or status as a service-disabled veteran, and (3) conduct its contracting and purchasing programs so as to prevent any discrimination prohibited by state law and federal law relating to discrimination in employment.

I.2. ENABLING ACTION

In August 2016 the School Board commissioned a Business Market Availability and Disparity Study to determine whether there was a compelling interest to establish a narrowly-tailored minority- and women-owned business enterprise (MWBE) program. The study found factual predicate evidence to establish remedies to address disparities identified in Architecture and Engineering, Construction, Professional Services, Nonprofessional Services, and Goods and Commodities contracts procured by the District. The study also recommended the addition of a Small Business Enterprise (SBE) Program. The study was conducted by MGT of America Consulting, LLC (MGT), and presented to the School Board in 2017. As a result of the study's findings and recommendations, the School Board hired MGT to design and develop a MWBE/SBE Program. On August 28, 2018 the School Board adopted revisions to policy 2010 Minority, Women and Small Business Enterprise Participation ([click for Policy](#)).

I.3. COMMERCIAL NONDISCRIMINATION

It is the policy of the School Board not to enter into a *contract* with any *business enterprise* that has discriminated in the solicitation, selection, hiring or treatment of vendors, suppliers, subcontractors, its own employees, or *commercial customers* on the basis of race, gender, religion, national origin, ethnicity, age, disability, or on the basis of any otherwise unlawful use of characteristics regarding such vendor's, supplier's, or *commercial customer's* employees or owners in connection with a Shelby County Schools *contract or solicitation*.

I.4. PROGRAM OBJECTIVES

- To provide MWBEs and SBEs equal access to opportunity for participation in District contracts for Architecture and Engineering, Construction, Professional Services, Nonprofessional Services, and Goods and Commodities.
- To provide procedures for determining and monitoring MWBEs and SBEs participation and compliance with Diversity Program procedures.
- To promote awareness of this MWBEs and SBEs Program throughout Shelby County Schools and the Community.
- Revise the bidding procedures and guidelines to increase the potential for MWBEs and SBEs participation.
- Promote growth and profitability of MWBE and SBE firms in Shelby County.
- To encourage all Shelby County Schools personnel involved in procurement and contracting activities to maintain good faith efforts and appropriate purchasing procedures.

I.5. PROGRAM ROLES AND RESPONSIBILITIES

I.5.1. SCHOOL BOARD

- Provide policy oversight and collaborate with staff for program improvements and modifications.
- Vote on enabling policies for the implementation of a Diversity Program.

I.5.2. SUPERINTENDENT

- Determine the organization structure and appropriate staffing of the Shelby County Schools Diversity Program.
- Take all necessary and reasonable steps permissible by law to ensure full equitable participation by MWBEs and SBEs in the procurement of contracts for Shelby County Schools.
- Establish and implement the program as required under policy 2010 Minority, Women and Small Business Enterprise Participation.
- Establish and implement an internal/external communication plan that articulates the rationale supporting the Diversity Program.
- Ensure all senior-level staff performance evaluations include an indicator for MWBE and SBE objectives for procurement.

I.5.3. THE GENERAL COUNSEL

- Review the MWBE and SBE Program, applicable policies, rules, and guidelines to ensure their compliance with federal and state laws.

- Review recommendations to reject a bid for non-compliance with MWBE and SBE Program requirements and provisions. Advise District Board and Staff on legal issues related to the MWBE and SBE Diversity Program, its implementation and administration.
- Ensure all District Bids/RFPs/RFIs/RFQs have standard language in place to identify MWBE and SBE Program goals and the supplier selection process sets minimum targets for MWBE and SBE inclusion and selection.

I.5.4. PROGRAM ADMINISTRATOR

- Daily administration of all components of the Diversity Program and supervision of the Diversity Program staff or consultants.
- Develop procedures as may be necessary to effectuate the purposes of the Diversity Program.
- Advise District on Diversity Program issues.
- Consult with District departments on Diversity Program implementation, administration, and reporting.
- Develop and implement strategies to achieve the annual and project participation goals established by the Diversity Program.
- Make revisions to the Diversity Program as needed from time to time to facilitate administration and fulfill Program objectives.
- Provide regular MWBE and SBE participation reports and presentations to the School Board.
- Monitor compliance with the Program requirements.
- Maintain and develop databases to be maintained as a public record of certified firms. Certified MWBEs and SBEs shall be integrated into the procurement system's vendor database such that the SCS Procurement staff can easily source MWBEs for all bids and proposals, and prime bidders can identify potential MWBE or SBE firms.
- Investigate alleged violations of the Diversity Program, and the issuance of written statements following any determination of such investigation, stating the reasons therefore and any penalty to be imposed.
- Develop an appeals process for supplier diversity and/or procurement award or procurement recommendation decisions.
- Monitor utilization of MWSBEs on District contracts.
- Establish MWSBE supplier tracking system to enable results reporting (ability to track MWBE and SBE spend by the District with prime contractors, subcontractors, goods, services, commodity, geographical area, ethnicity, gender, cost, etc.).
- Establish and maintain documented procedures for planning and implementing internal/external program audits to verify whether activities and related results comply with School Board policy and requirements of the Diversity Program.

- Develop and implement outreach and assistance programs to promote equal contracting opportunities for all businesses that wish to do business with District.

I.5.5. DEPARTMENT CHIEFS AND SCHOOL PRINCIPALS

- Promote the MWBE and SBE participation in the contracting and procurement activities of their departments or schools.
- Integrate the Diversity Program components into procurement practices and processes. Ensure Diversity Program compliance within their departments.
- Monitor and report small, minority, and women business participation as required by Diversity Program Procedures.
- Identify opportunities where MWBE and SBE can be significantly integrated in all departmental product/service/commodity areas of spend, including non-traditional areas of spend (e.g., student activity funds/fundraisers).

I.5.6. PROCUREMENT DIRECTOR

- Implement a process to review the expiration dates of all existing contracts with existing suppliers to find new opportunities for MWBE and SBE firms.
- Identify targeted long-term, large-scale opportunities for greater MWBE and SBE inclusion.

I.6. DEFINITIONS

- **Affiliate Relationship.** Two entities are “Affiliates” of one another when: (a) one controls or has the power to control the other, (b) a third party or group of parties’ controls or has the power to control both; or (c) there is a significant relationship between the two entities.
- **Aspirational Goal.** A state of affairs that a plan is intended to achieve.
- **Bid.** A response to an invitation to bid.
- **Business Enterprise.** A corporation, limited liability company, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association, or any other legal entity authorized to do business in the State of Tennessee.
- **Certification.** An application procedure completed by a business enterprise to participate as a minority, women, or small business enterprise under the MWBE program
- **Certified Business Enterprise.** A Minority, Women-Owned, or Small Business Enterprise that has been certified by certifying agencies approved by Shelby County Schools.
- **Commercially Useful Function.** A firm is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a

contract and carries out its responsibilities by actually performing, managing, and supervising the work involved.

- **Commodities.** Physical items, including but not limited to equipment and materials, excluding land or a permanent interest in land.
- **Conduit.** A MWBE or SBE that knowingly agrees to pass the scope of work for which it is listed for participation and is scheduled to perform or supply on the contract, to a non-MWBE or non-SBE firm.
- **Construction.** Services provided for the building, renovation, rehabilitation, repair, alteration, improvement, demolition, and excavation of physical structures, excluding the performance of routine maintenance.
- **Contract.** A binding written agreement between two or more persons that is enforceable by law.
- **Contractor.** A person, firm, or legal entity with which the District has entered into a contract.
- **Exempt Contracts.** Contracts that are exempt from the Diversity Program in accordance with policy.

For example:

- Utilities
- Purchase of land or real estate
- Athletic official fees and school reimbursements for sports
- Expense reimbursements to individuals
- **Good Faith Effort.** All activity performed by bidders or departments to assure the participation of minority, women, and small business enterprises in contracts covered under the MWBE policy.
- **Joint Venture.** A legal association between business enterprises that provides for a sharing of economic interest and risks. Each participant in the Joint Venture must be responsible for a clearly defined portion of work, must perform a Commercially Useful Function, and must share in the ownership, control, management responsibilities, risks, and profits of the Joint Venture.
- **Market Area.** A geographic zone containing the people who are likely to provide goods and services to the District. The relevant geographic market area identified for the Supplier Diversity Program is Shelby County.
- **Minority Business Enterprise.** A for-profit Business Enterprise that is at least fifty-one percent (51%) owned by one or more persons who are members of one of minority groups set forth. For purposes of this program minority business enterprises must reside within the Shelby County and possess a Shelby County and Tennessee business license.
- **Minority individual.** An individual who is a citizen of the United States or a legal resident alien and who satisfies one or more of the following:

- “African American” means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.
- “Asian American” means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh, or Sri Lanka and who is regarded as such by the community of which this person claims to be a part.
- “Hispanic American” means a person having origins in any of the Spanish-speaking peoples.
- “Native American or American Indian” means a person having origins in any of the original Indian peoples of North America.
- **Non-Professional Services.** Services of a general nature based on skill that is repetitive in nature, for which there is adequate competition in the marketplace to set a market price (e.g., painting, roofing, cleaning, etc.).
- **Owned, Operated, and Independently Controlled.** For the purpose of determining whether a business is a minority or women business enterprise, “owned, operated and independently controlled” shall mean that a minority or woman (or combination thereof) has a minimum of 51% ownership interest and (1) possess legal authority and power to manage business assets, good will and daily operations of the business; and (2) actively and continuously exercise such authority and power in determining the policies and directing the operations of the business, knowledge and technical expertise in the business endeavor, licensed to perform the business or trade, and the lack of external influence over the day-to-day operations or decision-making process by any entity (with the exception of franchise operations).
- **Professional Services.** Services provided by an individual or group of individuals with a professed expertise based on prolonged and specialized intellectual training over time which enables a particular service to be rendered. The term implies professional attainment in specialized knowledge as distinguished from mere skill. Professional services include, but are not limited to, insurance, auditing, accounting and financial services; professional development, business consulting services; educational consulting services; research services; seminar leaders; surveys and studies; legal services; medical services; technical services (e.g. technology); and software development.
- **Small Business Enterprise.** Business that meets the federal small business size standards and is independently owned and operated, is organized for profit, and is not dominant in its field. Size standards based on an industry-by-industry basis. (See 13 CFR 121). Small business size standards matched to industry NAICS codes are published by the Small Business Administration and are available at <http://www.sba.gov/content/table-small-business-size-standards>. For purposes of this program small business enterprises must reside within the Shelby County and possess a Shelby County and Tennessee business license.

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- **WBE.** A for-profit Business Enterprise that is at least fifty-one percent (51%) owned by one or more persons who are female. For purposes of this program minority business enterprises must reside within the Shelby County and possess a Shelby County and Tennessee business license.

I.7. PROGRAM GOALS

I.7.1. ASPIRATIONAL GOALS

At the beginning of each fiscal year, the Superintendent or his/her designee will recommend districtwide MWBE and SBE goals to the School Board for their approval. Goals should be relative to the availability and past utilization of MWBEs and SBEs in District contracting and purchasing.

Recommended MWBE Aspirational Goals from the 2018 Disparity Study are as follows:

MWBE ASPIRATIONAL GOALS

Procurement Category	MWBE Goals
Architecture and Engineering	13.68%
Construction	24.17%
Professional Services	35.24%
Nonprofessional Services	32.57%
Goods or Commodities	24.02%

Accountability. The Superintendent shall ensure Department Directors and Principals contribute appropriately to the achievement of the Districtwide MWBE goals. The Superintendent will further ensure that Department Directors work with the Program Administrator in developing appropriate measures to remediate ongoing marketplace discrimination against MBEs or WBEs that has impacted their ability to participate in District contracts.

I.7.2. PROJECT SPECIFIC SUBCONTRACTING GOALS

Subcontracting goals shall be set in accordance with Section 2.3. MWBE goals shall be set only for those categories of firms that have experienced discrimination¹ in the District's Metropolitan Statistical Area (MSA)². The District shall establish a project specific MWBE goal that is a percentage of the dollar value of all services and goods the procurement contract requires (including any contingency). MWBE project goals should be considered first before establishing SBE project goals. Small business enterprise goals should be considered after it has been determined that there are no MWBE firms available to bid on services or goods needed by the District. The District may waive the goal requirement for a given procurement contract if it determines it to be in the best interests of the District. Requests to waive goal requirements must be submitted to the Program Administrator for evaluation and approval.

¹ The Shelby County Schools 2018 Disparity Study, Chapter 5, Section 5.3.2

² The Shelby County Schools MSA is defined as Shelby County, TN.

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Goals on such contracts may consist of:

- Both an SBE Goal and an MWBE Goal.
- Only an MWBE Goal.
- Only an SBE Goal

Goal-Setting Methodology for Subcontracting. The Program Administrator shall establish a methodology for setting MWBE, and/or SBE, goals on District contracts, through rules and guidelines for the implementation of the Diversity Program. Such methodology shall take into account contract size, reasonably known availability of subcontracting opportunities that MWBEs and SBEs can perform on each contract, whether MWBE Goals for the project are legally warranted to remedy the effects of past discrimination and other factors as the Program Administrator deems appropriate. MWBE goals shall be set only for those categories of firms that have experienced discrimination in the District's MSA.

State and Federally Funded Contracts. Notwithstanding anything contained herein to the contrary, the District will not set subcontracting goals on any state or federally funded contract that is subject to state or federal requirements for minority and women business utilization, including without limitation contracts subject to the U.S. Department of Transportation's Disadvantaged Business Enterprise Program.

I.8. MWBE/SBE OUTREACH, ASSISTANCE, AND BUSINESS DEVELOPMENT

Programs and activities to provide outreach to MWBEs and SBEs, and to assist the business development of such enterprises may include, but are not limited to:

- Communicating information on the MWBE and SBE Program through newsletters, the Internet, workshops, training activities, and other outreach activities conducted by the District or by other public or private entities in collaboration with the District.
- Development of a resource directory to be provided to the MWBE and SBE business community in the District's MSA with information as to assistance in bonding, financial management and/or accounting, continuing education, professional organization, and other resources that improve small business market access or capacity.
- Such other programs or activities as the District may recommend from time to time.

I.9. PROGRAM SUNSET

Absent an extension by the School Board, the race and gender conscious measure of the Diversity Program, including the establishment of MWBE goals, will expire on November 1, 2023.

I.10. AUDIT OF RECORDS

The Shelby County Schools or others so designated by the District, or other lawful entity shall have the option to audit all accounts directly pertaining to the resulting contract for a period of five (5) years after project acceptance or as required by applicable local, state, and federal law. Records shall be made available during normal working hours for this purpose in accordance with policy 1012 Public Records ([https://www.boarddocs.com/tn/scsk12/Board.nsf/files/AY7UDV7406CD/\\$file/1012%20Public%20Records.pdf](https://www.boarddocs.com/tn/scsk12/Board.nsf/files/AY7UDV7406CD/$file/1012%20Public%20Records.pdf)).

I.11. SEVERABILITY

If any provision of the Diversity Program section, paragraph, sentence, clause, phrase, or word is for any reason held by a court of competent jurisdiction to be unconstitutional, inoperative, or void, such holding shall not affect the remainder of Program, which shall remain in full force and effect.

SECTION 2. PROGRAM ADMINISTRATION

The District is implementing strategies to solicit and utilize small business enterprises, minority-owned business enterprises, and women-owned business enterprises in the District's market area. This section applies to small purchasing, competitive bids and proposals that are required for most procurement activity. The District will implement an MWBE and SBE Program, which includes aspirational goals for MWBE utilization in proportion to the availability of firms in particular areas of procurement.

2.1. PROGRAM REQUIREMENTS

All bidders are required to make good faith efforts to ensure that businesses are not discriminated against based on their race, ethnicity, or gender, and to demonstrate compliance with these program requirements at or prior to the time of bid opening, or upon request by the District. Bidders are required to ensure prospective subcontractors, vendors, suppliers, and other potential participants are not denied opportunities to compete for work on a District contract based on their race, ethnicity, or gender, and must afford all firms, including those owned by racial or ethnic minorities and women, opportunities to participate in the performance of the business of the District to the extent of their availability, capacity, and willingness.

2.2. ANNUAL AND PROJECT SPECIFIC GOAL SETTING

The District shall determine the present availability of all MWBEs and SBEs in the District's vendor database and make recommendations to the District for approval. User departments may assist in the development of annual and project specific goals; however, the Program Administrator to set project specific goals and recommend annual goals.

Annual Aspirational Goals will be approved by the School Board at the beginning of each fiscal year. Annual Aspirational Goals can be achieved through all types of procurement.

Project specific MWBE and SBE goals may be set for all formal contracts and purchases, except as provided otherwise in this Program.

2.3. GOAL SETTING COMMITTEE

Each Goal Setting Committee or series of Goal Setting Committees is to be appointed and chaired by the Diversity Director or designee. The committee shall include, at a minimum, the Director of Procurement or designee, the Chief Financial Officer or designee, Financial Management or designee, the director or designee of the originating department. The committee establishes MWBE program goals for recommendation to the School Board (e.g., annual aspirational goals and project specific subcontracting goals) based upon industry categories, vendor availability, project-specific characteristics, and MWBE

utilization. The committee also makes determinations about which MWBE or SBE goals are to be applied to specific contracts based upon various criteria.

2.4. TYPES OF PURCHASES

- Purchases up to \$9,999. The budget center manager should contact MWBE firms, when available, for purchases.
- Small Purchases: \$10,000 to up to \$99,999. The buyer shall include any available MWBE firm to quote for purchases in this threshold. The buyer must document efforts made to include MWBE firms in the purchasing opportunity.
- Purchases \$100,000 and above. The buyer shall include any available MWBE firm in the notification of the purchasing opportunity. The buyer must document efforts made to notify MWBE firms in the purchasing opportunity.
- Professional Services. The buyer shall include any available MWBE firm to submit qualifications for services. The buyer must document efforts made to include MWBE firms in the purchasing opportunity.
- Construction Bids: The buyer shall include any available MWBE firm in the notification of the purchasing opportunity. The buyer must document efforts made to notify MWBE firms in the purchasing opportunity.
- Strategic Sourcing Suppliers. The buyer should include or identify MWBE firms where contract pricing is already in place or identify an MWBE firm that can match the contracted price.

Competitive price quotes are not required for the items below; however, before approval of the procurement, the District should investigate whether there are available MWBEs or SBEs that can compete for contract:

- Emergency purchases.
- Sole source purchases.
- Grants
- Federal funding
- District operational expenses, i.e. utilities, taxes, etc.
- Funding with other governmental agencies.

The District will consider MWBEs and SBEs that are identified as providers on states or cooperative agreements before the District utilizes one of these methods of procurement. The District will request firms on state contracts and cooperative agreements to identify and utilize local MWBEs to meet the MWBE utilization goal required on the master contract during the duration of their contract with the District.

2.5. COUNTING MWBE OR SBE PARTICIPATION

The District will only give bidders credit toward the MWBE and/or SBE goal(s) for those MWBEs and/or SBEs that:

- Are certified as of the bid or proposal due date.
- Will actually perform a Commercially Useful Function.
- Will perform within the area(s) for which they are registered with the District unless the bidder provides documentation satisfactory to the District or his/her designee showing that the MWBE and/or SBE has performed similar work in the past. The District will not give credit towards the goal for subcontracting to MWBEs nor SBEs that are found to be Affiliates of the bidder.
- Comply with the District's bid or proposal document requirements.

A prime Bidder is required to meet the goal or demonstrate Good Faith Efforts for subcontracting with MWBEs as set by the District or its designee. Only the value of the work performed by a MWBE shall be counted towards the goal, in accordance with the following provisions:

- **MWBE or SBE Prime Contractor:** The percentage of work that a Prime MWBE or SBE self-performs shall count toward MWBE goal.
 - If the MWBE prime intends to self-perform the entire work, then 100 percent participation will be counted. If the MWBE self-performs a portion of the work and other portions are subcontracted, then the percentage of work the MWBE prime performs is added to the percentage of work MWBE subcontractors perform. If the MWBE self-performs a portion of the work and other portions of the work are subcontracted to non-MWBEs then only the percentage of work performed by MWBEs will be counted.
- **Non-MWBE or Non-SBE Prime Contractor:** Only the percentage of work performed by a MWBE subcontractor(s) shall count toward MWBE goal.
- **Joint Ventures:** When a MWBE or SBE performs as a participant in a joint venture, only the distinct and clearly defined percentage clearly defined portion of the work of the contract and whose share in the capital contributions, control, management, risk, and profits of the joint venture are commensurate with its ownership interest performs with its own forces shall count toward the MWBE or SBE goal.
- **Commercially Useful Function:** The expenditures to a MWBE or SBE contractor toward MWBE and/or SBE goals shall count only if the MWBE or SBE is performing a commercially useful function on that contract.

2.6. CONTRACT AWARD

All proposed contracts less than \$100,000 will be reviewed for program compliance prior to presenting to the School Board for award approval.

2.7. MWBE CERTIFICATION

Shelby County Schools District does not certify MWBE or SBE firms. The District, however, will accept valid and current proof of certification from entities that certify business enterprises including but not limited to:

- City of Memphis;
- Shelby County Government;
- Tennessee Department of Transportation;
- Tennessee Minority Suppliers Development Council (TNMSDC);
- Memphis Light, Gas, and Water;
- Women Business Enterprise Council (WBENC);
- Uniform Certification Agency of the MMBC Continuum.

The District shall consider other third-party certification agencies whose certification meet the objectives of this Program.

2.8. AFFILIATE RELATIONSHIPS

The District will consider business enterprises as “Affiliates” when: (a) one controls or has the power to control the other, (b) a third party or group of parties’ controls or has the power to control both, or (c) there is a significant relationship between the two entities. The District shall investigate claims of affiliate relationships when one of the entities is seeking to meet an MWBE or SBE goal. Should the District determine that an affiliate relationship exists, credit will not be given towards the goal.

Control. Examples of the power to control include, but are not limited to:

- Ownership of a majority equity interest (stock, partnership shares, etc.).
- Voting control of the board of directors.
- Officer with decision making authority.
- Approval rights over key decisions (through charter, by-laws, shareholder’s agreement, or otherwise).
- Power to prevent a quorum, or to otherwise block action by the board of directors or shareholders.

Control may be direct or indirect and need not be exercised to create an Affiliate relationship.

Significant Relationship. There is a significant relationship between two entities when one entity is significantly dependent on the other, when one entity (through shared officers, employees, etc.) has the ability to play a key role in the management or direction of the other, or when the two entities share facilities, assets or employees to a significant degree or have an identity of interest (through family relationships or otherwise). The factors the District will consider include, but are not limited to:

- Common ownership, management, or employees
- Shared equipment, assets, or facilities
- Family relationships
- Physical proximity
- Percentage of revenue derived from the other entity
- Loans, leases, and contributions
- Contractual or other significant relationships

2.9. PROGRAM REPORTS

The Superintendent or designee shall track and report data measuring the outcomes of the Supplier Diversity Program. Written reports shall be provided to the Board four times each fiscal year describing (1) the District's progress in meeting the annual aspirational goals for MWBE utilization, (2) departments progress in meeting annual goals for small purchasing, (3) the extent to which primes are meeting project specific MWBE and SBE goals, and (4) key achievements and challenges encountered during the reporting period.

SECTION 3. GOOD FAITH EFFORTS COMPLIANCE AND DOCUMENTATION

- 3.1. A bidder must document that it has made Good Faith Efforts (GFE) to solicit and negotiate with MWBEs in compliance with this section or met the proposed MWBE goal. Failure to provide documentation as outlined in Section 3.3 may deem a bid or proposal non-responsive and not further considered for review.
- 3.2. If the bidder does not meet the proposed MWBE goal, the bidder must submit their GFE documentation with their bid.
- 3.3. Where project specific goals are established bidders must earn a minimum of 50 points from any combination of the GFEs listed for their bid to be considered responsive. GFE documentation must coincide with the good faith efforts submitted on **Affidavit A, Listing of Good Faith Efforts** which identifies methods utilized to accumulate the minimum points required. If a bidder meets the requirements for a sub-section below, then the full number of points will be counted. If a bidder does not meet the requirements of a sub-section below, then no points will be counted. Partial points will not be given. The GFE requirements that bidders must demonstrate to show that they actively and aggressively sought to achieve the MWBE Goal are as follows:
 - 3.3.1. **Notification of Subcontracting Opportunities (10 points):** To receive credit for this GFE, a bidder must provide to the Program Administrator or its designee a list of the areas in which the bidder sought subcontractors and suppliers. The bidder may report this information on **Form A, Subcontracting Opportunities** or another form listing the same information.
 - 3.3.2. **MWBE Contact (10 points):** To receive credit for this GFE a bidder must contact MWBE businesses that reasonably could have been expected to submit a bid, for the areas the bidder intends to subcontract or purchase supplies at least **ten days** before the bid date and notified them of the nature and scope of the work to be performed.
 - A. **Solicitation Method:** The bidder shall make the MWBE solicitations by fax, e-mail, U.S. Mail, or overnight courier service. Regardless of the method of contact, the solicitation must occur no less than **ten days** before bid opening. If the bidder contacts MWBEs by U.S. Mail, the District shall presume that the solicitation reached the MWBE by the required deadline if the bidder: (a) mailed the solicitation at least **ten days** prior to the bid opening; and (b) documented the solicitation as required by Section C below.
 - B. **Solicitation Content:** To receive credit for a solicitation, the substance of the solicitation must be sufficient to put the MWBE on notice that the bidder is soliciting a bid from the MWBE to participate in the Contract up for award in one or more of the areas for which the MWBE is certified.

C. **Solicitation Documentation Requirements:** To receive GFE credit for contacting MWBEs, a bidder shall document in writing for each MWBE solicited: (a) the method of contact, (b) the date of the contact, (c) the business name and contact person for each of the MWBE firms contacted, and (d) the North American Industry Classification System (NAICS) Code or a description identifying the goods or services the bidder solicited from the MWBE. In addition, the Program Administrator or its designee may require the bidder to provide a copy of the solicitation sent to MWBEs (which must meet the content requirements per Section 3.3.2 B), along with the following documentation depending on the method of contact:

- 1) **For contacts made by fax:** The bidder must provide a confirmed fax transmission record showing that: (i) a fax was transmitted to a fax number maintained by the MWBE, or (ii) a fax was directed to a fax number maintained by the MWBE but did not go through due to reasons outside the bidder's control. If the bidder cannot provide the forgoing, the Program Administrator or its designee may refuse to consider such contact in awarding GFE points.
- 2) **For contacts made by e-mail:** The bidder must provide a copy of an e-mail confirmation notice showing that an e-mail was delivered to an e-mail address maintained by the MWBE.
- 3) **For contacts made by U.S. Mail:** The bidder must provide: (a) a copy of the solicitation that satisfies the content requirements in item B above; and (b) a Certificate of Mailing from the U.S. Postal Service certifying the date on which the bidder mailed the solicitation; and (c) an affidavit stating that the bidder mailed the solicitation to the MWBE recipient on the date indicated in the Certificate of Mailing.
- 4) **For contacts made by overnight courier:** The bidder must provide a copy of the solicitation that meets the content requirements set forth in Section 3.3.2 B above, along with a routing slip from the overnight courier showing the MWBE's address, the date on which the bidder sent the solicitation to the MWBE recipient.

3.3.3. Making Project Documents Available (10 points): To receive credit for this GFE, the bidder must: (a) make Project Documents available to interested MWBEs no less than **ten days** before bid opening in one of the three ways described below; and (b) notify all MWBEs contacted under GFE 3.3.1 of the way in which Project Documents will be made available. The three ways a bidder may make project documents available to MWBEs are:

- A. Provide interested MWBEs with a hard copy of the project documents via email, fax, regular mail, or other means of document transfer.
- B. Provide necessary physical access and adequate time for MWBEs to fully review the project documents at the bidder's place of business within the Shelby County Schools

3.0. GOOD FAITH EFFORTS COMPLIANCE AND DOCUMENTATION

relevant market area or, if the bidder has no place of business within the Shelby County Schools relevant market area, at an alternate location within the Shelby County Schools relevant market area where the information can be reviewed at no cost to the MWBEs.

- C. Post the project documents on a website that MWBEs can access at no cost. To receive credit for this GFE, the bidder's notice to MWBEs must identify: a telephone number or email address for requesting copies of the project documents.

3.3.4. Breaking Down Work (15 points): To receive credit for this GFE, the bidder must: (a) notify MWBEs as part of a bidder's MWBE Contacts under Section 3.3.2 that the bidder is willing to divide or combine elements of work into economically feasible units on a case-by-case basis to facilitate MWBE participation and (b) negotiate in good faith with any MWBEs that request such divisions or combinations. A bidder may receive credit for this GFE only if it receives credit for GFE 3.3.2 (MWBE Contacts).

3.3.5. Working with MWBE Assistance Organizations (10 points): To receive credit for this GFE, the bidder must document that it has performed one of the following within the 12- month period before bid opening for an MWBE Assistance Organization:

- A. **Provide Location for MWBE Assistance Organization Event:** providing a meeting location for the MWBE Assistance Organization to host a regular meeting or special event at no cost or at a reduced rate.
- B. **Provide Training for MWBE Assistance Organization Members:** providing training or facilitating workshops aimed at increasing the capacity or skill level of the MWBE Assistance Organization members or participating in training or a workshop sponsored by the MWBE Assistance Organization.
- C. **Contracting with new MWBE:** documenting that the MWBE Assistance Organization helped to identify an MWBE with whom the bidder subsequently subcontracted work (whether on a District contract or another contract). The bidder will not be given credit for this GFE if the Bidder contracts with an MWBE that the bidder has used on previous projects.

3.3.6. Attend or Host Pre-Bid Meeting (10 points): To receive credit for this GFE, the bidder must attend meetings scheduled by the District or conduct a pre-bid meeting for MWBEs no less than three business days before bid opening. If the bidder hosts a pre-bid meeting, the pre-bid meeting must take place within the Shelby County Schools or, if the bidder has no place of business within the Shelby County Schools, at an alternate location within the Shelby County Schools relevant market area. No less than 48 hours before the pre-bid meeting, the bidder must communicate the time and location of the meeting to the MWBEs. A bidder may receive credit for this GFE only if it receives credit for GFE 3.3.2 (MWBE Contacts).

- 3.3.7. Bonding or Insurance Assistance (20 points):** To receive credit for this GFE, the bidder must assist an MWBE in obtaining its own bond or insurance coverage for a District contract or another contract by (a) providing direct assistance within the six months preceding the bid opening, and (b) showing the MWBE did not have access to the bond or insurance coverage before the bidder's assistance. To document satisfaction of this GFE, the bidder must submit: (a) the name of the MWBE; (b) a description of the assistance the bidder provided; (c) the date the bidder provided the assistance; (d) the name of a contact person with the MWBE who can verify that the bidder provided the assistance; and (e) any additional information requested by the Program Administrator or its designee. No credit will be given for bonding or insurance assistance to an Affiliate of the bidder.
- 3.3.8. Negotiate in Good Faith (15 points):** To receive credit for this GFE, the bidder must have documented that an MWBE does not qualify to perform the services it bid. To document satisfaction of this GFE, the bidder must submit: (a) contract termination of the MWBE; (b) the MWBE's bid was higher than what was proposed by the subcontractor or supplier the bidder decided to use or higher than the bidder's cost of performing such work on its own; (c) the business enterprise that will be performing in place of the interested MWBE is more qualified than the interested MWBE, to the extent that such difference in qualification would materially impact the bidder's bid, or (d) there was a material deficiency with the interested MWBE's bid (such as it being submitted late, containing inaccurate information, etc.).
- 3.3.9. Financial Assistance (25 points):** To receive credit for this GFE, the bidder must provide one of the following types of assistance to an MWBE during the 12 months before bid opening: (a) assistance in obtaining equipment, a loan, capital, lines of credit, (b) joint pay agreements or guaranties to secure loans, the purchase of supplies, or letters of credit, including waiving credit that is ordinarily required; or (c) assistance in obtaining the same unit pricing with the bidder's suppliers as the bidder. Such assistance may be in connection with a District contract or any other contract. To receive credit for this GFE, bidders must document: (a) the name of the MWBE; (b) the description of the assistance the bidder provided; (c) the date the bidder provided the assistance; (d) the name of a contact person with the MWBE who can verify that the bidder provided the assistance was provided. No credit will be given for financial assistance to an Affiliate of the bidder.
- 3.3.10. Joint Ventures (20 points):** To receive credit for this GFE, the bidder must document the existence of a Joint Venture agreement between the bidder and an MWBE that increases opportunities for MWBE business participation, whether on District contracts or other contracts. To document satisfaction of this GFE, bidders must document that they have entered into such an agreement within the 12 months before the bid opening, and such documentation must include: (a) the name of the MWBE; (b) a description of the Joint Venture; (c) evidence of the date the bidder and the MWBE entered into the agreement; and (d) the name of a contact person with the MWBE who can verify the terms of the agreement. No credit will be given for a joint venture with an Affiliate of the bidder.

3.0. GOOD FAITH EFFORTS COMPLIANCE AND DOCUMENTATION

3.3.11. Quick Pay Agreements (20 points): To receive credit for this GFE, bidders must: (a) provide the Program Administrator or its designee with a copy of a policy containing the quick pay commitment that the bidder has adopted for the project and document that the bidder informed each MWBE about the quick pay commitment as part of the bidder's MWBE contacts under Section 3.3.2; or (b) document that prior to bid opening the bidder made a written quick pay commitment to each MWBE that will participate in the contract up for award. Including a statement in a bid solicitation letter indicating that the bidder will consider entering into quick pay agreements will not suffice. A bidder may receive credit under subpart (a) of this GFE only if it receives credit for GFE 3.3.2 (MWBE Contacts). No credit will be given for agreements with an Affiliate of the bidder.

3.3.12. MWBE Participation on Non-SCS Contracts (15 points): To receive credit for this item the bidder must document that during the 18 months period before bid opening, the bidder paid MWBEs on non- District contracts. The bidders must document for each non-District MWBE subcontract: (a) the name of the project and the parties to the contract; (b) the name of the MWBEs the bidder paid on the project; (c) the amount the bidder paid to each MWBE during such period. Documentation to satisfy this requirement may include invoices showing the MWBE has previously performed such work. The MWBE firm must be certified and registered at the time of the District bid or proposal receipt. No credit will be given for amounts paid to an Affiliate of the bidder.

3.4. Waiver of Good Faith Efforts. The Program Administrator or its designee shall be entitled (but not required) to waive the Good Faith Efforts requirement in a situation where the lowest bidder failed to comply with the Good Faith Efforts requirements ("Non-Compliant Bidder") but has proposed MWBE utilization that is greater than that proposed by the next lowest bidder that complied with the Good Faith Efforts requirements and would otherwise be awarded the contract ("Compliant Bidder"). In determining whether to grant such waiver, the District will take into account:

- A. The cost difference to the District between the two bids.
- B. The difference in the level of MWBE utilization proposed by the compliant and non-compliant bidders.
- C. The level of effort the compliant and non-compliant bidders undertook to meet the Good Faith Efforts requirement.
- D. The consistency in subcontractors the non-compliant bidder has proposed on District projects (i.e., whether or not the bidder consistently uses the same subcontractors on every bid).
- E. The consistency in MWBE Goals the non-compliant bidder has proposed on District projects (i.e., whether or not the bidder consistently proposes the same MWBE Goal).

3.0. GOOD FAITH EFFORTS COMPLIANCE AND DOCUMENTATION

- F. Instances of past non-compliance with the Good Faith Efforts requirements on the part of the non-compliant bidder and any other factors deemed relevant by the Program Administrator or its designee.

SECTION 4. PROGRAM COMPLIANCE

- 4.1. A bidder or proposer is deemed to be compliant with the MWBE requirements when:
 - A. The Bidder or proposer has met the project goal.
 - B. The Bidder or proposer has documented evidence of meeting the good faith efforts.
 - C. The Bidder or proposer has demonstrated evidence that the bidder or proposer can and will self-perform all aspects of the project.
- 4.2. Bidders shall provide with the bid, **Form B, MWBE Utilization Commitment**, identifying the amount of MWBE participation to meet MWBE objectives.
- 4.3. Provide with the bid, **Affidavit A, Listing of Good Faith Efforts**, if the project goal is not attained.
- 4.4. Provide with the bid, **Affidavit B, Statement of Intent to Perform Work Without Subcontracting**, and upon request, information sufficient for the Program Administrator or its designee to determine that the bidder does not customarily subcontract work on this type project. Such contractors will be required to document good faith efforts to provide equal opportunity to MWBE's to participate in significant material supplier opportunities under the prime contract and identify its own minority and women employees by name and job title that will have a significant material role on the project.
- 4.5. Upon being named apparent low bidder, the bidder shall provide **Form C, Letter of Intent to Perform as a Subcontractor or Subconsultant**, complete with a description of the scope of services and dollar value from each MWBE firm proposed at the time of bid for use on the contract.
- 4.6. Failure to submit the applicable forms may result in the bid being declared non-responsive. The District reserves the right to waive any irregularities in MWBE documentation if the District finds it to be in its best interest to do so and award the contract.
- 4.7. Failure by any contractor to comply with such requirements as described in this document will constitute a breach of contract exposing the contractor to a potential termination of the contract or other appropriate remedy in accordance with the termination provisions of the contract.
 - A. All documents and information submitted by a successful bidder will become a legal and binding part of the final contract document.
 - B. A finding by the District that any of the information submitted is inaccurate, false, or incomplete will constitute grounds for a finding that a bid is non-responsive and may result in rejection of the bid or termination of the contract.

- C. During the contract period, all MWBE requirements will apply to change orders, additions, or replacements of subcontractors. The contractor is responsible for notifying the District of problems arising from MWBE performance and possible contract changes prior to removing any MWBE subcontractor or making major changes in their contract amendments.
 - D. Problems arising out of either contractor or subcontractor non-compliance with the program requirements will be reviewed by the Program Administrator or its designee.
 - E. The Program Administrator or its designee will make a determination on the adequacy of the good faith efforts. The decision of the District shall be final, and the contractor shall be notified in writing within ten days of that decision.
 - F. The District reserves the right to waive any irregularities in MWBE documentation if they can be resolved prior to award of the contract and the District finds it to be in its best interest to do so and award the contract.
- 4.8. The Program Administrator or its designee may request information, documents or other materials from a contractor at any time for the purpose of determining whether the contractor is in compliance with the MWBE Program. The contractor shall comply with all such requests within **three business days**, unless otherwise agreed by the District in writing.

SECTION 5. POST AWARD REQUIREMENTS

Bidders shall have an affirmative, ongoing obligation to meet or exceed the committed MWBE and/or SBE goal for the duration of the contract. The District may deem a contractor to be in violation of the Diversity Program and in breach of its contract if at any time the District determines that: (a) the contractor will not meet the committed MWBE and/or SBE goal; and (b) the reasons for the contractor's failure are in the District's judgment within the bidder's control. For example, if a bidder does not meet the MWBE and/or SBE goal because the bidder terminated a MWBE or SBE without cause or caused a MWBE or SBE to withdraw from the project without justification, then the District could find the bidder to be in violation. The District reserve the right to conduct an audit of a contractor's work on an eligible project to confirm the contractor's compliance with the Diversity Program, including without limitation compliance with the covenant of non-discrimination, the good faith efforts documentation, and the MWBE participation commitment.

5.1. EXCEPTIONS

A contractor shall not be deemed in violation of this Program for failure to meet the committed MWBE and/or SBE Goal to the extent such failure is directly attributable to:

- The District reducing the scope of a contract so as to eliminate or reduce work that was going to be performed by MWBEs or SBEs (whether through a change order, contract amendment, force account, or otherwise).
- A MWBE's voluntary withdrawal from the project if the contractor demonstrates that such withdrawal was beyond the bidder's reasonable control, so long as the bidder complied with the Good Faith Efforts to replace the MWBE with another MWBE.
- Termination or reduction in the work of a MWBE, if the contractor demonstrates that such termination was consistent with the terms of this Program, and that the bidder complied with the Good Faith Efforts to replace the MWBE with another MWBE.

5.2. CHANGE IN MWBE OR SBE STATUS

Bidders shall not terminate, replace, or reduce the work of a MWBE or SBE that the bidder has counted toward meeting the committed MWBE and/or SBE goal unless:

- The MWBE or SBE refuses to enter into a contract consistent with the Letter of Intent.
- The MWBE's or SBE's certification expires.
- The MWBE or SBE materially breaches its contract with the bidder.
- The MWBE or SBE voluntarily withdraws from the contract for reasons not within the bidder's reasonable control.

5.3. REPLACING OR TERMINATING MWBE OR SBE

Contractors shall provide the District written notice prior to replacing or terminating a MWBE or SBE on a contract. The notice shall 1) identify the MWBE or SBE and the contract; 2) state the reason for the termination or replacement, and 3) state the proposed date on which such termination or replacement will occur. Unless the circumstances necessitate immediate termination or replacement, the bidder shall provide such notice to the District at least **five business days** before the bidder terminates the MWBE or SBE. The bidder shall further provide written notice to the MWBE stating the reasons for the termination. Unless circumstances dictate otherwise, the bidder shall provide such notice before termination is to occur.

5.4. UPDATING SUBCONTRACTING PORTION OF CONTRACT

If a bidder elects to subcontract any portion of a contract that the bidder did not previously identify to the District as a subcontracting opportunity, or if the scope of work on a contract increases for any reason in a manner that creates a new MWBE or SBE subcontracting opportunity (whether through a change order, contract amendment, inaccurate initial estimate by the bidder or otherwise), the bidder shall: (a) promptly notify the District of the new subcontracting opportunity and, (b) inform the District whether the bidder, existing MWBEs, SBEs, or other subcontractor(s) can perform the new opportunity.

SECTION 6. DOCUMENTATION OF UTILIZATION AND PAYMENTS

Contractors shall report to the Program Administrator or its designee the total dollars paid to each subcontractor and supplier on each contract, and shall provide such payment affidavits, certifications, or other documentation regarding payment to subcontractors as may be requested by the District. Such affidavits, certifications or documents shall be in the format specified by the District and shall be submitted at such times as required by the District. Failure to provide such reports within the time period specified by the District may include, but not be limited to, withholding payment from the contractor and/or collecting liquidated damages.

Contractors are required to submit **Form D, Documentation of All Contract Payments** with all periodic and final pay requests.

Within **seven days** of receipt by the prime contractor of each periodic or final payment, the prime contractor shall pay the subcontractor based on work completed or service provided under the subcontract. If any periodic or final payment to the subcontractor is delayed by more than seven days after receipt of the periodic or final payment by the prime contractor, the prime contractor shall pay the subcontractor interest, beginning on the eighth day, at the rate of one percent per month or fraction thereof on such unpaid balance as may be due.

SECTION 7. VIOLATIONS AND REMEDIES

Contractors and MWSBEs shall report any alleged Diversity Program violations or unfair practices involving the Diversity Program to the District within **five business days** after the contractor or MWSBE first became aware of the act or omission in question. The District may reject as untimely any report submitted after such time. The District shall not accept reports of violations or unfair practices that are submitted more than 30 calendar days after the MWBE first became aware of the act or omission in question.

7.1. PROGRAM VIOLATION

Violation of the Diversity Program by a contractor shall constitute a material breach of the contract and shall entitle the District to exercise all rights and remedies that it may have at law or at equity for violation of the contract.

- Terminate the contract for default.
- Suspend the contract for default.
- Withhold all payments due to the contractor under the contract until such violation has been fully cured or the District and the contractor have reached a mutually agreeable resolution.
- Assess liquidated damages as provided in Section 7.2.
- Offset any liquidated damages and/or any amounts necessary to cure any violation of the Diversity Program from any retainage being held by the District on the contract, or from any other amounts due to the contractor under the contract.

The remedies set forth herein shall be deemed cumulative and not exclusive, and may be exercised successively or concurrently, in addition to any other available remedy.

7.2. LIQUIDATED DAMAGES

In entering into a contract that is subject to the Diversity Program, the contractor agrees to the following:

The District and the contractor acknowledge and agree that the District will incur damages if the contractor violates the Diversity Program in one or more of the ways set forth below, including but not limited to loss of goodwill, detrimental impact on economic development and diversion of internal staff resources. The parties further acknowledge and agree that the damages the District might reasonably be anticipated to accrue as a result of such failures are difficult to ascertain due to their indefiniteness and uncertainty. Accordingly, the contractor agrees to pay the liquidated damages assessed by the District at the rates set forth below for each specified violation of the Diversity Program. The contractor further agrees that for each specified violation the agreed upon

liquidated damages are reasonably proximate to the loss the District will incur as a result of such violation:

- **Failure to Meet MWBE and/or SBE Commitment.** If the District determines upon completion or termination of a contract that the contractor did not meet the committed MWBE and/or commitment and that such failure is not otherwise excused under Section 5, the District may assess the lesser of: (a) \$30,000 or (b) the dollar difference between the committed MWBE and/or SBE goal and the contractor's actual MWBE and/or SBE utilization.
- **Using MWBE and/or SBE as a Conduit.** If the contractor lists an MWBE and/or SBE to receive credit toward a committed MWBE and/or SBE goal with knowledge that the MWBE and/or SBE will be acting as a conduit or will not be performing a commercially useful function reasonably commensurate with the payment amount for which the contractor will be seeking credit, the District may assess the lesser of: (a) \$20,000 or (b) the dollar amount the contractor indicated that it would pay such MWBE and/or SBE in the MWBEs and/or SBE contract(s) (or if no contract has been signed, the Letter of Intent).
- **Wrongful Termination or Replacement of MWBE and/or SBE Services.** If the contractor terminates or replaces an MWBE and/or SBE in violation of the Diversity Program, the District may assess the lesser of: (a) \$20,000 or (b) the dollar amount of the work remaining to be performed by the terminated MWBE and/or SBE at the time it was terminated (or if the MWBE and/or SBE was not terminated because it was never retained, then, the dollar amount that the Contractor indicated it would pay the MWBE and/or SBE in the letter of intent).
- **Failure to Comply with Diversity Program Following Termination or Withdrawal by MWBE and/or SBE.** If the contractor fails to comply with the Good Faith Efforts requirements in replacing an MWBE and/or SBE that is terminated or withdraws from work on a contract, the District may assess the lesser of: (a) \$20,000 or (b) the dollar amount of the work remaining to be performed by the MWBE and/or SBE that withdrew or was terminated at the time of the termination or withdrawal.
- **Failure to Comply with Diversity Program to Add New Subcontractors.** If the contractor fails to comply with Good Faith Efforts when required in adding new subcontractors to a contract, or when the scope of work of a contract changes so as to create a new MWBE and/or SBE subcontracting opportunity, or on a contract renewal, the District may assess the lesser of: (a) \$20,000; or (b) the dollar amount of the new or additional work.
- **False Statements and Misrepresentations.** If the contractor makes a false statement, material misrepresentation or material misleading omission regarding any matter relevant to the Diversity Program (including but not limited to information relating to good faith efforts, MWBE and/or SBE utilization, MWBE and/or SBE certification or payments to MWBEs and/or SBEs), the District may assess the lesser of: (a) \$25,000; or (b) if the misrepresentation relates to payment, the dollar difference between what the Contractor represented and the truth.
- **Failure to Respond to Request for Information.** If the contractor fails to provide any report, documentation, affidavit, certification or written submission required under the Diversity

7.0. VIOLATIONS AND REMEDIES

Program within the time period set forth therein, the District may assess \$25 per day for each day that such report, documentation or written submission is overdue.

7.3. ARBITRATION

In responding to a bid or entering into a contract that is subject to the Diversity Program, the contractor agrees to the following:

Any claim or dispute by a contractor against the District, or against any agent, employee, successor, or assign of the District, whether related to a bid, applicable Board policies and MWBE procedures set forth in this document, contract, or otherwise, and any claim or dispute related to a bid, contract, or the relationship or duties contemplated under this Program, including the validity of this arbitration clause, shall be resolved by binding arbitration by the American Arbitration under the Arbitration Rules then in effect. The location of any arbitration hearing shall be in the Shelby County, Tennessee. Any award of the arbitrator(s) may be entered as a judgment in any court of competent jurisdiction. Information may be obtained, and claims may be filed at any office of the American Arbitration Association or at Corporate Headquarters, 335 Madison Avenue, Floor 10, New York, New York 10017-4605. This agreement shall be interpreted under the Federal Arbitration Act.

**SHELBY COUNTY SCHOOLS
SUPPLIER DIVERSITY PROGRAM
DOCUMENTATION OVERVIEW**

Form	Submission Requirements	Required Form
Listing of Good Faith Efforts (GFE) Indicates the actions you undertook to recruit and solicit minority vendors, subcontractors, vendors, or suppliers for this project and/or other aspects of the company's business	Due with bid/proposal IF goal is met or exceeded (if subcontracting or purchasing supplies/materials)	Affidavit A
Statement of Intent to Perform Contract with Own Workforce Indicates that the vendor does not customarily subcontract elements of this type project, normally performs all elements of work on this project with his/her own current work force AND will not purchase any materials or supplies in the performance of the contract	Due with bid/proposal (self-performing and not purchasing supplies/materials)	Affidavit B
Subcontract/Purchase Opportunities A list of the scope of work bidders/proposers sought subcontract/purchase opportunities.	Submitted as documentation of Good Faith Efforts, if applicable.	Form A
MWBE Utilization Commitment Lists the total dollar amount of such participation by M/WBE subcontractors and suppliers the Vendor will use on the project	Due with bid/proposal	Form B
Letter of Intent to Perform as a Subcontractor or Subconsultant Identifies minority participation will be used on the project. Form C is signed by the M/WBE	Within three (3) business days after notification of being the apparent low bidder. Must match firms listed on Form A	Form C
Documentation for All Payments to Subcontractors, Suppliers, and Service Providers Contractor shall provide with each pay request to the School Board all payments to contractors, subcontractors, supplies and service providers	Must submit with each pay request and final payment	Form D

SHELBY COUNTY SCHOOLS
FORM B – MWSBE UTILIZATION COMMITMENT

I, _____
(Name of Bidder/Proposer)

Bid/RFP # _____

do hereby certify that on this project, we will expend a minimum of _____% of the total dollar amount of the contract with the following MWSBE as subcontractors, vendors, suppliers or providers of professional services.

[illegible]

*MWSBE categories: African American (**B**), Asian American (**A**), Hispanic American (**H**), Native American (**N**), Nonminority Woman (**W**), Nonminority Male (**M**)

The total value of MWSBE contracting will be \$_____

This form may be reproduced.

SHELBY COUNTY SCHOOLS
AFFIDAVIT A – LISTING OF THE GOOD FAITH EFFORTS
Attach FORM B to the Bid/Proposal if goal is not attained

Affidavit of _____
 (Name of Vendor)

I have made a good faith effort to comply under the following areas checked. Vendor must earn at least 50 points from the Good Faith Efforts list for their bid to be considered responsive.

	1 – Notification of Subcontracting Opportunities (10 Points) vendor must provide to the School Board or their designee a list of the areas in which the bidder sought subcontractors and suppliers.
	2 – M/WBE Contact (10 pts) Contacted M/WBE businesses that reasonably could have been expected to submit a quote, for the areas the vendor intends to subcontract or purchase supplies at least ten (10) days before the solicitation response due date and notified them of the nature and scope of the work to be performed.
	3 - Making Project Documents Available (10 pts) Made the construction plans, specifications, and requirements available for review by prospective M/WBE businesses, or providing these documents to them at least ten (10) days before the bids are due
	4 – Breaking Down Work (15 pts) Broken down or combined elements of work into economically feasible units to facilitate M/WBE participation
	5 – Working with M/WBE Assistance Organizations (10 pts) Worked with minority and women trade, community, or contractor organizations identified by the School Board and included in the bid documents that aid in recruitment of minority businesses
	6 – Attend or Host Pre-Bid Meeting (10 pts) Attended pre-bid meetings scheduled by the School Board or conduct a pre-bid meeting for M/WBE within five (5) days of the bid opening
	7 – Bonding or Insurance Assistance (20 pts) Aided in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors or subconsultants
	8 – Negotiate in Good Faith (15 pts) Negotiated in good faith with interested M/WBE businesses and did not Reject them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing. Provide the names of the M/WBE businesses and email addresses
	9 - Financial Assistance (25 pts) Aided an otherwise qualified M/WBE business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisted M/WBE businesses in obtaining the same unit pricing with the bidder's suppliers in order to help the M/WBE businesses in establishing credit
	10 – Joint Ventures (20 pts) Negotiated joint venture and partnership arrangements with M/WBEs in order to increase opportunities for M/WBE participation when possible
	11 – Quick Pay Agreements (20 pts) Provided quick pay agreements and policies to enable M/WBE to meet cash-flow demands
	12 – M/WBE Participation on Non-SCS Contracts (15 pts) The Bidder must document that during the eighteen (18) month period before bid opening, the bidder paid M/WBEs on non-School Board contracts.

In accordance with Policy the undersigned will enter into a formal agreement with the firms listed on the Minority, and Women, Business Utilization Commitment schedule conditional upon execution of a contract with the Owner. Failure to abide by this statutory provision will constitute a breach of the contract. The undersigned hereby certifies that he or she has read the terms of the Minority, and Women Business Enterprise commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: _____

Name of Authorized Officer _____

Signature: _____

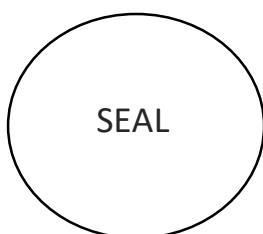
Title: _____

State of _____ County of _____

Subscribed and sworn to before me this _____ day of _____ 20____

Notary Public

My commission expires _____



SHELBY COUNTY SCHOOLS
AFFIDAVIT B - STATEMENT OF INTENT TO PERFORM WORK WITHOUT SUBCONTRACTING
Attach this form to the Bid/Proposal

Affidavit of _____
(Name of Bidder)

I hereby certify that it is our intent to perform 100% of the work required for the _____
_____ contract.
(Name of Project)

In making this certification, the Bidder/Offeror states that the Bidder/Offeror does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform all elements of the work on this project with his/her own current work forces; and

The Bidder/Offeror shall provide documentation related to past projects in which their company has provided similar services utilizing its own workforce over the past three (3) years. Please provide the name of the companies and the email addresses. This information is being requested in support of the above statement to validate the capabilities of completing such work without use of any subcontractors. Also, list contract experiences with certified M/WBE businesses in other aspects of your company's business, their name and contact information, status as to whether they are woman or minority owned, what work/services were performed, and the amount paid of the contract and/or the services and goods provided.

The undersigned hereby certifies that he or she has read this certification and is authorized to bind the Bidder to the commitments herein contained.

Date: _____

Name of Authorized Officer _____

Signature: _____

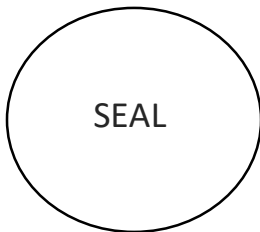
Title: _____

State of _____ County of _____

Subscribed and sworn to before me this _____ day of _____ 20____

Notary Public

My commission expires _____



SHELBY COUNTY SCHOOLS
FORM C - LETTER OF INTENT TO
PERFORM AS A SUBCONTRACTOR OR SUBCONSULTANT
(PROVIDE MATERIALS, SUPPLIES, OR/ & SERVICES)

Project Name: _____ Project/Bid # _____

Name of Prime Bidder/Proposer: _____

Address: _____
Street City State Zip Code

Telephone: _____ Email: _____

Name of Certified Vendor: _____

The undersigned intends to perform work in connection with the above project as
____ Minority Business Enterprise ____ Women's Business Enterprise ____ Small Business Enterprise

The MWSBE status of the undersigned is/is not certified by the 3rd party certification agencies accepted
by the District.

Our firm is certified by _____

Certification number is _____ Expiration date _____

The undersigned is prepared to perform the following described work or provide materials/supplies in
connection with the above project (*specify in detail particular work items, materials or services to be
performed or provided*):

Description of work to be performed by certified vendor:

Subcontracting at any tier must be reported and is subject to all MWSBE compliance requirements. This
form shall be used for MWSBE subcontracting at any level.

Date Name of MWSBE Company

Title of Authorized Officer Phone Number

Email Address: _____

(Signature)

**THE PRIME CONTRACTOR OR ARCHITECT MUST GET THIS FORM COMPLETED BY THE SUBCONTRACTORS OR
SUPPLIERS**

SHELBY COUNTY SCHOOLS
FORM D - DOCUMENTATION FOR PAYMENTS TO
ALL SUBCONTRACTORS, SUPPLIERS, AND SERVICE PROVIDERS

Prime Contractor/Architect: _____

Address & Phone: _____

Project Name: _____

Pay Application #: _____ Period: _____

Current Requested Payment Amount: _____

The following is a list of payments to be made to all contractors/suppliers & other providers on this project for the above-mentioned period.

Firm Name and Address	*MWSBE Category	Amount to be Paid form this pay Request	Total Payments to date	Total Amount Committed