

**Non-Discrimination and Columbia Disadvantaged Business Enterprise
(CDBE) Utilization Policy
(Last Revised: March 12, 2021)**

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

2. Non-Discrimination Contracting Policy. In carrying out the service, the Contractor shall not discriminate against any employee or applicant for employment because of that employee or applicant's age, sex, gender, gender identity or expression, sexual orientation, race, religion, creed, color, disability, national origin, veteran or military status, political affiliation, or any other characteristic protected by federal, state, or local laws ("protected characteristic"). The Contractor shall take affirmative steps to ensure equal employment opportunities for all applicants for employment, without regard to their protected characteristics. For the purpose of this Non-Discrimination in Contracting Policy, the term "sex" includes medical needs and / or lactation needs arising from pregnancy, childbirth, or related medical conditions pursuant to the South Carolina Pregnancy Accommodations Act, 2018 S.C. Act No. 244. This Non-Discrimination in Contracting Policy extends to all aspects of the Contractor's operations, including, but not limited to the Contractor's employment practices (including selection, hiring, assignment, re-assignment, training, promotion, transfer, compensation, layoff, leave of absence, return from layoff or leave of absence, discipline, and termination); selection of volunteers and vendors, and provision of services. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the government setting forth the provisions of this Non-Discrimination in Contracting Policy. The Contractor shall incorporate the provisions of this Non-Discrimination in Contracting Policy in all subcontracts for service work.

3. City of Columbia Local Business Enterprise Defined. Resolution R-2010-066 adopted and incorporated Local Business Enterprise (LBE) Preference Policy into the City Procurement Regulations. Whereas, the City of Columbia has a significant interest in encouraging the creation of employment opportunities for residents and businesses located within the Columbia-Orangeburg-Newberry Combined Statistical Area (CSA). It is in the interest of the City of Columbia to give preference on eligible local projects to local business enterprises having a moderate degree of employment interchange within the CSA. To claim local vendor preference, an offeror must complete the LBE Qualification Statement and submit it to the Office of Business Opportunities for approval prior to bid opening.

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

5. CDBE Defined.

- a. A CDBE is defined as (1) a certified business (2) that has an office in the Columbia-Orangeburg-Newberry CSA for one year; and (3) is a socially and/or economically disadvantaged business.
- b. Columbia-Orangeburg-Newberry CSA includes the following counties: Calhoun, Fairfield, Kershaw, Lexington, Newberry, Orangeburg, Richland, and Saluda.
- c. Certified Business: Any businesses having at least one of the following certifications shall qualify as certified under the City of Columbia DBE Utilization Policy upon submission and verification of such certification. (The list below is not all inclusive, other certifications may be accepted from accredited certifying agencies):

Certification	Acronym	Certifying Agency
Disadvantaged Business Enterprise	DBE	Department of Transportation (DOT)
Historically Underutilized Business Zone	HUBZone	Small Business Administration (SBA)
Minority Business Enterprise	MBE	SC Office of Small and Minority Business Contracting and Certification (SMBCC)
Minority Business Enterprise	MBE	National Minority Supplier Diversity Council (NMSDC)
Service-Disabled Veteran-Owned Small Business/Veteran-Owned Small Business	SDVOSB/ VOSB	Small Business Administration (SBA)
Women’s Business Enterprise National Council	WBENC	Women’s Business Enterprise National Council (WBENC)
Women Owned Small Businesses	WOSBs	Small Business Administration (SBA)
Economically Disadvantaged Women-Owned Small Business	EDWOSB	Small Business Administration (SBA)
8(a) Business Development Program	8(a)	Small Business Administration (SBA)

6. Socially and/or Economically Disadvantaged Individuals Defined.

- a. Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities.
- b. Economically disadvantaged individuals are those whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities.

- c. Minority and women-owned businesses are presumed socially disadvantaged. “Minority” means a person who is a citizen or lawful permanent resident of the United States and who is:
 - Black (a person having origins in any of the black racial groups of Africa);
 - Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
 - Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); and/or,
 - American Indian and Alaskan Native (a person having origins in any of the original peoples of North America).

7. Socially and/or Economically Disadvantaged Business Defined.

- a. A socially and/or economically disadvantaged business is at least fifty-one (51%) percent owned and controlled by one or more citizens of the United States who are determined to be socially and/or economically disadvantaged.
- b. In the case of a concern which is a corporation, fifty-one (51%) percent of all classes of voting stock of such corporation must be owned and controlled by an individual determined to be socially and/or economically disadvantaged.
- c. In the case of a concern which is a partnership, fifty-one (51%) of the partnership interest must be owned by an individual or individuals determined to be socially and/or economically disadvantaged and whose management and daily business operations are controlled by individuals determined to be socially and/or economically disadvantaged. Such individuals must be involved in the daily management and operations of the business concerned.

8. Applicability. Except as otherwise provided herein or prohibited by federal or state law, this policy shall also apply to any federally assisted activity with subcontracting possibilities.

9. Responsible Department. The City Manager shall designate the Office of Business Opportunities to administer this policy. The Office of Business Opportunities shall be responsible for developing, managing, and implementing the CDBE Utilization Policy and such other responsibilities as set forth in this policy.

10. Contract Goals. The City Manager has the authority to determine contract goals for CDBE participation on any prime contract estimated at \$200,000.00 or more.

11. City Records and Reports. The Office of Business Opportunities shall maintain such records and provide such reports annually to the City Manager and City Council to ensure full compliance with the CDBE Program.

12. Policies to Ensure that CDBE's have an Equitable Opportunity to Compete for Contracts and Subcontracts. The City shall use the following techniques to facilitate CDBE utilization in contracting activities:

- a. Arrange bid solicitations and times for the submission of bids/bid specifications to ensure equitable participation.
- b. Break down larger contracts into smaller contracts to include the participation of smaller businesses to the extent economically and legally feasible.
- c. Provide specifications in a timely manner to CDBEs, majority contractors and business associations.
- d. Provide technical assistance to CDBEs.
- e. Hold seminars or workshops to acquaint the business community with the requirements and scope of City procurement activities.
- f. Utilize local minority-owned banks wherever feasible.
- g. Maintain accurate records of the utilization of CDBEs.
- h. Aid such businesses in the Columbia-Orangeburg-Newberry CSA that meet the definitions of DBE and ensure that they shall be afforded the full opportunity to participate in procurement through the goals and procedures established herein, provided that the integrity of the bidding procedures and process of awarding contracts to the low acceptable bidders is maintained.
- i. Have available resources, including directories and/or lists, to facilitate in the identification of CDBEs with capabilities needed in the performance of City contracts on the Office of Business Opportunities website (these lists should not be considered sole sources or all-inclusive and no warranties expressed and/or implied).

13. Good Faith Efforts. Offerors shall perform Good Faith Efforts (GFEs) in meeting the CDBE goal placed on City projects. The offeror is responsible for maintaining all GFEs documentation and records for each CDBE project for which they participate at a minimum of three (3) years. If the offeror meets or exceed the CDBE goal placed on a project, GFEs are not required.

GFEs must include but are not limited to the following:

- a. Attend pre-solicitation meetings, pre-bid meetings and outreach events that are scheduled by the City to inform CDBEs of contracting, subcontracting, and supply opportunities.

- b. Placement of digital or print advertisements in general circulation, trade association, and/or Small Minority Women Business Enterprise (SMWBE) focused media outlets concerning subcontracting opportunities.
- c. Provide written notice to relevant CDBEs that their interest in the contract is being solicited, in sufficient time to allow the CDBEs to participate.
- d. Follow up with initially solicited CDBE firms to determine with certainty whether they are interested in participating.
- e. Identify and select portions of the work to be performed by CDBEs in order to increase the likelihood of CDBE participation (including, where appropriate, breaking down contracts into economically feasible units).
- f. Provide interested CDBEs with equal access to specifications, plans, and requirements of the contract.
- g. Negotiate fairly with interested CDBEs (not rejecting CDBEs as unqualified without sound reasons based on a thorough investigation of their capabilities).
- h. Use the services of available SMWBE community organizations, majority contractors' groups, local, state and federal SMWBE business assistance offices, and other organizations that provide assistance in the recruitment and placement of SMWBEs.
- i. Assist interested CDBEs and certified enterprises in obtaining bonding, lines of credit or insurance as needed.
- k. Offerors must use the tiered approach listed below in an effort to meet or exceed the CDBE utilization goal placed on a CDBE project.

Tier One	Utilization of <i>CDBEs</i> within the Columbia-Orangeburg-Newberry CSA
Tier Two	Utilization of Certified <i>DBEs</i> within the Columbia-Orangeburg-Newberry CSA
Tier Three	Utilization of Certified <i>DBEs</i> within the state of South Carolina

14. Audit of Good Faith Efforts. The City reserves the right to audit GFE paperwork at any time it deems necessary. Offerors that repeatedly fail to meet the specified CDBE utilization goal placed on CDBE projects will be audited.

15. Compliance Submittal Period on Projects with CDBE Utilization Goals. Interested contractors or consultants with an interest in bidding on City of Columbia projects with a CDBE utilization goal must submit required compliance documentation, except for pricing, during the Compliance Submittal Period (CSP). Submitted information will be used to

determine respondent's compliance for the specific bid in meeting the GFE requirement of the CDBE policy.

The City reserves the right, in its sole discretion, to reject all submissions, reissue a subsequent bid, terminate, restructure or amend this process at any time. The final selection and contract negotiation rests solely with the City.

- a. Offerors must submit the areas for which CDBE participation will be achieved at bid opening. The information should include the specific CDBE participation percentages, services, and/or materials to be provided.
 - b. All offerors must submit a *Letter of CDBE Commitment* as part of their CSP package to the Office of Procurement and Contracts stating the CDBE utilization percentage to be obtained by offeror and one (1) of the following:
 - o Offeror will meet or exceed the CDBE project goal at bid opening.
 - o Offeror's CDBE percentage will be at least 50% or more of the specified CDBE project goal at bid opening.
 - o Offeror's CDBE percentage will be below 50% of the specified CDBE project goal at bid opening.
 - c. Offerors that certify in their *Letter of CDBE Commitment* that their CDBE percentage will meet or exceed the CDBE project goal at bid opening are not required to submit GFEs documentation as part of their CSP.
 - d. Offerors that certify in their *Letter of CDBE Commitment* that their CDBE percentage will be at least 50% or more of the specified CDBE project goal at bid opening are not required to submit GFEs documentation as part of their CSP.
 - e. Offerors that certify in their *Letter of CDBE Commitment* that their CDBE percentage will be below 50% of the specified CDBE project goal must submit all GFEs documentation and records as part of their CSP.
 - f. Pricing should not be included as a component of the CSP by any offeror.
 - g. The offeror must also include in the *Letter of CDBE Commitment* that the CDBEs/DBEs to be included at bid opening will self-perform a minimum of 50% of their portion of the project.
 - h. All CDBE relevant compliance information submitted by offerors will be forwarded to the Office of Business Opportunities for CDBE compliance review.
16. GFE Committee Review. The Office of Business Opportunities will convene the GFE Committee to review GFE documentation and records submitted by offerors during the CSP that have certified that their CDBE percentage will be below 50% of the specified CDBE

project goal. Based on the review of the offeror's CDBE GFE, the GFE Committee will determine if the GFE requirement was met.

- a. Based on the review and determination made by the GFE Committee, the submittal will be deemed either compliant or non-compliant by the Office of Business Opportunities.
- b. Offerors deemed non-compliant will be notified by the Office of Procurement and Contracts prior to the release of the invitation for bid.

17. CDBE Appeals Process & General Administrative Review Committee. All appeals from non-compliant CSP offerors shall be escalated to a newly established Administrative Review Committee (ARC) for further review.

18. Invitation for Bid on Projects with CDBE Utilization Goals. An Invitation for Bid will be extended to offerors deemed compliant during the CSP.

- a. CDBE percentages reflected in final bid submittals must match or exceed the previous percentage certified in the *Letter of CDBE Commitment* submitted during the CSP by offeror prior to bid opening. If the percentage contained in the bid submitted during bid opening is less than the percentage contained in the letter, the bidder will be found non-responsive.
- b. Offerors must include on the Business Information Record (BIR) the list of all subcontractors, including CDBE/DBE subcontractors, that will be utilized on the project.
 - Business names and addresses of the participating subcontractors; and
 - Specific participation percentages, services, and/or materials to be provided by each subcontractor (Percentages should be based on the projected total contract amount of the bid).
- c. Proof of certification for each CDBE/DBE subcontractor utilized for the specific project.
- d. Written documentation of the offeror's commitment to use the CDBEs/DBEs listed at the stated participation percentages.
- e. Written confirmation of participation from each CDBE/DBE subcontractor listed at the stated percentages.
- f. All other bid documentation and information as required by the Office of Procurement and Contracts.

19. Complaints. Any complaint received by the City concerning the CDBE Policy will be investigated by the Office of Business Opportunities, or designee(s) of the City Manager, and reported to the City Manager with a recommendation for resolution. This information shall be reported by the City Manager to City Council as deemed necessary.

20. Additional Rules and Regulations. The City may, with the approval of the City Manager, promulgate additional rules and regulations not inconsistent with this policy or any Federal or State law, regulation or grant requirement, as needed. The City Manager reserves the right to review and/or remove programmatic provisions should it be found to be in the best interest of the City.

21. Severability Clause. In the event any provision or part of this policy is found to be invalid or unenforceable, only that particular provision or part so found, and not the entire policy will be inoperative.

APPROVED AS TO FORM



Legal Department City of Columbia, SC
3/12/2021