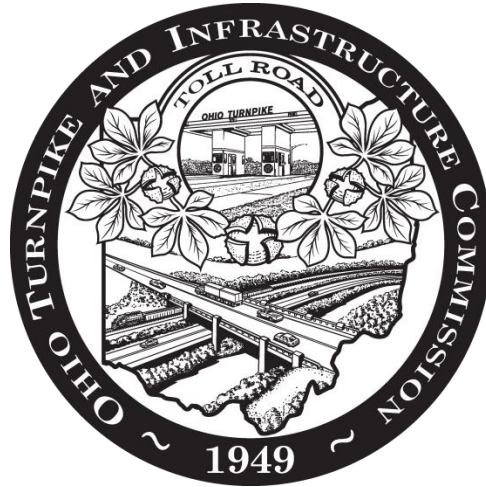


OHIO TURNPIKE AND INFRASTRUCTURE COMMISSION



Office of Equity and Inclusion

Standards and Practice Manual for the Business Inclusion Program

October 2023

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INTRODUCTION

Ohio law establishes the Ohio Turnpike and Infrastructure Commission (“Commission”) under Chapter 5537 of the Ohio Revised Code as an instrumentality of the state, and having its own separate legal identity to perform the essential governmental functions necessary to construct, operate, and maintain the Ohio Turnpike and provide funding for infrastructure projects.

As part of operating, the Commission adopted Resolution No. 18-2014 on March 24, 2014, reaffirming its policy to encourage diversity in contracting and providing the fullest possible opportunity for small and disadvantaged businesses, including those owned by minorities, women, veterans, or otherwise disadvantaged individuals. Resolution No. 18-2014 instructed the preparation of a new program that establishes and prescribes the means to achieve goals for the participation of small and disadvantaged businesses in Commission contracts.

Resolution No. 18-2014 authorized the Executive Director to engage a consultant to conduct a study (“Disparity Study”) to determine whether a disparity exists between the participation of businesses owned by minorities and women in Commission contracts and the availability of those businesses to capitalize on those contracts. Based on the findings of the Disparity Study conducted by BBC Research & Consulting and Exstare Federal Services Group, LLC (“Consultants”), statistical and anecdotal evidence indicate that minority- and woman-owned businesses face substantial barriers in the marketplace that may inhibit their ability to compete for Commission contracts. The Commission seeks to remedy such barriers and historical discriminatory practices that minority- and woman-owned businesses, as well as other disadvantaged businesses, face throughout the marketplace to ensure equal opportunity for all businesses to compete for Commission contracts. The Consultants made recommendations in the Disparity Study that the Commission authorized the Office of Equity and Inclusion to implement under Resolution No. 43-2016, adopted June 20, 2016. Based on Disparity Study findings and Resolution No 43-2016, the Commission established the Business Inclusion Program (“Program”).¹ The Commission retained BBC Research & Consulting to conduct a follow-up Availability Analysis, which was completed in September 2022, to measure the availability of minority- and woman-owned businesses for Commission contracts. Based on results from the Availability Analysis and other available information, the Commission revised the Program and established a sheltered market policy to ensure small and disadvantaged businesses have opportunities to contract directly with the Commission.

This Standards and Practices Manual developed for the Program establishes the measures to implement the Program. The Manual provides guidance to carryout the Commission’s policy to ensure that all small and disadvantaged businesses have the fullest possible opportunity to participate in Commission contracts. These Standards and Practices are intended to provide means to ensure there are equal opportunities for small and disadvantaged businesses to participate in the Commission’s business transactions, prevent contracts from disparately affecting small and disadvantaged businesses, and eliminate the

¹ The Program was set to automatically sunset on June 1, 2022, but was extended by Commission approval through October 2023 pending results from a follow-up Availability Analysis.

effects of discrimination on competition for its contracting opportunities.

ARTICLE I. DEFINITIONS

The following words, terms, phrases and abbreviations shall have the following meanings:

“Affiliate” means a person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, another person or entity constituting an affiliate, or an identity of interest between or among parties exists such that affiliation may be found. In determining Affiliation, the Commission shall consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether an applicant meets the criteria of this Program for purposes of SBE certification.

“Annual Aspirational Goal or Annual Goal” shall mean the targeted level established by the Commission for the annual aggregate participation of SBEs in the Commission’s Contracts.

“Annual Gross Receipts” means the “total income” (or in the case of a sole proprietorship, “gross income”) plus “cost of goods sold” as these terms are defined and reported on Internal Revenue Service (IRS) tax return forms (such as Form 1120 for corporations; Form 1120S and Schedule K for S corporations; Form 1120, Form 1065 or Form 1040 for LLCs; Form 1065 and Schedule K for partnerships; Form 1040, Schedule F for farms; Form 1040, Schedule C for other sole proprietorships), and does not include net capital gains or losses; taxes collected for and remitted to a taxing authority if included in gross or total income, such as sales or other taxes collected from customers and excluding taxes levied on the concern or its employees. For size determination purposes, the only exclusions from receipts are those specifically provided for in this paragraph. All other items, such as subcontractor costs, reimbursements for purchases a contractor makes at a customer's request, and employee-based costs such as payroll taxes, may not be excluded from receipts.

“Bid” shall mean a quote, bid or proposal submitted by a person or entity in response to a solicitation issued by the Commission.

“Bidder” or “Contractor” shall mean any person or entity that submits a quote, bid or proposal to the Commission in response to a solicitation issued by the Commission; and person or entity that has registered as a vendor interested in doing business with the Commission; or a person or entity that has been awarded a Contract by the Commission.

“Broker” shall mean a person or entity that fills orders by purchasing or receiving supplies from a third party rather than out of its own existing inventory, and provides no Commercially Useful Function other than acting as a conduit between a supplier and the customer.

“Commercially Useful Function” means responsibility to perform a component of the contract obligations by actually performing, managing and supervising the work involved. A business does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of participating in the transaction, contract or project. To perform

a Commercially Useful Function as a Subcontractor (as distinguished from a Manufacturer, Regular Dealer, Broker or trucking company), the business must be responsible, with respect to materials and supplies, for negotiating price, determining quality and quantity, ordering the material, and installing and paying for the material itself. If a Subcontractor performs or exercises responsibility for at least 30 percent of the total cost of its subcontract with its own workforce, there is a rebuttable presumption that it is performing a Commercially Useful Function. To determine whether a firm is performing a Commercially Useful Function, the Commission will evaluate the amount of work subcontracted, normal industry practices, whether the amount the firm is to be paid under the Contract is commensurate with the work it is actually performing, and other factors deemed relevant.

“Compliance” shall mean the condition existing when the Commission determines that a participant has met the requirements of the Program set forth herein.

“Contract” shall mean any mutually binding legal obligation created to exchange the Commission’s funds for some good or service from a private-for-profit enterprise. In this context, the terms “contracting,” “purchasing,” and “procurement” are synonymous and refer to the process or processes under which the Commission undertakes such acquisitions. Contract does not include sole source procurements, which by their very nature limit the source of supply to one vendor; the acquisition of any interest in real property, including lease holdings; direct and indirect employee payments including payroll expenditures, pensions and unemployment compensation and other employee-related expenditures; agreements with non-profit or governmental entities; agreements with utility providers; and any other categories and subcategories of goods and services that the Commission may establish as excluded.

“Contract Goal” shall mean the goal for SBE participation on a particular project or Contract based upon the availability of SBEs to perform the scope of work and other factors deemed relevant to the project or Contract.

“Controlled” means actual operational and managerial control, responsibilities or obligations for the applicant with the authority to make daily business decisions, direct how business is conducted and manage general enterprise operations with Experience in specified industry classifications for a period of at least one (1) year prior to the application. The principal manager(s) that direct business decisions must not have outside business interests or employment that conflict with the interests of the applicant.

“Experience” means demonstrated skills, knowledge or ability to perform in the field of endeavor in which certification is sought by the firm as defined by normal industry practices using six digit North American Industry Classification System identifiers. A firm shall be entitled to a rebuttable presumption that it has the Experience performing in the categories for which it is applying for certification if the firm has been in continuous operation in those categories for at least one (1) year prior to its application for certification.

“General Services Agreement” means a Contract under which the Commission contracts with a Prime Contractor to deliver goods or services as needed over the duration of a determined period and issues individual task orders, work orders or assignment letters for such goods or services.

“Good Faith Efforts” means performing necessary and reasonable actions that, by their scope, intensity, and appropriateness, would reasonably be expected to attain SBE participation in proportion to an established Contract Goal. The determination of Good Faith Efforts is based on consideration of the quality, quantity, and intensity of the different kinds of actions taken. The activities or efforts undertaken when making a Good Faith Effort must be those that one could reasonably expect to deploy when seriously, actively and aggressively attempting to obtain SBE participation in proportion to an established Contract Goal.

“Joint Venture” means an association of two or more independent Bidders or Contractors formed to carry out a for-profit business enterprise in a single transaction or a series of transactions, for which, pursuant to a written agreement (A) the parties combine, pool, or integrate some of their assets with a view to mutual gain, but otherwise remain independent operations; and (B) a SBE partner in a Joint Venture has a legal and actual right or obligation, consistent with its equity share of the Joint Venture, to: (i) contribute to the operating capital of the Joint Venture; (ii) share in the operating profits or losses of the Contract and the Joint Venture; and (iii) to perform clearly defined services under the Contract in the name of the Joint Venture.

“Manufacturer” means an individual (or individuals) who owns, operates, or maintains a factory or establishment that produces on the premises the components, materials and/or equipment, or supplies equipment required under the Contract of the general character described by the specifications.

“Master Contract” see “General Services Agreement.”

“Owned” means having at least 51% equity interest in an applicant for at least one year prior to certification with an interest in its capital and earnings commensurate with the ownership stake.

“Program Manager” means the Office and Equity and Inclusion Contracts Coordinator, or other delegate of the Executive Director, authorized to and responsible for carrying out administrative duties required to effectuate the Program.

“Personal Net Worth” means the net value of the assets of an individual remaining after total liabilities are deducted. However, the assets do not include the individual's ownership interest in the business applicant or participant; or the individual's equity in his or her primary place of residence. Personal Net Worth includes: (a) all asset transfers within a two-year period, to the applicant business or any other business, and trust accounts; (b) the person's interest in any other business; (c) if married, half of all assets and liabilities held jointly with the individual's spouse, including, but not limited to bank accounts, insurance policies, retirement accounts, property and stocks and bonds.

“Prime Contractor” means the Contractor who enters into a Contract with the Commission and who is responsible to the Commission for performance under such Contract.

“Purchasing Agent” means the Director of Contracts Administration, Procurement Manager, Procurement Coordinator or other similar position.

“Regular Dealer” means a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a Regular Dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products at issue. A firm may be a Regular Dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business if the firm both owns and operates distribution equipment for the products. Any supplementing of a Regular Dealer's distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, manufacture representatives, or other persons who arrange or expedite transactions are not Regular Dealers.

“Small Business Enterprise (SBE)” means an entity certified by the Commission as any sole proprietorship, partnership, corporation, limited liability company, or Joint Venture whose employees and/or annual receipts do not exceed the size standards established by the [U.S. Small Business Administration using the six digit "North American Industry Classification System"](#) under 13 CFR § 121.201 for the industry classification(s) applicable to its area of Experience; who is headquartered in a Qualified Census Tract in Ohio or has a physical presence in Ohio; and is at least 51% Owned and Controlled by individual(s) whose Personal Net Worth does not exceed one million six hundred dollars (\$1,600,000).

“Stand-alone Contract” means a Contract the Commission issues for a specific project or scope of work that is limited to the duration, location as applicable and goods and services specified under the Contract.

“Standards and Practices” means the administrative and policy standards set forth in the Standards and Practices Manual for the Business Inclusion Program.

“Subcontractor” means any vendor or contractor that is providing goods, services, or supplies to a Prime Contractor in furtherance of the Prime Contractor's performance under a Contract with the Commission.

“Qualified Census Tract” means a recognizable geographic region within the state of Ohio as a historically underutilized business zone ([HubZone](#)) established under 15 USC §362(p)(1) or an [enterprise zone](#) established under Chapter 5709 of the Ohio Revised Code, and that the United States Department of Administrative Services has recognized as having an average minimum household income less than eighty percent of the average non-metropolitan income of the state or has an unemployment rate of the geographic region that exceeds the unemployment rate of the state by more than one hundred forty percent.

“User Department” means the specific Commission department for which the Contract is intended to support in its operations.

ARTICLE II. PROGRAM ADMINISTRATION

The Office of Equity and Inclusion is responsible for administering and enforcing the Program established under Resolution No. 43-2016, adopted June 20, 2016. The Program is administered by the Program Manager through the Office of Equity and Inclusion. The Program Manager shall periodically report to the Executive Director and the Commission on all matters concerning the Program.

A. FUNCTIONS OF THE OFFICE OF EQUITY AND INCLUSION.

The Office of Equity and Inclusion shall foster contracting opportunities for small and disadvantaged businesses, and strive to achieve the objectives of the Program set forth in Resolution No. 43-2016, adopted June 20, 2016, as reaffirmed by Resolution No. 95-2023, adopted October 16, 2023, by, among other things:

1. Recommending written rules, regulations and procedures with respect to the administration of the Program and its incorporation into the Commission's Procurement Policies and Procedures.

2. Establishing and recommending Annual Aspirational Goals for the participation of SBEs in Commission Contracts.

3. Maintaining outreach programs and Contractor advisory council(s) to promote contracting opportunities for SBEs—including minority-, woman-, and veteran-owned businesses—the efficacy of the Program, and the fair and equitable administration of the Program.

4. Establishing, enhancing and maintaining relationships with other agencies and stakeholders that share the objectives of the Program and, whenever possible, coordinating the operation of the Program with the programs of such agencies and stakeholders.

5. Implementing uniform procedures and criteria for certifying, recertifying and decertifying businesses as SBEs, accepting certifications by other agencies, maintaining a directory of certified firms, and making the directory available to User Departments and all interested persons.

6. Monitoring and tracking data related to use of SBEs and non-SBEs as Prime Contractors, Subcontractors and/or Joint Venture partners in connection with the award or performance of Contracts.

7. Responding to inquiries regarding Invitations to Bid or Requests for Proposals that require demonstrations of Good Faith Efforts or Contract Goals; are set aside for SBE competition; or include provisions for bid preference or evaluation credits.

8. Tracking and evaluating Contractors' Good Faith Efforts to meet Contract Goals, commitments to SBE participation on Contracts and progress in meeting participation commitments in performing Contract obligations.

9. Reporting Contractors' Good Faith Efforts to meet Contract Goals,

commitments to SBE participation on Contracts and progress in meeting participation commitments in performing Contract obligations.

10. Attending pre-Bid and pre-construction conferences or kick-off meetings for other projects to explain this Program and applicable Program measures.

11. Working with other departments to monitor Contracts to ensure prompt payments to SBEs and compliance with Contract Goals and commitments, including gathering data to facilitate such monitoring.

12. Consulting with User Departments to establish targets for set-aside opportunities and identify contracts for exclusive SBE bidding.

13. Monitoring the Program and the Commission's progress towards the Annual Aspirational Goal, including any subgoals.

14. Investigating written complaints regarding the administration of the Program.

B. FUNCTIONS OF USER DEPARTMENTS.

User Departments responsible for Contract management shall be responsible for the following Program duties:

1. Endeavoring in good faith to maximize opportunities for the participation of SBEs in its Contracts.

2. Assisting with setting Contract Goals.

3. Assisting with establishing departmental targets for sheltered market opportunities.

4. Assisting with the identification of available SBEs and providing other assistance in meeting Contract Goals and identifying sheltered market opportunities.

5. Assisting in obtaining and reporting prime contracting and subcontracting data for those Contracts they manage to the Office of Equity and Inclusion.

ARTICLE III. ELIGIBILITY STANDARDS FOR SBE CERTIFICATION

The Office of Equity and Inclusion will apply the following standards when determining an applicant's eligibility to participate in the Program. The determination of eligibility shall be within the sole discretion of the Office of Equity and Inclusion, subject to review as herein provided. The applicant has the burden to prove that it meets the eligibility criteria set forth for certification.

A. SMALL BUSINESS ENTERPRISE APPLICATION.

1. Fast Track Application. Ohio businesses certified as a DBE through the federal Uniform Certification Program, certified as an EDGE Business Enterprise by the Ohio Department of Administrative Services or certified as a SBE by the Ohio Department

of Transportation will receive recognition from the Commission as a SBE through a “Fast Track” application after receiving verification of the certification with those entities and providing additional business information as necessary. The Office of Equity and Inclusion may further recognize certifications by other entities as meeting the SBE eligibility requirements of the Program through Fast Track applications if the Program Manager determines that the certification standards of such entities are comparable to those required for certification under the Standard Application.

2. Standard Application. Any businesses that are not certified through those organizations recognized in the Fast Track application identified above may apply to the Office of Equity and Inclusion for certification as a SBE as follows:

i. The application shall be submitted through the online Certification portal located on the Commission’s Office of Equity and Inclusion webpage.

ii. The applicant shall demonstrate that:

a. it is Independently Owned and Controlled without Affiliation with another entity or person for at least one (1) year prior to making the application. If an applicant has been in business for less than one year, but it is the direct successor to a business that has operated for more than one year, the one-year requirement will be satisfied if the ownership and control of the businesses have remained substantially with the same persons who Independently Owned and Controlled the predecessor business. This requirement shall not apply to Joint Venture applicants.

b. its Annual Gross Receipts or number of employees falls below the Small Business Administration’s standards for the industry or fields of its Expertise using the North America Industry Classification System categories.

c. at least 51% Owned and Controlled by individual(s) whose Personal Net Worth does not exceed one million six hundred thousand dollars (\$1,600,000).

iii. SBEs may conduct business as a sole proprietorship, a corporation, a limited liability company, or a partnership. To be eligible for certification as a SBE, the application shall include, but not be limited to, evidence that:

a. If the applicant is a sole proprietorship:

(1) the sole proprietor has ultimate control over the management and day-to-day operations of the business, including but not limited to finances, management decisions and policies;

(2) the sole proprietor has the entire interest in the capital, assets, profits and losses of the business, not including mortgages and other

types of financial arrangements secured by assets or bonds secured by revenues; and

(3) the applicant submitted true and accurate copies of all relevant financial statements that have been audited or reviewed by a certified public accountant or tax returns for the immediate past two years and will submit any additional financial records and other documents requested.

b. If the applicant is a corporation:

(1) the board of directors and the principal executive officers are individuals that are independent and not ex officio members that serve the interests of an Affiliate, and that these persons have ultimate control over the management and day-to-day operations of the business, including but not limited to finances, management decisions and policies; and

(2) the applicant submitted true and accurate copies of the articles of incorporation, including the number of shares issued, a list of all stockholders and a copy of its code of regulations, bylaws, and financial statements that have been audited or reviewed by a certified public accountant or tax returns for the past two fiscal years of the corporation, and will submit any additional financial records and other documents requested.

c. If the applicant is a limited liability company:

(1) the members of the limited liability company are independent individuals having ultimate control over the management and day-to-day operations of the company, including, but not limited to, finances, management decisions and policies and are not ex officio members that serve the interests of an Affiliate; and

(2) the applicant submitted true and accurate copies of the articles of organization and operating agreement of the limited liability company, a list of all its members and the corporation's financial statements that have been audited or reviewed by a certified public accountant or tax returns for the past two fiscal years of the corporation, and will submit any additional financial records or other documents requested.

d. If the applicant is a partnership:

(1) each class of partnership interest is owned by independent individuals that have ultimate control over the management and day-to-day operations of the business, including, but not limited to, finances, management decisions and policies and are not serving the interests of an Affiliate; and

(2) the applicant submitted true and accurate copies of the partnership agreement and the partnership's financial statement that have been audited or reviewed by a certified public accountant or tax returns for the immediate past two years, and will submit any other financial records or other documents requested.

e. If an applicant has been in business more than one (1) year, but less than two (2) years, the documents required need only to be given for the time that the business has been in operation.

iv. Failure to certify or provide any of the necessary information may be cause for disapproval of an application. Failure to produce any information required by the Program Manager or the online form will be cause for disapproval of an application.

B. REVIEW OF APPLICATIONS.

Upon receipt of an application containing all proper certifications and required documents, the Program Manager shall review the online application form to determine the applicant's eligibility for certification as a SBE. If verification of any item is necessary, the Program Manager may request additional information or documentation, schedule an interview with the applicant or make any other further inquiry to obtain all relevant information. Interviews may take place on-site at the location of the business or virtually if the Program Manager so determines.

1. Approval. If the Program Manager approves the application for certification on the basis that the applicant meets the requirements for recognition as SBE, the applicant shall be notified and provided documentation verifying status as a SBE for a period not to exceed two (2) years. SBE status is subject to the continuing compliance of the business with these requirements and the review, at any time, by the Program Manager.

2. Modifications. Any change that affects the ownership, control or area of Experience as originally approved by the Program Manager makes the certification voidable. The Program Manager must receive notice within three (3) business days of that change for new approval. Any change in the business structure of the enterprise, the ownership and control of the enterprise or the type of business conducted by a certified SBE shall require a reapplication for certification and a review by the Program Manager.

3. Renewal. Each certified SBE shall be required to reapply for certification through a renewal application submitted to the Program Manager biennially. Such renewal applications shall contain a yearly financial statement or tax returns, a Personal Net Worth statement, all pertinent financial records and other financial documents as requested, and notarized affidavits certifying the continued eligibility for certification and any material changes to the business. If the applicant timely files the biennial renewal applications, then the applicant's present certification status shall remain in effect until such time as the Program Manager determines whether certification should be continued or not.

C. CERTIFICATION DENIAL AND DECERTIFICATION.

1. Notwithstanding the ability of an applicant to meet these standards, the Commission reserves the right to deny SBE certification or decertify any business that is or has been:

i. In arrears or declared to be in default to the Commission upon any Contract or debt, or has otherwise failed to perform faithfully, fully and completely any previous Contract with the Commission;

ii. In arrears or declared to be in material breach upon any Contract, or has otherwise failed to substantially perform any previous Contract; or

iii. In default on any obligation to the Commission under the Program.

2. The Commission shall decertify a firm that does not continuously meet the eligibility criteria. Decertification by another public entity shall create a prima facie case for decertification by the Commission. The challenged firm shall have the burden of proving that its certification with the Commission should be maintained.

3. If an applicant is decertified or denied certification or recertification, it may not reapply for certification for a period of one (1) year from the date of the notice of denial. An applicant whose application for certification or recertification is denied may appeal the denial by filing a hearing application to the General Counsel within thirty (30) calendar days after the notice of denial. The General Counsel shall be the final arbiter of all challenges.

ARTICLE IV. ANNUAL ASPIRATIONAL GOAL

The Disparity Study identified statistically significant disparities between the availability and utilization of minority- and woman-owned businesses on Commission contracts for professional engineering services, construction services and general goods and support services. Based on the Disparity Study's findings and the Commission's interest as stated in Resolution No. 43-2016, adopted June 20, 2016, to address the underutilization of minority- and woman-owned businesses as well as other disadvantaged businesses in the contracts it awards, the Commission has adopted this race- and gender-neutral Program to increase opportunities for small and disadvantaged businesses to compete for and perform on Commission projects and Contracts.

Each year, the Commission will establish an Annual Aspirational Goal (Annual Goal) for the participation of SBEs in its contracts. The Commission will attempt to meet that goal through the use of race- and gender-neutral measures. The Commission will measure the annual participation of SBEs and its progress towards meeting its Annual Goal to assess the efficacy of those measures. The Program Manager may set annual subgoals for individual business groups (e.g., minority-, woman-, or veteran-owned businesses) so that the subgoals sum to the overall Annual Goal.

Based on results from the 2022 Availability Analysis and other available information, the Commission has established an initial Annual Aspirational Goal of 20% for SBE

participation in its Contracts for 2023.

The Program Manager will monitor and assess the participation of SBEs, including minority-, woman-, and veteran-owned businesses and other disadvantaged businesses during the year. If the actual participation of SBEs falls short of the Annual Goal, or if the Commission is not on track to meet its Annual Goal, the Program Manager may require User Departments to participate in mandatory meetings to establish a plan for achieving the Annual Goal.

ARTICLE V. CONTRACT GOALS

In an effort to meet its Annual Aspirational goal, the Commission will establish goals for the participation of SBEs on individual contracts it awards (Contract Goals). Contract Goals may apply to any Contract awarded through a competitive process.

A. ESTABLISHING CONTRACT GOALS.

The Commission will establish Contract Goals for the participation of SBEs on specific Contracts. The goal on a particular Contract may be higher or lower than the Commission's Annual Aspirational Goal, and the Contract Goal may be waived as determined by the Program Manager. In setting Contract Goals, the Commission shall consider the following factors relevant to the Contract:

1. The specific work types and supplies involved in the Contract and the anticipated dollar amount associated with each work type or supply category;
2. The availability of SBEs for each involved work type or supply category;
3. The extent to which subcontracting opportunities exist for the Contract;
4. The extent to which the services to be performed or supplies to be provided can reasonably be segmented into elements SBEs can perform;
5. The level of SBE participation in similar Contracts previously awarded by the Commission;
6. Contract specifications or requirements such as insurance, bonding, certification or prequalification requirements that could impact SBE participation;
7. Other work in the marketplace that may limit the capacity of SBEs to perform on the Contract; and
8. Any other relevant factors related to Commission contracting or the local marketplace.

B. CREDITING SBE PARTICIPATION.

The Commission will credit the entire amount of any of the following towards the Contract Goal and SBE participation on a given Contract:

1. For purposes of meeting a Contract Goal at the time of bid, the Commission will only count the participation of SBEs that are certified at the time of bid. However, for the purpose of reporting, should a business become certified as a SBE at any point during Contract performance, its total participation on the Contract, including participation prior to certification, will be counted towards the Contract Goal.

2. The portion of a Contract that SBEs perform with its own forces, including the cost of supplies and materials obtained by the SBE for the work of the Contract, will count towards the applicable Contract Goal. When a SBE is performing as a Prime Contractor, it may count 100% of the amount it self-performs towards the applicable Contract Goal.

3. The entire amount of fees or commissions charged by a SBE for providing a bona fide service, such as professional, technical, consulting or managerial services, provided the fee is reasonable and not excessive as compared with fees customarily charged for similar services.

4. When a SBE performs as a participant in a Joint Venture, the Commission will count only the portion of the total dollar value of the Contract equal to the distinct, clearly defined portion of the work of the Joint Venture's contract that is performed by the SBE with its own forces.

5. The Commission will credit only SBE participation that corresponds with performing a Commercially Useful Function.

i. The Commission will use the following factors in crediting a SBE trucking company performing a Commercially Useful Function:

a. The SBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting a Contract Goal.

b. The SBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Contract.

c. The SBE receives credit for the total value of the transportation services it provides on the Contract using trucks it owns, insures, and operates using drivers it employs.

d. The SBE may lease trucks from another SBE, including an owner-operator who is certified as a SBE. The SBE who leases trucks from another SBE receives credit for the total value of the transportation services the lessee SBE provides on the contract.

e. The SBE may also lease trucks from a non-SBE firm, including from an owner-operator. The SBE that leases trucks equipped with drivers from a non-SBE is entitled to credit for the total value of transportation services provided by non-SBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by SBE-owned trucks or leased trucks with SBE employee drivers. Additional participation by non-SBE

owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the appropriate Program Manager.

ii. The Commission will use the following factors in crediting a SBE material supplier performing a Commercially Useful Function:

a. The entire amount of the cost of the materials or supplies obtained from a SBE Manufacturer or Regular Dealer, and one hundred percent of the fees or transportation charges for its delivery of materials or supplies required on a job site if the payment of such fees is a customary industry practice and are commensurate with fees customarily charged for similar services.

b. With respect to materials or supplies purchased from a SBE which is neither a Manufacturer nor a Regular Dealer, the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward SBE credit, provided the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.

6. If a firm ceases to be certified during its performance on a Contract, the dollar value of work performed under a Contract will count as long as the firm was certified at the time of Contract execution.

7. In determining participation under a Contract, the participation of a SBE shall not be counted until that amount has been paid to the SBE.

C. CONTRACT AWARD PROCEDURES.

All Contractors must use Good Faith Efforts. When the Commission does not have a Contract Goal on a given project, the use and demonstration of Good Faith Efforts are not required. When a Bidder commits to achieve a Contract Goal established for a particular Contract, there is a prima facie showing that Good Faith Efforts were performed. SBEs bidding as a Prime Contractor may count 100% of the amount they intend to self-perform towards meeting the applicable Contract Goal. In the absence of an established Contract Goal for a particular contract, Bidders are encouraged to achieve the level of SBE participation corresponding to the proportional availability of SBE firms in the marketplace to perform Commercially Useful Functions under the opportunities the Contract presents.

1. Bidders are required to complete all forms and submit all documents as described in the solicitation regarding SBE participation commitments and the use of Good Faith Efforts to achieve the Contract Goal. Such information shall include:

i. Identifying all SBEs committed to participate in the Contract, the general scope of work being performed by each, and the approximate dollar amount the scope represents on the Contract.

ii. Identifying the portions of the work that the Bidder subdivided into practicable subparts to increase the likelihood that SBEs will participate in the project.

iii. Identifying all services or organizations that provided assistance in identifying and soliciting proposals from SBEs to participate on the Contract.

iv. Identifying all SBEs the Bidder supplied adequate and timely information to solicit a quote to participate on the Contract.

v. Identifying all SBEs that engaged the Bidder in negotiating scopes of work to participate on the project.

vi. Identifying all SBEs that provided quotes for the project but that were not chosen to perform the work, and the reason for the rejection.

2. The determination that a Bidder exercised adequate Good Faith Efforts is based on the holistic review of the documented opportunities, the availability for SBEs to perform on the Contract, Good Faith Effort and SBE commitment using the following considerations:

i. Opportunities under the project, or the subcomponents of the project that are identifiable as economically viable scopes of work that may interest Subcontractors in responding to the respondent's solicitations to participate in the project. The unique opportunities each project presents is determined based on the nature of the project using in-house expertise and the aggregation of those that Bidders may identify in their bids. The Bidder can fulfil the opportunities component of Good Faith Efforts through actions that include the following:

a. Selecting and packaging portions of the work in order to increase the likelihood that SBEs will respond to solicitations expressing interest in participating on the project. This includes, where appropriate, breaking out contract work into economically feasible units to facilitate participation through subcontracting.

b. Soliciting the interest of SBEs available to perform on the project through reasonable, meaningful and available means and providing a reasonable and meaningful time to respond.

ii. Availability of SBEs to capitalize on the opportunities, or the degree of ready, willing and able SBEs available to perform under the Contract. In determining the availability of SBEs for the Contract, the Commission may consider the number of SBEs certified on NAICS codes or other commodity codes relevant to the Contract using (1) the Commission's list of certified SBEs; (2) the Unified Certification Program's DBE Directory; (3) Ohio Department of Administrative Services' search results for MBE and EDGE Certified firms; (4) the City of Cleveland's MBE and FBE/CSB Registries; (5) the Northeast Ohio Regional Sewer District's Certification Directory for DBEs and MBEs; and (5) any other Ohio-centric database the Commission recognizes as using standards that are substantially

similar to the requirements for certification with the Commission. The means for a Bidder to fulfill the Availability component of demonstrating Good Faith Efforts includes the following:

- a. Searching recognized registries identifying SBEs that potentially could fulfill the opportunities under the project.

- b. Identifying other possible ready, willing and able SBEs through the effective use of the services of available from community organizations, contractors' groups, local, state, and Federal small business and minority/women business assistance offices, and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and utilization of SBE entities.

3. Efforts documented by the Bidder to seek SBE participation, or the documented attempt to meaningfully and earnestly solicit the interest of available SBEs to fulfill the opportunities presented to perform on the project, including making a sufficient number of contacts to follow up with any available but non-responsive SBEs and negotiating in good faith with SBEs to reach reasonably agreeable terms for their participation. The efforts component considers the active attempts to successfully reach an agreement with interested SBEs, which may include the following:

- i. Negotiating in good faith with interested SBEs so as to facilitate their participation on the project.

- ii. Not rejecting SBEs without sound reasons based on a thorough investigation of their capabilities.

- iii. Assisting SBEs in obtaining bonding, lines of credit, or insurance as required by the Bidder.

4. Commitment obtained from SBEs to participate in the Contract, or the Bidder's representations to have made commitment(s) to utilize certified SBEs to perform a Commercially Useful Function on the Contract.

- i. Commitments provide a cross-check on the culmination of opportunities, availability and efforts. Unless the analyses under the opportunities, availability and efforts prongs demonstrate otherwise, the use of Good Faith Efforts is expected to result in the Bidder successfully representing its achievement of SBE participation on the project reflecting the opportunities the project presents and availability of SBEs in the marketplace.

- ii. The Bidder must provide justification for any lack of achieving the applicable Contract Goal through making commitments to SBEs by showing the failure occurred despite its Good Faith Efforts through the demonstration of the opportunity, availability and efforts involved.

5. Upon the receipt of the Bids, the Program Manager shall review the completed demonstration of Good Faith Efforts to identify the opportunities presented under the

Contract and availability of SBEs to perform. In assessing Good Faith Efforts, the Program Manager shall consider all forms and documents submitted by Bidders and may also consult with in-house subject matter experts to identify additional possible opportunities and recognized certification registries for possible untapped available firms.

6. If the Program Manager finds that a Bidder did not use or demonstrate Good Faith Efforts, the Program Manager shall recommend the Bid be deemed non-responsive, non-responsible or not the “best.” In addition to other factors in its evaluation, the Commission may declare a Bid or the Bidder to not be responsible where it is determined that a Bidder has not submitted any form, affidavit, or other document required by the solicitation, these standards or reasonably requested by the Program Manager.

7. Upon determining that a Bidder did not use or demonstrate Good Faith Efforts, the Program Manager will submit the Good Faith Effort determination recommendation to a Good Faith Effort Committee consisting of internal personnel to be identified by the Executive Director provided that such committee be comprised of an odd number of at least three (3) directors, supervisors or managers from at least two (2) different departments familiar with the scope of work, management, and administration of the Contract. The Good Faith Effort Committee members will review the Program Manager’s determination and either approve or deny the recommendation in writing. A majority of the Good Faith Effort Committee’s approval or denial will dictate the Committee’s action. If a majority of the Good Faith Effort’s Committee denies the Program Manager’s recommendation, the General Counsel may appeal the determination to the Executive Director for a final determination or recommendation to the Commission.

8. In the event that a Bidder is awarded a Contract without meeting the Contract Goal, such Contract award does not relieve the Bidder from the continuing contractual obligation to exercise Good Faith Efforts throughout performance of the Contract in order to meet its Commitments or to achieve higher SBE participation.

D. CONTRACT PERFORMANCE PROCEDURES.

1. Upon execution of a Contract based on a Bid that includes commitments to achieve an established level of SBE participation, the commitments shall become covenants of performance by the Contractor in favor of the Commission. The Contractor shall deliver “Statements of Intent to Contract and Perform” signed by the Contractor and the SBE(s) participating on the Contract describing the general scope and dollar amount.

2. Prime Contractors performing Contracts shall comply with all reporting requirements of the Commission related to use of SBE and other Subcontractors, including, but not limited to, submitting certified participation reports with each invoice or pay estimate or completing an online report of payments made to such SBE and other Subcontractors.

3. The Program Manager shall monitor Subcontractor participation during the course of the Contract. The Commission shall have full and timely access to the Contractor's books and records, including without limitation to payroll records, tax returns and records and books of account, to determine the Contractor's compliance with its commitment to SBE participation and the status of any SBE performing any portion of the Contract.

4. The Contractor cannot make changes to the commitment or substitute SBEs named in the Statement of Intent to Contract and Perform without the prior written approval of the Program Manager and the User Department. Unauthorized changes or substitutions shall be a violation of these standards and may constitute a breach of Contract, subject to the breach provisions contained in the Contract or rescission of an award. All requests for changes or substitutions of a SBE Subcontractor(s) named in the Statement of Intent to Perform shall be made to the Program Manager and the User Department in writing and shall clearly and fully set forth the basis for the request.

5. Contractors shall not terminate or replace a SBE Subcontractor unless the Contractor demonstrates good cause for the termination or replacement, and until the Program Manager and the User Department approve such substitution or change in writing. A Contractor shall not allow a substituted Subcontractor to begin work until the Program Manager and the User Department have approved the substitution. Good cause to justify termination or replacement of SBE Subcontractors include one or more of the following instances:

i. The listed SBE firm fails or refuses to provide the required Statement of Intent to Contract and Perform or execute a written contract.

ii. The listed SBE firm fails or refuses to perform the work of its Subcontract in a manner consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the SBE firm to perform its work on the Subcontract results from the bad faith or discriminatory action of the awarded Contractor.

iii. The listed SBE firm fails or refuses to meet the awarded Contractor's reasonable, nondiscriminatory bond requirements.

iv. The listed SBE firm becomes bankrupt, insolvent, or exhibits credit unworthiness.

v. The listed SBE firm is ineligible to work on public works projects because of suspension and debarment proceedings.

vi. The Commission determines that the listed SBE firm is not a responsible firm.

vii. The listed SBE firm voluntarily withdraws from the project and provides written notice of its withdrawal.

viii. A SBE owner dies or becomes disabled with the result that the listed SBE firm is unable to complete its work on the contract.

ix. Other documented good cause that the Commission determines compels the termination of the SBE firm.

6. The facts supporting the request must not have been known nor reasonably should have been known by either party before the submission of the Bid, commitment or

Statement of Intent to Contract and Perform.

7. The Contractor must demonstrate it has negotiated in good faith with the SBE Subcontractor in an attempt to resolve any disputes.

8. Before requesting to terminate or replace a SBE, the Contractor must give notice in writing to the SBE, and provide a copy of that notice to the Program Manager, of its intent to request to terminate or replace the SBE and the reason(s) for the request. The Contractor must give the SBE five (5) calendar days to respond to the notice and describe the reasons, if any, why it objects to the proposed termination or substitution and why the Commission should not approve the termination or substitution.

9. Where the Contractor has established a good cause basis for the termination or replacement to the satisfaction of the Commission, the Contractor shall use its best efforts to replace the terminated SBE with another SBE in a manner that substantially adheres with the scope and compensation of the original terminated SBE. The Contractor may seek the assistance of the Program Manager in obtaining a new SBE.

10. Before Contract closeout, the Program Manager shall evaluate the Contractor's fulfillment of the participation commitment, taking into account all approved substitutions, terminations and changes to the Contract's scope of work. If the Program Manager determines that Good Faith Efforts to meet the SBE contractual commitments were not made, or that fraudulent misrepresentations have been made, or any other breach of the Contract or violation of these standards has occurred, a remedy may be sought and the failure may be considered in evaluating the responsibility of the Contractor on future bids.

ARTICLE VI. SHELTERED MARKET OPPORTUNITIES

The Commission shall administer and maintain a sheltered market program to identify a portion of its Contracts for competition exclusively by SBEs. The sheltered market program is designed to increase opportunities for certified SBEs to bid directly with the Commission as Prime Contractors to build capacity in meaningful technical areas within Commission contracting. Contracts that are sheltered shall be Contracts that SBEs are fully capable of performing at the customary and usual market rate.

A. CONTRACT VALUES.

The Commission may shelter construction and consulting Contracts with the following values for competition exclusively by SBEs:

1. Construction: Contracts with an estimated value not to exceed \$2 million.
2. Consulting: Stand-alone, project-specific Contracts or General Services Agreements or Master Contracts with an estimated value not to exceed \$2 million.

B. CONTRACT SELECTION.

The Program Manager, in consultation with User Departments, shall establish a target percentage of Contract dollars that will be sheltered for SBE competition by each User Department in the next 12 months. In establishing those targets, the Program Manager and User Departments shall consider:

1. Upcoming projects and Contracts the User Department anticipates awarding in the next 12 months;
2. The degree of SBE participation in Contracts in the specific industries in which the User Department procured goods and services in the prior twelve months;
3. The extent to which the Commission achieved its overall Annual Aspirational Goal in the prior twelve months;
4. The volume of Contracts the User Department successfully sheltered in the prior twelve months; and
5. The reason for any short falls between the User Department's target and the volume of Contracts it successfully sheltered in the prior twelve months.

User Departments shall identify and recommend Contracts for the sheltered market program. Recommended Contracts must be approved by the Program Manager prior to being sheltered for SBE competition. In recommending Contracts for the sheltered market program, User Departments shall consider:

1. The estimated value of the Contract or cost of required goods or services;
2. How the required goods or services are bundled or packaged, including by commodity, service or geographic location;
3. How the structure of the Contract (e.g., stand-alone Contract, General Services Agreement) relates to a SBE's potential capacity to perform on the Contract;
4. The volume of Contracts the User Department has successfully sheltered in the 12 months leading up to the Contract solicitation; and
5. The number of certified SBEs that are available to bid on the Contract and that have the capabilities to perform the required work:
 - a. Contracts worth up to \$2 million or less: Contracts of this size may be sheltered if there are at least three (3) available SBEs for the contract.

B. CONTRACT AWARD.

The Commission may award the Contract if it receives at least one (1) responsive and

responsible bid from a SBE and if the quoted price is deemed fair and reasonable.² The Purchasing Agent, in consultation with the User Department, shall assess whether the quoted price is fair and reasonable. In doing so, the Purchasing Agent and User Department may consider any number of factors, such as:

1. Price history for similar goods or services;
2. Difference between the estimated cost and quoted cost;
3. Price differences between quotes; or
4. Independent cost or market analysis.

C. RE-BIDS.

If the Commission receives no (0) responsive and responsible bids in response to the solicitation, or if all bids are determined to be unacceptable due to unfair and/or unreasonable price, then the Contract shall be removed from the sheltered market program and re-bid under typical open competition procedures to all businesses.

In the event a Contract is removed from the sheltered market program and re-bid under open competition, it shall be considered for SBE Contract Goals prior to being re-bid. The Program Manager shall also reach out to available SBEs that did not bid on the Contract to determine why they did not do so.

D. SBE DIRECTORY.

The Program Manager shall maintain a directory of certified SBEs eligible for the sheltered market program and ensure User Departments have ready access to that directory.

ARTICLE VII. BID DISCOUNTS AND EVALUATION CREDITS

The Commission may apply bid discounts or evaluation credits to Contracts procured under typical open competition procedures open to all businesses.

A. BID DISCOUNTS.

The Commission may apply a Bid Discount to bids received from SBEs to perform as Prime Contractors as long as the discount does not violate the Commission's obligations to only make reasonable, efficient and economical expenditures. The Commission may apply a five percent (5%) discount to bids received from SBEs for Contracts estimated to cost five-hundred thousand dollars (\$500,000) or less, a three percent (3%) discount to bids received from SBEs for Contracts estimated to cost between five-hundred thousand dollars (\$500,000) and one million dollars (\$1,000,000) and a two percent (2%) discount to bids received from SBEs for Contracts estimated to cost one million dollars (\$1,000,000) or more.

² A "responsive and responsible" bid or bidder is one that has been deemed by the Commission as qualified to provide the required good or service and that has responded to all relevant requirements set forth in the associated invitation to bid, request for proposals, or price inquiry.

B. BID MATCHING.

The Commission may, as an alternative to the Bid Discount applied under division (A), provide a SBE having submitted a bid that is no more than five percent (5%) above the apparent low bid with the opportunity to match the low bid amount. If the SBE agrees in writing to match the apparent low bid amount, the Commission will evaluate its bid to determine whether the SBE is the lowest responsive and responsible bidder.

C. EVALUATION CREDITS.

The Commission may apply an Evaluation Credit of five percent (5%) of the total points awarded for proposals received from SBE consultants to perform personal or professional services as long as the discount does not violate the Commission's obligations to only make reasonable, efficient and economical expenditures.

ARTICLE VIII. REMEDIES, SANCTIONS AND PENALTIES

A. WRITTEN COMPLAINTS.

Any Contractor, Bidder, SBE, or allegedly aggrieved by the provisions of this Program may submit a written complaint to the Program Manager, setting forth the bases of such complaint. After receipt of a written complaint, the allegedly aggrieved party (the Complainant) may be afforded a hearing before the General Counsel. The General Counsel shall be empowered to hear all grievances concerning certification, de-certification, and any other grievances relative to the Program.

1. Notice of Hearing. Upon receipt of a written complaint from the Complainant, the General Counsel shall schedule a hearing within a reasonable time after receipt of such complaint. The Commission shall provide notice of the date, time, and location of the hearing to the Complainant via registered mail. A Complainant may make one (1) request to reschedule a hearing after receipt of any hearing notice provided herein. The Commission shall have no obligation to provide a rescheduled hearing for any Complainant who fails to appear at a properly scheduled hearing.

2. Hearing Conduct. The General Counsel may designate a Hearing Panel on a hearing-by-hearing basis, or at any other interval. Hearings before the designated Hearing Panel shall be informal, without strictly adhering to any given procedural or evidentiary rules. The Complainant may appear in person or via a representative designated by the Complainant. The Complainant may present evidence and witness testimony in support of the Complainant's alleged grievances. The Complainant may bring legal counsel. Abusive or otherwise disruptive language or behavior at a hearing by a Complainant will be grounds for discontinuance and/or forfeiture by the Complainant of any hearing described under this Policy.

3. Hearing Decisions. The General Counsel shall issue a written opinion setting forth the findings and recommendations within a reasonable time after the hearing based on the preponderance of the reliable, probative and substantial evidence.

4. Exhaustion of Legal Remedies. A Complainant must comply with the hearing process outlined above in order to exhaust its administrative remedies. Thereafter, a Complainant may seek any other statutory, legal or equitable remedies that may be available. Failure to exhaust all administrative remedies listed is an affirmative defense to any statutory, legal or equitable proceeding that may arise.

5. Advisory Recommendations. The designated Hearing Panel shall have authority to render advisory recommendations to General Counsel, absent a hearing, upon the request of the General Counsel.

B. VIOLATIONS.

Any Bidder or Contractor who violates any provision of the Program or these Standards and Practices may be subject to administrative sanctions. Violations that may result in a breach of Contract include, but are not limited to, providing false or misleading information to the Commission in connection with submission of a bid, responses to requests for qualifications or proposals, Good Faith Efforts documentation, post-award compliance, or other operations.

In addition, violations may constitute a material breach of Contract, enforceable at law or in equity. A Contractor or Subcontractor may be subject to sanctions and penalties if it is found by the Executive Director to have:

1. Provided false or misleading information in connection with an application for certification or recertification or colluded with others to do so;

2. Provided false or misleading information in connection with the submission of a bid or proposal or documentation of Good Faith Efforts, post-award compliance, or other Program operations or colluded with others to do so;

3. Failed in bad faith to fulfill Contract Goals, thereby materially breaching the Contract; or

4. Failed to comply in good faith with substantive provisions of this Policy.

C. SANCTIONS AND PENALTIES.

In addition to the breach of Contract remedies available to the Commission, the following sanctions and penalties are established for the enforcement of this Program:

1. Suspension for not to be less than two (2) years, unless the General Counsel determines that a shorter time period is warranted. The Executive Director may impose suspensions in excess of two (2) years in cases involving intentional or fraudulent misrepresentation or concealment of material facts, multiple acts in breach of the Program, cases where the participant has been previously suspended, or other similarly situated misconduct.

2. Other appropriate sanctions as the Commission deems appropriate under the circumstances, until compliance or remedial action has been accomplished by the Contractor to the satisfaction of the Executive Director.

D. AUTHORITY.

The sole authority and power for imposition of sanctions shall lie with the Executive Director. The Commission's procurement policies shall apply to sanctions under this Policy. In determining the length of any suspension, the Executive Director shall consider the following factors:

1. Whether the failure to comply with applicable requirements involved intentional conduct or, alternatively, may be reasonably concluded to have resulted from a reasonable misunderstanding on the part of the Bidder or Contractor of the requirements of this Program.
2. The number of specific incidences of Non-Compliance of this Program by the Bidder or Contractor.
3. Whether the Bidder or Contractor has been previously suspended or has a history of violations of this Program.
4. Whether the Bidder or Contractor has failed or refused to provide the Commission with any information required or requested.
5. Whether the Bidder or Contractor has materially misrepresented any applicable facts in any filing or communication to the Commission.
6. Whether any subsequent restructuring of the Bidder's or Contractor's business or other action has been undertaken to cure the deficiencies in meeting applicable requirements.

E. PROHIBITION AGAINST FALSE STATEMENTS.

It shall be unlawful for any person, knowingly, willfully and with intent, to mislead or to make any false or fraudulent representations to the Commission. The Commission may impose sanctions against any person making such false representation. In addition, knowingly providing false information to a public official is punishable as a first-degree misdemeanor, pursuant to O.R.C. § 2921.13.

ARTICLE IX. PROGRAM REVIEW AND SUNSET

A. PROGRAM REPORTING.

The Program Manager shall report to the Commission at least annually detailing the Commission's performance under the Program. The Commission shall review these reports, including the Annual Aspirational Goal (and any subgoals) and the Commission's progress towards meeting that goal and encouraging the participation of small and disadvantaged businesses in its contracting activities and the marketplace.

B. USER DEPARTMENTS REPORTING.

At its discretion, the Program Manager may require User Departments to participate in a meeting to review SBE participation and, should the User Department fall short of Program objectives or fail to comply with the Program, develop a plan for the User Department to address any identified deficiencies or non-compliance.

C. PROGRAM SUNSET.

The Program shall automatically terminate six (6) years after the date of reauthorization by the Commission under Resolution No. 95-2023 adopted October 16, 2023, and may be reauthorized by the Commission by separate resolution for a new six (6) year term or other period determined by the Commission. The Commission shall determine whether the Program has been effective in encouraging the participation of small and disadvantaged business in its contracting such that the Program should be continued, revised or suspended.

ARTICLE X. MODIFICATIONS TO THE PROGRAM

The Executive Director has the authority to modify these Standards and Practices to address legal, financial, operational or other managerial issues that may arise (i.e., changes in applicable legal or regulatory requirements, changes in staffing, position or title, etc.) without Commission approval if the modifications are not substantive, meaning they do not alter the purpose or function of the Business Inclusion Program.

ARTICLE XI. SEVERABILITY

If any provision of the Business Inclusion Program or any application thereof is held invalid or unenforceable, such invalidity or unenforceability shall not affect other provisions or applications of the program, which can be given effect without the invalid provisions or applications, and the remaining provisions are to be severable and shall remain in full force and effect.