

**CITY OF NEW ORLEANS
CHIEF ADMINISTRATIVE OFFICE**

POLICY MEMORANDUM NO. 46(R)

3/1/2016

TO: All Departments, Boards, Agencies, Commissions, and Corporations

FROM: Andrew D. Kopplin, Chief Administrative Officer 

SUBJECT: Disadvantaged Business Enterprise Program

I. PURPOSE

This policy memorandum establishes the Disadvantaged Business Enterprise (DBE) Program of the City of New Orleans (City) and is effective upon the date of its issuance. Previously issued Policy Memorandum No. 46(R), dated April 26, 2004, Policy Memorandum No. 66 dated July 11, 1985, and Policy Memorandum No. 67, dated July 11, 1985, are hereby revoked.

II. AUTHORITY

Section 6-308 of the Home Rule Charter requires the city to maintain a Disadvantaged Business Enterprise (DBE) program.

Section 4-302(5) of the Home Rule Charter authorizes the Chief Administrative Officer to "prescribe accepted standards of administrative practice to be followed by all offices, departments, and boards."

Executive Order MJL 10-02 establishes a provisional certification program for Disadvantaged Business Enterprises (DBEs).

Executive Order MJL 10-03 creates the position of the Director of Supplier Diversity.

Division 2 of Article IV of Chapter 70 of the Code of the City of New Orleans (Section 70-456 *et seq.*) sets forth the DBE Program.

Section 70-464 of the City Code provides that the Chief Administrative Officer (CAO) has authority to implement Division 2 of Article IV of Chapter 70 of the Code of the City of New Orleans and to promulgate policies to implement the provisions of this division, including without limitation establishing procurement and contract requirements that shall address but need not be limited to:

- A. Designation of representative(s) to implement Division 2 of Article IV of Chapter 70 of the Code of the City of New Orleans.

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- B. Determination of DBE goals.
- C. Vendor reporting of DBE utilization.
- D. Standards and criteria for the evaluation and documentation of vendors' good faith efforts to comply with the DBE goals.
- E. Prompt payment of Disadvantaged Business Enterprises in accordance with law.
- F. Modification of Disadvantaged Business Enterprises by vendors.
- G. Subcontracting by Disadvantaged Business Enterprises.
- H. Monitoring vendor compliance.

III. POLICY AND OBJECTIVES

It is the policy of the City to practice nondiscrimination based on social and economic disadvantage, race, color, gender, disability and national origin in the award and performance of contracts.

The City is committed to providing opportunities to businesses owned and controlled by socially and economically disadvantaged persons and is charged with ensuring their meaningful participation in the contracting activities of the city that involve public spending or private projects that utilize public funding or incentives.

The objectives of the DBE program are to:

- A. Increase the number of available, qualified and capable City certified DBEs.
- B. Increase the number and the dollar amount of contracts with DBEs.
- C. Ensure compliance and monitoring of DBE participation on City contracts.
- D. Create a level playing field upon which DBEs can compete fairly for City contracts.
- E. Assist certified DBEs to build more competitive and sustainable businesses for the benefit of the City and its residents.

IV. DBE PROGRAM OVERVIEW

Section 70-459 of the City Code establishes an overall goal of thirty-five (35) percent DBE participation, for all public spending or private projects that utilize public funding and/or incentives.

The CAO designates the Office of Supplier Diversity (OSD) to oversee certification, compliance, training, and outreach for local, small and disadvantaged businesses in the City of New Orleans and otherwise manage the DBE Program in accordance with Section 70-464 of the City Code.

In accordance with Section 70-462, the OSD shall prepare for the CAO for submission with its annual budget request to the City Council a report identifying the City's DBE goals and attainment rates from the prior two years.

V. APPLICATION

In accordance with City Code Section 70-465, except as otherwise provided and subject to all local, state, and federal laws affecting the city's procurement of goods and services or use of funds, this policy shall apply to all contracts of the City, including all departments, agencies, corporations, and attached and unattached boards and commissions, that utilize any public spending, public funding, and/or public incentives, including tax credits, Payment In Lieu of Taxes (PILOT) incentives or waivers through which the City forgoes its normal taxes and fees.

A. Exempt Contracts

This policy does not apply to the following contracts:

1. The procurement of immovable property.
2. The resolution of any legal claim.
3. Cooperative endeavor agreements.
4. Any procurement to satisfy declared emergency needs.
5. Restoration tax abatement credits for owner-occupied residential properties not exceeding six residential units.
6. Any procurement or contract, except those for public works, valued at less than the applicable formal competitive procurement threshold.
7. Any procurement or contract valued at \$15,000.00 or less.

B. Grant Funding

Any City grant that incorporates DBE sub-contracting opportunities as identified by OSD shall be subject to the Regulations contained herein, excluding contracts provided in Section 70-465 of the Code of the City of New Orleans.

C. Waiver of DBE Participation

DBE waiver consideration is an internal function and shall only be requested by a head of a City department, agency, board, commission or corporation. Agency and department heads must provide specific reasons for the requested waiver along with supporting documentation of good faith efforts to procure DBE participation. Agency and department heads are required to review and sign each waiver request prior to submission to the OSD for approval.

When applicable, a waiver of DBE participation should be requested prior to the solicitation of the good or service.

Examples of possible reasons for waivers include:

- No DBEs available in the market to perform the scope of work identified for the contract; or
- Services or goods requested are of such a specialized, technical or unique nature as to require the City department or agency to be able to select its Contractor without application of DBE provisions. (*e.g. Sole-Source: Only one firm has a product that will meet the project's needs or only one firm can do the work*).

All DBE waiver requests are made utilizing DBE Compliance Form-5. The CAO, at his or her sole discretion, may approve or disapprove the recommendation.

VI. DEPARTMENT COOPERATION AND COMPLIANCE

Heads of all City departments, agencies, boards, commissions and public benefit corporations, when exercising any contracting power on behalf of the City, shall consult and cooperate with the OSD in achieving the DBE program goals and work with the OSD to implement this policy.

A. Required Solicitation Language and Final Contract Provisions

The Bureau of Purchasing will attach the required City DBE Program requirements for all applicable City Invitations to Bid, Requests for Proposals, or Requests for Qualifications.

All contracts shall include required DBE participation provisions.

To obtain a copy of the required solicitation language and final contract provisions contact the OSD.

B. Pre-Bid and Pre-Proposal Meetings

OSD shall be invited by every Department to all pre-bid meetings and all City selection committee meetings where proposals are evaluated.

C. Departmental Outreach and Training

Departments shall work with the OSD to conduct seminars, training programs and outreach activities for DBEs to improve DBE opportunities to participate in City procurements and to encourage potential DBE's to become certified with the City.

D. Reporting DBE Participation

City departments, agencies, boards, commissions and public benefit corporations permitted to continue in existence by the Charter shall submit with their annual budget requests to the CAO a DBE Participation Report that identifies DBE goals and attainment rates from the prior two years. In no event shall the Reports be submitted after October 15th of each year. Contracts monitored by OSD will be included in a year-end report to the CAO.

The DBE Participation Report shall contain at a minimum the following information:

1. The estimated value of all new City contracts awarded during the reporting period.
2. Of the totals reflected in (a), the estimated value of new City contracts awarded to non-DBEs during the reporting period.
3. Of the totals reflected in (a), the estimated value of new City contracts awarded to DBEs during the reporting period.
4. The total percentage of DBE participation on new City contracts during the reporting period.
5. Year to Date attainment rates for the prior year.

E. Contract Compliance Monitoring System

All City departments, agencies, boards, commissions and public benefit corporations are required to utilize the City's Contract Compliance Monitoring system to track and monitor contracts that include DBE participation. The OSD is available to help gain access to the system. An electronic training manual and a customer support center is available to provide assistance.

F. Departmental Contract Routing

In accordance with City Code Section 70-461, prior to the City's consideration of any new contract, amendment, including term-extension, close-out, or change order, all departments must ensure that the required supporting documentation is included as an attachment(s) in a request for contract approval.

1. New Contracts require a DBE Validation form or an approved waiver signed by the CAO; and
2. Contract amendments or change orders require a new DBE Validation form or the approved waiver from the original contract.

XV. INQUIRIES

Questions concerning this memorandum should be addressed to the OSD. All DBE Compliance forms and materials are maintained by the OSD and are subject to change.

ADK/ASM

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**DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM POLICY
LIST OF DBE REFERENCED DOCUMENTS**

- A. Executive Orders MJL 10-02 and MJL 10-03
- B. 2013 City of New Orleans DBE Ordinance
- C. 2015 City of New Orleans DBE Reporting Ordinance
- D. DBE Rules and Regulations
- E. DBE Compliance Form-5 (DBE Waiver Request)