

ORDINANCE NO. 85-65 AC CMS

AN ORDINANCE ESTABLISHING A MINORITY BUSINESS ENTERPRISE PROGRAM
FOR THE CITY OF OBERLIN, OHIO

BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain,
State of Ohio, a majority of all members elected thereto concurring:


SECTION 1. There is hereby established a Minority Business Enterprise
Program for the City of Oberlin, Ohio. The terms, conditions, policies and
procedures for said program are contained within "Exhibit A" which is attached
hereto and incorporated herein by reference.

SECTION 2. It is hereby found and determined that all formal actions of
this Council concerning or relating to the adoption of this ordinance were
adopted in an open meeting of the Council and that all deliberations of this
Council and of any of its committees that resulted in such formal action, were
in meetings open to the public in compliance with all legal requirements, in-
cluding Section 121.22 of the Ohio Revised Code.

SECTION 3. That this ordinance shall take effect at the earliest date
allowed by law.

PASSED: 1st Reading - October 21, 1985
2nd Reading - November 4, 1985 - TABLED; 11/18/85 - Tabled; 12/16/85
3rd Reading - January 6, 1986 - Tabled; January 27, 1986 - Tabled;
February 3, 1986 - Tabled; February 18, 1986

ATTEST:


Clerk of Council


Chairman of Council

POSTED: February 19, 1986

ORDINANCE NO. 85-65 AC CMS

EXHIBIT A

MBE PROGRAM DOCUMENT

ORDINANCE NO. 85-65 AC CMS

EXHIBIT A

TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
I. Introduction	1
II. Definitions	1
III. Policy Statement	2
IV. Responsibilities.	3
V. Ensuring Equitable Opportunities for MBE's	5
VI. The Means by Which the City of Oberlin Ensures that Bidders Make Good Faith Efforts to Meet the MBE Contract Goals.	7
VII. Certification of MBE's and Joint Ventures.	10
VIII. Appeals of Denials of Certification as an MBE	12
IX. Goals	14
X. Percentage Goals for Dollar Award of Contracts, Subcontracts and/or Joint Ventures to be Awarded to MBE's	15
XI. Complaints.	15
XII. MBE Directory.	16
XIII. Internal Audit and Report	16

ATTACHMENT

A. Notice to Bidders/Proposers.	AA-1
B. Assurances	AB-1
C. Additional Bidding/Proposal Requirements	AC-1
D. Standards for Determining Good Faith Efforts	AD-1

FORMS

1. Solicitation Record.	F1-1
2. Schedule of MBE Participation.	F2-1

ORDINANCE NO. 85-65 AC CMS
EXHIBIT A

SECTION I. INTRODUCTION

The purpose of this Minority Business Enterprise (MBE) Program is to insure participation of minority business enterprises in the City's procurement activities. It must be emphasized that nothing in this Minority Business Enterprise Program will be used to discriminate against any company or companies. However, the City of Oberlin accepts the premise that special efforts must be made to include minority business enterprises in the nation's economic system, and, further, the City is committed to ensuring minority firms of an equitable opportunity by undertaking every reasonable effort to attain the goals set forth in this Minority Business Enterprise Program.

SECTION II. DEFINITIONS

The term "minority business enterprise" means a small business concern, as defined pursuant to Section 3 of the Small Business Act and implementing regulations, which is owned and controlled by one or more minorities. For the purpose of this definition:

1. "Minority" means persons who are citizens or lawful permanent residents of the United States and who are:
 - a. "Black Americans", which includes persons having origins in any of the Black racial groups of Africa;
 - b. "Hispanic Americans", which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - c. "Native Americans", which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - d. "Asian-Pacific Americans", which includes persons whose origins are from Japan, China, Taiwan, Korea, Viet-Nam, Laos, Cambodia, the Phillipines, Samoa, Guam, the U. S. Trust Territories of the Pacific, and the Northern Marianas;
 - e. "Asian-Indian Americans", which includes persons whose origins are from India, Pakistan, and Bangladesh;and any other minorities or individuals found to be socially and economically disadvantaged by the Small Business Administration under Section 8(a) of the Small Business Act.
2. "Owned and controlled" means that at least fifty-one percent of the business, including corporate stock if a corporation, is owned by persons who belong to one or more of the groups set forth in division 1 of this section, and that such owners have control over the management and day-to-day operations of

the business and an interest in the capital, assets, and profits and losses of the business proportionate to their percentage of ownership. In order to qualify as a minority business enterprise, a business shall have been owned and controlled by such persons at least one year prior to being awarded a contract pursuant to this section.

"Compliance" means the condition existing when a contractor has met and implemented the requirements of this Program.

"Contractor" means any person, partnership, corporation, association or joint venture which has been awarded a public contract and includes every subcontractor on such a contract.

"Subcontractor" means any person, partnership, corporation, association or joint venture which supplies any of the work, labor, services, supplies, equipment, materials or any combination of the foregoing under a contract with the contractor on a public contract.

"Public contract" means any contract awarded by the City whereby the City is committed to expend or does expend its funds in return for work, labor, services, supplies, equipment, materials, or any combination of the foregoing, or any lease, lease by way of concession, concession agreement permit or permit agreement whereby the City leases, grants, or demises property of the City or otherwise grants a right or privilege to occupy or use property of the City.

"Joint venture" means an association of two or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge.

"Noncompliance" means the condition existing when a contractor has failed to meet and implement the requirements of this Program.

"Recipient" means any entity, public or private, to whom financial assistance is extended, directly or indirectly.

"Bidder" means any person, partnership, corporation, association or joint venture seeking to be awarded a public contract.

"Certified MBE" means any MBE having been approved by the City of Oberlin as being an MBE qualified to participate in the MBE Program.

"Goals" means a numerically expressed objective which contractors are required to make good faith efforts to achieve and which the City must make a good faith effort to achieve through its procurement practices.

SECTION III. POLICY STATEMENT

It is the policy of the City of Oberlin to support the fullest possible participation by firms owned and controlled by minority persons in the performance of contracts and subcontracts and procurements financed in whole or in part with funds under the control of the City of Oberlin.

In the furtherance of this Policy, the City of Oberlin shall take such action to ensure that minority business enterprises shall have the maximum opportunity to participate in contracts and subcontracts and procurements let by the City of Oberlin.

The Contract Compliance Officer is responsible for the day-to-day administration of the City's MBE Program. Other management personnel, especially those responsible for procurement and contracting, shall give their full cooperation to the Contract Compliance Officer in the implementation of this Policy.

The Minority Business Enterprise Program which has been developed pursuant to this Policy outlines the specific actions which are and will be taken by the City of Oberlin to insure that bona fide minority business enterprises have maximum opportunity to participate in business opportunities resulting from the City's activities. Affirmative action shall be consistent with sound procurement principles and applicable law, and, in line with such principles and law, it is the policy of the City of Oberlin to utilize minority business enterprises in all areas, and they are encouraged to participate in all procurements.

Chairman, City Council

SECTION IV. RESPONSIBILITIES

A. City Manager

The City Manager has the overall responsibility for the administration of this Minority Business Enterprise Program.

B. Contract Compliance Officer (CCO)

The Code Administrator of the City of Oberlin shall function as the Contract Compliance Officer, and report directly to the City Manager. The CCO will maintain a Directory of MBE's identified for participation in the program. The Directory shall be consulted before making any bid recommendation or award.

The CCO shall periodically review, evaluate and, if necessary, recommend revisions to the City's contract and procurement procedure, and, shall report to City Council after the first six months and thereafter once each year at the Council meeting immediately following the anniversary date of the passage of Ordinance No. 85-65 AC CMS on the degree to which the City has met the minority business enterprise goals herein described.

It is the responsibility of the CCO to carry out the day-to-day administration of this Minority Business Enterprise Program reporting directly to the City Manager.

Among the specific duties of the Contract Compliance Officer are:

1. To develop, monitor the implementation of, and provide continuing evaluation of this program. The CCO will work closely with those persons responsible for making management decisions regarding procurement and contracting for the City.
2. To circulate the MBE Policy Statement to personnel throughout the City and to minority and non-minority community and business organizations.
3. To maintain and constantly update a Directory of bona fide minority businesses with specific information on expertise, work performance, and other data.
4. To assist in securing management and technical assistance for the expansion and overall development of MBE's.
5. To publicize business opportunities at the City with the objective of reaching MBE's to assist such businesses as they compete for contracts and subcontracts.
6. To attend pre-bid and pre-construction meetings to explain MBE requirements.
7. To monitor contractors' and subcontractors' compliance with MBE commitments throughout the life of contracts.
8. To plan and participate in training sessions for the purpose of informing potential bidders about this MBE Program and about business opportunities with the City.
9. To serve as liaison with agencies supporting economic development in the minority community.
10. To maintain accurate and up-to-date records demonstrating MBE efforts and progress under this Program.
11. To advise contractors of the steps necessary to bring them into compliance with the City's requirements regarding MBE utilization and to conduct compliance reviews, as needed, to ensure effective program implementation.
12. To report quarterly to the City Manager on progress being made in the implementation of this Program and to recommend program modifications. The CCO will also be responsible for the timely submission of reports on this Program that are required by the City Council.

C. Other Personnel

Other administrative personnel share the responsibility for ensuring the effective implementation of this Program. They shall give their full cooperation and active support of this Program to the City Manager and the Contract Compliance Officer. Administrative personnel are evaluated on their performance in this area.

SECTION V. ENSURING EQUITABLE OPPORTUNITIES FOR MINORITY BUSINESS ENTERPRISES

The City recognizes that the establishment of goals for MBE participation must be coupled with specific programs which will enhance the likelihood of goal attainment.

All bid specifications shall include an explanation of requirements concerning MBE participation. Further information, including lists of possible MBE subcontractors compiled from the MBE Directory shall be available upon request and shall be provided by the CCO at pre-bid conferences.

The following techniques shall be used to provide assistance directly to MBE's:

1. Appropriate MBE's, selected from the MBE Directory by the City Manager and CCO, will receive early notice of at least ten (10) working days of contracting opportunities. Bid notices will automatically be provided to the CCO and will be published in media which reach minority entrepreneurs. Members of the MBE Advisory Committee will receive copies of invitations to bid so that they may distribute them to other MBE's. The purpose of such distribution is to increase the awareness among MBE's of opportunities with the City.
2. The practice of the City is to allow a reasonable amount of time for completion of bids or proposals for all prospective contractors, including MBE's. Except in the case of emergency needs, the minimum time allowed for completion of bids is thirty (30) days from the date of authorization to solicit needed goods and services. Whenever feasible, adjustments are made in deadlines in order to minimize bidding constraints.
3. The City shall use the least complicated bid forms appropriate to each procurement solicitation.
4. The City shall consider breaking contracts into smaller parts, where economically feasible, prorating payment and delivery schedules, and using staged bonding where not inconsistent with the law.
5. Materials necessary for the completion of a contract may be purchased directly by the City and furnished to the MBE contractor for installation, subject to appropriate contract amendments to be agreed upon prior to such purchases.

In addition to the methods previously mentioned of providing information on business opportunities for MBE's with the City, such as use of the MBE Advisory Committee, use of minority-oriented newspapers and other media, and training sessions on bidding procedures, the City will also periodically inform MBE organizations of business opportunities

with it as well as future trends in development and the procurement implications of these trends.

As a further means of increasing awareness, the City shall develop an informational pamphlet for distribution to minority businesses and organizations assisting MBE's. Material in the pamphlet shall include:

1. Items and services purchased or contracted for by the City on a regular basis;
2. Prerequisites for contracting with the City;
3. Location of information regarding proposed procurements;
4. Certification requirements for minority business enterprises;
5. Name, office and hours of the City's CCO;
6. Directions for obtaining plans and specifications; and
7. Explanation of payment and delivery schedules.

The City recognizes that the normal procurement process may present problems to business enterprises that are unfamiliar with bidding procedures, lacking in strong management methods, or simply inexperienced. The City shall offer whatever aid may be reasonable and necessary to individuals and/or groups of MBE's in overcoming such barriers so as to advance the intent and goals of this Program. Among the techniques which shall be used to assist MBE's are:

1. City staff provides counseling on the completion of bids so that the necessary requirements are met. Staff also conducts training sessions for groups of MBE's by category of construction, supply and service. These sessions include instruction on every phase of the bidding process. Individual MBE's who have questions or need assistance are referred by the CCO to the appropriate official for guidance. The CCO pursues all requests for assistance to ensure that all necessary information was provided and, if necessary, issues the appropriate bidding documents. To ensure that all potential MBE bidders are aware of the availability of this assistance, all solicitations for bids and requests for proposals include the name, address and phone number of the CCO with a statement that any MBE wishing information on the City's bidding process should contact the CCO.
2. The City will provide coordination with and referral to existing programs of the U. S. Department of Commerce, the Small Business Administration, and other organizations designed to provide management and technical assistance to MBE's.
3. MBE's are, upon request, counseled regarding the specific reasons their bid was unsuccessful. Requests for debriefing sessions are to be made through the CCO who will arrange for appropriate staff to be present.

4. Where a proposed procurement of goods and/or services includes requirements for bid and/or performance bonds, insurance or technical assistance, the City will advise MBE's as needed of procedures to be followed to obtain necessary bonds, insurance and/or technical assistance, including referral to the Small Business Administration, U. S. Department of Commerce, U. S. Department of Transportation and appropriate state agencies. Where the MBE bidder has exhausted its opportunities to obtain the necessary bonds, insurance and/or technical assistance and is otherwise qualified, the City Manager may recommend to the City Council that the City waive the necessary bonding. The City Manager may also recommend to the City Council that the City help secure insurance and/or technical assistance for the MBE. The waiver of bonding and/or help in securing insurance and/or technical assistance by the City shall be conducted in accordance with sound procurement principles and shall be consistent with applicable law and shall, if the City deems necessary, include the right on behalf of the City to reasonably participate in certain of the MBE business functions including management assistance and payroll control.

Implementation of all of the foregoing programs must be and is consistent with appropriate statutes and regulations.

Additional activities which improve the opportunities for minority business enterprises will be implemented as the need arises. Innovative approaches to fulfilling the City's minority business enterprise commitment are recommended by the CCO or the MBE Advisory Committee at any time for the consideration of the City Council.

SECTION VI. THE MEANS BY WHICH THE CITY OF OBERLIN ENSURES THAT BIDDERS MAKE GOOD FAITH EFFORTS TO MEET MBE CONTRACT GOALS

Invitations to bid and requests for proposals for all procurement for which MBE goals have been established shall contain a notice informing prospective bidders that they will be required to submit with their bid (proposal) an assurance that they used good faith effort to achieve the level of MBE participation sought by the City in the procurement and a statement of the level of participation attained by such efforts. (The notice and amendments to the form of bid are provided in Attachment A.) These submittals will be considered elements of bid (proposal) responsiveness. If the bidder states that it failed to attain the goal, it must also submit with its bid a statement detailing its efforts to obtain capable certified MBE participation. Said statement, together with any supporting documentation will be used by the CCO to assess the good faith of said bidder. Each bidder will also be required to submit with its bid (proposal) a complete MBE participation plan setting forth the extent of MBE involvement in the procurement. The failure to submit said plan with the bid (proposal) or the submission of an incomplete plan shall be considered an assessment of said bidder's responsiveness.

The notice shall further advise each bidder that the successful bidder's MBE participation shall, in the event a contract is awarded, become a part of the procurement contract, binding said successful bidder to full and faithful performance in accordance with said plan. The notice shall further advise bidders that only certified MBE firms are eligible for participation in a plan. Every effort will be made by the City to certify MBE firms prior to bid submission. Certification will not be made after the bids or proposals are opened. Substitutions of certified MBE's appearing in a plan will be permitted only where the CCO determines that such substitution will not result in an abuse of this program. Said determination shall be reduced to written form and shall include the reasons therefor.

The CCO shall promptly review the MBE participation plans and statements of efforts, and shall assess the responsiveness of each bidder with regard to MBE participation. In making the assessment, the CCO shall consider whether the submissions demonstrate good faith efforts on the part of the bidder to obtain capable certified MBE participation.

The standard by which the CCO shall determine whether the efforts made by a bidder were good faith efforts is whether such efforts could reasonably be expected to produce sufficient MBE participation to meet the goals set for the procurement. In reaching a decision, the CCO shall consider all efforts advanced by the bidder as well as the criteria set forth in Attachment D, Standards for Determining Good Faith Efforts.

The CCO shall apply the following standards in making an assessment of the bidder's responsiveness regarding its MBE participation:

1. Whether the participation plan contains capable, certified MBE firms.
2. Whether the firms listed are performing a commercially useful function.
3. Whether the listed firms are sharing monetary benefit in proportion to their share of the work of the project.
4. Whether the plan exhibits a likelihood of goal attainment.
5. Whether the prime/sub relationships are firm, i.e., whether conditional subcontracts have been entered.

The CCO shall diligently and regularly review the successful bidder's performance under its resulting contract with the City with a view to ensuring full and faithful performance of the MBE Participation Plan submitted by said bidder. Staff within the City shall actively assist the CCO in this effort. Contract administration shall include review and monitoring of MBE contract requirements. Contract administrators shall notify the CCO when failure or laxity is suggested by the manner of the contractor's performance. The review by the CCO shall include, but not be limited to, a comparison of the payments made by the City to the successful bidder and the payments received by MBE subcontractors with the certifications by said subcontractors that said work was per-

formed and payments therefor received. The CCO may, from time to time, at any time during the performance of the contract and up to three (3) years following completion of the contract, perform compliance reviews. Said reviews shall be performed expeditiously. Immediately following the conclusion of each performance and/or compliance review, the CCO shall reduce the findings and conclusions to written form, serve a copy on the contractor, and file the same in the contract file.

If the CCO finds that the successful bidder has failed to fully and faithfully perform its obligations under its MBE Plan, the CCO shall promptly notify the City Manager who shall immediately seek corrective action from the successful bidder. If the bidder fails or refuses to promptly take corrective action, the City Manager shall then notify City Council. Refusal by the contractor or subcontractor to comply with any portion of this program as herein stated and described will subject the offending party to any or all of the following penalties:

1. Withholding of all future payments under the involved public contract to the contractor in violation until it is determined that the contractor or subcontractor is in compliance with the provisions of the contract.
2. Refusal of all future bids for any public contract with the City or any of its departments or divisions until such time as the contractor or subcontractor demonstrates that he has established and shall carry out the policies of the program as herein outlined;
3. Cancellation of the public contract and declaration of forfeiture of the performance bond;
4. In cases in which there is substantial or material violation or the threat of substantial or material violation of the compliance procedure or as may be provided for by contract, appropriate proceedings may be brought to enforce those provisions, including the enjoining, within applicable law, of contractor, subcontractors or other organizations, individuals or groups who prevent directly, indirectly, or seek to prevent directly or indirectly, compliance with the policy, as herein outlined.
5. Order the contractor to stop work.

The action taken by the City Manager shall remain in force until vacated by Council action or until the cause for the action has abated. Past performance of the contractor shall be considered by the CCO in the assessment of the contractor's responsibility in any future bid competition in which said contractor participates.

Administration of this MBE Program in procurements will be achieved by the City Manager. Before a purchase order is issued, the Buyer shall affirmatively seek certified MBE's capable of supplying the goods or services to be procured and shall solicit their quotations. As a minimum, the Buyer shall consult the MBE Directory prior to the solicitation of any quotations. Buyers will record their efforts in this regard on

a form entitled "Solicitation Record" and shall place the completed form in the procurement file. Copies of said records shall be filed with the CCO on a weekly basis.

SECTION VII. CERTIFICATION OF MBE'S AND JOINT VENTURES

In order to ensure that this Program benefits only firms owned and controlled in both form and substance by one or more minority individuals, the City of Oberlin certifies the eligibility of every MBE seeking business opportunities with the City.

Any business, including the MBE partner in a joint venture, wishing to participate as an MBE in contracts and subcontracts let by the City must complete and submit Schedule A - Information for Determining Minority Business Enterprise Eligibility (see Minority Business Enterprise Certification Compliance Package). In addition, a joint venture MBE must also complete and submit Schedule B - Information for Determining Joint Venture Eligibility (see Minority Business Enterprise Certification Compliance Package). The schedule(s) must be signed by the authorized representative of the business entity and notarized. A business wishing to be certified as an MBE or joint venture by the City must have been in business one (1) year prior to applying for certification as a minority business enterprise. Since only certified MBE's and joint ventures may be considered in evaluating an MBE participation plan, certification must be achieved thirty (30) days prior to the relevant bid date. This requirement must be communicated to uncertified MBE's early on in the proceedings.

An MBE which has been certified by another agency may request in writing that the City accept evidence of that certification in lieu of Schedule A and/or B. The City retains the right to deny such request and require the submission of Schedules A and/or B.

An MBE which has been determined by the Small Business Administration to be owned and controlled by minority individuals under Section 8(a) of the Small Business Act, as amended, need only submit evidence of that determination.

The CCO shall promptly review said schedules and advise the applicant of its status as certified or not certified. If the applicant is not certified as an MBE, the reasons therefor shall be clearly stated in writing and submitted to the applicant.

The denial of certification by the City shall be final for the pending contract and all other contracts pending at the time of the denial. Persons who have been denied certification may correct the deficiencies which caused the denial and apply for certification for future contracts or may seek reconsideration at any time prior to award of a pending contract. The CCO may reconsider the denial of certification prior to the award of any pending contract.

Any firm which believes that it has been wrongly denied certification as an MBE or joint venture may file a written, signed and dated appeal with the City Manager.

Once certified, an MBE must update its submission annually by submitting a new Schedule A or certifying that the Schedule A on file is still accurate. Any time there is a change in ownership or control of the firm, the MBE must submit a new Schedule A.

In determining the eligibility of a firm for certification as an MBE, the City will use the following standards:

1. The firm must be an independent business, and the ownership and control by minority individuals must be real, substantial, and continuing and must go beyond the pro forma ownership reflected in the firm's ownership documents. Said owners must enjoy the customary incidents of ownership and must share in the risks and profits commensurate with their ownership interests. Recognition of the business as a separate entity for tax or corporate purposes will not necessarily be sufficient for certification as an MBE. In determining whether a firm is an independent business, the City will consider all relevant factors, including the date the business was established, the adequacy of its resources for work as a contractor or subcontractor for the City, and the degree to which financial, equipment leasing, and other relationships with non-MBE firms vary from industry practice.
2. The minority owners must also possess the power to direct or cause the direction of the management and policies of the firm and to make the day-to-day, as well as major decisions on matters of management, policy, and operations. The firm must not be subject to any formal or informal restrictions which limit the customary discretion of the minority owners.
3. If the owners of the firm who are not minorities are disproportionately responsible for the operation of the firm, then the firm is not controlled by minority individuals and will not be certified as an MBE for purposes of this MBE Program. Where the actual management of the firm is contracted out to individuals other than the owner, those persons who have the ultimate power to hire and fire the managers will be considered as controlling the business.
4. All securities which constitute ownership and/or control of a corporation for purposes of establishing it as an MBE must be held in trust, or by any guardian for a minor, and will be considered as held by minority individuals in determining the ownership or control of a corporation.
5. The contribution of capital or expertise by the minority owners to acquire their interests in the firm must be real and substantial.

Special attention shall be paid to the following circumstances:

1. Newly formed firms and firms whose ownership and/or control has changed since the date of the advertisement of the contract will be closely scrutinized to determine the reasons for the timing of the formation of or change in the firm.

2. A previous and/or continuing employer-employee relationship between or among present owners will be carefully reviewed to ensure that the employee-owner has the requisite management responsibilities and capabilities.
3. Any relationship between an MBE and a business that is not an MBE but which has an interest in the MBE, conflicts with the ownership and control requirements outlined herein.

A joint venture is eligible for certification if the MBE partner of the joint venture meets the standards set forth herein and the MBE partner is responsible for a clearly defined portion of the work to be performed and shares in the ownership, control, management responsibilities, risks, and profits of the joint venture.

Responsibility for determining whether a firm, in fact, is certified as an MBE will be the contractor's. Should it be found that a firm was used as an MBE but not qualified as such, the City reserves the right to impose sanctions against the contractor and the MBE which may include termination of the contract and the rejection of future bids.

Should certification or recertification be denied, the reason(s) for the denial shall be stated in writing. Applicants must be notified that they are entitled to a hearing.

The City shall safeguard from disclosure to unauthorized persons information that reasonably may be regarded as confidential business information, consistent with federal, state and local law.

SECTION VIII. APPEALS OF DENIALS OF CERTIFICATION AS AN MBE

A. Filing:

Any individual or firm which believes that it has been wrongly denied certification as an MBE or joint venture may file an appeal in writing, signed and dated, with the City. The appeal shall be filed in the Office of the City Manager no later than thirty (30) days after the date of denial of certification. The City Manager may extend the time for filings or waive the time limit in the interest of justice, specifying in writing the reasons for so doing. Third parties who have reason to believe that another firm has been wrongly denied or granted certification as an MBE or joint venture may advise the City Manager.

The City Manager may hold hearings on the matter where all parties may be present and may submit evidence pertaining to the appeal. The City Manager shall issue a written decision on the matter within ten (10) working days from the date of the filing of the appeal.

B. Appeal to the City Council:

Any party desiring to file an appeal of the decision of the City Manager may do so by filing a notice of appeal with the Clerk of

Council within ten (10) working days of the decision issued by the City Manager.

The City Council shall hear and decide the appeal within thirty (30) days from the filing of the appeal with the Clerk of Council.

C. Status of Certification During the Investigation :

The City may deny the MBE or joint venture in question, eligibility to participate as an MBE in contracts let during the pendency of the investigation, after providing the MBE or joint venture in question an opportunity to show cause by written statement to the City.

D. Cooperation in Investigation:

All parties shall cooperate fully with the investigation. Failure or refusal to furnish requested information or other failure to cooperate is a violation of this Program.

E. Determinations:

The City makes one of the following determinations and informs the MBE or joint venture in writing of the reasons for the determination:

1. The MBE or joint venture is certified; or
2. The MBE or joint venture is not eligible to be certified and is denied eligibility to participate as an MBE in any contract until a new application for certification is approved by the City.

MBE Advisory Committee

- A. There is hereby created, under the authorization of Section VII of the City Charter an MBE Advisory Committee consisting of five members consisting of representatives from organizations working with MBE's.
- B. Members of the committee shall be residents of the City and shall serve terms of five years. They shall be persons working in or with minority business enterprise organizations and shall provide various levels and degrees of technical assistance to MBE's, assisting them in securing business from a variety of sources.

C. Duties and Responsibilities

The MBE Advisory Committee shall have the following duties and responsibilities:

- a.) Shall assist the City in the identification of MBE's which can provide needed goods and services to the City.
- b.) Shall be trained by consultants and/or City staff on all bid procedures relating to securing contracts and subcontracts with

the City. The organizations represented by the various members of the MBE Advisory Committee will be requested to hold training sessions for MBE's with which they work to enable the City to have the widest possible range of knowledgeable MBE bidders. The CCO will attend all such sessions.

- c.) Shall meet with the CCO to review problems MBE's have in competing for contracts and subcontracts so that further procedures can be developed to legally remove impediments.
- d.) Shall be sent minutes from the City Council meetings by the Clerk of Council wherein authority to solicit goods and services is given by the City Council.
- e.) Shall receive notice of all invitations to bid, contract specifications, and other procurement related information at the earliest possible time.
- f.) Shall review reports of the CCO and may make additional suggestions for program modification to the City Manager and City Council.
- g.) Shall arrange for the recording and maintaining of all proceedings of the MBE Advisory Committee.

SECTION IX. GOALS

The provisions of this Minority Business Enterprise Program will be applied to all contracts in excess of \$5,000.

The City Manager, with the assistance of staff, shall annually review and recommend to City Council goals for the use of MBE's. Said goals, together with a description of the methodology used to establish them, shall be submitted to the City Council for approval.

Simultaneously, with the submission of said goals to City Council, the City Manager shall publish in general circulation and minority focus media and trade publications a notice announcing the goals and the fact that the goals and a description of the methodology used to establish them are available for inspection during regular business hours at the principal office of the City for thirty (30) days following said publication, the fact that the public may submit comments on said goals to the City within forty-five (45) days of the date of publication, and the fact that said comments are for informational purposes only. The City Manager shall include in said notice the addresses to which comments may be sent.

The City Manager or his designee shall meet with staff members on a regular basis commencing no later than the first day of September of each calendar year to review the prior performance of this program and to establish the MBE goals for the coming year. The following minimum criteria shall be utilized in the determination of the goals: (1) the goals shall be based on the expected number and types of contracts to

be awarded and the number and types of MBE's likely to be available to compete for contracts to be awarded during the goal period, and (2) the goals shall be based on past results of the City's efforts to contract with MBE's and the reasons for these results.

SECTION X. PERCENTAGE GOALS FOR DOLLAR AWARD OF CONTRACTS, SUBCONTRACTS AND/OR JOINT VENTURES TO BE AWARDED TO MBE'S

The City of Oberlin hereby establishes the following goals for participation by MBE's in contracts, subcontracts, and/or joint ventures awarded by the City:

1. 20% of construction/repair contract dollar amounts
2. 10% of supplies, services contract dollar amount
3. 20% of professional services contract dollar amounts.

Ten percent (10%) of the total dollar amount of all City procurements for material, equipment, services and supplies shall be expended with MBE's.

A good faith effort must be made to obtain all goals.

SECTION XI. COMPLAINTS

Any person who believes himself or herself, another person, or any specific class of individuals to be subjected to a violation of these policies may file a complaint in writing, signed and dated, with the City Manager. The complaint shall be filed no later than thirty (30) days after the date of an alleged violation or the date on which a continuing course of conduct in violation of this part was disclosed. The City Manager may extend the time for filing or waive the time limit in the interest of justice, specifying in writing the reason for so doing.

Any party desiring to file an appeal of the decision of the City Manager may do so by filing a notice of appeal with the Clerk of Council within ten (10) working days of the decision issued by the City Manager.

The City Council shall hear and decide the appeal within thirty (30) days from the filing of the appeal with the Clerk of Council.

The contractor will cooperate fully with the investigation. Failure or refusal by the contractor to furnish requested information within ten (10) working days or other failure to cooperate is a violation of these policies.

Upon completion of the investigation, the City Council will inform the contractor and the complainant of the results of the investigation in writing. If the investigation indicates a failure to comply with the MBE requirements, the remedies stated in these policies are followed.

Neither the City of Oberlin nor any contractor nor any other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by these policies, or because he or she made a complaint, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under these policies. The identity of complainants shall be kept confidential at their election during the conduct of any investigation, proceeding or hearing under these policies. But when such confidentiality is likely to hinder the investigation, the complainant shall be advised for the purpose of waiving this privilege.

SECTION XII. MBE DIRECTORY

A Directory of bona fide (certified) minority business enterprises will be maintained and frequently updated. The Directory will include the following information on each MBE listed: name, address, and telephone number; character of the enterprise; date business established; legal structure of business (sole proprietorship, partnership, corporation, etc.); percent MBE ownership; capacity; previous work experience (including work performed for the City of Oberlin); bonding capacity; type of work/service provided; and names of contact persons.

The Directory will be made available to bidders and proposers who need this information in their efforts to meet the MBE requirements of the City. Specifically, lists of possible MBE subcontractors will be distributed at pre-bid conferences, and other information will be made available upon receipt of requests from bidders.

The Directory will also be made available to procurement personnel and to the MBE Advisory Committee, and to any other referrals deemed appropriate, i.e., libraries.

The Directory does not contain any information that reasonably may be regarded as confidential business information, consistent with federal, state and local law.

SECTION XIII. INTERNAL AUDIT AND REPORTING

The Contract Compliance Officer will maintain record-keeping systems which document all activities undertaken to further the policies and achieve the goals of this Program. These records will include:

1. Awards to MBE's, including names of contractors and subcontractors, nature of the work, total value of the contract or subcontract, and the amount of the MBE awards as a percentage of the dollar value of funds expended in all contracts and subcontracts awarded;
2. Specific efforts to identify and award contracts and subcontracts to minority owned and controlled firms;
3. Copies of advertised invitations to bid;

4. Copies of direct mailings to minority businesses;
5. Pre-bid conference information;
6. Requests for assistance from MBE's interested in bidding on contracts and subcontracts let by the City.
7. Group meetings and training sessions for MBE's; and
8. Efforts to assist MBE's in acquiring bonding and insurance.

The CCO reports quarterly to the City Manager regarding the progress of this Program. The entire Program will be reviewed in detail annually, measuring accomplishments against goals, with necessary revisions made at that time.

The CCO is responsible for compiling the necessary data and submitting these reports on a timely basis.

ATTACHMENTS

- A. NOTICE TO BIDDERS/PROPOSERS
- B. ASSURANCES
- C. ADDITIONAL BIDDING REQUIREMENTS
- D. STANDARDS FOR DETERMINING GOOD FAITH EFFORT

(TO BE INCLUDED IN BID SPECIFICATION)

ATTACHMENT A

NOTICE TO BIDDERS/PROPOSERS OF THE CITY OF OBERLIN'S
REQUIREMENTS TO ENSURE MBE OPPORTUNITY

STUDY THIS NOTICE CAREFULLY. FAILURE TO FOLLOW THE REQUIREMENTS OF THIS NOTICE SHALL BE DEEMED BY THE CITY AS YOUR DEMONSTRATION OF NON-RESPONSIVENESS WITH REGARD TO MBE REQUIREMENTS OF THIS PROCUREMENT. THE CONTRACT COMPLIANCE OFFICE (216) 775-1531 IS EAGER TO ASSIST YOU IN FULLY COMPREHENDING THE REQUIREMENTS OF THIS NOTICE AND THE CITY'S MBE PROGRAM.

City of Oberlin Policy

It is the policy of the City of Oberlin that Minority Business Enterprises, as defined in this policy, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with City of Oberlin funds. Consequently, the MBE requirements of this policy shall apply to any agreement resulting from this invitation to bid/request for proposal.

MBE Obligation

The bidder/proposer agrees to ensure that MBE's, as defined in this policy have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with City of Oberlin funds. In this regard, the bidder shall take all necessary and reasonable steps in accordance with these policies to ensure that MBE's have the maximum opportunity to compete for and perform contracts. The successful bidder shall not discriminate on the basis of race, color, national origin, or sex in the performance of any resulting City contract.

ATTACHMENT B

ASSURANCES

The undersigned, authorized representative of the bidder/proposer, on behalf of said entity, assures the City of Oberlin that the bidder/-proposer has used good faith efforts to obtain certified MBE's to meet the goal established for the procurement, and that said efforts resulted in an attainment of _____ percent MBE participation.

The undersigned understands and agrees that, if the goals of this procurement have not been attained, a statement of efforts is required and that its failure to submit a detailed statement of its efforts to obtain certified MBE participation with this bid will be regarded by the City as a demonstration of the bidder's non-responsiveness with regard to the MBE requirements of this procurement. The undersigned further understands that said statement is not required if the MBE goals have been attained with this proposal. These submittals are regarded as bid (proposal) responsiveness. Failure to submit these documents will serve to disqualify the bid (proposal) as non-responsive to this Invitation to Bid/Request for Proposal.

The undersigned further understands and agrees that an MBE participation plan must be submitted with this bid and that its failure to submit a complete plan* with its bid shall be regarded as a demonstration of bidder non-responsiveness with regard to the MBE requirements of this procurement, as a result, bidder will be deemed ineligible to receive a contract.

The undersigned understands and agrees that said plan shall become an obligation of any contract resulting from this procurement competition and that said obligation will be enforced to the same extent as all other contractual obligations resulting from this procurement competition.

The undersigned has read and understands this policy and these assurances contained in the instructions to bidders and agrees to be bound thereby as fully as all other obligations of any contract which may result from its bid/proposal.

Firm or Corporate Name Date of Signing

Signature Title

Signature Title

*Forms are supplied with these materials.

ATTACHMENT C

ADDITIONAL BIDDING/PROPOSAL REQUIREMENTS

In addition to the foregoing "policy" and "obligation" requirements and in addition to any other requirements contained in this invitation to bid or request for proposal, the following MBE Program requirements must be satisfied:

1. Each bid or proposal must include a complete MBE participation plan which sets forth the extent of MBE involvement in this procurement. A complete plan consists of a completed Schedule of MBE Participation, together with a signed letter of intent to perform and certificates of unavailability (forms are supplied in the MBE Bid/Proposal Submission Compliance Package) and any additional information which tends to support the reliability of the plan, e.g., conditional subcontract documents, purchase orders, or other evidence of a firm prime/sub contractor relationship. The substance of these materials are considered an important element of bidder responsiveness.
2. The standards by which the bidder's demonstration of good faith effort and its MBE participation plan are evaluated are set forth on the second page of the Schedule of MBE Participation forms supplied in the MBE Bid/Proposal Submission Compliance Package.
3. Any award resulting from this procurement competition shall be and is conditioned upon the attainment of the aforesaid goals or the satisfactory showing of good faith efforts to attain said goals.
4. Only City certified MBE entities are eligible for inclusion in a plan. Consult the MBE Directory which is available upon request from the Contract Compliance Officer (CCO) of the City of Oberlin for assistance in ascertaining certified status of some MBE's. All MBE entities are eligible for certification provided they have been in business for one (1) year. Applications for certification must be made on Schedules A and/or B (forms are supplied in the MBE Certification Compliance Package) and submitted well in advance of bid date. Every effort will be made by the City to certify MBE entities prior to bid/proposal submission. Certification must be achieved 30 days prior to bid date and will not be made after bids/proposals are opened. However, substitution of certified MBE entities appearing in a plan may be permitted where the CCO determines that such substitution will not result in an abuse of the MBE Program. The burden of demonstrating the propriety of such substitution lies with the bidder seeking such substitution. Denial of certification is final for the pending contract. Any person denied certification may appeal such decision in accordance with the provisions of Section VIII.
5. Contract goals for MBE participation are expressed as percentages of the total dollar value of the contract. MBE participation shall be counted in the following manner:

- a. The total dollar value of a contract or subcontract awarded to a certified MBE is counted towards the applicable contract goal.
 - b. In the case of a certified joint venture, the percentage of total dollar value of the contract or subcontract equal to the percentage ownership and control of the MBE partner is counted towards the applicable goal.
 - c. Only expenditures to MBE's which perform a commercially useful function in the work of a contract or subcontract may be counted towards MBE goals. An MBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract or subcontract and carries out its responsibilities by actually performing, managing, and supervising the work involved. If an MBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the MBE is presumed not to be performing a commercially useful function. The MBE may present evidence to rebut this presumption. The MBE contractor shall not subcontract more than 25% of the work of the contract to non-minority firms. The MBE contractor shall assure that every good faith effort is made to meet goals established by subcontracting to or undertaking to joint venture with other minority business enterprise firms.
 - d. Total dollar value of materials and supplies obtained from MBE suppliers and manufacturers may be counted towards MBE goals if the MBE assumes the actual and contractual responsibility for the provision of the materials and supplies. All of said dollar value is counted in the case of an MBE manufacturer. Twenty percent (20%) of said dollar value is counted in the case of MBE suppliers that are not manufacturers, provided that the MBE supplier performs a commercially useful function in the supply process.
6. MBE participation plans shall include the following minimum information:
- a. Names and addresses of the MBE entities that will participate in the contract;
 - b. The dollar amount of the participation of each MBE;
 - c. A description of the work each named MBE will perform;
 - d. A description of the efforts made to include MBE participation in the contract; and
 - e. A letter of intent or a certificate of unavailability from each MBE invited to participate or bid for participation in this contract as a subcontractor.

To assist bidders in assembling the required plan and to expedite the City's review thereof, forms are incorporated into the MBE Bid/Proposal Submission Compliance Package.

7. During the performance of any resulting contract and for a period of up to three (3) years following completion of the contract work, the City may cause reviews for compliance with the requirements of the City's MBE Program and the successful bidder's MBE participation plan. Such reviews may involve review of monthly statements, desk audits and/or onsite reviews. Where a contractor is found by the City to have failed to comply with the requirements of the contractor's MBE participation plan, the contractor will be required to take corrective action. If corrective action is not promptly taken by the offending contractor, the following sanctions may be instituted (singly, in any combination, and in addition to any other remedies provided by law or equity):
 - (1) Withholding of all future payments under the involved public contract to the contractor in violation until it is determined that the contractor or subcontractor is in compliance with the provisions of the contract.
 - (2) Refusal of all future bids for any public contract with the City or any of its departments or divisions until such time as the contractor or subcontractor demonstrates that he has established and shall carry out the policies of the program as herein outlined;
 - (3) Cancellation of the public contract and declaration of forfeiture of the performance bond;
 - (4) In cases in which there is substantial or material violation or the threat of substantial or material violation of the compliance procedure or as may be provided for by contract, appropriate proceedings may be brought to enforce those provisions, including the enjoining, within applicable law, of contractors, subcontractors or other organizations, individuals or groups who prevent directly, indirectly, or seek to prevent directly or indirectly, compliance with the policy, as herein outlined.
8. Agreements between a supplier/contractor and an MBE in which the latter promises not to provide subcontracting quotations to other suppliers/contractors are prohibited.
9. The contractor will keep records and documents for three (3) years following performance of this contract to indicate compliance with this notice. Such records and documents, or copies thereof, will be made available at reasonable times and places for inspection by any authorized representative of the City and will be submitted to the City upon request together with any other compliance information which such representative may require.

10. If, at any time, the City of Oberlin has reason to believe that any person or firm has willfully or knowingly provided incorrect information or made a false statement, it shall refer the matter to the City Solicitor. Persons may initiate any action in accordance with existing rules of law as they deem appropriate.
11. Bidders/proposers and contractors agree to be bound by all the requirements, terms and conditions of this notice.
12. Nothing in this notice shall be interpreted to diminish the present contract compliance review.
13. The bidder/proposer shall identify that the proposal/bid was prepared using subbids received from the MBE firms listed on the Schedule of MBE Participation. The bidder/proposer shall enter into a formal agreement with said MBE, for the work listed in the schedule conditioned upon the award of a contract by the City of Oberlin. A Letter of Intent to perform as a subcontractor for each entry appearing in said Schedule shall be enclosed with the bid/proposal. A certificate of unavailability shall be attached for each MBE solicited but declining participation as an MBE.

ATTACHMENT D

STANDARDS FOR DETERMINING GOOD FAITH EFFORTS

The standards by which the City shall determine whether the efforts made by a bidder were good faith efforts is whether such efforts could reasonably be expected to produce sufficient MBE participation to meet the goals set for the procurement. In reaching a decision, the City shall consider all efforts advanced by the bidder as well as the criteria set forth below:

1. Whether the bidder attended any pre-solicitation or pre-bid meetings that were scheduled by the City to inform MBE's of contracting and subcontracting opportunities.
2. Whether the bidder advertised in general circulation, trade association, and minority-focus media concerning the subcontracting opportunities.
3. Whether the bidder provided written notice to a reasonable number of specific MBE's that their interest in the contract was being solicited, in sufficient time to allow MBE's to participate effectively.
4. Whether the bidder followed up initial solicitations of interest by contacting MBE's to determine with certainty whether the MBE's were interested.
5. Whether the bidder selected portions of the work to be performed by MBE's in order to increase the likelihood of meeting the MBE goals (including, where appropriate, breaking down contracts into economically feasible units to facilitate MBE participation).
6. Whether the bidder provided interested MBE's with adequate information about the plans, specifications and requirements of the contract.
7. Whether the bidder negotiated in good faith with interested MBE's not rejecting MBE's as unqualified without sound reasons based on a thorough investigation of their capabilities.
8. Whether the bidder made efforts to assist interested MBE's in obtaining bonding, lines of credit, or insurance required by the City of the bidder; and,
9. Whether the bidder effectively used the services of available minority community organizations, local state and federal MBE offices and other organizations that provide assistance in the recruitment and placement of MBE's.

The following standards shall be applied in assessing the plan submitted:

1. Whether the participation plan contains capable, certified MBE firms.
2. Whether the firms listed in the plan are performing a commercially useful function.
3. Whether the listed firms are sharing monetary benefit in proportion to their share of the work of the project.
4. Whether the plan exhibits a likelihood of goal attainment.
5. Whether the prime/sub relationships are firm, i.e., whether conditional subcontracts have been entered.

FORMS

1. SOLICITATION RECORD
2. SCHEDULE OF MBE PARTICIPATION

SOLICITATION RECORD

Purchase Order No. _____

Requisition No. _____

Date _____

Bidder _____

Item _____

List below all business entities with whom the bidder actually discussed the needs of the City of Oberlin for this procurement.

	NAME	ADDRESS	PHONE #	YES	<u>MBE</u>	NO
1.	_____	_____	_____	()		()
2.	_____	_____	_____	()		()
3.	_____	_____	_____	()		()
4.	_____	_____	_____	()		()
5.	_____	_____	_____	()		()
6.	_____	_____	_____	()		()
7.	_____	_____	_____	()		()
8.	_____	_____	_____	()		()
9.	_____	_____	_____	()		()
10.	_____	_____	_____	()		()

Comments:

Project No. _____

Location _____

NAME OF PRIME CONTRACTOR _____

SCHEDULE OF MBE PARTICIPATION

Name of MBE Contractor	Address	Type of Work (Electrical, Paving, etc.) and Contract Items or Parts thereof to be Performed and Work Hours involved	Projected Commencement and Completion Date	Agreed Price

Signed _____