

**STANDARD PROCEDURES
OF THE
WASHINGTON SUBURBAN SANITARY COMMISSION**

ORIGINATOR & POSITION Towanda R. Livingston Director, SLMBE Office 	SP NUMBER SLBE 12-01 SUPERSEDES SLBE 08-01	APPROVE BY/DATE Commission/ July 20, 2011 	EFFECTIVE DATE August 26, 2011	PAGE 1 OF 22
SUBJECT: SMALL LOCAL BUSINESS ENTERPRISE (SLBE) PROGRAM				

I. PURPOSE

In accordance with Title 20, Subtitle 3 of the Public Utilities Article, Md. Code Ann., the Washington Suburban Sanitary Commission ("WSSC") Small Local Business Enterprise ("SLBE") Program is intended to assist small businesses located in Montgomery County and Prince George's County, Maryland by establishing a Sheltered Market and/or subcontracting or other appropriate preferences in connection with the award of Construction, Architectural and Engineering ("A&E"), Goods and Services and Professional Services contracts by WSSC. The Program was established in 2001 by the Commission with intent to provide additional race- and gender-neutral remedies for the Commission to use in its efforts to ensure that all segments of its local business community have a reasonable and significant opportunity to participate in WSSC contracts.

This Program is, in part, intended to further WSSC's compelling interest in avoiding either active or passive participation in private sector marketplace discrimination, and in promoting equal opportunity for all segments of the contracting community to participate in WSSC contracts.

Specialized terms¹ used in this Standard Procedure ("SP") are defined in Section III., *infra*.

II. STATEMENT OF POLICIES AND OBJECTIVES

A. POLICIES

1. The procedures in this SP implement WSSC's policy of encouraging greater availability, capacity development, and contract participation by SLBE's in Commission contracts. This policy is intended to promote equal opportunity for all segments of the contracting community to participate in WSSC contracts.
2. Consistent with Section 20-304(d) of the Public Utilities Article, the Commission will review the eligibility criteria and administrative procedures of the Program each year to assess their effectiveness in furthering the purposes of the Program.
3. The Commission shall take all necessary, reasonable, and legal action to prevent discrimination, and to ensure that all businesses (including local business enterprises ("LBEs") and small business enterprises ("SBEs") are afforded the maximum practicable opportunity to participate in the Commission's contracting process.

¹ The Maryland Annotated Code and COMAR provisions cited herein are available at www.wsscwater.com.

4. Consistent with Section 19-101 *et seq.* of the State Finance & Procurement Article, Md. Code Ann., the Commission will not enter into a contract with any business entity that has discriminated in the solicitation, selection or treatment of subcontractors, suppliers, vendors or commercial customers on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners.
5. The SLMBE Office shall have primary oversight responsibility with the full support and cooperation of all other WSSC offices in administering and ensuring compliance with all policies and procedures established herein.

B. OBJECTIVES

To meet the objectives of the SLBE Program, the WSSC is committed to, at a minimum:

1. Increasing the participation of SLBEs in WSSC contracting, and to the extent possible, eliminate through race- and-gender neutral means any disparities in the participation of minority business enterprises or women business enterprises on WSSC contracts;
2. Periodically evaluating the progress of the SLBE Program in meeting its objectives using accumulated availability and utilization data;
3. Providing accountability and accuracy in setting requirements and in reporting program results utilizing web-based compliance systems and/or other related systems (*i.e.*, CBR and SymTrac™ or any successor web-based compliance systems) capable of identifying the universe of firms that are ready, willing and able and interested in bidding on and/or performing on WSSC contracts;
4. Providing a means of tracking actual WSSC bids, contract awards, and Prime contract and subcontract payments to registered Bidders on the basis of firm ownership status, commodity or sub-industry codes, firm location and firm size. Accordingly, Prime Contractors and Subcontractors will be required to register and input data into WSSC's web-based compliance system and/or other related systems as one of the conditions of engaging in business with the WSSC; and
5. At a minimum, the SLMBE Office shall:
 - (a) Oversee and implement this SP;
 - (b) Report to WSSC and the public on at least an annual basis as to the WSSC's progress towards satisfying SLBE Program objectives;
 - (c) Recommend and/or grant SLBE Program waivers, improvements and adjustments to the Commission goal-setting and other SLBE Program functions;

- (d) Provide substantive input in a contract specification (Acquisition Process) review process to be undertaken in advance of the issuance of WSSC Invitation For Bids ("IFBs") and Request For Proposals ("RFPs") to ensure that contract bid specifications are not unnecessarily restrictive and unduly burdensome to SLBE firms;
- (e) Develop and implement extensive outreach and SLBE vendor development events;
- (f) Receive and analyze external and internal information including statistical data and anecdotal evidence it deems appropriate to effectively accomplish its duties;
- (g) Monitor and support the implementation of the procedures in this SP;
- (h) Meet with internal stakeholders as Program objectives;
- (i) Enforce contractor compliance with contract participation requirements, and ensure that the overall SLBE Program goals and objectives are met; and
- (j) Establish on a contract-by-contract basis the minimum SLBE subcontracting or other SLBE participation requirement(s).

III. DEFINITIONS AND TERMS

- A. **Affirmative Procurement Initiatives ("APIs")** – Refers to waivers, bid incentives, price preferences, sheltered market program, subcontracting, small contract rotation program, mentor-protégé program, and SLBE preference points and price in the proposal evaluations, expanded unbundling of contracts, bonding and insurance requirements, and expedited payments for subcontractors.
- B. **Architectural and Engineering ("A&E")** – Refers to services directly involving design and engineering. Systems engineering related to WSSC information technology is included in Professional Services.
- C. **Award** – The final selection of a Bidder or Offeror for a specified Prime contract or subcontract dollar amount. Contract awards are made by the Commission to Prime Contractors or vendors and by Prime Contractors or vendors to subcontractors or sub-vendors, usually pursuant to an open Invitation for Bid ("IFB") or request for proposal ("RFP") or Architecture and Engineering Qualification process. (Contract awards are to be distinguished from contract payments in that they only reflect the anticipated dollar amounts instead of actual dollar amounts that are paid to a Bidder or Offeror under an awarded contract.)
- D. **Bidder** – A firm submitting a price or proposal in response to an Invitation for Bid ("IFB").
- E. **Centralized Bidder Registration System ("CBR")** – A mandatory automated web-based system wherein the Commission requires all prospective Bidders, contractors, vendors and subcontractors that are ready, willing and able to sell goods or services to the Commission

to register online in accordance with WSSC SP ACQ. 07-01 (Effective March 4, 2008).

- F. **Construction** – Refers to building or repairing WSSC offices, treatment plants, reservoirs and tanks, pipelines, structures and other facilities. Construction materials and supplies may be part of a construction purchase if procured by the contractor. If construction materials and supplies are purchased directly by WSSC, they are classified as goods purchases.
- G. **Commercially Useful Function** – A business enterprise or firm performs a Commercially Useful Function when, based on all relevant facts and circumstances when it is responsible for the execution of the work of the contract by actually performing, managing and supervising the work involved. Thus, the enterprise or firm must be responsible with respect to the material and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable) and paying for the material itself. A SLBE 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 SLBE participation. In determining whether an SLBE is such an extra participant, the SLMBE Office will examine similar transactions, particularly those in which SLBEs do not participate.
- H. **Goal** – As used in this SP, a “Goal” is either an annual aspirational requirement or a contract-by-contract specific subcontracting requirement. Annual aspirational requirements are inapplicable to individual contracts, but are intended to serve as a benchmark against which to measure the overall effectiveness of the SLBE Program in increasing participation of ready, willing and able SLBEs in WSSC contracting opportunities.
- I. **Good Faith Efforts** – As used in this SP, “Good Faith Efforts” shall mean the actions taken by a Bidder, Respondent or Prime Contractor as established by reliable documentation of the Bidder’s intent to comply with the SLBE Program goals and procedures and is more than due diligence, including, but not limited to the requirements described in this SP in Section VI. H.
- J. **Goods and Services** – The term “Goods” refers, without limitation to physical items such as treatment plant parts and supplies, water meters, fire hydrants, valves, office supplies and equipment, vehicles and other materials. The term “Services” refers without limitation to business, cleaning and restoration, communication and waste management services.
- K. **Graduation** – An SLBE firm permanently graduates from the WSSC SLBE Program when it meets the criteria for graduation set forth in this SP in Section VI. B.
- L. **Independently Owned and Operated** – Ownership of an SLBE firm must be direct, independent, and by individuals only. Business firms that are owned by other businesses or by the principals or owners of other businesses that cannot themselves qualify under the SLBE eligibility requirements shall not be eligible to participate in the SLBE Program.
- M. **Industry Categories** – Procurement groupings for the WSSC inclusive of Architectural and Engineering, Construction, Professional Services and Goods and Services, (*i.e.*, manufacturing, wholesale and retail distribution of commodities and non-professional services). Industry Categories is also referred to as Contracting Areas.

- N. **Invitation for Bids ("IFB")** – A method of soliciting sealed bids which are awarded to the lowest, responsible, and responsive Bidder(s) are generally opened publicly at a fixed date and time and are read out loud in the presence of one or more witnesses.
- O. **Joint Venture** – An association of two or more persons or businesses carrying out a single business enterprise for which purpose they combine their capital, efforts, skills, knowledge and/or property. Joint ventures must be established by written agreement, and prior to submission of a bid, validated by the SLMBE Office.
- P. **Local Business Enterprise ("LBE")** – A firm having a Principal Place of Business or a Significant Employment Presence in Prince George's County or Montgomery County, Maryland. This definition is subsumed within the definition of Small Local Business Enterprise.
- Q. **Minority Business Enterprise ("MBE")** – Any legal entity, except a joint venture, that is organized to engage in commercial transactions, which is certified as being at least fifty-one percent (51%) owned, managed and controlled by one or more socially and economically disadvantaged minority and/or woman individuals as defined in Article Section 14-301 of the State Finance & Procurement Article of the Maryland Annotated Code and that is ready willing and able to sell goods or services that are purchased by WSSC. Unless otherwise stated, the term "MBE" as used in this SP is inclusive of women-owned business enterprises ("WBEs").
- R. **North American Industry Classification System ("NAICS")** – The six-digit code standard used by Federal statistical agencies in classifying business establishments to the type of goods or services a firm provides.
- S. **Notice-To-Proceed ("NTP")** – A communication from WSSC to a contractor stating the date the contractor can begin work, subject to the contract conditions.
- T. **Points** – The quantitative assignment of value for specific evaluation criteria in the contractor selection process pursuant to a Request for Proposal selection method.
- U. **Prime Contractor** – The vendor or contractor to whom a purchase order or contract is issued by the WSSC for purposes of providing goods or services for the WSSC.
- V. **Principal Place of Business** – A location wherein a firm maintains a physical office and through which it obtains no less than fifty percent of its overall customers or sales dollars, or through which no less than twenty-five percent (25%) of its employees are located and domiciled either in Prince George's County or Montgomery County.
- W. **Professional Services** – Refers to services provided by skilled professionals other than architectural and engineering. Such services include without limitation: IT consulting, management consulting, legal and accounting.
- X. **Race- and Gender-Neutral Remedy** – Efforts to open procurement opportunities in general, or specifically to small or newly-formed firms are collectively described as "race- and gender-neutral" programs. These efforts are "neutral" because race- and-gender ownership of a firm would not be a factor in considering whether the firm would benefit from the assistance. Neutral programs also include bonding assistance and small business

lending programs. A number of race- and gender-neutral business assistance programs are operated within the Washington Suburban Sanitary District Metropolitan Area. WSSC has also implemented "neutral" efforts to further open procurement opportunities to all firms and/or small firms in particular (*i.e.*, Small Local Business Enterprise Program).

- Y. **Request for Proposal ("RFP")** – Refers to all documents utilized by WSSC for soliciting proposals. This competitive selection method is used for procurements where the Commission has determined that price should not be the sole determinant when procuring specified types of supplies, services or construction. Proposals submitted in response to an RFP are analyzed and ranked based on evaluation factors and their corresponding relative weights, as stated in the RFP. For Architectural and Engineering ("A&E") contracts, WSSC may use a process that begins with publication of an announcement indicating the Commission's intention to retain an A&E consultant and requesting interested firms to submit a statement of their qualifications for the proposed project, termed a "Request for Qualifications."
- Z. **Requirement** – A minimum subcontracting percentage for SLBE participation may be established on a contract-by-contract basis by the SLMBE Director.
- AA. **Responsible** – A firm is capable in all respects to fully perform the contract requirements and has the integrity and reliability, which will assure good faith performance.
- BB. **Responsive** – A firm's bid or proposal conforms in all material respects to the invitation to bid or request for proposal and shall include compliance with the SLBE Program requirements.
- CC. **Sheltered Market Program** – An affirmative procurement initiative designed to identify a portion of the WSSC procurements and contracts for bidding exclusively by SLBEs.
- DD. **Significant Employee Presence** – No less than twenty-five percent (25%) of a firm's total number of employees are domiciled in either Prince George's County and/or Montgomery County, Maryland.
- EE. **SLMBE Subcontracting Participation Plan ("SL/MBE-C Form")** – The Subcontracting Plan identifies how the Prime Contractor intends to comply with the SLBE subcontracting participation requirements of the contract. This Subcontracting Plan is signed by both the Prime and Subcontractor and is notarized. All Subcontracting Plans are approved and validated by the SLMBE Office.
- FF. **Small Business Enterprise ("SBE")** – For the purpose of this SP, a Small Business Enterprise, is a small business qualifying under COMAR 21.11.01.04 or any successor regulation adopted pursuant to State Finance & Procurement Article, Section 14-203 or any successor provision thereto.
- GG. **Small Local Business Enterprise ("SLBE")** – A firm that is approved by the SLMBE Office based on the eligibility requirement as set forth in Section IV., *infra* an SLBE prior to submission of a bid or proposal or inclusion in a subcontract plan.

- HH. **Small Local Business Enterprise Status Expiration** – Occurs when a SLBE firm fails to obtain timely renewal, extension or reinstatement of its SLBE status from the Commission. An approved firm's failure to remain eligible and apply for its SLBE status upon receipt of written notice from the SLMBE Office will result in the Bidder's or Prime's profile being changed to Ineligible Status. Such firm will not be eligible to participate in SLBE Program.
- II. **Small Local Business Enterprise Program Application** – This form shall be completed by SLBEs when applying for approval or seeking renewal of their SLBE status for participation in WSSC's SLBE Program. This application shall be completed every two (2) years by SLBEs sixty (60) days prior to their status expiration date.
- JJ. **Small Local Business Enterprise Directory** – A listing of small local businesses that have been approved for participation in the SLBE Program may be obtained in part, by utilizing the CBR or any successor web-based compliance system thereto, or for a full SLBE Directory obtained from the SLMBE Office.
- KK. **Small, Local and Minority Business Enterprises ("SLMBE")** – Refers to small local and local business enterprises (including MBEs), defined in accordance with Sections 20-304 of the Public Utilities Code, Md. Code Ann., and the criteria adopted by the Commission in SP SLBE 08-01 (Effective. Oct. 27, 2007), to which the race- and gender-neutral remedies in Section V. as set forth in this SP.
- LL. **Small, Local and Minority Business Enterprise Office ("SLMBE Office")** – The office within the Commission that is primarily responsible for implementing and administering the SLBE and MBE Programs, defined in accordance with Section 20-202 of the Public Utilities Code, Md. Code Ann.
- MM. **Small, Local and Minority Business Enterprise Office Director ("SLMBE Director")** – The WSSC employee that is responsible for the management of the SLMBE Office, and ultimately responsible for oversight, tracking, monitoring, administration and implementation of the SLBE and MBE Programs, including but not limited to this SP.
- NN. **Standard Procedure** – Refers to this SP SLBE 12-01 (except where another WSSC Standard Procedure is expressly indicated.) The terms "Policy," "policy", "SLBE Policy" "SLBE Program" or "Program" are used synonymously with "SP" herein.
- OO. **Subcontractor** – Any vendor or contractor that is providing goods or services to a Prime Contractor in furtherance of the Prime Contractor's performance under a contract or purchase order with the WSSC.
- PP. **SymTrac™** – A web-based software application used by the WSSC to track and monitor subcontractor availability and utilization (*i.e.*, "Spend" or "Payments") on WSSC contracts.
- QQ. **Termination** – Permanent revocation of SLMBE eligibility as defined in this SP in Section VI. C.
- RR. **Waiver** – A provision of the SLBE Program waived upon approval of a written request to the Acquisition Office and supported by documentation that demonstrates a

Good Faith Effort either pre- or post-award of a WSSC contract, which is subject to approval by the SLMBE Director.

SS. Women-Owned Business Enterprise (“WBE”) – As used in this SP, WBE refers to any legal entity, except a joint venture, that is organized to engage in commercial transactions and that is certified as being at least fifty-one percent (51%) owned, managed and controlled by a non-minority female(s).

VV. WSSC or the Commission – Refers to the Washington Suburban Sanitary Commission.

IV. ELIGIBILITY FOR THE SLBE PROGRAM

- A. The SLMBE Office, in its sole discretion, will approve a firm registered in the CBR or any successor web-based compliance system adopted by WSSC as an SLBE in the SLBE Program upon submission of a completed and verified application, including supporting documentation, demonstrating that the applicant’s firm:
1. Is an independently-owned and operated for-profit business concern that is not dominant in its field of operation, and that is performing a Commercially Useful Function;
 2. Meets size standard eligibility requirements for SBEs as defined under the State of Maryland regulations adopted by the Department of General Services pursuant to State Finance & Procurement Article Section 14-203 or any successor provision thereto and as reflected in this SP, which shall be modified as necessary to remain consistent with State law;
 3. Is an LBE as defined by this SP in Section III., with a principal place of business or Significant Employment Presence in Prince George’s County or Montgomery County, Maryland;
 4. Has been established for at least one (1) year or the principals of the business have at least three (3) years of relevant experience prior to forming or joining the business; and
 5. Has not received more than \$1,000,000 in WSSC contract payments in open competition from the WSSC in the year preceding the date of the application.
- B. A firm must receive its SLBE approval from the SLMBE Office prior to submitting a bid or proposal or being included in a subcontract plan pursuant to this SP.
- C. Upon receipt of the SLBE Program application, the SLMBE Office shall review all enclosed application affidavits and documentation to make a determination as to whether the applicant successfully satisfies the SLBE eligibility requirements as set forth in this SP. Applicants determined ineligible to participate as a SLBE shall receive a letter from the SLMBE Office stating the basis for the denial of eligibility. Applicants determined ineligible shall not be eligible to submit a new application for one (1) year after the date of the notice of denial of eligibility.

- D. Approved SLBEs shall file with the SLMBE Office a completed renewal application every two (2) years, sixty (60) days prior to expiration of their SLBE status. At the time of filing any renewal application, an SLBE must satisfy each of the applicable eligibility criteria set forth in Section IV. in this SP.
- E. Any existing SLBE firms approved in accordance with the eligibility standards of SP SLBE No. 08-01, shall continue to be eligible for SLBE Program participation until expiration of their existing SLBE status, at which time the firm must meet all eligibility criteria as stated in this SP.
- F. The SLMBE Office reserves the right to periodically audit any SLBE firm with respect to the firm's SLBE status. Such audits may include but are not necessarily limited to: Inspection of the firm's office (*i.e.*, field compliance), job site, contract-related records and documents, and interviewing of the firm's employees, subcontractors, vendors, and customers as reasonably necessary to ensure that all eligibility standards are satisfied and that the integrity of the SLBE Program is maintained.
- G. A firm whose SLBE eligibility has been revoked and whose reinstatement request has been denied by the SLMBE Office, or an SLBE applicant whose waiver and reconsideration requests have been denied by the SLMBE Office, may appeal the decision to the General Manager/CEO. A written notice of appeal must be received by the General Manager/CEO within thirty (30) days of the last action taken by the SLMBE Office regarding its petition. The General Manager/CEO, or designee, shall conduct a hearing on the appeal. The decision of the General Manager/CEO, or designee, shall be the final decision of the Commission.

V. RACE- AND GENDER-NEUTRAL REMEDIES

The following race- and gender-neutral remedies set forth in this Section V. apply to firms whose applications for SLBE eligibility have been approved by the SLMBE Office.

A. EXPANDED UNBUNDLING

- 1. The WSSC, where feasible, shall engage in efforts to unbundle (segment or break-up) large contracts to make them more accessible to SLBEs; and
- 2. The WSSC shall engage in efforts to require or otherwise encourage Prime Contractors to subcontract portions of work that they might otherwise perform with their own resources.

B. MENTOR-PROTÉGÉ PROGRAM

- 1. WSSC shall implement and maintain a Mentor-Protégé Program to further the development of SLBEs.
- 2. WSSC shall develop incentives for businesses to mentor SLBEs to gain experience, contacts and resources necessary to compete for contracts.

3. Any mentor-protégé relationship shall be based on a written development plan, approved by WSSC, which sets forth the objectives of the parties and their respective roles, the duration of the arrangement and the services and resources to be provided by the mentor to the protégé.
4. SLBEs involved in a written mentor-protégé development plan must be approved in the SLBE Program.
5. WSSC shall monitor these mentor-protégé relationships.

C. BONDING AND INSURANCE REQUIREMENTS

1. WSSC shall assist SLBEs in overcoming their inability to obtain bonding, insurance, or financing. Commission efforts shall include, where feasible: Simplifying these processes, reducing bonding and insurance requirements where permitted by law, and eliminating the impact of surety costs from bids.
2. The WSSC, at its discretion, may waive or reduce the bonding, or insurance requirements depending on the type of contract and whether the Commission determines that the bonding and/or insurance requirements would deny the SLBE an opportunity to perform the contract that the SLBE has shown itself otherwise capable of performing.

D. AGGRESSIVE OUTREACH

WSSC shall engage in outreach measures to assist SLBEs, including the following:

1. Implement information and communication programs on contracting procedures and specific contract opportunities;
2. Provide services to help SLBEs improve long-term development, increase opportunities to participate in a variety of kinds of work and handle increasingly significant projects;
3. Implement a supportive services program to develop and improve immediate and long-term business management, record-keeping, and financial and accounting capability;
4. Establish a program to assist new start-up firms, particularly in fields in which small business participation has historically been low;
5. Ensure distribution of an SLBE Directory, through print and electronic means;
6. Provide technical assistance and other services including developing SLBE capability to utilize emerging technology and conduct business through electronic media;
7. Provide online bid documents available for download; and

8. Develop procedures to notify SLBEs of bid opportunities including, sending notices regarding bid opportunities to various organizations and other agencies.

E. SHELTERED MARKET PROGRAM

1. WSSC shall implement and maintain a Sheltered Market Program to identify a portion of the WSSC procurements and contracts for bidding exclusively by SLBEs.
2. The SLMBE Director and the appropriate WSSC Contracting Officer may select certain contracts which have a contract value of \$750,000 or less for award to an SLBE or a joint venture with a SLBE through the Sheltered Market Program.
3. In determining whether a particular contract is eligible for the Sheltered Market Program, the WSSC's Contracting Officer and the SLMBE Director shall consider: whether there are at least three SLBEs that are available and capable to participate in the Sheltered Market Program for this contract; the degree of under utilization of the SLBE Prime Contractors in the specific industry categories; and the extent to which the WSSC's SLBE Prime Contractor utilization goals are being achieved.
4. If a responsive and responsible bid or response is not received for a contract that has been designated for the Sheltered Market Program, or if the apparent low bid is determined to be fiscally unacceptable, then the contract shall be removed from the Sheltered Market Program.

F. SMALL CONTRACTS ROTATION PROGRAM

1. WSSC shall implement and maintain a Small Contracts Rotation Program to provide an orderly and efficient method of awarding purchases and work, and to equitably distribute purchases and work among qualified SLBEs.
2. Contracts will be assigned on a rotating basis; no firm in the rotation will be eligible to receive a second contract until all other businesses have been offered at least one (1) assignment.
3. The Small Contract Rotation Program will be widely advertised to SLBEs. WSSC may provide technical assistance and guidance to outside financial assistance to firms that participate in the rotation.

G. EXPEDITED PAYMENT

1. WSSC shall implement policies and procedures to ensure prompt and full payment to SLBEs.

2. Prime Contractors awarded WSSC contracts shall ensure the prompt and full payment of any subcontractors working on the contract. During the contract and upon completion of the contract, WSSC may request documentation to certify payment to subcontractors and/or suppliers. All WSSC contracts shall include a contract clause to require Prime Contractors to: Pay subcontractors for satisfactory performance of their contracts no later than fifteen (15) days from receipt of each payment WSSC makes to the Prime Contractor; and pay subcontractors retainage within fifteen (15) days after the subcontractor's work is satisfactorily completed.
3. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a Prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.
4. WSSC shall establish appropriate means for enforcement, which means that this may include appropriate penalties for failure to comply.

H. SUBCONTRACTING REQUIREMENTS

1. The SLMBE Office may at its discretion, either:
 - (a) Require that a predetermined percentage of a specific contract up to 40%, be subcontracted to eligible SLBEs on a contract-specific basis which may utilize a NAICS code; or
 - (b) Utilize some other APIs set forth herein.
2. An SLBE Prime Contractor may not subcontract more than 49% of the contract value to a non-SLBE.
3. A prospective Bidder or Prime Contractor on a WSSC contract shall submit at the time of bid a SLMBE Subcontracting Participation Plan providing the name of the approved SLBE subcontractor and/or subcontractors and describing both the percentage of subcontracting by the SLBE and the work to be performed by the SLBE at a minimum.

I. PRICE PREFERENCES/POINT PREFERENCES:

1. To facilitate and encourage the participation and utilization of SLBE firms in the Acquisition Process for larger purchases, a preference will apply to competitive solicitations for goods and services, professional services, construction and A&E.
2. The preference provides for the utilization of additional points in the evaluation of proposals and the utilization of a preference percentage reduction in price for bids. The preferences are as follows:

(a) Preference Points for Request for Proposals (RFP):

Note: The number of eligible preference points for a proposal submitted by a SLBE in response to a RFP shall not exceed ten (10) Points.

This preference is subject to reduction of joint ventures or subcontract with a non-SLBE firm(s).

(b) Preference Price Reduction for Invitation to Bids (IFB):

Note: The preference price reduction for a SLBE firm bidding as a prime shall not exceed ten percent (10%) or \$50,000, whichever is less.

This price reduction is subject to a limitation if the SLBE proposes to joint venture or subcontract with a non-SLBE firm(s).

3. A Preference Price Reduction may be awarded to a non-SLBE Prime Contractor that subcontracts with an approved-SLBE or proposes to joint venture with an approved SLBE firm(s); the price reduction will be equal to ten percent (10%) of the amount subcontracted. (*Example:* If a non-SLBE Prime Contractor subcontracts twenty-five percent (25%) of the contract value to an approved SLBE, the Prime Contractor will be eligible for 2.5% reduction in its bid price.)

J. BID DE-BRIEFINGS

WSSC shall offer debriefing sessions to unsuccessful Bidders and/or Responders to RFPs. The sessions should be published on the CBR, or any successor web-based compliance system thereto, and included in the Notice of Intent to Award to unsuccessful Bidders and/or Responders. WSSC shall make proposal and statement of qualification standards of the successful Bidder available upon request.

K. MONITORING, TRACKING AND REPORTING OF PROGRAM AND CONTRACTING ACTIVITIES

WSSC shall:

1. Implement procedures to review, analyze, and monitor procurement and contracting requirements, bid procedures, terms and conditions, and contract and purchase awards to determine the extent WSSC is soliciting SLBEs, and which SLBEs are being provided with the opportunity to engage in procurement and contracting with WSSC.
2. Create and maintain a database and records on SLBE participation on all WSSC projects. This includes keeping records of SLBE utilization by WSSC

on contracting and procurement, procurement of commodities, and emergency contracting and procurement.

3. Provide an overall evaluation of the effectiveness of the race, ethnic, and gender neutral measures on an annual (fiscal year) basis. WSSC shall implement appropriate changes to the measures and programs based on the results.

L. PROHIBITION OF DISCRIMINATION

WSSC shall establish policies, procedure legislation, and laws to prohibit discrimination in the provision of credit or bonding regarding WSSC contracts and with respect to contracting and procurement by contractors who do business with WSSC. WSSC shall enforce anti-discrimination policies, legislation and law, implement and maintain procedures for SLBEs, or any other firm, to notify WSSC if the SLBE (or firm) believes a Prime Contractor or WSSC is discriminating on the basis of race, ethnicity, or gender in the award of contracts or procurement.

VI. PROGRAM ADMINISTRATION

A. SLBE APPROVAL

1. The SLMBE Office shall verify, at the time of bid either as a Prime or Subcontractor, entities that claim to be an approved SLBE in the WSSC SLBE Program
2. The SLMBE Office may conduct an audit of the initial application, supplemental documentation and/or by conducting an on-site visit(s).
3. As required by SP ACQ. 10-01, all firms registered in WSSC's CBR or any successor web-based compliance system thereto shall provide their SLBE status when registering in the CBR or any successor web-based compliance system thereto and shall be responsible for the ongoing accuracy of that status.
4. The SLMBE Office reserves the right to revoke SLBE eligibility of any firm that has been determined to have violated the requirements of this SP or those of a comparable program of another government agency. WSSC reserves the right to deny the SLBE application of any firm that has been determined to have committed such a violation.

B. GRADUATION

1. The SLMBE Office shall be responsible for determining when SLBE firms no longer require the preferences provided by this SP and should, as a result, graduate from the SLBE Program. The SLMBE Office shall ensure that the CBR or any successor web-based compliance system thereto accurately and timely reflects the graduation of SLBE firms. Nevertheless, the risk that a firm's SLBE status is inaccurately stated in the CBR or any successor web-

based compliance system thereto shall be borne by any Bidder or Respondent to an IFB or RFP.

2. An SLBE firm shall graduate from the SLBE Program whenever the firm has received a cumulative total in prime and/or subcontract payments of either: (i) \$10 million for WSSC A&E, Goods and Services and Professional Services contracts; or (ii) \$14 million for WSSC Construction contracts and/or subcontracts since the firm's initial approval as an SLBE firm
3. The SLMBE Office shall annually evaluate each SLBE firm receiving contract payments from WSSC to determine whether the firm has graduated based on these standards.
4. An SLBE firm's graduation, pursuant to Section, VI.B. of this SP shall have no effect on any contract entered into by the firm and the Commission when the firm was qualified to participate in the API established in this SP.
5. The SLMBE Office will provide written notice to the SLBE upon graduation from the SLBE program, and therein state the reasons for such graduation.
6. Petition for Reinstatement:

During the three (3) years after graduating pursuant to Section VI. B. (2) of this SP, a graduated SLBE firm may petition for reinstatement providing the SLBE firm meets the eligibility requirements set forth in Section IV. of this SP.

C. TERMINATION

1. An SLBE firm's SLBE eligibility may be permanently revoked by the SLMBE Office if the firm fails to perform a Commercially Useful Function under a contract, and/or if the firm allows its SLBE status to be fraudulently used for the benefit of a non-SLBE firm (*i.e.*, a firm that lacks the size and/or geographic requirements for SLBE eligibility) and/or the owners of a non-SLBE firm so as to provide the non-SLBE firm or firm owners benefits from APIs for which the non-SLBE firm and its owners would not otherwise be entitled.
2. The SLMBE Office will provide written notice to the SLBE upon termination from the SLBE program, and state therein the reasons for such graduation.

D. RECONSIDERATION/APPEALS

An SLBE firm whose petition for reinstatement after graduating or being terminated is dismissed or denied by the SLMBE Office may ask the Office to reconsider its decision within twenty (20) days thereof, or may file an appeal with the General Manager/CEO within thirty (30) days of the last action taken by the SLMBE Office regarding its petition.

E. REQUEST FOR WAIVER

1. *Pre-Award* - A Bidder or Respondent may request a full or partial waiver of a SLBE subcontracting requirement by submitting either the SLBE Unavailability Utilization Certification form with the appropriate documentation contained in the solicitation and/or written request with appropriate documentation. Bidders and respondents are required to submit the SLBE Unavailability Utilization Certification simultaneously with bid or proposal submission, if the Bidder is unable to obtain an approved SLBE firm or meet the minimum SLBE participation subcontracting requirement and presents adequate evidence of its Good Faith Efforts, as defined in Section VI.H. of this SP, to meet the subcontracting requirement.
2. *Post-Award* - A Prime Contractor shall promptly request in writing a full or partial waiver of the SLBE subcontracting requirement as soon as possible after the Prime contractor becomes aware that it will be unable to comply with an approved SLMBE Subcontracting Participation Plan. The written request shall detail the Prime Contractor's Good Faith Efforts to execute the SLMBE Subcontracting Participation Plan and shall include a revised SLMBE Subcontracting Participation Plan. A Prime is required to notify and obtain written approval from the SLMBE Office in advance of any reduction in subcontract scope, termination, substitution or any other changes for a designated SLBE subcontractor and accompanied by supporting documentation.
3. *Procedure* - All waiver requests shall be in writing and shall be submitted to the SLMBE Office and to the Acquisition Office for resolution by the SLMBE Director. Should the SLMBE Director determine that the Bidder or Prime Contractor has demonstrated Good Faith Efforts then the waiver will be granted and the award process shall proceed. Should the SLMBE Director determine that the Bidder or Prime Contractor did not satisfy the requirement the Bidder's request for a waiver will be denied. The SLMBE Director's decision in these matters shall be final.
4. A Bidder or Prime Contractor may request a full or partial waiver of this mandatory subcontracting requirement from the SLMBE Office for good cause by submitting in writing, the reason for this inability to satisfy the SLBE subcontracting requirement to the SLMBE Office at the time of bid, along with a written waiver request outlining the good cause and Good Faith Efforts employed by the Bidder and Prime Contractor to satisfy the minimum SLBE subcontracting requirements. Under no circumstances shall a waiver of a subcontracting requirement be granted without submission of adequate documentation of Good Faith Efforts as defined in this SP by the Bidder and Prime Contractor and careful review by the SLMBE Office. The SLMBE Office shall base its determination, at a minimum, on a waiver request on the following criteria:
 - (a) The requestor has made Good Faith Efforts to subcontract with qualified and available SLBEs;

- (b) Subcontracting would be inappropriate and/or not provide a Commercially Useful Function under the circumstances of the contract;
- (c) The requestor sought assistance from the SLMBE Office in satisfying the requirement;
- (d) The requestor utilized the CBR or any successor web-based compliance system thereto;
- (e) There are no approved SLBE firms that are qualified and available to provide the goods or services required;
- (f) In the absence of a waiver granted by the SLMBE Office, failure of a Bidder or Respondent to commit in its bid or proposal to satisfying the SLBE subcontracting requirement will render its bid or proposal non-responsive; and
- (g) In the absence of a waiver granted by the SLMBE Office, failure of a Prime Contractor to attain the specified SLBE subcontracting requirement stated in the contract for SLBE participation in the performance of its contract shall be grounds for termination of existing contracts with the WSSC, debarment from performing future WSSC contracts, and/or any other remedies available under the terms and conditions (or general conditions) of its contract with the WSSC or under the law. A Prime Contractor's failure to be in compliance with the SLBE Program shall impact their potential for future contracts with the Commission.

F. SLBE PRIME AND SUBCONTRACTING: ENFORCEMENT AND COMPLIANCE

1. The SLMBE Office shall ensure adherence to this SP by Commission employees and SLBEs.
2. The SLMBE Office shall verify that a Prime Contractor has submitted the SLMBE Subcontracting Participation Plan before the NTP is issued on a contract.
3. To ensure compliance with contract specific SLBE subcontracting requirements, the SLMBE Office shall verify that the approved SLBE listed in the approved SLMBE Subcontracting Participation Plan is actually performing work and receiving compensation as set forth in the plan.
4. Requests for waiver of approved SLMBE Subcontracting Participation Plans shall be filed and resolved in accordance with Section VI. E.
5. Failure of a Prime Contractor to make Good Faith Efforts to comply with an approved SLMBE Subcontracting Participation Plan may—absent unintentional, accidental or otherwise justifiable extenuating circumstances—

constitute either willful or intentional failure to perform in accordance with the requirements of the SLMBE Subcontracting Participation Plan, or willful or intentional action to frustrate the plan. The SLMBE Office shall determine whether the Prime Contractor's failure to make Good Faith Efforts was willful or intentional based on all relevant facts, circumstances and information presented or available to the Office and shall then determine whether enforcement action should be taken in a particular case.

6. Upon determining that a Prime Contractor has failed to comply with an approved SLMBE Subcontracting Participation Plan, the SLMBE Office shall notify the Acquisition Office, which will notify the Prime Contractor in writing of its findings and shall specify what corrective actions are required. The Prime Contractor is required to initiate the corrective actions within 10 days of receipt of notice and complete them within the time specified in the notice.
7. If the SLMBE Office determines that material non-compliance with SLBE contract provisions exists and that the Prime Contractor refuses or fails to take the corrective action required in the Acquisition Office's notice, then the following sanctions may be invoked:
 - (a) Withhold Payment to the Prime Contractor;
 - (b) Suspension of the contract;
 - (c) Referral to the General Counsel's Office for appropriate Action;
 - (d) Termination of the contract; or
 - (e) Initiation of any other specific remedy identified by contract, this SP or other applicable law or regulation.
8. The SLMBE Office may use any other compliance mechanisms authorized by the contract, or by Commission regulation.
9. The SLMBE Office, in conjunction with appropriate staff personnel, may, upon completion of a contract, and before final payment is made, require that a Prime Contractor on any contract having a contract-specific SLBE subcontracting requirement to:
 - (a) Submit a final report, in affidavit form and under penalty of perjury, of all payments made to, or withheld from, SLBE subcontractors;
 - (b) Allow the SLMBE Office to inspect any relevant matter, including job site records of the contractor;
 - (c) Allow the SLMBE Office to interview subcontractors and employees of the contractor;

- (d) For construction contracts, ensure that subcontractors are (i) paid any undisputed amount to which the subcontractor is entitled as provided under Section 15-226 of the State Finance and Procurement Article; and (ii) comply with the Commission regulations; and
 - (e) Include in the agreement with the approved SLBE subcontractor a requirement that the subcontractor submit a monthly report to the Commission as required by the contract through SymTrac™ or any successor web-based compliance system thereto.
10. WSSC shall establish and implement subcontractor substitution standards to prevent Prime Contractors from listing subcontractors on bid documents without utilizing their services. Substitution of a listed subcontractor in furtherance of bid shopping before or after the award of the Prime contract is prohibited.
11. Any enforcement action taken by WSSC pursuant to Section VI.D. in this SP, shall be subject to the internal appeals process and procedures provided for in WSSC's Procurement Manual (and any subsequent manual or regulation thereto).

G. POST-AWARD CONTRACT COMPLIANCE MONITORING

WSSC shall establish a system to monitor monthly contract compliance to ensure that the Prime contract award and subcontractor participation listed in bids, proposals, and statements of qualification is achieved throughout the duration of a contract; the system shall:

- (a) Track and report subcontractor utilization in an electronic database; and
- (b) Collect copies of the canceled checks (before closeout of contracts with signed affidavits from Prime Contractors) written to subcontractors in order to verify payment information.

H. GOOD FAITH EFFORTS

Good Faith Efforts require Bidders and Prime Contractors to make and demonstrate an effort to provide subcontracting opportunities to approved SLBE firms. The Bidder or Prime Contractor is required to contact an approved SLBE firm at the time the contract is solicited for bid. Good Faith Efforts to contact and work with approved SLBE firms must be documented to the Commission. This Good Faith Effort must continue throughout the life of the contract, if awarded. Sustained Good Faith Efforts should be made with the intention of producing desired or required results. Good Faith Efforts do not necessarily include due-diligence. The Good Faith Efforts of the Bidders', Respondents' and Primes' intent to comply with the SLBE subcontracting requirement and evaluation of that intent based on a review of, but not limited to all of the following:

1. Provide a copy of the advertisement(s) in local and/or trade publications and the services that they are attempting to subcontract. This effort would need to be

made well in advance of pre-bid meetings, and at the very least, well before the bid or proposal due date.

2. Provide a list of SLBE firms that were contacted. There should also be a statement regarding what type of contact was made with each firm and why these firms were not suitable to service this project.
3. Provide the list of opportunities that the Prime Contractor (Bidder and/or Proposer) had in regards to the portion of the project they intended to subcontract out. What areas would be better served by an entity that may have specialized services (*i.e.*, trucking, paving, special supplies, electrical engineering, or asbestos abatement).
4. Submit a copy of information that was forwarded to the list of potential subcontracting firms. This step is to illustrate that adequate information was provided to firms that were contacted.
5. Provide evidence that no bid was rejected without a sound reason. This can be addressed adequately by complying with requirements in Sections VI. H. (2) and VI. H. (3) in this SP.
6. Demonstrate attempts were made to assist interested SLBE firms with obtaining bonding and/or insurance that the Bidder/Proposer may make as a requirement of the SLBE firm to subcontract.
7. Demonstrate that they (Prime Contractor - Bidder and/or Proposer) utilized the services of the SLMBE Office and the CBR or any successor web-based compliance system thereto, or one of the certifying agencies recognized by the WSSC in establishing the initial contact list. Provide a copy of the information that was furnished by these agencies and was used in contacting Bidders.
8. Provide the list of SLBE firms that were invited to bid on subcontract work, but were not available to work.
9. Provide the list of SLBE firms that were invited to bid on subcontract work, but did not respond to the IFB.
10. Provide the list of SLBE firms that submitted bids which were not the low acceptable bid or fiscally sound according to my company's contracting policies.
11. Demonstrate that the Bidder selected portions of the work that could be performed by SLBE firms in order to increase the likelihood of meeting the subcontracting requirements (including, where applicable, breaking down the contract work into economically feasible units to facilitate subcontractor participation).
12. Provide documentation that SLBE firms were invited, where appropriate, to meetings/conferences to inform them of subcontracting opportunities.
13. Provide documentation of written notice, to a reasonable number of specific SLBE

firms of the Bidder's interest in the contract that is being solicited; in sufficient time in order to allow SLBE firms to participate effectively.

I. SLBE PROGRAM PERFORMANCE REVIEW

1. The Small, Local and Minority Business Enterprise Office Director or designee shall monitor the implementation of this Policy and the progress of this Program.
2. On at least an annual basis, the Director or designee shall report to the WSSC on the progress of achieving the goals established for awards/payments to certified-SLBE firms, reporting both dollars awarded and expended.
3. The SLMBE Office Director or designee shall report on the progress in achieving the stated Program Objectives, including, but not limited to, enhancing competition, establishing and building new business capacity, and removing barriers and eliminating disparities in the utilization of available minority business enterprises and women business enterprises on WSSC contracts.
4. The WSSC shall review the eligibility and administrative procedures of the Program each year to assess their effectiveness in furthering the purposes of the Program.

J. SEVERABILITY

If any section, paragraph, sentence, clause, phrase or word of this SP is, for any reason, held by a Court of competent jurisdiction to be unconstitutional, invalid, inoperative, or void, such holding shall not affect the legality or validity of any other section, paragraph, sentence, clause, phrase or word of this SP.

K. REGULATORY STATUS

This SP shall constitute a "regulation" within the meaning of Section 17-403 of the Public Utilities Code, Md. Code Ann., and shall be enacted in accordance with the requirements of Section 17-403. Any revisions, modifications or amendments of or to this SP shall also be enacted in accordance with Section 17-403 or any successor provision thereto.

L. APPLICABILITY

For any WSSC contract to be awarded pursuant to an IFB, RFP, or Request for Bid/Quotation, this SP shall apply only to a contract with the associated IFB, RFP or other Request was disseminated to the public on or after this SP's effective date, as indicated above.

DISTRIBUTION LIST:

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Internal Audit Office
Office of the Corporate Secretary
Office of the General Counsel
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