

# CITY OF HOUSTON

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OFFICE OF THE MAYOR



**Minority/Women Business Enterprise-  
Disadvantaged Business Enterprise (MWBE/DBE)  
Certification Procedures**

**July 1994**

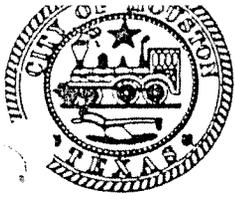
Lee Elliott Brown, Director  
Affirmative Action/Contract Compliance



**City of Houston  
Affirmative Action and Contract Compliance  
Minority/Women Business Enterprise-  
Disadvantaged Business Enterprise (MWBE/DBE)  
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**Table of Contents**

<b>SECTION 1</b>	<b>Authority</b>	<b>1</b>
<b>SECTION 2</b>	<b>Purpose</b>	<b>1</b>
<b>SECTION 3</b>	<b>Objectives</b>	<b>1</b>
<b>SECTION 4</b>	<b>Scope</b>	<b>2</b>
<b>SECTION 5</b>	<b>Definitions</b>	<b>2 - 9</b>
<b>SECTION 6</b>	<b>Responsibilities</b>	
	6.1 Departments	9 - 13
	6.2 Affirmative Action and Contract Compliance	13 - 16
	6.3 City Council	16
<b>SECTION 7</b>	<b>Procedures</b>	
	7.1 Certification	16 - 24
	7.2 Compliance	24



City of Houston  
Affirmative Action and Contract Compliance

Minority/Women Business Enterprise-  
Disadvantaged Business Enterprise (MWBE/DBE)  
Certification Procedures

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1. AUTHORITY

The authority for the City of Houston's Minority and Women Business Enterprise (MWBE) Program is found in the City Code of Ordinances, Chapter 15, Article V and Council Motions 84-2142 and 86-2204. The Aviation Department's Department of Transportation (DOT)/Federal Aviation Administration (FAA) Disadvantaged Business Enterprise (DBE) Program is supported by Ordinance Number 89-226.

2. PURPOSE

To establish policies and procedures governing the Minority, Women Business Enterprise Program, including MWBE certification, program compliance, and reporting of MWBE participation, and to establish policies and procedures governing the DOT/FAA DBE program administered by DOA.

3. OBJECTIVES

- A. To stimulate the growth of local Minority, Women, and Disadvantaged Business Enterprises (MWBEs) by affording them a full and fair opportunity to compete for all City contracts.
- B. To increase opportunities for local MWDBEs to serve as Contractors for the supply of goods and services to the City, in addition to acting as sub-contractors to others;
- C. To increase the capacity of local MWDBE firms to provide goods and services;
- D. To provide opportunities for local MWDBEs to broaden and enhance their range of capacities; and

- E. To provide City departments with a working knowledge of the City's MWBE and DBE programs, and assist them in meeting the City's MWBE and DBE goals, as applicable.

#### 4. SCOPE

These procedures apply to all City departments, prime contractors involved in contracts with MWBE or DBE goals, certified MWDBE firms, and MWDBE firms seeking certification with the City. DBE provisions apply only to the Department of Aviation. References to MWBEs shall mean MWBEs for all City departments other than Aviation, and shall mean DBEs for the Aviation Department.

#### 5. DEFINITIONS

- A. "Affirmative Action" means taking specific steps to eliminate discrimination and its effects, to ensure non-discriminatory results and practices in the future, and to involve minority, women, or disadvantaged business enterprises fully in contracts and programs funded by the City or the federal Department of Transportation (DOT).
- B. "Airports" means the William P. Hobby Airport, the Houston Intercontinental Airport, Ellington Field or any other improvements operated by the City or its contractors for Aviation related activities which are funded in whole or in part by DOT.
- C. "Bidder" means any person or legal entity which submits a bid or proposal to provide labor, goods or services to the City by contract for profit.
- D. "Business" means an entity that under its current organization and ownership has evidence of the following:
  - a. An office or an office-like space;
  - b. A formal declaration of business in the name of the business such as:
    - 1. an assumed name certificate
    - 2. a corporate charter
    - 3. a partnership agreement
    - 4. a joint venture agreement; or
    - 5. some comparable evidence of a business structure;
  - c. A business bank account, or evidence of cash receipt, or evidence of payments of money by the business such as:
    - 1. cancelled checks relating to the business; or
    - 2. an invoice with paid receipt or related cancelled check relating to

- the business;
- d. One reference for whom work has been performed or to whom goods or materials have been sold;
  - e. One reference from whom goods or materials have been purchased for the business or from whom major equipment has been purchased or leased; and
  - f. Visible signs of a business operation including but not limited to:
    - 1. letterhead stationery,
    - 2. business cards,
    - 3. telephone directory or information listing,
    - 4. signage in the name of the business on buildings, doors, major equipment, or similarly-placed locations,
    - 5. imprinted receipt book, or
    - 6. flyers.
- E. **"Commercially Acceptable Function"** means a discrete task or group of tasks, the responsibility for performance of which shall be discharged by the MWDBE by using its own forces or by actively supervising on-site the execution of the tasks by another entity for whose work the MWDBE is responsible. Without limiting the generality of the foregoing, an MWDBE will not be considered to be performing a commercially acceptable function, if it subcontracts to non-MWDBE firms, more than fifty percent (50%) of a contract being counted toward the applicable participation goal.
- F. **"Contract"** means a mutually-binding legal document under which an entity provides goods, labor or services to the City for profit. For purposes of the City's program, a lease is considered to be a contract.
- G. **"Contractor"** means one who is obligated to perform under a contract or subcontract, and includes Lessees.
- H. **"Controlled"** means that the one or more minority, women, or disadvantaged individuals who own the requisite interests in or assets of a business applying for MWDBE certification must have and exercise independently the authority to control the business decisions of the business. Characteristic of such control is the authority to (1) sign bids and contracts, (2) make price negotiation decisions, (3) incur liabilities for the business, (4) make personnel decisions, (5) establish policy for the business, (6) direct the management of the business, (7) make any financial decision on behalf of the business, and (8) sell or liquidate the business at will.
- I. **"Director"** means the Director of Affirmative Action and Contract Compliance

of the Mayor's Office, City of Houston.

- J. **"Disadvantaged Business Enterprise" or "DBE"** means an independent small business:
- (a) which is at least 51 percent Owned, as defined herein, by one or more socially- and economically-disadvantaged individuals, or, in the case of any publicly-owned business, at least 51 percent of the stock of which is Owned by one or more socially- and economically- disadvantaged individuals;
  - (b) which is Managed, as defined herein, and whose daily business operations are Controlled, as defined herein, by one or more of the socially- and economically-disadvantaged individuals who own it;
  - (c) which is certified by the City of Houston as meeting (a) and (b) of this definition; and
  - (d) which has grossed less than \$16,015,000 in the last three years.
- K. **"DOT"** means the Federal Department of Transportation, including the Federal Aviation Administration (FAA).
- L. **"DOT-assisted contract"** means any Contract between the City and a Contractor which is paid for in whole or in part with DOT financial assistance or any Contract or modification of a Contract between the City and a Lessee at the Airports.
- M. **"Functional Mission"** means the type of goods or services a business provides, i.e., what the business does.
- N. **"Goal Oriented Contract"** means any contract, agreement or other undertaking anticipated for construction work to be in excess of \$1,000,000 and for the supply of goods or non-personal or non-professional services to be in excess of \$100,000 for which (i) competitive bids are required by law to be taken; (ii) which is not within the scope of the MWBE program of the United States Environmental Protection Agency or the United States Department of Transportation and (iii) which the initiating City Department, in consultation with the Director of the Affirmative Action Division, determines has significant subcontracting potential in fields in which there are adequate number of known MBEs and/or WBEs to compete for and perform the Sub-contract service(s).
- O. **"Good Faith Efforts"** means those efforts required to be made and demonstrated by an apparently successful bidder or proposer prior to award of a Contract and at the conclusion of performance of the contract in the

- event it has been unsuccessful in meeting the contract MWDBE goal.
- a. Good Faith Efforts for construction, procurement and professional services shall mean at a minimum the following:
    1. Delivery of written notice to the following:
      - a. All local certified MWDBEs in the directory for the month prior to the month of the bid or proposal submission date and identified as performing work or services or providing commodities for all potential subcontracting or supply categories in the Contract; and
      - b. All minority, women and disadvantaged business organizations and associations identified in the directory for the month prior to the month of the bid or proposal submission date; and
      - c. All media focused toward minorities, women and disadvantaged identified in the directory for the month prior to the month of the bid or proposal submission date; and
      - d. All local MWDBEs which requested information on the Contract.
    2. The written notices will contain:
      - a. Adequate information about the plans, specifications, and relevant terms and conditions of the Contract and about the work to be subcontracted to or the goods to be obtained from subcontractors and suppliers;
      - b. A contact person within the apparent low bidder's or proposer's office to answer questions;
      - c. Information as to the apparent low bidder's or proposer's bonding requirements, the procedure for obtaining any needed bond, and the name and telephone number of one or more acceptable surety companies to contact;
      - d. The last date for receipt by the bidder or proposer of MWDBE bids or price quotations; and
    3. Attendance at any special pre-bid meeting called to inform MWDBEs of subcontracting or supply opportunities, if set forth in the bidding or proposal documents.
    4. Division of the contract, as recommended by the director of the affected city department and in accordance with normal industry practice, into small, economically feasible segments that could be performed by MWDBEs; and
    5. Providing an explanation for rejection to any MWDBE whose bid or price quotation is rejected, unless another MWDBE is accepted for the same work, as follows:
      - a. Where price competitiveness is not the reason for rejection, a

written rejection notice including the reason for rejection will be sent to the rejected MWDBE;

- b. Where price competitiveness is the reason for rejection, a meeting must be held, if requested, with the price-rejected MWDBE to discuss the rejection.
6. Providing an explanation for rejection of any MWDBE to the Affirmative Action and Contract Compliance Office ("AAD"), unless another MWDBE is accepted for the same work, including the name of the non-MWDBE firm proposed to be awarded the subcontract or supply agreement, and if price competitiveness is the reason for rejection, the MWDBE's price quotation and the successful non-MWDBE's price quotation.
- b. Good Faith Efforts for Leases shall mean, at a minimum, efforts which, in the joint opinion of the Director of Aviation and the AAD, given all relevant circumstances, would reasonably be expected to produce a level of DBE participation sufficient to meet the goal. The efforts must, in the joint opinion of the Director of Aviation and the AAD, be those that a competitor actively and aggressively seeking to meet the goal would make.
- P. **"Independent"** means that the business seeking certification is not dependent upon or connected with another business, as evidenced by such items as multiple shared resources, common employees, common directors, or the payment of the MWDBE's payroll by a non-MWDBE firm.
- Q. **"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.
- R. **"Lease"** means a contract by which one conveys real estate, equipment, or facilities for a specified term and for a specified rent.
- S. **"Lessee"** means a business or person that leases property from the City for the purpose of operating a related activity or for the provision of goods or services to the City or to the public on City facilities. Lessee includes concessionaires, permittees and others who are not engaged in a lease per se, but who provide similar services through another form of agreement.
- T. **"Managed"** means that one or more minority, women, or disadvantaged individuals who Own and Control the business independently from the control or influence of a non-MWDBE business, shall operate the business by making

the (i) day-to-day decisions that affect the functional mission of the business. In those instances where a license or permit is required in order to perform the functional mission of the business, one or more of the minority, women, or disadvantaged individuals who own the business must be licensed or have a permit in his or her name to perform the functional mission of the business; and (ii) the applicant must have the background and experience in the specific product or service (the functional mission) for which he/she seeks certification.

- U. **"Minority Business Enterprise (MBE)"** shall mean:
1. A business which as been certified as an MBE by the City's Affirmative Action Division, and
  2. A sole proprietorship, corporation, partnership, joint venture, or any other business or professional entity in which at least fifty-one percent (51 %) of the assets of such business or entity is owned, managed, and controlled by one or more Minority persons.
- V. **"Minority Person"** shall mean a citizen or legal resident alien of the United States who is:
1. Black (a person having origins in any of the Black racial groups in Africa);
  2. Spanish/Hispanic (a person who is either Mexican, Puerto Rican, Cuban or "other Spanish/Hispanic" in origin or descent. "Other Spanish/Hispanic are those whose origins are from Spain or the Spanish speaking countries of Central or South America. Persons of Spanish origin may be of any race);
  3. Asian-Pacific American (a person having origins in the Far East, Philippines, Vietnam, Korea, Samoa, Guam, the U. S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, Taiwan or the Indian Subcontinent);
  4. Native American (a person having origins in any of the original peoples of North American, American Indian, Eskimo, Aleut, Native Hawaiian).
- W. **"Owned"** means that the one or more minority, women or disadvantaged individuals who have ownership of the requisite interests in or assets of a business applying for MWDBE certification shall possess equivalent incidents of such ownership, including an equivalent interest in the profit and loss of the business, a commensurate position and reasonable salary therefor, and an equivalent contribution of capital, equipment and/or expertise to the business. Such contributions shall be real and substantial. Securities must be held directly by the minority, woman or socially and economically

disadvantaged person and not in trust on their behalf. A gift of stock from a non-MWDBE is not to be considered as ownership. [For purposes of certification as a business owned by a woman, ownership shall be measured as though not subject to the community property interest of the applicant's husband, if (a) the husband is non-participating spouse relinquishes control over his community property in the business, (b) both spouses certify in writing that the interest in the subject business (but by doing so is not required to transfer to his spouse his community property ownership interest or to characterize the property as the separate property of his wife), and (c) the husband does not exercise any ownership control over the business by virtue of his community property interest, including serving as a corporate director, being an employee involved in the functional mission of the business or acting as a paid consultant to the business.]

- X. **"Regulated Contract"** mean any contract, agreement or other undertaking for which (i) competitive bids are not required by law to be taken; (ii) which is not covered by the MWDBE programs of the United States Environmental Protection Agency or the United States Department of Transportation; and (iii) which the recommending City Department has determined, in consultation with the AAD, (a) either has significant subcontracting potential in fields in which there are sufficient known MWDBEs to perform the particular subcontract services; or (b) is of a type for which there are sufficient known MWDBEs which have represented their ability to perform the prime contract service to afford effective competition for the prime contract.
- Y. **"Socially and economically disadvantaged individuals"** means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act. The City shall make a rebuttable presumption that individuals in the following groups are socially and economically disadvantaged, and may determine, on a case-by-case basis, that individuals who are not members of one of the following groups are socially and economically disadvantaged.
- 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, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas; and
  - e. "Asian-Indian Americans" which includes persons whose origins are from India, Pakistan, and Bangladesh.
- Z. "Subcontract" means a mutually-binding legal document under which an entity provides goods, labor or services to a contractor for profit.
- AA. "Subcontractor" means any business providing goods, labor or services to a Contractor for such goods, labor or services for procurement or use in fulfillment of the Contractor's obligations arising from a contract with the City of Houston.
- AB. "Woman" means a person who is a citizen or legal resident alien of the United States and who is of the female gender.
- AC. "Women Business Enterprise" or "WBE" means a business which is:
- 1. A business which has been certified as a WBE by the City's Affirmative Action Division under any program, and
  - 2. A sole proprietorship, corporation, partnership, joint venture, or any other business or professional entity in which at least fifty-one percent (51%) of the stock or assets of such corporation is owned, controlled and managed by one or more Women.

## 6. RESPONSIBILITIES

### 6.1 The Departments

#### A. Goal Setting

It is the responsibility of each City department to determine which contracts initiated by it are Goal Oriented Contracts and which are Regulated Contracts. If the determination is made that a contract is a Goal Oriented contract or a regulated contract, the initiating Department shall review the contract and shall determine, by reference to the Directory of Certified Minority, Women, and Disadvantaged Business Enterprises ("the Directory"), the number of certified MWDBEs which have demonstrated that they are in the business of performing all or some of the required contract services. The initiating Department Director or his designee shall, on a contract by contract basis, determine whether the contract is one to which MWDBE provisions should be applied, and the appropriate percentage. These provisions are not

required to be applied in the following circumstances:

1. a public or administrative emergency exists which requires the goods or services to be provided with unusual immediacy; or
2. the service or goods requested are of such a specialized, technical or unique nature as to require the City Department to be able to select its Contractor without application of MWDBE provisions (such as contracts for expert witnesses, certain financial advisors or technical consultants); or
3. if application of MWDBE provisions would impose an unwarranted economic burden or risk on the City or unduly delay acquisition of the goods or services, or would otherwise not be in the best interest of the City; or
4. if the possible MWDBE participation level based on MWDBE availability would produce negligible MWDBE participation.

If one of the above-listed conditions is determined to exist, the Department Director shall certify that determination to the Director of the Affirmative action Division and specify the conditions which lead to the determination. This certification is to be made prior to the award of the contract.

If the contract does not fall within one of the above-listed exceptions, based upon its overall review, the initiating Department:

1. shall, on a contract by contract basis, assign an appropriate MWDBE participation level, if any, for the contract (whether Goal Oriented or Regulated) considering the local availability of certified MWDBEs in the contract field; or
2. for a Regulated Contract, where only a limited number of bids or proposals are to be solicited, may propose a percentage of the Bidders contacted to be MWDBEs.

The intention of this procedure is to provide administrative flexibility in the application of MWDBE provisions and in the percentage participation level on a contract-by-contract basis so as not to limit access to City contracting by non-minority and non-women owned businesses to a greater degree than necessary to

meet the City-wide annual goal and the policies and objectives of Ordinance 84-1309.

**B. Counting MWDBE Participation**

- 1) Where 100% of the work/effort will be performed by the MWDBE, the total dollar amount of the MWDBE contract may be counted toward the MWDBE proposed participation.
- 2) Consistent with industry practices, an MWDBE subcontractor may use second tier subcontractors, MWDBE or non-MWDBE. However, non-MWDBE firms may be used to a dollar amount of no more than 50% of the MWDBEs contract. If greater than 50% non-MWDBE participation exists in second-tier subs, the MWDBE participation will only be counted for the percentage of work performed by the MWDBE and MWDBE second tier subcontractor(s).
- 3) Joint Ventures will be counted as follows:
  - a) Where the Joint Venture has been certified under the provisions stated herein, as being an ongoing business Owned, Managed, and Controlled by a Minority Person or a Woman or a Disadvantaged person, and where 100% of the work/effort will be performed by the MWDBE Joint Venture, the contractor may count the total dollar amount of the MWDBE Joint Venture toward the MWDBE Proposed Participation.
  - b) Where the Joint Venture is between a certified MWDBE whose ownership interest is less than 51% and a non-MWDBE, the Joint Venture will be counted according to the portion and structure of the Joint Venture Owned, Controlled, and Managed by the MWDBE. However, to be counted, the MWDBE Joint Venture must perform a Commercially Acceptable Function on the contract.

**C. Contract Documents**

The bidding documents and the contract documents for Goal Oriented Contracts for which an MWDBE participation level has been established shall contain a provision detailing the purposes and objectives of the City's MWDBE Ordinance and shall incorporate by reference the Ordinances and/or the then-current Motion establishing MWDBE goals. Regulated Contracts which are determined to have significant subcontracting potential for which an MWDBE participation level has been established shall contain contractual provisions (and proposal provisions if submitted for proposals) requiring the Contractor to meet or exceed the determined MWDBE participation level for that contract

or to establish that it has made Good-Faith Efforts, as defined herein, to do so and that notwithstanding such efforts was unable to meet or exceed the determined participation levels. An MWBE contractor is required to meet the MWBE participation goal on a Goal Oriented Contract, with subcontracts, although 100% of the participation of the Contractor may be counted. An MWBE contractor on a Regulated Contract need not meet an MWBE goal with subcontractors. A DBE is not required to meet a DBE goal with subcontractors.

#### D. Reporting of MWDBE Participation

##### 1. Construction

It is the responsibility of the Aviation, Public Works and Engineering, Housing and Community Development, and Planning and Development Departments to compile and update monthly a report indicating the total dollar value of construction contracts awarded during the previous month. Each report shall include the project name and/or number, the name of the prime contractor (with a special notation for MWDBE primes), the total amount of the contract, any MWDBE subcontractors, the subcontract amount, and the ethnicity and sex of each MWDBE. The report should also include the total of all contracts awarded and the total awarded to certified firms. Each report should be submitted by the 15th of the following month.

##### 2. Purchasing and Non-Professional Services

It is the responsibility of the Finance and Administration Department Materials Management Division to compile and update monthly a report indicating the total dollar value of contracts, formal and informal bids, and purchase orders awarded during the previous month. This report will cover dollars awarded for the supply of goods and non-professional services. Each report shall include separately a summary of dollars awarded to non-MWDBE and MWDBE prime contractors and vendors, as well as detail of all awards and procurement activity. Each report should be submitted by the 15th of the following month.

##### 3. Professional Services

It is the responsibility of the Legal Department and the Department of Public Works and Engineering to compile and update monthly a report detailing and summarizing professional services contracting activity. Each report shall include the project name and/or number, the name of the prime contractor (with a special notation for MWDBE primes), the total amount of the contract, any MWDBE subcontractors, the subcontract amount, and the ethnicity and sex of each MWDBE. The report should also include the total of all contracts awarded and the total awarded to certified firms. Each report should be submitted by the 15th of the following month.

#### 4. Aviation

It is the responsibility of the Aviation Department to compile data for reporting to the FAA on DBE contract participation in all three categories described above, and in leasing.

### 6.2 The Affirmative Action and Contract Compliance Office

#### A. Certification

It is the responsibility of the AAD to certify, re-certify, deny or remove certification of MWBEs, as set forth in Section 7 of these procedures.

#### B. Directory

The City neither warrants or endorses the competency of any of the MWDBEs named therein. Contractors are not limited to the City's Directory as a source of subcontractors, but credit for MWDBE utilization shall not be given except where such firms or subcontractors utilized have been certified in accordance with the procedures established by the AAD.

The AAD maintains and distributes the Directory of certified MWDBEs, specifying the categories of contracting capability represented. The Directory is distributed to contract-awarding departments and is updated monthly. Prime contractors and other interested parties may obtain the directory in whole or in part to access certified MWDBEs available as subcontractors and/or suppliers and/or joint ventures. The Directory will include:

1. Names, addresses, contact persons, and telephone numbers of certified MWDBEs;
2. The classification of the certification-- Minority Business Enterprise (MBE), Minority Disadvantaged Business Enterprise (MDBE), Women Business Enterprise (WBE), Women Disadvantaged Business Enterprise (WDBE), Minority Women Business Enterprise (MWBE), Minority Women Disadvantaged Business Enterprise (MWDBE), or Joint Venture (JV).
3. The areas of specialization represented by the MWDBEs.
4. Instructions and resources to prime contractors on Directory utilization, and on City MWDBE procedures.
5. Minority & Women focused media

C. Records and Reports

1. The AAD maintains records to identify and assess MWDBE contract awards, prime contractors' and Departments' progress in achieving MWDBE contract goals and annual goals. The records kept by the AAD contain:
  - a. Department reports, specified in Section 5.C.
  - b. Reports submitted by Prime Contractors of all MWDBE subcontracts and invoices as they are executed. Reports are due on the 15th of the month following the activity.
2. The AAD submits bi-monthly reports on City-wide MWDBE contract activity for all construction, purchasing, and professional services awards to the Mayor, City Council, and Department Directors.

D. Educational Programs

The AAD develops educational programs for, and otherwise assists, MWDBEs to compete effectively for City contracts.

1. The AAD conducts weekly precertification workshops for all prospective registrants.

2. Monthly seminars/workshops are conducted by the AAD. Topics covered may include, and without limitation: financial planning, the bidding process, marketing, bonding, and insurance. Several of the seminars/workshops may highlight majority firm representatives and/or MWDBEs as participant-leaders.
3. Subcontractors will be encouraged to participate in training efforts directed toward maximizing the effectiveness and capacity of MWDBEs as primes or subcontractors.

E. Complaint or Suggestion Process

The AAD will receive and review complaints and suggestions concerning the MWDBE program in accordance with the following procedure:

1. The complainant will arrange to meet with the Director or his/her designee to discuss the complaint or suggestion.
2. The Director will attempt to resolve complaints within thirty working days.
3. When the AAD receives a complaint alleging that a certified firm is ineligible, the AAD will:
  - a) send a written notice to the firm outlining the complaint, and summarizing the grounds on which the firm's eligibility is being questioned.
  - b) institute an investigation based on the complaint, reviewing all available information. The AAD has the right to request additional documents and conduct a field investigation.
  - c) send letter specifying the outcome of the investigation

F. Procedures

It will be the responsibility of the AAD to establish procedures for the implementation of Ordinances 84-1309 and 89-226. All procedures are to be narrowly drawn to attain the purposes of the Ordinances without

unduly limiting non-minority, -women, or -disadvantaged businesses.

#### G. Good Faith Efforts

In accordance with Section 4 of these procedures, the Director will review documentation of the efforts of apparent low bidders who attempt, but fail, to meet or exceed the MWBE participation goal assigned to a contract. The Director will submit a memo to the contract-awarding department as to whether the bidder has met the City's Good Faith Efforts standard.

#### H. Capacity Study/Goals Review

Based upon a review of data submitted annually by affected City Departments, the AAD shall annually, identify three percentage figures which as closely as possible represent the ratio of the prior year's measured capacities of local MWBEs to do business in 1) the supply of goods and non-personal or non-professional services, 2) the performance of personal or professional services, and 3) construction, to the prior year's total local business community capacity to do business in each of the three-named fields of City contracting. DBE goals are set by ordinance adopted by City Council under standards set by the Federal government.

### 6.3 City Council

Based upon the measured capacities in Section 6.2,H above, City Council shall establish annual City-wide percentage goals for the upcoming year for City contracting with MWDBEs in each of the three named categories described in Section 6.2H above. Such percentage goals shall exceed in a reasonably-achievable amount, the identified prior year's MWDBE capacity percentages so as to encourage a steady growth and expansion of MWDBEs. These percentage goals shall be established during the first quarter of each calendar year, and applicable to the next fiscal year. The City Council shall also approve the implementation of DBE goals set by the Federal government.

## 7. PROCEDURES

## 7.1 Certification

### A. Overview

1. In the certification investigation, the Contract Compliance Officers (CCOs) are looking for evidence of an independent, currently-functioning business which is owned, managed, and controlled by a US citizen or permanent resident Minority, Woman or Socially Disadvantaged entrepreneur. Note - For City of Houston certification, the owner/applicant must have the expertise to perform the functional mission of the business, and must hold all applicable permits, registrations, and licenses in his/her own name.
2. To ensure that only participation by businesses that are owned, controlled and managed in both form and substance by minorities, women, or socially or economically disadvantaged persons, including Joint Ventures, is counted towards the goals set forth by the Houston City Council, businesses must be certified by the AAD.
3. Any business that wishes to be certified will be required to apply to the AAD for such certification and will complete all forms and provide all documentation required for such application. Failure of an applicant to comply with requests for information or documentation may result in a determination of certification status based on the information supplied or suspension of the application.
4. Throughout the following steps, accurate, insightful documentation is essential. Files can be requested by attorneys for litigation, the Mayor, Council, or the Legal Department, as well as by citizens through Open Records requests. Each file should contain all necessary forms and documents which objectively, and professionally, justify the determination to certify or deny.

### B. Precertification Workshop

The pre-certification workshops are offered weekly at 2:00 p.m. on Thursdays. The purpose of the workshops is:

1. to provide information about the City's program, its policies and eligibility criteria, to give step-by-step instructions on how to complete the application form, and to stress the importance of providing the necessary documentation;

2. to introduce information on doing business with the City; and
3. to save staff time by providing assistance to applicants in groups rather than on an individual basis.

This thorough workshop presentation eliminates the need for many questions and screens out those who do not qualify. (See Attachment 1 - Precertification Workshop Presentation)

#### C. Screening

When the applicant submits the application packet, staff reviews it to determine that all documentation has been provided for a thorough and complete investigation. The effective date of the application is the date when **ALL REQUIRED DOCUMENTATION** has been submitted -- not the date of submission of an incomplete packet.

Upon receipt of a folder for review, the CCO:

- 1) documents the day the file was received and date of Screening;
- 2) completes Application Screening checklist (attached);
- 3) documents what items are missing, and the action taken;
- 4) sends applicant a post card (see attachment) listing the missing documents. If documents are not submitted in the required time, the applicant is sent a letter notifying him/her of closing of the file;
- 5) if the folder is complete, the file is stamped "OK to Proceed" and assigned for a Desk Audit.

#### D. Desk Audit

Upon receipt of folder for review, the CCO:

- 1) logs in the file, with all necessary information;
- 2) begins file documentation with the date and "File is received for Desk Audit;"

- 3) reviews the application to make sure all questions are answered;
- 4) conducts Desk Audit
- 5) submits the folder and financial documents for Financial Review.
- 6) after Financial Review is complete, writes Desk Audit Summary, making sure to note concerns for Field Officer.

E. Financial Review

The financial officer reviews application and documentation, with particular attention to Financial Statements (Balance Sheet and Income Statement) and Income Tax Returns to assure consistency with application. The financial review confirms a functioning entity, verifies structure (sole-proprietorship, corporation, etc.), and independence.

Specific items examined and analyzed:

Balance Sheet:

- Inventory (if supplier)
- Physical Assets (equipment owned)
- Notes Payable - for discussion at field audit
- Equity - as aid to confirm ownership

Income Statement:

- Sub-contracting costs
- Depreciation - asset ownership
- Rental expenses
- Revenue identification

Tax Returns

Structure

When review is completed, the folder is ready for Desk Audit Summary. The CCO highlights questions to be asked at the Field Audit. Questions arising through the Financial Review are resolved either as part of Desk Audit or assigned to the Field Audit.

F. Field Audit

When file is ready for Field Audit, the CCO:

- 1) begins file documentation with the date and "File is received for Field Audit;"
- 2) reviews the file thoroughly prior to leaving the AAD and goes to the business address;
- 3) conducts the Field Audit, documenting date of Field Audit in file;
- 4) completes write-up, specifically outlining evidence of ownership, management (including functional mission and license requirements), control, independence, commercially useful function, and type of business. CCO clarifies discrepancies on services or products sold, and determines whether the company is certifiable for all, or just a portion of the applicant's request.

#### G. Recommendation

1. The CCO reviews the Desk Audit, Financial Review, and Field Audit notes and makes a recommendation to approve or tentatively deny certification.
2. If recommending certification, the CCO completes Directory Input Sheet and DBE eligibility form. (If recommending tentative denial, a Directory Input Sheet is not completed.)
3. CCO documents the date of the review, and submits file to Committee for decision.

#### H. Committee Review

Following completion of the Field Audit, the file is submitted to a member of the Review Committee (the Manager of the M/WBE section, the Chief Financial Officer, and a senior staff member). That committee member will review the entire file and will concur or disagree with the CCO's recommendation. He/she may also request that the other Committee members review the file and meet as a group to discuss it

and make a determination. Where a decision cannot be rendered with the available information, the file may be returned to a CCO for further clarification or a Special Investigation. The Director may also be requested to meet with the Committee to discuss the file. After any further investigation or clarification, the file is returned to the Committee.

The MWDBE Review Committee, upon completion of its review process, concurs or disagrees with the CCO's recommendation.

a. Certification

1. If certified, the business is listed by capability and alphabetically in the City's monthly Directory of MWDBEs for one year.
2. Certification by the AAD relates solely to the Ownership, Management, Control and Independence of the business, and not to its ability to perform work on a specific contract.
3. The AAD will issue seven types of certification:
  - i. Minority Business Enterprise (MBE) for businesses Owned, Managed and Controlled by one or more Minority persons.
  - ii. Minority Disadvantaged Business Enterprise (MDBE) for businesses Owned, Managed and Controlled by one or more Minority persons, and grossing less than \$16,015,000 during the last three calendar years.
  - iii. Women Business Enterprise (WBE) for businesses Owned, Managed and Controlled by one or more Women.
  - iv. Women Disadvantaged Business Enterprise (WDBE) for businesses Owned, Managed and Controlled by one or more Women, and grossing less than \$16,015,000 during the last three calendar years.
  - v. Minority and Woman Business Enterprise (MWBE) for businesses Owned, Managed, and Controlled by Minority women.
  - vi. Minority and Woman Disadvantaged Business Enterprise

(MWDBE) for businesses Owned, Managed, and Controlled by Minority women and grossing less than \$16,015,000 during the last three calendar years.

- vii. Joint Venture (JV) for businesses between Minority/Majority or Minority/Minority enterprises functioning jointly as prime contractor, and where a Minority person or Woman Owns, Manages, and Controls the Joint Venture.

b. Tentative Denial

1. Where the Committee determines that Ownership, Control and Management are not real, substantial and continuing and/or that the Management and Control do not go beyond the pro forma ownership of the firm as reflected in its ownership documents, certification will be tentatively denied and the business will be notified in writing. AAD submits a very specific letter of denial.
2. The tentative denial of certification shall be final for any contract which is pending and for which the applicant is being considered.
3. If tentatively denied, the applicant has the following recourse:
  - a) Appeal to the AAD's Review Committee. In fourteen days after the tentative denial, the applicant may submit corrections to the original submission to the Review Committee. Changes of circumstances occurring after the application is filed are not accepted.
  - b) Appeal to the Department of Transportation relative to Disadvantaged Business Enterprise status for DOT-assisted contracts;
  - c) If the tentative denial becomes final after appeal to the AAD or Department of Transportation, the AAD submits a general letter of denial. The applicant may reapply six months from date of denial or, if applicable, six months from date of DOT denial.
  - d) The Director signs all certification decision correspondence, but does not review all files.

e) During any appeal or challenge, the decision of the Committee will be in effect.

4. A business that is denied certification may not reapply for a period of six months from the date of denial.

I. Recertification

1. Support staff mails Recertification applications to companies 60 days prior to the expiration date. If a significant number of applications have not been received by the first week of the expiration month, reminder calls are made.

2. CCO reviews the application to determine if there are changes in ownership, management, or control. If so, a Field Audit may be necessary. **Note** - Field Audits may also be conducted at random, or if one has not been conducted in the last two to three years.

3. The CCO contacts contract references to verify that the business is currently functioning within the scope of its certification. It is not necessary to contact the contract references if one or more of the following conditions exist:

a) Company has been certified with the City for 3 or more years and is currently functioning.

b) Company is owned, managed, and controlled by one individual.

c) Company is 100% minority/woman owned and operated.

d) Required license is held by applicant

6. The CCO reviews tax returns for DBE eligibility, and documents all activity on the Recertification Review Form.

J. Revocation

The Director may, for cause, revoke the certification of any firm listed in the Directory, for a period of up to five years. A firm's certification will be removed for reasons which include but are not limited to:

- 1) the business entity has changed to the extent that the business is no longer Owned, Controlled and Managed by Minorities or Women as required by the Ordinance and these procedures;
- 2) the business is no longer an on-going business entity;
- 3) discovery of false or misleading information provided AAD during the original application process;
- 4) learning that the company's name was submitted toward satisfying the MWBE goal for a scope of work for which the company is not certified; or the company has brokered or passed-through supplies orders, wherein the MWDBE's contract includes dollars for supplies which would only be ordered from a distributor or manufacturer; or the company hired members of the prime contractor's workforce and misrepresented them as his/her own employees; or the company's name was submitted toward satisfying the MWBE goal, but did not actually perform, through the MWDBE's own workforce, the exact scope of work submitted in the Prime's Contract documents; or the company requested or allowed a Prime Contractor to "advance" dollars on government contracts or otherwise meet payroll for the MWDBE's employees;
- 5) such other reasons that the AAD determines reasonable indications that the MWDBE has fallen below the standard of initial certification.

#### K. Sanctions

A business whose certification is revoked for cause may not reapply for certification for a period of up to five years, to be determined by the Director on the basis of the severity of the infraction that caused the revocation; as well as any subsequent restructuring of the business.

#### 7.2 Compliance

The AAD will monitor contractor compliance with MWDBE contract provisions in the following manner:

1. Utilizing the monthly reports from the Public Works and Engineering,

Legal, Finance and Administration, and Aviation departments, or Requests for Council Action (RCA's), letters will be sent to a) Prime Contractors who have MWDBE subcontractors to verify the subcontractors and inform the Primes of monthly reporting requirements, as well as other utilization-related information; and b) the MWDBE subcontractors, to verify the award of the subcontract and make the certified firms aware that the AAD stands ready to assist them.

2. When the Monthly Utilization Reports are received from the Primes detailing the amount spent with MWDBEs, letters are sent to the MWDBEs to verify the amounts paid. Discrepancies are handled by contacting the Prime and the sub until the issue is resolved.
3. Prime contractors not meeting the MWDBE goal will be required to submit a plan for goal compliance by project completion.
4. At the end of construction projects, the AAD will rate the Contractor's MWDBE utilization (Outstanding, Good, or Unsatisfactory). Unsatisfactory ratings may be appealed to the MWDBE Division Manager and may be used in determining the responsibility of the contractor for future contract awards.