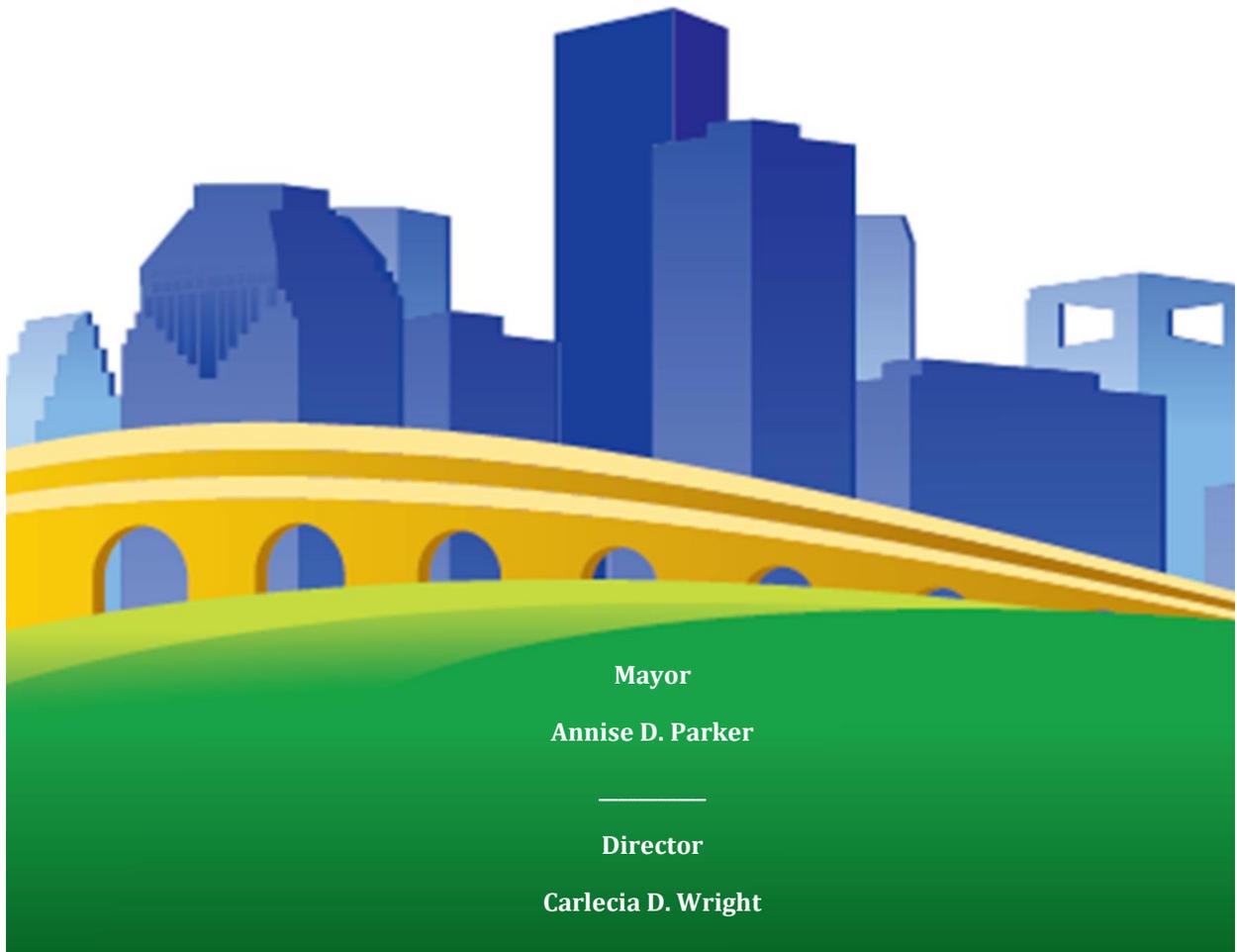


CITY OF HOUSTON
OFFICE
of
BUSINESS OPPORTUNITY

Policies and Procedures Manual: Part I

**Certification
Hire Houston First
External Affairs & Outreach
Reporting**

Approved by the City Attorney, December 23, 2015



Mayor

Annise D. Parker

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Director

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Table of Contents

I. AUTHORITY	3
II. PURPOSE	3
III. SCOPE	4
IV. DEFINITIONS	4
V. CERTIFICATION	8
A. APPLICATION SCREENING.....	9
B. DESK AUDIT	9
C. FINANCIAL REVIEW.....	9
D. FIELD AUDIT	10
E. CERTIFICATION APPLICATION REVIEW	10
1. OWNERSHIP	10
2. MANAGEMENT AND CONTROL	10
3. INDEPENDENCE	11
4. FUNCTIONAL MISSION.....	11
5. SIZE OF BUSINESS ENTERPRISE	11
6. EVIDENCE OF CURRENTLY FUNCTIONING BUSINESS	11
7. GEOGRAPHIC SCOPE.....	11
F. CERTIFICATION OFFICER RECOMMENDATION	12
G. COMMITTEE REVIEW.....	12
1. APPEALS PROCESS	12
2. CERTIFICATION DIRECTORY.....	13
H. TRIANNUAL CERTIFICATION ANNUAL UPDATES	13
I. DECERTIFICATION.....	13
VI. MEMORANDA OF UNDERSTANDING FOR CERTIFICATION	14
VII. HIRE HOUSTON FIRST PROGRAM	14
A. ELIGIBILITY REQUIREMENTS	15
B. BUSINESS STRUCTURES ELIGIBLE FOR DESIGNATION	15
C. PREFERENCE GIVEN TO CITY BUSINESS (CB) AND/OR LOCAL BUSINESSES (LB).....	15
1. PURCHASE OF PERSONAL PROPERTY/GOODS (CITY BUSINESS PREFERENCE ONLY).....	15
2. PURCHASE OF SERVICES(LOCAL BUSINESS PREFERENCE ONLY).....	16
D. HIRE HOUSTON FIRST PROGRAM EXCEPTIONS.....	16
E. CONTRACTING DEPARTMENT RESPONSIBILITIES AND ENFORCEMENT	17
F. HIRE HOUSTON FIRST APPLICATION PROCESS	17
1. INTAKE PROCESS.....	17
2. APPLICATION REVIEW.....	17
3. RECOMMENDATION	17
4. DENIALS	17
5. APPEALS.....	18
VIII. EXTERNAL AFFAIRS AND OUTREACH	18
A. TEXAS PUBLIC INFORMATION ACT (TPIA).....	19
B. BUSINESS DEVELOPMENT MANAGER AND VENDOR SERVICES.....	20
C. CUSTOMER SERVICE.....	20

D.	SPEAKER REQUEST PROCESS.....	20
E.	OBO SOLUTIONS CENTER.....	21
F.	OBO ADVISORY BOARD	21
G.	CONTRACT COMPLIANCE COMMISSION.....	22
H.	CITY COUNCIL LIAISON	22
IX.	OBO PERFORMANCE REPORTING STRATEGY	23
A.	PROGRESS OF CITY DEPARTMENTS	23
B.	HIRE HOUSTON FIRST REPORTING	23
X.	OPEN RECORDS.....	23
XI.	PROCEDURAL AMENDMENTS.....	24

I. AUTHORITY

The City of Houston Code of Ordinances, Chapter 15, Articles II, V, VI and XI, as amended, authorize the creation of the Minority, Women, Small Business Enterprise Program (MWSBE) and Persons with Disabilities Enterprise (PDBE) and Hire Houston First programs. As required in the Code of Ordinances, the Office of Business Opportunity (OBO) has established procedures for the implementation of Chapter 15, Articles II, V, VI and XI.

Under the Texas Unified Certification Program, OBO processes certifications for the United States Department of Transportation Disadvantaged Business Enterprise and Airport Concessionaire Disadvantaged Business Enterprise programs pursuant to Title 49 of the Code of Federal Regulations, Parts 23 and Part 26. In addition, as a recipient and sub-recipient of U.S. DOT funds, the Office of Business Opportunity monitors U.S. DOT contracts in compliance with Title 49 of the Code of Federal Regulations, Parts 23 and Part 26.

II. PURPOSE

It is the policy of the City of Houston to stimulate and encourage the full participation of local MWSBEs and PDBEs in all phases of procurement activities by affording them a full and fair opportunity to compete for City contracts at all levels. The Office of Business Opportunity (OBO) has been charged with enforcing the City's policy.

OBO was established with the purpose of creating a competitive and diverse business environment in the City of Houston by promoting the growth and success of small businesses, with special emphasis on historically underserved groups by ensuring their meaningful participation in the government procurement process. OBO has three key objectives:

- 1) Educate businesses;
- 2) Connect businesses to opportunities; and
- 3 Assist businesses with growing their capacity.

OBO strives to ensure that these objectives are achieved by:

- 1) Maintaining a program that attracts qualified certification candidates;
- 2) Administering a reputable certification process that is easy to complete and collects all relevant information;
- 3) Maintaining a directory of certified companies that regularly and successfully participate on City contracts;
- 4) Ensuring that Prime contractors are consistently meeting or exceeding utilization goals on contracts; and
- 5) Encouraging department-level accountability for achieving substantial progress in ensuring access to opportunities for small and historically underutilized groups.

III. SCOPE

The procedures, described herein, apply to all City departments (unless expressly excluded), Prime Contractors and all Certified local firms doing business with the City of Houston. Local firms are those business entities with a significant business presence in the metropolitan statistical area that includes the City of Houston.

IV. DEFINITIONS

Armed forces mean the United States Army, Navy, Air Force, Marine Corps, or Coast Guard.

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.

City means a location within the incorporated limits of Houston, Texas.

Commercially Useful Function means a discrete task or group of tasks, the responsibility for performance of which shall be discharged by the MWSBE by using its own forces or by actively supervising on-site the execution of the tasks by another entity for whose work the MWSBE is responsible. In determining whether a MWSBE is performing a commercially useful function, factors including but not limited to the following shall be considered: (1) whether it has the skill and expertise to perform the work for which it is being utilized and possesses all the necessary licenses; (2) whether it is in the business of performing, managing or supervising the work for which it has been certified and is being utilized; and (3) whether it is performing a real and actual service that is a distinct and verifiable element of the work called for in a contract. MWSBEs shall be responsible for performing more than fifty percent of the task or group of tasks being counted toward the applicable participation goal unless subcontracting such task or group of tasks in excess of fifty percent has been expressly authorized via a waiver by OBO.

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, unless the lease conveys real property.

Contract Compliance Commission is a panel composed of five Houston-area citizens, appointed by the Mayor, who presides over selected City contract related issues, with the duties and powers as specified in Chapter 15 of the Code of Ordinances.

Contracting Department means a City department who is the procurer of goods or services on a particular contract or the City department or City division responsible for managing a multi-department contract.

Contractor means any person or legal entity providing goods, labor, or services to the City by contract for profit.

Contract Specific Goals means the subcontracting goals for MBE and WBE participation established for a particular contract based on the divisibility of the contract and the availability of MBE and WBE firms to perform that divisible work.

Chronic or permanent character shall mean, with respect to a medically determined physical or mental impairment, that the impairment is medically anticipated to be of a continuing nature, with no present prognosis of complete or substantially complete recovery through the passage of time and/or the application of presently available medical treatment or rehabilitative therapy.

Disabled veteran means an individual who served on active duty in the armed forces, separated from the armed forces under honorable conditions, and has a disability rating letter issued by the Department of Veterans Affairs establishing a service-connected disability rating between zero and one-hundred percent, or a disability determination from the Department of Defense.

Director means the head of a City of Houston department.

Directory means either the online directory of MWSDBE and PDBE certified companies or the online directory of DBE and ACDBE companies certified through the Texas Unified Certification Program.

Established business enterprise means a MWSBE or any business applying for certification as a MWSBE that, by virtue of its size meets or exceeds the standards promulgated by the U.S. Small Business Administration for that category of business, as determined by the procedures described in section 15-87(a) of Chapter 15.

Functional Mission means the types of core goods or services a business provides. For certification purposes, the applicant owner(s) must be able to perform the business' functional mission.

Goal-oriented contract means any, agreement or other undertaking anticipated for construction work in excess of \$1,000,000.00 and for the supply of goods or non-personal or nonprofessional services in excess of \$100,000.00 for which competitive bids are required by law and the initiating City department, in consultation with OBO, determines has significant subcontracting potential in fields in which there adequate numbers of known MWSBEs to compete for and perform the necessary subcontracted services.

Good Faith Efforts shall refer to steps taken to achieve a MWSBE goal or other requirements which, by their scope, intensity and usefulness demonstrate a bidder's responsiveness to fulfill the business opportunity objective prior to the award of a contract and a contractor's responsibility to put forth measures to meet or exceed a MWSBE goal throughout the duration of the contract.

Joint venture means an association of a MWSBE and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the MWSBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Local means the geographical area or region identified as the metropolitan statistical area that includes the City of Houston, as defined by the United States Office of Management and Budget within the Executive Office of the President of the United States, as amended.

Major life activities shall mean functions significantly affecting a person's quality of life, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

Medical doctor shall mean an individual licensed to practice medicine in the State of Texas.

Medically determined shall mean determined by a medical doctor.

MWSBE means, collectively, MBEs, WBEs, and SBEs.

Minority Business Enterprise or **MBE** means a business which is:

- a. A sole proprietorship in which the owner is a minority person who owns, controls and manages the business; or
- b. A corporation in which at least 51 percent of the stock or of the assets of such corporation is owned, controlled and managed by one or more minority persons; or
- c. A partnership in which at least 51 percent of the assets of such partnership is owned, controlled and managed by one or more minority persons; or
- d. Any other business or professional entity in which at least 51 percent of the assets in such business or professional entity is owned, controlled and managed by one or more minority persons; or
- e. Any entity in which at least 51 percent of the assets of such entity is owned, controlled and managed by one or more minority persons and one or more women and such minority person; or
- f. A business which has been certified as an MBE by OBO under any other recognized MBE program.

Minority person means a citizen or legal resident alien of the United States who is:

- a. Black American, which includes persons having origins in any of the black racial groups of Africa
- b. Hispanic American, which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- c. Asian-Pacific American, which includes persons having origins from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, the Federated States of Micronesia, or Hong Kong, or the region generally known as the Far East;
- d. Native American, which includes persons having origins in any of the original peoples of North America, American Indian, Eskimo, Aleut, Native Hawaiian; or
- e. Subcontinent Asian American, which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka.

Origin or descent can be regarded as the ancestry, nationality group, lineage or country in which the person or persons' parents or ancestors were born before their arrival in the United States.

Owned, controlled and managed

Ownership: means that the one or more minority persons or women who own the requisite interests in or assets of a business applying for certification possesses equivalent incidents of such ownership, including an equivalent interest in profit and loss, and has contributed an equivalent percentage of capital and equipment to the business. Contributions of capital and equipment must be real and substantial.

Ownership shall be measured as though not subject to the community property interest of a spouse, if both spouses certify in writing that the nonparticipating spouse relinquishes control over his or her community property interest in the subject business (but by doing so is not required to transfer to his or her spouse his or her community property ownership interest or to characterize the property as the separate property of the spouse).

As it relates to controlled and managed: The one or more minority person or woman owners shall have recognized, ultimate control over all day-to-day business decisions affecting the MBE or WBE and shall hold a title commensurate with such control. Such ultimate control shall be known to and at least tacitly acknowledged in day-to-day operations by employees of the business and/or external parties.

In instances where expertise is relied upon to demonstrate ownership, control, and management, it must be shown that the expertise is: (1) in a specialized field; (2) in an area critical to the firm's operation and performance of a commercially useful function; (3) critical to the firm's continued success; and (4) documented in the records of the firm, including but not limited to documentation showing the particular expertise and its value to the firm. Additionally, the individual whose expertise is relied upon must have a significant financial investment in the business.

Personal property means any movable or intangible thing that is subject to ownership and not classified as real property.

Person with a disability shall mean a service connected disabled veteran or a citizen or legal resident alien of the United States who has a presently existing, medically determined physical or mental impairment of a chronic or permanent character which substantially limits one or more of his or her major life activities. The term persons with disabilities shall not include individuals currently engaging in the illegal use of drugs or currently engaging in the abuse of alcohol. However, the term persons with disabilities does not exclude individuals who have successfully completed a supervised drug or alcohol rehabilitation program and are no longer engaging in the illegal use of drugs or the abuse of alcohol and who otherwise qualify as persons with disabilities under the criteria set forth in this article.

Persons with Disabilities business enterprise or *PDBE* shall mean a business that is:

- a. A sole proprietorship in which the owner is a person with a disability who owns, controls and manages the business; or
- b. A corporation in which at least 51 percent of the stock or of the assets of the corporation is owned, controlled and managed by one or more persons with a disability; or
- c. A partnership in which at least 51 percent of the assets of the partnership is owned, controlled and managed by one or more persons with a disability; or
- d. A joint venture in which at least 51 percent of the interests of the joint venture is owned, controlled and managed by one or more persons with a disability; or
- e. Any other business or professional entity, in which at least 51 percent of the assets in the business or professional entity is owned, controlled and managed by one or more persons with a disability.

Prime Contractor shall mean the party who directly contracts with City of Houston to provide the goods, labor or services in fulfillment of terms of a contract with the City of Houston.

Regulated contract means

1. any contract, agreement or other undertaking, for which competitive bids are not required by law, typically professional services in nature;
2. any contract that is not covered by an MBE/WBE program of any the state or federal agency having jurisdiction; and
3. any contract the recommending City department has determined, in consultation with the Director of OBO either: (a) has significant subcontracting potential and sufficient MWSBE to perform those services or (b) has sufficient MWSBEs who can competitively function as prime contractors.

Small Business Enterprise or *SBE* means a firm whose gross revenues or number of employees, averaged over the past three years, inclusive of any affiliates as defined by 13 CFR Section 121.103, does not exceed the size standards defined in Section 3 of the Federal Small Business Act and applicable Small Business Administration regulations related to the size standards found in 13 CFR Part 121. The term shall also include a certified minority/women business enterprise defined in this Code.

Subcontractor means any business providing goods, labor or services to a contractor if such goods, labor or services are procured or used in fulfillment of the contractor's obligations arising from a contract with the City of Houston.

Woman means a person who is a citizen or legal resident alien of the United States and who identified their gender as female.

Women Business Enterprise or *WBE* means a business which is:

- a. A sole proprietorship in which the owner is a woman who owns, controls and manages the business; or
- b. A corporation in which at least 51 percent of the stock or assets of such corporation is owned, controlled and managed by one or more women; or
- c. A partnership in which at least 51 percent of the assets of such partnership is owned, controlled and managed by one or more women; or
- d. Any other business or professional entity in which at least 51 percent of the assets in such business or professional entity is owned, controlled and managed by one or more women; or
- e. Any entity in which at least 51 percent of the assets of such entity is owned, controlled and managed by one or more minority persons and one or more women; or
- f. A business which has been certified as a WBE by OBO under any other recognized WBE program.

V. CERTIFICATION

Certification is not required for a business enterprise to participate in the City's contracting process; however, certification is required to credit the participation of minority, women-owned or small businesses on City contracts with goals and for those businesses to be counted towards the overall citywide goals. Certified firms used for MWSBE goal credit must be certified at the time of bid or proposal submission date.

OBO's certification process ensures that each successful applicant-firm is an independent, currently functioning business which is owned, managed, and controlled by U.S. citizen(s) or permanent resident(s) who are Minority or, Women entrepreneurs or that the business is "Small" as defined by

the U.S Small Business Administration. In addition, the minority or woman owner(s)/applicant(s) must have the expertise to perform the function for which the business seeks certification, and must hold all applicable permits, registrations, and licenses in his/her own name. Any business seeking certification must provide all documentation required. Failure to comply with requests for additional information or documentation may result in a determination to reject or deny an application.

OBO provides a weekly pre-certification workshop at its location. The weekly pre-certification workshops provide an invaluable opportunity for OBO to interface with potential applicants and distribute information about the City's business enterprises program, its policies and eligibility criteria, give instructions on how to complete the certification application form and the importance of providing the necessary documentation, and provide general information on doing business with the City. Businesses seeking to apply for certification and/or get additional information about certification may do so at www.houstontx.gov/obo.

A. APPLICATION SCREENING

OBO staff reviews submitted application to determine completeness. Upon receipt of an application, the Certification Intake Staff will:

1. Document the day the file was received and date of screening;
2. Complete the Application Screening checklist; and
3. Document which items are missing, if any, and send applicant a notification letter listing the missing documents.

Complete applications will be assigned to a Certification Officer to conduct a desk audit financial review, and field audit. *Typically, complete applications are processed within 60 days.* Incomplete applications will be rejected and returned to applicants. The applicant can re-apply any time after 30 days from the date the application was rejected.

B. DESK AUDIT

The Certification Officer conducts a desk audit for each application. The audit consists of calling references provided by the applicant to verify the type of work performed and to determine who the participating owners are in the firm, as well as who owns/manages/controls the firm.

C. FINANCIAL REVIEW

The Certification Officer conducts a financial review for the purpose of determining whether a firm is a functioning entity and verifies its independence and size.

Documentation for Financial Review includes, but is not limited to:

1. Proof of Ownership
2. Tax Returns
3. Equity/Capital Contribution – as aid to confirm ownership
4. Income Statements
5. Balance Sheet
6. Inventory (if supplier)
7. Physical Assets (equipment owned)

8. Notes Payable – for discussion at field audit
9. Depreciation – asset ownership
10. Rental expenses

D. FIELD AUDIT

The Certification Officer conducts a field audit at applicant’s local office, at which time an interview with the applicant takes place to discuss ownership, management, control, independence, and type and function of business. At the conclusion of interview, the applicant reviews field audit written responses and is given the opportunity to acknowledge and sign off on all responses documented by the Certification Officer.

E. CERTIFICATION APPLICATION REVIEW

The Certification Officer reviews the entire application, which includes the notes from the desk audit, financial review, and field audit. The Certification Officer assesses whether the applicant has the requisite ownership interest and management and control of the business, whether the business is functioning independent of other businesses, and whether the applicant can perform the functional mission of the business, including possessing all applicable permits, registrations, and licenses in the applicant owner(s) name. In assessing whether the applicant meets the requirements for each of the criteria listed above, the Certification Officer examines the application for the following – note that these lists are not exhaustive of all forms of documentation requested or submitted and taken into consideration by OBO during the certification application review process.

1. OWNERSHIP

- Consideration/Contributions (what capital (i.e. money/resources) were used to secure ownership interest in the business seeking certification)
- Compensation/Profit Loss
- Tax Returns (verify ownership, salary, and share in profit & loss)
- Ownership Documents (i.e. stocks certificates, stock transfer ledger, assumed name certificate, partnership agreement, and LLC agreement)
- Trusts

2. MANAGEMENT AND CONTROL

- Corporate Documents (i.e. bylaws, LLC operating agreement, partnership agreement)
- Checks (signature authority, restrictions, if two signatures required etc.)
- Financial (corporate authorization resolution form, notes payable from financial statements, bank signature cards, company loan agreements, promissory notes, etc.)
- Reference checks (Desk Audits)
- Trusts

3. INDEPENDENCE

Independence means 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. While OBO may consider other factors, the following factors are typically considered in assessing independence:

- Office Space, equipment, employee sharing etc.
- Contracts (exclusive)

4. FUNCTIONAL MISSION

Functional Mission means the types of core goods or services a business provides. The applicant owner(s) must have the necessary experience, expertise, credentials and regulatory authority to conduct the type of business for which the business is certified. The following non-exhaustive factors are considered in assessing functional mission:

- Experience and education in the specific products or services the business provides
- Licensure/Permit, where required to provide the products or perform the services of the business
- Percentage of work subcontracted

5. SIZE OF BUSINESS ENTERPRISE

- Gross revenue, number of employees, etc.
- If an affiliation exists, examine gross receipts of the non-applicant affiliated firm(s).

6. EVIDENCE OF CURRENTLY FUNCTIONING BUSINESS

- Invoices and proof of payment for all areas requested for certification
- If appropriate, evidence of inventory

7. GEOGRAPHIC SCOPE

- Firm for which one or more employees is regularly based in the local area
- Established place of business in the local area
- Local office has a substantial role in the company's performance of a commercially useful function.

F. CERTIFICATION OFFICER RECOMMENDATION

After a thorough review of the factors discussed above, the Certification Officer makes a recommendation to the Certification Review Committee to approve or tentatively deny certification.

G. COMMITTEE REVIEW

The Review Committee consists of the Certification Manager and a senior staff member.

If the Certification Officer recommends approval and the Review Committee concurs, the applicant(s) is notified of the approval and is listed in the Certification Directory. Formal certificates of approved certification type(s) will be issued shortly after the written decision to certify. If the Certification Officer recommends denial and the Review Committee concurs, the applicant is notified of the tentative denial and is provided with an opportunity to appeal the decision.

Upon review by the Review Committee, if a decision cannot be rendered with the available information, the file may be returned to a Certification Officer for further clarification or a Special Investigation.

1. APPEALS PROCESS

Where the Review 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 as reflected in its ownership documents, certification will be tentatively denied and the business will be notified in writing. The Review Committee shall send the applicant a letter detailing the specific reasons for the tentative denial.

The applicant may appeal to the OBO Director within twenty-one (21) calendar days of the tentative denial letter date. The applicant may either:

- a. Submit corrections to their original application to OBO Director. The City will review corrections to the original application package, but not new information or changes of circumstances; or
- b. Request an informal hearing with OBO Director. Documentary evidence may be submitted with request for an informal hearing or at the informal hearing.

If the tentative denial becomes final after appeal to OBO Director, the OBO Director or designee will issue a letter of denial. A business that is denied certification may not reapply for a period of six (6) months from the date of denial. If the decision is to overturn the tentative denial, the OBO Director or designee will render a written decision reversing the tentative denial.

Formal certificates of approved certification type(s) will be issued shortly after the written decision to certify.

2. CERTIFICATION DIRECTORY

If certified, the business is listed by its approved North American Industry Classification System code(s) in the City's MWSDBE and PDBE Directory for three (3) years. Certification by OBO relates solely to the Ownership, Management, Control and Independence of the business, and not to its capacity to perform work on a specific contract.

OBO issues four types of local certification:

1. Minority Business Enterprise (MBE) for businesses Owned, Managed, and Controlled by one or more Minority persons.
2. Women Business Enterprise (WBE) for businesses Owned, Managed and Controlled by one or more Women.
3. Small Business Enterprises (SBE) for construction related businesses only that fall under the Small Business Administration Size Standards 13 Code of Federal Regulations (CFR), Part 121.
4. Persons with Disabilities Business Enterprise (PDBE) for businesses Owned, Managed and Controlled by a Person with a Disability or service connected Disabled Veteran(s).

OBO also processes and issues two types of certifications on behalf of the United States Department of Transportation:

1. Disadvantaged Business Enterprise (DBE) for businesses Owned, Managed, and Controlled by one or more socially and economically disadvantaged persons.
2. Airport Concessions Disadvantaged Business Enterprise (ACDBE) for businesses Owned, Managed, and Controlled by one or more socially and economically disadvantaged persons.

The criteria and requirements for DBE and ACDBE certification can be found in 49 Code of Federal Regulations Part 26 and Part 23.

H. TRIANNUAL CERTIFICATION ANNUAL UPDATES

MWSBE and PDBE certifications are effective for three (3) years. After 3 years, each business is subject to a certification review to ensure that the certified business is still in compliance with all of the certification criteria and is eligible to maintain its certification as a locally certified MWSBE and/or PDBE. Staff will review the 3-Year Update Form and Affidavit to determine if there are changes in size, ownership, management, or control. Certification staff reviews tax returns for MWSBE and PDBE eligibility, and documents all activity on the 3-Year Update Form and Affidavit. If there are substantive changes, a Field Audit may be necessary.

Note: Field Audits may be conducted at random throughout the life of a certification.

I. DECERTIFICATION

The OBO Director may, for cause, revoke the MWSBE and PDBE certification of any firm listed in the City's Certification Directory. A business and owner(s) whose certification is

revoked for cause may not reapply for certification for a period of up to five (5) years. The period of revocation will be determined by the OBO Director on the basis of the severity of the infraction that caused the revocation. The revocation period may be reevaluated based on any subsequent creation of a new business in the same functional area or significant restructuring of existing business.

A firm's certification may be removed for causes which include, but are not limited to:

1. The business entity has changed to the extent that the business is no longer Owned, Managed, and Controlled by Minorities or Women as required by the Ordinance and these procedures.
2. The business is no longer an operating business entity.
3. OBO discovers that the firm provided false or misleading information for the purpose of certification during the original application process or as part of the annual update.
4. Failure to submit requisite documents for annual update or as part of a certification review.
5. During the course of the contract, OBO learns that the business has allowed the company's name to be submitted towards satisfying the MWSBE goal for a scope of work for which the company is not certified.
6. 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 MWSBE and PDBE goal, but did not actually perform, through the MWSBEs own workforce, the scope of work submitted in the Prime's Contract documents.
7. The company requested or allowed a Prime Contractor to "advance" dollars on contracts or otherwise meet payroll for the MWSBEs employees.
8. Such other reasons that OBO determines reasonable indications that the MWSBE has fallen below the standard of initial certification.

VI. MEMORANDA OF UNDERSTANDING FOR CERTIFICATION

The City has entered into Memoranda of Understanding (MOU) with various certifying entities whose certification requirements and procedures conform, in part, with the standards and procedures for certification established in the City Code of Ordinances, Chapter 15, Article V. MOUs exist with the following entities (this is not an exhaustive list) to expedite the processing of their applications with the City of Houston:

- Houston Minority Supplier Development Council
- Women Business Enterprise Alliance
- Texas Comptroller of Public Accounts
- Texas Unifying Certification Program

A copy of each MOU is attached as Appendix A - D.

VII. HIRE HOUSTON FIRST PROGRAM

It is the policy of the City of Houston as defined in the City Code of Ordinance, Chapter 15, Article XI, to use the City's spending powers in a manner that promotes fiscal responsibility and maximizes

the effectiveness of local tax dollars by ensuring a portion of citizens' tax dollars remain in the local economy for the economic benefit of the citizens. The Hire Houston First program affords a preference in the contracting process to City and Local businesses that meet certain requirements.

A. ELIGIBILITY REQUIREMENTS

In order to qualify for a Hire Houston First designation, a business must have a principal place of business in either the City or Local area. Principal Place of Business means a company must either:

1. Be headquartered in the incorporated limits of the City or the Local area. Headquartered means the location where an entity's leadership directs, controls, and coordinates the entity's activities; **or**
2. Have an established place or places of business in the incorporated limits of the city or the local area as applicable, from which 20% or more of the entity's workforce are regularly based, and from which a substantial role in the entity's performance of a commercially useful function or a substantial part of its operations is conducted.

A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed as a principal place of business.

B. BUSINESS STRUCTURES ELIGIBLE FOR DESIGNATION

The types of business structures eligible for designations include:

- Corporation;
- Limited Liability Company;
- Limited Partnership;
- General Partnership;
- Limited Liability Partnership; AND
- Sole Proprietorship

C. PREFERENCE GIVEN TO CITY BUSINESS (CB) AND/OR LOCAL BUSINESSES (LB)

1. PURCHASE OF PERSONAL PROPERTY/GOODS (CITY BUSINESS PREFERENCE ONLY)

1. Subject to Article XI, Section 15-181 of the City Code of Ordinances, for city contracts with a value of \$100,000 or more, if the City receives a bid from a City Business and that bid is within 3% of the lowest bid received from a bidder that is not a City Business, then the

City shall award the contract to the lowest bidder or to the bidder that is a City Business.

2. Subject to Article XI, Section 15-181 of the City Code of Ordinances for contracts with a value less than \$100,000, if the City receives a bid from a City Business that is within 5% of the lowest bid received from a bidder that is not a City Business, the City shall award the contract to the lowest bidder or to the bidder that is a City Business.
3. Subject to Article XI, Section 15-181 of the City Code of Ordinances, if the contract value is less than \$50,000, the City shall select vendors with a principal place of business in the local area, provided that any such vendor's bid is not more than 5% greater than the lowest bid of a vendor that is not a Local or City Business.

2. PURCHASE OF SERVICES (LOCAL BUSINESS PREFERENCE ONLY)

1. Subject to Article XI, Section 15-181 of the City Code of Ordinances, if the contract value is \$100,000 or more, the contract will be awarded to a Local Business whose bid is within 3% of the lowest bid received by the contracting department.
2. Subject to Article XI, Section 15-181 of the City Code of Ordinances, if the contract value is less than \$100,000, the contract will be awarded to a City Business whose bid is within 5% of the lowest bid received by the contracting department.
3. Subject to Article XI, Section 15-181 of the City Code of Ordinances, if the contract value is less than \$50,000, the City shall select vendors with a principal place of business in the local area, provided that any such vendor's bid is not more than 5% greater than the lowest bid of a vendor that is not a Local or City Business.

D. HIRE HOUSTON FIRST PROGRAM-EXCEPTIONS

1. *Professional Services*: This program does not apply to the procurement of architectural, engineering or land surveying services covered under the Professional Services Procurement Act, Tex. Gov't Code, § 2254.004. In procuring these services, the applicable City department shall, when appropriate, consider knowledge of local conditions as part of the qualifications determination.
2. *Federally Funded Project*: This program does not apply to any contract in which the federal government participates in the form of a grant or loan, or the City acts as a conduit for federal money.
3. *Contracts where implementation would be unduly burdensome*: This program does not apply to contracts in which the contracting department has determined that it would unduly interfere with contract needs. In cases of purchases over \$100,000.00, such determination shall be made in writing, expressly approved by the department director, and furnished in advance to OBO.
4. *Information Technology*: In accordance with Local Government Code 271.9051, this program does not apply to the purchase of telecommunications services or information services, as those terms are defined by 47 U.S.C Section 153.

E. CONTRACTING DEPARTMENT RESPONSIBILITIES AND ENFORCEMENT

1. The contracting or evaluating department shall award additional points to a local business in any bid based on a "best value" evaluation.
2. Department Directors shall maintain written records of all departmental actions under the Hire Houston First program and provide quarterly reports to OBO.

F. HIRE HOUSTON FIRST APPLICATION PROCESS

Hire Houston First applications are processed by OBO unless otherwise indicated.

1. INTAKE PROCESS

1. Application is submitted to OBO.
2. Application is then reviewed to confirm all required fields are answered appropriately.
3. If the application is incomplete, the applicant is notified and advised to complete the required fields in order for the application to be reviewed for designation under the Hire Houston First program.

2. APPLICATION REVIEW

The review process consists of determining applicant's eligibility for designation under the Hire Houston First program. Generally, the review of each application is conducted in order of date submitted and each review includes, but is not limited to, the following:

- Confirm the application is signed and dated by the applicant.
- Determine the applicant's principal place of business is either:
 - Headquartered in the Local area **or**
 - Confirm that at least 20% of the entity's workforce is regularly based in the Local area and from which a substantial role in the entity's performance of a commercially useful function or a substantial part of its operations is conducted.
- If additional information is required, the applicant will be notified.

3. RECOMMENDATION

After a review is completed, a decision shall be made whether to "approve" or "deny" the application. If the decision is to approve a firm for a City Business (CB) and/or Local Business (LB) designation, OBO shall notify the firm and enters their HHF designation (s) in the HHF Registry in the contract management database.

4. DENIALS

When applications fail to meet the "Principal Place of Business" requirement, the applications, along with supporting staff research and a cover sheet explaining the

reason for the denial recommendation, are submitted to the Division manager for review. The Division Manager's review shall result in one of the following options:

A) DENIAL

If the Division Manager concurs with the recommendation to deny, the company is then notified of its ineligibility for the program via certified letter.

B) DESIGNATION APPROVAL

If the Division Manager does not concur with the recommendation to deny, OBO notifies the firm of designation approval and enters the firm's HHF designation(s) in the HHF Registry in the contract management database.

5. APPEALS

Applicants who wish to appeal denial of Hire Houston First designation must provide written notice within ten (10) business days of the date of the denial letter to the Director of OBO. The applicant may either:

- a. Submit corrections to their original application to OBO Director. Corrections to the original application package will be reviewed, but not new information or changes of circumstances; or
- b. Request an informal hearing with OBO Director. Documentary evidence may be submitted with request for an informal hearing or at the informal hearing.

Corrections and documentary evidence must include an explanation setting forth the reason the denial should be overturned, any supporting evidence and a sworn and notarized affidavit attesting that the content of the appeal submission is true and correct.

After the informal hearing and at the conclusion of the appeals process, OBO may reverse a denial for various reasons including, but not limited to, those instances where a firm shows that the denial was based on incomplete or inaccurate information. OBO will not overturn a denial if only one or some of the denial reasons are corrected. If at the conclusion of the appeals process OBO determines there is no basis to overturn the denial, OBO will provide a letter to the firm explaining the rationale for upholding the denial.

VIII. EXTERNAL AFFAIRS AND OUTREACH

OBO's External Affairs and Outreach team is responsible for outreach and recruitment of firms for certification, marketing the benefits of the business opportunity program through consistent interaction with the communities served by the program, developing relationships with community partners and stakeholders, developing educational programs to assist certified firms, and serving as resource for all local businesses through the OBO Solutions Center. External Affairs and Outreach also serves as a source of information and ombudsman to answer questions from Contractors, MWSBE and PDBE participants and to assist such persons

in navigating the City's procurement process, including identifying certified firms for projects. OBO's Public Information Officer and liaison to City Council and OBO's Advisory Board are components of OBO's External Affairs and Outreach Division.

A. TEXAS PUBLIC INFORMATION ACT (TPIA)

OBO's External Affairs Manager serves as the Department's Public Information Officer and is the point of contact for the department for all TPIA requests. In accordance with Administrative Procedure 2-9, the Public Information Officer (PIO) shall:

- (1) Ensure that all incoming packages, mail, e-mail and faxes are checked daily, at a minimum, to ensure that requests for public information are processed immediately;
- (2) Promptly review and address all requests for public information in accordance with the TPIA;
- (3) Contact the requestor to seek clarification of unclear requests and/or the narrowing of broad requests;
- (4) Coordinate the locating and gathering of responses to requests for public information submitted to his/her department;
- (5) Consult with the Legal Department to determine whether information should be withheld or disclosed pursuant to the TPIA;
- (6) Provide or make available for public inspection or reproduction information not excepted from disclosure, assess appropriate cost charges, and protect public information from deterioration, alteration, mutilation, loss or unlawful removal; and
- (7) Process all requests for public information promptly, uniformly and without regard to the position or occupation of the requestor, the person on whose behalf the request is made, or the status of the individual as a member of the media.

Upon receipt of a public information request, the PIO shall promptly:

- (1) Record the date and time the request was received;
- (2) Determine whether responsive information exists by contacting members of his/her department who may reasonably possess the requested information;
- (3) Notify the Mayor's Director of Communications and/or other appropriate department contact of requests that may have public relations significance; and
- (4) Consult the Legal Department if the PIO has questions on whether certain information should be disclosed or withheld and if information should be withheld, forward the request and the responsive information to the Legal Department.

All TPIA requests must receive a response within 10 business days of receipt, unless specified by the Legal Department. Any funds received as a result of TPIA requests shall be recorded and processed with the appropriate OBO team member. Refer to Administrative Procedure 2-9 regarding the handling of TPIA requests.

B. BUSINESS DEVELOPMENT MANAGER AND VENDOR SERVICES

As part of the External Affairs Team, the Business Development Manager serves as the direct point of contact between the department and certified companies. The services provided by the Business Development Manager include the following vendor services:

- (1) Provides one-on-one consultations with certified firms who are seeking assistance with researching opportunities to do business with the City of Houston;
- (2) Coordinates and participate in forums that promote access to contracting opportunities with the City of Houston and partners;
- (3) Facilitates capacity building programs for the department such as: Interagency Mentor Protégé Program, the Turner School of Construction Management and Build Up Houston; and
- (4) Attends community events and presents workshops on various topics.

C. CUSTOMER SERVICE

The External Affairs Team responds to phone calls, emails and requests for meetings from certified companies and interested small businesses with inquiries regarding the department. As a part of providing excellent customer service, the External Affairs Team has a goal of responding to all requests within 24 – 48 hours either by email or phone.

D. SPEAKER REQUEST PROCESS

Requests from the community for presentations and speakers are processed by External Affairs Team in order to effectively utilize resources within the department. The following steps are followed when processing a speaker request:

- (1) Requestors must complete Speaker Request Form on the OBO website.
- (2) All requests will be reviewed to determine which division of the department would be most appropriate to cover the event.
- (3) The Processing team will communicate directly with requestor to determine date, time, number of anticipated participants and the type of subject matter experts that should be engaged.
- (4) Once approved, the request will be sent to the appropriate division manager to coordinate speakers and event details will be placed on the OBO Calendar.
- (5) The External Affairs Team will coordinate with requestor, partnering organizations and division within the department to provide staff and topic experts for event.

E. OBO SOLUTIONS CENTER

The Office of Business Opportunity Solutions Center (OBOSC) is a clearinghouse of information and resource center for established and aspiring entrepreneurs. OBOSC provides information on city, county, state and federal regulations affecting the operation of Houston area businesses. In addition, OBOSC provides no-cost programs and services to help small business owners thrive. These services include:

- (1) Providing on-site information on permits, licenses, and fee schedules
- (2) Arranging one-on-one business counseling with SCORE Business Advisors
- (4) Hosting business seminars and workshops
- (5) Providing information on MWSBE and DBE Certification
- (6) Providing referrals to external resources and disseminating business planning materials

F. OBO ADVISORY BOARD

Executive Order 1-3 facilitates the goals of OBO by seeking input and advice from the private sector to foster a better understanding and relations among small businesses, Minority and Women Business Enterprise (“MWBE”) contractors, non-MWBE contractors, and the City. The Mayor’s Office shall develop a list of qualified candidates for membership on the OBO Board, and the Mayor shall appoint members to 20 positions, who shall serve for a term of two years from the date of appointment and confirmation.

The duties of the Board are:

- (1) To ensure visibility of OBO and its associated programs among a variety of stakeholders and interested parties;
- (2) To support outreach and recruitment efforts, in addition to promoting OBO’s mission;
- (3) To identify best practices in supplier diversity and procurement practices and to provide recommendations in policies and initiatives for the purpose of creating a fair and equitable government procurement environment;
- (4) To advise the Director of OBO in strategy planning;
- (5) To provide feedback on OBO’s progress and accomplishments; and
- (6) To assist with partnership development with the private sector, educational institutions, and non-government organizations to further the mission of OBO, including resource development to implement new initiatives

The External Affairs Manager will maintain communication with the OBO Advisory Board and help facilitate presentations during Advisory Board Meetings. Interested individuals

seeking appointment to the Advisory Board should contact the Director of Boards and Commissions for the City of Houston.

G. CONTRACT COMPLIANCE COMMISSION

Section 15-19 establishes the creation of the Contract Compliance Commission for the purposes of the OBO. In relevant part, section 15-19 states:

(a) There is hereby created and established a contract compliance commission ("commission") composed of five persons, four of whom must be shall be resident citizens of the city. The commission shall have the duties and powers as set out in this article.

(b) The five members of the commission shall be appointed by the mayor and confirmed by the city council. The mayor shall designate the member to be chairman of the commission.

(c) The membership of the commission shall be filled as follows:

- (1) One person from the construction industry;
- (2) Two persons from the minority group containing the largest number of minority workers in industry in Houston;
- (3) One person from the minority group containing the second largest number of minority workers in industry in Houston; and
- (4) One person from the public at large.

(d) The mayor shall designate two of the initial members of the commission to serve for a term of two years and three members of the commission to serve for a term of one year, respectively, from the date of their appointment and confirmation. Thereafter terms of all members shall be for two years from the date of their appointment and confirmation.

The External Affairs Manager shall maintain communication with the Contract Compliance Commission and help to facilitate communication between the Commission and the Department. Individuals interested in participating on the Commission may contact the Director of Boards and Commissions with the City of Houston.

H. CITY COUNCIL LIAISON

The External Affairs Team, specifically the External Affairs Manager, serves as the liaison between the Office of Business Opportunity and the members of the Houston City Council. In this role, the External Affairs Manager's duties include:

- (1) Monitor and research the City Council Agenda on a weekly basis.
- (2) Meet with members of the OBO team in regards to any issues regarding MWBE participation.
- (3) Respond in a timely fashion to any questions coming from City Council Members and their staffs regarding departmental reports and the City Council Agenda.

(4) During presentations made to City Council and Committee Meetings, take note of any questions posed by City Council and work with members of the department to form a response in a timely fashion.

(5) Communicate directly with City Council staff to promote OBO events in order to increase department visibility and maximize participation from the community.

IX. OBO PERFORMANCE REPORTING STRATEGY

Pursuant to Chapter 15, Article V, Section 15-83, each year OBO shall submit a progress report to the City Council. The report shall include two percentage figures that are intended to, as closely as possible, represent the ratio of the prior year's measured utilization and availability of local MWSBEs to do business in the two named fields for contracting below to the prior year's total local business community utilization and availability to do business in each of the two-named fields of city contracting:

- (1) The supply of goods and non-personal or nonprofessional services; and
- (2) The performance of personal or professional services.

In addition, the report shall include percentages that are intended to, as closely as possible, represent the ratio of the prior year's measured utilization and availability of local MWSBEs to do business in construction to the prior year's total local business community utilization and availability to do business in city construction contracting.

A. PROGRESS OF CITY DEPARTMENTS

OBO will compile a report of the progress of City departments, by department, in attaining the city-wide goals set by City Council. This report shall be based upon MWSBE contractor, subcontractor and joint venture information, to be specified by OBO. This report will be submitted on a quarterly basis to City Council members, the Mayor and all affected City department directors for their information.

B. HIRE HOUSTON FIRST REPORTING

In compliance with Section 15-180 of the Code of Ordinances, OBO shall submit semi-annual reports summarizing the dollar amount of procurements awarded to city businesses and local businesses under the Hire Houston First program. Contracting departments will facilitate the provision of data needed to compile the information for these semi-annual reports.

X. OPEN RECORDS

The registers of certified MWSBE and PDBEs referenced in Section 15-84(2) as well as records of compliance by City Contractors and MWBEs with the provisions of the MWSBE and PDBE program, shall be made available and easily accessible to the public in the offices of the Director, not including information deemed confidential by law. Copies of these Procedures and all required forms shall also be maintained and made available on the City's website.

XI. PROCEDURAL AMENDMENTS

The Director may amend these Procedures, as needed, provided that such amendments are consistent with Chapter 15 of the Code of Ordinances and state law and are approved by the City Attorney pursuant to Section 15-84 of the Code of Ordinances.

APPENDICES

APPENDIX A

C74630
MCA



CITY OF HOUSTON MEMORANDUM OF UNDERSTANDING

(Between the Houston Minority Supplier Development Council and the City of Houston)

This Memorandum of Understanding ("MOU") is entered into between the Houston Minority Supplier Development Council, ("HMSDC") and the City of Houston, a Texas Home-Rule municipality ("City") pursuant to Chapter 15, Article V, Section 15-84, (8), (G.) of the City of Houston's Code of Ordinances (The "Code"); and

WHEREAS, the City has established and administered processes for certifying businesses as minority-owned business ("MBE") that are eligible for participation in a certification program pursuant to the Code; and

WHEREAS, the Director of the Mayor's Office of Business Opportunity ("Director") has designated HMSDC a "reliable MBE certifying agency" as provided in the Code, after finding that the HMSDC has certification requirements and procedures that conform in part with the standards and procedures for MBE certification established by the Code of Ordinances; the HMSDC has at least five years of experience in certifying MBEs for participation in public and private affirmative action programs; and the HMSDC provides MBE certification which is recognized by one or more public agencies in the State of Texas, other than the City; and

WHEREAS, the coordination of the acceptance of MBE certification related documentation by the City from HMSDC promotes goodwill, increases efficiencies, creates cost savings, and provides for more efficient use of resources; and

NOW, THEREFORE, the HMSDC and City agree as follows:

1. Each party will supply to the other annually on July 1 of each year of this MOU its current certification requirements and procedures for its applicable MBE programs; provided that if there have been no changes in its certification requirements from the prior year, each party may instead send a letter so stating to the other party to this MOU in lieu of providing its certification requirements.

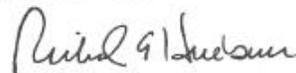
2. HMSDC and City will promptly notify the other within 30 calendar days should its certification requirements or procedures for its applicable MBE programs change in any material way.
3. The parties will meet annually to review the certification process for participation in their respective applicable MBE programs.
4. HMSDC will provide a current list of certified local businesses (business entities located within the counties of Harris, Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery, or Waller) electronically to the City. HMSDC will provide to the City, on a monthly basis, a list of the businesses that were certified, decertified, denied certification, or found ineligible by HMSDC during the prior reporting period, along with the reasons for decertification, denied certification and/or finding of ineligibility. HMSDC agrees that it shall not charge any fees to businesses for assistance relating to the City's certification process.
5. The City will share with HMSDC any denial or decertification of a MBE that is a client of HMSDC.
6. The City will maintain the confidentiality of information that comes under its control consistent with provisions of the Texas Public Information Act and all other relevant privacy acts.
7. The HMSDC will, within 30 calendar days of a written request from the Director, open its certification files for review by the City of the certification files of any business seeking City certification upon receiving written authorization by the business. A City representative can inspect the requested file upon written request and consent at the HMSDC's premises.
8. The City will, within 30 calendar days of a written request from an authorized representative of HMSDC, open its certification files for review by HMSDC of the certification files of any business seeking HMSDC certification upon receiving written authorization by the business.
9. The Director may accept a MBE certification issued by HMSDC. However, the Director's acceptance of a MBE certification is not automatic and the City reserves the right to reject a MBE certification issued by the HMSDC. Additionally, the City reserves the right to request additional information from any business at any time in connection with the certification process. The City also reserves the right to impose additional requirements, as required or permitted by law, including but not limited to city ordinances, on a MBE before accepting a MBE certification issued by the HMSDC.
10. The HMSDC may accept a MBE certification issued by the City. However, HMSDC's acceptance of a MBE certification is not automatic and HMSDC reserves the right to reject a MBE certification issued by the City. Additionally,

HMSDC reserves the right to request additional information from any business at any time in connection with the certification process.

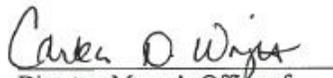
11. The term of this MOU shall commence upon the date of countersignature by the City Controller, and, unless otherwise terminated by one of the parties pursuant to paragraph 10 below, shall remain in effect for five (5) years. Upon expiration, this MOU may be renewed by mutual written agreement of the parties.
12. This MOU may be amended in writing at any time by mutual agreement of an authorized representative of the HMSDC and the Director or his/her designee.
13. Either party may terminate this MOU at any time upon serving 90 days of advance written notice to the other party. All businesses certified by the City based upon a HMSDC MBE certification prior to the termination of this MOU shall be unaffected by the termination of this MOU and shall remain certified City businesses until their current certification period expires or until they are decertified in accordance with applicable law.
14. The City has allocated no funds to pay for services under this MOU and has no obligation to pay for any services hereunder.
15. This MOU may be executed in one or more counterparts, all of which shall be considered to be one and the same agreement, binding on all parties hereto, notwithstanding that all parties are not signatories to the same counterpart.

ACCEPTED & APPROVED:

HOUSTON MINORITY SUPPLIER
DEVELOPMENT COUNCIL

By: 
Richard A. Huebner
President

CITY OF HOUSTON, TEXAS


Director, Mayor's Office of
Business Opportunity

APPROVED AS TO FORM:

CITY OF HOUSTON, TEXAS

Signed by:


Annise D. Parker
Mayor

ATTEST/SEAL:


Anna Russell
City Secretary

COUNTERSIGNED BY:


Assistant City Attorney

LD File: 0421100095001


City Controller *Chb. Han*

DATE COUNTERSIGNED:
3-14-12

APPENDIX B



C74946
WCA

CITY OF HOUSTON MEMORANDUM OF UNDERSTANDING

(Between the Women's Business Enterprise Alliance and the City of Houston)

This Memorandum of Understanding ("MOU") is entered into between the Women's Business Enterprise Alliance ("WBEA"), a 501(c) 3 Corporation, and the City of Houston, a Texas Home-Rule municipality ("City") pursuant to Chapter 15, Article V, Section 15-84, (8), (G.) of the City of Houston's Code of Ordinances (The "Code"); and

WHEREAS, the City has established and administered processes for certifying businesses as women-owned business ("WBE") that are eligible for participation in a certification program pursuant to the Code; and

WHEREAS, the Director of the Mayor's Office of Business Opportunity ("Director") has designated WBEA a "reliable WBE certifying agency" as provided in the Code, after finding that the WBEA has certification requirements and procedures that conform in part with the standards and procedures for WBE certification established by the Code of Ordinances; the WBEA has at least five years of experience in certifying WBEs for participation in public and private affirmative action programs; and the WBEA provides WBE certification on behalf of Women's Business Enterprise National Council (WBENC) which is recognized by one or more public agencies in the State of Texas, other than the City; and

WHEREAS, the coordination of the acceptance of WBE certification related documentation by the City from WBEA promotes goodwill, increases efficiencies, creates cost savings, and provides for more efficient use of resources; and

NOW, THEREFORE, the WBEA and City agree as follows:

1. Each party will supply to the other annually on July 1 of each year of this MOU its current certification requirements and procedures for its applicable WBE programs; provided that if there have been no changes in its certification requirements from the prior year, each party may instead send a letter so stating to the other party to this MOU in lieu of providing its certification requirements.

2. WBEA and City will promptly notify the other within 30 calendar days should its certification requirements or procedures for its applicable WBE programs change in any material way.
3. The parties will meet annually to review the certification process for participation in their respective applicable WBE programs.
4. WBEA will provide a current list of certified local businesses (business entities located within the counties of Harris, Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery, or Waller) electronically to the City. WBEA will provide to the City, on a monthly basis, a list of the businesses that were certified, decertified, denied certification, or found ineligible by WBEA during the prior reporting period, along with the reasons for decertification, denied certification and/or finding of ineligibility. WBEA agrees that it shall not charge any fees to businesses for assistance relating to the City's certification process.
5. The City will maintain the confidentiality of information that comes under its control consistent with provisions of the Texas Public Information Act and all other relevant privacy acts.
6. The WBEA will, within 30 calendar days of a written request from the Director, open its certification files for review by the City of the certification files of any business seeking City certification upon receiving written authorization by the business. A City representative can inspect the requested file upon written request and consent at the WBEA's premises.
7. The Director may accept a WBENC WBE certification issued by WBEA. However, the Director's acceptance of a WBENC WBE certification is not automatic and the City reserves the right to reject a WBE certification issued by the WBEA. Additionally, the City reserves the right to request additional information from any business at any time in connection with the certification process. The City also reserves the right to impose additional requirements, as required or permitted by law, including but not limited to city ordinances, on a WBE before accepting a WBE certification issued by the WBEA.
8. The term of this MOU shall commence upon the date of countersignature by the City Controller, and, unless otherwise terminated by one of the parties pursuant to paragraph 10 below, shall remain in effect for five (5) years. Upon expiration, this MOU may be renewed by mutual written agreement of the parties.
9. This MOU may be amended in writing at any time by mutual agreement of an authorized representative of the WBEA and the Director or his/her designee.
10. Either party may terminate this MOU at any time upon serving 90 days of advance written notice to the other party. All businesses certified by the City based upon a WBEA WBE certification prior to the termination of this MOU

shall be unaffected by the termination of this MOU and shall remain certified City businesses until their current certification period expires or until they are decertified in accordance with applicable law.

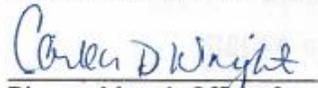
- 11. The City has allocated no funds to pay for services under this MOU and has no obligation to pay for any services hereunder.
- 12. This MOU may be executed in one or more counterparts, all of which shall be considered to be one and the same agreement, binding on all parties hereto, notwithstanding that all parties are not signatories to the same counterpart.

ACCEPTED & APPROVED:

WOMEN'S BUSINESS
ENTERPRISE ALLIANCE

By: 
Susan Rejka
Executive Director

CITY OF HOUSTON, TEXAS


Corleen D. Wright
Director, Mayor's Office of
Business Opportunity

APPROVED AS TO FORM:


Assistant City Attorney

LD File: 0421100094201

CITY OF HOUSTON, TEXAS

Signed by:


Annise D. Parker
Mayor

ATTEST/SEAL:


Anna Russell
City Secretary

COUNTERSIGNED BY:


Ronald C. Shew
City Controller

DATE COUNTERSIGNED:

9-13-12

APPENDIX C

MEMORANDUM OF AGREEMENT

Between

Texas Comptroller of Public Accounts

&

City of Houston

THIS MEMORANDUM OF AGREEMENT ("MOA") is made this 16th day of November, 2011, BETWEEN THE TEXAS COMPTROLLER OF PUBLIC ACCOUNTS ("COMPTROLLER") and the Mayor's Office of Business Opportunity of the City of Houston ("COH"). The execution of the agreement signifies the COMPTROLLER'S and COH's collective efforts and commitment to maximizing the number of certified Historically Underutilized Businesses (HUB) throughout the State of Texas.

I. RECITALS

Whereas, the COMPTROLLER is responsible for administering the HUB Program for the State of Texas pursuant to Texas Government Code, Chapter 2161;

Whereas, the HUB program is designed to ensure that all HUBs have an equal opportunity to compete for contracting and related subcontracting opportunities in State of Texas procurements;

Whereas, pursuant to §2161.061, the COMPTROLLER shall certify HUBs, and as one of its certification procedures, the COMPTROLLER may approve the certification program of one or more local government or nonprofit organizations in the State of Texas that certify HUBs, Disadvantaged Business Enterprises, Minority Business Enterprises, or Women Business Enterprises (D/M/WBEs) under substantially the same definition, to the extent applicable, used by §2161.001, provided that the local government or nonprofit organization meets or exceeds the standards established by the COMPTROLLER;

Whereas, a HUB is a business entity formed for the purpose of making a profit, in which at least 51 percent of all classes of shares of stock, assets, interest or other equitable securities is owned, operated, and controlled by individuals who are identified as economically disadvantaged because of their identification as members of the following groups: American Women, Asian Pacific Americans, Black Americans, Hispanic Americans and Native Americans. Eligible individuals in these groups must also be residents of Texas with their principal place of business located in Texas who do not exceed the size standard established by the COMPTROLLER;

Whereas, the COH administers a M/WBE Program in accordance with Houston City Code of Ordinances, Chapter 15, Article V, Sections 15-81 through 15-89, to stimulate growth of local minority, women and small business enterprises by encouraging the full participation of these business enterprises in various phases of city contracting, including to increase the utilization of such local firms in providing certain goods and services; and to provide opportunities to broaden and enhance their range of capacities; and to increase opportunities for such local firms to serve as contractors, in addition to acting as subcontractors to others, where applicable, all in order to help eliminate statistical disparities in city contracting. The COH is a member of the Texas Unified Certification Program (TUCP). The TUCP consolidates all DBE firms certified by six different agencies into one centralized DBE Directory for US Department of Transportation (USDOT) funded contracts for Airport, Highways, and Public Transit. The TUCP certifies DBEs for participation in USDOT federal contracting projects across the State of Texas in compliance with Code of Federal Regulations (49 CFR 26);

Whereas, the COMPTROLLER has determined that the COH's certification processes meet the standards established by the COMPTROLLER;

NOW THEREFORE, the COMPTROLLER and COH agree to cooperate and work collectively in the administration of their respective programs to streamline the certification process, thereby allowing for businesses that are certified by the COH to become certified as HUBs automatically by the COMPTROLLER pursuant to the operating procedures agreed upon by the COMPTROLLER and COH.

II. LEGAL AUTHORITY

The COMPTROLLER is authorized to execute this agreement pursuant to §2161.061

III. SERVICES TO BE PERFORMED

THE COMPTROLLER HAS AGREED TO:

- Accept as a HUB and list within the State's HUB Directory those D/M/WBEs the COH has certified into its program, and has determined as being HUB eligible in accordance with §2161.061 and Texas Administrative Code policies and procedures used to administer the HUB program. The COH is responsible for screening all of its certified D/M/WBE certification files for HUB eligibility.
- Define a cost effective and efficient process and format for COH to submit HUB eligible firms certified through the COH certification program.
- Notify COH D/M/WBEs of their HUB certification resulting from this MOA.
- Provide the COH with reports documenting the COMPTROLLER'S acceptance of the COH's certified D/M/WBEs as HUBs.
- Promote the benefits of this agreement through its education and outreach efforts.

THE COH HAS AGREED TO:

- Charge no additional fees for HUB certification.
- Provide the COMPTROLLER with the information listed in the Operating Procedures regarding the D/M/WBEs that are certified in COH's certification program, and are HUB eligible in accordance with §2161.061 and Texas Administrative Code policies and procedures used to administer the HUB program. COH will provide this information utilizing the process and format defined by the COMPTROLLER.
- Maintain data field within its certification database to query and extract only those D/M/WBEs that are HUB eligible, and submit them to the COMPTROLLER pursuant to the operating procedures.
- Provide applicants with written justification of certification denial within the period established by the COMPTROLLER in its rules for certification activities.
- Make available to the public an online searchable database containing the following information about the HUBs and D/M/WBEs it has certified: (1) the name of the business; (2) the contact person or owner of the business; (3) the address and telephone number of the business; (4) the type or category of business, including relevant capabilities of the business and the North American Industry Classification System codes for the business; and (5) the expiration date of the business's certification.
- Investigate and report to the COMPTROLLER any challenges or disputes regarding the HUB eligibility of any D/M/WBEs the COH has provided to the COMPTROLLER for HUB certification.

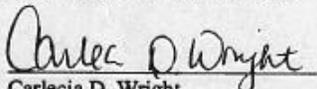
- In order for a COH-certified D/M/WBE to maintain its HUB certification status by way of this agreement, the D/M/WBE must maintain its D/M/WBE status with the COH, and the COH must continue to provide the D/M/WBE's information to the COMPTROLLER as specified in the operating procedures.
- If the COH decertifies a D/M/WBE that is HUB certified by way of this agreement, the COH must notify the COMPTROLLER accordingly, and notify the D/M/WBE that its HUB certification has been suspended and that the D/M/WBE may apply for HUB certification directly with the COMPTROLLER. In instances such as this, the COMPTROLLER is committed to expediting the applicant's request for re-certification.

BOTH PARTIES (COMPTROLLER AND COH) HAVE AGREED TO:

- Work cooperatively to increase the number of HUBs and ensure that HUBs comply with all applicable laws and rules of the State of Texas.
- (Modification): This agreement, including the operating procedures used to facilitate the certification processes, may be amended as needed to ensure that HUB certifications by way of this agreement are executed in the most cost effective and efficient manner possible.
- (Termination): Either party may terminate this agreement by 60-day written notice to the other party or by legislative act.

IN ACCORDANCE HEREWITH, witness our signature this 16th day of November, 2011.


Martin A. Hubert
Deputy Comptroller
Texas Comptroller of Public Accounts


Carlecia D. Wright
Director, Mayor's Office of Business Opportunity
City of Houston

APPENDIX D

STATE OF TEXAS **MEMORANDUM OF AGREEMENT**

I UNIFIED CERTIFICATION PROGRAM

This Memorandum of Agreement (MOA) establishes a Disadvantaged Business Enterprise (DBE) Unified Certification Program (UCP) in the State of Texas in accordance with Title 49 Parts 26 and 23 of the Code of Federal Regulations (49 CFR Parts 26 and 23). The TUCP Certifying Partners are the Texas Department of Transportation (TxDOT), City of Houston, City of Austin, Corpus Christi Regional Transportation Authority (CCRTA), North Central Texas Regional Certification Agency (NCTRCA), and South Central Texas Regional Certification Agency (SCTRCA). Each Certifying Partner in Texas is required to administer a DBE Certification Program in accordance with 49 CFR Part 26 and Part 26.81. Each TUCP Certifying Partner agrees to commit sufficient resources and expertise to carry out the requirements of 49 CFR Part 26.

A. Definitions

1. TUCP Certifying Partner

A State of Texas recipient with a current DBE Program Plan approved by an appropriate USDOT oversight modal agency. This includes those entities, North Central Texas Regional Certification Agency and South Central Texas Regional Certification Agency, who are not recipients, but were formed as domestic non-profit organizations for the purposes of performing certifications on behalf of recipients and can issue or revoke DBE certifications.

2. Non-certifying TUCP Partner

A State of Texas recipient, sub-recipient or grantee with a current DBE Program Plan approved by an appropriate USDOT oversight modal agency or via a TxDOT Letter of Agreement an entity that agrees to utilize the DBEs listed in TUCP Directory for purposes of their program for certification and or compliance purposes. A Non-Certifying Partner can neither issue nor revoke DBE certification.

3. Recipient

Any public entity which receives direct USDOT financial assistance.

4. Sub-recipient

Any public entity receiving USDOT financial assistance through another recipient.

5. Grantee

Any public entity that has received USDOT assistance.

B. Organization

The TUCP shall establish an Executive Committee consisting of representatives from each of the Certifying Partner agencies, who shall be designated by the signatories to this MOA Agreement. The Executive committee will also be responsible for resolving any conflicts between certification actions between its members. The Standard Operating Procedures of the TUCP Section III-Agency Compliance, outlines the process for dealing with matters regarding the compliance with certification requirements. Nothing in this agreement should be construed to contravene the sovereignty of each participant. The contact person for the TUCP is the Texas Department of Transportation, DBE/HUB/SBE Section.

A Certifying TUCP Partner may terminate its responsibilities under this Agreement and become a Non-Certifying TUCP Partner upon a six month notice to all TUCP Partners.

C. Purpose

The objectives of the Texas UCP are as follows:

- To follow the certification procedures and standards and the non-discrimination requirements of 49 CFR Parts 26 and 23.
- To cooperate fully with all oversight, review and monitoring activities of the United States Department of Transportation (USDOT) and its operating administrations.
- Directives and guidance on DBE certification matters.
- To make all certification and decertification decisions on behalf of all TUCP Partners with respect to participation in the U.S. DOT DBE Program. Certification decisions by the TUCP shall be binding on all TUCP Certifying Partners.

- To provide a single DBE certification that will be honored by all TUCP Partners.
- To maintain a unified DBE directory containing at least the following information for each firm listed: address, phone number and approved NAICS codes. The TUCP shall make the directory available to the public electronically on the Internet as well as in print. TxDOT shall update the electronic version of the directory by including additions, deletions and other changes upon notification by the DBE and/or Certifying Partner.
- The TUCP Partners will commit adequate resources and expertise to carry out this agreement. The partners will continue to individually bear the costs of training staff, certifying firms and sharing DBE files, i.e. postage and copying costs. Travel to and from meetings will be the responsibility of individual partners.

II TUCP PROGRAM DESCRIPTION

A. Partners' Roles, Responsibilities & Obligations

All TUCP Partners agree to maintain DBE certification application files, conduct site visits, make certification decisions and handle appeals and complaints. The Certifying TUCP Partners agree to utilize the USDOT Uniform Certification Application and Affidavit.

- All decisions related to eligibility and certification must comply with 49 CFR Parts 26 and 23.
- The TUCP Certifying Partners who are recipients or sub-recipients of federal funds must have an approved DBE Program. Additionally, each Certifying Partner must have clearly defined and written processes and procedures related to the administration of its DBE Program and certification decisions.
- Each TUCP Certifying Partner must adhere to the processes and procedures as set forth in the Standard Operating Procedures.
- If a TUCP certifying partner is no longer able or willing to uphold procedures outlined in this MOA and in the TUCP SOP, then that partner shall notify each partner in writing and submit to TxDOT all certification files within 30 days to maintain proper certification coordination.
- TUCP certifying partners agree to assist and comply with FHWA in conducting partner reviews outlined in the TUCP SOP.

- Any request received by a TUCP Partner by organizations and entities to become certifying members of the TUCP will be forwarded to each TUCP Partner for review. The TUCP Certifying partners will make a recommendation and forward the request to USDOT for review and a recommendation.

B. DBE Directory Management:

TxDOT has agreed to manage the TUCP Directory and shall designate a Database Manager as agreed by signature of this MOA. Upon approval of a firm for DBE certification by the UCP Certifying Partners, the originating Certifying Partner shall submit the firm's information for inclusion in the electronic database directly to the DBE Database Manager. This information shall include at a minimum:

- Name, Street Address, P.O. Box, City, County, State, Telephone and Fax Number, E-mail address and Federal Tax Identification Number/SSN;
- Name, Sex, Ethnicity, Race and Country of Origin of qualifying DBE owner(s);
- Type of work performed by the DBE using the North American Industry Classification System (NAICS) adopted by the SBA on October 1, 2000, as amended;
- Original Certification Date;
- Name of TUCP Certifying Partner;
- Annual Review Date;

The DBE Database Manager shall assume the following responsibilities:

- Input all data and make any corrections, additions and/or deletions upon receipt of information from the Certifying TUCP Partners;
- Maintain and keep the electronic DBE database current;
- Make the electronic DBE database available to all TUCP Partners and other interested parties;
- Maintain the TUCP Website.

C. DBE Directory & Internet Access

The DBE Directory will be located on the TUCP website. In accordance with 49 CFR Part 26.31 and 23.31(b), the DBE Directory will include the following minimum information for each firm:

- Name, address and telephone number of firm;
- Contact person
- Types of work performed by the firm with appropriate six (3) digit NAICS code and description.

The TUCP DBE Directory may contain additional information, including but not limited to the following:

- Geographic Location of the Firm (i.e., county)
- Website Address of the Firm
- Fax Number & E-Mail Address of the Firm
- Annual Review Date
- Gender and Ethnicity

Each TUCP Partner by signature of this agreement agrees to submit the above information.

III TUCP PROGRAM COSTS AND FUNDING

The cost of creating and establishing the TUCP website and the electronic DBE Directory will be the responsibility of the Texas Department of Transportation. Each TUCP Partner has agreed to coordinate responding to information request or open records request for certification list or copies of the data base as appropriate.

A. Training and Resources

The TUCP Partners will conduct ongoing in-service training. The TUCP Partners will agree to rotate the duties of hosting, planning and conducting training sessions amongst the TUCP Partners.

IV CERTIFICATION PROCEDURES AND PROCESS

In addition to the following procedures, the TUCP will follow all certification procedures and standards of 49 CFR Part 26, and will implement USDOT directives and guidance concerning DBE certification matters. A Standard Operating Procedure (SOP) has been developed and will be utilized by all Certifying TUCP Partners. The SOP may be modified as needed and agreed upon by majority consensus of the Certifying TUCP Partners. If consensus can not be reached, the issue will be forwarded to FHWA – Texas Division for further guidance.

- The TUCP will utilize the USDOT approved Uniform Certification Application and other related certification documents to facilitate “one-stop shopping” for applicants.

A. Geographic & Industry Considerations

The TUCP Certifying Partners have agreed to perform the certification process for DBE program applicants within the State of Texas by geographical location and by industry. If a DBE applicant/firm works only in the highway construction industry, TxDOT agrees to process the application and/or have certification responsibility for the DBE firm. Therefore, the certifying TUCP partner to whom application is made will ascertain the geographical area of the applicant firm and/or its primary work type or industry, and take the appropriate action to either process the application or forward the application within three to five business days to the appropriate TUCP certifying partner. If a firm is an applicant interested in airport DBE certification, the TUCP certifying partner agrees to forward the application to the appropriate TUCP agency based on geographical location or process within three to five business days.

City of Austin: Geographical: Bastrop, Caldwell, Hays, Travis and Williamson

City of Houston: Geographical: Counties of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller.

Corpus Christi Regional Transportation Authority: Geographical: Counties of Aransas, Bee, Goliad, Jim Wells, Karnes, Kleberg, Live Oak, Nueces, Refugio, and San Patricio.

North Central Texas Regional Certification Agency: Geographical: Counties of Collin, Dallas, Denton, Ellis, Erath, Hood, Jack, Johnson, Kaufman, Navarro, Palo Pinto, Parker, Rockwall, Somervell, Tarrant, and Wise.

South Central Texas Regional Certification Agency: Geographical: Counties of Atascosa, Bandera, Bexar, Comal, Frio, Guadalupe, Kendall, Kerr, McMullen, Medina, and Wilson.

Texas Department of Transportation: Geographical: All other remaining counties in Texas. All heavy highway construction categories indicating TxDOT only.

B. Quality Assurance (New Certifications)

The SOP has been created to ensure consistent application of UCP program requirements among the Certifying TUCP Partners. Uniform documents have been developed for use by the Certifying TUCP Partners so that consistent information is obtained and used in certification determinations. At a minimum, there will be annual training of certification staff in order to maintain consistency in determinations.

C. Annual Review Process

By signature of this agreement, DBEs certification updates will be conducted annually using the TUCP Annual Update "No Change" Affidavit as required in the SOP and following procedures outlined in 49 CFR Part 26.87. The TUCP Partner has agreed to conduct annual reviews of certified DBEs, conduct a DBE on-site review every three years in conjunction with the DBE firm's submittal of the Annual Update Affidavit per 49 CFR Part 26.83(h) or every five (5) years for corporations and partnerships and ten (10) years for sole proprietorships.

D. Decertification Procedures

The TUCP Partner agrees to process decertifications in compliance to 49 CFR Part 26.87. Provisions exist in the TUCP Standard Operating Procedure for the Certifying TUCP Partners to accept written complaints from a third party alleging the ineligibility of a currently certified firm. The TUCP SOP outlines how those complaints will be coordinated by the receiving partner.

E. Appeals Process and Procedures

An appeals procedure has been established as part of the TUCP SOP for appeals of denial of original certification, and decertification that provides due process to the affected firm in accordance with 49 CFR Part 26.

- **Denials of Original Certifications and Decertification:** The DBE applicant has the opportunity to appeal to USDOT in accordance with 49 CFR Part 26.89. Firms that are decertified will have due process in accordance with 49 CFR Part 26.87.

F. Staff Training

Each TUCP Partner agrees to:

- Participate in annual staff training; assist with the development and coordination of training modules that support the SOP.
- Recruit instructors and determine locations for training workshops.
- Schedule joint training sessions.
- Conduct staff training to assure that all staff are knowledgeable of certification regulations and procedures as updates and changes are made to the regulations.

G. Unified DBE Directory

By signature of this MOA the TUCP Partners agrees to:

- Develop and complete parameters for Unified DBE Directory.
- Compare UCP Certifying Partners databases.
- Remove duplicate DBE firms.
- Develop common databases however nothing in this agreement excludes the certifying partners from creating and maintaining separate databases for other programmatic needs.
- Develop procedures for electronic submission of DBE firms for inclusion in the Unified DBE Directory.
- Develop and issue press release on public access to online DBE Directory (information will be maintained on TXDOT Website).

V. CHANGES TO THE MOA

This MOA can be amended by approval of the majority of the TUCP Partners. Changes to this MOA shall require a majority agreement by the TUCP Certifying Partners. In cases where there is not a majority agreement, the issue will be forwarded to USDOT for resolution and the partners agree to execute the decision of USDOT by signature of this MOA.

VI. SUMMARY

As a result of the requirements set forth in 49 CFR Parts 26 and 23, we the undersigned, agree to participate in the STATE OF TEXAS'S Unified Certification Program in accordance with the provisions of this MOA and agree to abide by its contents

EXECUTED AND DELIVERED by and between the TUCP Partners as of the effective date of this MOA.

TUCP CERTIFYING PARTNERS

City of Austin Handwritten Signature for Veronica Business Law
 Name Veronica Price February 17, 2012
 Agency City of Austin Title Certification Division Manager

City of Houston Carlene D. Wright February 17, 2012
 Name Carlene D. Wright Title Director, DBE L-D
 Agency City of Houston - Mayor's Office of Business Opportunity

Handwritten Signature
 Corpus Christi Regional Transportation Authority February 17, 2012
 Name George G. Lopez-Aedo Title MANAGING DIRECTOR OF ADMINISTRATION
 Agency

Handwritten Signature
 North Central Texas Regional Certification Agency February 17, 2012
 Name Sheena Moram Title Agency Director
 Agency

Blaine R. Mitchell
 South Central Texas Regional Certification Agency February 17, 2012
 Name Blaine R. Mitchell Title Executive Director
 Agency

Texas Department of Transportation February 17, 2012
 Name Handwritten Signature Title DBE/Minority BE Program Director
 Agency



Educate. Connect. **Grow.**

Produced by:

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Jason McLemore, Houston Airport System-Office of Business Opportunity Deputy Assistant Director