

Attachment A

ARTICLE VI. THE SMALL BUSINESS ENTERPRISE PARTICIPATION PROGRAM¹

18-100 Rationale and adoption of findings.

A. Rationale. In 1993 and 1999, the City commissioned and completed disparity studies that revealed underutilization of local minority-owned and woman-owned business enterprises (M/WBE) in business opportunities for goods and general services procurement and construction subcontracting with the City. As a result of the 1993 study, the City established the Minority-owned and Woman-owned Business Enterprise Program (M/WBE Program). In response to the 1999 study, the M/WBE Program was revised to include the Small Business Enterprise Program (SBE Program).

In 2005, the City completed a study to review the M/WBE and SBE Programs (2005 Program Update Study). The 2005 Program Update Study documented substantial progress made by the City in eliminating disparity and identified the need to continue the M/WBE Program with significant revisions. The revisions adopted by the City included, but were not limited to, the transition of the goods and general services procurement program to a race- and gender-neutral small business enterprise (SBE) program. Further, in response to evidence in the 2005 Program Update Study showing that some groups participating in the construction subcontracting goals program were near parity, the City increased the number of construction projects with SBE goals relative to construction projects with M/WBE goals as a means to transition to a full race- and gender-neutral SBE program.

Statistical evidence gathered from M/W/SBE utilization data from July 1, 2005 through June 30, 2009, does not support the continuation of a race- and gender-based program:

1. M/W/SBEs earned \$53.3 million in 2005-09 on goods and general services contracts, with

M/WBEs earning \$48.4 million (91%) of the total;

2. M/W/SBEs firms earned \$79.2 million on construction subcontracts, with M/WBEs earning \$75.1 million (95%) of the total; and

3. M/WBEs comprised 90% of all certified firms in the City's M/W/SBE Program prior to May 1, 2010.

STATISTICAL AND OTHER EVIDENCE GATHERED FROM JULY 1, 2010 THROUGH JUNE 30, 2019, SUPPORTS THE CONTINUATION OF A RACE- AND GENDER-NEUTRAL SMALL BUSINESS ENTERPRISE (SBE) PROGRAM:

IN FISCAL YEAR 2018-2019, SBE BUSINESSES EARNED 7.54% OF ALL CONSTRUCTION DOLLARS SPENT ON LOCALLY FUNDED CONTRACTS.

On March 10, March 30, April 21, and April 26, 2010, the City hosted several informational forums for citizens, advocacy groups and stakeholders to gather evidence required to continue with an expanded SBE Program. A public hearing was held on April 28, 2010. In addition, the City established an open comment period from March 30, 2010, through April 30, 2010.

ON JANUARY 15, JANUARY 21, JANUARY 28, AND FEBRUARY 6, 2020, THE CITY HOSTED SEVERAL INFORMATIONAL FORUMS FOR CITIZENS, ADVOCACY GROUPS AND STAKEHOLDERS TO GATHER INFORMATION REQUIRED TO CONTINUE WITH A SBE PROGRAM.

The information gathered at the forums, public hearing, and from the COMMENTS SUBMITTED DURING THE COMMENT PERIOD REVEALED THAT SMALL BUSINESSES AND PRIME CONTRACTORS ARE SUPPORTIVE OF THE SBE PROGRAM. continue to face obstacles to full participation in

~~the marketplace. These obstacles include, but are not limited to, difficulties in obtaining. To be determined based on public comment.~~

B. Adoption of Findings. Based on the statistical evidence compiled by the City and the anecdotal evidence gathered from the public through the above mentioned forums, hearing, and comment period, the City Council hereby adopts the following findings:

1. The relevant geographic market for construction services purchased by the City is Maricopa County, Arizona.

2. The available evidence suggests that small businesses continue to experience difficulties competing in the relevant geographic market, including competing for City construction contracts.

3. ~~A~~ CONTINUING A race- and gender-neutral SBE program would further the mission to increase business opportunities for all small business enterprises.

~~(Ord. No. G-5518, § 1, adopted 5-19-2010, eff. 7-1-2010)~~

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~~Editor's note — Ord. No. G-5518, § 1, adopted May 19, 2010, effective July 1, 2010, amended the title of said article to read as herein set out. Formerly said article was entitled Minority-owned Business Enterprise, Woman-owned Business Enterprise and Small Business Enterprise Participation Program and derived from Ord. No. G-4697, § 1, 5-18-2005, eff. 7-1-2005.~~

~~Cross reference — Public works contracts, § 2-187 et seq.; prequalification of contractors, ch. 31A.~~

18-101 Definitions.

For the purposes of this article, the following terms shall have the following meanings:

A. Bid ~~means~~: a quotation, bid, statement of qualifications or proposal by a bidder or contractor to perform or provide labor or materials to the City.

B. Bidder ~~means~~: any person, partnership, corporation or other business entity that submits a bid FOR AN ELIGIBLE PROJECT or has been selected as a construction manager at risk, design builder or job order contractor. THE BIDDER CAN BE AN INDIVIDUAL FIRM OR A JOINT VENTURE.

C. Certified SBE ~~means~~: an SBE that meets the requirements of and has been granted status as a certified small business enterprise by the City Manager.

D. City ~~means~~: the City of Phoenix.

E. City Council ~~means~~: the City Council of the City of Phoenix.

F. City Manager ~~means~~: the City Manager of the City of Phoenix, or a person designated by THE such City Manager to implement any or all portions of this article delegated to the City Manager.

G. Commercially Useful Function ~~means~~: the performance of real and actual services in the discharge of any contractual endeavor, as stated in Code of Federal Regulations, Title 49, Part 26. An SBE subcontractor is considered to perform a commercially useful function when the subcontractor is responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing and supervising the work involved with its own resources. In determining whether an SBE subcontractor is performing a commercially useful function, factors including but not limited to, the following will be considered:

1. The amount of work subcontracted;
2. Whether the amount the SBE is to be paid is commensurate with the work it will actually perform;
3. Whether the business will perform work in the trade area where experience and expertise has been demonstrated and for which it is seeking to be or has been certified;
4. Whether the business actually performs, manages and supervises the work for which it has been contracted to perform;
5. Whether the business purchases goods and/or services from a non-SBE-certified firm and simply resells goods to the City, City contractor, or other person doing business with the City for the purpose of allowing those goods to be counted towards fulfillment of SBE utilization goals; and
6. Standard industry practices. Controlled, for purposes of determining whether a business is an SBE means: the small business owner(s) shall possess and exercise the legal authority and power to manage business assets, good will and daily operations in the primary trade area for which certification is sought and apart from administrative functions and they shall actively and continuously exercise this managerial authority and power in determining the policies of and directing the day-to-day operations of the business.

H. Eligible project means: any construction contract undertaken by the City unless otherwise precluded by law.

I. Good faith efforts or good faith participation means: the bidder/OR PRIME CONTRACTOR must show that the bidder OR PRIME CONTRACTOR took all necessary and reasonable steps to achieve an SBE goal or other requirement of this article which steps, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to

obtain sufficient SBE participation, even if such steps were not fully successful. A list of the types of steps that the City may consider as part of the bidder's OR PRIME CONTRACTOR'S good faith efforts to obtain SBE participation may be found in the administrative rules published by the City Manager and the instructions to bidders for the respective project.

J. Joint Venture means: an association of two or more persons, or business organization or any combination of these entities, established to carry on a single business activity limited in scope and duration to a specific contract with the City.

K. Local SBE means: an SBE whose principal place of business is located in Maricopa County, Arizona.

L. Owned for purposes of determining whether a business is an SBE means that:

1. The small business owner(s) as the context requires, shall possess 100% ownership interest in the applicant firm;
2. This ownership shall be real and continuing, and shall go beyond mere indicia of ownership of the business reflected in ownership documents; and
3. The small business owner(s) shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by an examination of the substance, rather than the form, of ownership arrangements.

M. Personal Net Worth means: the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: ~~t~~The individual's ownership interest in an applicant or participating SBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only

his or her own share of assets held jointly or as community property with the individual's spouse.

N. PRIME CONTRACTOR: SELECTED BIDDER THAT ENTERS INTO A CONSTRUCTION CONTRACT WITH THE CITY AND HAS THE FULL RESPONSIBILITY FOR ELIGIBLE PROJECT COMPLETION AND DELIVERY OR A SELECTED BIDDER THAT UNDERTAKES TO PERFORM AN ELIGIBLE PROJECT AND MAY EMPLOY OR MANAGE ONE OR MORE SUBCONTRACTORS TO CARRY OUT SPECIFIC PARTS OF THE CONTRACT. THE PRIME CONTRACTOR CAN BE AN INDIVIDUAL FIRM OR A JOINT VENTURE.

O. Small Business Size means: the size standard as defined in the Small Business Administration Size Regulations 13 CFR Part 121.

P. Small Business Enterprise (SBE) means: a small business that is an independent and continuing enterprise for profit; ~~performing~~ THAT PERFORMS a Commercially Useful Function; IS owned and controlled by one or more persons each of whose Personal Net Worth does not exceed LIMITS IDENTIFIED BY U.S. DOT REGULATIONS-49 CFR, PARTS 23 AND 26 ~~seven hundred fifty thousand dollars;~~ and meets the current Small Business Size standard in its primary industry or trade area.

~~(Ord. No. G-5518, § 1, adopted 5-19-2010, eff. 7-1-2010)~~

18-102 Statement of policy.

The City is determined:

A. To expand opportunities for SBE subcontractors on eligible contracts PROJECTS awarded by the City; and

B. To promote full and equal business opportunity for all persons doing business with the City.

~~(Ord. No. G-5518, § 1, adopted 5-19-2010, eff. 7-1-2010)~~

18-103 Duties of the City Manager for the implementation of SBE Participation Program in City construction contracting.

The City Manager shall have the following authority and duties:

A. The administration and enforcement of this article.

B. The establishment of written procedures to effectuate this article.

C. The development of a database of certified SBEs across all construction categories to be maintained as a public record.

D. The establishment and review of applicable SBE goals on a project-by-project basis.

E. The investigation of alleged violations of this article including a party's failure to act in good faith, and the issuance of written determinations following these investigations stating the reasons for each determination, and which may include the imposition of sanctions.

F. The review of cases where PRIME contractors fail to implement previously made SBE commitments to determine whether there should be further efforts or alternative approaches, including but not limited to, contact with industry, associations, or any pertinent federal agency, for information concerning the availability of qualified SBEs.

G. The investigation and determination of whether, in the case of a PRIME contractor's failure to act in good faith any of the penalties set forth in Section 18-110 (Failure to meet SBE participation goals) are appropriate.

H. The certification of contractors, subcontractors or bidders as bona fide SBEs, in accordance with the standards set forth in Article VIII.

I. The notification to an affected party that the party has the right to appeal a determination of noncompliance with this article.

J. The maintenance of annual statistical databases on availability and utilization of certified SBEs and non-SBEs including:

1. The level of SBE participation achieved in contracts subject to this article; and

2. The estimated availability of certified SBEs and non-SBE subcontractors ready, able and willing to perform work on City projects.

~~(Ord. No. G-5518, § 1, adopted 5-19-2010, eff. 7-1-2010)~~

18-104 Project SBE participation goals.

To determine SBE subcontracting participation goals on eligible projects, the City Manager may consider:

A. The availability of certified SBEs in various industry classifications who are qualified, willing, and able to provide labor and materials on the ELIGIBLE PROJECT particular contract;

B. The level of participation by such firms in past contracts awarded by the City;

C. The design plans and contract specifications;

D. The annual SBE participation goals; and

E. Any other relevant factors.

~~(Ord. No. G-5518, § 1, adopted 5-19-2010, eff. 7-1-2010)~~

18-105 Bidder's requirements regarding submission of an SBE Utilization Plan.

A. Notwithstanding a bidder's compliance with any other requirement of City ordinances, if SBE participation goals have been set for an eligible project, no bidder shall be awarded a contract for the project unless the City Manager has approved the bidder's SBE Utilization Plan or granted the bidder a waiver on the project. The bidder's SBE Utilization Plan shall demonstrate how the bidder will meet the applicable SBE participation goals set for the project and shall be incorporated into the contract.

B. Each bidder shall submit a completed SBE plan or fully documented waiver request with the bid submission. The plan shall contain, at a minimum, the names, addresses, and contact persons of the SBEs to be used in the contract, the type of work or service each business will perform, and the dollar value of the SBE subcontract. These requirements may be changed by the City Manager from time to time. PRIME CONTRACTORS/Bidders may meet the applicable SBE project goals through a variety of methods, as follows:

1. Subcontractor participation. Where a prime contractor utilizes one or more subcontractors to satisfy its SBE participation commitment, the prime contractor may claim only expenditures to certified SBE subcontractors performing a commercially useful function in the work of the contract and performing work in the trade area where SBE certification has been granted.

2. Non-SBE firms not counted. Work subcontracted BY SBE SUBCONTRACTORS to non-SBE firms will not be counted towards achieving the SBE utilization goal established for the project.

3. Supplier participation. Where a prime contractor utilizes one or more SBE suppliers to satisfy its SBE commitment, in whole or in part, the SBE supplier participation may be

credited towards the applicable SBE participation goal as follows:

- a. If SBE suppliers manufacture the goods supplied, then one hundred percent of the contract amount is credited towards the applicable SBE participation goal.
- b. If the SBE suppliers are wholesalers warehousing the goods supplied, then one hundred percent of the contract amount is credited towards the applicable SBE participation goal; but only twenty-five percent of the applicable SBE goal may be attained by non-manufacturing supplier contracts to SBEs.

4. Joint ventures and mentor-protege programs.

- a. The City Manager shall encourage, where economically feasible, establishment of joint ventures and mentor-protege programs to promote prime contracting opportunities for SBEs on all eligible projects.
- b. Where a PRIME contractor/BIDDER engages in a joint venture to satisfy its SBE commitment, the City Manager shall review and approve all joint venture agreements. On the basis of these agreements, the City Manager shall determine the degree of SBE joint venture participation that may be credited towards applicable SBE project goals.
- c. The PRIME CONTRACTOR/bidder shall permit the City Manager to review all records pertaining to joint venture agreements before and after the contract award, to the extent reasonably necessary to assess compliance with this article.
- d. The degree to which a joint venture may satisfy relevant SBE participation goals cannot exceed the proportionate interest held by the SBE as a member of the joint venture as demonstrated in the written agreement establishing the joint venture. Further, SBE economic interest in the joint venture shall be

based on sharing of real economic interest in the joint venture and shall include proportionate control over management, interest in capital acquired by the joint venture, and participation in the joint venture's profit or loss.

e. The City Manager shall also encourage mentor-protege programs to assist SBEs on financing, bonding, construction management, and technical matters. The City Manager shall review and approve the following terms of each mentor-protege agreement:

- i. Type of technical assistance to be provided by mentor;
- ii. Rights and responsibilities of each mentor and protege for each contracting activity;
- ii. The specific duration of the agreement, which shall not exceed three years; AND
- iv. The amount of the protege participation that may be credited toward the applicable SBE goal.

C. After the City executes the project contract, the successful PRIME CONTRACTOR/bidder may not alter the SBE utilization plan as submitted at the time of the bid without prior written consent of the City Manager.

D. Subcontractor goals packet SBE Plan.

1. The City will publish its SBE subcontracting goals in the project specifications and the instructions to bidders. All bidders shall submit at the time of bid a subcontractor goals packet containing their proposed SBE utilization plan and Letter(s) of Intent for the project, a complete list of SBE subcontractors, and the dollar value and participation percentage of each SBE proposed subcontract, a complete list of subcontractors/suppliers contacted in preparation for bid, or a good-faith request for waiver or both as applicable.

2. Each bidder shall certify on the subcontractor goals packet that the bidder has met the established SBE project participation goals; or notwithstanding good-faith efforts to meet the goals, the bidder has been unable to do so and therefore is entitled to a waiver. If this certification is not included as part of the bid for any reason, the bid shall not be read. In addition, the bid shall not be read or as applicable, deemed non-responsive unless it includes either the complete subcontractor goals packet if the bidder has met the established SBE project participation goals; or a fully documented waiver request if, notwithstanding good-faith efforts, the bidder has failed to meet the goals. All bids that include the certification and either the complete subcontractor goals packet or a fully documented waiver request shall be read, unless otherwise deemed nonresponsive.

E. Waiver.

1. All waiver requests shall indicate whether a complete or partial waiver is sought and shall indicate the scope of any partial-waiver request. The waiver request shall provide evidence of the PRIME CONTRACTOR'S/bidder's efforts to meet the project goals, and the waiver will be resolved in the manner described below.

2. The PRIME CONTRACTOR'S/bidder's application for waiver of the project goals shall include full documentary evidence of the PRIME CONTRACTOR'S/bidder's good-faith efforts to meet the project goals, and the application shall state why the request for waiver should be granted. The application shall be in writing and shall include a narrative, affidavits and/or exhibits that explain in detail and verify the actions taken by the PRIME CONTRACTOR/bidder to meet the goals. The fact that other PRIME CONTRACTORS/bidders could meet, or claim to meet, the project goals shall not by itself constitute grounds for denying a waiver request. All requests for waivers shall be

evaluated on the basis of the objective criteria set forth below.

3. The PRIME CONTRACTOR/bidder shall provide as part of the waiver request the following evidence of its good-faith efforts, and the request will be evaluated on these items:

- a. Copies of written notifications to SBEs that their interest in the subcontract is solicited;
 - b. Evidence of the efforts made to divide the work into small, economically feasible units in order to increase the likelihood of achieving the stated PROJECT goals;
 - c. Evidence of efforts made to negotiate with SBEs including at a minimum:
 - i. The names, addresses and telephone numbers of SBEs that were contacted;
 - ii. A description of the information provided to SBEs regarding the plans and specifications for portions of the work to be performed;
 - iii. A statement of the reasons why additional agreements with SBEs if needed to meet the stated goals, were not reached;
 - d. Evidence of efforts made to help SBEs contacted that need assistance in obtaining bonds and insurance required by the PRIME CONTRACTOR/bidder;
 - e. As to each contacted SBE, the PRIME CONTRACTOR/bidder considered unqualified, a written statement of the reasons for the PRIME CONTRACTOR'S/bidder's conclusion;
 - f. Written quotes or records of verbal quotes solicited from all SBEs seeking subcontract work with the PRIME CONTRACTOR/bidder.
4. The City shall waive a project goal, at least in part, if the quotes or proposals received by the PRIME CONTRACTOR/bidder requesting a waiver from all SBEs in one trade exceed the

quote or proposal of the lowest non-SBE competing for the same work by the lesser of twenty percent or one hundred thousand dollars. The City shall adopt administrative rules, with input from the Small Business Enterprise Subcontracting Goals Oversight Committee, to implement the waiver criteria specified above.

(Ord. No. G-5518, § 1, adopted 5-19-2010, eff. 7-1-2010)

18-106 Small Business Enterprise Subcontracting Goals Oversight Committee

A. THE CITY MANAGER SHALL APPOINT A SMALL BUSINESS ENTERPRISE SUBCONTRACTING GOALS OVERSIGHT COMMITTEE (OVERSIGHT COMMITTEE) TO MONITOR IMPLEMENTATION OF THE SBE PARTICIPATION PROGRAM ESTABLISHED BY THIS ARTICLE VI. THE OVERSIGHT COMMITTEE SHALL REVIEW AND COMMENT ON THE CITY MANAGER'S ADMINISTRATIVE RULES DESIGNED TO IMPLEMENT THIS ORDINANCE AND PERIODICALLY REVIEW AND COMMENT ON THE CITY'S PROGRESS IN MEETING THE OBJECTIVES OF THE SBE SUBCONTRACTING GOALS PROGRAM. SBE OVERSIGHT COMMITTEE MEMBERSHIP SHALL CONSIST OF UP TO EIGHT PERSONS AND WILL BE COMPOSED OF STANDING AND AD HOC MEMBERS. THERE WILL BE FOUR STANDING MEMBERS WHO ARE PERMANENT REPRESENTATIVES AND WILL INCLUDE: THE CITY ENGINEER; THE EQUAL OPPORTUNITY DEPARTMENT DIRECTOR; A MANAGEMENT/BOARD REPRESENTATIVE OF THE ARIZONA CHAPTER, ASSOCIATED GENERAL CONTRACTORS OF AMERICA (AZAGC), AND ASSOCIATED MINORITY CONTRACTORS OF ARIZONA (AMCA). THERE WILL BE UP TO FOUR AD HOC MEMBERS WILL CONSIST OF UP TO TWO

REPRESENTATIVES EACH FROM THE AZAGC AND THE AMCA.

~~A. The City Manager shall appoint a Small Business Enterprise Subcontracting Goals Oversight Committee (Oversight Committee) to monitor implementation of the SBE Participation Program established by this Article VI. The Oversight Committee shall review and comment on the City Manager's administrative rules designed to implement this ordinance and periodically review and comment on the City's progress in meeting the objectives of the SBE Subcontracting Goals Program. The Oversight Committee shall be comprised of up to eight persons. A minimum of two members shall be appointed from City departments that participate in the program and a minimum of three members shall be appointed from the following organizations or their successors in interest: the Associated General Contractors of America, Arizona Chapter; and established minority/woman/small business construction contractor or subcontractor organizations. Committee members shall serve without compensation.~~

B. The revisions herein to Article VI shall not apply to any contract publicly advertised before the effective date of this ordinance or to any contract executed before the effective date of this ordinance.

(Ord. No. G-5518, § 1, adopted 5-19-2010, eff. 7-1-2010)

18-107 Review of bid submission and SBE Plan.

A. Bid submission.

1. The City Manager shall review each subcontractor goals packet submitted with the bid to determine if the bidder included in its submission a completed and signed SBE plan that meets the SBE goals for the contract. The City Manager shall approve or reject the plan.

2. The City Manager may declare the bid nonresponsive if the City Manager determines a bidder failed:

- a. To provide a completed SBE Plan;
- b. To identify all SBEs by name, scope of work and value of work sufficient to meet the applicable SBE goals for that project;
- c. To achieve the dollar value of creditable participation by certified SBEs necessary to meet the SBE project goals; ~~or~~
- d. To act in good faith; or
- e. To meet all requirements for a good-faith waiver of the SBE goals all as determined by the City Manager.

3. The City Manager may declare the bid nonresponsive if the City Manager determines that a PRIME CONTRACTOR/bidder furnished false, fraudulent, misleading or materially inaccurate, incomplete information in the plan, or as part of a bid submission, proposal, or statement of qualifications.

4. If, after consulting with the appropriate City departments, the City Manager determines that the SBE plan submitted by a PRIME CONTRACTOR/bidder has been altered without prior written consent or is false or fraudulent, the City Manager shall be authorized to reject the bid; or, if the determination is made after an award, the City Manager may declare the contract null and void or may cancel it.

B. Waivers.

1. If a PRIME CONTRACTOR/bidder requests a waiver of project SBE goals, the City Manager shall determine whether the PRIME CONTRACTOR/bidder has made a good-faith effort to meet the project goals and whether a waiver of the goals should be granted in whole or in part.

2. In cases where a waiver is requested because SBEs are unavailable to deliver the specified labor and materials, the City Manager shall determine whether SBEs are not in fact available to provide the needed labor and materials at competitive prices.

~~(Ord. No. G-5518, § 1, adopted 5-19-2010, eff. 7-1-2010)~~

18-108 SBE Participation Clause.

Every contract with the City on an eligible project shall include an SBE clause. The SBE clause shall read as follows:

The contractor agrees to meet the goals of this Agreement by making available opportunities for Small Business Enterprises (SBEs), as defined in Chapter 18, Article VI of the Phoenix City Code, for utilization in the work set forth within this Agreement. For this purpose, the PRIME contractor, at minimum, shall undertake the following:

A. Notify SBEs that the PRIME contractor has subcontracting opportunities available and maintain records of all SBE and all non-SBE subcontractor responses.

B. Maintain a file of names and addresses of each SBE and non-SBE subcontractor contacted and action taken with respect to each such contact.

C. Disseminate the PRIME contractor's SBE participation policy within the contractor's management and externally communicate this policy to all subcontractors and suppliers.

D. Undertake and continue specific and personal recruitment efforts (both written and oral) directed at SBEs as well as SBE contractor trade and assistance organizations.

E. Subdivide the contract into economically feasible segments to facilitate SBE participation.

F. Adopt and comply with the SBE participation plan submitted with its response to the Invitation for Bids, Request for Qualifications or Request for Proposals, as approved by the City Manager.

G. The PRIME contractor further agrees that any breach of the SBE provisions of this Agreement shall be material and shall entitle the City to any or all of the following remedies, in addition to all other remedies allowed by law:

1. In addition to the applicable retention or securities-in-lieu of retention authorized by statute, to withhold up to ten percent more of all future payments on the involved eligible project until it is determined that the PRIME contractor is in compliance;

2. To withhold all future payments on the project until it is determined that the PRIME contractor is in compliance;

3. To reject all future bids for all projects or other procurements with the City of Phoenix until such time that the PRIME contractor has cured its breaches and demonstrates that it has adopted and faithfully performed its approved SBE Plan and all other provisions contained in the Agreement; or

4. If any breach of the SBE provisions is discovered or has not been cured by substantial completion of the project, to reject all of THE PRIME contractor's future bids, CONTRACTS AWAITING ISSUANCE OF A NOTICE TO PROCEED (NTP), OR BID OPENINGS for all projects or other procurements with the City of Phoenix for a period ~~of~~ NOT TO EXCEED one year from the date of substantial completion of the project. THIS REMEDY WOULD BE AT THE DISCRETION OF THE CITY MANAGER.

~~(Ord. No. G-5518, § 1, adopted 5-19-2010, eff. 7-1-2010)~~

18-109 Maintenance of SBE records and reports by contractors.

PRIME Contractors/BIDDERS THAT ARE awarded contracts on eligible projects incorporating SBE requirements must submit monthly updated participation reports, designed by the City Manager, which summarize the number and dollar amounts of subcontract awards made during the contract term and the actual participation of SBE firms that occurred during the report period. These reports shall be submitted to the City Manager with the monthly pay request.

~~(Ord. No. G-5518, § 1, adopted 5-19-2010, eff. 7-1-2010)~~

18-110 Failure to meet SBE participation goals.

If the City Manager determines that the PRIME contractor has failed to comply with any provision of this article, the City Manager may take any or all of the following actions, IN ADDITION TO ALL OTHER REMEDIES ALLOWED BY LAW:

A. In addition to the applicable retention or securities-in-lieu of retention as authorized by statute, to withhold from the contractor up to ten percent more of all future payments on the involved eligible project until it is determined that the PRIME contractor is in compliance;

B. To withhold from the contractor all future payments on the involved project until it is determined that the PRIME contractor is in compliance;

C. To reject all future bids or offers for all projects or other procurements with the City until such time that the PRIME contractor has cured its breaches and demonstrates that it has faithfully performed its approved SBE plan and all other provisions of this article; or

D. If any breach of the SBE provisions is discovered or has not been cured by substantial completion of the project, to reject all of THE PRIME contractor's future bids, CONTRACTS AWAITING ISSUANCE OF A NOTICE TO PROCEED (NTP), OR BID OPENINGS for all projects or other procurements with the City of Phoenix for a period ~~of~~ NOT TO EXCEED one year from the date of substantial completion of the project. THIS REMEDY WOULD BE AT THE DISCRETION OF THE CITY MANAGER.;

~~(Ord. No. G-5518, § 1, adopted 5-19-2010, eff. 7-1-2010)~~

Sec. 18-111 — PRIME CONTRACTOR

CORRECTIVE ACTION AND APPEALS.

A. IF THE CITY MANAGER DETERMINES THAT A PRIME CONTRACTOR'S OR BIDDER'S BREACH OF THE SBE PROVISIONS CANNOT BE REMEDIED TO ACHIEVE COMPLIANCE, THE CITY MANAGER SHALL NOTIFY THE PRIME CONTRACTOR/BIDDER IN WRITING BY CERTIFIED MAIL OF THE CORRECTIVE ACTION AS SET FORTH IN EITHER SECTION 18-108(G)(4) OR SECTION 18-110(D) AND THE REASONS FOR THE CORRECTIVE ACTION.

B. ANY PRIME CONTRACTOR/BIDDER WHO HAS BEEN DEEMED IN BREACH OF THE SBE PROVISIONS AND WHO HAS RECEIVED NOTICE OF CORRECTIVE ACTION IDENTIFIED IN EITHER SECTION 18-108(G)(4) OR SECTION 18-110(D) MAY APPEAL THE DECISION BY FILING A WRITTEN NOTICE OF APPEAL WITH THE CITY MANAGER WITHIN FOURTEEN (14) CALENDAR DAYS OF RECEIPT OF THE NOTICE OF CORRECTIVE ACTION. THE WRITTEN NOTICE MUST STATE THE REASONS FOR THE APPEAL. IMPOSITION OF THE CORRECTIVE ACTION SET FORTH IN SECTIONS 18-108(G)(1)-(3) AND

SECTIONS 18-110(A)-(C) IS NOT SUBJECT TO THIS APPEAL PROCESS.

C. WITHIN FIVE (5) CALENDAR DAYS OF RECEIPT OF THE NOTICE OF APPEAL FROM THE PRIME CONTRACTOR/BIDDER, THE NOTICE OF APPEAL SHALL BE FORWARDED TO THE PERSON DELEGATED BY THE CITY MANAGER'S OFFICE, TO SERVE AS HEARING OFFICER FOR THE APPEAL. THE HEARING OFFICER SHALL NOT BE A MEMBER OF THE SBE OVERSIGHT COMMITTEE.

D. THE HEARING OFFICER SHALL:

1. SET A HEARING DATE NOT MORE THAN FOURTEEN (14) CALENDAR DAYS FROM THE DATE OF RECEIPT OF THE NOTICE.

2. CAUSE A NOTICE OF THE HEARING, WHICH SHALL INCLUDE THE HEARING DATE, TIME AND PLACE, TO BE SERVED UPON ALL PARTIES BY CERTIFIED MAIL. SUCH NOTICE SHALL SET FORTH WITH PARTICULARITY THE REASONS FOR THE APPEAL.

3. CONDUCT A HEARING CONCERNING THE DETERMINATION OF NONCOMPLIANCE AND IMPOSITION OF THE CORRECTIVE ACTION SET FORTH IN EITHER SECTION 18-108(G)(4) OR SECTION 18-110(D). ALL PARTIES SHALL BE PROVIDED A FAIR AND IMPARTIAL HEARING AND SHALL BE ALLOWED TO PRODUCE ALL RELEVANT EVIDENCE IN EITHER PARTY'S POSSESSION CONCERNING THE DETERMINATION OF NONCOMPLIANCE WITH THE REQUIREMENTS OF THIS ARTICLE AND THE ISSUANCE OF CORRECTIVE ACTION. FOR THE APPEAL, THE BURDEN OF PROOF RESTS ON THE PRIME CONTRACTOR/BIDDER TO SHOW THAT ESTABLISHED CRITERIA FOR SBE PROVISIONS HAVE BEEN MET; THAT IT CAN BRING THE CONTRACT INTO SBE UTILIZATION COMPLIANCE; OR THAT MORE THAN ADEQUATE CORRECTIVE

ACTION HAS BEEN TAKEN TO ACHIEVE
SBE UTILIZATION COMPLIANCE.

4. ISSUE A WRITTEN REPORT ON THE
APPEAL TO ALL PARTIES THAT SHALL
AFFIRM, ALTER, OR REVERSE THE
CORRECTIVE ACTION. THE WRITTEN
REPORT SHALL BE SENT TO ALL PARTIES
BY CERTIFIED MAIL WITHIN FOURTEEN
(14) CALENDAR DAYS OF THE HEARING
AND SHALL SET FORTH THE REASONS
FOR THE DECISION.

E. THE HEARING OFFICER'S
DETERMINATION IS FINAL AND MAY NOT
BE APPEALED.

**18-111 112 Failure of SBE to comply with
program requirements.**

If the City Manager determines that an SBE
has; failed to comply with any provision of this
article; improperly altered bid documents; or
submitted false, fraudulent, misleading or
materially inaccurate information, the City
Manager may take any or all of the following
actions with regard to such THE SBE:

A. With the City Manager's prior written
consent, allow the contractor PRIME
CONTRACTOR/BIDDER to substitute another
SBE on the ELIGIBLE project;

B. Suspend the SBE's certification until such
time that the SBE has cured its breaches and
demonstrates that it has complied with this
article; AND

C. To Decertify the SBE for a period of one
year from the date the City Manager discovers
the improper conduct.

(Ord. No. G-5518, § 1, adopted 5-19-2010, eff.
7-1-2010)

**18-112113 Repeal; exemptions; Sunset;
severability.**

~~A. Repeal. All resolutions or ordinances and
parts of resolutions or ordinances in conflict
with this article VI are hereby repealed.~~

~~B. Exemptions. This article shall not apply to
any of the following:~~

~~1. Any contract publicly advertised prior to the
effective date of this article; or~~

~~2. Any contract executed prior to the effective
date of this article.~~

~~C. Sunset rule. Article VI shall expire on June
30, 2020 2025, unless the City Council finds
that the purposes identified in Section 18-102
of this article have not yet been achieved in
which case this article may be extended for up
to an additional five-year period.~~

~~D. Severability. If any provisions of this article
or any application thereof to any person or
circumstance is held invalid, the invalidity shall
not affect other provisions or applications of
this article that can be given effect without the
invalid provisions or applications, and to this
end the provisions of this article are declared to
be severable.~~

~~(Ord. No. G-5518, § 1, adopted 5-19-2010, eff.
7-1-2010)~~

18-113114—18-199 Reserved.

Article VII. THE SMALL BUSINESS ENTERPRISE PROCUREMENT PROGRAM*

18-200 Rationale and adoption of findings.

A. Rationale. In 1993 and 1999, the City commissioned and completed disparity studies that revealed underutilization of local minority-owned and woman-owned business enterprises (M/WBE) in business opportunities for goods and general services procurement and construction subcontracting with the City. As a result of the 1993 study, the City established the Minority-owned and Woman-owned Business Enterprise Program (M/WBE Program). In response to the 1999 study, the M/WBE Program was revised to include the Small Business Enterprise Program (SBE Program).

In 2005, the City completed a study to review the M/WBE and SBE Programs (2005 Program Update Study). The 2005 Program Update Study documented substantial progress made by the City in eliminating disparity, and identified the need to continue the M/WBE Program with significant revisions. The revisions adopted by the City included, but were not limited to, the transition of the goods and general services procurement program to a race- and gender-neutral small business enterprise (SBE) program. Further, in response to evidence in the 2005 Program Update Study showing that some groups participating in the construction subcontracting goals program were near parity, the City increased the number of construction projects with SBE goals relative to construction projects with M/WBE goals as a means to transition to a full race- and gender-neutral SBE program.

Statistical evidence gathered from M/W/SBE utilization data from July 1, 2005 through June 30, 2009, does not support the continuation of a race- and gender-based program:

1. M/W/SBEs earned \$53.3 million in 2005-09 on goods and general services contracts, with

M/WBEs earning \$48.4 million (91%) of the total;

2. M/W/SBEs firms earned \$79.2 million on construction subcontracts, with M/WBEs earning \$75.1 million (95%) of the total; and

3. M/WBEs comprised 90% of all certified firms in the City's M/W/SBE Program prior to May 1, 2010.

STATISTICAL AND OTHER EVIDENCE GATHERED FROM JULY 1, 2010 THROUGH JUNE 30, 2019, SUPPORTS THE CONTINUATION OF A RACE- AND GENDER-NEUTRAL SMALL BUSINESS ENTERPRISE (SBE) PROGRAM:

IN FISCAL YEAR 2018-2019, SBE BUSINESSES EARNED 7.54% OF ALL CONSTRUCTION DOLLARS SPENT ON LOCALLY FUNDED CONTRACTS.

On March 10, March 30, April 21, and April 26, 2010, the City hosted several informational forums for citizens, advocacy groups and stakeholders to gather evidence required to continue with an expanded SBE Program. A public hearing was held on April 28, 2010. In addition, the City established an open comment period from March 30, 2010, through April 30, 2010.

ON JANUARY 15, JANUARY 21, JANUARY 28, AND FEBRUARY 6, 2020, THE CITY HOSTED SEVERAL INFORMATIONAL FORUMS FOR CITIZENS, ADVOCACY GROUPS AND STAKEHOLDERS TO GATHER INFORMATION REQUIRED TO CONTINUE WITH AN EXPANDED SBE PROGRAM.

The information gathered at the forums, public hearing, and from the comments submitted during the comment period revealed that small businesses continue to face obstacles to full participation in the marketplace. These obstacles include, but are not limited to,

difficulties in obtaining: These obstacles include, but are not limited to, difficulties in obtaining: 1) credit and financing; 2) similar pricing for supplies and services; 3) participation in informal networks through which business opportunities are established; 4) notification of business opportunities; and 5) participation in the bidding process.

B. Adoption of Findings.

Based on the statistical evidence compiled by the City and the anecdotal evidence gathered from the public through the above mentioned forums, hearing, and comment period, the City Council hereby adopts the following findings:

1. The relevant geographic market for construction services purchased by the City is Maricopa County, Arizona.

2. The available evidence suggests that small businesses continue to experience difficulties competing in the relevant geographic market, including competing for City construction contracts.

3. CONTINUING A race- and gender-neutral SBE program would further the mission to increase business opportunities for all small business enterprises.

~~(Ord. No. G-5518, § 1, adopted 5-19-2010, eff. 7-1-2010)~~

Sec. 18-201. Definitions.

For the purposes of this article, the following terms shall have the following meanings:

A. Bid means: a quotation, bid, statement of qualifications or proposal by a bidder or contractor to perform or provide labor or materials to the City.

B. Bidder means: any person, partnership, corporation or other business entity that

submits a bid FOR AN ELIGIBLE PROJECT or has been selected as a construction manager at risk, design builder or job order contractor. THE BIDDER CAN BE AN INDIVIDUAL FIRM OR A JOINT VENTURE.

C. Certified SBE means: an SBE that meets the requirements of and has been granted status as a certified small business enterprise by the City Manager.

D. City means: the City of Phoenix.

E. City Council means: the City Council of the City of Phoenix.

F. City Manager means: the City Manager of the City of Phoenix, or a person designated by THE such City Manager to implement any or all portions of this article delegated to the City Manager.

G. Commercially Useful Function means: the performance of real and actual services in the discharge of any contractual endeavor, as stated in Code of Federal Regulations, Title 49, Part 26. An SBE subcontractor is considered to perform a commercially useful function when the subcontractor is responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing and supervising the work involved with its own resources. In determining whether an SBE subcontractor is performing a commercially useful function, factors including but not limited to, the following will be considered:

1. The amount of work subcontracted;

2. Whether the amount the SBE is to be paid is commensurate with the work it will actually perform;

3. Whether the business will perform work in the trade area where experience and expertise has been demonstrated and for which it is seeking to be or has been certified;

4. Whether the business actually performs, manages and supervises the work for which it has been contracted to perform;

5. Whether the business purchases goods and/or services from a non-SBE-certified firm and simply resells goods to the City, City contractor, or other person doing business with the City for the purpose of allowing those goods to be counted towards fulfillment of SBE utilization goals; and

6. Standard industry practices. Controlled, for purposes of determining whether a business is an SBE means: the small business owner(s) shall possess and exercise the legal authority and power to manage business assets, good will and daily operations in the primary trade area for which certification is sought and apart from administrative functions and they shall actively and continuously exercise this managerial authority and power in determining the policies of and directing the day-to-day operations of the business.

H. Eligible contract means: any contract for goods, supplies or general services for use in City operations unless otherwise precluded by law. Eligible contract does not include sole source contracts, petty cash purchases, emergency purchases as defined by the City Manager in the City's administrative regulations, contracts for professional services, contracts for architectural and engineering services or contracts for the following items: City utility payments, phone payments, rent, professional association fees, magazine subscriptions, payments to other governmental entities, and bank transfers. Professional services, which are not affected by this article, refer to infrequent technical or unique services or functions performed by independent contractors whose profession or occupation is the rendering of these services.

I. General service means: the furnishing of labor, time or effort by a vendor which does not

involve the delivery of a specific end product other than any requested report or documentation as required by the service agreement. General service also includes the installation of personal property only; and to maintenance and repair functions for all City facilities, equipment, property and improvements, including the replacement of parts and the providing of materials incorporated into City property as a function of the maintenance or repair service.

J. Good faith efforts or good faith participation means: the bidder must show that the bidder took all necessary and reasonable steps to achieve an SBE goal or other requirement of this article which steps, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient SBE participation, even if such steps were not fully successful. A list of the types of steps that the City may consider as part of the bidder's good faith efforts to obtain SBE participation may be found in the administrative rules published by the City Manager and the instructions to bidders for the respective project.

K. Goods or supplies means: equipment, products, commodities, or operating supplies purchased by the City for its operations in the ordinary course of business.

L. Joint Venture means: an association of two or more persons, or business organization or any combination of these entities, established to carry on a single business activity limited in scope and duration to a specific contract with the City.

M. Local SBE means: an SBE whose principal place of business is located in Maricopa County, Arizona.

N. Owned for purposes of determining whether a business is an SBE means that:

1. The small business owner(s) as the context requires, shall possess 100% ownership interest in the applicant firm;

2. This ownership shall be real and continuing, and shall go beyond mere indicia of ownership of the business reflected in ownership documents; and

3. The small business owner(s) shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by an examination of the substance, rather than the form, of ownership arrangements.

Q. Personal Net Worth means: the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: ~~t~~The individual's ownership interest in an applicant or participating SBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

P. Procurement means: buying, purchasing, renting, leasing or otherwise acquiring goods, supplies or general services. It also includes all functions that pertain to the obtaining of any good, supply or general service, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Q. Request for proposals (RFP) means: all documents, whether attached or incorporated by reference, utilized for soliciting proposals for goods, supplies and general services.

R. Small Business Enterprise (SBE) means: a small business that is an independent and continuing enterprise for profit; ~~performing~~ THAT PERFORMS a Commercially Useful Function; IS owned and controlled by one or

more persons each of whose Personal Net Worth does not exceed ~~seven hundred fifty thousand dollars~~ 1.32 MILLION DOLLARS; and meets the current Small Business Size standard in its primary industry or trade area.

S. Small Business Size means: the size standard as defined in the Small Business Administration Size Regulations 13 CFR Part 121.

T. Sole source means: a procurement for which clear and convincing evidence exists that there is only one source from which the City may obtain goods, supplies or general services suitable for the City's intended purpose.

U. Vendors means: suppliers, firms, entities, or individuals furnishing goods, supplies or general services directly to the City.

Sec. 18-202. Statement of policy.

The City is determined:

- A. To expand opportunities for eligible goods, supplies and general services contracts with SBEs awarded by the City; and
- B. To promote full and equal business opportunity for all persons doing business with the City.

Sec. 18-203. Duties of City Manager to SBE Procurement Program.

The City Manager shall have the following authority and duties:

- A. The administration and enforcement of this article.
- B. The establishment of written procedures to effectuate this article.
- C. The development of a database of SBEs, non-SBE vendors and non-SBE

suppliers that provide goods, supplies and general services to be maintained as a public record.

- D. The notification to an affected party that it has the right to appeal the determination of noncompliance with this article.
- E. The investigation of alleged violations of this article, and the issuance of written determinations following these investigations, stating the reasons for each determination.
- F. The coordination of expanded SBE procurement efforts.
- G. The maintenance of annual statistical databases on availability and utilization of SBEs including:
 - 1. The level of SBE participation achieved in the contracts subject to this article; and
 - 2. The estimated availability of SBEs and non-SBE vendors to perform contracts.
- H. The assistance and encouragement of City departments in the use of SBEs for requirements contracts.
- I. The requirement of City departments to use good faith efforts to include SBEs in their contracting practices. In keeping with this objective, contract awarding authorities, including the Finance Department, shall use good faith efforts to solicit and obtain bids from SBEs on all solicitations or document their unavailability,

Sec. 18-204. SBE Reserve Contract Program for goods, supplies and general services.

- A. The City Manager shall promptly implement, continue and expand as appropriate an SBE participation program for procurement of goods, supplies and general services in accordance with this section.
- B. The City Manager may reserve up to ten percent of the solicitation of all goods, supplies and general services procurements for competition exclusively among certified SBEs. Before the City Manager may reserve goods, supplies and general services procurements for competition exclusively among certified SBEs, the City Manager shall consider the availability of certified SBEs who are qualified, willing and able to provide materials or services in connection with the particular procurement.

Sec. 18-205. Conflicts; exemptions; Sunset; severability.

- ~~A. *Conflicts.* All resolutions or ordinances and parts of resolutions or ordinances in conflict with this article are repealed.~~
- ~~B. *Exemptions.* This article shall not apply to any of the following:
 - 1. Any invitation for bid or request for proposal publicly advertised before the effective date of this article; or
 - 2. Any contract executed before the effective date of this article.~~
- ~~C. *Sunset Rule.* Article VII shall expire on June 30, 2015 2025, unless the City Council finds that the purposes identified in Section 18-202 of this article have not yet been achieved in which case this article may be extended for up to an additional five-year period.~~

~~D. Severability. If any provisions of this article or any application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this article that can be given effect without the invalid provisions or applications, and to this end the provisions of this article are declared to be severable.~~

Secs. 18-206. – 18-299. Reserved.

ARTICLE VIII. CERTIFICATION OF SMALL BUSINESS ENTERPRISES

Sec. 18-300. Definitions.

All definitions in Articles VI and VII of this chapter shall be incorporated into this article, unless the context otherwise requires.

Sec. 18-301. City Manager Authority.

The City Manager shall have the following authority and duties for the certification of small business enterprises (SBEs):

- A. The administration and enforcement of this article.
- B. The establishment of written procedures to effectuate this article.
- C. The certification of contractors, subcontractors, vendors, and suppliers as bona fide SBEs, in accordance with the standards set forth in this article.
- D. The notification to an affected party by certified mail that it has the right to appeal to the City Manager a denial of certification or decertification as an SBE, as provided in section 18-303.
- E. The notification to the ~~Public Works~~ STREET TRANSPORTATION Department or Finance Department of any denial of certification as an SBE and any appeal of such refusal to certify.
- F. The development of a database of certified SBEs to be maintained as a public record.
- G. The maintenance of statistical data on the availability of SBEs, non-SBE construction subcontractors and non-SBE vendors and suppliers.

Sec. 18-302. Small Business Enterprise

Certification.

- A. The burden of proof rests on the applicant to establish that the standards and criteria have been met to obtain SBE certification. The City Manager shall certify SBEs for the SBE participation programs consistent with the standards set forth in 49 CFR Parts 23 and 26 as established by the U.S. Department of Transportation for the Federal Disadvantaged Business Enterprise Program as follows:

1. An eligible SBE under this program shall be an independent and continuing operation for profit, performing a commercially useful function, and which is owned and controlled by one or more eligible small business owners respectively. The ownership and control by a small business owner shall be real and substantial, and shall be indicated by customary incidents of ownership, as demonstrated by an examination of the substance rather than the form of ownership and operating arrangements.
2. A small business owner must possess the authority to direct or cause the direction of the management and policies of the firm critical to the operation of the primary business of the firm and the trade areas in which the firm is certified and apart from administrative duties and functions, and to make day-to-day decisions, on such matters of management, policy and operations. The firm shall not be subject to any formal or informal restrictions that limit the

customary discretion of a small business owner. There shall be no restrictions by partnership agreements, charter requirements or other arrangements that prevent a small business owner from making a business decision of the firm without the cooperation or vote of any owner or other party who is not a small business owner.

3. An SBE applicant shall satisfy business size standards commensurate with small business status. Except as required otherwise by law, to determine small business status for each trade, the City Manager shall adopt the annual gross receipt limitation for each trade as established by the United States Small Business Administration ("SBA") 13 CFR Part 121, Small Business Size Regulations, Subpart A, Size Eligibility Provisions and Standards for participation in SBA Programs, as such SBA limitations are amended from time to time.
4. An SBE applicant shall satisfy an individual personal net worth standard ~~\$750,000~~ NOT EXCEEDING LIMITS IDENTIFIED BY U.S. DOT REGULATIONS-49 CFR, PARTS 23 AND 26 which is commensurate with small business status. The City Manager shall adopt the personal net worth limitation for each individual owner(s) as established by the 49 CFR, Parts 23 and 26, Participation by Disadvantaged Business Enterprises in DOT Financial

Assistance programs, as such limitations are amended from time to time. To determine personal net worth, each SBE applicant shall submit to the City, and the City Manager will examine, a personal net worth financial statement including supportive documentation and evidence.

5. For purposes of this program, the applicant must be actively involved in the day-to-day management of the firm. If the actual management of an SBE firm is contracted out to individuals other than the owner, those persons who have the ultimate authority to hire and fire the managers or who can obligate the firm in financial and contractual matters will for the purpose of this article, be considered as controlling the business.
6. To determine the ownership or control of a business, all securities or other interests that constitute ownership or control of a business for purposes of establishing it as an SBE must be held directly by a small business owner. No securities or other ownership interests held in trust or by any guardian for a minor shall be considered held by a small business owner.
7. Ownership and control shall be measured as though not subject to the community property interest of a spouse.
8. A business will be declared ineligible for certification when a reasonable and prudent determination cannot be made as to ownership and control for a

family-owned enterprise where the members of the family actively involved in the business are not the qualifying individuals for certification.

B. The City Manager shall investigate SBE applications for certification. Failure to cooperate and provide all information and documentation required to make a determination of eligibility under this article will disqualify the applicant for certification. The investigation of ownership arrangements may exceed the review of formal documents submitted by each entity if:

1. The firm is applying for certification with the City for the first time;
2. The firm is newly formed or it has small business ownership of less than one hundred percent;
3. There is a previous or continuing employer-employee relationship between or among present owners;
4. A business which is not an SBE has an interest in the firm;
5. The ownership of the firm has changed since documents have been submitted to the City Manager;
6. A review of the documents submitted with the application raises serious objective concerns regarding either ownership or control of the firm; or
7. Information provided in the application process is found to be false, fraudulent, misleading or materially inaccurate.

C. The City Manager shall grant certification to an approved SBE for a

period of five years with annual updates of the applicable information A BUSINESS THAT CONTINUES TO MEET CERTIFICATION ELIGIBILITY REQUIREMENTS WHICH INCLUDES AN ANNUAL REVIEW OF APPLICABLE INFORMATION. If an SBE A BUSINESS is denied certification, the business cannot reapply for certification for a period of twelve months from the date of the notice of denial; but the business shall have the right to appeal the denial and to be certified if the appeal is decided in its favor.

D. To remain certified, all SBEs appearing in the certification database will be required to submit a new affidavit with required DOCUMENTATION every five years ON AN ANNUAL BASIS on an annual basis to the City Manager as follows:

1. All documentation required as part of the annual update process or five-year recertification will be evaluated for completeness and accuracy to determine whether any changes have occurred that affect the status of the business as a bona fide SBE. An investigation may be conducted to evaluate an applicant for continuing certification or recertification as deemed appropriate by the City Manager.
2. All certified SBEs are subject to monitoring by the City Manager to assure that the required ownership and control shall continue.

E. The City Manager may immediately remove or decertify a business that the City Manager finds is no longer a bona fide SBE. Any of the following reasons, which are not intended to be all-

inclusive, are sufficient grounds for decertification:

1. The business no longer satisfies the ownership, control, or size requirements.
 2. The SBE fails to submit, within a reasonable time period, information requested by the City Manager.
 3. The business defaults and is terminated for cause on two or more City contracts within a one-year period.
 4. The SBE is found to have provided false, fraudulent, misleading or materially inaccurate information to obtain certification that affects the eligibility status of the firm for certification.
- F. Businesses decertified for reasons other than the business's voluntary request may not apply for recertification for one year from the date of notice of decertification or removal. A business that is decertified may file an appeal under section 18-303.

Sec. 18-303. Appeals.

- A. Upon a denial of certification or decertification as an SBE by the City Manager, the City Manager shall notify the BUSINESS affected party in writing by certified mail, setting forth the reasons for the denial of certification or decertification.
- B. Any contractor, subcontractor, vendor, or supplier who BUSINESS THAT has been denied certification as an SBE or who has been decertified by the City Manager may appeal the decision by filing a written notice of appeal as designated by the City Manager within

seven working days of receipt of the notice of the denial of certification or decertification. This written notice must state the reasons for the appeal.

- C. Within three working days of receipt of the notice of appeal from the affected party, the City Manager shall forward the notice to a hearing officer.
- D. The hearing officer shall:
1. Set a hearing date not more than ~~seven working~~ FOURTEEN BUSINESS DAYS from the date of receipt of the notice from the City Manager.
 2. Cause a notice of the hearing, which shall include the hearing date, time and place, to be served upon all parties by certified mail. Such notice shall set forth with particularity the REASON FOR THE APPEAL charges filed by the affected business.
 3. Conduct a hearing concerning the determination of noncompliance. At the hearing, all parties shall be provided a fair and impartial hearing and shall be allowed to produce any and all relevant evidence in either party's possession concerning the determination of noncompliance with the requirements of this article or the denial of certification as an SBE. For the appeal, the burden of proof rests on the affected party BUSINESS to show that established criteria for SBE certification have been met.
 4. Issue written notice of the decision on the appeal to all parties and shall affirm, alter, or reverse the denial of certification by the City. The notice of

decision shall be sent to all parties by certified mail within ~~seven working~~ TWENTY BUSINESS days of the hearing and shall set forth the reasons for the decision.

- E. If the decision on appeal reverses the denial of certification or alters the denial

of certification in favor of the BUSINESS affected party, the ~~affected party's~~ business shall be certified as an SBE and added to the certification database maintained by the City. The decision of the hearing officer is final and shall be binding on all parties, subject to the right of appeal as provided by law.

PASSED by the Council of the City of Phoenix this -----day of May, 2020.

M A Y O R

ATTEST:

City Clerk

APPROVED AS TO FORM:

Acting City Attorney

REVIEWED BY:

City Manager

HG:tru:860164:CM 85, Item 32