

ARTICLE V. MINORITY, WOMEN AND SMALL BUSINESS ENTERPRISES

Sec. 15-82. Definitions.

The following words and phrases, when used in this article and in article VI of this chapter, shall have the meanings provided in this section, unless the context clearly indicates another meaning. For the purpose of these definitions, the singular shall also include the plural, and the plural shall also include the singular.

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.

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. An entity may use an employee's license in lieu of the owner's for purposes of determining whether the entity is performing a commercially useful function only when the owner has a documented disability, relevant and specific to the required license, making licensure impossible, when allowed under federal and state law, and otherwise still possesses the skill and expertise to perform the work for which the entity is being utilized. 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 the OBO director.

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

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 this Code.

Goal-oriented contract means any contract, agreement or other undertaking anticipated for construction work in excess of \$1,000,000.00 and for the supply of goods or nonpersonal or nonprofessional services in excess of \$100,000.00:

- a. For which competitive bids are required by law;

- b. Which is not within the scope of the disadvantaged business enterprise programs of the United States Environmental Protection Agency or the United States Department of Transportation or any other federal or state agency having jurisdiction; and
- c. That the initiating city department, in consultation with the OBO director, determines has significant subcontracting potential in fields in which there are adequate numbers of known MWSBEs to compete for and perform the subcontract service(s).

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 firm, local MWSBE, or locally based when describing a firm or entity seeking certification means a sole proprietorship, partnership, corporation or any other business entity with a significant business presence in the ~~Houston-Sugar Land-Baytown~~ metropolitan statistical area that includes the City of Houston ("MSA"), as defined by the Office of Management and Budget within the Executive Office of the President of the United States. A significant business presence includes the requirement that a MWSBE have an established place of business in the ~~Houston-Sugar Land-Baytown metropolitan statistical area at which one or more of its employees is regularly based and that such place of business~~ MSA that has a substantial role in the MWSBE's performance of a commercially useful function.

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

Minority business enterprise or MBE means ~~a business which is:~~

- a. A business which is:
 - i. A sole proprietorship in which the owner is a minority person who owns, controls and manages the business; or
 - ~~b.ii.~~ 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

~~e.iii.~~ 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.iv.~~ 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.v.~~ A business which has been certified as an MBE by the office of business opportunity under any other recognized MBE program; and

b. The majority owner on whom the MBE status relies has a personal net worth that does not exceed the current threshold outlined in the Office of Business Opportunity's Policies and Procedures.

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, 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 means that the one or more minority persons or women who own the requisite interests in or assets of a business applying for minority or women business enterprise 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. 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. 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). 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.

Regulated contract means any contract, agreement or other undertaking:

- a. For which competitive bids are not required by law;
- b. That is not covered by the MBE/WBE programs of the United States Environmental Protection Agency or the United States Department of Transportation or any other federal or state agency having jurisdiction; and
- c. That the recommending city department has determined, in consultation with the director of the office of business opportunity either:
 1. Has significant subcontracting potential in fields in which there are sufficient known MWSBEs to perform the particular subcontract service(s); or

2. Is of a type for which there are sufficient known MWSBEs which have represented their ability to perform the prime contract service to afford effective competition for the prime contract.

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 is of the female gender.

Women business enterprise or *WBE* means ~~a business which is:~~

a. A business which is:

i. A sole proprietorship in which the owner is a woman who owns, controls and manages the business; or

~~b.~~ii. 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.~~iii. 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.~~iv. 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.v. A business which has been certified as a WBE by the office of business opportunity under any other recognized WBE program; and

- b. The majority owner on whom the WBE status relies has a personal net worth that does not exceed the current threshold outlined in the Office of Business Opportunity's Policies and Procedures.

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ARTICLE VI. PERSONS WITH DISABILITIES BUSINESS ENTERPRISES

Sec. 15-91. Definitions.

- (a) The following words and phrases, when used in this article, shall have the meanings provided in this section, unless the context clearly indicates another meaning.

~~*Armed Forces* means the United States Army, Navy, Air Force, Marine Corps, or Coast Guard.~~

Chronic or permanent character means, 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.~~

Major life activities means 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 means an individual licensed to practice medicine in the State of Texas.

Medically determined means determined by a medical doctor.

Owned, controlled and managed means that the one or more persons with a disability who own the requisite interests in or assets of a business applying for persons with disabilities' business enterprise 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. 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(s) 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. 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). The one or more persons with a disability owners shall have recognized, ultimate control over all day-to-day business decisions affecting the PDBE 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.

Person with a disability means a disabled veteran or 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 means ~~a business that is:~~

a. A business that is:

- i. A sole proprietorship in which the owner is a person with a disability who owns, controls and manages the business; or
- ii. 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
- iii. 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
- iv. 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; ~~and-~~

- b. The majority owner on whom PDBE status relies on has a personal net worth that does not exceed the current threshold outlined in the Office of Business Opportunity's Policies and Procedures.

- (b) See section 15-82 of this Code for additional definitions.

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ARTICLE XII. VETERAN-OWNED BUSINESS ENTERPRISES

Sec. 15-183. Declaration of policy.

- (a) It is the policy of the city to stimulate the growth of local veteran-owned small businesses, including service-disabled veteran-owned small businesses, by encouraging the full participation of such businesses in all phases of its procurement activities and by affording them a full and fair opportunity to compete for all city contracts. The purposes and objectives of this article are:
- (1) To increase the utilization of local VOSB enterprises to provide goods and services; and
 - (2) To provide opportunities for local VOSB enterprises to broaden and enhance their range of capacities; and
 - (3) To increase opportunities for local VOSB enterprises to serve as contractors for the supply of goods and services to the city, in addition to acting as subcontractors to others.
- (b) This article is intended to be remedial in nature and to continue only until its purposes and objectives are met as determined by regular periodic reviews.
- (c) This article is not intended to duplicate, supplement or overlap in any fashion any state or federal program providing aid or assistance to veterans, or to entities that aid or assist veterans, with respect to rehabilitation, employment, job training, housing, economic or medical assistance and shall be construed and applied in a manner entirely separate from and independent of any such state or federal program.

Sec. 15-184. Definitions.

- (a) The following words and phrases, when used in this article, shall have the meanings provided in this section, unless the context clearly indicates another meaning.

Armed Forces means the United States Army, Navy, Air Force, Marine Corps, or Coast Guard.

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.

Owned, controlled and managed means that the one or more veterans who own the requisite interests in or assets of a business applying for veteran-owned small business 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. 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(s) 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. 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). The one or more VOSB owners shall have recognized, ultimate control over all day-to-day business decisions affecting the VOSB 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.

Service-Disabled Veteran, as defined in 13 CFR §128.102, as amended, is a veteran who is registered in the Beneficiary Identification and Records Locator Subsystem or successor system, maintained by Department of Veterans Affairs' Veterans Benefits Administration as a service-disabled veteran.

Service-Disabled Veteran-owned small business or *SDVOSB* means, as found in 13 CFR Part 128, as amended, a SBE that is not less than fifty-one (51) percent owned, controlled and managed by one or more service-owned veterans, or in the case of any publicly owned business, not less than fifty-one (51) percent of the stock of which is owned by one or more service-disabled veterans.

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 VOSB defined in this Code.

Veteran, as defined in 13 CFR Part 128, as amended, is a person who served on active duty with the Armed Forces for any length of time and at any

place and who was discharged or released under conditions other than dishonorable. Reservists or members of the National Guard called to federal active duty or disabled from a disease or injury incurred or aggravated in line of duty or while in training status also qualify as a veteran.

Veteran-owned small business or VOSB means, as found in 13 CFR Part 128, as amended, a SBE that is not less than fifty-one (51) percent owned, controlled and managed by one or more veterans, or in the case of any publicly owned business, not less than fifty-one (51) percent of the stock of which is owned by one or more veterans.

(b) See section 15-82 of this Code for additional definitions.

Sec. 15-185. Program elements.

- (a) Unless expressly excepted under this article, all elements, requirements and procedures of the MWSBE program set forth in article V of this chapter, including, without limitation, applicable definitions, reporting requirements, goal-setting procedures, city department procedures, exceptions, contract and participation provisions, plan filing requirements, sanctions and established business enterprise provisions, are hereby adopted and incorporated as if fully set forth herein and shall be applied to VOSBs and SDVOSBs, in the same manner as to MWSBEs. In addition, the office of business opportunity may set a preference or contract-specific goals for VOSBs and SDVOSBs.
- (b) The office of business opportunity (OBO) has responsibility for establishing procedures for the VOSB program consistent with the directives set forth under section 15-84 of this Code for the MWSBE program; provided, that the office of business opportunity may simplify, condense or modify reporting and monitoring responsibilities consistent with the anticipated lower volume of VOSB contracts in the interest of administrative efficiency.
- (c) All procedures established under this section shall be reviewed and approved by the city attorney prior to implementation. A copy of all procedures established hereunder shall be maintained in the office of business opportunity for inspection, and copies may be purchased at the fees prescribed by law.

Sec. 15-186. Certification.

- (a) The OBO director shall establish a methodology for certification as a VOSB and SDVOSB and provide for such certification in the office of business opportunities policies and procedures. The city may rely on a party's inclusion in the dataset of VOSBs and SDVOSBs maintained by the U.S. Small Business Administration, or certification by another public or private entity that uses similar certification procedures.
- (b) The OBO shall make the final determination as to whether a business is a VOSB or SDVOSB.

- (c) The submission of documentation by a person or business entity that is required to establish status as a VOSB or SDVOSB that is found to contain false information is grounds for suspension or debarment.

Sec. 15-187. Purchases of personal property.

- (a) Contracts of \$100,000.00 or more. In purchasing any personal property that is not affixed to real property, if the city receives one or more bids from a bidder that is a VOSB or SDVOSB and whose bid is within three percent of the lowest bid price received by the city from a bidder who is not a VOSB or SDVOSB, the city shall, subject to the provisions of section 15-98, enter into a contract with a value of \$100,000.00 or more with:

- (1) The lowest bidder; or

- (2) The bidder that is a VOSB or SDVOSB, as defined in this article.

- (b) Contracts under \$100,000.00. In purchasing any personal property that is not affixed to real property, if the city receives one or more bids from a bidder that is a VOSB or SDVOSB and whose bid is within five percent of the lowest bid price received by the city from a bidder that is not a VOSB or SDVOSB, the city shall, subject to the provisions of section 15-98, enter into a contract for an expenditure of less than \$100,000.00 with:

- (1) The lowest bidder; or

- (2) The bidder that is a VOSB or SDVOSB, as defined in this article.

Sec. 15-188. Purchases of services.

- (a) In procuring services, including construction services, the contracting department shall, subject to the provisions of section 15-98 and subject to Texas Government Code § 2254.004, grant a preference to a VOSB or SDVOSB. In no event shall a contract for services be granted to a VOSB or SDVOSB that is not within:

- (1) Five percent of the lowest bidder for contracts under \$100,000.00; or

- (2) Three percent of the lowest bidder for contracts of \$100,000.00 or more.

Sec. 15-189. Purchases under \$50,000.00.

Subject to Texas Government Code § 2254.004, when procuring goods or services valued at less than \$50,000.00 that are not the subject of a blanket purchase order or contract, the city shall, subject to the requirements of section 15-98, select VOSB or SDVOSB provided that any such vendor's bid is no more than five percent greater than the lowest bid, in the event the lowest bid is from one other than VOSB or SDVOSB.

Sec. 15-190. Responsibilities and enforcement.

- (a) OBO shall be responsible for the certification of a business as a VOSB or SDVOSB in accordance with Section 15-93 .
- (b) Department directors shall maintain written records of all departmental actions under this program. Departments are charged with primary responsibility for monitoring their contracts for compliance with the program.
- (c) The contracting or evaluating department shall award additional points to a VOSB or SDVOSB in any bid based on a "best value" evaluation.
- (d) The strategic purchasing division ("SPD") and OBO, in consultation with the legal department, are directed to provide written guidance, including guidance on best value bids, to departments for implementing this article. Such guidance shall include a preference structure that grants the highest number of points to a VOSB or SDVOSB and no points to a business that is not a VOSB or SDVOSB.
- (e) The submission of a form pursuant to subsection (a) above found to contain false information is grounds for debarment per section 15-103(1)(c) of this Code.
- (f) The OBO shall produce semi-annual reports, commencing January 1, 2026, summarizing the dollar amount of procurements awarded to VOSB or SDVOSB under this program.

Sec. 15-191. Exceptions.

- (a) 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.
- (b) 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 the OBO.

Sec. 15-192. Effective date.

This article shall be effective as to solicitations for procurements published on or after July 1, 2025.