CITY OF RALEIGH
SMALL DISADVANTAGED MINORITY & WOMEN OWNED
BusinessAssistance
PROGRAM

Policy and Concept

Adopted September 6, 2011

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CITY OF RALEIGH SMALL DISADVANTAGED MINORITY AND WOMEN OWNED BUSINESSES PROGRAM

I. POLICY AND CONCEPT

The City of Raleigh has adopted a policy on doing business with small disadvantaged minority and women owned businesses (SDMWOB). This policy statement is the basis for City efforts to improve the level of involvement with minority and women owned businesses. The policy statement that has been adopted by the City reads:

> ***"The City of Raleigh prohibits discrimination in any manner on the basis of race, color, creed, national origin, sex, age, handicap, or sexual orientation and will pursue an affirmative policy of fostering, promoting and doing business with women and minority owned business enterprises."***

To facilitate implementation of this policy statement, the City of Raleigh has established a BUSINESS ASSISTANCE PROGRAM which contains four major elements, including but not limited to the following: (1) Communication, (2) SDMWOB Identification, (3) an Advisory Program; and (4) Contract Information.

1. ***Communication*** *– Extensive communication will be aimed at informing the SDMWOB community that the City of Raleigh has a policy of affirmative action toward minority and women owned business enterprises. Additionally, the plan must provide specific communication to the SDMWOB community, informing potential minority bidder, well in advance of bidding action, of an upcoming project. This will be done with an email blast of SDMWOBs listed in the City's directory.*

2. ***SDMWOB Identification*** *– The City of Raleigh will utilize several sources of information for developing and updating a specialized minority business enterprise directory. These existing sources consist primarily of registries prepared by the North Carolina Office of Minority Business Enterprises and other State and local agencies or their affiliates. However, special efforts in identification of minority and women owned businesses must be a continuing process. One special effort would include advertisements in minority media in advance of major procurements.*

3. ***Advisory Program*** *– The Advisory Program is critical to the success of the Business Assistance Program and consists of pre-bid workshops or seminars, counseling and referral services. The purpose of these sessions will be to distribute project plans and specifications, explain the project specifications, and answer any questions that the minority business representatives may have. Bid forms and specific bid requirements may be reviewed and all questions answered.*

4. ***Contract Information*** *– The SDMWOB Program Plan does recognize that small, women and minority businesses may have difficulty meeting the requirements for large contracts. Therefore, consideration will be given to formulating contracts of a minimum practical size that lend themselves to bidding by small firms without compromising the total project or its budgetary considerations. With this approach, the City actively participates in the growth and development of small businesses as well as minority and women owned businesses.*

II. OBJECTIVES AND STRATEGIES

The objectives of the SDMWOB Program Plan are:

1. *To provide SDMWOBs equal opportunity for participating in City construction.*

2. *To provide procedures that will enable the City of Raleigh to fulfill Federal and State requirements related to SDMWOBs participation in its construction.*

3. *To increase awareness of the existence and capabilities of minority and women owned businesses and become familiar with their product lines.*

4. *To develop a certification program, assist SDMWOBs in becoming certified and keeping such businesses informed.*

5. *To sponsor special seminars and training programs. This will assist minorities and women in becoming actively involved in subcontracting in large contract projects.*

6. *To provide procedures for monitoring compliance with the SDMWOB Program and to provide procedures for the resolution of complaints.*

It is the intent of this program to broaden the opportunities for participation of businesses owned by small disadvantaged minorities and women. To realize the objectives of this program, therefore, the City of Raleigh urges all SDMWOBs to fully utilize the opportunities of this program and to accept the responsibility of (1) participating in training opportunities; (2) providing prompt and competitive responses for requests for quotations; and, (3) using information provided by the City of Raleigh on prospective bidders and the services/materials they may be seeking to provide competitive quotes to bidders; and (4) offer recommendations to the City related to the impact of the program on the community.

III. DEFINITIONS

Affirmative Action *– Specific steps taken to ensure non-discriminatory results and practices, and to fully involve minority and women-owned business enterprises in contracts and programs.*

Bidder/Participant *– Any person, firm, partnership, corporation, association, or joint venture seeking to be awarded a public contract or subcontract.*

Contract *– A mutually binding legal relationship, or any modification thereof, which obligates the parties to perform the requirements of the agreement. All public contracts or leases are included in this definition.*

Contractor *– Any person, firm, partnership, corporation, association or joint venture that has been awarded a public contract or lease, including every subcontract on such a contract.*

Joint Venture *– An association of two or more businesses to carry out a single business enterprise for profit, for which purpose they combine their property, capital, efforts, skills, and knowledge.*

Lessee *– A business that leases, or is negotiating to lease, property from the City of Raleigh or equipment or services to the City, or to the public on City property.*

Minority *– A person who is a citizen or lawful permanent resident of the United States and who is:*

a. Black (a person having origins in any of the black racial groups of Africa);
b. Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
c. Portuguese (a person of Portuguese, Brazilian, or other Portuguese culture or origin, regardless of race);
d. Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); and
e. American Indian and Alaskan Native (a person having origins in any of the original peoples of North America).

SDMWOB *– Small Disadvantaged Minority and Women Owned Business Program*

Small Disadvantaged Minority and Women Owned Business (SDMWOB) Program *– A program established for a business that is at least 51% owned, operated and controlled by minority group members, women or other business entities on a case by case request that can demonstrate that it is operating at a disadvantage. A minority and women owned business is bona fide only if the minority group or female ownership interests are real, continuing, and not created solely to meet the Minority and Women Owned Business Assistance requirement. In addition, the minority and women owned business must, itself, perform satisfactory work or services or provide supplies under the contract and not act as a mere conduit. In short, the contractual relationship must also be bona fide.*

The preceding phrase "owned, operated and controlled," as used in this plan, refers to the business which is (1) a sole proprietorship legitimately owned by an individual who is a minority group member or female; (2) a partnership or joint venture controlled by minorities and/or females; (3) a corporation or other entity controlled by minorities and/or females, and in which at least 51% of the voting interest and 51% of the beneficial ownership interests

are legitimately held by minorities and/or females. In addition, these persons must control *and* ***operate*** *the management/operation of the business.*

Subcontractor *– Any name, person, firm, partnership, corporation, association, or joint venture identified in a public contract which supplies any work, labor, services, supplies, equipment, materials, or any combination of the foregoing under contract with the contractor on a public contract.*

IV. ADMINISTRATION OF THE SDMWOB PROGRAM

The City Manager is hereby authorized to take all usual and legal administrative actions necessary to implement this program. Notwithstanding any specific assignment contained in the plan, the ultimate responsibility for its administration is assigned to the City Manager.

The City Manager will designate a SDMWOB Program Manager to be responsible for coordinating this program in accordance with City policies, applicable Federal and State laws and regulations in the evaluation and review of program compliance. The City Manager or his designee shall be responsible for determining whether or not a contractor has adhered to the provisions of this program or has shown good faith efforts to do so. The City Manager or his designee shall be responsible for certifying minority and women owned businesses that qualify to be considered under this program.

This program shall apply to all construction projects over $300,000 administered by the City of Raleigh. The provisions of this program take precedence over any departmental plans or procedures in conflict herewith, except for specific requirements mandated by State law or the terms of agreements enforced between the City of Raleigh and the Federal Government or the State of North Carolina that requires different procedures than those described in this program.

V. PROCEDURES TO ENSURE EQUAL OPPORTUNITIES FOR SDMWOBs TO COMPETE FOR CONTRACTS AND SUBCONTRACTS

1. Responsibilities of the City of Raleigh

The City of Raleigh shall take action to ensure equal opportunity to contract with small disadvantaged minority and women owned businesses and shall develop a plan of action to enhance opportunities for diversity in the direct award of contracts to small disadvantaged minority and women-owned businesses; and the City shall ensure that its contractors take similar action with small disadvantaged minority and women owned businesses. These actions shall include matters hereinafter set out.

A. Preparation of Bid Packages

The operating departments shall include, in the contract specifications, specific instructions and procedures relative to the City's SDMWOBs. Bidders upon request shall provide a copy of it's subcontracting plans setting forth it's good faith efforts

performed to assure that small disadvantaged minority and women-owned firms have an equitable opportunity to compete for specific scopes of work. Where feasible, requests for bids and proposals to provide equipment or services will be subdivided into contractual work elements small enough to make possible maximum minority and women-owned business participation opportunities at contractual levels. Bid packages shall not be so divided as to violate State law or where such would result in significant cost increases for the project.

1. *The City Manager shall establish a minimum overall goal of 15%, with a subgoal for small disadvantaged businesses owned by Minorities (8%) and Women (7 %) on each project.*

B. Advertising for Construction Bids

A period of at least thirty (30) days for formal bids should be given between advertising and receiving construction bids to provide small disadvantage minority and women owned businesses adequate time to obtain bonding and any needed technical assistance. Exceptions may be made for emergency situations or when determined to be in the City's best interest for a shorter period.

1. *General Contractors (GC's) are to make good faith efforts give subcontractors a minimum of ten (10) working days to prepare and submit quotes except when City issued addendums make such notice impractical.*

C. SDMWOB Workshops

1. *Workshops will be conducted at least semi-annually by the SDMWOB Program Manager to acquaint minority and women owned businesses with bidding procedures, construction procedures, technical specifications, and other requirements involved in performing City contracts. Assistance may be given in the preparation of bid packages (excluding estimates for any specific project), the understanding of legal requirements, and the procuring of surety bonds and familiarization with statutes governing public bidding.*

2. *A quarterly newsletter will be provided to certified businesses through the City's SDMWOB Program Manager by email.*

2. Communication Program for Construction

A. On-Going Communication Program

Quarterly, the City of Raleigh through the SDMWOB Program Manager will make available a list of proposed major construction projects and brief descriptions of each to the SDMWOB community.

All bid notices for construction projects over $300,000 will be advertised on the City website and may be advertised in a newspaper having general circulation in the area for which bids are requested. Construction projects less than $300,000 which covers informal bids will be advertised on the City of Raleigh website and project information is to be provided to the SDMWOB office.

- *<u>After the bid award date, bid results as well as project's close out numbers are to be made available.</u>*

The City of Raleigh may conduct workshops where small disadvantaged minority and women owned businesses will have an opportunity to receive assistance in completing bid forms and receive clarification of any areas of contracts in which there are questions (not including estimates for any specific project). City of Raleigh may provide SDMWOBs with technical assistance on finalizing their bid packages through the Raleigh Business & Technology Center.

B. <u>Communication Relevant to Specific Construction Projects</u>

When the City of Raleigh receives from bidders a listing of work items for which subcontractors and materials are being sought, the City shall notify those small disadvantaged minority and women owned businesses listed in the SDMWOB Directory providing needed services or materials, and other minority and women owned business trade associations of the available opportunity and where they can secure relevant information.

3. <u>Other Technical Assistance</u>

The City of Raleigh may periodically hold workshops, seminars, or training sessions designed to acquaint SDMWOBs with the City of Raleigh's construction procedures, and to provide technical assistance in bidding, licensing, bonding, loan preparation and packaging, and other procedures involved in securing City contracts. The City of Raleigh shall utilize the services of minority/female trade and professional organizations and the City's SDMWOB Program Manager to the extent possible in achieving this goal.

4. <u>Pre-Bid Conference on Construction Exceeding $300,000</u>

The City of Raleigh shall work with the Project Engineer and with the City's SDMWOB Program Manager to define elements of the total work available for contracting and subcontracting in order to facilitate increased minority and women owned business participation. The City of Raleigh may hold a pre-bid conference of all prospective bidders, subcontractors, and SDMWOB for the purpose of explaining the provisions and applications of this program and answering questions regarding the process of bidding and the contract to be performed. Available data on minority

and women owned businesses interested and/or capable of engaging in the prospective contract shall be made available to prospective bidders, contractors, and subcontractors.

A. Responsibilities of the General Contractor

The general contractor providers will take affirmative steps prior to submission of the bids to encourage participation in projects by small disadvantaged minority and women owned businesses. Only those SDMWOB firms with current certification by the City of Raleigh will be considered acceptable for listing in the bidder submittal for SDMWOB participation.

1. *The contractor shall indicate on the form for listing of SDMWOB subcontractors, the following required information:*

REQUIRED INFORMATION:

(a) *The names and addresses of SDMWOB firms committed to participate in the contract,*

(b) *The Contract item numbers or description of work to be performed by each SDMWOB firm;*

(c) *The total dollar amount to be paid to each SDMWOB based on agreed upon unit price;*

(d) *List of all firms submitting quotes; and*

(e) *The total dollar amount quoted by each firm from which quotes/bids were received.*

The bidder is required to submit written documentation of their commitment to use a SDMWOB subcontractor whose participation it submits to meet a contract goal as well as written confirmation from each SDMWOB listed in the proposal form indicating participation in the total dollar value of the contract.

The City of Raleigh will review any substitutions, deletions, or other alterations to the listing of firms committed for SDMWOB participation and/or the respective listed contract item number after opening of bids. The City will review adjustments to total dollar amount of SDMWOB participation after the opening of bids that would result in the SDMWOB participation being less than the contract goal. The only exceptions to the requirements of this paragraph will be: (1) to allow for replacement of a SDMWOB firm that had been decertified after opening of bids, and (2) to allow alterations of the listed contract item numbers subject to the bidder submitting sufficient documentation to verify an obvious error in the initial submittal.

If the SDMWOB participation submitted in bid by the apparent lowest bidder in response to Paragraph A does not meet or exceed the SDMWOB contract goal, the apparent lowest responsive bidder must submit information to satisfy the City of Raleigh that sufficient good faith efforts have been made to meet the contract goals. Documents containing SDMWOB quotations shall be a part of the "good faith effort" submittals as necessary to demonstrate compliance with the factors listed which the City of Raleigh considers in judging good faith efforts. This documentation shall include written subcontractor quotations, telephone log notations of verbal quotations, detailed evidence of specific good faith effort proposals and or other types of quotation documentation.

Where the bidder fails to provide this information by the deadline, the City of Raleigh may disqualify the contractor from the contract in question.

The following factors are what the City of Raleigh will consider in judging whether the bidder has made adequate good faith effort:

(a) Whether the bidder attended any pre-bid meetings that were scheduled by the City of Raleigh to inform SDMWOBs of subcontracting opportunities.

(b) Whether the bidder provided solicitations through all reasonable and available means (e.g. advertising in newspapers owned and targeted to the disadvantaged) at least 10 days prior to bid opening. Whether the bidder provided written notice to all SDMWOBs listed in the City of Raleigh directory that specializes in the areas of work (as noted in the SDMWOB Directory) that the bidder will be subcontracting.

(c) Whether the bidder followed up initial solicitations of interests by contacting SDMWOBs to determine with certainty whether they were interested.

(d) Whether the bidder selected portions of the work to be performed by SDMWOBs in order to increase the likelihood of meeting the contract goals. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate SDMWOB participation, even when the prime contractor might otherwise perform these work items with its own forces.

(e) Whether the bidder provided interested SDMWOBs with adequate and timely information about the plans, specifications and requirements of the contract.

(f) Whether the bidder negotiated in good faith with interested SDMWOBs not rejecting them as unqualified without sound reasons based on a thorough investigation of their capabilities. Any rejection should be so noted in writing with a description as to why an agreement could not be reached.

(g) Whether proposals were received from interested SDMWOB firms but rejected as unacceptable without sound reasons why the proposals were considered unacceptable.

(h) Whether the bidder specifically negotiated with subcontractors to assume part of the responsibility to meet the contract SDMWOB goal when the work to be sublet includes potential for SDMWOB participation.

(i) Whether the bidder made any efforts and/or offered assistance to interested SDMWOBs in obtaining the necessary equipment, supplies, materials, insurance, and/or bonding to satisfy the work requirements in the bid proposal.

(j) Any other evidence that the bidder submits which shows that the bidder has made reasonable Good Faith Efforts to include SDMWOB participation.

Where the apparent lowest bidder fails to submit verifiable participation by SDMWOB firms to meet the contract goal; and, upon a determination by the City of Raleigh based upon the information submitted that the apparent lowest bidder failed to make sufficient reasonable efforts to meet the contract goal, the bidder will be offered the opportunity to meet in person for administrative reconsideration. The bidder will have the opportunity to present written documentation and argument concerning the issue of whether it met the goal or made an adequate good faith effort. The bidder will receive a written decision on the reconsideration that will explain the basis for finding that the bidder did or did not meet the goal or made adequate good faith efforts to do so.

In the event that the City of Raleigh does not award the contract to the apparent lowest responsive and responsible bidders, the City of Raleigh reserves the right to award the contract to the next lowest responsible, responsive bidder that can demonstrate adequate good faith efforts have been made to meet the goal.

2. *General contractors shall make payments for work performed by minority and women subcontractors (in a timely manner) as described in the contract signed by both partners.*

3. ***Replacement of SDMWOBs***

   A. ***Performance Related***

   If any SDMWOB subcontractor submitted on the form for listing of SDMWOB subcontractors is terminated, or fails to complete its work on the contract for any reason, the Contractor shall take all necessary and reasonable steps to replace the SDMWOB subcontractor with another SDMWOB subcontractor to perform at least the same amount of work of the contract as the SDMWOB that was terminated.

To demonstrate necessary, reasonable good faith efforts, the Contractor shall document the steps he/she has taken to replace any SDMWOB subcontractor who is unable to perform successfully with another SDMWOB subcontractor. Such documentation shall include but not be limited to the following:

(1) Copies of written notification to SDMWOBs that their interest is solicited in subcontracting the work defaulted by the previous SDMWOB subcontractor or in subcontracting other items of work in the contract.

(2) Efforts to negotiate with SDMWOBs for specific sub-bids including, at a minimum:

(a) The names, addresses, and telephone numbers of SDMWOBs who were contacted;

(b) A description of the information provided to SDMWOBs regarding the plans and specifications for portions of the work to be performed;

(c) For each SDMWOB contacted but rejected as unqualified, the reasons for the Contractor's conclusion;

(d) Efforts made to assist the SDMWOBs contacted, if needed, in obtaining bonding or insurance required by the Contractor.

The Contractor shall not terminate a SDMWOB subcontractor listed in the proposal form for convenience or perform the work with its own forces or those of an affiliate without the written approval of the owner. If the Contractor fails to demonstrate reasonable efforts to replace a SDMWOB firm that does not perform as intended or completes the work with its own forces without the owner and or SDMWOB Program Manager approval, the Contractor may be disqualified from further bidding for a period of up to six (6) months after notification by certified mail.

B. <u>Decertification</u>

1. If a Prime Contractor has listed a SDMWOB firm in its low bid submitted and that SDMWOB subcontractor is subsequently decertified by the City of Raleigh after a Request for Subcontract has been approved, then the City of Raleigh shall not require the Prime Contractor to solicit replacement SDMWOB participation equal to the remaining work to be performed by the decertified firm. The participation equal to the remaining work performed by the decertified firm shall

count toward the contract goal and shall also be counted toward the overall program goal.

2. *If a Prime Contractor has listed a SDMWOB firm in its low bid submittal and the SDMWOB firm is decertified prior to the City approving a Request for Subcontract for the Named SDMWOB firm, the Prime Contractor shall take all necessary and reasonable steps to replace the SDMWOB subcontractor with another SDMWOB subcontractor to perform at least the same amount of work to meet the contract goal or demonstrate that it has made a good faith effort to do so.*

A. Responsibilities of SDMWOBs

SDMWOBs are responsible for self-promotion as it pertains to consideration in the contracting process. In addition to self-promotion, the following steps are recommended for minority and women owned businesses considering contractual relations with the City of Raleigh:

1. *Submit information to the contract recipients to identify firm status as that of a minority or women owned business.*

2. *Firms should become certified as SDMWOBs under City procedures as detailed with this program.*

3. *Take advantage of training opportunities offered by the City.*

4. *Provide competitive sub-bids to bidders without waiting for bidders to request quotes.*

5. *Promptly respond to requests for quotes from bidders in a responsible manner.*

6. *Make every effort to establish contacts and relationships with contractors for potential future business, including attending pre-bid conferences and subscribing to industry and trade journals.*

7. *SDMWOBs shall let the City of Raleigh know if there is a change in status of their business.*

VI. SDMWOB DATABASE AND DIRECTORY

The City shall maintain and periodically update a database describing capabilities of minority and women owned businesses in Raleigh, Wake County. This information is to be

made available to all prospective contractors and shall be used by the City in notifying minority and women owned businesses of contract opportunities.

The information collected shall include at least the following: Name of business, business address, email address, telephone number, services or products provided, capabilities of the firm, line of work performed by the firm, type of work the firm is interested in performing, licensing and bonding information, projects recently completed and/or currently underway, and whether the minority and women owned firm is certified for the purposes of this program.

All firms wishing to participate in the City's SDMWOB Program shall be requested to provide sufficient information to the City and to the City's SDMWOB office to be recognized as a SDMWOB.

Utilizing the information in the data bank described above, the City will make available a directory to facilitate identifying minority and women owned businesses with stated capabilities relative to general contracting and service requirements. The SDMWOB data base is located on the City of Raleigh web page www.raleighnc.gov.

VII. CERTIFICATION OF SDMWOBs TO PARTICIPATE IN CITY CONSTRUCTION PROGRAMS

The City Manager, or his designee, in consultation with the SDMWOB Program Manager, is responsible for granting operational certification of SDMWOB Program.

A. Qualification Standards

Small Disadvantaged Minority/Women Owned Business *– A small disadvantaged minority and women owned business is a business that is owned by one or more minority and/or female persons. Minority/women owners or stockholders should possess real and continuing control over management, interest in capital and interest in earnings equal with the percentage of ownership on which the claim of minority ownership status is based. Similarly, minority and/or female participation in a joint venture must also be based on the sharing of real economic interest and must include proportionate control over management, interest in capital and interest in earnings. For the purpose of this plan, a minority and women owned business is a business which is at least 51% owned and controlled by minority group members and/or women. A minority and women owned business is bona fide only if the minority group or female ownership interests are real and continuing and not created solely to meet the minority and women owned business requirement. The minority and women owned business itself must perform satisfactory work or services or provide supplies under the contract and not act as a mere conduit of a non-minority or non-female owned firm.*

- *Small is reference to size determined by the guidelines as defined by U.S. Small Business Administration (SBA) Rules.*
- *Disadvantaged*

- *Socially disadvantaged-minority and women are presumed to be socially disadvantaged*
- *Economically disadvantaged determination (net worth of $750,000 or less) based on review of guidelines used by SBA.*

The preceding phrase "owned, operated and controlled," as used in this plan refers to a business which is: (1) a sole proprietorship legitimately owned and operated by an individual who is a minority group member or female; (2) a partnership or joint venture controlled and operated by minorities and/or females; (3) a corporation or other entity controlled and operated by minorities and/or females, and in which at least 51% of the voting interests and 51% of the beneficial ownership interests are legitimately held by minorities and/or females. In addition, these persons must operate and control the management and operation of the business on a day-to-day basis.

B. Eligibility Standards

The following standards will be used by the City of Raleigh in determining whether a firm is owned, operated and controlled by one or more minorities and/or women and is therefore eligible to be certified as a minority and women owned business.

- *Must be a citizen or lawfully admitted permanent resident of the United States*
- *Must be an independent entity*
- *Must be an existing for profit business*
- *Must be a small business as defined by the Small Business Administration (SBA), 13CFR Part 121 in Section 54*
- *Must meet net worth and size requirement*
    - *Net worth $750,000 not to include interest in the business and primary personal residence. It does include those personal assets owned jointly with spouse.*
    - *Size Standard as demonstrated by U.S. Small Business Administration Regulations at 13 CFR Part 121.201 averaged over a three year period. The City of Raleigh will follow SBA regulation and guidance in applying those Standards.*

1. *An eligible minority business shall be an independent business. The ownership, operation and control by minorities and/or women shall be real, substantial, continuing, and shall go beyond the pro forma ownership of the firm as reflected in its ownership documents.* ***If expertise is relied upon, the expertise must be of outstanding quality in the specialized field, in an area critical to the firm's operations, indispensable to the firm's potential success and specific to the type of work the firm performs.*** *The minority and/or women owners shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by the substances rather than the form or arrangements.*

Recognition of the business as a separate entity for tax or corporate purposes is not necessarily sufficient for recognition as a minority and women owned business. In determining whether a potential minority and/or women owned business is an independent business, the City shall consider all relevant factors, including the date the business was established, tax returns and the adequacy of its resources for the work of the contract.

2. *The small disadvantaged minority and/or women business owners shall also possess the power to direct, or cause the direction of, the management and policies of the firm, as well as major decisions on matters of management, policy, and operations.*

3. *The firm shall not be subject to any formal or informal restrictions, which limit the customary discretion of the minority and/or women business owners. There shall be no restrictions on by-law provisions, partnership agreements, or charter requirements for cumulative voting rights or otherwise that prevent the small disadvantaged minority and/or women owners, without the cooperation or vote of any owner who is not a minority or woman, from making a business decision of the firm. If the owners of the firm who are not minorities or women are disproportionately responsible for the operation of the firm, then the firm is not controlled by minorities and/or women and shall not be considered a minority and women owned business. Where the actual management of the firm is contracted out to individuals other than another owner, those persons who have the ultimate power to hire and fire the managers can be considered as controlling the business.*

4. *A member of the small disadvantaged minority and/or women business ownership must hold the professional license or contractor license necessary for operation of each type of business for which the business enterprise seeks certification.*

5. *Only an independent firm may be certified as a SDMWOB. An independent firm is one whose viability does not depend on its relationship with another firm. In determining whether an applicant is an independent business, the City may:*

   (a) *Review relationships with non-SDMWOBs in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.*

   (b) *Consider whether present or recent employer/employee relationships between SDMWOB owner(s) of the applicant and non-SDMWOBs or persons associated with non-SDMWOBs compromise the applicant's independence.*

(c) Examine the applicant's relationships with non-SDMWOB prime contractors to determine whether a pattern of exclusive primary dealings with a prime contractor compromises the applicant's independence.

(d) Consider the consistency of relationships between the applicant and non-SDMWOBs with normal industry practice.

6. All securities which constitute ownership and/or control of a corporation for purposes of establishing it as a minority and women owned business shall be held directly by small disadvantaged minorities and/or women. No securities held in trust, or by any guardian for a minor, shall be considered as held by minorities and/or women in determining the ownership or control of a corporation.

7. The contributions of capital or expertise by the minority and/or women owners to acquire their interests in the firm shall be real and substantial. Examples of insufficient contributions include a promise to contribute capital, a note payable to the firm or its owners who are not minority and women owned businesses, or the mere participation as an employee rather than as a manager.

Bona fide *minority group membership shall be established on the basis of the individual's claim that he or she is a member of a minority group and is so regarded by that particular minority community. However, the City of Raleigh is not required to accept this claim if it determines the claim to be invalid.*

C. Special Considerations

In addition to the above standards, the City shall give special consideration to the following circumstances in determining eligibility:

1. Newly-formed firms and firms whose ownership and/or control has changed since the date of the advertisement of the contract are closely reviewed to determine the reasons for the timing of the formation of, or change in, the firms.

2. A previous and/or continuing employer-employee relationship between or among present owners are carefully reviewed to ensure that the employee-owner has the management responsibilities and capabilities described above.

3. Any relationship between SDMWOB and a business which is not a minority and women owned business but which has an interest in SDMWOB carefully reviewed to determine if the interest of the non-small disadvantaged minority and women owned business conflicts with the ownership and control requirements.

4. *A joint venture is eligible if the SDMWOB partner of the joint venture meets the standards for eligible SDMWOB set forth above and the SDMWOB partner is responsible for a clearly defined portion of the work to be performed and holds at least 51% of the ownership, control, management responsibilities, risks and profits of the joint venture.*

5. *A business wishing to be certified as a SDMWOB or joint SDMWOB shall cooperate with the City in supplying additional information which may be requested in order to make a determination. Failure or refusal to provide such information may result in denial of certification.*

Once certified, a SDMWOB shall update its certification bi-annually by submitting a new SDMWOB re-certification form, written statement that the form on file is still accurate in its reflection of ownership or control of the firm. Approved applicants will be assigned a certification I.D. number for use in City contract activity. If ownership or control of the firm has changed, the minority and women owned business must submit a new certification form. The denial of a certification by the City shall be final for that contract and other contracts being let by the City at the time of the denial of certification. SDMWOB and joint ventures denied certification might correct deficiencies in their ownership and control and apply for certification only for future contracts.

D. Certification and Establishment of SDMWOB Certification Program

Utilizing the data bank and directory, the City Manager or his designee will certify businesses to be recognized by the City as a SDMWOB.

E. Appeal of Certification Actions

The City of Raleigh will notify applicants of determination on SDMWOB status within twenty (20) working days of such determination. A business which believes that it has been wrongly denied certification as a SDMWOB will be granted reconsideration of its application for SDMWOB status upon a written request within 20 days of the receipt of denial of the SDMWOB applicant to the SDMWOB Program Manager's Office.

The SDMWOB applicant shall present a written statement of its position and copies of all information it wishes to introduce as evidence to the certification official. The certification official will furnish the SDMWOB applicant copies of any information used by the City in considering the application upon request of the SDMWOB applicant.

Within thirty (30) days of receipt of the information, the certification officer shall issue a statement as to certification of the SDMWOB applicant.

F. ***Revocation of Certification***

1. *Change in Status*

The certification of a business as a small disadvantaged minority and women owned business may be revoked by the City if it finds that the ownership or control of the business changes so that it no longer meets the definition of small disadvantaged minority and women owned business.

2. *Failure to Comply with the SDMWOB Plan*

The certification of a business as a small disadvantaged minority and women owned business may be revoked by the certification officer if it finds any of the following conditions:

a. *That a business has submitted inaccurate, false, or incomplete information to the City;*
b. *That, in performance of a contract a business has failed to comply with requirements of a contract with the City;*
c. *That, in performance of a contract business has failed to comply with SDMWOB requirements of a contract established by a contractor with the City in response to City requirements; or*
That a business has otherwise failed to comply with the provisions of this SDMWOB Plan.

3. *Period of Revocation*

The period of revocation shall be for one year. At the end of revocation, the business may reapply for certification by the City as a SDMWOB.

VIII. ***SDMWOB BUSINESS PROGRAM RECORDS, MONITORING, AND THE USE OF VOLUNTARY GOALS***

A. ***Program Monitoring***

To monitor the implementation of the City of Raleigh's policy to provide small disadvantaged minorities and women equal opportunity for participating in the City of Raleigh's construction programs, participation in the contracting process will be monitored and will include:

1. *The number of SDMWOBs available to provide goods or services;*

2. *The number of solicitations sent to SDMWOBs;*

3. *The number of bids submitted by SDMWOBs;*

4. *The number of contracts and subcontracts awarded to small SDMWOBs;*

5. *The value of contracts and subcontracts awarded to SDMWOBs; and*

6. *The option to review the employment composition of contractors.*

IX. PROCEDURES TO INSURE THAT PRIME CONTRACTORS MAKE GOOD FAITH EFFORTS TO PROVIDE EQUAL OPPORTUNITY TO SDMWOBs IN THE CITY OF RALEIGH CONSTRUCTION PROGRAM

A. Documentation of Good Faith Efforts

In solicitations for construction contracts exceeding $300,000, the contractor will submit documentation to the City that the contractor has made good faith efforts to provide equal opportunity for SDMWOBs to participate in subcontracting and significant material supplier opportunities available under the prime contract.

B. Competitive Bids

Nothing in this plan is to be construed to require contractors to award subcontracts to SDMWOBs who do not submit the lowest responsible sub-bid/quote.

PART II

This section of the City of Raleigh SDMWOB Program is designed to cover construction and repair contracts for $300,000 and under.

Construction and Repair

All departments and agencies of the City shall follow the City's normal informal bidding procedures when contracting for construction and repairs of $300,000 and under. When bid requests are developed, the SDMWOB contractors list shall be used, along with any other bidder list that may be used by the department or agency of the City.

The City Manager reserves the right to reject all informal bids for construction and repair if it is evidenced that sufficient documentation is not in place to demonstrate "a good faith effort" on the part of the department head or agency head of the City in obtaining reasonable responses from SDMWOB. The City Manager shall have the responsibility of reporting to City Council, on an annual basis, the number and dollar amount of construction and repair contracts that have been let to SDMWOB construction firms, the total number and dollar amount of construction and repair contracts for both formal and informal projects and the actual (actual shall be determined by the actual dollar amount paid out to each SDMWOB subgroup) dollar amount paid to each subgroup, to include non-minority, minority (disaggregate by race/ethnicity), female and socially/economically disadvantaged businesses.