

Pursuant to Section 6-308 of the Home Rule Charter of the City of New Orleans, the city council is authorized to administer its own competitive selection process for professional service contracts that regard its legislative authority and responsibilities, and regulatory authority and responsibilities. Accordingly, the following provisions shall control evaluation and satisfaction of DBE goals for such contracts. This section weds Rule 45 of the City Council Rules, which governs the competitive selection process, to include specific processes relative to the review of DBE goals relative to requests for qualifications and requests for proposals relative to professional service contracts and follow the DBE certification and compliance procedures required by the office of economic development, office of supplier diversity:

- A. There is an overall goal of 35 percent for the utilization of DBEs for city council professional service contracts.
- B. The city council should reject contract submittals that are subject to the requirements of this section, and must not award, enter into or amend any contract subject to this section that is not supported by documentation establishing that a respondent has either met the applicable DBE goal, or made good faith efforts to meet the applicable DBE goal.
- C. Whether and to what extent a respondent's good faith efforts shall count towards fulfillment of their DBE contract goal, shall depend on the following considerations, which shall be specifically considered by the selection review committee's in their recommendation to the council:
 - (1) That only business entities certified as SLDBE or LAUCP-DBE may be counted toward the contract DBE participation goal. DBEs must be certified by the proposal deadline date. Should a DBE fail to maintain their DBE certification after contract award, but before performance commences, additional good faith efforts to secure another certification shall be required.
 - (2) The entire amount of fees or commissions charged by a DBE for providing a bona fide service, which includes such professional, technical, consultant, or managerial services specifically required for the performance of the contract, shall count toward fulfillment of DBE goals.
 - (3) When the respondent is in a joint venture with one or more DBE business entities, after reviewing the joint venture agreement submitted by a respondent, must provide a recommendation to the council as to the percent of participation that will be counted toward the achievement of the contract DBE participation goal.
 - (4) A DBE can be a prime respondent and count as 100 percent of the contract DBE participation goal, provided that the Prime DBE has met the contract goal and will perform at least 30 percent of the work with its own forces. A DBE as a prime contractors that fails to maintain DBE certification throughout the term of the contract shall utilize and document their Good Faith Efforts to achieve a reasonable amount of DBE participation on the remaining work on the contract.
 - (5) A respondent may count toward its contract goal only those DBE subcontractors/suppliers performing a commercially useful function.
 - i. "Commercially useful function" is defined as a discrete task or group of tasks, the responsibility for performance of which shall be discharged by the DBE firm by using its own forces or by actively supervising on-site the execution of the tasks by another entity for whose work the DBE firm is responsible.
 - ii. In determining whether a certified firm is performing a commercially useful function, the factors include, but are not limited to:
 - a. Whether the business entity has the skill and expertise to perform the work for which it is being utilized and possesses all necessary licenses;
 - b. Whether the firm is in the business of performing, managing, or supervising the work for which it has been certified and is being utilized;
 - c. Whether the DBE subcontractor is performing a real and actual service that is a distinct and verifiable element of the work called for in a contract.

- d. Whether the DBE subcontractor work performed constituted at least 51 percent of the value of the sub-contract with their own forces.
- D. The selection review committee is responsible for reviewing and submitting to the council, based on a respondent's submittals, an evaluation of DBE participation to assess DBE certification status, percentage of DBE participation, the value of sub-contract dollars committed to a DBE, and whether the DBE will perform a commercially useful function under the contract to conclude one of the following that:
 - (1) a respondent has met the goal;
 - (2) a respondent did not meet the goal, but did make Good Faith Efforts to meet the goal; or
 - (3) a respondent did not meet the goal and did not make Good Faith Efforts to meet the goal.
- E. This section does not apply to the following city council contracts:
 - a. Professional services contracts for an individual councilmember;
 - b. The city council's annual audit; and
 - c. Emergency situations as provided in Rule 45.
- F. Ongoing monitoring of the DBE goals provided herein shall be performed by the office of economic development, office of supplier diversity to ensure that all applicable council contracts after award continue to meet their goals or make good faith efforts relative thereto, throughout the duration of the contract. Any determinations of non-compliance shall be timely reported in writing to the city council.
- G. The city council research office or the council fiscal office shall compile an annual report to the city council and submit such report by March 31 of each year identifying the council's DBE participation goals and attainment rates for professional service contracts granted the prior year. The DBE report shall include the following information:
 - a. The total number and value of all contracts awarded during the prior year;
 - b. The total number and value of all contracts awarded to DBEs as prime contractors (expressed as a percentage and dollar value of (a));
 - c. The total number and value of all contracts awarded by non-DBE prime contractors to DBEs as subcontractors (expressed as a percentage and dollar value of (a)); and
 - d. The overall number and value of all contracts awarded to DBEs during the reporting period (the sum of (b) and (c)).
- H. The office of supplier diversity (OSD) shall monitor all contracts issued pursuant to this section to ensure ongoing and continued compliance with the goals provided herein, throughout the entire contract term. OSD shall notify the council's chief-of-staff in writing within five business days of determining that a contract is not in compliance with the goals provided herein.
- I. A waiver from the provisions of the section may be submitted to the office of supplier diversity (OSD) prior to the issuance of a request for proposals (RFP) or request for qualifications (RFQ) for a professional services contract. Submittal of a waiver request shall be on forms provided by OSD and shall be submitted along with a copy of the proposed RFP/RFQ. The director of OSD shall recommend to the city council, in writing, with regards to the waiver request. Upon receipt of a waiver recommendation from OSD, the final execution of a waiver shall be authorized by the council's chief-of-staff upon consultation with councilmembers.