



## **REQUEST FOR PROPOSALS**

### **ENVIRONMENTAL, HEALTH, AND SAFETY CONSULTING SERVICES**

**SEPTEMBER 3, 2020**

This Request for Proposal (RFP) is being sent to qualified firms to perform as the Professional Services Consultant for undertaking environmental, health, and safety consulting services for the Northeast Ohio Regional Sewer District (NEORSRSD/the District). **Proposals for providing these services will be received until the close of business (4:30 P.M.) on Thursday, October 1, 2020.** Proposals shall be no more than 20 printed pages and the font size shall be equivalent to Times New Roman 12 pt or larger (see **Section 3.0**). Proposals are to be addressed to:

Kyle Dreyfuss-Wells, Chief Executive Officer  
Northeast Ohio Regional Sewer District  
3900 Euclid Avenue  
Cleveland, OH 44115-2504

Attn: Robin Halperin, Manager of Regulatory Compliance

Late submittals will not be considered. A virtual, non-mandatory pre-proposal meeting will be held at **1:00 P.M. on Tuesday, September 15, 2020** via Go To Meeting. The meeting can be accessed via the following link: <https://global.gotomeeting.com/join/204445501>. Questions regarding this RFP shall be accepted up to and during the pre-proposal meeting by contacting Sarah Andersson at (216) 881-6600, ext. 6442 or at [AnderssonS@neorsd.org](mailto:AnderssonS@neorsd.org). No questions will be accepted after 2:00 P.M. on Tuesday, September 15, 2020. This RFP is organized as follows:

SECTION 1.0	INTRODUCTION
SECTION 2.0	SCOPE OF SERVICES
SECTION 3.0	PROPOSAL CONTENT & FORMAT
SECTION 4.0	EVALUATION & SELECTION PROCESS

Various supporting and informational documents are referenced throughout this RFP. Unless otherwise noted, these documents are available on the Consultant and Contractor Resource Page on the District's website (<https://www.neorsd.org/business-home/engineering-and-construction/>). Any future addenda related to this contract will be posted to the District's website under the "Bids and Proposals" section and within the NEORSRSD Sharefile system.

## **1.0 INTRODUCTION**

### **1.1 PROJECT PURPOSE**

The Northeast Ohio Regional Sewer District (the “District”) is a regional sewer district organized and existing as a political subdivision of the State of Ohio under Chapter 6119 of the Ohio Revised Code. The District currently has approximately 800 employees and a service area encompassing over 62 communities in the Greater Cleveland area. The District’s mission is to provide progressive sewage and stormwater management through innovation, fiscal responsibility, and community partnerships.

The District is in the process of executing a five (5) year Capital Improvement Plan (CIP) which includes projects in support of the operation and maintenance of its three (3) wastewater treatment plants (WWTPs) and compliance with the District’s Consent Decree-mandated Combined Sewer Overflow Long Term Control Plan (CSO LTCP). The District is also in the process of executing a Regional Stormwater Management Program (RSMP) that includes projects to address stormwater issues. As a component of the RSMP, the District is conducting Stormwater Master Plan studies that will identify projects to address flooding, erosion, and other issues along the regional system. Collectively, these programs include a variety of projects such as the construction of large diameter CSO tunnels, collection system improvements, plant upgrades, property acquisition, stormwater asset maintenance, compliance with new regulations and stream restoration projects. Beyond the programmatic work of the District, the Operations & Maintenance (O&M) Department is responsible for the daily operation and repairs of District facilities and assets such as the replacement of parts/structural components and other activities needed to preserve an asset so that it continues to provide an acceptable level of service and achieves its expected life.

In response to the complex nature of the District’s operations, CIP, and RSMP, the District identified the need to supplement the skills of current staff with consultants specializing in environmental, health, and safety services. These services help to fulfil the District’s mission to serve our customers by leading effective wastewater and stormwater management that protects the health and environment of our region, while enhancing quality of life. Therefore, it is the District’s intent to hire one or more consulting firms (Consultant) for Professional Services to fulfill its needs for environmental, health, and safety services. It is necessary that the Consultant be familiar with local, state and federal environmental, health and safety rules and regulations, as well as industry best management practices. The resulting contract(s) is expected to cover a three (3) year period and will be in effect until funds are exhausted.

## 2.0 SCOPE OF SERVICES

### 2.1 REQUESTED SERVICES

The District is seeking environmental, health, and safety consulting services including, but not limited to:

- **Environmental, Health, and Safety Consulting/Technical Expertise** - Provide environmental and occupational health and safety expertise and technical assistance in the development and implementation of engineering and construction projects related to the CIP and RSMP. Evaluate and recommend actions that will enhance the District's compliance with air, water, solid waste, hazardous waste, occupational health and safety, and other applicable regulations and industry best management practices.
- **Environmental, Health, and Safety Compliance Evaluations** – Conduct audits of District projects, facilities and operations to determine applicability of environmental and occupational health and safety regulations and the District's compliance with said regulations. Evaluate existing environmental, health and safety compliance programs at the District. Make recommendations for cost-effective solutions to audit findings. Provide technical assistance in the development and implementation of compliance programs to address areas of deficiency.
- **Environmental, Health and Safety Training Program Development** – Provide expertise and technical assistance in the development of environmental and occupational health and safety training programs that allow District employees to complete their work safely and avoid creating hazards that could place themselves or others at risk. Make recommendations for whether to provide training at an awareness level or to develop a specialized training when the work involves unique hazards.
- **Technical Specifications & Policy Development** – Provide expertise and technical assistance in the development and implementation of technical specifications, standard operating procedures, environmental policies and other documents to address the environmental, health and safety conditions at a project site and control the District's risk exposure. Evaluate and recommend actions that will mitigate the project's impact on employee health and safety, public health and the environment.
- **Environmental Permitting Assistance** – Provide expertise and technical assistance in preparing permit applications, air dispersion modeling, reviewing draft permits, regulatory agency negotiations, and permit compliance.
- **Environmental Sampling & Analysis** – Provide the necessary field services to collect and evaluate analytical results from samples of soil, surface water, groundwater, indoor air, mold, wastewater treatment plant residuals, and other materials (e.g., grit removed from a sewer) in support of compliance with environmental rules, regulations and industry best management practices, information gathering, environmental assessments, subsurface investigations, and remediation activities.

- **Job Hazard Analysis** – Provide occupational health and safety expertise and technical assistance in the process of identifying and assessing job hazards that are present or that could be anticipated to prevent workplace injuries, illnesses, and incidents.
- **Hazardous Material Assessments & Management** – Provide the necessary field services to collect and evaluate analytical results from samples for asbestos, metals in paint (e.g., lead, chromium, cadmium, arsenic), polychlorinated biphenyls (PCBs), etc. Compile inventories of hazardous wastes, universal wastes, and other regulated building materials (oil-containing or TSCA regulated materials). Provide expertise and technical assistance to evaluate a project's impact on identified hazards and assist in the development of specifications and other documents to ensure worker safety, proper disposal and compliance with environmental and occupational health and safety regulations.
- **Remediation Oversight** – Provide expertise and oversight of field construction activities to ensure compliance with project specifications.

## 2.2 AUTHORIZATION OF TASK ORDERS

The contract is set up as a task-based contract. For each task to be executed, the Consultant and the District will agree on a task order scope, budget and schedule. The structure of each individual task may vary depending upon the size, type, and schedule of each project. Diligent tracking of tasks is necessary to record spending from the appropriate Program (i.e., CIP, RSMP, or O&M).

## 2.3 PROJECT MANAGEMENT

Project Management is a critical activity to be included within the execution of all tasks identified above. Projects should be planned, executed, and controlled to meet the agreed upon goals within the specified timeframe. Procedures related to cost estimating, scheduling, project documentation, risk management, QA/QC, and others as necessary should be utilized to enhance budget, scope and time management.

In order to ensure that tasks authorized under this contract are successfully completed in a timely manner and to the satisfaction of the District, the selected Consultant(s) shall provide Monthly Project Summary Reports, conduct and/or attend project meetings as required, and prepare monthly invoices.

## 2.4 DELIVERY OF SERVICES

The selected Consultant(s) shall deliver all services under this RFP in a timely and effective manner to meet the District's needs. The Consultant shall be responsible for preparing permit applications, conducting assessments, and other services within the timeframe or schedule agreed to with the District. The specific schedule for each task will be agreed upon between the District and the Consultant(s) at the time of Task Order issuance. The selected Consultant(s) shall begin work immediately upon authorization to proceed on a task (typically via email) and shall adhere to the schedule mutually agreed upon by the District and the Consultant for said task. Adequate time shall be built into the schedule for each task to allow for sufficient review time of any reports, drawings, documents, etc. by District staff. The Consultant(s) shall also provide monthly status updates and invoices in accordance with the District's standard procedures.

#### **2.4.1 Laboratory Results:**

Laboratory analyses shall be conducted by an accredited laboratory. Results of laboratory analyses performed under this Contract shall be delivered to the District as soon as possible after sample collection. Prior to the time of sample collection the District shall inform the Consultant(s) as to the urgency of the sample results and whether or not rush delivery on the results is warranted. The selected Consultant(s) shall also provide a brief interpretation of the sample results, if requested by the District.

#### **2.4.2 Reports/Documents:**

The selected Consultant(s) shall prepare and deliver all reports and deliverables in a professional, timely, and efficient manner to the District. The exact deliverables and their associated timeframe will be determined jointly by the District and the Consultant(s) at the time of task initiation. All reports shall include essential photographs, laboratory analyses, diagrams, maps, etc.

### **2.5 TRANSFER OF RECORDS**

It is the intent of the District that the work effort be conducted in a manner that maximizes the District's flexibility regarding follow-up studies or compliance related efforts and other District projects. Software and software programs that would be necessary to achieve this shall be made available to the District. Utilization of proprietary software which cannot be made available to the District at the end of this project will not be allowed, unless it is essential for the project and unavoidable (e.g., air modeling).

All records (project reports, meeting notes, data files, project data, original tracings, maps, field sketches, lab reports, data, graphic originals, electronic files, etc.) generated shall be the property of the District and shall be turned over to the District upon completion or as directed.

All deliverables are required to be delivered to the District in electronic (original software and PDF) format. Hardcopies of deliverables may be requested. Depending on the size of the electronic deliverables, the Consultant may be required to provide and utilize portable hard drive(s) for delivery.

### **3.0 PROPOSAL CONTENT AND FORMAT**

Each Consultant shall submit an electronic version, in PDF format with bookmarks, via email to Robin Halperin: [HalperinR@neorsd.org](mailto:HalperinR@neorsd.org). The font size on all submitted materials shall be equivalent to Times New Roman 12 pt or larger.

Proposals shall be no more than **20** printed pages, with hard copies printed on sheets of double-sided recycled paper. All pages will be counted (i.e., each side of a sheet will count as a unique page, so one double-sided sheet will be counted as two pages) unless indicated otherwise in this RFP. Sheets that are 11"x17" shall be counted as two (2) pages per side, or four (4) pages if double sided.

The following information shall be included in the proposal:

#### **3.1 EXECUTIVE SUMMARY**

To assist the District in meeting its needs for environmental, health, and safety services in support of District CIP Projects, implementation of the RSMP, and O&M activities, the District requires technical support with the appropriate expertise, resource capacity and flexibility. The Consultant team should summarize their specific expertise, capacity and understanding of the requirements of this project and any key considerations that would make them a reliable source of assistance for this critical project.

#### **3.2 PROJECT DELIVERY**

The District is looking for Consultants that will provide excellent service and deliver quality work for the District. The District expects this quality service to extend through the entire duration of the Project. In this section of the Proposal, present the capabilities, skills, and experience of your project manager as well as how you have served the District on prior projects. These factors will be strongly considered in selecting the successful Consultant(s) for this Project.

##### **3.2.1 Proposed Project Manager**

The District expects the proposed project manager to lead the Consultant project team, be the single point of accountability for project delivery, and provide the primary point of communication between the District and project team. Describe the proposed project manager's experience on similar projects, experience on other District projects, and skills and results supporting the ability to serve the District. The project manager is considered the most important key team member and will be committed for the Contract's duration. Any change in project manager, or any other key team member, will require prior approval by the District.

The Consultant's proposed project manager must be experienced in projects of the magnitude and complexity of the services listed in **Section 2.1** and should be an organized individual that has the ability and availability to effectively perform contract management activities. It is expected that the Consultant's proposed project manager will be available for frequent personal interaction with the District. In addition, the project manager must meet the following requirements:

- Must be experienced in multi-disciplined projects of the nature outlined in the Scope of Services (**Section 2.0**) in this RFP.

- Must have had a key role in projects of similar or complementary nature.
- Must have managed projects of a similar or greater complexity and/or size.

### **3.2.2 Performance on District Projects**

Summarize your firm's/team's experience on District Projects. List the District staff that you worked with and would be most familiar with your work. Your prior performance on District projects is an important consideration in the selection process. The successful Consultant's performance will be formally evaluated on this Project for use in subsequent procurements.

Consultants that do not have prior experience working for the District will receive a neutral rating for this evaluation criterion.

## **3.3. QUALIFICATIONS**

Because of the critical nature of the work described within this RFP, the District seeks services from highly experienced and qualified Consultant project teams. The Consultant must be able to staff this project with qualified individuals, experienced in the key technical disciplines needed, who shall remain committed to this work from inception through completion. A clear and comprehensive organization chart must be presented to illustrate the organization of the team and key team members, including subconsultants (if any).

Due to the unpredictable nature of the work requested under this Contract and the need to be responsive within a short period of time, preference will be given to Consultants with a local presence including local key technical staff and subconsultants.

### **3.3.1 Experience of Key Team Members on Similar Projects**

Include brief resumes for proposed key team members (excluding the proposed project manager, who should be addressed as noted in **Section 3.2.1**) and/or subconsultants proposed to work on the project. The information should be focused on experience on similar and/or complementary projects. The information for these projects shall include, at a minimum, the following: project description, key staff member's role, client, client contact information, project cost (as applicable), and year completed. The roles proposed for each subconsultant as well as their qualifications in that area shall also be identified in the Proposal. Identify the office locations of all proposed key team members. The roles proposed for each subconsultant, as well as their qualifications in that area shall also be identified in the Proposal. Key team members should be able to exhibit appropriate licenses, certifications, and qualifications for each discipline for which they will be used, a copy of which must be made available if requested by the District.

Key team members include but are not limited to project manager, technical discipline leads, and other key technical staff. Your ability to identify and highlight key team members in the Proposal will be considered when evaluating your understanding of the Project.

### 3.3.2 Project Examples/References

Include a description of three (3) recent projects/programs/efforts that included a similar scope of work as the services for the prime Consultant and relevant subconsultants. The following information shall be included for each project:

- Client Name
- Client Contact (address, phone, email)
- Project Title
- Project Description
- Start and end dates of project
- Consultant fees/project budget and overall project performance
- Consultant's role in project – highlight roles of staff

### 3.3.3 Key Team Members' Availability

It is expected that the Consultant will honor its proposed project staffing and all proposed key team members shall be assigned to the project. Substitutions will not be allowed for the convenience of the Consultant. In the event a proposed individual becomes unavailable the Consultant must propose, in advance and in writing, a substitution. The District reserves the right to accept or reject any and all proposed substitutions.

Because of the as-needed nature of many tasks in this project, capacity and depth of the Consultant project team is a highly important factor to the success of this project. To demonstrate the availability of proposed Consultant team members for the Project, including and especially the proposed project manager, the Consultant must include a summary of their availability during the contract.

### 3.3.4 Business Opportunity Program Participation

The District encourages Minority and Women Business Enterprises (MBE/WBE) and Small Business Enterprises (SBE) participation on this project. A goal of **8% MBE, WBE participation** has been established for this Contract. All certified firms will receive notification of the RFP and have the opportunity to submit individually or as a part of a team. Teaming with District-certified MBE/WBE firms will be considered as part of the proposal evaluation. Refer to **Section 4.1** for further information regarding scoring criteria.

The Consultant shall provide a summary of the proposed percentage of MBE/WBE participation in the project. The proposal shall include a statement indicating the following:

- Portions of the project assigned to MBE/WBE businesses in a responsible role;
- Other portions of the project that will involve contribution by MBE/WBE firms;
- Statement of the overall percentage of MBE/WBE involvement; and
- Principal contact information for each MBE, WBE firm.

The MBE and/or WBE firms proposed as part of the Consultant's project team shall be certified with the District at the time of proposal. Questions regarding the District's Business Opportunity Program shall be addressed to Ms. Tiffany Jordan, Contract Compliance Manager, at (216) 881-6600, extension 6640, or [JordanT@neorsd.org](mailto:JordanT@neorsd.org). A copy of the District's Business Opportunity Program MBE/WBE policy is included as **Attachment A**.

### **3.4 TECHNICAL APPROACH**

The Consultant's technical approach to the Project is a very important component of the selection. In the Proposal, the Consultant is requested to demonstrate their project understanding, provide a summary of the critical issues, and describe the Consultant's proposed approach to meet the District's objectives.

#### **3.4.1 Project Understanding**

The Consultant should concisely demonstrate its understanding of the services listed in **Section 2.1**. Key activities necessary to achieve the District's goals or objectives and approaches that improve the chances of success should be presented. The Consultant shall demonstrate their understanding of the process for completion of the scope of services and level of effort required.

#### **3.4.2 Critical Issues**

The Consultant should include a description of what they view as the critical issues (e.g., the main risks, improvement opportunities, processes, etc.) associated with this contract and the execution of CIP, RSMP, and O&M projects in this section of the Proposal.

The services to be delivered under this contract will be in support of the District's CIP, RSMP, and O&M activities. The Consultant shall discuss how the critical environmental and occupational health and safety tasks will interface with the engineering design and construction schedules of the District's CIP and RSMP. The Consultant shall include recommendations for scheduling any on-site work such that sufficient time is allowed to obtain necessary information, approvals and/or permits for incorporation into the project within the overall project schedule.

#### **3.4.3 Potential Task Assignments**

The Consultant shall describe their approach to each of the potential task assignments listed below. These task assignments represent a few of the potential tasks that the District may pursue under this contract and are being provided as a means to compare technical approaches of the Consultants responding to this RFP. These tasks may or may not be authorized as task orders under this contract.

- **Task 1:** The District's wastewater treatment plants are regulated under the Clean Water Act's National Pollutant Discharge Elimination System (NPDES), which sets limits on the concentration and amount of pollutants that can be discharged in final plant effluent. Over the last few years, per- and polyfluoroalkyl substances (PFAS) has come into the national regulatory spotlight. It is currently unknown whether or not elevated levels of PFAS are passing through our treatment systems to lakes and streams. Describe your approach to identifying the concentrations of PFAS in the

District's wastewater and conducting a risk analysis that includes consideration of applicable screening/comparison standards, sampling methodology, ways to reduce or eliminate industrial sources, and potential treatment technologies. Include recommendations for what steps the District should consider taking to best position itself for compliance if regulation is imposed under either Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Safe Drinking Water Act (SDWA), the Clean Water Act (CWA) or Emergency Planning and Community Right-to-Know Act (EPCRA).

- **Task 2:** The District is constructing a project in the collection system to upgrade a Pump Station which was constructed in 1930. The planned Pump Station upgrades include replacing the two (2) pneumatic ejectors with centrifugal pumps, adding a 600 gallon wet well, electrical upgrades, removal and replacement of the HVAC system on the roof, upgrades to the PLC controls and the associated variable frequency drive (VFD), as well as installation of a diesel-fueled emergency generator. Describe your approach to assessing the hazards associated with this project and make recommendations on how to mitigate potential risks. Include a discussion about your recommendation for the sequencing of these services relative to the bidding of construction.
- **Task 3:** Atmospheres can be hazardous in WWTPs and their associated collections systems, so both property and personnel must be protected. Protection must be framed by regulatory requirements and process considerations, as well as industry best practices. Both process and physical layouts can change frequently in the short term and over time. The challenge lies in determining the appropriate devices to use for protective purposes, requiring solutions that are effective AND sustainable. Describe your approach to assessing the District's fixed atmospheric monitoring and alarming systems. Include a discussion of how to ensure selection of the appropriate level of protection while minimizing nuisance activations and being economically feasible for purchase and maintenance.

### 3.5 STATEMENTS

The Consultant shall identify any possible conflicts of interest under Ohio Ethics Laws and/or the District's Code of Ethics that your firm may have with the District, including its Board of Trustees members, executive personnel, and staff members. The District's Code of Ethics is located on the District's internet website at [www.neorsd.org](http://www.neorsd.org) or can be provided upon request by the Consultant. In the absence of any such possible conflicts of interest, the Consultant shall include the following statement confirming that no personal or organizational conflicts of interest are known to exist.

"By submitting this proposal response, I acknowledge, on behalf of the entity submitting this proposal, that I have familiarized myself with the District's Code of Ethics which is located on the District's web page and certify that, to the best of my knowledge, there is no conflict of interest involving my entity and that I have authority to make such certification. I understand that any conflict or potential conflict of interest, must be reported to the District's contact person for this request for proposal in writing prior to the submission of the proposal response. I further

understand that conflict of interest or potential conflict of interest information may be considered by the District in evaluating a proposal response.”

### **3.6 LICENSES, CERTIFICATIONS, AND PREQUALIFICATIONS (Not Included in Page Count)**

The Consultant(s) shall include a table detailing the licenses, certifications, and qualifications that are currently held by each team member. Pages in this appendix are not included toward the total page count. Copies of said licenses, certifications, and qualifications shall be provided upon the request of the District.

### **3.7 DETAILED RESUMES (Not Included in Page Count)**

Detailed resumes for the Project Manager, key technical staff, and team members may be included as an appendix. Resumes for the proposed project manager can be no more than four (4) pages. Resumes for proposed key technical staff can be no more than two (2) pages per resume. The total number of pages for all resumes can be no more than 14 total pages. Pages in this appendix are not included toward the total page count.

### **3.8 RATE SHEET**

Provide job or personnel categories of the Project Manager, key technical staff, and team members proposed for this contract, along with applicable hourly rates and multipliers. Each Consultant shall submit an electronic copy of the rate sheet in a separate PDF document via email to Robin Halperin: [HalperinR@neorsd.org](mailto:HalperinR@neorsd.org) along with the copy of the proposal requested in **Section 3.0**.

Services under this contract will be subject to simple time and material based payment. The Consultant shall submit monthly invoices for each task that work was performed on during the previous month. The invoice shall be based on the actual hours worked including a description of the work activity, approved hourly rates and multipliers, and other direct costs expended in the furtherance of the services. Actual rate schedules and compensation shall be determined during contract negotiation.

## **4.0 EVALUATION & SELECTION PROCESS**

Once all proposals have been received, the Consultant selection committee will follow these steps.

### **4.1 SCORING CRITERIA**

The written Proposals will be evaluated and scored by a District Selection Committee utilizing the following criteria:

#### **Project Delivery (25% of Total Score)**

- Proposed Project Manager – 15%
- Performance on District Projects– 10%

#### **Qualifications (40% of Total Score)**

- Experience and availability of Project Team - 25%
- Depth and capacity of Project Team – 10%
- MBE/WBE and SBE Participation--5%

#### **Technical Approach (35% of Total Score)**

- Project understanding – 10%
- Critical Issues – 10%
- Response to Potential Task Assignments – 15%

### **4.2 EVALUATION AND RANKING**

Upon completion of the scoring and ranking of the written submittals, the District may select the top ranked Consultants to deliver a presentation and provide further clarification of their approach. The District may prepare and submit a list of questions to each of the short-listed Consultants to address during their interview. Upon completion of interviews, the District Selection Committee will score each Consultant according to the following criteria:

#### **Presentation & Interview (50 additional points)**

- Quality and clarity of presentation – 10 points
- Project Manager's ability to communicate project understanding – 15 points
- Team Support on Project Understanding and Questions – 10 points
- Adequacy of Response to District Questions – 15 points

For evaluations taken to the presentation stage, the scores for the Presentation and Interview will be combined with the scores from the evaluation of the written submittals to determine the overall ranking of the short-listed Consultants.

### **4.3 NEGOTIATION**

After evaluation, the District will enter into negotiations with the highest ranked Consultant to develop a final and mutually agreed-upon fee structure. If agreement cannot be reached with the highest ranked Consultant, the District may initiate negotiations with the next highest ranked Consultant.

#### **4.4 RECOMMENDATION TO AWARD**

Upon reaching agreement on the scope and the fee structure for the contract, the Selection Committee will make a recommendation to award to the District's Consultant Review Committee (CRC).

#### **4.5 RECOMMENDATION TO ENTER INTO AN AGREEMENT**

Upon approval by CRC, District Staff will report to the Board of Trustees and make a recommendation to enter into an agreement based on the outcome of the negotiations.

The selected Consultant(s) cannot commence work on any aspects of the project prior to Board approval and subsequent execution of the District's standard Agreement.

**END OF RFP**

## **ATTACHMENT A**

# **NEORSD Minority- and Women-Owned Business Enterprise (MBE/WBE) Program Policies and Procedures Manual**



**Northeast Ohio Regional Sewer District  
Minority- and Women-Owned  
Business Enterprise (MBE/WBE) Program**

**Policies and Procedures Manual**

November 16, 2017

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## **INTRODUCTION**

The NEORSD engaged a consultant to perform an intensive disparity study (Disparity Study) to examine evidence regarding the experiences of minority-and women-owned firms in NEORSD's geographic and procurement marketplaces. The Disparity Study found both statistical and anecdotal evidence of business discrimination against MBEs and WBEs in the NEORSD's relevant market area.

Based upon the results of the Disparity Study, NEORSD has developed this MBE/WBE Policy in order to implement narrowly tailored race-and gender-based remedies for the existence of discrimination within the NEORSD's Marketplace.

## **ARTICLE 1.** **DEFINITIONS**

For the purpose of this MBE/WBE Program, the following words, terms, phrases and abbreviations shall have the following meanings:

**"Affiliate"** of a person or entity means a person or entity that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person or entity, or an identity of interest between or among parties exists such that affiliation may be found. In determining Affiliation, the NEORSD shall consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether an applicant meets small business size criteria of this Policy. The NEORSD will follow the requirements of 13 C.F.R. Part 121, as amended, in applying this definition.

**"Annual Aspirational Goals"** shall mean the targeted levels established by the NEORSD for the annual aggregate participation of MBEs and WBEs in NEORSD Contracts.

**"Bidder" or "Contractor"** shall mean any person or entity that submits a bid or proposal to NEORSD, or has expressed interest in submitting a bid or proposal in response to a solicitation issued by NEORSD, or who has been awarded a Contract by NEORSD.

**"Broker"** shall mean a person or entity that fills orders by purchasing or receiving supplies from a third party rather than out of its own existing inventory, and provides no Commercially Useful Function other than acting as a conduit between his or her supplier and his or her customer.

**"Commercially Useful Function"** shall mean responsibility for the execution of a distinct element of the work of the Contract, which is carried out by actually performing, managing, and supervising the work involved, or fulfilling responsibilities as a Joint Venture partner, as determined by NEORSD in its sole

discretion. To determine whether a firm is performing a Commercially Useful Function, the NEORSD will evaluate the amount of work subcontracted, normal industry practices and other relevant factors.

A MBE/WBE performs a Commercially Useful Function when it is responsible for the work of the Contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a Commercially Useful Function, the MBE/WBE must also be responsible, with respect to materials and supplies used on the Contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. The determination that a MBE/WBE is performing a Commercially Useful Function will be determined by the amount of work subcontracted, normal industry practices, whether the amount the firm is to be paid under the Contract is commensurate with the work it is actually performing, and other relevant factors.

A MBE/WBE does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, Contract, or project through which funds are passed in order to obtain the appearance of MBE/WBE participation.

Generally, if a MBE/WBE does not perform or exercise responsibility for at least 30 percent of the total cost of its Contract with its own work force, or the MBE/WBE subcontracts a greater portion of the work of a Contract than would be expected on the basis of normal industry practice for the type of work involved, it is not performing a Commercially Useful Function.

**“Compliance”** shall mean the condition existing when NEORSD has determined that a participant has met the requirements of this Program.

**“Contract”** shall mean any mutually binding legal obligation of NEORSD created to acquire some good and/or service from one or more firms, which is paid or which is to be paid for, in whole or in part, with monetary appropriations of NEORSD. In this context, the terms “contracting,” “purchasing,” and “procurement” are synonymous and refer to the process or processes under which NEORSD undertakes such acquisitions. Contract does not include sole source procurements, which by their very nature limit the source of supply to one vendor; State of Ohio contract purchases that do not require competitive bidding; the acquisition of any interest in real property, including lease holdings; direct and indirect employee payments including payroll expenditures, pensions and unemployment compensation and other employee-related expenditures; agreements with non-profit or governmental entities; agreements with utility providers; and any other categories and subcategories of goods and services that NEORSD may from time to time establish as excluded.

**“Contract Goal”** shall mean the goal or goals for MBE and WBE participation on particular project or Contract based upon the availability of MBEs or WBEs in the scopes of work of the project or Contract.

**“Economically Disadvantaged”** shall mean a firm whose gross receipts do not exceed the business size standards established by the NEORSD and posted on NEORSD’s internet site at [www.neorsd.org](http://www.neorsd.org), relevant to the scope(s) of work the firm seeks to perform on NEORSD Contracts.

**“Expertise”** means demonstrated skills, knowledge or ability to perform in the field of endeavor in which certification is sought by the firm as defined by normal industry practices, including licensure where required. A firm shall be entitled to a rebuttable presumption that it has the Expertise to perform in the categories for which it is applying for certification under the MBE/WBE Program if the firm has been in continuous operation in those categories for at least one (1) year prior to its application for certification.

**“Joint Venture”** shall mean an association of two or more independent Bidders or Contractors formed to carry out a for-profit business enterprise in a single transaction or a series of transactions, for which, pursuant to a written agreement (i) the parties combine, pool, or integrate some of their assets with a view to mutual gain, but otherwise remain independent operations and (ii) the MBE or WBE has a legal and actual right or obligation, consistent with its equity share of the Joint Venture (A) to contribute to the operating capital of the Joint Venture; (B) share in the operating profits or losses of the Contract and the Joint Venture; and (C) to perform clearly defined services under the Contract in the name of the Joint Venture.

**“Local Small Business”** shall mean a business entity with a functioning office located within the Marketplace of the NEORSD. Mailbox facilities or other similar arrangements are not sufficient to establish office location. Additionally, the firm must be registered to conduct business within the State of Ohio, as demonstrated through official documents filed with the Secretary of State of Ohio. Additionally, the firm’s gross receipts must not exceed the business size standards established by the NEORSD and posted on NEORSD’s internet site at [www.neorsd.org](http://www.neorsd.org), relevant to the scope(s) of work the firm seeks to perform on NEORSD Contracts. A firm does not qualify as a Local Small Business for any calendar fiscal year in which its gross receipts, averaged over the firm’s previous five (5) fiscal years, exceed the size standards established by the NEORSD.

**“Manufacturer”** shall mean an individual (or individuals) who owns, operates, or maintains a factory or establishment that produces on the premises the components, Materials and/or Equipment, or supplies equipment required under the Contract and of the general character described by the specifications.

**“Marketplace”** shall mean the NEORSD’s geographic and procurement markets as established by the Disparity Study: the Metropolitan Statistical Areas of Cleveland-Elyria-Mentor, Ohio; Akron, Ohio; Canton-Massillon, Ohio; Youngstown-Warren, Ohio; and Ashtabula, Ohio. Such Metropolitan Statistical Areas include the counties of Cuyahoga, Lorain, Medina, Summit, Portage, Geauga, Lake, Ashtabula, Trumbull, Stark, Mahoning, and Carroll.

**“Material”** shall mean supplies that may be incorporated into, or attached to, an end product, or that may be consumed or expended in the manufacturing process.

**“Minority-Owned Business Enterprise (MBE)”** shall mean any sole proprietorship, partnership, corporation, limited liability company, or Joint Venture that is certified by NEORSD as meeting each of the following requirements:

1. **Ownership.** At least 51% of the equity of the enterprise is owned by one or more Minority Individuals.
2. **Operational Control.** Minority Individuals are in actual control of the management, major business decisions, and the conduct of the business and operations of the enterprise.
3. **Local Small Business.** The enterprise is qualified as a Local Small Business.
4. **Expertise.** The enterprise meets the NEORSD standards as to Expertise and Commercially Useful Function applicable to the certification being sought by the enterprise.

**“Minority Individual”** shall mean a natural person who is a citizen or permanent resident of the United States and is a member of one of the following groups:

1. African-Americans or Blacks, which includes persons having origins in any of the Black racial groups of Africa.
2. Hispanic-Americans, which includes persons of Mexican, Puerto Rican, Cuban, Caribbean, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race.
3. Native-Americans, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians.
4. Asian-Americans (persons whose origins are in any of the original peoples of the Far East, Southeast Asia, the islands of the Pacific or the Northern Marianas, or the Indian Subcontinent).
5. Natural Persons who are not neither women nor members of other groups that are not described in subparagraphs 1-4 above and that are found by the NEORSD to be socially disadvantaged by having suffered racial or ethnic

prejudice or cultural bias within American society, without regard to individual qualities, resulting in decreased opportunities to compete in the NEORSD's Marketplace or to do business with the NEORSD.

**"Non-Compliance"** shall mean the condition that exists when a Bidder or Contractor has failed to meet the requirements of this MBE/WBE Policy.

**"Prime Contractor"** shall mean the Contractor who enters into Contract with NEORSD and who is primarily responsible for performance under such Contract.

**"Regular Dealer"** shall mean a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a Regular Dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A firm may be a Regular Dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt, without owning, operating, or maintaining a place of business if the firm both owns and operates distribution equipment for the products. Any supplementing of a Regular Dealer's distribution equipment shall be by a long-term lease agreement and not on an *ad hoc* or contract-by-contract basis. Packagers, manufacture representatives, or other persons who arrange or expedite transactions are not Regular Dealers.

**"Socially Disadvantaged"** shall mean a Minority Individual or Woman who has been subjected to racial, ethnic or gender prejudice or cultural bias within American society because of his or her identity as a member of a group and without regard to individual qualities. Social disadvantage must stem from circumstances beyond the individual's control. A Socially Disadvantaged individual must be a citizen or lawfully admitted permanent resident of the United States.

**"User Department"** shall mean the specific NEORSD department for which the Contract is entered into.

**"Utilization Plan"** shall mean the document(s) provided by the Contractor and approved by the NEORSD identifying the MBEs and WBEs that the Contractor intends to utilize on a Project, including the corresponding scopes of work and dollar amounts.

**"Woman"** shall mean a natural person of the female gender, as defined under Ohio law.

**"Woman-Owned Business Enterprise (WBE)"** shall mean any sole proprietorship, partnership, corporation, limited liability company, or Joint Venture that is certified by NEORSD as meeting each of the following requirements:

1. **Ownership.** At least 51% of the equity of the enterprise is owned by one or more Women.
2. **Operational Control.** A Woman or Women are in actual control of the management, major business decisions, and the conduct of the business and operations of the enterprise.
3. **Local Small Business.** The enterprise is qualified as a Local Small Business.
4. **Expertise.** The enterprise meets the NEORSD standards as to Expertise and Commercially Useful Function applicable to the certification being sought by the enterprise.

## **ARTICLE 2.**

### **MBE/WBE PROGRAM ADMINISTRATION**

**Definition and Purpose:** The Office of Contract Compliance (OCC) is responsible for administering and enforcing the Minority- and Women-Owned Business Enterprise Program (MBE/WBE Program) as established by this MBE/WBE Policy. The OCC shall periodically report to the Board of Trustees, the Chief Executive Officer and the Chief Financial Officer of NEORSD on all matters concerning the MBE/WBE Program.

**Functions of the OCC:** The OCC shall encourage contracting opportunities for MBEs and WBEs, and strive to achieve the objectives of this MBE/WBE Policy and the MBE/WBE Program by, among other things:

1. Recommending written rules, regulations and procedures for adoption by NEORSD with respect to the administration of the MBE/WBE Program consistent with this MBE/WBE Policy.
2. Maintaining outreach assistance programs and Contractor advisory council(s) to promote contracting opportunities for MBEs/WBEs, the efficacy of the MBE/WBE Policy, and the fair and equitable administration of the MBE/WBE Program.
3. Establishing, enhancing and maintaining relationships with agencies and stakeholders that share the goals of the MBE/WBE Program and, whenever possible, coordinating the operation of the MBE/WBE Program with the programs of such agencies and stakeholders.
4. Establishing uniform procedures and criteria for certifying, recertifying and decertifying businesses as MBEs/WBEs, accepting certifications by other agencies, maintaining a directory of certified firms, and making the directory available to all interested persons.

5. Monitoring and tracking data related to utilization of MBEs/WBEs and non-MBEs/WBEs as Prime Contractors, subcontractors and/or Joint Venture partners in connection with the award or performance of Contracts.
6. Establishing Contract Goals with User Departments.
7. Responding to inquiries at pre-bid/proposal conferences regarding Contract solicitations that include Contract Goals.
8. Attending kick-off meetings for major projects to explain this MBE/WBE Policy and the MBE/WBE Program and applicable Contract Goals.
9. Tracking Contractors' achievement of Project Specific Goals or Good Faith Efforts to meet Project Specific Goals.
10. Working with other NEORSD departments to monitor Contracts to ensure prompt payments to MBEs/WBEs and compliance with Contract Goals and commitments, including gathering data to facilitate such monitoring.
11. Monitoring the Program and the NEORSD's progress towards the Annual Goals.
12. Investigating written complaints regarding the administration of the MBE/WBE Program.

**Functions of the User Departments:** The User Departments that have responsibility for Contract management shall have the following duties and responsibilities with regard to the Program:

1. Assisting the OCC with setting Contract Goals
2. Assisting in the identification of available MBEs and WBEs, and providing other assistance in meeting the Contract Goals.
3. Performing other activities to support the Program.
4. Gathering and maintaining prime contracting and subcontracting data for those Contracts that they manage.
5. Submitting subcontracting data as required to OCC.
6. Evaluating Contractors' achievement of Project Specific Goals or Good Faith Efforts to meet Project Specific Goals.
7. Reporting Contractors' achievement of Project Specific Goals or Good Faith Efforts to meet Project Specific Goals.

**ARTICLE 3.**  
**RACE- AND GENDER- NEUTRAL MEASURES TO ENSURE EQUAL**  
**OPPORTUNITIES FOR ALL CONTRACTORS AND SUBCONTRACTORS**

The NEORSD shall develop and use measures, whenever economically feasible and authorized by law, to facilitate the participation of all firms in NEORSD construction contracting activities. These measures shall include, but are not limited to:

1. Arranging solicitation times for the presentations of bids, quantities, specifications, and delivery schedules to facilitate the participation of interested firms.
2. Segmenting Contracts to facilitate the participation of MBEs, WBEs and other Local Small Businesses.
3. Providing timely information on contracting procedures, bid preparation and specific contracting opportunities.
4. Providing assistance to businesses in overcoming barriers such as difficulty in obtaining bonding and financing.
5. Holding pre-bid conferences, where appropriate, to explain the projects and to encourage Contractors to use all available firms as subcontractors.
6. Adopting prompt payment procedures, including, requiring by Contract that prime Contractors promptly pay subcontractors.
7. Reviewing retainage, bonding and insurance requirements to eliminate unnecessary barriers to contracting with the NEORSD.
8. Prohibiting the substitution of subcontractors without prior NEORSD approval.
9. At the discretion of the NEORSD, letting a representative sample of NEORSD construction Contracts without goals, to determine MBE and WBE utilization in the absence of goals.
10. Maintaining information on all firms bidding on NEORSD prime Contracts and utilization of subcontracts.
11. Referring complaints of discrimination to the appropriate authority(ies) for investigation.

**ARTICLE 4.**  
**ELIGIBILITY STANDARDS FOR MBE AND WBE CERTIFICATION**

The following standards will be used by OCC in determining an applicant's eligibility to participate in the MBE/WBE Program. The determination of OCC shall be within the sole discretion of OCC, subject to review as herein provided. The applicant has the burden of persuasion by a preponderance of the evidence to prove that it meets the eligibility criteria set forth in the MBE/WBE Policy.

**Social and Economic Disadvantage.** Only a Local Small Business that is owned and managed by a Socially and Economically Disadvantaged person(s) may be certified as a MBE or WBE.

1. The firm's ownership by a Socially and Economically Disadvantaged person must be real, substantial, and continuing, going beyond *pro forma* ownership of the firm as reflected in ownership documents. The owner(s) must enjoy the customary incidents of ownership and share in the risks and profits commensurate with that ownership interest.
2. The contributions of capital or Expertise by the Socially and Economically Disadvantaged owner(s) to acquire the ownership interest must be real and substantial. If Expertise is relied upon as part of a Socially and Economically Disadvantaged owner's contribution to acquire ownership, the Expertise must be of the requisite quality generally recognized in a specialized field, in areas critical to the firm's operations, indispensable to the firm's potential success, specific to the type of work the firm performs and documented in the firm's records. The individual whose Expertise is relied upon must have a commensurate financial investment in the firm.
3. A firm must not be subject to any formal or informal restrictions that limit the customary discretion of the Socially and Economically Disadvantaged owner(s). There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices that prevent the Socially and Economically Disadvantaged owner(s), without the cooperation or vote of any non-Socially and Economically Disadvantaged person, from making any business decision of the firm, including the making of obligations or the dispersing of funds.
4. The Socially and Economically Disadvantaged owner(s) must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long term decisions on management, policy, operations and work.
5. The Socially and Economically Disadvantaged owner(s) may delegate various areas of the management or daily operations of the firm to persons who are not Socially and Economically Disadvantaged. Such delegations of

authority must be revocable, and the Socially Disadvantaged owner(s) must retain the power to hire and fire any such person. The Socially Disadvantaged owner(s) must actually exercise control over the firm's operations, work, management and policy. The Socially Disadvantaged owner(s) must have an overall understanding of, and managerial and technical competence, experience and Expertise, directly related to the firm's operations and work. The Socially Disadvantaged owner(s) must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to make independent decisions concerning the firm's daily operations, work, management, and policymaking.

6. If federal, state and/or local laws, regulations or statutes require the owner(s) to have a particular license or other credential to own and/or control a certain type of firm, then the Socially Disadvantaged owner(s) must possess the required license or credential. If state law or other law or regulations or statute does not require that the owner possess the license or credential, that the owner(s) lacks such license or credential is a factor, but is not dispositive, in determining whether the Socially Disadvantaged owner(s) actually controls the firm.
7. A Socially Disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the owner from devoting sufficient time and attention to the affairs of the firm to manage and control its day to day activities.

**Affiliation.** Only an independent firm may be certified as a MBE or WBE. An independent firm is one whose viability does not depend on its relationship with another firm. Recognition of an applicant as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is independent and non-Affiliated. In determining whether an applicant is an independent business, the OCC will:

1. Scrutinize relationships with non-Certified Firms in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.
2. Consider whether present or recent employer/employee relationships between the Socially Disadvantaged owner(s) of the applicant and non-certified firms or persons associated with non-certified firms compromise the applicant's independence.
3. Examine the applicant's relationships with non-certified firms to determine whether a pattern of exclusive or primary dealings with non-certified firm compromises the applicant's independence.

4. Consider the consistency of relationships between the applicant and non-certified firms with normal industry practice.

**Certification.** An applicant shall be certified only for specific types of work in which the Socially Disadvantaged owner(s) has the ability and Expertise to manage and control the firm's operations and work.

The NEORSD shall certify the eligibility of Joint Ventures involving MBEs or WBEs and non-certified firms.

A firm owned by a Minority and Woman Individual or Individuals may be certified as both a MBE and a WBE.

All applications for certification must be on NEORSD's MBE/WBE certification forms and any required affidavits must be properly completed and accompanied by notarized signatures.

In lieu of conducting its own certifications, the OCC by rule may accept formal certifications by other entities as meeting the requirements of the Program, if the OCC determines that the certification standards of such entities are comparable to those of the NEORSD.

**Recertification.** The certification status of all MBEs/WBEs shall be reviewed biannually by the OCC. Failure of the firm to seek recertification by filing the necessary documentation shall result in decertification.

It is the responsibility of the certified firm to notify the OCC of any change in its circumstances affecting its continued eligibility for the Program. Failure to do so may result in the firm's decertification.

**Certification Denial and Decertification.** Notwithstanding the ability of an applicant to meet these standards, the OCC reserves the right to deny MBE/WBE certification to any firm that, within five (5) years prior to submission of the MBE/WBE certification application, is or has been:

1. In arrears or declared to be in default to the NEORSD upon any contract or debt, or has otherwise failed to perform faithfully, fully, and completely any previous contract with the NEORSD;
2. In arrears or declared to be in default to another public or private entity upon any contract or debt, or has otherwise failed to perform faithfully, fully, and completely any previous contract with another public or private entity;
3. In default, as surety or otherwise, upon any obligation to the NEORSD; or

4. In default, as surety or otherwise, upon any obligation to another public or private entity.

This provision shall include, but not be limited to, a firm that has common ownership or control, or right of control, of any person, firm, corporation, joint venture, or joint venture partner that committed any of the above within the last five (5) years. Further, this paragraph shall apply equally to any firm that has committed any of the above while performing as a prime contractor, a subcontractor, or as a joint venture partner under a joint venture arrangement, even if such firm is submitting an application for MBE/WBE certification as a partner in a different joint venture arrangement, and regardless of whether the firm was the managing joint venture partner under the prior joint venture.

The OCC shall decertify a firm that does not continuously meet the eligibility criteria.

OCC may move to decertify a firm that repeatedly fails to respond to requests for quotations from Bidders who timely solicit participation on a Contract, that repeatedly fails to attend relevant pre-Bid conferences, or that repeatedly fails to honor quotations in good faith.

If an applicant is denied certification or recertification, it may not reapply for certification for a period of one (1) year from the date of the notice of denial. An applicant whose application for certification or recertification is denied may appeal the denial by filing a hearing application to the Chief Executive Officer within thirty (30) calendar days after of the notice of denial.

Decertification by another agency shall create a *prima facie* case for decertification by the OCC. The challenged firm shall have the burden of proving that its NEORSR certification should be maintained.

Such challenges to eligibility shall be subject to an appeal. The Chief Executive Officer shall be the final arbiter of all challenges. The presumption that the challenged firm is eligible shall remain in effect until the NEORSR renders a final decision.

## **ARTICLE 5.**

### **ESTABLISHMENT OF GOALS**

**Annual Aspirational Goals.** Annual Aspirational Goals for the utilization of MBEs and WBEs on NEORSR Contracts and associated subcontracts, as supported by the Disparity Study, shall be established each year by NEORSR.

Annual Aspirational Goals will be established by a committee appointed by the Chief Executive Officer made up of representatives from the Departments of Finance (OCC and Purchasing), Engineering and Construction, and Law. The

committee will review utilization data of the prior year and analyze NEORSD needs for procurement for the upcoming year. The committee will submit goal recommendations to the Chief Executive Officer who will determine utilization goals for the upcoming year and report such goals to the Board of Trustees.

**Contract Goals.** OCC and the User Department, shall establish Contract Goals for Contracts based upon the availability of MBEs and WBEs certified under the NEORSD MBE/WBE Program. Contract goals may be set separately for MBEs and WBEs or for MBEs and WBEs combined. Generally, MBE Contract Goals will be set on Contracts when there are at least three (3) MBE firms certified to perform the anticipated subcontracting functions of the Contract, and WBE Contract Goals will be set on Contracts when there are at least three (3) WBE firms certified to perform the anticipated subcontracting functions of the Contract. A combined MBE/WBE Contract Goal may be set when there are at least three (3) of any combination of MBE and WBE firms certified to perform the anticipated subcontracting functions of the Contract. NEORSD may also set Contract Goals for MBEs and WBEs in conjunction with a Small Business Enterprise (SBE) goal under the NEORSD SBE Program.

## **ARTICLE 6.**

### **COUNTING MBE AND WBE PARTICIPATION**

OCC will count the entire amount of any of the following:

1. The portion of a Contract that is performed by the MBEs or WBEs own forces, including the cost of supplies and materials obtained by the MBE or WBE for the work of the Contract, and supplies purchased or equipment leased by the MBE or WBE (except supplies and equipment the MBE or WBE purchases or leases from the prime Contractor or the prime Contractor's Affiliate).
2. The entire amount of fees or commissions charged by a MBE or WBE for providing a *bona fide* service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of a contract, shall be counted, provided the fee is reasonable and not excessive as compared with fees customarily charged for similar services.
3. One hundred percent of the cost of the materials or supplies obtained from a MBE or WBE Manufacturer or Regular Dealer. One hundred percent of the fees or transportation charges for the delivery of materials or supplies required on a job site will be counted only if the payment of such fees is a customary industry practice and are commensurate with fees customarily charged for similar services. A MBE or WBE certified in the area of trucking that is delivering bulk items such as petroleum products, steel, cement,

gravel, stone, or asphalt, do not require additional certification in order for the cost of such bulk items to be counted toward a MBE or WBE goal. Fees to Brokers will not be counted toward a MBE or WBE goal.

4. **Joint Ventures.** When a MBE or WBE performs as a participant in a Joint Venture, OCC will count only the portion of the total dollar value of the Contract equal to the distinct, clearly defined portion of the work of the Joint Venture's contract that is performed by the MBE or WBE with its own forces and for which it is separately at risk.

The MBE or WBE must be certified at the time of bid or proposal submission to be counted towards meeting a Contract Goal.

The participation of a firm that is certified as a MBE and a WBE may be counted towards either goal in the Bidder's discretion, but cannot be double counted or split between the MBE and the WBE goal.

OCC will count only expenditures to a MBE or WBE that is performing a Commercially Useful Function. If a MBE or WBE subcontracts a greater portion of the work of a Contract than would be expected based on normal industry practice, it is presumed not to perform a Commercially Useful Function. When a MBE or WBE is presumed not to be performing a Commercially Useful Function, the Certified Firm may present evidence to rebut this presumption.

If a firm ceases to be certified during its performance on a Contract, the dollar value of work performed under a Contract with that firm after it has ceased to be certified shall not be counted.

In determining achievement of Contract Goals, the participation of a MBE or WBE shall not be counted until that amount has been paid to the MBE or WBE.

## **ARTICLE 7.**

### **CONTRACT AWARD PROCEDURES**

**Meeting Goals.** All Contractors must make Good Faith Efforts to attain Contract Goals. A MBE or WBE performing as a Prime Contractor may count its own participation towards meeting the goal for which it qualifies. Bidders are required to complete all forms and submit all documents as described in the solicitation regarding MBE/WBE participation. Unless otherwise stated in the solicitation, information regarding specific MBEs/WBEs shall be required at the time of the submission of a proposal for professional services, but shall not be required at the time of the submission of a competitive bid. In the case of a competitive bid, MBE/WBE utilization information shall be submitted at the request of NEORSD in accordance with the timeframe stated in the solicitation. Such information shall include:

1. A list of all MBEs/WBEs and other subcontractors to be utilized on the Contract.
2. The dollar amount and percentage of Contract funds related to each first- and second-tier MBE/WBE and non-MBE/WBE subcontractor.

Unless otherwise stated in the solicitation, proposed MBE/WBE utilization toward special allowance or general allowance work will not be counted at the time of award. Subsequent utilization of MBEs/WBEs for special allowance and general allowance work during performance of a Contract will be counted toward fulfillment of the MBE/WBE Contract goal.

**Evaluation of Good Faith Efforts.** All Bidders for competitively bid Contracts must submit an Affidavit of Business Opportunity Program Compliance or other similar form provided in the solicitation, certifying that the Bidder will use Good Faith Efforts to meet the established Contract Goal. Failure to submit such Affidavit may render a bid non-responsive. In the event that a Bidder is unable to meet the Contract Goal, the Bidder must demonstrate that it made a Good Faith Effort to meet the Contract Goal. The Bidder must submit all NEORSO-required Good Faith Effort forms, including any affidavits and MBE/WBE utilization plans that NEORSO may require, at the time specified in the bid documents or requests for proposal. All Good Faith Efforts must be thoroughly documented. The Bidder must document all solicitations and responses of MBEs/WBEs, including the names, contact information, method of contact, dates, a description of the information provided regarding the plans and specifications for the work selected for subcontracting, and reasons for failure to reach agreement. The Bidder may not reject MBEs/WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. That there may be some additional costs involved in finding and using MBEs/WBEs is not in itself sufficient reason for a Bidder's failure to meet the Contract Goals, as long as such costs are reasonable. The ability or desire of a Bidder to perform the work of a Contract with its own organization does not relieve it of the responsibility to make Good Faith Efforts on all subcontractable scopes of work.

The OCC will evaluate not only the kinds of efforts made by a Bidder, but also the quantity and intensity of such efforts. In evaluating whether a Bidder has made a good faith effort to achieve the Contract Goal, the OCC will evaluate at a minimum the Bidder's efforts to:

1. Solicit through all reasonable and available means (*e.g.*, attendance at pre-bid meetings, advertising and written notices) the interest of all MBEs/WBEs certified in the scopes of work of the Contract. The Bidder shall provide interested MBEs/WBEs with timely, adequate information about the plans, specifications, and requirements of the Contract to allow MBEs and WBEs to respond to the solicitation. The Bidder must follow up initial solicitations with interested MBEs/WBEs.

2. Seek the OCC's assistance when experiencing difficulty identifying subcontracting opportunities or available MBEs/WBEs.
3. Identify portions of the Contract capable of being performed by MBEs/WBEs and, where appropriate, breaking out work items into economically feasible units to facilitate MBE/WBE participation, even when the Bidder would otherwise prefer to perform these work items with its own forces. It is the Bidder's responsibility to make a portion of the work available to MBEs/WBEs and to select those portions of the work or material needs consistent with the availability of MBEs/WBEs to facilitate their participation.
4. Assist interested MBEs/WBEs in obtaining bonding, lines of credit, insurance, necessary equipment, supplies, materials, or related assistance or services, or technical assistance, as may be required for performance on the Contract.
5. Utilize resources available to identify available MBEs/WBEs, including MBE/WBE assistance groups, governmental business assistance offices, NEORSD-sponsored training programs, and other organizations that provide assistance in the recruitment and placement of MBEs/WBEs.

A signed letter of intent from each listed MBE or WBE, describing the work, materials, equipment or services to be performed or provided by the MBE or WBE and the agreed upon dollar value shall be due within the timeframe specified in the bid or proposal solicitation.

OCC shall timely review the MBE/WBE documents before award, including the scope of work and the letters of intent from MBEs/WBEs. OCC may request clarification in writing of items listed in the documents, provided such clarification shall not include the opportunity to augment listed participation or Good Faith Efforts.

If OCC finds that a Bidder did not make sufficient Good Faith Efforts, the Bidder may be deemed non-responsive.

**Good Faith Effort Requirements Ongoing.** In the event that a Bidder is awarded a Contract without meeting the Contract Goal(s), such Contract award does not relieve the Bidder from the continuing contractual obligation to exercise Good Faith Efforts throughout performance of the Contract in order to meet the Contract Goal(s) before Contract completion. Failure to comply with this provision may subject a Contractor to the sanctions and penalties set forth in the Contract and/or this MBE/WBE Policy.

**Determination of Non-Responsiveness or Lack of Responsibility.** In addition to other factors in its evaluation, NEORSD may declare a bid or proposal to be non-responsive or not the "best", or the Bidder to not be responsible where it is determined that a Bidder has not submitted with its bid or proposal any form,

affidavit, or other document required by the solicitation, this Policy or requested by NEORSD.

## **ARTICLE 8.**

### **CONTRACT PERFORMANCE PROCEDURES**

Upon award of a Contract by the NEORSD that includes Contract Goals, the Contract Goals shall become covenants of performance by the Contractor in favor of the NEORSD.

**Reporting Requirements.** Prime Contractors performing under NEORSD Contracts shall comply with all reporting requirements of NEORSD related to utilization of MBE/WBE and other subcontractors, including, but not limited to, completing on-line reporting of payments made to such MBEs/WBEs and other subcontractors.

OCC and the User Department shall monitor subcontractor participation during the course of the Contract. The NEORSD shall have full and timely access to the Contractor's books and records, including without limitation payroll records, tax returns and records and books of account, to determine the Contractor's compliance with its commitment to MBE and WBE participation and the status of any MBE/WBE performing any portion of the Contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the Contractor's records by any officer or official of the NEORSD for any purpose.

**Contract Assignment by MBE/WBE.** A MBE/WBE performing as a Prime Contractor or a subcontractor shall not be prohibited from assigning its interest in any NEORSD Contract or subcontract for the purpose of obtaining assistance from a financial institution.

**Changes to Utilization Plans.** The Contractor shall not make changes to the Utilization Plan or substitute MBEs/WBEs named in the Utilization Plan without the prior written notification to OCC and the User Department. Changes or substitutions made without such notification shall be a violation of this Policy and may constitute a breach of Contract, subject to the breach provisions contained in the Contract.

All notifications of changes or substitutions of a MBE/WBE subcontractor(s) named in the Utilization Plan shall be made to OCC and the User Department in writing, and shall clearly and fully set forth the basis for such change or substitution. A Contractor shall not allow a substituted subcontractor to begin work until notification has been given to OCC and the User Department.

Substitutions of a MBE/WBE subcontractor shall be permitted only on one or more of the following bases:

1. Unavailability after receipt of reasonable notice to proceed.
2. Failure of performance.
3. Financial incapacity.
4. Refusal by the subcontractor to honor the bid or proposal price.
5. Mistake of fact or law about the elements of the scope of work of a solicitation where agreement upon a reasonable price cannot be reached.
6. Failure of the subcontractor to meet insurance, licensing or bonding requirements.
7. The subcontractor's withdrawal of its bid or proposal.

Where the Contractor notifies the District of its intention to change or substitute a MBE or WBE subcontractor, the Contractor shall make Good Faith Efforts to fulfill the Utilization Plan, if achievement of the MBE or WBE Goal is affected. The Contractor may seek the assistance of OCC in obtaining a new MBE or WBE. If the Contract Goal(s) cannot be reached and Good Faith Efforts have been made, the Contractor may substitute with a non-Certified Firm.

If a Contractor plans to hire a subcontractor on any scope of work that was not previously disclosed in the Utilization Plan, the Contractor shall obtain the approval of OCC and the User Department to modify the Utilization Plan and must make Good Faith Efforts to ensure that MBEs/WBEs have a fair opportunity to bid on the new scope of work.

Changes to the scopes of work shall be documented by the User Department at the time they arise, to establish the reasons for the change and the effect on achievement of the MBE or WBE Contract Goal.

Before Contract closeout, OCC shall evaluate the Contractor's fulfillment of the Contracted Goals, taking into account all substitutions, terminations and changes to the Contract's scope of work. If OCC determines that Good Faith Efforts to meet the MBE or WBE contractual commitments were not made, or that fraudulent misrepresentations have been made, or any other breach of the Contract or violation of this Policy has occurred, a remedy or sanction may be imposed, as provided in the Contract or other NEORS rules.

## **ARTICLE 9.**

### **REMEDIES, SANCTIONS AND PENALTIES**

**Scope and Applicability.** Any MBE/WBE allegedly aggrieved by the provisions of this MBE/WBE Program may submit a written complaint to the OCC, setting forth the bases of such complaint. After receipt of a written complaint, the allegedly

aggrieved party (the Complainant) may be afforded a hearing before the MBE/WBE Hearing Panel. The MBE/WBE Hearing Panel shall be empowered to hear all grievances concerning certification, de-certification, and any other grievances relative to the MBE/WBE Program.

**Notice of Hearing.** Upon receipt of a written complaint from the Complainant, NEORSD shall schedule a hearing before the MBE/WBE Hearing Panel within a reasonable time after receipt of such complaint. NEORSD shall provide notice of the date, time, and location of the hearing to the Complainant via registered mail. A Complainant may make one (1) request to reschedule a hearing after receipt of any hearing notice provided under this MBE/WBE Policy. NEORSD shall have no obligation to provide a rescheduled hearing for any Complainant who fails to appear at a properly scheduled hearing.

**Hearing Conduct.** The MBE/WBE Hearing Panel shall consist of at least three (3) manager- or director-level NEORSD officials, who shall be appointed by the Chief Executive Officer. The Chief Executive Officer shall have the discretion to serve on the Panel as one of the Panel members. The Chief Executive Officer may designate Panel members on a hearing-by-hearing basis, or at any other interval. Hearings before the designated MBE/WBE Hearing Panel shall be informal. The Complainant may appear in person or via a representative designated by the Complainant. The Complainant may present evidence and witness testimony in support of the Complainant's alleged grievances. The Complainant may bring legal counsel. All hearings shall comply with State of Ohio law relative to the Open Meetings Act. Abusive or otherwise disruptive language or behavior at a hearing by a Complainant will be grounds for discontinuance and/or forfeiture by the Complainant of any hearing described under this Policy.

**Hearing Decisions.** The designated MBE/WBE Hearing Panel shall issue a written opinion setting forth the Panels' findings and recommendations within a reasonable time after the hearing.

**Exhaustion of Legal Remedies.** A Complainant must comply with the hearing process outlined above in order to exhaust its administrative remedies. Thereafter, a Complainant may seek any other statutory, legal or equitable remedies that may be available. Failure to exhaust all administrative remedies listed in this MBE/WBE Policy is an affirmative defense to any statutory, legal or equitable proceeding that may arise.

**Advisory Recommendations.** The designated MBE/WBE Hearing Panel shall have authority to render advisory recommendations to NEORSD, absent a hearing, upon the request of the NEORSD Contract Compliance Manager.

**Sanctions.** Any Bidder or Contractor who violates any provision of this MBE/WBE Policy may be subject to administrative sanctions. Violations of this Policy that may result in a breach of Contract include, but are not limited to, providing false or

misleading information to NEORSD in connection with submission of a bid, responses to requests for qualifications or proposals, Good Faith Efforts documentation, post-award compliance, or other Program operations.

In addition, violations of this MBE/WBE Policy and Program may constitute a material breach of Contract, enforceable at law or in equity, and subject to the remedies contained in the Contract, including the imposition of penalties. A Contractor or subcontractor may be subject to sanctions and penalties if it is found by NEORSD to have:

1. Provided false or misleading information in connection with an application for certification or recertification or colluded with others to do so;
2. Provided false or misleading information in connection with the submission of a bid or proposal or documentation of Good Faith Efforts, post-award compliance, or other Program operations or colluded with others to do so;
3. Failed in bad faith to fulfill Contract Goals, thereby materially breaching the Contract; or
4. Failed to comply in good faith with substantive provisions of this Policy.

In addition to the breach of Contract remedies available to NEORSD, the following sanctions and penalties are established for the enforcement of this Program:

1. Suspension for not to be less than two (2) years, unless the Chief Executive Officer determines that a shorter time period is warranted. The Chief Executive Officer may impose suspensions in excess of two (2) years in cases involving intentional or fraudulent misrepresentation or concealment of material facts, multiple acts in breach of the Program, cases where the Participant has been previously suspended, or other similarly situated misconduct.
2. Other appropriate sanctions as the Chief Executive Officer deems appropriate under the circumstances, until compliance or remedial action has been accomplished by the Contractor to the satisfaction of the Chief Executive Officer.

**Guidelines for Imposition of Sanctions.** The sole authority and power for imposition of sanctions shall lie with NEORSD. NEORSD's procurement policies shall apply to sanctions under this Policy.

1. **Severity of Sanctions.** In determining the length of any suspension, NEORSD shall consider the following factors:

- a. Whether the failure to comply with applicable requirements involved intentional conduct or, alternatively, may be reasonably concluded to have resulted from a reasonable misunderstanding on the part of the Bidder or Contractor of the requirements of this Program.
  - b. The number of specific incidences of Non-Compliance of this Policy by the Bidder or Contractor.
  - c. Whether the Bidder or Contractor has been previously suspended or has a history of violations of this Policy.
  - d. Whether the Bidder or Contractor has failed or refused to provide NEORSD with any information required or requested pursuant to the MBE/WBE Program.
  - e. Whether the Bidder or Contractor has materially misrepresented any applicable facts in any filing or communication to NEORSD.
  - f. Whether any subsequent restructuring of the Bidder's or Contractor's business or other action has been undertaken to cure the deficiencies in meeting applicable requirements.
2. **Prohibition Against False Statements.** It shall be unlawful for any person, knowingly, willfully and with intent, to mislead or to make any false or fraudulent representations to NEORSD. NEORSD may impose sanctions against any person making such false representation in connection with the MBE/WBE Program. In addition, knowingly providing false information to a public official is punishable as a first degree misdemeanor, pursuant to O.R.C. § 2921.13.

## **ARTICLE 10.**

### **PROGRAM REVIEW**

The NEORSD Board of Trustees (Board) shall receive quarterly and annual reports from OCC detailing NEORSD's performance under this Policy. The Board shall review these reports, including the Annual Aspirational Goals and NEORSD's progress towards meeting those Goals and eliminating discrimination in its contracting activities and Marketplace.

## **ARTICLE 11.**

### **SEVERABILITY**

If any of the provisions set forth in this Policy or any section, subsection, paragraph, sentence, clause, phrase, or word thereof shall be found to be invalid, illegal or unenforceable for any reason, the application of the remainder of this Program shall not be affected by such invalidity.

## **ARTICLE 12.**

### **CONTRACT-SPECIFIC MODIFICATIONS TO THIS POLICY**

Upon approval of the NEORSD's Chief Executive Officer and Manager of OCC, a User Department may make Contract-specific modifications to this Policy for a particular project. Such modifications shall be set forth in the NEORSD solicitation for bids or proposals.