

**AMENDING** Section 321-1-P, “Professional Services,” of Chapter 321, “Procurement and Disposal of Supplies, Services and Construction,” of the Cincinnati Municipal Code; **REPEALING** existing Chapter 323, “Small Business Enterprise Program,” of the Cincinnati Municipal Code; and **ORDAINING** new Chapter 323, “Small Business Enterprise and Local Business Enterprise Programs,” to implement race- and gender-neutral programs designed to complement race- and gender-conscious remedies to increase the participation of local business enterprises, including minority business enterprises and women business enterprises, in City contracts, consistent with the recommendations of the Economic Inclusion Advisory Council and the findings detailed in the Final Disparity Report submitted by Mason Tillman Associates, Ltd. dated July 2015.

WHEREAS, on August 7, 2013, the City Council adopted a motion (Doc. No. 201301088) recommending that the Administration undertake a disparity study, also known as a “Croson Study”; and

WHEREAS, following a competitive proposals process, the Administration chose Mason Tillman Associates, Ltd. to conduct the disparity study; and

WHEREAS, on January 15, 2014, City Council passed Ordinance No. 0006-2014 authorizing the City Manager to enter into the Agreement with Mason Tillman Associates, Ltd (“Mason Tillman”) to conduct the disparity study; and

WHEREAS, the Final Disparity Report dated July 2015 (“the Disparity Report”), which was prepared by Mason Tillman, identified statistically significant disparities in the participation of minority business enterprises (“MBEs”) and women business enterprises (“WBEs”) in City contracts; and

WHEREAS, the Disparity Report included recommendations for both race- and gender-neutral and race- and gender-conscious remedies for the identified and statistically significant disparities in the participation of MBEs and WBEs in City contracts; and

WHEREAS, the Economic Inclusion Advisory Council also has made recommendations for supporting greater economic inclusion of MBEs and WBEs in City contracts; and

WHEREAS, it is the desire of Council to provide additional race-neutral and gender-neutral procurement tools to ensure that all segments of the City's local business community have a reasonable and significant opportunity to participate in City contracts for construction, professional services including architectural and engineering services, and non-professional services and commodities; and

WHEREAS, Council believes the encouragement of the use of small local business enterprises and emerging local business enterprises will directly benefit the City's local economy, support local job creation, and further the City's commitment to be neither an active nor passive participant in private sector marketplace discrimination; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That Section 321-1-P, "Professional Services," of Chapter 321, "Procurement and Disposal of Supplies, Services and Construction," of the Cincinnati Municipal Code is hereby amended to read as follows:

**Section 321-1-P. - Professional Services.**

"Professional services" shall mean personal services which involve extended analysis, expression of opinion, exercise of discretion and independent judgment in their performance, and an advanced specialized knowledge, expertise, or training customarily acquired by either a prolonged course of study or equivalent experience in a field, which may require a license, official certification, or authorization by a state or national organization or body.

Section 2. That existing Section 321-1-P, "Professional Services," is hereby repealed.

Section 3. That existing Chapter 323, "Small Business Enterprise Program," of the Cincinnati Municipal Code is hereby repealed.

Section 4. That new Chapter 323, "Small Business Enterprise and Local Business Enterprise Programs," is hereby ordained to read as follows:

**Section 323-1. – Definitions.**

For the purpose of this chapter, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them, unless a different meaning is clearly indicated by the context.

**Section 323-1-A. - Affiliation.**

"Affiliation" or "affiliated" shall mean the relationship between or among businesses where one business controls or has the ability or power to control another or when one or more parties control or have the ability or power to control both businesses. Control may arise through an ownership interest or management of both businesses or other relationships or interactions between or among the businesses or parties.

**Section 323-1-B. – Bid.**

“Bid” shall have the same meaning as provided in Section 321-1-B1 of the Cincinnati Municipal Code.

**Section 323-1-B1. – Board.**

“Board” shall mean the Contract Compliance Advisory Board.

**Section 323-1-B2. - Brokerage.**

"Brokerage" or "Broker" shall mean a person or firm which contracts with third parties on behalf of the broker's principal or a specialist who represents buyers of goods, without taking possession or ownership of these goods, or an agent employed to make bargains and contracts for compensation. A broker acts as middleman in transactions between a buyer and a seller, generally receiving a commission or fee for work performed. An independent manufacturer's representative or a distributor is not a broker.

**Section 323-1-C. - Certification.**

"Certification" or "Recertification" shall mean the designation provided to an SBE, SLBE or ELBE that meets the qualification criteria set forth in this chapter and in the rules and regulations promulgated under the authority of this chapter for participation in the SBE, SLBE or ELBE programs in the appropriate construction, professional services, or supplies and non-professional services category for which the contract is being awarded and formally approved by the director or the director's designee as having met such criteria. Certification or recertification relate to qualifications regarding ownership and control of the business, not the quality of the service or product offered.

**Section 323-1-C1. – City Purchasing Agent.**

“City purchasing agent” shall have the same meaning as provided in Section 321-1-C of the Cincinnati Municipal Code.

**Section 323-1-C2. - Commercially Useful Function.**

- (a) "Commercially useful function" shall mean that the business is directly responsible for providing the supplies or services to the city as required by the solicitation or request for quotes, bids or proposals. An SBE, SLBE or ELBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing and supervising the work involved, taking into consideration the amount of work subcontracted, industry practices, and other factors determined by the director to be relevant. A business which stocks

sufficient quantities of supplies in direct inventory, held for sale or resale, to cover anticipated future demands for the supplies provides a "commercially useful function."

- (b) SBEs, SLBEs or ELBEs that engage in the business of providing brokerage shall not be deemed to perform a "commercially useful function" unless the brokerage services are those required and sought by the city. An SBE, SLBE or ELBE 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 meaningful and useful SBE, SLBE or ELBE participation, when no such role is performed in similar transactions in which SBE, SLBE or ELBE firms do not participate.

**Section 323-1-C3. - Contract.**

"Contract" shall mean a contract in excess of \$5,000.00, except types of contracts listed by the city purchasing agent as exempt and approved by the city manager, for:

- (a) Construction;
- (b) Supplies;
- (c) Services; or
- (d) Professional Services.

**Section 323-1-C4. - Construction.**

"Construction" shall mean any construction, reconstruction, improvement, enlargement, alteration, repair, painting, decorating, wrecking or demolition of any public improvement.

**Section 323-1-D. – Department.**

"Department" shall mean the department of economic inclusion.

**Section 323-1-D1. – Director.**

"Director" shall mean the director of the department of economic inclusion or his or her designee.

**Section 323-1-D2. – Dominant.**

"Dominant" shall mean the exercise by a business of a controlling or major influence on the industry in which it operates.

**Section 323-1-E. – Economic Inclusion Initiatives.**

“Economic inclusion initiatives” shall mean those procurement tools designed to enhance contracting opportunities for SLBEs or ELBEs, including bid incentives, price preferences, sheltered market programs, preference points in proposal evaluations, and bonding and insurance waivers.

**Section 323-1-E1. – Emerging Local Business Enterprise; ELBE.**

“Emerging local business enterprise” or “ELBE” shall mean a firm that:

- (a) Is an independently-owned and operated for-profit business that is not a broker, is not a subsidiary of another business, and is not dominant in its field of operation;
- (b) Performs a commercially useful function;
- (c) Has had no more than five full-time employees at any one time during its existence;
- (d) Has owners who are actively involved in day-to-day management and control of the business;
- (e) Has annual gross receipts, averaged over the life of the business, of not more than \$250,000.00;
- (f) Has either a principal place of business or significant employee presence in the city of Cincinnati;
- (g) Has been in existence for less than five years; and
- (h) Has not received, in the year immediately preceding the certification application, more than \$250,000.00 in city payments under contracts awarded through an open and competitive bidding process, awarded through the sheltered market program, or awarded directly through a non-competitive process.

**Section 323-1-I. - Independent Ownership and Control.**

"Independent ownership and control" or "independently owned and controlled" applies both to individual SBEs, SLBEs and ELBEs and to SBEs and SLBEs engaged in a joint venture with other businesses. For an individual SBE, SLBE or ELBE, "independent ownership and control" shall mean the degree to which owners of the SBE, SLBE or ELBE participate in and are capable of participating in the decisions affecting day-to-day operations of the business, by considering the ability of the owners of the SBE, SLBE or ELBE to function and carry out daily business activities without relying

upon others who are not owners or employees of the SBE, SLBE or ELBE, such as consultants, advisers, accountants, or owners' relatives. In determining the ability of the owners of the SBE, SLBE or ELBE to operate the business, the department may consider the owners' work experience, including experience in the primary industry in which the firm is seeking SBE, SLBE or ELBE certification, specialized training, education, and any other factors the director deems relevant.

For SBEs involved in a joint venture with a non-SBE as permitted by this chapter, "independent ownership and control" shall be determined by considering the participation of the owners of the SBE in the decisions affecting day-to-day operations of the joint venture, the ability of the owners of the SBE to function and carry out those daily business activities assigned to the SBE by agreement of the parties to the joint venture without assistance from the non-SBE business. "Independent ownership and control" also may be determined by considering the proportionate interest of the owners of the SBE in the capital, assets, profits and losses of the joint venture.

In determining whether a joint venture is independently owned and controlled by the owners of the SBE, the director may use discretion in weighing the foregoing factors, as well as any other factor, which, in the director's opinion, affects independent ownership and control.

**Section 323-1-I1. – Invitation to Bid.**

“Invitation to bid” shall have the same meaning as provided in Section 321-1-I of the Cincinnati Municipal Code.

**Section 323-1-J. - Joint Venture.**

"Joint venture" shall mean a combination of two or more persons, firms or corporations who, without any partnership or corporate designation, join to carry out a single business project or undertaking which is limited in scope and duration.

**Section 323-1-L. – Local Business Enterprise; LBE.**

“Local business enterprise” or “LBE” shall mean a firm having a principal place of business or a significant employee presence in the city of Cincinnati.

**Section 323-1-P. – Points.**

“Points” shall mean the quantitative assignment of value for specific response evaluation criteria in the contractor selection process initiated by a request for proposal.

**Section 323-1-P1. – Principal Place of Business.**

“Principal place of business” shall mean a location at which a business maintains a headquarters or physical office and from which it coordinates and generates no less than fifty percent of its overall gross revenues.

**Section 323-1-P2. - Professional Services.**

"Professional services" shall mean professional services as defined in Section 321-1-P of the Cincinnati Municipal Code.

**Section 323-1-R. – Regulations; Rules.**

“Regulations” or “Rules” shall mean the regulations promulgated by the city manager pursuant to Section 323-5, “Rules and Regulations,” of this chapter.

**Section 323-1-R1. – Request for Proposal; RFP.**

“Request for proposal” or “RFP” shall have the same meaning as provided in Section 321-1-R3 of the Cincinnati Municipal Code.

**Section 323-1-R2. – Request for Qualifications.**

“Request for qualifications” or “RFQ” shall have the same meaning as provided in Section 321-1-R4 of the Cincinnati Municipal Code.

**Section 323-1-S. - Services.**

"Services" shall have the same meaning as provided in Section 321-1-S of the Cincinnati Municipal Code.

**Section 323-1-S1. – Sheltered Market.**

“Sheltered market” shall mean a city contract or procurement that is reserved for competition among eligible SLBEs or ELBEs.

**Section 323-1-S2. – Significant Employee Presence.**

“Significant employee presence” shall mean twenty-five percent or more of a firm’s total number of full- and part-time employees are domiciled within the geographic limits of the city of Cincinnati.

**Section 323-1-S3. - Small Business Enterprise; SBE.**

"Small business enterprise" or "SBE" shall mean a firm for which the gross revenue or number of employees averaged over the past three years, inclusive of any

affiliates as defined by 13 C.F.R. Sec. 121.103, does not exceed the size standards as defined pursuant to 15 U.S.C. Section 632 and 13 C.F.R. Section 121.101, et seq. and for which the personal net worth of each owner does not exceed \$750,000.00. An SBE also must meet all of the following:

- (a) Such business shall have been in existence at least one year prior to application for participation in the SBE program;
- (b) Such business shall have maintained fixed offices located within the geographic boundaries of Hamilton County for at least one year prior to application for certification as an SBE;
- (c) Such business must perform a commercially useful function;
- (d) Such business has been certified by the city;
- (e) The personal net worth of each owner of such business cannot exceed \$750,000.00 at the time of initial certification or recertification, or at any time during the certification period. If an owner is married, the aggregate net worth of the owner and his or her spouse may not exceed \$750,000.00. Net worth shall be determined as follows:
  - (1) Contingent liabilities, transfers to immediate family members within two years of the application for SBE certification or recertification, and the value of retirement accounts not subject to a significant withdrawal tax penalty are included in the calculation of net worth; but
  - (2) Equity in the owner's primary residence, the value of the owner's ownership interest in the business applying for SBE certification or recertification, and the value of retirement accounts subject to a significant withdrawal tax penalty are not included in the calculation of net worth.
- (f) Each individual upon whom eligibility is based and his or her spouse must file a separate, detailed personal financial statement;
- (g) All owners of such business must be United States citizens;
- (h) Such business or joint venture must meet the definition of independent ownership and control; and
- (i) Franchisees and brokers are not eligible to be certified as SBEs.

**Section 323-1-S4. – Small Local Business Enterprise; SLBE.**

“Small local business enterprise” or “SLBE” shall mean a firm that:

- (a) Is an independently-owned and operated for-profit business that is not a broker, is not a subsidiary of another business, and is not dominant in its field of operation;
- (b) Performs a commercially useful function;
- (c) Has had no more than thirty-five full-time employees at any one time during the last three years;
- (d) Has owners who are actively involved in day-to-day management and control of the business;
- (e) Has annual gross receipts, averaged over the past three fiscal years, of not more than \$1,000,000.00;
- (f) Has either a principal place of business or significant employee presence within the geographic limits of the city of Cincinnati;
- (g) Has been established for at least one year or the owners have at least three years of relevant experience prior to forming or joining the business; and
- (h) Has not received, in the year immediately preceding the initial certification application, more than \$500,000.00 in city payments under contracts awarded through an open and competitive bidding process, awarded through the sheltered market program, or awarded directly through a non-competitive process.

**Section 323-1-S5. - Supplies.**

"Supplies" shall mean supplies as defined in Section 321-1-S2 of the Cincinnati Municipal Code.

**Section 323-1-S6. – Suspension.**

“Suspension” shall mean the temporary stoppage, for a finite period of time, of the beneficial participation of an SLBE or ELBE in the economic inclusion initiatives available to SLBEs and ELBEs under this chapter due to the receipt by the SLBE or ELBE of cumulative city contract payments in that fiscal year in excess of the amounts specified in subsection (f)(1) of Section 323-9 of this chapter.

**Section 323-3. – Purpose; Scope and Limitations.**

The purpose of the SBE, SLBE and ELBE programs of the city is to promote the economic welfare of the people of the city of Cincinnati, to mitigate the effects of discrimination against SBEs, SLBEs and ELBEs, and to promote full and equal business

opportunity for all persons doing business with the city of Cincinnati, through race- and gender-neutral means, by assisting SBEs, SLBEs and ELBEs to actively participate in the city's procurement process and by working to eliminate SBE, SLBE and ELBE discrimination in public markets.

It is also the intent and purpose of the SLBE and ELBE components of the program to encourage the use of small local business enterprises and emerging local business enterprises in order to directly benefit the local economy of the city of Cincinnati, support local job creation, and further the city's commitment to be neither an active nor passive participant in private sector marketplace discrimination.

The SBE, SLBE and ELBE programs may be applied by the director, in consultation with the city purchasing agent, on a contract-by-contract basis to the maximum extent permissible under federal and state law.

#### **Section 323-5. – Rules and Regulations.**

The city manager shall issue and enforce rules and regulations to carry out the meaning and purpose of the SBE, SLBE and ELBE programs and the subcontractor outreach program authorized by this chapter.

#### **Section 323-7. – SBE Certification.**

(a) *Requirements.* To be eligible for certification as an SBE, each applicant must meet the definition of an SBE in Section 323-1-S3.

(b) *Certification Process.*

(1) A business seeking certification as an SBE must:

(A) Submit an application to the department on the prescribed form, affirming under penalty of perjury that the business qualifies as a city of Cincinnati SBE, as that term is defined in Section 323-1-S3; and

(B) If requested by the department, the applicant must provide any and all materials and information necessary to demonstrate active participation in the control, operation, and management of the business.

(2) The department will review and evaluate applications, and may reject an application based on one or more of the following: the applicant does not meet the requirements of the definition of an SBE, the application is not satisfactorily completed, the application contains false information, or the applicant has not provided materials or information requested by the director.

(3) The director will make a certification determination within 90 days after the date the city receives a satisfactorily completed application from the applicant. If certification is denied, the director will notify the applicant in writing and specify the reason(s) for the denial. Unless the applicant is successful in a timely appeal of the denial of certification, the applicant may not reapply to be certified as an SBE for a period of one year from the date of the notice of denial.

(4) Firms certified as an SBE by other government agencies will be required to be certified under this chapter regardless of previous certification.

(c) *Period of Certification.* The certification is valid for a two-year period beginning on the date the city certifies the applicant as an SBE.

(d) *Recertification.* Upon expiration of the two-year certification period, a business that desires recertification must return a completed recertification form as provided by the director and comply with the requirements of subsections (b)(1)(A) and (b)(1)(B) of this section.

(e) *Revocation of Certification.*

(1) The director shall revoke the certification of a business if it is determined that the business was certified in error, the business no longer meets the definition of an SBE, or the business fails to provide requested information in connection with a certification review conducted by the department.

(2) The director shall permanently revoke the certification of a business if it is determined that the certification was fraudulently obtained or that the business allows its certified SBE status to be fraudulently used to obtain the benefits of SBE certification for a firm that is not a certified SBE or for the benefit of the owners of a firm that is not a certified SBE. In addition to certification revocation, any participant in the fraudulent use of certified SBE status for the benefit of another person or entity that is not a certified SBE shall be guilty of a misdemeanor of the first degree, punishable by imprisonment for up to six months and/or a fine of up to \$1,000.00.

(3) Prior to taking formal action, the department shall provide the business with written notice of the proposed revocation. The department staff shall then prepare a recommendation regarding the proposed revocation for review by the director, who shall make a recommendation regarding revocation to the city manager for decision.

The decision of the city manager or the city manager's designee is final.

(f) *Certification Reviews.* The department will conduct random certification reviews of certified businesses by auditing them to verify that the information submitted by a business is accurate, and that the business remains eligible during the certification period. Certification reviews may be conducted for any business for which the city determines a certification review is warranted. Businesses subject to certification reviews must provide the department with any information requested to verify the certification eligibility of the business within seven days of the request. Audits may include one or all of the following as reasonably necessary to ensure that all eligibility standards are satisfied:

- (1) Business owner interviews;
- (2) Employee and/or subcontractor interviews;
- (3) Record and document review; or
- (4) Job site inspection.

(g) *Joint Ventures.* On a contract-by-contract basis, an SBE may apply for certification of a joint venture with another SBE or, for contracts in excess of \$1,000,000.00, an SBE may apply for certification of a joint venture with a non-SBE. The certification of such a joint venture will be limited to the duration of the contract for which certification as a joint venture was requested and shall terminate upon completion of the city contract for which the joint venture was formed.

**Section 323-9. – SLBE or ELBE Certification.**

(a) *Requirements.* To be eligible for certification as an SLBE, each applicant must meet the definition of an SLBE in Section 323-1-S4 of this chapter. To be eligible for certification as an ELBE, each applicant must meet the definition of an ELBE in Section 323-1-E1 of this chapter.

(b) *Ineligible Firms.*

(1) A firm is ineligible for certification as an SLBE if:

(A) It is owned by another entity that does not meet the definition of an SLBE as defined in Section 323-1-S4 of this chapter; or

- (B) Any of its principals or owners are also the principals or owners of another entity that does not meet the definition of an SLBE as defined in Section 323-1-S4 of this chapter.
- (2) A firm is ineligible for certification as an ELBE if:
- (A) It is owned by another entity that does not meet the definition of an ELBE as defined in Section 323-1-E1 of this chapter; or
  - (B) Any of its principals or owners are also the principals or owners of another entity that does not meet the definition of an ELBE as defined in Section 323-1-E1 of this chapter.
- (3) A firm that has graduated from the SLBE or ELBE program under Section 323-9(j) of this chapter is no longer eligible for certification or recertification under that same program, even if it otherwise meets the definition of the particular type of local business enterprise (SLBE or ELBE) from which it has graduated.

(c) *Certification Process.*

- (1) A business seeking certification as an SLBE or ELBE must:
- (A) Submit an application to the department on the prescribed form, affirming under penalty of perjury that the business qualifies either as a city of Cincinnati SLBE, as that term is defined in Section 323-1-S4 of this chapter, or as a city of Cincinnati ELBE, as that term is defined in Section 323-1-E1 of this chapter, and is not ineligible under Section 323-9(b) of this chapter;
  - (B) Provide any and all supporting materials and information required by the director; and
  - (C) Attend an SLBE/ELBE orientation provided by the department to become familiar with the policies and procedures of doing business within the city. An applicant with prior experience doing business with the city may be exempted by the director from attending the orientation.
- (2) The department will review and evaluate applications and may reject an application based on one or more of the following:
- (A) The applicant does not meet the requirements of the definition of the type of local business enterprise (SLBE or ELBE) for which it has applied for certification or is ineligible for certification as provided in Section 323-9(b) of this chapter;

- (B) The application is not satisfactorily completed;
  - (C) The application contains false information; or
  - (D) The applicant has not provided materials or information requested by the director.
- (3) The director will make a certification determination within 90 days after the date the city receives a satisfactorily completed application from the applicant. If certification is denied, the director will notify the applicant in writing and specify the reason(s) for the denial. Unless the applicant is successful in a timely appeal of the denial of certification, the applicant may not reapply for the same type of certification (SLBE or ELBE) for a period of one year from the date of the notice of denial.
- (4) Firms certified by the city as an SLBE may also be eligible for certification as an SBE.
- (5) Firms denied certification as an ELBE on the basis that they do not meet the criteria of an ELBE as defined in Section 323-1-E1 of this chapter may submit an application for certification as an SLBE or SBE.
- (6) An applicant for SLBE or ELBE certification or recertification that, during the certification or recertification process or during any certification review process, makes any deceptive or fraudulent statement or omission, or otherwise intentionally misrepresents any fact that may be considered in making a certification determination, in addition to any other penalties provided therefore, may be denied certification or recertification by the director for a period not to exceed three years.
- (d) *Period of Certification.* The certification is valid for a two-year period beginning on the date the city certified the applicant as an SLBE or ELBE.
- (e) *Recertification.* Upon expiration of the two-year certification period, a business that desires recertification must return a completed recertification form as provided by the city and comply with the requirements of subsections (c)(1)(A) through (C) of this section.
- (f) *Suspension of Certification.*
- (1) *Temporary Suspension from the SLBE Program.*

(A) The director shall suspend a certified SLBE from further participation in SLBE economic inclusion initiatives for the remainder of the fiscal year once the SLBE receives, as a prime contractor or subcontractor on city-funded contracts, payments in that fiscal year totaling at least \$500,000.00.

(B) An SLBE suspended under subsection (f)(1)(A) of this section may be eligible to continue to participate in the SBE program for the remainder of that fiscal year.

(2) *Temporary Suspension from the ELBE Program.*

(A) The director shall suspend a certified ELBE from further participation in ELBE economic inclusion initiatives for the remainder of the fiscal year once the ELBE receives, as a prime contractor or subcontractor on city-funded contracts, payments in that fiscal year totaling at least \$250,000.00.

(B) An ELBE suspended under subsection (f)(2)(A) of this section may be eligible to continue to participate in the economic inclusion initiatives as an SLBE for the remainder of that fiscal year.

(g) *Revocation of Certification.*

(1) The director shall revoke the certification of a business if it is determined that the business was certified in error, the business no longer meets the definition of the type of local business enterprise (SLBE or ELBE) for which it had been certified, or the business fails to provide requested information in connection with a certification review conducted by the department.

(2) The director shall permanently revoke the certification of a business if it is determined that the certification was fraudulently obtained or that the firm allows its certified SLBE or ELBE status to be fraudulently used to obtain economic inclusion initiative benefits for a firm that is not a certified SLBE or ELBE or for the benefit of the owners of a firm that is not a certified SLBE or ELBE. In addition to certification revocation, any participant in the fraudulent use of certified SLBE or ELBE status for the benefit of another person or entity that is not a certified SLBE or ELBE shall be guilty of a misdemeanor of the first degree, punishable by imprisonment for up to six months and/or a fine of up to \$1,000.00.

(3) Prior to taking formal action, the department shall provide the business with written notice of the proposed revocation. The department staff shall then prepare a recommendation regarding the proposed

revocation for review by the director who shall make a recommendation regarding revocation to the city manager for decision. The decision of the city manager or the city manager's designee is final.

(h) *Certification Reviews.* The department will conduct random certification reviews of certified businesses by auditing them to verify that the information submitted by a business is accurate and that the business remains eligible after certification has been granted. Certification reviews may be conducted for any business for which the director determines a certification review is warranted. Businesses subject to certification reviews must provide the director with any information requested to verify the certification eligibility of the business. Audits may include one or all of the following as reasonably necessary to ensure that all eligibility standards are satisfied:

- (1) Business owner interviews;
- (2) Employee and/or subcontractor interviews;
- (3) Record and document review; or
- (4) Job site inspection.

(i) *Joint Ventures.*

- (1) SLBEs may apply for certification of a joint venture only with other certified SLBEs on a contract-by-contract basis;
- (2) The specific responsibilities of each participating SLBE in the joint venture must be set forth in writing and submitted with the certification application;
- (3) Certified SLBE joint ventures are not subject to the size limitations imposed by Section 323-1-S4 of this chapter;
- (4) For purposes of Section 323-1-S4(h) of this chapter, payments made by the city to a certified SLBE joint venture shall be credited to each participating SLBE in the same proportion as each participating SLBE's contribution to the total contract performance;
- (5) The certification of an SLBE joint venture will be limited to the duration of the contract for which certification as a joint venture was requested and shall terminate upon completion of the city contract for which the joint venture was formed.

(j) *Graduation from SLBE or ELBE Program.*

(1) An SLBE firm must be permanently graduated from the SLBE program after either of the following has occurred:

(A) It has received a cumulative total of \$2,500,000.00 of city-funded prime contract and/or subcontract payments in at least five separate contracts since its initial certification as an SLBE firm; or

(B) Its three most recent fiscal year average annual gross revenues exceed the size standards as defined by subsection (e) of Section 323-1-S4 of this chapter.

(2) An ELBE firm must be permanently graduated from the ELBE program after either of the following has occurred:

(A) It has received a cumulative total of \$500,000.00 of city-funded prime contract and/or subcontract payments in at least five separate contracts since its initial certification as an ELBE firm; or

(B) Its annual gross revenues, averaged over the life of the firm, exceed \$250,000.00.

**Section 323-11. – SBE Program Goals.**

(a) The city of Cincinnati's aspirational annual goal for SBE participation shall be 30% of the city's total dollars spent for construction, 15% of the city's total dollars spent for supplies/services, and 15% of the city's total dollars spent for professional services. The SBE participation rates will be monitored, tracked internally, and reported quarterly and annually to city council.

(b) SBE participation is counted as follows:

(1) Once a firm has been certified as an SBE as provided in Section 323-7 of this chapter, the total dollar value of the contract awarded to the SBE is counted toward the SBE participation rate.

(2) If the prime contractor is an SBE, it shall be entitled to count the dollar value of the work performed by its own labor force toward satisfaction of the SBE participation rate.

- (3) The city of Cincinnati or a contractor may count toward its SBE rate a portion of the total dollar value of a contract with an eligible joint venture equal to the percentage of the ownership and contract performance of the SBE partner in the joint venture.
- (4) The city of Cincinnati or a contractor may count toward its SBE rate only expenditures to SBEs that perform a commercially useful function in the work of a contract as defined in Section 323-1-C2 of this chapter. To determine whether an SBE is performing a commercially useful function, the city of Cincinnati shall evaluate the amount of work subcontracted, industry practices, and other relevant factors.
- (5) Consistent with normal industry practices, an SBE may enter into subcontracts. If an SBE prime contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the SBE shall be presumed not to be performing a commercially useful function under the contract. In such circumstance, the SBE shall not be permitted to count toward the SBE participation goals for the contract the amounts paid to the SBE prime contractor. The SBE may present evidence to rebut this presumption to the director.

**Section 323-13. – SLBE/ELBE Bid Preferences.**

- (a) The city may award a contract for construction, professional services, non-professional services, or supplies, as qualified in subsection (b) of this section, to an SLBE or ELBE that submits, in response to an invitation to bid, a bid that is no more than ten percent greater than the lowest and otherwise best bid unless:
  - (1) The award to the SLBE or ELBE would result in a total contract cost that is, on an annual basis, \$25,000.00 or more higher than the lowest and otherwise best bid; or
  - (2) The award to the SLBE or ELBE would cause the total contract cost to exceed the city's budgeted funding for the contract.
- (b) Subsection (a) of this section may be applied to SLBE bids on contracts valued between \$250,000.00 and \$1,000,000.00 and to ELBE bids on contracts valued between \$50,000.00 and \$100,000.00.

**Section 323-15. – SLBE/ELBE Response Evaluation Preferences.**

- (a) An SLBE or ELBE may be given up to ten additional preference points in the evaluation of its response to an RFP or RFQ for architecture and engineering or other professional services, as qualified by subsection (b) of this section.
- (b) Subsection (a) of this section may be applied to SLBE responses for contracts valued between \$100,000.00 and \$250,000.00 and to ELBE responses for contracts valued between \$50,000.00 and \$100,000.00.
- (c) For SLBE joint ventures, preference points shall be prorated based upon a clearly defined portion of the work to be performed by the SLBE with its own forces, equal to its share in the ownership, risks, performance, management and control of the joint venture.

**Section 323-17. – Mandatory Subcontracting to SLBEs/ELBEs.**

- (a) The director may, on a contract-by-contract basis, require that a predetermined percentage of a specific contract, up to 30%, be subcontracted to certified SLBEs or ELBEs.
- (b) Each bidder must include with its bid a subcontractor utilization plan (Form 2003) in which the bidder commits to utilize certified SLBEs or ELBEs in a percentage that equals or exceeds the applicable contract goals unless it submits a request for waiver as set forth in subsection (c) of this section. Any bid that does not include either a completed Form 2003 or a request for waiver shall be deemed non-responsive.
  - (1) Each bidder is responsible for verifying that all SLBEs and ELBEs to be used as subcontractors have been certified by the department.
  - (2) If the prime contractor is a certified SLBE, it shall be entitled to count the dollar value of the work performed by its own labor force toward satisfaction of the mandatory SLBE subcontracting percentage for the contract.
  - (3) An SLBE prime contractor may not subcontract more than twenty-five percent of the total contract value to a non-SLBE.
- (c) A bidder may submit with its bid a request for a full or partial waiver by the director of the mandatory subcontracting percentage for good cause by submitting evidence of SLBE or ELBE unavailability along with adequate documentation of good faith efforts, as defined in the program rules and regulations, to obtain SLBE or ELBE participation in the form required by the director. If the bidder requests a partial waiver, it shall also be required to

submit a completed subcontractor utilization plan (Form 2003) as provided in subsection (b) of this section.

- (1) Requests for waiver will be evaluated by the director on a case-by-case basis; and
  - (2) The determination of whether a waiver will be granted shall be based on the availability of certified SLBEs or ELBEs who can provide a commercially useful function under the circumstances.
- (d) In the absence of a waiver, the failure of a contractor to maintain the SLBE or ELBE participation percentage established for the contract shall be grounds for termination of the contract in addition to any other remedies available under the terms of the contract or under the law.
- (e) It shall be a material breach of contract if a contractor fails to notify the director and fails to obtain prior written approval from the director of any of the following:
- (1) Reduction in SLBE or ELBE subcontractor participation;
  - (2) Termination of an SLBE or ELBE subcontract; or
  - (3) Substitution of a new SLBE or ELBE for an SLBE or ELBE listed on the subcontractor utilization plan (Form 2003).

**Section 323-19. – SLBE/ELBE Sheltered Market Program.**

The city shall implement and maintain a sheltered market program to identify a portion of its procurements and contracts for bidding or response exclusively by SLBEs and ELBEs. Sheltered market procurements shall be contracts that SLBEs and ELBEs are fully capable of performing at the customary and usual market rate.

- (a) The director, in consultation with the purchasing agent and the contracting agency, may select certain contracts which have a value of \$250,000.00 or less for award to an SLBE, or a joint venture with SLBEs, through the sheltered market program.
- (b) The director, in consultation with the purchasing agent and the contracting agency, may select certain contracts which have a value of fifty thousand dollars \$50,000.00 or less for award to an ELBE through the sheltered market program.
- (c) The director, in consultation with the purchasing agent and the contracting agency, must consider the following factors when

determining whether a particular contract is eligible for the sheltered market program:

- (1) Whether there are at least three certified SLBEs or ELBEs that are available to participate in the sheltered market program for the selected contract and that have the capacity to perform the contract;
  - (2) The degree of underutilization of SLBEs and ELBEs in such contracts in the specific industry category during the immediately prior twelve months; and
  - (3) The extent to which the city's SLBE and ELBE prime contractor utilization goals, as set annually by the director in consultation with the purchasing agent, are being met.
- (d) If, in the case of an invitation to bid, there is no response to a bid solicitation or the apparent low bid is determined by the purchasing agent to be fiscally unacceptable, then the contract shall be removed from the sheltered market program.
- (e) If, in the case of an RFP or RFQ, there is no satisfactory responsive proposal, then the contract shall be removed from the sheltered market program.

**Section 323-21. – Sanctions.**

The director shall apply penalties against certified SBEs, SLBEs and ELBEs for violations of the provisions of this chapter or of the rules and regulations promulgated under the authority of this chapter, and shall apply penalties against any non-SBE, non-SLBE or non-ELBE firms which request or assist SBEs, SLBEs or ELBEs in misleading the city about ownership and control of a business purporting to be an SBE, SLBE or ELBE, or otherwise participate in such conduct. The nature and extent of penalties applied shall be reviewable on appeal to the contract compliance advisory board, which acts as an advisor to the city manager. Penalties applied against firms under this section or under Section 323-99 of this chapter shall be considered in making future decisions about contract awards to such firms. Penalties for a violation of this chapter or the rules and regulations under the authority of this chapter shall be as set forth in Section 323-99.

**Section 323-23. – Appeal.**

- (a) *Noncompliance and Denial of Certification.* Upon a determination of noncompliance with the requirements of this chapter or a denial of certification or recertification as an SBE, SLBE or ELBE by the director, the director shall notify the affected party in writing by certified mail at the address provided by the applicant on the application, setting forth the reasons

for the determination of noncompliance or denial of certification or recertification.

- (b) *Time for Filing Notice of Appeal.* Any applicant who has been denied certification or recertification as an SBE, SLBE or ELBE, or any person or entity against whom a determination of noncompliance with the requirements of this chapter has been found by the director may appeal the determination of noncompliance or denial of certification or recertification by filing a written notice of appeal with the director within fourteen days of the date of mailing the notice of the determination of noncompliance or denial of certification or recertification. In the event such a notice of determination that has been sent by certified mail is returned as refused or unclaimed, the director shall send the notice via regular U.S. mail, postage pre-paid, and, provided the notice sent by regular mail is not returned as undeliverable within ten days, the notice shall be presumed to have been delivered and a request for reconsideration of an adverse determination must be filed with the director in writing within ten days.
- (c) *Contract Compliance Advisory Board.* The city manager shall structure a contract compliance advisory board composed of five members, including representatives of the city, labor, SBEs, and citizens, all of whom shall be appointed by the city manager. The board shall make recommendations to the city manager for the disposition of appeals. Board members shall serve for a period of two years.
- (d) *Notice of Hearing Date and Hearing.*
  - (1) Within three working days of receipt of a written notice of appeal, the director shall forward the notice to the contract compliance advisory board.
  - (2) The board shall set a hearing date not more than twenty-eight days from the date of receipt of the notice of appeal forwarded by the director. The board shall cause notice of the hearing to be served upon all parties, by certified mail. Such notice shall set forth the adverse determination by the director from which the appeal was taken and the errors identified by the applicant or other aggrieved party, and shall also state the date, time, and place of the hearing. In the event such a notice of determination that has been sent by certified mail is returned as refused or unclaimed, the director shall send the notice via regular U.S. mail, postage pre-paid, and, provided the notice sent by regular mail is not returned as undeliverable within ten days, the notice shall be presumed to have been delivered.
  - (3) All parties shall be provided a fair and impartial hearing but shall not be permitted to introduce any new evidence not previously submitted.

- (e) *Decision.* Within seven days of the conclusion of the hearing, the board shall make a written recommendation to the city manager or the city manager's designee on the disposition of the appeal, which recommendation shall be to affirm, modify, or reverse the determination of noncompliance or the denial of certification or recertification by the director, and shall state the reason(s) for such recommendation. The board shall advise whether the determination of noncompliance was in accordance with the law. If the city manager finds for the party denied certification or recertification by the director, the business shall be certified or recertified as an SBE, SLBE or ELBE and added to the appropriate certification list maintained by the department. If the city manager finds for the party for whom the director had made a determination of noncompliance with this chapter and the rules and regulations issued thereunder, the business shall be found in compliance with the requirements of this chapter and permitted to submit a bid or proposal in response to the city's solicitation if the submission deadline has not yet passed, and to continue to participate in the economic inclusion initiatives available for the firm's particular certification (SBE, SLBE, or ELBE). The decision of the city manager or the city manager's designee shall be final, subject to the right of further appeal as may be provided by law.
  
- (f) *Notice of Decision.* The city manager shall issue written notice of the decision on the appeal to all parties within ten days after receiving the recommendation of the board. The notice of the decision shall be sent to all parties by certified mail and shall set forth the reasons for the decision.

**Section 323-25. - Duties of the Department of Economic Inclusion.**

The department shall have the following functions and duties associated with the programs set forth in this chapter:

- (a) The department shall act as a resource for small business information;
  
- (b) Information dissemination and communication with SBEs, SLBEs and ELBEs are integral parts of the city of Cincinnati's SBE, SLBE and ELBE programs. As a part of its outreach program, the department will solicit input from representatives of SBEs, SLBEs, ELBEs, trade associations, and community organizations. The department shall hold quarterly outreach events for SBEs, SLBEs, ELBEs, and owners of small businesses eligible to participate in the SBE, SLBE or ELBE programs; publish a biannual newsletter on small business matters; and produce video programming geared toward small businesses. In cooperation with the city of Cincinnati's purchasing division and other appropriate city departments, the department shall publicly inform SBEs, SLBEs, ELBEs, and owners of eligible small businesses of the city of Cincinnati's procurement forecast in a timely manner to allow such parties to make appropriate planning decisions;

- (c) The department will assist SBEs, SLBEs and ELBEs in overcoming barriers to program participation by including referrals to other agencies offering established, comprehensive, and continuous programs to assist small businesses. Businesses requiring management and technical assistance will be identified through a questionnaire, the department's prior experience with these businesses, and requests by businesses for assistance;
- (d) The department shall maintain for a period of three years records and reports submitted by contractors in accordance with the provisions of this chapter;
- (e) The department, in conjunction with other city agencies, will monitor SBE, SLBE and ELBE participation levels on projects throughout the duration of a contract;
- (f) The department shall investigate alleged violations of this chapter and the SBE, SLBE and ELBE program rules and regulations, and the director shall issue written determinations of the results of such investigations, stating the reasons for the determination and any penalty imposed pursuant to this chapter;
- (g) The department will determine whether a bidder or offeror made good faith efforts, as defined in the SBE, SLBE and ELBE program rules and regulations, to include SBEs, SLBEs or ELBEs as required by the director in its bid or proposal and its work on the contract subject to this chapter;
- (h) Upon request by a potential bidder on city contracts, the department will provide information regarding SBEs, SLBEs and/or ELBEs, which shall include names and contact information;
- (i) The department will notify the appropriate city departments of the director's determination that a contractor has not complied with this chapter or the SBE, SLBE and ELBE program rules and regulations and the result of any appeal from that determination;
- (j) The department will provide ongoing monitoring and oversight functions to determine successful bidders' continuing compliance with this chapter and the SBE, SLBE and ELBE program rules and regulations and their utilization of SBEs, SLBEs and ELBEs.

**Section 323-27. - City Maintained Records and Reports.**

- (a) The effectiveness of this program will be measured by a review of data indicating prime and subcontract awards to SBEs, SLBEs, and ELBEs. Program effectiveness measurements will also include efforts by the city to provide prime contracting opportunities for SBEs, SLBEs, and ELBEs. At the

end of each contract, the department will prepare a report on the utilization of firms in the SBE, SLBE, and ELBE programs. Data in this report will include information on the gross income size of the firms participating on each contract. Each project manager and the procurement staff will continuously maintain, and compile monthly, information relating to the departments' use of SBEs, SLBEs, and ELBEs, including information regarding subcontractors and efforts toward SBE program participation.

- (b) At the end of a contract, the director shall require a contractor to report to the department the identity of each SBE, SLBE, and ELBE to whom the contractor has awarded a subcontract for the purchase of services, professional services, supplies, materials, and equipment.
  
- (c) The director shall prepare quarterly a consolidated report based on a compilation and analysis of the reports submitted by each project manager and the procurement staff, information provided by the finance department, and the reports submitted by prime contractors. This record-keeping system will identify and assess SBE, SLBE, and ELBE contract awards, prime contractors' progress in achieving SBE, SLBE and ELBE subcontract participation, and other SBE, SLBE and ELBE development and contracting efforts. Specifically, the department in conjunction with all city agencies will maintain records showing:
  - (1) Awards to SBEs, SLBEs and ELBEs including names of contractors and subcontractors, nature of the work and services performed, and the percentage of SBE, SLBE and ELBE participation per contract. The city of Cincinnati will obtain regular reports from prime contractors on their progress in meeting contractual SBE, SLBE and ELBE commitments;
  
  - (2) Specific efforts to identify and award contracts to SBEs, SLBEs and ELBEs;
  
  - (3) Copies of direct mailings to SBEs, SLBEs and ELBEs;
  
  - (4) Pre-bid conference information as it relates to the SBE, SLBE and ELBE programs;
  
  - (5) Requests for assistance from the SBEs, SLBEs and ELBEs interested in bidding or proposing on city of Cincinnati contracts and subcontracts;
  
  - (6) Workshops, seminars and training programs conducted for SBEs, SLBEs and ELBEs; and

- (7) Efforts to assist SBEs, SLBEs and ELBEs in acquiring bonding and insurance.
- (d) The director will submit quarterly SBE, SLBE and ELBE development reports to city council. These reports shall include:
  - (1) The number of contracts awarded to SBEs, SLBEs and ELBEs;
  - (2) A description of the general categories of contracts awarded to SBEs, SLBEs and ELBEs;
  - (3) The dollar value of contracts awarded to SBEs, SLBEs and ELBEs; and
  - (4)
    - (A) The percentage of the dollar value of all contracts awarded to SBEs, SLBEs and ELBEs during the preceding year;
    - (B) The actual dollar amount paid to SBE, SLBE, ELBE and all other vendors as prime or subcontractors; and
    - (C) The percentage of dollar amount paid to SBEs, SLBEs and ELBEs compared to the total.

The city of Cincinnati does not discriminate against any company or group of companies in its contracting and procurement activities on the basis of race, color, age, religion, sex, national origin, handicap/disability or veteran status. The SBE, SLBE and ELBE opportunity does not propose any numeric goals determined by the rate of program participation by minorities or women, but will require this information at the end of city contracts. The program is designed to include all segments of the region's business community by increasing the competitiveness and profitability of all small businesses as defined within this program.

**Section 323-29. - SBE, SLBE and ELBE Resource Information.**

The department and purchasing division will make the following available:

- (a) Procedures outlining specific steps on how to bid;
- (b) Prerequisites for bidding on contracts;
- (c) Information on how plans and specifications can be obtained;
- (d) Names of persons to contact concerning questions on bid documents;
- (e) Names of relevant procurement staff and office hours;

- (f) Types of supplies and services purchased; and
- (g) Explanations of standard contract implementation procedures and requirements, concerning such matters as timely performance of work, contract changes, and payment schedules.

**Section 323-31. – SBE, SLBE and ELBE Directory.**

The department and purchasing division will create an SBE, SLBE and ELBE directory that lists SBEs, SLBEs and ELBEs, categorized by types of firms, to facilitate identifying businesses with capabilities relevant to a particular specification. Each business listing will contain the business name, contact person, address, phone number, legal structure of the business, and details concerning the company's business specialty(ies). The directory will be continuously updated and maintained electronically. In compiling this directory, the city of Cincinnati will identify and certify as many SBEs, SLBEs and ELBEs as possible that have the potential of doing business with the city of Cincinnati. The city of Cincinnati will maintain and have available updated SBE, SLBE and ELBE directories and source list(s) for each bid/proposal solicitation to facilitate identifying SBEs, SLBEs and ELBEs with capabilities relevant to general contracting requirements and to particular solicitations. The city of Cincinnati will make the directory and source list(s) available to bidders and offerors in their efforts to meet the SBE, SLBE and ELBE commitments.

**Section 323-33. - SBE, SLBE and ELBE Assistance to Provide an Equitable Opportunity to Compete for Contracts and Subcontracts.**

Specific affirmative procedures to be utilized by the department staff and procurement staff to encourage maximum practicable opportunities for SBE, SLBE and ELBE participation include the following:

- (a) Review individual solicitations to ensure that insurance and bonding provisions are not excessive; assist SBEs, SLBEs and ELBEs in obtaining insurance and surety bonds where necessary in the performance of contracts, including, but not limited to doing the following: package contracts so that dollar amounts do not require bonding; encourage prime contractors to waive bonding or assist SBE, SLBE and ELBE subcontractors in obtaining bonding; and encourage staged bonding where feasible, when bonding is carried over from one project stage to the next;
- (b) Encourage the formation of joint ventures among SBEs and SLBEs and between SBEs, SLBEs and firms which provide opportunity for the SBE or SLBE to gain experience. The department staff will assist prime contractors in identifying interested SBEs, SLBEs and ELBEs for subcontracts and joint ventures; provide information on the city of Cincinnati's organization and contractual needs; and offer instructions on

bid specifications, procurement policy, procedures, and general bidding requirements;

- (c) Provide, in conjunction with the city purchasing division, specifications and requests for proposals to the SBE, SLBE and ELBE community in a timely manner to allow them adequate time to develop responsible and responsive bids, quotations, and proposals. In instances where the cost of obtaining specifications or requests for proposal is prohibitive, copies of the material will be made available at no charge to SBE, SLBE and ELBE development agencies;
- (d) Establish, in conjunction with the city finance department and affected city departments, prorated payment and delivery schedules where feasible, to minimize cash flow problems faced by small businesses. The department will provide guidance to SBE, SLBE and ELBE contractors regarding maintenance of a positive cash flow so current obligations can be met;
- (e) Wherever feasible, use the least complicated bid forms appropriate for each procurement solicitation;
- (f) Hold pre-bid/proposal conferences to explain SBE, SLBE and/or ELBE commitments and to answer questions about forms that must be submitted with a bid or proposal;
- (g) Permit bidders/offerors to review and evaluate successful bid/proposal documents of prior similar procurement(s) and, upon request, use debriefing sessions to explain why certain bids were unsuccessful;
- (h) Provide projected procurement information and contracting schedules through the City Bulletin and other outreach efforts;
- (i) Conduct internal information workshops to inform and acquaint the city of Cincinnati staff with the goals and objectives of the city of Cincinnati's SBE, SLBE and ELBE plans, and to sensitize them to the problems faced by SBEs, SLBEs and ELBEs;
- (j) Maintain records showing specific efforts to identify and award contracts to SBEs, SLBEs and ELBEs and establish a monitoring system to ensure that all contractors, subcontractors, consultants, and vendors comply with contract specifications related to SBE, SLBE and ELBE utilization;
- (k) Inform SBEs, SLBEs and ELBEs of bid notices and specifications related to their capability by placing bid notices in the City Bulletin, major local newspapers, and other periodicals. Bid notices will also be sent to local trade associations, technical assistance agencies, economic development

groups, and SBEs, SLBEs and ELBEs with capabilities relevant to the bid notice as identified by the city of Cincinnati's SBE, SLBE and ELBE data banks. Bid specifications will be made available to SBE, SLBE and ELBE contractor associations and technical assistance agencies. Lists of potential firms bidding as primes also will be available to SBEs, SLBEs and ELBEs;

- (l) Provide coordination and referral to existing business development organizations;
- (m) Provide workshops and training sessions on identified SBE, SLBE and ELBE problem areas, i.e., pricing and estimating, joint venture formation, accounting principles, marketing, etc.; and
- (n) Disseminate information on the city of Cincinnati's SBE, SLBE and ELBE programs through written materials, seminars, workshops, and specialized assistance to individual firms.

**Section 323-35. - Contractor and Subcontractor Assistance to Support Compliance with Applicable SBE, SLBE and ELBE Requirements.**

The department and purchasing department staffs are available to assist contractors and subcontractors in implementing these programs. As a standard procedure, such assistance includes, as appropriate, the following:

- (a) Clear identification of the city of Cincinnati's SBE, SLBE and ELBE provisions in all the city of Cincinnati's solicitations;
- (b) Pre-bid/proposal conference to explain the city of Cincinnati's SBE, SLBE and ELBE programs;
- (c) Identification of certified SBEs, SLBEs and ELBEs per the city of Cincinnati solicitation; and
- (d) Monitor, in conjunction with other city departments, SBE, SLBE and ELBE participation levels on projects throughout the duration of a contract.

**Section 323-37. - Subcontracting Outreach Program.**

The department shall administer a subcontracting outreach program to make subcontracting opportunities available to a broad base of qualified city-certified SBE, SLBE and ELBE subcontractors.

**Section 323-99. - Penalties.**

The provisions of this section shall be incorporated into city contracts. The contractor shall agree that a breach of the provisions of this chapter or the contract terms regarding SBE, SLBE and/or ELBE participation in the contract shall subject the contractor to any or all of the following penalties:

- (a) Withholding all or part of future payments under the contract until it is determined that the contractor is in compliance;
- (b) Refusing further bids or proposals as provided in Section 321-153 of the Cincinnati Municipal Code;
- (c) Suspending the contractor for a minimum of two years from new awards to do business with the city; and
- (d) Permanently debaring the contractor from doing business with the city.

For good cause shown, the director may grant a stay of the penalty pending appeal; however, in no case shall the stay impede the city's contracting authority.

Section 5. That this ordinance shall be effective as of January 1, 2016.

Passed: \_\_\_\_\_, 2015

\_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
Clerk