

EXCERPT
from
MINUTES OF MEETING
of
BOARD OF LIGHT, GAS AND WATER COMMISSIONERS
CITY OF MEMPHIS
held
November 21, 2013

The Manager of Procurement and Contracts submitted for consideration of the Board revisions to the Memphis Light, Gas and Water Supplier Diversity Policy, attached hereto.

WHEREAS, MLGW contracted with MGT of America, Incorporated to conduct a minority and female business Disparity Study (Study) for MLGW and to determine whether there was a compelling interest for the MLGW Local Small Business Procurement Program; and

WHEREAS, the study consisted of fact-finding to examine the extent to which remedial MLGW efforts had effectively eliminated ongoing efforts of any past discrimination affecting MLGW's relevant marketplace; to analyze MLGW procurement trends and practices for the period of January 1, 2006 through December 31, 2010 and to evaluate various options for future program development; and

WHEREAS, the governmental entities have authorized disparity studies in response to the City of Richmond v J. A. Croson Co.(Croson) decision to determine whether there is a compelling interest for remedial procurement programs; and

WHEREAS, the recommendations resulting from disparity studies are used to narrowly tailor any resulting program to specifically address findings of underutilization attributable to unfair business practices; and

WHEREAS, the MGT Study identified statistically substantial disparities in the utilization of minority-owned and women-owned business enterprises in various industry sectors in the Memphis Metropolitan Area when compared to similarly situated white male-owned firms. The Study also found MLGW over utilized African-American and non-minority women as subcontractors in the construction and architectural and engineering services sector; and

WHEREAS, the Study specifically identified disparities in earnings of African-American owned firms compared to all other classifications when all other factors were equal; and

WHEREAS, the Study specifically identified disparities in revenue earnings of African-Americans and non-minority Women from self-employment; and

WHEREAS, the Study specifically identified evidence showing minorities and women continued to be underutilized in private sector commercial construction; and

WHEREAS, the Study determined the MLGW Supplier Diversity Program is primarily a race-gender neutral subcontracting goals program. One or a combination of several MWBE/LSBs may be utilized to meet the Supplier Diversity project/contract goal; and

WHEREAS, the Study determined the new MLGW relevant market area is the Memphis Metropolitan Statistical Area. This changes the geographic area from which supplier diversity program spending should be made; and

WHEREAS, MGT recommended MLGW consider focusing on increasing MWBE utilization through a local small business program. MLGW does not face constitutional restrictions on its local small business program, only those procurement restrictions imposed by State law; and

WHEREAS, the United States Supreme Court explained in Croson that anecdotal and statistical findings lend support to a local government's determination that broader remedial relief is justified to address the continued discrimination and/or continuing effect of past discrimination against minorities and women in business transactions in its Relevant Market Area; and

WHEREAS, MLGW, in the spirit of transparency, presented the Study findings to attendees totally more than 200 people across the Memphis community at minority-owned and women-owned business stakeholder group meetings; and

WHEREAS, MLGW collected feedback from stakeholder group meetings and incorporated some of the recommendations in the revised policy; and

WHEREAS, MLGW desires to encourage the growth of minority-owned, women-owned and local-small business enterprises (MWBE/LSB) by providing them with the opportunity to furnish MLGW with goods and services through its Supplier Diversity Program; and

WHEREAS, it is the expressed intent of the Supplier Diversity Program to address present effects of historical discrimination against minority contractors and suppliers, obstacles faced by women-owned businesses in gaining access to procurement opportunities, and barriers to scalability faced by local small businesses; and

WHEREAS, it is the responsibility of MLGW to ensure that such businesses are provided the fullest consideration to compete under the competitive bidding provisions of the Division; and

WHEREAS, it is the expressed intent of MLGW that all business classifications covered under this policy have the maximum practicable opportunity to participate in the performance of purchase orders, contracts, and subcontracts; and


WHEREAS, in furtherance of this policy, the posture of all MLGW staff shall be proactive to ensure supplier diversity; and

WHEREAS, MLGW will set annual supplier diversity participation goals by industry sector for minority-owned, women-owned and local-small business enterprises; and

NOW THEREFORE, BE IT RESOLVED BY The Board of Light, Gas and Water Commissioners:

THAT, the MLGW Supplier Diversity Policy has been revised as outlined in the attached document and that the Manager of Procurement and Contracts shall notify all affected parties of these changes.

I hereby certify that the foregoing is a true copy of a resolution adopted by the Board of Light, Gas and Water Commissioners at a regular ~~special~~ meeting held on 21st day of November, 2013, at which a quorum was present.


Secretary - Treasurer

**MEMPHIS LIGHT, GAS AND WATER DIVISION
SUPPLIER DIVERSITY POLICY
Effective Date: January 1, 2014**

I. POLICY STATEMENT

Memphis Light, Gas and Water Division (MLGW) carries a major responsibility to ensure the fullest consideration of all qualified sources for the purpose of contracting and purchasing.

At present, minorities, women and local small businesses represent groups in the supplier pool that are underutilized.

It is the intent of the MLGW Board of Commissioners to encourage the growth of minority, women and locally owned small business enterprises (MWBE/LSB) by providing them with the opportunity to furnish MLGW with goods and services through its Supplier Diversity program. More specifically, it is the expressed intent of this program to address present effects of historical discrimination against minority contractors and suppliers, obstacles faced by women-owned businesses in gaining access to procurement opportunities, and barriers to scalability faced by local small businesses. It is the responsibility of MLGW to ensure that such businesses are provided fullest consideration to compete under the competitive bidding provisions of the Division.

It is the expressed intent of MLGW that all business classifications covered under this policy have the *maximum practicable opportunity* to participate in the performance of purchase orders, contracts, and subcontracts. And, in furtherance of this policy, the posture of all MLGW staff shall be proactive to ensure supplier diversity.

II. REFERENCES

Disparity Study for Memphis/Shelby County Intergovernmental Consortium - 1994
Comprehensive Disparity Study and Policy Formulation – 2013
MLGW Procurement Policy
MLGW Contract Documents
MLGW Purchase Orders
City of Memphis Ordinance – Equal Business Program
City of Memphis Ordinance – Small Business Program

III. FORMS USED

- A. Supplier Diversity Participation Transmittal
- B. Minority, Women, and Locally Owned Small Business Enterprise Assurance Statement for Subcontracting
- C. Minority, Women, and Locally Owned Small Business Enterprise Assurance Statement for Prime Contractors
- D. MLGW Non-Attainment Justification Letter
- E. MLGW Supplier Diversity and Subcontractor Bid/Proposal Summary Form
- F. Supplier Diversity Goal Assignment – Procurement Request E-Form
- G. Bid Compliance Review

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H. Invoice Submittal Form

IV. DEFINITIONS

The following words, terms and phrases, when used in this policy shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

- A. AGREEMENT means a mutual understanding between two or more parties resulting in a binding obligation. For the purposes of this policy, an agreement may include but not be limited to a teaming agreement, strategic alliance, strategic partnership, subcontractor, sub consultant or any other such relationship between two parties to provide goods or services to MLGW.
- B. ANNUAL SUPPLIER DIVERSITY PARTICIPATION GOALS means the targeted levels set by the MLGW Board of Commissioners for procurement spending with minority-owned, women-owned, and local small business enterprises in construction, architectural and engineering services, professional services, other services and for goods and supplies.
- C. AVAILABILITY ANALYSIS means the analysis performed to determine number of qualified minority and women-owned businesses willing and able to provide construction, architectural and engineering, professional, and other services and to provide goods and supplies to MLGW.
- D. BEST BID means the most responsive proposal, solicitation or offer that meets bid requirements and specifications, including if applicable, any supplier diversity participation goals.
- E. BID means written quotations, proposals or offers by a bidder or contractor to perform or provide labor, materials, equipment, supplies or services to MLGW for a price submitted in response to competitive bidding or proposals issued by MLGW.
- F. BIDDER means any business enterprise that submits a bid or proposal as defined herein.
- G. BUSINESS ENTERPRISE means a corporation, partnership, sole proprietorship, joint venture, professional association or any other legal entity that is directly or indirectly involved in providing goods and services to MLGW with the anticipated outcome of earning a profit and is properly licensed and/or otherwise authorized to do business in the state of Tennessee.
- H. CERTIFICATION means the criteria and process for participation in the supplier diversity program authorized by this policy.
- I. COMMERCIALY USEFUL FUNCTION means the execution by a minority-owned, women-owned, or local small business which contracts with MLGW or subcontracts with another business enterprise which contracts with MLGW, of a distinct element of work of the contract by actually performing, managing and supervising the work involved. A business enterprise which serves as a conduit for another business shall

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not be deemed to perform a commercially useful function and that business enterprise cannot be used to fulfill the supplier diversity project participation goal.

- a. A MWBE/LSB performs a Commercially Useful Function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved.
 - b. To perform a Commercially Useful Function, the MWBE/LSB must be responsible, with respect to material 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.
 - c. To determine whether a MWBE/LSB is performing a Commercially Useful Function, the SDC will evaluate the amount of work subcontracted by the MWBE/LSB, industry practices regarding subcontracting, whether the amount the MWBE/LSB is to be paid under the contract is commensurate with the work it is actually performing, the MWBE/LSB credit claimed for its performance of the work, and other relevant factors.
 - d. A MWBE/LSB 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 MWBE/LSB participation. In determining whether a MWBE/LSB is such an extra participant, the SDC will examine similar transactions, particularly those in which MWBE/LSBs do not participate.
- J. CONDUIT means a business which purchases goods or services that are not normally purchased or sold as part of its daily business from another business(es) for the sole purpose of resale or to subcontract to MLGW or a contractor doing business with MLGW.
- K. CONTRACT means and includes any agreement between MLGW and a person or business enterprise to provide or procure labor, materials, equipment, supplies and services to, for or on behalf of MLGW.
- L. CONTRACTOR means any person or business enterprise that submits a bid or proposal to provide labor, goods or services to the contract for profit; and any person who supplies or provides labor, goods or services to MLGW by contract for profit; and any person who is a subcontractor under any such contract.
- M. DEBARMENT means MLGW for a period of five years will exclude/prohibit business enterprises from bid/proposal solicitations, contract and purchase award considerations, the option to renew contracts for additional terms, performing as subcontractor or material distributors, unless the MLGW President or a designee determines that there is a compelling reason for such action.
- N. DISPARITY STUDY means an analysis of whether a disparity, or differences, exists between the number of specified individuals or groups that are available to participate in procurement opportunities, and those that actually do participate in procurement opportunities. A disparity study helps to determine whether the environment is fair and equitable to all parties involved.

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- O. DIVISION means the Memphis Light, Gas and Water Division of the City of Memphis, Tennessee.
- P. ELIGIBLE PROJECT means any MLGW contract with a supplier diversity participation goal attached as identified by the Supplier Diversity Coordinator. For purposes of this policy, contract or project value shall mean either the expenditure of funds by MLGW or the generation of revenue for MLGW by contractor as a direct result of a MLGW contract.
- Q. EXTERNAL ADVISORY COUNCIL means the council composed of the Supplier Diversity Coordinator, one representative from the Purchasing and Contract Management departments, a minimum of two each certified minority, women, and local business owners, representatives from local minority and women business advocate organizations, banking and insurance institutions.
- R. FALSIFIED means to make false or incorrect, especially so as to deceive.
- S. FRONT means a business which purports to be a minority-owned, women-owned, or local small business enterprise (MWBE/LSB) but which is actually owned and/or controlled in a manner which is inconsistent with the requirements for the certification as defined in this policy.
- T. FRONTING ACTIVITY means any occurrence of collusion between a MWBE/LSB and a majority business enterprise for the purpose of exploiting that MWBE/LSB's minority, female, or local small business certification status to primarily benefit a majority firm without the performance of any commercially useful function by the MWBE/LSB.
- U. GOOD FAITH EFFORTS means the steps undertaken to obtain MWBE participation for subcontracting opportunities related to the bid proposal submitted.
- V. INTERNAL ADVISORY COUNCIL means the council composed of the Supplier Diversity Coordinator and representative from each MLGW department.
- W. JOINT VENTURE means an association of two or more persons, or any combination of types of business enterprises and persons numbering two or more, established to carry on a single business activity, in which each joint venture partner contributes property, capital, efforts, skill and/or knowledge. Joint ventures must have an agreement in writing specifying the terms and conditions of the relationships between the partners and their relationships and responsibility to business activity.
- X. LOCAL BIDDING PREFERENCE means the awarding of contracts and making purchases whenever the application of such a preference is reasonable in light of the dollar-value of the bids or proposals received in relation to such expenditures.
- Y. LOCAL BIDDING PRESENCE means the awarding of contracts and making purchases whenever the application of such a preference is reasonable in light of the dollar-value of the bids and/or proposals received in relation to such expenditures and any requests for the application of the Local Bidding Preference.
- Z. LOCAL SMALL BUSINESS (LSB) means a business enterprise with its headquarters and/or physical principal office located in Shelby County, Tennessee which had gross annual sales in the previous year less than the SIC category limits for the business SIC code found in 13 CFR, Part 121.601, and which is an independent and continuing enterprise for profit, performing a commercially useful function, which is at least

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- 51% owned, operated, and independently controlled by a resident or residents of the Memphis Metropolitan Statistical Area.
- AA. **MLGW REPRESENTATIVE** means the designated project representative who shall have the final decision as to whether or not the work complies with the contract documents. The MLGW Representative shall at all times, during the term of the contract, be able to stop the work in whole or part if in the MLGW Representative's discretion, the work does not comply with the contract documents.
- BB. **MEMPHIS METROPOLITAN STATISTICAL AREA (MSA)** means the geographical area consisting of Shelby, Tipton, Fayette, Crittenden, DeSoto, Tunica, Tate and Marshall Counties as amended.
- CC. **MINORITY-OWNED BUSINESS ENTERPRISE (MBE)** means a business enterprise which is at least 51% owned operated and independently controlled by a person or persons who are minority group members. For these purposes, minority group members are: African Americans, Native Americans, Hispanic Americans, Asian-Pacific Americans, who are citizens.
- a. **African Americans:** Includes persons having origins in any of the Black racial groups of Africa.
 - b. **Native Americans:** Includes persons who are American Indians, Eskimos, Aleuts or Native Hawaiians.
 - c. **Native Americans:** Includes persons who are American Indians, Eskimos, Aleuts or Native Hawaiians.
 - d. **Hispanic Americans:** Includes persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish or Portuguese culture or origin, regardless of race.
 - e. **Asian-Pacific American:** Includes persons whose origins are Bangladesh, China, Taiwan, Malaysia, Thailand, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific and the Northern Marianas.
- DD. **OWNED, OPERATED AND INDEPENDENTLY CONTROLLED** means the one or more minority persons, women or local residents who own(s) the requisite interest in or assets of a business applying for certification, shall possess equivalent incidents of such ownership, including an equivalent interest in profit and loss, and shall have contributed in equivalent percentage of capital or equipment and expertise to the business. Ownership shall be measured as though not subject to the community property interest of a spouse, if both spouses certify in writing that the nonparticipating spouse relinquished control over his or her community property interest in the subject business (but by doing so is not required to transfer ownership interest or to characterize the property as the separate property of the spouse). The one or more minority, women, or local residents shall have recognized ultimate control over all day-to-day operations by employees of the business, and by those with whom it does business. The ownership and control of the firm shall be real, substantial, and continuing and shall go beyond the pro forma ownership of the firm as related in its ownership documents.

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- EE. PROJECT PARTICIPATION GOAL means an alternative goal established for a particular project, contract, or purchase and calculated as authorized by this policy.
- FF. RELEVANT MARKET AREA means the area determined from a disparity study of a fixed geopolitical boundary identified from an availability analysis of minority and women-owned business enterprises ready, willing and able to provide construction, architectural and engineering, professional, other services and goods and supplies to MLGW.
- GG. PROPOSER means a person or business enterprise which responds to a contract opportunity with MLGW, solicited as a request for proposal or qualifications and that possesses the requisite expertise to perform the services sought.
- HH. SUBCONTRACT means any person or business enterprise providing goods, labor or services to a contractor if such goods, labor or services are procured in fulfillment of the contractor's obligations arising from a contract with MLGW. Subcontractor includes every level of subcontractor required to fulfill a contract with MLGW.
- II. SUPPLIER means a warehouse or manufacturer or materials, supplies or equipment which contracts directly with a Bidder to provide such materials, supplies or equipment on an Eligible Project which involves a trade or service. For purposes of measuring the total contract dollars awarded or paid to suppliers on Eligible Projects, only amounts paid to suppliers of goods customarily and ordinarily used based upon standard industry or trade practices shall be counted.
- JJ. SUPPLIER DIVERSITY COORDINATOR (SDC) means the MLGW representative who administers the Supplier Diversity Program set forth in this policy.
- KK. WOMEN means those persons, citizens of the United States and lawfully admitted resident aliens, who are of the female gender, and not otherwise included in one of the specific ethnic minority groups.
- LL. WOMAN-OWNED BUSINESS ENTERPRISES (WBE) means a business enterprise which is at least 51% owned, operated and independently controlled by a female or group of females who are U.S. citizens.

V. CERTIFICATION

MLGW will accept the certification of any entity that certifies businesses as minority-owned, women-owned, and local small business enterprises as defined in this policy. The MWBE/LSB certification must be current at the time of submission of a bid or proposal. Bidders must provide a copy of the certification certificate for each MWBE/LSB included in the bid or proposal for the purposes of addressing the supplier diversity participation goal. MLGW reserves the right not to accept the certification from entities not meeting the criteria outlined in this policy.

VI. RELEVANT MARKET AREA

The relevant market area for the procurement of goods and supplies, construction, professional services, and other services by MLGW is the Memphis MSA.

VII. PROCEDURES

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A. Goal Setting Methodology

In order to provide minority, women, and local small suppliers and contractors the maximum practicable opportunity to participate in the performance of purchase orders, contracts, and subcontracts, MLGW hereby incorporates the following factors as part of its goal setting methodology in establishing its annual supplier diversity participation goals:

1. The number of minority and women businesses in the relevant market area and the number of local small businesses in Shelby County.
2. The availability of minority and women businesses in the relevant market area and the availability of local small businesses in Shelby County.
3. The percentage of minority and women businesses compared to the total number of businesses in the relevant market area and the percentage of local small businesses compared to the total number of businesses in Shelby County.
4. The availability of minority and women businesses in the relevant market area and the availability of local small businesses in the relevant market area.
5. The availability of certified minority, women and local small businesses in the relevant market area and Shelby County respectively.

B. Annual Supplier Diversity Participation Goals

1. Supplier diversity participation goals will be established by industry sectors for contracted services and overall for goods and supplies with specific annual goals for minority-owned, women-owned, and local small business spending.
2. The goals will be presented in as an Addendum to this policy document.
3. The overall supplier diversity participation goals will be reviewed annually by the Supplier Diversity Coordinator. Any recommended changes will be presented to the MLGW Board of Commissioners for approval. The overall goals are intended to be benchmarks evaluating the overall performance of the MLGW Supplier Diversity program on an annual basis.

For the purpose of calculating annual spending goals with minority, women and local small businesses, only the participation of certified MWBEs located with the relevant market area and LSBs located within Shelby County will be used.

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C. Bidder Responsibilities

1. All bidders, respondents to requests for proposals and/or qualifications on any eligible project for construction, architectural and engineering services, professional services, other services or goods and supplies in which a supplier diversity participation goal has been set must complete and submit the required Supplier Diversity reporting documents as provided in the solicitation document.
2. Bidders not meeting the stated supplier diversity project participation goal must document their good faith efforts and thoroughly complete any provided non-attainment justification documents.
3. Bidders/proposers are required to document their activities in the solicitation and selection of subcontractors to ensure the process is carried out in a nondiscriminatory manner.
4. The apparent low and Best Bid must submit to MLGW within 10 days of receipt of the fully executed contract from MLGW copies of all executed contracts with MWBE/LSB subcontractors listed in the bid. Upon receipt of the fully executed subcontracts, MLGW will issue a Notice to Proceed Letter to the prime contractor. The contractor will report to the SDC any MWBE/LSB that will not be able to perform as provided in the bid documents. The SDC must approve the replacement subcontractor.
5. When requesting payment, prime contractors must complete and submit all invoice processing and supplier diversity participation documents provided by MLGW along with copies of invoices from MWBE/LSB subcontractors included in the contract.
6. Failure of a prime contractor to complete and submit the required Supplier Diversity reporting documents and copies of its subcontractor's invoices may result in a delay or non-payment of the prime contractor's invoices.
7. When requesting annual renewals of contracts, the prime contractor must submit updated certification certificates for all MWBE/LSBs listed in the contract.

D. Supplier Diversity Coordinator Responsibilities

1. Goal Setting
The SDC has the sole responsibility to determine if a supplier diversity project participation goal will be set for a contract or purchase. Goals are set on a case-by-case basis. Project goals may be more or less than the annual supplier diversity participation goal for each business category.

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2. Compliance Review of Bids/Proposals

The SDC performs a compliance review of bids and proposals to determine if the bid/proposal complies with the supplier diversity project participation goal, the Supplier Diversity policy, and the responsiveness to the bid, request for proposal or qualification.

The application of Best Bid may be applied to purchases from certified MWBE/LSB authorized first-tier and second-tier distributors of MLGW specified and approved products if the lowest bid is received from the manufacturer or non-MWBE/LSB first-tier distributor.

The bidders' compliance with the supplier diversity project participation goal will be determined based on the submission of accurate and complete bid documents.

Bids/proposals that fail to recognize and/or accurately, completely address the supplier diversity project participation goal and the requirements outlined in this policy by not submitting the required bid/proposal documentation will be deemed non-responsive and the bid/proposal will not be further considered for award.

Bids/proposals purporting to use business enterprises as conduits or fronts to meet the supplier diversity project participation goals will be deemed non-responsive and not further considered for award.

Submission of falsified documentation by the prime contractor or subcontractor during the bid solicitation process and the duration of the contract or purchase order may be grounds for rejection of the bid/proposal, termination of the contract and debarment.

3. Exceptions to the Local Bidding Preference and Local Bidding Presence

The Local Bidding Preference and Local Bidding Presence in no way prohibits MLGW from making awards based on the application of the MLGW Supplier Diversity Policy.

4. Evaluation of MWBE/LSB Status

If the MWBE/LSB subcontractors submitted with the bid/proposal are not certified and/or the documentation not current at the time of the bid/proposal submission or if the required bid documents are not complete and accurate, the bid/proposal will be considered non-responsive and will not be further considered for contract award unless the required good faith efforts documentation is provided and deemed responsive by the SDC.

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5. Program Reporting

The SDC will report the performance of the supplier diversity program to the MLGW Board of Commissioners on a periodic basis and frequency determined by the Board. The report format will include but not be limited to the dollar amount spent on purchases and contracts and the amount spent with MWBE/LSBs. The report shall contain other pertinent information such as the strategic goals and performance.

VIII. DETERMINATION OF THE AMOUNT OF MWBE/LSB PARTICIPATION

Only the work actually performed by a MWBE/LSB with its own forces will be counted as MWBE/LSB participation. A MWBE/LSB's participation can only be counted if it performs a commercially useful function on the contract.

A. Prime Contractor

The SDC will count the entire dollar amount of the work performed or services provided by the MWBE/LSB's own forces, including the cost of materials and supplies obtained for the work and reasonable fees and commissions charged for the services. Work subcontracted to another MWBE/LSB will not be counted as MWBE/LSB for the MWBE/LSB prime contractor.

B. MWBE/LSB Subcontractor

The SDC will count the entire amount of the work performed or services provided by the MWBE/LSB's own forces, including the cost of materials and supplies obtained for the work, except for materials and supplies purchased or leased from the prime contractor, and reasonable fees and commissions charged for the services. Work subcontracted by a MWBE/LSB to another firm will not be counted as MWBE/LSB participation. However, if the work is subcontracted to another MWBE/LSB, it will be counted as MWBE/LSB participation for the other MWBE/LSB.

C. MWBE/LSB Joint Venture Partner

The SDC will count the work that is performed solely by the MWBE/LSB's own forces or, if the work is not clearly delineated between the MWBE/LSB and the joint venture partner, count the portion of the work equal to the MWBE/LSB's percentage ownership interest in the joint venture.

D. MWBE/LSB Manufacturer

The SDC will count 100% of the costs of materials and supplies obtained from a MWBE/LSB manufacturer that operates or maintains a factory that produces the materials and supplies on the premises. This applies whether the MWBE/LSB is a prime contractor or subcontractor.

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- E. **MWBE/LSB First-Tier and Second-Tier Material Distributors**
MLGW will count 100% of the costs of materials and supplies obtained from a MWBE/LSB first-tier and second-tier material distributor.

IX. BUSINESS GROWTH AND DEVELOPMENT

It is the intent of the MLGW Board of Commissioners to encourage the growth of minority-, women-, and local businesses enterprises (MWBE/LSB) by, not only, providing them with the opportunity to furnish MLGW with goods and services through its Supplier Diversity Program, but also by encouraging of the creation of partnerships between manufacturers, manufacturer's representatives, and first-and second-tier MWBE/LSB distributors.

- A. **Expansion of MWBE/LSB Material Distributorships**
All material purchased to construct and maintain MLGW's electric, gas and water systems must meet specifications set forth by the Planning and Systems Engineering department.
 - 1. MLGW will encourage new manufacturers to partner with MWBE/LSBs to sell MLGW approved products.
 - 2. Manufacturers and distributors of MLGW approved products shall provide pricing to any MWBE/LSB distributor that requests pricing for a MLGW bid.
- B. **Partnering Initiative**
The Partnering Initiative gives MWBE/LSBs the valuable experience many need to enhance their competitiveness. MLGW, prime contractors, manufacturers, distributors, and consultants can participate as Partners. Through the initiative, Partners provide the opportunities needed by MWBE/LSBs to participate in and complete MLGW projects as subcontractors or via a joint venture. The Partner and MWBE/LSB develop a customized plan to increase the growth and improve the competitiveness of the MWBE/LSB. The goal is to better prepare MWBE/LSBs to successfully compete as prime contractors on future contracts.

X. SHELTERED MARKET

The SDC in consultation with the Purchasing and Contract Management department supervisors will designate certain purchases and contracts as sheltered market opportunities, which will only be open for competition by and between LSBs. Sheltered market opportunities shall exclude contracts pertaining to purchased power and gas, loans, grants, financial assistance, legal services, and banking contracts.

- A. **Purchases and Contracts under \$100,000** – Under the sheltered market program, every acquisition of goods or services that has an anticipated dollar value under \$100,000 is automatically reserved exclusively for the certified Supplier Diversity Program participants. The sheltered market procurement requirement will only

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apply when there is a reasonable expectation that offers will be obtained from three or more LSBs that are competitive in terms of market prices, quality and delivery. If only one acceptable offer is received from a responsible LSB, the sheltered market procurement will be withdrawn and the product or service, if still needed, will be solicited on an unrestricted basis.

- B. Purchases or Contracts over \$100,000 – The SDC and the Manager of Procurement and Contracts may agree to designate any purchase or contract over \$100,000 for LSBs except those purchases or contracts for which a sheltered market would conflict with the law. The sheltered market designation shall be made only when there is a reasonable expectation that bids and proposals will be obtained from at least three reasonable LSBs and that the award will be made at a fair market price. If only one acceptable offer is received from a responsible LSB, the sheltered market procurement will be withdrawn and the product or service, if still needed, will be solicited on an unrestricted basis.
- C. Partial Sheltered Market Procurements: A sheltered market procurement of a single acquisition or a class of acquisitions may be total or partial. The SDC and the Manager of Procurement and Contracts may designate a portion of an acquisition as sheltered market procurement
- D. To be eligible to participate in sheltered market procurement opportunities, a LSB must perform at least a given percentage of the contract. This provision limits the amount of subcontracting a LSB may enter into with other firms when performing these types of contracts. The provisions are as follow:
 - 1. Construction: For general and heavy construction contractors, at least 15 percent of the cost of the contract, not including the cost of materials, must be performed by the LSB prime contractor with its own employees. For special trade construction, such as plumbing, electrical, or heating/air conditioning and ventilation work, this requirement is 25%.
 - 2. Manufacturing: At least 50 percent of the cost of manufacturing, not including the cost of materials, must be performed by the LSB prime contractor .
 - 3. Architectural/Engineering, Professional Services and Other Services: At least 50% of the contract cost for personnel must be performed by the LSB prime contractor's own employees.

XI. DEBARMENT

MLGW may debar a prime contractor, manufacturer, subcontractor, supplier, owners or principals (at the time of debarment) and those owners or principals of future companies from

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participating in the bid process and from contract awards for a period of five (5) years from the date of the Notice of Debarment. Debarment is not meant to be punitive, but a procedure to ensure that the Supplier Diversity Program is conducted legally with responsible parties, maintaining the integrity of the MLGW procurement process.

Prime contractors, subcontractors, and/or suppliers found to have committed any of the following offenses shall be issued a Notice of Debarment:

- A. Failure to submit, in writing, documented reasons to substitute or replace certified subcontractors or suppliers listed in the bid documents to the Supplier Diversity Department prior to the start of the work to be performed by the subcontractor or supplier.
- B. Contractors awarded contracts based on the inclusion of MWBE/LSBs as subcontractors to satisfy supplier diversity participation goal and not utilizing the MWBE/LSBs to perform the work.
- C. Submission of falsified documentation concerning Supplier Diversity during the bid process and contract period.
- D. Submission of bids/proposals including the use of business enterprises as conduits, fronts, or participation in fronting activity.
- E. Refusal to provide pricing to MWBE/LSB distributors/resellers.
- F. Contractors, manufacturers, suppliers, distributors, and any other business enterprise with a conviction of or civil judgment for fraud, violation of antitrust laws, embezzlement, theft, forgery, bribery, false statements, or other offenses indicating a lack of business integrity.
- G. Violation of the terms of a Government contract, such as a willful failure to perform in accordance with its terms or a history of failure to perform.
- H. Any other cause of a serious and compelling nature affecting responsibility.

XII. COMPLAINTS AND APPEALS

The MLGW Procurement Complaint and Appeals process outlines specific guidelines for bidders, suppliers, contractors and MWBE/LSBs to submit and resolve procurement disputes/appeals resulting from any phase of the purchasing, contract management or supplier diversity process. The complainant submits a dispute/appeal in writing to the Manager of Procurement and Contracts who acts as the Contractor Appeals Committee Coordinator. Any protest must be filed in writing with the Manager of Procurement and Contracts by 5:00 PM CST within five business days of the notification of the intent to recommend an award or non-award

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incident. Protests or appeals will be handled in compliance with the current process as approved by the MLGW Board of Commissioners.

XIII. ACCOUNTABILITY

Accountability for all purchases or contracts, including but not limited to, those made independently of the Procurement department such as via funding requests, Corporate Procurement Card, petty cash, etc. will be governed by the MLGW Supplier Diversity Policy.

The Purchasing department will be accountable for the purchase of materials, goods, equipment, and services. In addition, the Contract Management department and all departments responsible for preparing bid specifications will be accountable for contracted services.

The named MLGW Representative for contracts will be responsible for ensuring the contract is performed in accordance with all terms and conditions especially the utilization of all MWBE/LSB subcontractors.

All individuals directly or indirectly authorized to purchase or contract on behalf of MLGW shall negotiate an element of their annual performance evaluation which demonstrates support for the accomplishment of the supplier diversity initiative.

While we recognize the unique situation of purchasing electricity and natural gas, we are poised to look for opportunities to purchase from and contract with MWBE/LSB companies in keeping with the MLGW Supplier Diversity Program goals.

XIV. SUPPLIER DIVERSITY ADVISORY COUNCILS

MLGW values the input of its stakeholders and it created two separate and independent councils whose purpose is to provide feedback in the development of policies and initiatives to increase the impact of the MLGW Supplier Diversity Program.

- A. External Supplier Diversity Advisory council is comprised of the Supplier Diversity Coordinator, one representative from the Purchasing and Contract Management departments, a minimum of two each certified minority, women, and local business owners, representatives from local minority and women business advocate organizations, banking and insurance institutions. The council meets quarterly and provides input to MLGW staff on procedural and policy recommendations for consideration that will impact the Division's spend with MWBE/LSBs.
- B. Internal Supplier Diversity Advisory council is comprised of the Supplier Diversity Coordinator and one representative from each MLGW department. The council meets quarterly and provides input to supplier diversity staff on procedural and policy

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recommendations for consideration that will increase the Division's spend with MWBE/LSBs.

XV. OUTREACH

The MLGW Supplier Diversity Program will be communicated to the Memphis community, where appropriate, by the Supplier Diversity Coordinator, Procurement department, and any official representative of MLGW via attendance at trade shows, advertising, workshops, and other internal and external programs.

Selected minority and trade associations will be forwarded copies of bid notices at the time that they are released for advertising.

XVI. AMENDMENTS

Revisions to this policy established by law, ordinance, or resolution of the MLGW Board of Commissioners shall be amended as ordered by the governing body.

END

MLGW Supplier Diversity Policy
Addendum No. 1
Effective: 01/01/2014

The initial overall supplier diversity participation goals by business categories shall be:

- a) Goals for Construction
 - (1) MBE – 15%
 - (2) WBE – 13%
 - (3) LSB – 14%
 - (4) Total – 42%

- b) Goals for Architecture and Engineering:
 - (1) MBE – 10%
 - (2) WBE – 2%
 - (3) LSB – 14%
 - (4) Total – 26%

- c) Goals for Professional Services
 - (1) MBE – 7%
 - (2) WBE - 4%
 - (3) LSB – 14%
 - (4) Total – 25%

- d) Goals for Other Services
 - (1) MBE – 25%
 - (2) WBE - 5%
 - (3) LSB – 14%
 - (4) Total – 44%

- e) Goals for Goods and Supplies
 - (1) MBE – 10%
 - (2) WBE – 5%
 - (3) LSB – 14%
 - (4) Total – 29%