

EXHIBIT A

Small, Minority, and Woman-owned Business (SMWB) Program Policy

1. PURPOSE

It is the policy of San Antonio Water System (SAWS) to provide equal opportunities to all contractors, and to redress the discrimination found in the relevant marketplace and in public procurement against minority and woman-owned business enterprises. SAWS seeks to encourage full participation in all phases of procurement activities and to afford a full and fair opportunity to all vendors to compete for SAWS contracts. The purposes and objectives of these policies are therefore as follows:

- (1) To ensure that SAWS is not a passive participant in a discriminatory marketplace.
- (2) To ensure that the program is narrowly tailored.
- (3) To provide opportunities for SMWBs to broaden and enhance their capacities to do business with SAWS.
- (4) To administer this program in a manner consistent with applicable federal and state law.

2. FINDINGS

The SAWS Board of Trustees hereby makes the following findings:

- (1) SAWS regularly enters into contracts for the procurement of goods and services of many kinds, including for construction.
- (2) In 1989, the U.S. Supreme Court, in the case styled *City of Richmond v. J.A. Croson Co.*, held that a local government may redress race discrimination in its contracting activities if it can demonstrate through relevant evidence a compelling governmental interest sought to be remedied, and that the remedies adopted are narrowly tailored to promote that interest.
- (3) SAWS participated in the 2009 San Antonio Regional Business Disparity Causation Analysis Study (the 2009 Study), conducted by MGT of America, Inc. (MGT). The 2009 disparity study reviewed procurement activity from 2002 through 2006.
- (4) The 2009 Study found evidence of ongoing effects of past discrimination in the local marketplace and in SAWS purchases of goods and services.
- (5) The 2009 Study examined Public Use Micro Sample data from 2002 to 2006 for the San Antonio Metropolitan Statistical Area and determined that there were statistically significant disparities in entry into, and earnings from, self-employment by women and minorities even after controlling for factors such as education, age, wealth and other variables as compared to non-minority males.
- (6) The 2009 Study also conducted an econometric analysis of data in the 2003 National Survey of Small Business Finance and found a statistically significant positive relationship between the probability of loan denial and African American ownership.
- (7) The 2009 Study also found evidence of negative stereotypes against M/WBEs and

- public testimony confirmed exclusionary practices of prime contractors to avoid utilizing M/WBE subcontractors and subconsultants.
- (8) In 2011, SAWS implemented the B2Gnow software application (also called the Subcontractor Payment & Utilization Reporting [S.P.U.R.] System) to capture actual payments made to prime contractors and their subcontractors.
 - (9) In September 2013, SAWS again contracted with MGT of America, Inc., (MGT) to conduct a new M/WBE Program Disparity Study (the “2015 Study”) in order to update the 2009 Study. Since the time that the prior study was approved by the SAWS Board of Trustees, SAWS has collected board-award, contract payment, and vendor registration data at the prime and subcontractor levels. The study reviewed procurement activity from January 1, 2011 through December 31, 2013. The final study was completed in October 2015.
 - (10) The 2015 Study found the following:
 - a) In heavy civil/utility Construction prime contracts, there was disparity for all M/WBE groups except African American-owned firms, for whom there was no Construction prime availability.
 - b) In Engineering prime contracts, there was disparity for all M/WBE groups except Native American-owned firms, for whom there was no Engineering prime availability.
 - c) In other Professional Services prime contracts, there was disparity for Hispanic Americans. There was no prime availability for African American and Asian American-owned firms.
 - d) In Procurement prime contract Awards (Commodity Procurement and General Services contracting), there was disparity for all M/WBE groups although African American-owned disparity was not substantial.
 - e) In heavy civil/utility Construction subcontracting, there was disparity for all MBE groups except Native American-owned firms, for whom there was no heavy civil/utility Construction subcontracting availability.
 - f) In Engineering subconsulting, there was disparity for Hispanic American-owned firms.
 - g) In other Professional Services subconsulting, no disparity was calculated because of the small amount of subconsultant spending.
 - h) In Procurement subcontracting and subconsulting (Commodity Procurement and General Services contracting), no disparity was calculated because of the small amount of subcontractor and subconsultant spending.
 - i) The 2015 Study also found that M/WBE utilization in private sector commercial construction in the San Antonio Metropolitan Statistical Area (MSA) was very low, as measured by data from building permits.
 - j) The 2015 Study also analyzed data from the 2012 American Community Survey U.S. Census Bureau data for the San Antonio area and found statistically significant disparities for entry into self-employment for African Americans, Hispanic Americans and nonminority women. There were statistically significant disparities in earnings from self-employment for Hispanic Americans, Asian Americans, and Nonminority Women.

- k) The 2015 Study also analyzed data in the National Survey of Small Business Finance (NSSBF) and found a statistically significant positive relationship between the probability of loan denial and African American ownership.
 - l) The evidence continues to demonstrate that business MBEs and WBEs have been underutilized in contracting opportunities on SAWS Contracts as a result of private sector discrimination.
- (11) In April 2020, SAWS contracted with Collette Holt & Associates (CH) to conduct a new M/WBE Program Disparity Study (the “2021 Study”) in order to update to the 2015 Study. The study reviewed procurement activity from September 1, 2016, through August 31, 2019. The final study was completed in December 2021.
- (12) The 2021 Study found the following:
- a) In combined prime and subcontracts, there was a disparity between utilization and availability for African American-, Native American- and white woman-owned firms. The disparity ratios were substantively significant.
 - b) In combined prime and subcontracts, utilization of Hispanic American- and Asian American-owned firms was greater than what would be expected based on the estimated availability in SAWS’ geographic market area. The 2021 Study results suggest that SAWS’ high utilization of Hispanic American- and Asian American-owned firms is primarily the result of the operation of the SMWB Program, not the cessation of discrimination outside of contracting affirmative action programs.
 - c) The 2021 Study also analyzed 2015-2019 data from the U.S. Census Bureau American Community Survey for the San Antonio area and found statistically significant disparities in business formation for African Americans, Hispanic Americans, and white women. There were statistically significant disparities in business earnings for African Americans, Hispanic Americans, Asian Americans and white women.
 - d) The 2021 Study also analyzed data from the U.S. Census Bureau’s 2017 Annual Business Survey and found statistically significant disparities in sales of all firms, the sales of employer firms, and the payroll of employer firms for minority-owned businesses and woman-owned firms.
 - e) The 2021 Study also analyzed qualitative answers from business owner interviews and an anecdotal survey, which informed the consultant’s accompanying policy recommendations.
 - f) The evidence continues to demonstrate that minorities and women, and minority- and woman-owned businesses, have experienced disparities in the San Antonio marketplace where M/WBE programs do not typically apply. The 2021 Disparity Study concluded that without the use of goals, SAWS may become a passive participant in the market failure discrimination.
- (13) Although SAWS has made substantial progress in eliminating discrimination in its own contracting practices, discrimination exists in the marketplace. As a result of this discrimination, SAWS has been in the past a passive participant in a system of discrimination and, in the absence of programs to eliminate disparity in utilization,

- would continue to be a passive participant in such a system.
- (14) Despite SAWS' efforts to create equal opportunities in its marketplace, the evidence continues to indicate that, absent the programs authorized under this policy, MBEs and WBEs would be underutilized on SAWS Contracts relative to their availability.
 - (15) Under these circumstances and based on the factual predicate which has been established after careful study and review, SAWS has a compelling governmental interest in remedying the racial and gender discrimination that exists in the market segments in which SAWS does business, and in ensuring that SAWS is not a participant in such discrimination.
 - (16) The program adopted herein is narrowly tailored to remedy that discrimination.

3. ESTABLISHMENT OF PROGRAM

- 3.1 Based on the foregoing findings, it is the policy of SAWS to establish this Small, Minority, and Woman-owned Business (SMWB) Program to remedy the ongoing effects of marketplace discrimination that continue to adversely affect the participation of M/WBE firms in SAWS Contracts.
- 3.2 SAWS seeks to exercise its spending powers in a manner that promotes economic inclusion of all segments of the business population that it serves, regardless of race or gender, so as to maximize the economic vitality and development of the San Antonio region, to expand and diversify SAWS' supplier base in order to maximize competition, and to obtain the best value on behalf of its customers for its purchased goods and services.
- 3.3 Based upon the foregoing findings and pursuant to the foregoing declaration of policy, there hereby is established an updated Small, Minority, and Woman-owned Business Program for SAWS.

4. PROGRAM ELIGIBILITY

- 4.1 Only Business Enterprises that perform a Commercially Useful Function and meet the criteria of Small Business Enterprises (SBE), which do not exceed size limits established by the United States Small Business Administration (i.e. "small" businesses), and are certified as an SBE may participate in the SMWB Program;
- 4.2 All SBEs, MBEs, and WBEs must be certified prior to participating in the Program.
- 4.3 Only Business Enterprises with a Significant Local Business Presence in the Relevant Marketplace may participate in the SMWB Program.
- 4.4 Certifications shall be conducted by the South Central Texas Regional Certification Agency, or another entity designated by SAWS.
- 4.5 If state law requires the owner(s) to have a particular license or other credential to own and/or control a certain type of Firm, then the owner(s) must possess the required license or credential. If state law does not require that the owner possess the license or credential, the fact that the owner(s) lacks such license or credential is

only a factor in the certification decision.

5. DEFINITIONS

Awarded. The final selection by the SAWS Board of Trustees to a Respondent for a specified Prime Contract. Contract awards are made by SAWS to Prime Contractors or Prime Consultants, and by Prime Contractors or Prime Consultants to Subcontractors or Subconsultants, usually pursuant to a solicitation process.

Best Value Contracting. A purchasing solicitation process which may evaluate factors other than price. Evaluation criteria for selection may include a Respondent's previous experience, location, MWBE or SBE goal compliance, and quality of product or services procured, and other factors identified in the applicable state law.

Bid. A complete, properly signed response to a competitive bidding Solicitation issued by SAWS, submitted by the required time and date on the prescribed forms required by SAWS, to perform or provide labor, materials, equipment, supplies or services to or for the SAWS for a stated price.

Bidder. A person, Firm, or Business Enterprise that submits a Bid in response to a Solicitation (Invitation for Bid, Best Value Bid, Request for Competitive Sealed Proposal, Construction Manager at Risk, Design-Build). A Bidder may be represented by an agent if such agent provides evidence demonstrating the agent's authority.

Business Enterprise or Firm. A corporation, partnership, sole proprietorship, Joint Venture, joint stock company, professional association, or any other legal entity, that is properly licensed and/or otherwise authorized to do business in the State of Texas.

Certification. The process by which the South Central Texas Regional Certification Agency, or another designated entity determines a firm to be a bona-fide small, minority, or woman-owned business enterprise that is located in the Relevant Marketplace. Any firm may apply for multiple Certifications that cover each category (e.g., SBE, MBE, or WBE) for which it is able to satisfy eligibility standards.

Commercially Useful Function. An SMWB firm 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, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the SMWB firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an SMWB firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted (or subconsulted), normal industry practices, whether the amount the SMWB firm is to be paid under the contract is commensurate with the work it is actually performing, the SMWB credit claimed for its performance of the work, and other relevant factors. Specifically, an SMWB firm does not perform a Commercially Useful

Function if its role is limited to that of an extra participant in a Contract through which funds are passed in order to obtain the appearance of meaningful and useful SMWB participation, when in similar transactions in which SMWB firms do not participate, there is no such role performed.

Consultant. A person or Business Enterprise that submits a Proposal or statement of qualifications to provide Engineering, Professional, or General services to SAWS by Contract, and any person or Business Enterprise who is Awarded a Contract to provide Engineering, Professional or General services to SAWS.

Contract. The entire and integrated binding legal agreement between SAWS and a Contractor or Consultant to provide or procure labor, materials, equipment, supplies or services to, for or on behalf of SAWS. Except as otherwise specifically defined in this section, an SMWB-available Contract does not include:

- a) sales transactions where SAWS sells its personal or real property;
- b) a loan transaction where SAWS is acting as a debtor or a creditor;
- c) lease and franchise agreements;
- d) agreements to use SAWS real property;
- e) gifts of materials, equipment, supplies or services to SAWS;
- f) interlocal or intergovernmental agreements between or among political subdivisions or quasi-governmental organizations;
- g) procurements of commodities or services that are sole-source by virtue of intellectual property rights or other exclusive rights and for which there are no other subcontracting opportunities; or
- h) Purchases or leases water rights.

Contractor. A person or Business Enterprise that submits a response to an Invitation for Bid, a Best Value Bid, a Request for Competitive Sealed Proposal, Construction Manager at Risk, or Design-Build solicitation with the intention of competing for the Award of a Contract to provide Construction services, Commodities, or General Services to SAWS by Contract, and any person or Business Enterprise who is Awarded a Contract to provide Construction services, Commodities, or General Services to SAWS.

Control. The authority of a person or business owner to sign responses to solicitations and Contracts, make price negotiation decisions, sell or liquidate the business, and have the primary authority to direct the day-to-day management and operation of a business enterprise without interference from others.

Formal Solicitation. An invitation for bids, request for proposals, request for competitive sealed proposals, request for qualifications or other solicitation documents issued by a SAWS department for a Contract that requires Board approval, in accordance with the procurement rules adopted by SAWS through an official Policy or Standard Operating Procedure under the authority of Board of Trustees or pursuant to statutory requirements.

Goals. The targeted participation percentage of M/WBEs established for a particular Solicitation or Contract. Goals set for all Invitation for Bid (low bid) contracts shall be

aspirational. Discretionary contracts shall have mandatory goals, consistent with the SMWB policy.

Good Faith Efforts. Documentation of the Respondent's intent to comply with M/WBE Program Goals and procedures including, but not limited to, the efforts set forth in Section 10.

Good Faith Effort Plan. The plan submitted with the Submittal detailing the Respondent's plan to achieve the Goals or documenting its Good Faith Efforts to meet the Goals for all elements of the Solicitation. A Good Faith Effort Plan must be submitted with a Submittal for any SAWS project for which Goals have been established.

Marketplace. The geographic market defined as the Relevant Marketplace.

Minority Business Enterprise (MBE). A business structure that is Certified as being 51% owned, operated, and controlled by a male or female ethnic minority group member(s) who is legally residing in or a citizen of the United States. The ethnic minority group members recognized by SAWS are African Americans, Hispanic Americans, Asian Americans, and Native Americans.

Minority Group Members. African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as defined below:

African Americans: Persons having origins in any of the black racial groups of Africa.

Hispanic Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central or South American origin.

Asian Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including India, Pakistan, Bangladesh, Sri Lanka, Maldives Islands, Bhutan, or Nepal.

Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

Overall Annual Aspirational Goal. A non-mandatory annual aspirational percentage goal for M/WBE prime and subcontractor or subconsultant participation in SAWS Contracts is set to 20 percent for the SMWB Program. This goal is based upon the weighted availability of minority- and woman-owned business enterprises provided in the 2021 Disparity Study. This Overall Annual Aspirational Goal will be established approximately every five years or so by a duly-authorized disparity study and based upon the availability statistics provided therein.

Payment. Dollars actually paid to Prime Contractors or Prime Consultants and/or

Subcontractors or Subconsultants for SAWS contracted goods and/or services.

Prime Contractor. The Respondent to whom a purchase order or Contract is issued by SAWS for purposes of providing Commodities, General Services, or Construction services to SAWS.

Prime Consultant. The Respondent to whom a purchase order or Contract is issued by SAWS for purposes of providing Engineering services, General Services, or Professional Services to SAWS.

Proposal. A complete, properly signed response to a Solicitation by the required time and date that, if accepted and awarded, would bind the Respondent to perform the resultant Contract.

Relevant Marketplace. The geographic market area affecting the M/WBE Program as determined for purposes of collecting data for the prior and any future Disparity Study, and for determining eligibility for participation under various programs established by this Policy. The Relevant Marketplace consists of the following Texas counties: Bexar, Comal, Guadalupe, Hays, Kendall, Travis, and Williamson.

Respondent. A contractor, consultant, distributor, manufacturer, or supplier submitting a bid, a best value bid, a Request for Competitive Sealed Proposals submittal, a Construction Manager at Risk, or Design-Build submittal, a statement of qualifications, or a proposal in response to a solicitation issued by SAWS.

Responsible. A firm that is capable in all respects to fully perform contract requirements, and has the integrity and reliability which will assure good faith performance of contract specifications.

Responsive. A firm's submittal at the required time and date (Bid or Proposal) that conforms in all material respects to a solicitation (Invitation for Bid, Best Value Bid, Request for Qualifications, Request for Proposal, or Request for Competitive Sealed Proposal, Construction Manager at Risk, Design-Build) and shall include compliance with SMWB Program requirements.

SMWB Program Manager. The individual responsible for oversight, tracking, monitoring, administration, implementation, and reporting of the SAWS SMWB Program. The SMWB Program Manager is also responsible for enforcement of Contractor and Consultant compliance with subcontractor and subconsultant participation requirements, and ensuring that overall program objectives are met.

Significant Local Business Presence. A Firm has a Significant Local Business Presence if it has an established place of business in the Relevant Marketplace, at which one or more of its employees is regularly based. Such place of business must have a substantial role in the SBEs', MBEs', and WBEs' performance of a Commercially Useful Function. A location utilized solely as a post office box, mail drop, or telephone message center or any

combination thereof, with no other substantial work function, shall not be construed to constitute a Significant Local Business Presence.

Small Business Enterprise (SBE) Certification. A business structure that is formed with the purpose of making a profit, which is independently owned and operated and which meets the United States Small Business Administration (SBA) size standard for a small business.

Small Business Enterprise (SBE) aspirational goal. The SWMB Program manager may set a specific percentage SBE goal on contracts with subcontracting opportunities, and for supplier contracts, and shall have the authority to establish such SBE goal on a contract-by-contract basis based upon the type of contract, the type of subcontracting work that will be required, and the availability of SBEs to perform the work for that specific contract.

Small, Minority, and Woman-owned Business Program Office (SMWB Program Office). The office within SAWS that is primarily responsible for general oversight and administration of the SMWB Program.

Solicitation. A Solicitation means, as the case may be, an Invitation for Bids, a Request for Proposals, a Request for Qualifications, a Request for Competitive Sealed Proposals Construction Manager at Risk, Design Build, Best Value Bid, or such other request as defined by SAWS.

Subconsultant. A person, Firm, or Business Enterprise providing Engineering Services, Professional Services, or General Services to a Prime Consultant if such professional or nonprofessional services are procured or used in fulfillment of the Prime Consultant's obligations arising from a Contract and including every level of subconsulting required to fulfill a Contract with SAWS.

Subcontractor. A person, Firm, or Business Enterprise that is providing Construction services, Commodities, or General Services to a Prime Contractor in furtherance of the Prime Contractor performance, including every level of subcontracting required to fulfill a Contract or purchase order with SAWS.

Submittal. A response to an Invitation for Bids, a Request for Proposals, a Request for Qualifications, a Request for Competitive Sealed Proposals, a Construction Manager at Risk solicitation, Design Build solicitation, Best Value Bid, or such other request as defined by SAWS, that has been submitted to SAWS at the required time and date for the purpose of competing for the Award of a Contract.

Utilization Documentation. A Prime Contractor or Prime Consultant will be required to report the actual payments to all Subcontractors and Subconsultants by using the Subcontractor Payment and Utilization Reporting (S.P.U.R.) System, in the time intervals and format prescribed by SAWS. This information will be utilized for subcontractor and subconsultant payment tracking purposes, regardless of a subcontractor's or subconsultant's SMWB certification status. Any unjustified failure to comply with the committed SMWB levels may be considered breach of contract. Additions, substitutions, deletions, or a

modification of the utilization amounts of Subcontractors/Subconsultants requires a written request to be submitted to the SMWB Program Manager, and approval by the SMWB Program Manager and the Director of Contractor or the Director of Purchasing before any changes can be made.

Woman-owned Business Enterprises (WBEs). A business structure that is certified as being 51% owned, operated, and controlled by a woman or women who are legally residing in or are citizens of the United States.

6. OVERALL ANNUAL ASPIRATIONAL GOALS

6.1 A non-mandatory annual aspirational percentage goal for overall M/WBE prime and subcontractor or subconsultant participation shall be set for SAWS Contracts. This annual aspirational goal is to be based upon the M/WBE availability and utilization data collected and analyzed approximately every five years or so as part of a duly-authorized disparity study. The annual aspirational goal is intended to serve as a benchmark against which to measure the overall effectiveness of the SMWB Program Policy, and to gauge the need for future adjustments to the program, including the various remedies applied under the program.

7. ESTABLISHMENT OF MBE AND WBE (M/WBE) PARTICIPATION GOALS FOR INDIVIDUAL CONTRACTS

7.1 For ease of SMWB Program administration, individual Solicitations may contain a contract-specific M/WBE Goal, if applicable, expressed as a round number using mathematical rounding principles.

7.2 Based on the size of the Contract, the type of work of the Contract, and the availability of each group of M/WBEs to perform elements of the work of the Contract, SAWS may set a contract-specific M/WBE Goal.

7.3 SAWS recognizes that the availability of M/WBEs is not uniformly present across all areas of procurement. Therefore, where appropriate, the SMWB Program Manager may establish project participation Goals for individual Contracts, based on any or all of the following guidelines:

- (1) normal industry practice;
- (2) the availability of at least three certified MBEs or WBEs to perform the functions of those individual Contracts;
- (3) SAWS utilization of MBEs and WBEs to-date, so as to achieve the Annual Aspirational Goals; and
- (4) any additional relevant factors.

7.4 Goals set for Invitation for Bid (low bid) contracts shall be aspirational. Goals set for Construction, Professional Services, and Purchasing discretionary solicitations shall be mandatory.

8. PAYMENT REPORTING

- 8.1 Contractors and Consultants shall be required to electronically submit Subcontractor or Subconsultant utilization and payment information by reporting payment data into the Subcontractor Payment and Utilization Reporting (S.P.U.R.) System, beginning with the first SAWS payment for services under the Contract, and with every payment thereafter (for the duration of the Contract). Utilization should be reported and collected at six-digit NAICS code level into the S.P.U.R. System.

9. COUNTING PARTICIPATION OF MBES AND WBES

- 9.1 When an M/WBE participates in a Contract as a Contractor, a Consultant, a Vendor, or a Subcontractor, Supplier, or Subconsultant, count the value of the work actually performed by the M/WBE toward the M/WBE Goals.
- 9.2 The entire amount of that portion of a Contract that is performed by the MBE's/WBE's own forces shall be counted, including the cost of supplies and materials obtained by the M/WBE for the work of the Contract, and supplies purchased or equipment leased by the M/WBE (except supplies and equipment the MBE/WBE Subcontractor purchases or leases from the Prime Contractor or its Affiliate).
- 9.3 Notwithstanding clause (9.1) above, on a single Contract, an MBE that is also a WBE may only be counted once (i.e., toward the M/WBE Goal).
- 9.4 The entire amount of fees or commissions charged by a M/WBE Firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a Contract will count toward M/WBE Goals, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services shall be counted.
- 9.5 When an M/WBE subcontracts part of the work of its Contract to another Firm, the value of the subcontracted work may be counted toward Goals only if the M/WBE Subcontractor is itself a M/WBE. Work that an M/WBE subcontracts to a non-MBE/non-WBE Firm does not count toward M/WBE Goals.
- 9.6 If a Subcontractor contracts part of its work to an MBE/WBE Firm, the value of that work may be counted toward M/WBE Goals. Work that an M/WBE Subcontractor contracts to another M/WBE Firm shall not be counted twice towards the Goal.
- 9.7 When an M/WBE performs as a participant in a Joint Venture, only the portion of the total dollar value of the Contract equal to the distinct, clearly defined portion of the work of the Contract that the M/WBE performs with its own forces and for which it is at risk shall be counted towards M/WBE Goals.

- 9.8 Only expenditures to an M/WBE Contractor or Consultant or a Subcontractor or Subconsultant that is performing a Commercially Useful Function shall be counted.
- 9.9 When an M/WBE is presumed not to be performing a Commercially Useful Function as provided in this section, the M/WBE may present evidence to rebut this presumption. The SMWB Program Manager may determine that the Firm is performing a Commercially Useful Function given the type of work involved and normal industry practices.
- 9.10 Expenditures with M/WBEs for materials or supplies shall be counted toward MBE/WBE Goals as follows:
- (1) If the materials or supplies are obtained from an M/WBE manufacturer or distributor, 100 percent of the cost of the materials or supplies toward MBE/WBE Goals shall be counted.
 - (2) With respect to materials or supplies purchased from a M/WBE that is neither a manufacturer nor a distributor, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward M/WBE Goals only if the payment of such fees are a customary industry practice and such fees are reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward M/WBE Goals, however.
 - (3) If a Firm ceases to be a certified M/WBE during a Contract, the dollar value of work performed under a Contract with that Firm after it has ceased to be certified shall not be counted.
 - (4) In determining achievement of M/WBE Goals, the participation of an M/WBE Subcontractor shall not be counted until the amount being counted toward the Goal has begun to be paid to the M/WBE.

10. PROGRAM REQUIREMENTS AND GOOD FAITH EFFORTS

- 10.1 In all Solicitations Awarded, for which a Goal has been established for a Contract, SAWS shall indicate its Goal for the use of M/WBEs in the solicitation documents. Respondents must make a Good Faith Effort to meet the stated Goal.
- 10.2 All Solicitation and Contract documents for which a Goal has been established shall contain:
- (1) the requirements related to achieving the Goals;
 - (2) if Goals are not achieved, the requirement of documentation of the Respondent's Good Faith Efforts of outreach toward M/WBEs for the purpose of achieving the Goals.
- 10.3 Achievement of Goals or, in the alternative, the documentation of Good Faith Efforts, applies to every Contract for which Goals are established.

- 10.4 M/WBE lists that may be provided by SAWS to a Respondent shall establish the minimum universe from which a Respondent may solicit Subcontractors to meet the Goals.
- 10.5 The Respondent's Good Faith Effort Plan shall be due, in most instances, at the time set out in the Solicitation documents.
- 10.6 Any agreement between a Respondent and an M/WBE Subcontractor or Subconsultant, in which the Respondent requires that the M/WBE Subcontractor or Subconsultant not provide quotations to other Respondents, is prohibited.
- 10.7 M/WBE Subcontractors and Subconsultants must be competitive with non-MBE/non-WBE Subcontractors and Subconsultants on price, quality, and delivery. M/WBE Subcontractors and Subconsultants shall respond to relevant requests for quotations.
- 10.8 The SMWB Program Manager will determine whether the Respondent has made Good Faith Efforts. In making this determination, the SMWB Program Manager will consider, at a minimum, the Respondent's efforts to do the following:
 - (1) Soliciting M/WBEs within the Relevant Marketplace who have the capability to perform the Contract work. The Respondent must solicit this interest within sufficient time to allow the M/WBEs to respond to the Solicitation. The Respondent must take appropriate steps to follow up initial Solicitations with interested M/WBEs. The Respondent must state a specific and verifiable reason for not contacting each certified Firm with a Significant Local Business Presence.
 - (2) Providing interested M/WBEs with adequate information about the plans, specifications, and requirements of the Contract, including addenda, in a timely manner to assist them in responding to a Solicitation.
 - (3) Negotiating in good faith with interested M/WBEs that have submitted Bids or Proposals to the Respondent.
- 10.9 That there may be some additional costs involved in soliciting and using MBEs and WBEs is not a sufficient reason for a Respondent's failure to meet the Goals, as long as such costs are reasonable.
- 10.10 M/WBEs may not be rejected without sound reasons based on a thorough investigation of their capabilities and qualifications. The M/WBEs standing within its industry, membership (or presumed membership) in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for rejecting or not soliciting M/WBEs to meet the Goals.
- 10.11 Respondents are not required to accept higher quotes in order to meet the Goals.

- 10.12 Effectively using the services of M/WBE-oriented community organizations; M/WBE-oriented Contractors groups; local, state, and federal M/WBE business assistance offices; and other organizations to provide assistance in solicitation and utilization of M/WBEs.
- 10.13 The performance of other Respondents in meeting the Contract Goals. For example, when other Respondents meet the Goal, it may be reasonably questioned whether, with additional reasonable efforts, the apparent successful Respondent could have met the Goal. Similarly, if the apparent successful Respondent fails to meet the Goal, but meets or exceeds the average MBE/WBE participation obtained by other Respondents, this may be evidence that the apparent successful Respondent made Good Faith Efforts.
- 10.14 The SMWB Program Manager shall review the Good Faith Effort Plan prior to award, including the scope of work, within a reasonable time so as not to unduly delay award of the Contract.
- 10.15 If the SMWB Program Manager determines that the Goal has been achieved or the Respondent showed Good Faith Efforts, then the SMWB Program Manager shall recommend award of the Contract.
- 10.16 In the event the applicable Goal has not been achieved, then the SMWB Program Manager shall evaluate the Respondent's Good Faith Efforts to achieve the Goal as documented in the Good Faith Effort Plan. The SMWB Program Manager may request clarification in writing of items listed in the Good Faith Effort Plan.
- 10.17 If the SMWB Program Manager finds that a Respondent did not submit a Good Faith Effort Plan document, and Good Faith Effort outreach was not conducted, the SMWB Program Manager shall communicate the finding to the SAWS Director of Contracting or Director of Purchasing. The SMWB Program Manager may recommend that the Bid/ Proposal be rejected as non-responsive based on failure to comply with this Policy.
- 10.18 The SAWS Director of Contracting or Director of Purchasing may reject the Submittal as not being in compliance with this Policy, or may advise the SMWB Manager of additional considerations which may form the basis for accepting the Submittal as being in the best overall interest of the Policy and SAWS.
- 10.19 The rejection of Submittals in conformance with this section does not affect the ability of the SAWS Contracting Department or SAWS Purchasing Department to continue to evaluate and consider the remaining Submittals that achieve the Goals or demonstrate Good Faith Efforts and to develop a recommendation to SAWS for award of the Contract.

11. EVALUATION OF CONSTRUCTION CONTRACTS PROCURED THROUGH ALTERNATIVE DELIVERY METHODS

- 11.1 For any construction contract that is let pursuant to construction alternative delivery methods (e.g., Requests for Competitive Sealed Proposals, Design- Build, and Construction Manager At Risk), the SMWB Program Manager may reserve up to 10% of the total points awarded in weighted selection criteria to be awarded in connection with a Respondents' community outreach efforts, including the evaluation of the Respondents' proposed team. In determining whether to reserve up to the 10% of the total points for an evaluation of the Respondents' community outreach efforts, the SMWB Program Manager shall consider whether there are at least three M/WBEs that are available and capable to perform as Prime Contractors or Subcontractors for the contract.

12. POST-AWARD CONTRACT ADMINISTRATION AND COMPLIANCE PROCEDURES

- 12.1 Upon award of a Contract by SAWS that includes Goals that are met, the Goals become covenants of performance by the Contractor in favor of SAWS.
- 12.2 Prior to Contract expiration or closeout, the SMWB Program Manager shall evaluate the Contractor's fulfillment of the contracted Goal, taking into account all approved substitutions, terminations and changes to the Contract's scope of work. Should the SMWB Program Manager find the Contractor has not fulfilled the contracted Goals, the SMWB Program Manager shall provide the reasons for such conclusion and shall state in writing to the Prime Consultant or Prime Contractor, and request justification for why the Goal was not met, and whether there will be any rectification for the M/WBE Subcontractors or Subconsultants.
- 12.3 The Contractor cannot substitute Subcontractors listed in the Good Faith Effort Plan without the prior written approval of the SMWB Program Manager. Unauthorized changes or substitutions shall be a violation of this Policy and may constitute grounds for termination of the executed Contract for breach, and/or subject the Prime Contractor or Prime Consultant to penalties or other sanctions.
- 12.4 All requests for changes or substitutions of the Subcontractors or Suppliers listed in the Good Faith Effort Plan shall be made to the SMWB Program Manager in writing and shall clearly and fully set forth the basis for the request. A Contractor shall not substitute a Subcontractor or perform the work designated for a Subcontractor in the Good Faith Effort Plan with its own forces unless and until the SMWB Program Manager approves such substitution in writing. A Contractor shall not allow a substituted Subcontractor to begin work until both the SMWB Program Manager and SAWS' Contracting Director or Purchasing Director have approved the substitution.
- 12.5 Substitutions of the Subcontractor shall be permitted only on the following basis:
- (1) unavailability after receipt of reasonable notice to proceed;
 - (2) failure of performance;
 - (3) financial incapacity;

- (4) refusal by the Subcontractor to honor the Bid or Proposal price;
- (5) mistake of fact or law about the elements of the scope of work of a Solicitation where a reasonable price cannot be agreed;
- (6) failure of the Subcontractor to meet insurance, licensing or bonding requirements; or
- (7) the Subcontractor's withdrawal of its Bid or Proposal.

13. PROGRAM RESPONSIBILITIES

- 13.1 **Administration:** The SMWB Program Office has overall responsibility to interpret, administer, and enforce SMWB Program policies, standards, definitions, criteria, and procedures to govern the implementation, interpretation, and application of this program in a manner to achieve its stated objectives and purposes.
- 13.2 **Reporting:** The SMWB Program Manager shall be responsible for reporting to the SAWS Board of Trustees on at least an annual basis regarding progress toward satisfying the SMWB Program policy objectives, and to make recommendations for any necessary adjustments or amendments to the policy and administration of the SMWB Program to fully effectuate its purposes. To this end, the SMWB Program Manager shall also have oversight responsibility to ensure that appropriate data tracking systems are maintained by SAWS to enable accurate reporting on the relative availability and utilization of SAWS Prime Contractors, Prime Consultants, Subcontractors, and Subconsultants by race and gender of business ownership, and by industry.
- 13.3 **Certification:** The SMWB Program Manager shall be appointed by the SAWS Director of Contracting to serve as the official SAWS representative on the South Central Texas Regional Certification Agency (SCTRCA) Board, and shall represent SAWS' interests in SMWB certification standards and program eligibility criteria so as to maintain the integrity of this Policy without unduly burdening certification applicants. An alternate employee representative shall also be appointed, who will represent SAWS on the South Central Texas Regional Certification Agency (SCTRCA) Board in the SMWB Program Manager's absence.
- 13.4 **Contract Administration:**
 - (1) The Contracting and Purchasing Departments shall have primary responsibility for ensuring that contract specifications provided by the SMWB Program Manager relating to the SMWB Program requirements are included in all appropriate solicitation documents. Compliance with such SMWB Program bid specifications shall be material in determining whether a bid or proposal is responsive.
 - (2) The Contracting and Purchasing Departments are also responsible for ensuring that such specified SMWB Program requirements are appropriately incorporated and included in all contract documents.
 - (3) The Contracting and Purchasing Departments shall be primarily responsible

for informing the SMWB Program Manager of change orders and contract amendments, including proposed changes to Subcontractors' or Subconsultants' participation on a contract.

- 13.5 **Complaints:** SMWB Program abuse, suspected fraud, or any violation of this program's rules and standards may be referred to the SMWB Program Manager for investigation, review, and appropriate sanctions or resolution.

14. RACE AND GENDER NEUTRAL MEASURES TO ENSURE EQUAL OPPORTUNITY FOR ALL CONTRACTORS

14.1 SAWS shall develop and use measures to facilitate the participation of all Business Enterprises in SAWS contracting activities with respect to Construction, Professional Services, and Purchasing. These measures shall include, but are not limited to:

- (1) Arranging Solicitation times for the presentations of Requests for Bids, Requests for Competitive Sealed Proposals, Design-Build, Construction Manager at Risk, Requests for Information, Requests for Proposals, Best Value Bids, and Cooperative Contracts, so as to facilitate the participation of interested Contractors and Subcontractors;
- (2) Segmenting Contracts so as to facilitate the participation of Business Enterprises;
- (3) Providing timely information programs on contracting procedures, Solicitation preparation, and specific contracting opportunities;
- (4) Developing an annual procurement forecast webpage providing information on upcoming bid opportunities with anticipated contract type, advertisement date and subcontracting opportunities;
- (5) Holding pre-Bid and pre-Proposal conferences, where appropriate, to explain the projects and to encourage other Contractors to use all available Business Enterprises as Subcontractors;
- (6) Adopting prompt payment procedures, including requiring by Contract that Prime Contractors pay Subcontractors (and Consultants pay Subconsultants, as the case may be) within 10 calendar days of receipt of payment from SAWS;
- (7) Collecting information for expenditures to Subcontractors (or Subconsultants) utilized by Prime Contractors (or Consultants) on SAWS Contracts;
- (8) Maintaining a continuous process for information flow between Contractors or Consultants and SAWS, including information of firms that were awarded a contract and contract amount;
- (9) Developing training videos explaining certification criteria and referrals to certifying agencies, contract goal settings, good faith efforts criteria and documentation, other bid submission requirements, compliance monitoring, substitution requests and how to contact the fraud hotline.
- (10) Operating an outreach program to identify SMWBs interested in competing for SAWS contracts;
- (11) Reviewing bonding and insurance requirements to eliminate unnecessary

- barriers to contracting with SAWS; and
- (12) Referring complaints of discrimination to the appropriate state or federal agency for investigation and resolution; or taking other action as appropriate.

15. ESTABLISHMENT OF SBE PARTICIPATION GOALS FOR INDIVIDUAL CONTRACTS

- 15.1 The SMWB Program Manager will set a specific percentage SBE goal on a contract-by-contract basis for prime contracts, for contracts with subcontracting opportunities, and for supplier contracts, and shall have the authority to establish such SBE goal on a contract-by-contract basis based upon the type of contract, the type of subcontracting work that will be required, and the availability of SBEs to perform the work for that specific contract.

16. COUNTING PARTICIPATION OF SBEs

- 16.1 When an SBE participates in a Contract as a Contractor, a Consultant, or a Subcontractor, Supplier, or Subconsultant, count the value of the labor, services, or product actually provided or performed by the SBE toward the SBE Goal.
- 16.2 The entire amount of that portion of a Contract that is performed by the SBE's own forces shall be counted, including the cost of supplies and materials obtained by the SBE for the work of the Contract, and supplies purchased or equipment leased by the SBE (except supplies and equipment the SBE Subcontractor purchases or leases from the Prime Contractor or its Affiliate).
- 16.3 Notwithstanding clause (1) above, on a single Contract, an SBE may only be counted once (i.e., toward the SBE Goal).
- 16.4 The entire amount of fees or commissions charged by an SBE Firm for providing a bona fide service, such as professional, technical, Consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a Contract will count toward the SBE Goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services shall be counted.
- 16.5 When an SBE subcontracts or subconsults part of the work of its Contract to another Firm, the value of the subcontracted or subconsulted work may be counted toward Goals only if the SBE Subcontractor or Subconsultant is itself an SBE. Work that an SBE subcontracts or subconsults to a non-SBE Firm, the value of the work performed by the non-SBE does not count toward the SBE Goal.
- 16.6 If a Subcontractor contracts part of its work to an SBE Firm, the value of that work may be counted toward the SBE Goal. Work that an SBE Subcontractor contracts to another SBE Firm shall not be counted twice towards the Goal.
- 16.7 When an SBE performs as a participant in a Joint Venture, only the portion of the total dollar value of the Contract equal to the distinct, clearly defined portion of the

work of the Contract that the SBE performs with its own forces and for which it is at risk shall be counted towards SBE Goals.

- 16.8 Only expenditures to an SBE Contractor, Consultant or Subcontractor or Subconsultant that is performing a Commercially Useful Function shall be counted.
- 16.9 When an SBE is presumed not to be performing a Commercially Useful Function as provided in this section, the SBE may present evidence to rebut this presumption. The SMWB Program Manager may determine that the Firm is performing a Commercially Useful Function given the type of work involved and normal industry practices.
- 16.10 Expenditures with SBEs for materials or supplies shall be counted toward the SBE Goal as follows:
 - (1) If the materials or supplies are obtained from an SBE Manufacturer or Regular Dealer, 100 percent of the cost of the materials or supplies toward the SBE Goal shall be counted.
 - (2) With respect to materials or supplies purchased from an SBE that is neither a manufacturer nor a distributor, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward the SBE Goal only if the payment of such fees are a customary industry practice and such fees are reasonable and not excessive as compared with fees customarily allowed for similar services.
 - (3) If a Firm ceases to be a certified SBE during a Contract, the dollar value of work performed under a Contract with that Firm after it has ceased to be certified as an SBE shall not be counted.
 - (4) In determining achievement of SBE Goals, the participation of an SBE Subcontractor shall not be counted until the amount being counted toward the Goal has begun to be paid to the SBE.

17. RACE AND GENDER NEUTRAL (SBE) PROGRAM REQUIREMENTS AND GOOD FAITH EFFORTS

- 17.1 In all Solicitations Awarded, for which a Goal has been established for Contracts, SAWS shall indicate its Goal for the use of SBEs in the Solicitation documents. Respondents must meet the stated Goals or, in the alternative, demonstrate a documented Good Faith Effort to meet the stated Goals.
- 17.2 All Solicitation and Contract documents for which a Goal has been established shall contain:
 - (1) The requirements related to achieving the Goals;
- 17.3 The Respondent's Good Faith Effort Plan shall be due, in most instances, at the time set out in the Solicitation documents. Any agreement between a Respondent and an SBE subcontractor or subconsultant, in which the Respondent requires that the SBE

not provide subcontracting or subconsulting quotations to other Respondents, is prohibited.

- 17.4 SBE Subcontractors must be competitive with non-SBE Subcontractors on price, quality, and delivery. SBEs shall respond to relevant requests for quotations.
- 17.5 The SMWB Program Manager will determine whether the Respondent has made Good Faith Efforts. In making this determination, the SMWB Program Manager will consider, at a minimum, the Respondent's efforts to do the following:
 - (1) Soliciting SBEs within the Relevant Marketplace who have the capability to perform the Contract work. The Respondent must solicit this interest within sufficient time to allow the SBEs to respond to the Solicitation. The Respondent must take appropriate steps to follow up initial Solicitations with interested SBEs. The Respondent must state a specific and verifiable reason for not contacting each certified Firm with a Significant Local Business Presence.
 - (2) Providing interested SBEs with adequate information about the plans, specifications, and requirements of the Contract, including addenda, in a timely manner to assist them in responding to a Solicitation.
 - (3) Negotiating in good faith with interested SBEs that have submitted Bids or Proposals to the Respondent.
- 17.6 That there may be some additional costs involved in soliciting and using SBEs is not a sufficient reason for a Respondent's failure to meet the Goals, as long as such costs are reasonable.
- 17.7 SBEs may not be rejected without sound reasons based on a thorough investigation of their capabilities. The SBE's standing within its industry, membership (or presumed membership) in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for rejecting or not soliciting SBEs to meet the Goals.
- 17.8 Respondents are not required to accept higher quotes in order to meet the Goals.
- 17.9 The performance of other Respondents in meeting the Contract Goal. For example, when other Respondents meet the Goal, it may be reasonably questioned whether, with additional reasonable efforts, the apparent successful Respondent could have met the Goal. Similarly, if the apparent successful Respondent fails to meet the Goal, but meets or exceeds the average SBE participation obtained by other Respondents, this may be evidence that the apparent successful Respondent made Good Faith Efforts.
- 17.10 The SMWB Program Manager shall review the Good Faith Effort Plan prior to award, including the scope of work, within a reasonable time so as not to unduly delay award of the Contract.

- 17.11 If the SMWB Program Manager determines that the Goal has been achieved or the Respondent showed Good Faith, then the SMWB Program Manager shall recommend award of the Contract.
- 17.12 In the event the applicable Goal has not been achieved, then the SMWB Program Manager shall evaluate the Respondent's Good Faith Efforts to achieve the Goal. The SMWB Program Manager may request clarification in writing of items listed in the Good Faith Effort Plan.
- 17.13 If the SMWB Program Manager finds that a Respondent did not make sufficient Good Faith Efforts, the SMWB Program Manager shall communicate the finding to the SAWS Director of Contracting or Director of Purchasing. The SMWB Program Manager may recommend that the Respondent be rejected as non-responsive based on failure to comply with this Policy.
- 17.14 The SAWS Director of Contracting or Director of Purchasing may reject the Submittal as not in compliance with this Policy, or may advise the SMWB Manager of additional considerations which may form the basis for accepting the Submittal as being in the best overall interest of the Policy and SAWS.
- 17.15 The rejection of Submittals in conformance with this section does not affect the ability of the Contract Awarding Authority to continue to evaluate and consider the remaining Submittals that achieve the Goal or demonstrate Good Faith Efforts and to develop a recommendation to SAWS for award of the Contract.

18. VIOLATIONS AND SANCTIONS

- 18.1 It is a violation of this Policy to:
 - (1) Fraudulently obtain, retain or attempt to obtain, retain or aid another in fraudulently obtaining, retaining or attempting to obtain or retain Certification status as an SBE, MBE, or WBE.
 - (2) Falsify, conceal or cover up a material fact or make any false, fictitious or fraudulent statements, reports, or representations, or make use of any false writing, document, or electronic report knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of this Policy.
 - (3) Make false statements to any entity that another entity is or is not certified as an SBE, MBE, or WBE.
 - (4) Make false reports regarding payments made to subcontractors/subconsultants in the Subcontractor Payment & Utilization Reporting (S.P.U.R.) System.
- 18.2 Any person who violates the provisions of this section shall be subject to the following sanctions and to the maximum penalty provided by law:
 - (1) Suspension of contract;
 - (2) Withholding of funds;
 - (3) Rescission of contract based upon material breach of contract pertaining to SMWB Program compliance;
 - (4) Refusal to accept a response or proposal;

- (5) Where appropriate and lawful, SAWS may revoke or otherwise amend any Contract to such extent as may be necessary to withhold monies to protect the Owner from loss on account of persistent and uncured contractor non-compliance with the SMWB Policies, including, if the contractor fails to submit for three consecutive months subcontractor payment information utilizing the Subcontractor Payment and Utilization Reporting (S.P.U.R.) System; and
- (6) In addition to other sanctions available to SAWS, the violation of any provision of this Policy may be included as an incident of breach in each Contract.
- (7) On discretionary solicitations, prior Subcontractor or Subconsultant utilization compliance may be considered when totaling the SMWB score, based upon data from the Subcontractor Payment & Utilization Reporting (S.P.U.R.) System. This applies to SMWB and Non-SMWB Prime Contractors' and Prime Consultants' utilization of their SMWB Subcontractors or Subconsultants. Up to 3 points may be deducted from the SMWB score for discrepancies between the pledged SMWB goal, and the current/ongoing actual utilization of SMWB Subcontractors or Subconsultants on recent SAWS projects. This option does not apply to work order/unspecified contracts.

19. MISCELLANEOUS TERMS

- 19.1 **Graduation.** SBE, MBE, and WBE firms shall be graduated from participation when the firms are no longer eligible based upon the Certification standards and definitions set forth in this Policy, or are no longer “small” as defined in the regulations of the United States Small Business Administration.
- 19.2 **Severability.** If any section, paragraph, sentence, clause, phrase or word of this SMWB Program Policy, or the application thereof, to any person or circumstance is for any reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, invalid or void, such holding shall not affect the remainder of this Policy or the application of any other provisions of this Policy which can be given effect without the invalid provision or application, and to this end, all the provisions of this Policy are hereby declared to be severable.

20. EFFECTIVE DATE

- 20.1 The SMWB Policy shall become effective January 1, 2023.

21. SUNSET DATE

- 21.1 This policy shall sunset on December 31, 2027, unless the SAWS Board of Trustees affirmatively decides that the program should continue.