

CHARLOTTE BUSINESS INCLUSION PROGRAM POLICY

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1.0 Purpose

The Charlotte Business Inclusion Program seeks to develop and grow Small Business Enterprises in the Relevant Market as well as remediate the effects of discrimination against Minority-Owned Business Enterprises and Women-Owned Business Enterprises in the Relevant Market that have adversely affected the ability of Minority-Owned Business Enterprises and Women-Owned Business Enterprises to participate in City Contracts.

2.0 Scope. The Charlotte Business Inclusion Program shall apply to:

- 2.1 Any employee of the City of Charlotte who has the authority to award or recommend for award any Contract.
- 2.2 Any committee established to support the Charlotte Business Inclusion Program.
- 2.3 Any Business Enterprise that registers with the Charlotte Business Inclusion Office, submits a Bid to the City of Charlotte, or has a Contract with the City of Charlotte.
- 2.4 Any Subcontractor who is identified on a Bid to the City of Charlotte or receives funds for work performed on a Contract.
- 2.5 Any Business Enterprise that receives money from the City of Charlotte.

3.0 Policy

- 3.1 It is the policy of the City of Charlotte to enhance competition in City Contracts and promote economic growth and development by:
 - 3.1.1 Increasing the utilization of Minority-Owned Business Enterprises, Women-Owned Business Enterprises, and Small Business Enterprises in City Contracts;
 - 3.1.2 Promoting small business start-up, development, and growth;
 - 3.1.3 Monitoring, evaluating, and reporting on participation of any Minority-Owned Business Enterprise, Women-Owned Business Enterprise, and Small Business Enterprise; and,
 - 3.1.4 Monitoring, evaluating, and reporting on compliance with the provisions of the Charlotte Business Inclusion Program.

3.2 Enabling Legislation

3.2.1 Minority-Owned Business Enterprise & Women-Owned Business Enterprise.

North Carolina General Statutes Sections 143-128.1, 143-128.2, 143-128.3, 143-128.4, and 143-131 authorizes the City of Charlotte to have a Minority-Owned Business Enterprise and Women-Owned Business Enterprise program for certain Contracts.

3.2.2 Small Business Enterprise

Section 8.88 of the Charlotte City Charter authorizes the City of Charlotte to have a Small Business Enterprise program and to promote the development of small businesses in the Charlotte Metropolitan Statistical Area and those counties outside the Charlotte Metropolitan Statistical Area. The North Carolina General Assembly added Section 8.88 after ratifying Senate Bill 1336 on August 27, 2002, which became Session Law 2002-91. Section 8.88 was subsequently amended to authorize the inclusion of counties outside the Charlotte Metropolitan Statistical Area after ratification of House Bill 2488 on July 15, 2008, by the North Carolina General Assembly, which became Session Law 2008-101.

3.2.3 Economic Development and Community Development

North Carolina General Statutes Section 158-7.1 and Section 160A-456 authorizes the City of Charlotte to engage in economic development and community development activities.

3.3 Disparity Study Background.

3.3.1 On January 15, 2021, the City of Charlotte retained Colette Holt and Associates (“Consultant”) to conduct a disparity study (“Disparity Study”) to (i) determine whether disparity exists between the number of Minority-Owned Business Enterprises and Women-Owned Business Enterprises available to perform on City Contracts and the City’s utilization of those Business Enterprises; (ii) determine if there is a legally defensible basis for the use of race-conscious and gender-conscious measures; and (iii) provide data and information that could be used to consider modifications to the Charlotte Business Inclusion Program.

3.3.2 Between January 2021 and June 2022, the Consultant gathered quantitative data and qualitative data from the City and local businesses for the Disparity Study.

- 3.3.3 In June 2022, the Consultant completed the Disparity Study and found that disparities existed between the availability and utilization of Minority-Owned Business Enterprises and Women-Owned Business Enterprises. The Consultant recommended that the City use race-conscious and gender-conscious measures because the utilization of Minority-Owned Business Enterprises and Women-Owned Business Enterprises increased with goals contracts compared to no-goals Contracts.
- 3.3.4 On June 22, 2022, and August 1, 2022, the Consultant presented its report to the Economic Development Committee of the Charlotte City Council. The Jobs & Economic Development Committee approved a recommendation that the Charlotte City Council accept and adopt the findings and recommendations set forth in the Disparity Study.
- 3.3.5 On September 12, 2022, the Consultant presented its report to the Charlotte City Council.
- 3.3.6 On September 26, 2022, the Charlotte City Council adopted the Consultant's report and findings.
- 3.4 Program Findings. In adopting the Disparity Study on September 26, 2022, the Charlotte City Council:
 - 3.4.1 Reaffirmed and accepted the findings and conclusions set forth or referenced in Disparity Study and the appendices to the Disparity Study;
 - 3.4.2 Acknowledged the disparity in all four areas of City Contract categories: Construction; Goods; Professional Services; and Services;
 - 3.4.3 Acknowledged that the use of race-conscious and gender-conscious measures have been effective in increasing the utilization of Minority-Owned Business Enterprises and Women-Owned Business Enterprises;
 - 3.4.4 Found that the City has a compelling interest to remedy the ongoing effects of marketplace discrimination against Minority-Owned Business Enterprises and Women-Owned Business Enterprises and to avoid becoming a passive participant in private sector discrimination;
 - 3.4.5 Proclaimed that the City is fully committed to not only remedying the ongoing effects of marketplace discrimination, but also to using its spending powers in a manner that promotes a robust and inclusive economy that fully utilizes all segments of its business population, regardless of race or gender; and

3.4.6 Based upon an extensive factual predicate, determined that a narrowly tailored combination of race-neutral and gender-neutral remedies and race-conscious and gender-conscious remedies is necessary to serve those compelling interests and needs of the City.

3.5 Race-Conscious and Gender-Conscious Remedies

The race-conscious and gender-conscious remedies shall be met by the racial/ethnicity groups and gender groups that were found to have a statistically significant underutilization in the Disparity Study. Race-conscious and gender-conscious remedies will be narrowly tailored to address the documented statistical disparity. Any Contract Goal will be based on the availability of any Minority-Owned Business Enterprise, Woman-Owned Business Enterprise, and Small Business Enterprise.

3.6 Sunset for Race-Conscious and Gender-Conscious Measures

Absent an extension by the Charlotte City Council, the race-conscious and gender-conscious measures will expire on January 1, 2028.

3.7 Severability

If any provision of the CBI Policy or CBI Program Administrative Procedures Manual or any application thereof is held invalid or unenforceable, such invalidity or unenforceability shall not affect other provisions or applications of the Charlotte Business Inclusion Program which can be given effect without the invalid provisions or applications and the remaining provisions are to be severable and shall remain in full force and effect.

4.0 Definitions

All capitalized terms used in the Charlotte Business Inclusion Policy shall be defined and set forth in the CBI Program Administrative Procedures Manual.

5.0 Program Roles and Responsibilities

The Charlotte City Council sets forth the following roles and responsibilities in administering and enforcing the Charlotte Business Inclusion Program.

5.1 City Manager. Such person shall have the authority to:

5.1.1 Determine the Charlotte Business Inclusion Office's organizational structure;

5.1.2 Evaluate the City's efforts to further the purpose of the Charlotte Business Inclusion Program;

5.1.3 Propose any amendment to the Charlotte Business Inclusion Program Policy;

- 5.1.4 Hear appeals concerning the Business Inclusion Officer's decision;
 - 5.1.5 Direct the Business Inclusion Officer to develop uniform standards for inclusion of the Charlotte Business Inclusion Program into City documents and procedures; and,
 - 5.1.6 Receive advice and input regarding the Charlotte Business Inclusion Program from the Business Inclusion Officer, Department Head, and City Attorney.
- 5.2 **Business Inclusion Officer.** Such person shall have the authority to:
- 5.2.1 Determine the appropriate staffing, operations, training, and outreach for the Charlotte Business Inclusion Office;
 - 5.2.2 Establish stakeholder groups and teams to facilitate the administration and enforcement of the Charlotte Business Inclusion Program.
 - 5.2.3 Administer the daily operation of the Charlotte Business Inclusion Program;
 - 5.2.4 Serve as an ombudsman for concerns by Minority-Owned Business Enterprises, Small Business Enterprises, and Women-Owned Business Enterprises;
 - 5.2.5 Offer programs and supporting services for outreach and business development assistance to Minority-Owned Business Enterprises, Small Business Enterprises, and Women-Owned Business Enterprises;
 - 5.2.6 Develop, amend, and enforce a CBI Program Administrative Procedures Manual. It shall include, but is not limited to, those items set forth in Section 6;
 - 5.2.7 Ensure compliance with federal, state and local requirements;
 - 5.2.8 Maintain data tracking and reporting and publish appropriate reports; and,
 - 5.2.9 Oversee the City's disparity study and set an aspirational goal.
- 5.3 **Department Heads.** Such persons shall have the authority to:
- 5.3.1 Promote the Charlotte Business Inclusion Program and participation by any Minority-Owned Business Enterprise, Women-Owned Business Enterprise, and Small Business Enterprise participation in the Solicitation and Contract activities of their respective Departments;
 - 5.3.2 Develop and implement strategies in furtherance of the Charlotte Business Inclusion Program;

5.3.3 Monitor and report utilization of Minority-Owned Business Enterprises, Women-Owned Business Enterprises, and Small Business Enterprises to the Business Inclusion Officer; and,

5.3.4 Ensure compliance with all federal, state and local requirements.

5.4 **City Attorney.** Such person shall have the authority to:

5.4.1 Advise the Charlotte City Council, City Manager, Department Head, or the Business Inclusion Officer on legal issues related to the Charlotte Business Inclusion Program;

5.4.2 Review any recommendation to reject a Bid for non-compliance with the Charlotte Business Inclusion Program; and

5.4.3 Ensure compliance with federal, state, and local laws.

5.5 **Delegation**

The City Manager, Business Inclusion Officer, Department Head, and City Attorney may designate other individuals to perform any tasks or functions assigned to them.

6.0 Administrative Procedures Manual

6.1 Burden of Proof

The CBI Program Administrative Procedures Manual shall set forth the burden of proof for challenging a decision of the Business Inclusion Officer and shall presume that all Business Enterprises have full knowledge of the Charlotte Business Inclusion Policy and CBI Administrative Procedures Manual.

6.2 Certification of Small Business Enterprises

The CBI Program Administrative Procedures Manual shall, at a minimum, address the certification process, duration of the certification, the decertification process, any ownership eligibility or ineligibility, any management and control, restrictions on affiliation, certification renewals, suspension or revocation of the certification, and graduation size standards.

6.3 Registration of Minority-Owned Business Enterprises and Women-Owned Business Enterprises

The CBI Program Administrative Procedures Manual shall, at a minimum, address the registration process, the process for removal of the registration, any ownership eligibility or ineligibility, and suspension or revocation of the registration.

6.4 Commercially Useful Function

The CBI Program Administrative Procedures Manual shall, at a minimum, address what constitutes a Commercially Useful Function and/or Conduit activity.

6.5 Goals

The CBI Program Administrative Procedures Manual shall, at a minimum, set forth the types of Contract Goals established by the Business Inclusion Officer, the minimum dollar amounts before any Contract Goal can be established, exclusions for state-funded and federally-funded contracts, agreements with third-parties, and self-performance.

6.6 Good Faith Negotiation and Good Faith Efforts

The CBI Program Administrative Procedures Manual shall, at a minimum, address what constitutes Good Faith Negotiation, the documentation necessary to demonstrate Good Faith Negotiation and Good Faith Efforts, all Good Faith Effort categories, the points awarded for each Good Faith Effort category, the process for submitting Good Faith Efforts documentation, and the process for accepting or rejecting Good Faith Efforts.

6.7 Responsibilities After Contract Award

The CBI Program Administrative Procedures Manual shall, at a minimum, address new Contract opportunities, the termination or replacement of Minority-Owned Business Enterprises, Small Business Enterprises, and Women-Owned Business Enterprises on a Contract, and the reduction in work for a Minority-Owned Business Enterprises, Small Business Enterprises, and Women-Owned Business Enterprise.

6.8 Remedies & Liquidated Damages

The CBI Program Administrative Procedures Manual shall, at a minimum, address what is a violation or material breach of the Charlotte Business Inclusion Program, the amount of any liquidated damage, and what rights and remedies that may be exercised by the City of Charlotte.

6.9 Authority to Grant Waivers.

The CBI Program Administrative Procedures Manual shall, at a minimum, address waivers by the Business Inclusion Officer for noncompliance with the Charlotte Business Inclusion Program. Any waiver may be granted by the Business Inclusion Officer without notice to or approval by the Charlotte City Council.

6.10 Standard Review

The CBI Program Administrative Procedures Manual shall, at a minimum, address any applicable deadlines for appealing a decision of the Business Inclusion Officer and the process for any appeal.

6.11 Program Information Technology System Administration

The CBI Program Administrative Procedures Manual shall, at a minimum, address the use of and requirements for a diversity and inclusion enterprise system.

6.12 Program Documentation

The CBI Program Administrative Procedures Manual shall, at a minimum, address the types of forms or documentation that a Business Enterprise may submit, and any requirements for submitting the forms or documentation by a Business Enterprise.

6.13 Small Business Market Strategy

The CBI Program Administrative Procedures Manual may, at a minimum, address the requirements, process, and dollar threshold for small business market strategy.

6.14 Committees.

The CBI Program Administrative Procedures Manual shall, at a minimum, address the composition of any stakeholder group and provide the charge for it. The Charlotte Business Inclusion Advisory Committee may be referenced in the Administrative Manual but only in accordance with the charge mandated by the Charlotte City Council.

6.15 Outreach, Assistance and Business Development

The CBI Program Administrative Procedures Manual shall, at a minimum, address programs and activities to provide outreach and business development assistance to Minority-Owned Business Enterprises, Small Business Enterprises, and Women-Owned Business Enterprise.