

Harris Health System
Minority- and Woman-Owned Business Enterprise Program
Policy

Effective:

POLICY STATEMENT

The Harris County Hospital District d/b/a/ Harris Health System (“Harris Health”) recognizes minority- and women-owned business enterprises, hereinafter M/WBEs, as key economic engines and major employers in Harris County and surrounding areas. Harris Health is committed to seeking out, identifying, assisting, and utilizing business enterprises owned by minorities and women. To this end, Harris Health shall seek mutually beneficial business relationships with diverse businesses, provide equal access to Harris Health’s purchasing opportunities, and promote M/WBE inclusion to reflect the business community of Harris County and surrounding areas.

Harris Health, its Contractors and Subcontractors shall not discriminate on the basis of race, color, religion, national origin, sex, age, or disability in the award and/or performance of contracts. Contractors shall afford equal opportunity required by applicable federal, state, or local law to all employees and applicants for employment, and shall afford equal opportunity to M/WBE Subcontractors.

Harris Health shall establish ongoing and robust procedures for a M/WBE program that will provide awareness of upcoming contracting opportunities, helpful tools for monitoring and promoting M/WBEs, and opportunities M/WBE owners to meet with and be mentored by Prime Contractors who will submit Proposals on Harris Health Contracts.

This M/WBE Program Policies and Procedures Manual (this “M/WBE Policy”) sets forth Harris Health’s rules and procedures to meet the goals set forth in this Policy Statement. Procedures for implementation, including good faith effort requirements, requirements for contract proposals, reporting procedures, etc., shall be consistent with the terms of this M/WBE Policy. This M/WBE Policy shall be consistent with the County Purchasing Act, Ch. 262, Texas Local Government Code, as applicable to Harris Health by order of the commissioners court of Harris County.

SECTION 1. BACKGROUND

Colette Holt & Associates conducted a Disparity Study to analyze Harris Health’s historical utilization of M/WBEs in Harris Health-funded contracts. The Disparity Study was presented to the Harris Health Board of Trustees in April 2022. The Disparity Study assessed the availability of M/WBE prime and subcontractors, based on market and industry sectors, and found significant disparities between Harris Health’s utilization of M/WBEs compared to the availability of M/WBEs in Harris County and surrounding areas. The study further analyzed the experiences of M/WBEs throughout the Houston area economy and in Texas as a whole, and likewise found large and significant disparities in opportunities for M/WBEs. The Disparity Study also gathered qualitative data on the experiences of M/WBEs in seeking work with Harris Health, other governments, and the private sector and found that qualified and capable M/WBEs were encountering systemic barriers in locating and utilizing opportunities to contract. Based on these findings, the Disparity Study made recommendations to Harris Health about possible strategies to increase opportunities for M/WBEs for Harris Health-funded contracts.

SECTION 2. DEFINITIONS

Aspirational Goal: A non-mandatory annual aspirational percentage goal for utilization and participation of M/WBEs in the overall pool of applicable Harris Health contracts. *See Section 4.C.1, below.*

Award: The final decision to approve the Contractor that will provide a good or service, along

with relevant terms and conditions of the Contract. Approval could be made by the Board, the Purchasing Agent, or any other individual legally authorized to approve a Contract on behalf of Harris Health.

Bid: A specific type of Proposal made in response to a Solicitation in which the Contract will be awarded to the Business whose Submittal is the lowest price.

Board: The Harris Health Board of Trustees.

Broker: A Business who contracts with third parties on behalf of a principal. A broker acts as a facilitator in transactions between a buyer and a seller, generally receiving a commission or fee for work performed. A distributor is not a broker.

Business: Any legal entity that is properly licensed and/or otherwise authorized to do business in the State of Texas.

Certification or Re-certification: The process by which a Business meets the criteria to be qualified as an M/WBE according to the requirements of an approved Certification Program.

Certification Program: A program for the certification of a Business as qualifying for M/WBE status in publically-funded contracts. For purposes of this policy, the City of Houston's MBE and WBE certifications, Historically Underutilized Business (HUB) certifications from the State of Texas, Disadvantaged Business Enterprise (DBE) certifications from the Texas Unified Certification Program and 8(a) certifications from the U.S. Small Business Administration. This list may be amended by the M/WBE Program Director or DEEO; except that any amendment shall only be prospective.

Commercially Useful Function: A distinct element of the work of a Contract that is carried out by a Subcontractor by using its own workforce.

Construction: A type of service that involves the construction, alteration, or repair of a public building or the construction or completion of a public work. Construction includes any element involved in the public work, including, but not limited to, painting, landscaping, interior design, and finish-work. *See also Section 4.A.*

Contract: A legally binding relationship obliging the Contractor to furnish goods or services to Harris Health.

Contract Goals: The M/WBE goals established according to this Policy for each specific applicable Contract. *See Section 4.C.2, below.*

Contractor: A general term that refers to any Business who is awarded a Contract to provide goods or services.

DEEO: The Harris County Department of Economic Equity and Opportunity.

Distributors: Individuals or companies that sell or disseminate a product of another company or corporation. They can hold title and/or take possession of the product(s) they are distributing, but it is not mandatory.

Good Faith Efforts: The Contractor's reasonable efforts, including scope, intensity, and appropriateness to seek and utilize M/WBEs in order to comply and meet the Contract Goals.

Good Faith Effort Form: The form submitted by a Contractor to detail the Contractor's Good

Faith Efforts to meet the requirements of the M/WBE Contract Goals.

Goods: A tangible product; something manufactured or produced for sale. *See also Section 4.A.*

Harris County Purchasing Agent: The Purchasing Agent for Harris Health, which is responsible for the procedures involved with Harris Health's purchase of goods and services, according to the Harris Health Purchasing Manual.

Harris Health: The Harris County Hospital District d/b/a/ Harris Health System.

Harris Health Purchasing Manual: The practices and procedures, rules, and guidelines that relate to the procurement, control, and disposal of goods and services by Harris Health, as managed and operated through the Harris County Purchasing Agent.

Joint Venture: A business arrangement in which two or more parties agree to pool their resources for the purpose of accomplishing a specific task. This task can be a new project or any other business activity.

Marketplace: The primary geographic market area defined by Harris Health that includes the following five (5) counties: Harris, Galveston, Montgomery, Fort Bend, and Brazoria.

MBE: A for-profit Business certified as a Minority-Owned Business Enterprise by an approved Certification Program that has a place of business located within the Marketplace or has a Significant Local Business Presence.

M/WBE: An MBE or a WBE Business.

M/WBE Contract Categories. Categories of Contracts that are identified as being appropriate for the inclusion of Contract Goals as set forth in this M/WBE Policy.

M/WBE Manufacturer: A Business certified as an M/WBE under a Certification Program and operates or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the Contract, and of the general character described by the specifications.

M/WBE Policy: This Harris Health System Minority- and Woman-Owned Business Enterprise Program Policy and Procedures.

M/WBE Program: The procedures, measures, plans, and actions taken by Harris Health to achieve the goals of the M/WBE Policy.

M/WBE Program Director: The Admin Director for Business & Supplier Diversity, or his/her designee.

NAICS Code: The North American Industry Classification System or the 6-digit standard coding system used by businesses and governments to classify and measure economic activity in the United States, Canada, and Mexico. A NAICS Code illustrates the business activity of a company. Contractors may find their NAICS code at this website: <https://www.naics.com/search/>

Owner: An individual or entity that has possession of at least 51% ownership of a business. Ownership is carefully defined to ensure that the minority, women, and diverse businesses enterprise member(s) enjoy the normal and customary privileges and responsibilities of ownership.

Participation: The rate of M/WBE utilization.

Payment: Dollars actually paid to Prime Contractors and/or Subcontractors for performance under a Contract.

Prime Contractor: The Contractor responsible for providing goods or services under a Contract that also includes performance by one or more Subcontractors.

Professional Services: Those services as defined by the laws of the State of Texas usually requiring a license, certification, or registration in accordance with Ch. 2254, Texas Government Code. *See also Section 4.A.*

Proposal: A Respondent's response to a Solicitation. See also: Submittal.

Purchasing: The Office of the Harris County Purchasing Agent.

Reconsideration Official: a Harris Health representative that has not participated in the original determination that a Respondent or Contractor did not comply with an element of the M/WBE Program or with its contractual commitment related to the M/WBE Program.

Reporting: The documentation that a Prime Contractor is required to report to Harris Health, including, among other requirements, the actual payments to all Subcontractors, in the time intervals and format prescribed by Harris Health.

Respondent: A general term that refers to a Business that submits a Proposal on a Solicitation.

Responsible Submitter: A person who has the capability in all respects at the time of award, to perform the contract requirements fully and satisfactorily, and with the integrity and reliability that will ensure Good Faith performance.

Responsive Submitter: A person who has submitted a bid that conforms in all material respects to the Invitation for Bids or Request for Proposals.

Significant Local Presence: Having a location in the Marketplace or having done business within the market area in the last three years.

Site Visit: An inspection of the site where services are performed by a Subcontractor under a Contract in order to measure M/WBE utilization for Construction or Professional Services.

Solicitation: A document prepared by the Harris County Purchasing Agent in order to make the selection of a Contractor for a future Contract including: an Invitation for Bid; Best Value Bid; Request for Qualifications, Request for Proposals; Request for Competitive Sealed Proposal; Construction Manager at Risk; Design-Build; or other competitive method used to procure services or goods.

Subcontractor: Any Business that receives work from a Prime Contractor under a Contract with Harris Health.

Subcontracts: All purchase orders, contracts, and other agreements issued by the Prime Contractor to a Subcontractor.

Submittal: A Respondent's response to a Solicitation.

User Department: The Harris Health department that develops the requisition for Purchasing.

Utilization Plan: The plan, in the form specified by Harris Health, which must be submitted by a

Respondent listing the certified firms that the Respondent intends to use in the performance of a Contract, the scopes of the work and the dollar values or the percentages of the work to be performed.

WBE: A for-profit Business certified as a Woman-Owned Business Enterprise by an approved Certification Program that has a place of business located within the Marketplace or has a Significant Local Business Presence.

SECTION 3: M/WBE PROGRAM OVERVIEW

A. Leadership of Harris Health's M/WBE Program

The Admin Director, Business & Supplier Diversity is responsible for the Harris Health M/WBE Program and acts as the M/WBE Program Director.

The M/WBE Program Director shall formulate, propose and implement rules and regulations for Harris Health's M/WBE Program in accordance with this M/WBE Policy. The M/WBE Program Director's duties shall include, but not be limited to:

- 1) Reviewing, monitoring, and ensuring compliance with the requirements of this M/WBE Policy, including developing rules, regulations, policies and procedures to implement or improve the M/WBE Program;
- 2) Developing and maintaining procedures and outreach activities that maximize the ability for M/WBEs to compete on Harris Health Contracts;
- 3) Coordinating with DEEO, Purchasing and other Contract Administration team members, as appropriate, in all matters affecting the M/WBE Program;
- 4) Reviewing Solicitations, including the evaluation criteria, where appropriate, to ensure the inclusion of the M/WBE Program requirements and the removal of artificial barriers to potential M/WBE participation;
- 5) Developing, recommending, and reviewing Aspirational Goals and Contract Goals;
- 6) Evaluating a Prime Contractor's achievement of the Contract Goal or Good Faith Efforts to meet a Contract Goal, including whether an M/WBE Subcontractor is performing a Commercially Useful Function on a Contract;
- 7) Conducting semi-annual reviews of the progress of each Harris Health department and Purchasing toward the overall achievement of the Aspirational Goals;
- 8) Preparing and presenting periodic reports on compliance with the M/WBE Program, any issues that need to be addressed, and the progress towards meeting the Aspirational Goals;
- 9) Acting as the Reconsideration Official, when appropriate;
- 10) Assisting all Harris Health departments in their efforts to assist Prime Contractors and Subcontractors with implementing and monitoring of the Contract Goals and Good Faith Efforts;
- 11) Reviewing opportunities for additional race- and gender-neutral measures, including outreach and support for small businesses in the Marketplace;
- 12) Managing the collection of data to facilitate a thorough review of the M/WBE Program; and

13) Receiving, reviewing and acting upon complaints and suggestions concerning the Program.

B. Utilization of External Resources

DEEO. The M/WBE Program Director shall identify opportunities to partner with and coordinate through DEEO in all appropriate aspects of this M/WBE Policy. Harris Health may enter into an interlocal agreement with Harris County to have DEEO administer any portion of the M/WBE Program, including delegating the duties of the M/WBE Program Director.

C. User Department M/WBE Program Roles and Responsibilities

User Departments are responsible for promoting, supporting and assisting in carrying out the purpose of the M/WBE Program. User Departments will be held accountable for the following duties which shall include, but not be limited to:

- 1) No later than ten (10) business days prior to the procurement announcement, notify and provide to the M/WBE Program Director or designee the necessary information when a solicitation is anticipated, to determine whether a Contract Goal should be set;
- 2) Manage Contracts in a consistent manner to assure compliance with the M/WBE Program;
- 3) Notify the M/WBE Program Director no later than five business days prior to any key post-award Contract meetings or issues that could affect the Prime Contractor's ability to achieve the M/WBE Contract Goal. For example, if a Prime Contractor is experiencing challenges achieving their M/WBE Contract Goal, the User Department can connect the M/WBE Program Director or designee with the Prime Contractor at Contract kick-off meetings, monthly meetings, or meetings to address Contract performance issues;
- 4) Assist and support the M/WBE Program Director by ensuring that the Contractor provides all necessary documents and information to close out the Contract, including a final accounting for M/WBE utilization and all other Subcontractor participation on the Contract; and
- 5) Develop and advertise forecasts of upcoming procurement opportunities, including on an annual basis.

D. Non-Harris Health Funds

Nothing herein shall be construed to authorize or require expenditure of funds for goods or services in a manner inconsistent with statutory requirements of Harris Health. In situations where procurement involves the expenditure of state or federal funds, Harris Health shall comply with all state or federal law and authorized regulations that are mandatorily applicable, and that are not presently reflected in this M/WBE Policy.

SECTION 4. M/WBE PROGRAM COMPONENTS

A. M/WBE Contract Categories

The following M/WBE Contract Categories are hereby established to identify the contracting and procurement activities covered by this M/WBE Policy. The M/WBE Program Director may recommend revisions to these M/WBE Contract Categories through a written amendment to this M/WBE Policy:

- 1) Construction: Including all contracts relating to new construction, renovation and/or maintenance of existing buildings, facilities, underground utilities, and non-building structures owned or leased by Harris Health.
- 2) Goods: Including the purchase of all products, equipment, office and other supplies, art, furniture, and other tangible personal property.
- 3) Services: Including the purchase of all services, such as maintenance services; printing services; non-construction repairs; janitorial services; services related to training seminars and workshops; computer and information systems security-related services; shipping, courier and mailing services; document copy, retention or destruction services; consulting and other non- professional services. Does not include Professional Services, as defined below.
- 4) Professional Services: Those services as defined by the laws of the State of Texas usually requiring a license, certification, or registration in addition to those listed in Ch. 2254, Texas Government Code.

B. Non-M/WBE Contract Categories

This M/WBE Policy does not apply to the following types of Contracts:

- 1) Purchases through an authorized Group Purchasing Organization (GPO);
- 2) A loan transaction in which Harris Health acts as a debtor or creditor;
- 3) Agreements to use, lease, sell, or purchase real property;
- 4) Individual employee contracts;
- 5) Gifts or bequests to Harris Health;
- 6) Grants or Contracts entered into by Harris Health in order to comply with a grant;
- 7) Purchases necessary to preserve or protect public health or safety;
- 8) Contracts for personal services;
- 9) Contracts with other governmental entities; or
- 10) Contracts for sole-source goods or services.

C. M/WBE Program Goals

1. Aspirational Goals

- a. **In General.** Attainment of the annual Aspirational Goal is based on Contract dollars spent with M/WBEs in relation to the total value of all Contracts awarded for the M/WBE Contract Categories set forth in this Policy. To achieve the Aspirational Goal, the M/WBE Program Director will encourage the utilization of M/WBEs as both Prime Contractors and as Subcontractors in Contract performance. Payments to Prime Contractors that are certified as M/WBE in an approved Certification Program shall be counted towards satisfaction of the Aspirational Goals. These overall goals are intended to be benchmarks for evaluating overall performance of the M/WBE Program on an annual basis. These Aspirational Goals are not and shall not be quotas.

- b. **Initial Aspirational Goals.** Upon the approval of this M/WBE Policy by the Board, Harris Health shall adopt an overall Aspirational Goal of twenty percent (20%) for spending with M/WBEs across all M/WBE Contract Categories.
 - c. **Setting Future Aspirational Goals.** The M/WBE Program Director may establish annual Aspirational Goals for M/WBE participation in M/WBE Contract Categories. The following factors may be used as part of the goal-setting methodology in establishing annual Aspirational Goals:
 - i. The number of M/WBEs in the Marketplace certified or eligible for certification;
 - ii. The availability of M/WBEs in the Marketplace that are eligible for certification and willing to do business with Harris Health;
 - iii. The findings and conclusions contained in any disparity studies and other reports undertaken by Harris Health or other governmental and quasi-governmental entities that may be relevant or beneficial to Harris Health and its M/WBE Program, including, but not limited to:
 - Annual Participation figures for qualified M/WBEs in both Harris Health contracting and the private sector in the Marketplace; or
 - Analysis of disparities between the availability and participation of qualified M/WBEs.
 - d. **Monitoring Aspirational Goals.** The annual Aspirational Goal will be reviewed from time to time by the M/WBE Program Director to determine Harris Health's current progress towards meeting the goal.
2. **Contract Goals.** The M/WBE Program Director, or designee, shall establish a Contract Goal for all Contracts where Harris Health intends to spend more than \$50,000.00. The Contract Goal may be based on 1) type of contract, 2) required type of subcontracting work, 3) and availability of M/WBEs for the type of subcontracting work. Every Harris Health-funded contract in the M/WBE Contract Categories shall be evaluated to determine the appropriate method for enhancing M/WBE participation, including progress towards achievement of the annual Aspirational Goal. Contract Goals for certain purchases may also be established based on any goal-setting objectives or directives of this M/WBE Policy. Prime Contractors shall be required to make Good Faith Efforts to subcontract with, schedule and utilize M/WBEs in a manner that will meet or exceed the Contract Goals for each Contract. A Contractor's compliance with the requirements for Good Faith Efforts shall be measured utilizing the guidance provided in this M/WBE Policy.

SECTION 5. CONTRACTOR M/WBE PERFORMANCE

A. Compliance at Time of Procurement Submittal

1. **In General.** A Respondent shall comply with the M/WBE Submittal requirements set forth in the Solicitation and this M/WBE Policy or include thorough documentary evidence to support the Good Faith Efforts made by the Respondent to meet the Contract Goals. A Respondent's failure to comply with the requirements of this Section 5.A or to prove Good Faith Efforts, according to this M/WBE Policy, shall result in the rejection of the Respondent's Submittal as Non-Responsive.

2. **Contract Goal Notification.** All Contract Solicitations that require a Contract Goal shall include a notification, as developed and deemed appropriate by the M/WBE Program Director and Purchasing, that they must comply with the requirements of the M/WBE Program.
3. **M/WBE Procurement Procedures for all Contracts over \$50,000.00.** All Solicitations for Contracts where Harris Health intends to spend more than \$50,000.00 for the M/WBE Contract Categories shall include the following:
 - a. A Contract Goal;
 - b. A Contract Goal Notification as set forth in A.2 of this Section 5.
 - c. A requirement that the Respondent submit a Subcontractor Utilization Plan with the Proposal and an affirmation by the Respondent that it will comply with the Good-Faith Effort requirements of this M/WBE Policy. This requirement may be waived in the discretion of the M/WBE Program Director after considering 1) the type of service, 2) the likelihood of the work being split into sub-components available for subcontracting opportunities, and 3) the determination of the M/WBE Program Director as to whether a Subcontractor Utilization Plan is appropriate.

B. Compliance During Contract Performance

1. A Prime Contractor performing under a Contract with Contract Goals shall include an M/WBE Subcontractor Utilization Status Report with each invoice or pay estimate submitted by the Contractor. This Status Report shall include without limitation the following information for each of the M/WBE Subcontractors utilized by the Prime Contractor: a) A description of the categories of contracts awarded to and spent with M/WBEs; b) the dollar value of contracts awarded to and spent with M/WBEs; and c) the contract number(s) and contact information for the M/WBEs. Additionally, the Prime Contractor shall provide information regarding its progress toward attaining the Contract Goal for the Contract.
2. Prime Contractors shall not discriminate or retaliate against M/WBE Subcontractors. In considering a Prime Contractor's conduct to determine discrimination or retaliation, where relevant, the M/WBE Program Director may consider the lack of timely payment of a Subcontractor to be a form of discrimination or retaliation, based upon a review of the circumstances.
3. Any M/WBE Subcontractors utilized by the Prime Contractor in connection with the services covered by the Contract shall be limited to the individuals or firms that were specifically identified by the Prime Contractor in the Submittal or post-selection documents, as applicable, and agreed upon by Harris Health in connection with the award of the Contract.
4. Prime Contractors must submit a Letter of Intent for each M/WBE Subcontractor that will be utilized to supply any services, labor, or materials pursuant to the M/WBE Subcontractor Participation Plan during the Contract negotiation with Harris Health or as requested by the M/WBE Program Director. This Letter of Intent confirms the intent of the Prime Contractor and M/WBE Subcontractor to conduct Good Faith negotiations toward a Subcontract Agreement, with terms agreeable to both parties, for the scope of work identified in the Letter of Intent. The parties acknowledge that any obligation of the Prime

Contractor to enter into a Subcontract Agreement with any M/WBE Subcontractor is expressly contingent upon the Prime Contractor entering into the Contract with Harris Health for the work defined in the Solicitation. The Letter of Intent must be completed in its entirety by the Prime Contractor and signed by both the Prime Contractor and the M/WBE Subcontractor.

5. In the event subcontracting opportunities arise after Contract award, Prime Contractors shall consider M/WBE Subcontractors in the same manner as the consideration given M/WBE Subcontractors before the new opportunities arose.
6. Any substitution of M/WBE Subcontractors must be submitted to Harris Health by the Prime Contractor in writing and will be subject to the prior approval of M/WBE Program Director. The Prime Contractor shall make a Good Faith Effort to substitute one M/WBE with another M/WBE. The written request for approval shall provide the name of the listed M/WBE Subcontractor; the name of the replacement M/WBE Subcontractor; the reason(s) for the proposed substitution; a brief description of the work to be performed by the substituted party; and the dollar amount of the subcontract or procurement involved. The M/WBE Program Director shall evaluate for fairness and outreach efforts the selection process for the substitute Subcontractor. Notwithstanding the foregoing, the Prime Contractor may immediately substitute a Subcontractor without approval in the event of an unusual and compelling circumstance such as the M/WBE Subcontractor's insolvency, bankruptcy, anticipatory repudiation, or the protection of property or people. Every effort must be made to provide notice of the substitution to Harris Health as soon as practical. The substitution of an M/WBE Subcontractor does not excuse the Prime Contractor's failure to make Good Faith Efforts to satisfy the Contract Goal.
7. The Prime Contractor is expressly prohibited from enforcing any type of exclusive arrangement, non-competition requirement, or any restriction on the discretion of an M/WBE Subcontractor to bid or submit on current or future solicitations. Violation of this provision shall result in one or more penalties set forth in Subsection F.1. of this Section 5, in the sole discretion of the M/WBE Program Director.

C. Post-Contract Compliance

1. Within thirty (30) days after the completion of performance on a Contract in which there were Contract Goals, each Prime Contractor shall provide Harris Health with close-out documentation summarizing the information provided pursuant to Subsection B.1 of this Section 5, above.
2. The close-out documentation may also include, in the sole discretion of the M/WBE Program Director, verification from M/WBE Subcontractors that the work claimed by the Prime Contractor was actually completed and payment was received.
3. Failure to provide the documentation set forth in this Subsection C may result in one or more of the penalties set forth in Subsection F.1. of this Section 5, in the sole discretion of the M/WBE Program Director.

D. Good Faith Efforts

1. When a Respondent or Contractor submits documentation claiming Good Faith Efforts, the M/WBE Program Director shall make a determination of adequate Good Faith Efforts based on those submitted documents. Additional submittals will not be permitted, with the

exception of evidence requested by the M/WBE Program Director.

2. In determining whether a Respondent or Contractor made Good Faith Efforts to comply with this M/WBE Policy, the M/WBE Program Director shall be guided by the assumption that compliance was possible and the burden of proof shifts to the Respondent or Contractor to prove Good Faith Efforts.
3. Respondents that fail to meet M/WBE Contract Goals and fail to demonstrate adequate Good Faith Efforts shall be deemed non-responsive to the Harris Health Solicitation and shall not be eligible to receive the contract award. Continuous failures to demonstrate adequate Good Faith Efforts in more than one Solicitation Submittal, in the sole discretion of the M/WBE Program Director, may result in debarment from participation in future Harris Health Solicitations and Contracts.
4. Upon completion of the Contract, Respondents that fail to meet M/WBE Contract Goals and fail to demonstrate Good Faith Efforts, as determined by the M/WBE Program Director in its sole discretion, shall be subject to the penalties set forth in Subsection F. of this Section 5, including possible debarment from participation in future Harris Health Solicitations and Contracts.
5. The M/WBE Program Director shall apply the following Good Faith Efforts criteria in considering a Contractor's Good Faith Efforts:
 - a. Identification of sufficient subcontracting work: Respondent identified and selected specific work items to be performed and/or procurement to be filled by M/WBEs. The Respondent subdivided total Contract work requirements and/or procurements into smaller portions or quantities to permit maximum active participation by M/WBEs, even when the Respondent might otherwise prefer to perform these work items with its own workforces. Content of advertisements and written notices to Subcontractors may demonstrate compliance with this objective.
 - b. Broad-based advertisement: Respondent conducted an advertising campaign designed to reach all segments of the community by advertising in newspapers, trade association publications, special interest publications, trade journals, community papers, or another media. Advertisement must be specific to the Harris Health contract or procurement, not generic, and may not be a place holder advertisement provided by the publication. Advertisement must be worded to ensure it does not exclude or limit the number of potential subcontractor respondents. Advertisement must include the project name; the name of the Respondent; areas of work available for subcontracting; contact person's name and phone number; information on the availability of plans and specifications; date the Subcontractor's interest and written bid/estimate are due to the Respondent; and Respondent's policy concerning assistance to Subcontractors in obtaining bonds, financing, and/or insurance. Respondents are encouraged to advertise no less than two weeks prior to the bid submittal due date, when time permits. Also, the Subcontractor written bid/estimate should be submitted to the Respondent no earlier than seventy-two (72) hours prior to Harris Health's submittal due date. Documentation that may satisfy this requirement includes copies of advertisements and proof of publication dates.
 - c. Written notice to M/WBE Subcontractors: Respondent provided, no less than ten (10) days prior to bid submittal, written notice of its interest in receiving Subcontractor bids related to the Harris Health contract or procurement to M/WBEs with an interest in performing identified work items. Contents of the notice must include the project name; the name of the Respondent; areas of work available for subcontracting and

procurement opportunities; contact person's name and phone number; information on availability of plans and specifications; date the Subcontractor's notification of interest and written bid/estimate are due to the Respondent; and Respondent's policy concerning assistance to Subcontractors in obtaining bonds, financing, and/or insurance. Respondents are encouraged to review all appropriate websites to view a list of M/WBEs available for use to meet the M/WBE Subcontractor participation goals. Documentation that will satisfy this requirement includes, but is not limited to, a copy of each notice sent to Subcontractors by the Respondent for each item of work to be performed or procured. If there is only one master notification, the Respondent must submit a copy with a list of its recipients. Faxed copies of the notice and copies sent by electronic transmission or e-mail must include fax transmittal confirmation slip or electronic confirmation of receipt by e-mail from the recipient, showing the date of transmission.

- d. Follow-up to initial solicitations: Respondent followed up on initial written notices to M/WBE Subcontractors to determine their interest in specific portions of project work and/or procurement; answered questions; recorded phone quotes; and recorded Subcontractors' interest in bidding on any portion of subject project. Documentation that demonstrates compliance with this requirement includes a copy of telephone logs, including name of caller and the name of and telephone number of Subcontractor's contact person. Telephone logs must be submitted to demonstrate follow-up with all Subcontractors to whom Respondent sent written notices.
 - e. Provision of plans, specifications, and requirements: Respondent provided interested M/WBE Subcontractors with access to plans, specifications, and requirements for the subject project. Documentation that demonstrates compliance with this requirement includes the content of advertisements and written notices to Subcontractors.
 - f. Assistance with bonds, financing, and insurance: Respondent made efforts to advise and assist interested Subcontractors in obtaining information regarding bonds, financing, and insurance required for the subject project. Documentation that demonstrates compliance with this requirement includes, but is not limited to, the content of advertisements and written notices to M/WBE Subcontractors.
 - g. Sound judgement: Respondent rejected M/WBEs as being unqualified only with sound reasons based on a thorough investigation of their capabilities. The Subcontractor's standing within its industry, 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 the rejection or non-solicitation of bids in the Respondent's efforts to meet the project goal.
 - h. Effectively utilizing the services of community organizations: Respondent contacted Contractors' groups; local, state, and federal business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of M/WBEs. Required documentation shall include a copy of telephone logs, including name of caller and the name of and telephone number of the organization's and/or agency's contact person.
6. **Reconsideration.** A Respondent may request a reconsideration of the determination of Good Faith Efforts from the Reconsideration Official. A Respondent's request for reconsideration must be received within three (3) business days of the Respondent's receipt of Harris Health's determination that it did not make adequate Good Faith Efforts to meet

the Contract Goal. As part of the reconsideration, the Respondent must have the opportunity to provide written documentation or argument concerning the issue of whether it met the Contract Goal or made adequate Good Faith Efforts to do so. Harris Health's decision on reconsideration must be made by a Reconsideration Official who did not take part in the original determination that the Respondent failed to meet the Contract Goal or made adequate Good Faith Efforts to do so. If requested by the Respondent at the time of the request for Reconsideration, the Respondent must have the opportunity to meet with the Reconsideration Official to discuss the issue of whether it met the Contract Goal or made adequate Good Faith Efforts to do so.

E. Measuring Contract Goals. When an M/WBE participates in a Contract, only the payments to the M/WBE for value of the work actually performed shall be counted towards the Contract Goal, in accordance with the following provisions:

1. Count the entire amount of the portion of a Contract that is performed by the M/WBE's own forces shall be counted;
2. Count the cost of supplies and materials obtained by the M/WBE for the work of the Contract, including supplies purchased or equipment leased by the M/WBE (except supplies and equipment the M/WBE purchases or leases from the Contractor or its affiliate). Expenditures by M/WBEs for materials or supplies may be counted toward Contract Goals as described below:
 - a. If the materials or supplies are obtained from an M/WBE Manufacturer, count 100% of the cost of the materials or supplies toward the Contract Goals;
 - b. If the materials or supplies are purchased from an M/WBE regular dealer (defined below), count 60% of the cost of the materials or supplies toward the Contract Goals. The M/WBE Program Director may conduct a review of the company to determine whether the dealer is a bona-fide business that performs a commercially useful function by using the following guidelines:
 - i. For the purposes of this section, a regular dealer is a business that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
 - ii. To be a regular dealer, the business must be an established, regular business that engages—as its principal business and under its own name—in the purchase and sale or lease of the products in question.
 - iii. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this section if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
 - iv. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this section.
 - c. With respect to materials or supplies purchased from an M/WBE that is neither a manufacturer nor a regular dealer, count only the 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—towards the Contract Goals, provided the M/WBE Program Director determines the fees to be reasonable and not excessive, as compared with fees customarily allowed for similar services. However, in such an event, the cost of the materials and supplies themselves shall not count towards the Contract Goals.

3. Count the entire fee or commission charged by an M/WBE for providing a bona fide service, such as professional, technical, consultant, or managerial services—or for providing bonds or insurance specifically required for performance of the Contract—provided the fee was determined to be reasonable and not excessive, as compared with fees customarily allowed for similar services;
4. Count the value of work an M/WBE Subcontractor subcontracts to another M/WBE Subcontractor (“Secondary M/WBE Subcontractor”) only if the Secondary M/WBE Subcontractor is itself certified as an M/WBE in an approved Certification Program. Work that an M/WBE subcontracts to a non-certified M/WBE business does not count toward the Contract Goals;
5. Only first, second, and third tier M/WBE Subcontractors count when calculating participation toward the Contract Goal;
6. When an M/WBE performs as a participant in a Joint Venture, count the portion of the total dollar value of the Contract equal to the distinct-defined portion of the Contract work that the M/WBE performs with its own forces;
7. Count expenditures toward the Contract Goals only if the M/WBE is performing a Commercially Useful Function on the Contract. The following factors must be considered in making this determination:
 - a. An M/WBE 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. An M/WBE does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of M/WBE participation. In determining whether an M/WBE is such an extra participant, the M/WBE Program Director will examine similar transactions, particularly those in which M/WBEs do not participate.
 - c. If an M/WBE Prime Contractor does not perform or exercise responsibility for at least 30% of the total cost of the Contract with its own workforce, or the M/WBE subcontracts a greater portion of the work of the Contract than would be expected on the basis of typical industry practice for the type of work involved, the M/WBE Program Director shall presume that M/WBE Prime Contractor is not performing a Commercially Useful Function.
 - d. The M/WBE Program Director shall develop factors similar to the DBE Program at 49 C.F.R. part 26, as amended, in determining whether an M/WBE trucking company is performing a Commercially Useful Function.
8. If an M/WBE is the Prime Contractor, count 100% of the participation performed by its own workforces toward the Contract Goal;
9. Do not count the dollar amount of work performed under a Contract with an M/WBE after

it: 1) has ceased to be a certified M/WBE or 2) has ceased performing a Commercially Useful Function; and

10. Do not count the participation of an M/WBE Subcontractor toward a Contractor's final compliance with its Contract Goal obligations on a Contract until the amount being counted has actually been paid to the M/WBE.
11. When an M/WBE is presumed not to be performing a Commercially Useful Function, the M/WBE may present evidence to rebut this presumption. After reviewing the additional information submitted, the M/WBE Program Director may determine that the M/WBE is performing a Commercially Useful Function, given the type of work involved and typical industry practices.

The M/WBE Program Director may revise or further define how to measure Contract Goals, consistent with this M/WBE Policy, in order to administer the M/WBE Program.

F. Results of Non-Compliance

1. All documents submitted by a Respondent in compliance with this Policy, including Subcontractor certifications, shall be verified by Harris Health or Purchasing prior to the issuance of a notice to proceed or a purchase order to the Prime Contractor to commence the work. Failure to secure such prior approval shall result in the application of one or more of the penalties set forth below.
2. Falsification or misrepresentation of a sub-agreement as to company name, contract amount, and/or actual work performed by a Subcontractor—submitted on any Contracts or forms required or otherwise requested by Harris Health— shall result in the application of one or more of the penalties set forth below.
3. When an allegation of discrimination or retaliation is sustained, the M/WBE Program Director shall recommend to Harris Health any one or more of the penalties set forth below.
4. The M/WBE Program Director, may recommend that Purchasing declare the Respondent's Submittal as non-responsive or reject other Submittals or Proposals related to the Harris Health contracts or procurements submitted by that Contractor for non-compliance with this M/WBE Policy.
5. The M/WBE Program Director may recommend to a committee of persons designated by the Executive Vice President, Chief Strategy Officer, and the committee shall make the decision to impose any of the following penalties for non-compliance with the provisions of this M/WBE Policy:
 - a. Declaring the Prime Contractor to be in material breach of the Contract, with all appropriate legal and equitable remedies available to Harris Health for such breach;
 - b. Placing the Respondent under probation during a period of time to be determined by the M/WBE Program Director. During probation, the Respondent shall comply with affirmative steps, as determined by the M/WBE Program Director, to show that the Respondent is acting in good faith with the requirements of this policy for all Contracts during the probationary period;
 - c. Debarment of the Respondent or Prime Contractor from future Solicitations or Contracts, according to the following guidelines:
 - i. After the first instance of non-compliance, for a period of time determined in the sole discretion of the M/WBE Program Director, but in no event less than six (6)

- months or longer than one (1) year,
- ii. After the second instance of non-compliance, for a period of time determined in the sole discretion of the M/WBE Program Director, but in no event less than two (2) years or longer than three (3) years, or
 - iii. After the third instance, and any instance thereafter, of non-compliance, for a period of time determined in the sole discretion of the M/WBE Program Director, but in no event less than four (4) years or longer than five (5) years; and/or
- d. Referral to the appropriate law enforcement agency for criminal prosecution.
5. The M/WBE Program Director has the right to report any suspected false, fraudulent, or dishonest conduct or documents in the commitment and attainment of any Contract Goal on Harris Health Solicitations or Contracts to the Office of the Harris County Attorney or any applicable enforcement agency.

SECTION 6. COMPLAINTS

- A. General Policy.** Harris Health is committed to enforcing this M/WBE Policy, and in turn encourages all M/WBEs, Businesses, and individuals to promptly report any suspected unethical, unlawful, or illegal activities by others related to this M/WBE Policy. Such activities may include, but are not limited to, falsification of information or documentation provided to Harris Health or other certifying bodies for purposes of obtaining M/WBE certification status or vendor registration, bidding on contracts, M/WBE participation on contracts awarded, discrimination against others in whatever form or capacity, and any retaliation against others for any reason or purpose associated with this M/WBE Program. Any person or organization with information that supports the unethical, unlawful, or illegal participation by an M/WBE, business enterprise, firm, or individual in the M/WBE Program should provide a detailed statement in writing to the M/WBE Program Director, specifying such unlawful or illegal acts and explaining the basis for such claim or statement.
- B. Complaints of Discrimination or Retaliation.** Any adult person, business entity, association, organization, or government agency may file a sworn complaint with the M/WBE Program Director stating facts showing or tending to show that a Respondent or Prime Contractor has, within the preceding one (1) year period from the date of the alleged incident, engaged in discrimination or retaliation in connection with a Harris Health Contract or Solicitation. Within fourteen (14) days, the M/WBE Program Director shall notify the Respondent or Prime Contractor against whom the complaint was filed that a sworn complaint has been received.
- C. Complaint Procedure, Initial Findings, and Recommendations.** The M/WBE Program Director shall be responsible for investigating complaints of discrimination or violation of this M/WBE Policy in coordination with DEEO, Purchasing, and/or the Office of the Harris County Attorney.

SECTION 7. OUTREACH TO BUSINESSES

- A.** To ensure that Harris Health contract participation and procurement opportunities are available to the widest feasible universe of interested, available, competitive, and qualified businesses, the M/WBE Program Director may perform any or all of the following actions:
- 1. Disseminate information describing Harris Health contract opportunities, the M/WBE

Program, the functions of the M/WBE Program Director, DEEO, and Purchasing at external outreach events, community events, trade shows, matchmaking events, and other appropriate M/WBE business functions;

2. Establish a procedure to engage in continuous recruitment and outreach efforts directed at M/WBE business assistance organizations, minority business chambers of commerce, small business enterprise organizations, contractor associations, and other minority certification agencies, with the goal of increasing the pool of M/WBEs available in the Marketplace to do business with Harris Health;
3. Actively encourage businesses to attend the pre-bid meetings in order to meet potential Respondents for Solicitations;
4. Create workshops for businesses located within the Marketplace to instruct them on how to compete for Solicitations, including advice on marketing, soliciting, and preparing a Proposal; and
5. Develop a website or other outreach platform to provide general information on doing business with Harris Health, the solicitation process, M/WBE certification attainment guidance, the process and resources for certification, and provide downloadable forms and other pertinent information.

B. The M/WBE Program Director may work with anyone, including existing advocacy groups in the Marketplace, to perform any of the outreach activities listed in this section.

SECTION 8. MONITORING AND REPORTING RESULTS OF M/WBE PROGRAM

A. In General. The effectiveness of this M/WBE Program will be measured by a review of Prime Contractor and Subcontractor spending with M/WBEs and the efforts by Harris Health to provide contracting opportunities for M/WBEs.

B. The M/WBE Program Director, in coordination with the DEEO and other management and staff involved in any contracting and/or procurement activities, shall perform the following actions to assist in meeting the outcomes included in this M/WBE Policy:

1. Establish direct notification of bid opportunities to M/WBEs;
2. When appropriate, discuss synopsising procurements and obtaining interested bidders lists in advance of solicitation postings;
3. Ensure that the appropriate Harris Health staff actively participates in trade fairs and certifying organization meetings for M/WBEs;
4. Maintain a tracking chart of the number of M/WBEs contacted, including the quotes received by Harris Health and Prime Contractors;
5. Conduct bi-annual, in-house training sessions for Harris Health staff who are involved in contracting and procurement to ensure awareness of the M/WBE Program;
6. Evaluate the effectiveness and performance of all Harris Health staff and managers involved in any contracting and/or procurement activities in utilizing M/WBEs in purchasing all services, for continuous improvement;
7. Conduct debriefing sessions with the cooperation of Purchasing, as necessary, to explain and analyze why certain M/WBE Solicitations and Contract Goals were unsuccessful;

8. Generate monthly and quarterly M/WBE participation reports for M/WBE Contract Categories to monitor Prime Contractor M/WBE compliance.
- C. To ensure the effective monitoring and reporting under this M/WBE Policy, the following activities shall be completed:
1. Purchasing shall provide the M/WBE Program Director with information regarding every Harris Health contract or procurement on which a Contractor is an M/WBE or on which an M/WBE is part of a Joint Venture or strategic partnership team serving as a Contractor. The information shall include the name and contact information of the M/WBE, the type of contract, and the dollar value of the contract.
 2. The M/WBE Program Director, in coordination with the DEEO, shall prepare consolidated quarterly reports based on a compilation and analysis of the reports submitted by each Prime Contractor and information from Purchasing regarding Harris Health's use of M/WBEs as Prime Contractors and Subcontractors. The consolidated reports will identify and assess the awards and payments to M/WBEs on Harris Health contracts; Prime Contractors' use of M/WBE Subcontractors; Prime Contractors' progress in achieving Contract Goals; and other M/WBE development and contracting efforts. Specifically, the M/WBE Program Director shall maintain records and prepare reports showing information such as, but not limited to:
 - a. Awards and payments to M/WBE Prime Contractors and Subcontractors, including the contract name and number, names of Prime Contractors and Subcontractors, contact persons, nature of the work/services performed, and the percentage of M/WBE participation per Contract;
 - b. Copies or summaries of utilization reports and outreach efforts by Prime Contractors to M/WBEs;
 - c. Harris Health awards to M/WBE Prime Contractors in which an M/WBE was a Joint Venture partner. This information shall include without limitation the contract name and number, the name and contact information of the M/WBEs, the type of contract, and the dollar value of the Contract;
 - d. Requests for assistance from M/WBEs interested in bidding/proposing on Harris Health contracts and subcontracts;
 - e. Workshops, seminars, and training programs conducted for M/WBEs;
 - f. Workshops, seminars, and training programs conducted for Small Business Enterprises; and
 - g. Any additional information the M/WBE Program Director deems relevant or is requested to provide by the Harris Health Chief Executive Officer or the Board of Trustees.
 3. The M/WBE Program Director or designee shall also prepare and submit an annual M/WBE Utilization Report to the Executive Vice President, Chief Strategy Officer. This report shall include a summary of the information described in in this Section 8, plus an analysis of the total dollar value of M/WBE Prime contracts/subcontracts awarded and paid to M/WBEs during the preceding year, categorized by prime contracting dollars and subcontracting dollars. The report also will provide the percentage of the total dollar value of the contracts awarded and paid to M/WBEs during the preceding year.

SECTION 9. SUNSET REVIEW

- A. Sunset Review Periods.** The M/WBE Program, upon its adoption and approval by the Harris Health Board of Trustees, shall be subject to review every (5) five years, with a recommendation for continuation or cessation of the M/WBE Program by the M/WBE Program Director.
- B.** Any recommendation of cessation of the M/WBE Program by the M/WBE Program Director shall be accompanied by a Disparity Study that includes appropriate data that supports the recommendation, including, but not limited to, disparity ratios and the weighted availability of M/WBEs in the Marketplace that validate the recommendation.