



PORT OF HOUSTON AUTHORITY

SMALL BUSINESS DEVELOPMENT PROGRAM

POLICY AND PROCEDURES (REVISED)

Approved April 29, 2009
Rev. 12-7-09

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I. SUMMARY OF THE PORT OF HOUSTON AUTHORITY'S SMALL BUSINESS DEVELOPMENT PROGRAM

The Port of Houston Authority's Small Business Development Program (SBDP or the "Program") was created to provide additional opportunities for local small businesses to participate in contracting and procurement at the Port of Houston Authority. By formalizing existing practices and implementing new procedures, the SBDP allows the Port of Houston Authority (PHA) to produce more effective small business participation and create opportunities relating to PHA contracting and procurement. Shown below are the key features of the Program.

- The SBDP is a goal-oriented program, requiring Contractors who receive Contracts from PHA to use Good Faith Efforts to utilize certified small businesses. The Program applies to all Contracts over \$50,000, except Contracts for sole-source items, federally funded Contracts, Contracts with other governmental entities, and those Contracts that are otherwise prohibited by applicable law or expressly exempted by PHA. The SBDP is a race- and gender-neutral program. PHA actively encourages the participation of minority and women-owned small businesses in the SBDP. The Program is restricted to local small businesses.
- The Port Commission will establish an annual goal for small business participation at PHA. The initial overall annual goal of the SBDP was set at thirty-five (35%) percent of the dollar amount of all SBDP-Eligible Contracts and procurement. The present annual goal for the Program remains at thirty-five (35%) percent. However, individual Contract goals will vary based on subcontracting opportunities, availability of small businesses, and price competitiveness.
- To participate, small businesses must be certified by an agency or organization whose certification is recognized by PHA or by an independent third-party certification agency retained by PHA. Certification is based on a firm's gross revenues or number of employees as defined by the Small Business Act, Section 3, and 13 C.F.R. § 121.201. The net worth of each owner must not exceed \$750,000, excluding principal residence and the value of the small business. Only local small businesses are eligible to participate.
- The SBDP has clear guidelines for counting small business participation. Safeguards are applied to prevent abuse.
- An approved application from a small business to participate in the SBDP is valid for a two-year period. Recertification is required after two years with evidence of continuing eligibility. SBDP-Certified Small Businesses are not allowed to participate in the Program longer than nine (9) years, except by a finding of good cause by PHA, and may be graduated from participation in SBDP based on a growth or change in status.
- The SBDP incorporates several procedures to help implement the Program. These are designed to maximize the Program's success. These procedures include:

- utilizing small business advisors to assist small businesses and Contractors by providing information, assistance, and support;
 - reducing the size of Contracts, when feasible, to allow small businesses a better opportunity to compete;
 - assisting small businesses in obtaining insurance and surety bonds when possible;
 - strongly encouraging joint ventures and/or alliances among small businesses and larger firms;
 - assisting in developing a mentoring program for small business owners with appropriate private sector businesses and individuals;
 - requiring prospective Proposers to provide written assurance of small business participation in their proposals;
 - providing workshops and training sessions on issues frequently encountered by small businesses during the proposal process and generally while doing work at PHA;
 - maintaining an updated small business directory and source list(s) to help identify qualified and available small businesses; and
 - maintaining a special PHA website on the SBDP, proposals, and other opportunities to do business with PHA.
- The SBDP requires Good Faith Efforts by Contractors to use small businesses in Contract performance. The SBDP has procedures in place to determine whether Contractors are meeting this requirement of Good Faith Efforts. Contractors are required to document efforts to obtain small business participation. A Contract award may be denied or an existing Contract may be terminated for the Contractor's failure to use Good Faith Efforts. PHA recognizes that availability, subcontracting capabilities, and price competitiveness are relevant factors in determining whether a Contractor has used Good Faith Efforts to subcontract with small businesses.
 - PHA may impose sanctions on a Contractor or small business that failed to make Good Faith Efforts or failed to comply with the required procedures of the SBDP. Sanctions may include a Suspension from doing business with PHA for up to five (5) years. Due process procedures are in place to provide an opportunity for a hearing to any Contractor or small business facing sanctions, including an appeals procedure.
 - The SBDP provides dispute resolution procedures for decisions relating to the implementation of the Program. Grievance procedures exist to resolve disputes involving the decisions or actions of SBDP Business Advisors.
 - PHA maintains a policy of nondiscrimination in its operations. The SBDP is implemented in a nondiscriminatory manner. Contractors and small businesses are

prohibited from discriminating in the operations of the Program based on race, sex, religion, national or ethnic origin, age, or disability. Any such discrimination by Contractors or small businesses in selecting or utilizing small businesses on the basis of race, color, sex, religion, national or ethnic origin, age or disability may subject the Contractor or small business to disqualification from future Contracts with PHA.

- PHA requires integrity in the operations of Contractors, Subcontractors, and small businesses participating in the SBDP. PHA policy requires Good-Faith Efforts, proper contract performance, prompt payment, and cooperation by all participants. Pass-Thru Businesses are not permitted. Contractors, Subcontractors and small businesses that violate PHA's requirement of operational integrity of the Program will be subject to sanctions.
- PHA utilizes various purchasing methods to acquire goods and services, including Purchase orders, Competitive Sealed Proposals, Requests For Proposals, Design-Build Contracts, Competitive Bidding, catalog purchases, construction manager Contracts, and job order Contracts. PHA determines which purchasing method to use based on the *best value* to PHA. Regardless of the purchase method utilized, all Contracts (unless otherwise exempt) shall have a SBDP goal.
- PHA seeks input from representatives of small businesses, Contractor associations, minority business groups, women-owned business groups, community organizations, and other governmental units in evaluating the Program's effectiveness and operations. The SBDP Advisory Council works directly with PHA to ensure the Program's effectiveness.
- The SBDP requires Contractors and small businesses to agree to utilize mediation to resolve disputes.
- PHA monitors the progress of the SBDP, reviewing participation reports, community input, recommendations, and operational efficiency. Annual reports are made to the Port Commission addressing the number of Contracts awarded to small businesses, general categories of Contracts, and dollar value of Contracts.
- Nothing in the SBDP should be construed to give a Proposer a property interest in a proposal or Contract prior to the Port Commissioners' award of the Contract and compliance with all statutory and other legal requirements.

Capitalized terms used in these Policies and Procedures shall have the meanings set forth below.

II. MISSION AND POLICY STATEMENT

By vote on May 29, 2001, the Port Commission of the Port of Houston Authority approved a Small Business Development Program (SBDP or the “Program”) for the Port of Houston Authority (PHA). As adopted, the SBDP is a goal-oriented program, requiring Contractors who receive Contracts from PHA to use Good Faith Efforts to utilize local SBDP-Certified Small Businesses. The Port Commission’s adoption of the SBDP is consistent with PHA’s overall mission and policy.

It is the mission of PHA to promote maritime commerce and economic development. It is PHA’s policy to seek simultaneously to promote economic development and business opportunities for all sectors of our community. Small businesses need an opportunity to obtain a fair proportion of the total purchases and Contracts for property, services, and construction for PHA. Therefore, PHA has established the SBDP to ensure opportunities for small businesses to participate in PHA’s contracting and procurement activities.

The SBDP operates in a race and gender-neutral manner. The Program is open to all qualified small businesses. PHA actively encourages the participation of minority and women-owned small businesses. The SBDP shall not be used to discriminate against any person or company or group of persons or companies. It is the policy of PHA to prohibit discrimination based on race, color, sex, religion, national or ethnic origin, age, or disability. Contractors and/or SBDP-Certified Small Businesses that violate the PHA Nondiscrimination Mandate in the operations of the SBDP will be subject to sanctions.

As a matter of policy, PHA recognizes and requires competitive pricing, qualifications, and demonstrated competencies in the selection of all Contractors. PHA policy requires all businesses (Contractors, Subcontractors and small businesses) to perform their duties with competency and cooperation. The SBDP is designed to create opportunities, while requiring competitiveness and quality of work. As such, it simply allows PHA to target more effectively and continuously improve small business participation in PHA contracting and procurement activities. In its operations, the SBDP is an asset to PHA in its pursuit of its overall mission of promoting maritime commerce and economic development.

III. PHA's NONDISCRIMINATION MANDATE

PHA's policy is to prohibit discrimination based on race, color, sex, religion, national or ethnic origin, age, or disability in all operations at PHA. Therefore, the Port Commission hereby adopts PHA's Nondiscrimination Mandate and requires that PHA's Small Business Development Program not be used to discriminate against any person or company or group of persons or companies on account of their race, color, sex, religion, national or ethnic origin, age, or disability. Contractors, Subcontractors and small businesses that violate PHA's Nondiscrimination Mandate are subject to sanctions, including possible Suspension from the Program. PHA will aggressively enforce this mandate to insure equal opportunity to participation to all.

IV. PHA'S REQUIREMENT FOR OPERATIONAL INTEGRITY

The SBDP gives opportunities for local small businesses to provide goods and services to PHA. To be successful, the Program must maintain a high level of operational integrity. Therefore, all Contractors, Subcontractors and small businesses must meet and continue to meet the operational requirements of SBDP. As a matter of course, PHA will not allow violations of policies or procedures that undercut the integrity of the Program. These types of violations include, but are not limited to, false or misleading representations about eligibility for SBDP certification, failure to make Good Faith Efforts, acts of impermissible discrimination, operating as a Pass-Thru Business, non-payment or continuous slow payment of Subcontractors, other failure to perform, etc. It is the policy of PHA to move swiftly and decisively to sanction such violations of the operational integrity of SBDP.

V. OPERATIONAL PROCEDURES

The procedures herein are established to govern the program components of the SBDP, including, without limitation, program compliance, certification, specific implementation measures, small business status verification, reporting of small business participation, imposition of sanctions, dispute resolution, and geographic scope.

A. OBJECTIVES

1. To implement the policy of PHA to promote economic development and business opportunities for all sectors of our local community;
2. To ensure opportunities for small business to participate in all phases of PHA's contracting activities;
3. To stimulate participation of local small businesses at PHA and create opportunities for PHA contracting and procurement;
4. To encourage small businesses to seek work from Prime Contractors when qualified and work is available;
5. To formalize existing practices and implement new procedures to assist more effectively small business participation;
6. To carry out the mandate of the Port Commission as adopted on May 29, 2001, and subsequent amendments, to implement a small business development program; and
7. To ensure nondiscriminatory practices in the use of small businesses for PHA Contracts.

B. SCOPE

These procedures apply to all PHA departments, Prime Contractors and Subcontractors involved with SBDP Contracts, and all certified small businesses. These procedures apply to those SBDP-Eligible Contracts as defined herein (i.e., all Contracts valued at over \$50,000, *excluding* Contracts for sole-source items, federally funded Contracts, Contracts with other governmental entities, and those Contracts for which participation in the SBDP is otherwise prohibited by applicable law or exempted by PHA).

C. DEFINITIONS

Advisory Council – a citizens group created by PHA to assist with the SBDP by providing an independent assessment of the Program's operations and by assisting in refining its goals, procedures, and operations. Members of the Advisory Council are appointed by the Chairman of the Port Commission of the PHA, in conjunction with the Small Business

Development Task Force, from representatives of small businesses, Contractor associations, minority business groups, women-owned business groups, community organizations, and other governmental units.

Appeal Arbitration – an arbitration conducted to hear a requested appeal of a suspension imposed by a final decision of a Hearing Officer. Appeal Arbitrations are only available to hear the appeal of final decisions that result in suspension of a Contractor or a SBDP-Certified Small Business. By being a party in an Appeal Arbitration, PHA *does not* waive its immunities.

Appeal Arbitrator – the individual chosen by lottery-style selection with the limited authority of determining whether a suspension imposed by the Hearing Officer for violations of the SBDP should be upheld.

Bidder – any person or entity that submits a bid to provide labor, goods, or services to PHA by Contract in response to a solicitation by PHA based on Competitive Bidding.

Certification – the process by which an applicant is determined to be a SBDP-Certified Small Business and to be eligible for participation in PHA’s SBDP.

Commercially Acceptable Function – a discrete task or group of tasks, the responsibility for performance of which shall be discharged by the small business by using its own forces or by actively supervising on-site the execution of the tasks by another entity for whose work the small business is responsible. A small business will not be considered to be performing a commercially acceptable function if it subcontracts to non-small businesses or to other small businesses more than fifty percent (50%) of a Contract being counted toward the applicable participation goal. PHA may waive this requirement upon demonstration that the industry standard for the type of work involved is to subcontract over fifty percent (50%) of the work.

Competitive Bidding – the process used by PHA to request and receive sealed bids for labor, goods and services wherein the winning Bidder selected presents the lowest and best qualified bid.

Competitive Sealed Proposal or CSP– a sealed proposal received by PHA in response to a request from PHA for a proposal for labor, goods, and/or services.

Contract – a mutually binding legal document under which an entity provides labor, goods, and/or services to PHA.

Contractor – any person or entity that shall enter into a Contract with PHA, including all partners and joint ventures of such person or entity.

Contractor’s Small Business Plan – the plan submitted by a Proposer (and maintained by a Contractor) that demonstrates the proposed and/or actual small business participation and utilization in a SBDP-Eligible Contract.

Design-Build Contract – a single Contract with a design-build firm for the design and construction of a facility.

Design-Build Firm – a partnership, corporation, or other entity or team that includes an engineer or architect and builder qualified to engage in building construction in Texas.

Design-Build Proposal – a written proposal to PHA by a prospective Contractor to provide both design and construction services for designated projects identified and requested by PHA. Design-Build Proposals include the requisite professional and technical services required to complete the project.

Executive Director – the Executive Director of PHA.

Facility – real property, including buildings and associated structures and improved and unimproved land, which is the subject of SBDP-Eligible Contract.

Goal – a numerically expressed objective that PHA or Contractors are encouraged to make a Good Faith Effort to achieve. A goal is identified for each individual SBDP-Eligible Contract. The initiating PHA department, in consultation with a Small Business Development Business Advisor, determines the small business subcontracting or joint venture potential and availability and small business capacity for the SBDP-Eligible Contract. In determining small business capacity, PHA may use PHA past practices and experiences, available SBDP certifications, recognized industry make-up, and available small business listings from other governmental entities.

Good Faith Efforts – documented steps that describe attempts to include small businesses in procurement and contracting opportunities. PHA requires all Contractors to make Good Faith Efforts to utilize small businesses in the performance of an SBDP-Eligible Contract.

1. Good Faith Efforts for non-small businesses shall mean *at a minimum* the following:
 - a. Delivery of written notice of subcontracting opportunities on SBDP-Eligible Contracts to the appropriate and industry-specific small businesses identified in the PHA small business directory;
 - b. Utilization of local small business and minority- and women-focused associations for notice purposes regarding subcontracting opportunities;
 - c. Delivery of written notice to all small businesses that request information on the SBDP-Eligible Contract;
 - d. The written notices will contain the following:
 - (i) Adequate information about the plans, specifications, and relevant terms and conditions of the Contract and about the

work to be subcontracted to, or the goods to be obtained from, Subcontractors and suppliers;

- (ii) A contact person with the Proposer's office to answer questions;
 - (iii) Information regarding the Proposer's bonding requirements, the procedure for obtaining any needed bond, and the name and telephone number of one or more acceptable surety companies to contact; and
 - (iv) The last date for receipt by the Proposer of small business price quotations;
- e. Attendance at any special pre-proposal meeting called to inform businesses of subcontracting or supply opportunities, if set forth in the proposal documents;
 - f. Division of the SBDP-Eligible Contract, when recommended by the department head of the initiating PHA department and in accordance with normal industry practice, into small, economically feasible segments that could be performed by small businesses;
 - g. Compliance with the dispute resolution provisions of the SBDP; and
 - h. Adhering to PHA's Nondiscrimination Mandate in the procurement and discharge of an SBDP-Eligible Contract and the performance of the SBDP requirements.
2. Good Faith Efforts for small businesses shall mean *at a minimum* the following:
- a. Furnishing prompt written responses to any written inquiry from PHA regarding the small business's participation in the SBDP, the small business's performance, or the small business's status;
 - b. Ensuring at all times during the performance of any SBDP-Eligible Contract or subcontract that the small business is engaging in a commercially acceptable function as that term is defined herein;
 - c. Ensuring that no application, response to a request for information, or other factual material submitted to PHA contains any material misrepresentation;
 - d. Complying with the dispute resolution provisions of the SBDP; and

- e. Adhering to PHA's Nondiscrimination Mandate in the procurement and discharge of an SBDP-Eligible Contract and the performance of the SBDP requirements.

Grievance Officer – the person selected by the Executive Director to hear grievances brought by an aggrieved party against a decision made by a Small Business Development Business Advisor in the operations of the SBDP.

Hearing Officer – the Small Business Development Business Advisor who conducts hearings and makes findings and determinations regarding allegations against Contractors or SBDP-Certified Small Businesses for failure to comply with Good Faith Efforts and/or other violations of the requirements of the Policy and Procedures of PHA's SBDP. The Hearing Officer is authorized to impose sanctions of all types for violations (private and public reprimands, suspensions, etc.). The Port Commission of PHA has delegated authority to the Hearing Officer to conduct hearings and impose sanctions. All actions taken by the Hearing Officer in this regard are made in the Hearing Officer's official capacity as an agent of the Port Commission of PHA.

Joint Venture – an association of two or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills, and knowledge.

Monthly Utilization Report or MUR – a reporting form used by PHA to record small business participation. Contractors (vendors) are required to submit monthly Utilization Reports on small business participation.

Notice of Appeal - the written notice of a request to appeal the final decision of a Hearing Officer imposing sanctions on a business. The Notice of Appeal must be filed in writing with the Executive Director of PHA no later than fifteen (15) days following receipt of notice of the final decision of the Hearing Officer.

Pass-Thru Business – a small business that is not performing a Commercially Acceptable Function, and that operates as a conduit or intermediary while allowing other Contractors and Subcontractors to actually do the work at PHA. For example, a Pass-Thru Business may purport to act as a supplier, while actually obtaining wholesale goods or services from another party conducting such business and reselling them in order to take part in the SBDP.

PHA-Approved Small Business or PHA-Certified Small Business – a small business whose application to participate in the SBDP has been received and approved and is eligible for SBDP participation.

PHA's Nondiscrimination Mandate – the policy of PHA to prohibit discrimination based on race, color, sex, religion, national or ethnic origin, age, or disability. The SBDP must be implemented in a nondiscriminatory manner. Discriminatory conduct by Contractors or SBDP-Certified Small Businesses in the operation of the SBDP violates this mandate and subjects violators to sanctions.

PHA Small Business Development Program or Small Business Development – the goal-oriented program mandated by the Port Commission of PHA by vote May 29, 2001, requiring Contractors who receive Contracts from PHA to use Good Faith Efforts to utilize SBDP-Certified Small Businesses.

Prime Contractor – a Contractor who receives a Contract from PHA for goods or services and has the primary responsibility for execution of the Contract. The Prime Contractor may subcontract portions of the work required to Subcontractors.

Prime Contractor Small Business – a small business that is awarded a Prime Contractor Contract by PHA.

Program – the Small Business Development Program of Port of Houston Authority of Harris County, Texas.

Prompt Payment Directive – the directive authorized by the SBDP Policy and Procedures and issued by PHA’s Executive Director that requires prompt payment to small businesses by Contractors and Subcontractors, following receipt of payment from PHA.

Proposal Request– any written request by PHA for submittal of proposals to provide labor, goods, or services to PHA by Contract. A Proposal Request may be in the form of a Request for Proposals, Request for Qualifications, or Request for Competitive Sealed Proposals.

Proposal Response – the response submitted to PHA by a prospective Contractor to a request for proposals or other written invitation from PHA to make a proposal to provide labor, goods, or services to PHA as requested.

Proposer – any person or entity that submits a proposal to provide labor, goods, and/or services to PHA by Contract in response to a Request for Proposals, Request for Qualifications or Request for Competitive Sealed Proposals.

Request for Proposals or RFP – any written request by PHA for submittal of proposals to provide labor, goods, or services to PHA by Contract.

Request for Qualifications or RFQ – a written request to persons or entities to submit qualifications for providing certain professional services to PHA. A submission of qualifications by a person or entity may lead to direct negotiations with PHA for a Contract without the need for a formal request for proposals.

Sanctions – punitive actions taken by PHA after notice and opportunity for hearing against a Contractor or SBDP-Certified Small Business for failure to adhere to SBDP’s procedures or failure to make Good Faith Efforts to comply to the requirements of SBDP or violations of PHA’s Nondiscrimination Mandate. Imposed sanctions may suspend the right of a small business or Contractor to do business with PHA for a defined period of time, or any lesser punitive action.

SBDP – the Small Business Development Program of the Port of Houston Authority of Harris County, Texas.

SBDP Business Advisor – Each PHA Small Business Development Department staff person responsible for the operation and implementation of the SBDP.

SBDP-Certified Small Business – a small business whose application to participate in the SBDP has been received and approved and is eligible for SBDP participation.

SBDP-Eligible Contract – a Contract awarded by PHA that is awarded with SBDP goals and for which Good Faith Efforts to utilize small businesses are required. Specifically, SBDP-Eligible Contracts are all Contracts valued at over \$50,000, *excluding* Contracts for sole-source items, federally funded Contracts, Contracts with other governmental entities, and those Contracts for which participation in the SBDP is otherwise prohibited by applicable law or exempted by PHA. Professional service Contracts are SBDP-Eligible Contracts, to the extent permitted by law.

Significant Local Presence – the required location of a small business in one or more of the counties of Harris, Galveston, Fort Bend, Montgomery, Liberty, Waller, Chambers, or Brazoria, Texas, with one or more of its employees regularly based therein. A location utilized solely as a post office box, mailbox, or telephone message center, or any combination thereof, with no substantial work function, shall not be considered a Significant Local Presence.

Size Standards – the limitations on the size of a small business relating to the gross revenues or number of employees of the small business over a three year period as described in Section 3 of the Small Business Act and 13 C.F.R. § 121.103 and § 121.201.

Small Business – a firm for which the gross revenues or number of employees averaged over the past three years, including any affiliates as defined by 13 C.F.R. § 121.103, does not exceed the size standards as defined pursuant to Section 3 of the Small Business Act and 13 C.F.R. § 121.201, and for which the net worth of each owner does not exceed \$750,000, excluding principal residence and the value of the small business.

Small Business Development Director – the PHA director for the direct operation and direct implementation of the SBDP.

Small Business Development Task Force – an ad hoc task force appointed by the Chairman of the Port Commission of the PHA with the responsibility of assisting the Port Commission in developing policies and procedures for small business participation at PHA.

Small Business Proposer – A SBDP-Certified Small Business that submits a proposal to provide labor, goods, or services to PHA in response to a Request for Proposals, Request for Qualifications or Request for Competitive Sealed Proposals.

Subcontractor – any business providing goods, labor, or services to a Contractor if such goods, labor, or services are procured or used in fulfillment of the Contractor's obligations arising from a Contract with PHA.

Suspension – a sanction imposed (after due process procedures) on a Contractor or small business that takes away the opportunity to do business with PHA for a defined period of time.

D. OVERALL ANNUAL SBDP GOAL AND INDIVIDUAL CONTRACT GOALS

1. Overall Annual Goal

An overall annual goal for small business participation at PHA will be set by the Port Commission. The initial overall annual goal was set at thirty-five percent (35%) of the dollar amount of all SBDP-Eligible Contracts and procurement. The annual goal may change from year to year based on all relevant factors considered by the Port Commission.

PHA staff and the Small Business Development Task Force will provide an annual report to the Port Commission calculating small business utilization during the previous year. The annual goal for overall small business participation will be based on prior utilization, policy requirements, staff recommendations, input from the SBDP Advisory Council, capacity analysis, and PHA-projected contracting opportunities.

PHA staff will also seek to track SBDP-Certified Small Business participation in non-SBDP Contracts, e.g., Contracts valued at \$50,000 or less, sole-source items, federally funded Contracts, Contracts with other governmental entities, and those Contracts for which participation in the SBDP is otherwise prohibited by applicable law or exempted by PHA. In evaluating performance in reaching its annual goal, PHA will count all small business participation resulting from both SBDP-Eligible Contracts and non-SBDP Contracts.

2. Individual Contract Goals

Each SBDP-Eligible Contract will have an individual Contract goal for small business participation. The following procedures should be utilized to set individual Contract goals. All SBDP-Eligible Contracts will be evaluated for SBDP goal potential. These individual Contract goals may be higher or lower than the annual goal. Individual Contract goals are set by the initiating PHA department, in conjunction (if necessary) with a SBDP Business Advisor. The criteria used to set individual Contract goals shall include small business capacity, small business availability, nature of the Contract, PHA past experiences with small business participation with similar Contracts, available SBDP-certified companies, and subcontracting opportunities in the performance of the Contract. All individual Contract goals will be determined prior to request for proposals or qualifications. No quotas or set-asides will be used in implementing the SBDP.

The initiating PHA department may request that the designated SBDP Business Advisor exempt an otherwise SBDP-Eligible Contract from a small business goal if it determines that one or more of the following is present:

- a. A public or administrative emergency exists that requires the goods or services to be provided with unusual immediacy; or

- b. The goods or services requested are of such a specialized, technical, or unique nature as to require PHA to be able to select its Contractor without application of small business provisions (such as Contracts for cranes, equipment, and dredging); or
- c. The application of small business provisions would impose an unwarranted economic burden or risk on PHA, would unduly delay acquisition of the labor, goods or services, or would otherwise not be in the best interest of PHA; or
- d. The possible small business participation level based on small business availability would produce negligible or no small business participation.

All SBDP exemptions must be approved by a SBDP Advisor.

E. PURCHASING METHODS

PHA utilizes various purchasing methods to acquire goods and services.

Regardless of which purchasing method PHA chooses to use, an individual Contract goal will be placed on all SBDP-Eligible Contracts. Purchasing methods used by PHA include Purchase orders, Competitive Sealed Proposals, Requests For Proposals, Design-Build Contracts, Competitive Bidding, catalog purchases, construction manager Contracts, and job order Contracts. In deciding which purchasing method to utilize, PHA will determine which purchasing method provides the *best value* to PHA.

If Competitive Bidding (lowest qualified bid) is utilized as the purchasing method, PHA may set forth its small business participation goal as part of the bid specifications and require evidence of small business participation in the bid submission. Bidders who tender a bid without a demonstration of Good Faith Efforts to meet the individual goal for small business participation may be deemed a non-responsive bidder.

If a Request for Qualifications is utilized as the purchasing method, the Proposal Request may set forth the demonstrated ability to fulfill the goals of the Small Business Development Program as part of the proposal qualifications and require evidence of such ability in the Proposal Response. Proposers who tender a Proposal Response without evidence of such ability to fulfill the goals of the Small Business Development Program may be given a lesser evaluation for such qualification criterion.

The Port Commission shall make the final determination to award a SBDP-Eligible Contract. SBDP-Eligible Contracts will be awarded consistent with the statutory requirements for certain professional services contained in Sections 2254.003 and 2254.004 of the Texas Government Code.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, NO CONTRACTOR OR ANY OTHER PERSON OR FIRM IS INTENDED TO

OR SHALL DERIVE ANY LEGAL OR EQUITABLE RIGHTS, DIRECTLY OR AS A THIRD-PARTY BENEFICIARY, FROM PHA'S SBDP.

Nothing in the SBDP should be construed to give a Proposer a property interest in a proposal or Contract prior to the Port Commissioners' award of the Contract and compliance with all statutory and other legal requirements.

F. PROCEDURES FOR EVALUATING AND REPORTING SMALL BUSINESS PARTICIPATION

Prior to any consideration of a bid or proposal by the Port Commission for Contract award, PHA staff will take certain steps to insure that the bid or proposal's small business participation is properly evaluated. In cases of competitive bids, PHA staff must review submitted bids to insure that bid specifications related to small business goals have been met. In evaluating responses to RFPs, CSPs and RFQs, PHA staff will make a recommendation to the Port Commission.

The staff evaluation process may utilize a point system based on evaluation criteria set forth in the procurement methods. A designated number of points will be set aside for small business participation, if applicable. If the RFP, CSP, or RFQ does not have a small business participation goal, but the SBDP Business Advisor concludes that small business contractors may be available to perform the work, the point system may include a designated number of points set aside for small business participation.

Proposers may receive zero, some, or all of these designated small business participation points, based on the Proposer's plan to satisfy small business participation goals as may be stated in the RFP, CSP or RFQ, or as otherwise set forth below.

If, in the opinion of PHA staff, the Proposal Response completely meets the stated small business participation goals of the Proposal Request, the total amount of eligible points will be awarded for small business participation.

Small Business Proposers that plan to self-perform work (e.g. Prime Contractors) will have their small business status recognized in determining eligibility for points for small business participation during the staff evaluation as follows:

- a. If the RFP, CSP, or RFQ has a small business participation goal, the project is estimated to cost less than \$1 million, and the Small Business Proposer plans to self-perform such work instead of subcontracting to another small business, PHA staff will award only three-quarters (3/4) of the eligible points for small business participation to the Small Business Proposer for that portion of the Contract self-performed and not subcontracted to another small business.
- b. If the RFP, CSP, or RFQ has a small business participation goal, the project is estimated to cost less than \$1 million, and the Small

Business Proposer plans to self-perform some work and subcontracts the remainder to another small business, PHA staff will award all of the eligible points for small business participation to the Small Business Proposer.

- c. If the RFP, CSP, or RFQ has a small business participation goal, the project is estimated to cost \$1 million or more, and the Small Business Proposer plans to self-perform such work instead of subcontracting to another small business, PHA staff will award only one-half (1/2) of the eligible points for small business participation to the Small Business Proposer for that portion of the Contract self-performed and not subcontracted to another small business.
- d. If the RFP, CSP, or RFQ has a small business participation goal, the project is estimated to cost \$1 million or more, and the Small Business Proposer plans to self-perform some work and subcontracts the remainder to another small business, PHA staff will award (i) one-half (1/2) of the eligible points for small business participation to the Small Business Proposer for that portion of the Contract self-performed and not subcontracted to another small business, and (ii) the customarily calculated portion of the remaining eligible points for small business participation, for the portion of the work performed by the small business contractor.
- e. If the RFP, CSP, or RFQ does not have a small business participation goal, the project is estimated to cost less than \$1 million, and the Small Business Proposer plans to self-perform the Contract, PHA staff will award all of the eligible points for small business participation to the Small Business Proposer.
- f. If the RFP, CSP, or RFQ does not have a small business participation goal, the project is estimated to cost \$1 million or more, and the Small Business Proposer plans to self-perform the Contract, PHA staff will award only one-half (1/2) of the eligible points for small business participation to the Small Business Proposer.

Notwithstanding the foregoing, if the Small Business Proposer that plans to self-perform work (e.g. Prime Contractors) is a part of a joint venture, PHA may multiply the applicable points awarded to it as described above for such self performed work by the percentage of the ownership of the small business partner in the joint venture.

The ultimate decision to award Contracts will be made by the Port Commission based on its determination of best value to PHA.

Once the Contract is awarded, the following guidelines should be utilized to report small business participation in the awarded Contract, as the measures its progress in meeting small business goals.

1. If the small business is a **Subcontractor**, PHA will count toward applicable small business goals the portion of the total dollar value of a Contract that is subcontracted to the small business.
2. If the small business is a part of a **joint venture**, PHA will count toward applicable small business goals a portion of the total dollar value of a Contract with an SBDP-eligible joint venture equal to the percentage of the ownership of the small business partner in the joint venture, or the participation of the small business partner in the Contract.
3. If the request for proposal contemplates the use of small business Subcontractors and a small business is the **Prime Contractor**, the PHA may require the Prime Contractor small business to utilize other small businesses as Subcontractors, and count toward applicable small business goals as provided below.
4. If the request for proposal contemplates the use of small business Subcontractors and a small business is the **Prime Contractor**, PHA will count small business participation in two separate ways (depending on the utilization of a small business Subcontractor). PHA will count the total dollar value of the Contract awarded to the SBDP-eligible Prime Contractor small business toward applicable small business goals if the Prime Contractor small business does 100% of the work itself or subcontracts with other SBDP-Certified Small Businesses to complete 100% of the work. However, if the Prime Contractor small business utilizes a non-small business Subcontractor, PHA will count the total dollar value of the awarded Contract to the Prime Contractor small business, minus the dollar amount subcontracted to non-small businesses.
5. PHA or a Contractor will count toward applicable small business goals only expenditures to small businesses that perform a commercially acceptable function in the work of a Contract.
6. PHA will count toward applicable small business goals Contract expenditures for materials and supplies obtained from small business distributors and small business manufacturers, provided that these businesses assume the actual and contractual responsibility for the provision of the materials and supplies.
7. PHA will count toward applicable small business goals the following expenditures to small business firms that are not manufacturers or distributors:

- a. The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant, or managerial services, and assistance in the procurement of essential personnel, facilities, equipment, materials, or supplies required for performance of the Contract, provided that the fee or commission is determined by PHA to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- b. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of, or a regular dealer in, the materials and supplies, provided that the fee is determined by PHA to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- c. The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the Contract, provided that the fee or commission is determined by PHA to be reasonable and not excessive as compared with fees customarily allowed for similar services.

G. CERTIFICATION PROCEDURES

The Port of Houston Authority's SBDP requires prior certification of a small business in order to count the participation of that small business toward program goals.

1. Eligibility Requirements for Certification

To be eligible for certification as a small business, each applicant must do the following:

- a. Demonstrate that the firm's gross revenues or number of employees averaged over the past three years, inclusive of any affiliates as defined by 13 C.F.R. § 121.103, does not exceed the size standards as defined pursuant to Section 3 of the Small Business Act and 13 C.F.R. § 121.201;
- b. Demonstrate that the net worth of each owner does not exceed \$750,000, exclusive of principal residence and the value of the small business;
- c. Sign a PHA application form certifying that the net worth of the applicant falls within the SBDP guidelines stated above; and
- d. Demonstrate a significant local business presence. This provision requires that the small business have an established place of business in one or more of the counties of Harris, Galveston, Fort

Bend, Montgomery, Liberty, Waller, Chambers, or Brazoria, Texas.

2. Certification Process

- a. To be eligible to participate in the SBDP, a small business must have certification of its small business status. Certifications may be obtained from public and private agencies that certify small businesses. In addition, PHA may offer the opportunity for certification by independent third-party agencies. Any such independent third-party agency would not be an agent of PHA.

An application form will be utilized by PHA to get basic information from small businesses. This application form is attached hereto as **Exhibit A**. The small business must complete this application form and provide it to PHA, accompanied by a copy of the small business's certification or evidence of certification.

PHA does not represent that any particular agency employs the same definition of "small business" as that used by PHA. It is the responsibility of the applicant to choose an agency for certification that uses PHA's definitional criteria for small business.

PHA recognizes certification by private agencies on behalf of governmental units (e.g. City of Houston). Whether certification is from a governmental agency (e.g., METRO, Small Business Administration, etc.), a private agency (e.g., Women's Business Enterprise Alliance, Houston Minority Supplier Development Council, etc.), or a PHA-approved agency, PHA has the right to revoke acceptance of a business as a certified or qualifying small business or to conduct certification reviews in accordance with these Procedures. *See infra* Sections III.G.4 and III.G.5.

Once an application is approved by PHA staff, the applicant is considered a SBDP-Certified Small Business.

PHA staff shall deny certification to any applicant that is deemed to be a Pass-Thru Business.

- b. If required by PHA, the applicant must provide any and all materials and information necessary to demonstrate eligibility for certification and active participation in the control, operation, and management of the business.
- c. PHA's staff will review and evaluate applications and may reject an application based on one or more of the following:

- (i) The application is not satisfactorily completed;
 - (ii) The applicant does not meet the eligibility requirements for small business certification;
 - (iii) The application contains false information;
 - (iv) The applicant does not provide the information required in connection with the application review conducted by PHA; or
 - (v) The applicant's small business certification expires less than forty five (45) days from the date of the application.
- d. PHA may develop partnerships with governmental agencies and other organizations to identify appropriate businesses for participation in the SBDP.
 - e. Small businesses certified by other governmental agencies as small businesses may be certified under this Program upon application to PHA, if the other governmental agencies apply the same or substantially similar criteria to define small business.
 - f. If a small business experiences any change in its certification status with its certifying agency (i.e. amendments, decertification, termination, graduation), the small business shall immediately notify PHA of such change. Failure to notify or undue delay in notifying PHA shall be grounds for sanctions by PHA in connection with participation in the SBDP. The PHA may, in its discretion, obtain relevant information regarding the change in certification status from the certifying agency.
 - g. If a certifying agency decertifies or removes certification from an SBDP-Certified Small Business participant in the SBDP, that business shall be disqualified from further participation in the SBDP, until recertified or certified by another agency. Disqualification will automatically occur sixty (60) days after the certifying agency decertifies or removes its certification.
 - h. The Executive Director or his or her designee is authorized to amend any of the attached Exhibits.

3. Recertification Requirement

A small business application is valid through the certification date provided by the certifying agency. To reapply, a business must submit a renewal application and evidence of continuing eligibility and certification.

4. Revocation

PHA may revoke a previously approved application if it determines that the business does not meet the definition of a small business, or if the business fails to provide requested information in connection with an application review conducted by PHA. A business may be disqualified from participation in the SBDP if the business fails to provide evidence of certification to PHA. PHA may also revoke a previously approved application if it determines that the small business is operating as a Pass-Thru Business. If a question arises regarding certification, PHA will continue to count the previously certified small business as a SBDP-Certified Small Business until the business's small business certification expires or is officially revoked.

5. Certification Reviews

PHA may conduct random certification reviews of certified businesses by auditing them to verify that the information submitted by the business is accurate and that the business remains eligible after certification has been granted. An application approval is subject to revocation if it is determined that a business does not qualify as a SBDP-Certified Small Business under the terms of this Program. Certification reviews may be conducted for any business that PHA determines a certification review is warranted.

6. Limitations

Notwithstanding any other provision of this Program, except upon a finding of good cause by PHA, a firm shall no longer be eligible to participate in the SBDP after being enrolled for nine (9) years, regardless of whether the firm received prime Contracts or subcontracts under this Program. A firm that has been terminated from the Program because of this limitation will still be eligible to receive Contracts from PHA, but its participation will not be counted toward any SBDP goal. In determining whether good cause exists to extend a firm's participation SBDP beyond nine (9) years, PHA may review all relevant factors (such as amount of business previously received by the firm, capacity of other small businesses to provide similar goods or services, impact on existing or potential Contracts, opportunity for other small businesses to compete, best interests of PHA, etc.) In no event shall a firm's participation be extended to allow the total time of participation in SBDP to exceed fifteen (15) years.

7. Graduation Provisions

PHA may graduate a small business from eligibility as a SBDP-Certified Small Business. Once graduated, a small business may still contract to work on PHA projects, but its participation will not be counted toward satisfaction of SBDP goals. A small business will be graduated from SBDP if any one of the following occurs:

- a. The small business' gross revenues or number of employees over a three year period exceeds the size standards as defined pursuant to Section 3 of the Small Business Act and 13 C.F.R. § 121.201. In determining size standards, PHA will include affiliates as defined by 13 C.F.R. § 121.103;
- b. The net worth of any owner of the small business exceeds \$750,000, exclusive of principal residence and the value of the small business;
- c. The small business is graduated by the certifying agency because of changes in size standards of the small business (inclusive of affiliates) or net worth of each owner; or
- d. The small business has participated in the SBDP for nine years (and PHA has not approved an extension of participation based on good cause).

Decisions by PHA regarding certification, revocation, limitations, and graduation are subject to the dispute resolution procedures of SBDP. A small business may utilize the provisions of Section III M (3) for resolution of disputes regarding matters related to eligibility (certification, revocation, limitation, graduation, etc.).

H. VERIFICATION OF LOCAL STATUS OF SBDP PARTICIPANTS

Only small businesses with a significant local presence are eligible to participate in the SBDP. A small business is considered to have a significant local presence if it is located and has operations in one or more of the counties of Harris, Galveston, Fort Bend, Montgomery, Liberty, Waller, Chambers, or Brazoria, Texas, with one or more of its employees regularly based therein. A location utilized solely as a post office box, mail box, or telephone message center, or any combination thereof, with no substantial work function, shall not be construed to be a significant local presence.

I. IMPLEMENTATION PROCEDURES

In an effort to maximize the Program's success, the following procedures have or should be implemented to maximize opportunities for small business participation:

1. PHA has created the position of Small Business Development Director. This administrator is responsible for the direct operation and direct implementation of the SBDP.
2. PHA may designate one or more consultants and/or staff members to act as business advisors and to work directly with small businesses and Contractors to provide information, assistance, and support. PHA's Small Business Development Director and SBDP Business Advisors will undertake various tasks to make the Program workable, including the following:
 - a. Provide information on PHA's organization and contractual needs and offer instructions on proposal specifications, procurement policy, procedures, and general proposal requirements;
 - b. Provide workshops and training sessions for small businesses (at least twice yearly) on challenges frequently encountered by small businesses during the proposal process and generally when doing work at PHA;
 - c. Provide specifications and requests for proposals to the small business community in a timely manner, to allow small businesses adequate opportunity to develop responsible and responsive quotations and proposals;
 - d. Enhance the PHA database on SBDP-Certified Small Businesses and assist Contractors in identifying SBDP-Certified Small Businesses with which to subcontract;
 - e. Hold pre-proposal seminars to explain small business requirements, including explanation of the forms that must be submitted with a proposal;
 - f. Conduct outreach activities for small businesses that are minority- and women-owned, to ensure access and opportunity to compete;
 - g. Conduct internal information workshops to inform and acquaint PHA staff with the goals and objectives of PHA's SBDP and to sensitize them to the problems of small businesses;
 - h. Maintain lists of SBDP-Certified Small Businesses and coordinate with listings from other agencies, e.g., City of Houston, METRO, Women's Business Enterprise Alliance, and Houston Minority Supplier Development Council. These lists will be offered to Contractors and PHA staff to assist in program implementation;
 - i. Maintain records showing specific efforts to identify and award Contracts to small businesses and establish a monitoring system to

- ensure that all Contractors, Subcontractors, consultants, and vendors comply with Contract specifications related to small business enterprise utilization;
- j. Inform small businesses of proposal notices and specifications related to their capabilities by placing proposal notices in the appropriate trade bulletins, local newspapers, and other periodicals and informing local trade associations, technical assistance agencies, economic development groups, and small businesses with capabilities relevant to the proposal notice; and
 - k. Maintain and update a special PHA website on the SBDP proposals and on other opportunities to do business with PHA.
3. When feasible, PHA may reduce the size of its Contracts to allow small businesses a better opportunity to compete. When it will be effective, feasible, and without undue interference with Contract needs, PHA may attempt to divide Contracts into separate components to provide opportunities for qualified small businesses to compete for the separated Contract services.
 4. When feasible, PHA may assist small businesses in obtaining insurance and surety bonds in the performance of Contracts, including but not limited to the following acts:
 - a. Packaging Contracts so that dollar amounts do not require bonding;
 - b. Encouraging Prime Contractors to waive bonding or to assist small business Subcontractors in obtaining bonding;
 - c. Encouraging staged bonding when feasible, where bonding is carried over from one project stage to the next; and
 - d. Reducing bonding requirements for projects less than \$100,000.
 5. PHA will strongly encourage the formation of joint ventures among small businesses and between small businesses and larger firms to provide opportunities for small businesses to gain experience.
 6. PHA's Executive Director is authorized to develop and issue a Prompt Payment Directive. The Prompt Payment Directive will provide guidelines and mandates to Contractors and Subcontractors on the timing of payments to SBDP-Certified Small Business following receipt of payment from PHA. This Prompt Payment Directive may be enforced by contract and by sanctions under the SBDP.

7. PHA will assist private sector businesses and individuals to help develop a mentoring program to bring small business owners together with private sector business owners, to share information and experiences.
8. PHA solicitations for SBDP-Eligible Contracts with SBDP-eligible goals shall require all Proposers to submit a written assurance of meeting the Contract goal for small business participation in their proposals. Proposals must also include a proposed schedule of small business participation that lists the names of small business Subcontractors, a description of the work each is to perform, and the dollar value of each proposed small business subcontract. If the small business participation does not meet the small business Contract goals, the Proposers must submit sufficient information and evidence demonstrating that the Proposer made Good Faith Efforts to meet the goals.
9. PHA will require that all Proposers be required to submit information on small business Subcontractors and on the Proposers at the time of proposal review. Agreements between a Proposer and a small business in which the small business promises not to provide subcontracting quotations to other Proposers shall be prohibited.
10. PHA may develop a written handbook and a website to assist small businesses and Contractors. The handbook and website will contain the following:
 - a. Procedures outlining specific steps regarding how to submit a proposal;
 - b. Prerequisites for submitting proposals on Contracts;
 - c. Information regarding how plans and specifications can be obtained;
 - d. Names of persons to contact concerning questions on proposal documents;
 - e. Names of procurement officers and office hours;
 - f. Types of supplies and services purchased; and
 - g. Explanations of standard Contract implementation procedures and requirements concerning such matters as timely performance of work, Contract changes, and payment schedules.
11. PHA will provide workshops and training sessions on identified small business challenges, e.g., pricing, estimating, joint venture formation, and how to do business with PHA.

12. PHA will maintain and have available an updated small business directory and source list(s) per proposal solicitation to facilitate identifying small businesses with capabilities relevant to general contracting requirements and to particular solicitations. PHA will make the directory and source list(s) available to Proposers to assist their efforts to meet the small business requirements.
13. PHA will seek to use the business schools of local colleges and universities to reach out to small businesses and engage in other cooperative efforts that may enhance the success of the SBDP.

J. PROCEDURES FOR DETERMINING SATISFACTION OF GOOD FAITH EFFORTS REQUIREMENT

1. Bidder's or Proposer's Responsibilities
 - a. Each Bidder or Proposer must file an executed Acknowledgment of PHA's Nondiscrimination Mandate (similar in form to **Exhibit B.**) Said acknowledgment must include a statement evidencing the Bidder or Proposer's awareness of PHA's policy of nondiscrimination and affirmatively state that the Bidder or Proposer has not and will not discriminate against any person or company on the basis of race, color, sex, religion, national or ethnic origin, age or disability in its participation in any aspect of the SBDP.
 - b. The Bidder or Proposer must submit a Contractor's Small Business Plan (the "Plan") setting out how the SBDP goal for the proposed project is to be met. The Plan is to be submitted with the proposal response or within a period designated by the SBDP Business Advisor upon notification of finalist or successful Proposer status. Failure to respond within the designated period could result in a determination by PHA that a Bidder or Proposer is nonresponsive and thereby removed from consideration for an award.

The Plan should be a simple, short statement of small business participation in the SBDP-Eligible Contract. The Plan must include a list of SBDP-Certified Small Businesses proposed as Subcontractors and suppliers. All small businesses listed must be approved as SBDP-Certified Small Businesses by PHA prior to submitting the proposal or bid is submitted.

The Plan must also include executed subcontract(s) or letter(s) of intent for each listed small business, including the name of the small business, description of the scope of work to be performed, and the dollar value and percentage amount for each small business Contract.

- c. The Proposer shall adhere to the Plan submitted unless a waiver is received from the Small Business Development Director of PHA.
 - d. If the Bidder or Proposer is unable to meet the SBDP goal, the Bidder or Proposer must submit documentation of Good Faith Efforts to meet the small business participation goal. *See* Section III.C (definition of “Good Faith Efforts”). Such documentation shall be presented to the SBDP Business Advisor for review.
 - e. PHA may suspend the Contract of any Contractor that has failed to make Good Faith Efforts to meet a Contract small business participation goal, and may suspend any small business that has failed to make Good Faith Efforts to meet all requirements necessary for participation as a SBDP-Certified Small Business.
 - f. Prior to being issued a Notice to Proceed or other notification to begin the work, the successful Bidder or Proposer shall execute written Contracts with all of its small business Subcontractors, and shall assure that all such Contracts contain the terms set out in PHA Small Business Development Program Subcontract Terms Form.
 - g. Prior to award, the Contractor shall designate a SBDP contact person who will administer the Contractor’s SBDP commitments and who shall be responsible for maintenance of records of Good Faith Efforts to subcontract with SBDP-Certified Small Businesses.
 - h. After award, the Contractor shall: (1) submit PHA Small Business Development Program Utilization Reports to the SBDP office; (2) submit all disputes with small businesses that are unable to be resolved by a SBDP Business Advisor to mediation as set out in Section III.M, Appeals and Dispute Resolution Procedures; and (3) make timely payments to all persons and entities supplying labor, materials, or equipment for the performance of the Contract. Disputes relating to payment of small businesses shall be submitted to mediation in the same manner as any other SBDP dispute.
2. In the event a SBDP-Certified Small Business is suspended or removed for any reason, the Contractor shall make a Good Faith Effort to replace the small business with another SBDP-Certified Small Business.
 3. Nondiscrimination and Legal Compliance. The SBDP adheres to the PHA’s Nondiscrimination Mandate. A Contractor or SBDP-Certified Small Business may be found to have failed to satisfy the Good Faith Efforts of the SBDP if the Contractor or SBDP-Certified Small Business

violates the PHA's Nondiscrimination Mandate. Furthermore, violations of federal or state law or significant ordinances or regulations of any governmental unit may be deemed to be a failure to satisfy the Good Faith Efforts of the SBDP.

K. SANCTIONS AND SUSPENSIONS FOR FAILURE TO COMPLY WITH SBDP POLICIES AND PROCEDURES

PHA has authorized sanctions against Contractors, Subcontractors, and small businesses that violate the SBDP Policies and Procedures. Sanctions, including possible suspension, are the primary mechanism PHA has authorized to police the SBDP participants. Contractors and Subcontractors may be sanctioned, including possible suspension, for any SBDP violation, including violating the PHA Non Discrimination Mandate, violating the Program's requirements for operational integrity, failing to make Good Faith Efforts to utilize small businesses, or failing to comply with its submitted Plan to utilize small businesses. Small businesses that participate in the SBDP may also be sanctioned, including possible suspension, for failing to comply with SBDP Policy and Procedures, including failing to make Good Faith Efforts to utilize small businesses when acting as a Prime Contractor, failing to comply with its Plan to utilize Small Business, violating PHA's Non Discrimination Mandate or violating the Program's requirements for operational integrity.

1. The Port Commission of PHA has delegated authority to the Hearing Officer to hear allegations of misconduct regarding the SBDP and to issue sanctions if appropriate. The Hearing Officer is authorized to consider any alleged violation of these policies and procedures and impose **any** appropriate sanction, including private or public reprimand or suspension. Specifically, the Hearing Officer is authorized to suspend from contracting with PHA for a period of up to, but not to exceed five (5) years, any Contractor or Subcontractor that failed to make Good Faith Efforts, failed to comply with its submitted Plan, failed to comply with the required procedures of the SBDP, violated PHA's Nondiscrimination Mandate or violated the Program's requirements for operational integrity. The Hearing Officer is authorized to impose lesser sanctions as warranted by the violations and the circumstances surrounding the violations. The Hearing Officer is also authorized to suspend any SBDP-Certified Small Business that has failed to make Good Faith Efforts, failed to comply with the required procedures of the SBDP, violated PHA's Nondiscrimination Mandate, acted as a Pass-Thru Business, or otherwise violated the Program's requirements for operational integrity. This sanction may preclude the SBDP-Certified Small Business from engaging in any PHA Contract for a period of up to, but not to exceed, five (5) years, or any lesser sanction as deemed appropriate.
2. No Suspension shall be imposed by the Hearing Officer except upon evidence of specific conduct on the part of a Contractor or SBDP-Certified Small Business that demonstrates actions inconsistent with, or in direct contravention of, the required policies and/or procedures of SBDP,

specific applicable requirements for Good Faith Efforts, violations of PHA's Nondiscrimination Mandate, or requirements for operational integrity of SBDP.

3. Suspensions may be for any length of time not to exceed five (5) years. Suspensions in excess of one (1) year shall be reserved for cases involving intentional or fraudulent misrepresentation or concealment of material facts, multiple acts in contravention of applicable requirements, violations of PHA's Nondiscrimination Mandate, cases in which the Contractor or SBDP-Certified Small Business has been previously suspended or reprimanded, a small business found to be acting as a Pass-Thru Business, violations of federal or state law or significant ordinances or regulations of a governmental body, or other similarly egregious conduct.
4. In determining the length of any Suspension, the Hearing Officer shall consider the following factors:
 - a. Whether the failure to comply with applicable requirements involved intentional conduct or whether it may be reasonably concluded that the failure to comply resulted from a misunderstanding on the part of the Contractor or SBDP-Certified Small Business of the duties imposed on it by the Policy and Procedures of PHA's SBDP;
 - b. The number of specific incidences of failure to comply by the Contractor or SBDP-Certified Small Business;
 - c. Whether the Contractor or SBDP-Certified Small Business has been previously suspended or reprimanded in any manner;
 - d. Whether the Contractor or SBDP-Certified Small Business has failed or refused to provide the Hearing Officer with information requested by the Hearing Officer or required to be submitted to the Hearing Officer pursuant to law or these Procedures;
 - e. Whether the Contractor or SBDP-Certified Small Business has materially misrepresented any applicable facts in any filing or communication to the Hearing Officer;
 - f. Whether the Contractor or SBDP-Certified Small Business has violated PHA's Nondiscrimination Mandate;
 - g. Whether any subsequent restructuring of the subject business or other action has been undertaken to cure the deficiencies in meeting applicable requirements; and

- h. Whether the Contractor or SBDP-Certified Small Business has violated federal or state law or ordinances or regulations of a governmental body.

L. DUE PROCESS PROCEDURES RELATING TO SANCTIONS AND SUSPENSIONS

1. Hearing Officer

A Suspension or sanction may be imposed only after notice and an opportunity for a hearing by the Hearing Officer. The Hearing Officer shall not have participated in the actions or investigations giving rise to the Suspension hearing.

2. Notice

- a. Prior to the imposition of any Suspension or sanction, the Contractor or SBDP-Certified Small Business shall receive notice setting forth the allegations of violations or misconduct or the grounds for the proposed Suspension or sanction and setting a date, time, and place to appear before the Hearing Officer for a hearing on the matter.
- b. Any notice required or permitted to be given hereunder to any Contractor or SBDP-Certified Small Business may be given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested, addressed to its most recent address as specified in PHA records or in the Contract.

3. Hearing Procedures

Proceedings before the Hearing Officer shall be conducted informally, provided that each party may be represented by counsel and may present evidence and cross-examine witnesses. The burden of proof shall be upon PHA to prove by a preponderance of evidence that a violation has occurred. The decision shall be reduced to writing, detailing findings and conclusions. A copy of the draft decision shall be provided to the parties for an opportunity to review and comment to the Hearing Officer. The Hearing Officer shall thereafter review any comments received and issue a final decision in writing with notice of the final decision provided to the Contractor or SBDP-Certified Small Business. The notice shall include the final decision and an explanation of opportunity and timeline to appeal the decision of the Hearing Officer. The notice of the final decision of the Hearing Officer may be given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested, addressed to the most recent address in PHA records.

M. APPEALS FROM HEARING OFFICER’S FINAL DECISION IMPOSING SANCTIONS

1. Any business that is sanctioned by a Hearing Officer shall have the right to appeal such sanction. If the sanction involves suspension, the appeal of the sanctioned business shall be heard by an Appeal Arbitrator as discussed below. If the sanction does not involve suspension, the appeal shall be heard by the Executive Director.
2. Appeals from Hearing Officer’s final decision imposing sanctions shall be initiated by filing a written notice of appeal with the Executive Director no later than fifteen (15) days following the receipt of notice of the final decision of the Hearing Officer.
3. The Notice of Appeal from a Hearing Officer’s final decision that imposes a suspension must name three potential arbitrators, each of which is approved by appellant to act as the Appeal Arbitrator to conduct a final and binding arbitration of the matter. The Executive Director shall also name three other potential Appeal Arbitrators as recommendations to conduct the arbitration. The names of all six recommended arbitrators shall be placed in a container, and one picked randomly by the Small Business Development Director in a lottery-style selection. The lottery-style selection shall be made in the presence of the two parties or their representatives, if requested. The arbitrator so selected must conduct the Appeal Arbitration in Harris County, Texas. All parties to the Appeal Arbitration shall share equally the cost of the arbitration.
4. The Appeal Arbitration shall take place as soon as possible after the selection of an arbitrator. The Appeal Arbitrator’s authority is limited to determining whether the sanctions imposed should be upheld based on the evidence presented at the initial hearing. PHA *does not* waive its immunities by being a party in an Appeal Arbitration. The arbitration decision shall be in writing, detailing all findings and agreements by the parties, and is to be issued within fifteen (15) business days from the date of the arbitration. The arbitration decision is a final, binding order for all parties and is not appealable.

N. DISPUTE RESOLUTION PROCEDURES FOR DECISIONS (OTHER THAN SANCTIONS) OF SBDP BUSINESS ADVISORS

PHA seeks to amicably resolve disputes relating to actions or decisions of the SBDP Business Advisors by providing a grievance process to affected parties. The grievance process is set out below.

1. Initiating the Grievance Procedure

Any Contractor, SBDP-Certified Small Business, or other business directly aggrieved by a decision of a SBDP Business Advisor may initiate a grievance hearing by filing written notice with the Small Business Development Director. The grievance notice shall set forth clearly and concisely the matters about which the aggrieved person complains and shall specify the name, mailing address, street address, and telephone number of each person having a particular interest in the dispute.

2. Notice of Grievance Hearing

Upon receipt of a grievance notice, the Small Business Development Director may attempt, when appropriate, to resolve the matter informally during a period not to exceed thirty (30) days if the parties are not already at an impasse on the issues presented. Failing informal resolution, a Grievance Officer shall be selected by the Executive Director who shall arrange for a date, time, and place for a grievance hearing. Notice of the date, time, and place of the hearing shall be delivered by the Small Business Development Director to the aggrieved person by certified mail.

3. Hearings

Grievance hearings shall be informal. Participants shall include the applicable SBDP Business Advisor and the aggrieved person or a representative of the aggrieved person. The Grievance Officer may continue hearings or schedule additional hearings or informal conferences if the parties mutually agree to such additional meetings.

4. Resolution

Following the conclusion of the proceedings, the Grievance Officer shall issue a report and recommendation to the Executive Director, which shall include any suggestions for resolving the dispute between the parties. The Executive Director shall cause a copy thereof to be transmitted to the aggrieved person. The report and recommendation are not binding upon any party and are not subject to appeal. However, the Executive Director shall give good faith consideration to implementation of any suggested resolution presented by the Grievance Officer that does not conflict with the Executive Director's duties, the policy of PHA, or these Procedures. Final decisions regarding the outcome of the grievance are made by the Executive Director.

O. RESOLUTION OF DISPUTES BETWEEN A CONTRACTOR AND A SMALL BUSINESS

Any Contractor and SBDP-Certified Small Businesses with unresolved disputes between themselves shall use the following dispute resolution procedures. Upon

notification of a dispute, a SBDP Business Advisor may make inquiries of the nature of the dispute to the parties, individually or jointly. The Small Business Development Director may order the parties to mediation to attempt to resolve their dispute. Any party who refuses to participate in mediation may be subject to sanctions by PHA. Mediation procedures shall be incorporated by reference into SBDP-Eligible Contracts and subcontracts. PHA shall **not** be a party to the mediation. No decision or agreement resulting from mediation between the Contractor and the SBDP-Certified Small Business shall be binding on PHA.

P. COSTS OF DISPUTE RESOLUTION

Costs for all proceedings conducted by an Appeal Arbitrator or Grievance Officer, including the fees charged by Appeal Arbitrator or Grievance Officer, shall be divided equally among the participating parties. The Appeal Arbitrator or Grievance Officer may require parties other than PHA to provide a bond or deposit for his or her services as a condition of proceeding with any grievance or Appeal Arbitration.

Q. REPORTING AND REVIEW PROCEDURES

1. Records

PHA will monitor the progress of the SBDP. A record-keeping system should be maintained to identify and assess small business Contract awards, Prime Contractors' progress in achieving small business subcontract goals, and other efforts to assist small businesses. When possible, PHA should track small business participation by type of Contract, dollar value of Contract and subcontract work. PHA should also keep statistical data on the participation of small businesses in Contracts that are not covered by the SBDP. Participants in the SBDP may voluntarily report the ownership status of the business, i.e. whether it is a minority or woman-owned business.

2. SBDP Advisory Council

The Chairman of the PHA Port Commission (the "Chairman") will periodically appoint, in conjunction with the Small Business Development Task Force, members of an Advisory Council of no less than fifteen (15) members to give input to PHA on the operations of the SBDP. The SBDP Advisory Council should have representatives of small businesses, Contractor associations, minority business groups, women-owned business groups, community organizations, and other governmental entities. The membership of the SBDP Advisory Council may be expanded as desired by the Chairman. Each member will serve a one-year term and is eligible for reappointment. The Small Business Development Director will assign a liaison to work directly with the Advisory Council. Periodic meetings of the Advisory Council will be called by PHA. The Chairman will appoint a presiding officer of the Advisory Council each year before its first

meeting. As an Advisory Council, no actions of the group are deemed or shall be considered acts of PHA.

3. Reports

Quarterly reports will be made to the Small Business Development Task Force of PHA by the Small Business Development Director. An annual report will be made to the Port Commission, addressing the number of Contracts awarded to small businesses, general categories of Contracts awarded to small businesses, dollar value of Contracts awarded, and an indication whether the percentage of Contracts awarded met the goals of the Program. All reports shall be made available to members of the SBDP Advisory Council.

VI. AMENDMENTS TO POLICES AND PROCEDURES

The Mission and Policy Statement contained herein may only be amended, changed or deleted by a vote of the Port Commission. Any substantive change to the Operational Procedures above requires a vote of the Port Commission. Non-substantive changes to the Operational Procedures may be made with input from the Small Business Development Director, the PHA Executive Director, or the SBDP Advisory Council and only after a recommendation from the Small Business Development Task Force.

EXHIBIT A

Small Business Development Program Application



PORT OF HOUSTON AUTHORITY
SMALL BUSINESS DEVELOPMENT PROGRAM
APPLICATION

[] NEW APPLICATION

[] RENEWAL OF CERTIFICATION

I, _____ hereby make application to the Port of Houston Authority for recognition of
(name of person completing Application)

(Name of Applicant Business)

as a SBDP-Certified Small Business under the Port of Houston Authority's Small Business Development
Program. I represent that I am the owner or duly authorized representative of the above named Business
with full authority to make this Application.

Attached hereto is evidence of my certification from the indicated certifying agency: (Please mark below
which of the approved agencies is providing certification that Applicant is a Small Business. Please
attach proof of certification.)

- [] City of Houston [] METRO [] Houston Supplier Development Council
[] Women's Business Enterprise Alliance

This certification is valid until _____.

I have received, read, acknowledged, and will comply with the Port of Houston Authority's Small Business
Development Program's Policy and Procedures. I represent that my Business meets the eligibility
requirements for certification under the Small Business Development Program as defined in Section III, G
of the Small Business Development Program's Policies and Procedures. Specifically, I represent that my
Business is a Small Business with a Significant Local Presence as those terms are defined in the Port of
Houston Authority's Small Business Development Program's Policy and Procedures. I further pledge to
inform the Port of Houston Authority of any changes in the status of certification of my Business and of
any other changes that might disqualify it as a SBDP-Certified Small Business. This Application is
executed to be an official government document, subject to the applicable laws of perjury.

Date
Name
Signature
Federal Tax ID
Address
City, State Zip
County
Telephone
Fax
Email

Definitions (taken from the Small Business Development
Program's Policy and Procedures)

Small Business. A Small Business is a firm for which
the gross revenues or number of employees over the
past three years, including any affiliates as defined by 13
C.F.R. § 121.103, does not exceed the size standards as
defined pursuant to 15 U.S.C. § 632 (formerly Section 3
of the Small Business Act), and 13 C.F.R. § 121.201, and
for which the net worth of each owner does not exceed
\$750,000, excluding principal residence and the value of
the small business.

Significant Local Presence. Pursuant to the Small
Business Development Program's Policy and
Procedures, a Small Business has a Significant Local
Presence if it is located in one or more of the counties of
Harris, Galveston, Fort Bend, Montgomery, Liberty,
Waller, Chambers or Brazoria, Texas, with one or more
of its employees regularly based therein. A location
utilized solely as a post office box, mail box or telephone
message center, or any combination thereof, with no
substantial work function shall not be construed to be a
significant local presence.

EXHIBIT B

Acknowledgment of PHA’s Non Discrimination Mandate

I am the duly authorized representative of _____ (the “Company”), that seeks to do business with the Port of Houston Authority and/or participate in the Port of Houston’s Small Business Development Program. I hereby acknowledge on behalf of the Company that it is aware of the Port of Houston Authority’s Nondiscrimination Mandate. Specifically, I hereby acknowledge on behalf of the Company that it is aware that the Port of Houston Authority’s policy is not to discriminate based on race, color, sex, religion, national or ethnic origin, age, or disability in all operations at the Port of Houston Authority.

The Company has not and will not discriminate against any person or company or group of persons or companies on account of their race, color, sex, religion, national or ethnic origin, age, or disability in the selection of subcontractors, the operations of the Small Business Development Program or in any of my dealings related to the Port of Houston Authority.

I hereby acknowledge on behalf of the Company that it understands that the Port of Houston Authority aggressively enforces this mandate and that the Company may be sanctioned or suspended from business at the Port of Houston Authority if it is found to be in violation of the Port of Houston Nondiscrimination Mandate.

Date

Signature

EXHIBIT C

Acknowledgment of PHA’s Prompt Payment Directive

I am the duly authorized representative of _____ (the “Company”), that seeks to do business with the Port of Houston Authority. I have received and reviewed the Port of Houston Authority’s Prompt Payment Directive. The Company herein pledges to adhere to this directive.

I understand and acknowledge that failure to adhere to the Prompt Payment Directive may be grounds for PHA’s sanction of the Company or possible contract action against the Company

Date

Signature