



**Supplier Diversity
Small Local Business Enterprise
Program Manual
(SBE Program)**

Effective July 1, 2023

Louisville and Jefferson County Metropolitan Sewer District (MSD)
700 West Liberty Street
Louisville, Kentucky 40203-1911

Message from MSD Executive Director

MSD has embarked on several initiatives to ensure equity in the award of our contracts to help grow small, local businesses, while at the same time developing an excellent supply base that benefits our customers and communities where we live and work.

In 2018, MSD received the results of a Disparity Study commissioned by the organization. We are now pleased to introduce MSD's new Small Local Business Enterprise Program (SBE Program). The SBE Program is intended to further MSD's commitment to stimulate economic development and promote equal opportunity for small local businesses in MSD Service Areas



The objectives of the MSD SBE Program are to:

- Establish race- and gender-neutral initiatives for small local businesses.
- Increase reasonable/significant opportunities for small local businesses to work with MSD.
- Develop new capacity and resources to compete for MSD prime contracts.
- Increase competition in the contracting community.
- Diversify the companies doing business with MSD.

As Executive Director, I am fully committed to MSD's new SBE Program. The SBE Program will allow MSD to more effectively target small business participation by creating contracting opportunities and technical assistance relating to MSD's contracting and procurement.

I hope you will join me in supporting this important small business community initiative.

A handwritten signature in blue ink that reads "James A. Parrott". The signature is written in a cursive style and is positioned above a thin horizontal line.

James A. Parrott

MSD Executive Director

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1. Overview

A. Introduction

MSD is committed to encouraging and facilitating full and equitable business opportunities for small local business enterprises in MSD Service Areas, wishing to do business with MSD. In 2016, MSD commissioned Mason Tillman Associates, Ltd., to conduct a Disparity Study to: 1) review minority- and woman-owned business enterprise (M/WBE) and non-M/WBE participation on MSD's contracts awarded from July 1, 2010, to June 30, 2015; and 2) assess the procurement policies governing the award of MSD's contracts. These policies impacted the level of contracting with M/WBEs and other small businesses.

Effective July 1, 2021, MSD implemented a new race and gender neutral SBE Program in response to the findings and recommendations in the Disparity Study Final Report, which was completed in 2018. The SBE Program was initially a two-year pilot program. The MSD Board adopted the SBE Program Policy as part of MSD's efforts to support Supplier Diversity and small businesses. The SBE Program is designed to improve access to contracting opportunities for small local businesses in MSD Service Areas. The purpose of the program is to develop, promote and foster inclusiveness and economic development, as well as ongoing evaluation to assure small local businesses in MSD Service Areas are provided equal opportunities in MSD's procurement process to compete for MSD contracts.

B. Leadership

MSD leadership shall take an active and positive role in building a culture within which MSD is able to effectively implement this SBE Program. The MSD Executive Director and MSD Chief Procurement Officer shall:

1. Actively review the results of the performance of the SBE Program with internal management personnel on a periodic basis.
2. Articulate in written and verbal communication, internally and externally, MSD's interest in the success of the SBE Program and performance in SBE procurement.
3. Issue periodic reports to the MSD Board, Executive Leadership Team, and other internal and external stakeholders, as applicable.
4. Engage in other leadership activities contributing to supporting the SBE Program.

C. Program Administration

MSD's Supplier Diversity and SBE Programs Manager shall have primary responsibility for the administration of the SBE Program and has designated the day-to-day administration of the SBE Program to the Supplier Diversity Program Administrator, who is authorized to:

1. Establish written procedures, guidelines and forms necessary to effectively implement the SBE Program requirements.
2. Develop and implement outreach and provide technical assistance to help businesses gain the ability to compete successfully for MSD contracting opportunities.
3. Track and report on the effectiveness of the SBE Program through collection, review and

analysis of SBE utilization data.

4. Attend pre-bid/proposal conferences to explain the SBE Program.
5. Review and verify the program eligibility status and gross revenue/receipts of SBEs.
6. Maintain a directory of SBEs for prime contracting opportunities.
7. Draft and submit SBE Program periodic reports to the Supplier Diversity and SBE Programs Manager, as applicable.
8. Promote the SBE Program to small businesses located in MSD Service Areas.

2. Definitions

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

1. **Bid** means written quotation, proposal or offer by a contractor to perform or provide labor, materials, equipment, supplies or services to MSD for a price submitted in response to a solicitation issued by MSD.
2. **Bidder/Proposer** means any business enterprise seeking to be awarded an MSD contract by a competitive process.
3. **Broker** means a firm or person who contracts with third parties on behalf of the broker's principal or a specialist who represents purchasers of materials without taking possession or ownership of those materials, or an agent employed to make bargains and contracts for compensation. A broker acts as an intermediary in transactions between a buyer and a seller, generally receiving a commission or fee for work performed. An independent manufacturer's representative or distributor is not a broker.
4. **Business Enterprise** means a company, corporation, partnership, sole proprietorship, professional association or any other legal entity that is properly licensed and/or otherwise authorized to do business in the Commonwealth of Kentucky and is organized to engage in lawful commercial transactions that are directly or indirectly involved in providing materials and/or services to MSD with the anticipated outcome of earning a profit. The business enterprise must perform a commercially useful function and shall not include a joint venture.
5. **Construction** means all aspects of building, altering, repairing or improving any public structure or building, or other public improvements of any kind to any public real property. Construction also includes the demolition, destruction, dismantling or removal of public structures, buildings and other public improvements and the clearing of land. It does not include the routine operation, repair or maintenance of existing structures, buildings or real property.
6. **Contract** means an agreement between MSD and a person or business enterprise to provide or procure labor, materials, equipment, supplies and services to, for or on behalf of MSD.
7. **Contractor** means any person or business enterprise who undertakes to procure a contract for profit with MSD, to supply or provide labor, materials or services; and any

person who is a subcontractor under any such contract.

8. **MSD Service Areas** means the geographic area within which MSD is authorized and required to provide service. For the purpose of the SBE Program, MSD service area currently includes Jefferson, Oldham and Bullitt Counties.
9. **Principal Place of Business** means the physical business location where the business enterprise's day-to-day operations are directed, controlled and managed and where business records are retained. If the location for the management of the business enterprise is different from the location of where business records are retained, MSD will determine the principal place of business for SBE program purposes.
10. **Significant Local Business Presence** means a business enterprise with an established place of business in MSD Service Areas, at which one or more of its employees is regularly based. Such place of business must have a substantial role in the SBE performance of a commercially useful function. A location utilized solely as a temporary location, movable work site, post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a Significant Local Business Presence.
11. **Small Local Business Enterprise (SBE)** – For the purposes of the SBE Program, a Small Local Business Enterprise is a small business enterprise with a Significant Local Business Presence in MSD Service Areas and with annual gross revenue/receipts not exceeding an average of \$10 million (\$10,000,000.00) over a three-year period.

3. Program Participation

1. The SBE Program is designed to improve opportunities and build capacity of small local business enterprises to compete in the open market at a prime contracting level on MSD projects. The SBE Program is also subject to MSD's Procurement Regulations.
2. MSD registered SBEs are eligible to participate in the SBE Program and will competitively compete for projects allocated by MSD. Contracts will be awarded based on lowest responsive, responsible bid. MSD, however, reserves the right to reject any and all bids and to waive technicalities and minor irregularities in bids. The grounds for rejection shall include but shall not be limited to the grounds for rejection of sealed bids as set forth in MSD's Procurement Regulations and shall be recorded in writing and filed in the bid file relating to the particular procurement.
3. The Chief Engineer or their designee in conjunction with the Supplier Diversity and SBE Programs Manager will determine the projects to be bid to the program participants, if it appears that sufficient SBEs are available to provide competitive bids. Projects will range from \$40,000.00 to \$199,999.99.
4. There must be at least two (2) competitive bids received from SBE participants. If fewer than two (2) bids are received from SBEs, MSD may cancel the bid and rebid through the normal bidding process, which will include non-SBEs.
5. There must be a reasonable expectation that the award will be made at fair market value/price.
6. The SBE is required to self-perform at least 50 percent (50%) of the services involved on any contract they are awarded. MSD reserves the right to terminate the contract if the SBE performs less than 50 percent (50%) of the work. SBEs are prohibited from engaging in

brokerage and/or pass-through business activities and may be subject to suspension and/or debarment in accordance with MSD's Procurement Regulations for engaging in such activities.

7. The SBE must comply with all federal, state and local contracting laws and shall meet the terms and conditions set forth in MSD's Contract.
8. Bonding shall be required on all construction projects estimated to exceed \$100,000.00.

4. Eligibility Requirements

Only Business Enterprises that meet **all** of the following criteria set forth below will be eligible to participate in the SBE Program:

1. For the purposes of the SBE Program, an SBE must be an independent and continuing for-profit business enterprise performing a commercially useful function and must have a Significant Local Business Presence located in MSD Service Areas.
2. The SBE must be in operation for a minimum of one year prior to applying for MSD SBE Program registration and have a minimum of one year of gross revenues/receipts. Participants are required to submit three years of business tax returns at the time of registration (see the SBE Program Application for the appropriate schedule to be submitted for gross revenue/receipts verification). If a business enterprise has not existed for three years, the gross annual revenue/receipts will be based on the annual average(s) over the course of the existence of the business.
3. The annual gross revenue/receipts of the SBE shall not exceed an average of \$10 million (\$10,000,000.00) over a three-year period.

5. Required Documentation

A business enterprise meeting the above criteria will be registered in MSD's database as an SBE with the Supplier Diversity Department upon its submission of a completed SBE Program Application form and supporting documentation, including but not limited to:

- Three years of business tax returns or tax return for each year the SBE has been in business if less than three years;
- Copy of documents filed by the SBE with the Kentucky Secretary of State in accordance with the Kentucky Business Entity Filing Act (e.g. articles of incorporation, articles of organization, etc.);
- Copy of the SBE's deed, lease or rental agreement for the SBE's principal place of business in that it meets the SBE eligibility criteria as set forth above.

SBEs must verify SBE Program eligibility every three years. In the event an SBE no longer meets the eligibility requirements, the SBE shall notify MSD immediately.

6. MSD Audit Provisions

MSD has the right to audit the books and records of the business enterprise, as necessary, to

verify compliance with the SBE Program. The audit may include, but not be limited to the following: (1) verification of documentation related to the SBE's eligibility; and (2) verification of the SBE's gross revenue/receipts... The SBE shall permit and make available to MSD or its authorized representative, all books, records, and any information necessary to demonstrate compliance with the SBE Program. Records may include, but are not limited to personnel, financial and/or any other relevant records pertaining to the SBE Program. Upon request, MSD may conduct an audit at any time during the SBE's regular business hours at the SBE's principal place of business. However, MSD shall not unreasonably interfere with the SBE's course of business. All records related to the SBE Program shall be retained for five (5) years from the SBE's initial participation date. In the event of multiple participation dates, the latest date shall be deemed the participation date.

7. Suspension/Debarment

If MSD determines a valid cause for suspension or debarment exists, MSD may temporarily suspend or debar the SBE, its members and, principals and may deem future companies or entities formed by the SBE and/or its members and principal's ineligible from doing business with MSD for a period of three (3) years. Valid cause for suspension or debarment may include, but is not limited to the following:

- The falsification of earnings
- Submitting falsified information on the SBE Program Application
- Submitting any falsified documentation to make it look as if the SBE is an eligible program participant
- Engaging in brokerage or pass-through activities

8. Form(s) – SBE Program

The SBE must complete the following form(s) (To be completed electronically):

- SBE Program Application Registration
- SBE Eligibility Affidavit