

**Small Business Enterprise (SBE)
Subcontracting Program**

Policies and Procedures Manual

Revised September 29, 2010

TABLE OF CONTENTS

<u>Article</u>	<u>Page No.</u>
1. Definitions	2
2. The Office of Contract Compliance	3
3. Eligibility Standards for SBE Certification	5
4. Ownership and Control	6
5. Certifications	6
6. Purpose and Establishment of Goals	7
7. Requirements of Prime Contractors	8
8. Evaluation of Good Faith Efforts	10
9. Exclusions	11
10. Grievance Process	11
11. Sanctions and Penalties for Non-Compliance	13
12. Severability	15

ARTICLE 1.
DEFINITIONS

For the purpose of this Program, the following words, terms, phrases and abbreviations shall have the following meanings:

"Bidder or Contractor" shall mean any contractor, vendor, supplier, or other person, partnership, joint venture, corporation or other business entity that submits a bid or proposal to NEORSD or expressed interest in submitting a bid or proposal in response to competitive solicitation issued by NEORSD or who has been awarded a contract by NEORSD.

"Broker" shall mean a firm that does not itself perform, manage or supervise the work of its contract or subcontract in a manner consistent with the normal business practices for contractors or subcontractors in its line of business.

"Capital Equipment" shall mean equipment that is fixed, built-in, or permanently affixed to a building or structure. Capital Equipment represents a substantial investment of money.

"Compliance" shall mean the condition existing when a participant has met the requirements of this Program.

"Contract" shall mean any mutually binding legal obligation of NEORSD created to acquire some good and/or service from one or more firms, which is paid or which is to be paid for, in whole or in part, with monetary appropriations of NEORSD. In this context, the terms "contracting", "purchasing", and "procurement" are synonymous and refer to the process or processes under which NEORSD undertakes such acquisitions.

"Contract Goal" shall mean an aspirational effort to attain a certain level of SBE participation, through first- and second-tier subcontracting on contracts awarded by NEORSD, based upon contract-specific subcontracting opportunities and the availability certified SBEs.

"Installation" shall mean the process of putting a piece of equipment or machinery in place and making it ready for use.

"Joint Venture" shall mean an association of two or more independent persons, partnerships, corporations (or any combination of them) formed, consistent with the laws of the State of Ohio, to carry out a single, for-profit

business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the SBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

“Manufacturer” shall mean an individual (or individuals) who owns, operates, or maintains a factory or establishment that produces on the premises the components, materials, or supplies obtained by a bidder, vendor, consultant, or NEORSD.

“Material” shall mean supplies that may be incorporated into, or attached to, an end product, or that may be consumed or expended in the manufacturing process.

“Non-Compliance” shall mean the condition that exists when a contractor, consultant, or certified SBE has failed to meet the requirements of the SBE Policy.

“Prime Contractor” shall mean the firm who enters into contract with the District and who is primarily responsible for performance under such contract, including professional services firms or consultants.

ARTICLE 2. **THE OFFICE OF CONTRACT COMPLIANCE**

Definition and Purpose: The Northeast Ohio Regional Sewer District (NEORSD) has an interest in maintaining and advancing the public welfare by assuring that its public expenditures promote the financial growth and stability of small businesses. NEORSD endeavors to increase economic opportunity for small businesses to enhance the well-being of citizens of the greater Cleveland metropolitan area as well as Cuyahoga County and its surrounding counties. NEORSD has established the Office of Contract Compliance (OCC) for the purpose of managing the Small Business Enterprise (SBE) Program. The OCC will establish SBE participation subcontracting goals for all areas of procurement of NEORSD, and will monitor and track SBE participation for each contract awarded by NEORSD. SBE goals are not quotas, but a method enabling NEORSD to encourage the inclusion of SBEs in NEORSD’s procurement process. The OCC will also establish SBE participation goals for District programs, and will monitor and track SBE participation as a prime contractor, as a joint venture partner, or as a subcontractor.

The OCC is responsible for developing, administering and enforcing the SBE Program of NEORSD. The OCC reports to the Executive Director and the Director of the Department of Finance of NEORSD on all matters concerning the SBE Program.

Functions of the OCC: The OCC encourages contracting opportunities for SBEs and strives to achieve the policies and objectives of the SBE Program by:

1. Administering and enforcing SBE Program policies;
2. Establishing written rules, regulations and procedures consistent with this SBE Policy;
3. Maintaining outreach and assistance programs to promote contracting opportunities for SBEs;
4. Establishing, enhancing and maintaining relationships with agencies and stakeholders in the region;
5. Maintaining a current database of available SBEs and making such database accessible to interested parties;
6. Monitoring and tracking data related to utilization of SBEs as prime contractors, joint venture partners, and subcontractors on NEORSD projects;
7. Recommending SBE subcontracting goals for individual contracts and programs to contracting departments of NEORSD;
8. Attending pre-bid/proposal conferences regarding contract solicitations that include SBE goals;
9. Attending kick-off meetings for major projects to explain the SBE Program and goals;
10. Participating on evaluation panels;
11. Investigating written complaints;
12. Determining compliance of SBE Program rules and regulations;
13. Preparing reports related to the SBE Program; and
14. Performing other tasks as may be required to fulfill the purposes of the SBE Program.

ARTICLE 3.
ELIGIBILITY STANDARDS FOR SBE CERTIFICATION

The following standards will be used under the SBE Program in determining whether a firm is eligible to be certified as a SBE:

Years of Operation: The firm must demonstrate that it has been in continuous operation in the category for which it is requesting certification for at least one (1) year.

Size Standards: The annual gross revenues of the firm must be equal to or less than the amounts established by NEORSD and set forth on NEORSD’s website at www.neorsd/sbe.org, averaged over a three (3) year period. A sample listing of NEORSD’s size standards is set forth below:

Industry	NEORSD Size Standard
Construction	\$33,500,000
Plumbing/ HVAC	\$33,500,000
Electrical	\$33,500,000
Painting	\$14,000,000
Roofing	\$14,000,000
Engineering	\$10,000,000
Waste Management and Remediation Services	\$3,500,000

Location: The firm must establish that it has a functioning office located within the geographical limits of Cuyahoga, Geauga, Lake, Lorain, Medina, or Summit Counties. Mailbox facilities or other similar arrangements are not sufficient to establish a permanent office location.

Additionally, the firm must be registered to conduct business within the State of Ohio, as demonstrated through official documents filed with the Secretary of State of Ohio.

Attainment of Competitive Status: A certified and otherwise eligible SBE shall be presumed to have reached a competitive status in the marketplace upon achievement of revenue receipts for three (3) consecutive years in its respective industry in excess of the requirements listed in this Policy.

Upon achievement of a competitive status, a firm shall be ineligible for utilization to fulfill SBE Program participation goals and may not subsequently become certified under this SBE Program unless, after the expiration of two (2) calendar years from the date of ineligibility, the SBE demonstrates that:

1. Its annual gross receipts have declined to levels below those established in the Eligibility Section of this Policy; and
2. During the two calendar years referenced above, the SBE was unable to achieve meaningful participation in NEORS D contracting and/or in the public and private sectors of the larger local economy, despite its good faith efforts to do so.

Performance on Prior Contracts: The District reserves the right to deny SBE certification to any firm that, within five (5) years prior to submission of the SBE certification application, is or has been:

1. In arrears or declared to be in default to the District upon any contract or debt, or has otherwise failed to perform faithfully, fully, and completely any previous contract with the District;
2. In arrears or declared to be in default to another public or private entity upon any contract or debt, or has otherwise failed to perform faithfully, fully, and completely any previous contract with another public or private entity;
3. In default, as surety or otherwise, upon any obligation to the District; or
4. In default, as surety or otherwise, upon any obligation to another public or private entity.

This provision shall include, but not be limited to, a firm that has common ownership or control, or right of control, of any person, firm, corporation, joint venture, or joint venture partner that committed any of the above within the last five (5) years. Further, this paragraph shall apply equally to any firm that has committed any of the above while performing as a prime contractor, a subcontractor, or as a joint venture partner under a joint venture arrangement, even if such firm is submitting an application for SBE certification as a partner in a different joint venture arrangement, and regardless of whether the firm was the managing joint venture partner under the prior joint venture.

ARTICLE 4.

OWNERSHIP AND CONTROL

Affiliation: A firm must be independent from the control of another entity. NEORS D will follow the guidelines of [13 CFR 121.103](#) to determine a firm's

affiliation in approving certification under the SBE program. Such determination shall include reviewing the extent of both operational and managerial control of the SBE applicant. Any relationship between a SBE and a non-SBE that has an interest in the SBE shall be closely scrutinized to determine if the interest of the non-SBE conflicts with the ownership and control requirements of the SBE, as described in this section.

ARTICLE 5. **CERTIFICATIONS**

Purpose: A certified SBE is a business that has been designated by NEORSD as having met the criteria for eligibility as an SBE. Certification relates exclusively to the size of a business enterprise, but not the quality of service or products provided by that business enterprise.

Timing: SBE certifications shall be for a period of one (1) year. The Contract Compliance Manager may grant a provisional SBE certification relative to specific bids or proposals. All SBEs must obtain recertification on the anniversary of their latest certification.

If a company is denied certification by NEORSD, such company may not reapply for certification for a period of one (1) year from the date of the notice of denial, provided that such company shall have the right to appeal such denial.

All firms submitting applications for SBE certification must be certified at least seven (7) calendar days prior to the submission of a bid or proposal for which a firm desires to participate as a certified SBE.

Process: All applications for certification must be on NEORSD's SBE certification forms and any required affidavits must be properly signed and notarized. All certified SBEs must update their certification information immediately upon any changes of address, telephone number, fax number, email address, and/or changes in ownership, control and operation of the SBE.

ARTICLE 6. **PURPOSE AND ESTABLISHMENT OF GOALS**

Definition and Purpose: It is the policy of NEORSD that SBEs shall have the maximum feasible opportunity to participate in the performance of contracts of NEORSD.

Contract Goals: SBE subcontracting goals will be established on a contract-per-contract basis, based on an analysis of market availability and commercially useful function within the contract, along with the professional advice from the Director of the requesting department. The Contract Compliance Manager may also waive the SBE goals for particular bids or proposals. The total dollar value of a subcontract with a SBE or a second-tier SBE subcontractor utilized under a contract may be counted toward a specified SBE goal. SBE goals will only be established on those contracts that have subcontracting opportunities for SBE participation. The size of SBE goals will be dependent on the circumstances of each contract (e.g., type and location of work, availability of SBEs to perform the particular type of work) and functionality within the contract.

Program Goals: In addition to Contract Goals, the OCC may establish Program SBE participation goals for District programs. The OCC shall track and report not only the amounts spent toward SBE subcontracting under District programs, but also amounts spent by the District toward SBEs serving as prime contractors and joint venture partners.

Award of Contract: NEORSD reserves the right to determine the actions to be taken on a bid, proposal, or contract if a Contract Goal is not or will not met, including rejecting any or all bids or proposals. If a contract is amended, resulting in an increase in the total contract amount, SBE participation shall be counted against the updated contract amount.

Post-Award Reporting: Contractors must submit SBE utilization reports during the course of, and at the end of, the performance of the contract, as required by the OCC. Such reports shall include summaries of the dates and dollar amounts of payments made to SBEs and other subcontractors during the term of the contract. The OCC shall have the right to audit any contract to determine SBE participation at any time during or after the contract term. Such audit may include, but not be limited to, on site reviews and interviews, desk reviews, requests for cancelled checks, requests for invoices, certified payroll reports, etc. Participants may be required to submit a SBE utilization recovery plan when deemed necessary by the OCC.

ARTICLE 7.

REQUIREMENTS OF PRIME CONTRACTORS

Meeting Goals: All contractors, including SBEs performing as prime contractors, shall make good faith efforts to attain SBE Contract Goals. The obligation to meet such goals shall be ongoing throughout the performance of the contract.

Only those SBEs certified by the OCC shall be eligible to be utilized for the fulfillment of the SBE Contract Goal. SBE listings may be obtained from the Office of Contract Compliance or on NEORSD's website at www.neorsd/sbe.org. All SBEs must perform a commercially useful function on the contract. For competitively bid or procured contracts, bidders are required to complete all forms and submit all documents regarding SBE participation at the time of the bid. Such information shall include:

1. A list of all SBEs and other subcontractors to be utilized on the contract;
2. A list of SBEs who provided quotes for the project, but were not chosen to perform the work; and
3. The dollar amount and percentage of contract funds related to each first- and second-tier SBE.

Reporting Requirements: Prime Contractors performing under District contracts shall comply with all reporting requirements of the District related to utilization of SBE subcontractors, including, but not limited to, completing on-line reporting of payments made to such SBEs.

Prime Contractors: Prime Contractors shall utilize SBE subcontractors consistent with industry standards. Only participation by SBE subcontractors that perform a commercially useful function, as defined herein, will be counted towards an SBE goal.

SBE Performing as Prime Contractor: A NEORSD-certified SBE that submits a bid or proposal as a prime contractor for a contract shall be required to obtain 100% of the total SBE participation goal established for the contract using other NEORSD-certified SBEs. The District shall track and report amounts paid by the District to SBEs performing as Prime Contractors under District contracts.

Joint Ventures: Joint Ventures containing a NEORSD-certified SBE(s) that perform on NEORSD contracts may receive credit toward the total SBE subcontracting goal for any distinct, clearly defined portion of the work actually performed by the SBE Joint Venture partner(s), so long as the SBE Joint Venture partner(s) individually hold(s) 49% or less ownership in the Joint Venture. Before credit will be given toward an SBE subcontracting goal, the Joint Venture must provide evidence to the District of the Joint Venture's various ownership interests through a copy of the Joint Venture agreement and other relevant documentation.

Joint Venture Subcontractors: Prime Contractors may receive credit toward the total SBE subcontracting goal by utilizing a subcontractor who is performing under a Joint Venture arrangement so long as all Joint Venture partners individually qualify as a SBE. In the event that one or more Joint Venture partners does not individually qualify as a SBE, the Prime Contractor may receive credit toward the total SBE participation goal for any distinct, clearly defined portion of the work actually performed by an SBE performing under a Joint Venture arrangement, so long as the SBE Joint Venture partner(s) individually hold(s) 49% or less ownership in the Joint Venture. Before credit will be given toward an SBE subcontracting goal, the Prime Contractor and/or the Joint Venture subcontractor must provide evidence to the District of the Joint Venture subcontractor's various ownership interests through a copy of the Joint Venture agreement and other relevant documentation.

Materials and Equipment: Where a bidder proposes to utilize suppliers or distributors to satisfy a Contract Goal through the provision of materials and/or equipment, in whole or in part, NEORSD may approve supplier participation upon review of the following factors:

1. The nature and amount of materials and/or equipment to be furnished;
2. Whether the SBE is a manufacturer, wholesaler or distributor of the supplies and has the capabilities to deliver such supplies in accordance with its SBE certification;
3. Whether the SBE actually performs, manages and supervises the work to furnish the materials and/or equipment;
4. Whether the SBE intends to purchase materials and/or equipment from a non-SBE and simply resell such materials and/or equipment to the prime contractor for the purpose of obtaining credit towards fulfillment of the SBE goal. Bidders will receive no SBE credit for supplies provided by or through brokers, as defined in this SBE Policy; and
5. A bidder may only receive credit toward a SBE goal for the purchase of capital equipment, as defined in this SBE Policy, to the extent specified in the bid documents.

Reporting SBE Substitutions: Participants shall report any planned replacements or substitutions of the use of any SBEs to the OCC and NEORSD Department of Engineering and Construction or such other appropriate

contracting departments of NEORSD, within five (5) business days after the determination that such replacement or substitution is necessary.

ARTICLE 8.
EVALUATION OF GOOD FAITH EFFORTS

Evaluation of Good Faith Efforts: In the event that a bidder is unable to meet the Contract Goal, the bidder must demonstrate that it made a good faith effort to meet the Contract Goal.

The OCC will evaluate not only the kinds of efforts made by a bidder, but also the quantity and intensity of such efforts. In evaluating whether a bidder has made a good faith effort to achieve the Contract Goal, the OCC will evaluate the following factors:

1. Completion and timely submission of all NEORSD-required good faith effort forms, including any affidavits and SBE utilization plans that NEORSD may require;
2. Documentation of all contacts and responses of SBEs (telephone, e-mail and fax) regarding the solicitation of SBEs, including names, dates, work scopes, and reasons for failure to reach agreement;
3. A minimum of three documented solicitations of SBEs through reasonable and available means, such as written notices and advertisements; and
4. Demonstration that the bidder sought the OCC's assistance when experiencing difficulty identifying subcontracting opportunities or available SBEs.
5. Identification of portions of the project capable of being performed by SBEs and, where appropriate, breaking out work items into economically feasible units to facilitate SBE participation;
6. Demonstration that sufficient time was provided to allow SBEs to respond to solicitations;
7. Demonstration that the contractor responded in a timely manner to questions of SBEs regarding the solicitation;
8. Demonstration of timely and adequate provision of information to SBEs regarding the plans, specifications and requirements of the project;
9. Establishment of delivery schedules that encourage participation by SBEs;

10. Documentation of negotiation in good faith with interested SBEs that submitted bids or proposals;
11. Demonstration of efforts made to assist interested SBEs in obtaining bonding, lines of credit, insurance, technical assistance, as may be required for performance on the contract; and
12. Utilization of resources available to identify available SBEs, including SBE assistance groups, governmental business assistance offices, NEORSD-sponsored training programs, and other organizations that provide assistance in the recruitment and placement of SBEs.

Good Faith Effort Requirements Ongoing: In the event that a bidder is awarded a contract without meeting the Contract Goal, such contract award does not relieve the bidder from the continuing contractual obligation to exercise good faith efforts throughout performance of the contract in order to meet the Contract Goal prior to contract completion. Failure to comply with this provision may subject a contractor to the sanctions and penalties set forth in Article 10 of this SBE Policy.

ARTICLE 9. **EXCLUSIONS**

Exclusions: This SBE Policy shall not apply to any of the following:

1. Sole source procurements, which by their very nature limit the source of supply to one vendor;
2. State of Ohio contract purchases that do not require competitive bidding;
3. The acquisition of any interest in real property, including lease holdings;
4. Direct and indirect employee payments including payroll expenditures, pensions and unemployment compensation and other employee-related expenditures;
5. Contracts with non-profit or governmental entities; and
6. Any other categories and subcategories of goods and services that NEORSD may from time to time establish as excluded.

ARTICLE 10. **GRIEVANCE PROCESS**

Scope and Applicability: Any SBE allegedly aggrieved by the provisions of this SBE Program may submit a written complaint to the OCC, setting forth the bases of such complaint. After receipt of a written complaint, the allegedly aggrieved party (the Complainant) may be afforded a hearing before the SBE Hearing

Panel. The SBE Hearing Panel shall be empowered to hear all grievances concerning certification, de-certification, and any other grievances relative to the SBE Program.

Notice of Hearing: Upon receipt of a written complaint from the Complainant, NEORSD shall schedule a hearing before the SBE Hearing Panel within twenty (20) calendar days from receipt of such complaint. If, in the opinion of the Contract Compliance Manager, a longer or shorter scheduling period is warranted, the Contract Compliance Manager shall notify the SBE Hearing Panel members of the reasons for such opinion, and the Panel members shall make an independent determination as to whether the recommendation of the Contract Compliance Manager is warranted under the specific circumstances surrounding the complaint. NEORSD shall provide notice of the date, time, and location of the hearing to the Complainant via registered mail. The Complainant must notify NEORSD to acknowledge receipt of the hearing notice within three (3) days of such receipt in order for the hearing to go forward. A Complainant may make one (1) request to reschedule a hearing after receipt of any hearing notice provided under this SBE Policy. NEORSD shall have no obligation to provide a rescheduled hearing for any Complainant who fails to appear at a properly scheduled hearing.

Hearing Conduct: The SBE Hearing Panel shall consist of at least three (3) manager- or director-level NEORSD officials, who shall be appointed by the Executive Director. The Executive Director shall have the discretion to serve on the Panel as one of the Panel members. The Executive Director may designate Panel members on a hearing-by-hearing basis, or at any other interval. Hearings before the designated SBE Hearing Panel shall be informal. The Complainant may appear in person or via a representative designated by the Complainant. The Complainant may present evidence and witness testimony in support of the Complainant's alleged grievances. The Complainant may bring legal counsel. All hearings shall comply with State of Ohio law relative to the Open Meetings Act. Abusive or otherwise disruptive language or behavior at a hearing by a Complainant will be grounds for discontinuance and/or forfeiture by the Complainant of any hearing described under this Policy.

Hearing Decisions: The designated SBE Hearing Panel shall issue a written opinion setting forth the Panels' findings and recommendations within twenty (20) calendar days after the hearing.

Exhaustion of Legal Remedies: A Complainant must comply with the hearing process outlined above before that person or entity has exhausted its administrative remedies. Thereafter, a Complainant may seek any other statutory, legal or equitable remedies that may be available. Failure to exhaust all administrative remedies listed in this SBE Policy is an affirmative defense to any statutory, legal or equitable proceeding that may arise.

Advisory Recommendations: The designated SBE Hearing Panel shall have authority to render advisory recommendations to NEORSD, absent a hearing, upon the request of the Contract Compliance Manager.

ARTICLE 11.

SANCTIONS AND PENALTIES FOR NON-COMPLIANCE

Any bidder or contractor who violates any provision of this SBE Policy shall be subject to administrative sanctions. In addition, any violation of this SBE Program shall constitute a material breach of contract, enforceable at law or in equity, including the imposition of penalties. The following sanctions and penalties are established for the enforcement of this Program:

1. **Determination of Non-Responsiveness:** In addition to other factors in its evaluation, NEORSD may declare a bid or proposal to be non-responsive where it is determined that a bidder has not submitted with its bid or proposal any form, affidavit, or other document required by this SBE Program or requested by NEORSD. In addition, the bid or proposal of any Participant who fails to meet the Contract Goal and who fails to demonstrate a good faith effort may be deemed non-responsive and/or not the best bidder.
2. **Limited Suspension:** For falsifications, misrepresentations, deception to obtain a contract, or any other violation of the SBE Policy, NEORSD may deem a bidder or contractor ineligible to do business with NEORSD for a period not to be less than two (2) years.
3. **Rejection of Future Proposals:** NEORSD may reject any or all future bids or proposals of a bidder or contractor who is in non-compliance with this Policy under an existing contract until such time as the bidder or contractor demonstrates that it is or shall come into compliance.
4. **Withholding Payment:** NEORSD may withhold payment from a contractor who is in non-compliance with this Policy under an existing contract until such time as the contractor demonstrates that it is in compliance.

5. **Cancellation of Contract:** NEORSR may declare a contract null and void where, after such contract has been awarded, an investigation determines that the contractor's documents contain false, fictitious, or fraudulent information, or in cases where a contractor is in noncompliance with this Policy and fails to demonstrate that it shall come into compliance.
6. **Permanent Debarment:** Any bidder or contractor who repeatedly violates this Policy, may be permanently debarred from doing business with NEORSR.

Guidelines for Imposition of Sanctions: The sole authority and power for imposition of sanctions shall lie with NEORSR.

1. **General:** Sanctions may be imposed if there is evidence of specific conduct on the part of the bidder or contractor that is inconsistent with or in direct opposition to any provision of this Program. Furthermore, the imposition and enforcement of sanctions shall be consistent with applicable state and federal law.
2. **Severity of Sanctions:** In determining the length of any suspension, NEORSR shall consider the following factors:
 - a. Whether the failure to comply with applicable requirements involved intentional conduct or, alternatively, may be reasonably concluded to have resulted from a reasonable misunderstanding on the part of the bidder or contractor of the requirements of this Program;
 - b. The number of specific incidences of non-compliance of this Policy by the bidder or contractor;
 - c. Whether the bidder or contractor has been previously suspended or has a history of violations of this Policy;
 - d. Whether the bidder or contractor has failed or refused to provide NEORSR with any information required or requested pursuant to the SBE Program;
 - e. Whether the bidder or contractor has materially misrepresented any applicable facts in any filing or communication to NEORSR;

- f. Whether any subsequent restructuring of the bidder's or contractor's business or other action has been undertaken to cure the deficiencies in meeting applicable requirements; and
 - g. **Length of Suspension:** Suspensions may be for any length of time not to be less than two (2) years. NEORS Board may impose suspensions in excess of two (2) years in cases involving intentional or fraudulent misrepresentation or concealment of material facts, multiple acts in breach of the Program, cases where the Participant has been previously suspended, or other similarly situated misconduct. Suspensions of less than two (2) years may be granted only in unique cases where NEORS determines that a shorter time period is warranted due to the existence of mitigating factors.
3. **Prohibition Against False Statements:** It shall be unlawful for any person, knowingly, willfully and with intent, to mislead or to make any false or fraudulent representations to NEORS. NEORS may impose sanctions against any person making such false representation in connection with the SBE Program.

ARTICLE 12.
SEVERABILITY

If any of the provisions set forth in this Policy or any section, subsection, paragraph, sentence, clause, phrase, or word thereof shall be found to be invalid, illegal or unenforceable for any reason, the application of the remainder of this Program shall not be affected by such invalidity.