

MEMPHIS & SHELBY COUNTY INDUSTRIAL DEVELOPMENT BOARD

DIVERSITY PROGRAM

2009



An economic development requirement of the Payment-in-lieu-of-tax (PILOT) and Industrial Development Bond programs formerly entitled the “Jobs Plus” Program

125 North Main Street, Room 468
Memphis, Tennessee 38103
901-576-7107 Fax: 901-576-7101

TABLE OF CONTENTS

Program Summary.....	3
Purpose.....	3
Overview.....	4
Overall Goals of the Diversity Plan.....	5
Goals of Local Government Programs.....	5
Goals To Be Established in the Applicant’s Diversity Plan.....	6
Diversity Plan Development Process.....	6
Informational Meeting.....	6
PILOT Evaluation.....	6
Development of Diversity Plan.....	6
Components of Diversity Plan.....	7
Contracting.....	7
Identified Labor Source.....	7
Compliance	8
Incentives	8
Penalties for Non-Compliance.....	8
Steps to Maintain Compliance.....	8

Appendix 1: Contacts & Descriptions

Appendix 2: Sample Diversity Plan

MEMPHIS & SHELBY COUNTY INDUSTRIAL DEVELOPMENT BOARD DIVERSITY PROGRAM



PROGRAM SUMMARY

PURPOSE

Memphis and Shelby County governments offer economic development incentives, such as the payment-in-lieu-of-tax program (PILOT), to companies expanding or locating in this community to stimulate business growth and foster job creation. Companies are able to reduce the cost of doing business by taking advantage of local, State and Federal tax incentives. In Memphis and Shelby County, the total benefit provided to these new and expanding companies is based on capital investment, jobs, wages and business location.

To encourage the support and inclusion of minority, women, and locally owned small businesses and citizens of Memphis and Shelby County in the economic development of the local community, the Memphis and Shelby County Industrial Development Board (IDB) has adopted a Diversity Program. The program is an effort to assure that companies receiving PILOT benefits purchase goods and services from minority, women and locally owned small businesses and hire Memphis area residents.

Memphis and Shelby County legislators made sweeping changes to the PILOT program in 2007 that included requiring participation in the Jobs Plus Program by every company taking advantage of the PILOT program incentives. The Diversity Program incorporates the incentives outlined in the "Jobs Plus" optional program that was initiated in 2001. Eligibility for a PILOT in Memphis and Shelby County is now based on the applicant's capital investment, jobs, wages, business location and submission and achievement of a Diversity Plan.

It is the intent of the IDB to facilitate awareness and cooperation by providing assistance to applicant firms in formulating an acceptable Diversity Plan. This Program is to be utilized by all entities seeking payment-in-lieu-of-tax (PILOT) Incentives, Tax Credits, or Bonds from the IDB.

OVERVIEW

As of January, 2008, every applicant seeking benefits from the Memphis and Shelby County Industrial Development Board (IDB) is required to submit a custom-tailored Diversity Plan with the help of IDB staff (Business Resource Group). The applicant's plan will be utilized as part of the staff recommendation to the full IDB.

In order to establish local spending and hiring goals in the Plan, the PILOT applicant will outline a baseline estimate of planned expenditures for professional services, construction, and goods and non-professional services, along with the applicant's planned job creation for the proposed PILOT or bond issue project. IDB staff will work with each PILOT and/or bond issue applicant to: 1) evaluate the applicant's overall spending and hiring needs; and 2) set appropriate and mutually beneficial goals covering the purchase of goods and services and hiring that will insure the inclusion of Minority and Women Business Enterprises (M/WBE), Locally-Owned Small Businesses (LOSB) and persons enrolled in the Identified Labor Source (ILS) through the Memphis Area Career Centers. See Appendix 1 for definitions of M/WBE, LOSB and ILS.

Every applicant will be supplied a comprehensive list of M/WBEs certified by the City of Memphis Office of Contract Compliance and LOSBs certified by the Shelby County Office of Equal Employment Opportunity, along with information on the availability of ILS workers. From this information, the company and IDB staff will formulate Diversity Plan participation goals for the purchase of goods and services and hiring of employees through the ILS.

Once the PILOT and/or bond issue and Diversity Plan have been approved by the IDB, the Diversity Plan will become a part of the company's incentive agreement. Quarterly and annual reports will help the IDB assure that the goals are being met. If changes occur and goals need to be adjusted, a process is in place to revise the company's Diversity Plan. A PILOT company must produce a Diversity Plan, follow the plan, file all required reports and reasonably achieve all of the plan's goals throughout the years of the PILOT. Each PILOT company may submit a Diversity Plan that significantly exceeds the basic diversity plan goals. The IDB may approve the proposed plan and authorize one or two additional benefit years at the time of the PILOT application, subject to the successful completion of the plan. If the plan goals are obtained, the IDB shall award an additional one or two years of benefits as agreed at the outset.

If a PILOT company exhibits a "good faith effort" in working to achieve and/or revise the plan's goals, files all of the required reports but in good faith does not achieve its goals, the PILOT benefit will not be modified. Examples of "good faith effort" shall include, but not be limited to, documented proof of the PILOT company's efforts to comply with more than one of the following activities:

- (i) to maintain open communication with the Diversity Contractor and/or Compliance Officer concerning efforts to follow Diversity Plan;
- (ii) to provide quarterly and annual reports to the Diversity Contractor as required;
- (iii) to utilize local, minority, or women owned businesses to meet its obligations to the IDB;
- (iv) to use the Memphis Career Center and/or placement agencies to hire minority, women or other disadvantaged workers;

- (v) to coordinate with educational institutions or other training agencies to find and train suitable employees to meet its Diversity Plan Goals;
- (vi) to advertise in local, regional or national publications to attract workers to meet its Diversity Plan Goal;
- (vii) to use of advertisements and bidding processes targeted to attract and use local and small businesses; or
- (viii) to work with Diversity Contractor in the establishment and implementation of an Outreach Plan.

If the PILOT company was initially awarded additional tax benefit based on the Diversity Plan, the additional periods may be reduced at the discretion of the IDB for failure of the PILOT company to attain the stated goals.

If the PILOT applicant does not produce a Diversity Plan, it will not be considered for a PILOT. If a PILOT company files no reports or does not show a “good faith effort” to participate in the Diversity Program with the IDB, the PILOT company will be considered in default of the PILOT program and could lose some or all of its tax incentives. The severity of the penalty will be a matter for consideration by the IDB Performance and Review Committee with final resolution of the penalty to be made by the full IDB. Regular review of the Diversity Plan is crucial and every company is encouraged to maintain open communication with the Diversity Contractor and IDB staff regarding any changes, updates or questions which will prove a “good faith effort” in following the submitted plan.

OVERALL GOALS OF THE DIVERSITY PLAN

GOALS OF LOCAL GOVERNMENT PROGRAMS

As the Industrial Development Board (IDB) is a joint entity created by the City of Memphis and County of Shelby, it is imperative that the interests of both governmental entities be represented. Overall businesses that contract with the City of Memphis must fulfill goals as set by the Minority and Women Business Enterprise (M/WBE) Procurement Program. Those businesses that contract with the Shelby County Government must fulfill goals as set by the Locally Owned Small Business (LOSB) Program. Below are the goals as set by those governmental agencies.

Professional Services

- 24% goal – City M/WBE
- 10% goal – County LOSB

Construction Needs

- 25% goal – City M/WBE
- 10% goal – County LOSB

Goods & Non-professional Services

- 25% goal – City M/WBE
- 10% goal – County LOSB

GOALS TO BE ESTABLISHED IN THE APPLICANT'S DIVERSITY PLAN

The local government goals are used as a reference point but not as a hard and fast rule for applicants. Each applicant of the PILOT program or bond financing program shall participate in the development of their Diversity Plan based on information provided by the applicant. To assist in the identification of eligible M/WBEs and LOSBs, IDB staff will provide each applicant with a list of certified vendors. If the PILOT company wishes to use a firm that is not a certified City M/WBE or County LOSB firm then the PILOT company shall submit the firm to the City's Contract Compliance Office or the County's Employment Opportunity Compliance Office for certification.

In addition to the purchase of goods and services goals, companies must establish a goal, appropriate to the project and/or industry, for hiring Workforce Investment Act participants through the Identified Labor Source (ILS). It is recommended that the range of participation in ILS is:

Shelby County Identified Labor Source (ILS)
15%-20% goal – ILS

DIVERSITY PLAN DEVELOPMENT PROCESS

The Diversity Plan Development Process is outlined below. At the conclusion of the process, the applicant should have a Diversity Plan approved by the Industrial Development Board (IDB) which shall be attached to their PILOT agreement and/or bond documents.

Informational Meeting

Company considering locating to Memphis and Shelby County will attend an introductory meeting and/or One-Stop-Shop meeting to learn about various local, State and Federal incentives. Summary information will be provided about the PILOT and Diversity Programs.

PILOT Evaluation

Company will work with IDB staff and attorney to evaluate the feasibility of a PILOT with information about the company's plans for capital investment, job creation, wages, business location and local spending and hiring. If the project is eligible for a PILOT, a pre-application evaluation will be drafted by IDB staff and, with IDB staff assistance, a PILOT application and a Diversity Plan will be developed by the applicant for presentation to the full IDB.

Development of Diversity Plan

1. Applicant will provide estimates of planned expenditures and job creation for the project to the Diversity Contractor (Business Resource Group).
2. Diversity Contractor will evaluate the Applicant's overall spending and hiring needs.
3. Applicant and Diversity Contractor will set appropriate and mutually beneficial goals and draft the company's Diversity Plan. See Appendix 2 for a Sample Diversity Plan.
4. Applicant will submit a PILOT application and a Diversity Plan for review by the IDB.
5. Upon approval of the PILOT and Diversity Plan, the IDB shall sign the agreed upon Diversity Plan.
6. The Diversity Plan shall become an integrated part of the incentive agreement.

7. Upon approval by the IDB, the applicant will be responsible for Diversity Plan compliance.

COMPONENTS OF DIVERSITY PLAN

There are two main components and one auxiliary component of the Diversity Plan as appropriate to the project and/or industry: 1) contracting with minority, women and locally owned small businesses; 2) employment of participants in the Shelby County Identified Labor Source; or 3) provide other significant programs that further the policies of the Diversity Program as approved by the IDB. However, the IDB expects all Applicants to make a good faith effort to utilize the first two components in their Diversity Plan.

Contracting

Applicants to the IDB will work with the Diversity Contractor (Business Resource Group) to contract with Minority and Women Business Enterprises (M/WBE) certified through the City of Memphis Office of Contract Compliance and with Locally-Owned Small Businesses (LOSB) certified through the Shelby County Office of Equal Opportunity Compliance. In evaluating an Applicant's overall business activities, several categories of business will be considered. These categories include Professional Services, Construction, Goods and Non-professional Services.

Professional Services include, but are not limited to various disciplines such as:

- Architectural
- Engineering
- Accounting,
- Information Systems
- Legal
- Professional Studies
- Surveying Services

Construction services may include the actual building or renovation of a structure, paving, and/or demolition services, etc.

Goods include, but are not limited to the purchase of items such as:

- Office supplies
- Promotional items
- Furniture
- Vehicles
- Heavy equipment

Non-professional Services may include building maintenance, security/guards, and janitorial services, etc.

Identified Labor Source

The IDB works with the Memphis Area Career Center to fulfill the goals of economic development and job creation. The Memphis Area Career Center, established as a result of the Workforce Investment Act of 1998, provides a broad network of services centered around job

placement, retention, career advancement and training. Identified Labor Source (ILS) participants encompass all registered Workforce Investment Act customers who are unemployed, underemployed and/or employed. Job seekers and businesses can access services at one of the eight centers in Memphis and Shelby County

COMPLIANCE

INCENTIVES

No PILOT company may receive tax benefits based on the Diversity Plan approved by the IDB prior to the fulfillment of the Diversity Plan terms. These benefits may extend the PILOT for one to two years as awarded by the IDB and upon the actual achievement of the goals of the company's Diversity Plan. The IDB Compliance Officer will annually audit for compliance based on the January 15 annual report.

PENALTIES FOR NON-COMPLIANCE

If no additional periods are awarded by the IDB, the PILOT company must show a "good faith effort" to comply with its approved Diversity Plan. If the PILOT company does not file any reports nor show a "good faith effort" to participate in the Diversity Program with the IDB, the PILOT company will be considered in default of the PILOT program and could lose some or all of its tax incentives. The severity of the penalty will be a matter for consideration by the IDB Performance and Review Committee as recommended by the IDB Compliance Officer with final resolution of the penalty to be made by the full IDB. However, the IDB will generally consider the first determination that a PILOT company has not acted in good faith as a warning. If the IDB determines that a PILOT company has failed to act in "good faith" for two consecutive years or if the PILOT company has been decided to not act in "good faith" for three years of the term of its benefit, the IDB may terminate all PILOT benefits.

STEPS TO MAINTAIN COMPLIANCE

After the IDB has approved and issued benefits to the PILOT company, the company must remain in compliance with the Diversity Plan in order to maintain the approved PILOT benefits.

A. Diversity Plan Reporting Procedures

1. Quarterly reports will reflect dollars spent, percentage of total expenditures per category and company names of vendors. Reports will be submitted by April 15th, July 15th, October 15th (collectively, the 'Preliminary Reports') and January 15th (the 'Diversity Program Annual Report') to the IDB for review by the IDB Compliance Officer. IDB Compliance Officer will work with the applicant to address deficiencies in its performance and will make recommendations to the Performance Committee and IDB.
2. The IDB Compliance Officer will review reports for compliance. At the end of the quarter, the IDB will be updated on the status of the Diversity Plans.
3. Applicants will be subjected to periodic audits of the information provided.

B. Compliance

1. If a PILOT company produces a Diversity Plan, follows the plan, files all required reports and achieves all of the plan's goals throughout the years of the PILOT, the

company is entitled to receive the tax benefits associated with the Diversity Plan approved at the time of the PILOT application.

2. If a PILOT company produces a Diversity Plan, follows the plan, files all of the required reports but does not achieve its goals, the company must exhibit a “good faith effort” to comply with the mandatory requirements of the Diversity Program. Examples of “good faith effort” shall include, but not be limited to, documented proof of the PILOT company’s efforts to comply with more than one of the following activities:
 - (i) to maintain open communication with the Diversity Contractor and/or Compliance Officer concerning efforts to follow Diversity Plan;
 - (ii) to provide quarterly and annual reports to the Diversity Contractor as required;
 - (iii) to utilize local, minority, or women owned businesses to meet its obligations to the IDB;
 - (iv) to use the Memphis Career Center and/or placement agencies to hire minority, women or other disadvantaged workers;
 - (v) to coordinate with educational institutions or other training agencies to find and train suitable employees to meet its Diversity Plan Goals;
 - (vi) to advertise in local, regional or national publications to attract workers to meet its Diversity Plan Goal;
 - (vii) to use of advertisements and bidding processes targeted to attract and use local and small businesses; or
 - (viii) to work with Diversity Contractor in the establishment and implementation of an Outreach Plan.

C. Non-Compliance

1. If a PILOT company fails to work in good faith to comply or achieve the goals as set forth by the Diversity Plan, the Diversity Contractor will work in conjunction with the company to either adjust the goals or implement an Outreach Plan that would provide assistance in connecting with all possible M/WBEs, LOSBs, and ILS candidates to facilitate the achievement of the previously set goals.
2. Within thirty (30) days notice of the non-compliance, after submission of the Diversity Program Annual Report, the Diversity Contractor will notify the PILOT company that an Outreach Plan needs to be implemented.
3. The PILOT company will have thirty (30) days after notification from the Diversity Contractor of an Outreach Plan to agree and implement the Plan.
4. Upon receipt of an additional deficient Diversity Program Annual Report, the IDB Compliance Officer will review and determine if the goals need to be adjusted or if the PILOT company is failing to put forth “Good Faith Efforts” in the accomplishment of the goals agreed upon by the Applicant.
 - a. If the goals need to be adjusted, Diversity Contractor and Compliance Officer will make recommendations to the Performance Review Committee. The Performance Review Committee will determine if the goal adjustment is acceptable and appropriate. Then the Performance Review Committee will put forth the issue before the full IDB for a vote of concurrence with the recommendation.
 - b. If it appears that the PILOT company has no intention of putting forth a “good faith effort” to achieve the Diversity Plan, the issue will be brought before the

- Performance Review Committee in order to reconsider the issuance of benefits. The Performance Review Committee shall issue any default notices.
- c. If the PILOT company has two (2) determinations in a row of a failure to make “good faith effort” as determined by the IDB’s reasonable determination or (3) three determinations during the term of the initial benefits, the IDB may terminate all PILOT benefits associated with the project after providing written notice and an opportunity for the PILOT company to present its information to the Performance Committee and the IDB. Notwithstanding the above, nothing herein shall prevent the IDB from taking immediate action if the applicant is not acting in good faith as reasonably determined by the IDB.

Appendix 1: CONTACTS AND DEFINITIONS

DIVERSITY CONTRACTOR FOR IDB

Carol Crawley
Business Resource Group
P.O. Box 383301
Germantown, TN 38183
901-276-0157 office
901-276-0159 fax
carolgcrawley@bellsouth.net

CITY OF MEMPHIS MINORITY/WOMEN BUSINESS ENTERPRISES (M/WBE)

Carlee McCullough
City of Memphis Contract Compliance Officer
125 North Main Street, Room 440
Memphis, TN 38103
901-576-6545 office
901-576-6560 fax
carlee.mccullough@memphistn.gov

City of Memphis Contracted Central Certification Agency

Luke Yancy
Mid-South Minority Business Council
158 Madison, Avenue, Suite 300
Memphis, TN 38103
901-525-6512 office
901-525-5204 fax
lyancy@mmbc-memphis.org

SHELBY COUNTY LOCALLY-OWNED SMALL BUSINESSES (LOSB)

Carolyn Watkins
Shelby County of Equal Opportunity
160 North Main, Suite 969
Memphis, TN 38103
901-545-4336 office
901-545-3473 fax
carolyn.watkins@shelbycountyttn.gov

IDENTIFIED LABOR SOURCE

Jimmy Tuggers
Memphis Area Career Center
444 North Main, 2nd floor
Memphis, TN 38105
901-545-2172 office
901-545-2202 fax
jimmy.tuggers@memphistn.gov

MEMPHIS & SHELBY COUNTY INDUSTRIAL DEVELOPMENT BOARD STAFF

Joann Massey, Compliance Officer
Memphis & Shelby County Office of Economic Development
125 N. Main, Room 468
Memphis, TN 38103
901-576-7107 office
901-576-7160 direct
901-576-7101 fax
Joann.Massey@memphistn.gov

ACRONYMS

IDB	Memphis and Shelby County Industrial Development Board
PILOT	Payment-in-lieu-of-tax
M/WBE	Minority and Women Business Enterprise
LOSB	Locally Owned Small Business
ILS	Identified Labor Source

IDB COMMITTEES

EVALUATION COMMITTEE

Recommends approval of Diversity Plan for final decision by full IDB. Makes recommendations for initial PILOT approval.

PERFORMANCE AND REVIEW COMMITTEE

Reviews Diversity Plans plan for compliance as presented by IDB Compliance Officer. Makes recommendations to IDB for enforcement of PILOT and Diversity Plan.

IDB

Makes all final decisions on PILOTs and bond issues, approves Diversity Plan and enforces PILOT and Diversity Plan policies.



INDUSTRIAL DEVELOPMENT BOARD (IDB)

Appendix 2: Sample Diversity Plan

We acknowledge our understanding of the commitment(s), requirements for implementation, on-going participation and quarterly reporting requirements for compliance. _____ agrees to participate in the following manner:

CONTRACT with local minority, women-owned and small businesses (Memphis and Shelby County based) firms that are certified vendors through the Shelby County Office of Equal Opportunity Compliance or the City of Memphis on terms that are agreed as outlined below.

Contracting: We agree to achieve the following percentages annually with MWBEs and LOSBs:

	M/WBE & LOS B	Total Spending	%
Construction/Tenant Impr.	\$ 1,250,000	\$ 5,000,000	25%
Professional Services	\$ 250,000	\$ 1,000,000	25%
Goods	\$ 100,000	\$ 500,000	20%
Non-Professional Services	\$ 25,000	\$ 100,000	25%
Total	\$ 1,625,000	\$ 6,600,000	24.6%

HIRE identified labor source (ILS) employees through the designated agency, The Memphis Area Career Center.

Identified Labor Source: We agree to hire and maintain an annual average level of 15% (or 10 employees whichever is greater), of our committed new jobs through the Memphis Area Career Centers.

PILOT Firm Representative

Date

Title

**Chairman/Vice Chairman
Memphis & Shelby County
Industrial Development Board**

Date

This agreement must be executed upon approval of the PILOT by the IDB.