

City of New Haven

Signature Copy

Ordinance: OR-2020-0011

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File Number: OR-2020-0011

ORDER OF THE NEW HAVEN BOARD OF ALDERS APPROVING THE ORDINANCE
AMENDMENT OF CHAPTER 12 ¼ OF THE CODE OF ORDINANCES OF THE CITY
OF NEW HAVEN - SMALL CONSTRUCTION BUSINESS DEVELOPMENT
PROGRAM.

Footnotes:

--- (1) ---

Editor's note- Ord. No. 1773 <<http://newords.municode.com/readordinance.aspx?ordinanceid=717496&datasource=ordbank>>, adopted May 18, 2015, amended Ch. 12¼ in its entirety to read as herein set out.

Sec. 12¼-1. - Declaration of policy.

- (a) The City of New Haven is committed to developing and nurturing a competitive local construction industry in which contractors for publicly financed projects provide efficient, high-quality services, pay competitive wages to their employees, and represent New Haven's ethnic diversity.
- (b) Based on a study of the utilization of construction contractors in New Haven ("utilization study") and further research, it has been determined that there is a serious need to help small, minority and women owned construction business enterprises to be considered for and awarded city contracts for the construction, reconstruction or rehabilitation of public buildings and the construction and maintenance of highways and other public spaces. This construction business opportunity initiative is intended to ensure that there is no discrimination against small business enterprises or minority business enterprises and that equal opportunities for construction and construction related contracts are available while encouraging competitive practices and long term sustainable small business development.
- (c) Accordingly, the City of New Haven hereby adopts a program of contractor utilization goals, contractor capability-building measures, internal policy and procedure changes, and monitoring requirements with respect to the participation of small and minority businesses in construction contracts that are financed (in whole or in part) by the City of New Haven. To enable underutilized construction and construction related firms to overcome a history of disadvantages based on race and gender by providing targeted opportunities and support for women and minority firms.
- (d) All city departments and all contractors shall fully comply with the city's equal opportunity policy, and shall not discriminate against or grant preferential treatment to any contractor on the basis of race, color, religious creed, age, sex, marital status, sexual orientation, familial status, national origin, ancestry or disability as set forth in the Americans with Disabilities Act of 1990 in the performance of city contracts.

(Ord. No. 1292, § 1, 11-19-01; Ord. No. 1421, § 1, 6-5-06; Ord. No. 1580, § 1, 12-15-08; Ord. No.

1629, 6-7-10; Ord. No. 1666, 11-10-11 <<http://newords.municode.com/readordinance.aspx?ordinanceid=510626&datasource=ordbank>>; Ord. No. 1773

<<http://newords.municode.com/readordinance.aspx?ordinanceid=717496&datasource=ordbank>>, 5-18-15)

Sec. 12¼-2. - Scope.

The provisions of this chapter shall apply to all contracts for construction and construction related services to which the City of New Haven is a party.

(Ord. No. 1292, § 1, 11-19-01; Ord. No. 1421, § 1, 6-5-06; Ord. No. 1580, § 1, 12-15-08; Ord. No.

1629, 6-7-10; Ord. No. 1773 <<http://newords.municode.com/readordinance.aspx?ordinanceid=717496&datasource=ordbank>>, 5-18-15) Sec. 12¼-3. - Definitions.

For the purpose of this chapter, the following terms have the following meanings:

- (a) *Affiliated* means the relationship in which a person directly, or indirectly through one (1) of more intermediaries, controls or is controlled by or is under common control with another person.
- (b) *City* shall mean the City of New Haven, a municipal corporation organized and existing under the laws of the State of Connecticut, and shall include any agency, department, board, and commission of the City of New Haven.
- (c) *City construction contract* shall mean any contract, development agreement, school construction contract, purchase order or other such agreement with the city involving any type of construction work (including demolition, renovation or repair work), or related services (including the different or allied building trades whose work is necessary for the completion of a construction project) where such work is paid for in whole or in part out of city funds or other public funds, or by any developer that has received (or is to receive) any type of subsidy from the city, financial or otherwise.
- (d) *Contractor* shall mean any individual, partnership, corporation, limited liability company, or other such business entity that enters into a city construction contract.
- (e) *Control* means the power to direct or cause the direction of the management and policies of any person, whether through the ownership of voting securities, by contract, or through any other direct or indirect means. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing twenty (20) percent or more of any voting securities of another person.
- (f) *Independent* shall mean ~~a business whose viability does not depend on its relationship with another firm or firms.~~ the viability of the enterprise of the small contractor does not depend upon another person, as determined by an analysis of the small contractor's relationship with any other person in regard to the provision of personnel, facilities, equipment, other resources and financial support, including bonding.
- (g) *Informal bid* shall mean and include a solicitation, request, invitation or advertisement for quotation or bid by the city to perform or provide services on a city construction contract valued at less than ~~fifty thousand dollars (\$50,000.00)~~ ten thousand dollars (\$10,000), with the exception of the ~~and limited to small business enterprises.~~ Energy Efficiency Rehabilitation Program (ERAP) and the Emergency Elderly and Disabled Program, which will continue with informal bids of less than \$50,000.00.
- (h) *Joint venture* shall mean ~~any~~ a business arrangement in which two or more parties agree to pool their resources for the purpose of accomplishing a specific task. The Joint Venture is its own entity, separate from the participants' other business interests.~~arrangement, subject to review by and approval of the city and formalized in writing, whereby two or more persons combine their property, money, efforts, skill, resources or knowledge in a common undertaking without any actual partnership or corporate designation.~~
- (i) *Minority business enterprise (MBE)*, for the purposes of this chapter, shall mean any small contractor with at least fifty-one (51) percent ownership by one or more persons:
 - (1) Who exercise operational authority over the daily affairs of the enterprise;

- (2) Who have the power to direct the management and policies and receive the beneficial interest of the enterprise;
- (3) Possess managerial and technical competence and experience directly related to the principal business activities of the enterprise and;
- (4) Who are members of a minority group that has been identified through a utilization study or other analysis of New Haven contractor utilization records to be the victim of statistically significant underutilization for construction and construction-related services by the city and private contractors. As such, and in accordance with court rulings, the designated minority groups are:
 - a. *African American*, which shall mean all persons having origins in any Black racial groups of Africa, and not of Spanish culture origin.
 - b. *Hispanic American*, which shall mean all persons Puerto Rican, Cuban, Mexican, Central American or South American or other Spanish culture origin.
- (j) *New Haven Market Area*, for the purposes of this chapter, means the geographic area in which the majority of contractors who perform city construction contracts are physically clustered. Contractors and subcontractors located within New Haven County will be considered part of the New Haven Market Area.
- (k) Pre-certified by the City's *Small Contractor Development--(SCD)* program shall mean a contractor is qualified for pre-certification if the contractor can demonstrate that it is eligible for certification, is in the process of becoming certified by the State of Connecticut Department of Administrative Services but needs additional time or assistance to assemble the documentation required for State certification, and has been in business for 6 (six) months. A qualified contractor shall be pre-certified for a period of no more than six (6) months. After six (6) months, the contractor must be certified by the State of Connecticut and in business for one (1) year or be removed from the city "pre-certification" list. A pre-certified contractor is entitled to participate in the following programs established pursuant to this chapter:
 - a. City-sponsored training and support programs;
 - b. Bidding on contracts under one hundred fifty thousand dollars (\$150,000.00).
- (l) *Program graduate* shall mean a small construction business development program contractor who has completed a two-year period in the program and has earned three million dollars (\$3,000,000.00) or more in revenues for any fiscal year.
- (m) *Purchasing agent* shall mean the official of the city described in Section 71(a) of the City Charter, or any other person designated to perform the purchasing function.
- (n) *Set aside bid* shall mean and include a solicitation, request, invitation or advertisement for quotation or bid by the city to perform or provide services on a city construction contracts that is limited to small business enterprises.
- (o) *SCD shall mean the small contractor development program of the City of New Haven.*
- (p) *Small business enterprise (SBE)*, for the purposes of this chapter, shall mean any business entity that:
 - (1) Has been doing business as an independent, operating business under the same ownership and management and has maintained its principal place of business in the New Haven Market Area for a period of at least one (1) year immediately prior to the date of application for registration;
 - (2) Has gross revenues not exceeding three million dollars (\$3,000,000.00) in the three (3) years prior to application for registration;
 - (3) At least fifty-one (51) percent of the ownership of which is held by a person or persons who exercise operational authority over the daily affairs of the business and who have the power to direct the management and policies and receive the beneficial interests of the business.
- (q) *SCD Program Manager shall mean the person charged by the City of New Haven with administering the SCD Program.*
- (r) *Subcontractor* shall mean any individual, partnership, corporation, limited liability company, or other such business entity that enters into a contract with a contractor to perform a portion of the work specified under a city construction contract.

- (s) *Self Perform* means that a registered SBE, MBE, or WBE, whether a Prime Contractor or a subcontractor, performs thirty (30) percent of the value of its work (exclusive of materials and equipment) using its own forces and resources, as determined by monthly payrolls.
- (t) *Utilization study* shall mean a study commissioned by the City to determine whether there is a historical disparity between the availability and utilization of MBEs as defined in this chapter in the city's market area. Utilization studies are available at the City's small contractor development (SCD) program office and are incorporated in this chapter for all purposes.
- (u) *Women Owned Business*, for the purpose of this chapter, shall mean a small contractor (who can be of any ethnic background) with at least fifty-one (51) percent ownership by one or more women who:
 - (1) Exercises operational authority over daily affairs of the business;
 - (2) Has the power to direct the management and policies and receive the beneficial interests of the business; or
 - (3) Possess managerial and technical competence and experience directly related to the principal business activities of the enterprise.

(Ord. No. 1292, § 1, 11-19-01; Ord. No. 1347, §§ 1-3, 5-3-04; Ord. No. 1421, § 1, 6-5-06; Ord.

No. 1580, § 1, 12-15-08; Ord. No. 1629, 6-7-10; Ord. No. 1773

<http://newords.municode.com/readordinance.aspx?ordinanceid=717496&datasource=ordbank>, 5-18-15)

Sec. 12¼-4. - Registration.

- (a) Registration will enable the city to target enhanced services and opportunities for SBEs, WBEs, and MBEs, and will facilitate utilization goal setting and performance monitoring.
- (b) SBEs, WBEs, and MBEs that wish to take advantage of the opportunities and support services established pursuant to this chapter must qualify as an SBE as defined in section 12¼-3(m) or MBE, or WBE as defined in section 12¼-3(i) of this chapter and be current on all city taxes, loans, and any other obligations to the City of New Haven; and which have not graduated from the City's small contractor development (SCD) program; and
 - (1) Must be certified by the State of Connecticut Department of Administrative Services as an SBE, MBE, or WBE pursuant to State of Connecticut Public Act 99-233 as amended; or
 - (2) Must be "pre-certified" by the City's small contractor ~~construction-business~~ ~~contractor-development~~ (SCD) program. A contractor is qualified for pre-certification if the contractor can demonstrate that it is eligible for certification, that it is in the process of becoming certified by the State of Connecticut Department of Administrative Services but needs additional time or assistance to assemble the documentation required for State certification, and has been in business for ~~6~~ (six) months. A qualified contractor shall be pre-certified for a period of no more than six (6) months. After six (6) months, the contractor must either be certified by the State of Connecticut or be removed from the city "pre-certification" list. A pre-certified contractor is entitled to participate in the following programs established pursuant to this chapter:
 - a. City-sponsored training and support programs;
 - b. Bidding on contracts under one hundred fifty thousand dollars (\$150,000.00).
- (c) The City's small ~~construction-business~~ contractor development (SCD) program may promulgate additional policies and procedures to facilitate and manage the [pre-certification] registration process.
- (d) The City's small ~~construction-business~~ contractor development (SCD) program will coordinate the support services with the State Department of Administrative Services.
- (e) Registered SBEs, MBEs, and WBEs must comply with all the obligations of the State of Connecticut Certification, including re-certification procedures, audits, penalties, or other requirements as may be established from time to time.
- (f) There will be no fee for registration.
- (g) The City's Economic Development Administrator or SCD Program Manager ~~his/her designee~~ shall evaluate all registration applications for final determination as to whether the applicant meets the requirements, criteria, and intent of the program.
- (h) Registration may be denied by the City's Economic Development Administrator or SCD Program Manager ~~his/her designee~~ if the applying business or the owners, officers or key personnel are debarred, suspended or have otherwise been denied bidding privileges by any federal, state, or local agency.
- (i) The City's small ~~construction-business~~ contractor development (SCD) program shall rescind registration of eligibility to any small contractor found to have obtained the registration through the use of false

information, or misrepresentation, has been denied bidding privileges by any federal, state, or local agency, or which has been found to have participated in any fraudulent, criminal or otherwise illegal activities.

- (j) When a small business is denied registration, it will receive a letter of explanation from the small contractor development (SCD) program as to why it was denied registration. The business may appeal to the small contractor development program, in writing, for a review of its application. To appeal a decision, the applicant must submit a letter explaining why the applicant considers that it is entitled to registration, which must be received by the City's Economic Development Administrator or ~~SCD Program Manager~~ his/her designee within thirty (30) days of the denial. The City's Economic Development Administrator or ~~SCD Program Manager~~ his/her designee shall upon receipt of such letter, forward the same to the review committee consisting of the Economic Development Administrator or his designee SCD Program Manager, corporation counsel, and purchasing agent.
- (k) The decision of the review committee is administratively final.

(Ord. No. 1292, § 1, 11-19-01; Ord. No. 1347, § 4, 5-3-04; Ord. No. 1421, § 1, 6-5-06; Ord. No. 1580, § 1, 12-15-08; Ord. No. 1629, 6-7-10; Ord. No. 1773

<http://newords.municode.com/readordinance.aspx?ordinanceid=717496&datasource=ordbank>, 5-18-15)

Sec. 12¼-5. - Utilization goals for city construction contracts.

- (a) *Purpose.* In accordance with the findings of the utilization study, the evidence supports the conclusion that MBE and WBE firms have been disadvantaged by discriminatory practices when competing for participation as contractors or subcontractors on city construction contracts. In order to eliminate the disparity between the availability and utilization of MBEs, and WBEs the city is establishing goals to achieve an adequate level of MBE participation in city construction contracts. The MBE and WBE utilization goals represent a reasonable expectation of MBE and WBE utilization based on current utilization levels and the availability of MBE and WBE firms as determined by the utilization study. The goals are not quotas, but rather a public statement of the city's aspiration for diversity among its contractors and an approximate benchmark to measure the city's progress in overcoming the disparity.
- (b) *Ethnicity-specific utilization goals.* The utilization study identified differences in the level of utilization of contractors and subcontractors from various minority groups as defined in this chapter. The city seeks to achieve MBE and WBE participation in city construction contracts proportionate to the availability of qualified MBE and WBE firms within the construction industry.

The city hereby establishes the following ethnic specific goals for city construction contracts for the twelve-month period following the effective date of this chapter.

- (1) For African American firms, ten (10) percent of the total value of city construction contracts and ten (10) percent of the total value of subcontracts on city construction contracts.
 - (2) For Hispanic American firms, two and one-half (2.5) of the total value of city construction contracts and six (6) percent of the total value of subcontracts on city construction contracts.
- (c) *Gender-specific utilization goals.* The utilization study identified differences between the level of utilization of women-owned firms and other firms. The city seeks to achieve participation by women-owned firms in city funded contracts proportionate to the availability of such firms within the construction industry. The city hereby establishes gender specific goals for women-owned firms for the twelve-month period following the effective date of this chapter at eleven (11) percent of the total value of city construction contracts and fifteen (15) percent of the total value of subcontracts on city construction contracts.
- (d) *Revision of goals.* The goals will be revised on an annual basis in accordance with current utilization and availability data. The goals from any previous year will remain in effect until the Economic Development Administrator approves the new goals.

(Ord. No. 1292, § 1, 11-19-01; Ord. No. 1421, § 1, 6-5-06; Ord. No. 1580, § 1, 12-15-08; Ord. No. 1629, 6-7-10; Ord. No. 1773 [http://newords.municode.com/readordinance.aspx?](http://newords.municode.com/readordinance.aspx?ordinanceid=717496&datasource=ordbank)

<http://newords.municode.com/readordinance.aspx?ordinanceid=717496&datasource=ordbank>, 5-18-15) Sec. 12¼-6. - Small business enterprise contractor capability-building.

- (a) *Purpose.* The purpose of this section is to nurture small and underutilized contractors who have the potential for long-term, sustainable success on a level playing field, by helping them to improve business operations.
- (b) *Outreach.* The City's Small Contractor Development (SCD) program will provide outreach to underutilized firms regarding registration as SBEs and MBEs pursuant to this chapter, bid opportunities, training and

other services. Outreach will include a variety of print and electronic media, as well as leveraging local organizations where appropriate. Notification of bid opportunities will be accomplished through a combination of the following:

- (1) Facsimile broadcast to registered contractors;
- (2) E-mail notification to registered contractors ~~within the relevant industry segment~~;
- (3) Posting of the information on a publicly accessible website;
- (4) Posting of the information at a central physical location with after-hours access;
- (5) Announcement in three (3) relevant targeted publications aimed at underutilized contractors. At the city's discretion, announcement may be consolidated with ongoing permanent advertisements that specifically list upcoming bid opportunities, relevant training opportunities, and the address for the publicly accessible website.

(c) *Training and support services.*

- (1) In order to facilitate first-time contracts or larger contracts between the city and SBEs, the city may offer seminars to introduce contractors to city personnel and procedures. These seminars would provide an opportunity for SBE contractors to become registered, to learn the requirements for submitting bids, to meet relevant city department heads, to learn how to access city resources, and to learn how to accommodate wage rates and other labor requirements.
- (2) The city will sponsor construction management training and mentoring programs to assist SBEs in developing and strengthening their management capabilities. The city may also sponsor and/or co-sponsor educational programs for contractors on financial management, business development, technology, and other programs as necessary.
- (3) The city will coordinate training and support services with other public and private entities that provide services to contractors.
- (4) The city will encourage and facilitate voluntary mentor-protégé relationships between high-potential, under-utilized firms with larger contractors.

(Ord. No. 1292, § 1, 11-19-01; Ord. No. 1347, § 5, 5-3-04; Ord. No. 1421, § 1, 6-5-06; Ord. No.

1580, § 1, 12-15-08; Ord. No. 1629, 6-7-10; Ord. No. 1773

<<http://newords.municode.com/readordinance.aspx?ordinanceid=717496&datasource=ordbank>>, 5-18-15)

Sec. 12¼-7. - Set aside opportunities for small business enterprises.

(a) *Purpose.* The purpose of this section is to enable SBEs to compete for city construction contracts on smaller projects without being unduly disadvantaged by their size or other diseconomies of smaller scale.

(b) *Procedure.* The city construction managers and prime contractors shall set aside, for award to contractors registered in the small contractor program on the basis of competitive selection procedures, city construction contracts valued at one hundred fifty thousand dollars (\$150,000.00) or less.

(1) The provisions of this section shall apply to the following types of city contracts:

- a. City construction contracts valued at ~~fifty thousand dollars (\$50,000.00)~~ ten thousand dollars (\$10,000) or less for which informal bidding is required.
- b. City construction contracts valued at more than ~~fifty thousand dollars (\$50,000.00)~~ dollars ten thousand dollars (\$10,000) and up to a maximum of one hundred fifty thousand dollars (\$150,000.00) for which competitive bidding is required;

(2) If the apparent, responsive low bidder for set-aside contracts submits a bid that exceeds one hundred fifty thousand dollars (\$150,000.00) the purchasing agent may in his sole discretion accept the bid if it is within ten (10) percent of the set-aside ceiling of one hundred fifty thousand dollars (\$150,000.00).

(3) If bids for non-set-aside contracts fall below the set-aside limit of one hundred fifty thousand dollars (\$150,000.00) the purchasing agent in his or her sole discretion may accept the bids or rebid the contract as a set-aside contract. However, the bureau of purchasing and SCD Program Manager shall maintain a record of all such bids and analyze such bids to ensure that the intent of this chapter has not been violated or otherwise defeated.

(4) Contracts may be exempted from the set-aside provisions of this chapter if any of the following conditions apply:

- a. There are fewer than two (2) registered SBE firms for the particular trade or project type;
- b. ~~Fewer than two (2) registered SBE firms submitted a bid;~~
- c. No responsive bids are submitted as determined by the purchasing agent;
- d. The purchasing agent and the SCD Program Manager determines that an exemption should be

granted in accordance with section 12¼-11 of this chapter.

(Ord. No. 1292, § 1, 11-19-01; Ord. No. 1347, § 6, 5-3-04; Ord. No. 1421, § 1, 6-5-06; Ord. No. 1580, § 1, 12-15-08; Ord. No. 1629, 6-7-10; Ord. No. 1773

<http://newords.municode.com/readordinance.aspx?ordinanceid=717496&datasource=ordbank> , 5-18-15)

Sec. 12¼-7.1. - Set-aside opportunities-School construction contracts.

- (a) *Purpose.* The purpose of this section is to enable SBE firms to participate in the school construction program, a major initiative to renovate existing schools and build new schools in the city. The school construction program is a joint program between the city and the New Haven Public Schools that is funded in part by proceeds from the school construction trust fund and with eligible matching grant funds from the State of Connecticut. School construction projects represent a significant portion of the city's construction projects and a major source of construction opportunities for underutilized firms.
- (b) *Procedure.* The city, construction managers and prime contractors shall set aside, for award to registered SCD firms, on the basis of competitive selection procedures, school construction contracts valued at ten (10) percent of the total amount expended for school construction contracts. This provision shall include all school construction contracts awarded pursuant to construction management agreements. No single contract awarded to a prime contractor or a first-tier subcontractor shall receive more than five hundred thousand dollars (\$500,000.00) credit towards the requirements of this subsection. All subcontractor work awarded to an SCD contractor under the first tier shall receive full credit toward meeting the requirements of this subsection.

(Ord. No. 1292, § 1, 11-19-01; Ord. No. 1347, § 6, 5-3-04; Ord. No. 1421, § 1, 6-5-06; Ord. No.

1580, § 1, 12-15-08; Ord. No. 1629, 6-7-10; Ord. No. 1773

<http://newords.municode.com/readordinance.aspx?ordinanceid=717496&datasource=ordbank> , 5-18-15)

Sec. 12¼-8. - Minority business enterprise requirements for informal bids up to ~~fifty thousand dollars (\$50,000.00)~~ ten thousand dollars (\$10,000)

- (a) *Purpose.* The purpose of this provision is to increase the utilization of underutilized MBEs and WBEs by facilitating the competitive selection of MBE and WBE contractors for city construction contracts valued at less than ~~fifty ten thousand dollars (\$50,000.00)~~ (\$10,000).
- (b) *Procedure.* This provision is applicable to city construction contracts under ~~fifty ten thousand dollars (\$50,000.00)~~ (\$10,000) for which informal bidding is required.
- (1) Pursuant to New Haven Ordinance 2-151 (as amended), city construction contracts under ~~fifty ten thousand dollars (\$50,000.00)~~ (\$10,000) shall be awarded in accordance with the informal quotation and informal bidding procedures established by the purchasing agent.
 - (2) For procurement of construction and construction related services under ~~fifty ten thousand dollars (\$50,000.00)~~ (\$10,000), the purchasing agent or his/her designee must receive at least three informal bids or quotes from registered SBEs, and at least two (2) of the three (3) bids must be from registered MBEs or WBEs.
 - (3) If the purchasing agent or his/her designee is unable to obtain ~~at least three (3) bids from registered SBEs SCD contractors ; or at least two (2) bids from registered MBEs, or WBEs the city construction contract will be re-bid unless small construction business development) program agrees that a waiver should be granted.~~ A waiver may be granted by the SCD Program Manager if it can be shown that a good faith effort was made to reach a sufficient number of potential set aside bidders or that there are extraordinary circumstances relating to the project such that a waiver is warranted.
 - (4) If under these provisions, the apparent responsive, low informal bidder submits an informal bid that exceeds the limit of ~~fifty ten thousand dollars (\$50,000.00)~~ (\$10,000) the bids may be accepted in the sole discretion of the purchasing agent if it is within ten (10) percent of the informal bid limit.
- (c) *Annual limit.* To deter program manipulation or dependence upon these provisions, once a contractor has been awarded a contract or contracts in an aggregate amount of one hundred seventy-five thousand dollars (\$175,000.00) through the City of New Haven in any one (1) fiscal year, such contractor will not be eligible to participate in additional informal bids in that fiscal year.
- (d) *Audit.* The informal bid program shall be audited by the SCD Program Manager on an annual basis to ensure compliance with bureau of purchases procedures established for such purchases .

(Ord. No. 1292, § 1, 11-19-01; Ord. No. 1421, § 1, 6-5-06; Ord. No. 1580, § 1, 12-15-08; Ord. No.

1629, 6-7-10; Ord. No. 1773 <<http://newords.municode.com/readordinance.aspx?ordinanceid=717496&datasource=ordbank>>, 5-18-15) Sec. 12¼-9. - MBE subcontractor utilization and good

faith effort requirements.

- (a) The City's specific goals for utilization of MBE and WBE subcontractors are defined in section 12¼-5 of this chapter. The city hereby requires that all parties bidding or otherwise seeking to be qualified as a contractor with respect to a city construction contract (a "potential contractor") shall aggressively make every effort to obtain MBE, WBE subcontracting participation in order to achieve the utilization goals. In the case where a potential prime contractor is an MBE contractor, the potential contractor shall make every effort to obtain WBE/ MBE subcontracting participation to achieve the utilization goals. In the case where a potential prime contractor is a WBE contractor, the potential contractor shall make every effort to obtain MBE/WBE subcontracting participation to achieve the utilization goals.
- (b) The provisions of this section 12¼-9 shall apply to all city construction contracts that are over one hundred fifty thousand dollars (\$150,000.00) and that are not bid through the set-aside program.
- (c) The city intends to award city construction contracts to the lowest responsible bidder that has achieved or made a good faith effort to achieve the MBE, WBE subcontracting utilization goals. Failure by any potential contractor to demonstrate that they have either achieved the subcontracting utilization goals, or that they have made good faith efforts to achieve the subcontracting utilization goals as required hereunder, will result in a determination by the purchasing agent and SCD Program Manager that the potential contractor is not a responsible bidder with respect to the city construction contract in question.
- (d) In order to achieve the MBE and WBE subcontracting utilization goals, ~~a contractor may award contracts to subcontractors that are certified as MBEs or WBEs the purpose of this program, or may enter into a joint venture (or other commercially reasonable relationship which is satisfactory to the city for the purposes of this program) with one (1) or more MBEs, WBEs for the purpose of carrying out the city construction contract.~~ the MBEs and WBEs must self-perform 30% of the ~~actual~~ his or her construction work (or construction-related work such as site preparation, etc.) contract and not merely act as a passive conduit. The awarding authority shall require a subcontractor to ensure that not less than fifty per cent of the work be performed by contractors or subcontractors eligible for awards under this section. A contractor awarded a contract or a portion of a contract under this section shall not subcontract with any person with whom the contractor is affiliated. No person who is affiliated with another person shall be eligible for awards under this section if both affiliated persons considered together would not qualify as a small contractor or

This Ordinance was Approved by the Board of Alders on 8/3/2020.

Attest, City Clerk



Date

7/6/2020

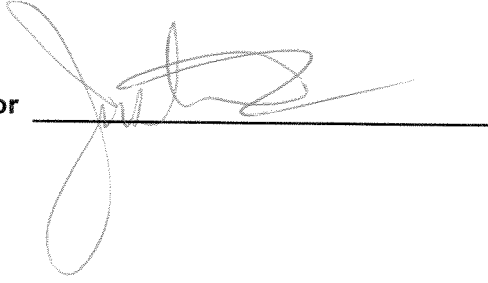
Signed, City Clerk



Date

8/3/2020

Signed, Mayor



A handwritten signature in black ink, appearing to be 'John DeStefano', is written over a horizontal line.

Date



A handwritten date '9/22/2020' is written over a horizontal line.