

Chapter 12¼ - SMALL CONSTRUCTION BUSINESS DEVELOPMENT PROGRAM¹¹

Footnotes:

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Editor's note— Ord. No. [1773](#), 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](#); Ord. No. [1773](#), 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](#), 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](#), 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 contractor-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](#), 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](#), 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](#), 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](#), 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](#), 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](#), 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 a minority business enterprise under section 12 ¼.3 . The awarding authority shall require that a contractor awarded a contract pursuant to this section submit to the SCD Program Manager a subcontractor utilization form and an explanation in writing of any subcontract to such contract that is entered into with any person**

that is not eligible for the award of a contract pursuant to this section, prior to the performance of any work pursuant to such subcontract.

- (e) A potential contractor shall submit signed (**subcontractor utilization form**) contracts or letters of commitment to the **SCD Program Manager** with the MBEs and WBEs that will be utilized by the potential contractor in the carrying out of such city construction contract, together with a list of the respective dollar amounts payable to each such MBE, WBE. For credit to be given, each MBE, WBE must be registered as an MBE, WBE prior to submittal of such list by the potential contractor.
- (f) A potential contractor will be considered in compliance with the goals if they have achieved at least twenty-five (25) percent overall MBE, WBE **subcontractor** utilization for the entire project.
- (g) If the potential contractor can demonstrate that it has successfully achieved the twenty-five (25) percent overall MBE, WBE **subcontractor** utilization goals for the entire project the bureau of purchases and the **SCD Program Manager** is not required to evaluate other efforts the prime bidder made to achieve the goal. If, however, the potential contractor has failed to meet the goals and desires to be considered for the bid, the potential contractor's good faith effort will be evaluated, verified and will generally be recognized if a contractor has accomplished at least ~~four (4)~~ five (5) of the following:
 - (1) The submittal of scope specific subcontracting opportunities with the SCD office for distribution;
 - (2) Demonstrate to the SCD office whether the contractor provided relevant plans, specifications or terms and conditions to certified minority- and women-owned business enterprises sufficiently in advance to enable them to prepare an informed response to a contractor request for participation as a subcontractor;
 - (3) Verification of quotes received from subcontractors that were denied because of cost, quality, availability, etc.;
 - (4) Verification of outreach and collaboration with the New Haven Regional Contractors Alliance;
 - (5) The contractor identified economically feasible units of the project that could be contracted or subcontracted to certified minority- and women-owned business enterprises in order to increase the likelihood of participation by such enterprises on the contract;
 - (6) Conducting a networking event with owner, construction manager, and prime contractors;
 - (7) Holding individual trade meetings with construction manager, prime contractors and sub-contractors;
 - (8) Other efforts as determined in advance by the Small Contractor Development Office;
 - (9) The contractor followed-up initial solicitations by contacting the enterprises to determine whether the enterprises were interested in such contracting or subcontracting opportunity;
 - (10) The contractor negotiated in good faith with certified minority- and women-owned business enterprises submitting bids, proposals, or quotations and did not, without justifiable reason, reject as unsatisfactory any bids, proposals or quotations prepared by any certified minority- or women-owned business enterprise. "Good faith" negotiating means engaging in good faith discussions with certified minority- or women-owned business enterprises about the nature of the work, scheduling, requirements for special equipment, opportunities for dividing of work among the bidders, proposers, and various subcontractors and the bids of the minority or women businesses, including sharing with them any cost estimates from the request for proposal or invitation to bid documents, if available; and,
- (h) The burden of proof is on the bidder. Whether or not any such potential contractor made a good faith effort to achieve the utilization goals shall be a question of fact to be decided by the city, acting in its

reasonable discretion. A committee composed of a representative from small contractor development (SCD) program office, the corporation counsel's office, and the bureau of purchasing will evaluate whether such good faith effort was achieved in accordance with the provisions of this chapter.

- (i) The potential contractor shall be required to document their good faith efforts in the form of an affidavit signed by a principal or other authorized person of the contractor and submitted at the pre-award meeting. If the affidavit or other the documentation submitted by the potential contractor does not provide compelling, verifiable evidence of a good faith effort, the bidder will be considered a non-responsive bidder for failing to meet the city's good faith effort requirements, and the bid may be rejected. If a bidder submits more than one (1) non-responsive bid within a twelve-month period, that bidder will be disqualified from all future bids within the next twelve (12) months.
- (j) If at least one (1) bidder has met the utilization goal or demonstrated a good faith effort, all non-responsive bids will be rejected, and the contract shall be awarded to the bidder who has demonstrated a good faith effort, so long as rejection of the non-responsive bids, in the discretion of the purchasing agent, will not lead to gross inefficiency of public resources
- (k) If all potential contractors are non-responsive bidders as defined in the provisions of this section, the purchasing agent will have discretion to reject all bids and to rebid the project, or to accept the lowest, non-responsive bidder.

(Ord. No. 1292, § 1, 11-19-01; Ord. No. 1347, § 8, 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](#), 5-18-15)

Sec. 12¼-10. - Compliance.

- (a) Bid specifications or requests for proposals shall require potential contractors to do the following:
 - (1) Demonstrate in their bid or proposal that they have made good faith efforts to utilize MBE/ **WBE** subcontractors as required in section 12¼-9; and
 - (2) Identify the particular MBE/ **WBE** subcontractors to be utilized in performing the contract, including a signed contract or commitment letter specifying for each subcontractor the dollar value of the participation, the type of work to be performed and such information as may be reasonably required to determine responsiveness of the bid or proposal.
- (b) Except as otherwise provided elsewhere in this chapter, bidders not meeting the requirements of this subsection shall be declared non-responsive.

(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](#), 5-18-15)

Sec. 12¼-11. - Exceptions.

- (a) In the event that a city construction contract is funded in whole or in part by the state or federal government or any agency thereof and there is a conflict between the city goals and state or federal goals, the relevant policies and goals of the state or federal government or agency will apply.
- (b) The utilization goal requirements and set aside provisions will not apply to the following procurements:
 - (1) Construction services that the purchasing agent certifies are available only from a sole source and the prospective contractor is not currently disqualified from doing business with the city or from doing business or with any governmental agency based on a failure to fulfill MBE requirements. Copies of all construction related sole source approvals by the purchasing agent shall be forwarded to the City's small ~~construction contractor~~ **business** development (SCD) program and shall serve as the certification of the purchasing agent.

- (2) Construction contracts certified in writing by the purchasing agent to the City's small ~~construction business~~ contractor development (SCD) program that are necessary to respond to an emergency situation that is a threat to the public health, safety or welfare.
- (3) Construction contracts certified in writing by the purchasing agent to the City's small ~~construction business~~ contractor development (SCD) program that are made through cooperative purchasing arrangements with other governmental entities when, in the judgment of the city purchasing agent such contracts are in the best interest of the city and such arrangements involve competitive purchasing procedures.
- (4) Construction contracts made in a manner approved by the Board of Alders upon the recommendation of the purchasing agent, where the purchasing agent has advised the Board of Alders in writing that in his opinion it would not be practicable or in the best interest of the city to proceed in accordance with provisions of this chapter and where the Board of Alders shall find that the making of such a contract in such manner is in the best interest of the city. The purchasing agent shall notify in writing the City's small ~~construction development~~ contractor development (SCD) program of the purchasing agent's intent to seek such a finding by the Board of Alders.
- (c) Any certifications or notices submitted to the City's small contractor development (SCD) program under this provision shall be made prior to the contract being awarded or submitted to the Board of Alders for consideration.

(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](#), 5-18-15)

Sec. 12¼-12. - Prompt payment for registered small business enterprises.

- (a) To improve opportunities for underutilized firms, it is essential for the city to reduce the firm's costs of doing business with the city as a contractor. The city, through its department of finance, will implement a program for registered SBE and MBE firms that will ensure prompt and faster payment of invoices for work performed and accepted by the city.
- (b) The goal of the city is to pay registered SBEs within thirty (30) days of receipt of a complete and proper invoice. The department of finance is required to track the speed of payment to SBEs and MBEs and maintain a record of payment schedules for all city construction contracts. A monthly record of such payments shall also be forwarded to the City's small contractor development (SCD) program.
- (c) Non-SBE contractors that have achieved a minimum threshold for MBE subcontractor utilization of twenty (20) percent on a current project will also be targeted for fast payment on that particular project, so as to provide an incentive to contractors to use underutilized subcontractors.
- (d) Following payment by the city to a contractor for a portion of the work required under a city construction contract where such portion of the work comprises all or a portion of the work carried out by a subcontractor which is an SBE, the contractor must pay the subcontractor for the work in question within ten (10) days of its receipt of such payment. However, a contractor may withhold payment if the contractor has a bona-fide reason for doing so, provided that within said ten-day period, the contractor shall notify the affected subcontractor in writing of the reason for withholding payment and shall deliver a copy of such notice to the purchasing agent and the finance director, and shall thereafter take all reasonable steps to promptly settle the dispute.
- (e) Subcontractors who believe that they are not being paid according to these requirements may submit an inquiry/complaint to the Economic Development Administrator or his/her designee who will record the complaint and perform an investigation if necessary. If a contractor routinely fails to pay subcontractors promptly, the firm may be deemed non-responsive to MBE goals on subsequent bids.

(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](#), 5-18-15)

Sec. 12¼-13. - Protest procedure.

- (a) If at the time of a bid opening there is an apparent low responsible bidder that should be awarded a city construction contract in accordance with the provisions of this chapter but an unsuccessful party (a "protesting party") is of the opinion that the apparent low bidder did not comply with the provisions of this chapter, then the protesting party or parties shall have a period of five (5) working days from the date on which the bids were public opened in order to protest such award.
- (b) Any such protest shall be made in writing and mailed to the purchasing agent by certified mail, return receipt requested, with a post mark no later than five (5) days from the date of the bid opening.
- (c) The purchasing agent shall, upon immediate receipt of such protest letter, forward such protest letter to the contract review committee consisting of a representative from the City's small contractor development (SCD) program, the office of corporation counsel, and the department of finance.
- (d) The contract review committee shall, after notice, convene a meeting within five (5) working days from the date of its receipt of the protest letter to consider the matter. The committee shall consider such documentation or testimonial evidence, or other evidence provided to it by the protesting party and others, including the apparent low bidder, and the purchasing agent. At the conclusion of this meeting, the committee shall consider all the evidence provided to it and reach a decision.
- (e) Within five (5) working days from the date of its meeting to consider the protest, the contract review committee shall issue a written opinion as to whether the apparent low bid or bidder met the requirements of this chapter. The written opinion shall be sent by certified mail, return receipt requested, to both the protesting party or parties and the apparent low bidder, and a copy of said opinion shall be sent to the purchasing agent.
- (f) The opinion of the contract review committee shall be binding on the purchasing agent. It shall form the basis of the purchasing agent's decision as to whether to proceed with the award of the contract, to award to the next lowest responsible bidder, or to reject all bids and rebid the contract.

(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](#), 5-18-15)

Sec. 12¼-14. - Administration.

- (a) The Economic Development Administrator shall be responsible for the overall administration of this chapter.
- (b) The following city offices and city departments shall have the specific duties and responsibilities described herein:
 - (1) *Powers and duties of the City's small ~~construction-business~~ contractor development (SCD) program.* In addition to the duties and powers given to the City's small ~~construction-business~~ contractor development (SCD) program elsewhere in this chapter, the small ~~construction-business~~ contractor development (SCD) program shall have the following duties and powers:
 - a. Coordinate with the State of Connecticut Department of Administrative Services to maintain a list of certified ~~SBI~~ SBE and DAS contractors and manage the registration process consistent with the criteria established in section 12¼-4.
 - b. Establish the necessary programs to provide business assistance, training, support, and other measures for SBEs and MBEs, consistent with the provisions of this chapter.
 - c. **Require each City department with a construction or construction related project to submit monthly subcontractor utilization report to the Small contractor Development Office (SCD).**

- d. At the end of the city's fiscal year, and annually thereafter, prepare a report on the utilization of SBEs and MBEs for the previous twelve (12) months and recommend utilization goals for the subsequent twelve-month period. This report shall include an assessment of the small construction development (SCD) program ordinance and be submitted to the City's Economic Development Administrator, the Mayor, the Board of Alders, and the public.
- (2) *Powers and duties of the bureau of purchases.* In addition to the duties and powers given to the bureau of purchases elsewhere in this chapter, the bureau of purchases shall have the following duties and powers:
- a. Within thirty (30) days of the effective date of this chapter, develop and revise purchasing procedures and guidelines as necessary to implement the provisions of this chapter. Prepare standard bid documents and templates as appropriate. Train other departments as necessary to ensure compliance with procedures.
 - b. Administer the SBE set-aside bidding process for city construction contracts less than one thousand fifty dollars (\$150,000.00).
 - c. Administer the informal bid process, incorporating the MBE quote opportunity requirement as established in section 12¼-8.
 - d. Administer the city construction contracting bid process, incorporating MBE subcontractor utilization goals and the contractor good faith effort requirement as established in section 12-9.
 - e. Collect and maintain contract award data and provide information on a semi-annual basis to the office of economic development small ~~construction-business~~ **contractor** development (SCD) program and as requested by the department of finance.
- (3) *Powers and duties of the department of finance.* In addition to the duties given to the department of finance elsewhere in this chapter, the department of finance shall have the following duties and powers:
- a. The department of finance shall develop and implement fast payment procedures to enable SBE contractors to be paid within thirty (30) days from the date the city receives a complete and proper invoice, consistent with the provisions of section 12¼-14 of this chapter.
 - b. The department of finance shall prepare a quarterly report for the office of economic development small ~~construction-business~~ **contractor** development (SCD) program on the performance of the fast payment program.
 - c. Administer an annual audit of City construction contracts to ensure compliance with City policies and the provisions of this chapter.
- (4) *Powers and duties of the economic development administrator.*
- a. In addition to the powers and duties given elsewhere, the Economic Development Administrator or **SCD Program Manager** shall promulgate additional regulations, procedures and guidelines necessary to implement or clarify any provisions of this SBE Program.
 - b. The Economic Development Administrator shall review periodic monitoring and compliance reports and recommendations submitted by small construction development program.
 - c. The Economic Development Administrator shall make periodic reports to the mayor and the Board of Alders on the status of the ~~SBE~~ **SCD** program.
 - d. By July 1 of each fiscal year, the Economic Development Administrator or **SCD Program Manager** shall issue notices to all city departments informing them of their duties under this chapter. The notice shall contain the following information:
 1. The citywide MBE/ WBE participation goals that the departments are expected to attain during the fiscal year.

2. The data each department is required to provide the finance department, or any other city department on each contract award.
 3. The Economic Development Administrator or SCD Program Manager shall coordinate cooperation and compliance by all City departments with this chapter.
- (5) *Powers and duties of the department of engineering and public works.*
- a. Prepare an annual report establishing SBE and MBE utilization goals for engineering and public works for the twelve-month period beginning July 1 of each fiscal year. Each such report shall be submitted to the Economic Development Administrator, the Bureau of Purchasing, and the SCD Program Manager.
 - b. Develop strategies to increase utilization of under-utilized firms by dividing large projects into smaller projects where appropriate.
 - c. Coordinate with the City's small contractor development (SCD) program for outreach and training programs.
- (6) *Powers and responsibilities of developers.* Each developer shall have responsibility for monitoring its compliance with the provisions of pertinent sections of this chapter and the rules and regulations implementing this chapter, including obtaining and analyzing reports, conducting preliminary investigations to determine compliance or noncompliance with this chapter, and taking any other action which may be appropriate to assure that all project contractors comply with these provisions.
- (7) *Powers and duties of the department of education.* The department of education shall work with the city's purchasing agent and the office of economic development small construction development (SCD) program to administer the provisions of section 12¼-7.1 and other applicable provisions of this section, as well as other city ordinances and state laws relating to school construction contracts. The department, through the school construction program, shall submit to the office of economic development small construction development (SCD) program on a monthly basis a written report on contract award data and the utilization of SBE and MBE firms for school construction contracts awarded in the prior three (3) months.

(Ord. No. 1292, § 1, 11-19-01; Ord. No. 1347, §§ 9, 10, 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](#), 5-18-15)

Sec. 12¼-15. - Monitoring compliance.

- (a) The office of economic development small ~~construction-business~~ contractor development shall monitor the city's progress toward achievement of the city's goals set forth in section 12¼-5.
- (b) Noncompliance by contractors. In cases where the office of economic development small ~~construction-business~~ contractor development or the purchasing agent has cause to believe that a bidder, contractor or developer has failed to comply with any of the requirements of this chapter, rules or regulations adopted pursuant to this chapter, or contract provisions pertaining to MBE utilization, the City's small contractor development (SCD) program or the purchasing agent shall notify the contract review committee and shall attempt to resolve the noncompliance through conciliation. The contract review committee shall be empowered to require the bidder, contractor or developer to participate in this conciliation process. If the noncompliance cannot be resolved, the contract review committee shall submit a written finding of noncompliance to the Economic Development Administrator and the bidder, contractor or developer. The contract compliance committee in consultation with the affected city department shall take such action as will effectuate the purposes of this chapter and may impose sanctions as appropriate. Such sanctions may include, but are not limited to:
 - (1) Declaring the bidder, contractor or developer to be nonresponsive and ineligible to receive the award of the contract;

- (2) Declaring the bidder, contractor or developer to be an irresponsible bidder and disqualifying the bidder, contractor or developer from eligibility for providing goods or services to the city for a period of up to twelve (12) months;
- (3) Removing the bidder or contractor from the list of registered SBEs or MBEs.
- (4) Imposing a civil penalty of up to ten thousand dollars (\$10,000.00) in any instance in which the noncompliance is determined to be willful or persistent or with blatant disregard for the provisions of this chapter.

(Ord. No. 1292, § 1, 11-19-01; Ord. No. 1347, § 11, 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](#), 5-18-15)

Sec. 12¼-16. - Dissemination of chapter provisions.

The city/town clerk shall send copies of this chapter, and any amendments thereto, to every city department, agency and the bureau of purchases for the City of New Haven.

(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](#), 5-18-15)

Sec. 12¼-17. - Duration of chapter.

The provisions of this chapter 12¼ shall be reviewed no later than **June 30, 2025** for a determination as to whether or not the city should continue or modify any or all of the provisions herein.

(Ord. No. 1421, § 1, 6-5-06; Ord. No. 1347, § 12, 5-3-04; Ord. No. 1580, § 1, 12-15-08; Ord. No. 1629, 6-7-10; Ord. No. [1773](#), 5-18-15)

Sec. 12¼-18. - Severability.

The provisions of this chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this chapter, or the invalidity of the application thereof to any person or circumstances, shall not affect the validity of the remainder of this chapter, or the validity of its application to other persons or circumstances.

(Ord. No. 1421, § 2, 6-5-06; Ord. No. 1629, 6-7-10; Ord. No. [1773](#), 5-18-15)