

CHAPTER 57 ARTICLES II & III

ARTICLE II. MINORITY BUSINESS ENTERPRISE

Sec. 57.15. Definitions.

- (1) For the purposes of this Chapter, *Minority Business Enterprise* is defined as a business firm which is at least 51 percent (51%) owned by minority group members, or in the case of a publicly owned business, at least 51 percent (51%) of the stock of which is owned by minority group members. The minority ownership must exercise actual day to day management and control of the business. Minority Business Enterprises must be officially certified or recognized as such by the City of Orlando. Such a firm whose principal place of business is located in Orange, Seminole or Osceola County may be certified as a Minority Business Enterprise. Such a firm whose principal place of business is located outside of Orange, Seminole or Osceola County may be recognized as a Minority Business Enterprise.
- (2) *Minority* means Blacks, Hispanics, American Indians, Alaskan Natives, Asians, and Pacific Islanders.
- (3) *Bid*. "Bid" means all purchase prices sought by procurement methods as described in Article III of Chapter 7 of the Code of the City of Orlando.
- (4) *Contract*. "Contract" means all types of City agreements regardless of what they may be called, for the purchase or disposal of supplies or services or performance of construction with the following exceptions: salaries/employee benefits, taxes, judgements, travel, dues, pensions, utilities, subscriptions, auto allowances, debt service requirements, postage, and those contracts entered into by Greater Orlando Aviation Authority or Orlando Utilities Commission, either solely by those entities or with the City as cosignator. It includes contracts for a fixed price, cost, cost plus a fixed fee, or incentive contracts, contracts providing for the issuance of job or task orders, leases, letter contracts, and purchase orders.
- (5) *Construction*. "Construction" means the process of building, altering, repairing, improving, or demolishing any public structure, building, roadway, or other public improvements of any kind to any public real property. It does not include the routine operation, repair or maintenance of existing structures, buildings or real property.
- (6) *Services*. "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term includes "Professional Services," but does not include employment agreements or collective bargaining agreements.
- (7) *Supplies*. "Supplies" means all property including, but not limited to equipment, materials, printing, insurance, and leases, but excluding land or a permanent interest in land.
- (8) (Ord. of 8-29-1983, Doc. #18037; Ord. of 10-3-1983, Doc. #18092; Ord. of 2-25-1985, Doc. #19235; Ord. of 8-28-1995, Doc. #28748)

Sec. 57.16. Establishment of Goals

- (1) To achieve parity there is hereby established a goal of 18% of the City's annual monetary value of contracts and subcontracts for supplies, services and construction to be awarded to minority business enterprises meeting contract specifications. Calculation of the 18% monetary value shall not include the amounts for contracts for which no minority business enterprise bid or contracts where no minority business enterprise meets the specifications.
- (2) The goals for minority group employment levels and minority enterprise subcontract levels to be achieved by contractors with the City for construction are hereby set at 18% and adjusted pursuant to 57.26(4).
- (3) On an annual basis the City Council shall review the levels of minority business enterprise participation for the City's contracting, subcontracting and work force participation, and shall in addition annually review minority population totals and percentages for the Orange County area. After said reviews, the City Council may adjust the percent goals for contracts, subcontracts and work force participation to reflect a more representative share of the minority population or available market of minority business enterprises.
- (4) In determining the MBE/WBE participation on a contract, the following facts will be taken into consideration:
 - (a) On contracts where the estimated material portion of the contract exceeds thirty percent (30%) of the project cost and the materials in question are not available to be furnished through City certified MBE/WBE firms, the MBE Coordinator is authorized to effect reductions in the goals for the project to reflect the unavailability of the materials. It is intended that this provision will only be utilized for projects involving major equipment items such as pipe, equipment, fabrications, etc.
 - (b) The costs of materials which will be used in determining the MBE/WBE participation at the time of bid shall be those estimates as compiled by the City of Orlando. The City's adjusted goal will be the official goal on any particular project subject only to other provisions of this ordinance.
- (5) In all instances, any MBE/WBE company performing under a contract with the City of Orlando may only claim, as part of his/her MBE/WBE participation, those materials which the company purchases and actually fully installs as part of their responsibility under the contract, if such work is listed as one of the areas of expertise under which the company is certified or recognized to perform.
- (6) If a certified or recognized material supplier exists, that portion of the contract filled by the supplier will count directly against the 18% MBE & 6% WBE goals and will not be adjusted according to 57.16(4). The percent of the total contract price which is performed by the material supplier shall first be deducted from the City's goals, i.e.: eighteen percent (18%) in the case of minority business enterprises and six percent (6%) in the case of woman-owned business enterprises. Any remaining MBE/WBE percentage which the material supplier has failed to satisfy shall then be adjusted according to Section 57.16(4). The prime contractor shall then have to make a good faith effort to provide subcontracts to minority or woman-owned companies, as the case may be, to fulfill the City's goals.
- (7) (Ord. of 8-29-1983, Doc. #18037; Ord. of 8-17-1987, Doc. #21410)

Sec. 57.17. Award of Contracts to Minority Business Enterprises

(1) If, during any fiscal year, bids are being sought by the City for a contract to provide supplies, services or construction and the City has not achieved the goal established in accordance with Section 57.16(1) of this Chapter, the contract shall be awarded to the lowest bidding minority business enterprise meeting contract specifications unless it appears that the minority business enterprise's bid is unreasonably priced or the minority business enterprise's bid is neither in the best interest of the City nor the lowest and best bid. All other factors being equal, preference shall be given to minority business enterprises located in Orange County. For the purpose of this subsection, an "unreasonable price" is a price above competitive levels which cannot be attributed to the minority business enterprise's attempt to cover costs inflated by the present effect of disadvantage or discrimination.

(2) For the purpose of this subsection, determination of the "lowest and best bid" shall include an evaluation of such factors as the nature of the supplies or services sought, prices of similar products in the relevant market area, minority employment levels achieved by the prospective contracting entities, location of business offices, general conditions in the market area, minority participation in the marketplace and such other factors as may be deemed relevant.

(Ord. of 8-29-1983, Doc. #18037; Ord. of 10-3-1983, Doc. #18092)

Sec. 57.18. Minority Employment and Subcontracting Levels to be Achieved by Contractors with the City for Construction Services

Contractors submitting bids to provide construction services to the City shall comply with the minority group employment levels and minority business enterprise subcontracting percentages as established pursuant to Section 57.16 of this Chapter, or shall in the event such levels and percentages are not achieved, provide evidence of a good faith effort to achieve such levels and percentages. If such levels and percentages are not achieved and if it is deemed that a good faith effort for compliance has not been shown, then the contractor's bid shall be rejected as non-responsive.

Compliance with "minority group employment levels" shall mean hiring and maintaining a minimum of 18% minority workforce on the City construction job for which the contractor has bid.

Compliance with "minority business enterprise sub-contracting percentages" shall mean subcontracting to minority business enterprises a minimum of 18% of the total dollar value of a construction contract for which the contractor has bid. For the purpose of this requirement "minority business enterprises" need not be located in Orange, Seminole or Osceola Counties.

(Ord. of 8-29-1983, Doc. #18037; Ord. of 2-25-1985, Doc. #19235)

Sec. 57.19. Compliance Officer; Compliance Procedures

The Mayor shall designate a Compliance Official whose duty it shall be to monitor contractors with the City for construction services for compliance with minority employment levels and minority business enterprise subcontracting levels during the contractual term. The Compliance Official shall also prepare a list of all minority business enterprises in the Standard Metropolitan Statistical Area, compliance guidelines for contractors with the City for construction services, with said guidelines to include

monitoring and reporting procedures, and recommendation for actions to be taken should non-compliance occur and procedural guidelines for City allocation of contracts to minority business enterprises as provided by this ordinance. Said guidelines shall be subject to the approval of City Council. The Compliance Official shall also perform such other duties relating to the provisions of this Article as may be directed by the Mayor.
(Ord. of 8-29-1983, Doc. #18037)

Sec. 57.20. Failure to Comply

(1) If it is determined by the Compliance Officer that a contractor with the City for construction services has at any time during the term of said contract failed to maintain the minority employment levels and minority business enterprise percentages established pursuant to Section 57.16 of this Chapter and also failed to show a good faith effort to maintain said levels and percentages, the Compliance Officer shall document the non-compliance and report it to the Director of Purchasing and Materials Management or Public Works Director, the contractor, and the contractor's surety. If the contractor fails to come into compliance or fails to show a good faith effort to come into compliance within fifteen (15) days in the case of minority employment levels, and within thirty (30) days in the case of minority business enterprises, the Director of Purchasing and Materials Management or the Public Works Director may then impose appropriate penalties upon the contractor, to include but not be limited to debarment from submitting future bids to the City for a period of one (1) year, and forfeiture of a portion of the retainage withheld pursuant to the contract, commensurate with the extent of the violation. All such penalties shall be reviewed by the City Council upon request of the contractor or its surety for concurrence or modification.

(2) If it is determined by the Compliance Officer that any contractor with the City, subcontractor, a minority business enterprise or women-owned business enterprise certified by the City or seeking certification by the City has violated the provisions of this Ordinance or any other state, federal or local law or has given false information to the City, then the Compliance Officer shall document said action and report it to the Director of Purchasing and Materials Management or Director of Public Works, and the contractor, subcontractor, women-owned business enterprise or minority business enterprise. Within 15 days after the receipt of the report the Director of Purchasing and Materials Management or Director of Public Works shall meet with contractor, subcontractor, minority business enterprise or women-owned business enterprise to hear and take such evidence as may be offered by that contractor, subcontractor, minority business enterprise or women-owned business enterprise. The Director of Purchasing and Materials Management or Director of Public Works may then impose debarment or suspension upon the contractor, subcontractor, minority business enterprise or women-owned business enterprise. All such penalties shall be reviewed for concurrence or modification by the City Council upon the request of the contractor, subcontractor, minority business enterprise or women-owned business enterprise.

(Ord. of 8-29-1983, Doc. #18037; Ord. of 10-3-1983, Doc. #18092; Ord. of 2-25-1985, Doc. #19235; Ord. of 12-13-1999, § 15, Doc. #32494)

Sec. 57.21. Conformity with Applicable Federal and State Laws and Chapter 7 of the Code of the City of Orlando

The provisions of this Article shall be construed according to and in conformity with Acts of Congress and of the Legislature of the State of Florida concerning the bidding and awarding of contracts and with

Chapter 7 of the Code of the City of Orlando entitled "Purchasing Code." Where provisions of this Article come into conflict with either federal or state law or Chapter 7 of the Code of the City of Orlando, the federal or state law or Chapter 7 of the City Code shall prevail.

(Ord. of 8-29-1983, Doc. #18037)

ARTICLE III. WOMEN-OWNED BUSINESS ENTERPRISES

Sec. 57.22. Definitions

(1) For the purposes of this Chapter, "Women-Owned Business Enterprise" is defined as a business firm which is at least 51 percent (51%) owned by women, or in the case of a publicly owned business, at least 51 percent (51%) of the stock of which is owned by women. The women ownership must exercise actual day to day management and control of the business. Women-Owned Business Enterprises must be officially certified or recognized as Women-Owned Business Enterprises by the City of Orlando. Such a firm whose principal place of business is located in Orange, Seminole or Osceola County may be certified as a Women-Owned Business Enterprise. Such firm whose principal place of business is located outside of Orange, Seminole or Osceola County may be recognized as a Women-Owned Business Enterprise.

(2) Wherever used in this article, the terms "bid," "contract," "construction," "services," and "supplies" shall be defined as in Section 57.15 of Article II of this Chapter.

(Ord. of 8-29-1983, Doc. #18037; Ord. of 2-25-1985, Doc. #19235; Ord. of 8-28-1995, Doc. #28748)

Sec. 57.23. Establishment of Goals

(1) There is hereby established a goal of 6% of the City's annual monetary value of contracts and subcontracts for supplies, services and construction to be awarded to women-owned business enterprises meeting contract specifications. Calculation of the 6% monetary value shall not include the amounts for contracts for which no women-owned business enterprises bid or contracts where no women-owned business enterprise meets the specifications.

(2) The goals for women group employment levels and women enterprise subcontract levels to be achieved by contractors with the City for construction are hereby set at 6% and adjusted pursuant to 57.16(4).

(3) This Section hereby incorporates by reference the provisions of Section 57.16(3)--(6) and makes them applicable to woman-owned companies.

(Ord. of 8-29-1983, Doc. #18037; Ord. of 8-17-1987, Doc. #21410)

Sec. 57.24. Award of Contracts to Women-Owned Business Enterprises

The award of contracts to women-owned businesses shall be according to the procedures as set forth for minority business enterprises in Section 57.17 of Article II of this Chapter, provided however, until the goal as established by this Article is achieved, contracts shall be awarded to the lowest bidding women-owned business enterprise or minority business enterprise meeting contract specifications, unless it appears that the bid is unreasonably priced or the bid is neither in the best interest of the City nor the lowest and best bid.

(Ord. of 8-29-1983, Doc. #18037; Ord. of 10-3-1983, Doc. #18092)

Sec. 57.25. Women Employment and Subcontracting Levels to be Achieved by Contractors with the City for Construction Services

Contractors submitting bids to provide construction services to the City shall comply with the women group employment levels and women-owned business enterprise subcontracting percentages as established pursuant to Section 57.23 of this Chapter, or shall in the event such levels and percentages are not achieved, provide evidence of a good faith effort to achieve such levels and percentages. If such levels and percentages are not achieved and if it is deemed a good faith effort for compliance has not been shown, then the contractor's bid shall be rejected as non-responsive.

Compliance with "women-owned group employment levels" shall mean hiring and maintaining a minimum of 6% female workforce on the City construction job for which the contractor has bid.

Compliance with "women-owned business enterprise subcontracting percentages" shall mean subcontracting to women-owned business enterprises a minimum of 6% of the total dollar value of a construction contract for which the contractor has bid. For the purpose of this requirement "women-owned business enterprises" need not be located in Orange, Seminole or Osceola Counties.

(Ord. of 8-29-1983, Doc. #18037; Ord. of 2-25-1985, Doc. #19235)

Sec. 57.26. Provisions Adopted by Reference

For the purposes of this Article the provisions of Sections 57.16(3), 57.19, 57.20 and 57.21 of Article II of this Chapter, in general and as they are applicable to the contracting goals as set forth in this Article, are hereby adopted in their entirety to apply to women-owned business enterprises as they apply to minority business enterprises.

(Ord. of 8-29-1983, Doc. #18037)

Sec. 57.27. Emergency Waivers

The provisions of Articles II and Article III of this Ordinance, either in whole or in part, may be waived by the Compliance Officer in any event or award of a contract of such an emergency nature so as to render compliance with this Ordinance unreasonable or impossible.

(Ord. of 2-25-1985, Doc. #19235)

Sec. 57.28. Certification Board Created

There is hereby created a Certification Board of seven (7) members to be appointed by the Mayor, subject to the approval of City Council. Members shall serve without compensation and shall serve a term of two (2) years.

(Ord. of 5-6-1985, Doc. #19372; Ord. of 11-9-1987, Doc. #21640; Ord. of 9-18-1989, Doc. #23312)

Sec. 57.29. Powers and Duties of the Board

The powers and duties of the Certification Board shall be:

(1) To receive and review such evidence, both oral and documentary, as may be presented on behalf of minority and women-owned business enterprises to prove their compliance with the definitions of minority and women-owned businesses contained in this Chapter as well as compliance with the rules adopted by the Certification Board. The Board shall meet to receive and consider such evidence no less than once each month.

(2) To issue certification or recognition to those businesses which, in the Board's estimation, after review, comply with the definitions of minority and women-owned businesses as contained in this Chapter. Those businesses receiving certification must have their principal place of business located in Orange, Seminole or Osceola County. Those businesses receiving recognition need not have their principal place of business located in Orange, Seminole or Osceola County.

(3) The MBE Coordinator may grant reciprocity to MBE/WBE firms who are currently certified or recognized in other jurisdictions subsequent to the Certification Board approval of that jurisdiction. Reciprocity shall take place under the following conditions:

(a) The MBE Coordinator shall review the standards, application process, rules and regulations of other jurisdictions and shall present those findings to the Certification Board for ratification.

(b) The Certification Board, shall by majority vote, compile a list of those jurisdictions to whom they wish to grant reciprocity, which decision shall be based upon the information presented by the MBE Coordinator.

(c) Once the list of jurisdictions is compiled, the MBE Coordinator shall notify the MBE/WBE firms in the jurisdiction being offered reciprocity of the provisions of this Section. Additionally, the MBE Coordinator shall make available a list of those MBE/WBEs who are granted reciprocity to the contractors bidding on City projects.

(d) Reciprocity may be rescinded by a majority vote of the Certification Board subsequent to recommendation by the MBE Coordinator and review by the Certification Board.

(e) Companies granted reciprocity must notify the MBE Coordinator of their intent to bid on City contracts prior to the time that they submit their bids to a contractor. They shall provide a copy of the application which they submitted to their original jurisdiction along with an affidavit attesting to the authenticity and truthfulness of the documentation presented.

(f) The MBE Coordinator will contact the original jurisdiction to verify that companies granted reciprocity are in good standing, and to request notice of any future adverse action which the original jurisdiction might take against that company.

(g) Once the MBE Coordinator verifies the status of a company granted reciprocity, the company shall receive temporary certification or recognition for a maximum period of four (4) months, however said temporary status shall not be effective beyond the termination of their MBE/WBE status with their originating jurisdiction.

(h) Prior to the expiration of the four (4) month period, the files of the company granted reciprocity, as maintained by the MBE Coordinator, shall be presented to the Certification Board. The Certification Board shall then review this file to determine whether the MBE/WBE should be granted status as a certified or recognized company pursuant to Section 57.29(2).

(i) Under no circumstances may a firm which is currently under suspension or debarment or which has been denied certification or recognition by the City of Orlando in the six (6) months preceding its application for reciprocity with the City of Orlando MBE/WBE program, use this Section to circumvent the imposed sanctions or actions of the City. Additionally all applicants for reciprocity must be in current good standing with all other foreign jurisdictions under which they are certified or recognized.

(j) The City of Orlando encourages jurisdictions granted reciprocity to allow those MBE/WBEs certified or recognized by the City of Orlando to be given similar status in their jurisdiction.

(k) If necessary, the MBE Coordinator shall formulate a supplemental application form to ensure compliance with the standards established by the City of Orlando. The applicant shall comply with any requests for information which the MBE Coordinator deems appropriate. Applicants going through this shortened process must have their status verified by the MBE Coordinator prior to bidding on any contract with the City, where they wish their participation to be counted towards the City's MBE/WBE goals. Failure to do so will result in no credit being given and the applicant will be prohibited from applying under the reciprocity provision and will be required to apply through normal channels.

(4) To propose reasonable rules and internal procedures as may be necessary for operation of the Board, as well as criteria pertaining to ownership, independent management and control, and other factors relating to minority and women-owned business enterprise requirements, provided that they are

consistent with the policies and procedures and ordinances of the City of Orlando and the laws of the State of Florida.

(Ord. of 5-6-1985, Doc. #19372; Ord. of 11-9-1987, Doc. #21640; Ord. of 8-28-1995, Doc. #28740)

Sec. 57.30. Review of Certification Board Decision

(1) Appeals of decisions by the Certification Board shall be heard by the Chapter 57 Review Board, which shall be composed of seven (7) members appointed by the Mayor and confirmed by City Council. Members shall serve without compensation and shall serve a term of two (2) years.

(2) A hearing before the Chapter 57 Review Board to appeal the denial of certification or recognition by the Certification Board may be obtained by filing a written request for a hearing to the Minority/Women Business Enterprise Office within ten (10) days of receipt of the notice of the denial. The appellate decision of the Chapter 57 Review Board shall be final.

(3) The Chapter 57 Review Board shall promulgate rules and procedures governing the operations and functions of the Board. Such rules and procedures shall be consistent with the ordinances of the City of Orlando and the laws of the State of Florida.

(Ord. of 5-6-1985, Doc. #19372; Ord. of 10-21-1985, Doc. #19791; Ord. of 8-28-1995, Doc. #28748; Ord. of 5-7-2007, § 4, Doc. #0705071002)