

**Whereas**, the City Council approved the Small Business Enterprise Program in the Fall of 2005 in an effort to increase the use of minority-owned, women-owned and other disadvantaged contractors in the City of Bridgeport awarding of contracts;

**Whereas**, the City Council approved an amendment to the Small Business Enterprise Program on April 3, 2006 to increase the percentage attainable goals for awarding of contracts to such contractors; and

**Whereas**, the City Council desires to change the name of the Small Business Enterprise Program, to further increase the percentage attainable goals previously established, and to make other necessary changes to the program to better ensure that the program's goals and requirements can be satisfied. **Now, therefore,**

**BE IT ORDAINED:** By the City Council of the City of Bridgeport that the Bridgeport Municipal Code of Ordinances Chapter 3.12 Equal Opportunity Requirements for Contractors, Section 3.12.130 Small Business Enterprise Program, is hereby substituted in its entirety and replaced with the following ordinance:

3.12.130 Minority Business Enterprise Program.

A. Purpose. The purpose of this chapter is to:

- Recognize the findings of the Disparity Study dated March 2005 conducted at the city's request.
- Implement a race and gender-conscious program to correct historic discrimination in contracting for those groups identified in the Disparity Study;
- Create a sheltered market program to benefit small, Bridgeport-based businesses by providing a pool of contracts for which they can compete on a fair basis; and
- Take steps to reduce or eliminate aspects of the city's bidding and contracting processes that pose the greatest difficulties for Minority Businesses and other small businesses and hinder their participation, prosperity and growth.

B. Definitions. All capitalized terms not defined in this chapter shall have the meanings assigned to them in Section 3.08.070, Purchasing procedure, unless the context otherwise requires.

"African American" means a Black American, including all persons having origins in any of the Black African racial groups not of Hispanic origin.

"Asian American" means an Asian American, including all persons having origins in any of the countries of the Asian Continent, Southeast Asia, an Asian Pacific American and a Pacific islander.

“American Indian” means a person having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

“Business” means a business defined under “Company”.

"Certified" means an MBE, WBE or DBE contractor whose status as a member of a particular minority group classification has been established, certified or accepted for participation in any minority, disadvantaged or small business program by (a) any State of Connecticut agency or quasi-governmental agency, (b) any other State governmental or quasi-governmental agency in another state, and (c) any governmental or quasi-governmental agency of any city, town, county or municipality in Connecticut or any other state, and which Certified contractor otherwise possesses the experience, skills and resources to satisfy a City contract and/or Contract Category.

"City contract" for purposes of this chapter means any contract, purchase order, bid, quote or selection process involving work in the nature of construction (including new construction, rehabilitation, demolition and sitework), architecture and engineering, professional services, non-professional services, or goods.

“Compliance Committee” means a committee established by the Administrator to oversee the implementation of this chapter, compliance with its provisions, interpretations of its meaning and application, hearing and resolution of protests and complaints, and implementation of remedies and penalties, consisting of the Administrator, a representative of the Purchasing Department, a representative of the City Attorney’s Office, the City Council’s Legislative Director, and a representative from any city consultant engaged for purposes of implementation and/or compliance.

"Compliance reports" means those reports identified in this chapter prepared by the person or department designated or otherwise prepared at the request of the Administrator or his designee, including any city consultant engaged for such purpose, to track all phases of the program established by this chapter, including utilization of Minority Contractors and Bridgeport businesses, compliance by bidders and various participants in the implementation of or compliance with the program, outreach efforts, protests and complaints received and determined, enforcement actions taken, Liquidated Damages assessed, debarments and disciplinary actions recommended, and such other reports as the Administrator may deem necessary or desirable.

"Contracting Category" means contracts for construction, contracts for architecture and engineering, contracts for professional and non-professional services, and goods.

"Company" means a business enterprise, including a corporation, partnership, joint venture, limited liability company, limited liability partnership or sole proprietorship.

"Disadvantaged business enterprise" or "DBE" means an individual having a physical impairment that substantially limits one or more of the major life activities of the individual or who has a record of such an impairment that is Certified.

"Due Diligence Criteria" for purposes of this chapter means a fair and unbiased method by which a Contracting Officer obtains informal quotes when permitted by Chapter 3.08.070 from Companies, including MBEs, WBEs and DBEs, such that bias, prejudice and discretionary practices by a Contracting Officer are minimized and city contracts are awarded in compliance with the requirements of this chapter.

"Evaluation credits" means, in a qualifications-based selection process, the assignment of ten (10) additional points to applicable Target Groups when evaluating their qualifications and/or their proposals, based upon a uniform 100-point scoring system described in this chapter in order to arrive at a short-list of proposers so that Target Groups are not placed at a competitive disadvantage when competing with non-target groups.

"Formal" contracts means those city contracts that exceed \$25,000 and are required to be publicly advertised under Section 3.08.070.

"Good Faith Efforts" means a Prime Contractor's obligations to reach out through various means and methods described in this chapter to Minority Contractors to participate as subcontractors in connection with the Prime Contractor's intention to bid for a city contract, as more particularly described in Section G(5) of this chapter.

"Hispanic American" means a Hispanic American, including all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

"Industry coding" means the Contracting Officer's determination of and the Purchasing Director's agreement with the industry classification codes assigned to a city contract prior to or at the time of bid to facilitate bidding, selection, implementation, compliance, monitoring and enforcement activities.

"Informal" contracts means those city contracts under \$25,000 that are not required to be publicly advertised under Section 3.08.070 of this code.

"Jobs funnel" means a community effort to provide opportunities for Bridgeport residents to receive life-skills training, job training, and job placement with building trades and Companies doing business with the city or in the City of Bridgeport.

"Liquidated Damages" means monetary penalties that can be assessed against a Prime Contractor or a Minority Contractor for violation of the requirements of this chapter, as more particularly described in Section G(3) of this chapter.

"Minority business enterprise", "Minority Contractor" or "MBE" means a minority-owned business, including minority female-owned business enterprises, the latter sometimes referred to herein as a "WMBE" that demonstrates at least 51% percent of the ownership held by a person(s) who is a member of a racial minority group, and who exercises operational authority over the daily affairs of the business, has the power to direct policies and management, and receives beneficial interests of the business that is Certified. In some cases use of the term Minority Contractors or MBEs may include WBEs, WMBEs and DBEs where the context requires.

"Outreach and marketing program" means a city program operated by the Administrator, or his designee, including any city consultant engaged for that purpose, to attract and promote the inclusion of new and existing Minority Contractors into the city bidding and contracting process, including soliciting businesses to bid for city contracts and become city contractors, advertising contracting opportunities especially in media outlets sensitive to minority

interests, hosting open houses, registration and networking events, arranging training opportunities, facilitating partnering with Companies, and identifying agencies and for-profit and not-for-profit organizations interested in fostering the capacity and effectiveness of Minority Businesses, and the like.

"Prime Contractor" means a non-minority contractor that seeks or obtains a city contract.

"Program administrator" or "Administrator" means the city's chief administrative officer or his designee, including any city consultant engaged for implementation purposes or the Compliance Committee.

"Project Labor Agreement" or "PLA" means one (or more) agreements sought for and arranged by the city on appropriate projects or programs such as the new schools construction program to ensure the creation of trade apprenticeships and other job opportunities for Bridgeport residents in accordance with the goals of this chapter.

"Prompt payment directive" means the city's commitment to a prompt payment process developed by the Administrator, Director of Finance and the Director of Information Technology for (a) all Prime Contractors employing Minority Contractors as subcontractors and (b) all Minority Contractors to ensure that the city pays complete invoices in a maximum of thirty (30) days if to a Prime Contractor and a maximum of fifteen (15) days if to a Minority Contractor, except for any portions of such invoices about which there exists a legitimate dispute.

"Self-Perform" means that a Certified MBE, WBE or DBE contractor, whether a Prime Contractor or a subcontractor, performs 30% of the value of its work (exclusive of materials and equipment) using its own forces and resources as determined by monthly payrolls.

"Sheltered market program" means a city program developed by the Administrator or his designee, including any city consultant engaged for that purpose, and the Director of Purchasing that creates a pool of various city contracts for SLBEs in Contracting Categories in which SLBEs are available that ensures fair competition for city contracts taking into account the relative sizes and resources of SLBEs so that SLBEs compete for city contracts against other SLBEs of similar size and resources.

"Small local business enterprise" or "SLBE" means a business enterprise having its principal office in Bridgeport and a business license, and either less than \$5 million in annual sales or fewer than 20 employees.

"Subcontractor substitution" means a Prime Contractor's request to substitute or replace a Minority Contractor listed or identified prior to the time of award and upon which the award was made, which can only be accomplished with the Administrator's, or his designee's, including a city consultant engaged for that purpose, or the Compliance Committee's prior written consent after written notice from the Prime Contractor to the Administrator, with a copy to the subcontractor, both the Prime Contractor and the subcontractor having a right to be heard, and such a substitution must be based on good cause shown in accordance with a process established by the Administrator or the Compliance Committee.

"Target Groups" means those racial or gender groups identified in the Disparity Study that experienced historic discrimination in city contracting to such a degree that this chapter provides race and gender-conscious remedies

such as set-asides, percentage attainable goals, Evaluation Credits or other preferences.

"Voluntary programs" mean those program activities described in this chapter and other activities implemented in the future by the Administrator or his designee, including any city consultant engaged for that purpose, that are designed to encourage and develop Minority Contractors and SLBEs, provided that such activities are legally permissible without the need to establish historic discrimination and are essentially neutral as to all types of small business enterprises, including but not limited to the creation of a sheltered market program, the adoption of Project Labor Agreements, the creation of a Jobs Funnel, etc.

"Waiver" means the request for relief from a requirement of this chapter, satisfactory to the Program Administrator or the Compliance Committee, that the Prime Contractor's good faith efforts to identify a Minority Contractor or a Target Group, as required by this chapter, did not result in meeting at least 50% of the requirements or goals of this chapter in spite of the Prime Contractor's good faith efforts to achieve compliance.

"Women business enterprise" or "WBE" means a women-owned business enterprise contractor who is not a member of a racial minority group and whose legal existence has been established for at least one (1) year prior to the time of bid.

### C. Guiding Principles

1. It is important to implement the principles and goals of this chapter in a way that encourages the participation of MBE, WBE and DBE contractors in the city contracting process while at the same time being fair and avoiding unreasonable burdens on other contractors that are not members of such groups.

2. It is important to implementation and compliance that participants in the city contracting process, whether Prime Contractors, subcontractors, MBEs, WBEs, DBEs, and city officials, employees and agents, be discouraged in various ways and penalized for non-compliance, efforts to avoid or subvert, or assist others in such efforts, or to appear to be in compliance with the important principles and goals of this chapter by the use of strategies, devices, ploys and other improper means.

3. It is important in the implementation and compliance process to understand that this chapter serves as an important tool in the revitalization of the city's economy, including the encouragement, development and success of Bridgeport companies and the employment of Bridgeport residents.

4. A prime contractor who is a Certified MBE, WBE or DBE and meets the other requirements of this chapter such as the obligation to Self-Perform, is, by definition, in compliance with the principles and goals of this chapter.

D. Establishment of Race and Gender-Conscious Remedies.

1. Formal Prime Contract Remedies.

a. Competitive Bids. An attainable goal of 30% of the aggregate dollar value of each Formal city contract (goal of 15% of the contract value to MBEs and goal of 15% to WBEs).

b. Qualifications-Based Selections. An attainable goal of 30% of the aggregate dollar value of a city contract is established for Prime Contractor utilization of certain Target Groups during QBS processes. For purposes of this subsection, the Target Groups that should receive Evaluation Credits are:

- i. City contracts for construction professionals: African Americans, Hispanic Americans, MBEs, and minority female and Caucasian female minority business enterprises.
- ii. City contracts for architecture and engineering professionals: Asian Americans, Hispanic Americans, and Caucasian females.
- iii. City contracts for other professional services: Asian Americans, Hispanic Americans, Caucasian females, MBEs, and minority female and Caucasian female minority business enterprises.
- iv. City contracts for goods and nonprofessional services: African Americans, Caucasian females, MBEs, and minority female and Caucasian female minority business enterprises.

2. Informal Prime Contract Remedies.

a. An attainable goal of 30% of the aggregate dollar value of each Informal city contract (goal of 15% of the contract value to MBEs and goal of 15% to WBEs).

b. Since Informal city contracts awarded to Prime Contractors are not usually publicly advertised and tend to be awarded by individual Contracting Officers after informal quotes are obtained, MBEs do not participate sufficiently in city contracts to the extent that they can build experience, become better equipped to provide goods and services to the city, and circulate procurement dollars within the city's tax base. The Administrator and the Director of Purchasing shall implement Due Diligence Criteria for Contracting Officers and standardize the process for identifying, documenting and selecting Target Groups for the award of Informal city contracts to minimize discretionary or prohibited practices.

For purposes of this subsection, the Target Groups are:

- i. City contracts for construction: African Americans, Hispanic Americans, and MBEs.
- ii. City contracts for architecture and engineering services: Hispanic Americans, Caucasian females, MBEs, and minority female and Caucasian female business enterprises.
- iii. City contracts for professional services: African Americans, Asian Americans, Hispanic Americans, Caucasian females, MBEs, and minority female and Caucasian female minority business enterprises.
- iv. City contracts for goods and nonprofessional services: African Americans, Caucasian females, MBEs, and minority female and Caucasian female minority business enterprises.

3. Disparity in Construction Subcontracting Remedy.

a. In addition to the attainable goal of 30% of the aggregate dollar value for Formal city contracts and the attainable goal of 30% for Informal city contracts, a mandatory requirement of 6% of the aggregate dollar value of Formal and Informal construction subcontracts is established for Prime Contractor utilization of Certified African American businesses who Self-Perform and meet the other requirements of the bid. African-American businesses constitute the Target Group for purposes of this subsection.

b. The Administrator or his designee, including any city consultant engaged for this purpose, and the Director of Purchasing will create a registration system that will collect business information, construction trade classification, size, capacity and other characteristics for African American Contractors. City contracts for construction subcontracting reserved for African American Contractors shall be based on such registry and shall be revised on an annual basis to accommodate the registration of new African American Contractors in the construction trades.

c. The inability of a Prime Contractor to meet the mandatory 6% African American requirement of this subsection may be permitted only upon the Administrator's grant of a waiver for good cause shown in accordance with this chapter. If a waiver is not granted, all or portions of the work shall be re-bid if feasible and practical or the Administrator shall assign work in a fair and unbiased manner to Contractors previously identified and participating in the program created by this chapter who are Certified, Self-Perform and meet the other requirements of the bid. This mandatory requirement and a study of the general utilization of Minority Contractors shall be revisited in ten (10) years from the date of the Disparity Study.

4. Sheltered Market Program for SLBEs.

a. An attainable goal of 30% of the aggregate dollar value of city contracts to SLBEs for city contracts determined to be appropriate for the city's Sheltered market program. Such attainable goal shall be implemented without regard to the minority, female or disadvantaged status of any SLBE. The Administrator or his designee, including any city consultant engaged for such purpose, and the Director of Purchasing shall determine in which Contracting Categories SLBEs are available to bid for city contracts and shall bid such contracts to SLBEs in a manner that ensures fair competition, taking into account the relative sizes of available SLBEs so that SLBEs compete for such city contracts against other SLBEs of similar size.

b. This program will enable such SLBEs to build experience, become better equipped to provide goods and services to the city, and circulate procurement dollars within the city's tax base. In order to identify the SLBEs interested in obtaining city contracts, the Administrator or his designee, including any city consultant engaged for such purpose, and the Director of Purchasing will create a registration system that will collect SLBE business information, industry classification, size in terms of annual sales, capacity, workforce size, equipment and other characteristics. The city contracts sought to be awarded to SLBEs in the Sheltered market program shall be based upon such registry and shall be revised on an annual basis to accommodate the registration of new SLBEs. All SLBEs on the registry shall receive procurement notices for the city contracts reserved for the Sheltered market according to each SLBE's Industry coding and according to their availability and their experience, skills and resources to satisfy a City contract and/or Contract Category.

c. SLBEs are not required to meet MBE, WBE or DBE goals established by this chapter for city contracts that are not included in the Sheltered market program, but are nevertheless encouraged to utilize MBE, WBE and DBE subcontractors where possible.

E. Establishment of Best Practices. For purposes of implementing the city's program, the Administrator will ensure that best management practices are employed to improve MBE, WBE and DBE access to and participation in city contracts. The following practices focus on pre-award and post-award efforts and are intended to benefit all Minority Contractors and SLBEs interested in contracting with the city. Best practices include, but are not limited to, the following:

1. Identification of Specific Subcontractors is Required and Substitutions May Not be Made Without Good Cause Shown. Prime Contractors must either identify subcontractors at the time of bid submission or indicate that they intend to meet the goals established for such contract. Following receipt of a notice of intent to award, a Prime Contractor must identify such subcontractors, the dollar value of each subcontractor's work, and those subcontractors may not be substituted without good cause being shown in accordance with this chapter. The Administrator will determine whether good cause has been shown for the substitution of the subcontractor and shall be guided by the principles and goals of this chapter and any applicable industry standards in the Contract Category involved.

2. Creation of a Uniform System for Posting Procurement Notices. The Administrator or his designee, including any city consultant engaged for such purpose, the Director of Purchasing and the Director of Information Technology shall establish a uniform system for posting notices of city contracts that includes posting minority contracting opportunities in the Purchasing Department, providing computer stations available to the public in the Purchasing Department for contracting opportunities, registration, placing bids, etc., placing newspaper notices, website posting, fax notification, email notification and/or any combination thereof with other methods. Sufficient time should be permitted between bid posting and bid opening so that Prime Contractors are able to make good faith efforts to recruit Minority Contractor participation.

3. Unbundling of City Contract Opportunities into Smaller Contracts Where Feasible. Where practical and feasible, Contracting Officers seeking to bid city contracts should make every effort to unbundle contracts into separate parts of the work (including labor, materials, equipment, etc.) in a way that is practical, manageable, efficient and cost-effective, in a way that balances such concerns with the goal of maximizing the ability of MBEs to participate as subcontractors or as prime contractors themselves.

4. Revising Bonding Requirements. The Administrator and the City Attorney shall develop a policy to reduce or eliminate to the extent practical and feasible the bonding requirements from MBEs, WBEs and DBEs for city contracts, including for example the establishment of a contingency in the budget for the work to cover the costs and consequences of a Minority Contractor's failure to complete, that balances the city's concerns about job completion, risks and potential liabilities, and other legal concerns with this chapter's desire to ensure that bonding requirements do not constitute an unreasonable obstacle to participation, including the creation of a contingency fund in the budget for particular city contracts to cover the cost of complete and consequences resulting from a Minority Contractor's failure to perform.

5. Phased Release of Bonding and Retainage. The Administrator and the City Attorney shall develop a policy and procedure, when practical and feasible, to work with Prime Contractors to permit periodic releases of an MBE's, WBE's or DBE's performance bond, where subcontractor bonds are required by the Prime Contractor, and to release retainage upon satisfactory completion of portions of such subcontractor's work so long as the Prime Contractor is satisfied with the quality and completion of such work. Prime Contractors may not create retainage greater than 5% of the value of a Minority Contractor's portion of the work, but may create retainage up to 10% in other cases according to industry standards and practices not in violation of law. Such policy and procedure shall not include the periodic release of payment bonds, since such bonds are created to protect the interests of other subcontractors or sub-subcontractors.

6. Adopt a Prompt Payment Procedure to Assist MBEs; Prohibition of "Pay When Paid" Clauses in Certain Contracts. The Administrator and the Director of Finance shall develop a prompt payment procedure that prioritizes payments to Minority Contractors and the Prime Contractors for whom they may be working. Such procedure shall provide for the payment of complete invoices to a Prime Contractor that utilizes Minority Contractors in a maximum of thirty (30) days after receipt, elimination of any "pay when paid" clause in the Prime Contractor's contracts with Minority Contractors, and a requirement that Prime Contractors shall pay Minority Contractors within fifteen (15) days of the receipt of complete invoices. In all cases, payments in accordance with this paragraph are not required within such timeframes for invoices or portions thereof about which there exists a legitimate dispute until such dispute is resolved.

7. Adoption of Protest Procedures. The Administrator and the City Attorney shall develop protest procedures when Contractors, whether Prime Contractors or Minority Contractors, or other persons wish to challenge a bid, contract award, grant or denial of a waiver, release of retainage, and other complaints that may arise in the interpretation, implementation, monitoring and compliance activities of this chapter, and such procedures may be similar to the bid protest procedures adopted by the Board of Public Purchases pursuant to Section 3.08.070 of this code. Such protests shall be heard and determined by the Compliance Committee.

8. Collection of Monthly Records; Preparation of Compliance Reports on a Regular Basis. In order to determine the program's level of success and to address any problems that may result in the implementation of the program described in this chapter, monthly records will be available for review in the Department of Purchasing, and the Administrator or his designee, including any city consultant engaged for such purpose, shall prepare quarterly utilization reports at the end of the months of October, January, April and July in each fiscal year for submission to the Mayor and the Legislative Director of the city council. Such compliance reports shall include reports on Minority Contractor availability and utilization, employment of Minority Contractors, creation of apprenticeships and employment opportunities for Bridgeport residents on projects covered by Project Labor Agreements, nature and results of bid protects, instances of non-compliance by Prime Contractors, Minority Contractors, city employees and others involved in the program.

9. Establishment of Outreach and Marketing Program. The Administrator or his designee, including any city consultant engaged for such purpose, shall develop an outreach and marketing program that includes developing a tag line and print materials for an outreach campaign, creating procedures for distributing forecasts of contracting opportunities, developing arrangements with public and private agencies and organizations to disseminate information about the program described in this chapter, and conducting periodic program monitoring and evaluation as required by this chapter. This program will create a resource listing existing and new Minority Contractors that contains the Contracting Category, minority group affiliation, Target Group membership, experience, resources, size, equipment and other relevant information for each. Such program will also include a notification process to ensure that Minority Contractors and Target Group members obtain a timely notification designed to reach them, and sufficient time and opportunity to submit bids, quotes, qualifications or proposals to Prime Contractors who plan to bid for city contracts.

10. Award of City Contract to Minority Contractor Where It Was Not the Low Bidder. A Minority Contractor may be awarded the city contract even though it was not the low bidder in a competitive bid or competitive proposal when the Prime Contractor has not substantially achieved (i.e., achieved at least 50% of) the goals set forth in this chapter applicable to such contract:

a. In a bid for an Informal contract, if the Minority Contractor's bid is within ten percent (10%) of the low bid submitted by a Prime Contractor or, if greater than 10% of the low bid, the Minority Contractor agrees to accept the city contract for no greater than 10% above the low bid.

b. In a bid for a Formal Contract, if the Minority Contractor's bid is no greater than the percentage above the low bid submitted by a Prime Contractor stated below or, if greater than the percentage of the low bid stated below, the Minority Contractor agrees to accept the city contract for an amount no greater than the percentage above the low bid stated below:

i. If the Minority Contractor's bid is no greater than 10% above the low bid and the low bid is \$100,000 or less;

ii. If the Minority Contractor's bid is no greater than 7% above the low bid and the low bid is \$500,000 or less; or

iii. If the Minority Contractor's bid is no greater than 5% above the low bid and the low bid is \$1,000,000 or less.

c. Notwithstanding anything contained in this paragraph 10 to the contrary, if the bid or proposal requests quotes for base work and quotes for alternate additions or deductions, all bids must be analyzed on a fair and equitable basis without manipulation of the base bid and the alternate bids in such a way that makes the calculation of the low bid suspect or questionable in violation of the principles of this chapter.

11. Uniform Scoring System For QBS Processes. The Administrator and the City Attorney will develop a uniform 100-point system for use in qualifications-based selection processes. Target Groups determined in accordance with this chapter for the Contracting Category involved will be entitled to an additional 10 points above the score that they receive as a result of the 100-point system in determining whether they are part of the short list of contractors arrived at for purposes of making a final selection. The final selection shall then be made in the ordinary course of making a qualifications-based selection..

12. Adoption of Due Diligence Criteria For Informal Bids. In bids for Informal contracts, the Administrator and the Purchasing Director shall develop Due Diligence Criteria for Contracting Officers so that Informal contracts are awarded in a fair and unbiased method. Contracting Officers may only make recommendations to the Purchasing Department for the award of an Informal contract in order to minimize discretionary practices and to ensure that the goals of encouraging awards to Minority Contractors and SLBEs in accordance with this chapter.

F. Priority of Federal and State Minority Business Award Criteria. Often, with regard to federal and state funding of loans and grants, such governments require their own criteria and goals for awarding contracts to MBEs, WBEs and DBEs when federal or state dollars, respectively, are used to procure the goods or services desired. Recipients of federal and state funds are often required to implement measures to ensure equitable minority contracting whether a disparity was found or not. Therefore, notwithstanding anything contained in this chapter to the contrary, any requirements of federal or state governments relating to the award of contracts to SBEs, MBEs, WBEs, MWBEs or DBEs shall govern over any inconsistent provision of this chapter.

G. Compliance; Good Faith Efforts; Penalties; Miscellaneous.

1. Compliance with and good faith adherence to the requirements of this chapter by Prime Contractors, Minority Contractors, city officials and employees, and others involved in the city contracting process is mandatory, except where otherwise provided or permitted by this chapter.

2. No scheme, strategy, ruse, artifice, collaboration, passthrough or other device to make it appear that compliance with this chapter has been achieved or to avoid compliance with this chapter is permitted.

3. Any Prime Contractor, Minority Contractor or other Company involved in city contracting that violates this chapter, avoids, or attempts to avoid the implementation of this chapter or any of its requirements, goals, principles or practices, including implementation plans that may be adopted, shall be subject to debarment under the provisions of Chapter 3.08.090 of this Code. The Administrator or his designee, including any city consultant engaged for such purpose, or the Compliance Committee, with the advice of the City Attorney, may direct that payment to Prime Contractors or Minority Businesses involved in a city contract be withheld until any violation of this chapter has been corrected, or may deduct any monetary penalty from any monies that the city owes to such contractor, without the city incurring any additional cost, charge, interest or other fee from the Company committing the violation. The city may also impose and collect liquidated damages in the amount of \$200/day for each day that a violation has been committed and continues ("Liquidated Damages"), unless the Company proves and the Administrator finds that mitigating or extenuating circumstances to exist, in which case such Liquidated Damages may be reduced in the Administrator's discretion. Such Liquidated Damages may be imposed because of the difficulty and expense of attempting to quantify the value and assess the damage done to the program adopted under this chapter, and all Companies submitted bids or proposals for city contracts shall be deemed to understand and accept the imposition of Liquidated Damages for violations of this chapter. The Administrator shall use Liquidated Damages that are collected to fund outreach and educational efforts under this chapter.

4. Any city employee deemed by the Administrator or his designee, including any city consultant engaged for such purpose, or the Compliance Committee, with the advice of the City Attorney, to have violated this chapter in an intentional or grossly negligent manner or who has avoided or attempted to avoid, or to have assisted or encouraged a Company to avoid or attempt to avoid, the implementation of this chapter or any of its requirements, goals, principles or practices, including implementation plans adopted, shall be recommended for progressive disciplinary action within such employee's department and if necessary with the involvement of the city Department of Labor Relations, subject to the terms of any collective bargaining agreement that applies.

5. Mandatory Good Faith Efforts; Waivers; Exceptions. A Prime Contractor has the burden to demonstrate at the time of receipt of a notice of intent to award a city contract, and before the contract is awarded, that it is committed to and will be able to achieve the goals and requirements of this chapter. If, however, the Prime Contractor believes that it cannot achieve the goals and requirements of this chapter, it must demonstrate that it has (a) completed good faith effort No. 1 below and has met at least two (2) of good faith efforts Nos. 2 through 7 identified below (collectively, "Good Faith Efforts") to the reasonable satisfaction of the Administrator or his designee, including any city consultant engaged for such purpose, or the Compliance Committee in order to justify a waiver of the requirements of this chapter involved in the particular situation. Good Faith Efforts are:

No. 1— City Website and Newspaper Notice. Publish a notice seeking subcontractors on the City's purchasing website and an advertisement (one column inch minimum) in the Saturday edition of the Connecticut Post, in the public notices section, entitled "Bridgeport Minority Contracting Opportunity" in bold lettering describing the type or types of work, services, equipment, goods or supplies being sought, and the name, address and telephone number of the Prime Contractor's contact person having knowledge of the subcontracting work being sought within a reasonable time prior to the time of submission of each bid, quotation or proposal..

No. 2--Written notices to business associations or agencies. The Prime Contractor shall send written notices to at least two (2) business associations or development agencies, profit or non-profit, that represent or are associated with the interests of Minority Contractors and who disseminate bid opportunities and other information to Minority Contractors, so long as such notices are sent within a reasonable time prior to the deadline for the submission of each bid, quotation or proposal. Such notices shall describe the types of work, services, equipment, goods or supplies being sought, and the name, address and telephone number of the Prime Contractor's contact person having knowledge of the subcontracting work being sought. The Prime Contractor shall make every reasonable effort to respond to the inquiries and information requests of Minority Contractors within a reasonable time prior to the time of submission of each bid, quotation or proposal.

No. 3--Searching Available Databases and Lists of Minority Contractors. The Prime Contractor shall take steps to identify Minority Contractors in the Contracting Category doing the type of work sought in connection with the city contract from lists available from the Purchasing Department, on the city's purchasing website or other internet websites, or at other locations.

No. 4--Obtaining Quotes From Available Minority Contractors. The Prime Contractor shall obtain written quotes from Minority Contractors that we rejected for good cause because of cost, quality, experience, availability, responsibility, resources, equipment, lack or inadequacy of bonding or insurance, and the like.

No. 5--Attempts to Enter Into Joint Ventures or Other Arrangements with Minority Contractors. The Prime Contractor shall demonstrate its attempts to enter into joint ventures or other business arrangements with Minority Contractors not in violation of this chapter to perform portions of the work, to supply materials, and the like, and shall document all actions taken in that regard, including, where appropriate, the reasons for the failure or rejection of such efforts.

No. 6--Placing Advertisements in Minority Business Media Outlets. The Prime Contractor shall advertise in media outlets associated with or likely to reach Minority Contractors at least 2 times within a reasonable time prior to the date for submission of the bid, quotation or proposal for the city contract involved that includes a reasonable time for Minority Contractors to provide quotes.

No. 7--Other Efforts Particular to the Bid. The Administrator may approve other good faith efforts that can be made in connection with a particular bid.

6. Exemptions; Waivers.

a. The following procurements are exempt from the application of this chapter:

i. Qualified Purchases, Emergency Purchases, or purchases from federal, State, regional or other cooperative bidding arrangements.

ii. Bids that are otherwise exempted from competitive bidding or procurement requirements under the city's purchasing ordinance or city charter, for example, the selection of bond underwriters for the sale of city general obligation bonds.

b. When a Prime Contractor is unable to meet at least 50% of the goal established for a particular city contract, the Administrator or his designee, including any consultant engaged for that purpose, or the Compliance Committee, may grant a waiver if the Prime Contractor can demonstrate either that:

- i. Its workforce includes 30% Bridgeport residents;
  - ii. It will hire only Bridgeport residents for jobs the Prime Contractor identifies will be created as a result of the city contract; or
  - iii. That it has a good record of hiring minority contractors in the 2-year period prior to the city bid but has been unable to utilize minority contractors for the city contract for good cause shown..
- c. Other work for which the Administrator determines that there are no Minority Contractors registered, available or qualified to bid on such work.
  - d. Any waiver request and all supporting documentation and must be submitted to and accepted by the Administrator prior to the contract being awarded.

7. Prohibition Against Double-Counting. Minority Contractor participation in a city contract may not be double-counted in calculating whether the percentage goal has been met. If, for example, a Minority Contractor is also a minority female contractor, in calculating the Prime Contractor's compliance with the attainable goal, the Minority Contractor's portion of the contract may be calculated only in terms of the aggregate value of its portion of the contract work as a percentage of the total contract work.

8. Implementation Timetable. The Administrator has discretion to determine the applicability of this chapter to city contracts that are close to being awarded and those that will be awarded soon after passage for purposes of feasibility and practicality.

This chapter shall be effective upon publication.

APPROVED BY THE  
BRIDGEPORT CITY  
COUNCIL ON:

July 2, 2007

ATTEST:

FLEETA C. HUDSON  
CITY CLERK

APPROVED BY MAYOR  
JOHN M. FABRIZI  
ON:

July 2, 2007

ATTEST:

JOHN M. FABRIZI  
MAYOR

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