



Legislation Details (With Text)

File #: 130303 **Version:** 2

Type: Ordinance **Status:** Passed

File created: 6/11/2013 **In control:** COMMON COUNCIL

On agenda: **Final action:** 11/5/2013

Effective date:

Title: A substitute ordinance repealing the minimum levels of participation of minority and woman business enterprises in city contracts.

Sponsors: THE CHAIR

Indexes: CONTRACTS, MINORITY BUSINESS ENTERPRISES

Attachments: 1. City Attorney Letter, 2. African American Chamber of Commerce of Greater Milwaukee Letter, 3. HCCW - Settlement Agreement - FINAL, 4. Poverty Map provided by Stephanie Findley, 5. Ethnically Diverse Business Coalition Letter, 6. Letter from Curtis Harris, 7. Letter from W2 Excel LLC, 8. Hearing Notice List 9-17-13, 9. Hearing Notice List 10-7-13, 10. Hearing Notice List 10-28-13, 11. Notice Published on 11-21-13

Date	Ver.	Action By	Action	Result	Tally
6/11/2013	0	COMMON COUNCIL	ASSIGNED TO		
8/2/2013	1	CITY CLERK	DRAFT SUBMITTED		
9/11/2013	1	COMMUNITY & ECONOMIC DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
9/11/2013	1	COMMUNITY & ECONOMIC DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
9/17/2013	2	COMMUNITY & ECONOMIC DEVELOPMENT COMMITTEE	RECOMMENDED FOR PASSAGE	Pass	5:0
9/17/2013	1	COMMUNITY & ECONOMIC DEVELOPMENT COMMITTEE	SUBSTITUTED	Pass	5:0
9/24/2013	2	COMMON COUNCIL	ASSIGNED TO	Pass	13:2
10/1/2013	2	COMMUNITY & ECONOMIC DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
10/1/2013	2	COMMUNITY & ECONOMIC DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
10/7/2013	2	COMMUNITY & ECONOMIC DEVELOPMENT COMMITTEE	HELD TO CALL OF THE CHAIR	Pass	5:0
10/23/2013	2	COMMUNITY & ECONOMIC DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
10/28/2013	2	COMMUNITY & ECONOMIC DEVELOPMENT COMMITTEE	RECOMMENDED FOR PASSAGE	Pass	4:0
11/5/2013	2	COMMON COUNCIL	PASSED	Pass	15:0
11/12/2013	2	MAYOR	SIGNED		
11/21/2013	2	CITY CLERK	PUBLISHED		

130303
SUBSTITUTE 2
120298

THE CHAIR

A substitute ordinance repealing the minimum levels of participation of minority and woman business enterprises in city contracts.

370 (title) am

370-1-1 rp

370-1-2 rp

370-1-3 ra

370-1-4 rn

370-1-5 rn

370-1-6 rn

370-1-7 rn

370-1-8 rn

370-1-9 rn

370-1-10 rn

370-1-11 rn

370-1-12 rn

370-1-13 rp

370-1-14 rn

370-1-15 rn

370-1-16 rn

370-1-17 rn

370-1-18 rp

370-1-19 rp

370-1-20 rp

370-1-21 ra

370-1-22 rn

370-1-23 rn

370-1-24 rp

370-3-0 am

370-3-1 am

370-3-2 am

370-3-3 am

370-3-4-0 am

370-3-4-a am

370-3-4-b am

370-3-4-c am

370-3-4-e am

370-3-5 am

370-3-6 am

370-3-8 am

370-3-9 am

370-3-10 am

370-3-11 am

370-3-12 am

370-5-1-0 am

370-5-2 am

370-5-3 am

370-5-4-a am

370-5-4-b am

370-5-4-c-1 am
370-5-4-c-2 am
370-5-4-e am
370-5-5 am
370-7 am
370-9 am
Subch. 2, ch. 370 rp
Subch. 3, ch. 370 rp
370-25-6 rp
370-25-7 rn
370-25-8 rn
370-25-9 rn
370-27-1 am
370-27-2 am

This ordinance repeals code provisions relating to the city's minority and woman business enterprise programs, in effect abolishing the programs. In addition, the ordinance expands the city's small business enterprise program by increasing the levels of participation by small business enterprises in the city's contracting activities as follows:

1. For construction contracts, from 12.05% to 25%.
2. For goods and services contracts, from 4.59% to 25%.

The requirement for professional services contracts remains unchanged at 18%.

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Chapter 370 (title) of the code is amended to read:

CHAPTER 370
[[MINORITY, WOMAN AND]] SMALL BUSINESS [[PROGRAMS]]
>>PROGRAM<<.

Part 2. Section 370-1-1 and 2 of the code is repealed.

Part 3. Section 370-3 of the code is renumbered 370-1-1 and amended to read as follows:

370-1. Definitions.

[[3.]] >>1.<< AT A DISADVANTAGE WITH RESPECT TO BUSINESS LOCATION means location within an enterprise zone within **[[the Milwaukee metropolitan area]] >>the city<<** for a period of not less than one year of the applicant's principal office and business of which the applicant is the sole owner or one of the owners and a principal operator.

Part 4. Section 370-1-4 to 12 of the code is renumbered 370-1-2 to 10.

Part 5. Section 370-1-13 of the code is repealed.

Part 6. Section 370-1-14 to 17 of the code is renumbered 370-1-11 to 14.

Part 7. Section 370-1-18 to 20 of the code is repealed.

Part 8. Section 370-1-21 is renumbered 370-1-15 and amended to read:

15. OWNED, OPERATED AND CONTROLLED means a business which is one of the following:

- a. A sole proprietorship legitimately owned, operated and controlled by ~~[[a minority, a woman or]]~~>>an <<individual at a disadvantage.
- b. A partnership or joint venture legitimately owned, operated and controlled by individuals who are ~~[[minorities or women or individuals]]~~ at a disadvantage and who own at least 51% of the beneficial ownership interests in the enterprise and who hold at least 51% of the voting interests of the enterprise.
- c. A corporation legitimately owned, operated and controlled by one or more individuals who are ~~[[a minority, woman or individual]]~~ at a disadvantage and who own at least 51% of the voting interests of the corporation.

Part 9. Section 370-1-22 and 23 of the code is renumbered 370-1-16 and 17.

Part 10. Section 370-1-24 of the code is repealed.

Part 11. Section 370-3-0, 1 to 3 of the code is amended to read:

370-3. Administration. There is created an office of small business development in the department of administration which shall be responsible for the administration, coordination and implementation of the city's ~~[[minority, woman and]]~~ small business enterprise ~~[[programs]]~~>>program<<. Under the direction of the department of administration, the office of small business development shall be administered by a small business development manager. The manager shall be appointed by the mayor and confirmed by the common council and shall serve concurrently with the term of the mayor. The manager shall:

1. Establish criteria and procedures for reviewing contract performance and compliance with the requirements of the ~~[[programs]]~~ >>program<<, subject to approval by the common council.
2. Develop appropriate rules, procedures and regulations for assuring participation of ~~[[minority, woman and]]~~ small business enterprises in city contracts, subject to approval by the common council, and supervise, coordinate, monitor and enforce the implementation of ~~[[minority, woman and]]~~ small business enterprise participation goals for all city procurements in accordance with those rules, procedures and regulations.
3. Develop procedures for certification of ~~[[minority woman and]]~~ small business enterprises.

Part 12. Section 370-3-4-0, a to c and e of the code is amended to read:

4. Provide appropriate management assistance and direction to ~~[[minority, woman and]]~~ small business enterprises so as to maximize their participation in contracts let by the city, with such assistance to include:

- a. Provide assistance and information in connection with the establishment of ~~[[minority, woman and]]~~ small business enterprises.
- b. Assisting in the introduction of business associations between individuals of ~~[[minority, woman and]]~~ small business enterprises and others or between 2 or more ~~[[minority, woman or]]~~ small business enterprises.
- c. Planning and participation in training seminars for informing potential bidders of the ~~[[minority, woman and]]~~ small business enterprise ~~[[programs]]~~>>program<< and of business opportunities available.
- e. Developing various types of financial assistance for consideration by the common council to assist ~~[[minority, woman and]]~~ small business enterprises to obtain working capital to begin, continue and maintain a satisfactory level of business. These include a revolving loan program, guaranteed loan program, gap lending program and bond reduction and waivers when feasible.

Part 13. Section 370-3-5 and 6, and 8 to 12 of the code is amended to read:

5. Develop a reporting and evaluation system to reflect the city's ~~[[minority, woman and]]~~ small business enterprise ~~[[programs]]>>program<<~~.
6. Review and monitor all city contracts with ~~[[minority, woman and]]~~ small business enterprises for compliance and notify in written form the contractor on the findings of the review and decisions concerning satisfaction of contractual deficiencies.
8. Coordinate any city-sponsored economic development programs for ~~[[minority, woman or]]~~ small business enterprises.
9. Review ~~[[minority, woman and]]~~ small business enterprise participation progress in the city's contract and procurement activities and submit a written report to the mayor and common council.
10. Establish reporting requirements for all city departments to document the percentage of contracts which have been awarded to ~~[[minority, woman and]]~~ small business enterprises.
11. Devise rules, regulations and procedures governing requests for waivers from the requirements of the ~~[[minority, woman and]]~~ small business enterprise ~~[[programs]]>>program<<~~, subject to approval by the common council.
12. Conduct hearings on requests by contracting departments for waivers from the requirements of the ~~[[programs]]>>program<<~~. Upon a denial of a request for a waiver, the affected department may apply for a waiver to the appropriate standing committee of the common council. The committee shall have the authority to waive any requirements of this chapter upon showing of good cause.

Part 14. Section 370-5-1-0, 2 and 3 of the code is amended to read:

370-5. Goals of Contracting Departments.

1. GOALS. The following requirements are adopted by the city for increasing the level of ~~[[minority, woman and]]~~ small business enterprise participation in city contracts. It shall be the responsibility of each contracting department to attain such goals in accordance with the criteria specified in this section. Each contracting department, and all other operating departments when contracting based upon authority therefrom, shall, unless contrary to federal, state or local laws, utilize ~~[[minority, woman and]]~~ small business enterprises for the following percentage of the total dollars, through prime contracts or subcontracts annually expended on:
2. REVIEW OF GOALS. To assure the appropriate percentage goals for ~~[[minority, woman and]]~~ small business enterprise participation, the manager shall annually review and adjust the percentage goal, with the approval of the common council.
3. JOINT VENTURES Participation of ~~[[minority, woman and]]~~ small business enterprises in joint ventures with other such businesses and mainstream business entities is encouraged. In the case of a certified joint venture, only that portion of the total dollar value of the contract equal to the percentage of participation of the ~~[[minority, woman or]]~~ small business enterprise partner venture in the joint venture shall be counted toward the applicable requirement.

Part 15. Section 370-5-4-a and b, c-1 and 2, and e of the code is amended to read:

4. DUTIES OF DEPARTMENTS.

- a. Cooperate with the office of small business development in the implementation of the ~~[[minority, woman and]]~~ small business enterprise ~~[[programs]]>>program<<~~.
- b. Develop lists of ~~[[minority, woman and]]~~ small business enterprises experienced in the various types of services, products or property typically contracted for.
- c-1. For the forthcoming quarterly period, the means by which it intends to meet the requirements established by this section and the projected opportunities for ~~[[minority, woman and]]~~ small business enterprises.

c-2. The total dollar percentage and dollar amount expended on all city contracts >>,<< including with and without ~~[[minority, woman and]]~~ small business enterprises.

e. Identify appropriate categories of contracts, on an annual basis for the inclusion of requirements specifying designated levels of participation of ~~[[minority, woman and]]~~ small business enterprises, and, where appropriate, include in each contract a requirement that the contractor achieve the stated percentages.

Part 16. Section 370-5-5 of the code is amended to read:

5. PERFORMANCE ASSURANCE PROCEDURE. Each contracting department shall develop and implement procedures, unless inappropriate, to assure that suppliers, employees, agents or persons providing goods or services to ~~[[minority, woman and]]~~ small business enterprises participating in city contracts shall be paid in full in a timely manner. The procedures shall include joint check payments, bonding requirements and other financial safeguards. Nothing contained in this subsection shall require the city to make payments in excess of the contract price.

Part 17. Section 370-7 of the code is amended to read:

370-7. Duration. This chapter shall be in effect for a period of 3 years after the effective date of this chapter [January 1, 2012], when the common council shall determine the necessity for the continuation of the ~~[[programs]]~~>>program<< as well as the applicable department goal percentages and minimum program requirement percentages.

Part 18. Section 370-9 of the code is amended to read:

370-9. Sanctions. Every city contract awarded under this chapter shall contain language indicating that if any document submitted to the office of small business development by a contractor, subcontractor, bidder or individual to be certified as a ~~[[minority, woman or]]~~ small business enterprise for participating in any city contract contains false, misleading or fraudulent information, the office of small business development may direct the imposition of any of the following sanctions on the offending contractor, subcontractor, bidder or individual.

Part 19. Subchapters 2 and 3 of chapter 370 of the code are repealed.

Part 20. Section 370-25-6 of the code is repealed. (Note: The provision being repealed reads as follows:

370-25. Certification Requirements for a Small Business Enterprise.

6. The business shall have a physical business address located within the limits of the Milwaukee metropolitan area for at least one year prior to certification.)

Part 21. Section 370-25-7 to 9 of the code is renumbered 370-25-6 to 8.

Part 22. Section 370-27-1 and 2 of the code is amended to read:

370-27. Requirements for the Participation of Small Business Enterprises.

1. Construction contracts: ~~[[12.05%]]~~>>25%<<.

2. Goods and services contracts: ~~[[4.59%]]~~>>25%<<.

APPROVED AS TO FORM

Legislative Reference Bureau

Date: _____

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: _____

Teodros W. Medhin:sd/lp
LRB147103-4
9/16/2013