

**Ordinance No. 2018-081****City of Minneapolis****File No. 2018-01254**

Author: Warsame

Notice: Oct 19, 2018

1st Reading: Nov 2, 2018

Committee: WM

Public Hearing: Dec 04, 2018

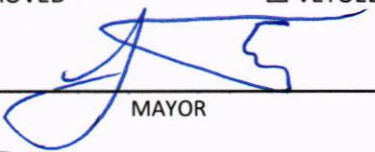
2nd Reading: Dec 7, 2018

Passage: Dec 7, 2018

Publication: **DEC 15 2018**

RECORD OF COUNCIL VOTE				
COUNCIL MEMBER	AYE	NAY	ABSTAIN	ABSENT
Bender	X			
Jenkins	X			
Johnson	X			
Gordon	X			
Reich	X			
Fletcher	X			
Cunningham	X			
Ellison	X			
Warsame	X			
Goodman	X			
Cano	X			
Schroeder	X			
Palmisano	X			

**MAYOR ACTION**☒ APPROVED☐ VETOED

  
\_\_\_\_\_  
MAYOR  
**DEC 10 2018**  
\_\_\_\_\_  
DATE

Certified an official action of the City Council

ATTEST:

  
\_\_\_\_\_  
CITY CLERK

Presented to Mayor: **DEC 07 2018**Received from Mayor: **DEC 10 2018****Amending Title 16, Chapter 423 of the Minneapolis Code of Ordinances relating to Planning and Development: Small and Underutilized Business Enterprise Program.**

The City Council of the City of Minneapolis do ordain as follows:

Section 1. That Section 423.30 contained in Chapter 423, Planning and Development, be amended to read as follows:

**423.30. - Definitions.** For the purposes of this chapter, the following words and phrases shall have the meanings set forth in this section, except where the context clearly indicates that a different meaning is intended.

*Commercially useful function* means a function performed by a business enterprise that is responsible for the execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing, and supervising the work involved. Acting as a conduit to transfer funds to another business does not constitute a commercially useful function unless it is done as a normal business practice of a particular industry.

*City-assisted contract* means any agreement for construction; for professional, technical and other personal services; and/or for the provision of non-construction-related equipment, food, material, commodities, and supplies on a community development project administered by the Community Planning and Economic Development department where the community development project is funded in whole or in part with in excess of ~~one hundred thousand dollars (\$100,000.00)~~ one hundred seventy-five thousand dollars (\$175,000.00) of financial assistance from the City.

*Contract* means any agreement with the city or the Park and Recreation Board for a construction or development contract; for professional, technical and other personal services; and/or for the provision of non-construction-related equipment, food, material, commodities, and supplies.

*Contractor* means any individual, corporation, partnership, association, nonprofit organization, groups of persons, organization, company, firm, limited liability company, joint venture, enterprise, or any other legal or commercial entity, or combination thereof, which enters into a contract with the city or the Park and Recreation Board.

*Construction or development contract* means:

- (1) Any development contracts.
- (2) Any contract involving the construction, demolition, alteration, painting or repair of a building or any structure on land.
- (3) Any contract involving the construction, demolition, building, alteration, reconstruction, modernization or improvement of any structure.
- (4) Any contract involving the improvement of, or addition to, any capital asset.

*Department* means the Minneapolis Department of Civil Rights ("MDCR").

*Director* means the Director of the Minneapolis Department of Civil Right or his/her designee.

*Eligible MBE/WBE* means a minority-owned business enterprise or woman-owned business enterprise that is determined by the Director to be eligible to participate in the program established by this Chapter because evidence establishes a disparity between utilization of such businesses in comparison to their availability, in specific categories of purchasing and contracting. The Director shall publish a determination of eligibility of businesses based upon such evidence.

*Marketplace* means the geographical area of the Minnesota counties of Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Le Sueur, Mille Lacs, Ramsey, Scott, Sherburne, Sibley, Washington, and Wright, and the Wisconsin counties of Pierce and St. Croix.



*Master contract* means a contract awarded through the request for proposal process that results in an establishment of a pool of contractors to be used for the work specified in the contract.

*Minority* means a person who is African American, Hispanic, Native American or Asian/Pacific Islander. Minority also means a person who is determined, through a certification process, to be a socially and economically disadvantaged individual.

*Minority-owned business enterprise ("MBE")* means a business, including but not limited to, a sole proprietorship, corporation, partnership, association, groups of persons, organization, company, firm, limited liability company, joint venture, enterprise, or any other legal or commercial entity, or combination thereof:

- (1) That is a small business;
- (2) That has its principal place of business located within the marketplace at the time of bid opening or solicitation;
- (3) That is at least fifty-one (51) percent owned and controlled by one (1) or more minority persons;
- (4) That is an independent and continuing business for profit;
- (5) That is a socially and economically disadvantaged business; and
- (6) That has been accepted as certified by the director.

*Principal place of business* means the primary physical location at which or from which a business performs, is maintained, or operates.

*Small business* means a business meeting the United States Small Business Administration ("SBA") standards under the North American Industry Classification System ("NAICS") provided in 13 Code of Federal Regulations § 121.

*Socially and economically disadvantaged business* means a business, including but not limited to, a sole proprietorship, corporation, partnership, association, groups of persons, organization, company, firm, limited liability company, joint venture, enterprise, or any other legal or commercial entity, or combination thereof, that is at least fifty-one (51) percent owned by one (1) or more socially and economically disadvantaged individuals and whose management and daily business operations are controlled by one (1) or more of the socially and economically disadvantaged individuals who own it.

*Socially and economically disadvantaged individual* means a person:

- (1) who is found to be socially and economically disadvantaged on a case by case basis; or
- (2) who is an individual in any of the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged: African Americans, Hispanics, Native Americans, Asian/Pacific Islanders, Women; and

(3) whose net worth does not exceed the personal net worth dollar amount limitation specified in 49 Code of Federal Regulations, Part 26.

*Subcontractor* means any individual, corporation, partnership, association, nonprofit organization, groups of persons, organization, company, firm, limited liability company, joint venture, enterprise, or any other legal or commercial entity, or combination thereof, which enters into a contract with a contractor.

*Women-owned business enterprise ("WBE")* means a sole proprietorship, corporation, partnership, association, groups of persons, organization, company, firm, limited liability company, joint venture, enterprise, or any other legal or commercial entity, or combination thereof:

- (1) That is a small business;
- (2) That has its principal place of business located within the marketplace at the time of bid opening or solicitation;
- (3) That is at least fifty-one (51) percent owned and controlled by one (1) or more women;
- (4) That is an independent and continuing business for profit;
- (5) That is a socially and economically disadvantaged business; and
- (6) That has been accepted as certified by the director.

Section 2. That Section 423.40 contained in Chapter 423, Planning and Development, be amended to read as follows:

**423.40. - Applicability and enforcement.** This Chapter applies to any contract in excess of ~~one hundred thousand dollars (\$100,000.00)~~ one hundred seventy-five thousand dollars (\$175,000.00). The department will set overall, annual goal(s) for MBE/WBE participation for all anticipated contracts, based on the overall availability of minority-owned and women-owned businesses in the city's marketplace.

The department will also review each contract and when appropriate set contract specific goals based on the scopes of work of the contract; the availability of qualified, ready, willing and able eligible MBEs/WBEs to perform those scopes; the city's progress towards meeting its annual goal(s); the location of the contract's performance; and any other relevant factors.

If the department places no specific goals on a contract, the department may submit a list of MBEs/WBEs, which may have the capability to offer a bid or proposal, to the soliciting department or the Park and Recreation Board. If the city or the Park and Recreation Board seeks bidders or proposers on a master contract, the department may offer any and all available MBEs/WBEs to the soliciting department or the Park and Recreation Board so that the soliciting department or the Park and Recreation Board may directly solicit the businesses for inclusion on the master agreement.

Any bid or proposal, where there is or has been a material lack of compliance with the requirements of this chapter, shall be deemed to be an unresponsive bid or proposal and such lack of compliance shall be a sufficient basis for the rejection of that bid or proposal by the city or Park and Recreation Board. The

bidder or proposer's commitment(s) to each eligible MBE/WBE firm, and its percentage commitment to the total contract, will be material conditions of contract award. A bidder or proposer's obligation to meet these commitments or demonstrate good faith efforts to do so extends throughout the life of the contract.

The department will monitor participation on contracts to ensure eligible MBEs/WBEs are utilized on the contract as submitted by the bidder or proposer.

Every contract covered by this chapter shall be drafted in such a way as to comply with the terms of section 139.50 of this Code, except to the extent that the terms of section 139.50 conflict with the terms of this chapter.