



## ORDINANCE NO. 28766

1 AN ORDINANCE relating to equity in contracting; amending Chapter 1.07 of the  
2 Tacoma Municipal Code, entitled “Equity in Contracting,” to clarify language  
and the waiver process and replace outdated language.

3 WHEREAS, in 1998, the City created the Small Business Enterprise (“SBE”)  
4 Program as a response to Washington State’s Initiative-200 policy, and

5 WHEREAS the SBE Program was a race- and gender-neutral attempt to  
6 increase the volume of subcontracts for all small businesses, and

7 WHEREAS, in 2018, the City’s consultant, Griffin & Strong, completed a  
8 Disparity Study of contracts let by the City from 2012–2016 and found statistically  
9 significant disparities between the available and utilized quantity of Minority and  
10 Women Owned Businesses, and  
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12 WHEREAS, in response to these findings, the City created a task force  
13 comprised of community members, contractors, and organized labor, which  
14 recommended implementing suggestions from the Disparity Study, including a  
15 new program that specifically addressed Minority and Women Owned Businesses,  
16 and  
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18 and  
19 WHEREAS, on November 5, 2019, pursuant to Ordinance No. 28625, the  
20 City enacted the Equity in Contracting (“EIC”) Program as Chapter 1.07 of the  
21 Tacoma Municipal Code (“TMC”), replacing the SBE Program, and

22 WHEREAS the EIC Program began implementing new requirements on  
23 construction contracts in early 2020, and

24 WHEREAS, at the time of passage of the EIC Program, staff advised of the  
25 likelihood of the need for future changes based on experience with program  
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implementation, and is now recommending amendments to TMC Chapter 1.07, to  
1 include the following:

- 2 • Language Simplification – Replacing the terms Minority Business  
3 Enterprises (“MBEs”), Women Business Enterprises (“WBEs”), Minority  
4 and Women’s Business Enterprises (“MWBEs”), Small Business  
5 Enterprises (“SBEs”), and Disadvantaged Business Enterprises (“DBEs”) with the term “Certified Business,” to refer to an entity that has been  
6 certified as a DBE, SBE, MBE, WBE, or MWBE by the Washington State  
7 Office of Minority and Women’s Business Enterprise and approved by  
8 the EIC Program;
- 9 • Waiver Process Clarification – Differentiates between an “Exception” to  
10 the imposition of EIC Program requirements to a contract in certain  
11 circumstances, such as sole source or emergency contracts or if the EIC  
12 Program manager documents an insufficient number of qualified  
13 contractors, and a “Waiver” of the program requirements after the bids  
14 have been received, but prior to a contract award; and transferring the  
15 approval of waivers from the existing process of review by the Board of  
16 Contracts and Awards, with an opportunity for appeal to the City  
17 Manager or Director of Utilities, to the exclusive determination of the City  
18 Manager or Director of Utilities; and
- 19 • General amendments to replace outdated language from the former  
20 SBE Program, and

21 WHEREAS the proposed TMC amendments will increase access to  
22 contracting opportunities for MBEs, WBEs, SBEs, and DBEs; Now, Therefore,

23 BE IT ORDAINED BY THE CITY OF TACOMA:

24 Section 1. That Chapter 1.07 of the Tacoma Municipal Code, entitled  
25 “Equity in Contracting,” be amended as set forth in the attached Exhibit “A.”

26 Section 2. That the City Clerk, in consultation with the City Attorney, is  
authorized to make necessary corrections to this ordinance, including, but not



1 limited to, the correction of scrivener's/clerical errors, references, ordinance  
2 numbering, section/subsection numbers, and any references thereto.

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4 Passed \_\_\_\_\_

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\_\_\_\_\_  
Mayor

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Attest:

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\_\_\_\_\_  
City Clerk

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Approved as to form:

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Deputy City Attorney

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**EXHIBIT "A"**

**CHAPTER 1.07  
EQUITY IN CONTRACTING**

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Sections:

- 1.07.010 Policy and purpose.
- 1.07.020 Definitions.
- 1.07.030 Discrimination prohibited.
- 1.07.040 Program administration.
- 1.07.050 ~~Certification~~ [Approval as a Certified Business.](#)
- 1.07.060 Program requirements.
- 1.07.070 Evaluation of submittals.
- 1.07.080 Contract compliance.
- 1.07.090 Program monitoring.
- 1.07.100 Enforcement.
- 1.07.110 Remedies.
- 1.07.120 Unlawful acts.
- 1.07.130 Severability.
- 1.07.140 Review of program.

\* \* \*

**1.07.020 Definitions.**

Terms used in this chapter shall have the following meanings unless defined elsewhere in the Tacoma Municipal Code ("TMC"), or unless the context in which they are used clearly indicates a different meaning.

[1.07.020.B](#)

~~A-~~ "Bid" means an offer submitted by a Respondent to furnish Supplies, Services, and/or Public Works in conformity with the Specifications and any other written terms and conditions included in a City request for such offer.

~~B-~~ "Bidder" means an entity or individual who submits a Bid, Proposal or Quote. See also "Respondent."

[1.07.020.C](#)

["Certified Business" means an entity that has been certified as a Disadvantaged Business Enterprise \("DBE"\), Small Business Enterprise \("SBE"\), Minority Business Enterprise \("MBE"\), Women Business Enterprise \("WBE"\), or Minority and Women's Business Enterprise \("MWBE"\) by the Washington State Office of Minority and Women's Business Enterprise and meets the criteria set forth in Section 1.07.050 \(2\) of this chapter and has been approved as meeting that criteria by the Community and Economic Development Department Program Manager.](#)

"City" means all Departments, Divisions and agencies of the City of Tacoma.

~~D-~~ "Contract" means any type of legally binding agreement regardless of form or title that governs the terms and conditions for procurement of Public Works and Improvements and/or Non-Public Works and Improvements Supplies and Services. Contracts include the terms and conditions found in Specifications, Bidder or Respondent Submittals, and purchase orders issued by the City. A "Contract" as used in this chapter shall include an agreement between the City and a non-profit entity to perform construction-related services for Public Works. A "Contract" does not include: (1) awards made by the City with federal/state grant or City general funds monies to a non-profit entity where the City offers assistance, guidance, or supervision on a project or program, and the recipient of the grant awards uses the grant moneys to provide services to the community; (2) sales transactions where the City sells its personal or real property; (3) a loan transaction



where the City is acting as a debtor or a creditor; (4) lease, franchise; (5) agreements to use City real property (such as Licenses, Permits and Easements) and, (6) banking and other financial or investment services.

~~F.~~ “Contractor” means any Person that presents a Submittal to the City, enters into a Contract with the City, and/or performs all or any part of a Contract awarded by the City, for the provision of Public Works, or Non-Public Works and Improvements, Supplies or Services.

1.07.020.G

~~F.~~ “Goals” means the annual level of participation by ~~MWBEs and SBEs~~ Certified Businesses in City Contracts as established in this chapter, the Program Regulations, or as necessary to comply with applicable federal and state nondiscrimination laws and regulations. Goals for individual Contracts may be adjusted as provided for in this chapter and shall not be construed as a minimum for any particular Contract or for any particular geographical area.

~~G.~~ “Certified business” (or “MWBEs”) means ~~a business that meets the criteria set forth in Section 1.07.050 of this chapter and has been certified as meeting that criteria by the Community and Economic Development Department Program Manager.~~

~~H.~~ “SBE Certified Business” (or “SBEs”) means ~~a business that meets the criteria set forth in Section 1.07.050 of this chapter and has been certified as meeting that criteria by the Community and Economic Development Department SBE Program Manager.~~

1.07.020.N

~~“Non-Public Works and Improvements” means all competitively solicited procurement of Supplies and/or Services by the City not solicited as Public Works.~~

1.07.020.P

~~I.~~ “SBE Program Manager” means ~~the individual appointed, from time to time, by the City’s Community and Economic Development Director to administer the Program Regulations.~~

~~J.~~ “Program Regulations” shall mean ~~the written regulations and procedures adopted pursuant to this chapter for procurement of Supplies, Services and Public Works.~~

~~K.~~ “Non Public Works and Improvements” means ~~all competitively solicited procurement of Supplies and/or Services by the City not solicited as Public Works.~~

~~L.~~ “Person” means individuals, companies, corporations, partnerships, associations, cooperatives, any other legally recognized business entity, legal representative, trustee, or receivers.

~~“Program Manager” means the individual appointed, from time to time, by the City’s Community and Economic Development Director to administer the Program Regulations.~~

~~“Program Regulations” means the written regulations and procedures adopted pursuant to this chapter for procurement of Supplies, Services and Public Works.~~

~~M.~~ “Proposal” means a written offer to furnish Supplies or Services in response to a Request for Proposals. This term may be further defined in the Purchasing Policy Manual and/or in competitive solicitations issued by the City.

~~N.~~ “Public Works (or “Public Works and Improvements)” means all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the City, or that is by law a lien or charge on any property therein. This term includes all Supplies, materials, tools, and equipment to be furnished in accordance with the Contract for such work, construction, alteration, repair, or improvement.

1.07.020.Q

~~O.~~ “Quote” means a competitively solicited written offer to furnish Supplies or Services by a method of procurement that is less formalized than a Bid or a Proposal. This term may be further defined in the Purchasing Policy Manual.



1.07.020.R

1 ~~P~~-"Respondent" means any entity or Person, other than a City employee, that provides a Submittal in response  
2 to a request for Bids, Request for Proposals, Request for Qualifications, request for quotes or other request for  
3 information, as such terms are defined in Section 1.06.251 TMC. This term includes any such entity or Person  
4 whether designated as a supplier, seller, vendor, proposer, Bidder, Contractor, consultant, merchant, or service  
5 provider that; (1) assumes a contractual responsibility to the City for provision of Supplies, Services, and/or  
6 Public Works; (2) is recognized by its industry as a provider of such Supplies, Services, and/or Public works;  
7 (3) has facilities similar to those commonly used by Persons engaged in the same or similar business; and/or  
8 (4) distributes, delivers, sells, or services a product or performs a Commercially Useful Function.

5 1.07.020.S

6 ~~Q~~-"Services" means non-Public Works and Improvements services and includes professional services,  
7 personal services, and purchased services, as such terms are defined in Section 1.06.251 TMC and/or the  
8 City's Purchasing Policy Manual.

9 ~~R~~-"Submittal" means Bids, Proposals, Quotes, qualifications or other information submitted in response to  
10 requests for Bids, Requests for Proposals, Requests for Qualifications, requests for Quotations, or other City  
11 requests for information, as such terms are defined in Section 1.06.251 TMC.

12 ~~S~~-"Supplies" means materials, Supplies, and other products that are procured by the City through a  
13 competitive process for either Public Works procurement or Non-Public Works and Improvements  
14 procurement unless an approved waiver has been granted by the appropriate authority.

11 1.07.020.T

12 ~~T~~-"Tacoma Public Utilities Service Area" means any ZIP code in which Tacoma Public Utilities maintains  
13 infrastructure or provides retail services.

13 1.07.020.W

14 "Waiver" means a discretionary decision by the City that the one or more requirements of this chapter will not  
15 be applied to a Contract or Contracts.

15 \* \* \*

16 **1.07.040 Program administration.**

17 A. The Community and Economic Development Director, or their designated Program Manager, shall be  
18 responsible for administering this chapter and obtaining compliance with respect to contracts entered into by  
19 the City and/or its contractors. It shall be the duty of the Director to pursue the objectives of this chapter by  
20 conference, conciliation, persuasion, investigation, or enforcement action, as may be necessary under the  
21 circumstances. The Director is authorized to implement an administrative and compliance program to meet  
22 these responsibilities and objectives.

20 B. The Director is hereby authorized to adopt and to amend administrative ~~rules and~~ regulations known as the  
21 Program Regulations, to properly implement and administer the provisions of this chapter. The Program  
22 Regulations shall be in conformance with City of Tacoma policies and state and federal laws and be designed  
23 to encourage achievement of the ~~MWBE and SBE~~ goals set forth herein. ~~The Program Regulations shall  
24 become effective following public notice and an opportunity to comment by the public.~~

23 ~~C. The Program Regulations adopted pursuant to this section are for the administrative and procedural  
24 guidance of the officers and employees of the City and are further expressions of the public policy of the City.  
25 The Program Regulations, when adopted, shall not confer an independent cause of action or claim for relief  
26 cognizable in the courts of the state of Washington or the United States of America to any third parties, and  
such provisions shall not be used as the basis for a lawsuit in any court of competent jurisdiction challenging  
the award of any contract by the City.~~



**1.07.050 Certification Approval as a Certified Business.**

A. The Program Manager shall approve an entity-business as a Certified Business if all of the following criteria are satisfied:

1. The businessentity is certified as a DBE, SBE, MBE, WBE, or MWBE through the state of Washington’s Office of Minority & Women Business Enterprises; and

2. The entitycompany can demonstrate that it also meets at least one of the following additional requirements:

a. The personal residence of the owner is located within the City of Tacoma or Tacoma Public Utilities Service Area, or

b. The entitycompany’s business offices are located in any county of the Tacoma Public Utilities Service Area or any county adjacent to Pierce County, or

c. When the work is performed outside of Pierce County, the company’sentity’s business offices may be located in an adjacent county in which the work is performed, or

d. Such additional information as the Program Manager or designee may require.

3. When another governmental entity has an equivalent business classification process, the City may enter into an interlocal cooperative agreement for mutual recognition of certifications.

B. Appeals. The applicant may appeal any certificationapproval determination by the Program Manager under this chapter to the Director. The appeal must be made in writing and must set forth the specific reasons for the appeal. The Director shall make a decision on the appeal request within a reasonable time, which decision shall be final unless further appeal is made to the Hearing Examiner. In that event, the Hearing Examiner Rules of Procedure for Hearings, Chapter 1.23 TMC, shall be applicable to that appeal proceeding.

**1.07.060 Program requirements.**

A. The program shall meet the following requirements:

1. Establishment of Annual Goals. The Program Regulations adopted pursuant to this chapter shall state reasonably achievable cumulative annual goals for utilization of MWBEs and SBEs Certified Businesses in the provision of supplies, services, and public works procured by the City. Cumulative annual goals for the participation of MWBEs and SBEs Certified Businesses in City contracts shall be based on the number of qualified MWBEs and SBEs Certified Businesses operating within the Tacoma Public Utilities Service Area. The dollar value of all contracts awarded by the City to MWBEs and SBEs Certified Businesses in the procurement of supplies, services, and public works shall be counted toward the accomplishment of the applicable goal.

2. Application of Annual Goals to Contracts. The Program Manager shall consult with City departments/divisions to establish department/division specific goals for competitively solicited contracts in accordance with this chapter and the Program Regulations.

B. Waivers/Exceptions:- City departments/divisions or the Program Manager may request to waive an exception to one or more of the requirements of this chapter as they apply to a particular Ccontract or Ccontracts. Waivers/Exceptions may be granted in any one or more of the following circumstances:

1. Emergency: The supplies, services and/or public works must be provided with such immediacy that neither the City nor the contractor can comply with the requirements herein. Such emergency and waiver must exception will be deemed documented whenever a waiver of competitive solicitation for emergency situations is authorized under Tacoma Municipal Code Chapter 1.06.257 or as may be hereinafter amended by the department/division awarding the contract.

2. Not Practicable: The Contract involves special facilities or market conditions or specially tailored or performance criteria-based products, such that cCompliance with the requirements of this chapter would cause financial loss to the City or an interruption of vital services to the public would impose an unwarranted economic burden or risk to the City after consideration of existing budgetary approvals. Such circumstances



1 must be documented by the department/division awarding the Contract and approved by the senior financial manager or, for Contracts where the estimated cost is over \$500,000 (excluding sales tax), approved by the Board of Contracts and Awards (“C&A Board”).

2 3. Sole source: The supplies, services, and/or public works are available from only one feasible source, and  
3 subcontracting possibilities do not reasonably exist as documented by the department/division awarding the Contract and approved by the senior financial manager or, for Contracts where the estimated cost is over \$500,000 (excluding sales tax), approved by the C&A Board~~determined by the finance purchasing manager.~~

4 4. Government purchasing. The Contract or Contracts are the result ~~City is a party to or included in~~ a federal, state or inter-local government purchasing agreement and the use of such agreement in lieu of a bid solicitation conducted by the City is ~~as~~ approved by the ~~finance purchasing~~ senior financial manager.

5 5. Lack of certified contractors: An insufficient number of qualified contractors exist to create any utilization opportunities as documented by the Program Manager.

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7 6C. Waiver: Best interests of the City: If, after receipt of Submittals but prior to Contract award, it is determined that due to unforeseen circumstances, w~~Waiver of goals is in the best interests of the City, due to unforeseen circumstances, provided that said circumstances are set forth in writing by the requestor, the Director or Superintendent of the department/division awarding the Contract may request in writing that the City Manager or designee, on behalf of General Government, or the Director of Utilities or designee, on behalf of the Department of Public Utilities, approve such waiver.~~

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10 C. Review of Waivers. A waiver determination by the finance purchasing manager may be reviewed by the Board of Contracts and Awards (C&A Board). The C&A Board may also review a request to reduce or waive the utilization requirements based on Not Practicable or Best Interests of the City circumstances. Waivers may be granted only after The C&A Board shall determination by the City Manager or Director of Utilities e~~whether that~~ compliance with such the requirements of this chapter would impose unwarranted economic burden on, or risk to, the City of Tacoma as compared with the degree to which the purposes and policies of this chapter would be furthered by requiring compliance. If the determination of the C&A Board does not resolve the matter, a final determination shall be made by the City Council or Public Utility Board, as the case may be.

15 **1.07.070 Evaluation of submittals.**

16 A. All submittals for a supplies, services, or public works and improvements contracts shall be evaluated for attainment of the MWBE and SBE Certified Business requirements established for that contract in accordance with this chapter and the Program Regulations.

17 B. The determination of MWBE and SBE Certified Business usage and the calculation of MWBE or SBE Certified Business requirements per this section shall include the following considerations:

18 1. General. The dollar value of the contract awarded by the City to a MWBE or SBE Certified Business in the procurement of supplies, services, or public works shall be counted toward achievement of the respective goal.

19 2. Supplies. A public works and improvements contractor may receive credit toward attainment of the MWBE and/or SBE Certified Business requirement(s) for expenditures for supplies obtained from an MWBE or SBE Certified Business; provided such MWBE or SBE Certified Business assumes the actual and contractual responsibility for delivering the supplies with its resources. The contractor may also receive credit toward attainment of the MWBE or SBE Certified Business goal for the amount of the commission paid to a MWBE or SBE Certified Business resulting from a supplies contract with the City; provided the MWBE or SBE Certified Business performs a commercially useful function in the process.

20 3. Services and Public Works subcontracts. Any bid by a Ceertified MWBE and/or SBE Business or a bidder that utilizes a Ceertified MWBE and/or SBE Business shall receive credit toward requirement attainment based on the percentage of MWBE and/or SBE Certified Business usage demonstrated in the bid. A contractor that utilizes an MWBE and/or SBE Certified Business as a subcontractor to provide services or public works shall receive a credit toward the contractor’s attainment of the respective requirement based on the value of the subcontract with that firm.





4. Brokers, Fronts, or Similar Pass-Through Arrangements. ~~MWBEs and/or SBEs~~Certified Businesses acting as brokers, fronts, or similar pass-through arrangements (as such terms are defined in the Program Regulations) shall not count toward the requirement attainment unless the activity reflects normal industry practices and the broker performs a commercially useful function.

C. Evaluation of competitively solicited submittals for public works and improvements and for services when a requirement has been established for the contract to be awarded shall be as follows:

1. When contract award is based on price. The lowest priced bid submitted by a responsive and responsible bidder will be reviewed to determine if it meets the requirement. ~~An MWBE and/or SBE firm~~Certified Businesses may self-count utilization on such bids if they will perform the work for the scope the requirement is based upon.

a. If the low bidder meets the requirements, the bid shall be presumed the lowest and best responsible bid for contract award.

b. ~~Any~~ bidder that does not meet the ~~stated MWBE and/or SBE~~Certified Business requirements shall be considered a non-responsible bidder unless ~~the bidder receives a waiver of one or more of the requirements of this chapter is granted, in the City's sole discretion, pursuant to the criteria and processes in Tacoma Municipal Code 1.07.060.C from the Program Manager or C&A Board.~~

2. When contract award is based on qualifications or other performance criteria in addition to price, ~~s~~solicitations shall utilize a scoring system that promotes participation by certified contractors. The Program Regulations may establish further requirements and procedures for final selection and contract award, including:

a. Evaluation of solicitations for Architectural and Engineering (A&E) services;

b. Evaluation and selection of submittals in response to requests for proposals; and

c. Selection of contractors from pre-qualified roster(s).

#### **1.07.080 Contract compliance.**

A. The contractor awarded a contract based on ~~MWBE or SBE~~Certified Business participation shall, during the term of the contract, comply with the requirements established in said contract. To ensure compliance with this requirement following contract award, the following provisions apply:

1. Any substitutions for or failure to utilize ~~MWBE or SBEs~~Certified Businesses projected to be used must be approved in advance by the Program Manager. Substitution of one ~~MWBE or SBE~~Certified Business with another shall be allowed where there has been a refusal to execute necessary agreements by the original ~~MWBE or SBE~~Certified Business, a default on agreements previously made or other reasonable excuse; provided that the substitution does not increase the dollar amount of the bid.

2. Where it is shown that no other ~~MWBE or SBE~~Certified Business is available as a substitute and that failure to secure participation by the ~~MWBE or SBE~~Certified Business identified in the solicitation is not the fault of the respondent, substitution with a non-~~MWBE or non SBE~~Certified Business shall be allowed; provided, that, the substitution does not increase the dollar amount of the bid.

3. If the Program Manager determines that the contractor has not reasonably and actively pursued the use of replacement ~~MWBEs or SBEs~~Certified Businesses, such contractor shall be deemed to be in non-compliance.

B. Record Keeping. All contracts shall require contractors to maintain relevant records and information necessary to document compliance with this chapter and the contractor's utilization of ~~MWBEs or SBEs~~Certified Businesses, and shall include the right of the City to inspect such records.

#### **1.07.090 Program monitoring.**

A. An Advisory Committee shall monitor compliance with all provisions of this chapter and the related Regulations. The Program Manager shall establish procedures to collect data and monitor the effect of the provisions of this chapter to assure, insofar as is practical, that the remedies set forth herein do not



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disproportionately favor one or more racial, gender, ethnic, or other protected groups, and that the remedies do not remain in effect beyond the point that they are required to eliminate the effects of underutilization in City contracting, unless such provisions are supported by a Disparity Study. The Program Manager shall have the authority to obtain from City departments/divisions, respondents, and contractors such relevant records, documents, and other information as is reasonably necessary to determine compliance.

B. The Program Manager shall submit an annual report to the Community and Economic Development Director, Director of Utilities, and the City Manager detailing performance of the program. The report shall document [MWBE and SBE Certified Business](#) utilization levels, waivers, proposed modifications to the program, and such other matters as may be specified in the Program Regulations.

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