



ORDINANCE NO. 28625

1 BY REQUEST OF COUNCIL MEMBER BLOCKER

2 AN ORDINANCE relating to equity in contracting; amending Chapter 1.07 of the
3 Tacoma Municipal Code, entitled "Small Business Enterprise," by renaming
4 the chapter "Equity in Contracting"; implementing contracting equity by
5 creating Minority & Women Business Enterprise requirements on City of
Tacoma contracts; and establishing an effective date.

6 WHEREAS, for 20 years, the City has administered the Historically
7 Underutilized Business ("HUB") program and its successor, the Small Business
8 Enterprise ("SBE") program, which were race- and gender-neutral programs
9 intended to remedy historic discrimination and disparity in contracting, and

10 WHEREAS, based on the 2018 Disparity Study, the City's race- and
11 gender-neutral HUB and SBE programs have not resulted in a more equitable
12 distribution of contracts, and

13 WHEREAS, pursuant to Resolution No. 40124, adopted on October 2,
14 2018, the City Council created the Community Workforce Task Force ("Task
15 Force") to assess approaches to race and gender conscious subcontracting
16 requirements and community workforce agreements, and

17 WHEREAS the 2018 Tacoma Disparity Study identified significant
18 disparities in contracting work offered by the City for businesses owned by women
19 and/or minorities, and made recommendations to address these disparities, and

20 WHEREAS the Task Force affirmed the Disparity Study recommendations
21 and supplied additional recommendations, and

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WHEREAS the City seeks to implement contracting equity by creating
Minority & Women Business Enterprise (“MWBE”) requirements on its contracts,
and

WHEREAS, consistent with the findings of the 2018 Disparity Study and the
recommendations of the Task Force, staff is proposing the following changes to
Chapter 1.07 of the Tacoma Municipal Code (“TMC”) to address identified
disparities: (1) adding Program Regulations to define administrative rules,
regulations, and procedures (TMC 1.07.040); (2) adding consideration of Minority
Business Enterprise (“MBE”), Woman Business Enterprise (“WBE”), and MWBE
status, using the state’s Office of Minority & Women Business Enterprises for all
certifications, and keeping geographic distinctions the same as the current SBE
program (TMC 1.07.050); (3) adding a statement of cumulative goals to the
Program requirements, and providing for consultation with City departments and
divisions to establish plans complying with the City’s annual goals (TMC 1.07.060);
(4) evaluating all contracts for attainment of the MWBE and SBE requirements and
bid requirements as a condition of award (TMC 1.07.070); and (5) creating an
Advisory Committee to monitor compliance with all provisions, and providing for
the submission of an annual report by the Program Manager (TMC 1.07.090), and

WHEREAS the Program will be reviewed, based on a new Disparity Study
Finding, no later than July 1, 2024, to determine whether, or for how long, some or
all of the requirements of this TMC 1.07 should remain in effect, and



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WHEREAS Initiative 1000 (“I-1000”), passed in Washington State earlier this year, effectively removes the step in which a neutral solution must be attempted before a race and gender conscious one may be adopted, and

WHEREAS I-1000 is up for public referendum in the November 2019 election; however, as the City has gone through all of the prior steps necessary under I-200 with the HUB and SBE programs, the fate of I-1000 will not impact the City’s ability to move forward, and

WHEREAS the City Council finds that the proposed amendments to be incorporated in the new Equity in Contracting code are necessary to address the disparities identified in the 2018 Disparity Study, and that the new regulations are intended and designed to remedy the specific identified disparities; Now, Therefore,

BE IT ORDAINED BY THE CITY OF TACOMA:

Section 1. That the City Council hereby adopts the Recitals of this Ordinance as its formal legislative findings.

Section 2. That Chapter 1.07 of the Tacoma Municipal Code is hereby amended as set forth in the attached Exhibit “A.”

Section 3. That the effective date of this ordinance shall be January 1, 2020.

Section 4. 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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6 _____
7 Mayor

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9 Attest:

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12 City Clerk

13 Approved as to form:

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16 Deputy City Attorney

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EXHIBIT "A"

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CHAPTER 1.07
SMALL BUSINESS ENTERPRISE EQUITY IN CONTRACTING

- 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.
- 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 ~~Sunset and r~~ Review of program.

1.07.010 Policy and purpose.

It is the policy of the City of Tacoma that citizens be afforded an opportunity for full participation in our free enterprise system and that historically underutilized business enterprises shall have an equitable opportunity to participate in the performance of City contracts. The City finds that in its contracting for supplies, services and public works, there has been historical underutilization of small and minority-owned businesses located in certain geographically and economically disfavored locations and that this underutilization has had a deleterious impact on the economic well-being of the City. The purpose of this chapter is to remedy the effects of such underutilization through use of reasonably achievable goals narrowly tailored contracting requirements to increase opportunities for historically underutilized businesses to participate in City contracts. It is the goal of this chapter to facilitate a substantial procurement, education, and mentorship program designed to promote equitable participation by historically underutilized businesses in the provision of supplies, services, and public works to the City. It is not the purpose of this chapter to provide any person or entity with any right, privilege, or claim, not shared by the public, generally, and this chapter shall not be construed to do so. This chapter is adopted in accordance with Chapter 35.22 RCW and RCW 49.60.400.

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.

~~A. "Affidavit of Small Business Enterprise Certification" means the fully completed, signed, and notarized affidavit that must be submitted with an application for SBE certification. Representations and certifications made by the applicant in this Affidavit are made under penalty of perjury and will be used and relied upon by City to verify SBE eligibility and compliance with SBE certification and documentation requirements.~~

~~B. "Base Bid" means a Bid for Public Works to be performed or Supplies or Services to be furnished under a City Contract, including additives, alternates, deductives, excluding force accounts, and taxes collected separately pursuant to Washington Administrative Code ("WAC") 458-20-171.~~

CA. "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.



1 DB. “Bidder” means an entity or individual who submits a Bid, Proposal or Quote. See also “Respondent.”

2 EC. “City” means all Departments, Divisions and agencies of the City of Tacoma.

3 FD. “Contract” means any type of legally binding agreement regardless of form or title that governs the terms
4 and conditions for procurement of Public Works and Improvements and/or Non-Public Works and
5 Improvements Supplies and Services. Contracts include the terms and conditions found in Specifications,
6 Bidder or Respondent Submittals, and purchase orders issued by the City. A “Contract” as used in this
7 chapter shall include an agreement between the City and a non-profit entity to perform construction-related
8 services for Public Works. A “Contract” does not include: (1) awards made by the City with federal/state
9 grant or City general funds monies to a non-profit entity where the City offers assistance, guidance, or
10 supervision on a project or program, and the recipient of the grant awards uses the grant moneys to provide
11 services to the community; (2) sales transactions where the City sells its personal or real property; (3) a loan
12 transaction where the City is acting as a debtor or a creditor; (4) lease, franchise; (5) agreements to use City
13 real property (such as Licenses, Permits and Easements) and, (6) banking and other financial or investment
14 services.

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

18 H. ~~“Evaluated Bid” means a Bid that factors each Respondent’s Base Bid including any alternates, deductive
19 and additives selected by the City that will result in a weighed reduction based on that Respondent’s
20 percentage of SBE participation, as defined by formula set forth in this chapter or in the SBE Regulations
21 adopted pursuant to this chapter.~~

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

G. “MWBE 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.

HH. “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 Coordinator/Manager.

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

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

M. ~~“Lowest and Best Responsible Bidder” means the Bidder submitting the lowest Bid received that is within
the range of acceptable bids, that also has the ability to timely perform the Contract bid upon considering
such factors as financial resources, skills, quality of materials, past work record, and ability to comply with
state, federal, and local requirements, including those set forth in the SBE Regulations.~~

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

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

PM. “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.



1 QN. “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.

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

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

9 FQ. “Services” means non-Public Works and Improvements services and includes professional services,
10 personal services, and purchased services, as such terms are defined in Section 1.06.251 TMC and/or the
City’s Purchasing Policy Manual.

11 UR. “Submittal” means Bids, Proposals, Quotes, qualifications or other information submitted in response to
12 requests for Bids, Requests for Proposals, Requests for Qualifications, requests for Quotations, or other City
requests for information, as such terms are defined in Section 1.06.251 TMC.

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

14 T. “Tacoma Public Utilities Service Area” means any ZIP code in which Tacoma Public Utilities maintains
15 infrastructure or provides retail services.

16 **1.07.030 Discrimination prohibited.**

17 A. No person that is engaged in the construction of public works for the City, engaged in the furnishing of
18 laborers or craftspeople for public works of the City, or is engaged for compensation in the provision of non-
public works and improvements supplies and/or services to the City, shall discriminate against any other
19 person on the basis of race, religion, color, national origin or ancestry, sex, gender identity, sexual orientation,
age, marital status, familial status, or the presence of any sensory, mental or physical disability in
20 employment. Such discrimination includes the unfair treatment or denial of normal privileges to a person as
manifested in employment upgrades, demotions, transfers, layoffs, termination, rates of pay, recruitment of
employees, or advertisement for employment.

21 B. The violation of the terms of RCW 49.60 or Chapter 1.29 TMC by any person that is engaged in the
22 construction of public works for the City, is engaged in the furnishing of laborers or craftspeople for public
works of the City, or is engaged for compensation in the provision of non-public works and improvements
23 supplies and/or services shall result in the rebuttable presumption that the terms of this chapter have also been
violated. Such violation may result in termination of any City contract the violator may have with the City
and/or the violator’s ineligibility for further City Contracts.

24 **1.07.040 Program administration.**

25 A. The Community and Economic Development Director, or ~~his or her~~their designated SBE Program
26 Coordinator/Manager, shall be responsible for administering this chapter and obtaining compliance with
respect to contracts entered into by the City and/or its contractors. It shall be the duty of the Director to
pursue the objectives of this chapter by conference, conciliation, persuasion, investigation, or enforcement



action, as may be necessary under the circumstances. The Director is authorized to implement an administrative and compliance program to meet these responsibilities and objectives.

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

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

12 **1.07.050 Certification.**

13 A. The SBE Program Coordinator/Manager shall approve a person-business as a SBE-Certified Business if all
14 of the following criteria are satisfied:

15 1. ~~Each person with an ownership interest in the company has a personal net worth of less than \$1,320,000~~
16 ~~excluding one personal residence and the net worth of the business.~~ The business is certified as a SBE, MBE,
17 WBE, or MWBE through the state of Washington’s Office of Minority & Women Business Enterprises; and

18 2. ~~The company’s total gross receipts for any consecutive three year period within the last six years is not~~
19 ~~more than \$36,500,000 for public works companies and not more than \$15,000,000 for non-public works and~~
20 ~~improvements companies;~~

21 3. ~~The owner(s) of the company executes an Affidavit of Small Business Enterprise Certification and files it~~
22 ~~with the City which states that all information submitted on the SBE application is accurate, that the business~~
23 ~~has sought or intends to do business with the City and/or within the Pierce County area and has experienced~~
24 ~~or expects to experience difficulty competing for such business due to financial limitations that impair its~~
25 ~~ability to compete against larger firms; and~~

26 4. The company can demonstrate that it also meets at least one of the following additional requirements:

a. ~~The company’s business offices, or the personal residence of the owner, is located within the~~ City of
Tacoma or Tacoma Public Utilities Service Area designated Renewal Community/Community Empowerment
Zone, prior to designation as a SBE, or

b. ~~The company’s business offices, or the personal residence of the owner, is located within the City of~~
Tacoma for at least six months prior to designation as a SBE; or

c. ~~The company’s business offices are located in a federally designated HUBZONE in Pierce County or any~~
adjacent county for at least 12 months prior to designation as a SBE; or

d. ~~The company’s business offices are located in any county of the Tacoma Public Utilities Service Area or~~
any county adjacent to Pierce County, a federally designated HUBZONE in a County wherein the work will
be performed, or an adjacent county, for at least 12 months prior to designation as a SBE.

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

B. ~~Application Process. The SBE Program Coordinator shall make the initial determination regarding~~
certification or recertification. ~~Each SBE applicant shall provide the following documents; as such documents~~
are more fully described in the SBE Regulations, to the SBE Program Coordinator:

1. A completed Statement of Personal Net Worth form;



2. A completed, signed, and notarized Affidavit of Small Business Enterprise Certification that affirms compliance with the certification and documentation requirements of this section;

3. List of equipment and vehicles used by the SBE;

4. Description of company structure and owners;

~~5b.~~ Such additional information as the SBE-Program Coordinator-Manager or designee may require.

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

~~C. Recertification. A SBE-qualified business shall demonstrate annually to the satisfaction of the SBE Program Coordinator that the following SBE-qualifications are still in effect for such business:~~

~~1. That the company still meets all of the criteria set forth in subsection 1.07.050.A. TMC, and~~

~~2. That the company has maintained all applicable and necessary licenses in the intervening period, and~~

~~3. That the company demonstrates that the owner and/or designated employees have completed the minimum annual continuing business education training requirements set forth in the SBE Regulations.~~

~~D3.~~ Appeals. The applicant may appeal any certification determination by the SBE-Program Coordinator-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 SBE-Goals. The SBE-Program Regulations adopted pursuant to this chapter shall state reasonably achievable cumulative annual goals for utilization of MWBEs and SBEs in the provision of supplies, services, and public works procured by the City. Cumulative annual goals for the participation of MWBEs and SBEs in City contracts shall be based on the number of qualified MWBEs and SBEs operating within the Tacoma Public Utilities Service Area Pierce County or in a county that is adjacent to Pierce County or in a HUBZone in a county where the supplies, services and/or public works will be delivered or performed. The dollar value of all contracts awarded by the City to MWBEs and SBEs in the procurement of supplies, services, and public works shall be counted toward the accomplishment of the applicable SBE-goal. The initial cumulative annual SBE-goal for all public works, non-public works and improvements supplies and services procured by the City of Tacoma is 22 percent.

~~B. Revision of Annual SBE Goals. SBE utilization goals for supplies, services, and public works shall be reviewed annually to determine the total level of SBE participation reasonably attainable. If no certified SBEs are available to provide supplies, services, and/or public works, the dollar value of such supplies, services, or public works shall be exempt from the calculation of the cumulative annual goals set forth in the SBE Regulations. Proposed reduction of the cumulative annual SBE goals shall be in accordance with the SBE Regulations.~~

~~C2.~~ Application of SBE-Annual Goals to Contracts. The SBE-Program Coordinator-Manager shall consult with City departments/divisions to establish department/division specific goals the SBE-goal for competitively solicited contracts of \$25,000 and above, in accordance with this chapter and the SBE-Program Regulations. No SBE-goal will be established if no certified SBEs are available to provide supplies, services and/or public works.

~~DB.~~ Waivers. City departments/divisions or the SBE-Program Coordinator-Manager may request to waive one or more of the requirements of this chapter as they apply to a particular contract or contracts. Waivers 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 be documented by the department/division awarding the contract.
2. Not Practicable: Compliance with the requirements of this chapter would impose an unwarranted economic burden or risk to the City after consideration of existing budgetary approvals.
3. Sole source: The supplies, services, and/or public works are available from only one source, and subcontracting possibilities do not reasonably exist as determined by the finance purchasing manager.
4. Government purchasing. The City is a party to or included in a federal, state or inter-local government purchasing agreement as approved by the finance purchasing manager.
5. Lack of ~~SBE~~certified contractors: An insufficient number of qualified ~~SBE~~contractors exist to create ~~SBE~~utilization opportunities.
6. Best interests of the City: Waiver of ~~SBE~~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.

EC. 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 ~~SBE~~utilization goals requirements based on Not Practicable or Best Interests of the City circumstances. The C&A Board shall determine whether compliance with such goals requirements 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.

1.07.070 Evaluation of submittals.

A. All submittals for a supplies, services, or public works and improvements contracts valued at \$25,000 or more shall be evaluated for attainment of the MWBE and SBE goal requirements established for that contract in accordance with this chapter and the SBE Program Regulations.

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

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

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

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

4. Brokers, Fronts, or Similar Pass-Through Arrangements. MWBEs and/or SBEs acting as brokers, fronts, or similar pass-through arrangements (as such terms are defined in the SBE Program Regulations) shall not count toward SBE goal 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 SBE utilization goal 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 SBE goal requirement. An MWBE and/or SBE firm may self-count utilization on such bids if they will perform the work for the scope the requirement is based upon. Such low bid shall be determined to meet the SBE goal if the bidder is a certified SBE.

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

b. any bidder that does not meet the MWBE and/or SBE requirements shall be considered a non-responsible bidder unless the bidder receives a waiver from the Program Manager or C&A Board.

b. If the lowest priced bid does not meet the SBE goal, but the bid of any other responsive and responsible bidder does, and such other bid(s) is or are priced within five percent of the lowest bid, then the following formula shall be applied to each such other bid:

$$\begin{array}{r}
 \text{(Base Bid)} \\
 \left[\begin{array}{l} \text{SBE Usage} \\ \text{Percentage} \\ \text{SBE Goal} \\ \text{Percentage} \end{array} \right] \times (.05 \times \text{Low Base Bid}) = \text{Evaluated Bid}
 \end{array}$$

e. The lowest evaluated bid after applying said evaluation formula shall be presumed the lowest and best responsible bid for contract award.

d. In no event shall a bidder's evaluated bid price be adjusted more than 5 percent from its base bid price for purposes of contract award.

2. When contract award is based on qualifications or other performance criteria in addition to price. Solicitations shall utilize a scoring system that promotes participation by certified SBEs contractors. Submittals by respondents determined to be qualified may be further evaluated based on price using the formula applicable to price based contract awards above. The SBE 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).

D. Evaluation of competitively solicited submittals for supplies when no SBE utilization goal has been established for the contract to be awarded shall encourage SBE participation as follows:

1. A submittal from a responsive certified SBE that is priced within five percent of the otherwise lowest responsive bid shall be recommended for award. Otherwise, the lowest responsive bidder shall be recommended for contract award.

E. The SBE Regulations may establish further SBE goal evaluation requirements and procedures for award of contracts between \$5,000 and \$25,000.00 and for non competitively solicited contracts. City departments/divisions shall use due diligence to encourage and obtain SBE participation for supplies, services, and public works contracts under \$5,000.

1.07.080 Contract compliance.

A. The contractor awarded a contract based on MWBE or SBE participation shall, during the term of the contract, comply with the SBE goal 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 MWBEs or SBEs projected to be used must be approved in advance by the SBE Program Coordinator/Manager. Substitution of one MWBE or SBE with another shall be allowed where there has been a refusal to execute necessary agreements by the original MWBE or SBE, 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 is available as a substitute and that failure to secure participation by the MWBE or SBE identified in the solicitation is not the fault of the respondent, substitution with a non-MWBE or non-SBE shall be allowed; provided, that, the substitution does not increase the dollar amount of the bid.

3. If the SBE Program Coordinator-Manager determines that the contractor has not reasonably and actively pursued the use of replacement MWBEs or SBE(s), 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, and shall include the right of the City to inspect such records.

1.07.090 Program monitoring.

A. ~~The SBE Program Coordinator~~ An Advisory Committee shall monitor compliance with all provisions of this chapter and the SBE-related Regulations. The SBE Program Coordinator-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 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 under-utilization in City contracting, unless such provisions are supported by a Disparity Study. The SBE Program Coordinator-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 SBE-Program Coordinator-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 utilization levels, waivers, proposed modifications to the program, and such other matters as may be specified in the SBE-Program Regulations.

1.07.100 Enforcement.

The Director, or ~~his or her~~ designee, may investigate the employment practices of contractors to determine whether or not the requirements of this chapter have been violated. Such investigation shall be conducted in accordance with the procedures established in the SBE-Program Regulations.

1.07.110 Remedies.

A. Upon receipt of a determination of contractor violation by the SBE-Program Coordinator-Manager, the City Manager or Director of Utilities, as appropriate, may take the following actions, singly or together, as appropriate:

1. Forfeit the contractor's bid bond and/or performance bond;
2. Publish notice of the contractor's noncompliance;
3. Cancel, terminate, or suspend the contractor's contract, or portion thereof;
4. Withhold funds due contractor until compliance is achieved; and/or
5. Recommend appropriate action including, but not limited to, disqualification of eligibility for future contract awards by the City (debarment) per Section 1.06.279 TMC;

B. Prior to exercise of any of the foregoing remedies, the City shall provide written notice to the contractor specifying the violation and the City's intent to exercise such remedy or remedies. The notice shall provide that each specified remedy becomes effective within ten business days of receipt unless the contractor appeals said action to the Hearing Examiner pursuant to Chapter 1.23 TMC.



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C. When non-compliance with this chapter or the SBE-Program Regulations has occurred, the SBE-Program Coordinator/Manager and the department/division responsible for enforcement of the contract may allow continuation of the contract upon the contractor's development of a plan for compliance acceptable to the Director.

1.07.120 Unlawful acts.

It shall be unlawful for any Person to willfully prevent or attempt to prevent, by intimidation, threats, coercion, or otherwise, any Person from complying with the provisions of this chapter.

1.07.130 Severability.

If any section of this chapter or its application to any Person or circumstance is held invalid by a court of competent jurisdiction, then the remaining sections of this chapter, or the application of the provisions to other Persons or circumstances, shall not be affected.

1.07.140 ~~Sunset and r~~Review of program.

This chapter shall be in effect through and until December 31, 2024~~19~~, unless the City Council shall determine at an earlier date that the requirements of this chapter are no longer necessary. If this chapter has not been repealed by July 1, 2024~~19~~, the City Council shall determine by the end of that year whether substantial effects or lack of opportunity of MWBEs and/or SBEs remain true in the relevant market and whether, and for how long, some or all of the requirements of this chapter should remain in effect.