

**WHEREAS**, the City of Bridgeport's current Minority Business Enterprise Program set forth in Section 3.12.130 of the Bridgeport Municipal Code has been in effect and has not been amended since 2007; and

**WHEREAS**, internal and external reviews of the ordinance's effectiveness, together with the City of Bridgeport's continued desire to increase competition and remedy past discriminatory effects suggest that revisions are appropriate in order to better further such ends; and

**WHEREAS**, the City of Bridgeport, its citizens, delegation, and administration have wish to clarify and simplify the Minority Business Enterprise Program ordinance through a global amendment in an attempt to increase competition among local businesses and improve opportunities for minorities in City procurements.

**NOW, THEREFORE, BE IT HEREBY ORDAINED:** By the City Council of the City of Bridgeport that the current section 3.12.130 of the Bridgeport Municipal Code be and is hereby amended to read as set forth in the clean version of which is attached hereto and made a part hereof as Exhibit B.

### **3.12.130 - Minority business enterprise program.**

#### **A. Purpose.**

The purpose of this chapter is to:

1. Recognize the findings of the Disparity Study conducted at the city's request and implementation investigations and failures of prior remedies;
2. Implement a race and gender-conscious program to correct historic discrimination in contracting for those groups identified in the Disparity Study;
3. Create a program to benefit minority and City-based businesses; and
4. Take steps to reduce or eliminate aspects of the city's bidding and contracting processes that pose the greatest difficulties for minority businesses and City-based businesses and hinder their participation, prosperity and growth, and competition for city work.

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

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

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

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

"Business" means a business defined under "company."

"Certified" means an MBE, or WBE contractor whose status as a member of a particular minority group classification has been established, certified or accepted for participation as a minority by: (a) any state of Connecticut agency or quasi-governmental agency, (b) any other state governmental or quasi-governmental agency in another state, and (c) any governmental or quasi-governmental agency of any city, town, county or municipality in Connecticut or any other state (for Minority status) and by (d) the city's Small and Minority Resource Center (for City-based business status), and which certified contractor otherwise possesses the experience, skills and resources to satisfy a city contract and/or contract category.

"City-based business" means a responsive and responsible vendor with its Principal Place of Business located within the municipal boundaries of the City of Bridgeport.

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

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

"Compliance committee" means a committee established by the administrator to oversee the implementation of this chapter, compliance with its provisions, investigations relating to this chapter interpretations of its meaning and application, hearing and resolution of protests and complaints, and implementation of remedies and penalties, consisting of the named or his/her designee: The Mayor, the Chief Administrative Officer ("administrator"), the City Attorney, the Director of Purchasing, the Director of the Small and Minority Resource Center, the Contract Compliance Officer, President of the Board of Directors of the Hispanic Chamber of Commerce of Greater Bridgeport, Inc., the head of the Southern Connecticut Black Chamber of Commerce, Inc., and a Community Representative appointed by the Mayor.

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

"Contracting category" means contracts for construction, contracts for architecture and engineering, contracts for professional and nonprofessional services, and goods.

"Due diligence criteria" for purposes of this chapter, means a fair and unbiased method by which a contracting officer obtains informal quotes when permitted by Section 3.08.070 from companies, including MBEs, WBEs and City based businesses, such that bias, prejudice and discretionary practices by a contracting officer are minimized and city contracts are awarded in compliance with the requirements of this chapter.

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

"Formal" contracts means those city contracts that exceed twenty-five thousand dollars (\$25,000.00) and are required to be publicly advertised under Section 3.08.070.

"Good faith efforts" means a prime contractor's obligations to reach out through various means and methods described in this chapter to minority contractors to participate as subcontractors in connection with the prime contractor's intention to bid for a city contract, as more particularly described in subsection (G)(5) of this section.

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

"Informal" contracts means those city contracts equal to or less than twenty-five thousand dollars (\$25,000.00) that are not required to be publicly advertised under Section 3.08.070 of this title.

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

"Liquidated damages" means monetary penalties that can be assessed against a prime contractor for violation of the requirements of this chapter, as more particularly described in subsection (H)(3) of this section.

"Minority business enterprise," "minority contractor" or "MBE" has the same meaning as set forth in C.G.S. Sec. 4a-60(g)(a)(4), as may be amended from time to time, excluding therefrom the disabled and any requirement that such be a small contractor as defined therein.

"Outreach and marketing program" means a city program operated by the administrator, or his designee, including any city consultant engaged for that purpose, to attract and promote the inclusion of new and existing minority and City-based businesses into the city bidding and contracting process, including soliciting businesses to bid for city contracts and become city contractors, advertising contracting opportunities especially in media outlets sensitive to minority interests, hosting open houses, registration and networking events, arranging training opportunities, facilitating partnering with companies, and identifying agencies and for-profit and not-for-profit organizations interested in fostering the capacity and effectiveness of minority businesses, and the like.

"Prime contractor" means a responsive and responsible nonminority contractor that seeks or obtains a city contract.

"Principal Place of Business" means the location where the thought processes of the business, the books and records of the business, and where top management of the business preside as their prime office location.

"Program administrator" or "administrator" means the city's chief administrative officer or his/her designee.

"Prompt payment directive" means the city's commitment to a prompt payment process developed by the administrator, director of finance and the director of information technology for: (a) all prime contractors employing minority contractors as subcontractors, and (b) all minority contractors to ensure that the city pays complete invoices in a maximum of thirty (30) days if to a prime contractor and a maximum of fifteen (15) days if to a minority contractor, except for any portions of such invoices about which there exists a legitimate dispute.

"Self-perform" means that with regard to a Minority contractor that it is a contractor, whether a prime contractor or a subcontractor, that performs at least forty (40%) percent of the value of its work (exclusive of materials and equipment) using its own forces and resources as determined by monthly payrolls; "self-perform" means that with regard to a Majority contractor that it is not a certified MBE, WBE or city based business contractor, whether a prime contractor or a subcontractor, which performs in excess of ninety (90%) percent of the value of its work (exclusive of materials and equipment) using its own forces and resources as determined by monthly payrolls .

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

"Target groups" means those racial or gender groups identified in the Disparity Study that experienced historic discrimination in city contracting to such a degree that this chapter provides race and gender-conscious remedies such as set-asides, percentage attainable goals, evaluation credits or other preferences.

"Voluntary programs" means those program activities described in this chapter and other activities implemented in the future by the administrator or his designee, including any city consultant engaged for that purpose, that are designed to encourage and develop minority contractors and City-based businesses, provided that such activities are legally permissible without the need to establish historic discrimination and are essentially neutral as to all types of small business enterprises, including but not limited to the adoption of project labor agreements, the creation of a jobs funnel, etc.

"Waiver" means the request for relief from a requirement of this chapter, satisfactory to the program administrator or the Compliance committee, that the prime contractor's good faith efforts to identify a minority contractor or a target group, as required by this chapter, did not result in meeting at least fifty (50) percent of the requirements or goals of this chapter in spite of the prime contractor's good faith efforts to achieve compliance.

"Women business enterprise" or "WBE" means a responsive and responsible women-owned business enterprise contractor who is not a member of a racial minority group.

### **C. Guiding Principles.**

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

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

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

4. A prime contractor who is a certified MBE, MWBE, or WBE and meets the other requirements of this chapter, such as the obligation to Minority self-perform, is, by definition, in compliance with the principles and goals of this chapter.

**D. Establishment of Race, Local, and Gender-Conscious Remedies.**

1. Formal Prime Contract Remedies.

a. *Competitive Bids.* An attainable goal of thirty (30) percent of the aggregate dollar value of each formal city contract (goal of fifteen (15) percent of the contract value to MBEs and goal of fifteen (15) percent to WBEs).

b. *Qualifications-Based Selections.* An attainable goal of thirty (30) percent of the aggregate dollar value of a city contract is established for prime contractor utilization of certain target groups during QBS processes. For purposes of this subsection, the target groups that should receive evaluation credits are:

i. City contracts for construction professionals: African Americans, Hispanic Americans, minority female, and caucasian female business enterprises.

ii. City contracts for architecture and engineering professionals: Asian Americans, Hispanic Americans, and Caucasian females.

iii. City contracts for other professional services: Asian Americans, Hispanic Americans, minority female, and caucasian female business enterprises.

iv. City contracts for goods and nonprofessional services: African Americans, minority female, and caucasian female business enterprises.

2. Informal Prime Contract Remedies.

a. An attainable goal of thirty (30) percent of the aggregate dollar value of each informal city contract (goal of fifteen (15) percent of the contract value to MBEs and goal of fifteen (15) percent to WBEs).

b. Since informal city contracts awarded to prime contractors are not usually publicly advertised and tend to be awarded by individual contracting officers after informal quotes are obtained, some businesses do not participate sufficiently in city contracts to the extent that they can build experience, become better equipped to provide goods and services to the city, and circulate procurement dollars within the city's tax base. The administrator and the director of purchasing shall implement due diligence criteria for contracting officers and standardize the process for identifying, documenting and selecting target groups for the award of informal city contracts to minimize discretionary or prohibited practices. At least one informal quote must be from a firm listed as a City-based business in the City's Minority and Small Resource Center, or in the alternative, a waiver is obtained from the City's Minority and Small Resource Center.

For purposes of this subsection, the target groups are:

i. City contracts for construction: African Americans, and Hispanic Americans.

ii. City contracts for architecture and engineering services: Hispanic Americans, minority female, and caucasian female business enterprises.

iii. City contracts for professional services: African Americans, Asian Americans, Hispanic Americans, minority female, and caucasian female business enterprises.

iv. City contracts for goods and nonprofessional services: African Americans, minority female, and caucasian female business enterprises.

### 3. Disparity in Construction Subcontracting Remedy.

a. In addition to the attainable goal of thirty (30) percent of the aggregate dollar value for formal city contracts and the attainable goal of thirty (30) percent for informal city contracts, a mandatory requirement of six (6) percent of the aggregate dollar value of formal and informal construction subcontracts is established for prime contractor utilization of certified African American businesses who will Minority self-perform under the resulting contract and meet the other requirements of the bid. African-American businesses constitute the target group for purposes of this subsection.

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

c. The inability of a prime contractor to meet the mandatory six (6%) percent African American requirement of this subsection may be permitted only upon the administrator's grant of a waiver for good cause shown in accordance with this chapter or because it has established that it is a Majority self-performing contractor to the satisfaction of the Director of the Minority and Small Resource Center. If a waiver is not granted or the contractor will not Majority self-perform, all or portions of the work shall be re-bid if feasible and practical or the administrator shall assign work in a fair and unbiased manner to contractors previously identified and participating in the program created by this chapter who are certified, Minority self-performs and meet the other requirements of the bid.

## **E. Local and Minority Preference for Competitive Bids**

### 1. When Businesses That Are Both Minority And City-Based Fall Within the Allotted Percentages.

For businesses that are both a Certified minority and a Certified City-based business, provided that the response to a competitive bid contains, at the time of submission, supporting documentation satisfactory to the purchasing agent, the following shall apply:

- (a) For purchases in which the lowest bid amount is one hundred thousand dollars (\$100,000.00) or less, the lowest responsive, responsible minority, City-based business that submitted a bid within ten percent (10.0%) of the lowest responsive, responsible bid shall be offered the award to the contract, provided such business agrees to accept the contract at the lowest bid amount.

- (b) For purchases in which the lowest bid amount is more than one hundred thousand dollars (\$100,000.00) but does not exceed two hundred and fifty thousand dollars (\$250,000.00), the lowest responsive, responsible minority, City-based business that submitted a bid within seven and one-half percent (7.5%) of the lowest responsive, responsible bid shall be offered to award to the contract, provided such business agrees to accept the contract at the lowest bid amount.
- (c) For purchases in which the lowest bid amount is more than two hundred and fifty thousand dollars (\$250,000.00) but does not exceed five hundred thousand dollars (\$500,000.00), the lowest responsive, responsible minority, City-based business that submitted a bid within five (5.0%) of the lowest responsive, responsible bid shall be offered to award to the contract, provided such business agrees to accept the contract at lowest bid amount.
- (d) In the event that more than one business meets the criteria of both a minority and City-based business and their bids falls within the allotted percentage, first preference will be given to such business whose bid price was closest to the lowest bid price. If the first of such qualifying businesses chooses not to accept the award of the bid at the lowest bid amount, then the option shall go to the qualifying business within the applicable percentages with the next closest bid to the lowest bid price.

2. When No Bidders That Fall Within The Allotted Percentages Are Both Minority and City-Based Businesses, But Are One Or The Other.

If no businesses meet the criteria for both a Certified minority and a Certified City-based business, or such a qualifying business chooses not to accept the award of the bid at the lowest bid amount, the following shall apply to businesses that are either a Certified minority or a Certified City-based business provided that the response to the competitive bid contains, at the time of submission, supporting documentation satisfactory to the purchasing agent set forth in the definition for a minority or a city based business:

- (a) For purchases in which the lowest bid amount is one hundred thousand dollars (\$100,000.00) or less, the lowest responsive, responsible minority or city based business that submitted a bid within ten percent (10.0%) of the lowest responsive, responsible bid shall be offered the award to the contract, provided such business agrees to accept the contract at the lowest bid amount.
- (b) For purchases in which the lowest bid amount is more than one hundred thousand dollars (\$100,000.00) but does not exceed two hundred and fifty thousand dollars (\$250,000.00), the lowest responsive, responsible minority or city based business that submitted a bid within seven and one-half percent (7.5%) of the lowest responsive, responsible bid shall be offered the award to the contract, provided such business agrees to accept the contract at the lowest bid amount.
- (c) For purchases in which the lowest bid amount is more than two hundred and fifty thousand dollars (\$250,000.00) but does not exceed five hundred thousand dollars (\$500,000.00), the lowest responsive, responsible minority or city based business that submitted a bid within five percent (5.0%) of the lowest responsive, responsible bid shall be offered the award to the contract, provided such business agrees to accept the contract at lowest bid amount.

- (d) In the event that more than one business meets the criteria of either a minority or a based business, first preference will be given to such business whose bid price was closest to the lowest bid price. If the first of such qualifying businesses chooses not to accept the award of the bid at the lowest bid amount, then the option shall go to the qualifying business within the applicable percentages with the next closest bid to the lowest bid price.

3. When No Bidders That Fall Within The Allotted Percentages are either Minority or City Based.

If no businesses meet the criteria for either a Certified minority or a Certified City-based business, or such a business chooses not to accept the award of the bid at the lowest bid amount, the award shall go to the lowest responsive, responsible bidder.

4. Uniform Scoring System for QBS Processes. In the event an interview of a short list is involved in a QBS procurement, then the contracting officer shall develop a uniform one hundred (100) point system for use in qualifications-based selection processes. Target groups determined in accordance with this chapter for the contracting category involved will be entitled to an additional ten points above the score that they receive as a result of the one hundred (100) point system in determining whether they are part of the short list of contractors arrived at for purposes of making a final selection. The final selection shall then be made in the ordinary course of making a qualifications-based selection.

5. Informal Bids: For purchases by informal bid or informal proposal, at least one quote must be obtained from a City-based business on the list maintained by the City's Small & Minority Resource Center, or Purchasing shall require an explanation from the Director of the Small & Minority Resource Center as to why such a quote should not be required for the specified procurement.

**F. Establishment of Best Practices In Subcontracting.**

For purposes of implementing the city's program, the administrator will ensure that best management practices are employed to improve MBE, WBE and City-based business access to and participation in city contracts. The following practices focus on pre-award and post-award efforts and are intended to benefit all minority contractors interested in contracting with the city. Best practices include, but are not limited to, the following:

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

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

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

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

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

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

7. Adoption of Protest Procedures. The administrator and the city attorney shall develop protest procedures when contractors, whether prime contractors or minority contractors, or other persons wish to challenge a bid, contract award, grant or denial of a waiver, release of retainage, and to handle other complaints that may arise in the interpretation, implementation, monitoring and compliance activities of this chapter, and such procedures may be similar to the bid protest procedures adopted by the board of public purchases pursuant to Section 3.08.070 of this title. Such protests shall be heard and determined by the Compliance committee.

8. Collection of Monthly Records—Preparation of Compliance Reports on a Regular Basis. In order to determine the program's level of success and to address any problems that may result in the implementation of the program described in this chapter, monthly records will be available for review in the department of purchasing, and the administrator or his designee, including any city consultant engaged for such purpose, shall prepare quarterly utilization reports at the end of the months of October, January, April and July in each fiscal year for submission to the mayor and the city clerk of the city council. Such compliance reports shall include reports on minority contractor availability and utilization, employment of minority contractors, creation of apprenticeships and employment opportunities for Bridgeport residents on projects covered by project labor agreements, nature and results of bid protects, instances of noncompliance by prime contractors, minority contractors, city employees and others involved in the program.

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

#### **G. Priority of Federal and State Minority Business Award Criteria.**

Often, with regard to federal and state funding of loans and grants, such governments require their own criteria and goals for awarding contracts to MBEs, WBEs and, in cases, refusals to award based upon any local preference when federal or state dollars, respectively, are used to procure the goods or services desired. Recipients of federal and state funds are often required to implement measures to ensure equitable minority contracting whether a disparity was found or not. Therefore, notwithstanding anything contained in this chapter to the contrary, any requirements of federal or state governments relating to the award of contracts to SBEs, MBEs, WBEs, MWBEs or City-based businesses shall govern over any inconsistent provision of this chapter.

#### **H. Compliance—Good Faith Efforts—Penalties—Miscellaneous.**

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

2. No scheme, strategy, ruse, artifice, collaboration, pass through or other device to make it appear that compliance with this chapter has been achieved or to avoid compliance with this chapter is permitted. The Compliance committee, of its own accord or upon complaint by a third party, shall have investigatory authority over such complaint, may issue determinations of compliance or noncompliance, and may impose remedies as provided for herein.

3. Any prime contractor, minority contractor or other company involved in city contracting that violates this chapter, avoids, or attempts to avoid the implementation of this chapter or any of its requirements, goals, principles or practices, including implementation plans that may be adopted, shall be subject to debarment under the provisions of Section 3.08.090 of this title. The administrator or his designee, including any city consultant engaged for such purpose, or the compliance committee, with the advice of the city attorney, may direct that payment to prime contractors or minority businesses involved in a city contract be withheld until any violation of this chapter has been corrected, or may deduct any monetary penalty from any monies that the city owes to such contractor, without the city incurring any additional cost, charge, interest or other fee from the company committing the violation. The city may also impose and collect liquidated damages in the amount of two hundred dollars (\$200.00)/day for each day that a violation has been committed and continues ("liquidated damages"), unless the company proves and the administrator finds that mitigating or extenuating circumstances to exist, in which case such liquidated damages may be reduced in the administrator's discretion. Such liquidated damages may be imposed because of the difficulty and expense of attempting to quantify the value and assess the damage done to the program adopted under this chapter, and all companies submitted bids or proposals for city contracts shall be deemed to understand and accept the imposition of liquidated damages for violations of this chapter. The administrator shall use liquidated damages that are collected to fund outreach and educational efforts under this chapter.

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

5. Mandatory Good Faith Efforts—Waivers—Exceptions. A prime contractor has the burden to demonstrate at the time of receipt of a notice of intent to award a city contract, and before the contract is awarded, that it is committed to and will be able to achieve the subcontracting goals and requirements of this chapter. If, however, the prime contractor believes that it cannot achieve the subcontracting goals and requirements of this chapter and has not established itself to be a Majority Self Performer by the Director of the Minority and Small Resource Center, it must demonstrate that it has (a) completed good faith effort No. 1 below and has met at least two of good faith efforts Nos. 2 through 7 identified below (collectively, "good faith efforts") to the reasonable satisfaction of the administrator or his designee, including any city consultant engaged for such purpose, or the Compliance committee in order to justify a waiver of the requirements of this chapter involved in the particular situation. Good faith efforts are:

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

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

No. 3—Searching Available Databases and Lists of Minority Contractors. The prime contractor shall take steps to identify minority contractors in the contracting category doing the type of work sought in connection with the city contract from lists available from the purchasing department, on the city's purchasing website or other internet websites, or at other locations.

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

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

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

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

6. Exemptions—Waivers.

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

i. Qualified purchases, emergency purchases, or purchases from federal, state, regional or other cooperative bidding arrangements.

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

b. Other work for which the administrator determines that there are no minority contractors registered, available or qualified to bid on such work.

c. Any waiver request and all supporting documentation and must be submitted to and accepted by the administrator prior to the contract being awarded.

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

(Ord. dated 7/2/07; Ord. dated 6/19/06 (part); Ord. dated 4/3/06; Ord. dated 11/7/05; Ord. dated \_\_\_\_\_). Effective upon publication.

APPROVED BY THE  
BRIDGEPORT CITY  
COUNCIL ON:  
MAY 7, 2018

APPROVED BY MAYOR  
JOSEPH P. GANIM  
ON:  
MAY 7, 2018

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