

Council Memorandum

Subject: Ordinance Creating a Minority Business Enterprise and Woman Business Enterprise (M/WBE) Program

Date: January 15, 2015

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PRIOR ACTION:

Council approved contract with MGT to review SBE program

March 2009

Council approved contract with MGT to perform a Disparity Study

June 2011

Council approved contract with MGT for implementation assistance

February 2013

FUNDING:

N/A

FINANCIAL IMPACT:

N/A

STAFF CONTACT:

Richard Barker, Jr., CFO, Interim City Administrator and George Maiberger, Purchasing Manager

ATTACHMENTS:

1) Proposed Ordinance

PRESENTATION:

None

PROPOSED
ORDINANCE NO. _____

ORDINANCE NO. _____

**AN ORDINANCE
TO BE ENTITLED:**

AN ORDINANCE CREATING SECTIONS 3-3-7 THROUGH 3-3-13 OF THE CODE OF THE CITY OF PENSACOLA, FLORIDA; CREATING AND IMPLEMENTING A MINORITY AND WOMAN-OWNED BUSINESS PROGRAM FOR CITY PROCUREMENT; PROVIDING FOR SEVERABILITY; REPEALING CLAUSE; PROVIDING AN EFFECTIVE DATE.

SECTION 1. Sections 3-3-7 through 3-3-13 of the Code of the City of Pensacola, Florida are hereby created to read as follows:

Sec. 3-3-7. Purpose and scope.

The purpose of this section, consistent with the legislative findings stated below, is to enable the City, through the Mayor or his designee, to undertake specific activities to prevent disparate treatment and its effects against business enterprises that have been certified as MBEs ("MBEs") or WBEs ("WBEs"). The Mayor or his designee is hereby expressly delegated the necessary powers to effectuate the purpose of this section.

Sec. 3-3-8. Findings.

The City Council of Pensacola, after considering:

- (1) The Report prepared by MGT of America entitled, "Comprehensive Disparity Study for the City of Pensacola, 2012" ("MGT Study") which found evidence of disparities between availability and utilization of woman-owned and minority-owned business enterprises and in the private sector as well as;
- (2) Anecdotal evidence of disparate treatment against MBEs and WBEs by prime contractors.
- (3) Hereby adopts the following findings as a strong basis in evidence supporting a narrowly tailored, remedial program in City procurement.

There exists prima facie evidence showing that WBEs, and MBEs owned by African-Americans, Hispanics, Asian-Americans, Native Americans and Women, who have done business or attempted to do business in the private and public industries within the City and the Pensacola metropolitan area, have suffered and continue to suffer from disparate treatment by prime contractors. This disparate treatment has existed in private sector industry contracting in such work areas in which the City has been a passive participant. Because of such disparate treatment, such WBEs and MBEs have lacked equal opportunity to participate in such contracts. Such disparate treatment has prevented WBEs and MBEs from participating both in the City's contracting opportunities and in the private sector at a level which would have existed absent such disparate treatment.

The City seeks to provide a level playing field and equal access for all prime contractors and subcontractors to participate in City procurement. The City also desires to reaffirm its commitment to full and fair opportunities for all firms to participate in its contracts.

The MGT Study made recommendations for a minority and woman-owned business program for City procurement, emphasizing the establishment of project specific goals, implementation of race and gender neutral measures, and enhancements to data gathering.

Goals program. The City, therefore, finds and declares that it has a compelling governmental interest in prohibiting, preventing, and eliminating race and gender disparate treatment and its effects in City contracts, and for this purpose, adopts the specific program of good-faith efforts goals as set forth in this section 3-3-8. This program will be carefully structured to take into consideration factors such as present availability of such WBEs and MBEs to perform work on such City contracts, and to take into consideration statistical and anecdotal evidence of disparate treatment. The program is to be narrowly tailored to prevent and eliminate disparate treatment and its effects against such MBEs and WBEs with a minimum of burden on other contractors, including:

The program does not impose a quota, set-aside, sheltered market or bid preference, never excludes any party, including non-minority and non-woman-owned business enterprises, from competing for any contract, and never denies contracts for failure to meet project goals, if non-disparate treatment is demonstrated by a showing of a good-faith attempt to comply with project goals established therein. The program provides for graduation from the program of MBEs and WBEs whose size indicates that they have had the opportunity to overcome the effects of disparate treatment.

Definitions.

- **Certification.** An application procedure completed by a business enterprise to participate as a small, minority, or woman owned business enterprise under the M/WBE Program.

- **Proposal.** A response to a Request for Proposal, Request for Information, Request for Qualifications, or City-Requested Informal Quote.
- **M/WBE.** A certified minority or woman owned business enterprise, as defined herein, located in the Pensacola Regional Area.

Sec. 3-3-9. Rules and regulations; informal guidelines.

The Mayor or his designee shall have the power and authority to each adopt rules and regulations and/or informal guidelines to effectuate the purpose and operation of this section, including by way of example, but not by way of limitation, the determination of qualification of a business enterprise; the determination of good-faith criteria and efforts with respect to the meeting of contract goals; the determination of informal procurement procedures involving notification of MBEs and WBEs; the procedures, methods and criteria of certification and decertification of MBEs and WBEs; and graduation size standards and other criteria.

Sec. 3-3-10. Contracts excepted from this article.

In the case of a contract hereunder for which a part of the contract price is to be paid with funds from the United States Government or the State of Florida and for which the United States Government or the State of Florida has made applicable to such contract requirements, terms or conditions which are inconsistent with the terms of this section, the provisions of this section shall not apply to such contract to the extent of such inconsistency.

Sec. 3-3-11. Program review and sunset.

- (1) The City Council shall hear annual reports from the Mayor or his designee detailing the City's performance under the Program.
- (2) The City Council will review these reports, including the Annual Participation Goals and the City's progress towards meeting those goals and eliminating disparate treatment in its contracting activities and marketplace.
- (3) Within five years after the effective date of this ordinance, the City will review the operation of the Program and the evidentiary basis for the Program in order to determine whether the City has a continuing compelling interest in remedying disparate treatment against MBEs and WBEs in its marketplace, and the permissible scope of any narrowly tailored remedies to redress disparate treatment against MBEs or WBEs.
- (4) This subdivision shall sunset on or before March 1, 2020.

SECTION 2. If any word, phrase, clause, paragraph, section or provision of this ordinance or the application thereof to any person or circumstance is held invalid or unconstitutional, such finding shall not affect the other provision or applications of the ordinance which can be given effect without the invalid or unconstitutional provisions or application, and to this end the provisions of this ordinance are declared severable.

SECTION 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 4. This ordinance shall become effective on the fifth business day after adoption, unless otherwise provided pursuant to Section 4.03(d) of the City Charter of the City of Pensacola.

Passed: _____

Approved: _____
President of City Council

Attest:

City Clerk