



Legislation Text

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SUBSTITUTE 1

Reference

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Sponsor

ALD. HAMILTON, DAVIS, WADE, COGGS, KOVAC, WITKOWIAK, BAUMAN, MURPHY, AND HINES

Title

A substitute ordinance relating to the implementation of the recommendations of the city disparity study.

Sections

310 am

360 rp

370 cr

Analysis

This ordinance implements the recommendations of the city disparity study by redesigning the emerging business enterprise program as minority, woman and small business enterprise programs. There is created an office of small business development to implement and oversee these programs. Goals for participation of minority, woman and small businesses are established for city contracting departments. These goals shall be reviewed and adjusted annually with the approval of the common council. Initially, each contracting department shall utilize minority, woman and small business enterprises for the following percentage of the total dollars annually expended on the following:

Construction: 25%

The purchase of goods and services: 25%

The purchase of professional services: 18%

Certification standards for a minority business enterprise are established, including the requirement that the business be at least 51% owned, operated and controlled by one or more African-American, Asian-American, Hispanic or Native American individuals. Annual requirements for the participation of minority business enterprises are established, based on the results of the city disparity study, for the following types of contracts and minority groups:

Construction contracts:

African-American: 5.57%.

Asian-American: 0.07%.

Goods and services contracts:

Hispanic: 3.23%.

Native American: 0.17%.

Certification standards for a woman business enterprise program are established, including the

requirement that the business be at least 51% owned, operated and controlled by one or more non-minority women. Annual requirements for the participation of woman business enterprises are established, based on the results of the city disparity study, for the following types of contracts:
Construction contracts: 7.31%.
Goods and services contracts: 17.09%.

Certification standards for a small business enterprise program are established, including the requirement that the business shall meet the size standards of the U.S. small business administration and that the business have a physical business address located within the limits of the Milwaukee metropolitan area for at least one year prior to certification. Annual requirements for the participation of small business enterprises are established for the following types of contracts:
Construction contracts: 12.05%.
Goods and services contracts: 4.59%.
Professional services contracts: 18%.
Body

Whereas, In June 2009, D. Wilson Consulting Group, LLC was retained to conduct a disparity study for the City of Milwaukee to determine whether there was a legal basis for the city to establish a race- and gender-based business enterprise program for the procurement of goods and services by the city; and

Whereas, In July 2010, phase I of the disparity study was completed and released for public comment; and

Whereas, In December 2010, the final disparity study was completed and released for public comment; and

Whereas, The disparity study found that a statistically significant disparity exists between the number of minority-owned and women-owned business enterprises that are ready and able to provide goods and services, including construction, to the city and the number of those businesses that are providing goods and services, including construction, to the city; and

Whereas, The disparity study also found anecdotal evidence that discrimination patterns and practices have occurred with the city's procurement of goods and services; and

Whereas, The disparity study has recommended narrowly-tailored race and gender goals which could be used to remedy the effects of the identified discrimination; and

Whereas, The City of Milwaukee has a compelling interest to remedy the ongoing effects of marketplace discrimination against minority- and women-owned businesses and to avoid becoming a passive participant in private sector discrimination; and

Whereas, In April of 2011, the unemployment rate for the United States was 9%, the unemployment rate for the city of Milwaukee was 10.1% and for the Milwaukee Metropolitan Area it was 7.6%; and

Whereas, In April of 2011, the number of unemployed persons in the city of Milwaukee was 27,905 and in the Milwaukee Metropolitan Area it was 60,935; and

Whereas, A high unemployment rate severely impacts the economic well-being of the city's population and results in serious social problems; and

Whereas, The high rate of unemployment in the city negatively effects the city's property tax base and revenues and expenditures for city services; and

Whereas, In 2009, 27% of all persons living in the city of Milwaukee were living in poverty; and

Whereas, The high rate of poverty has a severe negative effect on the city's property tax base and revenues and expenditures for city services; and

Whereas, Unemployment and poverty also leads to an increase in demand for city-funded services, such as increased needs for services provided by the city's health, neighborhood services and police departments; and

Whereas, To address the city's chronic problems of unemployment and poverty, particularly in central-city communities, it is essential that the city assist its residents in taking full advantage of economic and employment opportunities; and

Whereas, Small businesses account for 52% of private-sector jobs in the state and make up 98% of the state's employers; and

Whereas, Small businesses are a driving force for the economy and provide economic support and growth through both the jobs they create and their involvement in the community; and

Whereas, The City of Milwaukee, through its contracting function, has a significant impact on local economic activity; and

Whereas, Under s. 4-10, city charter, the common council, has the management and control of the finances of the city with full power to enact ordinances for the good of the city; and

Whereas, The common council may institute programs which will afford minority, woman and small businesses competitive opportunities when bidding on city contracts, without excluding any potential contractors or unduly hampering other contractors, and unless contrary to federal, state or local law or regulation; now, therefore

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 310-1 of the code is amended to read:

310-1. Department Established.

8. ~~[[Emerging business enterprise program]]~~ >>Office of small business development<<.

Part 2. Whenever the term "emerging business enterprise administration" appears in the following sections of the code, the term "office of small business development" is substituted:

355-7-1-c

355-7-2-0

- 355-7-2-a
- 355-7-2-c
- 355-7-3-0
- 355-7-3-c
- 355-7-3-e
- 355-11-2-a
- 355-11-2-b
- 355-11-2-c
- 355-11-2-d
- 355-11-2-e
- 355-11-3-0
- 355-11-3-b
- 355-11-3-c
- 355-11-5
- 355-11-6
- 355-11-7

Part 3. Chapter 360 of the code is repealed.

Part 4. Chapter 370 of the code is created to read:

CHAPTER 370
MINORITY, WOMAN AND SMALL BUSINESS ENTERPRISE PROGRAMS

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- 370-23. Creation.
- 370-25. Certification Requirements for a Small Business Enterprise.
- 370-27. Requirements for the Participation of Small Business Enterprises.

SUBCHAPTER 1
GENERAL PROVISIONS

370-1. Definitions. In this chapter:

1. **AFRICAN-AMERICAN** means a person having origins in any black racial group of Africa.
2. **ASIAN-AMERICAN** means a person having origins in any of the original people of the Far East, Southeast Asia or the Indian subcontinent.
3. **CONSTRUCTION** means the erection, rehabilitation, alteration, conversion, extension, demolition or repair of improvements to real property, including facilities providing utility service and includes the supervision, inspection and other on-site functions incidental to construction.
4. **CONTRACT** means a binding agreement by which the city is committed to expend or does expend its funds or other resources for in connection with any of the following purposes:
 - a. Construction of any public improvements.
 - b. Purchase of any personal property.
 - c. Purchase of any services, goods or supplies.
 - d. Lease of any personal or real property.
 - e. Concession agreements whereby the city grants a specific permission, privilege or license.
5. **CONTRACTING DEPARTMENT** means any city department, agency, board or commission that has contracting responsibilities.
6. **CONTRACTOR** means a separate and distinguishable business entity participating or seeking to participate in the performance of a contract.
7. **HISPANIC-AMERICAN** means a person of Spanish or Portuguese culture with origins in Cuba, Puerto Rico, Mexico, South or Central America, regardless of race.
8. **JOINT VENTURE** means an association of 2 or more persons or businesses carrying out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge.
9. **MANAGER** means the manager of the office of small business development.
10. **MILWAUKEE METROPOLITAN AREA** means the counties of Milwaukee, Ozaukee, Washington and Waukesha.
11. **MINORITY** means an individual who is African-American, Asian-American, Hispanic-American or

Native American.

12. MINORITY BUSINESS ENTERPRISE means a business that has been certified by the office of small business development based on the requirements specified in s. 370-13.

13. NATIVE AMERICAN means a person having no less than 1/16th percentage origin in any of the Native-American tribes as recognized by the U.S. department of the interior, bureau of Indian affairs.

14. OWNED, OPERATED AND CONTROLLED means a business which is one of the following:

- a. A sole proprietorship legitimately owned, operated and controlled by a minority or woman.
- b. A partnership or joint venture legitimately owned, operated and controlled by individuals who are minorities or women and who own at least 51% of the beneficial ownership interests in the enterprise and who hold at least 51% of the voting interests of the enterprise.
- c. A corporation legitimately owned, operated and controlled by one or more individuals who are a minority or woman and who own at least 51% of the outstanding shares and who hold at least 51% of the voting interests of the corporation.

15. PHYSICAL BUSINESS ADDRESS means owned or leased real property within the geographical boundary of the Milwaukee metropolitan area. Post office box numbers shall not suffice to establish compliance. A residential address may suffice to establish compliance, but only if the business does not own or lease other real property.

16. SMALL BUSINESS ENTERPRISE means a business that has been certified by the office of small business development based on the requirements specified in s. 370-25.

17. WOMAN BUSINESS ENTERPRISE means a business that has been certified by the office of small business development based on the requirements specified in s. 370-19.

370-3. Administration. There is created an office of small business development in the department of administration which shall be responsible for the administration, coordination and implementation of the city's minority, woman and small business enterprise programs. Under the direction of the department of administration, the office of small business development shall be administered by a small business development manager. The manager shall be appointed by the mayor and confirmed by the common council and shall serve concurrently with the term of the mayor. The manager shall:

1. Establish criteria and procedures for reviewing contract performance and compliance with the requirements of the programs, subject to approval by the common council.
2. Develop appropriate rules, procedures and regulations for assuring participation of minority, woman and small business enterprises in city contracts, subject to approval by the common council, and supervise, coordinate, monitor and enforce the implementation of minority, woman and small business enterprise participation goals for all city procurements in accordance with those rules, procedures and regulations.
3. Develop procedures for certification of minority, woman and small business enterprises.
4. Provide appropriate management assistance and direction to minority, woman and small business enterprises so as to maximize their participation in contracts let by the city, with such assistance to include:
 - a. Providing assistance and information in connection with the establishment, expansion and overall development of minority, woman and small business enterprises.
 - b. Assisting in the introduction of business associations between individuals of minority, woman and

small business enterprises and others or between 2 or more minority, woman or small business enterprises.

- c. Planning and participating in training seminars for informing potential bidders of the minority, woman and small business enterprise programs and of business opportunities available.
- d. Serving as a clearinghouse for information about training and educational programs.
- e. Developing various types of financial assistance for consideration by the common council to assist minority, woman and small business enterprises to obtain working capital to begin, continue and maintain a satisfactory level of business. These include a revolving loan program, guaranteed loan program, gap lending program and bond reduction and waivers when feasible.
5. Develop a reporting and evaluation system to reflect the city's minority, woman and small business enterprise programs.
6. Review and monitor all city contracts with minority, woman and small business enterprises for compliance and notify in written form the contractor on the findings of the review and decisions concerning satisfaction of contractual deficiencies.
7. Serve as liaison with economic development organizations and agencies working in support of economic development in the community.
8. Coordinate any city-sponsored economic development programs for minority, woman or small business enterprises.
9. Review minority, woman and small business enterprise participation progress in the city's contract and procurement activities and submit a written report to the mayor and common council.
10. Establish reporting requirements for all city departments to document the percentage of contracts which have been awarded to minority, woman and small business enterprises.
11. Devise rules, regulations and procedures governing requests for waivers from the requirements of the minority, woman and small business enterprise programs, subject to approval by the common council.
12. Conduct hearings on requests by contracting departments for waivers from the requirements of the programs. Upon a denial of a request for a waiver, the affected department may apply for a waiver to the appropriate standing committee of the common council. The committee shall have the authority to waive any requirements of this chapter upon showing of good cause.
13. Develop and monitor affirmative action criteria for employment of minorities and women by contractors, subcontractors and suppliers consistent with law.

370-5. Goals of Contracting Departments. 1. GOALS. The following requirements are adopted by the city for increasing the level of minority, woman and small business enterprise participation in city contracts. It shall be the responsibility of each contracting department to attain such goals in accordance with the criteria specified in this section. Each contracting department, and all other operating departments when contracting based upon authority therefrom, shall, unless contrary to federal, state or local law, utilize minority, woman and small business enterprises for the following percentage of the total dollars, through prime contracts or subcontracts, annually expended on:

- a. Construction: 25%.
 - b. The purchase of goods and services: 25%.
 - c. The purchase of professional services: 18%.
2. REVIEW OF GOALS. To assure the appropriate percentage goals for minority, woman and small business enterprise participation, the manager shall annually review and adjust the percentage goal, with the approval of the common council.
3. JOINT VENTURES. Participation of minority, woman and small business enterprises in joint ventures with other such businesses and mainstream business entities is encouraged. In the case of a certified joint venture, only that portion of the total dollar value of the contract equal to the

percentage of participation of the minority, woman or small business enterprise partner venturer in the joint venture shall be counted toward the applicable requirement.

4. DUTIES OF DEPARTMENTS. Each contracting department is directed to:

- a. Cooperate with the office of small business development in the implementation of the minority, woman and small business enterprise programs.
- b. Develop lists of minority, woman and small business enterprises experienced in the various types of services, products or property typically contracted for.
- c. Provide quarterly reports to the manager not later than 30 calendar days after the end of the previous quarterly period specifying with respect to contracts and subcontracts for the following:
 - c-1. For the forthcoming quarterly period, the means by which it intends to meet the requirements established by this section and the projected opportunities for minority, woman and small business enterprises.
 - c-2. The total dollar percentage and dollar amount expended on all city contracts including with and without minority, woman and small business enterprises.
 - c-3. The degree to which the goals set forth in this section have been met, any past and current activities undertaken and being undertaken in trying to meet the goals and, if necessary, a detailed explanation of why the goals have not been met.
 - c-4. Any other information requested by the manager.
- d. Appoint a member of the contracting department or division to serve as a liaison between the contracting department and the office of small business development.
- e. Identify appropriate categories of contracts, on an annual basis, for the inclusion of requirements specifying designated levels of participation of minority, woman and small business enterprises, and, where appropriate, include in each contract a requirement that the contractor achieve the stated percentages.
- f. Comply with the monitoring requirement that all prime contractors pay subcontractors within 7 business days of receipt of payment from the city.

5. PERFORMANCE ASSURANCE PROCEDURE. Each contracting department shall develop and implement procedures, unless inappropriate, to assure that suppliers, employees, agents or other persons providing goods or services to minority, woman and small business enterprises participating in city contracts shall be paid in full in a timely manner. The procedures shall include joint check payments, bonding requirements and other financial safeguards. Nothing contained in this subsection shall require the city to make payments in excess of the contract price.

370-7. Duration. This chapter shall be in effect for a period of 3 years after the effective date of this chapter [city clerk to insert date], when the common council shall determine the necessity for the continuation of the programs as well as the applicable department goal percentages and minimum program requirement percentages.

370-9. Sanctions. Every city contract awarded under this chapter shall contain language indicating that if any document submitted to the office of small business development by a contractor, subcontractor, bidder or individual to be certified as a minority, woman or small business enterprise for participating in any city contract contains false, misleading or fraudulent information, the office of small business development may direct the imposition of any of the following sanctions on the offending contractor, subcontractor, bidder or individual:

1. Withholding of payment.
2. Termination, suspension or cancellation of the contract in whole or in part.
3. Denial to participate in any further contracts awarded by the city for a period of one year after the first violation is found and for a period of 3 years after any subsequent violations are found.

370-11. Penalties. Any person, firm or corporation knowingly engaging in fraud, misrepresentation or in any attempt, direct or indirect, to evade the provisions of this chapter by providing false, misleading or fraudulent information shall, upon conviction, forfeit not less than \$2,000 nor more than \$5,000 together with the costs of prosecution, or upon default of payment, shall be imprisoned in the house of correction or county jail not to exceed 90 days.

SUBCHAPTER 2 MINORITY BUSINESS ENTERPRISE PROGRAM

370-11. Creation. There is created a minority business enterprise program to assist and protect the interests of minorities owning, operating and controlling small businesses to promote and encourage full and open competition in the city, and to enhance opportunities for individuals who are at an economic disadvantage to successfully compete in a free market as independent business owners. The program shall apply to all contracts and shall include the taking of steps to increase the participation of minority business enterprises, assisting in minority business enterprise development programs and the identification and elimination of barriers that deny minority business enterprises equal opportunity.

370-13. Certification Requirements for a Minority Business Enterprise. A business shall be certified by the office of small business development as a minority business enterprise for participation in the program, and shall meet the following requirements:

1. The business shall be a U.S.-based business which is independently owned, operated and controlled and is not dominant in its field of operation, or an affiliate or subsidiary of a business dominant in its field of operation.
2. The business shall meet the size standards of the United States small business administration.
3. The business shall have demonstrated capacity to perform independently or as a subcontractor relative to its field of operation.
4. The business shall not be owned, operated and controlled by individuals or groups of individuals who own, operate and control a large business involved in the same category of work as the business for which minority business enterprise status is sought.
5. The business shall be at least 51% owned, operated and controlled by one or more African-American, Asian-American, Hispanic or Native American individuals.
6. The business shall be operational for at least one year prior to certification.
7. The business shall have a physical business address located within the limits of the Milwaukee metropolitan area for at least one year prior to certification.
8. The owner shall control the day-to-day critical operations of the firm.
9. The owner or owners shall be citizens or permanent, legal residents of the United States.

370-15. Requirements for the Participation of Minority Business Enterprises. Annually, there shall be required levels of participation of minority business enterprises for the following types of contracts and minority groups:

1. CONSTRUCTION CONTRACTS.
 - a. African-American: 5.57%.
 - b. Asian-American: 0.07%.
2. GOODS AND SERVICES CONTRACTS.
 - a. Hispanic: 3.23%.
 - b. Native American: 0.17%.

SUBCHAPTER 3 WOMAN BUSINESS ENTERPRISE PROGRAM

370-17. Creation. There is created a woman business enterprise program to assist and protect the interests of women owned, operated and controlled small businesses to promote and encourage full and open competition in the city, and to enhance opportunities for women who are at an economic disadvantage to successfully compete in a free market as independent business owners. The program shall apply to all contracts and shall include the taking of steps to increase the participation of woman business enterprises, assisting in woman business enterprise development programs and the identification and elimination of barriers that deny woman business enterprises equal opportunity.

370-19. Certification Requirements for a Woman Business Enterprise. A business shall be certified by the office of small business development as a woman business enterprise for participation in the program, and shall meet the following requirements:

1. The business shall be a U.S.-based business which is independently owned, operated and controlled and is not dominant in its field of operation, or an affiliate or subsidiary of a business dominant in its field of operation.
2. The business shall meet the size standards of the United States small business administration.
3. The business shall have demonstrated capacity to perform independently or as a subcontractor relative to its field of operation.
4. The business shall not be owned, operated and controlled by individuals or groups of individuals who own, manage and control a large business involved in the same category of work as the business for which a woman business enterprise status is sought.
5. The business shall be at least 51% owned, operated and controlled by one or more non-minority women.
6. The business shall be operational for at least one year prior to certification.
7. The business shall have a physical business address located within the limits of the Milwaukee metropolitan area for at least one year prior to certification.
8. The owner shall control the day-to-day critical operations of the firm.
9. The owner or owners shall be citizens or permanent, legal residents of the United States.

370-21. Requirements for the Participation of Woman Business Enterprises. Annually, there shall be required levels of participation of woman business enterprises for the following types of contracts:

1. Construction contracts: 7.31%.
2. Goods and services contracts: 17.09%.

SUBCHAPTER 4 SMALL BUSINESS ENTERPRISE PROGRAM

370-23. Creation. There is created a small business enterprise program to assist and protect the interests of individuals owning, operating and controlling small businesses to promote and encourage full and open competition in the city, and to enhance opportunities for individuals who are at an economic disadvantage to successfully compete in a free market as independent business owners. The program shall apply to all contracts and shall include the taking of steps to increase the participation of small business enterprises, assisting in small business enterprise development programs and the identification and elimination of barriers that deny small business enterprises equal

opportunity.

370-25. Certification Requirements for a Small Business Enterprise. A business shall be certified by the office of small business development as a small business enterprise for participation in the program, and shall meet the following requirements:

1. The business shall be a U.S.-based business which is independently owned, operated and controlled and is not dominant in its field of operation, or an affiliate or subsidiary of a business dominant in its field of operation.
2. The business shall meet the size standards of the United States small business administration.
3. The business shall have demonstrated capacity to perform independently or as a subcontractor relative to its field of operation.
4. The business shall not be owned, operated and controlled by individuals or groups of individuals who own, operate and control a large business involved in the same category of work as the business for which small business enterprise status is sought.
5. The business shall be operational for at least one year prior to certification.
6. The business shall have a physical business address located within the limits of the Milwaukee metropolitan area for at least one year prior to certification.
7. The owner shall control the day-to-day critical operations of the firm.
8. The owner or owners shall be citizens or permanent, legal residents of the United States.

370-27. Requirements for the Participation of Small Business Enterprises. Annually, there shall be required levels of participation of small business enterprises for the following types of contracts:

1. Construction contracts: 12.05%.
2. Goods and services contracts: 4.59%.
3. Professional services contracts: 18%.

Part 5. This ordinance takes effect January 1, 2012.

LRB
APPROVED AS TO FORM

Legislative Reference Bureau
Date:_____

Attorney
IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney
Date:_____

Drafter
Mary E. Turk

9/23/11
LRB127679-2

clerical correction
CVL - 10/12/11

clerical correction
JRO -- 10/24/11