

CHAPTER 370
SMALL BUSINESS ENTERPRISE PROGRAM

TABLE
SUBCHAPTER 1
GENERAL PROVISIONS

370-1	Definitions
370-3	Administration
370-5	Goals of Contracting Departments
370-9	Sanctions
370-11	Penalties

SUBCHAPTER 4
SMALL BUSINESS
ENTERPRISE PROGRAM

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. AT A DISADVANTAGE WITH RESPECT TO BUSINESS LOCATION means location within a renewal community within the city for a period of not less than one year of the applicant's principal office and business of which the applicant is the sole owner or one of the owners and a principal operator.

2. AT A DISADVANTAGE WITH RESPECT TO EDUCATION means failure to attain a high school degree or its equivalent for good reason or attendance in schools which have repeatedly achieved ratings below national, state and community averages in educational standards, educational standardized test scores and student grade point averages.

3. AT A DISADVANTAGE WITH RESPECT TO EMPLOYMENT means a pattern of nonachievement in hiring, promotion and other aspects of employment advancement due to factors beyond the individual's reasonable control, a lack of current knowledge and skills necessary for employment, career advancement or consistent earning of average annual income below the median income level of adults of comparable age in this city.

4. AT A SOCIAL DISADVANTAGE means an applicant's experience of substantial difficulty in attaining employment or business success at least in part due to location of the individual's residence and lack of mobility, physical handicap or other causes beyond the individual's reasonable control.

5. AT AN ECONOMIC DISADVANTAGE means an inability to compete in the free enterprise system due to diminished capital, credit or bonding opportunities. Factors which will be considered as an indication that an individual has been economically disadvantaged include, but are not limited to, failure to accumulate adequate business capital or obtain sufficient credit to start or support a going business concern, failure to acquire business-related credit or bonding under terms or circumstances as favorable as those generally experienced by nondisadvantaged individuals, consistent failure to receive awards or bids of governmental contracts despite competitive pricing or other similar factors which have disadvantaged the applicant in the development of a business.

6. 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.

7. 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.

Small Business Enterprise Program 370-3

8. CONTRACTING AGENCY means any city department, agency, board, commission or officer that has contracting authority.

9. CONTRACTOR means a separate and distinguishable business entity participating or seeking to participate in the performance of a contract.

11. INDIVIDUAL AT A DIS-ADVANTAGE means a person who is at an economic disadvantage, who is a citizen or lawful permanent resident of the United States and who is experiencing substantial difficulty in achieving business-related success as a result of at least 3 of the following:

a. At a disadvantage with respect to business location.

b. At a disadvantage with respect to education.

c. At a disadvantage with respect to employment.

d. At a social disadvantage.

12. 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.

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

a. A sole proprietorship legitimately owned, operated and controlled by an individual at a disadvantage.

b. A partnership or joint venture legitimately owned, operated and controlled by individuals who are at a disadvantage 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 at a disadvantage and who own at least 51% of the outstanding shares and who hold at least 51% of the voting interests of the corporation.

17. RENEWAL COMMUNITY means an area within the city for which an application for designation as a renewal community has been submitted to the United States secretary of housing and urban development, or which has been designated as a renewal community by the United States secretary of housing and urban development, under 26 U.S.C., ss. 1400E, et seq., as amended, or similar area designated as disadvantaged by the common council.

18. SMALL BUSINESS ENTERPRISE means a business that has been certified by the office of equity and inclusion based on the requirements specified in s. 370-25.

370-3. Administration. The office of equity and inclusion in the department of administration shall be responsible for the administration, coordination and implementation of the city's small business enterprise program. The office of equity and inclusion shall:

1. Establish criteria and procedures for reviewing contract performance and compliance with the requirements of the program, subject to approval by the common council.

2. Develop appropriate rules, procedures and regulations for assuring participation of small business enterprises in city contracts, subject to approval by the common council, and supervise, coordinate, monitor and enforce the implementation of small business enterprise participation goals for all city procurements in accordance with those rules, procedures and regulations.

3. Develop procedures for certification of small business enterprises.

4. Provide appropriate management assistance and direction to small business enterprises so as to maximize their participation in contracts let by the city, with such assistance to include:

Small Business Enterprise Program 370-5

a. Providing assistance and information in connection with the establishment, expansion and overall development of small business enterprises.

b. Assisting in the introduction of business associations between individuals of small business enterprises and others or between 2 or more small business enterprises.

c. Planning and participating in training seminars for informing potential bidders of the small business enterprise program 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 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. Use centralized labor and contract compliance software reporting and evaluation systems for uniform data collection, maintenance, monitoring and reporting by all city departments and contractors with responsibilities under the city's small business enterprise and residents preference programs.

6. Review and monitor all city contracts with 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 small business enterprises.

9. Review small business enterprise participation progress in the city's contract and procurement activities and submit, on or before October 1 of each year, a written report to the mayor and common council.

10. Establish reporting requirements for all contracting departments to document the percentage of contracts which have been awarded to small business enterprises.

11. Devise rules, regulations and procedures governing requests for waivers from the requirements of the small business enterprise program, subject to approval by the common council.

12. Conduct hearings on requests by contracting agencies for waivers from the requirements of the program. Upon a denial of a request for a waiver, the affected agency 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 small business enterprise participation in city contracts. It shall be the responsibility of each contracting agency to attain such goals in accordance with the criteria specified in this section. Each contracting agency shall, unless contrary to federal, state or local law, utilize 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 small business enterprise participation, the office of equity and inclusion shall annually review and adjust the percentage goal, with the approval of the common council.

3. JOINT VENTURES. Participation of 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 small business enterprise partner venture in the joint venture shall be counted toward the applicable requirement.

Small Business Enterprise Program 370-9

4. DUTIES OF CONTRACTING AGENCIES. Each contracting agency is directed to:

a. Cooperate with the office of equity and inclusion in the implementation of the small business enterprise program.

b. Develop lists of small business enterprises experienced in the various types of services, products or property typically contracted for.

c. Provide monthly reports to the office of equity and inclusion not later than 30 calendar days after the end of the previous month specifying with respect to contracts and subcontracts for the following:

c-1. For the forthcoming month, the means by which it intends to meet the requirements established by this section and the projected opportunities for small business enterprises.

c-2. The total dollar percentage and dollar amount expended on all city contracts, including with and without 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 office of equity and inclusion.

d. Appoint a member of the contracting agency or division to serve as a liaison between the contracting agency and the office of equity and inclusion.

e. Identify appropriate categories of contracts, on an annual basis, for the inclusion of requirements specifying designated levels of participation of 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 agency shall develop and implement procedures, unless inappropriate, to assure that suppliers, employees, agents or other persons providing goods or services to 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.

370-9. Sanctions. Every contract awarded under this chapter shall contain language indicating that if any document submitted to the office of equity and inclusion by a contractor, subcontractor, bidder or individual to be certified as a small business enterprise for participating in any city contract contains false, misleading or fraudulent information, the office of equity and inclusion 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 4
SMALL BUSINESS ENTERPRISE PROGRAM

370-23. Creation. There is created a small business enterprise program to assist and protect the interests of individuals at a disadvantage 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 equity and inclusion 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 of 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 owner shall control the day-to-day critical operations of the firm.

7. The owner or owners shall be citizens or permanent, legal residents of the United States.

8. The business shall be at least 51% owned, operated and controlled by one or more individuals at a disadvantage.

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: 25%.
2. Goods and services contracts: 25%.
3. Professional services contracts: 18%.

For legislative history of chapter 370, contact the Municipal Research Library.

370- Small Business Enterprise Program

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