

ARTICLE 10: MINORITY PARTICIPATION GOALS FOR PUBLIC WORKS CONTRACTS.

SECTION 10-1. POLICY: The City of Decatur encourages a diverse workforce for all public works projects. Toward that end, the City establishes goals for participation by Minority Business Enterprises (MBE) and minority workers for public works contracts. The objectives of the minority participation goals include:

- A. Ensuring non-discrimination in the award and administration of City public works contracts;
- B. Encouraging a level playing field on which MBE and minority workers can compete fairly for City public works contracts;
- C. Helping to remove barriers to the participation of MBE and minority workers in City public works contracts;
- D. Promoting the use of MBE and minority workers in City public works projects;
- E. Ensuring that the minority participation goals are narrowly tailored in accordance with applicable law;
- F. Providing appropriate flexibility to contractors in establishing and providing opportunities for MBE and minority workers;

SECTION 10-2. DEFINITIONS:

A. MINORITY: For purposes of this Article, the City hereby adopts and incorporates by reference “minority person” as defined in the Illinois Business Enterprise for Minorities, Females and Persons with Disabilities Act, 30 ILCS 575/2.

B. MINORITY BUSINESS ENTERPRISE (MBE): A business that is owned and controlled by minorities. There must be not less than 51 percent minority ownership of the

business, and the minority ownership must control the management and daily operations of the business.

C. PUBLIC WORKS CONTRACTS. All City contracts entered into for the repair, remodeling, renovation or construction of public buildings, structures and rights of way.

D. PUBLIC WORKS PROJECTS. All City projects entered into for the repair, remodeling, renovation or construction of public buildings, structures and rights of way.

SECTION 10-3. MINORITY PARTICIPATION GOALS IN PUBLIC PROJECTS.

A. As allowed by law, Contractors for City public works projects shall make a good faith effort to comply with the following minimum goals: (1) Ten (10) percent of the total dollar amount of the contract should be performed by Minority Business Enterprises if subcontracting opportunities are available and/or ten (10) percent of the total dollar amount of the contract should be for the purchase of goods, materials and equipment to be used for the public works project from Minority Business Enterprises with the ten (10) percent goal being met separately or in combination; and (2) Eighteen (18) percent of the total hours worked should be performed by minority workers.

B. Where a proposal or bid for a public works contract meets or exceeds the twenty percent (20%) total MBE amount described in Section A above to the total dollar amount of the contract, the City will award a two percent (2%) bonus of final contract amount up to a maximum of fifty thousand dollars (\$50,000). Payment of this extra amount or bonus will be made at the end of the contract and after the City has verified and documented that MBE expenditures met or exceeded twenty percent (20%) of total contract value.

C. Subcontracting is not required for a City project. If a subcontractor is used, the contractor shall make a good faith effort to meet the City's minority participation goals in the selection of subcontractors.

D. A contractor shall provide evidence of meeting the City's minority participation goals as directed and required by the Public Works Director or provide evidence that it made a good-faith effort to meet the goals.

E. A good faith effort means the contractor took reasonable and necessary steps to achieve the minority participation goals. "Good faith" means the contractor actively and aggressively sought participation by MBE sub-contractors or vendors or minority workers. The City shall consider the quality, quantity and intensity of efforts made by a contractor.

F. Evidence of a good-faith effort includes, but is not limited to, as appropriate:

- (i) Soliciting through all reasonable and available means the interest of MBE and minority workers;
- (ii) Outreach and recruitment efforts of and to MBEs and minority workers;
- (iii) Packaging requirements, when feasible, into tasks, quantities or subcontracts that permit maximum participation from MBEs and minority workers;
- (iv) Providing interested MBEs and firms that employ minority workers with adequate information about the bidding process, adequate time to respond and assistance in responding to a solicitation;
- (v) Negotiating in good faith with MBEs and firms that employ minority workers;
- (vi) Assisting interested MBEs and firms that employ minority workers in obtaining bonding, lines of credit or insurance;

(vii) Assisting interested MBEs and firms that employ minority workers in obtaining necessary equipment, supplies or materials;

(viii) Seeking services from available minority community organizations; minority contractors' groups, minority business assistance offices and other organizations, as appropriate, to provide assistance in recruiting MBEs and minority workers;

(ix) If an MBE is rejected, providing sound reasons for rejection based on a thorough investigation of the firm;

(x) Providing payroll records or other evidence showing the percentage of minority workers employed on the project or the percentage of project hours completed by minority workers;

(xi) All other good faith efforts or evidence of due diligence to meet the City's minority participation goals.

G. The minority participation goals shall be reviewed annually by the City Manager or his designee. Any changes of the goals shall require a majority vote by Decatur City Council.

SECTION 10-4. PROGRAM ADMINISTRATION:

A. The Public Works Director, his designee, or third party contractor, shall:

(i) Administer and enforce the provisions of this Article;

(ii) Monitor, track and report on contractors over the contract duration to ensure compliance with this Article.

(iii) Report to the City Council no less than annually on MBE utilization pursuant to this City Code.

SECTION 10-5. PENALTIES:

A. If a contractor fails to meet the City's minority participation goals, falsifies MBEs documentation, and/or fails to provide evidence of a good faith effort to meet the goals, the Public Works Director or his designee may, as appropriate:

- (i) Order immediate corrective action, as appropriate and practicable, to meet the minority participation goals or to show a good faith effort toward meeting the goals;
- (ii) Assess a fine or penalty not to exceed \$2,000 for each offense. Each day on which a violation occurs or continues shall be considered a separate offense. The assessed fine or penalty may be deducted and withheld from the unpaid portion of the contract;
- (iii) Order that the contractor will not be considered a responsive responsible bidder for future City projects for a fixed period of time and/or until the contractor provides evidence of making a good faith effort toward meeting the City's minority participation goals.

SECTION 10-6. APPEALS: The penalty assessed by the Public Works Director or his designee shall be appealable to the City's Human Relations Commission.

SECTION 10-7. WAIVER:

A. If a contractor does not or cannot meet the City's minority participation goals for contracts, it may seek in writing a waiver. The waiver request shall include, as appropriate:

- (i) Evidence of the contractor's good faith efforts to secure participation by MBE and minority workers;
- (ii) Evidence the contractor received no proposals or inquiries from qualified MBEs or firms that employ minority workers in response to a good faith effort to secure participation.

B. The Public Works Director or his designee may, at his or her discretion, waive the minority participation goals upon finding:

(i) The project is essential for city operations;
(ii) Emergency circumstances require a waiver;
(iii) Evidence of a good faith effort by the contractor;
(iv) Evidence the contractor received no proposals or inquiries from qualified MBE or firms that employ minority workers in response to a good faith effort to secure participation.

(Amended, Ordinance 2015-07, March 2, 2015)

ARTICLE 11. GENERAL PROVISIONS.

SECTION 11-1. The provisions of this Chapter are, and shall be construed to be, severable, and a finding of invalidity of any of such provisions by a court of competent jurisdiction shall not invalidate the other provisions hereof.

SECTION 11-2. Nothing in this Chapter shall be construed, and it is not the intent hereof, to require more costly means of compliance herewith than are required for compliance with standards set out in applicable State or Federal laws which are similar or comparable hereto.