

CHAPTER 6
MINORITY – AND WOMEN-OWNED
BUSINESS ENTERPRISE PROGRAM
AND OTHER CONTRACTING PROCEDURES

POLICY

600. RESERVED

601. Promote Equal Contracting Opportunity.

Jackson County, Missouri reaffirms its policy to promote equal opportunity for access to County contracts and associated subcontracts among all qualified businesses and persons regardless of their race, color, national origin, religion, age, sex, disability, or sexual orientation. (Ord. 1068, Sec. 1(1), Eff. 8-2-83; Ord. 4636, Eff. 02/01/15)

602. County Contracts.

Jackson County, Missouri reaffirms its long-standing policy to let certain County Contracts only to Contractors that demonstrate their commitment to a policy of equal contracting opportunity by making Good Faith Efforts to meet contracting affirmative action goals. (Ord. 1068, Sec. 1(2), Eff. 8-2-83; Ord. 4636, Eff. 02/01/15)

603. Construction of Chapter.

Nothing in this chapter shall be construed to require a Contractor or Subcontractor to hire unqualified or incompetent Subcontractors or to discharge qualified or competent Subcontractors. (Ord. 1068, Sec. 7.B, Eff. 8-2-83; Ord. 4636, Eff. 02/01/15)

604. Findings.

Jackson County, Missouri, procured a Disparity Study that was completed in 2017. The Study was conducted by Colette Holt & Associates, a national expert on conducting such studies and designing contracting affirmative action programs. The County was part of a study consortium consisting of the City of Kansas City, Missouri, the Kansas City Area Transportation Authority, and the Kansas City Public Schools. The objective was to meet the requirements of strict constitutional scrutiny applicable to Minority-and Women-Owned Business Enterprise (“M/WBE”) programs and national best practices. The Study analyzed County purchase order and contract data for calendar years 2008 through 2013.

The Study found the availability of minority-owned business enterprises to be 9.5 percent and the availability of women-owned business enterprises to be 11.7 percent. The Study found large and significant disparities between the County’s utilization of M/WBEs and the availability of such firms in the County’s marketplace

on County prime contracts and associated subcontracts. The Study also analyzed Census Bureau data on the receipts of M/WBEs compared to similar non-M/WBEs and M/WBE entrepreneurs' formation of firms and earning from the firms that are formed, compared to similar white male entrepreneurs. The quantitative findings were bolstered by anecdotal evidence of barriers to full and fair opportunities for M/WBEs to participate on County projects gathered through interviews with business owners, stakeholder groups and County staff. The Study provided race- and gender-neutral recommendations and further recommended the use of Contract Goals to ensure nondiscrimination in the award and administration of county contracts and associated subcontracts. It further recommended the County revise its Interim Ordinance to comply with the findings and set a sunset date by which the evidence related to whether race and gender-conscious relief remains supportable.

Based on the Study's findings, this chapter is adopted. (Ord. 5123, Eff. 07/30/18)

605-609. RESERVED

DEFINITIONS

610. Definitions.

For the purposes of this chapter, the following definitions shall apply unless the context explicitly indicates otherwise. (Ord. 1068, Sec. 2, Eff. 8-2-83)

611. Affiliate.

An Affiliate is a person or entity that directly or indirectly through one or more intermediaries controls or is controlled by, or is under common control with, the person or entity. In determining affiliation, the County shall consider all appropriate factors, including common ownership, common management, and contractual relationships. A franchise company shall not be deemed to be an affiliate of the franchisor if the owners of the franchise company have the right to profit from their franchise company and the right to profit from their effort, proportionate to ownership, and bear the risk of loss. (Ord. 1068, Sec. 2.A. Eff. 8-2-83; Ord. 4636, Eff. 02/01/15)

612. Bidder or Contractor.

Bidder or Contractor means any individual or entity that seeks to enter into a Contract with the County, and includes all partners, Affiliates, and Joint Ventures of such person or entity. (Ord. 4636, Eff. 08/22/14; Ord. 4636, Eff. 02/01/15)

613. Broker.

Broker means a person or entity that fills orders by purchasing or receiving supplies from a third party supplier rather than out of its own existing inventory and provides no substantial service other than acting as a conduit between his or her supplier and his or her customer. (Ord. 4636, Eff. 02/01/15)

614. Certified Firm.

A Certified Firm is one that has been accepted by the County as a certified MBE or WBE. The CRO shall maintain a list of acceptable certifications from organizations whose certification standards, policies, and procedures meet the requirements of strict constitutional scrutiny. (Ord. 4636, Eff. 02/01/15)

615. Commercially Useful Function.

A Commercially Useful Function is performed by a Contractor or Subcontractor when that entity has responsibility for the execution of a distinct element of the work of the Contract, which is carried out by actually performing, managing, and supervising the work involved, or fulfilling responsibilities as a Joint Venture partner.

616. Compliance Review Officer.

The Compliance Review Officer is the person hired pursuant to this chapter, who may also be referred to by the acronym "CRO." (Ord. 1068, Sec. 8, Eff. 8-2-83; Ord. 4636, Eff. 02/01/15)

617. Contract.

Contract means any lawful agreement to which the County is a party, except the following. (Ord. 1068, Sec. 2.C, Eff. 8-2-83; Ord. 4636, Eff. 02/01/15)

617.1 With Governments.

Contract does not include any Contract between Jackson County, Missouri, and other governmental entities. (Ord. 1068, Sec. 2.E(2), Eff. 8-2-83)

617.2 Real Property.

Contract does not include any Contract for the purchase, sale, or lease of an interest in real property. (Ord. 1068, Sec. 2.E(3), Eff. 8-2-83)

617.3 Emergency Contracts.

Contract does not include any Contract established in an emergency. (Ord. 1068, Sec. 2.E(4), Eff. 8-2-83; Ord. 4636, Eff. 02/01/15)

617.4 Single Supplier.

Contract does not include any Contract for the purchase of commodities or services controlled and supplied by only one (1) contractor. (Ord. 1068, Sec. 2.E(5), Eff. 8-2-83)

617.5 Borrowing Money.

Contract does not include any Contract for the borrowing of money at interest, for the sale of county general obligation or revenue bonds, or for the sale of County tax anticipation notes. (Ord. 1068, Sec. 2.E(6), Eff. 8-2-83; Ord. 4636, Eff. 02/01/15)

618. Contract Goals.

Contract Goals are the goals established for a particular Contract based upon the availability of at least three MBEs or three WBEs to perform the scopes of work of the Contract. (Ord. 4636, Eff. 02/01/15)

619. County.

County refers to Jackson County, Missouri. (Ord. 1068, Sec. 2, Eff. 8-2-83)

620. Good Faith Efforts.

Good Faith Efforts are actions undertaken by a Contractor to achieve MBE or WBE Contract Goals which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the Contract Goals. (Ord. 4636, Eff. 02/01/15)

621. Joint Venture.

A Joint Venture is an association of two or more persons, or any combination of types of business enterprises and persons numbering two or more, proposing to perform a single for-profit business enterprise, in which each Joint Venture partner contributes property, capital, efforts, skill, and knowledge, and in which the MBE or WBE is responsible for a distinct, clearly defined portion of the work of the project and whose share in the capital contribution, control, management, risks, and profits of the Joint Venture are equal to its ownership interest. Joint Ventures must have an agreement in writing specifying the terms and conditions of the relationship between the partners and their relationship, risks, and responsibility under the Contract. (Ord. 4636, Eff. 02/01/15)

622. Minority Business Enterprise (MBE).

An MBE is a business, including a sole proprietorship, partnership, corporation, limited liability company, Joint Venture, or any other business or professional entity:

622.1 That is at least 51% owned by one or more Minority Individuals or, in the case of a publicly owned business, at least 51% of all classes of the stock of which is owned by one or more Minority Individuals;

622.2 Whose management, policies, major decisions, and daily business operations are independently managed and controlled by one or more such more Minority Individuals;

622.3 That performs a Commercially Useful Function; and

622.4 That is a Certified Firm. (Ord. 4636, Eff. 02/01/15)

623. Minority Individual.

A Minority Individual is a person who is:

623.1 African-American or Black, which includes persons having origins in any of the Black racial groups of Africa;

623.2 Hispanic-American, which includes persons of Mexican, Puerto Rican, Cuban, Caribbean, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

623.3 Native-American, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

623.4 Asian-American, which includes persons whose origins are in any of the original peoples of the Far East, Southeast Asia, the islands of the Pacific or the Northern Marianas, or the Indian Subcontinent; or

623.5 An individual member of any other group recognized by the County to be socially disadvantaged by having suffered racial or ethnic prejudice or cultural bias within American society, without regard to individual qualities, resulting in decreased opportunities to compete in the County's marketplace or to do business with the County. (Ord. 4636, Eff. 02/01/15)

624. Regular Dealer.

A Regular Dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a Regular Dealer, a firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A firm may be a Regular Dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt, without owning, operating, or maintaining a place of business if the firm both owns and operates distribution equipment for the products. Any supplementing of a Regular Dealer's distribution equipment shall be by a long-term lease agreement and not on an *ad hoc* or Contract-by-Contract basis. Packagers, manufacturer's representatives, or other persons who arrange or expedite transactions are not Regular Dealers. (Ord. 4636, Eff. 02/01/15)

625. Subcontractor.

Subcontractor means any individual or entity that shall undertake, by virtue of a separate Contract with another individual or entity, whether or not such individual or entity is a Contractor, to fulfill all or any part of the obligation of the other under a Contract with Jackson County, Missouri. (Ord. 1068, Sec. 2.1, Eff. 8-2-83; Ord. 4636, Eff. 02/01/15)

626. Utilization Plan.

A Utilization Plan is a list of MBEs and WBEs that a Bidder commits will be utilized, including its own participation as a MBE or WBE, if applicable, in the

scopes of the work and the dollar values or the percentages of the work to be performed pursuant to a solicitation and in conformance with this chapter and the solicitation documents. (Ord. 4636, Eff. 02/01/15)

627. Woman.

A Woman is a person of the female gender. (Ord. 4636, Eff. 02/01/15)

628. Woman-Owned Business Enterprise (WBE).

A WBE is a business, including a sole proprietorship, partnership, corporation, limited liability company, Joint Venture, or any other business or professional entity:

628.1 That is at least 51% owned by one or more Women, or in the case of a publicly owned business, at least 51% of all classes of the stock of which is owned by one or more Women;

628.2 Whose management, policies, major decisions and daily business operations are independently managed and controlled by one or more such Women;

628.3 That performs a Commercially Useful Function; and

628.4 That is a Certified Firm. (Ord. 4636, Eff. 02/01/15)

COMPLIANCE REVIEW OFFICER

629. Compliance Review Officer.

There is hereby established a non-merit position of Compliance Review Officer (CRO) as a member of the staff of the County Auditor. The CRO shall be supervised and directed by the County Auditor. (Ord. 1068, Sec. 8, Eff. 8-2-83; Ord. 1780, 11/21/89; Ord. 1900, Eff. 12/19/90; Ord. 2654, Eff. 04/23/97; Ord. 4636, Eff. 02/01/15)

629.1 Appointment.

The CRO shall be selected by a majority of the County Legislature after the Finance and Audit Committee, or in the event that Committee shall not exist, a Committee of the Legislature so designated by the Chairman of the Legislature, has recommended a candidate for the position of CRO. The candidate recommended shall be appointed to the position of CRO upon a majority vote of the Legislature approving that person. (Ord. 1068, Sec. 8, Eff. 8-2-83; Ord. 1900, Eff. 12/19/90)

629.2 Removal.

The CRO may be removed by a vote of two-thirds (2/3) of the County Legislature after review and recommendation for removal by the Finance and Audit Committee, or other Committee so designated by the Chairman of the

Legislature if the Finance and Audit Committee does not exist. (Ord. 1068, Sec. 8, Eff. 8-2-83; Ord. 1950, Eff. 04/10/91)

629.3 Limitation.

The CRO shall not simultaneously hold any other position or office with the County, except that this section shall not preclude the CRO from holding an unpaid County office or position of a temporary nature. (Ord. 1068, Sec. 8, Eff. 8-2-83; Ord. 2110, Eff. 6/25/92; Ord. 4636, Eff. 02/01/15)

629.4 Salary.

The salary of the CRO shall not be established by the County Legislature pursuant to section 285. of this code. (Ord. 1068, Sec. 8.D, Eff. 8-2-83; Ord. 1621, Eff. 02/10/88, Ord. 4108, Eff. 06/30/09)

629.5 Required to Attend Meetings.

The CRO shall attend all meetings of the Finance and Audit Committee and other legislative meetings, as appropriate. (Ord. 1068, Sec. 8.C, Eff. 8-2-83; Ord. 1900; Eff. 12/19/90)

629.6 Mandates to Compliance Review Officer.

The following are mandates to the Compliance Review Officer.

a. Establishing Contract Goals.

The CRO shall establish Contract Goals for the utilization of MBEs and WBEs on solicitations subject to this chapter, based on the availability of MBEs and WBEs in the anticipated scopes of work for the Contract and the dollar amounts of the scopes of work of the Contract.

b. Evaluating Achievement of Contract Goals.

The CRO shall evaluate a Contractor's achievement of Contract Goals or its Good Faith Efforts to do so.

c. Monitoring Contract Compliance.

The CRO shall work with user departments to monitor Contracts to ensure prompt payments to MBEs and WBEs and compliance with Contract Goals and commitments, including gathering data to facilitate such monitoring.

d. Collecting Program Data.

The CRO shall collect data to facilitate compliance with this chapter.

e. Notice to Bidder of Ineligibility.

The CRO shall notify every ineligible Bidder of the CRO's determination of the ineligibility of the Bidder for Contracts because of noncompliance with this chapter, and the reasons for the

determination of noncompliance. (Ord. 1068, Sec. 6.A, Eff. 8-2-83; Ord. 4636, Eff. 02/01/15)

f. Notice of Ineligibility to Others.

The CRO shall notify the County Legislature and the Director of the Department of Finance and Purchasing of those Bidders who are ineligible for Contract because of noncompliance with this chapter. (Ord. 1068, Sec. 6.B, Eff. 8-2-83; Ord. 4636, Eff. 02/01/15)

g. Notice to Bidder of Reinstatement.

The CRO shall notify in writing every Bidder whose eligibility has been reinstated for Contract bidding under this chapter and shall also communicate that fact in writing to the County Legislature, the County Auditor, and the Director of the Department of Finance and Purchasing. (Ord. 1068, Sec. 6.C, Eff. 8-2-83; Ord. 4636, Eff. 02/01/15)

h. Notice of Noncompliance with Chapter.

The CRO shall notify the County Legislature and the Director of the Department of Finance and Purchasing of those Contractors that are not determined to be in compliance with any provision of this chapter and the reasons for the determination on noncompliance. (Ord. 1068, Sec. 6.D, Eff. 8-2-83; Ord. 4636, Eff. 02/01/15)

i. Notice of Deficiency in Plan.

If the CRO finds that a Utilization Plan fails to comply with the requirements set out in this chapter, the CRO shall specify to the interested Bidder, Contractor, or Subcontractor each deficiency and shall allow seven (7) working days after the notice to correct the deficiency. (Ord. 1068, Sec. 6.E, Eff. 8-2-83; Ord. 4636, Eff. 02/01/15)

j. Compliance by Contractor.

The CRO shall review all evidence submitted and all other evidence available to the CRO, and shall determine whether or not the Contractor has neglected to implement its Utilization Plan, or is otherwise in violation of this chapter. Notice of an adverse determination shall be promptly communicated to the Contractor in writing by registered mail to the address listed on the bid of the Contractor, with notice of the right of appeal granted under this chapter. The CRO shall specify to the Contractor the corrective action required and shall request from the Contractor a commitment in writing to accomplish the corrective action so specified. (Ord. 1068, Sec. 6.F, Eff. 8-2-83; Ord. 4636, Eff. 02/01/15)

k. Bidders on contracts in Excess of Fifty Thousand Dollars.

With respect to each Bidder being considered, as indicated by the Director of Finance and Purchasing or other County officer authorized to invite bids, for the award of a Contract in excess of fifty thousand dollars (\$50,000) in any contract term, as estimated by the Director of Finance and Purchasing or other officer, the CRO shall find whether: (Ord. 1492, Eff. 12/16/86; Ord. 4636, Eff. 02/01/15; Ord. 5123, Eff. 07/30/2018)

i. Contractor or Subcontractor.

The individual or entity is a Contractor or Subcontractor; and

ii. Eligibility.

The Bidder or Contractor has complied with this chapter for the proposed Contract.

iii. Notice of Findings.

The CRO shall promptly communicate the findings under i. and ii. to the County Legislature, the Legislative Auditor, and the Director of the Department of Finance and the Purchasing. (Ord. 1068, Sec. 6.G, Eff. 8-2-83; Ord. 4636, Eff. 02/01/15)

l. Notice of Compliance Review Officer.

The CRO shall notify every affected Bidder, Contractor, and Subcontractor of all decisions, findings or other actions of the CRO and of its appeal right under this chapter.

m. Other Duties.

In addition to other duties specified elsewhere, it shall be the duty of the CRO under this chapter:

i. Act to Assure Compliance.

To do every act reasonably necessary and feasible to assure compliance by Bidders, Contractors, and Subcontractors with all requirements of this chapter;

ii. Assist Bidders, Contractors and Subcontractors.

To actively assist Bidders, Contractors, and Subcontractors to achieve or maintain compliance with this chapter;

iii. Maintain Public File.

To prepare and maintain a public file for each individual or entity submitting information to the CRO, to maintain in that file a correspondence log documenting all contact with those individuals or entities, and to keep and prepare records of the cumulative amounts of all Contracts awarded during each

calendar year to any Contractor or its Affiliates;

iv. Recommend Revisions.

To recommend to the County Legislature any revisions to this chapter deemed prudent and policies and procedures to implement these provisions;

v. Design Documents and Forms.

To design documents, reports, manuals, and other papers and electronic forms needed to perform the functions of the CRO and to disseminate and accumulate relevant information in the enforcement of this chapter, provided that, in no event may the CRO require any Bidder, Contractor, or Subcontractor to file any document, report form, manual, or other paper more frequently than semi-annually;

vi. Cooperate with OEHRCC.

To cooperate with the Office of Ethics Human Relations and Citizen Complaints in connection with the exercise by that office of its charter functions;

vii. Verify Information.

To verify information from Bidders, Contractors, or Subcontractors with on-site visits and to request the submission of relevant employment data from such;

viii. Reports to Legislature.

To present monthly and annually to the County Legislature a report of the progress of the County in implementing the policy of this chapter, including the utilization of MBEs and WBEs as prime Contractors and Subcontractors; and

ix. Encourage Development of Affirmative Action Programs.

To encourage the development of affirmative action programs by County Bidders, Contractors, and Subcontractors.

630. Assistant to the Compliance Review Officer.

There is hereby established a non-merit position of Assistant to the Compliance Review Officer as a member of the staff of the Compliance Review Office. The Assistant to the Compliance Review Officer shall be hired by the Compliance Review Officer.

630.1 Salary.

The salary of the assistant to the Compliance Review Officer shall be established by the County Legislature pursuant to section 285. of the code.

630.2 Duties.

The Assistant to the Compliance Review Officer shall perform all duties as assigned by the Compliance Review Officer.

631. Goal Policy.

It is the policy of the County that it seeks to award not less than 21.2 percent of its total eligible Contract dollars to MBEs and WBEs. To achieve this goal, the County will use race-and gender-neutral measures to the maximum feasible extent. The Compliance Review Officer and other County personnel will implement Contract Goals where appropriate and effective. (Ord. 5123, Eff. 07/30/18)

632-639. RESERVED.

640. Required Measures to Ensure Equal Contracting Opportunity.

All County officials involved in the procurement process shall develop and use measures to facilitate equal opportunities for the participation of all firms in County contracting activities. These measures shall include, but are not limited to:

640.1 Arranging solicitation times for the presentations of bids, quantities, specifications, and delivery schedules to facilitate the participation of interested firms.

640.2 Unbundling contracts to facilitate the participation of MBEs, WBEs, and other small firms.

640.3 Providing timely information on contracting procedures, bid preparation, and specific contracting opportunities.

640.4 Holding pre-bid conferences, where appropriate, to explain the projects and to encourage Contractors to use all available firms as Subcontractors.

640.5 Reviewing retainage, bonding, and insurance requirements to eliminate unnecessary barriers to contracting with the County.

640.6 Maintaining information on all firms bidding on County prime Contracts and Subcontracts.

640.7 Referring complaints of discrimination to the County's Office of Ethics, Human Relations and Citizen Complaints, or other appropriate

authority, for investigation. (Ord. 4636, Eff. 02/01/15)

641. Equal Opportunity, Contractors and Subcontractors.

No Contractor or Subcontractor shall deny equal opportunity for Contracting, employment, advancement, or continuation of employment to any qualified person because of the race, color, national origin, religion, age, sex, sexual orientation, or disability of that person. (Ord. 1068, Sec. 3.A, Eff. 8-2-83; Ord. 4636, Eff. 02/01/15)

642. Contracts in Excess of Fifty Thousand Dollars, Affirmative Action Requirements.

Sections 642.-655. of this chapter govern Contracts in excess of fifty thousand dollars (\$50,000). (Ord. 1068, Sec. 3.B, Eff. 8-2-83; Ord. 1492, Eff. 12/16/86; Ord. 4636, Eff. 02/01/15)

643. Review Solicitations.

The CRO shall review all eligible solicitations for MBE and WBE participation, and may cause to be included in a solicitation a Contract Goal for MBE participation and a Contract Goal for WBE participation. (Ord. 4636, Eff. 02/01/15)

644. Good Faith Effort.

Each Bidder must make a Good Faith Effort to meet the Contract Goal(s). (Ord. 4636, Eff. 02/01/15)

645. Failure to Achieve Goals.

Where the Bidder cannot achieve the Contract Goal(s), the CRO will determine whether the Bidder has made Good Faith Efforts to meet the Goal(s). In making this determination, the CRO will consider, at a minimum, the Bidder's efforts to:

645.1 Solicit through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising, and written notices) the interest of all MBEs and WBEs certified in the scopes of work of the Contract. The Bidder shall provide interested MBEs and WBEs with timely, adequate information about the plans, specifications, and requirements of the Contract to allow MBEs and WBEs to respond to the solicitation. The Bidder must follow up initial solicitations with interested MBEs and WBEs.

645.2 Select portions of the work to be performed by MBEs and WBEs in order to increase the likelihood that the Contract Goals will be achieved. This includes, where appropriate, breaking out Contract work items into economically feasible units to facilitate MBE and WBE participation, even when the Bidder would otherwise prefer to perform these work items with its own forces. It is the Bidder's responsibility to make a portion of the work available to MBEs and WBEs and to select those portions of the work or material needs consistent with the availability MBEs and WBEs to facilitate their participation.

645.3 Negotiate in good faith with interested MBEs and WBEs. Evidence of such negotiation includes the names, addresses, email addresses, telephone numbers and contact person of MBEs and WBEs that were contacted; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and why agreements could not be reached with MBEs and WBEs. The Bidder may not reject MBEs and WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. That there may be some additional costs involved in finding and using MBEs and WBEs is not in itself sufficient reason for a Bidder's failure to meet the Contract Goal(s), as long as such costs are reasonable. The ability or desire of a Bidder to perform the work of a Contract with its own organization does not relieve it of the responsibility to make Good Faith Efforts on all subcontractable scopes of work.

645.4 Make efforts to assist interested MBEs and WBEs in obtaining bonding, lines of credit, or insurance as required by the County or the Bidder, where appropriate.

645.5 Make efforts to assist interested MBEs and WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services, where appropriate.

645.6 Use the services of the CRO, available minority/women community organizations, minority/women Contractors' groups, government-sponsored minority/women business assistance offices, and other appropriate organizations to provide assistance in the recruitment and placement of MBEs and WBEs.

645.7 In determining whether a Bidder has made Good Faith Efforts, the performance of other Bidders in meeting the Contract Goal(s) may be considered. For example, when the apparent successful Bidder fails to meet the Contract Goal(s) but others meet it, it may be reasonably questioned whether, with additional reasonable efforts, the apparent successful Bidder could have met the Contract Goal(s). Similarly, if the apparent successful Bidder fails to meet the Contract Goal(s), but meets or exceeds the average MBE or WBE participation obtained by other Bidders, this may be evidence that the apparent successful Bidder made Good Faith Efforts. (Ord. 4636, Eff. 02/01/15)

646. Advertisement of Required Good Faith Evidence.

The manner and time for submittal of evidence of Good Faith Efforts shall be specified in the solicitation documents. (Ord. 4636, Eff. 02/01/15)

647. Evaluation of Good Faith Efforts.

The CRO shall evaluate the evidence of the Bidder's Good Faith Efforts and determine whether it has satisfied the requirements of this chapter and the solicitation documents. (Ord. 4636, Eff. 02/01/15)

648. Utilization Plan Required.

A Bidder that intends to utilize MBEs or WBEs to meet the Contract Goal in full or in part must submit a Utilization Plan in the manner and at the time specified in the solicitation documents. (Ord. 4636, Eff. 02/01/15)

649. Letter of Intent.

A signed letter of intent from each listed MBE or WBE, describing the work, materials, equipment, or services to be performed or provided by the MBE or WBE and the agreed upon dollar value shall be due in the manner and at the time specified in the solicitation documents. (Ord. 4636, Eff. 02/01/15)

650. Utilization Plan Review.

The CRO shall timely review the Utilization Plan before award, including the scope of work and the letters of intent from MBEs and WBEs. The CRO may request clarification in writing of items listed in the Utilization Plan, provided such clarification shall not include the opportunity to augment listed participation or Good Faith Efforts. (Ord. 4636, Eff. 02/01/15)

651. Recommendation of Award.

If the CRO determines that the Utilization Plan demonstrates that the Contract Goals have been achieved or Good Faith Efforts have been made, the CRO shall recommend award to Director of Finance and Purchasing or Director of Public Works, as applicable. (Ord. 4636, Eff. 02/01/15)

652. Lack of Sufficient Good Faith Efforts, Consequences.

If the CRO finds that a Bidder did not make sufficient Good Faith Efforts, the CRO shall communicate this finding to the Director of Finance and Purchasing or Director of Public Works and recommend that the bid/proposal be rejected. A Bidder may protest this determination pursuant to the procedures set out in section 661. of this chapter. (Ord. 4636, Eff. 02/01/15)

653. Contract Goals Are Covenants.

Upon award of a Contract by the County that includes Contract Goals, the Contract Goals become covenants of performance by the Contractor in favor of the County. (Ord. 4636, Eff. 02/01/15)

654. Contractor's Required Submittals.

The Contractor shall provide a listing of all Subcontractors to be used in the performance of the Contract, and detailed Subcontractor information in the form specified by the County with each request for payment submitted to the County or as otherwise directed by the County. The CRO and the using department shall

monitor Subcontractor participation during the course of the Contract. The County shall have full and timely access to the Contractor's books and records, including without limitation payroll records, tax returns, and records and books of account, to determine the Contractor's compliance with its commitment to MBE and WBE participation and the status of any MBE or WBE performing any portion of the Contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the Contractor's records by any officer or official of the County for any purpose. (Ord. 4636, Eff. 02/01/15)

655. Utilization Plan Changes Not Authorized.

The Contractor cannot make changes to the Utilization Plan or substitute MBEs or WBEs named in the Utilization Plan without the prior written approval of the CRO, the Director of Finance and Purchasing, if applicable, and the using department. Unauthorized changes or substitutions shall be a violation of this chapter and a breach of Contract, and may constitute grounds for rejection of the bid or proposal or cause termination of the executed Contract for breach, the withholding of payment, and/or subject the Contractor to Contract penalties or other sanctions.

655.1 All requests for changes or substitutions of a MBE or WBE Subcontractor(s) named in the Utilization Plan shall be made to the CRO, Director of Finance and Purchasing, if applicable, and the using department in writing, and shall clearly and fully set forth the basis for the request. A Contractor shall not substitute a MBE or WBE Subcontractor or perform the work designated for a MBE or WBE Subcontractor with its own forces unless and until the CRO, Director of Finance and Purchasing, and the using department approve such substitution in writing. A Contractor shall not allow a substituted Subcontractor to begin work until each of the CRO, Director of Finance and Purchasing, if applicable, and the Using Department have approved the substitution.

655.2 The facts supporting the request must not have been known nor reasonably should have been known by either party before the submission of the Utilization Plan. Bid shopping is prohibited. The Contractor must negotiate with the MBE or WBE Subcontractor to resolve the problem. Where there has been a mistake or disagreement about the scope of work, the MBE or WBE can be substituted only where an agreement cannot be reached for a reasonable price for the correct scope of work.

655.3 Substitutions of the Subcontractor shall be permitted only on the following bases:

- a. Unavailability after receipt of reasonable notice to proceed;
- b. Failure of performance;
- c. Financial incapacity;

- d. Refusal by the Subcontractor to honor the bid or proposal price;
- e. Mistake of fact or law about the elements of the scope of work of a solicitation where agreement upon a reasonable price cannot be reached;
- f. Failure of the Subcontractor to meet insurance, licensing, or bonding requirements; or
- g. The Subcontractor's withdrawal of its bid or proposal.

655.4 The County's final decision whether to permit or deny the proposed substitution, and the basis of any denial, shall be communicated to the parties in writing by the CRO.

655.5 Where the Contractor has established the basis for the substitution to the satisfaction of the County, the Contractor shall make Good Faith Efforts to fulfill the Utilization Plan. The Contractor may seek the assistance of the CRO in obtaining a new MBE or WBE. If the Contract Goal(s) cannot be reached and Good Faith Efforts have been made, the Contractor may substitute with a non-Certified Firm.

655.6 If the County requires the substitution of a MBE or WBE Subcontractor listed in the Utilization Plan, the Contractor shall undertake Good Faith Efforts to fulfill the Utilization Plan. The Contractor may seek the assistance of the CRO in obtaining a new MBE or WBE Subcontractor. If the Goal(s) cannot be reached and Good Faith Efforts have been made, the Contractor may substitute with a non-Certified Firm.

655.7 If a Contractor plans to hire a Subcontractor on any scope of work that was not previously disclosed in the Utilization Plan, the Contractor shall obtain the approval of the CRO to modify the Utilization Plan and must make Good Faith Efforts to ensure that MBEs and WBEs have a fair opportunity to bid on the new scope of work.

655.8 Changes to the scopes of work shall be documented by the using department at the time they arise, to establish the reasons for the change and the effect on achievement of the MBE and/or WBE goal.

655.9 Prior to Contract closeout, the CRO shall evaluate the Contractor's fulfillment of the Contract Goals, taking into account all approved substitutions, terminations, and changes to the Contract's scope of work. If the County determines that Good Faith Efforts to meet the MBE or WBE commitments were not made, or that fraudulent misrepresentations have

been made, or any other breach of the Contract or violation of this chapter has occurred, a remedy or sanction may be imposed, as provided in the Contract and this chapter. (Ord. 4636, Eff. 02/01/15)

656. Breach of Contract.

The following acts may result in a breach of Contract:

656.1 Providing false or misleading information to the County in connection with submission of a bid, responses to requests for qualifications or proposals, Good Faith Efforts documentation, post-award compliance, or other program requirements or operations.

656.2 Committing any other violation of this chapter. (Ord. 4636, Eff. 02/01/15)

657. Sanctions.

A Contractor or Subcontractor is subject to withholding of payments under the Contract, termination of the Contract for breach, Contract penalties, or being barred or deemed non-responsive in future County solicitations and Contracts as determined by the County's Director of Finance and Purchasing or Director of Public Works, as applicable, if it is found to have:

657.1 Provided false or misleading information in connection with an application for certification or recertification or colluded with others to do so;

657.2 Provided false or misleading information in connection with the submission of a bid or proposal or documentation of Good Faith Efforts, post-award compliance, or other program requirements or operations or colluded with others to do so;

657.3 Failed in bad faith to fulfill Contract Goals, thereby materially breaching the Contract; or

657.4 Failed to comply in good faith with substantive provisions of this chapter. (Ord. 4636, Eff. 02/01/15)

658. Ineligible for Contract.

No Bidder or Contractor is eligible for any Contract as long as it has not complied with any provision of this chapter. (Ord. 1068, Sec. 4.A, Eff. 8-2-83; Ord. 4636, Eff. 02/01/15)

659. Contracts Let Under Purchasing Code.

No payment shall be made by the County under any Contract let under chapter 10 of this code until the CRO has determined in writing that such Bidder or Contractor

and its Subcontractors have complied with this chapter. (Ord. 1068, Sec. 4.B, Eff. 8-2-83; Ord. 4636, Eff. 02/01/15)

660. Effect of Ineligibility.

No Contractor whose Contract is rescinded under this chapter shall be eligible for any future Contract until the cited deficiency has been corrected and the Contractor has notified the CRO in writing of the correction. The eligibility of the Contractor will be reinstated on determination by the CRO that the deficiency in question has been remedied. (Ord. 1068, Sec. 4.C, Eff. 8-2-83; Ord. 4636, Eff. 02/01/15)

661. Right to Appeal.

Any individual or entity who is aggrieved by any decision, finding or action of the CRO shall have the right to appeal that action within ten (10) days after the receipt by the individual or entity of notice of adverse action, pursuant to the procedures set out in section 662. of this chapter. (Ord. 1068, Sec. 9.A, Eff. 8-2-83; Ord. 4636, Eff. 02/01/15)

662. Contractor Sanctions, Appeal Procedure.

Any aggrieved party may appeal to the Legislature or such committee as may be determined by the Legislature to hear such appeals in writing, within ten (10) days of written receipt of the CRO's adverse decision. The committee shall follow administrative procedures pursuant to chapter 536 of the Revised Statutes of Missouri in ruling upon the appeal and shall render all decisions on appeal within 60 days after the mailing date of an adverse determination by the CRO. (Ord. 1068, Sec. 9.B, Eff. 8-2-83; Ord. 4636, Eff. 02/01/15)

663. Retention of Authority by County Legislature.

The County Legislature retains the authority to make all final decisions of the awarding of any County Contract within its jurisdiction. (Ord. 1068, Sec. 10, Eff. 8-2-83)

664. Program Review.

664.1 The County Legislature shall receive quarterly and annual reports from the CRO detailing the County's performance under this chapter.

664.2 The County Legislature will review these reports, including the County's progress toward eliminating discrimination in its contracting activities and marketplace.

664.3 The County will retain qualified experts to develop evidence to assist the County in evaluating whether it has a continuing compelling interest in remedying discrimination against MBEs and WBEs in its

construction marketplace, and the permissible scope of any narrowly tailored remedies.

DEBARMENT OF BIDDERS ON PUBLIC WORKS CONTRACTS

665. Debarment of Bidders for Public Works Contracts.

No contract in the amount of \$10,000.00 or more for the construction of County improvements of whatsoever kind or character or for the doing of any public work shall be let to any bidder which is itself debarred from the award of County contracts as hereinafter set out or is managed, controlled or more than 50% owned by a person or an entity so debarred. A contractor which is itself debarred or is managed, controlled or more than 50% owned by a person or an entity that is debarred shall not act as a subcontractor on any such County contract, if the amount of the subcontracts is \$10,000.00 or more.

665.1 Standard for Debarment.

In the event that any contractor or subcontractor on a County contract for the construction of improvements or the doing of any public work is determined, as hereinafter set out, to be willfully and without good cause violating the requirements of the contract in any of the ways listed below, then such contractor and its chief operating officer and any owner or part owner who participated in the management of the company at the time of the violation shall be debarred from participating, either as a contractor or subcontractor, in other such County contracts for a period of one year for the first offense, three years for the second offense and five years for any subsequent offense, except that in the case of extenuating circumstances which are set out in writing in detail by the Review Committee, such periods may be reduced by not more than one-half:

- a. Incorporating materials into the work which are not in accordance with the specification.
- b. Doing work on the contract without the insurance required by the contract being in force.
- c. Failing to complete the contract work.
- d. Failing to show good faith in attempting to meet the County's MBE/WBE requirements.
- e. Failing to enter into a contract after having been awarded the contract.
- f. Failing to obtain required permits.
- g. Failing to comply with County's requirements relating to equal

opportunity in employment.

- h. Disposing of waste in a location which has not been approved as provided in the contract.
- i. Failing to obtain all permits and observe all required safety precautions in connection with the handling, storage and use of explosives.
- j. Concealing work from inspectors.
- k. Falsifying test results.
- l. Failing to repair property which was damaged in the course of doing the work.
- m. Failing to pay suppliers.
- n. Failing to pay any County tax.
- o. Failing to pay the wage rates prescribed in the contract, or failing to comply with any of the following: prevailing wage requirements under this code, chapter 290 of the Revised Statutes of Missouri, Missouri regulations 8 CSR 30-3.010 through 8 CSR 30-3.060 and 8 CSR 30-5.010 through 30-5.030, the State's Annual Wage Order, and all Annual Incremental Wage Increases as issued by the Missouri Department of Labor and Industrial Relations.
- p. Falsifying payrolls or work-related records.
- q. Misrepresenting employees as independent contractors.
- r. Failing to include provisions in subcontracts which are required to be included under the contract terms.
- s. Permitting a subcontractor to do any of the things listed herein or failing to take reasonable measures to assure that subcontractors do not do the things listed herein.
- t. Failing to comply with the contract requirements in any other manner which is deemed to be so serious and compelling as to justify debarment.

665.2 Procedure for Debarment.

Action to debar a contractor may be initiated by the Legislative Auditor and shall proceed as follows:

- a. Initiation of proceedings.

The proceeding may be initiated by the Legislative Auditor who shall issue a written notice of the proposed debarment to the contractor and to the chairman of the Review Committee. The notice shall include a statement of the reasons for the proposed debarment, the date of mailing and the date, time, and place of a hearing on the matter. If the contractor cannot be located for purposes of delivery of the notice, the proceeding shall be held in abeyance until notice can be given.

b. Notice.

Any notice required by the proceeding and any other notice to the contractor shall be sent postage prepaid by certified U.S. mail to the contractor at its last known address or at its registered office, if it is a corporation.

c. Review Committee.

The Review Committee shall consist of the director of public works, the Chief Administrative Officer and the Deputy Chief Administrative Officer. The County Executive shall appoint one of the three above listed persons as the chairman of the Review Committee.

d. Conduct of hearing.

The hearing shall be held in accordance with the procedures to be established by the chairman of the Review Committee. Unless a delay is requested by the contractor, the hearing shall be no more than thirty (30) days after notice is received by the contractor.

e. Decision.

Within sixty (60) days after the hearing, the Review Committee shall issue its decision in writing stating whether the contractor is debarred from contracting with County and, if so, for what period of time.

f. Notice of decision.

The contractor shall be give prompt notice of the decision of the Review Committee, and a copy of such decision shall be promptly mailed or otherwise furnished to the contractor.

g. Finality of decision.

The decision of the Review Committee shall be final and conclusive unless the contractor, within thirty (30) days after issuance of the decision, commences a timely action for review in a court of competent jurisdiction in accordance with applicable law.

(Ord. 1801, Eff. 02/05/90; Ord. 4108, Eff. 06/30/09)