

Sec. 3-3-7. - Findings.

(a) The city council, after considering:

- (1) The Report prepared by MGT of America entitled, "Comprehensive Disparity Study for the City of Pensacola, 2012" ("MGT Study") which found evidence of disparities between availability and utilization of woman- and minority-owned business enterprises and in the private sector; as well as
- (2) Anecdotal evidence of disparate treatment against MBEs and WBEs by prime contractors;

hereby adopts the following findings as a strong basis in evidence supporting a narrowly tailored, remedial program in city procurement.

- (b) There exists a prima facie evidence showing that WBEs, and MBEs owned by African-Americans, Hispanics, Asian-Americans, Native Americans and Women, who have done business or attempted to do business in the private and public industries within the city and the Pensacola metropolitan area, have suffered and continue to suffer from disparate treatment by prime contractors. This disparate treatment has existed in private sector industry contracting in such work areas in which the city has been a passive participant. Because of such disparate treatment, such WBEs and MBEs have lacked equal opportunity to participate in such contracts. Such disparate treatment has prevented WBEs and MBEs from participating both in the city's contracting opportunities and in the private sector at a level which would have existed absent such disparate treatment.
- (c) The city seeks to provide a level playing field and equal access for all prime contractors and subcontractors to participate in city procurement. The city also desires to reaffirm its commitment to full and fair opportunities for all firms to participate in its contracts.
- (d) The MGT Study made recommendations for a minority- and women-owned business program for city procurement, emphasizing the establishment of project-specific goals, implementation of race- and gender-neutral measures, and enhancements to data gathering.
- (e) Goals program.
 - (1) The city, therefore, finds and declares that it has a compelling governmental interest in prohibiting, preventing, and eliminating race and gender disparate treatment and its effects in city contracts, and for this purpose, adopts the specific program of good-faith efforts goals as set forth in this section. This program will be carefully structured to take into consideration factors such as present availability of such WBEs and MBEs to perform work on such city contracts, and to take into consideration statistical and anecdotal evidence of disparate treatment. The program is to be narrowly tailored to prevent and eliminate disparate treatment and its effects against such MBEs and WBEs with a minimum of burden on other contractors, including:
 - (2) The program does not impose a quota, set-aside, sheltered market or bid preference, never excludes any party, including nonminority- and non-woman-owned business enterprises, from competing for any contract, and never denies contracts for failure to meet project goals, if non-disparate treatment is demonstrated by a showing of a good-faith attempt to comply with project goals established therein. The program provides for graduation from the program of MBEs and WBEs whose size indicates that they have had the opportunity to overcome the effects of disparate treatment.
 - (3) Definitions. The following words, terms and phrases, when used in this program, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Certification means an application procedure completed by a business enterprise to participate as a small, minority, or woman business enterprise under the M/WBE program.

Certified business enterprise means a small, minority, or women-owned business enterprise that has been certified by the city and/or certifying agencies approved by the city.

M/WBE means a certified minority and woman business enterprise, as defined herein, located in the Pensacola regional area.

Minority individual means an individual who is a citizen of the United States or a legal resident alien and who satisfies one or more of the following definitions as defined by the United States (U.S.) Census Bureau:

- a. African Americans: U.S. citizens or lawfully admitted permanent residents having an origin in any of the black racial groups of Africa.
- b. Hispanic Americans: U.S. citizens or lawfully admitted permanent residents of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese cultures or origins regardless of race.
- c. Asian Americans: U.S. citizens or lawfully admitted permanent residents who originate from the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.
- d. Native Americans: U.S. citizens or lawfully admitted permanent residents who originate from any of the original peoples of North America and who maintain cultural identification through tribal affiliation or community recognition.
- e. Women: U.S. citizens or lawfully admitted permanent residents who are non-Hispanic white females. Minority women were included in their respective minority category.
- f. Disadvantaged Individual: An individual defined as disadvantaged for purposes of the federal disadvantaged business enterprise program (DBE) contained in 49 CFR part 26.

Minority-owned business means a business located in the Pensacola regional area, that is at least 51 percent owned by one or more minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more minority individuals.

Pensacola regional area means the market area of four Florida counties: Escambia, Santa Rosa, Okaloosa, and Walton as well as Mobile, Alabama.

Proposal means a response to a request for proposal, request for information, request for qualifications, or city-requested informal quote.

(Code 1986, § 3-3-8; Ord. No. 04-15, § 1, 2-12-2015)