

**AN ORDINANCE OF THE CITY OF ORLANDO, FLORIDA,
AMENDING ARTICLES II AND III CHAPTER 57,
ORLANDO CITY CODE, TO MODIFY SECTIONS 57.15,
57.16, 57.19, 57.20, 57.21, 57.22, 57.23, 57.27, 57.28, 57.29, and
57.30 RELATING TO M/WBE COMPLIANCE
PROCEDURES, CERTIFICATION APPEALS BOARD;
PROVIDING FOR SEVERABILITY, CODIFICATION,
CORRECTION OF SCRIVENER'S ERRORS, AND AN
EFFECTIVE DATE.**

WHEREAS, the City has a long established Minority and Women Business Enterprise Program ("M/WBE"); and

WHEREAS, the City wishes to provide clarification on compliance procedures with the M/WBE Program and to modify the roles and responsibilities of the M/WBE Certification Board; and

WHEREAS, the City wishes to amend Sections 57.15, 57.16, 57.19, 57.20, 57.21, 57.22, 57.27, 57.28, 57.29, and 57.30 to make minor procedural modifications and clarification to the City's M/WBE Compliance procedures and Certification Appeals Board procedures in Chapter 57, City Code.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF ORLANDO, FLORIDA:

SECTION 1. ARTICLE II, CHAPTER 57, AMENDED. Article II, Chapter 57, Code of the City of Orlando, Florida, is hereby amended as follows:

ARTICLE II. MINORITY BUSINESS ENTERPRISE

Sec. 57.15. Definitions.

- (1) For the purposes of this Chapter, *Minority Business Enterprise* is defined as a business firm which is at least 51 percent (51%) owned by minority group members, or in the case of a publicly owned business, at least 51 percent (51%) of the stock of which is owned by minority group members. The minority ownership must exercise actual day to day management and control of the business. Minority Business Enterprises must be officially certified as such by the City of Orlando. ~~A Minority Business Enterprise that has previously been designated as a recognized firm shall be deemed a certified firm, effective July 1, 2018.~~
- (2) *Minority* means Blacks, Hispanics, American Indians, Alaskan Natives, Asians, and Pacific Islanders.
- (3) *Bid*. "Bid" means all purchase prices sought by procurement methods as described in Chapter 7 of the Code of the City of Orlando.

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Deleted: Such a firm whose principal place of business is located in Orange, Seminole or Osceola County may be certified as a Minority Business Enterprise. Such a firm whose principal place of business is located outside of Orange, Seminole or Osceola County may be recognized as a Minority Business Enterprise.

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- (4) *Compliance Official* ~~means the City of Orlando MBE and Blueprint Division Manager.~~
- (5) *Contract*. "Contract" means all types of City agreements regardless of what they may be called, for the purchase or disposal of supplies or services or performance of construction with the following exceptions: salaries/employee benefits, taxes, judgements, travel, dues, pensions, utilities, subscriptions, auto allowances, debt service requirements, postage, and those contracts entered into by Greater Orlando Aviation Authority or Orlando Utilities Commission, either solely by those entities or with the City as cosignator. It includes contracts for a fixed price, cost, cost plus a fixed fee, or incentive contracts, contracts providing for the issuance of job or task orders, leases, letter contracts, and purchase orders.
- (6) *Construction*. "Construction" means the process of building, altering, repairing, improving, or demolishing any public structure, building, roadway, or other public improvements of any kind to any public real property. It does not include the routine operation, repair or maintenance of existing structures, buildings or real property.
- (7) *Services*. "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term includes "Professional Services," but does not include employment agreements or collective bargaining agreements.
- (8) *Supplies*. "Supplies" means all property including, but not limited to equipment, materials, printing, insurance, and leases, but excluding land or a permanent interest in land.
- (Ord. of 8-29-1983, Doc. #18037; Ord. of 10-3-1983, Doc. #18092; Ord. of 2-25-1985, Doc. #19235; Ord. of 8-28-1995, Doc. #28748)

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Sec. 57.16. - Establishment of Goals.

- (1) To achieve parity there is hereby established a goal of 18% of the City's annual monetary value of contracts and subcontracts for supplies, services and construction to be awarded to minority business enterprises meeting contract specifications: ~~except for exclusions as set forth in the City's Policies and Procedures Section 2510.2.~~
- (2) The goals for minority group employment levels and minority enterprise subcontract levels to be achieved by contractors with the City for construction are hereby set at 18% and adjusted pursuant to 57.26.
- (3) On an annual basis the City Council shall review the levels of minority business enterprise participation for the City's contracting, subcontracting and work force participation, and shall in addition annually review minority population totals and percentages for the Orange County area. After said reviews, the City Council may adjust the percent goals for contracts, subcontracts and work force participation to reflect a more representative share of the minority population or available market of minority business enterprises.
- (4) In determining the MBE/WBE participation on a contract, the following facts will be taken into consideration:
- (a) On contracts where the estimated material portion of the contract exceeds thirty percent (30%) of the project cost and the materials in question are not available to be furnished through City certified MBE/WBE firms, the ~~Compliance Official~~ is authorized to effect reductions in the goals for the project to reflect the unavailability of the materials. It is intended that this provision will only be utilized

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for projects involving major equipment items such as pipe, equipment, fabrications, etc.

(b) The costs of materials which will be used in determining the MBE/WBE participation at the time of bid shall be those estimates as compiled by the City of Orlando. The City's adjusted goal will be the official goal on any particular project subject only to other provisions of this ordinance.

(5) In all instances, any MBE/WBE company performing under a contract with the City of Orlando may only claim, as part of his/her MBE/WBE participation, those materials which the company purchases and actually fully installs as part of their responsibility under the contract, if such work is listed as one of the areas of expertise under which the company is certified to perform.

(6) If a certified material supplier exists, that portion of the contract filled by the supplier will count directly against the 18% MBE & 6% WBE goals and will not be adjusted according to 57.16(4). The percent of the total contract price which is performed by the material supplier shall first be deducted from the City's goals, i.e.: eighteen percent (18%) in the case of minority business enterprises and six percent (6%) in the case of woman-owned business enterprises. Any remaining MBE/WBE percentage which the material supplier has failed to satisfy shall then be adjusted according to Section 57.16(4). The prime contractor shall then have to make a good faith effort to provide subcontracts to minority or woman-owned companies, as the case may be, to fulfill the City's goals. (Ord. of 8-29-1983, Doc. #18037; Ord. of 8-17-1987, Doc. #21410)

Sec. 57.19. Compliance Official; Compliance Procedures

The Mayor shall designate a Compliance Official whose duty it shall be to monitor contractors with the City for construction services for compliance with minority employment levels and minority business enterprise subcontracting levels during the contractual term. The Compliance Official shall also prepare a list of all minority business enterprises, compliance guidelines for contractors with the City, with said guidelines to include monitoring and reporting procedures, and recommendation for actions to be taken should noncompliance occur and procedural guidelines for City allocation of contracts to minority business enterprises as provided by this ordinance. Said guidelines shall be subject to the approval of City Council. The Compliance Official shall also perform such other duties relating to the provisions of this Article as may be directed by the Mayor.

(Ord. of 8-29-1983, Doc. #18037)

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Sec. 57.20. Failure to Comply.

- (1) The Compliance Official shall designate a Contract Compliance Investigator or MBE Project Manager to investigate whether a contractor with the City for construction services has at any time during the term of said contract failed to maintain the minority employment levels and minority business enterprise percentages established pursuant to Section 57.16 of this Chapter and also failed to show a good faith effort to maintain said levels and percentages, the Contract Compliance Investigator or MBE Project Manager shall document the non-compliance and report it to the Compliance Official. If the contractor fails to come into compliance or fails to show a good faith effort to come into compliance within fifteen (15) days in the case of minority employment levels, and within thirty (30) days in the case of minority business enterprises, the Compliance Official may then impose appropriate penalties upon the contractor, to include but not be limited to (a) forfeiture of a portion of the retainage withheld pursuant to the contract, commensurate with the extent of the violation, (b) withhold MBE approval memorandum for failure to comply, and (c) M/WBE de-certification. The Compliance Official may in his discretion refer the contractor to the Chief Procurement Officer for debarment from submitting future bids to the City for a period of one (1) year.

- (2) If it is determined by the Contract Compliance Investigator or MBE Project Manager that any contractor with the City, subcontractor, a minority business enterprise or women-owned business enterprise certified by the City or seeking certification by the City has violated the provisions of this Ordinance or any other state, federal or local law or has given false information to the City, then the Contract Compliance Investigator or MBE Project Manager shall document said action and report it to the Compliance Official, and the contractor, subcontractor, women-owned business enterprise or minority business enterprise. Within 15 days after the receipt of the report the Compliance Official shall meet with contractor, subcontractor, minority business enterprise or women-owned business enterprise to hear and take such evidence as may be offered by that contractor, subcontractor, minority business enterprise or women-owned business enterprise. The Compliance Official may impose appropriate penalties upon the contractor, to include but not be limited to (a) forfeiture of a portion of the retainage withheld pursuant to the contract, commensurate with the extent of the violation, (b) withhold MBE approval memorandum for failure to comply, and (c) M/WBE de-certification. The Compliance Official may then, in his discretion, refer to the City's Chief Procurement Officer a recommendation to impose debarment or suspension upon the contractor, subcontractor, minority business enterprise or women-owned business enterprise.

(Ord. of 8-29-1983, Doc. #18037; Ord. of 10-3-1983, Doc. #18092; Ord. of 2-25-1985, Doc. #19235; Ord. of 12-13-1999, § 15, Doc. #32494)

Sec. 57.21. Conformity with Applicable Federal and State Laws and Chapter 7 of the Code of the City of Orlando**Deleted:****Deleted:** If it is determined by the Compliance Officer that**Deleted:** Compliance Officer**Deleted:** Director of Purchasing and Materials Management or Public Works Director, the contractor, and the contractor's surety**Deleted:** Director of Purchasing and Materials Management or the Public Works Director**Deleted:** ,**Deleted:** and forfeiture of a portion of the retainage withheld pursuant to the contract, commensurate with the extent of the violation. All such penalties shall be reviewed by the City Council upon request of the contractor or its surety for concurrence or modification.**Deleted:** Compliance Officer**Deleted:** Compliance Officer**Deleted:** Director of Purchasing and Materials Management or Director of Public Works**Deleted:** Director of Purchasing and Materials Management or Director of Public Works**Deleted:** Director of Purchasing and Materials Management or Director of Public Works**Deleted:** All such penalties shall be reviewed for concurrence or modification by the City Council upon the request of the contractor, subcontractor, minority business enterprise or women-owned business enterprise.

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The provisions of this Article shall be construed according to and in conformity with Acts of Congress and of the Legislature of the State of Florida concerning the bidding and awarding of contracts and with Chapter 7 of the Code of the City of Orlando entitled "Procurement Code." Where provisions of this Article come into conflict with either federal or state law or Chapter 7 of the Code of the City of Orlando, the federal or state law or Chapter 7 of the City Code shall prevail. (Ord. of 8-29-1983, Doc. #18037)

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SECTION 2. ARTICLE III, CHAPTER 57, AMENDED. Article III, Chapter 57, Code of the City of Orlando, Florida, is hereby amended as follows:

ARTICLE III. - WOMEN-OWNED BUSINESS ENTERPRISE

Sec. 57.22. - Definitions.

- (1) For the purposes of this Chapter, "Women-Owned Business Enterprise" is defined as a business firm which is at least 51 percent (51%) owned by women, or in the case of a publicly owned business, at least 51 percent (51%) of the stock of which is owned by women. The women ownership must exercise actual day to day management and control of the business. Women-Owned Business Enterprises must be officially certified as Women-Owned Business Enterprises by the City of Orlando, A Women-Owned Business Enterprise that has previously been designated as a recognized firm shall be deemed a certified firm, effective July 1, 2018.
- (2) Wherever used in this article, the terms "bid," "contract," "construction," "services," and "supplies" shall be defined as in Section 57.15 of Article II of this Chapter.

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Deleted: Such a firm whose principal place of business is located in Orange, Seminole or Osceola County may be certified as a Women-Owned Business Enterprise

Deleted: Such firm whose principal place of business is located outside of Orange, Seminole or Osceola County may be recognized as a Women-Owned Business Enterprise.

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(Ord. of 8-29-1983, Doc. #18037; Ord. of 2-25-1985, Doc. #19235; Ord. of 8-28-1995, Doc. #28748)

Sec. 57.23. - Establishment of Goals.

- (1) There is hereby established a goal of 6% of the City's annual monetary value of contracts and subcontracts for supplies, services and construction to be awarded to women-owned business enterprises meeting contract specifications; except for exclusions as set forth in the City's Policies and Procedures Section 2510.2.
- (2) The goals for women group employment levels and women enterprise subcontract levels to be achieved by contractors with the City for construction are hereby set at 6% and adjusted pursuant to 57.16.
- (3) This Section hereby incorporates by reference the provisions of Section 57.16(3)—(6) and makes them applicable to woman-owned companies.

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(Ord. of 8-29-1983, Doc. #18037; Ord. of 8-17-1987, Doc. #21410)

Sec. 57.27. - Waivers.

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The provisions of Articles II and Article III of this Ordinance, either in whole or in part, may be waived by the Compliance Official in any event or award of a contract of such a nature so as to render compliance with this Ordinance unreasonable or impossible.

(Ord. of 2-25-1985, Doc. #19235)

Sec. 57.28. - Certification Appeals Board Created.

There is hereby created a Certification Appeals Board of seven (7) members to be appointed by the Mayor, subject to the approval of City Council. Members shall serve without compensation and shall serve a term of two (2) years.

(Ord. of 5-6-1985, Doc. #19372; Ord. of 11-9-1987, Doc. #21640; Ord. of 9-18-1989, Doc. #23312)

1 Sec. 57.29. - Powers and Duties of the Board.

2 The powers and duties of the Certification Appeals Board shall be:

- 3 (1) To hear and conduct appeals on behalf of minority and women-owned business
4 enterprises appealing the decision of the City Minority/Women Business Enterprise
5 Office regarding certification of minority and women-owned business enterprises. To
6 receive and review such evidence, both oral and documentary, as may be presented on
7 behalf of minority and women-owned business enterprises to prove their compliance
8 with the definitions of minority and women-owned businesses contained in this Chapter
9 as well as compliance with the rules adopted by the Certification Board or as may be
10 adopted as set forth in the City's Policies and Procedures.
- 11 (2) A hearing before the Certification Appeals Board to appeal the denial of certification by
12 the City Minority/Women Business Enterprise Office may be obtained by filing a
13 written request for a hearing to the Minority/Women Business Enterprise Office within
14 ten (10) days of receipt of the notice of the denial.
- 15 (3) To issue certification to those businesses which, in the Board's estimation, after their
16 appeal and review, comply with the definitions of minority and women-owned
17 businesses as contained in this Chapter.
- 18 (4) To propose reasonable rules and internal procedures as may be necessary for operation
19 of the Board, as well as criteria pertaining to ownership, and control, and other factors
20 relating to minority and women-owned business enterprise requirements, provided that
21 they are consistent with the policies and procedures and ordinances of the City of
22 Orlando and the laws of the State of Florida.

23 (Ord. of 5-6-1985, Doc. #19372; Ord. of 11-9-1987, Doc. #21640; Ord. of 8-28-1995, Doc.
24 #28740)

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Deleted: <#>The MBE Coordinator may grant reciprocity to MBE/WBE firms who are currently certified or recognized in other jurisdictions subsequent to the Certification Board approval of that jurisdiction. Reciprocity shall take place under the following conditions: ¶

The MBE Coordinator shall review the standards, application process, rules and regulations of other jurisdictions and shall present those findings to the Certification Board for ratification. ¶

The Certification Board, shall by majority vote, compile a list of those jurisdictions to whom they wish to grant reciprocity, which decision shall be based upon the information presented by the MBE Coordinator. ¶ Once the list of jurisdictions is compiled, the MBE Coordinator shall notify the MBE/WBE firms in the jurisdiction being offered reciprocity of the provisions of this Section. Additionally, the MBE Coordinator shall make available a list of those MBE/WBEs who are granted reciprocity to the contractors bidding on City projects. ¶

Reciprocity may be rescinded by a majority vote of the Certification Board subsequent to recommendation by the MBE Coordinator and review by the Certification Board. ¶

Companies granted reciprocity must notify the MBE Coordinator of their intent to bid on City contracts prior to the time that they submit their bids to a contractor. They shall provide a copy of the application which they submitted to their original jurisdiction along with an affidavit attesting to the authenticity and truthfulness of the documentation presented. ¶

The MBE Coordinator will contact the original jurisdiction to verify that companies granted reciprocity are in good standing, and to request notice of any future adverse action which the original jurisdiction might take against that company. ¶

Once the MBE Coordinator verifies the status of a company granted reciprocity, the company shall receive temporary certification or recognition for a maximum period of four (4) months, however said temporary status shall not be effective beyond the termination of their MBE/WBE status with their originating jurisdiction. ¶

Prior to the expiration of the four (4) month period, the files of the company granted reciprocity, as maintained by the MBE Coordinator, shall be presented to the ... [1]

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Sec. 57.30. - Review of Certification Appeals Board Decision.

- (1) Appeals of decisions by the Certification Appeals Board shall be heard by the Chapter 57 Review Board, which shall be composed of seven (7) members appointed by the Mayor and confirmed by City Council. Members shall serve without compensation and shall serve a term of two (2) years.
- (2) A hearing before the Chapter 57 Review Board to appeal the denial of certification by the Certification Appeals Board may be obtained by filing a written request for a hearing to the Minority/Women Business Enterprise Office within ten (10) days of receipt of the notice of the denial. The appellate decision of the Chapter 57 Review Board shall be final.
- (3) The Chapter 57 Review Board shall promulgate rules and procedures governing the operations and functions of the Board. Such rules and procedures shall be consistent with the ordinances of the City of Orlando and the laws of the State of Florida.

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(Ord. of 5-6-1985, Doc. #19372; Ord. of 10-21-1985, Doc. #19791; Ord. of 8-28-1995, Doc. #28748; Ord. of 5-7-2007, § 4, Doc. #0705071002)

SECTION 3. SEVERABILITY. If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 4. CODIFICATION. The City Clerk and the City Attorney shall cause the Code of the City of Orlando, Florida, to be amended as provided by Section 1 of this ordinance and may renumber, re-letter, and rearrange the codified parts of this ordinance if necessary to facilitate the finding of the law.

SECTION 5. SCRIVENER'S ERROR. The City Attorney may correct scrivener's errors found in this ordinance by filing a corrected copy of this ordinance with the City Clerk.

SECTION 6. EFFECTIVE DATE. This ordinance takes effect immediately upon final passage.

DONE, THE FIRST READING, by the City Council of the City of Orlando, Florida, at a regular meeting, this _____ day of _____, 2018.

DONE, THE PUBLIC NOTICE, in a newspaper of general circulation in the City of Orlando, Florida, by the City Clerk of the City of Orlando, Florida, this _____ day of _____, 2018.

DONE, THE SECOND READING, AND ENACTED ON FINAL PASSAGE, by an affirmative vote of a majority of a quorum present of the City Council of the City of Orlando, Florida, at a regular meeting, this _____ day of _____, 2018.

CODING: Words ~~stricken~~ are deletions; words underlined are additions; **** denote omitted text.

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BY THE MAYOR/MAYOR PRO TEMPORE OF
THE CITY OF ORLANDO, FLORIDA:

Mayor / Mayor Pro Tempore

ATTEST, BY THE CLERK OF THE
CITY COUNCIL OF THE CITY OF
ORLANDO, FLORIDA:

Denise Aldridge, City Clerk

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND RELIANCE OF THE
CITY OF ORLANDO, FLORIDA:

Assistant City Attorney

The MBE Coordinator may grant reciprocity to MBE/WBE firms who are currently certified or recognized in other jurisdictions subsequent to the Certification Board approval of that jurisdiction. Reciprocity shall take place under the following conditions:

The MBE Coordinator shall review the standards, application process, rules and regulations of other jurisdictions and shall present those findings to the Certification Board for ratification.

The Certification Board, shall by majority vote, compile a list of those jurisdictions to whom they wish to grant reciprocity, which decision shall be based upon the information presented by the MBE Coordinator.

Once the list of jurisdictions is compiled, the MBE Coordinator shall notify the MBE/WBE firms in the jurisdiction being offered reciprocity of the provisions of this Section. Additionally, the MBE Coordinator shall make available a list of those MBE/WBEs who are granted reciprocity to the contractors bidding on City projects.

Reciprocity may be rescinded by a majority vote of the Certification Board subsequent to recommendation by the MBE Coordinator and review by the Certification Board.

Companies granted reciprocity must notify the MBE Coordinator of their intent to bid on City contracts prior to the time that they submit their bids to a contractor. They shall provide a copy of the application which they submitted to their original jurisdiction along with an affidavit attesting to the authenticity and truthfulness of the documentation presented.

The MBE Coordinator will contact the original jurisdiction to verify that companies granted reciprocity are in good standing, and to request notice of any future adverse action which the original jurisdiction might take against that company.

Once the MBE Coordinator verifies the status of a company granted reciprocity, the company shall receive temporary certification or recognition for a maximum period of four (4) months, however said temporary status shall not be effective beyond the termination of their MBE/WBE status with their originating jurisdiction.

Prior to the expiration of the four (4) month period, the files of the company granted reciprocity, as maintained by the MBE Coordinator, shall be presented to the Certification Board. The Certification Board shall then review this file to determine whether the MBE/WBE should be granted status as a certified or recognized company pursuant to Section 57.29(2).

Under no circumstances may a firm which is currently under suspension or debarment or which has been denied certification or recognition by the City of Orlando in the six (6) months preceding its application for reciprocity with the City of Orlando MBE/WBE program, use this Section to circumvent the imposed sanctions or actions of the City. Additionally all applicants for reciprocity must be in current good standing with all other foreign jurisdictions under which they are certified or recognized.

The City of Orlando encourages jurisdictions granted reciprocity to allow those MBE/WBEs certified or recognized by the City of Orlando to be given similar status in their jurisdiction.

If necessary, the MBE Coordinator shall formulate a supplemental application form to ensure compliance with the standards established by the City of Orlando. The applicant shall comply with any requests for information which the MBE Coordinator deems appropriate. Applicants going through this shortened process must have their status verified by the MBE Coordinator prior to bidding on any contract with the City, where they wish their participation to be counted towards the City's MBE/WBE goals. Failure to do so will result in no credit being given and the applicant will be prohibited from applying under the reciprocity provision and will be required to apply through normal channels.