

Chapter 42

MINORITY AND WOMEN BUSINESS ENTERPRISE PARTICIPATION PROGRAM*

Sec. 42-1. Definitions.

For purposes of this chapter, the following terms shall have the meaning defined in this section, unless otherwise apparent from the context:

(a) *Bid* shall mean an offer by a business to enter into a public construction contract.

(b) *Bidder* shall mean a business that submits a bid.

(c) *Certification* shall mean the process by which the city's office of minority affairs determines that a business entity should be recognized as a minority-owned and/or women-owned business enterprise for the purposes of this chapter.

(d) *City* shall mean the city of Syracuse, New York.

(e) *Contractor* or *prime contractor* shall mean a business that is awarded a public construction contract.

(f) *Minority-owned business enterprise (MBE)* shall mean a business that is periodically certified by the city office of minority affairs as satisfying the following criteria: (i) at least fifty-one (51) percent of the business is owned and controlled by minority group members who are United States citizens or permanent resident aliens, or in the case of a publicly owned business, at least fifty-one (51) percent of the stock of the business is owned by minority group members who are United States citizens or permanent resident aliens; (ii) the management and daily operations of the busi-

***Editor's note**—Gen. Ord. No. 19-1994, adopted June 20, 1994, extended the provisions of Ch. 42, as amended, for three (3) years following the adoption of said ordinance. Chapter 42 derives from Gen Ord. No. 9-1991, adopted Feb. 11, 1991, and extensions in the expiration date were enacted by Gen. Ord. No. 2-1994 (from April 4, 1994 to May 19, 1994) and Gen. Ord. No. 9-1994 (from May 19, 1994 to June 30, 1994).

Cross reference—Affirmative action plan, Pt. O, Ch. 39.

ness are controlled by one or more of the minority group members who own it; and (iii) the business has its principal operations, or has permanently staffed offices, located within Onondaga County.

(g) *Minority group members* shall mean the following:

- (1) Black persons, meaning persons having origin in any of the Black African racial groups.
- (2) Hispanic Americans, meaning persons of Mexican, Puerto Rican, Cuban, Central or South American origin regardless of race.
- (3) Asian Americans, meaning persons having origin in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.
- (4) American Indians, meaning persons having origin in any of the original peoples of North America and who are recognized as American Indian by either a tribe, tribal organization, or a suitable authority in the community.

(h) *Positive efforts* by a contractor shall include all of the following:

- (1) Identification of MBEs and WBEs that may be able to perform specific subcontracts, by:
 - a. Perusing the Syracuse directory of MBEs and WBEs; and/or
 - b. Sending appropriate representatives to pre-bid and pre-award meetings conducted by representative of the office of minority affairs, to inform prime contractors and subcontractors of MBE and WBE requirements and subcontracting opportunities; and/or
 - c. Placing advertisements in general circulation, trade association, and minority/female focus media located within reasonable proximity to the construction project, that solicit bids for identified subcontracting opportunities; and/or
 - d. Contacting minority and women's organizations, contractors' groups and local, state and federal minority and women business assistance offices and other organizations that provide assistance to and promote opportunities for MBEs and WBEs; and/or

- e. Any other method(s) that in fact results in the identification of MBEs and WBEs qualified to bid on subcontracting opportunities.
- (2) Where technically feasible, and consistent with the efficient performance of the prime contract, dividing the prime contract into segments that create subcontracting opportunities for qualified and available MBEs and WBEs.
 - (3) Notifying a reasonable number of specific MBEs and WBEs in writing, that their interest in specified subcontracts is being solicited in sufficient time to allow them to participate effectively; such notice must include complete and accurate information about the plans, specifications, change orders and other requirements of a given subcontract, and must state the date bids and a response to the notice are due.
 - (4) Following-up initial solicitations of interest by contacting MBEs and WBEs to determine with certainty whether they are interested and whether they need additional information to make a bid.
 - (5) Negotiating with, and considering and awarding subcontracts to interested MBEs and WBEs in the same manner and subject to the same procedures, standards and requirements the contractor follows with companies that are not MBEs and WBEs (e.q., it may not negotiate more demanding contract terms with MBEs and WBEs; or, in evaluating the merits of a bid by an MBE or a WBE, a commercially insignificant difference in price shall not be a basis for rejecting the bid).
 - (6) After awarding a subcontract to an MBE or a WBE, imposing requirements and performance standards no more stringent than those imposed on companies that are not MBEs or WBEs.
 - (i) *Public construction contract or prime contract* shall mean: (a) Any contract, in the amount of at least twenty thousand dollars (\$20,000.00), awarded by the city for the construction, rehabilitation, alteration, conversion, extension, repair or demolition of city buildings, streets or other improvements to its real property

whereby the city is committed to expend or does expend its funds in return for such construction, rehabilitation, alteration, conversion, extension, repair or demolition; or (b) any contract or loan, in the amount of at least twenty thousand dollars (\$20,000.00), for the rehabilitation or construction of buildings administered by the department of community development; provided, however, that the term shall not include any contract under which federal or state authorities expressly prohibit the city from imposing the requirements of this chapter.

(j) *Subcontract* shall mean a contract between a contractor and any other business unrelated to the contractor, through which the other business (i.e., the subcontractor) provides a distinct element of the work, services, goods, supplies, equipment or materials contemplated by, and required for the completion of, the public construction contract.

(k) *Women-owned business enterprise (WBE)* shall mean a business that is periodically certified by the city office of minority affairs as satisfying the following criteria: (i) At least fifty-one (51) percent of the business is owned and controlled by women who are United States citizens or permanent resident aliens, or in the case of a publicly owned business, at least fifty-one (51) percent of the stock of the business is owned by women who are United States citizens or permanent resident aliens; (ii) the management and daily operations of the business are controlled by one or more of the women who own it; and (iii) the business has its principal operations, or has permanently staffed offices, located within Onondaga County. (Gen. Ord. No. 22-1991, 3-25-91)

Sec. 42-2. Administration.

The city office of minority affairs, a unit of the department of community development ("Office of Minority Affairs"), in addition to the specific powers and duties set forth elsewhere in this chapter shall:

- (1) Develop techniques, materials and procedures consistent with this chapter, to facilitate the participation of WBEs and MBEs in public contracting opportunities and to facilitate compliance with this chapter by contractors;

- (2) Subject to the prior approval of the commissioner of community development, adopt administrative rules and procedures to implement its responsibilities under this chapter (e.g., to certify companies as MBEs and WBEs);
 - (3) For each public construction contract, conduct a pre-bid meeting and a pre-award meeting to inform WBEs and MBEs of subcontracting opportunities and to review with the successful bidder its MBE and WBE responsibilities;
 - (4) Maintain and periodically update a directory of businesses that have been certified as MBEs and WBEs under this chapter;
 - (5) Develop and implement internal auditing and reporting systems to determine the effectiveness of this chapter in preventing discrimination against MBEs and WBEs.
- (Gen. Ord. No. 22-1991, 3-25-91)

Sec. 42-3. Establishment of MBE and WBE participation goals.

(a) *Overall goal.* Goals for MBE and WBE participation in public construction contracts, for the three-year period commencing from and after the effective date of this chapter, are as follows: MBE goal, nine (9) percent of the total amount of all public construction contracts; WBE goal, six (6) percent of the total amount of all public construction contracts.

(b) *Contract goals.* The office of minority affairs, with the prior approval of the commissioner of community development and after consultations with a representative of the engineering department, the purchasing department and the department for which the contract is being awarded, shall set participation goals for each public construction contract. Two (2) goals shall be set, one for MBE participation and one for WBE participation. Each goal shall be expressed as a percentage of the total dollar amount of the contract and will represent an estimate of the likely level of MBE and WBE participation in the contract if MBEs and WBEs are given an equal opportunity to compete for and perform sub-

contracts likely to be awarded under the contract. The goals shall be recorded in the documents soliciting bids and shall be based upon the following considerations:

- (1) The city's overall goals set forth in subsection (2) immediately above;
- (2) The possible subcontracting opportunities, in the given prime contract, by trade area (e.g., electrical, HVAC, plumbing) and by business category (e.g., supplier of insulated windows); the dollar amount of each such subcontracting opportunity; the percentages of the total number of businesses located in Onondaga County—in each such trade or business category—that are MBEs and WBEs;
- (3) The number of qualified MBEs and WBEs available to compete for each identified subcontracting opportunity;
- (4) The extent to which MBEs and WBEs have in the past been awarded subcontracts under other comparable public construction contracts; and
- (5) The extent to which a contractor will likely receive credit towards a goal under the standards and limitations set forth in section 42-13 (d), below.

(c) *Modification of contract goal.* A contract goal may be modified by the office of minority affairs, with the prior approval of the commissioner of community development, and after consultations with a representative of the Engineering Department, the purchasing department and the department for which the contract is being awarded, based on:

- (1) Changes in the plans, specifications or other relevant terms of the contract;
- (2) The receipt of relevant information not available or considered when the contract goal was first established;
- (3) The receipt of an objection to the goal urged by any potential contractor or subcontractor on the grounds that: (a) The goal will result in inadequate competition for a subcontract or for a group of subcontractors; or (b) the goal for the specific public construction contract and the goal for similar prior contracts has necessarily excluded a particu-

lar company from consideration for subcontracting opportunities. Such an objection shall be made in writing to the office of minority affairs, prior to the deadline for the submission of bids on the contract, and shall fully explain the basis for, and establish the soundness of, the objection.

(d) *Standards controlling whether MBE and WBE goals have been achieved.* The dollar amount of all subcontracts awarded to certified MBEs and WBEs will be credited toward the satisfaction of the MBE and the WBE goals, subject to the following limitations:

- (1) A contractor that awards a subcontract to a business certified as both an MBE and a WBE must elect to apply the amount of that subcontract to either the MBE or the WBE goal.
- (2) A contractor that awards a subcontract to a joint venture may apply toward the MBE or WBE goal, the percentage of the total dollar amount of the subcontract equal to the percentage of the joint venture in fact owned and controlled by the MBE or WBE joint venturer(s).
- (3) A contractor will be given credit for a subcontract only if it serves a commercially useful function. To determine whether a subcontract satisfies this requirement, the office of minority affairs will consider the nature and amount of the subcontract, customary industry subcontracting practices for the given public construction contract, and such other factors it finds relevant.
- (4) A contractor will receive credit for the full amount of a subcontract even if the MBE or the WBE subcontractor enters into sub-contracts with businesses that are not MBEs or WBEs. However, if an MBE or WBE subcontractor, sub-subcontracts a significantly greater portion of the work of the subcontract than would be expected under customary industry practices, the contractor will not receive credit for the subcontract.
- (5) A contractor will receive credit for a subcontract that entails the supplying of materials or products only if the subcontractor is regularly engaged in the business of supply-

ing materials or products and has a warehouse or other storage facility where the materials or products provided through the subcontract are regularly stored.

- (6) In addition to credit received through subcontracts, a prime contractor that is certified as an MBE or WBE shall receive credit toward the MBE or WBE goal equal to the percentage of the total contract amount that it undertakes and completes, i.e., that it does not perform through subcontracts.

(Gen. Ord No. 22-1991, 3-25-91; Gen Ord. No. 19-1994, 6-20-94)

Sec. 42-4. Obligations of successful bidders and contractors.

(a) Every successful bidder shall, as a condition precedent to the award of the prime contract, submit to the office of minority affairs, within ten (10) business days of being notified that it is the successful bidder, an MBE and WBE utilization plan, executed before a notary by the appropriate officer of the bidder, which shall:

- (1) State the name, title and telephone number of the individual(s) responsible for: Assuring compliance with this chapter; supervising efforts to identify subcontractors; negotiating and awarding subcontracts; and monitoring performance of subcontracts;
- (2) Provide a brief description of each item of work, services, goods, supplies, equipment or material that it expects to complete or provide through subcontracts and the dollar amount of each such subcontract;
- (3) State the month the work under each subcontract will likely commence or the month the services, goods, supplies, equipment or materials under each subcontract will likely be provided;
- (4) Identify each subcontract listed in response to paragraphs (2) and (3), immediately above, that it expects to award to an MBE or WBE; the name, address and telephone number of each such MBE or WBE; the name, race (or ethnicity) and sex of the chief executive officer of each such MBE or WBE;

- (5) Contain a promise by the bidder that it will satisfy the MBE and WBE contract goals or will make positive efforts to do so.
 - (b) Every contractor shall be required to agree, by contract, as fully set forth in "Appendix A" to this chapter:
 - (1) That it will not discriminate against MBEs or WBEs in the identification of potential subcontractors and in the negotiation, awarding and performance of subcontracts.
 - (2) That it will document that it in fact satisfied the MBE and WBE goals set for the contract, or document that it was unable to do so despite positive efforts. More specifically, it will file monthly reports with the office of minority affairs, on the fifteenth day of each month following the signing of the public construction contract, providing the following documents and information:
 - a. A copy of each written subcontract for work or services—including a copy of each agreement or order for goods, supplies, equipment or materials—executed during the previous month;
 - b. The name of each company that was awarded a subcontract; whether the company is an MBE or a WBE; the date the subcontract was awarded; the dollar amount of the subcontract; the trade or specialty involved; the date work or services under the subcontract will (or has) commence(d) and will be (or has been) completed or the date the goods, supplies, equipment or materials will be or have been provided;
If the successful company is an MBE or WBE not listed in the utilization plan, the race or ethnicity and sex of the individual(s) who own and manage the company (e.g., Black, Hispanic American, Asian-American, American Indian, Woman);
 - c. In the event a contractor has not awarded a subcontract to an MBE or WBE that was specifically identified in the contractor's utilization plan as likely to receive the subcontract, the reasons the subcontract was not awarded as originally contemplated by the utilization plan;

- d. In the event a company was found by the contractor to be unqualified or unable to perform a subcontract after the subcontract had been awarded to that company, the name of each such company; the reason the company was found unqualified to perform the subcontract; whether the company is an MBE or a WBE and, if either an MBE or a WBE, the race or ethnicity and sex of the individuals who own and manage the company;
- e. The percentage of each subcontract completed; the amount paid to each subcontractor and the balance due each subcontractor under each subcontract;
- f. All revisions to the utilization plan, in the form and with all information required for the initial utilization plan;
- g. If the utilization plan, as originally tendered or as revised, reveals that the contract goals will not be satisfied, then a detailed statement and documentary proof of the positive efforts that the contractor has made and will make to satisfy the goals. Included in the report shall be a listing of MBEs and/or WBEs, if any, that were considered for each subcontracting opportunity, the race or ethnicity of the individuals who own and manage each of those companies, the name and title of the person at each of those companies with whom the contractor dealt or negotiated, and the reason(s) such companies were denied the subcontracting opportunity.

- (3) That it will retain, and make available to the city upon request, for a period of three (3) years subsequent to the completion of the contract all records relied upon for the compilation of each monthly report.

(Gen. Ord. No. 22-1991, 3-25-91)

Sec. 42-5. Enforcement provisions.

(a) The office of minority affairs, upon concluding that a contractor has failed to comply with any requirement of this chapter, shall report its findings, with specificity and in writing, to the commissioner of community development and the office of the

corporation counsel. The office of the corporation counsel shall then give notice of the specific deficiencies to the prime contractor who shall then be given ten (10) days to show cause at a hearing why a determination of noncompliance by the office of the corporation counsel should not be entered.

(b) A determination of noncompliance by the office of the corporation counsel shall constitute a finding by the city that the contractor breached the contract. The office of the corporation counsel may impose appropriate remedies for noncompliance such as:

- (1) Directing that part or all of the payments to the contractor be withheld until noncompliance is cured;
- (2) Directing that the contract be terminated;
- (3) Directing that the contractor be barred from bidding on future contracting opportunities with the city;
- (4) Imposing a requirement that the contractor, in future bidding for city contracts, guarantee that it will meet a specific MBE or WBE goal;
- (5) If it is determined that a particular MBE or WBE subcontractor has been victimized by discrimination, directing that a specific subcontract be awarded to that subcontractor;
- (6) Any other remedy that the corporation counsel finds appropriate given the facts and circumstances of the particular case.

(Gen. Ord. No. 22-1991, 3-25-91)

Sec. 42-6. Annual review and evaluation of program.

The office of minority affairs with the assistance of, and after consultation with, all other appropriate city departments, shall issue a report to the common council stating the levels of MBE and WBE participation attained for public construction contracts awarded during the previous year; whether and to what extent the office of minority affairs and the office of the corporation counsel have found violations of this chapter; whether, in light of

the city's experiences under this chapter, including reports submitted by contractors, any modifications to this chapter should be adopted.

(Gen. Ord. No. 22-1991, 3-25-91)

Sec. 42-7. Effective and expiration dates.

This chapter shall take effect immediately upon its adoption. It shall be applicable to solicitations for bids issued from and after the effective date. Gen. Ord. No. 22-1991, as amended by Gen. Ord. No. 27-2003, and as last amended by Gen. Ord. No. 8-2008, is hereby renewed for a period of two (2) years from May 29, 2009 through May 29, 2011, unless prior thereto, it is renewed or repealed by the common council.

(Gen. Ord. No. 22-1991, 3-25-91; Gen. Ord. No. 19-1994, 6-20-94; Gen. Ord. No. 17-1997, 5-27-97; Gen. Ord. No. 21-2001, 5-7-01; Gen. Ord. No. 27-2003, 8-18-03; Gen. Ord. No. 48-2004, 11-8-04; Gen. Ord. No. 8-2008, 3-24-08; Gen. Ord. No. 16-2009, 5-11-09)

**APPENDIX A TO CHAPTER 42.
AWARDING OF SUBCONTRACTS
EQUAL OPPORTUNITY PROVISIONS**

A. Statement of policy and assurance of equal opportunity.

It is the policy of the city of Syracuse that minority-owned business enterprises (MBEs), and women-owned business enterprises (WBEs), as defined in paragraph B, below, may not be discriminated against based on race, color, national origin or sex: (i) In the process leading to the identification of potential subcontractors; (ii) in the negotiation of terms and conditions to be included in subcontracts; and (iii) in the standards for measuring performance by subcontractors.

The contractor agrees to take the steps set forth below to assure implementation of and compliance with this policy.

B. Definitions.

(1) *Minority-owned business enterprise (MBE)* shall mean a business that is periodically certified by the City Office of Minority Affairs as satisfying the following criteria: (i) At least fifty-one (51) percent of the business is owned and controlled by minority group members who are United States citizens or permanent resident aliens, or in the case of a publicly owned business, at least fifty-one (51) percent of the stock of the business is owned by minority group members who are United States citizens or permanent resident aliens; (ii) the management and daily operations of the business are controlled by one or more of the minority group members who own it; and (iii) the business has its principal operations, or has permanently staffed offices, located within Onondaga County.

(2) *Minority group members* shall mean the following:

- (1) Black persons, meaning persons having origin in any of the Black African racial groups.
- (2) Hispanic Americans, meaning persons of Mexican, Puerto Rican, Cuban, Central or South American origin regardless of race.

- (3) Asian Americans, meaning persons having origin in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.
- (4) American Indians, meaning persons having origin in any of the original peoples of North America and who are recognized as American Indian by either a tribe, tribal organization, or a suitable authority in the community.

(3) *Subcontract* shall mean a contract between a contractor and any other business unrelated to the contractor, through which the other business (i.e., the subcontractor) provides a distinct element of the work, services, goods, supplies, equipment or materials contemplated by, and required for the completion of, the public construction contract.

(4) *Women-owned business enterprise (WBE)* shall mean a business that is periodically certified by the City Office of Minority Affairs as satisfying the following criteria: (i) At least fifty-one (51) percent of the business is owned and controlled by women who are United States citizens or permanent resident aliens, or in the case of a publicly owned business, at least fifty-one (51) percent of the stock of the business is owned by women who are United States citizens or permanent resident aliens; (ii) the management and daily operations of the business are controlled by one or more of the women who own it; and (iii) the business has its principal operations, or has permanently staffed offices, located within Onondaga County.

C. Directory of MBEs and WBEs.

The Syracuse Office of Minority Affairs compiles and keeps current a directory of certified MBEs and WBEs. Interested persons may obtain a copy by writing or calling The Office of Minority Affairs, (address/phone number). The directory does not purport to record all companies eligible for certification. Bidders and contractors are urged to compile their own lists of MBEs and WBEs and to take steps to promote certification of such companies as MBEs and WBEs by the Office of Minority Affairs.

D. MBE and WBE utilization plan.

Within seven (7) days of being notified that it was the successful bidder, an officer of the contractor executed an MBE and

WBE utilization plan. A copy of this plan is annexed hereto and made a part of this contract.

E. MBE and WBE goals.

The goals established for this contract — expressed as a percentage of the total contract price — are:

MBE _____percent.
WBE _____percent.

These goals represent the city's best estimate of the level of MBE and WBE participation in the contract that will likely occur if MBEs and WBEs are given an equal opportunity to compete for subcontracts available under this contract.

F. Attainment of MBE and WBE goals and positive efforts to attain goals.

The contractor agrees to satisfy these goals or document that it was unable to do so despite positive efforts. Positive efforts shall include all of the following:

- (1) Identification of MBEs and WBEs that may be able to perform specific subcontracts, by:
 - a. Perusing the Syracuse directory of MBEs and WBEs; and/or
 - b. Sending appropriate representatives to pre-bid and pre-award meetings conducted by representatives of the Office of Minority Affairs, to inform prime contractors and subcontractors of MBE and WBE requirements and subcontracting opportunities; and/or
 - c. Placing advertisements in general circulation, trade association, and minority/female focus media located within reasonable proximity to the construction project, that solicit bids for identified subcontracting opportunities; and/or
 - d. Contacting minority and women's organizations, contractors' groups and local, state and federal minority and women business assistance offices and other organizations that provide assistance to and promote opportunities for MBEs and WBEs; and/or

- e. Any other methods that in fact result in the identification of MBEs and WBEs qualified to bid on subcontracting opportunities.
- (2) Where technically feasible, and consistent with the efficient performance of the prime contract, dividing the prime contract into segments that create subcontracting opportunities for qualified and available MBEs and WBEs.
- (3) Notifying a reasonable number of specific MBEs and WBEs in writing, that their interest in specified subcontracts is being solicited in sufficient time to allow them to participate effectively; such notice must include complete and accurate information about the plans, specifications, change orders and other requirements of a given subcontract, and must state the date bids and a response to the notice are due.
- (4) Following-up initial solicitations of interest by contacting MBEs and WBEs to determine with certainty whether they are interested and whether they need additional information to make a bid.
- (5) Negotiating with, and considering and awarding subcontracts to interested MBEs and WBEs in the same manner and subject to the same procedures, standards and requirements the contractor follows with companies that are not MBEs and WBEs (e.g., it may not negotiate more demanding contract terms with MBEs and WBEs; or, in evaluating the merits of a bid by an MBE or WBE, a commercially insignificant difference in price shall not be a basis for rejecting the bid).
- (6) After awarding a subcontract to an MBE or a WBE, imposing requirements and performance standards no more stringent than those imposed on companies that are not MBEs or WBEs.
- (7) Such additional measures that assure nondiscriminatory treatment of MBEs and WBEs.

G. Reporting and record keeping.

The contractor will file monthly reports with the Office of Minority Affairs documenting that it will satisfy the MBE and WBE goals or that it is unable to do so despite positive efforts. More specifically, the contractor shall on the fifteenth day of each month following the signing of this contract provide the following documents and information:

- (1) A copy of each written subcontract for work or services — including a copy of each agreement or order for goods, supplies, equipment or materials — executed during the previous month;
- (2) The name of each company that was awarded a subcontract; whether the company is an MBE or WBE; the date the subcontract was awarded; the dollar amount of the subcontract; the trade or specialty involved; the date work or services under the subcontract will (or has) commence(d) and will be (or has been) completed or the date the goods, supplies, equipment or materials will be or have been provided;

If the successful company is an MBE or a WBE not listed in the Utilization Plan, the race or ethnicity and sex of the individual(s) who own and manage the company (e.g., Black, Hispanic American, Asian-American, American Indian, Woman);

- (3) In the event a contractor has not awarded a subcontract to an MBE or WBE that was specifically identified in the contractor's Utilization Plan as likely to receive the subcontract, the reasons the subcontract was not awarded as originally contemplated by the Utilization Plan;
- (4) In the event a company was found by the contractor to be unqualified or unable to perform a subcontract after the subcontract had been awarded to that company, the name of each such company; the reason the company was found unqualified to perform the subcontract; whether the company is an MBE or WBE and, if either an MBE or a WBE, the race or ethnicity and sex of the individuals who own and manage the company;

- (5) The percentage of each subcontract completed; the amount paid to each subcontractor and the balance due each subcontractor under each subcontract;
- (6) All revisions to the Utilization Plan, in the form and with all information required for the initial Utilization Plan;
- (7) If the Utilization Plan, as originally tendered or as revised, reveals that the contract goals will not be satisfied, then a detailed statement and documentary proof of the positive efforts that the contractor has made and will make to satisfy the goals. Included in the report shall be a listing of MBEs and/or WBEs, if any, that were considered for each subcontracting opportunity, the race or ethnicity of the individuals who own and manage each of those companies, the name and title of the person at each of those companies with whom the contractor dealt or negotiated, and the reason(s) such companies were denied the subcontracting opportunity.

H. Retention of records.

The contractor shall retain, and make available to the city upon request, for a period of three (3) years subsequent to the completion of the contract all records relied upon for the compilation of each report. Appropriate legal action will be taken against a contractor that willfully makes false statements or that provides incorrect information.

I. Determination of compliance or noncompliance.

Upon request of the Office of Minority Affairs, the Office of the Corporation Counsel shall determine whether the contractor has failed to comply with any requirement of the Equal Opportunity Provisions of this contract.

The office of the Corporation Counsel shall give notice to the contractor of a proposed finding of noncompliance. The contractor shall be afforded a hearing, upon ten (10) days notice, to show cause why a finding of noncompliance by the Office of the Corporation Counsel should not be entered.

J. Effect of determination of noncompliance.

A determination of noncompliance by the Office of the Corporation Counsel shall constitute a finding by the city that the contractor breached the contract. The Office of the Corporation Counsel may impose appropriate remedies for noncompliance such as:

- (1) Directing that part or all of the payments to the contractor be withheld until noncompliance is cured;
- (2) Directing that the contract be terminated;
- (3) Directing that the contractor be barred from bidding on future contracting opportunities with the city;
- (4) Imposing a requirement that the contractor, in future bidding for city contracts, guarantee that it will meet a specific MBE or WBE goal;
- (5) If it is determined that a particular MBE or WBE subcontractor has been victimized by discrimination, directing that a specific subcontract be awarded to that subcontractor;
- (6) Any other remedy that the corporation counsel finds appropriate given the facts and circumstances of the particular case;
- (7) Such additional measures found appropriate by the contractor that assure nondiscriminatory treatment of MBEs and WBEs.