

First Reading: _____

Bill No. 1257

Second Reading: _____

Ordinance No. 1212

AN ORDINANCE AMENDING CHAPTER 135 ENACTING A NEW SECTION RELATING TO CONSTRUCTION CONTRACTS.

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF COOL VALLEY, MISSOURI, AS FOLLOWS:

Section One

Chapter 135 of the Code of Ordinances of the City of Cool Valley is hereby amended by the enactment of a new section, initially to be designated as Section 135.080, to read as follows:

TITLE I.	GOVERNMENT CODE
CHAPTER 135.	PURCHASING
ARTICLE I.	IN GENERAL
SECTION 135.080.	CONSTRUCTION CONTRACTS – MINORITY AND WOMEN PARTICIPATION

- A. In addition to other requirements set forth in this Code, invitations to bid and requests for proposals for construction materials or services which may result in a contract for more than fifty thousand dollars (\$50,000.00) shall include goals that twenty (20) percent of all commercially useful functions, as measured by percentage of the dollar value of all work on the contract, be performed by minority business enterprises and that five (5) percent of all commercially useful functions be performed by woman business enterprises; except, however, that the City Clerk may waive or reduce these percentages for a particular contract if the City Clerk determines, with concurrence of the City Attorney and the appropriate departmental director, that it is in the City's best interests due to limited competition or other valid reason.
- B. The following contributions shall count toward the project goal: portions of work undertaken as contractors, joint ventures, subcontractors, and suppliers.
- C. As used herein:
1. "Business" or "Business enterprise" means a sole proprietorship, corporation, limited liability company, partnership, limited partnership, limited liability limited partnership, joint stock company, joint venture,

professional association, or any other legal entity operated for profit that is properly licensed or registered, as applicable, owned and controlled by persons who are citizens or lawful permanent residents of the United States, and otherwise authorized to do business in the State of Missouri;

2. "Certified MBE or WBE" means a business enterprise which is certified as a minority business enterprise or a woman business enterprise by either (1) the City of St. Louis, Missouri, including Lambert-St. Louis International Airport, or 2) the State of Missouri or its certifying agencies, including the Office of Equal Opportunity, or 3) the St. Louis Minority Business Council;
3. "Commercially useful function" means a real and actual service that is a distinct and verifiable element of the construction services based upon private sector trade or industry standards. An MBE or WBE performs a commercially useful function when it is responsible for executing the ordinary and necessary work of the construction services and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. Factors considered in determining whether the construction services constitute a commercially useful function include but are not limited to the amount of construction services subcontracted, industry practices, whether the amount the MBE or WBE is to be paid under the contract is commensurate with the construction services it is actually performing, whether the MBE or WBE has the skill and expertise to perform the construction services for which it is being utilized, whether the MBE or WBE is responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering, installing (where applicable), and paying for the material and supplies itself, and credit claimed for its performance of the construction services;
4. "Construction services" shall mean all services related to the construction phase of a project, including professional services ancillary to construction such as but not limited to architectural, engineering, land surveying, testing, and construction management services; except, however, that the provisions of this section shall not apply to contracts to be paid in whole or part with funds from the United States government or the State of Missouri to the extent that such provisions are inconsistent with requirements, terms, or conditions imposed by those governments, or to highway projects as to which Disadvantaged Business Enterprise goals are applicable;

5. "Subcontractor" means a business enterprise that directly contracts with a contractor or another subcontractor to perform construction services on a City contract;
 6. "Supplier" means a business enterprise that directly contracts with a contractor or subcontractor to provide materials, supplies, or equipment for a City contract and is a regular dealer, manufacturer, manufacturer's representative, or broker.
- D. The bid or proposal specifications for each construction project shall require that all bidders or proposers seeking to contract with the City address the project goals either by committing to compliance therewith or by demonstrating inability to do so despite specific and identified good faith efforts. Good faith efforts must be demonstrated to be meaningful and not merely formalistic. The scope and intensity of the efforts will be considered in determining whether the bidder or proposer has achieved a good faith effort.
- E. If the bidder or proposer is an MBE or WBE, the value of the commercially-useful function to be self-performed by the MBE or WBE shall count toward satisfaction of the project goal. The bidder or proposer shall count toward satisfaction of the project goal only that portion of each MBE or WBE subcontractor's work which is self-performed by that subcontractor.
- F. The City Clerk shall review all bids or proposals for compliance with the requirements of this section. If the City Clerk determines that a bid or proposal meets the project goals or has shown adequate good faith efforts to achieve the goals, then the bid or proposal shall be deemed responsive as to the requirements of this section. If the City Clerk determines that a bid or proposal does not meet the project goals and that the bidder or proposer has failed to show good faith efforts to achieve the goals, then the City Clerk shall designate the bid or proposal as nonresponsive with the concurrence of the City Attorney and no further consideration shall be given to it. A full and complete statement of the reasons for designating the bid or proposal as nonresponsive shall be filed with the other contract documents.
- G. Any change orders that result in a net increase in compensation to the contractor shall be performed in compliance with the goals set forth in subsection A, unless the City Clerk determines that the contractor has shown adequate good faith efforts to achieve the goals in accordance with the procedure set forth in subsection F.
- H. The City Clerk shall receive and investigate complaints concerning compliance with the requirements set forth herein, and may further initiate his or her own investigations concerning compliance either during the project or after

completion. Business enterprises being investigated shall cooperate fully with the investigation and shall have a continuing burden of providing complete, truthful information to the City Clerk's designee.

- I. If a contractor is found to be in violation of the provisions of this section or any representations in the contractor's bid or proposal, City may suspend or terminate the contract and will reserve all of its rights at law or equity to pursue any available remedies against the contractor. Failure to meet the goal or to demonstrate good faith efforts to meet the goal may subject the contractor to liquidated damages and will be considered in determining the qualifications of the contractor as to future bids and/or proposals.

Section Two

The Chapter, Article, Division and/or Section assignments designated in this Ordinance may be revised and altered by the codification company servicing the City's Code of Ordinances upon supplementation of such code if, in the discretion of the editor, an alternative designation would be more reasonable. In adjusting such designations the editor may also change other designations and numerical assignment of code sections to accommodate such changes.

Section Three

It is hereby declared to be the intention of the Board of Aldermen that the sections, paragraphs, sentences, clauses, phrases and words of this ordinance are severable, and if any section, paragraph, sentence, clause, phrase or word(s) of this ordinance shall be declared unconstitutional or otherwise invalid, such unconstitutionality or invalidity shall not affect any of the remaining sections, paragraphs, sentences, clauses, phrases and words of this ordinance since the same would have been enacted by the Board of Aldermen without the incorporation in this ordinance of any such unconstitutional or invalid portion of the ordinance.

Section Four

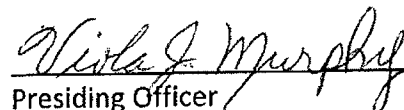
This Ordinance shall be in full force and effect from and after final passage and approval.

PASSED BY THE BOARD OF ALDERMEN FOR THE CITY OF COOL VALLEY THIS 22ND DAY OF OCTOBER, 2014.

Ayes: M. JOHNSON, F. BLACKWELL, A. ROBINSON

Nays:

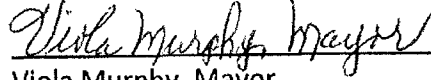
Absent: D. JOHNSON


Presiding Officer

Attest:


Deborah Jones-Daniels, City Clerk

APPROVED THIS 22ND DAY OF OCTOBER, 2014.


Viola Murphy, Mayor

Attest:


Deborah Jones-Daniels, City Clerk