



Legislation Text

File #: Ord 15-60, **Version:** 1

Amending Chapter 84 of the Administrative Code establishing a dollar threshold for applicability, creating a set-aside program for CERT certified businesses and establishing penalties for failure to establish good faith efforts to establish vendor outreach goals.

THE COUNCIL OF THE CITY OF SAINT PAUL DOES ORDAIN:

SECTION 1

Chapter 84 of the Saint Paul Administrative Code shall be amended as follows:

Sec. 84.01. Declaration of Policy and Purpose.

The ordinance is based on and responds to the information and evidence of discrimination against women and minorities documented by the study submitted by BBC Research & Consulting, September 1995, to the City of Saint Paul (City); and the disparity study submitted by the Institute on Race and Poverty, February, 1996, to the City of Saint Paul; and future disparity studies conducted for a similar purpose as it relates to information and evidence of discrimination against women and minorities. In doing so, this ordinance is intended to remedy and correct the effects of past discrimination in construction, goods, services, and professional services whose effects still burden small business enterprises (SBEs), and minority-owned business enterprises (MBEs), and women-owned businesses enterprises (WBEs) in the eCity.

This ordinance will help prevent future discrimination against vendors and contractors who provide goods and services to the eCity, or engage in the completion of construction contracts to which the eCity is or shall be a party. It is intended to further discourage and prevent discrimination on account of race or gender.

It is the policy of the eCity both (a) to attempt to provide a remedy for past underutilization of qualified minority-, and women-owned businesses and economically disadvantaged small businesses SBEs, MBEs, and WBEs, and (b) to prevent ongoing underutilization of such businesses in the eCity's contracting process, by facilitating their participation as vendors to the eCity in its purchase of goods, services, professional services, and construction of public buildings and publicly assisted projects, and its various economic development activities.

The policy of the eCity is to promote increased participation by qualified SBEs, MBEs and WBEs, minority-owned, women-owned, and economically disadvantaged small businesses in public contracting that is comparable to their availability in the Saint Paul marketplace. To this end, the eCity shall must set annual benchmarks or levels of participation for SBEs, MBEs and WBEs Minority Business Enterprises (MBE's), Women-owned Business Enterprises (WBE's), and Small Business Enterprises (SBE's) participating in eCity contracting activities based upon their current availability within the marketplace. These levels of participation shall must not be quotas. The levels that are established shall must be reviewed every three (3) years, and the participation of such businesses shall must be reviewed every three (3) years, to insure ensure:

- (1) That the program does seeks no more than to remedy the effects of past discrimination and prevent future discrimination; and
- (2) That the program does not become over time a race- or gender-based entitlement or quota program, nor become a limitation or cap on the participation of qualified businesses.

Sec. 84.02. Short Title.

This ordinance and the program it enacts ~~shall~~ must be cited as the "Vendor Outreach Program."

Sec. 84.03. Definitions.

For purposes of this chapter, the following words and phrases ~~shall~~ must have the meanings set forth in this section, except where the context clearly indicates that a different meaning is intended.

Affiliate or subsidiary of a business dominant in its field of operation. ~~means a~~ A business that is at least twenty (20) percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in that field of operation.

Broker. ~~means a~~ A business that carries no inventory and that has no written or oral ongoing agreement with any manufacturer or manufacturer's authorized distributor to sell the products of the manufacturer. ~~This definition is not intended to include businesses who actively use just-in-time methods in their normal operation.~~

Business, or business entity. ~~means~~ Includes but is not limited to a contractor, developer, vendor, subcontractor, supplier, consultant, or provider of technical, administrative, or physical services, regardless of whether operating as an individual or organized as a sole proprietorship, partnership, joint venture, association, cooperative, corporation, or other entity which is organized for profit.

Business opportunity. Any available scope of work for which a business or business entity could be contracted with to complete.

Central CERT Certification Program (CERT). A small business certification program managed jointly by members of the CERT Collaborative. The primary goal of the CERT program is to certify small businesses to participate in local procurement opportunities.

CERT certified. To become CERT certified, a SBE, WBE or MBE must complete the application process and be found eligible for certification. CERT certification must be renewed every three years, but may be terminated if it is found that the business no longer meets the definition of a SBE, WBE or MBE.

CERT Collaborative. Entities representing the governing board of CERT.

City. ~~means~~ the City of Saint Paul, Minnesota.

Commercially useful function. ~~means a~~ A function performed by a business enterprise when it is responsible for the execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing, and supervising the work involved. Acting as a conduit to transfer funds to another business does not constitute a commercially useful function, ~~unless,~~ it is done as a normal business practice of that industry.

Construction and/or development projects. ~~means~~ This includes (a) construction and/or development projects, (b) the construction, alteration, painting or repair of a building or any structure on land;; (c) any construction, building, alteration, reconstruction, modernization or improvement of any structure;; and (d) the improvement of, or addition to, any capital asset.

Contract. An agreement in excess of \$50,000 between the City and a developer, a prime, a contractor, a manufacturer, or a vendor.

Developer. ~~means a~~ A business which contracts with or seeks to contract with the eCity for any construction and/or development project in which the contractual documents therefor provide that either the eC ity or the Housing and Redevelopment Authority of the City of St. Paul, Minnesota ("HRA") (a) will receive, at any time, legal or equitable title to the land, or any building or structure thereon, which is part of such project, excluding title or property interests to or for public rights-of-way for pedestrian or vehicle transit, ingress or

gress; or (b) is obligated to issue general obligation bonds, or provide financing supported by a full faith and credit pledge.

Director. means ~~t~~ The ~~d~~Director of the department of ~~h~~Human ~~r~~Rights and ~~e~~Equal ~~e~~Economic ~~o~~Opportunity and his or her designees.

Dominant in its field of operation. means a A business having gross revenues that exceed (a) the Minnesota Department of Administration Standard Industrial Classification (SIC) Code North American Industry Classification System ("NAICS") code revenue size standard for its (SIC) (NACIS) category; or (b) another revenue size standard adopted by the CERT Collaborative.

Franchise, or franchised business. means a A business operated under an operating agreement obtained from a ~~franchiser~~ franchisor to conduct a business where the ~~franchiser~~ franchisor retains the right to (1) direct, or set requirements for, certain elements of the business; or (2) receive compensation for use of the franchise or the goodwill or business name; and or (3) where the ~~owner~~ franchisee does not bear the full risk and responsibility for the performance of the business.

Goods and services. means and ~~i~~ Includes but is not limited to: (a) materials, supplies, equipment, all things which are movable, and all tangible personal chattels, whether or not intended or suitable for becoming a fixture when attached to real property; (b) labor and work; and (c) services of any kind, including consultant, trade, technical, artistic, and professional services.

Joint venture. means a An association of two (2) or more persons or businesses to carry out a single business enterprise for profit for which purposes they combine their property, capital, skills, knowledge and management in an agreed-to proportionate share.

Manufacturer. means a A business that makes or processes raw materials into a finished product.

Manufacturer's representative. means a A business that has an agreement with one (1) or more manufacturers or manufacturer's authorized distributors to sell the products of the manufacturer, but that is not an employee of the manufacturer, and in which the owner does not bear the full risk and responsibility for the performance of the business and the products and services offered.

Marketplace. means ~~t~~ The geographical area of the Minnesota counties of Anoka, Benton, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Stearns, Washington, and Wright; and the Wisconsin counties of Pierce and St. Croix.

Minority. means a A citizen of the United States or lawfully admitted permanent resident who is Asian-American, Native American, African-American, or Hispanic.

MBE, or ~~m~~Minority-owned ~~b~~Business ~~e~~Enterprise (MBE). means a A qualified small business enterprise (SBE) located in the marketplace or doing business in the marketplace at the time of ~~bid opening~~ or solicitation, grant application submittal, or any other submittal that may lead to a contract with the City. Such business must (a) which is be at least fifty-one (51) percent owned by one (1) or more minority persons, or, in the case of any publicly owned business, at least fifty-one (51) percent of the stock is owned by one (1) or more minority persons; and, (b) ~~whose~~ have its management and daily business operations are controlled by one (1) or more minority persons who own it.

NAICS, or NAICS Code. The North American Industry Classification System Code as promulgated and maintained by one (1) or more agencies or departments of the United States, and includes any code or system which replaces or succeeds the code in existence on July 1, 1997. It also includes classification codes promulgated and maintained by the American Institute of Architects or other organizations concerned with contracting which, in the discretion of the Director, are deemed more useful or suitable for carrying out the purposes of this chapter.

NIGP Code. The National Institute of Governmental Purchasing Commodity Services Code which classifies products and services procured by State and local governments.

Prime, or prime contractor. means a A business engaging in construction and/or development projects by

contractual agreement, or in prime contracts, with the eCity. The terms also include a developer who or which may enter into a contract with the eCity for a particular construction and/or development project, and which necessarily contemplates that the developer will also enter into other or further contracts for the completion of the said project.

Prime contract means a A contract with a prime contractor for the completion of a construction and/or development project, as to which it is reasonably likely that the prime contractor will use, contract with, or seek bids, quotes, grant proposals, requests for information, requests for proposals, request for qualifications ("solicitations") from, one (1) or more subcontractors. A prime contract also includes a contract with a developer, where such contract or the particular "construction and/or development project" necessarily contemplates that the developer will enter into other or further contracts for the completion of the project.

Principal place of business means ~~t~~ The primary physical location at which or from which a business performs, is maintained, or operates.

Small ~~b~~Business ~~e~~Enterprise (SBE) means a A business entity whose principal place of business is in the marketplace that:

- (1) Is not a business dominant in its field of operation, nor an affiliate or subsidiary thereof; and
- (2) Is not a broker, or a manufacturer's representative, does not operate as a franchise or under a franchise operating agreement, and is not a business in which the owner is also owner or part owner of one (1) or more businesses that is dominant in the same field of operation; and
- (3) Is not a business whose gross revenues exceed those established for its Standard Industrial Classification (SIC) code NAICS code, as adjusted by the department of administration of the state pursuant to statute The Department will publish the applicable size standard; and
- (4) Performs a commercially useful function; and
- (5) If it has been in operation for less than one (1) year, must be able to provide reasonable evidence in form satisfactory to the Director ~~manager~~, showing that it (a) has an established record of generating revenue while performing the business function represented in its application for certification; or, (b) if a professional service, showing that it possesses applicable licenses or professional certifications or credentials.

SIC, or SIC Code means the Standard Industrial Classification code as promulgated and maintained by one (1) or more agencies or departments of the United States, and includes any code or system which replaces or succeeds the code in existence on July 1, 1997. "SIC" or "SIC Code" shall also include classification codes promulgated and maintained by the American Institute of Architects or other organizations concerned with contracting which, in the discretion of the director, are deemed more useful or suitable for carrying out the purposes of this chapter.

Solicitation. Quotes, grant proposals, requests for information, requests for proposals, requests for qualifications, or any other type of solicitation.

Subcontract. An agreement between the subcontractor and a developer, prime contractor, or a manufacturer.

Subcontractor. A business which contracts with, or seeks to contract with, a developer, a prime contractor, or a manufacturer to assist in completing any services, construction, or provide any goods on a construction and/or development project.

Vendor. means a A business selling goods and or services to the eCity, as well as other services. This includes including, but not limited to, construction and/or development projects, grants, franchise agreements, or construction projects for which there will be no subcontracts.

Vendor contract. means a A contract with a vendor as to which the vendor will not use, contract with, or seek bids from, subcontractors. This may include, but is not limited to, grants awarded with the City where

scopes of work may be available for CERT certified vendors, SBE's, MBE's and WBE's.

~~WBE, or a Women-Owned Business Enterprise.~~ means a A qualified small business enterprise (SBE) ~~concern~~ located in the marketplace or doing business in the marketplace at the time of bid opening or solicitation or grant application submittal or any other submittal that may lead to a contract with the City. Such business must (a) which is be at least fifty-one (51) percent owned by one (1) or more women, or, in the case of any publicly owned business, at least fifty-one (51) percent of the stock is owned by one (1) or more women; and, (b) whose have its management and daily business operations are controlled by one (1) or more women who own it.

Sec. 84.04. Applicability.

- (a) The provisions of this ordinance shall be liberally construed for the accomplishment of its policies and purposes. The provisions apply to all contracts which are awarded or entered into by the eCity. This includes, but is not limited to, including vendor contracts and prime contracts, except as may be hereinafter specifically exempted, and shall be liberally construed for the accomplishment of its policies and purposes.
- (b) Any bid response to a solicitation, as to which there is or has been a material lack of compliance with the requirements of this Chapter 84 by any bidder, shall be deemed to be an unresponsive bid, and s Such lack of compliance shall be a sufficient basis for the rejection of that bid response to a solicitation by the dDirector.
- (c) Every contract covered by this chapter, which is entered into without bidding, shall include provisions which:
- (1) (a) obligate the prime contractor, developer, and vendor to fully comply with the applicable outreach requirements imposed in this chapter;
 - (2) (b) provide that failure to so comply is a breach of such contract; and
 - (3) (c) provide remedies for such breach.
- (d) Exemptions to this ordinance include:
- (1) Contracts for which there are no business opportunities, including professional services;
 - (2) Contracts where the only business opportunities available are for highly specialized scopes of work where fewer than 5 businesses in the country provide such services; and
 - (3) Contracts where this ordinance is in direct conflict with the federal Disadvantaged Business Enterprise program. Such instances may include the construction of bridges or other highway heavy construction receiving funding from the Department of Transportation or passed through the Minnesota Department of Transportation.

Sec. 84.05. Administration.

- (a) The dDirector shall direct and administer the Vvendor Outreach Pprogram.
- (b) The dDirector may contract with other governmental agencies to administer programs for such other agencies which are similar to the Vvendor Outreach Pprogram, provided that the eCity is fully protected from liability and risk of loss arising out of such contract or contracts. The Ddirector may also contract with nongovernmental agencies for the administration of all or part of the Vvendor Outreach Pprogram.
- (c) All departments and offices of the eCity shall share in the responsibility for accomplishing the policy and purposes of the Vvendor Outreach Pprogram. The mMayor may, by administrative order, provide for additional activities and reports in furtherance of said program. In particular, the dDirector shall work

jointly with other eCity departments and offices to establish levels of utilization of CERT certified SBEs, MBEs and WBEs in and for professional services contracts, vendor contracts, and or any other categories of purchases or contracts that may help the eCity to accomplish the overall purpose of the program.

Sec. 84.06. Establishment of desired levels of participation.

- (a) *Annual participation.* In consultation with each eCity department and office, the dDirector shall establish, as provided in this section, on an annual basis, the desired levels of participation of CERT certified SBEs, of MBEs, and of WBEs in vendor contracts and prime contracts for the next fiscal year, expressed as a percentage, for each, of the reasonably anticipated total dollar amount of all such contracts. Such levels of participation shall may be adjusted, from time to time during the course of the year as may be necessary, based on changes in the availability of SBEs, MBEs and WBEs in the marketplace.
- (b) *Adjustments for individual prime contracts.* The Ddirector shall also establish and/or, where appropriate, modify levels of participation by subcontractors or vendors, which may be more or less than the annual levels established in subsection (a) above, for individual prime contracts, taking into account the total dollars of the contract and the dollars in the contract which may reasonably be expected to be subcontracted available as business opportunities for CERT certified SBEs, MBEs, and WBEs. In setting such level of participation, the dDirector shall also take into account and remove from consideration those amounts and works under the contract and subcontracts which cannot be performed or supplied by subcontractors which are certified as eligible for participation in the vendor outreach program CERT certified SBEs, MBEs, and WBEs. Such levels of participation shall be established by SIC NAICS Code where appropriate, and the Ddirector shall indicate which codes included within the definition of SIC NAICS Code are being used and for what purposes.
- (c) *Factors.* In setting levels of participation of SBEs, MBEs, and WBEs, whether annually under subsection (a) above or for individual prime contracts under subsection (b) above, the dDirector shall endeavor to arrive at the number of such businesses (i) which are currently available in the marketplace and which are qualified to do the particular work required by the eCity contract, and (ii) which would reasonably be expected by normal economic and business operation and market forces to participate in such vendor contracts and prime contracts, in the absence of present discrimination or the effects of past discrimination.
- The dDirector shall may consider the following factors in establishing levels of participation:
- (1) The practical, as opposed to theoretical, availability of SBEs, MBEs and WBEs ("such businesses" in this subsection) in the marketplace;
 - (2) The particular goods and services, or construction or development projects, for which such businesses are available;
 - (3) The past levels of participation of such businesses in eCity vendor contracts or as subcontractors in eCity prime contracts;
 - (4) The reasonably anticipated number and amount and type of eCity vendor contracts and subcontracting opportunities in eCity prime contracts for the next fiscal year;
 - (5) Whether the reasonably anticipated contracts are for goods or services, or construction contracts, for which there are few or no such businesses available or qualified to do the particular work, or to do subcontracts;
 - (6) Whether such businesses will be able to obtain necessary bonds, insurance policies, and equipment or personnel required to perform such eCity vendor contracts or subcontracting on prime contracts;

- (7) As to professional services, the levels of participation for SBEs, MBE, and WBEs, providing goods, services, or professional services, that are established by other eCity departments and offices similarly structured government entities in the City's marketplace that have completed recent disparity studies;
 - (8) Whether the previous year's goals were surpassed and if the goal must be increased to accurately reflect the availability in the marketplace;
 - (9) Whether the reasonable and necessary requirements of the contract render subcontracting or other participation of business other than the bidder or proposer infeasible;
 - (10) Whether a public or administrative emergency exists which requires the goods or services, or construction or development project, to be delivered or performed with unusual immediacy;
 - (11) Whether the number of ~~certified~~ SBEs, MBEs or WBEs providing the services required by the contract are so few as to render them unavailable in practical terms, despite attempts to locate them; and
 - (12) Whether the application of the provisions of this ordinance will impose an unwarranted risk on the eCity or unduly delay acquisition of the goods or services, or completion of the construction or development project.
- (d) Availability shall be construed as broadly as is lawful and reasonably possible in order to effectuate the goals of this ordinance.
- (e) And the ~~d~~Director shall develop and administer a program to assist certified businesses to obtain bonding and insurance.
- (f) Unmet levels of participation. In the event that the number and dollar amount of vendor or prime contracts awarded to CERT certified SBEs, MBEs, and WBEs does not rise to the levels of participation that were established under this section, the Director shall re-examine the procedures used by the Director and other City officials for the proceeding and award of contracts. Where appropriate, the Director may seek other changes in the procedures by ordinance or administrative order.

Sec. 84.07. Certification of businesses.

- (a) *Requirement; ~~two~~ three years.* Any SBE, MBE, or WBE (business) ("such business" or "such businesses" for the remainder of this section) which seeks to participate in, or avail itself of the benefits of, the ~~v~~Vendor ~~e~~Outreach ~~p~~Program, must first be CERT certified. Once CERT certified, the certification is valid for the following ~~two~~ (2) three (3) calendar years and, thereafter, renewable for ~~two~~ three-year periods by recertification.
- (b) *Application.* Such business shall file an application with the ~~d~~Director, and provide ~~such~~ information on ~~such~~ forms as the ~~d~~Director may reasonably require. The ~~d~~Director may require information:
- (1) Related to, or ~~T~~ that will establish that such business meets and will continue to meet the definition of an CERT certified SBE, MBE or WBE, as the case may be, for the entire period of certification;
 - (2) That delineates the availability and qualifications of such business;
 - (3) Concerning ~~T~~ the areas of eCity vendor contracts or prime contracts such business seeks; and
 - (4) Conveying ~~T~~ the number and dollar amount of past eCity contracts it has been a party to or participated in as a subcontractor.
- (c) *Certification of another jurisdiction ("reciprocal applications").* The ~~d~~Director may, in his or her sole discretion, waive all or part of the application process, and waive the submission of information required thereunder, as to any such business which has been certified under a program materially similar to the ~~v~~V

endor eOutreach pProgram. The burden is on the applicant to furnish a copy of the application and supporting information from the other program, and to demonstrate to the satisfaction of the dDirector that the guidelines and requirements of the other program are substantially similar to those required under the vVendor eOutreach pProgram. This authority is not intended to amend, modify or rescind, in whole or in part, any agreements that may exist to engage in a joint certification process with other governmental entities.

- (d) *Joint applications.* The dDirector may cooperate with any other governmental entity having a program materially similar to the vVendor eOutreach pProgram in providing for a joint or mutually acceptable application process.
- (e) *Change in circumstances.* If the dDirector is put on notice, or has reason to believe that any such business no longer meets the qualifications of a SBE, MBE, or WBE, the Director reserves the right to conduct an investigation in order to verify that the business is still eligible for CERT certification. During the investigation, the Director reserves the right to request documentation from the SBE, MBE, or WBE to exhibit that it meets the qualifications for the CERT certifications for which it was approved. If, during or after the investigation, the SBE, MBE, or WBE is found to no longer meet the definition of the corresponding certification, the Director may immediately terminate the business' certification(s). determines that any such business no longer meets the definition of SBE, MBE or WBE, as the case may be, the director may terminate the certification of such business. Each such business, which has been certified, is and remains under a continuing obligation to report to the dDirector any change in circumstances affecting it that would cause it not to meet the appropriate definition.
- (f) *Material misstatement of fact.* If the dDirector determines that any such business made a material misstatement of fact in its application for certification or in any information submitted in support of the application, whether intentional or by mistake, the dDirector may determine either not to certify such business for participation in the vVendor eOutreach pProgram, or to terminate the certification of such business if already granted.
- (g) *Periodic review.* The certification for each such business may be reviewed periodically by the dDirector to determine that it continues to be eligible for certification and meets the definitions of an CERT certified SBE, MBE or WBE, as the case may be, but such review shall take place at least every two (2) three (3) years after its initial certification. The dDirector may require each such business which has been certified to submit all information necessary to verify the continued eligibility of such business, and the failure of such a business shall automatically terminate its eligibility to participate in the vVendor eOutreach pProgram.
- (h) *Inspection.* The dDirector is hereby authorized to verify that the CERT certified SBEs, MBEs or WBEs working on any cCity vendor contract or on any city prime contract are CERT certified, remain eligible and certified, actually performing the work, and otherwise in compliance with the vVendor eOutreach pProgram. Such verification may be made by on-site inspection, requesting written information from the bidder or the subcontractor, or by such other means as may be reasonable.
- (i) *Access to records.* Each CERT certified SBE, MBE or WBE shall, upon request of the dDirector, permit access during normal business hours to its business work site, records, and files as needed to determine conformance with program requirements herein.
- (h) *Targeted vendor development program.* A business which is registered as a "targeted vendor" pursuant to section 81.07, Saint Paul Administrative Code, on the effective date of this ordinance shall be certified as an SBE, MBE, or WBE, as the case may be, and shall be included in the vendor outreach program for a period of six (6) months following the effective date of this ordinance. The director shall notify all such targeted vendors of the provisions of this ordinance. During such six-month period, all such targeted vendors which wish to be further certified shall make request to be further certified in conformity with the requirements of this subsection. Upon receipt of such a request, the director shall review any materials previously filed to determine compliance with certification requirements. Where current materials are insufficient to determine compliance, additional materials may be requested. Any targeted vendors

failing to submit a request to continue, or failing to submit all additional materials which may be requested by the director, will be terminated and will have to submit to a new certification process.

Sec. 84.08. Prime contract bid requirements.

- (a) *Evidence of compliance with bid documents.* Before the bid is awarded, ~~E~~ each apparent low bidder on a eCity prime contract having a vVendor oOutreach pProgram goal as a material term is required to submit evidence with the bid document demonstrating compliance with and commitment to the Vendor oOutreach Program goal or, alternatively, within ten (10) days after the bid opening date. Such evidence must exhibit compliance with and commitment to the outreach goal or good faith efforts exhibiting why the goal will not be attained. Such good faith efforts must be in accordance with Section 84.11 below. Before the bid is awarded to it, each apparent low bidder shall submit evidence of its compliance with the requirements of the vVendor oOutreach pProgram. The Director may prescribe forms on which bidders may provide evidence of compliance with the Vendor Outreach Program, along with evidence of compliance with the outreach efforts listed in subparagraph c, specifically (6) and (9) on such forms as the director may prescribe. Such forms may include a certification by the bidder that the bidder will not use any subcontracts on the particular job. The bid may be rejected as being nonunresponsive if the bidder has not otherwise complied with the above outreach requirements of the Vendor Outreach Program as required by this section 84.08.
- (b) *Commitment to goal.* Before the bid contract is awarded, an apparent low bidder on a prime contract must submit evidence that it has or will enter into binding contracts with CERT certified subcontractors whose contract dollar amounts meet or exceed the levels of participation established for that prime contract. This evidence shall constitute a material term of the prime contract if awarded. A subcontractor or vendor is CERT certified for the purpose of this subsection if it is CERT certified before the award of the contract, or before the end of the contract. If such bidder prime contractor submits the name of a proposed subcontractor to satisfy this program, and the subcontractor is not certified before the award of the bid contract, the dollar amount of that subcontract will not be counted in determining the level of participation of CERT certified SBEs, MBEs and WBEs, and the bid may be rejected as being unresponsive if the bidder has not otherwise complied with the above outreach requirements of the vendor outreach program as required by this section 84.08. If, however, a business listed at SBE, MBE or WBE is not CERT certified before the award of the contract, but becomes CERT certified before the end of the contract, it may, at time of CERT certification approval, count towards the level of participation. Bidders Prime contractors shall not count toward the desired level of participation any agreements with businesses that are not located within the marketplace or otherwise do not meet the guidelines as set forth in this ordinance. The bidder prime contractor may include first and second tier subcontractors and suppliers as meeting the desired levels of participation.
- (c) *Outreach good faith efforts factors.* A bidder not binding itself to the established outreach goal may be classified as a responsive and responsible bidder if it documents and establishes to the city that it engaged in the following good faith efforts:
- (1) List each possible subcontract opportunity in the prime contract, indicating where possible the SIC Code of such work, seeking the assistance of the director in ascertaining such subcontract opportunities.
 - (2) Obtain a current list of certified SBEs, MBEs and WBEs from the director, which list shall contain where available the applicable SIC Code or codes for such businesses.
 - (3) Attend all pre-bid conferences to obtain information about the vendor outreach program, the levels of participation of certified SBEs, MBEs and WBEs, and the outreach requirements herein.
 - (4) Request assistance from minority and women community organizations, minority and women contractor groups, or other organizations that provide assistance in the recruitment and placement of

SBEs, MBEs or WBEs.

- (5) Obtain a current list of minority and women publications from the director.
- (6) Solicit bids from certified SBEs, MBEs and WBEs, which have been identified by the director in consultation with the bidder as being available and capable of performing the necessary work, for the subcontracts within the prime contract at least ten (10) days prior to bid opening, by phone, advertisement in a local paper and the relevant minority publications on the list obtained from the director, or other means specified by the director, by written notice to the bidder. The bidder for the prime contract must solicit bids from a minimum of five (5) such certified businesses for each subcontract within the prime contract, by SIC Code where available and applicable. If the applicable certified list, using the SIC Code or codes where available, is five (5) or fewer, such bidder must contact the entire list.
- (7) Provide plans and specifications or information regarding the location of plans and specifications to certified SBEs, MBEs or WBEs.
- (8) Where applicable, advise and make efforts to assist interested SBEs, MBEs and WBEs to obtain bonds, lines of credit, or insurance required to perform the contract.
- (9) Submit documentation if bids from certified SBEs, MBEs or WBEs were rejected, giving the complete basis to the certified vendor for the rejection and evidence that the rejection was justified.
- (10) Bidders on prime contracts who continuously list the same certified SBEs, MBEs and WBEs as having been contacted and listed as unavailable, when contact has previously been unsuccessful as a result of disconnected phone numbers or returned mail, will not be deemed to be in compliance with the outreach requirements.

Sec. 84.09. Vendor contract requirements.

- (a) Applicable requirements. The Vendor Outreach Program is applicable in both publicly bid and non-publicly bid opportunities.
- (b) Evidence of compliance. City vendor contracts having a Vendor Outreach Program goal as a material term are required to submit evidence upon entering the contract demonstrating compliance with and commitment to the Vendor Outreach Program goal. Such evidence shall exhibit efforts to engage and incorporate SBEs, MBEs, and WBEs on the contract where business opportunities are available. Upon engaging in a contract with the City, vendors engaged in vendor contracts must demonstrate their efforts to include SBEs, MBEs, and WBEs. This may be demonstrated by:
 - (1) Exhibiting a history of working with SBEs, MBEs, and WBEs;
 - (2) Providing specific plans of what SBEs, MBEs, and WBEs will be contracted with for the project;
 - (3) Providing a list of SBEs, MBEs, and WBEs contacted for purposes of engagement on the project; and/or
 - (4) Other evidence, as deemed satisfactory by the Director, exhibiting the vendor's dedication to incorporating SBEs, MBEs, and WBEs on its project.
- (c) Commitment to goal. As contracts with SBEs, MBEs, and WBEs are finalized, vendor must submit updated documentation of all businesses working on the project, both non-CERT certified and CERT certified businesses. If, at any time, the established Vendor Outreach Program goal is not being met, then the vendor must submit good faith efforts as described in Section 84.11.

Sec. 84.09 10. ~~Vendor contract requirements.~~ Director compliance and outreach requirements.

- (a) *Director compliance.* The ~~d~~Director shall, consistent with applicable laws and statutes relating to competitive bidding and awards of contracts to the lowest responsible bidder or vendor contracts awarded, seek where possible and lawful to award a portion of ~~vendor contracts~~ to CERT certified SBEs, MBEs and WBEs, in accordance with the annual levels of participation for such businesses established pursuant to section 84.06 above.
- (b) *Small business set-aside program.* In accordance with achieving the annual levels of participation, CERT certified SBEs, MBEs, and WBEs may become eligible to be solicited for contracts falling within the categories noted below, provided that any award based on a negotiated price shall not exceed by more than five percent the municipality's estimated price for the goods and services if they were purchased on the open market and not under the set-aside program.
- (1) *Applicability.* This "small business set-aside program" provision only applies to City departments' procurement processes.
- (2) *Contracts exceeding \$25,000 but not \$100,000.* If the amount of the contract is estimated to exceed \$25,000, but not to exceed \$100,000, the contract may be made either upon sealed bids, by direct negotiation, or by other means, by obtaining two or more quotations for the purchase or sale when possible, with at least one quote to a CERT certified vendor, and without advertising for bids or otherwise complying with the requirements of competitive bidding. First consideration will be given to a CERT certified vendor if its quotation is within 5% of the lowest quote received. All quotations obtained must be kept on file for a period of at least one year after receipt.
- (3) *Contracts \$25,000 or less.* If the amount of the contract is estimated to be \$25,000 or less, the contract may be made either upon quotation or in the open market, in the discretion of the governing body. If the contract is made upon quotation it shall be based, so far as practicable, on at least two quotations, with at least one quotation to a CERT certified vendor. First consideration will be provided to the CERT certified vendor if its quotation is within 5% of the other quotation received. All quotations must be kept on file for a period of at least one year after their receipt. Alternatively, municipalities may award a contract for construction, alteration, repair, or maintenance work to the vendor or contractor offering the best value under a request for proposals.
- (c) *Outreach requirements.* The ~~d~~Director shall engage in one (1) or more of the following outreach steps in order to achieve the desired level of participation for all ~~e~~City vendor contracts:
- (1) Solicit bids, proposals or quotations from CERT certified SBEs, MBEs and WBEs for the vendor contracts prior to bid opening by phone, advertisement in a local paper, or other means.
- (2) Provide plans and specifications or information regarding the location of plans and specifications to CERT certified SBEs, MBEs or WBEs.
- (3) Request assistance from minority and women community organizations, minority and women contractor groups, or other organizations that provide assistance to such minority and women contractor groups in the recruitment and placement of SBEs, MBEs or WBEs.
- (4) Where applicable, advise and make efforts to assist interested SBEs, MBEs and WBEs to obtain bonds, lines of credit, or insurance required to perform the contract.
- (5) Prepare and maintain documentation if bids from CERT certified SBEs, MBEs or WBEs were rejected, giving the complete basis for the rejection and evidence that the rejection was justified.
- (c) *Unmet levels of participation.* In the event that the number and dollar amount of vendor contracts awarded to SBEs, MBEs and WBEs does not rise to the levels of participation that were established under section 84.06 of this ordinance, the director shall reexamine the procedures used by the director and other

eCity officials for the processing and award of contracts. Where appropriate, the director may seek changes in such procedures by ordinance or administrative order.

Sec. 84.10 11. Good faith efforts, consequences of failure.

- (a) Good faith efforts required. On any contract with the City where a contracting party has failed to meet the established level of certified vendor participation, good faith efforts to meet such levels must be shown. Levels of certified vendor participation are evaluated throughout the duration of the contract.
- (b) Factors to be considered. When determining whether a good faith effort has been established the City will consider all relevant efforts, including but not limited to the following factors:
- (1) List each possible subcontract opportunity in the contract, indicating where possible the NAICS Code (or NIGP Code) of such work, seeking the assistance of the department in ascertaining such subcontract opportunities.
 - (2) Obtain access to the CERT Certified Vendor Online Directory or an exported list of the CERT certified businesses from CERT staff and search for current CERT certified SBEs, MBEs and WBEs.
 - (3) Attend all pre-bid and pre-construction conferences to obtain information about the Vendor Outreach Program, the levels of participation of CERT certified SBEs, MBEs, and WBEs, and the outreach requirements herein.
 - (4) Request assistance from local small business related organization; minority and women community organizations; minority and women contractor groups; or other organizations that provide assistance in the recruitment and placement of SBEs, MBEs, and WBEs.
 - (5) Solicit bids from CERT certified SBEs, MBEs and WBEs, which have been identified as being available and capable of performing the necessary work for the business opportunity within the contract within sufficient time for such business to provide a response, but at no time less than (10) business days prior to bid opening, by phone, fax, electronic mail, internet or other social media.
 - (6) Advertising available business opportunities in local papers, minority publications, and women publications.
 - (7) Solicit bids from a minimum of three (3) such certified businesses for each business opportunity available within the contract. Bidders who continuously list the same certified SBEs, MBEs and WBEs as having been contacted and listed as unavailable, when contact has previously been unsuccessful as a result of disconnected phone numbers or returned mail, will not be deemed to have made good faith efforts.
 - (8) Provided plans and specifications; information regarding the location of plans and specifications; or other necessary information regarding the opportunity to SBEs, MBEs and WBEs in a timely manner.
 - (9) Where applicable, advise and make efforts to assist interested CERT certified SBEs, MBEs and WBEs to obtain bonds, lines of credit or insurance, or other potential capacity barriers required to perform the contract.
 - (10) Submit documentation if responses from CERT certified SBEs, MBEs or WBEs were rejected, giving the complete basis for the rejection and evidence that the rejection was justified.
 - (11) Encourage potential SBE, MBE and WBE candidates to become CERT certified.
- (c) Failure to meet good faith efforts.
- (1) A contracting party who fails to meet established goals and provide sufficient good faith efforts shall be subject to a penalty, the amount of which shall be calculated as follows:

The difference between the established Vendor Outreach Program goal based off of the available business opportunity on the contract that failed to establish good faith efforts and the actual goal achieved/actual amount contracted with CERT certified businesses.

- (2) Additionally, a contracting party who fails to meet established goals and provide sufficient good faith efforts on a project will be deemed a non-responsible bidder and placed on a list of ineligible bidders for a period of one year. During the period of ineligibility, the contracting party may request a review of its subsequent efforts to work with SBEs, MBEs, and WBEs on projects with other entities within the Marketplace for the purpose of being removed from the list and reinstated as an eligible bidder.
- (3) A contracting party found to have failed to provide good faith efforts shall be notified in writing of the determination. The notice must contain the amount of penalty being imposed, the date upon which placement on the ineligible list occurs, and the method for appealing the determination.

Sec. 84.1012. Monitoring and Reporting.

- (a) *Inspection.* The dDirector is hereby authorized to verify that the certified SBEs, MBEs or WBEs working on any eCity vendor contract or on any city prime contract are certified, remain eligible and certified, actually performing the work, and otherwise in compliance with the vendor outreach program. Such verification may be made by on-site inspection, requesting written information from the bidder or the subcontractor, or by such other means as may be reasonable.
- (b) *Access to records.* Each certified SBE, MBE or WBE shall, upon request of the dDirector, permit access during normal business hours to its business work site, records, and files as needed to determine conformance with program requirements herein.
- (c) *City reports.* Each eCity department and office and the HRA shall prepare reports documenting the levels of participation established for professional service agreements, and other contracts for the particular fiscal year, the results of their efforts to meet those goals, and the level of participation goals set for the following fiscal year. The dDirector shall prepare reports documenting goals established for development and other grant projects under its jurisdiction, and the results of its efforts to meet those goals.
- (d) *Report of the dDirector.* The dDirector shall annually submit a report to the mMayor, eCity eCouncil, and the hHuman rRights and eEqual eEconomic oOpportunity eCommission summarizing the information gathered pursuant to this section, including information about any other activities undertaken by or on behalf of the eCity to further the objectives of the vVendor eOutreach pProgram. The report shall be published and made available to program participants and other interested parties.

Sec. 84.1113. Business development.

- (a) *Reserved.*
- (b) *Support for CERT certified SBEs, MBEs and WBEs.* The Director of the Department of Planning and Economic Development shall undertake and/or facilitate any other activities to enhance the viability of CERT Certified SBEs, MBEs and WBEs, in the marketplace that are authorized by law or program. Such activities may include, but are not limited to, mentoring, technical assistance programs, advocacy efforts, encouraging joint venture formation, collaboration with organized labor, and providing financial assistance.

Sec. 84.1213. Misdemeanor.

It shall be a misdemeanor for any person to furnish or to provide fraudulent or false information for the purpose of gaining eligibility for, or participation in, the vendor outreach program.

Sec. 84.1314. Applicability of other laws.

Nothing in this ordinance should be construed to amend, modify, affect or repeal any provision in any other ordinance or statute that would otherwise be applicable to SBEs, MBEs, WBEs, or to any person, firm or corporation bidding on or party to any contract with the City of Saint Paul.

SECTION 2

This Ordinance shall take effect and be in force thirty (30) days following its passage, approval and publication.