

(h) *Damages.* In the event of any court or other proceeding upholding the protestant's claim, any damages, including court-awarded damages accruing to the protestant or any other party shall be limited solely to proposal preparation costs. (Ord. No. 96-8, § 9, 3-26-96; Ord. No. 2002-15, § 5, 10-15-02; Ord. No. 2008-13, § 5 7-8-08)

Sec. 17-314. Suspension and debarment.

(a) *Authority.* The chief of purchasing and contracts may suspend or debar for cause the right of a vendor to be included on a vendor list and any bid or response from that vendor rejected; provided, however, the board of county commissioners shall have the power to waive or lift such suspension or debarment.

(b) *Suspension.* A vendor may be suspended for a period not to exceed two (2) years as determined by the chief of purchasing and contracts based upon the following:

- (1) Vendor defaults or fails to fully comply with the conditions, specifications or terms of a bid, quotation, proposal or contract with the county; or
- (2) Vendor commits any fraud or misrepresentation in connection with a bid, quotation, proposal or contract with the county; or
- (3) Vendor is charged by a court of competent jurisdiction with the commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract; or
- (4) Vendor is charged by a court of competent jurisdiction with the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects responsibility as a county government contractor.

If charges are dismissed or the vendor found not guilty, the suspension shall be

lifted automatically upon written notification and proof of final court disposition provided by the vendor to the county; or

- (5) Vendor becomes insolvent, has proceedings in bankruptcy instituted against it, or compounds its debts or assigns over its estate or effects for payment thereof, or has a receiver or trustee appointed over its property; or
- (6) Vendor commission of any act or omission to perform any act which is grounds for debarment; or
- (7) Vendor violates the ethical standards set forth in local, state or federal law; or
- (8) Vendor fails to comply with the M/WBE participation or M/WBE requirements of an awarded contract; or
- (9) Suspension by another government entity; or
- (10) Any other cause the chief of purchasing and contracts determines on a commercial basis to be so serious and compelling as to materially and adversely affect the capability of a business to function as a county contractor.

(c) *Debarment.* A vendor may be permanently debarred for the following:

- (1) Default or failure to fully comply with the conditions, specifications, drawings or terms of a bid, proposal or contract with the county twice in any three-year period.
- (2) Conviction by or judgment obtained in a court of competent jurisdiction for commission of those offenses in connection with the vendor's commercial enterprise stated in subsections (b)(3) and (b)(4). If the conviction or judgment is reversed through the appellate process, the debarment shall be removed immediately upon written notification and proof of final court disposition from the vendor to the county.

(d) *Decision.* After the chief of purchasing and contracts has determined to suspend or debar a vendor, the chief shall notify the vendor in writing of the debarment or the period of suspension and the reasons for the action taken. The chief of

purchasing and contracts, prior to issuance of written notification, may schedule an informational hearing with the vendor to determine if suspension or debarment is warranted.

(e) *Public entity crime.* Any vendor who has been convicted of a public entity crime as defined by F.S. § 287.133 shall not be able to transact business with the county to the extent as specified in F.S. § 287.133(3)(a).

(f) *Finality of decision.* The suspension or debarment shall be final and conclusive, unless the suspended or debarred vendor initiates protest proceedings pursuant to section 17-313 within twenty-one (21) days after the date of notification. (Ord. No. 92-26, § IV.E, 9-15-92; Ord. No. 96-8, § 10, 3-26-96)

Sec. 17-315. Inspections and tests.

(a) The chief of purchasing and contracts may inspect, or arrange for the inspection of, all deliveries of supplies, materials, equipment or contractual services to determine conformance with specifications set forth in the order of contract.

(b) Any using department which has the staff and facilities for adequate inspection may be authorized by the chief of purchasing and contracts to inspect deliveries made to it.

(c) The chief of purchasing and contracts shall have the authority to require chemical and/or physical tests of samples submitted with bids and samples of deliveries which are necessary to determine their quality and conformance with the specifications. For such tests, the chief of purchasing and contracts shall have the authority to make use of laboratory facilities of an agency of the county government or any outside laboratory. Should the product fail such testing, the county may require the vendor to pay the county for any expense incurred in testing. (Ord. No. 92-26, § IV.F, 9-15-92)

Secs. 17-316, 17-317. Reserved.

DIVISION 4. MINORITY/WOMEN BUSINESS ENTERPRISE

Sec. 17-318. Short title.

This division shall be entitled the "Minority/Women Business Enterprise Ordinance." (Ord. No. 94-02, § 2, 1-11-94)

Sec. 17-319. Definitions.

When used in this division, the following terms are to be defined and construed as follows:

American means a person who is a citizen or a permanent resident of the United States.

Bid preference program means a program whereby a selected vendor's bid is adjusted by the county for evaluation purposes.

Bid means a formal written offer by a vendor to the county to furnish specific goods and/or services at a specified price or prices in response to an invitation for bid or a multistep bidding procedure.

Board means the board of county commissioners of Orange County, Florida.

Broker means a business which purchases goods or services from another business or businesses for the sole purpose of resale to the county, or to a contractor doing business with the county, or to any subcontractor or sub-subcontractor doing work under a county contract.

Business net worth means total business assets minus total business liabilities. If the applicant owns more than one (1) business, all of the businesses are included in the calculation.

Certified or *certification* means official recognition of the minority/women business enterprise status of a business by Orange County.

Certified graduate M/WBE firm means a firm certified to participate as a graduate firm. Such firms will only be counted as M/WBE firms on projects that meet the criteria set forth in section 17-332 of this Code.

Compliance officer means the business development department manager or his or her designee.

Conduit means the minority/women business enterprise acting as a subcontractor to a contractor under a contract with the county, when the minority/women business enterprise does not perform the work under subcontract, and instead the work under the subcontract is performed by a non-minority/women business enterprise.

Construction means the process, usually requiring the professional services of an architect and/or engineer, of building, altering, repairing, improving or demolishing any structure or building, or other improvement of any kind to any real property.

Contractor means any person having a contract with the board of county commissioners.

Controlled means, for the purposes of determining whether a business is a minority-owned business enterprise or women-owned business enterprise, that the minority(ies), or the women, as the context requires, shall:

- (1) Possess legal authority and power to manage business assets, goodwill and daily operations of the business; and
- (2) Actively and continuously exercise such authority and power in determining the policies and directing the operations of the business.

County mayor means the county mayor, who is elected county-wide as per the County Charter, or his or her designee.

Credit program means the official recognition and reward to a contractor for minority/women business enterprise utilization, employment, employment training and minority/women business enterprise training on county projects; and for utilizing minority/women business enterprises on other governmental jurisdictions, and private sector projects wherein the contractor's bid or proposal can be awarded bonus points or other forms of credit or advantage in the evaluation process.

Debarment means the exclusion for cause of a vendor or contractor from bidding and/or receiving a contract to do business with the county.

Disparity study means the "Orange County Interlocal Disparity Study," dated February 24, 1993, and any subsequent updates of the same.

Emergency or emergency purchases means a procurement made in response to a requirement when the delay incident to complying with all government rules, regulations and/or procedures would be detrimental to the health, safety and welfare of the county and/or its citizens.

Front means a business which purports to be a minority/women business enterprise, but which is actually owned and/or controlled in a manner which is inconsistent with the requirements of certification.

Goal means a targeted percentage level of minority/women business enterprise participation aspired to by the county. Participation goals shall be established for the utilization of minority-owned and women-owned businesses unless prohibited by federal or state funding agencies for specific contracts.

Good faith effort (contracts) means the efforts undertaken by a contractor to obtain minority/women-owned business enterprise participation in a contract, and shall include all the following actions:

- (1) Written notice to minority/women business enterprises that provides the type of work that the contractor intends to subcontract. The notice shall be by e-mail or fax no fewer than seven (7) calendar days prior to bid or proposal opening. All e-mails shall include the legal name of the firm. The notice shall advise:
 - a. That the minority/women business enterprise's interest in the contract is being solicited;
 - b. The specific work the contractor intends to subcontract;
 - c. How to obtain information about and review of the contract plans and specifications;
 - d. Information on bonding and/or other pertinent insurance requirements;
 - e. The deadline for bid or proposal submission to the prime contractor and the bid or proposal opening date; and

f. That the prime contractor will provide the minority/women business enterprise no less than twenty-four (24) hours' notice of all addenda.

- (2) The prime contractor shall list the divisions of contract work not subcontracted and provide an explanation why the M/WBE goals were not achieved.
- (3) Follow-up of initial submittals of interest by contacting minority/business enterprises and document using a contract log, which shall include the firm's name address, contact information (e-mail, telephone and/or fax numbers), scope of work requested, the date, name of person making the effort, denote if M/WBE will bid, time quote received and notes denoting if plans and specs were sent. Each bidder shall use the standardized contract log.
- (4) Where a non-minority/non-woman contractor is listed for work for which a minority/women business enterprise availability exists, the prime contractor shall submit all quotations received from minority/women business enterprises and the listed contractor within twenty-four (24) hours, if one (1) of the three (3) apparent low bidders. The prime contractor shall provide an explanation as to why the minority/women quotations were not accepted. Receipt of a lower quotation from a non-minority/non-women business enterprise prior to or at the time of bid opening will not in itself excuse a contractor's failure to meet contract goals. However, a contractor's good faith effort obligation does not require a contractor to accept a quotation from a minority/women business enterprise which is an unreasonable price. For the purpose of this subsection, "unreasonable price" means a price above (or below) competitive levels which cannot be attributed to the minority/women business enterprise's attempt to cover costs inflated by the present effect of discrimination.
- (5) Contractor shall contact the business development division staff as a resource to obtain M/WBE participation.

Good faith effort (employment) means an honest attempt to meet the county's minority and women employment goals. Factors to be considered in determining good faith effort (employment) are as follows:

- (1) The equal employment opportunity work force schedule complete and in the bid package;
- (2) Where the level of employees does not meet the county minority and women employment goals, the contractor has set forth its plans to meet those goals;
- (3) Nonworking training hours of minority/women apprentices and trainees can be counted toward the goals, if such minority/women apprentices or trainees are employed by the contractor during the training period and the contractor has made a commitment to employ the minority/women apprentices or trainees at the completion of their training, subject to the availability of employment opportunities;
- (4) A diversification plan that outlines specific actions to ensure equal employment opportunity to include, but not be limited to: a work environment free from harassment, intimidation or coercion; a current list of minority and women recruitment sources and community sources and a provision for written notification to these sources when employment opportunities are available; a current file of applicants and the action taken with respect to each applicant; written notification when the union referral process has impeded the contractor's effort to meet its obligation; on the job training opportunities and/or training programs, within the contractor's firm, for the area which expressly includes minorities and women;
- (5) The contractor has provided notice of these training programs and employment opportunities to the recruitment sources and the county minority/women business enterprise department;
- (6) The contractor disseminates the equal employment opportunity policy and re-

quests assistance in meeting these equal employment opportunity obligations by including it in any policy manual and collective bargaining agreement, by publicizing it in the company newspaper, annual report, by specific review of the policy with all management personnel and with all minority and female employees and by posting the equal employment opportunity policy on bulletin boards accessible to all employees;

- (7) The contractor's recruitment efforts, both oral and written, have been directed to minority and female organizations, schools and to its own minority and female employees;
- (8) The contractor has designated a responsible official to monitor all employment related activity to ensure that the equal employment opportunity policy is being carried out.

Good faith effort credit means that if a contractor fails to meet requirements (1) through (4) of the above-mentioned good faith effort (contracts), then the contractor will be permitted to substitute one (1) of the following with documentation showing that:

- (1) The Disney Entrepreneur Center (DEC) was used to host a workshop that informed M/WBE firms how to better prepare for subcontracting opportunities;
- (2) The contractor has participated in Orange County Business Development Division's sponsored "How to do Business" workshop;
- (3) The contractor has sponsored a match-maker event with certified M/WBE firms. Orange County Business Development Division will determine the usage of this substitution, alone with the appropriate time frame for utilizing this credit.

Goods means any tangible personal property as distinct from services or real property.

Joint venture means an association of two (2) or more businesses:

- (1) That is contractually formed to carry out a single business project or contract or enterprise for profit;
- (2) For which purpose the businesses combine their expertise, property, capital, efforts, skills, and knowledge and share contractual obligations, responsibilities, liabilities and profits;
- (3) That is approved by the compliance officer; and
- (4) One (1) of the businesses of which must be a certified minority/women-owned business enterprise.
- (5) Capable of obtaining bonding/insurance under the joint venture firm's name as required by the county.

Minority means:

- (1) "African Americans," which includes persons having origins in any of the black racial groups of Africa;
- (2) "Hispanic Americans," which includes persons of Spanish or Portuguese culture with origins in Mexico, Puerto Rico, Cuba, Central or South America or the Caribbean Islands;
- (3) "Native Americans," which includes persons residing in the United States or its territories, who are descendants of any of the Indian tribes with origins in the North and South American continents and other islands or lands to include the countries of the United States, Canada and Mexico;
- (4) "Asian Americans," which includes persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands.
 - a. "Far East" is defined to include China, Hong Kong, Macao, Japan, Korea, Taiwan and the Philippines.

- b. "Southeast Asia" is defined to include Burma, Kampuchea, Laos, Thailand, Vietnam, Malaysia, Brunei, Borneo, Indonesia and Cambodia.
- c. "Pacific Islands" is defined to include Micronesia, Polynesia, Melanesia and the area consisting of the Hawaiian Islands prior to 1778.
- d. "Indian Subcontinent" is defined to include India, Bangladesh, Sikkim, Nepal, Pakistan and Bhutan.

Minority-owned business enterprise means a business firm certified by the county:

- (1) That is at least fifty-one (51) percent owned by minorities or, in the case of a publicly-owned business, at least fifty-one (51) percent of the voting stock of which is owned by minorities;
- (2) For which the minority ownership exercises actual day-to-day management and control of the business;
- (3) Which is located in the relevant market area;
- (4) That is legally organized;
- (5) That demonstrates the capability (i.e. sufficient employees, equipment, facilities, supplies, etc.) to perform a specific line of business;
- (6) That operates separately from a non-minority or woman-owned firm;
- (7) That provides a commercially useful business function according to customs and practices of the industry; and
- (8) That has a net worth which is less than two million three hundred thousand dollars (\$2,300,000.00) at the time of application to become certified.

The county will not certify any business as a minority/women-owned business enterprise if there is substantial evidence the business was established to circumvent the net worth limitations set forth in section 17-332.

Minority/women business enterprise means a business that is either a minority-owned business enterprise or a women-owned business enterprise, or both.

Minority/women business enterprise advisory committee means the minority/women business enterprise advisory committee, appointed by the board of county commissioners.

Minority/women business enterprise directory means a printed compilation of certified minority/women business enterprises which is retained and published by the minority/women business enterprise department and made available to contractor(s), vendor(s) and the public for use in identifying contractors, service providers, material suppliers, etc.

Orlando Metropolitan Statistical Area means Lake, Orange, Osceola and Seminole Counties.

Owned means having all the customary incidents of ownership, including the right of disposition, and the right or obligation to share in all risks and profits commensurate with the degree of ownership interest.

Pass-through means buying or obtaining goods or services from a non-minority/women business enterprise and reselling or transferring those goods or services to the county, to county contractors, or to other persons doing business with the county for the purpose of obtaining any advantage or benefit conferred under this division, without performing a commercially useful function.

Procurement means buying, purchasing, renting, leasing or otherwise acquiring any goods and/or services for public purposes in accordance with the law, rules, regulations and procedures intended to provide for the economic expenditure of public funds. It includes, but is not limited to, all functions which pertain to the obtaining of any supplies, materials, equipment and/or services including construction projects and capital improvement projects, as defined herein, required by any division, department or agency of county government regardless of the source of funds or for which payment is made from county funds.

For the purposes of this division, it excludes those items set forth in Orange County Code section 17-286.

Professional services has the same meaning as is provided for that term by F.S. § 287.055(2), as that subsection may from time to time be amended or replaced.

Relevant market means the geographical areas which the county will target to do business with minority/women business enterprises in order to remedy the past and present day effect of discrimination.

Services means the furnishing primarily of labor, time and/or effort by professionals or contractors, wherein the submission of goods or other specific end products other than reports, studies, plans, advisories, contractual documents or other documents relating to the required performance is incidental or secondary. This term shall not include employment agreements or collective bargaining agreements.

Sole source means the only existing source of the only item which meets the needs of the using department as determined by a reasonably thorough analysis of the marketplace.

Suspension means temporary debarment for a period not to exceed two (2) years.

Women-owned business enterprise means a business firm certified by the county:

- (1) That is at least fifty-one (51) percent owned by a woman or women or, in the case of a publicly owned business, at least fifty-one (51) percent of the voting stock is owned by American women;
- (2) For which the women ownership exercises actual day-to-day management and control of the business;
- (3) Which is located in the relevant market area;
- (4) That is legally organized;
- (5) That demonstrates the capability (i.e. sufficient employees, equipment, facilities, supplies, etc.) to perform a specific line of business;

- (6) That operates separately from a non-minority or woman-owned firm;
- (7) That provides a commercially useful business function according to customs and practices of the industry; and
- (8) That has a net worth which is less than two million three hundred thousand dollars (\$2,300,000.00) at the time of application to become certified.

(Ord. No. 94-02, § 3, 1-11-94; Ord. No. 98-25, § 2, 10-6-98; Ord. No. 2002-01, § 3, 1-08-02; Ord. No. 2009-21, § 3, 8-25-09)

Sec. 17-320. Minority/women business enterprise participation goals; transition to race-, ethnic-, and gender-neutral practices in certain procurement matters.

(a) The goals for participation by minority/women business enterprises in county procurement contracts and subcontracts for construction, professional services, other services, and goods are established by this division. From time to time the board of county commissioners may revise or alter the goals based on such evidence as may come before the board with respect to the legal and public-policy grounds on which this division and its goals are based.

(b) The board of county commissioners acknowledges the need for or usefulness of transitioning to policies and practices governing the county's procurement of goods, construction subcontracting, and professional-services subconsulting that are neutral with respect to race, ethnicity, and gender. Therefore, the board expressly declares that this division is intended to provide (i) incentives, opportunities, and goals for participation by minority-owned and women-owned business enterprises in county procurement matters where, in the county's procurement results, there exist material disparities between the availability and the use of minority/women business enterprises and (ii) a transition to race-, ethnic-, and gender-neutral policies and practices in those county procurement matters where no such disparities exist. To that end, this division is intended to

establish policies and practices and to delegate authority as is necessary or useful to accomplish such a transition.

(Ord. No. 94-02, § 4, 1-11-94; Ord. No. 2002-01, § 4, 1-08-02; Ord. No. 2009-21, § 3, 8-25-09)

Sec. 17-321. Contract and subcontract goals.

(a) The following initial goals are hereby established with respect to the amount of participation each year by minority-owned and women-owned businesses in the indicated types of county contracts:

- (1) *Construction.* The county hereby establishes a minimum annual contract dollar participation goal of twenty-five (25) percent of contract dollars awarded to minority/women business enterprises for participation in the construction area. The twenty-five (25) percent goal applies to all construction-related procurement.
 - a. Fifty (50) percent of the total dollar value of supplies furnished by certified minority/women business enterprises will be counted toward the goals established for the project provided the supplier is not a manufacturer. If the minority/women business enterprise supplier also manufactured the goods, one hundred (100) percent of those dollars will be allotted toward the minority/women business enterprise goals.
 - b. If a minority/women business enterprise prime contractor certifies that it will self-perform fifty-one (51) percent or more of the project with its own forces, it will not be required to comply with the minority/women business enterprise subcontracting goals. If the minority/women business enterprise prime contractor does not certify that it will self-perform at least fifty-one (51) percent of the project, then the minority/women business enterprise prime contractor must comply with the twenty-

five (25) percent annual minority/women business enterprise subcontracting goal.

- c. Contract awards will count towards minority/women business enterprise subcontract participation only for subcontractors who are certified in a specific line of work or business for which a defined scope of work is sought at the time of bid or proposal opening. Only these minority/women business enterprise firms certified or recognized by the county will count towards the subcontracting goals.
- d. A prime contractor is not required to subcontract out work that it has historically and consistently performed with its own work force. For that portion that the prime contractor does not historically and consistently perform, the prime shall make a good-faith effort as defined herein, to utilize all available minority/women business enterprise. However, if after the award of bid, the prime contractor chooses to subcontract such work to a non-minority/women business enterprise firm, the prime contractor may face penalties pursuant to section 17-326.
- e. A business acting or that will act as broker, front, conduit or pass-through shall not be certified or recertified as a minority/women business enterprise, unless in the case of a broker the brokering service reflects normal industry practice and provides or will provide a commercially useful function. The compliance officer may revoke the certification of any minority/women business enterprise that is determined to be acting under these arrangements in connection with one (1) or more county procurement contracts, and contractors and subcontractors who create or knowingly participate in such arrangements shall be subject to the penalties enumerated in this division.

(2) *Professional services.* The county hereby establishes a minimum annual contract dollar participation goal of twenty-seven (27) percent minority/women business enterprise participation in professional services.

(3) *Goods.* The county hereby establishes a minimum annual contract dollar participation goal of ten (10) percent minority/women business enterprise participation in the procurement of goods.

The goals set forth shall be examined annually and shall sunset as provided in section 17-334, subsequent to the board of county commissioners review and determination as to whether discrimination against minority/women business enterprises continues in the relevant markets.

(4) *Services.* The county hereby establishes a minimum annual contract dollar participation goal of twenty-four (24) percent minority/women business enterprise participation in the procurement of services.

(b) The relevant market for which the county will recognize and calculate minority/women business enterprise participation will be as follows:

- (1) Construction - Orlando Metropolitan Statistical Area.
- (2) Professional services - Orlando Metropolitan Statistical Area.
- (3) Goods - Orlando Metropolitan Statistical Area.
- (4) Services - Orlando Metropolitan Statistical Area.

(c) In addition to the other measures provided herein, the following measures may be taken in order to achieve the goals of minority/women business enterprise participation:

- (1) Each contract, except sole source, emergency purchases and other contracts for which goals have been waived shall include a requirement that the contractor commit to the expenditure of at least the required minority/women business enterprise percentage of the dollar value of the contract. This requirement may be waived

or revised if it is determined that a different percentage commitment should apply based on the availability of minority/women business enterprises in the applicable industry, service or commodity code. The contractor shall also furnish to the compliance officer written documentation evidencing actual dollars paid to each subcontractor/supplier listed and/or utilized by the contractor. This will include, but not be limited to: copies of canceled checks, approved invoices, and signed, sworn affidavits certifying the accuracy of payment reports, so that the county may determine actual participation achieved by the contractor prior to issuance of final payment. However, under no circumstances shall the county be responsible for direct payment to any subcontractor.

(2) During any fiscal year in which bids are sought by the county for a contract to provide goods, professional services, services or construction, the county may so prescribe bidding requirements as to include bid preference and initiatives for certified minority businesses and/or women businesses.

(3) The county may negotiate a reasonable price directly with a certified minority/women business enterprise provided the procurement is less than the mandatory bid amount.

(4) The county may recognize and create initiatives for the development and maintenance of joint ventures between majority and minority/women business enterprises.

(d) If in the bidding for a construction contract the established level and percentage subcontract goals are not achieved by the low bidder, and it is deemed that a good-faith effort for compliance has not been shown by the low bidder, then the bid shall be rejected by the purchasing manager as nonresponsive but only if the next lowest responsive bid does not exceed the low bid by more than:

- (1) Eight (8) percent on contract awards up to one hundred thousand dollars (\$100,000.00);

- (2) Seven (7) percent on contract awards from one hundred thousand dollars (\$100,000.00) to five hundred thousand dollars (\$500,000.00);
- (3) Six (6) percent on contract awards from five hundred thousand dollars and one cent (\$500,000.01) to seven hundred fifty thousand dollars (\$750,000.00);
- (4) Five (5) percent on contract awards from seven hundred fifty thousand dollars and one cent (\$750,000.01) to two million dollars (\$2,000,000.00);
- (5) Four (4) percent on contract awards from two million dollars and one cent (\$2,000,000.01) to five million dollars (\$5,000,000.00); or
- (6) Three (3) percent on contract awards over five million dollars and one cent (\$5,000,000.01).

Notwithstanding the foregoing provisions, if the next low bid is responsive only because of the bidder having made good-faith effort (not because of having met the goals set forth in subsection (a)), the board may award the contract to the next low bidder only if the value of its minority/women business enterprise participation will be equal to or greater than that of the low bidder.

(e) At any time prior to the award of contract or a purchase of goods and supplies, the compliance officer may grant a partial or complete waiver of minority/women business enterprise requirements in the event of a sole source, unavailability or an emergency when a waiver is necessary to avoid detriment to the public health, safety or welfare of the citizens of the county or the general public. If the compliance officer grants such a waiver, the compliance officer must document the reasons for granting the waiver.

(f) Minority/women business enterprise utilization waiver may be granted by the compliance officer if the apparent successful bidder/proposer has demonstrated that it has exercised good-faith efforts (contracts) in soliciting minority/women business enterprise participation, but has been unable to achieve the established goal, and a

determination has been made that the award to the apparent successful bidder/proposer is in the best interest of the county.

(g) In addition to any other requirements set forth in this division, contractors who are awarded contracts by the county shall submit a copy of their executed subcontract with each minority/women business enterprise listed in their bid/proposal prior to execution of a contract with the county.

(h) After consultation with the county department or division requesting or affected by the particular procurement, the compliance officer may specify a goal or goals for a pending county procurement that are lower than the goals set forth in subsection (a), but only when the aggregate estimated contract payments expected in connection with the procurement matter will exceed one hundred thousand dollars (\$100,000.00) and only if the lower goal or goals are based on the following factors:

- (1) The nature and type of the goods, services, or construction to be delivered under the pending contract;
- (2) The extent to which the goods, services, or construction is susceptible to being delivered through subcontractors and/or subconsultants;
- (3) The availability of minority/women business enterprises ready, willing, and able to deliver the goods, services, or construction, whether through the prime contract or through subcontracts thereunder;
- (4) The county's past experience in meeting its minority/women business enterprise goals in similar types of procurement matters and, when not met, the reasons therefor;
- (5) Special circumstances of the project (if any), such as schedule constraints, construction requirements, requirements of related state or federal grant funding, or other related special circumstances;
- (6) The extent, if any, to which the county may have experienced an excess in the amount that minority/women business en-

terprises have been used, when compared to their availability, in similar types of procurement matters during the previous thirty-six (36) months; and

- (7) Such other factors as the compliance officer may determine to be reasonably germane to the pertinent procurement and to the need or desirability to provide goals, incentives, and opportunities for participation therein by minority/women business enterprises.

(i) The compliance officer is authorized and directed to monitor the availability and utilization of minority/women business enterprises in county procurement and to adjust the county's procurement practices from time to time as follows:

- (1) The compliance officer shall monitor the availability and utilization of minority/women business enterprises and shall report to the county administrator no later than thirty (30) days after the end of each calendar quarter regarding the extent to which minority/women business enterprises are being utilized, underutilized, or overutilized, both in county procurement and, to the extent data is available, in procurement in the public and private sectors of the Orlando Metropolitan Statistical Area.
- (2) If at any time the compliance officer determines, based on competent data and analysis, that minority-owned business enterprises or women-owned business enterprises, or both, are being overutilized in any part of county procurement matters, and if the compliance officer determines that a reduction or elimination of some or all of the goals set forth in subsection (a) (as they may then have been adjusted by the board of county commissioners) will not result in a material decline in the utilization of minority-owned or women-owned business enterprises (as the case may be), the compliance officer may adjust the procurement practices authorized or required under this division as he determines to be necessary, appropri-

ate, or useful to eliminate the overutilization. He shall notify the board of county commissioners, the county administrator, the chief of purchasing and contracts, and other county departments and divisions as appropriate and useful, of the adjustments to be made, and thereafter such adjustments shall supersede the goals and other policies and requirements set forth in this division.

- (3) The compliance officer shall deliver a report to the county administrator setting forth data, analysis, and conclusions on the extent to which minority/women business enterprises have been underutilized, overutilized, or proportionately utilized in county procurement of goods, construction subcontracting, and professional-services subconsulting. If the data, analysis, and conclusions of the report demonstrate that in one (1) or more of those types of procurement the county has succeeded in using minority/women business enterprises in amounts proportionate to their availability in the relevant market, or if the report demonstrates that minority/women business enterprises have been overutilized when compared to their availability for those types of procurement, the county administrator shall notify the board of county commissioners of the situation and shall direct the compliance officer, the chief of purchasing and contracts, and other county departments and divisions, as necessary or useful, to discontinue immediately the imposition of the goals in subsection (a) in the type or types of procurement where the report demonstrates that minority/women business enterprises are being overutilized or proportionately utilized. Thereafter, the county administrator shall ensure that the goals are not reimposed in any such procurement proceedings unless and until he or she receives data, analysis and conclusions that, during a subsequent period of no less than six (6) consecutive calendar months, the county's procurement processes have again resulted in a

material underutilization of minority/women business enterprises in those types of county procurement.

(Ord. No. 94-02, § 5, 1-11-94; Ord. No. 98-25, § 3, 10-6-98; Ord. No. 2002-01, § 5, 1-08-02; Ord. No. 2009-21, § 3, 8-25-09)

Sec. 17-322. Establishment of goals; employment.

The goals for minority and women employment levels to be achieved by contractors with the county are hereby set at twenty-four (24) percent, with minority employment levels being established at eighteen (18) percent, and women employment levels being established at six (6) percent.

- (1) Contractors submitting bids to the county may comply with minority group employment levels and percentages as established pursuant to this division or may, in the event such levels and percentages are not achieved, provide evidence of a good faith effort (employment) to achieve such levels and percentages. If such levels and percentages are not achieved and if it is deemed that a good faith effort (employment) for compliance has not been shown, then the contractor's bid may be rejected as nonresponsive.
- (2) Contractors submitting bids to the county may comply with female employment levels and percentages as established pursuant to this division or may, in the event such levels and percentages are not achieved, provide evidence of a good faith effort (employment) to achieve such levels and percentages. If such levels and percentages are not achieved and it is deemed that a good faith effort (employment) for compliance has not been shown, then the contractor's bid may be rejected as nonresponsive.

(Ord. No. 94-02, § 6, 1-11-94)

Sec. 17-323. Credit program.

The county may establish a credit program whereby contractors are awarded credits to be applied toward meeting the minority/women busi-

ness enterprise requirements on certain county bids/proposals. The credits earned may be applied to subsequent county bids/proposals.

- (1) *Non-county utilization credit.* This credit may be earned, awarded and applied for the use of certified minority/women business enterprises on private sector projects not involving governmental funding, and government projects that do not have mandated minority/women business enterprise participation goals or programs. The compliance officer shall report to the board within eighteen (18) months on what impact, if any, the application of this credit has had on the utilization of certified minority/women business enterprises.
- (2) *Minority and women employee recruitment and training credit.* This credit may be earned, awarded and applied to contractors who establish and utilize structured, internal minority and women scholarship, recruitment and training programs. These programs must be pre-approved, and may be monitored by the compliance officer before credit can be earned, awarded and applied.
- (3) *First-time minority/women business enterprise utilization credit.* This credit may be earned, awarded and applied to contractors who joint venture with a minority/women business enterprise for the first time or include and utilize a minority/women business enterprise for the first time in a bid/proposal.
- (4) *Minority/women business enterprise recruitment and training credit.* This credit may be earned, awarded and applied to contractors who have established structured internal minority/women business enterprise development and enhancement programs. Eligible programs may be those which provide technical assistance, mentor/protege training, scholarships and business development information to minority/women business enterprises. Programs must be pre-approved and may be monitored by the compliance officer before credit can be earned, awarded and

applied. Credit may be awarded only to the contractor responsible for development and enhancement of the minority/women business enterprise. If there is more than one contractor, credit may be allocated among contractors in order to prevent duplication.

- (5) *Joint venture credit.* Credit may be earned, awarded and applied for established and registered joint venture relationships.
- (6) The credit program shall include the following features:
 - a. Credits toward the goals set forth in this division may be applied at the time bids/proposals are evaluated. Credits can be used only one time. Contracts, certificates of completion, affidavits, canceled checks, and other documentation as requested by the compliance officer must be provided to substantiate the award and application of credits. A record of earned and applied credits shall be maintained by the compliance officer. The compliance officer determines whether credits will be applied to bids/proposals.
 - b. Credits may not be applied more than two (2) years after award.
 - c. The credit program shall be reviewed annually by county staff and may be suspended upon a finding of substantial evidence of fraud or insufficient monitoring.
 - d. Only dollars spent with certified minority/women business enterprises, whose corporate office is domiciled in the Orlando Metropolitan Statistical Area are eligible for credits.
 - e. Contractors who utilize graduated minority/women business enterprises may earn credits only when the graduate minority/women business enterprise is in a joint venture relationship with a certified minority/women business enterprise and both minor-

ity/women business enterprises are domiciled in the Orlando Metropolitan Statistical Area.

- f. Earned credits cannot be applied to offset more than twenty (20) percent of the designated participation goal on an individual procurement.

(Ord. No. 94-02, § 7, 1-11-94; Ord. No. 2002-01, § 6, 1-08-02)

Sec. 17-324. Bid preference program.

(a) Under the circumstances described below, a contract may be awarded to a certified minority/women business enterprise bidder as long as its bid does not exceed the low bid by more than:

- (1) Eight (8) percent on contract awards up to one hundred thousand dollars (\$100,000.00);
- (2) Seven (7) percent on contract awards from one hundred thousand dollars (\$100,000.00) to five hundred thousand dollars (\$500,000.00);
- (3) Six (6) percent on contract awards from five hundred thousand dollars and one cent (\$500,000.01) to seven hundred fifty thousand dollars (\$750,000.00);
- (4) Five (5) percent on contract awards from seven hundred fifty thousand dollars and one cent (\$750,000.01) to two million dollars (\$2,000,000.00);
- (5) Four (4) percent on contract awards from two million dollars and one cent (\$2,000,000.01) to five million dollars (\$5,000,000.00); or
- (6) Three (3) percent on contract awards over five million dollars and one cent (\$5,000,000.01).

(b) On a quarterly basis, the compliance officer and the county's chief of purchasing and contracts will review the status of the minority/women business enterprise goals. If it is determined that inequity with respect to women or one (1) or more particular minorities continues to exist in con-

tract awards or goal accomplishments, bid preference may be utilized in the award of contracts for which bids have been solicited.

(Ord. No. 94-02, § 8, 1-11-94; Ord. No. 98-25, § 4, 10-6-98; Ord. No. 2002-01, § 7, 1-08-02; Ord. No. 2009-21, § 3, 8-25-09)

Sec. 17-325. Reserved.

Editor's note—Ord. No. 2002-01, § 8, adopted Jan. 8, 2002, repealed, in its entirety, § 17-325. Former § 17-325 pertained to procurement program and derived from Ord. No. 98-25, § 5, adopted Oct. 6, 1998; and Ord. No. 94-02, § 9, adopted Jan. 11, 1994.

Sec. 17-326. Penalties.

The purpose of Orange County's minority/women business enterprise ordinance is to provide a prompt remedy for the effects of past discrimination. The county in general, and this program in particular, are damaged when a contract, or portion of a contract, to be performed by a minority/women business enterprise is not actually performed by a minority/women business enterprise in compliance with this division. Because the actual amount of such damage is not reasonably calculable, each contract will state that liquidated damages equal to the dollar value of the utilization by certified and recognized business loss to the county due to the violation, not to exceed ten (10) percent of the dollar value of the contract, shall be the amount required to compensate the county for resulting delays in carrying out the purpose of the program, the costs of meeting utilization goals through additional contracts, the administrative costs of investigation and enforcement and other damages and costs caused by the violation. The contractor will be liable to the county for such liquidated damages in the event the contractor or a subcontractor fails to perform a commercially useful function and/or operates as a front, conduit or pass-through, as defined in this division.

In addition to the foregoing, firms/persons who violate the provisions of this division or who provide fraudulent information may be subject to:

- (1) Removal from the county's vendor list;
- (2) Suspension from bidding on county contracts for up to two (2) years;

- (3) Permanent debarment from bidding on county contracts;
- (4) Termination of any present contract(s);
- (5) Withholding retainage;
- (6) A negative evaluation of good-faith effort on future projects for up to two (2) years;
- (7) Withholding payment to contractors failing to comply with the minority/women business enterprise subcontractor utilization and work force percentages set forth in the contract of the contractor's bid or proposal;
- (8) Revocation of certification.

Appeal of penalties shall be pursuant to protest and/or appeals procedures outlined in the Orange County Procurement Code, section 17-313 and any amendments thereto.

(Ord. No. 94-02, § 10, 1-11-94; Ord. No. 98-25, § 6, 10-6-98; Ord. No. 2002-01, § 9, 1-08-02)

Sec. 17-327. Minority/women business enterprise department; compliance officer and compliance procedures.

The county mayor shall designate a minority/women business enterprise department manager who shall be the compliance officer whose duty it shall be to monitor contracts with the county to determine if the county is meeting the goals established by this division and to determine if contractors with the county are achieving and maintaining female and minority employment levels and subcontracting goals set forth in this division during the contractual term. The compliance officer shall ensure that only certified minority/women business enterprise firms participate in the minority/women business enterprise program and also maintain a minority/women business enterprise directory of all women-owned and minority-owned business enterprises in Florida who seek to do business with the county, and shall gather such data as necessary in order to make such annual reports to the board of county commissioners as required by this division. In addition, the compliance officer shall establish guidelines for contractors with the county with such guidelines to include good faith effort evaluations,

certification, monitoring, reporting procedures and recommendations for actions to be taken should noncompliance occur, and procedural guidelines for county allocation of contracts to women-owned and minority-owned business enterprises as provided by this division. Such guidelines shall be subject to the approval of the board of county commissioners. The compliance officer shall also perform such other duties relating to the provisions of this division as may be directed by the county mayor and the board of county commissioners.

(Ord. No. 94-02, § 11, 1-11-94; Ord. No. 2009-21, § 3, 8-25-09)

Sec. 17-328. Failure of contractors to maintain minority and women employment levels and minority-owned and women-owned business enterprise percentages during a contractual term.

If a contractor with the county has at any time during the term of the contract failed to maintain the minority or women employment levels and minority-owned business and women-owned business enterprise subcontractor percentages pursuant to this division and also failed to show a good faith effort to maintain such levels and percentages, the compliance officer shall, upon receiving knowledge of such noncompliance, note the noncompliance and report it to the contractor, contract project manager, the contractor's surety and the minority/women advisory committee. If the contractor fails to come into compliance or fails to show a good faith effort to come into compliance within thirty (30) days of written notification of noncompliance from the compliance officer, in the case of minority and female employment levels, and within thirty (30) days from notification in the case of women-owned and minority-owned business enterprise subcontracting levels, the county may then impose appropriate penalties as outlined in section 17-326, penalties, upon the contractor.

(Ord. No. 94-02, § 12, 1-11-94)

Sec. 17-329. Minority/women business enterprise advisory committee.

(a) The board shall establish and appoint seven (7) voting members to the minority/women business enterprise advisory committee to serve in an

advisory capacity to the compliance officer and the board on issues related to minority/women business enterprises. Further, the National Association for the Advancement of Colored People, the Hispanic Chamber of Commerce, the Asian Chamber of Commerce, the Southern Christian Leadership Conference, the National Association of Women in Construction, the Associated Builders and Contractors and the Associated General Contractors may each designate one (1) person for appointment by the county mayor to the minority/women business enterprise advisory committee as a nonvoting member. Unless approved otherwise by vote of five (5) or more members of the board, the fourteen (14) members shall be Orange County residents.

(b) The minority/women business enterprise advisory committee may act as an initial hearing committee for appeals of certification denials as provided for in certification guidelines implementing this ordinance and other policies.

(Ord. No. 94-02, § 13, 1-11-94; Ord. No. 94-17, § 1, 8-9-94; Ord. No. 98-25, § 7, 10-6-98; Ord. No. 2009-21, § 3, 8-25-09)

Sec. 17-330. Rules, regulations and procedures.

The board of county commissioners is hereby authorized to adopt by resolution such rules and regulations and procedures as are necessary or proper to implement this division.

(Ord. No. 94-02, § 14, 1-11-94)

Sec. 17-331. Conformity with applicable federal and state laws.

The provisions of this division shall be construed according to and in conformity with acts of Congress and the Legislature of the State of Florida concerning the bidding and awarding of contracts. Where provisions of this division come into conflict with either federal or state law, the federal or state law shall prevail.

(Ord. No. 94-02, § 15, 1-11-94)

Sec. 17-332. Graduation.

(a) Graduated minority/women business enterprises may not be utilized to satisfy contract participation goals except as provided under sub-

section 17-332(b). A certified minority/women business enterprise shall graduate from the minority/women business enterprise program when the following criteria are met:

- (1) *Construction and suppliers:* The minority/women business enterprise's three-year averaged annual company net worth is greater than two million three hundred thousand dollars (\$2,300,000.00); and
- (2) *Professional services:* The minority/women business enterprise's three-year averaged annual company net worth is greater than two million three hundred thousand dollars (\$2,300,000.00).

All firms certified as minority/women business enterprises must provide evidence of having bid on contracts to the extent such bidding opportunities are available.

(b) Notwithstanding the criteria set forth in subsection 17-332(a), graduated minority/women business enterprise firms can be utilized to satisfy contract participation goals established for minority/women business enterprises on the following class of projects;

- (1) Vertical construction awards which are greater than ten million dollars (\$10,000,000.00). Vertical construction is any construction of a structure or building which requires a contractor's license.
- (2) Horizontal construction awards which are greater than seven million dollars (\$7,000,000.00). Horizontal construction awards include, but are not limited to roadwork, sitework, drainage or utilities work.
- (3) Other construction awards greater than seven million dollars (\$7,000,000.00).
- (4) Professional service contract awards where the aggregate fees are greater than five hundred thousand dollars (\$500,000.00)

(Ord. No. 98-25, § 9, 10-6-98; Ord. No. 2009-21, § 3, 8-25-09)

Sec. 17-333. Appeal of certification denial.

(a) *Right to appeal.* Any person or business that is denied certification or has its certification revoked may appeal such denial or revocation in accordance with the certification guidelines approved by the board. The compliance officer shall provide notice of the right to appeal and the procedures to follow to any person or business that is denied certification or has its certification revoked.

(b) *Reapplication.* A firm denied certification because its net worth is two million three hundred thousand dollars (\$2,300,000) or more shall not be eligible to reapply for certification until three (3) years after the date of the denial of certification.

(Ord. No. 94-02, § 18, 1-11-94; Ord. No. 98-25, § 8, 10-6-98; Ord. No. 2002-01, § 10, 1-08-02; Ord. No. 2009-21, § 3, 8-25-09)

Sec. 17-334. Review.

(a) The policies and regulations promulgated under this division shall be reviewed and evaluated by the county mayor on an annual basis, except as may otherwise be determined by the board of county commissioners. A full sunset review shall be conducted within seven (7) years of the initial enactment of this division and, thereafter, no less frequently than once every four (4) years.

(b) The board of county commissioners shall review the implementation of this division and whether discrimination against minority and women-owned business enterprises continues in the relevant markets with subsequent reviews to be conducted no less frequently than once every four (4) years thereafter. If the board determines that the requirements of this division are no longer necessary to prevent discrimination against minority and women-owned business enterprises in the relevant markets from affecting the county's contracting processes, the division shall be repealed.

(Ord. No. 94-02, § 18, 1-11-94; Ord. No. 98-25, § 8, 10-6-98; Ord. No. 2002-01, § 11, 1-08-02; Ord. No. 2009-21, § 3, 8-25-09)

Sec. 17-335. Reserved.