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**ORDINANCE NO.** 0-17-09

**An ordinance** amending Chapter 18 of the Code of the Unified Government of Wyandotte County/Kansas City, Kansas, by adding a new article on supplier opportunity, directing the county administrator (1) to implement race- and gender-neutral remedies to encourage participation by small business enterprises, including minority and woman business enterprises, on Unified Government contracts; and (2) to take affirmative measures to provide opportunities for minority and woman business enterprises to participate on Unified Government construction contracts exceeding \$250,000,

**BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE UNIFIED GOVERNMENT OF WYANDOTTE COUNTY/KANSAS CITY, KANSAS:**

**Section 1.** Chapter 18 of the Code of the Unified Government of Wyandotte County/Kansas City, Kansas, is amended by adding a new article to read as follows:

**Article V. SUPPLIER OPPORTUNITY**

**DIVISION 1. GENERAL PROVISIONS**

**Sec. 18-150. Purpose and scope.**

In 2006, the Unified Government co-sponsored an area-wide diversity study with the City of Kansas City, Missouri and other jurisdictions within the Kansas City metropolitan area. The results of that study, published in November 2006, showed statistically significant underutilization of minority and woman business enterprises as prime contractors or subcontractors in various categories of Unified Government contracts. The Board of Commissioners is committed to correcting these disparities and to increasing opportunities for minority and woman business enterprises to participate as prime contractors, joint venturers, subcontractors, and suppliers on Unified Government contracts. The intent of the Board of Commissioners is to achieve its supplier diversity goals through the use of race- and gender-neutral remedies to the extent feasible. As set forth below, the Board of Commissioners authorizes the county administrator to implement race- and gender-conscious remedies to the extent necessary to increase the utilization of minority and woman business enterprises on Unified Government construction contracts exceeding \$250,000. The Board of Commissioners intends to review the results of this program regularly and, as set forth in this article, the county

administrator is directed to collect data on participation of minority and woman business enterprises on Unified Government contracts.

**Sec. 18-151. Annual goals.**

(a) The county administrator shall recommend to the Board of Commissioners an overall annual goal for minority and woman business enterprise participation on Unified Government contracts, as well as a specific annual goal for the utilization of minority and woman business enterprises on construction contracts exceeding \$250,000. Specific goals may be established for other industries, professions, or trade groupings. The goals shall be stated as a percentage of dollars anticipated to be spent on contracts in the upcoming year. The county administrator's recommendations shall be submitted to the Board of Commissioners during the fourth quarter of the preceding calendar year. For 2009, the county administrator shall submit recommendations for goals no later than May 31, 2009.

(b) As a basis for the establishment of the annual goals, the county administrator shall annually determine the availability of all minority and woman business enterprises doing business in the Unified Government's marketplace by industries, professions, or trade groupings. The county administrator shall conduct such inquiries, studies, and hearings, and utilize information and assistance from such persons, consultants, entities, or organizations, within or without the Unified Government, including but not limited to the coordinator of the Office of Supplier Opportunity, Contract Fairness Board, and department heads, as he or she may deem necessary to make annual recommendations.

(c) The Board of Commissioners shall review the annual goals recommended by the county administrator and may direct that additional inquiries be conducted as it deems appropriate. The Board of Commissioners shall approve, disapprove, or modify the recommended annual goals by resolution.

(d) As used in this division 1, "Unified Government contracts" means all Unified Government contracts, except contracts for minor purchases, sole source procurements, and emergency procurements.

**Sec. 18-152. Responsibility of county administrator for achievement of annual goals; authority; reports to Board of Commissioners.**

(a) The county administrator shall be responsible for achieving the annual goals established by the Board of Commissioners by any or all of the following means:

- (1) By using race- and gender-neutral remedies to increase opportunities for minority and woman business enterprises to

participate as prime contractors, joint venturers, subcontractors, and suppliers on Unified Government contracts; and

- (2) By using race- and gender-conscious measures to increase participation of minority and woman business enterprises on Unified Government construction contracts exceeding \$250,000, as authorized in division 2 of this article.

(b) Except as otherwise provided, the following shall count toward the annual goals: Portions of work on Unified Government contracts undertaken by minority and woman business enterprises as prime contractors, joint venturers, subcontractors, and suppliers. For the work to count toward the annual goals, the minority or woman business enterprise must have performed a commercially useful function as defined in section 18-157(6).

(c) The county administrator is expressly delegated the necessary powers to effectuate the purposes of this article, including the authority to promulgate regulations necessary to implement its provisions.

(d) Not later than 30 days after the end of each of the first three quarters of the calendar year, the county administrator shall submit a written report to the Board of Commissioners detailing progress toward the annual goals.

(e) Not later than the last day of February of each year, the county administrator shall submit to the Board of Commissioners a comprehensive annual report for the previous calendar year, which shall include, but not be limited to, the following:

- (1) Detailed information on the availability and participation of minority and woman business enterprises on Unified Government contracts during the previous year by industries, professions, or trade groupings, including the availability and utilization of minority and woman business enterprises on construction contracts exceeding \$250,000;
- (2) A comparison of MBE and WBE utilization achieved during the previous year to prior years and to the annual goal;
- (3) A description and evaluation of the effectiveness of individual race- and gender-neutral measures undertaken by the Unified Government;
- (4) For each construction contract exceeding \$250,000, the availability of minority and woman business enterprises to perform the contracted work, the project goals, the justification for the goals, and whether the contractor complied with the goals or

demonstrated the required good faith efforts throughout the duration of the project;

- (5) For any construction contract exceeding \$250,000 for which the county administrator has waived or modified the application of project goals, an explanation of the reasons for the waiver or modification;
- (6) A description of all enforcement efforts undertaken by the coordinator under division 2 of this article;
- (7) The results of any additional studies conducted or commissioned by the Unified Government on the subject of supplier diversity, including disparity studies;
- (8) If the annual goal was not met, a description of additional actions or program modifications being taken to ensure that the current year's goal is met; and
- (9) Recommendations for further action by the Board of Commissioners.

**Sec. 18-153. Race- and gender-neutral remedies.**

(a) The county administrator shall implement race- and gender-neutral remedies to facilitate participation by minority and woman business enterprises as prime contractors, joint venturers, subcontractors, and suppliers on Unified Government contracts. Race- and gender-neutral remedies may include, but are not limited to, the following:

- (1) Unbundling large procurements into small contracts;
- (2) Establishing a small contracts rotation program for small businesses;
- (3) Using direct contracting to award small prime contracts;
- (4) Establishing a direct purchase program for supplies and materials utilized by prime contractors;
- (5) Lowering insurance requirements, consistent with the interests of the Unified Government;
- (6) Eliminating or reducing retainage for small contracts and releasing the subcontractor's portion of the retainage once its work has been completed and accepted;

- (7) When mobilization is paid to the prime contractor, requiring the prime contractor to pay subcontractors mobilization in an amount equal to their participation level on the prime contract at the time they are directed to mobilize and before commencing their work;
- (8) Developing an expedited payment program for small businesses;
- (9) Providing prompt payment of undisputed invoice amounts and implementing procedures to resolve disputed items in a timely manner;
- (10) Requiring prime contractors to validate that subcontractors have been paid before final payment;
- (11) Developing formal subcontractor substitution standards;
- (12) Requiring prime contractors to list all subcontractors included in their bids or proposals and all subcontractors who submitted bids or proposals but were not hired;
- (13) Conducting routine post-award contract compliance monitoring;
- (14) Establishing a complaint procedure for minority and woman business enterprises who believe they have been discriminatorily denied award of a prime contract or the opportunity to participate as a subcontractor or supplier on a contract;
- (15) Using the Unified Government's website to give notice of forecasted projects and upcoming solicitations;
- (16) Developing an internet registry of minority and woman business enterprises interested in participating on Unified Government contracts; and
- (17) Establishing programs to educate small business enterprises, including minority and woman business enterprises, about contracting opportunities with the Unified Government.

(b) The county administrator may decline to implement or apply any race- and gender-neutral remedy if, in the county administrator's judgment, the annual goals set by the Board of Commissioners can be met in a more effective or cost-efficient manner through the implementation of other race- and gender-neutral remedies; implementing or applying the remedy would create an unreasonable risk of legal liability; or implementing or applying the remedy

would be likely to have a substantial adverse impact on the operations or interests of the Unified Government.

**Section 18-154. Office of Supplier Opportunity; coordinator; duties and authority.**

(a) The county administrator shall establish an Office of Supplier Opportunity and shall appoint a coordinator to supervise the Office and to perform the duties and responsibilities set forth in this article. The county administrator shall assign necessary staff to assist the coordinator in discharging his or her duties and responsibilities. The qualifications for the position of coordinator shall be established by the county administrator, and the coordinator shall report to the county administrator or his or her designee.

(b) The coordinator shall have the following duties and responsibilities, in addition to any other duties and responsibilities specified in this article:

- (1) To implement and administer the provisions of this article, subject to the direction of the county administrator or his or her designee;
- (2) To formulate, propose, and implement rules and regulations for the development, implementation, administration, and monitoring of the programs established under this article, subject to approval by the county administrator;
- (3) To determine on an ongoing basis the availability of minority and woman business enterprises within the Unified Government's marketplace for all relevant industries, professions, or trade groupings;
- (4) To make recommendations to the county administrator on annual goals for participation of minority and woman business enterprises on Unified Government contracts;
- (5) To evaluate and make recommendations to the county administrator on the implementation of race- and gender-neutral remedies;
- (6) To coordinate with the chief procurement officer, department heads, and other Unified Government employees to ensure the efficient and cost-effective implementation of the programs under this article;
- (7) In cooperation with the chief procurement officer and department heads, to establish information reporting requirements for

contractors that shall be incorporated into the terms of all invitations for bids, requests for proposals, and contracts;

- (8) To collect and maintain in a centralized database all data needed to evaluate the utilization of minority and woman business enterprises on Unified Government contracts and the impact of the programs established under this article, including race- and gender-neutral remedies;
- (9) To collect and maintain data on the residency of all contractors, joint venturers, subcontractors, and suppliers who participate on contracts subject to division 2 of this article;
- (10) To monitor the Unified Government's progress towards the established annual MBE and WBE goals;
- (11) To determine the eligibility of business enterprises to participate as minority or woman business enterprises on contracts subject to division 2 of this article;
- (12) To attend meetings of the Contract Fairness Board and to furnish staff assistance to the Board;
- (13) To establish project goals under division 2 of this article with the assistance and advice of the Contract Fairness Board and in consultation with the department head;
- (14) To evaluate bids or proposals for compliance with project goals, including determining whether the bidder or proposer has demonstrated required good faith efforts;
- (15) To monitor post-award compliance with project goals and the requirements of division 2 of this article;
- (16) To enforce the provisions of division 2 of this article, including imposing sanctions when warranted;
- (17) To provide information and assistance to minority and woman business enterprises and other small business enterprises relating to Unified Government contracting practices and procedures and bid specifications, requirements, and prerequisites;
- (18) To implement an online directory of minority and woman business enterprises as part of the Unified Government's website;

- (19) To develop and maintain relationships with organizations representing contractors, including organizations representing minorities and women, and to solicit their input and advice on the Unified Government's programs;
- (20) To implement any MBE, WBE, or DBE program required by federal or state law or contract;
- (21) To monitor compliance with MBE, WBE, or local business enterprise participation goals contained in any development or similar agreement to which the Unified Government is a party;
- (22) To conduct or recommend studies necessary to evaluate, support, or improve the programs established under this article;
- (23) To assist the county administrator in preparing quarterly and annual reports to the Board of Commissioners, as required by subsections 18-152(d) and (e); and
- (24) To perform other related duties as assigned.

**Sec. 18-155. Relation to Chapter 29, Procurement Code.**

This article is intended to supplement the procurement code in Chapter 29 of this code. To the extent that the provisions of this article are inconsistent with the provisions of Chapter 29, the provisions of this article shall govern.

**DIVISION 2. MBE/WBE PROGRAM FOR  
CONSTRUCTION CONTRACTS EXCEEDING \$250,000**

**Sec. 18-156. Contracts subject to this division.**

(a) Except as otherwise provided, the provisions of this division shall apply to all construction contracts exceeding \$250,000.

(b) The provisions of this division shall not apply to a contract to be paid in whole or part with funds from the United States government or the State of Kansas to the extent that they are inconsistent with requirements, terms, or conditions imposed by those governments.

**Sec. 18-157. Definitions.**

For the purposes of this division, the following definitions shall apply, unless otherwise clearly required by the context:

(1) *Annual goal* means the annual goal established by the Board of Commissioners under section 18-151(c).

(2) *Bid* means a bid to perform a construction project made in response to an invitation for bid, as provided in section 29-153 of the procurement code.

(3) *Bid shopping* means the practice in which a person divulges or requires another to divulge a subcontractor's bid or proposal for the purpose of securing a lower bid or proposal.

(4) *Broker* means a business enterprise that performs a commercially useful function as an intermediary, for a fee, in the acquisition of materials, supplies, or equipment, regardless of whether or not it takes title to such materials, supplies, or equipment, for the Unified Government or its contractors or suppliers, but that is not a manufacturer, manufacturer's representative, or regular dealer. Only bona fide commissions earned by a broker for its activities in performing a commercially useful function on a Unified Government contract shall be counted toward the project goal.

(5) *Business enterprise* or *business* means an individual, sole proprietorship, corporation, limited liability company, partnership, limited partnership, limited liability limited partnership, joint stock company, joint venture, professional association, or any other legal entity operated for profit that is properly licensed or registered, as applicable, owned and controlled by persons who are citizens or lawful permanent residents of the United States, and otherwise authorized to do business in the State of Kansas.

(6) *Commercially useful function* means real and actual services that are a distinct and verifiable element of the contracted work based upon private sector trade or industry standards. An MBE or WBE performs a commercially useful function when it is responsible for executing the ordinary and necessary work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether an MBE or WBE is performing a commercially useful function, all relevant factors will be evaluated, including the following:

- a. The amount of work subcontracted;
- b. Industry practices;
- c. Whether the amount the MBE or WBE is to be paid under the contract is commensurate with the work it is actually performing;
- d. Whether the MBE or WBE has the skill and expertise to perform the work for which it is being utilized;

- e. Whether the MBE or WBE is responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering, installing (where applicable), and paying for the material and supplies itself; and
- f. The credit claimed for its performance of the work.

(7) *Competitive selection process* means the process of using competitive sealed proposals, as described section 29-154 of this code.

(8) *Conduit* means an MBE or WBE that knowingly agrees to pass the scope of work for which it is listed for participation and is scheduled to perform or supply on a contract to a non-MBE or non-WBE. In this type of relationship, the MBE or WBE has not performed a commercially useful function and the arranged agreement between the two parties is not consistent with standard industry practice. This arrangement does not meet the commercially useful function requirement, and, therefore, the MBE's or WBE's participation does not count toward the MBE or WBE goals on the contract.

(9) *Construction* means the process of building, altering, repairing, improving, or demolishing any public structure or building or other public improvements of any kind to any public real property. It does not include routine operation, repair, or maintenance of existing structures, buildings, or real property.

(10) *Construction contract* means any Unified Government construction contract whose value exceeds \$250,000, except those that are exempted from a competitive bidding or selection process under the procurement code in Chapter 29. This definition shall encompass design-build contracts, but does not include stand-alone contracts with the Unified Government for professional design and construction services or for construction-related supplies.

(11) *Contractor* means a business enterprise that enters into a competitively bid or otherwise competitively selected contract with the Unified Government, in privity of contract with the Unified Government.

(12) *Day*, unless otherwise indicated, means working day.

(13) *Design-build contract* means a contract for the procurement of both the design and the construction of a structure, building, or other improvement in a single contract with a single design-build contractor or combination of such contractors that are capable of providing the necessary design and construction services.

(14) *Coordinator* means the coordinator of the Office of Supplier Opportunity.

(15) *Good faith efforts* means substantive and meaningful good faith actions undertaken by a contractor to achieve the MBE and WBE project goals as defined in more detail in section 18-161 of this division.

(16) *Individual or person* means a natural human being and not a legally-created or maintained entity.

(17) *Joint venture* means an association of two or more business enterprises to constitute a single business enterprise to perform a Unified Government construction contract for which purpose they combine their property, capital, efforts, skills, and knowledge and in which endeavor each joint venturer is responsible for a distinct, clearly defined portion of the work of the contract, performs a commercially useful function, and shares in the capital contribution, control, management responsibilities, risks, and profits of the joint venture to an extent equal to its ownership interest. Joint ventures must have an agreement in writing specifying the terms and conditions of the relationship between the joint venturers and their relationship and responsibility to the contract.

(18) *Manufacturer* means a business enterprise that operates or maintains a factory or establishment that produces, or substantially alters on the premises, the materials, supplies, or equipment provided to contractors, subcontractors, manufacturer's representatives, or suppliers on a contract, required under the contract and of the general character described by the contract specifications. The percentage of the value of the commercially useful function performed by a manufacturer on a Unified Government contract shall be counted toward the applicable project goal in the same manner as for a supplier.

(19) *Manufacturer's representative* means a business enterprise that sells products for one or more manufacturers. The manufacturer's representative must possess any licenses or certifications required by the manufacturer to sell its products. A manufacturer's representative does not take legal title to or physical possession of the products that it sells, the products generally being sent directly from the manufacturer to the contractor or subcontractor purchasing the products. Only bona fide commissions earned by a manufacturer's representative in performing a commercially useful function on a contract shall be counted toward the project goal as set out in section 18-159.

(20) *Minority or minority individual* means a person who is a citizen or lawful permanent resident of the United States and who is:

- a. African American, a person whose origins are in any of the Black racial groups of Africa, and who has historically and consistently identified himself or herself as being such a person;
- b. Hispanic American or Latino American, a person whose origins are in Mexico, Central, or South America, or any of the Spanish-

speaking islands of the Caribbean (for example, Cuba and Puerto Rico) regardless of race, and who has historically and consistently identified himself or herself as being such a person;

- c. Asian or Pacific Islander American, a person whose origins are in any of the original peoples of the Far East, Southeast Asia, the islands of the Pacific or the Northern Marianas, or the Indian Subcontinent, and who has historically and consistently identified himself or herself as being such a person; or
- d. Native-American, a person having origins in any of the original peoples of North America, and who maintains tribal affiliation or demonstrates at least one-quarter (1/4) descent from such groups, and who has historically and consistently identified himself or herself as being such a person.

(21) *Minority business enterprise* or *MBE* means a business enterprise that is owned and controlled by one or more minority individuals and that is certified as a minority business enterprise by one of the entities set forth in section 18-158(a)(1).

(22) *Packager* means a business enterprise that performs a commercially useful function in the packaging of goods, but is not itself a regular dealer, manufacturer, or manufacturer's representative. A packager shall be considered and treated as a broker.

(23) *Principal place of business* means the location at which the business records of the business enterprise are maintained and the location at which the individual who manages the business enterprise's day-to-day operations spends the majority of his or her working hours.

(24) *Professional design and construction services* means those areas of services ancillary to construction as encompassed within the Unified Government's contracting processes, including but not limited to architectural, engineering, real estate appraisal, land surveying, testing, and construction management services.

(25) *Proposal* means a proposal to perform a construction project submitted in response to a request for proposals, as provided in section 29-154 of the procurement code.

(26) *Qualified* means that a business enterprise has the financial ability, expertise, skill, experience, licensing and registration, and access to the necessary staff, facilities, and equipment to complete contracts or subcontracts that it may undertake on projects. The Unified Government makes no representations as to the qualification of any business enterprise.

(27) *Regular dealer* means a business enterprise that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the contract specifications and required for the performance of the contract are bought and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the business enterprise must be an established, regular business engaged in, as a substantial and material portion of its business, and in its own name, the purchase and sale or lease of the products in question. A regular dealer is presumed to keep such materials, supplies, articles, or equipment in stock, but must in any event bear the risk of loss of such items. A regular dealer in such bulk items as steel, cement, gravel, stone, asphalt, and petroleum products need not own, operate, or maintain a place of business if it both owns and operates distribution equipment for the products. Any supplementation of a regular dealer's distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Brokers, conduits, packagers, manufacturers, and manufacturer's representatives shall not be regarded as regular dealers within the meaning of this term.

(28) *Subcontractor* means a business enterprise that directly contracts with a contractor or subcontractor to perform work on a Unified Government contract.

(29) *Supplier* means a business enterprise that directly contracts with a contractor or subcontractor to provide materials, supplies, or equipment on a Unified Government contract. A supplier may be a regular dealer, manufacturer, manufacturer's representative, or broker.

(30) *Unified Government's marketplace* means the geographic and procurement area in which the Unified Government contracts on an ongoing basis and includes Cass, Clay, Jackson, and Platte counties in Missouri and Johnson, Leavenworth, and Wyandotte counties in Kansas.

(31) *Woman business enterprise* or *WBE* means a business enterprise that is owned and controlled by one or more women who are citizens or lawful permanent residents of the United States and that is certified as a woman business enterprise by one of the entities set forth in section 18-158(a)(1).

**Sec. 18-158. Eligibility of business enterprise to participate as MBE or WBE.**

(a) To be eligible to participate as a minority or woman business enterprise on contracts subject to this division, a business enterprise must meet the following requirements:

- (1) It must be certified as a minority or woman business enterprise (MBE or WBE) by one of the following entities:

- a. City of Kansas City, Missouri;
  - b. State of Kansas or its certifying agencies, including the Kansas Department of Commerce and Housing and Kansas Department of Transportation;
  - c. State of Missouri or its certifying agencies, including the Office of Supplier and Workforce Diversity and Missouri Department of Transportation;
  - d. Mid-America Minority Business Development Council;
  - e. Women’s Business Enterprise National Council; or
  - f. National Women Business Owners Corporation.
- (2) It must have a real and substantial presence in the Unified Government’s marketplace. A business enterprise will be deemed to have a real and substantial presence in the Unified Government’s marketplace if:
- a. The enterprise’s principal office or place of business is in the Unified Government’s marketplace;
  - b. The enterprise maintains full-time employees in one or more of the enterprise’s offices within the Unified Government’s marketplace to conduct or solicit business in the Unified Government’s marketplace the majority of their working time;
  - c. The enterprise has transacted business more than once in the Unified Government’s marketplace within the past three years; and
  - d. The enterprise has been in existence in the Unified Government’s marketplace for at least one year.

(b) The coordinator shall, by rule and regulation or informal guidelines relating solely to internal management and procedure, establish reasonable procedures and methods for the determining the eligibility of business enterprises to participate as MBEs or WBEs on contracts subject to this division.

(c) *Unified Government officials, employees, and their relatives ineligible.* No business enterprise shall be eligible to participate as an MBE or WBE on contracts subject to this division if ownership or control of such business enterprise is held by a Unified Government official or employee, as defined in

section 2-253 of this code, or an official's or employee's spouse, child, sibling, or parent.

(d) *Disqualification of business enterprise.* The coordinator shall disqualify a business enterprise that does not continuously meet the above eligibility criteria from participating as an MBE or WBE on contracts subject to this division.

(1) *Duty to notify of change of circumstances.* The business enterprise shall notify the coordinator of any change in its circumstances affecting its continued eligibility under this division within 30 days after the enterprise becomes aware of the change of circumstances. Failure to notify the coordinator of a change of circumstances affecting eligibility may result in the imposition of sanctions under section 18-170.

(2) *Failure to respond, attend, honor, or comply.* The coordinator may disqualify a business enterprise from participating as an MBE or WBE on contracts subject to this division if the enterprise repeatedly fails to respond to requests for quotations from bidders or proposers who timely solicit participation on a contract, to attend relevant pre-bid or pre-proposal conferences, to honor quotations in good faith, or otherwise to comply with the requirements of this division.

**Sec. 18-159. Project goals.**

(a) Upon approval of the county administrator, the coordinator shall add a requirement to the bid or proposal instructions for each construction contract assigning project goals for MBE and WBE utilization based upon a percentage of the dollar value of all work on the contract, and, as set out below, the availability of MBEs and WBEs to perform the work and the Unified Government's progress toward meeting the annual goal for construction contracts; provided that, if the county administrator determines it to be in the best interests of the Unified Government, the county administrator may waive or modify the application of a project goal for a given contract. The goal percentage assigned by the coordinator may vary from contract to contract consistent with meeting the annual goal. The individual project goal for each contract shall be set forth in the bid or proposal instructions.

(b) The following contributions shall count toward the project goal as more specifically provided below: Portions of work undertaken by MBEs and WBEs as contractors, joint venturers, subcontractors, and suppliers.

(c) As an aid in the establishment of an individual project goal, the coordinator shall seek the advice and assistance of the Contract Fairness Board

established in section 18-172. The coordinator may utilize the advice of the Contract Fairness Board to the extent that the coordinator deems it to be appropriate and consistent with the purposes of this article.

(d) Upon approval of the county administrator, the coordinator may cause a representative sample of Unified Government construction contracts to be bid or otherwise selected without a project goal to determine MBE and WBE utilization on such contracts in the absence of a goal.

**Sec. 18-160. Compliance with project goals.**

The bid or proposal specifications for each construction project shall require that all bidders or proposers seeking to contract with the Unified Government address the project goal through one or more of the following subsections, or by demonstrating good faith efforts as set out in section 18-161:

(a) If the bidder or proposer is an MBE or WBE, the value of the commercially-useful function to be self-performed by the MBE or WBE shall count to the extent provided in section 18-162 toward satisfaction of the project goal, provided that the project goal to the extent not met by bidder or proposer self-performance shall be addressed as otherwise set out in this section;

(b) If the bidder or proposer submits a joint venture agreement that includes one or more MBEs or WBEs, the value of the commercially useful function to be performed by the MBEs or WBEs in the joint venture shall count to the extent provided in section 18-162 toward satisfaction of the project goal. The joint venture is subject to review and approval by the coordinator, and the joint venture agreement shall be provided to the coordinator within a time period before the date of bid opening or the date of final project-specific proposal in the case of a competitive selection process defined by the coordinator. Joint venturer participation will count toward the satisfaction of the project goal upon confirmation by the coordinator of the utilization in the joint venture of joint management and full integration of work forces by the joint venturers; or

(c) If the bidder or proposer utilizes MBEs or WBEs as subcontractors or suppliers, the value of the commercially useful function to be performed by such MBEs and WBEs shall count to the extent provided in section 18-162 toward satisfaction of the project goal.

**Sec. 18-161. Good faith efforts.**

(a) If the bidder or proposer has not fully met the project goal established under section 18-159, then it shall demonstrate that it has made good faith efforts to meet such goal. The bidder or proposer shall furnish to the coordinator, within two days after bid opening by the Unified Government or date of final project-specific proposal in the case of a competitive selection process, a

detailed statement of its good faith efforts to meet the project goal. The statement shall address each of the items in subsection (b) and any additional criteria that the director may establish by rule or regulation consistent with the purposes of this division. Good faith efforts must be demonstrated to be meaningful and not merely for formalistic compliance with this division. The scope and intensity of the efforts will be considered in determining whether the bidder or proposer has achieved a good faith effort.

(b) The statement of good faith efforts shall include a specific response and verification with respect to each of the following good faith effort categories, which may be further defined by rule or regulation. A bidder or proposer may include any additional information it believes to be relevant. Failure of a bidder or proposer to show good faith efforts as to any one of the following categories shall render its overall good faith effort showing insufficient and its bid or proposal non-responsive:

- (1) If pre-bid or pre-selection meetings are scheduled by the Unified Government at which MBEs and WBEs may be informed of joint venture, subcontracting, or supplier opportunities under a proposed contract to be bid or procured under a competitive selection process, attendance at such pre-bid or pre-selection meetings is not mandatory; however, bidders and proposers are responsible for the information provided at these meetings.
- (2) The bidder or proposer must solicit by all reasonable and available means, the interest of all MBEs and WBEs certified in the scopes of work of the contract. The bidder or proposer must solicit the interest of the MBEs and WBEs within sufficient time, before the bid opening or date of final project-specific proposal in the case of a competitive selection process, to allow the MBEs and WBEs to respond to the solicitation. The bidder or proposer must determine with certainty if the MBEs and WBEs are interested by demonstrating appropriate steps to follow up initial solicitations.
- (3) The bidder or proposer must select portions of the work of the contract to be performed by MBEs and WBEs to increase the likelihood that the project goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MBE and WBE participation as joint venturers or subcontractors, and for bidder or proposer self-performed work, as suppliers, all reasonably consistent with industry practice, even when the bidder or proposer would otherwise prefer to perform these work items with its own forces. The bidder or proposer must identify what portions of the contract will be self-performed and what portions of the contract will be opened to solicitation of bids, proposals, and quotes from

MBE and WBEs. All portions of the contract not self-performed must be solicited for MBE and WBE participation. The ability or desire of a bidder or proposer to perform the work of a contract with its own forces does not relieve the bidder or proposer of the responsibility to meet the project goal or demonstrate good faith efforts to do so.

- (4) The bidder or proposer, consistent with industry practice, must provide MBEs and WBEs at a clearly stated location with timely, adequate access to and information about the plans, specifications, and requirements of the contract, including bonding and insurance requirements, if any, to assist them in responding to the solicitation.
- (5) The bidder or proposer must negotiate in good faith with interested MBEs and WBEs and provide written documentation of negotiation with each MBE or WBE.
- (6) For each MBE or WBE that contacted the bidder or proposer or that the bidder or proposer contacted, consistent with industry practice, the bidder or proposer must supply a statement giving the reasons why the bidder or proposer and the MBE or WBE did not succeed in negotiating a joint venture, subcontracting, or supplier agreement, as applicable.
- (7) The bidder or proposer must provide verification that it rejected each non-utilized MBE and WBE because the MBE or WBE did not submit the lowest bid or was not qualified. Such verification shall include a verified statement of the amounts of all bids received from potential or utilized joint venturers, subcontractors, and suppliers on the contract, whether or not they are MBEs or WBEs. In determining whether an MBE or WBE is qualified, the bidder or proposer shall be guided by the definition of qualified in section 18-157(26). Evidence of lack of qualification must be based on factors other than solely the amount of the MBE's or WBE's bid. For each MBE or WBE found not to be qualified by the bidder or proposer, the verification shall include a statement giving the bidder's or proposer's reasons for its conclusion. A bidder's or proposer's industry standing or group memberships may not be the cause of rejection of an MBE or WBE. A bidder or proposer may not reject an MBE or WBE as being unqualified without sound reasons based on a reasonably thorough investigation and assessment of the MBE's or WBE's capabilities and expertise.

(c) In determining whether a bidder or proposer has satisfied good faith efforts as to a project goal, the success or failure of other bidders or proposers on the contract in meeting the project goal may be considered.

**Sec. 18-162. Identification of participating MBEs and WBEs.**

(a) At the time of bid opening or date of final project-specific proposal in the case of a competitive selection process, the bidder or proposer shall provide to the Unified Government an affidavit of intended utilization in a form prescribed by the coordinator stating its intent to meet the project goals or to submit evidence of good faith efforts to meet those goals.

(b) Within two days of bid opening or date of final project-specific proposal in the case of a competitive selection process, the bidder or proposer shall provide to the Unified Government the following:

- (1) A notarized contractor utilization plan in a form prescribed by the coordinator. The contractor utilization plan shall list all MBEs and WBEs that are being utilized toward the satisfaction of the project goal, whether as a self-performing bidder or proposer or as joint venturers, subcontractors, or suppliers. The list shall specify:
  - a. The name and contact name for each MBE or WBE;
  - b. The dollar value and description of the commercially useful function to be performed by the MBE or WBE, consistent with subsections (e) and (f) of this section;
  - c. The percentage of the value of the commercially useful function to be performed by the MBE or WBE, consistent with subsections (e) and (f), as compared to the total contract amount;
  - d. The designation of each business enterprise as either an MBE or WBE; and
  - e. An adequate statement from the bidder or proposer that the dollar amount of work to be performed by each MBE or WBE on the contract, other than that self-performed by the bidder or proposer, was furnished to the bidder or proposer and agreed upon before the bid opening or date of final project-specific proposal in the case of a competitive selection process.
- (2) An executed letter of intent for each MBE or WBE listed by the bidder or proposer, affirming that the contractor agrees to utilize

the MBE or WBE on the project and describing the commercially useful function to be performed and the agreed upon dollar amount to be paid by the contractor; and

(3) If the bidder or proposer has failed to meet the project goals, the statement of good faith efforts required by section 18-161.

(c) Failure to provide the documentation required by subsections (a) and (b) in a timely manner will render the bid or proposal non-responsive.

(d) Only that level of MBE or WBE utilization demonstrated in accordance with this section at the time of bid opening or date of final project-specific proposal in the case of a competitive selection process may be counted in satisfaction of the project goal, except as otherwise set out in sections 18-165 and 18-166.

(e) All MBE or WBE contractors, joint venturers, subcontractors, or suppliers must actually perform a commercially useful function in the work of a contract within the areas for which they are certified, and must not function as a conduit. Consistent with industry practice, and as permitted by rules and regulations adopted by the coordinator, MBEs and WBEs may enter into subcontracts, including subcontracts with non-MBEs and non-WBEs. In no case, however, shall an MBE or WBE act as a conduit, nor shall the participation of an MBE or WBE count toward a project goal to the extent it fails to perform a commercially useful function.

(f) Expenditures for materials, supplies, and equipment obtained from an MBE or WBE supplier shall count toward the appropriate project goal. Expenditures for materials, supplies, and equipment paid to MBEs and WBEs that are not suppliers may count toward an appropriate project goal only to the extent of fees or commissions charged for providing a bona fide service, such as professional, technical, consultant, or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials, or supplies required for performance of the contract, provided that the fee or commission is determined by the coordinator to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(g) Any agreement between a bidder or proposer and an MBE or WBE in which the bidder or proposer requires that the MBE or WBE not provide quotations to other bidders or proposers is prohibited and shall render the bid or proposal non-responsive.

(h) Bid shopping is prohibited and shall render the bid or proposal non-responsive.

**Sec. 18-163. Responsive and nonresponsive bids or proposals.**

(a) *Responsive; compliance with requirements.* If the coordinator determines that a bid or final project-specific proposal in the case of a competitive selection process meets the project goal, or that the bidder or proposer has shown adequate good faith efforts as required by section 18-161, then the coordinator shall notify the procurement officer and department head to regard the bid or proposal as responsive under with this division.

(b) *Failure to meet requirements.* If the coordinator determines that a bid or proposal does not meet the project goal and that the bidder or proposer has failed to show good faith efforts as required by section 18-161, or that the bidder or proposer has failed to provide timely documentation as required by section 18-162, then the coordinator shall notify the procurement officer and department head to regard the bid or proposal as non-responsive, and no further consideration shall be given by the Unified Government to the bid or proposal.

(c) *Informal meeting.* If the coordinator finds the bid or proposal non-responsive in accordance with subsection (b) above for failure of the bidder or proposer to show adequate good faith efforts, the non-responsive bidder or proposer may request an informal meeting with the coordinator within two working days from the date that the Unified Government notifies the bidder or proposer of the inadequacy of good faith efforts. The coordinator shall meet with the non-responsive bidder or proposer before notifying the procurement officer and department head that the bid or proposal is non-responsive. All deficiencies in the good faith efforts shall be explained to the bidder or proposer at such meeting after which the bidder or proposer shall be allowed an additional 24 hours in which to submit additional information or to clarify the original good faith efforts. The coordinator will at no time, however, allow joint venturers, subcontractors, or suppliers not listed on the contractor utilization plan to be counted toward meeting the project goal for the purpose of making the bid or proposal responsive. If after this informal meeting or the expiration of the 24-hour period to submit additional information, the coordinator still finds the bid or proposal to be non-responsive, the coordinator shall make the notification as stated in subsection (b) above.

**Sec. 18-164. Schedule of work to be performed by MBEs and WBEs.**

Within five working days following commencement of work on a contract, the contractor shall submit to the coordinator a duplicate of the project schedule that sets forth in detail the anticipated utilization of all MBEs and WBEs on the contract. In the event of a contract performance delay of more than one-third of the originally estimated length of time between project notice to proceed and completion, the contractor shall submit to the coordinator not later than the originally estimated date of project completion, a revised schedule for utilization of all MBEs and WBEs on the contract.

**Sec. 18-165. Compliance with achieved project goal level required throughout performance of contract.**

(a) Upon award of a contract by the Unified Government that includes a project goal, the project goal becomes a covenant of performance by the contractor in favor of the Unified Government.

(b) All contracts subject to this division shall be reviewed by the coordinator for compliance with the provisions of this division. This review shall examine, but not be limited to, whether the MBE and WBE participation dollar amounts and percentages and achieved project goal levels upon which the contract was awarded are maintained over the term or duration of the contract.

(c) For any contract for which the coordinator has set a project goal, it shall be an ongoing, affirmative obligation of the contractor on such contract to maintain, at a minimum, compliance with the originally achieved level of MBE and WBE participation upon which the contract was awarded, for the duration of the contract, unless the Unified Government initiates a material alteration to the scope of work affecting MBEs or WBEs performing on the contract through change order, contract amendment, force account, or as otherwise described in section 18-166.

(d) The coordinator shall evaluate the utilization of MBEs and WBEs to determine whether such MBEs and WBEs are performing a commercially useful function. The evaluation shall examine the amount of work subcontracted, industry practice, and other relevant factors. The amount of MBE and WBE participation credited toward a project goal shall be based upon an analysis of the specific duties performed by the MBE or WBE and the extent to which such duties constitute a commercially useful function. The coordinator may undertake such inquiries or studies, consult such employees, or, with the approval of the county administrator, retain such consultants as may be necessary to assist the coordinator in making these determinations.

(e) The work performed by an MBE or WBE not providing a commercially useful function or by an MBE or WBE functioning as a conduit shall not count toward meeting the project goal.

**Sec.18-166. Project change orders, amendments, and modifications.**

(a) Contractors shall have a continuing obligation to immediately inform the coordinator in writing of any agreed-upon increase or decrease in the scope of work of the contract, upon any of the bases discussed in this section, regardless of whether the increase or decrease in scope of work has been reduced to writing at the time of notification.

(b) Any increase in the scope of work of a construction contract, whether by amendment, change order, force account, or otherwise that increases the dollar value of the contract, whether or not the change is within the scope of work designated for performance by an MBE or WBE at the time of contract award, shall be contemporaneously submitted to the coordinator. Those amendments, change orders, force accounts, or other contract modifications that involve a changed scope of work that cannot be performed by existing project subcontractors or by the contractor shall be subject to a goal for MBEs and WBEs equal to the original project goal on the contract that was included in the bid or proposal requirements. The contractor shall satisfy such goal as respects the changed scope of work by soliciting new MBEs or WBEs in accordance with section 18-160, or the contractor must show each element of modified good faith efforts set out in section 18-168(c). The contractor shall supply to the coordinator the documentation described in section 18-168(c) with respect to the increased dollar value of the contract.

**Sec. 18-167. Payments to joint venturers, subcontractors and suppliers.**

All contractors shall promptly render payment to all joint venturers, subcontractors, and suppliers on a contract. A contractor shall provide with each pay request to the Unified Government, beginning with the second pay request, partial claim releases from joint venturers, subcontractors, and suppliers in form and content satisfactory to the Unified Government or shall provide, at the Unified Government's sole option, alternative proof of payment to subcontractors and suppliers in form and content approved by the coordinator, evidencing that all joint venturers, subcontractors, and suppliers have been duly paid out of the proceeds of the contractor's payments from the Unified Government, unless a bona fide dispute, documented in writing, exists between the contractor and the unpaid joint venturer, subcontractor, or supplier.

**Sec. 18-168. Potential violations during contract performance.**

(a) A contractor who has been awarded a contract based upon a given level of MBE and WBE participation shall not at any time before or during the performance of such contract:

- (1) Fail to utilize an MBE or WBE that was listed on the contractor utilization plan to satisfy the project goal, and for which a letter of intent was submitted, without substituting another MBE or WBE performing the same commercially useful function and dollar amount, or demonstrating each element of modified good faith efforts, as defined in subsection (c) of this section, to substitute another MBE or WBE; or
- (2) Fail to allow an MBE or WBE functioning as a joint venturer, subcontractor, or supplier to perform the commercially useful

function, the value of which was originally counted for that MBE or WBE in awarding the contract; or

- (3) Modify or eliminate all or a portion of the scope of work attributable to an MBE or WBE upon which the contract was awarded, unless directed by the Unified Government; or
- (4) Terminate an MBE or WBE originally utilized as a joint venturer, subcontractor, or supplier in order to be awarded the contract without replacing the MBE or WBE with another MBE or WBE performing the same commercially useful function and dollar amount, or demonstrating each element of modified good faith efforts, as defined in subsection (c), to substitute another MBE or WBE; or participate in a conduit relationship with an MBE or WBE scheduled to perform work on the contract; or commit any other violation of this division, or rules and regulations promulgated under this division, that constitutes a material breach of the contract, not mentioned above.

(b) Any action by a contractor in violation of subsections (a)(1) through (4) of this section shall constitute a material breach of the contract and shall entitle the Unified Government to exercise all of its rights at law or equity for such material breach, in addition to exercising any of the other sanctions set out in section 18-170. If, after award of a contract, an MBE or WBE has its certification terminated, fails to perform a commercially useful function, the value of which was originally counted for that MBE or WBE in awarding the contract, or voluntarily withdraws its MBE or WBE participation on the contract, and the contractor can demonstrate that the termination or failure did not result from any action or inaction, whether direct or indirect, by the contractor, the termination of certification, failure to perform a commercially useful function, or withdrawal from participation shall not be deemed to affect compliance with the project goal and shall not be deemed a breach of the contract; provided, however, that the terminated MBE or WBE is substituted with another MBE or WBE performing the same commercially useful function and dollar amount, or that modified good faith efforts to substitute another MBE or WBE, as defined in subsection (c), are demonstrated.

(c) In the event that a contractor must add or replace an MBE or WBE joint venturer, subcontractor, or supplier or in the event that a new scope of work is added to the ongoing contract, and the contractor is in non-compliance with maintenance of the original project goal upon which the contract was awarded due to failure to utilize additional MBEs or WBEs, the following modified good faith efforts must be completed. Failure of a contractor to show good faith efforts as to any one of the following categories shall render its overall good faith efforts showing insufficient and its contract performance in non-compliance with this division.

- (1) The contractor must submit notice in writing to the coordinator of its intent to terminate or replace an MBE or WBE previously identified for participation. The reason for the termination or replacement must be stated and the type of work or services must be identified.
- (2) The contractor must verify in writing to the coordinator that it used the most current MBE and WBE directory from the Unified Government to contact MBEs and WBEs that are certified in the applicable area of work or supply at the time of the modified good faith efforts.
- (3) The contractor must submit documentation to the coordinator verifying its efforts to contact appropriate MBEs and WBEs within the Unified Government's marketplace. Facsimile transmission, e-mail, and telephone communication will be acceptable. The coordinator may verify such contacts as he deems appropriate.
- (4) Documentation of the modified good faith efforts must be submitted to the coordinator before the payment to the contractor of the next progress or other partial payment or fund release under the contract.

**Sec. 18-169. Burden of proof; investigations of compliance.**

Any business enterprise affected by the operation of this division shall have the burden of proving its compliance with the requirements and obligations of the division. The coordinator is empowered to receive and investigate complaints and allegations by MBEs, WBEs, third parties, or Unified Government personnel, or to initiate his or her own investigations into compliance with the requirements and obligations of this division. If the coordinator determines in his or her sole discretion that an investigation is warranted, upon written notice of such investigation the affected party shall be obligated to cooperate fully with the investigation and shall have a continuing burden of providing complete, truthful information to the coordinator and of otherwise proving compliance with the requirements and obligations of this division.

**Sec. 18-170. Contract sanctions for failure to comply with requirements of division.**

(a) If a contractor is found to be in violation of the provisions of this division; to otherwise be in breach of a contract; to perform as or to utilize MBEs or WBEs for a non-commercially useful function or as a conduit; to fail to submit information required by this division; to submit false, misleading, or materially incomplete statements, documentation, or records, including but not limited to

contractor utilization plan, letters of intent, or good faith efforts; or to fail to cooperate in an investigation, it shall be subject to sanctions. The Unified Government may exercise any or all of its rights, including but not limited to withholding funds, imposing monetary penalties, or suspending or terminating the contract, contained in the contract terms and conditions. If the contract is suspended or terminated, the Unified Government reserves all its rights at law or equity, with the suspension or termination being deemed a response to a contractor default.

(b) In the event that the coordinator determines that a contractor has not complied with this division, the coordinator may assess the contractor a civil, remedial penalty of not more than 150 percent of the contract amount that would have been allocated to one or more MBEs or WBEs but for the contractor's noncompliance. In assessing a civil penalty:

- (1) The coordinator shall calculate the applicable amount of civil penalty, and may reduce or waive all or part of the penalty in consideration of the following factors:
  - a. The length of the period of noncompliance;
  - b. The history of previous noncompliance with any provision of this division;
  - c. The monetary impact of the civil penalty on the contractor in correcting the noncompliance; or
  - d. Other facts and circumstances relevant to the noncompliance of the contractor.
- (2) The coordinator shall collect assessed and unpaid civil penalties under this subsection by action initiated in state district court. A stay of any order of the coordinator pending judicial review shall not relieve a contractor from any civil penalty obligation imposed under this section.
- (3) Any assessed civil penalties may be offset against any amount, including but not limited to contract retainage, otherwise due and owing to the contractor on the contract.
- (4) The contract may be suspended or terminated, with the Unified Government reserving all its rights at law or equity, with such suspension or termination being deemed a response to a contractor default;

- (5) The coordinator may suspend or debar the contractor from participating in Unified Government contracts subject to this division for a period as may be determined by the coordinator under such suspension and debarment procedures as may be established by the Unified Government. In that event, the coordinator shall regard as non-responsive any bid or proposal received during this time period that includes the contractor as a contractor, joint venturer, subcontractor, or supplier.
- (6) If a contractor or other business enterprise knowingly receives new or additional work on a contract as a result of actions set out in this section, then the penalties in this section may be applied to such business enterprise.
- (7) The coordinator may suspend or revoke an offending MBE's or WBE's eligibility for participation, may suspend its participation from counting toward a project goal, and may suspend or debar it from participating in future Unified Government contracts based upon such MBE's or WBE's acting as a conduit, failing to comply with the provisions of this division, failing to perform a commercially useful function on a contract, failing to submit required information, submitting false, misleading, or materially incomplete statements, documentation, or records, or failing to cooperate in an investigation.

(c) The coordinator may impose any one or more of the sanctions set out in this section against any contractor, joint venturer, subcontractor, or supplier determined to be in violation of the section, provided that the coordinator shall first advise the affected department head of the proposed sanction in writing. If the department head advises the coordinator in writing that the department head believes that imposition of the sanction would not be in the best interests of the Unified Government, the coordinator shall consult with the department head before making a decision as to whether to impose the sanction.

(d) Suspected criminal violations shall be referred to the proper authorities for prosecution. If a conviction or a guilty plea is obtained as a result of such prosecution, the perpetrator may be barred from contracting with the Unified Government to the extent authorized by law.

**Section 18-171. Appeal procedure.**

(a) Any person or business enterprise aggrieved by any decision or action of the coordinator made under authority of this division, other than the determination of project goals, may appeal to the county administrator by delivering a written notice of appeal to the county administrator not later than 10 days following the receipt of notice of the coordinator's decision or action. The

notice of appeal shall specify the decision or action appealed from and the reasons why the decision or action is believed to be in error. The person or business enterprise filing the notice of appeal shall serve copies of the notice of appeal by first-class mail or by hand-delivery on all persons or business enterprises known to have an interest in the outcome of the appeal. Service of copies of the notice of appeal on interested persons or business enterprises shall be documented in a certificate of service delivered to the county administrator with the notice of appeal. Failure to serve a copy of the notice of appeal on a person or business enterprise known to have an interest in the outcome of the appeal shall be grounds for denial of the appeal.

(b) Failure to file a timely appeal shall constitute waiver of the right to appeal the coordinator's decision or action.

(c) In the event that the outcome of the appeal may impact the award of a contract for which bids or proposals have been invited or requested before or during the pendency of the appeal, the county administrator, in his sole discretion, may delay award of the contract pending the outcome of the appeal.

(d) Upon receiving the notice of appeal, the county administrator shall decide whether to conduct a hearing on the appeal personally, to appoint a designee or hearing officer to hear the appeal, or to refer the appeal to the Contract Fairness Board established in section 18-172 for hearing and recommendation.

(e) A hearing on the appeal shall be held within 21 days of the county administrator's receipt of the notice of appeal. At the county administrator's discretion, the hearing date may be extended for up to an additional 14 days. The county administrator may expedite the appeal or request that the Contract Fairness Board expedite the appeal if he or she decides that it is in the interest of any interested party or the Unified Government to do so.

(f) A bidder or proposer who has been declared an apparent successful bidder or proposer shall have the right to intervene in any appeal filed on that project. Any bidder, proposer, contractor, or other person or business enterprise whose interests will be affected by any appeal may be permitted by the county administrator or the Contract Fairness Board (if the matter is referred by the county administrator to the Board) to intervene in the appeal.

(g) If the county administrator refers the appeal to the Contract Fairness Board, the Board shall report its findings and recommendations in writing to the county administrator within 10 days of the conclusion of the hearing.

(h) The county administrator shall send written notice of his decision on the merits of the appeal to the person or business enterprise appealing and to

any known interested persons or business enterprises by first-class mail within 14 days after conclusion of the hearing or, if the appeal is referred to the Contract Fairness Board, within 10 days of receiving the Board's findings and recommendations.

(i) Exhaustion of the appeal procedure set forth in this section shall be a jurisdictional prerequisite to the commencement of a civil action in district court challenging any decision or action of the coordinator.

**Sec. 18-172. Contract Fairness Board; composition; conflict of interest; quorum.**

(a) There is hereby established the Unified Government Contract Fairness Board. The Board shall advise the county administrator and the coordinator on project goals for MBE and WBE participation in construction contracts and make recommendations for improvement of the MBE and WBE program.

(b) *Board composition.* The Board shall be composed of seven members appointed by the Mayor as follows:

- (1) One member and one alternate recommended by the Builders' Association;
- (2) One member and one alternate recommended by the Heavy Constructors' Association;
- (3) One member and one alternate recommended by the Kansas Black Chamber of Commerce;
- (4) One member and one alternate recommended by the Hispanic Contractors Association of Greater Kansas City;
- (5) One member and one alternate recommended by the Women Construction Owners and Executives and National Association of Women in Construction;
- (6) One member and one alternate recommended by the Kansas City, Kansas Chamber of Commerce; and
- (7) A chairperson appointed by the Mayor.

(c) *Term of appointment.* The terms of all Board members shall be four years, except that the initial terms of the members and alternates appointed under subsection (b)(1), (3), and (5) shall be two years.

(d) *Co-chairperson.* The members of the Board shall select a co-chairperson from among them to preside in the absence of the chairperson.

(e) *Alternates.* In the event a Board member is unable to attend a meeting of the Board or has a conflict of interest on a particular contract or issue, the alternate shall serve in that member's place. The term of an alternate shall expire at the expiration of the term of the Board member.

(f) *Ineligible for appointment.* The following are ineligible to serve on the Contract Fairness Board:

(1) Officials and employees of the Unified Government, as defined in section 2-253 of this code, or an official's or employee's spouse, child, sibling, or parent; and

(2) Non-residents of the Unified Government's marketplace.

(g) *Conflict of interest.* If a Board member has a conflict of interest on a contract or issue that comes before the Board, the member shall be temporarily replaced by the alternate. If the alternate has a conflict of interest in a bid, contract, or issue that comes before the Board, the alternate shall recuse himself.

(h) *Quorum.* Four members or alternates of the Board shall constitute a quorum unless otherwise increased by Board rules.

**Sec. 18-173. Responsibilities of the Contract Fairness Board; goal setting; appeals.**

(a) *Goal setting.* Before release for bid or proposal, the coordinator shall present to the Contract Fairness Board recommended MBE or WBE goals for each proposed construction contract. The Board shall advise the coordinator as to whether it believes the recommended goals are appropriate. If the Board considers the recommended goals inappropriate, it shall recommend alternative goals to the coordinator. In the event of a disagreement over goals, the coordinator shall meet with the Board and attempt to reach agreement on goals for the project. The coordinator shall have authority to decide project goals, subject to approval by the county administrator.

(b) *Advice.* The coordinator and county administrator may seek the advice of the Board about any matter related to the administration of the programs established under this article. The coordinator, county administrator, mayor, or Commission may seek the Board's input or recommendations on modifications or additions to this ordinance.

(c) *Appeals.* When requested by the county administrator, the Board shall hold hearings on appeals filed under section 18-171 and shall issue written

findings and make recommendations to the county administrator as to the disposition of the appeal.

(d) *Same; authority of board.* The Board shall hold a hearing within 21 days of the date the appeal was filed. The Board shall have authority to investigate and to inquire into all the facts and circumstances of the appeal and may hold investigative hearings for such purpose. The Board shall have the authority to issue advisory opinions concerning appeals to the county administrator, including recommending that the county administrator reverse, affirm, or modify decisions or actions of the coordinator. The Board shall issue a written report of its findings and recommendations to the county administrator within ten days of the conclusion of the hearing. The Board shall expedite the hearing and issuance of its findings and recommendations at the request of the county administrator.

(e) *Same; intervention.* A bidder or proposer who has been declared an apparent successful bidder or proposer shall have the right to intervene in any appeal filed on that project. Any bidder, proposer, contractor, or other person or business enterprise whose interests will be affected by any appeal may be permitted by the Board to intervene in the appeal.

**Sec. 18-174. Review and sunset.**

(a) This division shall be reviewed by the Board of Commissioners on the third anniversary of its enactment to determine whether it should be revised or whether additional studies are warranted.

(b) This division shall be repealed effective December 31, 2013.

**Section 2. Severability.** If any provision of this ordinance is held invalid or unenforceable, it shall be severed from the remaining provisions, which shall remain in full force and effect.

**Section 3. Effective Date.**

(a) This ordinance shall take effect and be in full force on April 15, 2009, from and after its passage, approval, and publication in the official Unified Government newspaper.

(b) Division 2 of Article V of Chapter 18 of the Code of the Unified Government of Wyandotte County/Kansas City, Kansas shall apply to all construction contracts exceeding \$250,000 for which bids or proposals are invited or requested on or after July 1, 2009.

**PASSED BY THE BOARD OF COMMISSIONERS OF THE UNIFIED  
GOVERNMENT OF WYANDOTTE COUNTY/KANSAS CITY, KANSAS, THIS  
\_\_\_\_\_ DAY OF \_\_\_\_\_, 2009.**

\_\_\_\_\_  
**Joe Reardon, Mayor/CEO**

**Attest:**

\_\_\_\_\_  
**Unified Government Clerk**

**Approved as to Form:**

\_\_\_\_\_  
**Assistant Counsel**