

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2019

COUNCIL BILL NO. CB19-0159
COMMITTEE OF REFERENCE:

Business, Arts, Workforce & Aeronautical Services

A BILL

For an ordinance amending portions of Chapter 28, Article III, Article V and Article VII to extend sunset dates; and Approve Annual Aspirational Goals.

WHEREAS, the Office of Economic Development, Division of Small Business Opportunity (“DSBO”), is responsible for the functions, powers and duties assigned to it under the Denver Revised Municipal Code, including development and enforcement of the Minority-Owned Business Enterprise (“MBE”), Woman-Owned Business Enterprise (“WBE”) and Small Business Enterprise (“SBE”) programs as related to construction under Article III, goods and services under Article V, and the SBE program under Article VII (collectively “MBE/WBE/SBE Programs” or “Programs”); and

WHEREAS, as a part of its responsibilities in operating its programs DSBO retained an independent consultant to conduct a disparity study to measure and confirm disparities in contracting within certain industries in which the City conducts business; and

WHEREAS, the independent consultant has finalized its study and report, and DSBO, City Council, City agencies, and stakeholders have all conferred and collaborated on the DSBO’s MBE/WBE/SBE Programs in order to implement program operations; and

WHEREAS, at this time, DSBO desires to make certain limited revisions to only those portions of Articles III, V, and VII set forth in this bill to effectuate administrative improvements to the Programs, as well as to correct typographical errors in the Articles, but leaving the rest of Articles III, V, and VII intact; and

WHEREAS, in order to receive and review the results of the study; conduct briefings on the results; confer with City Council and various stakeholders on those results; and prepare to repeal, reinstate and reauthorize the Programs; DSBO desires a limited extension of the pertinent dates of expiration of the MBE/WBE/SBE Programs; and

WHEREAS, in addition, City Council and DSBO wish to approve the aspirational annual goal for the Programs.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:

Section 1. As a result of previously held hearings and briefings regarding pertinent data, information and comment provided by DSBO and other City agencies, City Council hereby approves

1 the aspirational annual goal recommended by DSBO for construction, professional services, and
2 goods and services.

3 **Section 2.** Section 28-34(a)(1) of the Denver Revised Municipal Code is amended by
4 adding the language underlined to read as follows:

5 “(1) Formulating, proposing and implementing rules and regulations for the development,
6 implementation, administration, compliance, and monitoring, and reporting of the various programs
7 established through chapter 28, by other city programs or by federal law.”

8 **Section 3.** Section 28-34(a)(2) of the Denver Revised Municipal Code is amended by
9 adding the language underlined to read as follows:

10 “(2) Providing information, education, outreach and assistance to MBEs, WBEs, SBEs and
11 other business enterprises relating to city contracting practices and procedures, and bid
12 specifications, requirements and prerequisites.”

13 **Section 4.** Section 28-34(a)(4) of the Denver Revised Municipal Code is amended by
14 deleting the language stricken and adding the language underlined to read as follows:

15 “(4) Establishing annual and project goals for the MBE and WBE~~H~~ contracting program
16 established in division 3 of this article III of chapter 28.”

17 **Section 5.** Section 28-34(a)(8) of the Denver Revised Municipal Code is amended by
18 adding the language underlined to read as follows:

19 “(8) Collecting payment, goal compliance, and other pertinent data to evaluate the
20 programs and other city contracting initiatives.”

21 **Section 6.** Section 28-34(a)(11) of the Denver Revised Municipal Code is amended by
22 deleting the language stricken and adding the language underlined to read as follows:

23 “(11) Establishing a mentor-protégé program to encourage ~~majority and minority~~ trade
24 associations and individual businesses to work jointly to connect MBE and WBE protégés with well-
25 established mentor firms. DSBO shall in coordination and cooperation with other City agencies,
26 facilitate the implementation and coordination of this program. The program may ~~include appropriate~~
27 ~~incentives to~~ encourage firms to mentor MBE and WBE protégés.”

28 **Section 7.** Section 28-34(a)(12) of the Denver Revised Municipal Code is amended by
29 deleting the language stricken and adding the language underlined to read as follows:

30 “(12) ~~Completing on or before April 1, 2019~~ Periodically, at the director’s discretion and
31 based on DSBO’s specific needs, DSBO shall perform or cause to have performed an evaluation of
32 DSBO ~~to include~~ including by not limited to the following:”

1 **Section 8.** Section 28-54(5) of the Denver Revised Municipal Code is amended by deleting
2 the language stricken and adding the language underlined to read as follows:

3 “(5) ~~Broker~~ Broker means a business enterprise that performs a commercially useful function
4 as an intermediary, for a fee, in the acquisition of materials, supplies or equipment, regardless of
5 whether or not it takes title to such materials, supplies or equipment, for the city or a private owner
6 or its contractors, consultants or suppliers, but is not a manufacturer, manufacturer's representative
7 or regular dealer. Only bona fide commissions earned by a broker for its activities in performing a
8 commercially useful function on a city contract shall be counted toward the project goal as set out in
9 sections 28-63 and 28-68. A packager shall be considered and treated as a broker.”

10 **Section 9.** Section 28-54(26) of the Denver Revised Municipal Code is amended by
11 deleting the language stricken and adding the language underlined to read as follows:

12 “(26) ~~Goal committees~~ mean committees of persons engaged in the construction,
13 reconstruction and remodeling, and professional design and construction services industries, which
14 shall be established by the director to advise the director as to project goal setting as set forth in this
15 Chapter 28.”

16 **Section 10.** Section 28-54(32) of the Denver Revised Municipal Code is amended by
17 deleting the language stricken and adding the language underlined to read as follows:

18 “(32) ~~Manufacturer's representative~~ Manufacturer's representative means a business
19 enterprise that sells products for one (1) or more manufacturers. A manufacturer's representative
20 does not take legal title to or physical possession of the products that it sells, such products generally
21 being sent directly from the manufacturer to the contractor or subcontractor purchasing the products.
22 Only bona fide commissions earned by a manufacturer's representative in performing a commercially
23 useful function on a contract shall be counted toward the project goal as set out in sections 28-63
24 and 28-68.”

25 **Section 11.** Section 28-54(33) of the Denver Revised Municipal Code is amended by adding
26 the language underlined to read as follows:

27 “(33) Mentor-Protégé means a relationship between a subcontractor certified as a MBE or a
28 WBE (protégé) and a more experienced contractor (mentor) approved by DSBO. In a mentor-protégé
29 relationship, the mentor provides guidance on technical, financial, bonding, equipment, and
30 personnel assistance to the protégé. The purpose of the relationship is to increase the capacity of
31 MBEs and WBEs to perform city contracts.”

32 **Section 12.** Section 28-54(35)(a) of the Denver Revised Municipal Code is amended by
33 deleting the language stricken and adding the language underlined to read as follows:

1 “(a) An individual whose lifelong cultural and social affiliation is with one of the following
2 groups encompassed within the findings of the Denver City Council, which are rebuttably [~~reputably~~]
3 presumed to be socially disadvantaged:”

4 **Section 13.** Section 28-54(50) of the Denver Revised Municipal Code is amended by
5 deleting the language stricken and adding the language underlined to read as follows:

6 “(50) *Woman* means a person of the female gender, encompassed within the findings of,
7 the Denver City Council, who is ~~reputably~~ rebuttably presumed to be socially disadvantaged.”

8 **Section 14.** Section 28-54(51) of the Denver Revised Municipal Code is amended by
9 deleting the language stricken and adding the language underlined to read as follows:

10 “(51) *Woman business enterprise* or *WBE* means a business enterprise that is certified by
11 the director under this division as meeting all of the requirements for certification set forth in sections
12 28-55 and 28-~~568~~ as a WBE.”

13 **Section 15.** Section 28-55(c)(1)(a)(ii) of the Denver Revised Municipal Code is amended by
14 deleting the language stricken and adding the language underlined to read as follows:

15 “(ii) Have acquired the interest in a ~~real~~ verifiable and substantial arms-length transaction,
16 utilizing ~~real~~ verifiable, substantial, and continuing consideration; going beyond pro forma ownership
17 of the applicant business enterprise as reflected in ownership documents;”

18 **Section 16.** Section 28-55(c)(1)(a)(iv) of the Denver Revised Municipal Code is amended
19 by deleting the language stricken and adding the language underlined to read as follows:

20 “(iv) Have acquired the interest with a contribution of his or her own capital resources, by
21 having put his or her own financial resources at risk in the operation of the applicant business
22 enterprise, or, subject to requirements below, with a contribution of expertise. All contributions by
23 the socially and economically disadvantaged owner(s) to acquire the ownership interest in the
24 applicant business enterprise must be ~~real~~ verifiable, substantial, and continuing, which in part,
25 requires that it be commensurate with the ownership interest acquired. All contributions to acquire
26 an ownership interest, including any portion of it, must have been made at the time the socially and
27 economically disadvantaged individuals acquired the interest in business enterprise.”

28 **Section 17.** Section 28-55(c)(2) of the Denver Revised Municipal Code is amended by
29 deleting the language stricken and adding the language underlined to read as follows:

30 “(2) *Management and control.* Only an applicant business enterprise that is managed and
31 controlled by a socially and economically disadvantaged individual(s) may be certified as an MBE or
32 WBE. The socially and economically disadvantaged minority or woman owner(s) shall direct the
33 management, policies, and day-to-day business operations of the applicant business enterprise and

1 shall have the power to make, and ~~actually in fact make~~, routine and major decisions on matters of
2 management, policy, and operations. The socially and economically disadvantaged minority or
3 woman owner's(s') management and control must be ~~real~~, verifiable, substantial, and continuing and
4 go beyond the pro forma ownership of the applicant business enterprise as reflected in its ownership
5 documents. Ownership alone is not sufficient to establish management and control. To determine
6 whether each socially and economically disadvantaged individual satisfies these requirements, the
7 DSBO shall consider the criteria below:"

8 **Section 18.** Section 28-55(c)(2)(a) of the Denver Revised Municipal Code is amended by
9 deleting the language stricken and adding the language underlined to read as follows:

10 "a. If federal or state law or city ordinance requires the owner(s) to have a particular license
11 or other credential ~~to own~~ in order to own or control a certain type of business enterprise, then the
12 socially and economically disadvantaged owner(s) must possess the required license or credential.
13 If federal or state law or city ordinance does not require that the owner possess the license or other
14 credential to own or control the business enterprise, to determine whether the socially and
15 economically disadvantaged owner(s) manage and control the business enterprise, DSBO may
16 consider whether the socially and economically disadvantaged owner(s) hold the license or other
17 credential required to conduct the specific type of work in which certification is sought as a factor. If
18 there is not a legal requirement for the owner to hold the license or other credential to own or control
19 a certain type of business enterprise, failure of the owner to hold the license or other credential does
20 not by itself indicate lack of management and control of a business enterprise without other factors
21 indicating to the contrary."

22 **Section 19.** Section 28-55(c)(2)(d) of the Denver Revised Municipal Code is amended by
23 deleting the language stricken and adding the language underlined to read as follows:

24 "d. There may not be any restriction through corporate charter provisions, by law
25 provisions, contracts, or any other formal or informal devices that prevent the socially and
26 economically disadvantaged owner(s), without the cooperation or vote of any non-socially and
27 economically disadvantaged owner, from making any business decision of the applicant business
28 enterprise, including the making of obligations or the ~~dispensing~~ disbursing of funds."

29 **Section 20.** Section 28-55(c)(6)(a) of the Denver Revised Municipal Code is amended by
30 deleting the language stricken and adding the language underlined to read as follows:

31 "a. ~~Reputably~~ Rebuttably *presumed social disadvantage*. A socially and economically
32 disadvantaged minority individual or woman upon whom the application for certification is based
33 must supply credible evidence, by sworn affidavit, that such individual has suffered from past race-

1 or gender-based (as applicable) discrimination in association with the conduct of business or the
2 attempted conduct of business as a business enterprise, in the construction or the professional
3 design and construction services industries in the city's marketplace; provided that, any applicant
4 business enterprise owned and controlled by, or any socially and economically disadvantaged
5 minority individual or woman upon whom certification of such applicant business enterprise is sought,
6 who is a member of the racial or ethnic minority groups referenced in section 28-54(34)(35)(a), or is
7 a woman, is ~~reputably~~ rebuttably presumed to be socially disadvantaged under the provisions of
8 section 28-54(35)(34)(a) and (46)(47) and, if such minority individual or woman further demonstrates
9 that such minority individual or woman so conducted business or attempted to conduct business in
10 the construction or professional design and construction services industries in the city's marketplace
11 prior to January 1, 2006, such minority individual or woman shall in addition be rebuttably ~~reputably~~
12 presumed to have suffered from discrimination within the city's marketplace and to therefore be
13 eligible to be certified as an MBE or WBE under this division 3, subject to compliance with all other
14 requirements of sections 28-55 and 28-56.”

15 **Section 21.** Section 28-55(c)(6)(b) of the Denver Revised Municipal Code is amended by
16 deleting the language stricken and adding the language underlined to read as follows:

17 “b. *Individualized social disadvantage.* An individualized socially disadvantaged minority
18 individual upon whom the application for certification is based pursuant to section 28-54(34)(35)(b)
19 shall supply credible evidence, by sworn affidavit, that such individual has suffered from past
20 individualized discrimination in association with the conduct of business or the attempted conduct of
21 business as a business enterprise, in the construction or the professional design and construction
22 services industries in general, that he has in addition suffered from such individualized discrimination
23 within the city's marketplace and that he conducted business or attempted to conduct business in
24 the city's marketplace as set out in a., above. An individual who makes such a showing shall be
25 deemed to have suffered from individualized discrimination and social disadvantage within the city's
26 marketplace and to therefore be eligible to be certified as an MBE or WBE under this division 3,
27 subject to compliance with all other requirements of sections 28-55 and 28-56.”

28 **Section 22.** Section 28-55(c)(8) of the Denver Revised Municipal Code is amended by
29 deleting the language stricken and adding the language underlined to read as follows:

30 “(8) *Threshold size; continued eligibility and renewal of certification.* No applicant business
31 enterprise, MBE or WBE shall be eligible for initial or subsequent renewal of certification if such
32 business enterprise, MBE or SBE combined with any affiliates meets the criteria set forth in section
33 28-56 for *graduation* from participation in the goals program established by this division 3. An MBE

1 or WBE will be certified for a ~~one~~ three-year period. Following initial certification, an MBE or WBE
2 that desires to continue its certification shall, no later than thirty (30) days prior to each ~~annual~~ three-
3 year anniversary of the certification, submit a certification renewal application, which shall update
4 and reaffirm all requirements for certification. No later than thirty (30) days prior to each annual
5 anniversary of the certification, an MBE or WBE shall submit an affidavit certifying that there has
6 been no change in any information affecting certification eligibility, and other required tax or other
7 financial information and documents. A certification may be terminated by the director upon the
8 failure of the MBE or WBE to satisfy any certification requirement set forth in this division 3.”

9 **Section 23.** Section 28-57 of the Denver Revised Municipal Code is amended by deleting
10 the language stricken and adding the language underlined to read as follows:

11 **“Section 28-57. Third party challenge to certification; renewal of certification; or**
12 **presumption of social disadvantage of minority individual or woman.**
13

14 Subject to the provisions in this section, a third party may challenge the eligibility of an
15 applicant business enterprise for certification, the eligibility of an MBE or WBE for renewal of
16 certification, or the rebuttable presumption of social disadvantage of a minority individual or woman
17 as provided in section 28-54~~(34)~~(35)(a) and ~~(46)~~(47), respectively. The burden of demonstrating to
18 the director's satisfaction the lack of such eligibility or the rebuttal of such presumption rests with
19 such third party, and shall be demonstrated by a preponderance of the evidence.

20 (a) The eligibility of a challenged applicant business enterprise, MBE or WBE for
21 certification or renewal of certification, or the presumption that a minority individual or woman
22 is socially disadvantaged, shall remain in effect unless and until the city renders a final
23 decision otherwise.

24 (b) The challenge to such certification, renewal of certification or presumption shall be made
25 in writing to the director by the challenging third party and shall include all information relied
26 upon by such party.

27 (c) The director shall notify the challenged applicant business enterprise, MBE or WBE or
28 minority individual or woman in writing of the challenge, identify the challenging third party as
29 required by law and summarize the grounds for the challenge. The notice may also require
30 the challenged applicant business enterprise, MBE or WBE or minority individual or woman
31 to provide the director, within a reasonable time, any information requested to permit the
32 director to evaluate the eligibility of the applicant business enterprise or MBE or WBE or the
33 validity of the presumption of social disadvantage with respect to a minority individual or
34 woman.

1 (d) Subject to the limitation in section 28-3(e), a third party putting forth a challenge under
2 this section, and an applicant business enterprise, MBE, WBE or minority individual or woman
3 that is the subject of such challenge, may seek review from a decision of the director pursuant
4 to section 28-33.”

5 **Section 24.** Section 28-58 of the Denver Revised Municipal Code is amended by adding the
6 language underlined to read as follows:

7 “(a) Of the total dollars spent annually for construction and for professional design and
8 construction services contracts, the director, no later than six (6) months after the enactment of this
9 division 3, shall establish an aspirational annual goal for MBE/WBE utilization based on the dollars
10 to be spent for construction, reconstruction and remodeling contracts and such a goal for MBE/WBE
11 utilization based on the dollars to be spent for professional design and construction services
12 contracts. For the purpose of setting such annual aspirational goal, construction management
13 services contracts shall be computed in and counted toward the construction area although
14 construction management shall be considered a professional service. The following shall count
15 toward the goal to the extent provided in sections 28-63 and 28-68; portions of work undertaken by
16 MBEs and WBEs as contractors, consultants, subcontractors, subconsultants, suppliers,
17 manufacturers, manufacturer's representatives, brokers, teaming agreements or joint venturers,
18 including appropriate portions of work undertaken by subcontractors, subconsultants, suppliers,
19 manufacturers, manufacturer's representatives, and brokers on subsidiary tiers under MBEs and
20 WBEs, whether or not such subsidiary tier business enterprises are MBEs or WBEs.

21 (b) The director as a basis for the establishment of the aspirational annual goal shall
22 annually during the term hereof determine the present availability of all MBEs and WBEs doing
23 business in the city by profession and trade groupings and recommend the aspirational annual goal
24 to the city council for its review. The director shall conduct such inquiries, studies and hearings, and
25 utilize information and assistance from such persons, consultants, entities or organizations, within
26 or without the city, including, but not limited to, the department heads, as the director may, in the
27 exercise of sole discretion, deem necessary to make such annual recommendation.

28 (c) The city council shall review the aspirational annual goal recommended by the director,
29 may undertake such additional inquiries as it deems appropriate, and may approve, disapprove or
30 modify the recommended aspirational annual goal by ordinance in each succeeding year. Until the
31 city council approves, disapproves or modifies the aspirational annual goal in a succeeding year, the
32 initial aspirational annual goal established in this section shall continue in effect.”

1 **Section 25.** Section 28-59(a)(1) of the Denver Revised Municipal Code is amended by
2 deleting the language stricken and adding the language underlined to read as follows:

3 “(a) The director shall assign for each construction, reconstruction, and remodeling
4 contract, and for each professional design and construction services contract, a unitary project goal
5 for MBE/WBE utilization based upon a percentage of the dollar value of all work on such contract,
6 and, as set out below, the availability of MBEs and WBEs to perform the anticipated work and the
7 city's progress toward meeting the annual goal; provided that, if the director determines it to be in
8 the best interests of the city, the director may in his or her sole discretion waive the application of a
9 project goal for a given contract. The goal percentage assigned by the director to each such contract
10 may vary from contract to contract consistent with meeting the appropriate overall annual goals,
11 when established. The DSBO shall establish a methodology for the setting of the project goal,
12 including ~~the methodology to be followed by the goal committees~~, through rules and regulations.
13 Such methodology shall consider the following factors:

14 (1) To the extent applicable, the effect on the annual goal achievement of the
15 varying levels of availability of MBEs and WBEs among industry groupings associated
16 with individual projects and the effect on aspirational annual goal achievement of the
17 project goal compliance being achieved through good faith efforts resulting in non-
18 utilization of MBEs and WBEs.”

19 **Section 26.** Section 28-59(c) of the Denver Revised Municipal Code is amended by deleting
20 the language stricken and adding the language underlined to read as follows:

21 “(c) As an aid in the establishment of ~~such an individual~~ the methodology and review and
22 analysis of data and information used for project goals goal or annual aspirational goals, the director
23 ~~may shall~~ appoint a goals committee or committees to advise and assist the director in the
24 methodology and review and analysis of data and information used for project or annual aspirational
25 goals determination of an individual project goal.”

26 **Section 27.** Section 28-59(d) of the Denver Revised Municipal Code is amended by deleting
27 the language stricken and adding the language underlined to read as follows:

28 “(d) The goal committees shall meet ~~on a regular basis~~ as established by the director to
29 consider and recommend the methodology and review and analysis of data and information used for
30 project goals ~~an individual project goal pursuant to guidelines developed by the DSBO~~. The goal
31 committees shall consider data as to availability of types of MBEs and WBEs doing business in the
32 city with respect to the substantive work requirements ~~of each individual contract under~~
33 ~~consideration~~. The director may utilize such advice and assistance from the goal committees to the

1 extent that the director deems it to be appropriate and consistent with the purposes of this division 3
2 as well as other information helpful to a determination as to a project ~~goals~~ goal. The director shall
3 in the director's sole discretion establish an individual project goal for each contract in bid or proposal
4 instructions or as otherwise promulgated by regulations.”

5 **Section 28.** Section 28-60(a)(3) of the Denver Revised Municipal Code is amended by
6 deleting the language stricken and adding the language underlined to read as follows:

7 “(3) If the bidder or proposer utilizes MBEs or WBEs as subcontractors, suppliers,
8 manufacturers ~~manufacturer~~, manufacturer's representatives or brokers, the value of the
9 commercially useful function to be performed by such MBEs and WBEs, shall count to the extent
10 provided in section 28-63 toward satisfaction of the project goal.”

11 **Section 29.** Section 28-60.5(a) of the Denver Revised Municipal Code is amended by
12 deleting the language stricken and adding the language underlined to read as follows:

13 “(a) Based upon the scope of work and market availability, and whether permitted by law,
14 the division of small business opportunity shall determine on a project-by-project basis, in
15 consultation with the manager of the user agency or his or her designee, whether a joint venture with
16 an MBE or WBE may be ~~incentivized~~ utilized for a given project, or whether a teaming agreement
17 with an MBE or WBE may be ~~incentivized~~ utilized for a given project. Only projects valued at over
18 ten million dollars (\$10,000,000.00) are eligible for consideration under this section for a Joint
19 Venture or Teaming Agreement.”

20 **Section 30.** Section 28-60.5(b) of the Denver Revised Municipal Code is amended by
21 deleting the language stricken and adding the language underlined to read as follows:

22 “(b) On such projects ~~in~~ which utilization of a joint venture relationship or a teaming
23 agreement with an MBE or WBE ~~is incentivized~~ is proposed, the manager of the user agency or his
24 or her designee and the director of the division of small business opportunity will establish prior to
25 issuing the request for bids or the request for proposals any criteria to evaluate the use of joint
26 ventures or teaming agreements for the project.”

27 **Section 31.** Section 28-60.5(e) of the Denver Revised Municipal Code is amended by
28 deleting the language stricken and adding the language underlined to read as follows:

29 “(e) As to each teaming agreement under this section, a written teaming agreement must
30 be completed by ~~at~~ all parties to the teaming agreement and executed, which clearly delineates the
31 rights and responsibilities of each teaming party, complies with any requirements of provides that
32 the teaming agreement shall continue for, at a minimum, the duration of the project.”

1 **Section 32.** Section 28-64(a) of the Denver Revised Municipal Code is amended by adding
2 the language underlined to read as follows:

3 “(a) *Responsive; compliance with requirements.* If the low monetary bid or competitive
4 selection process final project-specific proposal subject to a project goal meets such goal or shows
5 adequate good faith efforts as set out in sections 28-60 or 28-62, then the director shall notify the
6 department head to regard the bid or proposal as nonresponsive as to compliance with this division
7 3.”

8 **Section 33.** Section 28-64(b) of the Denver Revised Municipal Code is amended by deleting
9 the language stricken and adding the language underlined to read as follows:

10 “(b) *Failure to meet requirements.* If a bid or proposal subject to a project goal does not
11 meet such goal or show good faith efforts as set out in sections 28-60 or 28-62, or provide timely
12 information as set out in section 28-63, then the director shall notify the department head to regard
13 the bid or proposal as nonresponsive, and such ~~determinate~~ determination shall result in no further
14 consideration by the city or private owner of the bid or proposal.”

15 **Section 34.** Section 28-65(a)(1) of the Denver Revised Municipal Code is amended by
16 adding the language underlined to read as follows:

17 “(1) If the proposer is an MBE or WBE, the value of the commercially useful function to be
18 self-performed by the MBE or WBE, shall count to the extent provided in section 28-68 toward
19 satisfaction of the project goal, provided that the project goal not met by proposer self-performance
20 shall be addressed as otherwise set out in this section; or”

21 **Section 35.** Section 28-65.5(a) of the Denver Revised Municipal Code is amended by
22 deleting the language stricken and adding the language underlined to read as follows:

23 (a) Based upon the scope of work and market availability, and whether permitted by law,
24 the division of small business opportunity shall determine on a project-by-project basis, in
25 consultation with the manager of the user agency or his or her designee, whether a joint venture with
26 an MBE or WBE may be ~~incentivized~~ utilized for a given project, or whether a teaming agreement
27 with an MBE or WBE may be ~~incentivized~~ utilized for a given project. ~~Only Those~~ Only Those projects where the
28 professional design and construction services are valued at over five hundred thousand dollars
29 (\$500,000.00) are eligible for consideration ~~under this section~~ for Joint Ventures or Teaming
30 Agreements.

31 **Section 36.** Section 28-65.5(b) of the Denver Revised Municipal Code is amended by
32 deleting the language stricken and adding the language underlined to read as follows:

33

1 “(b) On such projects ~~in~~ which utilize a joint venture relationship or a teaming agreement
2 with an MBE or WBE ~~is incentivized~~, the manager of the user agency or his or her designee and the
3 director of the division of small business opportunity will establish prior to issuing the request for bids
4 or the request for proposals any criteria to evaluate the use of joint ventures or teaming agreements
5 for the project.”

6 **Section 37.** Section 28-65.5(d) of the Denver Revised Municipal Code is amended by
7 adding the language underlined to read as follows:

8 “(d) The division of small business opportunity shall review and approve all contractual
9 agreements regarding the terms and provisions of each joint venture relationship to the award of a
10 contract subject to this division, including agreements pertaining to:”

11 **Section 38.** Section 28-65.5(f) of the Denver Revised Municipal Code is amended by adding
12 the language underlined to read as follows:

13 “(f) The division of small business opportunity shall review and approve all contractual
14 agreements regarding the terms and provisions of each teaming agreement prior to the award of a
15 contract subject to this division, including agreements pertaining to:”

16 **Section 39.** Section 28-65.5(b) of the Denver Revised Municipal Code is amended by
17 deleting the language stricken and adding the language underlined to read as follows:

18 “(m) In the event that the mediation with the director of small business opportunity does not
19 resolve all disputes, the director shall have the option of referring mediation proceedings to a
20 qualified outside mediator, contingent upon the consent of the interested parties, the costs to be ~~born~~
21 borne by the interested parties.”

22 **Section 40.** Section 28-67(b)(7) of the Denver Revised Municipal Code is amended by
23 deleting the language stricken and adding the language underlined to read as follows:

24 “(7) The proposer must provide verification that it rejected each non-utilized MBE and WBE
25 because the MBE or WBE was not qualified. Such verification shall include a verified statement of
26 the proposals received from potential or utilized subconsultants, suppliers, manufacturers,
27 manufacturer's representative or brokers on the contract, whether or not they are MBEs or WBEs.
28 In making such a determination of not being qualified, the proposer shall be guided by the definition
29 of qualified in section 28-54(44) ~~28-54(42)~~. For each MBE or WBE found not to be qualified by the
30 proposer, the verification shall include a statement giving the proposer's reasons for its conclusion.
31 A proposer's industry or professional standing or group memberships may not be the cause of
32 rejection of an MBE or WBE. A proposer may not reject an MBE or WBE as being unqualified without

1 sound reasons based on a reasonably thorough investigation and assessment of the MBE's or
2 WBE's capabilities and expertise.”

3 **Section 41.** Section 28-67(b)(9) of the Denver Revised Municipal Code is amended by
4 deleting the language stricken and adding the language underlined to read as follows:

5 “(9) If requested by a solicited MBE or WBE, the proposer must make reasonable efforts
6 to assist interested MBEs and WBEs in obtaining necessary and competitively priced equipment,
7 supplies, materials ~~materials~~, or related assistance or services for performance under the contract,
8 provided that the proposer need not provide financial assistance toward this effort.”

9 **Section 42.** Section 28-68(a) of the Denver Revised Municipal Code is amended by deleting
10 the language stricken to read as follows:

11 “(a) At the time of the final project-specific proposal submitted to and authorized by the city
12 or a private owner, the proposer shall provide to the city or private owner a list of all MBEs ~~and was~~
13 that are being utilized toward the satisfaction of the project goal whether as a self-performing
14 proposer, or as subconsultants, suppliers, manufacturers, manufacturer's representatives, brokers
15 or members of a joint venture. Unless otherwise specified in a request for qualifications, request for
16 proposal or other proposal solicitation, in the event that a proposal is requested for the provision of
17 on-call services for a period of time, with no delineation of the dollar amount of specific on-call
18 projects, the proposer need list only the anticipated percentage participation of MBEs and WBEs
19 rather than specific dollar amounts. The list shall specify:”

20 **Section 43.** Section 28-72(c) of the Denver Revised Municipal Code is amended by adding
21 the language underlined to read as follows:

22 “(c) For any contract for which the director has set a project goal, it shall be an ongoing,
23 affirmative obligation of the contractor or consultant on such contract to maintain compliance with all
24 applicable provisions of this Division III to include, at a minimum, compliance with the originally
25 achieved level of MBE and WBE participation upon which the contract was awarded, for the duration
26 of the contract, unless the city initiates a material alteration to the scope of work affecting MBEs or
27 WBEs performing on the contract through change order, contract amendment, force account or as
28 otherwise described in section 28-73.”

29 **Section 44.** Section 28-73(b) of the Denver Revised Municipal Code is amended by deleting
30 the language stricken and adding the language underlined to read as follows:

31 “(b) Any increase in the scope of work of a contract for construction, reconstruction, or
32 remodeling, whether by amendment, change order, force account or otherwise, or any increase in
33 the scope of services of a contract for professional design or construction services, whether by

1 amendment or any other addition of special, additional or other services to the contract, which
2 increases the dollar value of the contract, whether or not such change is within the scope of work
3 designated for performance by a MBE or WBE at the time of contract award, shall be
4 contemporaneously submitted to the DSBO. Those amendments, change orders, force accounts or
5 other contract modifications that involve a changed scope of work that cannot be performed by
6 existing project subcontractors, subconsultants, joint venturers, suppliers, manufacturer,
7 manufacturer's representatives or brokers, or by the contractor or consultant, shall be subject to a
8 goal for ~~MBEs~~ MBEs and WBEs equal to the original project goal on the contract that was included
9 in the bid or proposal requirements. The contractor or consultant shall satisfy such goal as respects
10 such changed scope of work by soliciting new MBEs or WBEs in accordance with section 28-60 or
11 28-65 as applicable, or the contractor or consultant must show each element of modified good faith
12 set out in section 28-75(c) hereof. The contractor or consultant shall supply to the director the
13 documentation described in section 28-75(c) with respect to the increased dollar value of the
14 contract.”

15 **Section 45.** Section 28-75(a)(4) of the Denver Revised Municipal Code is amended by
16 adding the language underlined to read as follows:

17 “(4) Terminate an MBE or WBE originally utilized as a subcontractor, subconsultant, joint
18 venturer, supplier, manufacturer, manufacturer's representative or broker in order to be awarded the
19 contract without replacing such MBE or WBE with another MBE or WBE, performing the same
20 commercially useful function and dollar amount, or demonstrating each element of modified good
21 faith efforts, as defined in subsection (c) hereof, to substitute another MBE or WBE, or retaliate
22 against any MBE or WBE who reports issues to DSBO; all subject to DSBO approval and (as
23 applicable) department approval; or”

24 **Section 46.** Section 28-75(a)(5) of the Denver Revised Municipal Code is amended by
25 deleting the language stricken and adding the language underlined to read as follows:

26 “(5) ~~Participates~~ Participate in a conduit relationship with an MBE or WBE scheduled to
27 perform work on the contract; or”

28 **Section 47.** Section 28-75(a)(6) of the Denver Revised Municipal Code is amended by
29 deleting the language stricken and adding the language underlined to read as follows:

30 “(6) ~~Commits~~ Commit any other violation of this division 3, or rules and regulations
31 promulgated thereunder, which constitutes a material breach of the contract, not mentioned above.”

32 **Section 48.** Section 28-79 of the Denver Revised Municipal Code is amended by deleting
33 the language stricken and adding the language underlined to read as follows:

1 “The director shall prepare written reports four (4) times each year which shall describe
 2 progress in meeting the annual goal set out in section 28-58. Copies of such reports shall be provided
 3 to the affected department heads, city council and the mayor according to the following schedule:

Period Covered	Date Due
January 1—March 31	June 1
April 1—June 30	September 1
July 1—September 30	December 1
October 1—December 31	March 1

4
 5 In addition, the quarterly report shall encompass the implementation of this division 3 ~~as well~~
 6 ~~as a project by project report~~ and discussion of setting and justification of individual project goals
 7 and achievements, including but not limited to ~~by contracts including all~~ change orders, amendments
 8 and modifications.

9 In calculating MBE/WBE participation, all funds paid on city contracts with MBE and WBE
 10 goals during the year shall be counted whether or not such funds were used to accomplish project
 11 goals applicable at the time of bid opening, date of final project-specific proposal in the case of a
 12 competitive selection process, or other proposal receipt.”

13 **Section 49.** Section 28-80 of the Denver Revised Municipal Code is amended by deleting
 14 the language stricken and adding the language underlined to read as follows:

15 “If the annual goal in section 28-58 is not met in any year, then by March 1 of the following
 16 year, the director shall submit to the mayor and city council a report comparing MBE and WBE
 17 utilization achieved in the year to the aspirational annual goal, stating the reasons why the goal was
 18 not met, and advising and making recommendations as to continuing or further efforts that the city
 19 ~~should make~~ will take in ~~remediating the effects of~~ eliminating identified discrimination in city
 20 construction, reconstruction and remodeling, and professional design and construction services
 21 contracting, and recommending ~~what should be done~~ actions to assist in meeting such goal in the
 22 future.”

23 **Section 50.** Section 28-83(b) of the Denver Revised Municipal Code is amended by deleting
 24 the language stricken and adding the language underlined to read as follows:

25 “(b) This division 3 shall be repealed effective ~~April 1~~ December 31, 2019.”

26 **Section 51.** Section 28-123(25) of the Denver Revised Municipal Code is amended by
 27 deleting the language stricken and adding the language underlined to read as follows:

1 “(25) *Goal committee or goal committees* mean a committee or committees of persons that
2 may be engaged in the covered goods or covered services industries or experienced in the
3 implementation of MBE/WBE or SBE program, that will be established by the DSBO director to
4 advise the director as to procurement goal setting.”

5 **Section 52.** Section 28-123(38) of the Denver Revised Municipal Code is amended by
6 deleting the language stricken to read as follows:

7 “(38) *Proposal* means an offer to provide covered goods or perform covered services under
8 a city contract or purchase order with ~~either~~ the city in response a competitive selection process.”

9 **Section 53.** Section 28-126(a) of the Denver Revised Municipal Code is amended by
10 deleting the language stricken to read as follows:

11 “(a) The DSBO director, in consultation with the purchasing director or department head,
12 as appropriate, shall assign for each purchase of covered goods or covered services with an
13 estimated cost of one million dollars (\$1,000,000.00) or more a unitary procurement goal for
14 MBE/WBE utilization based upon a percentage of the dollar value of all covered goods and covered
15 services to be provided on such contract and, as set out below, the availability of MBEs and WBEs
16 to perform the anticipated work and the city's progress toward meeting the annual goal; provided
17 that, the DSBO director may in his or her sole discretion waive the application of a procurement goal
18 for a given contract or purchase order. The DSBO director will provide a written justification to the
19 purchasing director or department head, as appropriate, for each waiver granted. The goal
20 percentage assigned by the DSBO director to each such contract or purchase order may vary from
21 contract to contract consistent with meeting the appropriate overall annual goals, when established.
22 The DSBO shall establish a methodology for the setting of the procurement goal, ~~including the~~
23 ~~methodology to be followed by the goal committee(s),~~ through rules and regulations. Such
24 methodology shall consider the following factors.”

25 **Section 54.** Section 28-126(a) of the Denver Revised Municipal Code is amended by adding
26 the language underlined to read as follows:

27 “(3) Any pertinent and relevant information, data, or recommendation provided by the goals
28 committee.”

29 **Section 55.** Section 28-126(c) of the Denver Revised Municipal Code is amended by
30 deleting the language stricken and adding the language underlined to read as follows:

31 “(c) As an aid in the establishment of ~~such an individual~~ the methodology and review and
32 analysis of data and information used for procurement goals goal, the DSBO director may in the
33 director's discretion ~~shall~~ appoint at least one (1) goal committee to advise and assist the DSBO

1 director in the methodology and review and analysis of data and information used for project goals
2 ~~determination of an individual procurement goal~~. Membership on the goal committee(s) shall include
3 ~~as a nonvoting member(s) such~~ representatives of the purchasing division of the department of
4 general services as may be appointed by the purchasing director, with the concurrence of the
5 manager.”

6 **Section 56.** Section 28-126(e) of the Denver Revised Municipal Code is amended by
7 deleting the language stricken and adding the language underlined to read as follows:

8 “(e) The goal committee(s) shall meet on a regular basis established by ~~the DSBO goal~~
9 ~~committee(s)~~ the DSBO director and shall consider data as to availability of types of MBEs and
10 WBEs doing business in the city with respect to ~~each individual~~ procurement for covered goods or
11 covered services ~~under consideration~~. The DSBO director may utilize such advice and assistance
12 from the goal committee(s) to the extent that the director deems it to be appropriate and consistent
13 with the purposes of this article V, as well as other information helpful to a determination as to a
14 procurement goals goal. The DSBO director shall in the director's sole discretion establish a goal for
15 each procurement in bid or proposal instructions or as otherwise promulgated by regulations.”

16 **Section 57.** Section 28-127(b) of the Denver Revised Municipal Code is amended by
17 deleting the language stricken and adding the language underlined to read as follows:

18 “(b) For on-call contracts and purchase orders awarded in accordance with section 20-68
19 of this Code and any other on-call procurement contract, the purchasing director or department head
20 may ~~my~~ determine to address the procurement goal by means of a compliance plan for utilization of
21 MBEs and WBEs on such contract or purchase order, or for alternative demonstration of good faith
22 efforts by the bidder or proposer. In that event, the purchasing director or department head shall
23 request the DSBO director to approve the utilization of such a compliance plan, consistent with the
24 scope and intent of this article V. The development, scope and utilization of such compliance plans
25 shall be addressed in rules and regulations promulgated by the DSBO director.”

26 **Section 58.** Section 28-142 of the Denver Revised Municipal Code is amended by deleting
27 the language stricken and adding the language underlined to read as follows:

28 “The SBE bid preference invites small businesses to compete for city procurement
29 opportunities for covered goods and covered services. The SBE bid preference will enable the city,
30 through the DSBO, the purchasing division of the department of general services, and other user
31 departments to promote the use of SBEs that are not brokers, packagers, or manufacturer's
32 representatives, in contracts and purchase orders for covered goods and covered services awarded
33 by the purchasing division and user departments pursuant to the Charter, revised Municipal Code,

1 and executive orders of the City and County of Denver. The scope of the preference will be limited
2 to procurement opportunities for covered goods or covered services for which the estimated cost is
3 from fifty thousand ~~dollars~~ dollars (\$50,000.00) to two hundred fifty thousand dollars (\$250,000.00).
4 The bidding instructions will require that such ~~sees~~ SBEs will self-perform no less than seventy-five
5 (75) percent of the total amount of the contract or purchase order with their own forces.”

6 **Section 59.** Section 28-150(c) of the Denver Revised Municipal Code is amended by
7 deleting the language stricken and adding the language underlined to read as follows:

8 “(c) The DSBO director may, in his or her sole discretion, impose any one (1) or more of
9 the sanctions set out in this section against any vendor, contractor, or consultant determined to be
10 in violation of the section, provided that the director shall first advise the affected department head
11 of the proposed sanction in writing. If the department head advises the DSBO director in writing that
12 the department head believes that imposition of such sanction would not be in the best interests of
13 the city, the ~~DSSO~~ DSBO director shall consult with the department head prior to making a final
14 decision as to whether to impose such sanctions.”

15 **Section 60.** Section 28-158(b) of the Denver Revised Municipal Code is amended by
16 deleting the language stricken and adding the language underlined to read as follows:

17 “(b) This article V shall be repealed effective ~~April 4~~ December 31, 2019.”

18 **Section 61.** Section 28-205(c)(1)(b) of the Denver Revised Municipal Code is amended by
19 deleting the language stricken and adding the language underlined to read as follows:

20 “b. Have acquired the interest in a ~~real~~ verifiable and substantial arms-length transaction
21 utilizing ~~real~~ verifiable, substantial, and continuing consideration, going beyond pro forma ownership
22 of the applicant business enterprise as reflected in ownership documents;”

23 **Section 62.** Section 28-205(c)(1)(d) of the Denver Revised Municipal Code is amended by
24 deleting the language stricken and adding the language underlined to read as follows:

25 “d. Have acquired the interest with a contribution of his or her own capital resources, by
26 having put his or her own financial resources at risk in the operation of the applicant business
27 enterprise, or subject to requirements below, with a contribution of expertise. All contributions by the
28 owner(s) to acquire the ownership interest in the applicant business enterprise must be ~~real~~
29 verifiable, substantial, and continuing, which in part, means that it be commensurate with the
30 ownership interest acquired.”

31 **Section 63.** Section 28-205(c)(2) of the Denver Revised Municipal Code is amended by
32 deleting the language stricken and adding the language underlined to read as follows:

1 “(2) *Management and control.* The owner(s) shall manage and control the daily business
2 operations of the applicant business enterprise. The owner(s) management and control must be
3 verifiable ~~real~~, substantial, and continuing and go beyond the pro forma ownership of the applicant
4 business enterprise as reflected in its ownership documents. Ownership alone is not sufficient to
5 establish management and control. To determine whether the owner(s) satisfy these requirements,
6 DSBO shall consider the criteria below.”

7 **Section 64.** Section 28-205(c)(7) of the Denver Revised Municipal Code is amended by
8 deleting the language stricken and adding the language underlined to read as follows:

9 “(7) *Threshold size; continued eligibility and renewal of certification.* No applicant business
10 enterprise or SBE or EBE shall be eligible for initial or subsequent renewal of certification if such
11 applicant business enterprise or SBE or EBE combined with any affiliates meets the criteria set forth
12 in section 28-206 for graduation from this article VII. An SBE or EBE will be certified for a ~~one~~ three-
13 year period. Following initial certification, an SBE or EBE that desires to continue its certification
14 shall, no later than thirty (30) days prior to each ~~annual~~ three-year anniversary of the certification,
15 submit a certification renewal application that shall update and reaffirm all requirements for
16 certification. No later than thirty (30) days prior to each annual anniversary of the certification, an
17 SBE shall submit an affidavit certifying that there has been no change in any information affecting
18 certification eligibility, and other required tax or other financial information and documents. A
19 certification may be terminated by the director upon the failure of the SBE to satisfy any certification
20 requirement set forth in this article VII.”

21 **Section 65.** Section 28-234(b) of the Denver Revised Municipal Code is amended by
22 deleting the language stricken and adding the language underlined to read as follows:

23 “(b) This article VII shall be repealed effective ~~April 1~~ December 31, 2019.”
24

25 **[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**
26

1 COMMITTEE APPROVAL DATE: February 27, 2019

2 MAYOR-COUNCIL DATE: March 5, 2019

3 PASSED BY THE COUNCIL: _____

4 _____ - PRESIDENT

5 APPROVED: _____ - MAYOR _____

6 ATTEST: _____ - CLERK AND RECORDER,
7 EX-OFFICIO CLERK OF THE
8 CITY AND COUNTY OF DENVER

9 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____;

10 PREPARED BY: Jason D. Moore, Assistant City Attorney DATE: March 7, 2019

11 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of
12 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
13 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to
14 § 3.2.6 of the Charter.

15

16 Kristin M. Bronson, Denver City Attorney

17

18 BY: *Kristin M. Bronson*, Assistant City Attorney DATE: Mar 7, 2019