BY AUTHORITY

ORDINANCE NO. __________ COUNCIL BILL NO. CB26-___

SERIES OF 2026 COMMITTEE OF REFERENCE:

Finance and Business

A BILL

For an ordinance amending and revising Articles III, V and VII of Chapter 28 of the Denver Revised Municipal Code by repealing and reenacting a new Article III and a new Article V establishing a Minority and Women Business Enterprise contracting ordinance in furtherance of nondiscrimination in City Contracts and Purchase Orders; and repealing and reenacting a new Article VII establishing a Small Business Enterprises ordinance related to City contracting.

WHEREAS, the City has undertaken formal and informal programs and initiatives to address, remedy and eliminate demonstrated discrimination against minorities and women in construction, reconstruction, remodeling, design and professional construction services; and in the purchase of non-construction goods and services in the City market area in which the City was both an active and passive participant; and

WHEREAS, in furtherance of its ongoing attempts to remediate this discrimination, the City conducted extensive public hearings prior to the enactments of Ordinance No. 246, Series of 1983; Ordinance No. 424, Series of 1988; Ordinance No. 213, Series of 1989; Ordinance No. 513, Series of 1990; Ordinance No. 760, Series of 2006; Ordinance No. 85, Series of 2014 for construction; Ordinance No. 86, Series of 2014 for the purchase of goods and services; and Ordinance No. 286, Series of 2020; hired independent consultants who found evidence of discrimination in 1990; and who in 1995, 1996, 2004, 2012, 2018, and 2024 found continuing evidence of disparities between the availability and utilization of woman- and minority-owned business enterprises in said industries and, in some studies, in the purchase of non-construction goods and services; and

WHEREAS, in 2018, the City commissioned BBC Research and Consulting, Inc. to perform a study of disparities in the construction, professional services and in the purchase of non-construction goods and services in the City's market areas; and

WHEREAS, after reauthorization of the programs in 2020, which included continuation of the goals program for construction; a goals program for the purchase of certain goods and services; and a small business enterprise ("SBE") defined selection pool for construction and for the purchase of goods and services; DSBO, the City and various community groups continued to examine the numerous areas and program initiatives and improvements for the program; and

WHEREAS, in 2024, the City commissioned Keen Independent Research (“Keen”) to perform a study of disparities in the construction, professional services, and in the purchase of non-construction goods and services in the City’s market areas; and

WHEREAS, while the study proceeded, and through a series of community meetings including through the DSBO Equity and Empowerment Council advisory group and the disparity study external stakeholder group, the City received numerous and invaluable recommendations for the improvement of the programs; and

WHEREAS, in 2025 Keen concluded and provided to the City its study which included data and evidence-based analysis measuring continuing disparities in construction and the purchase of non-construction goods and services in the City as well as within the relevant markets, and anecdotal accounts of experiences suffered by participants in such industries, which was consistent with and indicative of continued racial and gender discrimination in the said industries; and

WHEREAS, Keen also found in its study evidence that although improvements in the City’s efforts in eliminating disparities can be measured through the use of a goals program, disparities still existed in the wider industry; and

WHEREAS, along with the data and conclusions provided, Keen received information from in-depth interviews and recommended, among other things, that the City should expand the use of the social disadvantage certification process in an effort to pursue additional minority- and women-owned business enterprises (“MWBE”) participation, expand the SBE race neutral programs including use of SBE goals, expand tracking of small businesses and emerging businesses, and raise dollar thresholds for formal procurements for goods and services; and

WHEREAS, the City has assessed whether it would serve legitimate interests of the City and serve a public purpose to continue its programs to assist smaller business enterprises in the construction and in non-construction goods and services, in which the City participates, together with concession activity at Denver International Airport through a variety of race and gender neutral components, including but not limited to, the development of a variety of outreach and development programs together with a reenacted minority and women business enterprise goals program and a defined pool small business enterprise program as components of the initiative; and

WHEREAS, the City Council has reviewed documentation and records evidencing the program and studies, which include anecdotal evidence and other public comment referenced above regarding this proposed legislation, and based on all of the above, hereby **finds**:

(a) *History of discrimination.*

(1) There exists a prima facie showing that woman business enterprises and minority business enterprises owned by Black/African-Americans, Hispanic-Americans, Asian-Pacific Americans, South Asian Americans, Native Americans, and Middle Eastern and North African Americans who have done business or attempted to do business in the private and public construction, professional design and construction services industries, and private and public non-construction goods and services within the City and the City's market area or marketplace for these industries, which encompasses the State of Colorado, have suffered and continue to suffer from discrimination. This discrimination has existed in the City's construction and in non-construction goods and services contracting practices, and in the private sector industry contracting in such industries, in which the City has been a passive participant. Because of such discrimination, such woman business enterprises and minority business enterprises have been denied equal opportunity to participate in such contracts.

(2) Such denial of equal opportunity has been aggravated by impediments to the creation of minority and women-owned business enterprises in the said industries, as measured by lending discrimination affecting such industries, comparison of business formation rates of minority and women employees and majority employees in such industries, and a comparison between self-employment earnings of minorities and women as compared to majority persons in such industries.

(3) Such discrimination has prevented woman business enterprises and minority business enterprises from participating both in the city's contracting opportunities in the construction and in the non-construction goods and services procurement areas, and in the private sector construction and non-construction goods and services procurement at a level that would have existed absent such discrimination.

(4) Such discrimination in contracting opportunities violates the city's constitutional duty to prohibit, prevent, and eliminate race- and gender-based discrimination and its effects in the conduct of its business.

(5) Such discrimination continues to require action to prevent discrimination and to remedy its effects including outreach and education efforts to promote access to procurement opportunities,

improved instructional resources for enterprises inexperienced in dealing with the City insofar as the City may effectively and lawfully do so, the adoption of a participation goals program for appropriately and lawfully designated procurements, and implementation of defined pool procedures for small businesses to encourage equal opportunities to compete for City funded procurement contracts and subcontracts.

(6) Without the adoption of these programs, such woman business enterprises and minority business enterprises would not have an equal opportunity to participate in City contracts for construction or non-construction goods and services.

(b) *DSBO Goals Program.* It would serve a legitimate and compelling governmental interest of the City to continue the comprehensive, multi-tiered program of race and gender conscious and race and gender neutral assistance to small business enterprises, generally referred to as the DSBO Program, the details of such as developed by the agencies of the City, with the reauthorized MWBE ordinance and the SBE defined selection pool program forming components of the City's program. The city has a compelling governmental interest in prohibiting, preventing and eliminating race and gender discrimination and its effects in City contracting, and for this purpose adopts the specific program of good-faith goals as set forth in Article III and Article V of Chapter 28. This goal program has been carefully structured to take into consideration factors such as present availability of such woman business enterprises and minority business enterprises to perform work on such City contracts. The goals program is narrowly tailored as required by prevailing law and does not authorize the use of set-asides, quotas, or sheltered markets, or bid preferences. The program is narrowly tailored to prevent and eliminate discrimination and its effects against such minority business enterprises and woman business enterprises with a minimum of burden on other contractors, including:

(1) A specific goal for participation of woman and minority business enterprises is to be established for each applicable contract for construction or non-construction goods and services based on the availability of woman business enterprises and minority business enterprises for that particular contract.

(2) The program does not impose a quota, set-aside, sheltered market, or bid preference, never excludes any party, including nonminority- and male-owned business enterprises, from competing for any contract, and never denies contracts for failure to meet the participation goal, if

nondiscrimination is demonstrated by a showing of a good-faith attempt to comply with the goal established therein.

(3) The program provides for the ability of individual persons not within the program's identified categories of minorities and women to be individually certified to participate as a minority business enterprise if such person can demonstrate individualized social disadvantage.

(4) The program requires that minority business enterprises and woman business enterprises that have reached or exceeded the size threshold will not be certified in the program and indicates that they have had the opportunity to overcome the effects of discrimination.

(c) *Small Business Enterprise Program*

(1) One Hundred Percent (100%) of national SBA size standards is reasonably reflective of business size in the Denver marketplace for construction and non-construction services, and for food service, and other concession industries, all subject to modification by DSBO based on future study and data analysis. Further, a development program to assist such small business enterprises, regardless of the race or gender of the owners thereof, in contracting with the City in the areas of construction and non-construction services, both as contractors and as subcontractors, and in the City's retail, food services, and other concession activities would benefit the City contracting by promoting competition in bidding and benefit the marketplace and the metropolitan area, including the City, by promoting the economic growth of such small business enterprises, and such a development program is therefore justified as being related to a legitimate governmental interest of the City;

(2) The continuing maintenance of an SBE ordinance would benefit City contracting, and SBEs doing business in the Denver marketplace would continue to be assisted in their development and expansion into general contracting roles, and City contracting would be further benefited, if functioning as a contractor, consultant or concessionaire on certain contracts and concession agreements were restricted to SBEs, as defined herein, through a defined selection pool (set-aside) program in which such contracts and concession agreements were restricted for the exclusive competition by SBEs, or with the utilization of SBEs as subcontractors, subconsultants and suppliers on certain of such contracts, and that such features of an SBE ordinance would also be justified as being related to a legitimate governmental interest of the City.

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

Section 1. That division 1 of article III of chapter 28 of the Revised Municipal Code is hereby repealed and reenacted to read as follows:

ARTICLE III. NONDISCRIMINATION IN CITY CONTRACTING FOR CONSTRUCTION, GOODS, AND SERVICES

DIVISION 1. DIVISION OF SMALL BUSINESS OPPORTUNITY

Subdivision I. [In general].

Sec. 28-31. – DSBO and program objectives.

The division of small business opportunity (DSBO), under the Denver Economic Development and Opportunity (DEDO) agency and the Department of General Services, shall be responsible for the performance of the functions, powers and duties assigned to DSBO by this chapter 28 or as may be assigned by the executive director of DEDO or the executive director of General Services, all of which shall report to the mayor. Such duties shall include development and enforcement of programs for enhancing minority, women, other socially and economically disadvantaged enterprises, and small business enterprise utilization in city construction, including professional design and construction services, contracting for goods and services, and concession contracting. DSBO shall also be responsible for promoting economic development of such minority, women and small business enterprises.

Sec. 28-32. - Purpose and scope.

The purpose of article III, article V, and article VII is to enable the city, through the departments and agencies of the city, including the departments of transportation and infrastructure, the department of aviation, and the department of general services and other user departments, and DSBO, to undertake specific activities to promote equity, maximize opportunities, and prevent discrimination and its effects against business enterprises that have been certified as MWBEs and SBEs in the areas of construction, goods and services, and concessions in the execution of the above departments' duties pursuant to the Charter and ordinances of the City and County of Denver. DSBO is hereby expressly delegated the necessary powers to effectuate the purpose of these articles and to undertake such additional studies or inquiries as may be appropriate.

Sec. 28-33. - Powers and duties.

(a) DSBO shall perform all duties and responsibilities established by these articles together with such other duties and responsibilities as may be assigned to DSBO by ordinance, executive order, or which may be otherwise delegated to it by operation of federal law, including, but not limited to, administration and oversight of such federally established disadvantaged business enterprise (DBE) or similar programs that may be made applicable to city contracting activities. Unless otherwise set forth, the provisions and requirements of this article III shall apply to article V and article VII.

(b) DSBO is hereby delegated the authority to promulgate such rules and regulations or guidelines as may be necessary to effectuate the purposes of these articles and other programs within the purview of DSBO.

Sec. 28-34. - Race- and gender-neutral measures to promote equal opportunities for all business enterprises.

The city, through DSBO, in cooperation with user departments, other governmental agencies and private parties and organizations, is authorized to develop and utilize discretionary programs and activities to provide outreach to, and to facilitate the participation of, business enterprises in city contracting and concession activities, including but not limited to SBEs. These programs and activities may include, but are not limited to:

(a) Collection and analysis, for informational purposes only, of data and information from each responder on a city contract regarding the ongoing availability and utilization of minority and women-owned businesses and other small businesses, whether or not certified , on such responder's private contracts in any of the industries addressed in these articles; and

(b) Development of such other programs or activities as DSBO may from time to time recommend.

Sec. 28-35. - Definitions.

As used in article III, article V, and article VII, the following words and phrases shall have the following meanings, unless otherwise clearly required by the context:

(1) *Affiliate* means a business concern or business enterprise where one (1) business enterprise controls or has the power to control the other, or where a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists. In determining if affiliation exists, DSBO may utilize the definition of affiliate set forth in C.F.R. part 121 or successor regulation, including related SBA guidance documents, as from time to time amended.

(2) *Bid* means an offer to provide goods or perform services for a price under a city contract or purchase order with the city in response to a bidding procedure. For purposes of this ordinance, the term “response” shall include bid.

(3) *Bidder* means a business enterprise that submits a bid on a city contract, usually but not exclusively a construction contract, or purchase order that is advertised by the city for competitive bidding or otherwise advertised or offered by a private owner. For purposes of this ordinance, the term “responder” shall include bidder.

(4) *Business enterprise* (or business) means a sole proprietorship, corporation, limited liability company, partnership, limited partnership, limited liability limited partnership, or any other legal corporate entity organized for profit, properly licensed or registered, and authorized to do business in the State of Colorado.

(5) *Certified* means that a business enterprise has completed the required application process and has been formally authorized by DSBO to participate as an MWBE or SBE under these articles. Certification refers solely to the business enterprise’s status and does not imply that a business enterprise is qualified to perform on a contract or that it performs a commercially useful function.

(6) *City* means the city and county of Denver and its participating user departments.

(7) *City's marketplace* means the geographic and procurement area in which the city contracts on an ongoing basis, as established by the findings of the Denver City Council.

(8) *Commercially useful function* means an that MWBE or SBE is responsible for the provision of goods or for the execution of a distinct element of the work of a contract and carries out the work by actually performing, maintaining control, managing, and supervising the work involved, actually providing the goods, or fulfilling responsibilities as a joint venturer. Commercially useful function is measured for purposes of determining participation on a contract, not for determination of certification eligibility.

(9) *Competitive selection process* has the meaning set forth in sections 2.3.3(A) and 2.11.3(8) of the Denver city charter, and in D.R.M.C. sections 5-19 and 20-56, as that meaning may pertain to a contract(s) at issue.

(10) *Concession agreement* means a city agreement for the operation of a retail, food service or other concession authorized by provisions of the charter or ordinances of the city, including, but not limited to, agreements awarded by a competitive selection process or negotiated

contracts, in a building, or aviation or aeronautical facility, or improvements thereto, situated on real property owned or operated by the city. For purposes of this ordinance, the term “contract” shall include concession agreement.

(11) *Conduit* means an MWBE or SBE 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 business entity that is not an MWBE or SBE or does not carry out the responsibilities required of the MWBE or SBE for participation by actually performing, managing, controlling or supervising the work under a contract. In this type of relationship, the MWBE or SBE has not performed a commercially useful function. This arrangement does not meet the commercially useful function requirement, and therefore the MWBE’s or SBE’s participation does not count toward participation on the contract. Conduit is also referred to as a passthrough.

(12) *Construction* means those areas of construction, reconstruction and remodeling authorized by the charter and ordinances of the city, including construction management services and design-build contracts as appropriate. DSBO may, as may be applicable, assign goals or other DSBO programs to work procured by agencies in addition to DOTI and DEN that utilize construction trades as may be defined by NAICS or other industry codes or classifications. All authority and responsibility in DOTI and DEN to procure construction under the city charter shall not be affected by this ordinance.

(13) *Contract* means any city contract for construction, for professional design and construction services, or for other services, or for the purchase of goods, authorized by provisions of the charter or ordinances of the city. Contract shall include contracts and purchase orders ancillary to cooperative agreements or understandings with other public and private agencies for the acquisition of goods or services, the maintenance, repair, management, operation, construction and construction related services, of public facilities, park and recreational facilities, museums, zoological and other gardens, collections of natural history, and observatories, if such contracts provide for funding in whole or in part by the city for said purposes or utilization of any public facility or area owned or leased by the city or situated on real property owned or leased by the city. Notwithstanding the foregoing, “contract” shall also include construction or professional design and construction services contracts, and contracts for goods or services, for buildings or aviation or aeronautical facilities or improvements thereto, constructed by private owners on real property owned by the city, without regard to the utilization of city funding. For purposes of this ordinance, the term “contract”

includes purchase orders, work orders, task orders, tenant agreements, concession agreements, supplier contracts, design-build contracts, integrated contracts, on-call contracts, and any other city agreements or contracts.

(14) *Contractor* means a business enterprise or corporate entity that enters into a contract with the city, in privity of contract with the city, for acquisition of goods or performance of services, inclusive of construction, and professional design and construction services. Contractor also means a business enterprise or corporate entity that enters into such a contract with a private owner, in privity of contract with such private owner, for such services on a building or aviation or aeronautical facility, or improvements thereto, situated on real property owned by the city. For purposes of this ordinance, the term "contractor" includes consultant, vendor, concessionaire, tenant, prime contractor, and general contractor, and is generally the party to the contract performing or providing a service or good to the city or private owner.

(15) *Day,* unless otherwise indicated, means calendar day.

(16) *Department head* means the manager, executive director, or director, or a designee, of the city department, user department or agency, issuing solicitations for city procurements of goods or services, including for construction and construction related services.

(17) *Design-build contract* means a contract for the procurement of both the design and the construction, reconstruction or remodeling for the improvement of city property 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, reconstruction or remodeling services. For purposes of this ordinance, the term "contract" shall include design-build contract.

(18) *DSBO* means the division of small business opportunity.

(19) *Economically disadvantaged* means, with respect to an individual, that an individual with a demonstrated diminished capacity to compete in the city and private marketplace due to limited capital and credit opportunities, compared to similarly situated persons. Individuals with a personal net worth below the DSBO-determined cap are rebuttably presumed to be disadvantaged.

(20) *Eligible owner* means an owner of a business enterprise who is necessary for certification and meets the definitions of socially or economically disadvantaged.

(21) *Good faith efforts* means substantive and meaningful actions undertaken by a contractor to achieve the participation goal and participation goal commitment.

(22) *Goods* means tangible, physical items, fungible or not, and distinguished from a service or the purchase or procurement of a service. The term "goods" includes "supplies" as such term is set forth in subsection 20-61(i) of the Denver Revised Municipal Code.

(23) *Individual* or *person* means a natural human being, and not a legally created or maintained corporate entity.

(24) *Integrated contract* means contract or contracts for construction procured and awarded for a city construction project or program, including where the awarded contractor may be authorized to conduct bidding or solicit proposal of contractors or subcontractors under city requirements, without a specific pre-determined project or scope of work. Once specific scope or scopes of work are identified, various projects, separate procurements, or individual work orders or task orders are authorized, and the contractor proceeds to complete the work under the separate contracts, projects or the individual work orders or task orders.

(25) *Invitation for bid* or *request for bid* means a written invitation or request to prospective vendors, contractors, or consultants to submit a bid to provide goods or perform services for a price in response to bidding procedures conducted by user departments as authorized by the charter, ordinances, or executive orders of the city. For purposes of this ordinance, the term “solicitation” shall include invitation for bid and request for bid.

(26) *Minority/woman-owned business enterprise* or *MWBE* means a certified business enterprise that meets all of the requirements for certification set forth in section 28-53, which is at least 51% owned and controlled by one or more socially and economically disadvantaged individuals. Active MWBEs are listed in the city’s certified firm directory.

(27) *Minority individual* means:

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

(i) Black Americans, who include individuals having origins in any of the black racial groups of Africa including for example, African Americans, Jamaicans, Haitians, Nigerians, Ethiopians, and Somalis.

(ii) Hispanic-Americans, who include individuals of Mexican, Puerto Rican, Salvadoran, Cuban, Dominican, Guatemalan, and other Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) Native-Americans or American Indians who include individuals with origins in any of the original peoples of North, Central and South America.

(iv) Asian-Pacific Americans, who include individuals whose origins are from Central, East or Southeast Asia, Pacific Islands or Hawaii. For example, Chinese, Filipino, Vietnamese, Hmong, Karen, Korean and Japanese Americans, Pacific Islanders and Native Hawaiians.

(v) South Asian Americans, who include individuals whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka.

(vi) Middle Eastern or North African Americans, who include individuals whose origins are in any of the original people from this region and includes Arabic and non-Arabic speaking groups and ethnic and transnational groups from the region.

(28) *NAICS code* means the industry codes established under the North American Industry Classification System. DSBO assigns NAICS codes to a certified business enterprise based on its demonstrated scope of work and the management and control exercised by its eligible owners.

(29) *Participation goal* (or goal) means the specific percentage of the total dollar amount of applicable work established to be performed by certified firms for a particular contract or project based upon the availability of certified business enterprises in the scope(s) of work of the contract.

(30) *Participation goal commitment* (or goal commitment) means the participation goal amount that, upon award of a contract by the city, becomes a covenant of performance by the contractor in favor of the city.

(31) *Personal net worth* means the net value of an individual's assets after total liabilities are deducted and calculated in accordance with section 28-53(e)(7). An individual's personal net worth includes only his or her share of assets held jointly or as community property with the individual's spouse.

(32) *Private owner* means a private or other non-city owner undertaking to contract for construction work, for design or construction management services on buildings or aviation or aeronautical facilities or improvements thereto, or for the performance of other services, on real property owned by the city, or improvements to or on land or facilities owned by the city.

(33) *Professional design and construction services* means those areas of services related to or necessary for construction authorized by the charter and ordinances of the city, including, but not limited to, engineering services, architectural services, construction management services,

testing, planning services and all other professional services related to construction projects. Engineering, architectural, testing, planning services, and other professional services procured by other agencies in addition to DOTI or DEN in accordance with charter may be subject to DSBO requirements in accordance with applicable NAICS codes.

(34) *Proposal* means an offer to perform construction, professional design, construction services, or other services, or to procure goods, pursuant to a negotiated or otherwise competitively selected city contract with either the city or a private owner, and whether in response to a request for qualifications, request for proposals, or other solicitation or offer. For purposes of this ordinance, the term “response” shall include proposal.

(35) *Proposer* means a business enterprise that submits a proposal in response to a city advertised procurement. For purposes of this ordinance, the term “responder” shall include proposer.

(36) *Purchase order* or *supplier contract* means an approved document memorializing the formal and legally binding terms and conditions of a proposed transaction for the acquisition for certain goods or services. For purposes of this ordinance, the term “contract” shall include purchase order and supplier contract.

(37) *Request for proposal* means a written request to prospective vendors, contractors, or consultants to submit a proposal to provide goods or perform services where an award is made based on factors other than or in addition to price in response to a selection procedure conducted by user departments as authorized by the charter, ordinances, or executive orders of the city. For purposes of this ordinance, the term “solicitation” shall include request for proposal.

(38) *Responder* means a business enterprise that submits a response to a city solicitation or private owner solicitation. For purposes of this ordinance, responder includes bidder, proposer, and submitter.

(39) *Response* means the submission to a city solicitation or private owner solicitation proposing the provision of goods or the performance of services, including construction or construction related services, under a city contract or purchase order. For purposes of this ordinance, the term “response” is inclusive of bid, proposal, and submission.

(40) *Services* means all work offered for public or private use that is purchased by user departments under authority of the charter, ordinances, or executive orders of the city and that do not consist primarily of goods.

(41) *Small business enterprise* or *SBE* means a certified business enterprise that meets all of the requirements for certification as set forth in section 28-53, which is at least 51% owned and controlled by economically disadvantaged individuals. Active SBEs are listed in the city's certified firm directory.

(42) *Small business enterprise concessionaire* or *SBEC* means a certified SBE providing goods or services to the public at a city facility, including but not limited to the airport and which may include retail, food and beverage, and service businesses serving the traveling public and businesses that provide goods or services to concessionaires or directly to the public within the concession environment on city property.

(43) *Socially disadvantaged* means, with respect to an individual, that an individual who has been subjected to racial, ethnic or gender prejudice or cultural bias, or who has experienced discrimination or systemic barriers within American society in the city's marketplace because of their identity as a member of a group or other immutable characteristics and without regard to individual qualities, and which has limited their ability to conduct business or start a business in the city's marketplace. Social disadvantage must stem from circumstances beyond the individual's control.

(44) *Solicitation* means a written bid or selection procedure to procure goods or services. For purposes of this ordinance, the term "solicitation" includes requests for proposal, invitations for bid, requests for bid, requests for qualifications, requests for offer, and any other method of procurement advertisement.

(45) *Subcontractor* means a business enterprise that has entered into a contract with a contractor, under a contract with the city, to provide goods or services pursuant to the city contract. For purposes of this ordinance, the term "subcontractor" includes subconsultant and subvendor.

(46) *Supplier* means a business enterprise that will provide goods, supplies or equipment pursuant to a city contract or purchase order.

(47) *Tenant* means a corporate entity authorized by the city to occupy or use city property under a lease, concession agreement, permit, license or other contractual agreement with a user department, which may include DSBO requirements related to tenant finishes. For purposes of this ordinance, the term "contractor" shall include tenant.

(48) *User department* means the city department, agency, office, board, commission, authority, officer, or elected official, excluding the board of water commissioners but including without

limitation the county courts, library commission, civil service commission, career service authority (office of human resources), auditor, city council, and clerk and recorder, initiating or requesting a city contract or city purchase order utilizing MWBE or SBE participation. For purposes of this ordinance, the term “user department” includes “procuring agency.”

(49) *Woman* means a person of the female gender, encompassed within the findings of the Denver City Council, who is rebuttably presumed to be socially disadvantaged.

Subdivision II. Administrative Requirements for DSBO Program.

Sec. 28-36. - Program administration.

(a) DSBO shall perform additional duties in the administration of the programs established under article III, article V, and article VII, including but not limited to outreach and technical assistance to certified and non-certified small businesses; assisting and conferring with city agencies regarding DSBO requirements in procurements, data collection, analysis, and assessment; and establishment of advisory or other committees as appropriate.

(b) DSBO and the user departments that issue and administer procurements and resultant contracts shall confer and cooperate with regard to the programs established through article III, article V, and article VII on certain DSBO program requirements, including but not limited to, assistance with identifying small businesses for participation in the DSBO programs; assistance with identifying projects and contracts appropriate for SBE defined pool contracting; providing contracting and subcontracting data and information; and performing other activities to support and improve DSBO’s programs.

Subdivision III. Enforcement and sanctions.

Sec. 28-36.1 - Administrative review and court proceedings.

(a) Disputes concerning any determination made by or on behalf of the city pursuant to the authority of DSBO as set forth in this ordinance will be governed by administrative review and court proceeding provisions contained in sections 2-286 through 2-294, D.R.M.C., and as may be specified in rules and regulations.

(b) Pursuant to Rule 106(a)(4) of the state rules of civil procedure, the district court of the second judicial district of the state shall have original jurisdiction in proceedings to review DSBO’s final determination. A final determination may be appealed within twenty-eight (28) days of the date DSBO’s determination becomes final.

(c) DSBO shall collect assessed and unpaid civil penalties under this ordinance by action initiated in state district court for collection of such penalty. A stay of any order of DSBO pending judicial review shall not relieve any contractor from any civil penalty obligation imposed under this ordinance.

Sec. 28-36.2 - Retaliation prohibited.

Contractors shall not, at any time before or during contract performance, retaliate against any SBE or MWBE that reports issues to the city, inclusive of DSBO, or otherwise rightfully exercises the provisions of the ordinance.

Sec. 28-36.3 - Burden of proof; investigations.

Any business enterprise subject to this ordinance shall have the burden of proving its compliance with the requirements and obligations herein, including after closeout. DSBO is authorized to receive and investigate complaints and allegations by MWBEs, SBEs, third parties, or city personnel, or to initiate its own investigations regarding compliance with the ordinance. If DSBO determines in its 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 DSBO and of otherwise proving compliance with the ordinance.

Sec. 28-36.4 - Sanctions for failure to comply with requirements.

(a) Any action by a contractor in violation of the ordinance may constitute a material breach of the contract and may entitle the city or private owner to exercise all of its rights at law or equity for such material breach, in addition to exercising any of the other sanctions. Sanctions may include withholding payment, withholding of funds including retainage, imposition of monetary penalties, or suspension or termination of the subject contract, as specified in rules and regulations.

(b) Contractors remain subject to enforcement and sanctions after contract closeout.

(c) If contractor fails to submit required information, submits false, misleading or materially incomplete statements, documentation or records, or fails to cooperate in an investigation, it shall be subject to sanctions.

(d) DSBO may refer a contractor in violation of this ordinance to the debarment board established under Denver revised municipal code section 20-77. Any solicitation response received during the debarment procedure time period may be deemed nonresponsive by the city.

(e) If a contractor or other business enterprise knowingly receives new or additional work on a contract or purchase order as a result of actions in violation of the ordinance, then the penalties in this section may be applied to such business enterprise.

(f) DSBO may decertify a violating SBE or MWBE in accordance with section 28-55, or may suspend the counting of its participation toward the participation goal.

(g) DSBO may, in its discretion, impose any one (1) or more of the sanctions set out in this section against any contractor or subcontractor determined to be in violation of this ordinance.

(h) DSBO may prescribe corrective actions in the case of violations of this ordinance.

Subdivision IV. - Other administration

Sec. 28-37 - State or federal law and other guidelines.

In making any findings required herein, DSBO may incorporate by reference rules, procedures and powers of C.R.S. § 24-4-101 et seq. as they may exist on the date of enactment of this ordinance or as they may be amended. In making any findings required herein or in aid of definition or interpretation of any term or phrase herein, or by way of procedure or process, DSBO may utilize as a guide or adopt by rule and regulation, insofar as they are consistent with the purposes of this ordinance, provisions of federal law, including without limitation the provisions of Title 49 Code of Federal Regulations and Title 13 Code of Federal Regulations, or successor regulations, as they exist on the date of enactment of this ordinance or as they may be amended, provided that no substantive provision of such federal law that is inconsistent with or contradictory to the provisions of this ordinance shall be used.

Sec. 28-38 - Severability.

If any provision of this ordinance or its application is held invalid or unenforceable, such invalidity or unenforceability shall not affect other provisions or applications of this ordinance that can be given effect without the invalid provisions or applications and the remaining provisions are to be severable and shall remain in full force and effect.

Sec. 28-39 - Effective date.

Article III, article V, and article VII shall become effective on November 1, 2026, and shall apply to all DSBO requirements within the scope of article III, article V, and article VII, and to solicitations publicly advertised on or after November 1, 2026.

Sec. 28-40. - Review and sunset.

(a) Article III, article V, and article VII shall be periodically reviewed by the mayor, DSBO and department heads in order to determine whether adjustments or revisions to any of the articles or additional studies or inquiries in furtherance of the articles are deemed appropriate and should be undertaken or recommended, in order to further and maintain the purpose and intent of the articles.

(b) Article III, article V, and article VII shall be repealed effective October 31, 2032.

Section 2. That division 3 of article III of chapter 28 of the Revised Municipal Code is hereby repealed and reenacted to read as follows:

DIVISION 3. ELIGIBILITY AND CERTIFICATION

Sec. 28-51. - [Reserved].

Sec. 28-52. - Duties and responsibilities.

The Denver economic development and opportunity agency shall perform the duties and responsibilities established by this division 3.

Sec. 28-53. - Certification procedures; eligibility of business enterprises.

(a) Procedures and methods. DSBO shall, by rule and regulation or policies relating solely to internal administration and procedure, establish reasonable procedures and methods for the certification of business enterprises as an MWBE and SBE in order to effectuate the purposes of the programs under these articles. DSBO shall, at a minimum, require all business enterprises to submit an application for certification.

(b) Only business enterprises that meet the requirements for certification as an MWBE or SBE may participate in the DSBO programs. The business enterprise has the burden of demonstrating, by a preponderance of the evidence, that it satisfies all of the requirements for certification.

(c) To determine whether the requirements set forth below are met, DSBO shall consider all of the facts and information in the record, viewed as a whole.

(d) General requirements. Except as otherwise provided, the business enterprise applying for one or more certifications:

(1) must be a for-profit business or enterprise engaged in business activities and operational at the time of application; and

(2) must be registered with the Colorado Secretary of State and in good standing; and

(3) shall not be owned, managed, or controlled by a current city and county of Denver official, employee, or officer.

(e) *Eligibility for MWBE and SBE.* Except as may be otherwise set forth, the requirements below shall apply to all certifications.

(1) *Size standards and thresholds.* A business enterprise, including its affiliates, must meet DSBO's small business size standard for certification. No business enterprise shall be certified, and following certification, no business enterprise shall remain certified, if on the effective date of the application, or at any time during the business enterprise's certification, the business enterprise, combined with all affiliates, exceeds the threshold established by DSBO. DSBO is authorized to establish size standards for the certification of business enterprises, which may vary by certification type, industry classification, or other criteria including tiered standards where appropriate, and in accordance with this article. In determining a small business size standard, DSBO may apply the Small Business Administration (SBA) size limits in 13 CFR part 121 corresponding to the applicable NAICS codes.

(2) *Ownership.* One or more eligible owner(s) of the business enterprise must own at least 51% of the business enterprise or of each class of ownership of the business enterprise. Each eligible owner must demonstrate that their ownership meets the requirements set forth below and under this ordinance.

a. Each eligible owner must:

i. Own in his or her own name the legal and equitable interest in the business enterprise; and

ii. Have acquired the interest by purchase or capital contribution representing a contribution of their own financial resources and commensurate with the interest acquired; and

iii. Enjoy customary incidents of ownership and share in the risks and profits commensurate with their ownership interests in practice, not merely in the form of arrangements.

All contributions by the owner or owners to acquire the ownership interest in business enterprise must be verifiable, substantial, and continuing. All contributions to acquire an ownership interest, including any portion of it, must have been made at the time the individual owner or owners acquired the interest in business enterprise.

b. Expertise as part of an owner's contribution to acquire ownership may be considered on a case by case basis, and must be of the requisite quality generally recognized in the applicable field or industry, in areas critical to the operations of the business enterprise, indispensable to the business enterprise's potential success, specific to the type of work the applicant business enterprise performs, and must be documented in the business enterprise's records.

c. Gifted or inherited interest may be considered as a part of the owner’s contribution assuming all other certification requirements are met and the transfer is sufficiently documented in the business enterprise’s records.

d. A business enterprise whose ownership interests are held indirectly, such as through a parent company, subsidiary, employee stock ownership plan (ESOP), or other non-traditional structure, may be eligible for certification on a case by case basis, and in accordance with all other certification requirements.

(3) *Management and control.* At least one eligible owner must manage and control the business enterprise. The eligible owner(s) must demonstrate that they direct the management, policies, and day-to-day business operations of the business enterprise and must have the power to make, and in fact regularly make, routine and major decisions on matters of management, policy, and operations. The eligible owner's(s') management and control must be verifiable, substantial, and continuing and go beyond the pro forma ownership of the business enterprise as reflected in its ownership documents.

a. At least one eligible owner must:

i. Possess and exercise the independent authority to control the business enterprise, to direct or cause the direction of the management and policies of the business enterprise, and to make day-to-day as well as long-term decisions on management, policy, and operations, as evidenced by governing documents, titles, contractual rights, and actual practice. No provision of a corporate charter, bylaws, contracts, or any other formal or informal arrangement may restrict or prevent the eligible owner(s), without the cooperation or vote of any non-eligible owner, from making any business decision of the business enterprise, including the making of obligations or the disbursing of funds; and

ii. Have an overall understanding of, and managerial and technical competence, experience and expertise regarding matters directly related to the type of business in which the business enterprise is engaged and its essential operations. The eligible owner(s) is not required to have experience or expertise in every area of the business enterprise's operations or have greater experience or expertise than managers, key employees, or other owners. However, the owner must be able to show that they have the ability to intelligently and critically evaluate information presented by other participants and to make independent decisions concerning the business enterprise's daily operations, management, and policymaking.

b. Licensing or other credentials required under federal or state law, or city ordinance may be considered as a factor of eligibility. Failure of the eligible owner to hold the license or other credential does not on its own indicate lack of management or control of a business enterprise without other factors indicating to the contrary.

c. A business enterprise may be certified only for specific types of work in which the eligible owner(s) has the ability and expertise to manage and control.

(4) *Independence.* Only an independent business enterprise may be certified. An independent business enterprise is one whose viability does not depend on its relationship with another business enterprise.

(5) *Lawfully present in the United States.* The eligible owner(s) must be a citizen of the United States or a lawfully admitted permanent resident of the United States.

(6) *Eligibility; social disadvantage; evidence of discrimination.* To be considered an eligible owner for purposes of MWBE certification, each owner must demonstrate they are socially disadvantaged.

a. *Rebuttably presumed social disadvantage.* An individual who is a member of a racial or ethnic minority group referenced in section 28-35(27) or is a woman, is rebuttably presumed to be socially disadvantaged and must affirm by signed declaration: (1) that they are a member of one (1) or more defined minority groups or a woman; and (2) that they have been subjected to racial, ethnic or gender prejudice or cultural bias or have experienced discrimination or systemic barriers within American society because of their identity as a member of a group without regard to individual qualities, and which has limited their ability to conduct business or start a business in the city’s marketplace.

b. *No presumption of disadvantage; Individualized social disadvantage.* An individual who is not presumed to be disadvantaged and is not a member of a group referenced in section 28-35(27) or (49) may demonstrate, based on their own experiences and circumstances, that they are a socially disadvantaged individual by providing a narrative describing in detail:

(1) at least one (1) identifiable immutable characteristic or distinguishing feature that forms the basis of the disadvantage not common to individuals who are not socially disadvantaged and that stem from circumstances beyond the individual's control;

(2) specific instances in which the individual has experienced prejudice, cultural bias, discrimination, or systemic barriers within American society, including the city's marketplace, as a result of the identified characteristic(s) above;

(3) the negative impact on the individual's ability to conduct business or start a business in the City's marketplace as evidenced by their education, employment, or business history.

(7) *Economic disadvantage.* To be an eligible owner for MWBE or SBE certification, each owner must demonstrate they are economically disadvantaged. In support of a claim of economic disadvantage, each owner must supply credible evidence, by providing a personal net worth (PNW) statement and any additional supporting documentation as required by DSBO, that their PNW does not exceed the cap established by DSBO. Individuals whose PNW is below the cap established by DSBO are rebuttably presumed to be economically disadvantaged. In calculating an individual's PNW, DSBO may utilize the form and definitions developed by the U.S. Department of Transportation for its Disadvantaged Business Enterprise (DBE) program.

(8) *Continued eligibility.* Following initial certification, a certified business enterprise must submit, annually, documentation as specified by DSBO demonstrating that the business enterprise continues to meet all eligibility requirements for certification. A certified business enterprise must notify DSBO of any material change, including new ownership, management and control, change in disadvantage status, business size, or any other changes or circumstance that may affect continued eligibility within thirty (30) days of the change. A certified business enterprise may be decertified upon the failure to timely submit notification of change or to otherwise satisfy any certification requirement set forth in this article.

(f) Certification shall correspond to the codes set forth in the North American Industrial Classification System (NAICS), defined in section 28-35(28), or any successor classification system. DSBO shall assign NAICS codes based on the specific scope of work the business enterprise performs and which the eligible owner(s) can demonstrate they manage and control.

(g) Applicants and certified business enterprises shall cooperate with DSBO's review of applications and ongoing eligibility, including onsite visits, interviews, or requests for information.

Failure to cooperate, or the submission of false or misleading information, or act of fraud, may be grounds for denial of certification or for decertification.

Sec. 28-54. - Collection of fees by DSBO.

DSBO shall establish a certification fee not to exceed three hundred dollars ($300.00) assessed to each business enterprise seeking to be certified or to maintain certification(s) under this article.

Sec. 28-55. - Decertification

(a) Decertification. A business enterprise that no longer meets all the eligibility requirements set forth in section 28-53 shall be decertified and will no longer be eligible to participate in any of the DSBO programs. Additional grounds for decertification include, but are not limited to, failure to submit a timely annual update; failure to notify DSBO of a material change affecting eligibility; failure to cooperate with DSBO; or submission of false or misleading information or acts of fraud. DSBO shall provide written notice of decertification to the business enterprise identifying the reason(s) for the decertification.

(b) If a business enterprise is certified in more than one (1) NAICS code and exceeds the size threshold for one (1) or more, but not all of the assigned NAICS codes, then the business enterprise shall remain certified only in the NAICS code(s) for which it continues to meet DSBO's size standard. The business enterprise may reapply for that NAICS code(s) if they subsequently meet the requirements for certification including the requisite size standard.

(c) A business enterprise that has been denied certification or has been decertified may appeal the denial or decertification by first requesting a review for reconsideration by DSBO as specified in the rules and regulations. If the appealing business enterprise disagrees with DSBO's reconsideration, then the enterprise may further appeal by the procedure set out in section 28-36.1. A business enterprise that has been decertified may not reapply for certification for one (1) year after the effective date of the final decision. A business enterprise decertified for failing to submit the required annual update must reapply for certification, but need not wait the one (1) year.

Sec. 28-56. - Third party challenge to certification; investigation.

(a) A third party may challenge the eligibility of a certified business enterprise. The challenge must be made in writing and submitted in accordance with the procedures set forth in the DSBO rules and regulations. DSBO reserves the right to refuse investigation of vague or unsubstantiated challenges; and further reserves all discretion in determining whether to investigate any challenge. The burden of demonstrating to DSBO's satisfaction the lack of such eligibility or the rebuttal of such presumption rests with such third party and shall be demonstrated by a preponderance of the evidence.

(b) DSBO may, at its discretion, investigate the facts, documents, and circumstances regarding the eligibility of any certified business enterprise without the need for a third-party challenge. Such review may be conducted based on information obtained by DSBO or on its own determination that additional verification is warranted.

Secs. 28-57—28-90. – [Reserved].

Section 3. That article V of chapter 28 of the Revised Municipal Code is hereby repealed and reenacted to read as follows:

ARTICLE V. - GOALS FOR CITY CONTRACTS AND PURCHASE ORDERS; MINORITY AND WOMAN-OWNED BUSINESS ENTERPRISES

DIVISION 1. PARTICIPATION GOALS; BUSINESS UTILIZATION DETERMINATION

Sec. 28-117. - Contracts excluded from this article V.

(a) Contracts for which bids or proposals are sought under the SBE defined selection pool contracting program established pursuant to article VII of this chapter 28 are excluded from the coverage of this Article V. In addition, in the case of a contract hereunder for which a part of the contract price is to be paid with funds from the United States Government or the State of Colorado and for which the United States Government or the State of Colorado has made applicable to such contract requirements terms or conditions which are inconsistent with the provisions of this article V, the provisions of this article V shall not apply to such contract to the extent of such inconsistency.

(b) Contracts where DSBO has authorized the waiver of a participation goal, or has otherwise authorized a contract to be advertised in collaboration with the user departments without participation goals to assist in the determination of ongoing MWBE utilization on city contracts in the absence of participation goals, are excluded from the coverage of this Article V. However, this reference to contracts without participation goals shall not include contracts that are advertised with a zero percent participation goal after due assessment of availability.

Sec. 28-118. - Participation goals.

(a) DSBO may assign to a solicitation or city contract or project a participation goal for MWBE utilization expressed as a percentage of the total dollar value of the contract or project. The participation goal shall be based upon the scope of work and availability of MWBEs to perform the anticipated work, among other factors as determined by DSBO.

(b) The participation goal may vary from contract to contract or project to project.

(c) If determined to be in the best interest of the city, DSBO may, in its discretion, waive the application of a participation goal for a given contract.

(d) DSBO may cause a representative sample of city contracts or projects to be selected without a participation goal or with a zero percent (0%) goal to determine MWBE utilization on such contracts in the absence of a goal. If a contract or project is let with a zero percent (0%) goal and MWBE subcontractors are later added to the contract or project, then the contract or project shall be subject to the requirements of this article V.

(e) DSBO shall not set MWBE participation goals where the SBE program applies.

DIVISION 2. PARTICIPATING MWBEs; GOOD FAITH EFFORTS; RESPONSIVENESS

Sec. 28-119. – Responsiveness.

(a) DSBO shall establish and determine compliance with DSBO requirements for responsiveness to a solicitation, and shall notify the user department whether to regard a submission as responsive or nonresponsive. A nonresponsive determination by DSBO shall result in no further consideration by the city.

(b) Any DSBO required documents shall be submitted at such time as required by DSBO.

(c) Any agreement between a responder and an MWBE in which the responder requires that the MWBE not provide subcontracting quotations to other responders is prohibited and shall render the submission nonresponsive.

(d) A responder's failure to comply with good faith efforts as may be required under section 28-121 shall render the response nonresponsive.

Sec. 28-120. – Participating MWBEs.

(a) The responder or contractor shall utilize the city's certified firm directory to identify the business enterprises for MWBE utilization.

(b) The responder, or contractor during contract performance, must demonstrate its level of MWBE participation in the manner specified by DSBO.

(c) All MWBEs on a project or contract let with an MWBE goal are afforded the protections and obligations of this article, regardless of whether the MWBE's participation is intended for satisfaction of the participation goal or participation goal commitment.

Sec. 28-121. – Good faith efforts.

(a) If at the time of response the responder cannot meet the participation goal, then it must demonstrate good faith efforts as specified by DSBO in rules and regulations to identify or secure MWBE participation to meet such goal.

(b) Contractors, during the course of contract performance, are required to make and document continuous good faith efforts to meet the participation goal commitment.

DIVISION 3. COMPLIANCE REQUIREMENTS

Sec. 28-122. - Compliance with participation goals during contract performance.

(a) Upon award of a contract by the city that includes a participation goal, the goal commitment shall become a covenant of performance by the contractor in favor of the city.

(b) All contracts subject to this article V shall be monitored by DSBO for compliance with the provisions hereof.

(c) For any contract for which DSBO has set a participation goal, it shall be an ongoing, affirmative obligation of the contractor on such contract to maintain compliance with all applicable provisions of this ordinance.

(d) Work performed by MWBEs under the applicable contract shall count toward MWBE participation. Only MWBE participation that constitutes a commercially useful function shall be credited toward satisfaction of the goal commitment.

(e) DSBO may evaluate the utilization or performance of any MWBEs to determine whether the MWBEs are performing a commercially useful function. The evaluation may include, but shall not be limited to, the amount and duties of work subcontracted, reasonableness of fees charged, industry practice, and other relevant factors established by DSBO.

(f) In the case where a joint venture is established to meet the participation goal, only the portion of the total dollar value of the joint venture contract equal to the distinct, clearly defined work that the MWBE(s) perform with their own forces will count toward MWBE participation.

(g) DSBO shall establish in rules and regulations the methods for counting percentages of MWBE participation that apply toward satisfaction of the goal commitment.

(h) Contractors shall regularly submit documentation and information as prescribed and required by DSBO in order for DSBO to accurately monitor and track MWBE utilization.

(i) If DSBO determines that an MWBE is functioning as a conduit, then that work shall not count toward meeting the participation goal commitment.

Sec. 28-123. - Project change orders, amendments and modifications.

If change orders, amendments, or other modifications result in a changed scope of work or dollar amount of the contract, the participation goal commitment shall be applied to the new scope or dollar amount of the contract. The contractor shall satisfy such participation goal commitment as to the changed amount or scope of work by assigning the work to existing MWBEs, or by soliciting new MWBEs, or by demonstrating good faith efforts.

Sec. 28-124. - Contractor prompt payment; MWBE subcontractors.

(a) A contractor shall ensure that MWBE subcontractors are paid any invoiced and undisputed amounts for completed and accepted work within thirty-five (35) days of receipt of the MWBE subcontractor's invoice, unless otherwise directed by law. Payment to the MWBE subcontractor shall be timely made as required under this section regardless of whether the contractor has been paid for the same work or payment period.

(b) The payment requirements under this section shall apply to MWBE subcontractors performing on a city contract with DSBO requirements regardless of tier. The requirements of this section are in addition to, and do not limit, the prompt pay provisions of section 20-112, D.R.M.C.

(c) MWBEs performing as prime contractors shall be subject to the requirements under this section 28-124 regarding payment to MWBE subcontractors.

(d) This section 28-124 shall apply only to city contracts in amounts that exceed the prompt pay threshold as established by DSBO.

Sec. 28-125. - Participation modification; substitution; termination of MWBE subcontractors.

(a) A contractor may not substitute, terminate, or reduce the scope of an MWBE subcontractor without DSBO's prior written consent. This includes, but is not limited to, instances in which a contractor seeks to perform work with its own forces, those of an affiliate, a non-MWBE firm, or with another MWBE as a substitute for an originally designated MWBE.

(b) In the event a contractor must substitute or terminate an MWBE subcontractor or otherwise modify or eliminate all or a portion of work attributable to an MWBE, except in cases where directed by the city, the contractor, at minimum, must (i) provide written notice to the MWBE, (ii) provide the MWBE an opportunity to respond, (iii) obtain written consent from DSBO to terminate for good cause, and other factors as may be established by DSBO in rules and regulations.

(c) If modification, substitution, or termination is specifically directed by the city, the contractor need only provide DSBO and the MWBE with written notice.

(d) DSBO approval to substitute, terminate or reduce the scope of work of the MWBE subcontractor does not modify the contractor's goal commitment.

(e) The provisions of this section apply to proposed subcontractors prior to contract execution as well as during contract performance.

Secs. 28-126—28-199. – Reserved.

Section 4. That article VII of chapter 28 of the Revised Municipal Code is hereby repealed and reenacted as a new article VII to read as follows:

ARTICLE VII. OPPORTUNITIES FOR SMALL BUSINESS ENTERPRISES IN CITY CONTRACTING INCLUDING SBE GOALS AND DEFINED POOL SELECTION

DIVISION 1. SMALL BUSINESS ENTERPRISE PROGRAM

Sec. 28-201. - [Reserved].

Sec. 28-202. - Duties and responsibilities.

The Department of General Services shall perform the duties and responsibilities established by this article VII. DSBO may promulgate additional rules for the administration of a small business enterprise concession program by and for the department of aviation's concession contracts and projects.

Sec. 28-203. - Purpose and scope.

The purpose of this article VII is to enable the city, through the department of transportation and infrastructure, department of aviation, general services and other user departments, and the division of small business opportunity ("DSBO"), to undertake specific activities to promote use of small business enterprises ("SBEs"), inclusive of small business enterprise concessionaires ("SBEC"), in city contracting for construction, non-construction goods and services, and concession agreements.

Sec. 28-204. - Contracts excluded from this article VII.

Contracts for which responses are sought under the minority and women business enterprise (MWBE) ordinance established pursuant to article III of this chapter 28, and its divisions, are excluded from the coverage of this article VII. In addition, in the case of a contract for which a part of the contract price is to be paid with funds from the United States Government or the State of Colorado and for which the United States Government or the State of Colorado have made applicable to such contract requirements, terms or conditions that are inconsistent with the terms of this article VII, the provisions of this article VII shall not apply to such contract to the extent of such inconsistency.

DIVISION 2. SBE GOALS FOR CONTRACTS

Subdivision I. [In general]

Sec. 28-205. - Participation goals.

(a) DSBO may assign to a solicitation or city contract or project a participation goal for SBE utilization expressed as a percentage of the total dollar value or projected gross receipts of the contract or project. The participation goal shall be based upon the scope of work and availability of SBEs to perform the anticipated work, among other factors as determined by DSBO.

(b) The participation goal may vary from contract to contract or project to project.

(c) If determined to be in the best interest of the city, DSBO may, in its discretion, waive the application of a participation goal for a given contract.

(d) DSBO shall not set SBE participation goals where the MWBE program applies.

Subdivision II. Participating SBEs; Responsiveness; Good Faith Efforts

Sec. 28-206. - Responsiveness.

(a) DSBO shall establish, and determine compliance with, DSBO requirements for responsiveness to a solicitation, and shall notify the user department whether to regard a submission as responsive or nonresponsive. A nonresponsive determination by DSBO shall result in no further consideration by the city.

(b) Any DSBO required documents shall be submitted at such time as required by DSBO.

(c) Any agreement between a responder and an SBE in which the responder requires that the SBE not provide subcontracting quotations to other responders is prohibited and shall render the submission nonresponsive.

(d) A responder's failure to comply with good faith efforts as may be required under section 28-208 shall render the response nonresponsive.

Sec. 28-207. - Identification of participating SBEs.

(a) The responder or contractor shall utilize the city's certified firm directory to identify the business enterprises for SBE utilization.

(b) The responder, or contractor during contract performance, must demonstrate its level of SBE participation in the manner specified by DSBO.

(c) All SBEs on a project or contract let with an SBE goal are afforded the protections and obligations of this article, regardless of whether the SBE's participation is intended for satisfaction of the participation goal or participation goal commitment.

Sec. 28-208. – Good faith efforts.

(a) If at the time of response the responder cannot meet the participation goal, then it must demonstrate good faith efforts as specified by DSBO in rules and regulations to identify or secure SBE participation to meet such goal.

(b) Contractors, during the course of contract performance, are required to make and document continuous good faith efforts to meet the participation goal commitment.

Subdivision III. Compliance Requirements

Sec. 28-209. – Compliance with SBE participation goal during contract performance.

(a) Upon the city's award of a contract that includes an SBE participation goal, the goal commitment shall become a covenant of performance by the contractor in favor of the city.

(b) All contracts subject to this division 2 shall be monitored by DSBO for compliance with the provisions hereof.

(c) For any contract for which DSBO has set a participation goal, it shall be an ongoing, affirmative obligation of the contractor on such contract to maintain compliance with all applicable provisions of this ordinance.

(d) Work performed by SBEs under the applicable contract shall count toward SBE goal participation. Only SBE goal participation that constitutes a commercially useful function shall be credited toward satisfaction of the goal commitment.

(e) DSBO may evaluate the goal utilization or performance of any SBEs to determine whether the SBEs are performing a commercially useful function. The evaluation may include, but shall not be limited to, the amount and duties of work subcontracted, reasonableness of fees charged, industry practice, and other relevant factors established by DSBO.

(f) In the case where a joint venture is established to meet the participation goal, only the portion of the total dollar value of the joint venture contract equal to the distinct, clearly defined work that the SBE(s) perform with their own forces will count toward SBE goal participation.

(g) DSBO shall establish in rules and regulations the methods for counting percentages of SBE goal participation that apply toward satisfaction of the goal commitment.

(h) Contractors shall regularly submit documentation and information as prescribed and required by DSBO in order for DSBO to accurately monitor and track SBE utilization.

(i) If DSBO determines that an SBE is functioning as a conduit, then that work shall not count toward meeting the participation goal commitment.

Sec. 28-210. – Project change orders, amendments and modifications.

If change orders, amendments, or other modifications result in a changed scope of work or dollar amount of the contract, the participation goal commitment shall be applied to the new scope or dollar amount of the contract. The contractor shall satisfy such participation goal commitment as to the changed amount or scope of work by assigning the work to existing SBEs, or by soliciting new SBEs, or by demonstrating good faith efforts.

Sec. 28-211. – Contractor prompt payment; SBE subcontractors.

(a) A contractor shall ensure that SBE subcontractors are paid any invoiced and undisputed amounts for completed and accepted work within thirty-five (35) days of receipt of the SBE subcontractor's invoice, unless otherwise directed by law. Payment to the SBE subcontractor shall be timely made as required under this section regardless of whether the contractor has been paid for the same work or payment period.

(b) The payment requirements under this section shall apply to SBE subcontractors performing on a city contract with DSBO requirements regardless of tier. The requirements of this section are in addition to, and do not limit, the prompt pay provisions of section 20-112, D.R.M.C.

(c) SBEs performing as prime contractors shall be subject to the requirements under this section 28-211 regarding payment to SBE subcontractors.

(d) This section 28-211 shall apply only to city contracts in amounts that exceed the prompt pay threshold as established by DSBO.

Sec. 28-212. - Participation modification; substitution; termination of SBE subcontractors.

(a) A contractor may not substitute, terminate, or reduce the scope of an SBE subcontractor without DSBO's prior written consent. This includes, but is not limited to, instances in which a contractor seeks to perform work with its own forces or those of an affiliate, with a non-SBE firm, or with another SBE as a substitute for an originally designated SBE.

(b) In the event that a contractor must substitute or terminate an SBE subcontractor or otherwise modify or eliminate all or a portion of work attributable to an SBE, except in cases where directed by the city, the contractor, at minimum, must (i) provide written notice to the SBE, (ii) provide the SBE an opportunity to respond, (iii) obtain written consent from DSBO to terminate for good cause, and other factors as may be established by DSBO in rules and regulations.

(c) If modification, substitution, or termination is specifically directed by the city, the contractor need only provide DSBO and the SBE with written notice.

(d) DSBO approval to substitute, terminate or reduce the scope of work of the SBE subcontractor does not modify the contractor's goal commitment.

(e) The provisions of this section apply to proposed subcontractors prior to contract execution as well as during contract performance.

DIVISION 3. SBE DEFINED POOL CONTRACTS

Sec. 28-213. - Identification of SBE defined pool contracts and projects.

(a) DSBO may, based on certain criteria established by this article VII and rules and regulations, identify and determine those contracts to be restricted for solicitation and award only to certified SBEs under this article VII.

(b) User departments shall not split, combine, revise, restructure, or modify solicitations, projects, or purchases to avoid inclusion of contracts or projects in the defined selection pool, or perform other actions with the intent of avoiding the requirements of this article VII.

(c) In addition to determining that a contract shall be subject to defined selection pool requirements, DSBO may add a project participation goal for SBE utilization as subcontractors, pursuant to Article VII Division 2.

(d) If the user department's solicitation fails, prior to resolicitation, DSBO will reassess the project for a DSBO goal requirement pursuant to article VII division 2.

(e) If DSBO determines it to be in the best interest of the city, DSBO may waive the application of a defined selection pool requirement for a given contract.

Sec. 28-214. - Responsiveness.

(a) DSBO shall establish and determine compliance with DSBO responsiveness requirements, and notify the user department whether to regard the submission as responsive or nonresponsive.

(b) Certification by DSBO as an SBE shall be a condition of responsiveness related to defined selection pool.

(c) A nonresponsive DSBO determination shall result in no further consideration of the response by the city.

Sec. 28-215. - Change orders, amendments, and good faith efforts.

(a) If change orders, amendments, or modifications are made to the contract, SBE requirements, including the self-performance percent, shall be applied to the new, increased dollar amount of the contract.

(b) In the event that the city initiates a material alteration to the contract which causes the SBE to be noncompliant with the self-performance requirement, the SBE must demonstrate that it has made good faith efforts to comply with that requirement.

Sec. 28-216. – SBE compliance during contract performance.

(a) Upon award of a contract by the city, compliance with the requirements of this ordinance becomes a covenant of performance by the contractor in favor of the city.

(b) All contracts subject to this division 3 shall be monitored by DSBO for compliance with the provisions hereof.

(c) For DSBO to accurately track utilization of SBEs, the contractor shall submit regularly information required by DSBO, in a method prescribed by DSBO.

Sec. 28-217. - Commercially useful function; conduits.

(a) All SBEs must perform a commercially useful function and must not function as a conduit.

(b) DSBO may evaluate the utilization or performance of any SBEs to determine whether such SBEs are performing a commercially useful function. The evaluation shall examine the work performed, industry practice, and other relevant factors.

(c) The amount of SBE participation credited shall be based upon an analysis of the specific duties performed by the SBE, and the extent to which such duties constitute a commercially useful function.

(d) The work performed by an SBE functioning as a conduit shall not count toward meeting the minimum self-performance percent.

Secs. 28-218—28-249. – Reserved.

COMMITTEE APPROVAL DATE: _______________

MAYOR-COUNCIL DATE: ______________________

PASSED BY THE COUNCIL: ____

____ - PRESIDENT

APPROVED: ______________________________ - MAYOR ________________________________

ATTEST: ___________________________________ - CLERK AND RECORDER,
EX-OFFICIO CLERK OF THE
CITY AND COUNTY OF DENVER

NOTICE PUBLISHED IN THE DAILY JOURNAL: ___________________; ___________________

PREPARED BY: __________________, Assistant City Attorney DATE:_______________

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

Miko Ando Brown, Denver City Attorney

BY: ______________________, Assistant City Attorney DATE: ________________________