

1 **BY AUTHORITY**

2 ORDINANCE NO. _____
3 SERIES OF 2019

COUNCIL BILL NO. CB19-XXXX
COMMITTEE OF REFERENCE:

4 Business, Arts, Workforce & Aeronautical Services

5 **A BILL**

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

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

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

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

20 **WHEREAS**, at this time, DSBO desires to make certain limited changes to Articles III, V, and VII
21 to effectuate administrative improvements to the Programs, as well as to correct typographical errors
22 in the Articles; and

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

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

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

31 **Section 1.** As a result of previously held hearings and briefings regarding pertinent data,
32 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 of the Denver Revised Municipal Code is amended to read as
4 follows:

5 (a) The DSBO shall perform additional duties in the administration of the programs
6 established under this chapter 28 or otherwise, which duties shall include:

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

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

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

16 (8) Collecting payment, goal compliance, and other pertinent data to evaluate the
17 programs and other city contracting initiatives.

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

24 (12) ~~Completing on or before April 1, 2019~~ Periodically, at the director's discretion
25 and based on DSBO's specific needs, DSBO shall perform or cause to have performed
26 an evaluation of DSBO ~~to include~~ including by not limited to the following:

27 **Section 3.** Section 28-54 of the Denver Revised Municipal Code is amended to read as
28 follows:

29 (5) ~~Broker~~ Broker means a business enterprise that performs a commercially useful
30 function as an intermediary, for a fee, in the acquisition of materials, supplies or
31 equipment, regardless of whether or not it takes title to such materials, supplies or
32 equipment, for the city or a private owner or its contractors, consultants or suppliers,
33 but is not a manufacturer, manufacturer's representative or regular dealer. Only bona
34 fide commissions earned by a broker for its activities in performing a commercially

1 useful function on a city contract shall be counted toward the project goal as set out in
2 sections 28-63 and 28-68. A packager shall be considered and treated as a broker.

3 (26) *Goal committees* mean committees of persons engaged in the construction,
4 reconstruction and remodeling, and professional design and construction services
5 industries, which shall be established by the director to advise the director as to project
6 goal setting as set forth in this Chapter 28.

7 (32) ~~Manufacturer's representative~~ Manufacturer's representative means a business
8 enterprise that sells products for one (1) or more manufacturers. A manufacturer's
9 representative does not take legal title to or physical possession of the products that it
10 sells, such products generally being sent directly from the manufacturer to the
11 contractor or subcontractor purchasing the products. Only bona fide commissions
12 earned by a manufacturer's representative in performing a commercially useful
13 function on a contract shall be counted toward the project goal as set out in sections
14 28-63 and 28-68.

15 (33) *Mentor-Protégé* means a relationship between a subcontractor certified as a
16 MBE or a WBE (protégé) and a more experienced contractor (mentor) approved by
17 DSBO. In a mentor-protégé relationship, the mentor provides guidance on technical,
18 financial, bonding, equipment, and personnel assistance to the protégé. The purpose
19 of the relationship is to increase the capacity of MBEs and WBEs to perform city
20 contracts.

21 (35) *Minority individual means:*

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

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

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

31 **Section 4.** Section 28-55 of the Denver Revised Municipal Code is amended to read as
32 follows:

33 (c) To determine whether the requirements set forth below are met, the division
34 must consider all of the facts in the record, viewed as a whole.

1 (1) *Ownership.* In order for the socially and economically disadvantaged
2 owner(s) to be found to own the applicant business enterprise for purposes of
3 certification, as applicable, the applicant business enterprise or socially and
4 economically disadvantaged owner(s) must meet the requirements set forth
5 below.

6 a. To be an eligible MBE or WBE, each socially and economically
7 disadvantaged owner must:

8 (i) Own in his or her own name the legal and equitable interest in the
9 applicant business enterprise;

10 (ii) Have acquired the interest in a ~~real~~ verifiable and substantial arms-length
11 transaction, utilizing ~~real~~ verifiable, substantial, and continuing consideration;
12 going beyond pro forma ownership of the applicant business enterprise as
13 reflected in ownership documents;

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

24 (2) *Management and control.* Only an applicant business enterprise that is
25 managed and controlled by a socially and economically disadvantaged
26 individual(s) may be certified as an MBE or WBE. The socially and economically
27 disadvantaged minority or woman owner(s) shall direct the management,
28 policies, and day-to-day business operations of the applicant business
29 enterprise and shall have the power to make, and ~~actually in fact~~ make, routine
30 and major decisions on matters of management, policy, and operations. The
31 socially and economically disadvantaged minority or woman owner's(s')
32 management and control must be ~~real~~, verifiable, substantial, and continuing
33 and go beyond the pro forma ownership of the applicant business enterprise as
34 reflected in its ownership documents. Ownership alone is not sufficient to

1 establish management and control. To determine whether each socially and
2 economically disadvantaged individual satisfies these requirements, the DSBO
3 shall consider the criteria below:

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

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

25 (6) *Eligibility; rebuttable presumption of social disadvantage; individualized*
26 *showing of social disadvantage; evidence of discrimination.*

27 a. ~~Reputably~~ Rebuttably *presumed social disadvantage.* A socially and
28 economically disadvantaged minority individual or woman upon whom the
29 application for certification is based must supply credible evidence, by sworn
30 affidavit, that such individual has suffered from past race- or gender-based (as
31 applicable) discrimination in association with the conduct of business or the
32 attempted conduct of business as a business enterprise, in the construction or
33 the professional design and construction services industries in the city's
34 marketplace; provided that, any applicant business enterprise owned and

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

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

28 (8) *Threshold size; continued eligibility and renewal of certification.* No applicant
29 business enterprise, MBE or WBE shall be eligible for initial or subsequent renewal of
30 certification if such business enterprise, MBE or SBE combined with any affiliates
31 meets the criteria set forth in section 28-56 for *graduation* from participation in the goals
32 program established by this division 3. An MBE or WBE will be certified for a ~~one~~ three-
33 year period. Following initial certification, an MBE or WBE that desires to continue its
34 certification shall, no later than thirty (30) days prior to each ~~annual~~ three-year

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

8 **Section 5.** Section 28-57 of the Denver Revised Municipal Code is amended to read as
9 follows:

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

16 **Section 6.** Section 28-58 of the Denver Revised Municipal Code is amended to read as
17 follows:

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

33 (b) The director as a basis for the establishment of the aspirational annual goal shall
34 annually during the term hereof determine the present availability of all MBEs and WBEs

1 doing business in the city by profession and trade groupings and recommend the aspirational
2 annual goal to the city council for its review. The director shall conduct such inquiries, studies
3 and hearings, and utilize information and assistance from such persons, consultants, entities
4 or organizations, within or without the city, including, but not limited to, the department heads,
5 as the director may, in the exercise of sole discretion, deem necessary to make such annual
6 recommendation.

7 (c) The city council shall review the aspirational annual goal recommended by the director,
8 may undertake such additional inquiries as it deems appropriate, and may approve,
9 disapprove or modify the recommended aspirational annual goal by ordinance in each
10 succeeding year. Until the city council approves, disapproves or modifies the aspirational
11 annual goal in a succeeding year, the initial aspirational annual goal established in this section
12 shall continue in effect.

13 **Section 7.** Section 28-59 of the Denver Revised Municipal Code is amended to read as
14 follows:

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

27 (1) To the extent applicable, the effect on the annual goal achievement of the
28 varying levels of availability of MBEs and WBEs among industry groupings associated
29 with individual projects and the effect on aspirational annual goal achievement of the
30 project goal compliance being achieved through good faith efforts resulting in non-
31 utilization of MBEs and WBEs.

32 (c) As an aid in the establishment of ~~such an individual~~ the methodology and review and
33 analysis of data and information used for project goals goal or annual aspirational goals, the
34 director ~~may shall~~ appoint a goals committee or committees to advise and assist the director

1 in the methodology and review and analysis of data and information used for project or annual
2 aspirational goals ~~determination of an individual project goal.~~

3 (d) The goal committees shall meet ~~on a regular basis~~ as established by the director to
4 consider and recommend the methodology and review and analysis of data and information
5 used for project goals ~~an individual project goal pursuant to guidelines developed by the~~
6 ~~DSBO.~~ The goal committees shall consider data as to availability of types of MBEs and WBEs
7 doing business in the city with respect to the substantive work requirements ~~of each individual~~
8 ~~contract under consideration.~~ The director may utilize such advice and assistance from the
9 goal committees to the extent that the director deems it to be appropriate and consistent with
10 the purposes of this division 3 as well as other information helpful to a determination as to a
11 project ~~goals~~ goal. The director shall in the director's sole discretion establish an individual
12 project goal for each contract in bid or proposal instructions or as otherwise promulgated by
13 regulations.

14 **Section 8.** Section 28-60 of the Denver Revised Municipal Code is amended to read as
15 follows:

16 (a) The bid or competitive selection process specifications for each construction contract
17 shall require that all bidders or proposers seeking to contract with the city or a private owner
18 on such project shall address the project goal through one (1) or more of the following
19 subsections, or by demonstrating good faith efforts as set out in section 20-62:

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

24 **Section 9.** Section 28-60.5 of the Denver Revised Municipal Code is amended to read as
25 follows:

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

33 (b) On such projects ~~in~~ which utilization of a joint venture relationship or a teaming
34 agreement with an MBE or WBE ~~is incentivized~~ is proposed, the manager of the user agency

1 or his or her designee and the director of the division of small business opportunity will
2 establish prior to issuing the request for bids or the request for proposals any criteria to
3 evaluate the use of joint ventures or teaming agreements for the project.

4 (e) As to each teaming agreement under this section, a written teaming agreement must
5 be completed by at all parties to the teaming agreement and executed, which clearly
6 delineates the rights and responsibilities of each teaming party, complies with any
7 requirements of provides that the teaming agreement shall continue for, at a minimum, the
8 duration of the project.

9 **Section 10.** Section 28-64 of the Denver Revised Municipal Code is amended to read as
10 follows:

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

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

21 **Section 11.** Section 28-65 of the Denver Revised Municipal Code is amended to read as
22 follows:

23 (a) The proposal specifications for each professional design and construction services
24 contract shall require that all proposers seeking to contract with the city or a private owner on
25 such project shall address the project goal through one (1) or more of the following
26 subsections, or by demonstrating good faith efforts as set out in section 28-67:

27 (1) If the proposer is an MBE or WBE, the value of the commercially useful function
28 to be self-performed by the MBE or WBE, shall count to the extent provided in section
29 28-68 toward satisfaction of the project goal, provided that the project goal not met by
30 proposer self-performance shall be addressed as otherwise set out in this section; or

31 **Section 12.** Section 28-65.5 of the Denver Revised Municipal Code is amended to read as
32 follows:

33 (a) Based upon the scope of work and market availability, and whether permitted by law,
34 the division of small business opportunity shall determine on a project-by-project basis, in

1 consultation with the manager of the user agency or his or her designee, whether a joint
2 venture with an MBE or WBE may be ~~incentivized~~ utilized for a given project, or whether a
3 teaming agreement with an MBE or WBE may be ~~incentivized~~ utilized for a given project. ~~Only~~
4 Those projects where the professional design and construction services are valued at over
5 five hundred thousand dollars (\$500,000.00) are eligible for consideration ~~under this section~~
6 for Joint Ventures or Teaming Agreements.

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

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

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

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
21 be ~~born~~ borne by the interested parties.

22 **Section 13.** Section 28-67 of the Denver Revised Municipal Code is amended to read as
23 follows:

24 (b) The statement of good faith efforts shall include a specific response and verification
25 with respect to each of the following good faith effort categories, which may be further defined
26 by rule or regulation. A proposer may include any additional information it believes may be
27 relevant. Failure of a proposer to show good faith efforts as to any one (1) of the following
28 categories shall render its overall good faith effort showing insufficient and its proposal
29 nonresponsive:

30 (7) The proposer must provide verification that it rejected each non-utilized MBE and WBE
31 because the MBE or WBE was not qualified. Such verification shall include a verified
32 statement of the proposals received from potential or utilized subconsultants, suppliers,
33 manufacturers, manufacturer's representative or brokers on the contract, whether or not they
34 are MBEs or WBEs. In making such a determination of not being qualified, the proposer shall

1 be guided by the definition of qualified in section 28-54(44) ~~28-54(42)~~. For each MBE or WBE
2 found not to be qualified by the proposer, the verification shall include a statement giving
3 the proposer's reasons for its conclusion. A proposer's industry or professional standing or
4 group memberships may not be the cause of rejection of an MBE or WBE. A proposer may
5 not reject an MBE or WBE as being unqualified without sound reasons based on a reasonably
6 thorough investigation and assessment of the MBE's or WBE's capabilities and expertise.

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

12 **Section 14.** Section 28-68 of the Denver Revised Municipal Code is amended to read as
13 follows:

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

24 **Section 15.** Section 28-72 of the Denver Revised Municipal Code is amended to read as
25 follows:

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

33 **Section 16.** Section 28-73 of the Denver Revised Municipal Code is amended to read as
34 follows:

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

18 **Section 17.** Section 28-75 of the Denver Revised Municipal Code is amended to read as
19 follows:

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

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

31 (5) ~~Participates~~ Participate in a conduit relationship with an MBE or WBE scheduled
32 to perform work on the contract; or

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

4 **Section 18.** Section 28-79 of the Denver Revised Municipal Code is amended to read as
5 follows:

6 The director shall prepare written reports four (4) times each year which shall describe
7 progress in meeting the annual goal set out in section 28-58. Copies of such reports shall be provided
8 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 |

9
10 In addition, the quarterly report shall encompass the implementation of this division 3 ~~as well~~
11 ~~as a project by project report~~ and discussion of setting and justification of individual project goals. ~~by~~
12 ~~contract including all change orders, amendments and modifications~~

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

17 **Section 19.** Section 28-80 of the Denver Revised Municipal Code is amended to read as
18 follows:

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

26 **Section 20.** Section 28-83 of the Denver Revised Municipal Code is amended to read as
27 follows:

28 (b) This division 3 shall be repealed effective ~~April 4~~ December 31, 2019.

1 **Section 21.** Section 28-123 of the Denver Revised Municipal Code is amended to read as
2 follows:

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

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

9 **Section 22.** Section 28-126 of the Denver Revised Municipal Code is amended to read as
10 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
15 covered services to be provided on such contract and, as set out below, the availability of
16 MBEs and WBEs to perform the anticipated work and the city's progress toward meeting the
17 annual goal; provided that, the DSBO director may in his or her sole discretion waive the
18 application of a procurement goal for a given contract or purchase order. The DSBO director
19 will provide a written justification to the purchasing director or department head, as
20 appropriate, for each waiver granted. The goal percentage assigned by the DSBO director to
21 each such contract or purchase order may vary from contract to contract consistent with
22 meeting the appropriate overall annual goals, when established. The DSBO shall establish a
23 methodology for the setting of the procurement goal, ~~including the methodology to be followed~~
24 ~~by the goal committee(s)~~, through rules and regulations. Such methodology shall consider the
25 following factors:

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

28 (c) As an aid in the establishment of ~~such an individual~~ the methodology and review and
29 analysis of data and information used for procurement goals goal, the DSBO director may in
30 the director's discretion shall appoint at least one (1) goal committee to advise and assist the
31 DSBO director in the methodology and review and analysis of data and information used for
32 project goals ~~determination of an individual procurement goal~~. Membership on the goal
33 committee(s) shall include ~~as a nonvoting member(s)~~ such representatives of the purchasing

1 division of the department of general services as may be appointed by the purchasing director,
2 with the concurrence of the manager.

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

12 **Section 23.** Section 28-127 of the Denver Revised Municipal Code is amended to read as
13 follows:

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

23 **Section 24.** Section 28-142 of the Denver Revised Municipal Code is amended to read as
24 follows:

25 The SBE bid preference invites small businesses to compete for city procurement
26 opportunities for covered goods and covered services. The SBE bid preference will enable
27 the city, through the DSBO, the purchasing division of the department of general services,
28 and other user departments to promote the use of SBEs that are not brokers, packagers, or
29 manufacturer's representatives, in contracts and purchase orders for covered goods and
30 covered services awarded by the purchasing division and user departments pursuant to the
31 Charter, revised Municipal Code, and executive orders of the City and County of Denver. The
32 scope of the preference will be limited to procurement opportunities for covered goods or
33 covered services for which the estimated cost is from fifty thousand [dollars] (\$50,000.00) to
34 two hundred fifty thousand dollars (\$250,000.00). The bidding instructions will require that

1 such ~~sees~~ SBEs will self-perform no less than seventy-five (75) percent of the total amount of
2 the contract or purchase order with their own forces.

3 **Section 25.** Section 28-150 of the Denver Revised Municipal Code is amended to read as
4 follows:

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

12 **Section 26.** Section 28-158 of the Denver Revised Municipal Code is amended to read as
13 follows:

14 (b) This article V shall be repealed effective ~~April 1~~ December 31, 2019.

15 **Section 27.** Section 28-205 of the Denver Revised Municipal Code is amended to read as
16 follows:

17 (c) To determine whether the requirements set forth below are met, the division must
18 consider all of the facts in the record, viewed as a whole.

19 (1) *Ownership.* In order for the owner(s) to be found to own the applicant business
20 enterprise for purposes of certification, as applicable, the applicant business enterprise
21 or owner(s) must meet the requirements set forth below.

22 a. Own in his or her own name the legal and equitable interest in the applicant
23 business enterprise;

24 b. Have acquired the interest in a ~~real~~ verifiable and substantial arms-length transaction
25 utilizing ~~real~~ verifiable, substantial, and continuing consideration, going beyond pro
26 forma ownership of the applicant business enterprise as reflected in ownership
27 documents;

28 c. Enjoy customary incidents of ownership and share in the risks and profits
29 commensurate with his or her ownership interest in practice, not merely in the form of
30 arrangements; and

31 d. Have acquired the interest with a contribution of his or her own capital
32 resources, by having put his or her own financial resources at risk in the operation of
33 the applicant business enterprise, or subject to requirements below, with a contribution

1 of expertise. All contributions by the owner(s) to acquire the ownership interest in the
2 applicant business enterprise must be ~~real~~ verifiable, substantial, and continuing,
3 which in part, means that it be commensurate with the ownership interest acquired.

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

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

25 **Section 28.** Section 28-234 of the Denver Revised Municipal Code is amended to read as
26 follows:

27 (b) This article VII shall be repealed effective ~~April 1~~ December 31, 2019.
28

1 COMMITTEE APPROVAL DATE: _____

2 MAYOR-COUNCIL DATE: _____

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: _____, Assistant City Attorney DATE: _____

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: _____, Assistant City Attorney DATE: _____