

1 **BY AUTHORITY**

2 ORDINANCE NO. _____
3 SERIES OF 2017

COUNCIL BILL NO. CB17-1324
COMMITTEE OF REFERENCE:

4 Business, Arts, Workforce & Aeronautical Services

5 **A BILL**

6 **For an ordinance amending Sections 28-34(a), 28-71, 28-72(d), 28-74, 28-75(a)(4)**
7 **and 28-222(d) of the Revised Municipal Code of the City and County of Denver**
8 **regarding the Construction Bid and Proposal Process, Payment Documentation**
9 **and Timing Process, Prompt Payment and Release of Retainage to**
10 **Minority/Women Business Enterprises and Small Business Enterprises, and the**
11 **Evaluation of the Division of Small Business Opportunity related to the**
12 **Minority/Women Business Enterprise Program and the Small Business**
13 **Enterprise Program.**

14
15 **BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

16 **WHEREAS,** City Council desires to ensure accurate and prompt payment to minority business
17 enterprises, women business enterprises, and small business enterprises on City construction, design
18 and construction service contracts and to facilitate the monitoring of payments to such minority business
19 enterprises, women business enterprises and small business enterprises; and

20 **WHEREAS,** City Council desires to ensure that minority business enterprises, women business
21 enterprises, and small business enterprises are paid timely for their quality work in compliance with
22 current City and state law and City contract provisions; and

23 **WHEREAS,** Section 28-79 requires Division of Small Business Opportunity to provide quarterly
24 and annual reports to affected department heads, City Council and the Mayor describing the progress
25 in meeting the annual goal, as well as implementation of division 3 of chapter 28 of the Denver Revised
26 Municipal Code; and

27 **WHEREAS,** City Council desires to require minority and women-owned businesses, as well as
28 small businesses, to submit certain information monthly so that the city can monitor payment issues
29 and change order issues that may be arising between minority, women and small business
30 subcontractors and a prime contractor;

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

33 **Section 1.** Section 28-34(a) of the Denver Revised Municipal Code is amended by adding a
34 new subsection (12) to read as follows:

35 **"(12) Completing on or before April 1, 2019 an evaluation of DSBO to include the following:**

- 1 a. Program goals, responsibilities, and staffing necessary to fulfill all compliance
2 requirements and accomplish annual goals;
- 3
- 4 b. Documentation on total MBE, WBE and SBE completed work payments for each
5 compliance program participant and its relationship to established goals;
- 6
- 7 c. Monitoring of SBE contractor billing and payment process procedures as well as MBE,
8 WBE and SBE subcontractor billing and payment process procedures as required through
9 this Chapter 28;
- 10
- 11 d. Number of certified MBE, WBE and SBE firms and their participation in city contracts over
12 a defined period to establish a relevant participation trend;
- 13
- 14 e. Number of MBE, WBE and SBE educational activities and mentorships, the number of
15 participants, and an evaluation of the educational programs, including education on how
16 to utilize city systems for tracking activity and payments;
- 17
- 18 f. Compliance with section 28-59 regarding establishing project goals."

19 **Section 2.** Section 28-71 of the Denver Revised Municipal Code is amending by adding
20 the language underlined to read as follows:

21 (a) Within five (5) business days following commencement of work on a contract, the
22 contractor or consultant shall submit to the director a duplicate of the project schedule, which sets
23 forth in detail the anticipated utilization of all MBEs and WBEs on the contract. In the event of a
24 contract performance delay of more than one-third (1/3) of the originally estimated length of time
25 between project notice to proceed and completion, such contractor or consultant shall submit to the
26 director not later than the originally estimated date of project completion, a revised schedule for
27 utilization of all MBEs and WBEs on the contract.

28 (b) The anticipated utilization of all MBEs and WBEs shall conform to the individual letters
29 of intent submitted for each MBE/WBE at the time of the final project-specific proposal or bid to and
30 accepted by the city or a private owner. If the MBE or WBE listed on the letter of intent is not the
31 MBE or WBE listed on the MBE/WBE utilization project schedule, then contractor or consultant shall
32 comply with section 28-75 with respect to modified good faith efforts.

33 **Section 3.** Section 28-72(d) of the Denver Revised Municipal Code is amended by adding
34 the language underlined to read as follows:

1 “(d) The Division of Small Business Opportunity shall evaluate the utilization of MBEs and
2 WBEs to determine whether such MBEs and WBEs are performing a commercially useful function.
3 The evaluation shall examine the amount of work subcontracted, industry practice and other relevant
4 factors. The amount of MBE and WBE participation credited toward a project goal shall be based
5 upon an analysis of the specific duties performed by the MBE or WBE, and the extent to which such
6 duties constitute a commercially useful function. The director may undertake such inquiries or
7 studies, engage such employees or retain such consultants to assist the director in rendering these
8 determinations. In order for DSBO to accurately track utilization of MBEs and WBEs, MBEs and
9 WBEs shall submit regularly the following information to DSBO in a method prescribed by DSBO:

- 10 (1) Prime contractor information and identification (name, address, contact person, and
11 telephone);
- 12 (2) MBE/WBE subcontractor information and identification (name, address, contact
13 person, telephone, email address, and certification number);
- 14 (3) Contract information and identification (report for month of, contract reference number,
15 contract name and date executed);
- 16 (4) Subcontract information (services, task order number, or work order number);
- 17 (5) Original subcontract amount;
- 18 (6) Change order amount and approval date;
- 19 (7) Current subcontract amount;
- 20 (8) Payment received in current month;
- 21 (9) Total payments received;
- 22 (10) Percent of work completed;
- 23 (11) Billing request rejection date and reason for rejection;
- 24 (12) Past due invoices (invoice date, reference number, number of days past due, and
25 amount outstanding); and
- 26 (13) Comments.

27 If DSBO finds that there has been a delay in payment to MBE or WBE subcontractors or
28 subconsultants that exceeds sixty (60) days, DSBO shall investigate the reason for the delay in
29 payment, and shall document the reason for the delay in its records.”

1 **Section 4.** Section 28-74 of the Denver Revised Municipal Code is amended by deleting the
2 language stricken and adding the language underlined to read as follows:

3 **“Section 28-74. Payments to subcontractors, subconsultants, joint venturers,**
4 **suppliers, manufacturers, manufacturer’s representatives and brokers.**

5 All contractors and consultants shall promptly render payment to all subcontractors,
6 subconsultants, joint venturers, suppliers, manufacturers, manufacturer’s representatives and
7 brokers on a contract. Each contractor and consultant shall provide with each pay request to the city
8 or private owner on each contract, beginning with the second pay request, partial claim releases
9 from subcontractors, subconsultants, joint venturers, suppliers, manufacturers, manufacturer’s
10 representatives and brokers in form and content satisfactory to the city, or shall provide, at the city’s
11 sole option, alternative proof of payment to subcontractors, subconsultants, joint venturers,
12 suppliers, manufacturers, manufacturer’s representatives and brokers, in form and content approved
13 by the department head and the director, evidencing that all subcontractors, subconsultants,
14 suppliers, manufacturers, manufacturer’s representatives and brokers have been duly paid ~~out of~~
15 ~~the proceeds of~~ by the contractor’s or consultant consultant’s payments from the city or private owner
16 ~~under the contract~~, unless a bona fide dispute, documented in writing, exists between the contractor
17 or consultant and the unpaid subcontractor, subconsultant, joint venturer, supplier, manufacturer,
18 manufacturer’s representative or broker. As provided by city and state law and city contracts, an
19 agency, upon request from a contractor, may authorize payments to contractors from withheld
20 retainage for contractors who have completed their work in a manner acceptable to the City.”

21 **Section 5.** Section 28-75(a)(4) of the Denver Revised Municipal Code is amended by
22 adding the language underlined to read as follows:

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

29 **Section 6.** Section 28-222(d) of the Denver Revised Municipal Code is amended by adding
30 the language underlined to read as follows:

1 "The DSBO shall evaluate the performance of the SBE contractor, consultant or concessionaire to
2 determine whether such contractor, consultant or concessionaire, and any utilized SBE
3 subcontractor, subconsultant or supplier, is performing a commercially useful function on the contract
4 or concession agreement. The evaluation shall examine the amount of work subcontracted, industry
5 practice and other relevant factors. The amount of SBE participation credited toward defined
6 selection pool requirements and minimum SBE utilization requirements shall be based upon an
7 analysis of the specific duties performed by the SBE contractor, consultant or concessionaire, and
8 any utilized SBE subcontractor, subconsultant or supplier, and the extent to which such duties
9 constitute a commercially useful function. The director may undertake such inquiries or studies,
10 engage such employees or retain such consultants as may be necessary to assist the director in
11 rendering these determinations. In order for DSBO to accurately track the amount of SBE
12 participation credited toward defined selection pool requirements and minimum SBE utilization
13 requirements, SBE contractors, consultants and concessionaires, as well as any utilized SBE
14 subcontractors, subconsultants or suppliers, shall submit monthly the following information on a form
15 prescribed by DSBO:

- 16 (1) Prime contractor information and identification (name, address, contact person, and
17 telephone);
- 18 (2) SBE subcontractor information and identification (name, address, contact person,
19 telephone, email address, and certification number);
- 20 (3) Contract information and identification (report for month of, contract reference number,
21 contract name and date executed);
- 22 (4) Subcontract information (services, task order number, or work order number);
- 23 (5) Original subcontract amount;
- 24 (6) Change order amount and approval date;
- 25 (7) Current subcontract amount;
- 26 (8) Payment received in current month;
- 27 (9) Total payments received;
- 28 (10) Percent of work completed;
- 29 (11) Billing request rejection date and reason for rejection;
- 30 (12) Past due invoices (invoice date, reference number, number of days past due, and
31 amount outstanding); and

1 (13) Comments.

2 If DSBO finds that there has been a delay in payment to SBE subcontractors, subconsultants and
3 suppliers that exceeds sixty (60) days, DSBO shall investigate the reason for the delay in payment,
4 and shall document the reason for the delay in its records."

5 **Section 7.** This ordinance shall be effective upon publication, except that provisions
6 pertaining to tracking of subcontractor information in Sections 3 and 6 shall be effective as of
7 March 1, 2018.

8 COMMITTEE APPROVAL DATE: November 29, 2017

9 MAYOR-COUNCIL DATE: December 5, 2017

10 PASSED BY THE COUNCIL: _____ December 18, 2017

11 ALB _____ - PRESIDENT

12 APPROVED: MB _____ - MAYOR _____ Dec 19, 2017

13 ATTEST: _____ - CLERK AND RECORDER,
14 EX-OFFICIO CLERK OF THE
15 CITY AND COUNTY OF DENVER

16 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____ ; _____

17 PREPARED BY: Deanne R. Durfee, Assistant City Attorney DATE: December 7, 2017

18 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of
19 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
20 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to
21 § 3.2.6 of the Charter.

22 Kristin M. Bronson, Denver City Attorney

23 BY: Kristin M. Bronson, Assistant City Attorney DATE: Dec 7, 2017