

BY AUTHORITY

ORDINANCE NO. _____

COUNCIL BILL NO. CB _____

SERIES OF _____

COMMITTEE OF REFERENCE:

Business, Arts, Workforce & Aeronautical Services

A BILL

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

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

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

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

WHEREAS, Section 28-79 requires DSBO to provide quarterly and annual reports to affected department heads, city council and the mayor describing the progress in meeting the annual goal, as well as implementation of division 3 of chapter 28 of the Denver Revised Municipal Code; and

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

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

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

- 1 “(12) Completing on or before April 1, 2019 an evaluation of DSBO to include the following:
- 2 a. Program goals, responsibilities, and staffing necessary to fulfill all compliance
- 3 requirements and accomplish annual goals;
- 4
- 5 b. Documentation on total MBE, WBE and SBE completed work payments for each
- 6 compliance program participant and its relationship to established goals;
- 7
- 8 c. Monitoring of SBE contractor billing and payment process procedures as well as MBE,
- 9 WBE and SBE subcontractor billing and payment process procedures as required through
- 10 this Chapter 28;
- 11
- 12 d. Number of certified MBE, WBE and SBE firms and their participation in city contracts over
- 13 a defined period to establish a relevant participation trend;
- 14
- 15 e. Number of MBE, WBE and SBE educational activities and mentorships, the number of
- 16 participants, and an evaluation of the educational programs, including education on how
- 17 to utilize city systems for tracking activity and payments;
- 18
- 19 f. Compliance with section 28-59 regarding establishing project goals.”
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21 **Section 2.** Section 28-71 of the Denver Revised Municipal Code is amending by adding

22 the language underlined to read as follows:

23 (a) Within five (5) business days following commencement of work on a contract, the

24 contractor or consultant shall submit to the director a duplicate of the project schedule, which sets

25 forth in detail the anticipated utilization of all MBEs and WBEs on the contract. In the event of a

26 contract performance delay of more than one-third (1/3) of the originally estimated length of time

27 between project notice to proceed and completion, such contractor or consultant shall submit to the

28 director not later than the originally estimated date of project completion, a revised schedule for

29 utilization of all MBEs and WBEs on the contract.

30 (b) The anticipated utilization of all MBEs and WBEs shall conform to the individual letters of

31 intent submitted for each MBE/WBE at the time of the final project-specific proposal or bid to and

32 accepted by the City or a private owner. If the MBE or WBE listed on the letter of intent is not the

33 MBE or WBE listed on the MBE/WBE utilization project schedule, then contractor or consultant shall

34 comply with section 28-75 with respect to modified good faith efforts.

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

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

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

1 13. Comments

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

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

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

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

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

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

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

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

- 27 1. Prime contractor information and identification (name, address, contact person, and
28 telephone)

DRAFT – FOR DISCUSSION PURPOSES ONLY

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: Deanne R. Durfee, 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.

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16 Kristin M. Bronson, Denver City Attorney

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18 BY: _____, Assistant City Attorney DATE: _____