

AN ORDINANCE REGARDING THE CENTRAL PURCHASING SYSTEM AND
OTHER POLICIES PERTAINING TO PROCUREMENT
THE CITY OF HARTFORD

SGM VERSION 19.Final Submission – 16 September 2008

Set Aside Programs, Bid Preference for City-Based Businesses, Contract
Participation Criteria and Affirmative Action

**Sec. 2-660 Set-Aside Programs for Small Contractors and Minority
Business Enterprises.**

(A) Definitions⁴⁶. As used in this Article, the terms *Minority, Women Owned Business Enterprise ("WBE"), Minority Business Enterprise ("MBE") and Small Contractors ("SC")*, shall have the meaning set forth in the General Statutes⁴⁷. When used in combination the terms WBE and MBE shall be referred to as "MWBE". With respect to projects with the Connecticut State Department of Transportation, where federal funds are utilized, *Disadvantaged Business Enterprise ("DBE")* shall have the meaning set forth in federal and state laws and regulations pertinent thereto and shall supersede the requirements of this Ordinance.

(B) Percentage of City Agreements allotted.

(1) Small Contractor Set Aside. Under the provisions of [Section 7-148u of] the General Statutes⁴⁸, there shall be set aside in each fiscal year, for award to S [s]mall C [c]ontractors, as defined in the General Statutes on the basis of a competitive bidding procedure, Agreements [city contracts or portions of city contracts] with the City or portions of Agreements with the City for the construction, reconstruction or rehabilitation of public buildings, the construction and maintenance of highways and the purchase of goods and services. The total of such [contracts] Agreements or portions thereof to be set aside shall be not more nor less than the percentage, set forth in the General Statutes, [twenty-five (25) percent] of the average of the total value of all such [contracts] Agreements let by the C [c]ity for each of the previous three (3) fiscal years, provided an Agreement [contract] that may not be set aside due to a conflict with a federal law or regulation shall not be included in the calculation of such average.

(2) Awards to Minority Business Enterprises. Agreements [contracts] or portions thereof having a value of not less than the percentage, set forth in the General Statutes, [twenty-five (25) percent] of the total value of all Agreements [contracts] or portions thereof to be set aside shall be reserved for awards to M [m]inority B [b]usiness E [e]nterprises.

(C) Disclosure of Pertinent Statutory Information. The Director of the Office of Human Relations, in all procurement solicitations, is required to disclose the specific statutory percentages pertaining to the "Small Contractor Set Aside" and "Awards to Minority Business Enterprises" and substantiation of ownership of a minority or woman-owned business enterprise, as set forth in this Article. Notwithstanding the foregoing, the Candidate is obligated to conduct its own due diligence and will be responsible for the content of its bid or proposal

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and its compliance with the provisions of this Ordinance and Division 9, in particular.

Sec. 2-661 Bid preference for City Certified Small Businesses [city-based businesses]⁴⁹.

(A) Unless otherwise set forth or required by federal or state law, f [F]or the purpose of this section a "City Certified Small Business" shall mean [city-based business] a "Small Contractor" as that term is defined in the General Statutes, which has been certified by the Office of Human Relations and has a principal place of business located within the [c] City. A [b] Business shall not be considered a [city-based] [b] City Certified Small Business unless evidence satisfactory to the [Purchasing Agent] Office of Human Relations has been submitted with each bid submitted by such [b] Business to establish that the Business has a bona fide principal place of [b] Business in the [c] City. Such evidence may include evidence of:

(1) ownership of or a long term lease of the real estate located in the City from which the principal place of [b] Business is operated, at the time of bid submission and for the duration of the Business' Agreement with the [c] City[.]; and/or,

(2) payment of property taxes on the personal property of the [b] Business to be used in performance of the bid; and/or

(3) with respect to bids pertaining to Infrastructure Facility Projects, a proven record of compliance with Division 10 of this Ordinance.

(B) The lowest responsible bidder shall be determined in the following order:

(1) Any [city-based bidder] City Certified Small Business which has submitted a bid not more than fifteen (15) percent higher than the low bid provided such City Certified Small Business [city-based] bidder agrees to accept the award [of the bid] at the amount of the low bid. If more than one City Certified Small Business [city-based] bidder has submitted bids not more than fifteen (15) percent higher than the low bid and each has agreed to accept the award of the bid at the amount of the low bid, the City shall select the lowest [r] Responsible bidder [shall be that one of] among such City Certified Small Business [city-based] bidders which submitted the lowest bid; or,

(2) In the case of Competitive Bids where there is no City Certified Small Business, [T] the low bidder.

(C) Notwithstanding the foregoing limitations, qualified HUBZone small business concern, certified by the U.S. Small Business Administration as a Historically Underutilized Business Zone Business pursuant to Section 602 of the Small Business Reauthorization Act of 1997, shall be deemed as being lower than the price offered by another Candidate (other than another small business

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concern) if the price offered by the qualified HUBZone small business is not more than ten (10%) percent higher than the price offered by the otherwise lowest, responsive and responsible Candidate.

Sec. 2-662 - 2-664 Reserved for Future Use.

*City Agreements Participation Criteria*⁵⁰

Sec. 2-665 Formal Review Criteria: Purpose⁵¹.

The purpose of this [d] Division is to establish formal review criteria by which any minority or female company shall be evaluated regarding its participation in any [c] City or [c] City-related [construction] Agreements containing MWBE [MBE/WBE] preference requirements.

Sec. 2-666 Definitions⁵².

As used in this section, the term "minority" and "other socially or economically disadvantaged individuals" shall have the meaning set forth in the General Statutes and the terms defining such other persons covered by the General Statutes shall be included in this Ordinance⁵³. *Minority Business Enterprise, Women Business Enterprise, Small Contractor and Individual with a Disability* shall have the meaning set forth in the provisions of the General Statutes⁵⁴.

Sec. 2-667 Minimum in-[b] Business time period and gross revenue threshold requirement for certification of SC and/or MWBE [MBE/WBE]⁵⁵.

(A) A [b] Business requesting SC and/or MWBE [MBE/WBE] certification must have been in business and have maintained its principal place of business in the State of Connecticut for a period of at least one year prior to the date of application for certification [for a minimum of one (1) year preceding an application for certification], and must present official documentation evidencing this requirement.

(B) Acceptable documentation to be supplied to evidence the requirement of this [d] Division is as follows:

(1) *Corporations.* Copy of certificate of incorporation filed with the S [s]ecretary of the S[s]tate, articles of incorporation and corporate bylaws. Include any documents amending the foregoing;

(2) *Limited partnerships.* Copy of certificate of limited partnership filed with the S [s]ecretary of the S[s]tate, and, if written, a copy of the limited partnership agreement. Include any amendments to the foregoing;

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(3) *General partnerships.* If written, a copy of the partnership agreement, with amendments, if applicable, and business invoices such as payroll receipts, office space leasing agreement or deed if applicable, tax withholding forms, bond or insurance invoices, accounting and bookkeeping statements;

(4) *Joint ventures.* A commercial enterprise undertaken by several persons or entities jointly and usually limited in its scope and duration [See, section 2-622 for joint ventures];

(5) *Sole proprietorships.* If a trade name license is required to operate, a copy of the license, and business invoices such as payroll receipts, business leasing agreement or deed if applicable, tax withholding forms, bond or insurance invoices, accounting and bookkeeping statements.

(6) *Limited Liability Company.* Copies of Articles of Organization filed with the Secretary of the State and a copy of the Operating Agreement; including any amendments to the foregoing.

(C) For all of the [b] Business organizations listed in subsection ([b] B), also include the following requirements:

(1) Copy of [c] Contractor's license if required by state, county or [c] City laws or ordinances;

(2) Copy of federal income tax returns for the year immediately preceding the application for certification.

(D) A business requesting SC and/or MWBE certification must meet the gross revenue threshold set for by the General Statutes⁵⁶.

Sec. 2-668 Requirement of substantial ownership of business assets of the SC or MWBE [MBE/WBE] by minority owners⁵⁷.

(A) The SC or MWBE [MBE/WBE] must be [at least fifty-one (51) percent] owned and controlled by minority group members at the percentage set forth in the General Statutes. In the case of an SC or MWBE [MBE/WBE] which is a corporation, [at least fifty-one (51) percent of] the stock must be owned and controlled by minority group members comprising the percentage of ownership set forth in the General Statutes. [At least fifty-one (51) percent of t] The SC or MWBE [MBE/WBE] business assets must be owned by the minority owners in accordance with the percentage set forth in the General Statutes. The SC or MWBE [MBE/WBE] may not share assets with a nonminority-owned firm unless there is documentable evidence that a fair compensation is being paid or has been paid for such assets.

(1) Shareholder agreements must evidence that the minority owners own [at least fifty-one (51) percent of the] the percentage of stock

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set forth in the General Statutes and have all of the powers attendant thereto. Partnership agreements must evidence that the minority partners own [s at least fifty-one (51) percent] the percentage of the partnership assets as set forth in the General Statutes, with all powers attendant thereto;

(2) A [B] business place leasing agreement or mortgage note or deed must evidence that minority owners are obligated for at least [fifty-one (51) percent] the percentage of the payments thereunder as set forth in the General Statutes;

(3) Barring extenuating circumstances, the SC or MWBE [MBE/WBE] must have its own telephone. The SC or MWBE [MBE/WBE] may not share telephone services with a nonminority firm;

(4) The SC or MWBE [MBE/WBE] must have its own [e] Employees. The [e] Employees of the SC or MWBE [MBE/WBE] may not simultaneously be [e] Employees of a nonminority-owned [b] Business.

(B) The following documentation must be submitted in order to verify the ownership percentage which the minority member holds in the SC or MWBE [MBE/WBE]:

(1) Shareholder agreement [,] or partnership agreement;

(2) Any other written agreement that could affect the nature of the minority member's legal or beneficial ownership or control of the SC or MWBE [MBE/WBE], including but not limited to management contracts, limitations on voting rights of stock and buy/sell agreements affecting the minority member's interest in the [b] Business;

(3) Include a brief description of any nonwritten agreement of the type set forth in this [d] Division.

Sec. 2-669 Requirement of substantial involvement in the daily operation of the SC or MWBE [MBE/WBE] by minority owners⁵⁸.

A substantial portion of the minority owner's['] working time must be spent on the operation of the SC or MWBE [MBE/WBE].

(A) The minority owner of the SC or MWBE [MBE/WBE] must not be engaged in other [b] Business or professional pursuits which preclude him from devoting what would be reasonably deemed an adequate amount of time to conduct the business operations of the SC or MWBE [MBE/WBE];

(B) The minority owner of the SC or MWBE [MBE/WBE] must control the day-to-day operations of the SC or MWBE [MBE/WBE]:

(1) Barring extenuating circumstances, the minority owner of the SC or MWBE [MBE/WBE] must be either the sole or one (1) of the

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required signatories on the [operation] firm's checks, invoices and all [contracts] Agreements including, but not limited to, Contracts and Purchase Orders,

(2) The minority owner of the SC or MWBE [MBE/WBE] must be actively involved in the negotiation of [contracts] the Agreements of the SC or MWBE [MBE/WBE],

(3) The minority owner of the SC or MWBE [MBE/WBE] must have substantial control over the hiring and firing of the [e] Employees of the MWBE [MBE/WBE],

(4) The minority owner of the SC or MWBE [MBE/WBE] must substantially supervise jobs that the firm undertakes, both on and off the job site,

(5) The minority owner of the SC or MWBE [MBE/WBE] must have unrestricted access and authority over necessary payroll, tax, personnel, and other records and books of the firm.

(C) The owner of the SC must control the day-to-day operations:

(1) Barring extenuating circumstances, the owner of the SC must be either the sole or one (1) of the required signatories on the firm's checks, invoices and all [contracts] Agreements including, but not limited to, Contracts and Purchase Orders,

(2) The owner of the SC must be actively involved in the negotiation of [contracts] the Agreements,

(3) The owner of the SC must have substantial control over the hiring and firing of the [e] Employees,

(4) The owner of the SC must substantially supervise jobs that the firm undertakes, both on and off the job site,

(5) The owner of the SC must have unrestricted access and authority over necessary payroll, tax, personnel, and other records and books of the firm.

Sec. 2-670 Certain relationships between owners and officers of MWBE [MBE/WBE] and other firms working on same project prohibited⁵⁹.

(A) An MWBE [MBE/WBE] is prohibited from satisfying a substantial amount of its purchasing requirements from a firm which is owned by a nonminority owner of the MWBE [MBE/WBE].

(B) An MWBE [MBE/WBE] is prohibited from using the assets and facilities of a firm which is owned by a nonminority owner of the MWBE

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[MBE/WBE] unless there is documentable evidence that a fair compensation is being paid or has been for the use of such assets and facilities.

[Requirement of showing by MBE/WBE of nondependency on MBE/WBE preference contracts.

The total value of the preference contracts which the MBE/WBE receives in a given two-year period must not exceed sixty (60) percent of its total billings for the same two-year period.⁶⁰

Sec. 2-671 Requirement of demonstrable experience by SC and/or MWBE [MBE/WBE] in subject-matter area of particular [p] Preference [contract] Agreement⁶¹.

(A) The minority owner or officer of the SC and/or MWBE [MBE/WBE] must demonstrate expertise and experience in the area of the firm's business, and in the subject area of its [p] Preference [contracts] Agreements.

(B) In lieu of such demonstrable experience and expertise, the minority owner or officer must provide definite plans to gain such experience and expertise. Such measures shall include the following:

(1) Participation in regular classes or special trades training programs on the subject matter in question, within a period of one year in order to address the deficiencies in expertise and experience set forth above, which period may be extended by the Office of Human Relations, in its sole discretion, based upon the level of training necessary and the requirements of a bona fide class or program,;

(2) [Participation in special trades training programs on the subject matter in question;]

[(3)] Participation in a joint venture covering the subject matter in question;

[(4)](3) Securing the employment of at least one (1) individual with expertise in the subject area;

[(5)] (4) For companies requiring specific [c] Contractors' licenses to operate, a specific work plan and timetable within which the minority owner or minority officer will acquire such in [his] the [own] name of the person or entity, within of one year, which period may be extended by the Office of Human Relations, in its sole discretion, based upon time required for obtaining such license(s).

Sec. 2-672 Requirement of consent by SC and/or MWBE [MBE/WBE] to monitoring of its operation by [c] City⁶².

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The SC and/or MWBE [MBE/WBE] shall consent to the monitoring of its operations by the [purchasing agent] Director of the Office of Human Relations:

(A) Such monitoring shall be carried out at the place of business of the SC and/or MWBE [MBE/WBE] or at a project site, or both.

(B) Such monitoring may be carried out without advance notice to the SC and/or MWBE [MBE/WBE], but shall only be carried out during regular business hours.

(C) [purchasing agent] the Director of the Office of Human Relations, in the course of such monitoring, shall have the right to examine all books, records and files of the SC and/or MWBE [MBE/WBE] which the [purchasing agent] said Director deems relevant to determining whether the SC and/or MWBE [MBE/WBE] is [a] bona fide [minority-owned and -operated Business].

(D) The [purchasing agent] Director of the Office of Human Relations shall have the right to question all Employees of the SC and/or MWBE [MBE/WBE] where the [purchasing agent] Director of the Office of Human Relations deems that such questioning will further its objectives in determining whether the SC and/or MWBE [MBE/WBE] is [a] bona fide [minority-owned and -operated business].

Sec. 2-673 Suppliers and vendors⁶³.

(A) In order for any given company to be recognized as a bona fide MWBE [MBE/WBE] supplier of material services, the company must be able to demonstrate the MWBE [MBE/WBE] ownership, control and daily operational participation involvement as outlined in [sections 2-651 through 2-658] Secs. 2-665 through 2-671.

(B) Additionally, a supplier of [m] Materials must also be able to:

(1) Document a specific place of business;

(2) [Have in place an inventory of materials that would be expected of such a supplier given the nature of the business;

(3)] Maintain a direct and responsible involvement in the procurement and delivery of such [s] Supplies;

[(4)] (3) Demonstrate a capacity to handle and deliver such [s] Supplies.

(C) Where it is determined that an MWBE [MBE/WBE] acts merely as an agent or a relatively passive conduit in connection with the provision of services or [m] Materials, only the commission or fee earned by the MWBE [MBE/WBE] may be counted toward the MWBE [MBE/WBE] requirement. Even this commission or fee will not be counted if the MWBE [MBE/WBE] performs no substantive services and is a totally passive conduit.

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Sec. 2-674 Provisional [certification] recognition; defined, requirements and effect⁶⁴.

(A) For a company [ies] pursuant to this [d] Division having less than one (1) full year of operation or companies not able to fully demonstrate the [minority ownership and] control activities as set forth under [sections 2-651 through 2-658] Secs. 2-667 through 2-669, a provisional recognition [as a bona fide minority or female owned enterprise] may be provided to such company. The provisional recognition shall allow such company to participate on a single [c] City project [as a bona fide MBE/WBE] on the condition that such company agrees to develop a management work plan and timetable of no more than one year to address the areas of deficiency as outlined in writing by the Director of the Office of Human Relations [city]. Such provisional recognition [certification] shall be for the specific project in question only, and may be withdrawn if such company fails to comply with the management work plan and timetable for implementation which shall have been agreed upon and appended to the [contract] Agreement upon which such company is working or for failure to perform the required services on the said City project.

(B) Should such recognition of an MWBE [MBE/WBE] participating on a [c] City project be withdrawn for noncompliance thereto by the MWBE [MBE/WBE], the prime [c] Contractor shall not be penalized, provided he has acted in good faith during the pendency of the matter.

(C) Any company that has applied for MWBE [MBE/WBE] recognition [certification] and whose application has been denied shall be ineligible for a provisional recognition [certification] for a period of one (1) year from the date of denial.

Sec. 2-675 Special provisions for certifying joint ventures⁶⁵.

(A) The SC or MWBE [MBE/WBE] portion of the joint venture must meet the regular SC or MWBE [MBE/WBE] certification requirements set forth in [sections 2-651 through 2-658] Secs. 2-665 through 2-671, prior to the [executive d] Director of the Office of [h] Human [r] Relations [commission's] consideration for certification of the joint venture involving such SC or MWBE [MBE/WBE] as a participant.

(B) The [b] Businesses requesting certification of their joint venture must provide the [executive d] Director of the [h] Human [r] Relations [commissions] with a written joint venture agreement. Such agreement must provide that:

(1) The SC or MWBE [MBE/WBE] joint venture partner shall assume at least forty (40) percent of the responsibility for administration of the joint venture agreement;

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(2) The SC or MWBE [MBE/WBE] joint venture partner shall assume at least forty (40) percent of the liability from the operation or share in at least forty (40) percent of the profit of the operation or both;

(3) Where one (1) joint venture partner provides any additional service or [e] Equipment, etc., that the joint venture partnership shall reimburse such partner for the fair market value of such service or [e] Equipment.

(C) Where personnel of a[n] SC or MBE/WBE firm and a majority-owned firm are involved in any of the relationships as specified in [section 2-655] Sec. 2-679, the certification of a joint venture of such firms will be subject to the restrictions imposed by such regulation.

Sec. 2-676 SC or MWBE [MBE/WBE] credit determination⁶⁶.

(A) In minority or female companies representing themselves to be owned, controlled and operated by minority or female individuals wherein a majority person likewise has ownership interests, should such minority or female company subcontract with the organization with which the majority person also has beneficial interests, only that percent of the subcontract value representative of the minority ownership interests will be credited toward the SC or MWBE [MBE/WBE] requirement.

(B) In joint venture proposals, only that percentage of such joint venture representative of the minority or female ownership partnership shall be credited toward meeting the SC or MWBE [MBE/WBE] requirements.

Sec. 2-677. Certification; denial of certification; appeal; repeal of certification⁶⁷.

The [executive d] Director of the Office of [h] Human [r] Relations [commissions] shall investigate each company that submits an application for SC and/or MWBE [MBE/WBE] certification. The [executive d] Director [of the human relations commission shall make written recommendations to the city manager. The city manager] shall certify whether such company is deemed to be a certified SC and/or MWBE [MBE/WBE]. In each case where the [city manager] Director determines that the company is not deemed to be a certified SC and/or MWBE [MBE/WBE], [the city manager] said Director shall state the reasons in a written opinion to be forwarded to the [executive director of the human relations commission] Chief Operating Officer, the [c] Corporation [c] Counsel and the company. The [city manager] Director's determination not to certify the company shall be appealable by written notice by the company to the [contract enforcement committee of the council] Chief Operating Officer within ten (10) [five (5)] days after receipt of the [city manager] Director's determination. The [contract enforcement committee] Chief Operating Officer or a designated hearing officer may reverse the [city manager] Director's determination [by a majority vote]. Applicants that have been denied certification are required to wait a period of one year from the date of denial prior to submitting another

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application for certification. The Director shall revoke certification if the company has misrepresented information during the certification process or the company no longer meets the conditions set forth under Sec. 2-675 through 2-686.

Sec. 2-678 to 2-679 Reserved for Future Use.