

EMERGENCY

CMZ

- 2023

REPEALING existing Chapter 324, “Minority and Women Business Enterprise Program,” of the Cincinnati Municipal Code, and **ORDAINING** in its place new Chapter 324, “Minority and Women Business Enterprise Program.”

WHEREAS, existing CMC Chapter 324 was ordained effective January 1, 2016 based on the findings of a disparity study that analyzed the historical procurements of the City during the five-year period January 1, 2009 through December 31, 2013; and

WHEREAS, under the standards established by the United States Supreme Court, public minority business enterprise (“MBE”) and women business enterprise (“WBE”) programs must have a sunset date; and

WHEREAS, existing Chapter 324 automatically will expire on October 2, 2023; and

WHEREAS, under the standards established by the United States Supreme Court, the continuation of public MBE and WBE programs must be narrowly tailored to remedy the disparities identified by a relatively recent disparity study; and

WHEREAS, a new disparity study was conducted by Griffin & Strong, PC to analyze the City’s historical procurements during a more current five-year period from January 1, 2016 through December 31, 2020; and

WHEREAS, the Final Disparity Report dated February 2023 (the “Disparity Study Report”) identified statistically significant disparities in the participation of MBEs and WBEs in City contracts that differ in some respects from the statistically significant disparities identified by the previous study, which analyzed an earlier period of City procurements; and

WHEREAS, the statistically significant disparities identified by the Disparity Study Report require adjustments to current MBE and WBE programs, including the addition of Hispanic American-owned firms to those eligible for MBE certification, the narrow tailoring of eligibility of Asian American-owned firms and African American-owned firms for MBE certification, and the narrow tailoring of eligibility for WBE certification to non-minority, women-owned firms; and

WHEREAS, there is a compelling governmental interest in ensuring opportunities for full and fair participation of all segments of the business community in the City’s relevant geographic market area, including MBEs and WBEs, in City contracts; and

WHEREAS, the Disparity Study Report included recommendations for both race- and gender-neutral and race- and gender-conscious remedies for the identified statistically significant disparities in the participation of MBEs and WBEs in City contracts; and

WHEREAS, it is the desire of Council to remedy the statistically significant disparities in the utilization of MBEs and WBEs in City contracts for construction, professional services including architectural and engineering services, other services, and supplies through both race- and gender-neutral programs and narrowly tailored race- and gender-conscious programs designed to permit full and fair participation of MBEs and WBEs; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That existing Chapter 324, “Minority and Women Business Enterprise Program,” of the Cincinnati Municipal Code, scheduled to expire on October 2, 2023, is hereby repealed effective as of October 1, 2023.

Section 2. That the following Chapter 324, “Minority and Women Business Enterprise Program,” of the Cincinnati Municipal Code is hereby ordained effective as of October 1, 2023:

Chapter 324 MINORITY AND WOMEN BUSINESS ENTERPRISE PROGRAM

Sec. 324-1. Definitions.

For the purpose of this chapter, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them, unless a different meaning is clearly indicated by the context.

Sec. 324-1-A. Affiliation; Affiliate.

“Affiliation” and “affiliate” shall have the same meaning as provided in section 323-1-A of the Cincinnati Municipal Code or its successor.

Sec. 324-1-A1. African American.

“African American” means a U.S. citizen or lawfully admitted permanent resident whose ancestry originates from any of the black racial groups of Africa.

Sec. 324-1-A2. Asian American.

“Asian American” means a U.S. citizen or lawfully admitted permanent resident whose ancestry originates from the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

Sec. 324-1-B. Bid.

“Bid” shall have the same meaning as provided in section 321-1-B1 of the Cincinnati Municipal Code or its successor.

Sec. 324-1-B1. Board.

“Board” shall mean the Certification Appeals Board.

Sec. 324-1-C. Certification.

“Certification” or “recertification” shall mean a minority business enterprise (“MBE”) or women business enterprise (“WBE”) that meets the qualification criteria set forth in this chapter and in the rules and regulations promulgated under the authority of this chapter for participation in the MBE or WBE programs in the appropriate construction, professional services, other services, or supplies category for which the contract is being awarded and is formally approved by the director or the director’s designee as having met such criteria. Certification or recertification relates to qualifications regarding ownership and control of the business and not the quality of the service or product offered.

Sec. 324-1-C1. Cincinnati Market Area.

“Cincinnati market area,” as determined by the disparity study report dated February 2023, includes all of Hamilton County, Ohio and is the area in which firms must have an operating office in order to be considered for certification as an MBE or WBE.

Sec. 324-1-C2. City Purchasing Agent.

“City purchasing agent” shall have the same meaning as provided in section 321-1-C of the Cincinnati Municipal Code or its successor.

Sec. 324-1-C3. Commercially Useful Function.

“Commercially useful function” shall have the same meaning as provided in section 323-1-C2 of the Cincinnati Municipal Code, or its successor, except that the phrase “MBE or WBE” shall be substituted for the phrase “SBE, SLBE or ELBE” wherever those terms appear in the definition.

Sec. 324-1-C4. Compliance.

“Compliance” shall mean a determination by the director that a utilization plan for MBE and WBE participation in a particular contract complies with this chapter, that the contractor has managed the contract as provided in the MBE/WBE utilization plan, and that the contractor or prospective contractor has otherwise complied with this chapter.

Sec. 324-1-C5. Construction.

“Construction” shall have the same meaning as provided in section 323-1-C4 of the Cincinnati Municipal Code or its successor.

Sec. 324-1-C6. Contract.

“Contract” shall mean a contract in excess of \$50,000, except contracts listed by the city purchasing agent as exempt and approved by the city manager, for:

- (a) Construction;
- (b) Professional Services;
- (c) Services; or
- (d) Supplies.

Sec. 324-1-C7. Contract Participation Goals.

“Contract participation goals” shall mean the actual commitment made by an awarded vendor to utilize MBE and WBE firms in the performance of the work, as determined by the director upon review and verification of the information on the subcontractor utilization plan submitted with the awarded vendor’s bid or response to an RFP or RFQ. The contract participation goals shall be incorporated into the awarded vendor’s contract.

Sec. 324-1-C8. Contracting Agency.

“Contracting agency” shall mean the City agency, department, independent board, or authorized representative that issues an invitation to bid, RFP, or RFQ.

Sec. 324-1-C9. Contractor.

“Contractor” shall mean an individual, joint venture, or legal entity with a written agreement to provide goods or services to the city.

Sec. 324-1-C10. Control.

“Control,” as it relates to the control of a business by owners who are members of a minority group or women, means that such minority or women owners:

- (a) Possess and actively and continuously exercise the legal authority and power to direct or cause the direction of the management and policies of the business and to make day-to-day and long-term decisions for the business on matters of management, policy, and operations;
- (b) Are not subject to any formal or informal restrictions that limit the discretion customarily within the purview of a business owner; and
- (c) Are not restricted, whether by agreement, by-laws, resolutions, or other arrangements, from making business decisions without the cooperation or vote of any owner who is not a minority or a woman.

Sec. 324-1-D. Department.

“Department” shall mean the department of economic inclusion.

Sec. 324-1-D1. Director.

“Director” shall mean the director of the department of economic inclusion or the director’s designee.

Sec. 324-1-D2. Disparity Study.

“Disparity study” means the study undertaken by Griffin & Strong, P.C. that statistically analyzed the City of Cincinnati prime contracts and subcontracts during the period January 1, 2016 through December 31, 2020 to evaluate the use of willing and able minority- and women-owned business enterprises and that is reflected in a final report dated February 2023.

Sec. 324-1-G. Good Faith Efforts.

“Good faith efforts” means the documented efforts of bidders, respondents, and contractors, as applicable, proactively to take all reasonably necessary steps to achieve the MBE and WBE solicitation goals or the MBE and WBE contract participation goals, as applicable. In determining whether a bidder, respondent, or contractor made good faith efforts to achieve the applicable MBE and WBE solicitation goals or MBE and WBE contract participation goals, the director shall consider:

- (a) Evidence of timely attempts and follow-ups, using all reasonable and available means, to solicit all MBE and WBE firms certified by the city to provide goods or services under the applicable commodity codes for which subcontracting opportunities exist;
- (b) Evidence of the unbundling of work into economically feasible components or units to facilitate MBE and WBE participation and solicitation of the work in its unbundled form;
- (c) Evidence that interested MBE and WBE firms were provided adequate and timely information about the plans, specifications, and requirements of the contract to enable them to submit thorough bids or proposals in response to solicitations;
- (d) Evidence of good faith negotiations with interested MBE and WBE firms;
- (e) Evidence that the rejection of any MBE and WBE firms as being unqualified was based on both a thorough investigation of their capabilities and capacity to perform the work and an objective analysis; and
- (f) Evidence of efforts to assist MBE and WBE firms in obtaining bonding, lines of credit, or insurance as required by the contractor where those requirements create an obstacle to MBE and WBE participation.

Acceptable types of documentation of good faith efforts shall be identified in the rules and regulations for this chapter.

Sec. 324-1-H. Hispanic American.

“Hispanic American” means a U.S. citizen or lawfully admitted permanent resident whose ancestry originates from Mexico, Puerto Rico, Cuba, the Dominican Republic, Central America, South America, Spain, Portugal, or other Spanish or Portuguese culture, regardless of race.

Sec. 324-1-I. Independent Operating Business.

“Independent operating business” shall mean a business where ownership is direct, independent, and by individuals only. Businesses that are owned by other businesses that do not qualify under the MBE or WBE eligibility requirements shall not be eligible for certification unless the following conditions are met:

- (a) The minority or women owners own and control the business through a parent company that is a holding company, established for tax, capitalization, or other purposes consistent with industry practice, and the minority or women owners of the parent/holding company control the subsidiary through the parent/holding company; and
- (b) The cumulative ownership by the minority or women owners in the parent/holding company is at least 51 percent.

Sec. 324-1-II. Invitation to Bid; ITB.

“Invitation to bid” or “ITB” shall have the same meaning as provided in section 321-1-I of the Cincinnati Municipal Code or its successor.

Sec. 324-1-J. Joint Venture.

“Joint venture” shall have the same meaning as provided in section 323-1-J of the Cincinnati Municipal Code or its successor.

Sec. 324-1-M. Minority Business Enterprise; MBE.

“Minority business enterprise” or “MBE” shall mean a business that meets each of the following criteria:

- (a) Is an independent operating business;
- (b) Is a sole proprietorship that is independently owned and controlled by an individual who is a minority group member; a joint venture that is at least 51 percent independently owned and controlled by minority group members; or a partnership, limited liability company, or corporation that is at least 51 percent independently owned and controlled by minority group members;
- (c) The minority group member owners have interest in capital and earnings commensurate with the minority group members’ percentage of ownership;
- (d) Has been in operation for at least twelve months before applying for certification;
- (e) Has been at least 51 percent minority-owned for at least twelve months before applying for certification;
- (f) Has an operating office located in the Cincinnati market area; and
- (g) Performs a commercially useful function.

Sec. 324-1-M1. Minority Group Member.

“Minority group member” shall mean a member of the following groups for which the disparity study found a statistically significant underutilization for the following types of contracts:

- (a) For construction: African Americans and Hispanic Americans;
- (b) For professional services, including architecture and engineering: African Americans and Hispanic Americans; and
- (c) For other services: African Americans, Asian Americans, and Hispanic Americans.

Sec. 324-1-N. Native American.

“Native American” shall mean a U.S. citizen or lawfully admitted permanent resident whose ancestry originates from the original people of North America and who maintains cultural identification through tribal affiliation.

Sec. 324-1-O. Operating Office.

“Operating office” shall mean either a principal place of business or significant employee presence within the geographic limits of Hamilton County, Ohio. For purposes of this definition, “significant employee presence” shall mean 25 percent or more of a firm’s total number of full- and part-time employees are domiciled within the geographic limits of Hamilton County, Ohio.

Sec. 324-1-P. Points.

“Points” shall mean the quantitative assignment of value for specific response evaluation criteria in the contractor selection process initiated by a request for proposal.

Sec. 324-1-P1. Prime Contractor.

“Prime contractor” shall mean the vendor or contractor to which a purchase order or contract is issued by the city for purposes of providing construction, professional services, other services, or supplies to the city.

Sec. 324-1-P2. Professional Services.

“Professional services” shall mean professional services as defined in section 321-1-P of the Cincinnati Municipal Code or its successor and shall include architectural and engineering services.

Sec. 324-1-R. Regulations; Rules.

“Regulations” or “rules” shall mean the regulations promulgated by the city manager pursuant to section 324-9 of this chapter.

Sec. 324-1-R1. Request for Proposal; RFP.

“Request for proposal” or “RFP” shall have the same meaning as provided in section 321-1-R3 of the Cincinnati Municipal Code or its successor.

Sec. 324-1-R2. Request for Qualifications; RFQ.

“Request for qualifications” or “RFQ” shall have the same meaning as provided in section 321-1-R4 of the Cincinnati Municipal Code or its successor.

Sec. 324-1-S. Services.

“Services” shall mean service as defined in section 321-1-S of the Cincinnati Municipal Code or its successor.

Sec. 324-1-S1. Solicitation Goals.

“Solicitation goals” shall mean the MBE and WBE participation goals established by the director in accordance with sections 324-15(a) and 324-15(b) of this chapter for advertisement as part of the specifications of an ITB, RFP, or RFQ covered by this chapter.

Sec. 324-1-S2. Subcontractor.

“Subcontractor” shall mean any vendor or contractor that is providing goods or services to a prime contractor in furtherance of the prime contractor’s performance under a purchase order or contract with the city.

Sec. 324-1-S3. Subcontractor Utilization Plan.

“Subcontractor utilization plan” shall mean a document submitted by a bidder with its bid or by a respondent to an RFP or RFQ with its response, on a form required by the director, in which the bidder or respondent commits to utilize specifically identified city-certified MBEs and/or WBEs in a percentage that equals or exceeds the applicable MBE and/or WBE solicitation goals for the contract, except as otherwise noted in this chapter.

Sec. 324-1-S4. Supplier.

“Supplier” shall mean a business that furnishes needed items to a contractor and either is involved in the manufacture or distribution of the supplies or materials or otherwise warehouses and ships the supplies or materials.

Sec. 324-1-S5. Supplies.

“Supplies” shall mean supplies as defined in section 321-1-S2 of the Cincinnati Municipal Code or its successor.

Sec. 324-1-W. Women.

“Women” and “woman” shall mean non-minority U.S. citizens or lawfully admitted permanent residents whose assigned gender at birth is female and those persons whose public-facing gender identity, as defined in section 914-1-G1 of the Cincinnati Municipal Code, is female and for whom the disparity study found a statistically significant underutilization for the following types of contracts: construction, professional services, other services, and supplies.

Sec. 324-1-W1. Women Business Enterprise; WBE.

“Women business enterprise” or “WBE” shall mean a business that meets each of the following criteria:

- (a) Is an independent operating business;
- (b) Is a sole proprietorship that is independently owned and controlled by a woman; a joint venture which is at least 51 percent independently owned and controlled by women; or a partnership, limited liability company, or corporation that is at least 51 percent independently owned and controlled by women;
- (c) The women owners have interest in capital and earnings commensurate with the women's percentage of ownership;
- (d) Has been in operation for at least twelve months before applying for certification;
- (e) Has been at least 51 percent women-owned for at least twelve months before applying for certification;
- (f) Has an operating office located in the Cincinnati market area; and
- (g) Performs a commercially useful function.

Sec. 324-3. Rules of Construction.

- (a) The provisions of this chapter are to be liberally construed in order to accomplish its policies and purposes.
- (b) "Must" and "shall" are mandatory terms used to express a requirement or to impose a duty.
- (c) "Must not," "may not," and "no" are mandatory negative terms used to establish a prohibition.
- (d) All provisions of this chapter are severable. If a court determines that a word, phrase, clause, sentence, paragraph, subsection, section, or other provision is invalid or that the application of any part of the same to any person or circumstances is invalid, the remaining provisions and the application of those provisions to other persons or circumstances shall remain in full force and effect to the maximum extent practicable.
- (e) Unless otherwise specified, the first day of a designated period of time is not to be counted. The last day of a period of time is to be counted unless it is a Saturday, Sunday, or legal holiday observed by the city of Cincinnati.

Sec. 324-5. Legislative Findings, Policy, and Purpose.

- (a) The council of the city of Cincinnati finds, based on the disparity study, that:
 - (1) There is evidence of disparities in the city's utilization of MBEs and WBEs in city purchasing and contracting;
 - (2) There is evidence of the existence in the Cincinnati market area of discriminatory practices and attitudes that impede the full and fair participation of MBEs and/or WBEs

as prime contractors in city contracts for construction, professional services, other services, and supplies;

- (3) There is evidence of discrimination in the city's contracting process by prime contractors against MBEs and WBEs resulting in the underutilization of MBEs and WBEs as subcontractors in contracts awarded by the city of Cincinnati;
 - (4) It is in the best interest of the city to adopt measures to eliminate barriers that prohibit full and fair participation of MBEs and WBEs in city contracts;
 - (5) Race- and gender-neutral remedies alone will not adequately remedy existing disparities in city contracting, as evidenced by the fact that the city has had a race- and gender-neutral program for small business enterprises since 1999 and the disparity study found that MBEs and WBEs continue to be underutilized; and
 - (6) Race- and gender-conscious remedies also are necessary to provide opportunities for full and fair participation of MBEs and WBEs in city contracts.
- (b) It is the policy of the city of Cincinnati to promote equal business opportunity in the city's contracting process by ensuring full and equitable participation by MBEs and WBEs in the provision of construction, professional services, other services, and supplies to the city on a contractual basis. This policy is intended to further the city's compelling interest in stimulating economic development through the support and empowerment of all segments of the local business community.
- (c) The purpose of the MBE and WBE program is to provide a necessary race- and gender-conscious tool for the city to use, along with its race- and gender-neutral programs, to ensure that all segments of its local business community have a reasonable and significant opportunity to participate in city contracts. The program shall be regularly evaluated using accumulated availability and utilization data to determine whether specific program provisions may require modification, expansion, or curtailment during the effective period of this chapter.

Sec. 324-7. Scope and Effective Period of Chapter.

- (a) This chapter applies to all contracts for construction, professional services, other services, and supplies valued in excess of \$50,000 for which a contractor provides such goods or services to the city.
- (b) This chapter shall remain in effect through October 1, 2028 and shall expire automatically on October 2, 2028 unless, prior to that time, the council of the city of Cincinnati, after authorizing an appropriate study to be undertaken and conducting public hearings, finds that statistically significant disparity continues to exist and extends the effective period of this chapter for up to an additional five years.

Sec. 324-9. Rules and Regulations.

The city manager shall issue and enforce rules and regulations to carry out the meaning and purpose of the MBE and WBE program authorized by this chapter.

Sec. 324-11. MBE and WBE Certification.

(a) *Requirements.* To be eligible for certification as an MBE, each applicant must meet the definition of an MBE in section 324-1-M of this chapter. To be eligible for certification as a WBE, each applicant must meet the definition of a WBE in section 324-1-W1 of this chapter.

(b) *Certification Process.*

(1) A business seeking certification as an MBE or WBE must:

(A) Submit an application to the department on the prescribed form, affirming under penalty of perjury that the business qualifies as a city of Cincinnati MBE or WBE as those terms are defined in section 324-1-M or section 324-1-W1 of this chapter, respectively; and

(B) If requested by the department, provide any and all materials and information necessary to demonstrate active participation in the control, operation, and management of the business.

(2) The department will review and evaluate applications and may reject an application based on one or more of the following:

(A) The applicant does not meet the requirements of the definition of an MBE or WBE, as applicable;

(B) The application is not complete;

(C) The application contains false information; or

(D) The applicant has not provided materials or information requested by the director.

(3) The director will make a certification determination within ninety days after the date the city receives a satisfactorily completed application from the applicant. If certification is denied, the director will notify the applicant in writing and specify the reason(s) for the denial.

(4) Firms certified as an MBE or WBE by other public or private agencies must also be certified under this chapter regardless of other certification. The city manager may provide by rules and regulations for an expedited or summary process for certification by the city if the business has a current MBE or WBE certification from agencies specifically identified in those rules and regulations and shall provide for such expedited or summary process for certification as may be required by state or federal law.

- (c) *Period of Certification.* The certification is valid for a two-year period beginning on the date the city certifies the applicant as an MBE or WBE.
- (d) *Recertification.* Prior to expiration of the two-year certification period, a business that desires recertification must return a completed recertification form as provided by the city and comply with the requirements of subsections (b)(1)(A) and (b)(1)(B) of this section.
- (e) *Revocation of Certification.*
 - (1) The director shall revoke the certification of a business if it is determined that the business was certified in error; the business no longer meets the definition of an MBE or WBE, as applicable; or the business fails to provide requested information in connection with a certification review conducted by the department.
 - (2) The director shall permanently revoke the certification of a business if it is determined that the certification was fraudulently obtained or that the firm allows its certified MBE or WBE status to be fraudulently used to obtain economic benefits for a firm that is not a city-certified MBE or WBE or for the owners of a firm that is not a city-certified MBE or WBE.
 - (3) The director shall provide the MBE or WBE with written notice of the revocation of certification, subject to the right to request reconsideration and to request a hearing as provided in section 324-35 of this chapter.
 - (4) In addition to certification revocation, any participant in the fraudulent use of city-certified MBE or WBE status for the benefit of another person or entity that is not a city-certified MBE or WBE shall be guilty of a first degree misdemeanor, punishable by imprisonment for up to six months and/or a fine of up to \$1,000.
- (f) *Certification Reviews.* The department will conduct random certification reviews of certified businesses by auditing them to verify that the information submitted by a business is accurate and that the business remains eligible after certification has been granted. Certification reviews may be conducted for any business for which the city determines a certification review is warranted. Businesses subject to certification reviews must provide the department with any information requested to verify the certification eligibility of the business within seven days of the department's request. Audits may include one or more of the following as reasonably necessary to ensure that all eligibility standards are satisfied:
 - (1) Business owner interviews;
 - (2) Employee and/or subcontractor interviews;
 - (3) Interviews with bidders, contractors, vendors, or suppliers involved in a joint venture or contractual relationship with the MBE or WBE;

- (4) Interviews with any other person who may have knowledge or relevant information relating to a business enterprise's eligibility for certification as an MBE or WBE;
- (5) Record and document review; or
- (6) Job site inspection.

(g) *Joint Ventures.*

- (1) On a contract-by-contract basis, a city-certified MBE or WBE may apply for certification of a joint venture with another MBE or WBE or with a non-MBE or non-WBE firm.
- (2) The MBE or WBE joint venture participant must be certified by the city in the area of work to be undertaken as a participant in the joint venture.
- (3) A holding company cannot be an MBE or WBE participant in a joint venture.
- (4) The MBE or WBE participant in the joint venture must not be an affiliate of the non-MBE or non-WBE firm.
- (5) The joint venture must have a business structure set forth in a signed written agreement that clearly and specifically defines the participation of each party in the contribution of property, capital, efforts, skills, and knowledge.
- (6) The city-certified MBE or WBE participant in the joint venture must have an interest in the control, management, risks, and operation of the joint venture commensurate with the MBE's or WBE's percentage of participation in the joint venture, and the profit or loss of the joint venture should be distributed between the participants in proportion to their respective interests in the joint venture.
- (7) The city-certified MBE or WBE that is a participant in the joint venture must be responsible for a distinct, clearly defined portion of the work to be performed with its own forces, equal to its share in the ownership, control, and management of the joint venture.
- (8) The certification of a joint venture will be limited to the duration of the contract for which certification as a joint venture was requested and shall terminate upon the earlier of completion of the city contract for which the joint venture was formed or the expiration without renewal or the revocation of certification of the MBE or WBE participant.

Sec. 324-13. Annual Participation Goals for the MBE/WBE Program.

- (a) By July 30 of each year, the director, in consultation with the city purchasing agent, shall review and establish the participation goals for MBEs and WBEs in city contracts.

- (b) The purpose of the annual review is to aid the city in its evaluation of the effectiveness of the MBE and WBE program and to identify areas in which the program may need to be modified in order to meet the stated purpose of the program.
- (c) The annual participation goals are not and may not be treated as mandatory quotas.
- (d) By July 30 of each year, the director shall review MBE and WBE participation on all contracts and procurements covered by this chapter to determine the city's progress toward meeting the annual goals, and the director shall report the findings to the city manager.

Sec. 324-15. MBE and WBE Participation Goals.

- (a) (1) Except as provided in section (a)(2) below, the director, in consultation with the city purchasing agent and/or the contracting agency, must establish appropriate goals for MBE and/or WBE participation on each specific solicitation for a contract covered by this chapter or determine that a contract is not appropriate for the MBE/WBE program.
- (2) The director may establish standard solicitation goals for MBE and WBE participation to be used for solicitations of specifically identified construction, professional services, or other services the city solicits regularly and repetitively and that also involve the same components of work in substantially the same proportion to the overall value of the contract.
 - (A) The director, in consultation with the city purchasing agent, shall consider the following in determining which, if any, repetitive construction, professional services, or other services contracts are appropriate for standard solicitation goals:
 - (i) The historical volume and frequency of the solicitations for those services;
 - (ii) The consistency in availability of city-certified MBEs and WBEs to perform the various components of the work; and
 - (iii) The consistency of MBE and WBE participation historically achieved under city contracts for those services.
 - (B) The standard solicitation goals will apply to all solicitations for those identified construction, professional services, or other services until the goals are reassessed by the director. The director shall reassess the standard solicitation goals, including the continued appropriateness for establishing standard solicitation goals for those services, at least quarterly.
- (b) The director must consider each of the following elements in determining the appropriateness of including a contract solicitation in the MBE and WBE program and setting the solicitation goals:

- (1) The availability in the particular industry classification and industry of the MBEs and WBEs that are qualified and willing to provide goods, expertise, and services required by the contract;
 - (2) The level of utilization of MBEs and WBEs in past contracts awarded by the city;
 - (3) The contract specifications;
 - (4) The extent of any adverse impact on non-MBEs and non-WBEs; and
 - (5) Any other factor deemed by the director to be relevant to the determination.
- (c) Once established, the MBE and WBE solicitation goals must be clearly published as part of the contract specifications in the invitation to bid or in the RFP or RFQ.
- (d) The MBE and WBE participation goals specified in the awarded vendor's contract shall be the contract participation goals determined by the director and as defined in section 324-1-C7 of this chapter. The MBE and WBE contract participation goals may be greater than, equal to, or, only in accordance with section 324-22(b)(2)(B) of this chapter, less than the MBE and WBE solicitation goals. The MBE and WBE contract participation goals shall apply to the initial contract amount, to any alternates, and to all subsequent amendments, supplements, extra work orders, change orders, or other modifications that, either individually or in the aggregate, increase the dollar value of the contract by ten percent or more.

Sec. 324-17. Contracting Agency Duties; Unbundling Contracts.

- (a) Every contracting agency must ensure that invitations to bid, RFPs, or RFQs originating with the contracting agency comply with this chapter.
- (1) All invitations to bid, RFPs, or RFQs must include a requirement that, if an MBE or WBE solicitation goal is applicable, the bidder or respondent must:
 - (A) Make good faith efforts before the opening of bids or deadline for the submission of proposals to meet the applicable contract participation goal; and
 - (B) Keep records of its good faith efforts adequate to permit a determination of compliance with this chapter.
 - (2) Each contract must require the contractor during the term of the contract to:
 - (d) Fulfill the MBE and WBE contract participation goals and the subcontracting commitments specified in the subcontractor utilization plan submitted with the bid or response;
 - (B) Continue to make good faith efforts to utilize certified MBEs and WBEs in the performance of the contract;

- (C) Maintain records reasonably necessary for monitoring compliance with this chapter;
 - (D) Make payments to its subcontractors in accordance with section 319-9 of the Cincinnati Municipal Code or its successor; and
 - (E) Submit copies of signed agreements with MBEs or WBEs before a notice to proceed is issued or the contractor otherwise begins providing services under the contract.
- (b) The head of each contracting agency, or the head's designee, shall be primarily responsible for achieving the goals of the MBE/WBE program and shall, on a continuing basis, review all aspects of the contracting agency's operations to assure that the purposes of the MBE/WBE program are being served.
 - (c) All contracting opportunities must be evaluated to determine whether the total requirements of a contract may be unbundled or divided into smaller contracts to provide reasonable opportunities for participation by MBEs and/or WBEs.

Sec. 324-19. Subcontractor Utilization.

- (a) In addition to any other applicable requirements, invitations to bid, RFPs, and RFQs must include a requirement that the bidder or respondent include in its bid or response one of the following:
 - (1) A certified MBE/WBE subcontractor utilization plan in which the bidder or respondent commits to utilize city-certified MBEs and/or WBEs in a percentage that equals or exceeds the applicable solicitation goals; or
 - (2) If a bidder or respondent is unable to meet the solicitation goals, a subcontractor utilization plan that reflects the highest MBE and WBE participation the bidder or respondent was able to achieve and documentation of its good faith efforts to meet the advertised solicitation goals.
- (b) The subcontractor utilization plan must include the following information:
 - (1) The name of each certified MBE or WBE to which the bidder or respondent intends to award a subcontract;
 - (2) Whether the subcontractor is a city-certified MBE or WBE;
 - (3) The dollar value of each subcontract;
 - (4) The scope of work to be performed under that subcontract; and
 - (5) Any other information the director requires in order to determine whether the city-certified MBE or WBE will be performing a commercially useful function or whether the contract participation goals have been satisfied.

- (c) (1) Bids are non-responsive if they do not include a certified MBE/WBE subcontractor utilization plan that meets or exceeds the solicitation goals or a subcontractor utilization plan that reflects the highest MBE and WBE participation the bidder or respondent was able to achieve and documentation of its good faith efforts to meet the solicitation goals in compliance with section 324-22(a) of this chapter prior to bid opening.
- (2) Responses to RFPs or RFQs that do not include a certified MBE/WBE subcontractor utilization plan that meets or exceeds the solicitation goals or a subcontractor utilization plan that reflects the highest MBE and WBE participation the bidder or respondent was able to achieve and documentation of its good faith efforts to meet the solicitation goals in compliance with section 324-22(a) of this chapter prior to the deadline for submission of responses may be considered only as provided in section 324-22(b) of this chapter.
- (3) The director may allow bidders and respondents to submit corrections to subcontractor utilization plans that do not meet the solicitation goals due solely to the following errors in the subcontractor utilization plan, and those bids or responses shall be deemed responsive provided the bidder or respondent corrects only these errors and returns the subcontractor utilization plan to the director within two business days following the director's notification of the error:
 - (A) Obvious mathematical errors;
 - (B) Typographical errors in a subcontractor's city certification type (MBE or WBE); or
 - (C) Errors in either firm names or firm FEIN numbers where those two pieces of information are not associated with the same firms.No other modifications, changes, or corrections to the subcontractor utilization plan or other documentation submitted with the responses are permitted.
- (d) Each bidder or RFP or RFQ respondent is responsible for verifying that all MBEs and WBEs it identifies as MBE or WBE subcontractors on its subcontractor utilization plan have been certified by the director before bid opening or the deadline for submission of responses.
- (e) During the term of the contract, any failure to comply with the MBE or WBE contract participation goals or to utilize the MBE and WBE firms as specified in the subcontractor utilization plan submitted with the bid or response is a material breach of the contract unless the director has approved a waiver or reduction of contract participation goals and/or a request for substitution of MBE and/or WBE firms as set forth in section 324-23 of this chapter.

Sec. 324-21. City Agency Pre-Solicitation Goal Waiver or Reduction Requests.

- (a) A contracting agency may make a written request to the director for a waiver or reduction of the MBE and/or WBE solicitation goals established by the director before bids are solicited or RFPs or RFQs are published.

- (b) The director may grant the waiver or reduction if the director determines that either:
 - (1) The reasonable and necessary requirements of the contract make subcontracting or other participation of businesses other than the bidder or respondent infeasible; or
 - (2) There are not at least two qualified and certified MBEs or WBEs in the Cincinnati market area capable of providing the goods or services, despite feasible attempts to locate them.
- (c) If the director denies a request to waive or reduce an MBE or WBE solicitation goal, the contracting agency may appeal that denial to the city manager.

Sec. 324-22. Vendor Good Faith Efforts to Meet Goals.

- (a) A bidder or respondent that is unable to meet the established MBE and/or WBE solicitation goals must submit at the time of bid opening or at or before the deadline for submission of responses to an RFP or RFQ a subcontractor utilization plan that reflects the highest MBE and WBE participation the bidder was able to achieve and documentation of its good faith efforts to meet the advertised goals.
- (b) The director will review submitted documentation of good faith efforts only in the event no bid or response that is determined by the city purchasing agent to be lowest and best or most advantageous and therefore eligible for award meets the MBE or WBE contract participation goals.
 - (1) For RFPs and RFQs for which no respondent met the goals, the city purchasing agent may allow all respondents an additional three business days after notice to submit documentation of good faith efforts each made prior to the deadline for submission of responses to the RFP or RFQ. Respondents that fail to submit such documentation of good faith efforts within that period shall be nonresponsive and ineligible for award.
 - (2) The director shall evaluate each bidder's and respondent's documentation of their good faith efforts considering the factors in section 324-1-G of this chapter, and the director shall report the results of that evaluation and the maximum MBE and WBE participation achieved by each bidder and respondent to the city purchasing agent.
 - (A) A contract shall not be awarded to a bidder or respondent whose documentation does not demonstrate good faith efforts to meet the solicitation goals as determined by the director.
 - (B) If no other bidder or respondent met the solicitation goals, the city purchasing agent may award a contract to a bidder or respondent for which the director made a determination that the bidder or respondent demonstrated good faith efforts to meet the goals.

- (i) For an invitation to bid, the contract participation goals shall be those the director determined to be the maximum commitment achieved by the awarded bidder on its subcontractor approval plan.
- (ii) For an RFP or RFQ, the contract participation goals shall be the higher of the goals the director determined to be the maximum commitment achieved by the awarded respondent on its subcontractor approval plan or the goals negotiated with the awarded vendor by the city purchasing agent in consultation with the director.

Sec. 324-23. Requests for Post-Award Waivers or Reductions of Contract Participation Goals; Substitution of MBEs or WBEs.

- (a) After award of a contract, if the contractor is unable to meet the established MBE and/or WBE contract participation goal(s) through the use of the MBEs and WBEs specified by the contractor in the subcontractor utilization plan submitted with its bid or response, the contractor must seek a substitute certified MBE or WBE to fulfill its commitment.
 - (1) Any proposed substitution of a city-certified MBE listed on the contractor's subcontractor utilization plan with another city-certified MBE or proposed substitution of a city-certified WBE listed on the contractor's subcontractor utilization plan with another city-certified WBE shall require the written approval of the director.
 - (2) If a contractor has established the basis for a substitution to the satisfaction of the director, the contractor may seek the assistance of the director in obtaining a new applicable certified MBE or WBE as a substitute.
- (b) If, after making good faith efforts, the contractor is unable to find a qualified, city-certified MBE or WBE substitute, as applicable, that is capable of performing the work on the contract, the contractor must request a post-award waiver from the director, which, if granted, will permit the contractor to substitute another MBE or WBE that is not certified by the city or a non-MBE or non-WBE for the city-certified firm.
- (c) A request for approval of an MBE or WBE substitute or a post-award waiver must meet all of the following criteria:
 - (1) Be in writing;
 - (2) Document the reasons for the contractor's inability to meet its original MBE or WBE subcontractor utilization commitment with an MBE or WBE listed on the contractor's MBE/WBE subcontractor utilization plan; and
 - (3) Document either the name and qualifications of the proposed substitute certified MBE or WBE or the good faith efforts made to find a substitute qualified and certified MBE or WBE.

- (d) The director's decision to permit or deny a proposed substitution or waiver, and the basis of any denial, shall be communicated to the contractor, the MBE or WBE originally listed on the subcontractor utilization plan, and any proposed substitute MBE or WBE in writing.

Sec. 324-25. Chapter Inapplicable to Sole Source, Emergency Acquisitions, Cooperative/State Procurements, and Direct Awards.

Unless the city manager or city purchasing agent determines that application of the provisions of this chapter to a particular contract is practical and in the best interest of the city, the provisions of this chapter do not apply to a particular contract if the city purchasing agent determines:

- (a) There is only a single or sole source for the needed goods or services as provided in section 321-85, section 321-86, or any related or successor sections of the Cincinnati Municipal Code;
- (c) It is in the best interest of the city to use a direct award as provided in section 321-87 of the Cincinnati Municipal Code or its successor;
- (d) It is in the best interest of the city to procure compatible equipment accessories or replacement parts, to use the original manufacturer for supplies, to procure public utility services, or to procure supplies for trial use or testing without competition as provided in chapter 321 of the Cincinnati Municipal Code;
- (d) The city purchasing agent makes a written determination that an emergency procurement is appropriate as provided in section 321-89 of the Cincinnati Municipal Code or its successor;
- (e) It is in the best interest of the city to procure goods or services through a cooperative contract or state contract as provided in section 321-97 of the Cincinnati Municipal Code or its successor; or
- (f) The city purchasing agent and, as applicable, the city manager, determine it is in the best interest of the city to award a professional services contract without competition in accordance with city administrative regulations.

Sec. 324-27. Counting MBE and WBE Participation.

A bidder, a respondent to an RFP or RFQ, or a contractor may only be credited with MBE or WBE participation as follows:

- (a) Only city-certified MBEs and WBEs may be counted toward solicitation goals and only as follows:
 - (1) A certified MBE or WBE that submits a bid or proposal as a prime contractor may count 100 percent of the dollar value of the work it intends to perform with its own forces toward the applicable MBE or WBE solicitation goal.

- (2) Only businesses that were certified by the director as an MBE or WBE prior to bid opening or the deadline for submission of a response to an RFP or RFQ and were certified at that time to perform the work described in the subcontractor utilization plan submitted with the bid or response may be counted toward the applicable solicitation goal.
 - (3) Only that portion of the work to be performed by a joint venture that is equal to the percentage of the certified MBE or WBE participant's ownership, control, and identified contract performance may be counted toward the applicable MBE or WBE solicitation goal.
 - (4) The entire value of the identified utilization of a certified WBE manufacturer or a certified WBE supplier that also manufactures the goods supplied may be counted toward the WBE solicitation goal.
 - (5) Twenty-five percent of the value of the identified utilization of a certified WBE supplier that is a wholesaler warehousing the goods supplied may be counted toward the WBE solicitation goal.
 - (6) The fees or commissions charged by a certified MBE or WBE insurance company or travel agent may be counted toward the applicable solicitation goal, provided the fee is reasonable and not excessive as compared with fees or commissions customarily allowed for similar services.
 - (7) No planned utilization of a certified MBE or WBE that intends to subcontract more than ten percent of the dollar amount of the services to be performed under a subcontract with the bidder or with a respondent to an RFP or RFQ may be counted toward the applicable MBE or WBE solicitation goal. An MBE's or a WBE's necessary expenditures for the purchase of materials, equipment, or supplies that are incidental to the performance of its services shall not be counted toward this ten percent limitation.
 - (8) A certified MBE or WBE may not be counted toward the applicable MBE or WBE solicitation goal if the prime contractor has a financial interest in, has an interest in the ownership or control of, or is significantly involved in the operation of the certified MBE or WBE
- (b) Only city-certified MBEs and WBEs may be counted toward contract participation goals and only as follows:
- (1) A certified MBE or WBE awarded a contract as a prime contractor may count 100 percent of the dollar value of the work it actually performs with its own forces toward the applicable MBE or WBE contract participation goal.

- (2) Only payments to certified MBEs or WBEs that perform a commercially useful function in the performance of work for which they are certified may be counted toward the applicable contract participation goal.
 - (A) To determine whether a certified MBE or WBE is performing a commercially useful function, the director must evaluate:
 - (i) The amount of work subcontracted;
 - (ii) Industry practices;
 - (iii) Whether the amount the MBE or WBE is to be paid under the contract is commensurate with the work it actually performs and with the MBE or WBE credit claimed for its performance of the work; and
 - (iv) Any other factors deemed by the director to be relevant to the determination.
 - (B) If the director initially determines that an MBE or WBE is not performing a commercially useful function, the director shall give written notice to the MBE or WBE, and the MBE or WBE may provide written documentation to the director within seven days that evidences it is or will be performing a commercially useful function for work it has been certified by the city to perform.
 - (C) The decision of the director after submission of such additional evidence by the MBE or WBE, or seven days after written notice of the initial determination if no additional evidence is submitted, shall be final and conclusive.
- (3) Only that portion of the payment to a joint venture that is equal to the percentage of ownership, control, and contract performance of the certified MBE or WBE participant in the joint venture may be counted toward the applicable MBE or WBE contract participation goal.
- (4) The entire expenditure with a certified WBE manufacturer or a certified WBE supplier that also manufactures the goods supplied may be counted toward the WBE contract participation goal.
- (5) Twenty-five percent of the payment to a certified WBE supplier that is a wholesaler warehousing the goods supplied may be counted toward the WBE contract participation goal.
- (6) The fees or commissions charged by a certified MBE or WBE insurance company or travel agent may be counted toward the applicable contract participation goal, provided the fee is reasonable and not excessive as compared with fees or commissions customarily allowed for similar services.

- (7) No payments made to a certified MBE or WBE that subcontracts more than ten percent of the dollar amount of the services to be performed under a subcontract with the prime contractor may be counted toward the applicable MBE or WBE contract participation goal. An MBE's or a WBE's expenditures for the purchase of materials, equipment, or supplies that are incidental to the performance of its services under its subcontract shall not be counted toward this ten percent subcontracting limitation.
- (8) A certified MBE or WBE may not be counted toward the applicable MBE or WBE contract participation goal if the prime contractor has a financial interest in, has an interest in the ownership or control of, or is significantly involved in the operation of the certified MBE or WBE.

Sec. 324-29. Prime Contractor Capacity-Building Initiatives Authorized.

To promote the award of city contracts to city-certified MBEs or WBEs in an effort to remedy identified disparities in city prime contracts historically awarded to MBEs or WBEs, preference points may be awarded as provided in section 324-31 of this chapter to a response submitted by a city-certified MBE or WBE to an RFP or RFQ for professional services, and price preferences may be applied as provided in section 324-33 of this chapter to a bid submitted by a city-certified MBE or WBE for supplies and other services prime contracts.

Sec. 324-31. Preference Points for Professional Services Prime Contracts.

- (a) A city-certified MBE or WBE that submits a response to an RFP or RFQ for a professional services contract may be awarded up to ten evaluation preference points.
- (b) Preference points for joint ventures that include city-certified MBE or WBE participants must be allocated on a pro rata basis in the same proportion to which a clearly defined portion of the work to be performed by the MBE or WBE with its own forces and equal to its share in the ownership, risks, performance, management, and control of the joint venture bears to the total work to be performed under the contract.

Sec. 324-33. Price Preferences for Other Services and Supplies Prime Contracts.

The city may award a prime contract for other services or supplies to a city-certified MBE or WBE that submits a bid that is no more than five percent greater than the lowest and otherwise best bid unless either of the following applies:

- (a) The award to the MBE or WBE would result in a total contract cost that is, on an annual basis, \$25,000 or more higher than the lowest and otherwise best bid; or
- (b) The award to the MBE or WBE would cause the total contract cost to exceed the city's budgeted funding for the contract.

Sec. 324-35. Request for Reconsideration and Appeal of Denial of Certification.

- (a) *Noncompliance and Denial of Certification.* Upon a denial by the director of an application for certification or recertification as an MBE or WBE under this chapter, the director shall notify the affected party in writing by certified mail at the address provided

by the applicant on the application, setting forth the reasons for the denial of certification or recertification.

(b) *Request for Reconsideration.*

(1) Any applicant denied certification or recertification as an MBE or WBE or whose certification has been revoked may request the director to reconsider the denial or revocation by filing a written request for reconsideration with the director within fourteen days of the date the notice of denial or revocation decision is mailed, which request shall state with specificity the factual grounds supporting certification.

(A) In the event such notice sent by certified mail is returned as refused or unclaimed, the director shall send the notice via regular U.S. mail, postage pre-paid. Provided the notice sent by regular U.S. mail is not returned as undeliverable within ten days, the notice shall be presumed to have been delivered, and a written request for reconsideration must be filed with the director within ten days of the date the notice was mailed.

(B) The request for reconsideration may be accompanied by any supporting documents the applicant believes supports approval of the application or supports continued certification.

(2) Within thirty days of receipt of a request for reconsideration, the director must review the request and all relevant documents submitted in support thereof and render a written decision that states with specificity the reasons for the decision. The decision on reconsideration shall be sent by certified mail to the address provided by the applicant on the application.

(3) If, upon reconsideration, the director affirms the denial of certification or recertification or affirms the revocation of certification, the applicant may request a hearing before the certification appeals board by filing a written notice of appeal with the director within fourteen days of the date the notice of decision on reconsideration is mailed. In the event such notice sent by certified mail is returned as refused or unclaimed, the director shall send the notice via regular U.S. mail, postage pre-paid. Provided the notice sent by regular U.S. mail is not returned as undeliverable within ten days, the notice shall be presumed to have been delivered and a written request for hearing must be filed with the director within ten days of the date the notice was mailed.

(c) *Certification Appeals Board.* The city manager shall establish a certification appeals board for the purpose of reviewing and either affirming or overruling the director's disposition of an application for certification or recertification as an MBE or WBE or the director's revocation of MBE or WBE certification. The board shall be comprised of five members, one of whom shall be appointed by the mayor and four of whom shall be appointed by the city manager. The members must be knowledgeable about the city's procurement laws, rules and regulations, and procedures, including this chapter, and shall serve for a period of two years. A chairperson shall be elected by the members of the board. Included on the board shall be:

- (1) At least one member with demonstrated experience in the field of finance and accounting;
 - (2) At least one member with demonstrated experience in the field of construction;
 - (3) At least one member with demonstrated experience with MBE and WBE matters; and
 - (4) At least one member with demonstrated legal experience with business associations and business structures.
- (d) *Notice of Hearing Date and Hearing.*
- (1) Within three business days of receipt of a written notice of appeal, the director shall forward the notice to the certification appeals board.
 - (2) The board shall set a hearing date not more than 28 days from the date of receipt of the notice of appeal forwarded by the director. The board shall cause notice of the hearing to be served upon all parties by certified mail. Such notice shall set forth the adverse determination by the director from which the appeal was taken and the errors identified by the applicant. The notice also shall state the date, time, and place of the hearing. If the certified mail notice is returned as refused or unclaimed, the notice of hearing shall be mailed by regular U.S. mail, postage pre-paid, and will be deemed to have been received if it is not returned as undeliverable within ten days of mailing.
 - (3) All parties shall be provided a fair and impartial hearing and shall be allowed to produce any evidence that supports and substantiates the information submitted with the application for certification or recertification or the decision made by the director.
- (e) *Decision.* Within seven days of the conclusion of the hearing, the board shall render its decision, which shall be to affirm, modify, or reverse the denial of certification or recertification or the revocation of certification by the director, and shall state the reason(s) for such decision. The board shall decide whether the director's determination was in accordance with the law. If the board finds for the applicant, the business shall be certified or recertified as an MBE or WBE and added to the appropriate certification list maintained by the department. The decision of the board shall be final, subject to the right of further appeal as may be provided by law.

Sec. 324-37. Duties of the Department of Economic Inclusion.

The department or, as applicable, the director shall have the following functions and duties associated with the programs set forth in this chapter:

- (a) Review and make determinations on applications for certification of MBEs and WBEs;
- (b) Maintain a directory of MBEs and WBEs certified under this chapter;
- (c) Provide information and needed assistance to MBEs and WBEs;

- (d) Investigate alleged violations of this chapter and, when appropriate, make written recommendations to the city manager for remedial action;
- (e) Develop and distribute all forms, applications, and documents necessary to comply with this chapter;
- (f) Maintain statistics on and regularly review the progress toward achieving the annual goals for the utilization of MBEs and WBEs;
- (g) Monitor contractors throughout the duration of their contracts to ensure that all efforts are made to comply with this chapter; and
- (h) Certify compliance with this chapter before contracts are submitted to the city manager for execution.

Sec. 324-39. City Maintained Records and Reports.

- (a) The effectiveness of this program will be measured by a review of data indicating prime and subcontract awards to city-certified MBEs and WBEs. Program effectiveness measurements also will include efforts by the city's contracting agencies to provide prime contracting opportunities for city-certified MBEs and WBEs. At the end of each contract, after receipt of the information required by subsection (b) of this section, the department will prepare a report on the utilization of firms in the MBE and WBE program. Data in this report will include information on the gross income size of the firms participating on each contract, the race and gender of each contractor and subcontractor performing work under the contract, and the total payments made to each contractor and subcontractor performing work under the contract.
- (b) At the end of a contract, the director shall require the prime contractor to report to the department the identity of each city-certified MBE and/or WBE to which the contractor awarded a subcontract for the purchase of construction services, professional services, other services, and supplies and the total payments made to each city-certified MBE and/or WBE.
- (c) The director shall prepare a quarterly consolidated report based on a compilation and analysis of the reports submitted by each project manager and procurement officer, information provided by the finance department, and the reports submitted by prime contractors. This record-keeping system will identify and assess MBE and WBE contract awards, prime contractors' progress in achieving MBE and WBE subcontract participation, and other MBE and WBE development and contracting efforts. Specifically, the department in conjunction with all city contracting agencies, will maintain records showing:
 - (1) Awards to MBEs and WBEs, including names of contractors and subcontractors, nature of the work and services performed, and the percentage of MBE and WBE participation per contract. The department will obtain regular reports from prime contractors on their progress in meeting contractual MBE and WBE commitments;
 - (2) Specific efforts to identify and award contracts to MBEs and WBEs;

- (3) Copies of direct mailings to MBEs and WBEs;
 - (4) Pre-bid conference information;
 - (5) Requests for assistance from the MBEs and WBEs interested in bidding or proposing on city contracts and subcontracts;
 - (6) Workshops, seminars, and training programs conducted for MBEs and WBEs;
 - (7) Efforts to assist MBEs and WBEs in acquiring bonding and insurance; and
 - (8) Contracts for which a waiver of MBE or WBE participation has been obtained.
- (d) The director will prepare quarterly MBE and WBE development reports for submission to council. These reports shall be disaggregated by minority group as defined in Section 324-1-M1 of this chapter and shall include:
- (1) The number of contracts awarded to MBEs and WBEs;
 - (2) A description of the general categories of contracts awarded to MBEs and WBEs;
 - (3) The dollar value of contracts awarded to MBEs and WBEs;
 - (4) The percentage of the dollar value of all contracts awarded to MBEs and WBEs during the preceding year;
 - (5) The actual dollar amount paid to MBE, WBE and non-M/WBE vendors as prime or subcontractors; and
 - (6) The percentage of the dollar amount paid to MBEs and WBEs compared to the total amount paid under the contracts.

Sec. 324-41. MBE and WBE Resource Information.

The department and purchasing division will make the following available to MBEs and WBEs upon request:

- (a) Procedures outlining specific steps on how to bid;
- (b) Prerequisites for bidding on contracts;
- (c) Information on how plans and specifications can be obtained;
- (d) Names of persons to contact concerning questions on bid documents;
- (e) Names of procurement officers and office hours;

- (f) Types of supplies and services purchased by the city; and
- (g) Explanations of standard contract implementation procedures and requirements concerning such matters as timely performance of work, contract changes, and payment schedules.

Sec. 324-43. MBE and WBE Directory.

The department will create a city-certified MBE and WBE directory that lists city-certified MBEs and WBEs categorized by certification type and the work for which the firms are certified to perform to facilitate identifying businesses with capabilities relevant to a particular specification. Each business listing will contain the business name, contact person, address, phone number, legal structure of the business, and details concerning the company's business specialty(ies). The directory will be continuously updated and maintained electronically. In compiling this directory, the city will identify and attempt to certify as many MBEs and WBEs as possible that have the potential of doing business with the city. The city will maintain and have available an updated MBE and WBE Directory for each bid/proposal solicitation to facilitate identifying city-certified MBEs and WBEs with capabilities relevant to general contracting requirements and to particular solicitations. The city will make the directory available to bidders and respondents in their efforts to meet the MBE and WBE commitments under this chapter.

Sec. 324-45. MBE and WBE Assistance to Provide an Equitable Opportunity to Compete for Contracts and Subcontracts.

The department and the procurement staff may utilize any of the same specific affirmative procedures set forth in section 323-33 of the Cincinnati Municipal Code or its successor for SBEs, SLBEs, and ELBEs to encourage maximum practicable opportunities for MBE and WBE participation in city contracts.

Sec. 324-47. Enforcement.

- (a) During the term of a contract subject to this chapter, the department must monitor continued compliance with the chapter, and the director may require contractors, bidders, respondents, MBEs, WBEs, and contracting agencies to submit any reports, documents, or other information reasonably necessary to determine compliance with this chapter.
- (b) If the director finds cause to believe that a contractor or subcontractor has failed to comply with any requirement of this chapter or with any contract provision relating to utilization of MBEs or WBEs, the director shall notify the contracting agency and the contractor of the noncompliance and shall attempt to resolve the noncompliance by agreement.
 - (1) If the noncompliance cannot be resolved, the director and the contracting agency must submit written findings and recommendations to the city manager.
 - (2) The city manager may impose penalties for noncompliance as provided in section 324-99 of this chapter.
- (c) If the director finds that a contracting agency has failed to comply with a provision of this chapter, the director shall send the contracting agency written findings that specify the nature

of the noncompliance and attempt to resolve the noncompliance through conciliation. If the noncompliance cannot be resolved, the director must submit written findings and recommendations for further action to the city manager.

Sec. 324-49. Economic Inclusion Advocacy and Accountability Board.

(a) *Mission, duties of Board.*

(1) The mission of the economic inclusion advocacy and accountability board shall be to promote economic inclusion, serve as a public advocate for the department, assist the department in fulfilling the recommendations of the economic inclusion advisory council and measure the impact of the economic inclusion programs and initiatives within the city of Cincinnati.

(2) The economic inclusion advocacy and accountability board shall have the following functions and duties associated with economic inclusion and the programs set forth in this chapter:

(A) Recommending policies to implement the city's economic inclusion programs and services;

(B) Recommending strategies to implement recommendations of the economic inclusion advisory council or its successor advisory group;

(C) Measuring the community impact of the city's and the department's economic inclusion programs and initiatives;

(D) Preparing and distributing to the community an annual report on the city's inclusion efforts; and

(E) Ensuring that minority- and women-owned business inclusion programs and initiatives continue in the future.

(b) *Board members; appointment.* The economic inclusion advocacy and accountability board shall consist of up to twenty-five members appointed by the mayor of the city of Cincinnati with the approval of city council. The following organizations each may recommend three members to the mayor: Urban League of Greater Southwestern Ohio, African American Chamber of Commerce, Hispanic Chamber of Commerce, and Asian Chamber of Commerce. The members shall be diverse in terms of race, ethnicity, gender, and age, shall have knowledge of minority-owned or women-owned business growth and development issues, and shall be residents of Hamilton County, Ohio.

(c) The director shall be an ex-officio board member and shall not count as one of the 25 appointed board members required in paragraph (b) of this section.

(d) *Term.* In the economic inclusion advocacy and accountability board's first year, up to eight members of the board shall be appointed for a term of one year, up to eight members shall be appointed for a term of two years, and up to nine members shall be appointed for a term of

three years. Upon the expiration of the initial term of each member, each member's appointment may be renewed for two additional three-year terms. The terms of the board members shall be staggered so that each year, up to eight or nine members will be eligible for either renewal of their terms or replacement by a new board member.

- (e) *Frequency of meetings.* The economic inclusion advocacy and accountability board shall meet on a quarterly basis, or more frequently as needed.
- (f) *By-laws.* The economic inclusion advocacy and accountability board is authorized to pass by-laws or other regulations governing the board as long as such by-laws or regulations do not conflict with any provision of this section 324-49.
- (g) *Committees.* The economic inclusion advocacy and accountability board, through its bylaws, shall establish a structure of standing committees with specific areas of responsibility for accomplishing its mission and duties.
- (h) *Severability.* The provisions of this section 324-49 are severable from the other provisions in this chapter. If any other provision is held invalid, this section 324-49 shall not be made invalid as well.
- (i) *Board to exist indefinitely.* The expiration of the provisions of this chapter shall not apply to the provisions of this section 324-49. This section 324-49 shall remain in effect indefinitely. It is the intent of this ordinance to create an economic inclusion advocacy and accountability board that shall continue in existence regardless of the status of the other provisions of this chapter.

Sec. 324-99. Penalties.

- (a) *Administrative Penalties.* A contractor, potential contractor, MBE, or WBE that fails to comply with any provision of this chapter is subject to any or all of the following administrative penalties:
 - (1) Suspension of contract until noncompliance is resolved;
 - (2) Withholding of funds;
 - (3) Rescission of contract based on material breach;
 - (4) Refusal to accept a bid or a response to an RFP or RFQ;
 - (5) Debarment from providing goods or services to the city for a period not to exceed two years; and
 - (6) Payment of liquidated damages.
- (b) *Prohibited conduct.* No person shall do any of the following:

- (1) Fraudulently obtain, retain, attempt to obtain or retain, or aid another person or entity in fraudulently obtaining, retaining, or attempting to obtain or retain certification as an MBE or WBE under this chapter;
 - (2) In any matter administered under this chapter, falsify, conceal or cover up, by a trick, scheme, or device, a material fact or make any false writing or document knowing it contains any false, fictitious, or fraudulent statement or entry;
 - (3) Willfully obstruct, impede, or attempt to obstruct or impede an authorized official or employee who is investigating the qualifications of a business enterprise that has requested certification as an MBE or WBE under this chapter;
 - (4) Fraudulently obtain, attempt to obtain, or aid another in fraudulently obtaining or attempting to obtain public money to which the person is not entitled under this chapter;
or
 - (5) Make a false statement to any person or entity that another person or entity is not certified under this chapter.
- (c) Any person who violates any provision of subsection (b) of this section is guilty of a first-degree misdemeanor and on first conviction is subject to imprisonment for not more than six months, to a fine of not more than \$1,000, or to both imprisonment and fine.

Section 3. That it is hereby found and determined that any contracts awarded pursuant to or under the legal authority of the current Chapter 324, as ordained by Ordinance No. 308-2015, passed on September 30, 2015, as amended, (“Current Chapter 324”) shall not in any way be modified or impacted by the passage of this ordinance without regard to whether a contract has yet been reduced to writing and fully executed. It is further found and determined that any solicitations issued pursuant to or under the legal authority of the Current Chapter 324 shall not in any way be modified or impacted by the passage of this ordinance. Any such fully executed contracts shall continue in full force and effect, and any such solicitations shall proceed through review and evaluation, award recommendation, and contracting as appropriate in accordance with the provisions of the Current Chapter 324 as it applied to that contract, award, or solicitation, subject to any legal rights the City may have to terminate a contract or contract negotiations, to reject any

and all bids or responses, or to issue addenda for solicitations for which the time for submission of bids or responses has not yet closed.

Section 4. That, upon the effective date of this ordinance and expiration of the Current Chapter 324, firms with active certifications as MBEs or WBEs under the Current Chapter 324 and that remain eligible for certification under the reordained Chapter 324 automatically shall be certified under this ordinance without the need for immediate reapplication, provided that such automatic certification shall apply only to the certification, if any, for which the firm is eligible under the reordained Chapter 324. The initial term for certification under this ordinance shall be for only that time remaining between the date of the most recent certification under the Current Chapter 324 and the two-year anniversary of that certification date.

Section 5. That the members of the Certification Appeals Board and the members of the Economic Inclusion Advocacy and Accountability Board who were appointed during the effective period of the Current Chapter 324 and whose terms have not yet expired shall be entitled to serve out the remainder of their terms, unaffected by the repeal of Current Chapter 324. Those board members who are eligible for reappointment under Current Chapter 324 shall remain eligible for reappointment as otherwise provided under Current Chapter 324. For clarity, the reordained Chapter 324 shall not entitle any current board member to serve a longer term or to be eligible for additional reappointments beyond those permitted under Current Chapter 324.

Section 6. That the proper City officials are hereby authorized to do all things necessary to carry out the provisions of this ordinance.

Section 7. That reordained Chapter 324 shall be effective October 1, 2023.

Section 8. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms

of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to have a new Chapter 324 in effect immediately upon the expiration of the Current Chapter 324.

Passed: _____, 2023

Aftab Pureval, Mayor

Attest: _____
Clerk