

M/WBE City Code

Sec. 2-325. Minority and women business enterprise procurement program.

(a) *Findings.* The Memphis City Council hereby adopts the following findings:

- (1) Construction, professional services and supply firms owned by M/WBEs in the Memphis MSA have been subjected, disproportionately, to low participation levels in City of Memphis contracts and in the Memphis private marketplace relative to their availability.
- (2) The City of Memphis has been a direct and a passive participant in a system of discrimination in the private marketplace in Memphis and, in the absence of the establishment of certain annual and project goals as well as other procurement strategies, would continue to be a passive participant in such a system.

(b) *Statement of policy.* Under all the circumstances and based on the factual predicate which has been established after careful study and review, the City of Memphis has a compelling interest to fully remedy the ongoing effects of past and present discrimination against African Americans and female business owners in both the public and private sectors of its marketplace. As a passive participant in a system of racial and gender exclusion practiced by elements of the local construction, professional and supply industries, the City of Memphis has an affirmative duty to dismantle such a system. This affirmative duty also entails the continuation of initiatives to encourage the development of local small businesses, in general. Essentially, the City of Memphis has a compelling interest to assure that public dollars derived from tax collection and revenues are not utilized to further discriminatory practices.

(a) *Definitions.* As used in this article and division, the following terms shall have the following meanings:

Annual participation goals shall mean the targeted levels established by city council of relevant markets for minority or women participation in city professional services contracts, goods and non-professional services contracts, and construction contracts calculated in accordance with this article and division and applicable only to specific gender, ethnic or ethnic minority groups for which goals have been set.

Best bid shall be defined as the responsive quotation, proposal, solicitation or offer that meets specifications, including, if applicable, any project participation goal as set out in the bid packet specifications.

Bid shall mean written quotations, proposals or offers by a bidder or contractor to perform or provide labor, materials, equipment, supplies or services to the City of Memphis for a price submitted in response to competitive bidding solicitation issued by the City of Memphis.

Bidder shall mean any business enterprise that submits a bid as defined herein.

Business enterprise shall mean a corporation, partnership, sole proprietorship, joint venture, joint stock company, professional association or any other legal entity, operated for profit that is properly licensed and/or otherwise authorized to do business in the State of Tennessee.

Certification shall mean the criteria and process for participation in the program authorized in this chapter.

City and city limits shall mean the City of Memphis, Tennessee and its annexed boundaries, as the same may be amended from time to time.

Commercially useful function means the execution by a minority or woman owned business enterprise, which contracts with the City of Memphis, or subcontract with another business

enterprise which contracts with the City of Memphis, of a distinct element of the work of the contract by actually performing, managing, and supervising the work involved. A business enterprise which serves as a conduit for another business shall not be deemed to perform a commercially useful function.

Conduit shall mean a business which purchases goods or services that are not normally purchased or sold as part of its daily business from another business(es) for the sole purpose of resale to the city or a contractor doing business with the city.

Construction contracts shall mean those written agreements between a contractor and the city for the construction, repair, rehabilitation, alteration, conversion or extension of buildings, parks, utilities, streets or other improvements or alteration to real property. Construction projects include the contracts for the labor portion of a project as well as equipment and other supplies to be incorporated in a project.

Contract shall mean and include any agreement between the city and a person or business enterprise to provide or procure labor, materials, equipment, supplies and services to, for or on behalf of the city. A "contract" shall include an agreement between the city and a person or business enterprise to perform professional architectural and engineering services, construction related services or fund the performance of such services. Except as otherwise specifically defined in this section, a "contract" does not include: (1) awards made by the city with federal/state grant or city general funds monies to a non-profit entity which the city offers assistance, guidance, or supervision on a project or program and the recipient of the grant award uses the grant monies to provide services to the community; (2) sales transactions where the city sells its personal or real property; (3) a loan transaction where the city is acting as a debtor or a creditor; (4) lease and franchise agreements; (5) agreements to use city real property; or, (6) gifts of materials, equipment, supplies or services to the city. It is not the intent of this program to include federally grant funded contracts subject to a federally promulgated affirmative action program.

Contract compliance officer shall mean the city official who manages specifically designated sections of the program authorized by this chapter.

Contractor shall mean any person or business enterprise that submits a bid or proposal to provide labor, goods or services to the city by contract for profit in the area of construction or construction-related activities; and, person who supplies or provides labor, goods or services to the city by contract for profit; and any person who is a subcontractor under any such contract.

Dealer shall mean a supplier that owns, operates or maintains a store, warehouse or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, consigned or regularly sold to the public in the usual course of business. To be a dealer, the supplier must engage in, as its principal business, and in its own name, the purchase, sale or consignment of the products in question.

Expertise means demonstrable skills or knowledge of the field of endeavor in which certification is sought, including licensure where required.

Front shall mean a business which purports to be an M/WBE but which is actually owned and/or controlled in a manner which is inconsistent with the requirements for certification set out in this chapter.

Good faith efforts means the steps undertaken to obtain M/WBE participation for subcontracting opportunities related to the bid proposal submitted. Minimum standards are set out in section 2-328(d).

Joint venture shall mean an association of two or more persons, or any combination of types of business enterprises and persons numbering two or more, established to carry on a single business activity, in which each joint venture partner contributes property, capital, efforts, skill and/or knowledge. Joint ventures must have an agreement in writing specifying the terms and conditions of the relationships between the partners and their relationships and responsibility to business activity.

M/WBE advisory committee means the committee, composed of the contract compliance officer, the director of finance or designee, the city engineer or designee, the city attorney or designee, the purchasing agent or designee, the director of housing and community development or designee, the director of information systems or designee, responsible for recommending to the city council the annual minority and women owned business enterprise procurement participation goals.

Minority-owned business enterprise or *MBE* means a business (including, without being limited to, a sole proprietorship, partnership, corporation, joint venture or any other business or professional entity):

- (1) Which is at least 51 percent owned by one or more minority persons, or, in the case of publicly-owned business, at least 51 percent of all classes of the stock of which is owned by one or more minority persons;
- (2) Whose management, policies, major decisions and daily business operations are independently controlled by one or more of such minority persons;
- (3) Which performs a commercially useful function.

Minority person means those persons, citizens of the United States and lawfully admitted resident aliens, who are African American (persons whose origins are in one of the Black regional groups of Africa).

Owned, managed and independently controlled means the one or more minority persons or women who own(s) the requisite interest in or assets of a business applying for certification, shall possess equivalent incidents of such ownership, including an equivalent interest in profit and loss, and shall have contributed an equivalent percentage of capital or equipment and expertise to the business. Ownership shall be measured as though not subject to the community property interest of a spouse, if both spouses certify in writing that the nonparticipating spouse relinquished control over his or her community property interest in the subject business (but by doing so is not required to transfer ownership interest or to characterize the property as the separate property of the spouse). The one or more minority or women shall have recognized ultimate control over all day-to-day operations by employees of the business, and by those with whom it does business. The ownership and control of the firm shall be real, substantial, and continuing and shall go beyond the pro forma ownership of the firm as related in its ownership documents.

Project participation goal shall mean an alternative goal established for a particular project or contract and calculated as authorized in section 2-327(b).

Proposer shall mean a person or business enterprise which responds to a contract opportunity with the city, solicited as a request for proposal and that possesses the requisite expertise to perform the professional services sought.

Subcontractor shall mean any person or business enterprise providing goods, labor or services to a contractor if such goods, labor or services are procured in fulfillment of the contractor's obligations arising from a contract with the city. Subcontractor includes every level of subcontracting required to fulfill a contract with the city.

Women shall mean those persons, citizens of the United States and lawfully admitted resident aliens, who are of the female gender, and not otherwise included in one of the specific ethnic minority groups.

Women-owned business enterprise or WBE means a business including, without being limited to, a sole proprietorship, corporation, partnership, joint venture, or any other business or professional entity:

- (1) Which is at least 51 percent owned by one or more women; or, in the case of publicly-owned business, at least 51 percent of all classes of the stock of which is owned by one or more such women;
- (2) Whose management, policies, major decisions and daily business operations are independently controlled by one or more of such women;
- (3) Which performs a commercially useful function.

(d) *Administrative authority; powers and duties.* It is the responsibility of every officer, director, administrator, manager, and supervisor of the City of Memphis to manage the daily administration of the provisions of this division and to assure that the intent of this division is carried out in all procurement activities and opportunities.

(1) The overall provisions of this division shall be administered and enforced by the contract compliance officer ("CCO") and, in pertinent parts, in conjunction with the division of finance.

(2) The CCO's powers and duties under this division include the following:

- a. Assist, where directed, the division of finance in establishing written procedures to implement this division;
- b. Provide information and assistance to M/WBEs to increase their ability to compete effectively for the award of city contracts;
- c. Keep M/WBEs apprised of opportunities for technical assistance and training;
- d. In conjunction with the division of finance, monitor contracts for compliance with M/WBE participation goals throughout the contract term;
- e. Assist, where directed, the division of finance in preparing compliance guidelines for contractors which will include monitoring and reporting procedures and recommendations for actions to be taken should noncompliance occur;
- f. Monitor the city's progress toward achievement of M/WBE program goals;
- g. Issue an exit interview for any contract which includes M/WBE prime contractor participation as a joint venture partner. The purpose of the exit interview is to ensure that M/WBEs are actually performing services on joint ventures.

(e) *Certification.* For purposes of contracting with the City of Memphis under this program, a minority or woman owned business enterprise must be located within the Memphis MSA (Crittenden County in Arkansas (AR), Desoto County in Mississippi (MS), and Fayette, Shelby and Tipton Counties in Tennessee (TENNESSEE)) and certified as a minority or woman owned business enterprise by the City of Memphis approved central certification agency.

(f) *Graduation clause.* Certified M/WBEs shall be graduated out of the program once their annual sales exceed the average sales for the industry for three (3) consecutive years, as determined by the federal tax returns for that firm and the four-digit SIC Code U.S Economic Census data. If a M/WBE is engaged in more than one industry, then its graduation level shall be determined by a weighted average of sales for all industries in which the M/WBE is engaged.
(Ord. No. 4388, 2-20-96)

Sec. 2-326. Incorporating M/WBE chapter in contracts.

(a) All proposals, bid specifications and contracts for projects which have participating goals, will incorporate by reference this division and all city procedures established pursuant thereto, and will contain the following clause:

"The contractor further agrees that its breach of the M/WBE provisions in the city's M/WBE ordinance shall subject it to any or all of the following penalties:

- (1) If the contractor is a M/WBE, denial of recognition as an approved M/WBE, for purposes of contracting with the City of Memphis, for a period not to exceed one year;
- (2) Withholding of ten percent of all future payments on the involved project until it is determined that the contractor is in compliance;
- (3) Exclusion from submitting a bid or proposals for a period not to exceed one year;
- (4) Termination, by the city, of the contract."

(b) All contracts for projects with participation goals will require the prime contractor to pay all M/WBE subcontractors their pro-rata share of progress payments made by the city to the prime contractor. The pro-rata share will be based on all work completed and materials furnished by the subcontractors in the period for which the progress payment was made. Payments will be made within a reasonable period of time (as specified by the city's M/WBE procedures), unless the prime contractor has good cause for not making any such payments. The payments may be reduced by the pro-rata share of retainage withheld from the prime contractor up to a maximum of five percent. The contracts will also require the prime contractor, prior to receiving a progress payment from the city, to certify that it has paid all previous progress payments to M/WBE contractors, unless the contractor demonstrates good cause for not making any such payments and furnishes written notification of any such cause to the user division, the contract compliance office and the affected M/WBE subcontractor.

(c) All contracts for projects with participation goals, will require the prime contractor to report all payments to and utilization of M/WBE subcontractors for review and approval before final payment is made by the city under the contract.
(Ord. No. 4388, 2-20-96)

Sec. 2-327. M/WBE goals

(a) *Overall goals.* In order to provide M/WBEs equal opportunity and access to participate in all city procurement of construction-related services, goods and non-professional services and professional services, the city hereby incorporates the following six factors as part of its goal-setting methodology in establishing annual M/WBE goals:

- (1) The number of minority and female owned businesses in the relevant market area;

(2) The availability of minority and female owned businesses in the relevant market area willing to do business with the city;

(3) The general availability of minorities and females having the requisite skills to manage and/or form businesses in the relevant market area;

(4) The percentage of minority and female businesses compared to the total number of businesses in the relevant market;

(5) The availability of minority and female businesses in the relevant market area which an agency can reasonably add to its certification list; and

(6) The degree of outreach and training the city is reasonably able to undertake as a means of making opportunity available to minority and female businesses.

The initial annual M/WBE goals shall be:

(1) *Goals for construction:*

Seventeen percent - Minority

Eight percent - Women

Twenty-five percent - Total Goal

(2) *Goals for goods and non-professional services:*

Seventeen percent - Minority

Twenty percent - Women

Thirty-seven percent - Total Goal

(3) *Goals for professional services:*

Fifteen percent - Minority

Nine percent - Women

Twenty-four percent - Total Goal

The annual goals provided above shall be reviewed annually by the M/WBE advisory committee. These overall M/WBE participation goals are only intended to be benchmarks for evaluating the overall performance of the M/WBE program on an annual basis. These participation goals are not and, shall not be quotas. For purposes of determining or satisfying annual participation goals, only the participation of minority or woman owned business enterprises located within the Memphis MSA and certified by the city's contracted central certification agency will be considered.

(b) *Project participation goals.* On individual contracts or projects, there is no requirement that the above annual M/WBE goals be met. The M/WBE advisory committee shall have the responsibility of determining whether a project participation goal is warranted on any given project. On any individual contract or project, these annual goals may not be met, or may be exceeded, depending upon several factors, such as the availability of qualified M/WBE business enterprises, the nature of the project, adverse impact on non-M/WBE business enterprise, good faith efforts of contractors or vendors, or other relevant factors. For purposes of determining or satisfying project participation goals, only the participation of minority or woman owned business enterprises located within the Memphis MSA and certified by the city's contracted central certification agency will be considered.

(c) *Construction.*

(1) *Construction projects goals setting committee.*

a. There is hereby established a construction projects goals setting committee ("construction committee"). The membership of this committee will consist of the CCO, serving as chairperson; the city engineer or designee; and the city attorney or designee.

b. The construction committee shall establish specific participation goals for each construction project, the cost of which is estimated to be in excess of \$100,000.00. Said goals will be individual minority and women business enterprise participation goals, the sum of the individual goals not to exceed 50 percent of the total contract amount for each project.

(2) *Outreach for construction.* For any construction project, the CCO, and, in certain instances, in conjunction with the purchasing agent and the city engineer, will make good faith efforts to promptly notify M/WBEs, which are available to provide the needed construction services, of the contracting opportunities. The notification shall advise the M/WBEs:

a. Of the specific work the city intends to contract;

b. That their interest in the project is being solicited; and

c. How to obtain request for proposals or invitations to bid or information or specifications on the proposed contract.

(d) *Goods and non-professional services.*

(1) *Outreach for goods and non-professional services.* For all anticipated procurement of goods and non-professional services, the CCO, and, in certain instances, in conjunction with the purchasing agent or the soliciting division, will make good faith efforts to promptly identify and notify M/WBEs, which are available to provide the needed goods or services, of contracting opportunities. The notification shall advise the M/WBEs:

a. Of the specific work the city intends to contract;

b. That their interest in the project is being solicited; and

c. How to obtain request for proposals or invitations to bid or information or specifications on the proposed contract.

(e) *Professional services.*

(1) *Professional services projects goals setting committee.*

a. There is hereby established a professional services review committee ("professional services review committee"). The committee shall consist of the CCO serving as chairperson, the director of the user division, the director of finance, and the city attorney, or the respective designee of each.

b. The professional services committee shall review a professional services project costing \$50,000.00 or more to determine which, from the following, is or are the best methods for ensuring M/WBE participation.

c. If participation goals are established for a project, the contractor shall provide to the CCO documentation of good faith efforts to achieve said goals in the same manner as provided in section 2-328(d).

(2) *Outreach for professional services.* For all anticipated procurement of professional services, the CCO, and, in certain instances, in conjunction with the purchasing agent and director of the soliciting division, will make good faith efforts to identify and notify M/WBEs, which are available to provide the needed services, of the contracting opportunities on annual basis. Said notification shall advise the M/WBEs:

- a. Of the specific work the city intends to contract;
- b. That their interest in the project is being solicited; and
- c. How to obtain request for proposals or invitations to bid or information or specifications on the proposed contract.
(Ord. No. 4388, 2-20-96)

Sec. 2-328. Requirements of bidders and contractors

(a) General requirements.

(1) All bidders on any construction project, or any professional services project in which the bidders subcontract with M/WBEs or enter into joint ventures with M/WBEs, are required to complete and submit, as a part of their bids, the following:

- a. Schedule of participating certified M/WBE subcontractors or joint venturers;
- b. Affidavit declaring the bidder's intention to fully comply with the provisions of this chapter and all city procedures established pursuant hereto.
- c. Letters of intent from subcontractors within ten days after notification of contract award.

(2) Proposed changes to the designated participation of women or minority business enterprises in a bidder's bid, on any project, after submission of bids, including during performance of a contract, must be submitted to the user division and the CCO. Bidders and contractors must make a good faith effort to replace a woman or minority business enterprise subcontractor or joint venturer with another certified woman or minority business enterprise, based on said enterprises' availability. All substitutes for women or minority business enterprise subcontractors or joint venturers require prior approval by the CCO, not to be unreasonably withheld; and said approval may be granted for reasons including, but not limited to, the following:

- a. Subcontractor or joint venturer requests that its subcontract or joint venture agreement with the prime contractor be voided;
- b. Subcontractor or joint venturer is unable to perform the work;
- c. Subcontractor or joint venturer has consistently performed unacceptable work.

(3) The apparent low and best bidder on any project must submit copies of all executed subcontracts or joint venture agreements with M/WBEs listed in the bid documents, within ten business days after the prime contractor receives an executed contract.

(4) A bidder's failure to submit any information required by this chapter or the city's M/WBE program procedures may render the bid nonresponsive and ineligible for consideration.

(b) *Regulations on brokering services.*

(1) M/WBEs are required to perform a commercially useful function on contracts let or made pursuant to this chapter.

(2) Only expenditures to or contracts with M/WBEs that perform a commercially useful function in the work of a contract may be counted towards the M/WBE goal. A M/WBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether a M/WBE is performing a commercially useful function, the city will evaluate all relevant factors such as, for example, the amount of work subcontracted and industry practices.

(3) Consistent with normal industry practice, a M/WBE may enter into subcontracts. If a M/WBE subcontracts 50 percent or more of the work, the M/WBE shall be presumed not to be performing a commercially useful function. The M/WBE may present evidence to rebut this presumption to the city.

(c) *Construction projects.*

(1) *Goal achievement.*

a. Contractors are responsible for achieving participation goals, as established by the construction committee, on construction projects and maintaining said goals for the duration of the project.

b. If the prime contractor or bidder on a construction project is a certified woman or minority business enterprise, then the participation goal for the M/WBE classification of said prime contractor or bidder shall be deemed met. The bid of said prime contractor or bidder will be subject, however, to participation goals for M/WBE classifications other than its own classification.

(d) *Good faith efforts.* Any bidder, submitting a bid on a construction project, which does not meet participation goals established by this chapter, must provide in its bid, documentation of good faith efforts to achieve said goals. Documentation of good faith efforts will include, but not be limited to, the following:

(1) Attendance at pre-bid conference, if held;

(2) Copies of written notification sent to all city certified M/WBEs that perform the type of work to be subcontracted, in sufficient time to allow said M/WBEs to participate effectively, soliciting said M/WBEs' interest in working on the project and advising the M/WBEs:

a. Of the specific work the bidder intends to subcontract;

b. That their interest in the project is being solicited; and

c. How to obtain information for the review and inspection of the plans, specifications and requirements of the bid.

(3) A written statement that economically feasible portions of work were selected to be performed by M/WBEs, including, where appropriate, segmenting elements of work or combining elements of work into economically feasible units. The ability of the bidder to

perform the work with its own work force will not in itself excuse the bidder from making good faith efforts to meet participation goals.

(4) A statement of the efforts made to negotiate with M/WBEs, including:

- a. The names, addresses and telephone numbers of M/WBEs, who were contacted;
- b. The date negotiations took place;
- c. A description of the information provided to M/WBEs regarding the plans, specifications and requirements for portions of the work to be performed.

(5) A statement of the efforts made to assist M/WBEs contacted who need assistance in obtaining bonding, insurance, financing, or in reviewing the plans, specifications and requirements of the bid.

(6) A statement that the bidder submitted all quotations received from M/WBEs and, for those quotations not accepted, a statement of the reasons why the M/WBE will not be used to work on the project; provided, that submission of the actual quotations received from M/WBEs within ten business days from bid opening shall be deemed a compliance of this subsection; provided, further, that during this ten-day period no bids shall be solicited from any M/WBEs for the involved project. Receipt of a lower quotation from a non-M/WBE will not in itself excuse a bidder's failure to meet participation goals.

(7) As to each M/WBE contacted, which the bidder considered not to be qualified, a statement of the reasons for the bidder's conclusion based on an investigation of said M/WBE's capabilities, The determination of whether a bidder has made good faith effort will be made by the CCO, the director of finance and the purchasing agent, prior to the award of the project.

(e) *Post-award contract compliance.*

(1) The contractor shall submit monthly reports in such form, manner and time as required by the CCO and, in certain instances, the director of finance and/or purchasing.

(2) The contractor shall notify the user division and the contract compliance office of any situations in which regularly scheduled payments are not made to M/WBE subcontractors.

(3) At the completion of performance on the construction project, the contractor or awardee is required to submit a final schedule of participating certified M/WBE subcontractors to the user division and the contract compliance office. This document will be an affidavit denoting final contract amount and payments made to M/WBE subcontractors.

(f) *Exceptions and waivers.*

(1) The CCO will waive a construction project's participation goals for a bidder when reasonable good faith efforts are shown by such bidder.

(2) The CCO will waive the M/WBE good faith efforts requirements of this chapter under the following circumstances:

- a. Whenever the CCO finds, with the advice of the user division and purchasing agent, that any needed services or goods are available only from a single source, which is not a M/WBE, and the prospective contractor or awardee is not currently

disqualified from doing business with the city based on a failure to comply with the provisions of this chapter or city procedures established pursuant hereto;

b. If the user division certifies in writing to the CCO that an emergency exists, and no M/WBEs capable of performing the emergency work are immediately available.

(Ord. No. 4388, 2-20-96)

Sec. 2-329. Reserved

Sec. 2-330. Enforcement

(a) *Generally.* [Reserved.]

(b) *Noncompliance by bidders or contractors.*

(1) A determination by the CCO that the bidder or contractor has failed to comply with any provision of this chapter shall subject the offending party to any or all of the following penalties:

a. Declare the bidder's bid nonresponsive and ineligible to receive the involved contract;

b. If the contractor is a M/WBE, denial or revocation of the city certification as a M/WBE for a period not to exceed one year;

c. Withholding from the contractor in violation ten percent of all future payments under the involved project until it is determined that the contractor is in compliance;

d. Exclusion from submitting a bid for a period not to exceed one year;

e. Termination, by the city, of the contract.

(2) A determination by the CCO that a M/WBE has failed to comply with section 2-328(b), regulations on brokering services, shall subject the offending party to revocation of the city certification as a M/WBE for a period not to exceed one year.

(3) An appeal by a nonresponsive bidder, contractor, or M/WBE under this chapter will be resolved pursuant to City of Memphis appeals procedures as adopted.

(4) The CCO may require such reports, information and documentation from bidders, contractors, M/WBEs, user division and the head of any division or office of the city as are reasonably necessary to determine compliance with the requirements of this chapter.

(c) *Criminal sanction for fraud.* If the CCO determines that substantial evidence is available indicating that fraud or other unlawful activity has been committed:

(1) By a M/WBE certification or re-certification applicant;

(2) By a certified M/WBE or majority prime contractor falsely reporting the utilization of M/WBE subcontractors; or

(3) By an individual or firm attempting to benefit from or participate in the M/WBE program, through fronting activity, false representation of a commercially useful function,

or other fraudulent or unlawful activity, the matter shall be referred to the appropriate legal authorities and the City of Memphis Legal Division for criminal prosecution; and, in the event a conviction or guilty plea is obtained stemming from such criminal prosecution, the business entity and principals shall be barred from participation in city contracts for one year.

Fronting activity shall be defined as any occurrence of collusion between a M/WBE and a majority business enterprise for the purpose of exploiting that M/WBE's minority or female certification status to primarily benefit a majority firm without the performance of any commercially useful function by that M/WBE.

(d) *Notification of noncompliance, denial or revocation of certification.* Upon a determination of non-compliance with the provisions of this chapter or any city procedures established pursuant hereto, the CCO shall notify the affected party in writing by certified mail, return receipt requested, setting forth the reasons for the determination of non-compliance. Any appeal on the basis of non-compliance shall be conducted in conformity with procedures established by the City of Memphis as adopted.

The City of Memphis has contracted with a central certification agency to review, investigate, certify and re-certify M/WBE business enterprises. Upon a denial or revocation of certification as a M/WBE by the central certification agency, the City of Memphis hereby adopts and recognizes the policies, procedures and appeals process of the certification agency as controlling.
(Ord. No. 4388, 2-20-96)

Sec. 2-331. Miscellaneous

(a) *Sunset clause.* The minority and women business enterprises procurement program will expire on June 30, 2006, unless prior to such date the city council, after conducting public hearings, finds that the purposes of this division have not yet been achieved, in which case it may extend the effective period of this division for an additional five (5) years.

(b) *Bid preferences.* If upon review of the results of the annual program goals, the city determines that it has not achieved the individual M/WBE program goals based on contracts let or awards made during the preceding fiscal year for women or minority business enterprises, then the city may consider amending said ordinance to include bid preferences as maybe permitted by law.

(c) *Severability.* If any provision, section, sentence, clause or phrase of this division, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void, invalid or, for any reason, unenforceable, the validity or enforcement of the remaining portion of this division or its application to other persons or sets of circumstances shall not be affected thereby, it being the intent of City Council of the City of Memphis, Tennessee in adopting this division that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion, provision or regulation.

(Ord. No. 4388, 2-20-96; Ord. No. 4866, § 1, 6-5-01)