

Submitted by: Chairman of the Assembly at the Request
of the Mayor

Prepared by: Employee Relations Department

For Reading: January 26, 1999

CLERK'S OFFICE

APPROVED

Date: 2-9-99

ANCHORAGE, ALASKA
AO NO. 99-10

AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE CHAPTER 7.60 REVISING THE
LOCAL ORDINANCE TO RESTRICT THE DISADVANTAGED AND WOMAN-OWNED BUSINESS
ENTERPRISE PROGRAM TO FEDERAL REQUIREMENTS UNDER FEDERALLY ASSISTED
CONTRACTS.

THE ANCHORAGE ASSEMBLY ORDAINS:

Chapter 7.60 DISADVANTAGED AND WOMAN-OWNED BUSINESS ENTERPRISES

7.60.010 Policy and intent.

7.60.020 Disadvantaged and woman-owned business enterprise program
office.

7.60.030 Powers and duties of disadvantaged and woman-owned business
enterprise officer.

7.60.040 Discrimination in award of subcontracts.

7.60.050 Contract specifications.

7.60.060 Certification of disadvantaged and woman-owned businesses.

7.60.070 Access to records.

7.60.080 Investigation of complaints.

7.60.090 Recommendation of sanctions.

7.60.100 Appeals.

7.60.110 Exemptions.

7.60.120 Applicability of chapter to Anchorage Telephone Utility.

7.60.010 Policy and intent.

It is the policy of the municipality to give aid and assistance to
socially and economically disadvantaged business enterprises (DBEs) and
woman-owned business enterprises (WBEs) located within the municipality
and to encourage the provision to such businesses of an equitable
opportunity to participate in municipal contracts funded by federal
assistance.

It is the intent of the municipality in enacting this chapter to provide educational and informational assistance to DBEs and WBEs concerning bidding procedures, financing, bonding, management, contract administration and performance and other aspects of the operation of a business and to encourage the participation by DBEs and WBEs in federally assisted municipal contracts by requiring good-faith efforts by the municipality and municipal contractors to contract with DBEs and WBEs in fields of endeavor in which they exist and are certified.

7.60.020 Disadvantaged and woman-owned business enterprise program office.

There is in the office of equal opportunity the disadvantaged and woman-owned business enterprise program office (D/WBE office), which shall administer this chapter.

7.60.030 Powers and duties of disadvantaged and woman-owned business enterprise officer.

The D/WBE office shall be administered by the D/WBE officer, who shall have the following authority and responsibilities:

- A. To develop and administer plans, procedures and techniques for aiding and assisting socially and economically disadvantaged business enterprises (DBEs) and woman-owned business enterprises (WBEs) within the municipality in accordance with the policy and intent of this chapter;
- B. To develop and administer an affirmative action DBE and WBE plan for the municipality to implement the policy and intent of this chapter;
- C. To propose [ANNUAL] goals for participation by DBEs and WBEs in federally funded municipal contracts in accordance with the policy and intent of this chapter;
- D. To identify goals for DBE and WBE participation in federally assisted municipal contracts for those fields of endeavor in which DBEs and WBEs exist and are certified; and
- E. To promulgate regulations, pursuant to chapter 3.40, not inconsistent with this chapter, as he or she deems necessary, advisable or expedient to carry out or enforce the provisions, policy and intent of this chapter.

7.60.040 Discrimination in award of subcontracts.

- A. Neither municipal officers or employees nor municipal contractors may discriminate against DBEs and WBEs in the award of municipal contracts or subcontracts.

- B. To the extent required by any agency or instrumentality of the United States, [T]he municipality and every business bidding on a federally assisted municipal contract, under contracts for which a DBE and/or WBE goal is identified, shall take affirmative action to ensure that DBEs and WBEs are given equal opportunity to bid or propose on projects and to be selected for work on those projects, and to assure that they are treated during their employment on projects without regard to the DBE and WBE status of such businesses.

7.60.050 Contract specifications.

- A. To the extent required by any agency or instrumentality of the United States, t[T]he D/WBE officer may identify goals for DBE and WBE participation in federally assisted contracts involving fields of endeavor in which DBEs and WBEs exist and are certified. Such goals may be expressed in terms of a percentage of the total dollar amount of the contract or as an obligation that the contractor provide an equal opportunity to DBEs and WBEs to participate on the project, and shall be included in the contract specifications. Separate goals may be established for DBEs and WBEs.
- B. If a percentage goal, as described in subsection A of this section, is contained in contract specifications, the municipality and bidders on the contract shall use good-faith efforts to solicit bids from and contract with competitive and certified DBEs and WBEs. Bidders on such contracts shall keep records of all such efforts.
- C. Where percentage goals are specified for a project, the bidder shall submit a completed disadvantaged/woman-owned business enterprise statement as part of the proposal or bid. Then the apparent successful bidder shall submit such reports as are required prior to award of contract by the regulations promulgated to carry out this chapter.
- D. Where goals have been identified, a[A] contractor who has proposed to utilize, or to joint venture with, a DBE or WBE shall notify the D/WBE officer in writing prior to removal of such DBE and WBE subcontractor or joint venture partner.
- E. Where goals have been identified, e[E]ach prime contractor will file periodic and other reports regarding DBE and WBE utilization on the contract as required by the regulations promulgated to carry out this chapter.

7.60.060 Certification of disadvantaged and woman-owned businesses.

- A. A business entity may apply to the D/WBE office for certification to participate as a DBE or WBE in the municipality's D/WBE program.

- B. The D/WBE officer shall certify a business as a DBE or WBE if the D/WBE officer, after review and investigation of the company, finds that the company meets the requirements to be certified as specified in the regulations promulgated to carry out this chapter.

7.60.070 Access to records.

Unless otherwise forbidden by law, during normal business hours, every municipal contractor shall allow the D/WBE officer or designee full and complete access to records of the contractor pertaining to its certification as a DBE or WBE or to its utilization of DBEs and WBEs under the municipal contract, for the purpose of determining the contractor's compliance with this chapter.

7.60.080 Investigation of complaints.

- A. Upon receipt by the D/WBE officer of a complaint alleging a violation of this chapter, or when it otherwise appears to the D/WBE officer that a violation of this chapter has occurred, the D/WBE officer shall conduct a thorough and impartial investigation into the alleged violation.
- B. If, upon investigation, the D/WBE officer determines that a contractor has violated this chapter or regulations promulgated under this chapter, or that a certified DBE or WBE no longer merits such certification, the D/WBE officer shall give written notification to the contractor or business, and such contractor or business shall be required to take appropriate remedial action within the time limit specified in the notice, subject to appeal as provided in section 7.60.100. If the contractor or business fails to take appropriate action the D/WBE officer may pursue any remedies available under the contract, this chapter or any regulations promulgated under this chapter.

7.60.090 Recommendation of sanctions.

If the D/WBE officer, upon investigation, determines that a violation of this chapter or regulations promulgated under this chapter has occurred, he or she shall recommend to the mayor that one or more of the following sanctions be imposed:

- A. Where the violator is a municipal officer or employee, that the mayor initiate appropriate disciplinary action against the officer or employee.
- B. If a bid or proposal has been evaluated in violation of this chapter or regulations promulgated under this chapter, that the bid or proposal be disregarded in the awarding of the contract.

- 1 C. Where the violator is a municipal contractor, that the
2 purchasing officer suspend, limit or terminate the contract,
3 that the purchasing officer require the contractor to provide
4 such assurances of future compliance with this chapter or
5 regulations promulgated under this chapter as the D/WBE
6 officer deems necessary to remedy the breach, or that the
7 contractor be disqualified from bidding on municipal contracts
8 for a period not to exceed one year.
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- 10 D. Where the violator is a certified DBE and WBE, in addition to
11 the sanctions described in subsection C of this section, that
12 the certification be terminated.
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15 7.60.100 Appeals.

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- 17 A. *Application for hearing.* Any party against whom action is
18 taken under this chapter or regulations promulgated under this
19 chapter may, within seven days of receiving notice of the
20 mayor's decision, apply to the purchasing officer for a
21 hearing on that decision.
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- 23 B. *Conduct of hearing; decision.* Upon timely application under
24 subsection A of this section, a hearing shall be held before
25 the mayor or mayor's designee pursuant to chapter 3.60. The
26 hearing shall be limited to the issue of whether the party
27 violated this chapter or regulations promulgated under this
28 chapter, as found by the D/WBE officer. The decision of the
29 mayor or mayor's designee on this issue shall be final.
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32 7.60.110 Exemptions.

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34 The requirements of this chapter shall not apply to contracts under
35 any of the following circumstances:

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- 37 A. Where the materials, supplies or services are being secured
38 through another governmental agency, association of
39 governmental agencies or governmental officials.
- 40
- 41 B. Where the materials, supplies or services can be procured from
42 only one source.
- 43
- 44 C. Where an emergency requires the immediate procurement of
45 materials, supplies or services.
- 46
- 47 D. Where the D/WBE officer determines for good cause that a
48 waiver of the requirements of this chapter or regulations
49 promulgated under this chapter is justified and in the best
50 interests of the municipality.
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53 7.60.120 Applicability of chapter to Anchorage Telephone Utility.

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- 55 A. Except as provided in subsection B of this section, this
56 chapter shall apply to the Anchorage Telephone Utility.

B. The contrary provisions of this chapter notwithstanding, the general manager of the Anchorage Telephone Utility or his designee shall assume all powers and responsibilities of the office of equal opportunity, the office of disadvantaged and woman-owned business enterprise assistance and the D/WBE officer with respect to all contracting undertaken on behalf of the municipality for operations of the Anchorage Telephone Utility.

PASSED AND APPROVED by the Anchorage Assembly this 9th day of February 1999.

Fay Von Hemmingen
Chair of the Assembly

ATTEST:

Lynne L. Lusk
Municipal Clerk