

ORDINANCE

By Glidden, Quincy, and Warsame

Amending Title 2 of the Minneapolis Code of Ordinances relating to Administration.

CHAPTER 18A. TARGET MARKET PROGRAM

18A.10. Findings; Purpose. This chapter is enacted as a race-neutral and gender-neutral program to increase competition and to stimulate the local economy by providing economic opportunities in city contracting for small businesses in the city's marketplace. The city council of the City of Minneapolis finds that there is a need to encourage the expansion of small businesses in the city's marketplace to increase the tax base, to provide new employment opportunities, to alleviate or prevent economic blight and deterioration, to stimulate economic development, and to assist in the implementation of the comprehensive plan for the city. The city council further finds that the health, safety and general welfare and the preservation of the quality of life of the residents of the city and the city's marketplace are dependent on the preservation and expansion of small businesses in the city's marketplace. The city council is acting in all respects for the benefit of the citizens of the city and the city's marketplace to serve a public purpose in improving and otherwise promoting their health, welfare and prosperity.

18A.20. Policy. This program is intended to provide a race-neutral and gender-neutral tool to expand opportunities for, and develop the capacity of, small and local businesses so that all segments of the community may participate in city contracts. This program will allow small businesses to compete against other small businesses.

18A.30. Definitions. For the purposes of this chapter, the following words and phrases shall have the meanings set forth in this section, except where the context clearly indicates that a different meaning is intended.

Approved small business enterprise means a small business enterprise that is approved under this chapter.

Chief financial officer means the City's Finance Officer or his/her designee.

Commercially useful function means a function performed by a business that is responsible for the 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. Acting as a conduit to transfer funds to another business does not constitute a commercially useful function unless it is done as a normal business practice of a particular industry.

Contract means an agreement entered into by the city or the park and recreation board: (1) for the purchase of supplies, materials, equipment or the rental thereof, or the construction, alteration, repair or maintenance of real or personal property; or (2) for professional, technical or other personal services. Contract does not include agreements for private development or redevelopment of land or contracts making awards of grants or loans for development purposes.

General industry category means a class of contracts identified by the chief financial officer.

Marketplace means the geographical area of the Minnesota counties of Anoka, Benton, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Stearns, Washington, and Wright.

Principal place of business means the primary physical location at which or from which a business

performs, is maintained, or operates.

Small business enterprise ("SBE") means a business that meets all of the following criteria:

(1) *Size standards.* Does not exceed the United States Small Business Administration ("SBA") size standards under the North American Industry Classification System ("NAICS") code provided in Title 13, Chapter I, Part 121 of the Code of Federal Regulations.

(2) *Principal place of business.* Has its principal place of business located within the marketplace at the time of the request for quotation or response.

(3) *Independently owned and controlled.* Is independently owned and controlled. Whether the business is independently owned and controlled is indicated by the absence of control or influence of a non-SBE. The business must be free of such items as shared personnel, facilities, equipment, financial, or other resources with a non-SBE. Processing multiple SBEs under one business name with shared management, personnel, facilities, equipment, financial, or other resources is prohibited.

(4) *For-profit.* Is a for-profit business.

(5) *Commercially useful function.* Performs a commercially useful function.

(6) *Average annual gross receipts.* Has had average annual gross receipts over the business's previous three fiscal years that does not exceed the amount specified in the general industry category chart, as required under section 18A.50(c), for the general industry category for which the business is providing a quotation or response. If the business has been in business for less than three years, the annual gross receipts will be averaged over the period of time that the business has been in business.

18A.40. Target Market Program Contracting.

(a) Contracts that are not anticipated to exceed one hundred thousand dollars (\$100,000) may be set aside for only approved small business enterprises.

(b) Nothing in this chapter shall limit the city's right to reject all quotations or responses in the sole discretion of the city, including but not limited to, in the event that all quotations or responses received exceed the city's projected costs for a particular contract, or if an emergency necessitates the immediate hiring of a person or a business that is not an approved small business enterprise.

18A.50. Administration.

(a) The chief financial officer shall administer the Target Market Program.

(b) The chief financial officer may:

(1) Create processes, procedures and forms to implement the provisions of this chapter.

(2) Recommend the unbundling of contracts.

(3) Provide informational and training resources to approved small business enterprises.

(c) The chief financial officer shall create a general industry category chart.

(1) The chart must include, at a minimum, the general industry categories identified by the chief financial officer and a maximum dollar amount for each general industry category.

(2) When identifying the general industry categories, the chief financial officer may consider factors such as the types of contracts awarded by the City or awarded by other governmental entities in the Marketplace or in areas near the Marketplace.

(3) On at least an annual basis, the chief financial officer must:

- a. Review the general industry category chart;
- b. Consider whether any revisions will be made to the general industry category chart;
- c. Publish, with the city council, a revised general industry category chart or a statement that no changes will be made to the general industry category chart.

(4) The general industry category chart must be effective on January 1st of each year and must be posted on the City's designated internet site(s) or portal(s) or be available to the public through other readily available means.

18A.60. Procedures for maintenance of list of Small Business Enterprises.

The chief financial officer must establish procedures for:

- (1) The approval of a business as an approved small business enterprise.
- (2) The establishment and maintenance of a list of approved small business enterprises.
- (3) The removal of a business from the list of approved small business enterprises.
- (4) The rights of businesses when approval is denied or the business is removed from the list of approved small business enterprises.

18A.70. Administrative determinations; notice; effect on existing contracts.

(a) *Administrative determination of denial or removal.* If there is reasonable cause to determine that: (1) a business has not complied with the procedures for small business enterprises; or (2) a business does not meet all of the criteria of a small business enterprise, the business may be denied small business enterprise approval or may be removed from the list of approved small business enterprises, whichever is applicable.

(b) *Notification of determination of denial or removal.* The business must be notified, in writing, of the determination of denial or removal, the basis for the determination, and the manner for requesting an administrative hearing review.

(c) *Effect of removal from list on existing contracts.* If a business is removed from the list of approved small business enterprises, removal from the list does not automatically discharge the business from its obligations under any existing contracts with the city.

18A.80. Administrative Hearing Review. A business that has been notified, in writing, that it has been denied small business enterprise approval, or has been removed from the list of approved small business enterprises, may file, within 15 days of the date of the written notification of denial or removal, a request for an administrative hearing review.

Within twenty (20) days after the business has filed a request for an administrative hearing review, the

chief financial officer must initiate an administrative hearing review by requesting an assignment of a hearing officer. Within twenty (20) days of receiving a report of the hearing officer, or at a later date if there is good cause for an extension of time, the chief financial officer must make a final determination on the denial or removal. The final determination must be in writing, must provide the reasons for the final determination, and must be promptly provided to the business.

18A.90. Judicial review. An aggrieved party may obtain judicial review of the final determination by petitioning the Minnesota Court of Appeals for a writ of certiorari pursuant to Minnesota Statutes, Section 606.01.

18A.100. Complaints. The chief financial officer may create a complaint process to allow protests of a business's status as an SBE.

18A.110. City departments. All departments of the city and the park and recreation board shall share in the responsibility for accomplishing the goals and objectives of this chapter. Each city department and the park and recreation board shall designate one (1) employee of the respective department or board to act as a liaison to assist in carrying out the provisions of this chapter.

18A.120. Reporting. The chief financial officer shall report annually to the city council regarding the implementation of this chapter.

18A.130. Severability. If any provision of this chapter is held invalid by any court, the invalidity of such provision shall not affect any of the remaining provisions of this chapter.

18A.140. Effective date and expiration of chapter 18A.

This chapter of the Minneapolis Code of Ordinances, Chapter 18A, shall be effective January 1, 2017. Absent other action by the city council based on an analysis of its continuing need, this chapter shall cease to be effective on January 1, 2023.