



# Memo

To: Honorable Mayor and City Council

From: Saeed Kazemi, PE, City Manager

Date: July 12, 2019

**Re: Minority Business Enterprise Program**

CC: Grant W. Alley, City Attorney  
Terry Cramer, Chief Administrative Attorney  
Christine Tenney, Deputy Director of Budget

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In order to improve opportunities to businesses owned and operated by minorities as designated by the State of Florida through the Department of Management Services Office of Supplier Diversity, the City adopted Ordinance 3126, May 19, 2003.

The ordinance establishes thresholds for Minority Business Enterprises (MBE) in the procurement of and obtaining contracts for goods and services, and sets a goal for MBE participation of 15% of the total amount for construction contracts, which is the highest percentage goal in the area.

The thresholds are as follows:

- 1) Procurement of goods and services between \$3,000 and \$25,000: Award is made to the lowest offer, unless an MBE is within 7% of the lowest non-MBE offer.
- 2) Procurement of goods and services over \$25,000: Award is made to the lowest offer, unless an MBE is within the lower of \$10,000 or 6% of the lowest non-MBE offer.
- 3) Construction Bids: All vendors are required to complete and submit with their bid documents, information contained on the Utilization and Good Faith Effort form, demonstrating that they can or cannot meet or exceed the 15% goal utilizing MBEs.

- 4) Professional Services – also referred to services which fall under the State's Consultant's Competitive Negotiation Act (CCNA): Ratings to determine award of a contract are based on a point system – compliance with the City's MBE policy is one element of this system described as follows:
- a. 13 points: Firm is a certified MBE and is located in Lee County, FL
  - b. 8 points: Firm shows proof that they are in the process of becoming a certified MBE and is located in Lee County, FL
  - c. 3 points: Firm has selected to partner with 2 or more MBEs to perform services as a sub-contractor.

The City's MBE program provides for more opportunities for minority businesses than the State. Below contains an excerpt from the Florida State Statutes pertaining to procurement with Minority Businesses:

**287.093 Minority business enterprises; procurement of personal property and services from funds set aside for such purpose.**—Any county, municipality, community college, or district school board may set aside up to 10 percent or more of the total amount of funds allocated for the procurement of personal property and services for the purpose of entering into contracts with minority business enterprises. Such contracts shall be competitively solicited only among minority business enterprises. The set-aside shall be used to redress present effects of past discriminatory practices and shall be subject to periodic reassessment to account for changing needs and circumstances.

**History.**—s. 109, ch. 84-336; s. 26, ch. 94-322; s. 25, ch. 2002-207.

Further, the City of Fort Myers is the only city/county in the area that has this program.

If you have any questions regarding this information, please contact me.



Saeed Kazemi, PE, City Manager

SK: CT: sb  
Attachment

**ORDINANCE NO. 3126**

AN ORDINANCE  
To Be Entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA; AMENDING THE CITY CODE, CHAPTER 8, LICENSES AND BUSINESS REGULATIONS, ARTICLE IV. DISADVANTAGED BUSINESS ENTERPRISE PROGRAM BY CREATING MINORITY BUSINESS ENTERPRISE PROGRAM; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS:** The City of Fort Myers Disadvantaged Business Enterprise Program is being abolished and the Minority Business Enterprise Program is being created; and

**WHEREAS:** The City of Fort Myers seeks to improve opportunities to businesses owned and operated by minorities as designated by the State of Florida; and

**WHEREAS:** The City of Fort Myers seeks to add benefits to the program for mobilization dollars; and

**WHEREAS:** The City of Fort Myers seeks to establish additional thresholds for Minority Business Enterprises in the procurement of goods and services that will aid Minority Business Enterprises in obtaining contracts for procurement of those goods and services

**BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA,** that:

**SECTION 1.** The City Code, Chapter 8, Licenses and Business Regulations, is amended by deleting Article IV. Disadvantaged Business Enterprise Program and creating Article IV Minority Business Enterprise Program to read as follows:

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ARTICLE IV. MINORITY BUSINESS ENTERPRISE  
PROGRAM

**Sec. 8-196. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Business location* shall mean a permanent office or other site where a local business conducts, engages in or carries on all or a portion of its business; has personnel, equipment and materials within the boundaries of the county sufficient to constitute a present ability to perform the service and/or provide the goods. Business stationery and business cards must make a specific reference to a county address. A post office box or a location at a postal service center shall not constitute a business location.

*Construction* means the erection, rehabilitation, alteration, conversion, extension, demolition or repair of improvements to real property, including facilities providing utility service and includes the supervision, inspection and other on-site functions incidental to construction.

*Contract* means a binding agreement by which the city is committed to expend or does expend its funds or other resources for or in connection with any of the following purposes:

- (1) Construction of any public improvements;
- (2) Purchase of any goods or services;

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(3) Procurement of professional services.

*Contractor* means a separate and distinguishable business entity participating or seeking to participate in the performance of a contract.

*County business* shall mean any person, firm, partnership, company or corporation which is duly licensed and authorized to engage in the particular business for which a proposal is submitted, and whose principle place of business, in the sole opinion of the city, is located within the boundaries of the county.

*Goods* mean any tangible personal property other than services or real property.

*Minority business enterprise* means a business certified by the State of Florida Office of Supplier Diversity and a registered city vendor, where primary place of business is within the county, as demonstrated by an active county occupational license and/or city occupational license, as required.

*Professional services* means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying or mapping as defined by Florida Statutes or those performed by any architect, professional engineer, landscape architect, or registered surveyor or mapper in connection with his or her professional employment or practice.

*Purchasing manager* shall serve as the principal public purchasing official for the city and shall be responsible for the procurement of supplies, services and

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construction in accordance with the city Purchasing Policy and Procedures Manual.

*Services* mean the furnishing primarily of labor, time and/or effort, including construction contracts, if licensed as required.

**Sec. 8-197. Program created.**

There is created a minority business enterprise program to assist and protect the interests of minority businesses in order to promote and encourage full and open competition in the city, and to enhance opportunities for individuals to successfully compete in a free market as independent business owners in the city. The program shall apply to all contracts and shall include the taking of steps to increase the participation of minority business enterprises.

**Sec. 8-198. Administration.**

(a) The purchasing division shall administer this chapter by utilizing those businesses within the county on the State of Florida Office of Diversity list of Certified Minority Businesses for participation in city contracts.

(b) The purchasing division shall provide appropriate assistance and direction to minority business enterprises so as to maximize their participation in contracts awarded by the city.

(c) Minority business enterprise utilization.

(1) This sub-section is applicable to procurement of construction contracts (City Code, Sec. 8-199) and professional services (City Code, Sec 8-201); minority business enterprise utilization

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is not applicable for procurement of goods and services (City Code, Sec 8-200).

(2) Bidders shall meet or exceed or demonstrate that they could not meet, despite their good faith efforts, the contract goals set by the city. Certain minority business enterprise participation information shall be submitted with the bid proposals as required. Award of the bid shall be conditioned upon submission of the minority business enterprise participation information with bid proposals and upon satisfaction of the contract goals or, if the goals are not met, upon demonstration that sufficient good faith efforts were made to meet the goals.

(3) Bidders are encouraged to perform the following:

- a. Attend pre-bid conferences to address minority business enterprise compliance questions.
- b. Thoroughly review the minority business enterprise program regulations and accompanying forms early in the bidding preparation process to adequately comply and have questions timely addressed.
- c. Contact the purchasing division regarding questions.

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- d. Comply with the forms to be submitted with bids to avoid non-responsiveness ruling.
- e. Complete all forms fully and accurately.

(4) The city shall provide a list of qualified minority business enterprises that are state certified within the county with distribution of the bid package on bid issuance date. If additional minority business enterprise names are added during the bid solicitation term, an addendum may be issued. However, if an addendum is not issued, the originally distributed minority business enterprise list shall be utilized. Bidders are required to include documentation and utilization forms as part of their submittal package as follows:

- a. General contractor or professional information.
- b. Schedule of minority business enterprise participation.
- c. Failure to submit completed utilization forms may result in a general contractor's bid being deemed non-responsive and the bid being rejected. If no minority business enterprise participation is proposed, it should be so stated on the forms as required.

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d. The city reserves the right to request copies of proposals submitted by a minority business enterprise to the contractor or professional. Copies of said proposals shall be sent by facsimile or hand delivered to the purchasing division within twenty-four (24) hours after the request is made. If the proposals are not delivered within the twenty-four (24) hour period, the contractor or professional may be deemed non-responsive.

(5) Good faith effort documentation. Sufficient information to demonstrate that the contractor or professional made a good faith effort to meet the goal should be submitted with the bid. Contractors or professionals must use the good faith effort format and forms provided by the city in soliciting minority business enterprise participation and submit these forms, completed in full with their submittal.

(6) In evaluating the good faith effort of a contractor or professional, the city requires the following:

a. Documented notice from the contractor or professional by facsimile transmittal, certified mail, return receipt requested, or hand delivered, with receipt, to certified minority business enterprise participants, that perform the type of work, which the

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contractor or professional intends to subcontract. The contractor or professional shall indicate in the notice to minority business enterprise the following:

1. The specific work the contractor or professional intends to subcontract, including contract plans and specifications related to the specific sub-contract work requested;
  2. The contractor or professional shall include along with good faith effort forms a summation of all minority business enterprise quotations received and an explanation of why any minority business enterprise participant was not selected. If the minority business enterprise participant was not selected, the name of the sub-contractor and price submitted for that portion of the work shall be listed.
- b. The city will evaluate the good faith efforts of a contractor or professional by considering the following:
1. Whether a minority business enterprise is qualified to perform the portions of work selected by the contractor or professional.

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2. The ability of a contractor or professional to perform the work with its own work force will not excuse a contractor or professional from meeting the minority business enterprise goals.
3. Whether the minority business enterprise goals were met by other bidders.

(c) Failure to satisfy any of the above-referenced documentation requirements may result in bid submittals being deemed non-responsive. All documentation must be complete and included in the bid submittal. Good faith efforts to meet the minority business enterprise goals shall be documented. The appropriate form shall reflect whether a good faith effort was made or assistance was offered but not accepted by the minority business enterprise firm.

(d) The contractor or professional shall provide an annual reporting system to document the percentage of contracts that have been awarded to minority business enterprises.

**Sec. 8-199. Requirements of construction contracts.**

(a) *Goals generally.* The following requirements are adopted by the city for the purpose of increasing the level of minority business enterprise participation in city contracts. As a goal, the city should utilize minority business enterprises for fifteen (15) percent of the total

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dollars when contracting for construction contracts through prime contracts or sub-contracts

(b) Nothing shall prohibit a higher percentage participation by minority business enterprises whereby minority business enterprises possess the qualifications to perform one hundred (100) percent of the contract.

(c) In the event a minority business enterprise has been selected, but is not utilized on the awarded job, the general contractor is obligated to offer this trade area to another certified and licensed minority business enterprise before seeking a non-minority business enterprise subcontractor to perform the contracted work. If no other minority business enterprise is available or does not enter into a contract, the general contractor may use a non-minority business enterprise. A non-minority business enterprise contract shall not be executed between the general contractor and the non-minority business enterprise sub-contractor without full knowledge and approval of contracts administration division and the purchasing division.

(d) The contracts administrator shall be responsible for monitoring the execution of the contract between the general contractor and all minority business enterprise subcontractors. Presentation of an approved, executed minority business enterprise contract is a prerequisite to execution of a contract between the city and the general contractor, within ten (10) days after award of contract.

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(e) Mobilization: The general contractor shall provide the minority business enterprise subcontractor with ten (10) percent of the minority business enterprise contract amount as funds for mobilization in advance of the commencement of construction. The total minority business enterprise mobilization funds will be indicated as a separate line item on the schedule of values. Contractors are required to pay minority business enterprise contractors within thirty (30) days of receipt of payment from the city.

(f) All bid utilization forms must include a break down between labor and material.

**Sec. 8-200. Requirements for goods and services.**

(a) The procurement of goods and services under this section is for minority business enterprises providing one hundred (100) percent of the goods and services.

(b) Procurement of goods and services. The purchasing division shall maintain a list of services provided by minority business enterprises located in the county that are on the State of Florida Office of Diversity list of Certified Minority Businesses for participation in city contracts that will be used when the city is purchasing goods and services under twenty-five thousand dollars (\$25,000.00) but more than the established small dollar threshold for the city. Those measures shall include a provision that every effort will be made by purchasing agents to contact all minority

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business enterprises within a particular commodity area for purchases under twenty-five thousand dollars (\$25,000.00) but more than the established small dollar threshold for the city. Awards of purchases under twenty-five thousand dollars (\$25,000.00) but more than the established small dollar threshold for the city will be made to the lowest responsible, responsive bidder unless a minority business enterprise is within seven (7) percent of the lowest non-minority business enterprise bid, then the award shall be made to the minority business enterprise submitting the lowest bid.

(c) Participation by minority business enterprise for purchases over twenty-five thousand dollars (\$25,000.00). The minority business enterprise participation measures provide that every effort will be made by purchasing agents to contact all minority business enterprises within a particular commodity area for purchases over twenty-five thousand dollars (\$25,000.00). Awards of purchases over twenty-five thousand dollars (\$25,000.00) will be made to the lowest responsible, responsive bidder unless a minority business enterprise is within six (6) percent or up to ten thousand dollars (\$10,000.00), whichever is less, of the lowest non-minority business enterprise bid, then the award shall be made to the minority business enterprise submitting the lowest bid.

**Sec. 8-201. Requirements for professional services**

(a) The city will provide contracting opportunities for professional services pursuant to

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Florida Statutes as amended, known as the "Consultant's Competitive Negotiation Act"; which requires that one element of consideration is minority business enterprise participation.

(b) The contracts administration division and the purchasing division shall make every effort to increase minority business enterprise participation within a particular profession during a solicitation for professional services.

(c) A point system shall be utilized to determine the recipient of the contract award. Businesses submitting proposals to provide professional services to the city will be eligible to receive points, not to exceed twelve (12) percent of the total number of possible points awarded, for minority business enterprise participation.

(d) It will be the responsibility of the firm submitting a proposal to furnish all the necessary information to the city in order to receive points for minority business enterprise participation.

**Sec. 8-202. Sanctions.**

Every contract awarded under this article shall contain language indicating that if any document submitted to the city by a contractor, subcontractor, bidder or individual to be certified and licensed as a minority business enterprise for the purpose of participating in any contract contains false, misleading or fraudulent information, or any person knowingly engaged in fraud, misrepresentation or in any attempt, direct or indirect, to evade the provisions of this article

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by providing false, misleading or fraudulent information, the purchasing manager shall debar for cause following the debarment or suspension procedures provided in the Purchasing Policies and Procedures Manual. Any contractor that does not use the minority business enterprise specified in the bid proposal shall be sanctioned. The sanctions on the contractor, subcontractor, bidder or individual may include any of the following:

- (1) Withholding of payment.
- (2) Termination, suspension or cancellation of the contract in whole or in part.
- (3) Denial to participate in any contracts awarded by the city for a period of not more than three (3) years.
- (4) If the purchasing manager; purchasing/minority business enterprise dispute committee and city council determines after written notice that a contractor and/or minority business enterprise has made misrepresentations regarding the utilization of minority business enterprises, or has colluded with another making such misrepresentations or material omissions; the contractor or minority business enterprise, as the case may be, shall be recommended to be disqualified from contracting or subcontracting on future contracts for a period of not more than

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three (3) years. Such persons or firms determined to have violated any sections of this article shall be subject to debarment for not more than three (3) years under the cities purchasing procedures. The city shall maintain a list of such disqualified entities, which shall be available for public inspection. In the event that a contractor submitting a bid is determined not to have been involved in any misrepresentation of status of a disqualified subcontractor included in the bid, the city may allow the contractor to discharge the disqualified subcontractor and identify and engage a qualified subcontractor as its replacement for inclusion in the bid. The consequences provided herein shall be in addition to any other criminal or civil liability to which such entities may be subject. The appeal process shall follow the Purchasing Policies and Procedures Manual.

**Secs. 8-203--8-215. Reserved.**

**SECTION 2.** SEVERABILITY. If any section, subsection, sentence, clause, phrase of this ordinance, or the particular application thereof shall be held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses, or phrases under application shall not be affected thereby.

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**SECTION 3.** This ordinance shall become effective immediately upon adoption.

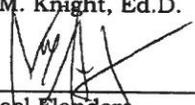
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**PASSED IN PUBLIC SESSION** of the City Council of the City of Fort Myers, Florida, this 19<sup>th</sup> day of May, A.D., 2003.

Aye   
Tammara Hall

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Veronica S. Shoemaker

Aye   
Ann M. Knight, Ed.D.

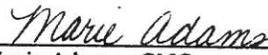
Aye   
Michael Flanders

Aye   
Randall P. Henderson, Jr.  
Council Members

**APPROVED** this 19<sup>th</sup> day of May, A.D., 2003, at 10:01 o'clock p.m.

  
Jim Humphrey  
Mayor

**FILED** in the Office of the City Clerk this 19<sup>th</sup> day of May, A.D., 2003.

  
Marie Adams, CMC  
City Clerk