

ORD 3025-2016 Code Attachment

Section 1. That existing Chapters 3901, 3903, 3907, 3909, 3911, 3913, 3920, 3921, 3922, 3923, 3924, 3925, 3926, 3927, 3928, 3930, 3931, 3932, 3933, 3934, 3935, 3936, 3937, 3938, 3951, 3953, 3955 and 3957 are hereby repealed in their entirety.

Section 2. That Title 39 of the Columbus City Codes is hereby supplemented by the enactment of new Chapter 3901, entitled "Definitions," and reading as follows:

Chapter 3901 - DEFINITIONS

3901.01 Definition of terms.

For the purpose of Title 39, the following words, phrases and terms shall be defined as set forth below:

- (A) "Commercially useful function" shall mean the performance of real and actual services in the discharge of any contractual endeavor. Services are real and actual if such services would be provided in the normal course of conducting business or trade activities. The contractor must perform a distinct element of work which the business has the skill and expertise as well as the responsibility of actually performing, managing and supervising.
- (B) "Construction" shall mean the erection, rehabilitation, alteration, conversion, extension, demolition or repair of improvements to real property, including facilities providing utility service. The term also includes the supervision, inspection, and other on-site functions incidental to the actual construction.
- (C) "Contract" shall mean a binding agreement between the city of Columbus and some other party(s) whereby the city expends its funds to:
 - (1) Employ such party(s) for the construction of any public improvements; or
 - (2) Purchase any personal property; or
 - (3) Purchase services; or
 - (4) Lease any personal property from another party.
- (D) "Contract" does not include binding agreements between the city and some other party(s) whereby:
 - (1) Any real property is leased to or from the city; or
 - (2) Any personal property is leased by the city to another; or
 - (3) Real property is purchased by or from the city; or
 - (4) The city agrees to provide services to some other party(s); or
 - (5) The agreement to provide services to the city will be totally fulfilled by a business entity with employees less than four (4) individuals; or
 - (6) The city contracts for services to be provided by another governmental agency;
 - (7) The city establishes a contract with a not-for-profit as defined in Chapter 329;
 - (8) The city establishes a contract for commodities with fixed prices in accordance with Chapter 329.

- (E) "Contracting agency" shall mean any agency authorized to act as an agent for the city to enter into a contract on behalf of the city.
- (F) "Contractor" shall have the same meaning as set forth in Chapter 329.
- (G) "Controlled" for purposes of determining whether a business is minority-owned or women-owned means the owner(s) shall:
 - (1) Possess and exercise the legal authority and power to manage business assets, goodwill and daily operations of the business; and
 - (2) Actively and continuously exercise such managerial authority and power in determining the policies and directing the operations of the business.
- (H) "Good Faith Efforts (or GFEs)" shall mean voluntary steps taken to demonstrate the bidder/proposer's willingness to fulfill the city's diversity and inclusion opportunity objective when bidding on a contract.
- (I) "Metropolitan Service Area" shall mean the counties of Franklin, Delaware, Fairfield, Fayette, Licking, Madison, Pickaway and Union.
- (J) "Minority-Owned Business Enterprise (MBE)" shall mean a business which is an independent and continuing operation for profit, performing a commercially useful function, and is owned and controlled by one or more eligible minority group members as defined by this code.
- (K) "Minority Group Members" shall mean African Americans, Asian Americans, Hispanic Americans and Native Americans, all as defined by the US EEOC, legally residing in, or that are citizens of the United States or its territories.
- (L) "ODI" means the Office of Diversity and Inclusion.
- (M) "Owned" shall mean:
 - (1) At least fifty-one percent (51%) of the business is owned and controlled by individuals born or naturalized of the United States;
 - (2) The ownership shall be real and continuing, and shall go beyond the mere indicia of ownership of the business reflected in the ownership document; and
 - (3) The owner(s) shall enjoy the customary incidence of ownership and shall share in the risks and profits commensurate with their ownership interest, as demonstrated by an examination of the substance, rather than the form of ownership arrangements.
- (N) "Veteran" shall mean a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.
- (O) "Veteran-Owned Business Enterprise (VBE)" shall mean a business which is an independent and continuing operation for profit, performing a commercially useful function, and is owned and controlled by one or more veterans.
- (P) "Women-Owned Business Enterprise (WBE)" shall mean a business which is an independent and continuing operation for profit, performing a commercially useful function, and is owned and controlled by one or more women that are U.S. citizens.

Section 3. That Title 39 of the Columbus City Codes is hereby supplemented by the enactment of new Chapter 3902, entitled “Organization,” and reading as follows:

Chapter 3902 – ORGANIZATION

3902.01 Office of Diversity and Inclusion ("ODI").

There is hereby created the Office of Diversity and Inclusion (“ODI”). ODI is dedicated to creating and implementing programs, policies and procedures that will deliver and capture value through supplier and workforce diversity. Additionally, the office will assist underserved, under-utilized and economically disadvantaged businesses with gaining greater access to procurement opportunities and resources to build viable and sustainable businesses.

ODI shall have the following duties, responsibilities and authority:

- (A) Administration and enforcement of compliance with this Code;
- (B) Establishment of written policy and procedures to execute this Code;
- (C) Development and refinement of workforce policy and procedures;
- (D) Development, refinement and coordination of supplier diversity and procurement activities such as outreach, solicitation for small contracts, bid specification review and prompt payment/contract dispute resolution procedures;
- (E) Development, refinement and coordination of assistance programs such as financing, bonding/insurance and technical assistance;
- (F) Development and coordination of mentor/protégé and on-the-job training demonstration projects;
- (G) Development and refinement of M/WBE certification procedures (including such activities as classification and graduation) and coordination of such procedures with the Purchasing vendor registration system;
- (H) Consideration of price preference and sheltered market solicitation, based upon criteria set forth in the applicable sections of this Code;
- (I) Investigation of alleged violations of this Code;
- (J) Analysis and review of programs on an annual, bi-annual or quarterly basis, and in accordance with the review and reporting requirements contained in this code;
- (K) Analysis, review and recommendation for adjustments to the city's annual participation goals;
- (L) Establish and review of all applicable specific contract participation goals;
- (M) Establishment of committees and advisors to further the goals of Title 39;
- (N) Recommendations to the mayor and city council regarding additional efforts necessary to ensure the effective operation of this office pursuant to periodic review and reporting requirements contained in this code.

ODI may hire staff or contract with outside firms or organizations to perform these and other duties as necessary to expand the role of ODI.

3902.02 Duties of the director.

The director of ODI shall be appointed by the mayor and shall serve at the pleasure of the mayor at a salary fixed by ordinance of council. The director shall be responsible for the administration and enforcement of this Title, the policies, rules and regulations issued hereunder, and for other duties pertinent thereto, including:

- (A) Investigating complaints, making inspections, and observing employment conditions related to City contracts;
- (B) Reviewing all submittals required by Title 39 and certifying all contractors who are in compliance with its requirements;
- (C) Certifying qualified business enterprises and monitoring their participation on city contracts to ensure compliance with Title 39;
- (D) Reviewing ordinances authorizing the entry into contracts and certifying the proposed contractor's compliance prior to the ordinance being submitted to council;
- (E) Monitoring the workforce of contractors by desk audits and on-site inspections, as needed, to determine if any contractor is in violation of any applicable law related to contract compliance;
- (F) Receiving and reviewing all rules and regulations issued by the State of Ohio or the federal government relevant to contract compliance, and assuring that the City is conforming to those rules or regulations.

3902.03 Advisory Council.

There is hereby created and established the Mayor's Office of Diversity and Inclusion Advisory Council. This advisory council shall provide guidance, review and recommendations for modification of ODI programs. The ODI Advisory Council may be comprised of up to seven members and may be made up of the following:

- (A) The ODI director or its designee shall be a non-voting member;
- (B) The procurement manager, or designee, within the department of finance;
- (C) Up to three appointed minority-owned and/or women-owned business representatives; or
- (D) Up to three appointed community representatives with an understanding of supplier and workforce diversity.
- (E) A city council member, appointed by city council, or a representative designated by that appointed city council member, to serve as a non-voting ex-officio member of this Advisory Council.

The Advisory Council shall elect one of its members (with the exception of the ODI director) to be the chairperson. All members, unless otherwise provided, will be appointed by the mayor with the concurrence of city council.

None of the minority or women members may vote on or otherwise participate in advisory matters that directly or indirectly involve their individual firms, with the exception that they may participate in and vote on policy matters that affect the broad class of M/WBEs.

3902.04 Workforce diversity.

The City of Columbus believes that a diverse workforce drives economic growth, fosters greater creativity and creates a more dynamic and innovative workforce. Additionally, the ethnic and gender workforce composition of the City of Columbus should reflect the diversity of the residents that make up

the population of the city of Columbus. As the City attracts, retains, and develops talent, the City will focus on new and innovative ways to help ensure that diversity is a part of that process and that the diversity of the City workforce reflects that of the city population.

- (A) The ODI director, in conjunction with City departments and management, may develop guidelines, initiatives and programs to help advance the objectives of this section.
- (B) Results will be reported to the mayor on a bi-annual basis.

3902.05 Equal employment policy.

It shall be the policy of the City of Columbus to provide equal opportunity without regard to race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, familial status or military status in hiring, tenure, training, terms, conditions or privileges of employment.

Section 4. That Title 39 of the Columbus City Codes is hereby supplemented by the enactment of new Chapter 3903, entitled "Assistance Activities," and reading as follows:

Chapter 3903 – ASSISTANCE ACTIVITIES

3903.01 Outreach.

ODI may provide for aggressive outreach efforts to solicit and encourage M/WBE to bid on city contracts. Specific "Outreach" efforts may be developed and coordinated by the ODI, in conjunction with the appropriate departments and divisions, and may include, but not be limited to, the following:

- (A) The mailing, electronically or through the US Postal Service, of opportunity alerts of upcoming procurement and contract bids by the city through utilization of the vendor registration system and the certification listing;
- (B) Advertisement of upcoming city contracts and procurement on government television; the city bulletin; targeted newspapers, magazines, social media or publications;
- (C) Seminars to familiarize M/WBEs with city procurement and bidding procedures and with upcoming business opportunities;
- (D) The establishment of plan rooms, as necessary, at several locations around the city to provide bid plans and specifications;
- (E) Active and sustained encouragement of M/WBEs to apply for certification and registration.
- (F) Develop partnerships with small business organizations and other supplier diversity organizations to enhance the effectiveness of outreach efforts.

3903.02 Solicitation for small contracts.

ODI may provide for enhanced solicitation efforts to encourage M/WBEs to bid for small contracts. A "Solicitation for Small Contracts" process may be developed and coordinated by the ODI to provide for the following:

- (A) ODI shall be responsible for providing an on-line listing of certified businesses. This listing is to be segmented or sorted into specific trades or lines of business (for each type of goods, services and construction purchased or contracted by the city) in accordance with this code.

- (B) The city shall provide for enhanced solicitation efforts to encourage M/WBES to bid for contracts under \$20,000. A "Solicitation for Contracts Under \$20,000" process may be developed and coordinated by ODI and the procurement office in the department of finance and management.

3903.03 Bid specifications review.

City agencies may be encouraged by ODI to eliminate any unnecessarily restrictive bid specifications that may adversely affect M/WBE participation. A "Bid Specification Review" process may be developed and coordinated by ODI.

3903.04 Prompt payment/contract dispute resolution.

The ODI director may, in conjunction with the chief procurement officer, streamline payment procedures and develop contract dispute resolution procedures in order to enhance the ability of certified M/WBE businesses to have the necessary liquidity to maintain operations, pursuant to ORC 4113.61.

3903.05 Financing assistance.

A lack of access to capital, credit and other financial tools limit M/WBE's ability to compete in the open marketplace. Therefore, the city may provide for financing assistance to M/WBE firms. A "Financing Assistance" program shall be developed and coordinated by the ODI and provide for the following:

- (A) A clearinghouse to inform M/WBEs of existing forms of financing
- (B) Examination and implementation of alternative and innovative programs to assist M/WBEs in obtaining financing.
- (C) Examination of the feasibility of developing a linked deposit program, in conjunction with local area banks, which may require the banks that the city deposits funds with to establish comprehensive financing programs for M/WBEs firms. These financing programs may include, but not be limited to, special lending programs for equipment purchase and leasing, contract financing, lines of credit, inventory financing, and receivables financing.

3903.06 Bonding/insurance assistance.

A "Bonding/Insurance Assistance" program may be developed and coordinated by the ODI in conjunction with the contracting department, and may provide assistance to firms including, but not limited to, the following:

- (A) Waiver of certain bonds for selected contracts to the extent permitted by federal, state and local law. Criteria for this bonding waiver shall be developed by the ODI for contracts under \$50,000 and shall include an assessment of the associated risks, liability and exposure to the city;
- (B) Segment selected contracts into smaller parts and permit contractors/vendors to roll over their bonding limits for each phase or part of the contract;
- (C) The ODI shall examine the feasibility of permitting contractors/vendors to specify and document their expenses for bonding and insurance and deduct those expenses from their bids and provide for the city to pay those expenses directly as and to the extent permitted by federal, state and local law;
- (D) The ODI shall examine the feasibility of establishing an independent bonding and insurance program that utilizes M/WBEs owned A-rated sureties and insurance companies or brokers to provide bonding and insurance to M/WBEs on public and private sector contracts;

- (E) The ODI shall examine the feasibility of using public funds to leverage private resources to establish a bonding pool for the issuance of bonds to M/WBEs on city contracts as and to the extent permitted by federal, state and local law.
- (F) The ODI may partner with other organizations to provide resources to assist M/WBEs with bonding assistance.

3903.07 Business Opportunity Assessment Program.

As an enhancement to the certification process, ODI may offer a business opportunity assessment for businesses to determine what financial, technical or equity assistance or support services may be needed by them to enhance their ability to build capacity and better compete for business opportunities with the City of Columbus. A "Business Opportunity Assessment Program" shall be established and administered by the ODI. ODI will either provide or refer support service through the Business Opportunity Assessment Program as a part of the process of certifying with the City of Columbus as an M/WBE.

3903.08 Mentor/Protégé.

The parameters of a Mentor/Protégé program may be established by the ODI to actively encourage majority construction firms to mentor M/WBEs construction firms in an effort to grow capacity and increase sustainability.

3903.09 Joint ventures.

The ODI, in conjunction with the contracting department/agency, may encourage, where economically feasible, the establishment of "joint ventures" to ensure prime contracting opportunities for certified M/WBEs on eligible projects or contracts. A joint venture shall mean an association of two (2) or more business enterprises to constitute a single business enterprise for which purpose they combine their property, capital, efforts, skills and knowledge. The ODI may adopt criteria for evaluating M/WBEs participation under joint venture agreements that includes, but is not limited to:

- (A) The initial capital investment of each venture partner;
- (B) The proportional allocation of profits and losses to each venture partner;
- (C) The sharing of the right to control the ownership and management of the joint venture;
- (D) Actual participation of the venture partners in the performance of the contract;
- (E) The method of and responsibility for accounting;
- (F) The methods by which disputes are resolved; and
- (G) Other pertinent factors of the joint venture.

3903.10 Sheltered market bids.

The ODI director may, in conjunction with the chief procurement officer, designate certain procurements as sheltered market procurement opportunities and establish criteria to determine whether to utilize the sheltered market solicitation.

Section 5. That Title 39 of the Columbus City Codes is hereby supplemented by the enactment of new Chapter 3904, entitled “Good Faith Efforts,” and reading as follows:

Chapter 3904 – GOOD FAITH EFFORTS

3904.01 Good Faith Efforts.

Good Faith Efforts are voluntary steps taken to demonstrate the bidder/proposer’s willingness to fulfill the city’s diversity and inclusion opportunity objective when bidding on a contract. In making a determination that the bidder has made a good faith effort, ODI may consider specific documentation concerning the steps taken to obtain M/WBE participation, in accordance with the following factors:

- (A) Attended any pre-bid or pre-proposal meetings scheduled by the City department;
- (B) Followed up with M/WBEs that attended the pre-bid or pre-proposal meetings to discuss subcontracting and supplier opportunities and contacted M/WBEs listed in the City’s certification directory;
- (C) Conducted outreach with M/WBE focused organizations and associations far in advance of solicitation due date (no less than 10 business days);
- (D) Identified and designated portions of the work to be performed by M/WBEs to increase the likelihood of participation (including where appropriate breaking down the contract into reasonably sized subcontracts to ensure participation);
- (E) Advertising subcontracting opportunities in news media focused towards minority and women-owned business persons far in advance of solicitation due date;
- (F) Provided M/WBEs with a point of contact that was knowledgeable about the project and possessed decision-making authority to answer questions from interested M/WBEs;
- (G) Provided a reasonable number of M/WBEs with timely written notices via email, mail, and/or fax and/or with documented contact regarding the subcontracting/supplier opportunities. A “reasonable number” shall be based on the number of M/WBEs available in the ODI certification directory;
- (H) Solicited the M/WBEs within a reasonable amount of time (no less than seven business days) before bid submission, as well as followed up with the M/WBEs solicited to determine if they were interested in submitting a bid or proposal or participating on a team;
- (I) Provided interested M/WBEs certified to perform the solicited work with prompt access to the plans, specifications, scope of work and requirements of the contract;
- (J) Negotiated in good faith with interested M/WBEs;
- (K) Entered into a formal contract, or signing enforceable letters of intent with M/WBEs;
- (L) Provided an explanation to any M/WBEs whose bid or price quotation is rejected, unless another M/WBEs is accepted for the same work;
- (M) Made efforts to assist interested M/WBEs in obtaining bonding, lines of credit, insurance required for the contract, and documenting M/WBE denied by bona fide surety agents;
- (N) Ensured that the conditions and requirements for subcontracts are commensurate with industry standards and would not cause an economic hardship on M/WBEs, such as unnecessary insurance or coupling bid bonds with retainage;

- (O) Incorporated efforts not attempted earlier or on previous bids that appear more likely to lead to attaining participation. Past performance on similar contracts with similar scopes will also be taken in consideration when determining Good Faith Efforts;
- (P) The ODI Director may encourage a bidder to make additional efforts to utilize M/WBE subcontractors prior to contract award. These efforts could include but are not limited to contacting the ODI office for advice and guidance regarding “Good Faith Efforts.”

Section 6. That Title 39 of the Columbus City Codes is hereby supplemented by the enactment of new Chapter 3905, entitled “Contractor Registration, Certification and Reporting,” and reading as follows:

Chapter 3905 – CONTRACTOR REGISTRATION, CERTIFICATION AND REPORTING

3905.01 Contractor registration submissions.

- (A) In order to contract with the City, all vendors/contractors must be registered through the City’s vendor portal managed by the department of finance and management, including obtaining a contract compliance registration number from ODI. Vendors/contractors may be required to electronically submit the following to ODI:
 - (1) Any forms and related materials required by ODI to obtain a contract compliance registration number.
 - (2) Contractors that have a contract with the City that is estimated to exceed sixty (60) days to complete shall be required to submit a monthly report on the contract. The report shall be in a form prescribed by or acceptable to the ODI director, and shall be submitted on or before the tenth (10th) day of each month until the contract is completed.
- (B) All contractors who are party to a contract with the City, and any subcontractors listed in the bid, must hold valid contract compliance registration numbers. Contract compliance registration numbers issued by ODI will be valid and acceptable in bid proposals for two years from the date of issuance.

3905.02 Certification.

ODI shall be responsible for the certification and verification of M/WBE businesses. To be eligible for certification, each applicant must meet the definition of Minority-Owned Business or Women-Owned business as defined herein.

- (A) If requested by ODI, the applicant must provide any and all materials and information necessary to demonstrate ownership and active participation in the control, operation, and management of the business.
- (B) ODI will review and evaluate any application and support documentation, and may reject the application based on one or more of the following: the applicant does not meet the requirements of the definition of a certified business; the application is not complete; the application contains false information; or the applicant has not provided materials or information requested by the ODI director or designee.
- (C) The director will make a certification determination within 30 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 denial.
- (D) Firms certified by other government agencies will be required to be certified under this chapter regardless of other certification. However, the ODI director may provide rules,

regulations and other provisions for an expedited or summary process for certification by the city if the business has a current certification from agencies/organizations specifically identified by the ODI director.

In addition, the ODI shall provide for the following:

- (A) A comprehensive certification system that is regularly updated and an on-line listing of certified businesses segmented into specific trades or lines of business (for each type of goods, services and construction purchased or contracted by the city).
- (B) Recertification of those businesses at least every three years.
- (C) Random on-site visits to verify ownership and control and compliance with certification requirements.
- (D) Decertification of any previously certified M/WBE upon a final determination that the firm is no longer satisfying the certification requirements. Any decertified M/WBE may appeal the determination of the ODI in accordance with the appeals procedure provided in this code.
- (E) Graduation of certified firms that exceeded the revenue or size standards.

3905.03 Certification classification.

The ODI will also be responsible for classifying M/WBE at least every three years relative to the developmental stages of those firms. The M/WBE Classification" process shall be developed and coordinated by the ODI to provide for the assessment of the general technical and business management assistance needs of each certified business.

3905.04 Graduation.

Certified M/WBEs shall be graduated out of the program based upon the three year average of gross annual revenue as determined by the ODI director.

3905.05 Contractor reports.

- (A) All contractors with a contract estimated to exceed sixty (60) days to complete shall be required to submit to the ODI director a monthly report on the contract. The report shall be in a form prescribed by or acceptable to the ODI director, and shall be submitted on or before the tenth (10th) day of each month until the contract is completed.
- (B) Failure to submit any required report may result in the withholding of payments due on the contract.

Section 7. That Title 39 of the Columbus City Codes is hereby supplemented by the enactment of new Chapter 3906, entitled "Department/Contracting Agency Responsibility," and reading as follows:

Chapter 3906 – DEPARTMENT/CONTRACTING AGENCY RESPONSIBILITY

3906.01 Notice required in advertisement for bid.

Where negotiations occur for contracts, whether written or verbal, the contracting agency shall be responsible for requiring the submission of the necessary certification numbers. Where invitations for bids are advertised, the following notice shall be included in the advertisement: Each responsive bidder shall submit with its bid, a valid contract compliance certification number.

3906.02 Equal opportunity clause.

- (A) The contracting agencies of the City are directed to include the following equal opportunity clause in all contracts. The inclusion of this clause may be waived by the ODI director where it is appropriate due to a similar clause requirement by state or federal law. The requirements contained in this clause will be considered by the ODI director in determining whether a contractor is in compliance with this Title.
- (B) Equal Opportunity Clause:
- (1) The contractor/vendor/bidder will not discriminate against any employee or applicant for employment because of race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, familial status or military status. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, familial status or military status. Such action shall include, but not be limited to, the following: employment up-grading, demotion, or termination; rates of pay or other forms of compensation; and selection for training. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices summarizing the provisions of this Equal Opportunity Clause.
 - (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that the contractor is an equal opportunity employer.
 - (3) It is the policy of the City of Columbus that business concerns owned and operated by M/WBEs shall have the maximum practicable opportunity to participate in the performance of contracts awarded by the city.
 - (4) The contractor shall permit access to any relevant and pertinent reports and documents by the ODI director for the sole purpose of verifying compliance with this Title and ODI regulations. All such materials provided to the ODI director by the contractor shall be considered confidential.
 - (5) The contractor will not obstruct or hinder the ODI director or his/her deputies, staff and assistants in the fulfillment of the duties and responsibilities imposed by Title 39 of the Columbus City Codes.
 - (6) The contractor and each subcontractor will include a summary of this Equal Opportunity Clause in every subcontract. The contractor will take such action with respect to any subcontractor as is necessary as a means of enforcing the provisions of the Equal Opportunity Clause.
 - (7) The contractor agrees to refrain from subcontracting any part of this contract or contract modification thereto to a contractor not holding a valid certification number as provided for in Title 39.
 - (8) Failure or refusal of a contractor or subcontractor to comply with the provisions of Title 39 may result in cancellation of this contract.

3906.03 Department/agency reporting responsibilities.

Each City department has a vested interest in ensuring that the city of Columbus is a diverse and inclusive city. Therefore, each department will have the following responsibility:

- (A) Department directors or designees shall participate in a cross functional process, to track and report supplier diversity and workforce diversity initiatives.

- (B) Regular reports shall be filed by all City agencies on forms provided by the ODI director for the purpose of monitoring compliance with the provisions of Title 39.
- (C) Department directors will designate staff who will utilize the designated ODI diversity tracking systems for the purposes of reporting on subcontractor participation and utilization within their department.
- (D) The ODI director will be notified of all professional services evaluation committees as defined in Title 329 of the city's procurement code. ODI shall have the option to be a voting member on each evaluation committee. Departments will give due notice to ODI via electronic means so proper staff can be allocated to participate on the selected evaluation committees.
- (E) The ODI director shall be notified by the department director, contract administrator or department designee of any proposed subcontracting changes or contract issues that impact M/WBEs during the term of a contract. Additionally, the contract administrator shall notify ODI if the work of a subcontractor has been inspected and approved and the subcontractor, after a valid invoice has been submitted, has not been paid for more than 10 days after the prime has received payment.
- (F) The ODI director in conjunction with department directors may create subcommittees to develop additional accountability measures, benchmarks and goals.

3906.04 ODI annual report to city council.

ODI shall submit an annual progress report to city council. Such report shall include an analysis of city contracting; recommendations for future action; and such other information as is requested.

3906.05 Periodic review and reporting requirements.

The ODI director shall be responsible for the compilation, review and analysis of the following reports:

- (A) Quarterly utilization reports based upon city contract awards, contract payments, and vendor registration data;
- (B) Annual reports to city council and the mayor summarizing the progress made toward inclusion of certified businesses; recommendations for future action; and such other information as is requested;
- (C) Annual review and evaluation of the effectiveness of the program, as well as the need for modification of the program. To accomplish this evaluation, the ODI director may, in addition to the above stated reports, provide for studies and surveys as needed.

Section 8. That Title 39 of the Columbus City Codes is hereby supplemented by the enactment of new Chapter 3907, entitled "Other Provisions," and reading as follows:

Chapter 3907 – OTHER PROVISIONS

3907.01 Enforcement.

If there is substantial or material violation of the compliance procedures set forth in this chapter or as may be provided for by the contract, appropriate proceedings may be brought by the city to enforce those provisions, including the enjoining, within applicable law, of contractors, subcontractors or other organizations, individuals or groups who prevent or seek to prevent, directly or indirectly, compliance with the policy provided in this chapter.

3907.02 Determination of compliance and non-compliance.

ODI, along with contracting staff of each City department, shall monitor contractor compliance requirements during the term of the contract. If it is determined that there is cause to believe that a prime contractor or subcontractor has failed to comply with applicable requirements of Title 39, ODI shall so notify the originating department and the contractor. The ODI director, or designee, may require such reports, information and documentation from contractors, respondents and the head of any City department, division or office as are reasonably necessary to determine compliance within fifteen (15) calendar days after a preliminary finding of non-compliance.

If non-compliance cannot be resolved, the director of the contracting agency/department or designee shall submit written recommendations to the ODI director or designee. If the director agrees, the recommendation of the contracting agency/department shall be implemented. The contractor will be afforded a reasonable time to correct the situation.

If the director is not in agreement, the reasons shall be stated.

If the director makes a final determination that the contractor has violated or has failed to comply with this Title and the contractor has been given reasonable time to correct such situation and or where negotiations have been of no avail, the director shall transmit a finding of noncompliance thereon to the mayor's office and city council.

3907.03 Appeals.

Upon determination of non-compliance with the requirements of this code or a denial of certification as an M/WBE by the ODI, the following appeals process shall be established:

- (A) The ODI director shall notify the affected party in writing by registered mail of the determination of non-compliance or denial of certification.
- (B) Any bidder, contractor or vendor ("aggrieved party") may appeal the determination of non-compliance or denial of certification. If the aggrieved party decides to appeal, it must do so by filing a notice of appeal with the ODI director, in writing, within five (5) days of receipt of the notice of the determination of non-compliance or denial of certification. The notice of appeal shall set forth in particular all the charges filed by the aggrieved party and the reasons for and the basis of its appeal.
- (C) Upon receipt of the notice of appeal from the aggrieved party, the ODI director, within five (5) days of receipt of the notice, shall forward the notice to an independent hearing officer ("hearing officer"). The duties of the hearing officer shall be as follows:
 - (1) The hearing officer shall set a hearing date not more than fifteen (15) days from the date of receipt of the notice from the ODI director. The hearing officer shall cause notice of the hearing to be served upon all parties by registered mail. Such notice shall set forth in particular the charges filed by the aggrieved business and shall include the hearing date, time and place.
 - (2) At the hearing, all parties shall be provided a fair and impartial hearing and shall be allowed to produce evidence concerning the determination of non-compliance with the requirement of this Code or the denial of certification as an M/WBE.
 - (3) The hearing officer shall, within ten (10) days of the hearing, render a written decision on the appeal, which decision shall affirm, alter, or reverse the determination of non-compliance or the denial of certification by the ODI. Notice of the decision shall be sent to all parties by registered mail and shall set forth the reasons for the decision.

3907.04 Criminal sanctions.

- (A) No person shall knowingly do any of the following:
- (1) Falsify any facts, information, or applications required or authorized by Title 39 of the City Code.
 - (2) Benefit or attempt to benefit from or participate in the City ODI program through fronting activity, false representation of a commercially useful function, falsification of required or authorized facts necessary to obtain a contract certification or recertification, or falsification of facts in connection with a waiver. "Fronting activity" shall be defined as occurrence of collusion between a certified firm and a non-certified firm without the performance of any commercially useful function by that ODI-certified firm.
- (B) Whoever violates this section is guilty of a misdemeanor of the first degree, which is punishable by not more than 180 days imprisonment and/or a fine not to exceed one thousand dollars (\$1,000.00).
- (C) In the event a conviction or guilty plea is obtained pursuant to any criminal prosecution, the offenders shall be permanently debarred from participation in ODI programs and possibly from other City contracts pursuant to Chapter 329.

3907.05 Severability.

If any of the provisions set forth in this Code or any section, subsection, paragraph, sentence, clause or phrase thereof shall be found to be invalid, illegal or unenforceable for any reason, the application of the remainder of this Code shall not be affected by any such finding of invalidity, illegality or unenforceability, and the remaining sections, subsections, paragraphs, sentences, clauses or phrases thereof shall remain in full force and effect to the maximum extent practicable. It is the specific and express intention that if any provisions of this Code or any application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this code which can be given effect without the invalid provisions or applications, and any such provisions determined invalid are declared to be severable.

3907.06 Waiver.

The mayor may waive any or all parts of this Title when, in his/her sole judgment, such action is necessary to preserve the public peace, health, safety, and welfare. The ODI director and city council shall be immediately notified, in writing, of any such action.

Section 9. That Section 211.03 of the Columbus City Codes is hereby amended to read as follows:

211.03 ~~Equal business opportunity commission office~~ Office of Diversity and Inclusion.

The ~~equal business opportunity commission office~~ office of diversity and inclusion is established within the office of the mayor. The ~~equal business opportunity commission office~~ office of diversity and inclusion shall be responsible for the implementation and administration of the policies and programs ~~of the equal business opportunity commission set forth in Title 39 and shall be responsible for the administration of the equal business opportunity program.~~ The ~~equal business opportunity commission office~~ office of diversity and inclusion shall consist of ~~an equal business opportunity executive~~ a director and other staff members as authorized by the mayor and city council.

Section 10. That existing Section 211.03 of the Columbus City Codes is hereby repealed and replaced, as provided herein.