



Legislation Details (With Text)

File #: 1815-2011 **Version:** 1

Type: Ordinance **Status:** Passed

File created: 10/18/2011 **In control:** Rules & Reference Committee

On agenda: 11/14/2011 **Final action:** 11/16/2011

Title: To amend existing Sections 3901.01, 3903.04, 3922.02, 3923.01, 3924.01, 3924.03, 3928.01 and 3928.02 of the Columbus City Codes, 1959, to authorize and direct the Equal Business Opportunity Commission and the Office of Contract Compliance to add Veterans Business Enterprises for consideration when doing business with the city; to provide free certification of qualifying Veteran Business Enterprises; to track City department utilization of Veteran Business Enterprises; and to provide free counseling services to Veteran Business Enterprises.

Sponsors: Hearcel Craig

Indexes:

Code sections:

Attachments:

Date	Ver.	Action By	Action	Result
11/16/2011	1	CITY CLERK	Attest	
11/15/2011	1	MAYOR	Signed	
11/14/2011	1	COUNCIL PRESIDENT	Signed	
11/14/2011	1	Columbus City Council	Approved	Pass
11/7/2011	1	Columbus City Council	Read for the First Time	

BACKGROUND: The City of Columbus is committed to helping the veterans who protected our very freedoms and, in the process, have been disconnected from the job and business markets for extended periods of time. This disconnection creates unique challenges for veteran-owned business, also known as Veteran Business Enterprises (VBEs). Currently, Columbus municipal code provides for certification of minority- and female-owned businesses, helping provide the maximum practicable opportunity to participate in contracts awarded by the City. The City of Columbus tracks city department utilization of these businesses. This provides a template for support of VBEs. Given the business challenges facing veterans, Columbus' large population of over 110,000 veterans, and the need to continually invest in the economic success of small businesses, Columbus City Council finds it necessary to support veteran-owned businesses by allowing for certification of VBEs, tracking of VBE utilization by City departments, and provision of support services for VBEs. Sections of chapters 3901, 3903, 3922, 3923, 3924, and 3928 of Title 39, Affirmative Action Code, Article I., Contract Compliance, of Columbus City Codes, 1959, are amended to effect these changes.

To amend existing Sections 3901.01, 3903.04, 3922.02, 3923.01, 3924.01, 3924.03, 3928.01 and 3928.02 of the Columbus City Codes, 1959, to authorize and direct the Equal Business Opportunity Commission and the Office of Contract Compliance to add Veterans Business Enterprises for consideration when doing business with the city; to provide free certification of qualifying Veteran Business Enterprises; to track City department utilization of Veteran Business Enterprises; and to provide free counseling services to Veteran Business Enterprises.

WHEREAS, the City of Columbus is committed to helping the veterans who protected the very freedoms we enjoy;

WHEREAS, veterans have sacrificed in service to our country and, in the process, have been out of the job and business market for extended periods of time, creating unique challenges for veteran-owned businesses;

WHEREAS, Columbus is home to over 110,000 veterans, including men and women returning from ongoing missions overseas;

WHEREAS, the large veteran population of Columbus and the need to continually invest in small business development creates a compelling interest for support of veteran-owned businesses;

WHEREAS, these changes will allow certified veteran-owned businesses to better compete for city contracts and receive bid counseling and start-up assistance now, therefore;

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBUS:

SECTION 1. That sections of chapters 3901.01, 3903.04, 3922.02, 3923.01, 3924.01, 3924.03, 3928.01 and 3928.02 of Title 39, Affirmative Action Code, Article I., Contract Compliance, of Columbus City Codes, 1959, be and is hereby amended to read as follows:

3901.01 - Definition of terms.

For the purpose of this Article 1, Title 39, the following words, phrases and terms shall be defined as set forth below:

- (A) "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.
- (B) "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 such other party(s).
- (C) "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 329.04(o) of the Columbus City Codes, 1959.
 - (8) The city establishes a contract for commodities with fixed prices such as utility services and postage stamps in accordance with Chapter 329.22 of the Columbus City Codes, 1959.
- (D) "Contracting agency" shall mean any agency authorized to act as an agent for the city to enter into a contract, as defined in subsection (B) above, on behalf of the city.
- (E) "Contractor" shall mean a party who participates, at any level in a contract as defined in subsection (B) above. The word "Contractor" shall include female business enterprises and minority business enterprises, unless otherwise provided.
- (F) A "Female Business Enterprise (FBE)" 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 females of non-African American descent.
- (G) A "Minority 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. "Minority group members" or "minority" shall mean an "African American." An "African American" shall mean persons having ancestry with origins in any of the black racial groups of Africa. The definition of "minority group members" may be amended through legislation by the city council and approved by the mayor of the city to either include ethnic groups other than African American, or to delete certain ethnic groups from this definition, provided that a legally sufficient factual predicate exists to warrant such inclusion or exclusion and which must be approved by the mayor and

city council.

(H) "Veteran Business Enterprise" 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.

(HI) In order to be certified as a Minority Business Enterprise (MBE), a Veteran Business Enterprise (VBE), or a Female Business Enterprise (FBE), a business must establish the following:

- (a) That it is at least 51% owned by one or more eligible racial minorities, veterans, or women; and
- (b) That it is managed and controlled by the minority, veteran, or woman seeking to be certified; and
- (c) That it has been in business in the Columbus MSA for at least three (3) months; and
- (d) That it has annual sales which for any two consecutive year period do not exceed the average sales for its industry, as determined by the federal tax returns for that firm and by the 4-digit SIC code of the U.S. Economic Census data. If a firm is engaged in more than one industry, then the annual average sales for its "industry" shall be determined by a weighted average of sales for all industries it is engaged in; and
- (e)(1) That the MBE, VBE, or FBE has a place of business located within the corporation limits of the city of Columbus as registered in official documents filed with the Secretary of State, state of Ohio, or Franklin County recorder's office; or
- (2) That the MBE, VBE, or FBE holds a valid vendor's license which indicates that its place of business is located within the corporation limits of the city of Columbus; or
- (3) That the MBE, FBE, woman or minority has suffered from past racial or gender discrimination in the city of Columbus MSA construction, goods or services industries, and can demonstrate this information by written documentation or affidavit; provided that any MBE, FBE, woman or minority that engaged in or attempted to engage in business in the Columbus MSA construction, goods or services industries prior to the effective date of this Code is rebuttably presumed to have suffered past racial or gender discrimination and therefore is an eligible minority or woman;
- (4) That the veteran(s) who own and control a VBE have presented to the director of EBO Compliance Office or his or her representative an official government record denoting his or her other than dishonorable discharge or release from active military, naval, or air service;

(HJ) "Owned" for purposes of determining whether a business is an MBE, VBE, or FBE, shall mean that:

- (a) The minority, veteran, or female owner(s) shall possess an ownership interest of at least fifty-one percent (51%) of the business;
- (b) 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
- (c) The minority, veteran, or female 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.

(JK) "Controlled" for purposes of determining whether a business is an MBE, VBE, or FBE, means the minority, the veteran, or the female owner(s) shall:

- (a) Possess and exercise the legal authority and power to manage business assets, goodwill and daily operations of the business; and
- (b) Actively and continuously exercise such managerial authority and power in determining the policies and directing the operations of the business.

If the owners who are not minorities, veterans, or females are disproportionately responsible for the operation of the business, then the business will be deemed to be not controlled by minorities, veterans, or females.

(KL) "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.

(M) "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.

Chapter 3903 - DIVISION OF MINORITY, VETERAN, AND FEMALE BUSINESS DEVELOPMENT

3903.04 - Duties of Executive Director.

(A) The EBO Commission Office Executive Director shall be the chief administrative officer of the Equal Business Opportunity Commission and the Office of Contract Compliance, and with the assistance of the Executive Director's staff,

as such may be assigned, shall be responsible for the enforcement of Article I, Title 39, the rules and regulations issued hereunder, and for other duties pertinent thereto, including:

- (1) Investigating complaints, making inspections, and observing employment conditions related to city contracts;
- (2) Reviewing all submittals required by this Article I, Title 39 and certifying all contractors who are in compliance with this Article;
- (3) Certifying qualified minority business enterprises, veteran business enterprises, and female business enterprises and monitoring their participation on city contracts to ensure compliance with Article I, of this Title;
- (4) Reviewing ordinances authorizing the entry into contracts, as defined in C.C. 3901.01 (C) and certifying the proposed contractor's compliance with Article I, Title 39, prior to the ordinance being submitted to Council;
- (5) Monitoring the workforce of contractors by desk audits and on-site inspections to determine if any contractor is in violation of the provisions of Article I, Title 39
- (6) 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 applicable to the city;
- (7) Publishing and disseminating information on methods for achieving equal opportunity; and, upon request of the contractor, providing assistance in the completion of required certification materials;
- (8) Promulgating rules, regulations, and procedures, with the advice of the Equal Business Opportunity Commission, relating to this Article I, Title 39

Chapter 3922 - CONTRACTOR/VENDOR REGISTRATION AND M/V/FBE CERTIFICATION

3922.02 - M/FBE Certification.

The EBO Commission Office shall be responsible for the certification and verification of minority, veteran, and female business enterprises. The "M/V/FBE Certification" process shall be refined and coordinated by the EBO Commission Office. In addition, the EBO Commission Office shall provide for the following:

(A) A comprehensive centralized and automated M/V/FBE certification system that is regularly updated. This system shall provide for the following:

(1) The ability to provide for an alphabetical listing of certified M/V/FBEs and be segmented into specific trades or lines of business (for each type of goods, services and construction purchased or contracted by the city).

(2) The classification of M/V/FBEs in accordance with Section 3922.03 and 3922.04

(B) Recertification of those firms at least every two years.

(C) Random on-site visits to verify ownership and control by minority, veteran, and female persons and compliance with certification requirements.

(D) Decertification of any previously certified M/V/FBE upon a final determination that the firm is no longer satisfying the certification requirements. Any decertified M/V/FBE may appeal the determination of the EBO Commission Office in accordance with the appeals procedure provided in Section 3928.01

(E) Rules adopted by the EBO Director no less than 30 days from the effective date of this ordinance establishing acceptable government records for VBE verification as required in 3901.01(I)(4).

3923.01 - Outreach.

The city shall provide for aggressive outreach efforts to solicit and encourage M/V/FBEs to bid on city contracts. Specific "Outreach" efforts shall be developed and coordinated by the EBO Commission Office, 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 to M/V/FBEs of upcoming procurement and contract bids by the city through utilization of the vendor registration system and the M/V/FBE certification listing;

(B) Advertisement of upcoming city contracts and procurement on government television; the City Bulletin; and minority newspapers or publications, which may include minority, specialty, women-focused and veteran-focused newspapers or publications;

(C) Seminars to familiarize M/V/FBEs with city procurement and bidding procedures and with upcoming business opportunities;

(D) Establishment of a telephone "hotline" which contractors and vendors can call to get information on bids or certification;

(E) The establishment of plan rooms at several locations around the city to provide bid plans and specifications;

(F) Active and sustained encouragement of M/V/FBEs to apply for certification and registration.

3924.01 - Financing assistance.

The city shall provide for financing assistance to M/V/FBE firms. A "Financing Assistance" program shall be developed

and coordinated by the EBO Commission Office and provide for the following:

- (A) A clearinghouse to advise M/V/FBEs of existing forms of financing that are available to them.
- (B) Examination of the feasibility of establishing alternative and innovative programs to assist M/V/FBEs in obtaining equity 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/V/FBE 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.

3924.03 - Technical assistance clearinghouse.

The city shall provide for a clearinghouse of technical assistance programs and resources. A "Technical Assistance Clearinghouse" shall be refined and coordinated by the EBO Commission Office and provide referrals to sources for technical and management assistance for M/V/FBEs, as needed.

3928.01 - Appeals.

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

- (A) The EBO Commission Office Executive 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 EBO Commission Office Executive 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 EBO Commission Office Executive 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 EBO Commission Office Executive 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. The hearings shall be held in any city building and shall be open to the public.
 - (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/V/FBE.
 - (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 EBO Commission Office. Notice of the decision shall be sent to all parties by registered mail and shall set forth the reasons for the decision.
- (D) The EBO Commission Office Executive Director shall send notice of the hearing officer's decision to the mayor and city council. The mayor and city council, if they so choose, may alter or reverse the decision of the hearing officer.
- (E) The EBO Commission Office Executive Director shall be responsible for retaining an independent hearing officer, as necessary. No employee or elected official of the city shall be appointed. Nor shall any person be appointed who is a contractor or subcontractor, or who otherwise has any interest in any contracting or subcontracting firm, or who otherwise does business with the city as a contractor.

3928.02 - Criminal sanctions for fraud.

- (A) If the EBO Commission Office determines that substantial evidence is available indicating that fraud or other unlawful activity has been committed:
 - (1) By a M/V/FBE certification or re-certification applicant;
 - (2) By a certified M/V/FBE or majority prime contractor falsely reporting the utilization of M/V/FBE subcontractors; or
 - (3) By any individual or firm attempting to benefit from or participate in the EBO program, through fronting activity, false representation of a commercially useful function, or other fraudulent or unlawful activity;The matter shall be referred to the proper legal authorities and the city's law department for criminal prosecution; and in the event a conviction or guilty plea is obtained pursuant to such criminal prosecution, the perpetrators shall be permanently debarred from participation in city contracts.
- Fronting activity shall be defined as any occurrence of collusion between an M/V/FBE and a majority firm for the purpose of exploiting that M/V/FBEs minority, veteran, or female certification status to primarily benefit a majority firm

without the performance of any commercially useful function by that M/V/FBE.

(B) 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 EBO 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.

(3) 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). In addition any false claims submitted to the city are subject to the city penalty adopted in the City Code Section 335.05 which provides for multiple damages.

SECTION 2. That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.