Sec. 202-401. - Purpose.

It is the purpose of this article to carry out the following policies of the city and county:

(1) To utilize minority-owned business enterprises (MBE) for public works projects, procurement of goods, and services for the city and county in a dollar amount equal to at least fifteen (15) percent of monies spent by the city and county;

(2) To utilize women-owned business enterprises (WBE) for public works projects, procurement of goods and services for the city and county in a dollar amount equal to at least eight (8) percent of monies spent by the city and county; and

(3) To utilize disabled-owned business enterprises (DOBE) for public works projects, procurement of goods and services for the city and county in a dollar amount equal to at least one (1) percent of monies spent by the city and county.

(4) To utilize veteran-owned business enterprises (VBE) for public works projects, procurement of goods and services for the city and county in a dollar amount equal to at least three (3) percent of monies spent by the city and county.

(G.O. 37, 2020, § 1)

Sec. 202-402. - Office of minority and women business development; director.

There is hereby established an office of minority and women business development (OMWBD). A director, who shall be appointed by and serve at the pleasure of the mayor, shall serve as the head of the office.

(G.O. 37, 2020, § 1)

Sec. 202-403. - Powers and duties generally.

The office of minority and women business development shall be responsible for performing the following functions:

(1) To monitor contract compliance, as follows:

   a. By ensuring compliance with federal grant requirements respective to the utilization of minority business enterprises, women business enterprises, veteran business enterprises and disabled-owned business enterprises;

   b. By reviewing city and county contracts to assure compliance with relevant federal, state and local laws and regulations on affirmative action and equal employment opportunity;

   c. By functioning as a liaison between the city and county and municipal corporations and their contractors by providing technical assistance in developing affirmative action goals and monitoring these compliance efforts to meet established goals;

   d. By managing and implementing the minority, women, veteran, and disabled-owned business enterprises programs and by monitoring city and county purchasing as specified in section 202-401 of this article;

   e. To ensure that city contractors have made a good faith effort to reach the MBE, WBE, VBE and DOBE goals set forth in the city's utilization plan and in section 202-401, the determination whether good-faith efforts were made will consider the following objective criteria:

      i. Bidder's attendance at pre-bid conference;

      ii. Advertisement in general circulation media, trade publications, and minority focused media for at least ten (10) working days before bids or proposals are due;

      iii. Mailings to MBE/WBE/VBE/DOBE firms notifying them of contracting opportunities;

      iv. Efforts made to select portions of the work proposed to be performed by MBE/WBE/VBE/DOBE firms in order to increase the likelihood of achieving the stated goal(s);

      v. Efforts to negotiate with MBE/WBE/VBE/DOBE firms for specific sub-bids, including at a minimum: the names, addresses and telephone numbers of MBE/WBE/VBE/DOBE firms that were contacted; a description of the information provided to MBE/WBE/VBE/DOBE firms regarding the plans and specifications for portions of the work to be performed; and/or a statement of why additional agreements with MBE/WBE/VBE/DOBE firms were not reached;

vi. Documented reasons for rejecting any MBE/WBE/VBE/DOBE firm(s) as unqualified;

vii. Documented efforts to provide technical assistance to any MBE/WBE/VBE/DOBE firms in obtaining bonding or insurance required by the City of Indianapolis;

viii. Documentation that interested MBE/WBE/VBE/DOBE firms were provided with prompt access to the plans, specifications, scope of work, and requirements of the contract;

ix. Documented follow-up to initial solicitations, including a copy of any call logs;

x. Any joint venture agreements with an MBE/WBE/VBE/DOBE firm relating to the contract;

xi. Any mentor-protégé agreements with an MBE/WBE/VBE/DOBE firm relating to the contract.

f. By collaborating with the office of disability affairs, OMWBD shall manage and implement the disabled-owned business enterprise program, make recommendations for improving the utilization of disabled-owned business enterprises, and monitor city and county purchasing as specified in section 202-401 of this article. The office shall be guided by the Americans with Disabilities Act. The office of disability affairs shall certify, by providing affidavits to OMWBD, that applicants are disabled; and

g. By collaborating with the office of veterans affairs, OMWBD shall manage and implement the veteran business enterprise program, make recommendations for improving the utilization of veteran-owned business enterprises, and monitor city and county purchasing as specified in section 202-401 of this article. The office shall be guided relevant policy created by the U.S. Department of Veteran Affairs. The office of veteran affairs will provide assistance to OMWBD in identifying honorably discharged veterans from the U.S. Armed Forces and will conduct outreach to the veteran community;

h. By coordinating with the office of finance and management-purchasing division to ensure that subcontractors are paid within fifteen (15) days of the date in which the prime contractor has been paid by the city and to ensure that no coercive exclusive teaming practices have been utilized that decrease contracting opportunities for subcontractors.

(2) To make recommendations for improving the utilization of minority, women, veteran, and disabled-owned businesses by the city and county and municipal corporations;

(3) To conduct disparity studies every five years and adopt the city's utilization plan in accordance with section 202-404; and

(4) To evaluate the effect which state and federal prevailing wage legislation has on:

a. The employment and training of minorities, families, persons with disabilities and other protected groups in public construction projects funded in whole or in part by the city or county; and

b. Employers and particularly minority-, women, and disability-owned business enterprises in bidding and working in public construction projects funded in whole or in part by the city or county.

As part of its evaluation, the division shall annually conduct surveys to determine the prevailing wage rates for various classes of construction work in private construction projects in the county.

(5) To execute contracts on behalf of the office subject to the powers of the mayor and any other limitations prescribed by law.

(G.O. 37, 2020, § 1)

Sec. 202-404. - Disparity study and utilization plan.

It shall be the responsibility of the OMWBD, every five (5) years, to conduct disparity studies that will determine whether inequities exist in public procurement and contracting that adversely affect minority, woman, veteran, or disabled business enterprises. The primary goal of the study is to assess, quantify, and evaluate the prevalence, significance (degree and weight) and scope of discrimination in the marketplace, if any, against minority-, woman-, veteran-, and disabled-owned business enterprises. As a result of this disparity study, OMWBD shall create a Consolidated City of Indianapolis-Marion County MBE/WBE/VBE/DOBE Business Utilization Plan that shall be used to address any disparities found. The OMWBD shall present the disparity study and the final utilization plan to the mayor for approval prior to implementation.

(1) The Consolidated City of Indianapolis and Marion County MBE/WBE/VBE/DOBE Business Utilization Plan (Utilization Plan).

a. The utilization plan shall apply to:

i. Expenditures of city or county public funds, irrespective of source;

ii. Certain public/private economic development projects, where feasible, in which city public funds and/or tax incentives are utilized, in part or in total; or

iii. Certain contracts between the city and other governmental entities, where feasible and where public funds are used to engage businesses to perform work on behalf of the city or the governmental entities.

b. The utilization plan shall include, at a minimum:

i. A communication policy;

ii. An implementation of responsibilities policy, which shall include an agency inclusion plan;

iii. Annual goals;

iv. Methods by which those goals will be established and realized;

v. An equal opportunity policy;

vi. A program certification policy;

vii. The good faith efforts requirements; and

viii. Any other provisions needed to address any disparities found.

c. All city departments and county agencies shall cooperate with OMWBD's efforts to eliminate any disparity found by complying with the requirements of the utilization plan.

d. Non-compliance, penalties, and remedies.

i. Every city and county contract is subject to the remedies in this subsection regardless of whether those remedies are provided for explicitly in the language of the contract.

ii. If OMWBD's director determines that a city- or county-engaged vendor has failed to comply with the provisions of the utilization plan:

A. The OMWBD shall meet with the contracting department or agency to discuss the contract and to discuss options for correcting the deficiencies.

B. The OMWBD shall serve the vendor a written notice of the deficiencies.

C. The vendor shall meet with OMWBD to discuss correcting the non-compliance.

D. If the vendor does not correct the deficiencies, the OMWBD shall take one of the following actions:

1. Withhold ten (10) percent of all future payments for the eligible project until the OMWBD has determined that the vendor is in compliance;

2. Withhold all future payment under the eligible project until it is determined by the OMWBD that the vendor is in compliance with the utilization plan;

3. Place the vendor on the city's debarred vendor list preventing them from bidding or otherwise procuring any contract with the

city or county for a designated period of time; or

4. Terminate the agreement.

E. The remedies provided in this subsection are in addition to, not in place of, any other remedies available to the contracting agency under the law, including:

1. Pursuing any remedies available to the city or county under the contract; or

2. If appropriate, referring the matter to the appropriate authorities for potential criminal investigation and prosecution.

F. In the event a vendor requests an appeal of a remedy imposed under section 202-404(1)(d)(ii)(D) or upheld under section 202-404(1)(d)(iii)(D), any penalties imposed or upheld shall be suspended for the duration of the appeal.

iii. Any vendor aggrieved by a remedy imposed under section 202-404(1)(d)(ii)(D) shall have the right to request a transcribed hearing before the equal opportunity advisory board's contract compliance committee.

A. The contract compliance committee may hold a public hearing upon not less than ten (10) working days' written notice to the OMWBD director and the aggrieved vendor. If the aggrieved vendor has not previously filed a written response, he or she may file such response with the committee and serve a copy thereof the OMWBD director not later than five (5) working days prior to the date of the hearing.

B. Powers; rights of parties at hearing. In connection with a hearing held under subsection (1)(d)(iii)(A) of this section, the contract compliance committee shall have the power, upon any matter pertinent to the complaint or response thereto, to subpoena witnesses and compel their attendance; to require the production of pertinent books, papers or other documents; and to administer oaths. The aggrieved vendor shall have the right to be represented by any attorney of his or her choice. The aggrieved vendor shall have the right to have a representative appear in person at the hearing, to subpoena and compel the attendance of witnesses, and to examine and cross examine witnesses. The committee may adopt appropriate rules for the issuance of subpoenas and the conduct of hearings under this section. The contract compliance committee and the board shall have the power to enforce discovery and subpoenas by appropriate petition to the Marion County Circuit or Superior Courts.

C. Statement of evidence; exceptions; arguments. Following the close of the hearing, the contract compliance committee shall prepare a report containing written recommended findings of fact and conclusions to the board. Findings and conclusions made by the contract compliance committee shall be based solely upon the record of evidence presented at the hearing and must either affirm or reverse the remedy imposed by the agency under section 202-404(1)(d)(ii)(D). The contract compliance committee shall make a good faith effort to complete the report within thirty (30) working days from the close of the hearing, but may extend the time for completing the report as needed, up to an additional thirty (30) working days. A copy of the report shall be furnished to the aggrieved vendor and the director of the OMWBD, each of whom shall have an opportunity to submit written exceptions within such time as the rules of the complaint adjudication committee shall permit. The contract compliance committee may, upon notice to each interested party, hear further evidence or argument upon the issues presented by the report and exceptions, if any.

D. Findings of fact; sustaining or dismissing complaint; remedies. Upon the preponderance of the evidence, the contract compliance committee shall issue written findings of fact and conclusions, and shall serve a copy thereof upon both parties. Findings and conclusions made by the contract compliance committee shall be based solely upon the record of the evidence presented at the hearing and must either affirm or reverse the remedy imposed by the OMWBD under section 202-404(1)(d)(ii)(D) or impose a different remedy undersection 202-404(1)(d)(ii)(D).

iv. Either party may appeal the contract compliance committee's recommendation to the full equal opportunity advisory board.

A. Appeal to the board. Within fifteen (15) working days after the issuance of findings and conclusions by the contract compliance committee, either party may file a written appeal of the decision of the committee. If no appeal is filed within fifteen (15) working days, then the findings and conclusions are final. After considering the record of the evidence presented at the hearing and the findings and conclusions of the contract compliance committee, the board may affirm the decision of the committee and adopt the findings and conclusions of the contract compliance committee, or it may affirm the decision of the contract compliance committee and make supplemental findings and conclusions of its own, or it may reverse the decision of the contract compliance committee and make findings of fact and conclusions to support its decision. The board will make reasonable efforts to hear the matter at its next scheduled meeting but in no event later than ninety (90) days after the appeal date.

B. Members of board who are ineligible to participate. No member of the board who has a financial interest in the underlying contract, as defined in section 293-102, or who has an immediate family member with such an interest, shall participate in the adjudication of that complaint as a member of the contract compliance committee or the board. In the event of an appeal to the board, a board member's participation on the adjudication committee shall not be a basis for ineligibility.

v. A vendor aggrieved by the board's findings and conclusions may file a verified petition to the superior or circuit court of Marion County for a review of that decision.

A. The Consolidated City of Indianapolis and Marion County shall be the only appropriate defendant named in such a judicial review petition.

B. The petition for review must be filed within thirty (30) calendar days after the date of issuance of the equal opportunity advisory board's decision undersection 202-404(1)(d)(v).

C. Within seven (7) calendar days after the date the petition is filed, the petitioner must serve a written request on the equal opportunity advisory board asking for a true and complete copy of the transcript of the hearing. The petitioner is responsible for filing that transcript with the court.

D. The court, without jury, shall review the record and determine whether the equal opportunity advisory board's decision was arbitrary and capricious or otherwise contrary to law as in other administrative reviews.

(G.O. 37, 2020, § 1)