

IN THE COUNTY LEGISLATURE OF JACKSON COUNTY, MISSOURI

AN ORDINANCE repealing sections 629. and 664., Jackson County Code, 1984, relating to minority- and women-owned business enterprise programs, and enacting, in lieu thereof, four new sections relating to the same subject.

ORDINANCE NO. 5123, July 30, 2018

INTRODUCED BY Alfred Jordan, Scott Burnett, Garry Baker, Crystal Williams, Tony Miller, Dennis Waits, Dan Tarwater, III, Greg Grounds, Theresa Galvin County Legislators,

WHEREAS, by Ordinance 4636, dated June 30, 2014, the Legislature did authorize the adoption of an interim minority- and women-owned business enterprise (MBE/WBE) program; and,

WHEREAS, Ordinance 4636, as codified in section 664. of the Jackson County Code, directed that on or before the sunset date of December 31, 2017, reports be compiled and reviewed to determine whether the County has a compelling interest in continuing narrowly tailored remedies to redress discrimination against MBEs or WBEs so that the County will not function as a passive participant in a discriminatory marketplace; and,

WHEREAS, section 664 also directed that qualified experts be retained to prepare a disparity study regarding the existence and effects of any history of discrimination in contracting; and,

WHEREAS, on August 9, 2017, the County's retained expert, Colette Holt and Associates, presented its report to the County; and,

WHEREAS, by Ordinances 5059, dated December 4, 2017, 5087, dated March 19, 2018 and 5107, dated June 25, 2018, the sunset date of the interim ordinance was extended to allow additional time to review these reports and draft an appropriate permanent ordinance; and,

WHEREAS, the qualified experts now recommend the revisions to the interim ordinance, incorporated herein, be adopted as the permanent ordinance; now therefore,

BE IT ORDAINED by the County Legislature of Jackson County, Missouri, as follows:

Section A. Enacting Clause. Sections 629. and 664., Jackson County Code, 1984, are hereby repealed, and four new section enacted in lieu thereof, to be known as sections 604., 629., 631., and 664., to read as follows:

604. Findings.
Jackson County, Missouri, procured a Disparity Study that was completed in 2017. The Study was conducted by Colette Holt & Associates, a national expert on conducting such studies and designing contracting affirmative action programs. The County was part of a study consortium consisting of the City of Kansas City, Missouri, the Kansas City Area Transportation Authority, and the Kansas City

Public Schools. The objective was to meet the requirements of strict constitutional scrutiny applicable to Minority- and Women-Owned Business Enterprise ("M/WBE") programs and national best practices. The Study analyzed County purchase order and contract data for calendar years 2008 through 2013.

The Study found the availability of minority-owned business enterprises to be 9.5 percent and the availability of women-owned business enterprises to be 11.7 percent. The Study found large and significant disparities between the County's utilization of M/WBEs and the availability of such firms in the County's marketplace on County prime contracts and associated subcontracts. The Study also analyzed Census Bureau data on the receipts of M/WBEs compared to similar non-M/WBEs and M/WBE entrepreneurs' formation of firms and earning from the firms that are formed, compared to similar white male entrepreneurs. These quantitative findings were bolstered by anecdotal evidence of barriers to full and fair opportunities for M/WBEs to participate on County projects gathered through interviews with business owners, stakeholder groups and County staff. The Study provided race- and gender-neutral recommendations and further recommended the use of Contract Goals to ensure nondiscrimination in the award and administration of county contracts and associated subcontracts. It further recommended the County revise its Interim Ordinance to comply with the findings and set a sunset date by which the evidence related to whether race and gender-conscious relief remains supportable.

Based on the Study's findings, this chapter is adopted.

629. Compliance Review Officer.

There is hereby established a non-merit position of Compliance Review Officer (CRO) as a member of the staff of the County Auditor. The CRO shall be supervised and directed by the County Auditor.

629.1 Appointment.

The CRO shall be selected by a majority of the County Legislature after the Finance and Audit Committee, or in the event that Committee shall not exist, a Committee of the Legislature so designated by the Chairman of the Legislature, has recommended a candidate for the position of CRO. The candidate recommended shall be appointed to the position of CRO upon a majority vote of the Legislature approving that person.

629.2 Removal.

The CRO may be removed by a vote of two-thirds (2/3) of the County Legislature after review and recommendation for removal by the Finance and Audit Committee, or other Committee so designated by the Chairman of the Legislature if the Finance and Audit Committee does not exist.

629.3 Limitation.

The CRO shall not simultaneously hold any other position or office with the County, except that this section shall not preclude the CRO from holding an unpaid County office or position of a temporary nature.

629.4 Salary.

The salary of the CRO shall not be established by the County Legislature pursuant to section 285. of this code.

629.5 Required to Attend Meetings.

The CRO shall attend all meetings of the Finance and Audit Committee and other legislative meetings, as appropriate.

629.6 Mandates to Compliance Review Officer.

The following are mandates to the Compliance Review Officer.

a. Establishing Contract Goals.

The CRO shall establish Contract Goals for the utilization of MBEs and WBEs on solicitations subject to this chapter, based on the availability of MBEs and WBEs in the anticipated scopes of work for the Contract and the dollar amounts of the scopes of work of the Contract.

b. Evaluating Achievement of Contract Goals.

The CRO shall evaluate a Contractor's achievement of Contract Goals or its Good Faith Efforts to do so.

c. Monitoring Contract Compliance.

The CRO shall work with user departments to monitor Contracts to ensure prompt payments to MBEs and WBEs and compliance with Contract Goals and commitments, including gathering data to facilitate

such monitoring.

d. Collecting Program Data.

The CRO shall collect data to facilitate compliance with this chapter.

e. Notice to Bidder of Ineligibility.

The CRO shall notify every ineligible Bidder of the CRO's determination of the ineligibility of the Bidder for Contracts because of noncompliance with this chapter, and the reasons for the determination of noncompliance.

f. Notice of Ineligibility to Others.

The CRO shall notify the County Legislature and the Director of the Department of Finance and Purchasing of those Bidders who are ineligible for Contract because of noncompliance with this chapter.

g. Notice to Bidder of Reinstatement.

The CRO shall notify in writing every Bidder whose eligibility has been reinstated for Contract bidding under this chapter and shall also communicate that fact in writing to the County Legislature, the County Auditor, and the Director of the Department of Finance and Purchasing.

h. Notice of Noncompliance with Chapter.

The CRO shall notify the County Legislature and the Director of the Department of Finance and Purchasing of those Contractors that are not determined to be in compliance with any provision of this chapter and the reasons for the determination on noncompliance.

i. Notice of Deficiency in Plan.

If the CRO finds that a Utilization Plan fails to comply with the requirements set out in this chapter, the CRO shall specify to the interested Bidder, Contractor, or Subcontractor each deficiency and shall allow seven (7) working days after the notice to correct the deficiency.

j. Compliance by Contractor.

The CRO shall review all evidence submitted and all other evidence available to the CRO, and shall determine whether or not the Contractor

has neglected to implement its Utilization Plan, or is otherwise in violation of this chapter. Notice of an adverse determination shall be promptly communicated to the Contractor in writing by registered mail to the address listed on the bid of the Contractor, with notice of the right of appeal granted under this chapter. The CRO shall specify to the Contractor the corrective action required and shall request from the Contractor a commitment in writing to accomplish the corrective action so specified.

k. Bidders on Contracts in Excess of Fifty Thousand Dollars.

With respect to each Bidder being considered, as indicated by the Director of Finance and Purchasing or other County [Employee] officer authorized to invite bids, for the award of a Contract in excess of fifty thousand dollars (\$50,000) in any contract term, as estimated by the Director of Finance and Purchasing or other officer, the CRO shall find whether:

i. Contractor or Subcontractor.

The individual or entity is a Contractor or Subcontractor;

ii. Eligibility.

The Bidder or Contractor has complied with this chapter for the proposed Contract.

iii. Notice of Findings.

The CRO shall promptly communicate the findings under i. and ii. to the County Legislature, the Legislative Auditor, and the Director of the Department of Finance and the Purchasing.

l. Notice of Compliance Review Officer.

The CRO shall notify every affected Bidder, Contractor, and Subcontractor of all decisions, findings or other actions of the CRO and of its appeal right under this chapter.

m. Other Duties.

office of its charter functions;

vii. Verify Information.

To verify information from Bidders, Contractors, or Subcontractors with on-site visits and to request the submission of relevant employment data from such;

viii. Reports to Legislature.

To present monthly and annually to the County Legislature a report of the progress of the County in implementing the policy of this chapter, including the utilization of MBEs and WBEs as prime Contractors and Subcontractors.

ix. Encourage Development of Affirmative Action Programs.

To encourage the development of affirmative action programs by County Bidders, Contractors, and Subcontractors.

631. Goal Policy.

It is the policy of the County that it seeks to award not less than 21.2 percent of its total eligible Contract dollars to MBEs and WBEs. To achieve this goal, the County will use race- and gender-neutral measures to the maximum feasible extent. The Compliance Review Officer and other County personnel will implement Contract Goals where appropriate and effective.

664. [Interim] Program Review [and Sunset].

664.1 The County Legislature shall receive quarterly and annual reports from the CRO detailing the County's performance under this chapter.

664.2 The County Legislature will review these reports, including the County's progress toward eliminating discrimination in its contracting activities and marketplace.

664.3 The County will retain qualified experts to develop evidence to assist the County in evaluating whether it has a continuing compelling interest in remedying discrimination against MBEs and WBEs in its construction marketplace, and the permissible scope of any narrowly tailored remedies.

[664.4 On or before the sunset date of this chapter, the County shall review the results of this evidence gathering, to determine whether it has a compelling interest in continuing narrowly tailored remedies to redress discrimination against MBEs or WBEs so that the County will not function as a passive participant in a discriminatory marketplace.]

[664.5. Sections 601. through 664. of this chapter shall sunset on July 31, 2018.]

Section B. Transition. All other sections of Chapter 6, Jackson County Code, 1984, not appearing in this Ordinance, are hereby reenacted as they existed as of July 31, 2018.

