



Jackson County Missouri

Jackson County Courthouse
415 E. 12th Street, 2nd floor
Kansas City, Missouri
64106
(816)881-3242

Legislation Text

File #: 4636, Version: 0

IN THE COUNTY LEGISLATURE OF JACKSON COUNTY, MISSOURI

AN ORDINANCE repealing sections 600., 601., 602., 603. 611., 612., 613., 615., 616., 617., 621., 622., 623., 624., 625., 626., 630., 631., 632., 633., 634., 635., 636., 637., 638., 639., 640., 641., 642., 643., 644., 650., 651., 652., 653., and 654., Jackson County Code, 1984 relating to Affirmative Action Programs - Contractors, and enacting, in lieu thereof, forty-five new sections, relating to minority- and women-owned business enterprises, with an effective date.

ORDINANCE NO. 4636, June 30, 2014

INTRODUCED BY Theresa Garza Ruiz, Crystal Williams, James D. Tindall, Dennis Waits, Dan Tarwater and Scott Burnett, County Legislators

WHEREAS, Jackson County, Missouri government has a long-standing policy to promote equal opportunity for employment, advancement, and continuation of employment among all qualified persons regardless of their race, color, national origin, religion, age, sex, sexual orientation, or disability; and,

WHEREAS, Holt and Associates of Oakland, CA, is a firm nationally recognized as expert in the area of minority- and women-owned business enterprise (MBE/WBE) law and has been retained to develop recommendations for an ordinance that more clearly sets out required M/WBE practices; and,

WHEREAS, after review of the County's practices related to MBE/WBE contracting, a revised proposed ordinance has been recommended; and,

WHEREAS, implementation of the recommended MBE/WBE practices will require the amendment of chapter 6 of the Jackson County Code; and

WHEREAS, such amendment is in the best interests of the health, welfare, and safety of the citizens of Jackson County; now therefore

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

Section A. Enacting Clause. Sections 600., 601., 602., 603. 611., 612., 613., 614., 615., 616., 617., 621., 622., 623., 624., 625., 626., 631., 632., 633., 634., 635., 636., 637., 638., 639., 640., 641., 642., 643., 644., 650., 651., 652., 653., and 654., are hereby repealed, and forty-five new sections enacted in lieu thereof, to be known as sections 601., 602., 603. 611., 612., 613., 614., 615., 616., 617., 618., 620., 621., 622., 623., 624., 625., 626., 627., 628., 629., 640., 641., 642., 643., 644., 645., 646., 647., 648., 649., 650., 651., 652., 653., 654., 655., 656., 657., 658, 659., 660., 661., 663., and 664., to read as follows, with existing affected and unaffected sections to be renumbered accordingly:

CHAPTER 6

[AFFIRMATIVE ACTION] INTERIM MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE
PROGRAM[S-CONTRACTORS]

600. [Affirmative Action

The following long-standing policies of Jackson County, Missouri are reaffirmed.] RESERVED.

601. Promote Equal Contracting Opportunity.

Jackson County, Missouri reaffirms its [long-standing] policy to promote equal opportunity for [employment, advancement and continuation of employment] access to county contracts and associated subcontracts among all qualified businesses and persons regardless of their race, color, national origin, religion, age, sex, [handicap] disability, or sexual orientation.

602. County Contracts.

Jackson County, Missouri, reaffirms its long-standing policy to let certain County Contracts only to Contractors [which] that demonstrate their commitment to a policy of equal [employment] contracting opportunity by [adopting and implementing] making Good Faith Efforts to meet contracting affirmative action [plans] goals.

603. Construction of Chapter.

Nothing in this chapter shall be construed to require a Contractor or Subcontractor to hire unqualified or incompetent [personnel] Subcontractors or to discharge qualified or competent [personnel] Subcontractors.

611. Affiliate.

An Affiliate is a [Contractor effectively controlled by another individual or entity under common ownership or control.] person or entity that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person or entity. In determining affiliation, the County shall consider all appropriate factors, including common ownership, common management, and contractual relationships. A franchise company shall not be deemed to be an Affiliate of the franchisor if the owners of the franchise company have the right to profit from their franchise company [have] **and** the right to profit from their effort, proportionate to ownership, and bear the risk of loss.

[612. Acceptable Affirmative Action Plan.

An acceptable affirmative action plan is one which has been determined by the Compliance Review Officer to meet the nine (9) elements of acceptability set out in Sections 630.00 through 639.00 and under which action has been, is being, or will be taken by the adopting individual or entity toward the goal of equal opportunity for employment, advancement and continuation of employment among all qualified persons regardless of their race, color, national origin, religion, age, sex or handicap.]

612. Bidder or Contractor.

A Contractor or Bidder means any individual or entity that seeks to enter into a Contract with the County, and includes all partners, Affiliates, and Joint Ventures of such person or entity.

613. Broker.

Broker means a person or entity that fills orders by purchasing or receiving supplies from a third party

supplier rather than out of its own existing inventory and provides no substantial service other than acting as a conduit between his or her supplier and his or her customer.

614. Certified Firm.

A Certified Firm is one that has been accepted by the County as a certified MBE or WBE. The CRO shall maintain a list of acceptable certifications from organizations whose certification standards, policies, and procedures meet the requirements of strict constitutional scrutiny.

[616. Contractor.

Contractor means any individual or entity employing six (6) or more persons. In determining whether an individual or entity employs six (6) or more persons, the following rules shall govern.

616.1 Employees Counted.

All employees, including owner-employees and all employees of every affiliate of the individual or entity, shall be counted regardless of whether they are full-time or part-time, permanent or temporary.

616.2 Employees not Counted.

Notwithstanding anything to the contrary, those employees who are parents, spouses, or children of the individual or of any owner of the entity shall not be counted.

616.3 Evidence Required.

Every individual or entity claiming not to be a Contractor shall submit documentary evidence, satisfactory to the CRO, verifying the number of its employees and the employees of its

affiliates.]

615. Commercially Useful Function.

A Commercially Useful Function is performed by a Contractor or Subcontractor when that entity responsibility for the execution of a distinct element of the work of the Contract, which is carried out by actually performing, managing, and supervising the work involved, or fulfilling responsibilities as a Joint Venture partner.

616. Compliance Review Officer.

The Compliance Review Officer is the person hired pursuant to [Section 620.00 through 625.00] this chapter, who may also be referred to by the [abbreviation] **acronym** "CRO."

617. Contract.

Contract means any lawful agreement to which the County is a party, except the following.

617.1 With Governments.

Contract does not include any Contract between Jackson County, Missouri, and other governmental entities.

617.2 Real Property.

Contract does not include any Contract for the purchase, sale, or lease of an interest in real property.

617.3 Emergency Contracts.

Contract does not include any Contract established in an emergenc[ies]y.

617.4 Single Supplier.

Contract does not include any Contract for the purchase of commodities or services controlled and supplied by only one (1) Contractor.

617.5 Borrowing Money.

Contract does not include any Contract for the borrowing of money at interest, for the [purchase] sale of County general obligation or revenue bonds, or for the [purchase] sale of County tax anticipation notes.

618. Contract Goals.

Contract Goals are the goals established for a particular Contract based upon the availability of at least three MBEs or three WBEs to perform the scopes of work of the Contract.

619. County.

County refers to Jackson County, Missouri.

620. Good Faith Efforts.

Good Faith Efforts are actions undertaken by a Contractor to achieve MBE or WBE Contract Goals which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the Contract Goals.

621. Joint Venture.

A Joint Venture is an association of two or more persons, or any combination of types of business enterprises and persons numbering two or more, proposing to perform a single for profit business enterprise, in which each Join Venture partner contributes property, capital, efforts, skill and knowledge, and in which the MBE or WBE is responsible for a distinct, clearly defined portion of the work of the project and whose share in the capital contribution, control, management, risks, and profits of the Joint Venture are equal to its ownership interest. Joint Ventures must have an agreement in writing specifying the terms and conditions of the relationship between the partners and their relationship, risks, and responsibility under the Contract.

622. Minority Business Enterprise (MBE).

An MBE is a business, including a sole proprietorship, partnership, corporation, limited liability company, Joint Venture, or any other business or professional entity:

622.1 That is at least 51% owned by one or more Minority Individuals or, in the case of a publicly owned business, at least 51% of all classes of the stock of which is owned by one or more Minority Individuals;

622.2 Whose management, policies, major decisions, and daily business operations are independently managed and controlled by one or more such more Minority Individuals;

622.3 That performs a Commercially Useful Function; and

622.4 That is a Certified Firm.

623. Minority Individual.

A Minority Individual is a person who is:

623.1 African-American or Black, which includes persons having origins in any of the Black racial groups of Africa;

623.2 Hispanic-American, which includes persons of Mexican, Puerto Rican, Cuban, Caribbean, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

623.3 Native-American, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

623.4 Asian-American, which includes persons whose origins are in any of the original peoples of the Far East, Southeast Asia, the islands of the Pacific or the Northern Marianas, or the Indian Subcontinent; or

623.5 An individual member of any other group, including but not limited to Arab-Americans, recognized by the County to be socially disadvantaged by having suffered racial or ethnic prejudice or cultural bias within American society, without regard to individual qualities, resulting in decreased opportunities to compete in the County's marketplace or to do business with the County.

624. Regular Dealer.

A Regular Dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a Regular Dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A firm may be a Regular Dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt, without owning, operating, or maintaining a place of business if the firm both owns and operates distribution equipment for the products. Any supplementing of a Regular Dealer's distribution equipment shall be by a long-term lease agreement and not on an *ad hoc* or Contract-by-Contract basis. Packagers, manufacture representatives, or other persons who arrange or expedite transactions are not Regular Dealers.

625. Subcontractor.

Subcontractor means any individual or entity [employing six (6) or more persons and which] **that** shall undertake, by virtue of a separate Contract with another individual or entity, whether or not such individual or entity is a Contractor, to fulfill all or any part of the obligation of the other under a Contract with Jackson County, Missouri. [In determining whether a subcontracting individual or entity employees six (6) or more persons, the rules of Sections 616.01, 616.02, and 616.03 shall govern.]

626. Utilization Plan.

A Utilization Plan is a list of MBEs and WBEs that a Bidder commits will be utilized, including its own participation as a MBE or WBE, if applicable, in the scopes of the work and the dollar values or the

percentages of the work to be performed pursuant to a solicitation and in conformance with this chapter and the solicitation documents.

627. Woman.

A Woman is a person of the female gender.

628. Woman-Owned Business Enterprise (WBE).

A WBE is a business, including a sole proprietorship, partnership, corporation, limited liability company, Joint Venture or any other business or professional entity:

628.1 That is at least 51% owned by one or more Women, or in the case of a publicly owned business, at least 51% of all classes of the stock of which is owned by one or more Women;

628.2 Whose management, policies, major decisions and daily business operations are independently managed and controlled by one or more such Women;

628.3 That performs a Commercially Useful Function; and

628.4 That is a Certified Firm.

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 [selected] **recommended** a candidate for the position of CRO. The candidate [selected] **recommended** shall receive the position of CRO upon a majority vote of the Legislature approving that person.

629.2 Removal.

The [person selected as] CRO may be removed by a majority vote of two-thirds (2/3) of the County Legislature after review and recommendation of 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 [person holding the position of] CRO shall not simultaneously hold any other positions 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 Bidder'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, compliance with Contract Specific 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 [and shall provide the Bidder with a copy of this chapter unless already provided].

f. Notice of Ineligibility to Others.

The CRO shall notify the County Legislature[, the Manager of the Division of Finance] and the [Purchasing] 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 [Manager of the Division] **Director of the Department** of Finance and [the] Purchasing [Director].

h. Notice of Noncompliance with [Ordinance] Chapter.

The CRO shall notify the County Legislature[, the Manager of the Division of Finance] and the **Director of the Department of Finance and** Purchasing [Director] of those Contractors [which] **that** are not determined to be in compliance with any provision of [Section 640.00 through 644.05] **this chapter** and the reasons for the determination on noncompliance

i. Notice of Deficiency in Plan.

If the CRO finds that [the design of an affirmative action plan lacks an element of acceptability]

a Utilization Plan fails to comply with the requirements set out in [Sections 630.00 through 639.00] **this chapter**, the CRO shall specify to the interested Bidder, Contractor, or Subcontractor [those elements of acceptability which need to be incorporated into the design of the plan] **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 [under Section 642.00] and all other evidence available to the CRO, and shall determine whether or not the Contractor has neglected to implement its [affirmative action] **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 [Section 653] **this chapter**. The CRO shall specify to the [attending] 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 [Ten] Fifty Thousand Dollars.**

With respect to each Bidder being considered, as indicated by the Director of Finance and Purchasing [Director] or other County employee authorized to invite bids, for the award of a Contract in excess of [ten] **fifty** thousand dollars (\$[10,000] **50,000**) the CRO shall find whether:

ii. **Contractor or Subcontractor.**

The individual or entity is a Contractor or Subcontractor;

ii. Eligibility.

The Bidder or Contractor [is eligible under] 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 [Manager] **Director** of the [Division] **Department** of Finance and the Purchasing [Director].

I. Notice of Compliance Review Officer.

The CRO shall notify every affected Bidder, Contractor, [or] and Subcontractor of all decisions, findings or other actions of the CRO and of its appeal right under [Section 653] **this chapter.**

m. Other Duties.

In addition to other duties specified elsewhere, it shall be the duty of the CRO under this chapter:

i. Act to Assure Compliance.

To do every act reasonably necessary and feasible to assure compliance by Bidders, Contractors, and Subcontractors with all requirements of this chapter [and, in particular, with the requirement of adopting and implementing acceptable affirmative action plans];

ii. Assist Bidders, Contractors and Subcontractors.

To actively assist Bidders, Contractors, and Subcontractors to achieve or maintain compliance with this chapter;

iii. Maintain Public File.

To prepare and maintain a public file for each individual or entity submitting information to the CRO, to maintain in that file a correspondence log documenting all contact with those individuals or entities, and to keep and prepare records of the cumulative amounts of all Contracts awarded during each calendar year to any Contractor or its Affiliates;

iv. Recommend Revisions.

To recommend to the County Legislature any revisions to this chapter deemed prudent and policies and procedures to implement these provisions;

v. Design Documents and Forms.

To design documents, reports [forms], manuals, and other papers and electronic forms needed to perform the functions of the CRO and to disseminate and accumulate relevant information in the enforcement of this chapter, provided that, in no event may the CRO require any Bidder, Contractor, or Subcontractor to file any document, report form, manual, or other paper more frequently than semi-annually;

vi. Cooperate with OEHRCC.

To cooperate with the Office of **Ethics** Human Relations and Citizen Complaints in

connection with the exercise of that 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. [Semi-annual] Reports to Legislature.

To present monthly and [semi-]annually to the County Legislature a report of the progress of the County in implementing the policy of this chapter, [with illustrative specific case histories] including the utilization of MBEs and WBEs as prime Contractors and Subcontractors.

[i. Review Certificates of Affirmative Action Compliance.

To review certificates of affirmative action compliance. If the CRO determines this certificate represents compliance with this ordinance, the Bidder shall be deemed eligible.]

ix. Encourage Development of Affirmative Action Programs.

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

[626.10 Supply Copies of this Chapter.

The CRO shall send a copy of Chapter 6 to all Bidders who request a copy of said chapter.

626.11 Anti-Drug Sales Tax: Review of Minority Hiring and Employment.

The CRO shall monitor the proceeds of the Anti-Drug Sales Tax for minority hiring practices.

a. All entities that receive funds through the Anti-Drug sales tax shall be monitored by the CRO for compliance with the twenty percent goal of minority hiring and employment.

i. This goal is intended for new hires.

b. The CRO shall monitor all invitations for bids and award of contracts in excess of ten thousand dollars (\$10,000) made with proceeds from the Anti-Drug Sales Tax to insure that Bidders/Contractors comply with the provisions of Chapter 6 relating to affirmative action plans as determined by '612 of Chapter 6.]

630. Assistant to the Compliance Review Officer.

There is hereby established a non-merit position of Assistant to the Compliance Review Officer as a member of the staff of the Compliance Review Office. The Assistant to the Compliance Review Officer shall be hired by the Compliance Review Officer.

630.1 Salary.

The salary of the assistant to the Compliance Review Officer shall be established by the County Legislature pursuant to section 285. of the code.

630.2 Duties.

The Assistant to the Compliance Review Officer shall perform all duties as assigned by the Compliance Review Officer.

[630. Affirmative Action Plan.

An acceptable affirmative action plan shall contain, but is not limited to the following elements.]

[631. Policy Statement.

An affirmative action plan shall contain a policy statement embracing the goal of equal opportunity for employment, advancement, and continuation of employment among all qualified persons regardless of their race, color, national origin, religion, age, sex or handicap, and expressing a commitment to affirmative action as a means to such goal.]

[632. Written Delegation of Responsibility.

An affirmative action plan shall contain a written delegation of the ultimate responsibility for implementing and assuring compliance with the affirmative action plan by a top management officer of the Bidder.]

[633. Annual Publication and Dissemination.

An affirmative action plan shall require an annual publication and dissemination of the equal employment opportunity policy and affirmative action plan to all employees, to all services or sources through or from which new or potential employees are obtained, recruited or referred, and to all other interested outsiders.]

[634. Annual Census.

An affirmative action plan shall require an annual census for each job classification of those employees who fit within any or all of the following classes: female, handicapped, non-Caucasian, and between forty (40) and seventy (70) years of age.]

[635. Annual Statement of Goals.

An affirmative action plan shall contain an annual written statement of the specific goals of the plan for the year and the procedures and timetables for obtaining those goals, all for the purpose of correcting or preventing a deficiency, in regard to each job classification, in the employment or utilization of persons falling within any or all of the classes specified in Section 634.00.]

[636. Annual Review.

An affirmative action plan shall require a review, at least annually, of the equal employment opportunity policy and affirmative action plan obligations with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions, including specific review of these items with all on-site supervisory personnel prior to the initiation of work at any job sites; a written record must be made and maintained to identify the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.]

[637. Advertising.

An affirmative action plan shall require an inclusion in all advertisements for employees of a notice to the fact that the company is an equal employment opportunity employer or an affirmative action employer.])

[638 Collective Bargaining Agreement.

An affirmative action plan shall require consistency between any collective bargaining agreements and the

affirmative action plan.]

[639. Annual Written Report.

An affirmative action plan shall contain the top management officer of the Bidder having ultimate responsibility for implementing and assuring compliance shall submit, at least annually, a written report stating the efforts of that officer and the efforts of his employer to implement past or current goals of the plan and the result thereof.]

[642. Contracts in Excess of Ten Thousand Dollars.

Every Contractor whose contracts, including the contracts of its affiliates exceed ten thousand dollars (\$10,000) in any calendar year shall submit to the CRO an acceptable affirmative action plan to remain eligible for further contracts during the calendar year.]

[643. Affirmative Action Plan, Failure to Implement.

In the event the CRO determines that a Contractor has failed to implement an acceptable affirmative action plan as specified in Sections 630.00 through 639.00 the CRO shall notify the County Legislature, the Manager of the Division of Finance and the Purchasing Director of that failure and those Contractors will be ineligible to receive a county Contract until a determination by the CRO that an acceptable affirmative action plan has been implemented.]

[644. Contractors, Contracts let Under Ordinance 366, Section 3.190.

Every Contractor which is a party to a Contract let under Section 3.190 of Ordinance 366, or other sections in amendment thereto or in lieu thereof, shall accept, as part of that Contract, the following provisions and shall comply with those provisions.

644.1 Representations not Fraudulent, Contractor Warranty.

The Contractor warrants that all of its representations to the CRO relative to the consideration by the CRO of the Contractor for the award of this Contract and/or its performance under this Contract were true and free from fraud at the time when made.

644.2 Not Discriminate.

The Contractor shall not discriminate against any qualified person because of the race, color, national origin, religion, age, sex or handicap of that person in recruitment and recruitment advertising, employment, upgrading, promotion, demotion or transfer, lay-off or termination, rates of pay or other forms of compensation, other terms or conditions of employment and selection for training including apprenticeship.

644.3 Inspection by CRO.

The Contractor will permit, on reasonable notice and at reasonable times, the CRO to visit its premises, inspect and copy thereon its business records, survey its work forces and interview its employees, as may be necessary to verify compliance with this chapter and implementation of the affirmative action plan of the Contractor. The Contractor further agrees to furnish such further information that may be reasonably required of the Contractor within ten (10) working days of the date it is requested in writing by the CRO.

644.4 Subcontractors, Agreements with Contractors.

The Contractor will require that all contracts between it and Subcontractors shall contain the following provisions.

a. Not Discriminate.

The Subcontractor shall not discriminate against any qualified person because of her or his race, color, national origin, religion, age, sex or handicap in recruitment and recruitment advertising, employment, upgrading, promotion, demotion or transfer, lay-off or termination, rates of pay or other forms of compensation, other terms of conditions of employment and selection for training including apprenticeship.

b. Inspection by CRO.

The Subcontractor will permit, on reasonable notice and at reasonable times, the CRO to visit its premises, inspect and copy thereon its business records, survey its work forces and interview its employees, as may be necessary to verify compliance with this chapter and implementation of the affirmative action plan of the Subcontractor. The Subcontractor further agrees to furnish such further information as may be reasonably required of it within ten (10) working days of the date it is requested in writing by the CRO.]

640. Required Measures to Ensure Equal Contracting Opportunity.

All County officials involved in the procurement process shall develop and use measures to facilitate equal opportunities for the participation of all firms in County contracting activities. These measures shall include, but are not limited to:

640.1 Arranging solicitation times for the presentations of bids, quantities, specifications, and delivery schedules to facilitate the participation of interested firms.

640.2 Unbundling contracts to facilitate the participation of MBEs, WBEs, and other small firms.

640.3 Providing timely information on contracting procedures, bid preparation, and specific contracting opportunities.

640.4 Holding pre-bid conferences, where appropriate, to explain the projects and to encourage Contractors to use all available firms as Subcontractors.

640.5 Reviewing retainage, bonding, and insurance requirements to eliminate unnecessary barriers to contracting with the County.

640.6 Maintaining information on all firms bidding on County prime Contracts and Subcontracts.

640.7 Referring complaints of discrimination to the County's Office of Ethics, Human Relations and Citizen Complaints, or other appropriate authority, for investigation.

641. Equal Opportunity, Contractors and Subcontractors.

No Contractor or Subcontractor shall deny equal opportunity for Contracting, employment, advancement, [and] **or** continuation of employment to any qualified person because of the race, color, national origin, religion, age, sex, sexual orientation, or [handicap] **disability** of that person.

642. Contracts in Excess of [Ten] Fifty Thousand Dollars, Affirmative Action Requirements.

The following [rules] sections govern Contracts in excess of [ten] fifty thousand dollars (\$[10,000] 50,000).

[641.1 Subcontractors Used by Bidders.

Every Contractor Bidder on a Contract in excess of ten thousand dollars (\$10,000) shall use only Subcontractors which have adopted acceptable affirmative action plan and shall submit those affirmative action plans to the CRO.

641.2 Affirmative Action Plan of Contractor.

Every Contractor bidding on a Contract in excess of ten thousand dollars (\$10,000) shall submit to the CRO an acceptable affirmative action plan.

641.3 Additional Information.

Every Bidder on any Contract shall notify the CRO or the Purchasing Director, on request and by affidavit, of the number of its employees and the identity of each of its Subcontractors of affiliates.]

643. Review Solicitations.

The CRO shall review all eligible solicitations for MBE and WBE participation, and may cause to be included in a solicitation a Contract Goal for MBE participation and a Contract Goal for WBE participation.

644. Good Faith Effort.

Each Bidder must make a Good Faith Effort to meet the Contract Goal(s).

645. Failure to Achieve Goals.

Where the Bidder cannot achieve the Contract Goal(s), the CRO will determine whether the Bidder has made Good Faith Efforts to meet the Goal(s). In making this determination, the CRO will consider, at a minimum, the Bidder's efforts to:

645.1 Solicit through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising, and written notices) the interest of all MBEs and WBEs certified in the scopes of work of the Contract. The Bidder shall provide interested MBEs and WBEs with timely, adequate information about the plans, specifications, and requirements of the Contract to allow MBEs and WBEs to respond to the solicitation. The Bidder must follow up initial solicitations with interested MBEs and WBEs.

645.2 Select portions of the work to be performed by MBEs and WBEs in order to increase the likelihood that the Contract Goals will be achieved. This includes, where appropriate, breaking out Contract work items into economically feasible units to facilitate MBE and WBE participation, even when the Bidder would otherwise prefer to perform these work items with its own forces. It is the Bidder's responsibility to make a portion of the work available to MBEs and WBEs and to select those portions of the work or material needs consistent with the availability MBEs and WBEs to facilitate their participation.

645.3 Negotiate in good faith with interested MBEs and WBEs. Evidence of such negotiation includes the names, addresses, email addresses, telephone numbers and contact person of MBEs and WBEs that were contacted; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and why agreements could

not be reached with MBEs and WBEs. The Bidder may not reject MBEs and WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. That there may be some additional costs involved in finding and using MBEs and WBEs is not in itself sufficient reason for a Bidder's failure to meet the Contract Goal(s), as long as such costs are reasonable. The ability or desire of a Bidder to perform the work of a Contract with its own organization does not relieve it of the responsibility to make Good Faith Efforts on all subcontractable scopes of work.

645.4 Make efforts to assist interested MBEs and WBEs in obtaining bonding, lines of credit, or insurance as required by the County or the Bidder, where appropriate.

645.5 Make efforts to assist interested MBEs and WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services, where appropriate.

645.6 Use the services of the CRO, available minority/women community organizations, minority/women Contractors' groups, government-sponsored minority/women business assistance offices, and other appropriate organizations to provide assistance in the recruitment and placement of MBEs and WBEs.

645.7 In determining whether a Bidder has made Good Faith Efforts, the performance of other Bidders in meeting the Contract Goal(s) may be considered. For example, when the apparent successful Bidder fails to meet the Contract Goal(s) but others meet it, it may be reasonably questioned whether, with additional reasonable efforts, the apparent successful Bidder could have met the Contract Goal(s). Similarly, if the apparent successful Bidder fails to meet the

Contract Goal(s), but meets or exceeds the average MBE or WBE participation obtained by other Bidders, this may be evidence that the apparent successful Bidder made Good Faith Efforts.

646. Advertisement of Required Good Faith Evidence.

The manner and time for submittal of evidence of Good Faith Efforts shall be specified in the solicitation documents.

647. Evaluation of Good Faith Efforts.

The CRO shall evaluate the evidence of the Bidder's Good Faith Efforts and determine whether it has satisfied the requirements of this Ordinance and the solicitation documents.

648. Utilization Plan Required.

A Bidder that intends to utilize MBEs or WBEs to meet the Contract Goal in full or in part must submit a Utilization Plan in the manner and at the time specified in the solicitation documents.

649. Letter of Intent.

A signed letter of intent from each listed MBE or WBE, describing the work, materials, equipment or services to be performed or provided by the MBE or WBE and the agreed upon dollar value shall be due in the manner and at the time specified in the solicitation documents.

650. Utilization Plan Review.

The CRO shall timely review the Utilization Plan before award, including the scope of work and the letters of intent from MBEs and WBEs. The CRO may request clarification in writing of items listed in the Utilization

Plan, provided such clarification shall not include the opportunity to augment listed participation or Good Faith Efforts.

651. Recommendation of Award.

If the CRO determines that the Utilization Plan demonstrates that the Contract Goals have been achieved or Good Faith Efforts have been made, the CRO shall recommend award to Director of Finance and Purchasing or Director of Public Works, as applicable.

652. Lack of Sufficient Good Faith Efforts, Consequences.

If the CRO finds that a Bidder did not make sufficient Good Faith Efforts, the CRO shall communicate this finding to the Director of Finance and Purchasing or Director of Public Works and recommend that the bid/proposal be rejected. A Bidder may protest this determination pursuant to the procedures in section 661. of this chapter.

653. Contract Goals Are Covenants.

Upon award of a Contract by the County that includes Contract Goals, the Contract Goals become covenants of performance by the Contractor in favor of the County.

654. Contractor's Required Submittals.

The Contractor shall provide a listing of all Subcontractors to be used in the performance of the Contract, and detailed Subcontractor information in the form specified by the County with each request for payment submitted to the County or as otherwise directed by the County. The CRO and the using department shall monitor Subcontractor participation during the course of the Contract. The County shall have full and timely access to the Contractor's books and records, including without limitation payroll records, tax returns, and

records and books of account, to determine the Contractor's compliance with its commitment to MBE and WBE participation and the status of any MBE or WBE performing any portion of the Contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the Contractor's records by any officer or official of the County for any purpose.

655. Utilization Plan Changes Not Authorized.

The Contractor cannot make changes to the Utilization Plan or substitute MBEs or WBEs named in the Utilization Plan without the prior written approval of the CRO, the Director of Finance and Purchasing, if applicable, and the using department. Unauthorized changes or substitutions shall be a violation of this chapter and a breach of Contract, and may constitute grounds for rejection of the bid or proposal or cause termination of the executed Contract for breach, the withholding of payment and/or subject the Contractor to Contract penalties or other sanctions.

655.1 All requests for changes or substitutions of a MBE or WBE Subcontractor(s) named in the Utilization Plan shall be made to the CRO, Director of Finance and Purchasing, if applicable, and the using department in writing, and shall clearly and fully set forth the basis for the request. A Contractor shall not substitute a MBE or WBE Subcontractor or perform the work designated for a MBE or WBE Subcontractor with its own forces unless and until the CRO, Director of Finance and Purchasing, and the using department approve such substitution in writing. A Contractor shall not allow a substituted Subcontractor to begin work until each of the CRO, Director of Finance and Purchasing, if applicable, and the Using Department have approved the substitution.

655.2 The facts supporting the request must not have been known nor reasonably should have been known by either party before the submission of the Utilization Plan. Bid shopping is prohibited. The

Contractor must negotiate with the MBE or WBE Subcontractor to resolve the problem. Where there has been a mistake or disagreement about the scope of work, the MBE or WBE can be substituted only where an agreement cannot be reached for a reasonable price for the correct scope of work.

655.3 Substitutions of the Subcontractor shall be permitted only on the following bases:

- a. Unavailability after receipt of reasonable notice to proceed;
- b. Failure of performance;
- c. Financial incapacity;
- d. Refusal by the Subcontractor to honor the bid or proposal price;
- e. Mistake of fact or law about the elements of the scope of work of a solicitation where agreement upon a reasonable price cannot be reached;
- f. Failure of the Subcontractor to meet insurance, licensing, or bonding requirements; or
- g. The Subcontractor's withdrawal of its bid or proposal.

655.4 The County's final decision whether to permit or deny the proposed substitution, and the basis of any denial, shall be communicated to the parties in writing by the CRO.

655.5 Where the Contractor has established the basis for the substitution to the satisfaction of the County, the Contractor shall make Good Faith Efforts to fulfill the Utilization Plan. The Contractor may seek the assistance of the CRO in obtaining a new MBE or WBE. If the Contract Goal(s) cannot be reached and Good Faith Efforts have been made, the Contractor may substitute with a non-Certified Firm.

655.6 If the County requires the substitution of a MBE or WBE Subcontractor listed in the Utilization Plan, the Contractor shall undertake Good Faith Efforts to fulfill the Utilization Plan. The Contractor may seek the assistance of the CRO in obtaining a new MBE or WBE Subcontractor. If the Goal(s) cannot be reached and Good Faith Efforts have been made, the Contractor may substitute with a non-Certified Firm.

655.7 If a Contractor plans to hire a Subcontractor on any scope of work that was not previously disclosed in the Utilization Plan, the Contractor shall obtain the approval of the CRO to modify the Utilization Plan and must make Good Faith Efforts to ensure that MBEs and WBEs have a fair opportunity to bid on the new scope of work.

655.8 Changes to the scopes of work shall be documented by the using department at the time they arise, to establish the reasons for the change and the effect on achievement of the MBE or WBE goal.

655.9 Prior to Contract closeout, the CRO shall evaluate the Contractor's fulfillment of the Contract Goals, taking into account all approved substitutions, terminations, and changes to the Contract's scope of work. If the County determines that Good Faith Efforts to meet the MBE or WBE commitments were not made, or that fraudulent misrepresentations have been made, or any other

breach of the Contract or violation of this chapter, a remedy or sanction may be imposed, as provided in the Contract and this chapter.

656. Breach of Contract.

The following acts may result in a breach of Contract:

656.1 Providing false or misleading information to the County in connection with submission of a bid, responses to requests for qualifications or proposals, Good Faith Efforts documentation, post-award compliance, or other program requirements or operations.

656. 2 Committing any other violation of this chapter.

657. Sanctions.

A Contractor or Subcontractor is subject to withholding of payments under the Contract, termination of the Contract for breach, Contract penalties, or being barred or deemed non-responsive in future County solicitations and Contracts as determined by the County's Director of Finance and Purchasing or Director of Public Works, as applicable, if it is found to have:

657.1 Provided false or misleading information in connection with an application for certification or recertification or colluded with others to do so;

657.2 Provided false or misleading information in connection with the submission of a bid or proposal or documentation of Good Faith Efforts, post-award compliance, or other program requirements or

operations or colluded with others to do so;

657.3 Failed in bad faith to fulfill Contract Goals, thereby materially breaching the Contract; or

657.4 Failed to comply in good faith with substantive provisions of this chapter

658. Ineligible for Contract.

No Bidder or Contractor is eligible for any Contract as long as it has not complied with [Sections 640.00 through 654.03] **any provision of this chapter.**

659. Contracts Let Under [Ordinance 366, Section 3.190] **Purchasing Code.**

No payment shall be made by the County under any Contract let under [Section 3.190 of Ordinance 366, or other section in amendment thereto] **chapter 10 of this code,** or in lieu thereof, until the CRO has determined in writing that such Bidder or Contractor and its Subcontractors have complied with [Section 640.00 through 644.00] **this chapter.**

660. Effect of Ineligibility.

[Every Bidder or] **No Contractor** whose Contract is rescinded under [Sections 644.00 through 644.03] **this chapter** shall be **[in]eligible** for any future Contract until the cited deficiency has been corrected and the Contractor has notified the CRO in writing of the correction. The eligibility of the Contractor [or Bidder] will be reinstated on determination by the CRO that, in fact, the deficiency in question has been remedied.

661. Right to Appeal.

Any individual or entity who is aggrieved by any decision, finding or action of the CRO shall have the right to appeal that action within ten (10) [working] days after the receipt by the individual or entity of notice of adverse action, **pursuant to the procedures set out in section 662.**

662. Contractor Sanctions, Appeal Procedure.

Any aggrieved party may appeal to the Legislature or such committee as may be determined by the Legislature to hear such appeals in writing, within [five (5)] **ten (10)** days of written receipt of the CRO's adverse decision. The committee shall follow administrative procedures pursuant to chapter 536 of the Revised Statutes of Missouri in ruling upon the appeal and shall render all decisions on appeal within [two weeks] **60 days** after the mailing date of an adverse determination by the CRO.

663. Retention of Authority by County Legislature.

The County Legislature retains the authority to make all final decisions of the awarding of any County Contract within its jurisdiction.

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 December 31, 2017.

Section B. Effective Date. This Ordinance shall be effective as of January 1, 2015.

..Enacted and Approved

Effective Date: This Ordinance shall be effective immediately upon its passage by the County Executive.

APPROVED AS TO FORM:

Chief Deputy County Counselor

County Counselor

I hereby certify that the attached Ordinance, Ordinance No. 4636 introduced on June 30, 2014, was duly passed on July 28, 2014 by the Jackson County Legislature. The votes thereon were as follows:

Yeas 8

Nays 0

Abstaining 0

Absent 1

This Ordinance is hereby transmitted to the County Executive for his signature.

Date

Mary Jo Spino, Clerk of Legislature

I hereby approve the attached Ordinance No. 4636.

Date

Michael D. Sanders, County Executive