

REQUESTED BY COUNCILMEMBERS DAVIS AND DYER

1 AN ORDINANCE TO AMEND CITY CODE
2 SECTIONS 2-224.1 TO 2-224.8 TO ENACT AN
3 ENHANCEMENT PROGRAM FOR SMALL
4 BUSINESSES, INCLUDING MINORITY, SERVICE
5 DISABLED VETERAN AND WOMAN-OWNED
6 BUSINESSES

7
8 SECTIONS AMENDED: §§ 2-224.1 to 2-224.8
9

10 WHEREAS, in 1995, in furtherance of the City Council's commitment to
11 the City's established policy of equal opportunity and nondiscrimination in City
12 procurement, City Council enacted City Code provisions to help ensure that
13 small, minority-owned, and woman-owned ("SWaM") businesses are made
14 aware of City contracting opportunities and are encouraged to compete for City
15 contracts;

16
17 WHEREAS, also in 1995, City Council created the region's first and, with
18 the possible exception of Hampton, only Minority Business Council ("MBC") to (1)
19 advise City Council and the City Manager on policy issues including the City's
20 efforts to encourage the participation of minority-owned businesses and small
21 and woman-owned businesses; (2) conduct educational and training programs to
22 promote the involvement of such businesses in City procurements; (3) serve as a
23 forum for the development of awareness of such businesses in City
24 procurements; and (4) provide annual reports to City Council on the City's
25 progress in achieving greater participation of such businesses in City contracts;

26
27 WHEREAS, since that time, the volunteer members of the MBC have
28 worked vigilantly and tirelessly with City staff to develop and implement a variety
29 of initiatives to increase minority participation in City procurement, with positive
30 results;

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32 WHEREAS, among the many additional initiatives implemented by the
33 City since 1995 are:

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- 36 • City Council's establishment of a 10% goal for minority participation
37 in City contracts;
 - 38 • Debundling of City contracts to better enable SWaM businesses to
39 compete for City contracts;
 - 40 • Access for City procurement officials and those with delegated
41 procurement authority to a comprehensive database of SWaM
42 businesses and the types of goods or services that each business
43 provides;
 - 44 • City Council's addition of service disabled veteran businesses to
the City's above-referenced SWaM enhancement efforts;

- 45 • City Council's enactment of a required Woman, Service Disabled
46 Veteran and Minority Participation Plan for all City contracts in
47 excess of \$50,000 to encourage prime contractors to solicit and
48 award subcontracts to SWaM and service disabled veteran
49 businesses;
- 50 • Implementation of a City Administrative Directive to require
51 solicitations of SWaM and service disabled veteran businesses in
52 small procurements of less than \$50,000;
- 53 • Implementation of a Contractor's Assistance Program to help
54 SWaM businesses with start up costs and early material
55 purchases;
- 56 • Entry into a Memorandum of Understanding with
57 Virginia's Department of Minority Business Enterprises ("DMBE"),
58 as well as development of a productive and mutually beneficial
59 working relationship with DMBE;
- 60 • City Council's creation and funding of a Minority Business
61 Coordinator position, a SWaM Business Development Manager,
62 and, most recently, a Title VI Civil Rights Compliance position;
- 63 • Recent efforts to further the City's SWaM and service disabled
64 veteran business participation in subcontracts by providing prime
65 contractors in all Requests for Proposals and Invitations for Bids
66 with information regarding City Council's 10% minority participation
67 goal and a list of examples of good faith efforts that prime
68 contractors could undertake both in support of that goal and in
69 fulfillment of the City's requirements for Woman, Service Disabled
70 Veteran and Minority Participation Plans;
- 71 • City Council's adoption of a program to reduce barriers to
72 participation by allowing prequalification in lieu of bonding for
73 contracts between \$100,000 and \$500,000.

74
75 WHEREAS, although significant progress has been made in furtherance
76 of City Council's 10% participation goal, more improvement is needed, especially
77 in the area of construction contracting;

78
79 WHEREAS, the Virginia Code provides authority for the City to enact a
80 small business enhancement program;

81
82 WHEREAS, a small business enhancement program would enhance small
83 businesses including minority, woman, and service disabled veteran owned
84 businesses, and also likely would be beneficial to locally owned businesses.

85
86 NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY
87 OF VIRGINIA BEACH, VIRGINIA:

88

89 1. That the City Council finds there is a rational basis to enhance the
90 participation of DMBE-certified small businesses, including woman and minority-
91 owned businesses, in City procurement processes; and
92

93 2. That the City Council endorses the re-titling and changes to
94 Administrative Directive 6.09, "DMBE-certified Small Business, including Woman
95 and Minority-owned businesses, Small Purchase Procedures" as set forth in the
96 attached Directive; and
97

98 3. That in furtherance of the above-stated desire and intent of the City
99 Council, the following sections of the Code of the City of Virginia Beach shall be
100 amended and re-ordained as follows:
101

102 Chapter 6. ADMINISTRATION

103 ARTICLE VI. FINANCE

104

105 Section 2-224.1 – Definitions.

106 For purposes of this subsection, the following words shall have the meanings
107 ascribed to them in this section:
108

109 DMBE-certified small business means a small business that has been certified by
110 the Virginia Department of Minority Business Enterprises.
111

112 *Good-faith Minority-owned, Service Disabled Veteran-owned and Woman-owned*
113 *Business Participation Efforts:* The sum total of efforts by a particular business to
114 provide for the equitable participation of minority, service disabled veteran and
115 woman employees and subcontractors in the operations and contracts of such
116 business.
117

118 (1) For past efforts, this sum total shall be comprised of the record of
119 minority, service disabled veteran and woman participation over the
120 past two (2) years through employment, retention, and promotion;
121 subcontracting or joint ventures in the private sector; or a combination
122 thereof.
123

124 (2) In connection with the performance of a particular city contract, "good
125 faith efforts" shall mean those measures which are proposed to allow
126 equitable participation of minority, service disabled veteran and woman
127 employees and subcontractors.
128

129 *Minority, Service Disabled Veteran and Woman Contractors Bid List:* A list of
130 contractors who have completed and filed with the purchasing agent the city's
131 bidder application indicating that their firm is a minority-owned, service disabled
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135 veteran or woman-owned business. The purchasing agent shall maintain the list
136 and shall organize the list by category of business. Such list shall be provided,
137 upon request, in its entirety or by relevant category, to any interested party. The
138 list shall not be deemed to constitute an endorsement of the qualifications of any
139 business included on the list.

140
141 *Minority-owned Business:* A business or other entity that is at least fifty-one (51)
142 percent owned and controlled by one (1) or more socially and economically
143 disadvantaged person(s). For purposes of this definition, the term "control" shall
144 mean exercising the power to make policy decisions and being actively involved
145 in day-to-day management. Such disadvantage may arise from cultural, racial,
146 chronic economic circumstance or background, or other similar cause. Such
147 persons include, but are not limited to, Black Americans, Hispanic Americans,
148 Asian Americans, Eskimos, and Aleuts.

149
150 *Service disabled veteran:* means a veteran who (i) served on active duty in the
151 United States military ground, naval, or air service, (ii) was discharged or
152 released under conditions other than dishonorable, and (iii) has a service-
153 connected disability rating fixed by the United States Department of Veterans
154 Affairs.

155
156 *Service disabled veteran business:* means a business concern that is at least
157 51% owned by one or more service disabled veterans or, in the case of a
158 corporation, partnership, or limited liability company or other entity, at least 51%
159 of the equity ownership interest in the corporation, partnership, or limited liability
160 company or other entity is owned by one or more individuals who are service
161 disabled veterans and both the management and daily business operations are
162 controlled by one or more individuals who are service disabled veterans.

163
164 *Small business* means a business, independently owned and controlled by one
165 or more individuals who are U.S. citizens or legal resident aliens, and together
166 with affiliates, has 250 or fewer employees, or annual gross receipts of \$10
167 million or less averaged over the previous three years. One or more of the
168 individual owners shall control both the management and daily business
169 operations of the small business.

170
171 *DMBE-certified Small Business, including Woman, Service Disabled Veteran and*
172 *Minority-owned businesses. Subcontracting Participation Plan:* A plan detailing,
173 at a minimum: Whether the contractor intends to utilize any subcontractors; what,
174 if any, DMBE-certified small business, including woman-owned, service disabled
175 veteran-owned and minority-owned, subcontractors the contractor intends to
176 utilize; the work to be performed by each DMBE-certified small business,
177 including woman-owned, service disabled veteran-owned and minority-owned
178 subcontractor; the anticipated amount or percentage to be paid to each DMBE-
179 certified small business, including woman-owned, service disabled veteran-
180 owned and minority-owned subcontractor; the composition of the contractor's

181 workforce, specifically indicating the percentage of woman, service disabled
182 veteran and minority employees in their company; the percentage of woman,
183 service disabled veteran and minorities in management positions, supervisory
184 positions, professional positions, and nonprofessional positions; what steps the
185 contractor has taken to solicit subcontracting bids from DMBE-certified small
186 businesses, including woman-owned, service disabled veteran-owned and
187 minority-owned subcontractors; which DMBE-certified small businesses,
188 including woman-owned, service disabled veteran-owned and minority-owned
189 businesses the contractor has solicited; if the contractor has elected not to utilize
190 a DMBE-certified small business, including woman-owned, service disabled
191 veteran-owned or minority-owned, subcontractor, an explanation of the decision;
192 and any additional Good-faith Minority-owned, Service Disabled Veteran-owned
193 and Woman-owned Business Participation Efforts the contractor intends to make
194 in connection with the contract.

195
196 *Woman-owned Business:* A business or other entity that is at least fifty-one (51)
197 percent owned and controlled by a woman or women. For purposes of this
198 definition, the term "control" shall mean exercising the power to make policy
199 decisions and being actively involved in day-to-day management.

200
201 **Section 2-224.2. - Reserved.**

202
203 **Section 2-224.3. – DMBE-certified small business, including woman and**
204 **Minority-owned business opportunities – Construction contracts; bid**
205 **requirements.**

- 206
207 (a) Notice of every invitation to bid on city construction contracts in excess of
208 fifty thousand dollars (\$50,000.00) shall be provided to each business
209 included in the relevant category of the Minority, Service Disabled Veteran
210 and Woman Contractors Bid List. In addition, the purchasing agent shall
211 also forward such notices, upon request, to any minority organization or
212 other interested party. Notice of the solicitation shall be provided to all
213 DMBE-certified small businesses in the relevant industry sector located
214 within 50 miles of the city.
- 215 (b) If a pre-bid meeting is held, the purchasing agent or designee shall
216 provide prospective contractors with direction regarding the resources for
217 locating DMBE-certified small businesses offered by the Virginia
218 Department of Minority Business Enterprises.
- 219 (b)(c) Every bid submitted in response to an invitation to bid on a city
220 construction contract in excess of fifty thousand dollars (\$50,000.00) shall
221 be required to contain a proposed DMBE-certified Small Business,
222 including Woman, Service Disabled Veteran and Minority-owned
223 Businesses, Subcontracting Participation Plan. The successful contractor
224 shall update his DMBE-certified Small Business, including Woman,
225 Service Disabled Veteran and Minority-owned Businesses, Subcontracting
226 Participation Plan prior to the execution of the contract with the City. The

227 final DMBE-certified Small Business, including Woman, Service Disabled
228 Veteran and Minority-owned Businesses, Subcontracting Participation
229 Plan shall become a part of the contract with the city.

- 230 (e) (d) The purchasing agent shall provide, upon request, to all prospective
231 prime construction contractors, a list of all businesses included in the
232 relevant categories of the Minority, Service Disabled Veteran and Woman
233 Contractors Bid List; provided, however, that the list shall not be deemed
234 to include all available minority-owned or woman-owned subcontractors,
235 nor shall it be deemed to constitute an endorsement of the qualifications of
236 any subcontractor included on the list.

237
238 **Section 2-224.4. - Same—Contracts for provision of goods and services.**

239
240 Solicitations for contracts of more than fifty thousand dollars (\$50,000.00) shall
241 include at least three (3) DMBE-certified small businesses, including Minority-
242 owned Businesses, Service Disabled Veteran-owned Businesses or Woman-
243 owned Businesses that are included on the list maintained pursuant to section 2-
244 224.1 and are in the business of supplying goods or services of the kind to be
245 procured, unless the list contains less than three (3) DMBE-certified small
246 businesses, including Minority-owned Businesses, Service Disabled Veteran-
247 owned Businesses and Woman-owned Businesses which are in the business of
248 supplying goods or services of the kind to be procured. In addition, the
249 purchasing agent shall forward such solicitations, upon request, to any minority
250 organization or other interested

251
252 **Section 2-224.5. Same – Procurement of professional and other than**
253 **professional services by competitive negotiation.**

- 254
255 (a) Notice of every request for proposals ("RFP") shall be provided to each
256 business included in the relevant category of the Minority, Service
257 Disabled Veteran and Woman Contractors Bid List. In addition, the
258 purchasing agent shall also forward such notices, upon request, to any
259 minority organization or other interested party. Notice of the solicitation
260 shall be provided to all DMBE-certified small businesses in the relevant
261 industry sector located within 50 miles of the city.
262 (b) If a pre-bid meeting is held, the purchasing agent or designee shall
263 provide prospective contractors with direction regarding the resources for
264 locating DMBE-certified small businesses offered by the Virginia
265 Department of Minority Business Enterprises.
266 (b)(c) Every proposal submitted in response to a RFP shall be required to
267 contain a proposed DMBE-certified Small Business, including Woman,
268 Service Disabled Veteran and Minority-owned Businesses, Subcontracting
269 Participation Plan. The successful contractor shall update his DMBE-
270 certified Small Business, including Woman, Service Disabled Veteran and
271 Minority-owned Businesses, Subcontracting Participation Plan prior to the
272 execution of the contract with the City. The final DMBE-certified Small

273 Business, including Woman, Service Disabled Veteran and Minority-
274 owned Businesses, Subcontracting Participation Plan shall become a part
275 of the contract with the City.

- 276 (e) (d) Compliance with the provisions of section 2-224.2, "Employment
277 discrimination by contractor prohibited," shall be considered in the RFP
278 evaluation and contractor selection process.

279
280 **Section 2-224.6. Responsible and responsive bidder; qualified offeror.**

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282 (a) The provisions of this subdivision shall be used as criteria in determining
283 whether a bidder is deemed to be responsible and responsive, or whether
284 an offeror is deemed to be fully qualified, and no contract shall be
285 awarded to a bidder or offeror who has not complied with the provisions
286 herein. Failure to submit a proposed DMBE-certified Small Business,
287 including Woman, Service Disabled Veteran and Minority-owned
288 Businesses, Subcontracting Participation Plan with a bid or proposal shall
289 result in the bid or proposal being declared nonresponsive

290 (b) For contracts with a value exceeding \$50,000 where the contractor
291 intends to utilize subcontractors, the DMBE-certified Small Business,
292 including Woman, Service Disabled Veteran and Minority-owned
293 Businesses, Subcontracting Participation Plan required by this section
294 must either: (i) provide for at least 50% of the value of the subcontracted
295 work to be provided by a DMBE-certified small business; or (ii) provide
296 documentation showing, with specificity, the efforts undertaken by the
297 prospective contractor to meet the 50% usage requirement.

298 (c) If a subcontracting plan does not meet the requirements of subsection b,
299 the entire bid or proposal shall be declared nonresponsive to the
300 solicitation.

301
302 **Section 2-224.7. - Public inspection of records.**

303
304 In accordance with the Virginia Freedom of Information Act, a bidder's or
305 contractor's Woman, Service Disabled Veteran and Minority Participation Plan
306 shall be open to public inspection.

307
308 **Section 2-224.8 – Penalties.**

309
310 (a) Any bidder or contractor that intentionally makes a material
311 misrepresentation in connection with any of the information required by
312 subdivision shall be debarred from contracting with the city for a period of
313 two (2) years from the date of notification of such debarment.

314 (b) Prior to final payment, each contractor shall submit a report documenting
315 its efforts undertaken in compliance with its final DMBE-certified Small
316 Business, including Woman, Service Disabled Veteran and Minority-
317 owned Businesses, Subcontracting Participation Plan. The report shall
318 include, at a minimum: A statement of whether any DMBE-certified small

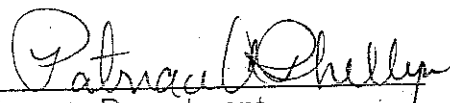
319 business subcontractors were utilized; a list of any DMBE-certified small
320 businesses, including woman-owned and minority-owned subcontractors
321 utilized; a brief description of the work performed by each DMBE-certified
322 small business, including woman-owned and minority-owned
323 subcontractors; the amount paid to each DMBE-certified small business,
324 including, woman-owned and minority-owned subcontractors; and any
325 additional Good-faith Minority-owned, Service Disabled Veteran-owned
326 and Woman-owned Business Participation Efforts the contractor made in
327 connection with the contract. A contractor will not receive final payment
328 under a contract until he submits the documentation required by this
329 subsection.

330 (c) If actual woman, service disabled veteran and minority participation
331 substantially deviates below the levels outlined in the final DMBE-certified
332 Small Business, including Woman, Service Disabled Veteran and Minority-
333 owned Businesses, Subcontracting Participation Plan, the contractor shall
334 provide an explanation for the deviation within ten (10) days of a request
335 by the city for such explanation. If the explanation for the deviation lacks
336 reasonable justification that rises to the level of dishonesty or in the event
337 the contractor refuses to submit an explanation for the deviation, the
338 contractor may be debarred from contracting with the city for a period of
339 up to two (2) years from the date of notification of such debarment.

340 (d) The debarment of any bidder or contractor pursuant to this subdivision
341 shall be deemed to include the debarment of any successor corporation,
342 partnership, firm or other entity controlled or managed by any officer,
343 director, partner or controlling shareholder of the debarred bidder or
344 contractor.

Adopted by the City Council of the City of Virginia Beach, Virginia, this
27th day of September, 2011.

APPROVED AS TO CONTENT:


Finance Department

APPROVED AS TO LEGAL
SUFFICIENCY:


City Attorney's Office

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September 14, 2011