

OMAHA CITY COUNCIL

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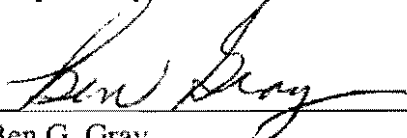
Honorable President

and Members of the City Council,

Transmitted herewith is an Ordinance to amend Chapter 10 of the Omaha Municipal Code to add a new Division 5 entitled "Small and Emerging Small Businesses." The purpose of this ordinance is to stimulate the growth of small and emerging businesses in Omaha with special attention to stimulating economic growth within census tracts with high levels of poverty. This Ordinance is race and gender neutral and would give preference for City contracting opportunities to small and emerging businesses based on their size and capacity.

Your favorable consideration of this Ordinance is respectfully requested.

Respectfully submitted,


Ben G. Gray
City Council Member

10/9/09
Date

Approved by B.C. No 1197
of 11-30-09

ORDINANCE NO. 38564

1 AN ORDINANCE to amend Chapter 10 of the Omaha Municipal Code entitled "Finance," by
2 creating a new Division 5, entitled "Small and Emerging Small Business Program"; and
3 to provide the effective date thereof.

4 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

5 Section 1. That Chapter 10 of the Omaha Municipal Code, entitled "Finance," is hereby
6 amended to read as follows:

7 DIVISION 5. SMALL AND EMERGING SMALL BUSINESS PROGRAM

8
9 **Sec. 10-200. Necessity and expediency declared.**

10
11 It is necessary and expedient, and it is hereby declared necessary and expedient, to
12 require the inclusion of certain provisions in contracts with the city to promote and encourage the
13 creation of business opportunities for emerging and small businesses of the city, to compete for
14 city contracts; and to promote equality of access to city contracts. Further, the objective of this
15 ordinance is to enable the establishment of incentives, savings, funding and other methods to
16 engage emerging and small businesses.

17
18 **Sec. 10-201. Definitions.**

19
20 (a) The word "contractor," wherever used in this division, is hereby defined as any
21 person, partnership, corporation, association or joint venture which has been awarded a contract,
22 and includes every subcontractor on such a contract.

23
24 (b) The word "subcontractor," wherever used in this division, is hereby defined as
25 any person, partnership, corporation, association or joint venture which supplies any of the work,
26 labor services, professional services, supplies, equipment, materials or any combination of the
27 foregoing under a contract with the contractor on a contract.

28
29 (c) The word "contract," wherever used in this division, is hereby defined as any
30 contract awarded by the city whereby the city is committed to expend or does expend its funds,
31 including funds received from other government agencies, in return for work, labor services,
32 financial services, technical services, professional services, supplies, equipment, materials or any
33 combination of the foregoing.

34

1 (d) The word "bidder," wherever used in this division, is hereby defined as any
2 person, partnership, corporation, association or joint venture seeking to be awarded a city
3 contract.

4
5 (e) The term "construction contract," wherever used in this division, means any city
6 contract for the construction, rehabilitation, alteration, conversion, extension or repair of
7 buildings, streets or other improvements to real property.

8
9 (f) A "construction contractor" is a business concern that contracts with the city for
10 the construction, renovation or demolition of a building, road or other structure and is the
11 signatory as the builder of the prime construction contract for the project, responsible for the
12 means and methods, material, labor, equipment to be used in the construction execution of the
13 project in accordance with the plans, specifications and contract documents.

14
15 (g) The term "other contractor" is a business concern that contracts with the city to
16 provide supplies or services, including professional services.

17
18 (h) The term "Small Business Administration" shall mean the United States Small
19 Business Administration government agency that supports small businesses.

20
21 (i) "North American Industry Classification System (NAICS)" is the standard
22 established by the United States Office of Management and Budget used by federal statistical
23 agencies in classifying business establishments for the purpose of collecting, analyzing and
24 publishing statistical data related to the U.S. business economy.

25
26 (j) The term "small business," wherever used in this division, shall mean a business
27 entity that:

- 28
29 (1) Is not an affiliate or subsidiary of a business in its field of operation; and
30
31 (2) Is not: a manufacturer's representative; a franchise, unless operating as an
32 independent entrepreneur utilizing a franchise name only; a business
33 where the owner is an owner or part owner of another similar business; or,
34 a non-stocking retailer or wholesaler; or
35
36 (3) Is a construction contractor, including a building constructor or heavy and
37 civil engineering contractor as described in subsections 236 and 237 of the
38 NAICS standard whose average annual gross receipts from the past three
39 years does not exceed the size standard (in million dollars) and/or the size
40 standard in number of employees (25 percent of NAICS code) for those
41 subsections of the NAICS as published in the current U.S. Small Business

Administration Table of Small Business Size Standards matched to North American Industry Classification System Codes; or

(4) Is a specialty trade contractor as described in subsection 238 of the NAICS standard whose average annual gross receipts from the past three years does not exceed the size standard (in million dollars) and/or the size standard in number of employees (25 percent of NAICS code) for those subsections of the NAICS as published in the current U.S. Small Business Administration Table of Small Business Size Standards matched to North American Industry Classification System Codes; or

(5) Is an "other contractor" whose average annual gross receipts from the past three years does not exceed the size standard (in million dollars) and/or the size standard in number of employees (25 percent of NAIS code) as published in the current U.S. Small Business Administration Table of Small Business Size Standards matched to North American Industry Classification System Codes; and

(6) The net worth of individual owners may not exceed the sum of \$750,000.00 after excluding the individual's equity in the business seeking certification and the individual's equity in his or her primary residence. As used in this subsection the word "owner" includes any person holding any percentage ownership in the business; and

(7) Individual owners may not hold more than 20 percent ownership in any other single business, unless the other business(es) is certified by the City of Omaha as a small business or an emerging small business. As used in this subsection the word "owner" includes any person holding any percentage ownership in the business.

(k) The term "emerging small business" or "ESB," wherever used in this division shall mean a business entity whose size is no greater than 10 percent of the numerical size standard applicable to the North American Industry Classification System (NAICS) code assigned to a contracting opportunity.

(l) "Tier I" ESB or SB is any emerging small business or small business concern that is certified as such by the City of Omaha and,

(1) has invested in a primary headquarters office or has a physical working office location within a census tract or contiguous area within Douglas County, Nebraska, in which the most recent U.S. decennial census shows

1 that 30 percent or more of the persons in that census tract are below the
2 poverty level; and

3
4 (2) can show that 30 percent or more of its employees reside in a census tract
5 or contiguous area within Douglas County, Nebraska, in which the most
6 recent U.S. decennial census shows that 30 percent or more of the persons
7 in that census tract are below the poverty level.

8
9 (m) "Tier II" ESB or SB is any emerging small business or small business that is
10 certified as such by the City of Omaha.

11
12 **Sec. 10-202. Certification.**

13
14 (a) Businesses desiring to be certified as a small or an emerging small business must
15 complete the requisite form(s) as provided by the Human Rights and Relations Department.

16
17 (b) The Human Rights and Relations Department is authorized to conduct the
18 necessary investigation of the business to determine its qualifications for the program. Such
19 investigation shall focus on the nature of the work performed and the company's capacity to
20 perform that work in consultation with the Public Works Department. Determination of capacity
21 may include, but is not limited to verifying the number of employees, the gross receipts of the
22 firm from the past three years; the net worth of the individual owners; and the owners' interest in
23 any other business and confirmation by a bonding company as a prime contractor or financial
24 institution of the business's financial capacity. This verification may include, but is not limited
25 to reviewing business records and files; personal and corporate tax returns; certificates of
26 insurance and articles of incorporation.

27
28 (c) Once a business has been certified as a small business or an emerging small
29 business, the certification shall remain in place for three years. The Public Works Department
30 shall maintain a list of all businesses that have been certified and the nature of the business along
31 with its capacity to perform the work. After three years, the business must be re-certified by the
32 Human Rights and Relations Department by completing the process described in this section
33 again.

34
35 (d) When the business no longer meets the criteria, as provided in the foregoing
36 definition section, said business shall be decertified and no longer participate in the program.

37
38 **Sec. 10-203. Utilization of small businesses and emerging small businesses in city contracts.**

39
40 (a) Commencing January 1, 2010, the city shall make every good-faith effort feasible
41 to utilize small and emerging small businesses in all city contracts.

1 **(b)** Commencing January 1, 2010, and then annually thereafter, the mayor shall
2 establish an overall goal and sub-goals as necessary for the utilization of small and/or emerging
3 business in all city contracts.

4
5 **(c)** Each city department that solicits bids for goods or services shall then set
6 departmental procurement or project goals which will result in attaining the overall city goal
7 established by the mayor.

8
9 **(d)** Prior to soliciting bids or proposals for supplies, materials, technical, professional
10 or other services, the Public Works Department and the department soliciting the bid shall work
11 with the purchasing agent to determine if the bid or any portion of the bid may be completed by a
12 certified small business or emerging small business. It may be recommended that small or
13 emerging small businesses not be utilized on a bid if it is determined that there are not sufficient
14 small or emerging small businesses available to respond to the bid or that have the capacity and
15 capability to provide the supplies, materials, technical, professional or other services. Provided
16 that an adequate number of certified entities are available, the solicitation or request for proposal
17 will give priority to certified Tier I and/or Tier II small businesses and/or emerging small
18 businesses. "Priorities" are set forth as follows: if there is an adequate number of qualified and
19 certified ESBs, first priority shall be given to Tier I ESBs; if not, then the next priority will be
20 given Tier II ESBs; if there are not an adequate number of ESBs, then priority shall go to Tier I
21 small businesses and then to Tier II small businesses.

22
23 **(e)** Prior to soliciting bids or proposals for a construction contract, the architect
24 and/or design professional shall work with the department soliciting the bid and the Public
25 Works Department to determine if the project or what portion(s) of the project may be completed
26 by a small business or an emerging small business either as a prime contractor or a
27 subcontractor. The department or the architect/design professional may recommend that no
28 portions of the contract can be completed by a small or an emerging small business if they
29 determine that there are no subcontracting opportunities or there are not sufficient small or
30 emerging small businesses available to perform the subcontracting work available on the
31 contract.

32
33 **(f)** If the Public Works Department and the architect/design professional designing
34 the project determine that that the project or portions of the project are appropriate for small or
35 emerging small businesses either as a prime contractor or a subcontractor, then such
36 determinations shall be made a part of the bid specifications, and bidders not adhering to the
37 requirements set forth in the bid specifications will be deemed non-responsive.

38
39 **(g)** For professional services as defined in Division 3 of this Chapter, the provisions
40 of Division 5 provide only for the certification of small or emerging small professional services
41 firms that desire to participate in the program. The process of selection of certain professional
42 services will follow the selection process as set forth in Division 3, Sec. 10-187.

43
44 **Sec. 10-204. Bidding process: small businesses and/or emerging small businesses.**

45
46 **(a)** All bidders shall complete the requisite forms in the bid documents listing all
47 certified small or emerging small businesses subcontractors to be utilized on the project.

1 Documentation must be submitted at the time the bid is opened. If a bidder or any of its
2 designated subcontractors desires to be considered a small or an ESB, the requisite forms must
3 be completed and approved by the Human Rights and Relations Department prior to the date of
4 bid opening on the project for which they are submitting a bid.

5
6 (b) If after the bid opening and during contract performance, the successful
7 bidder/contractor determines that a small or an ESB identified in the bid is unable to perform
8 successfully or is not performing satisfactorily, said bidder/contractor shall make every
9 reasonable effort to replace a small or an ESB subcontractor with another ESB. Prior to
10 substituting such replacement ESB, the apparent successful bidder/contractor must show good
11 cause for the replacement. The Public Works director or his/her designee shall approve all
12 substitutions in writing.

13
14 **Sec. 10-205. Enforcement of division.**

15
16 The Public Works director or his/her designee in collaboration with the Human Rights
17 and Relations Department shall administer and enforce the responsibilities of this division and
18 implement rules and procedures to effectuate such sections; make all appropriate determinations
19 as to compliance with the program; meet with contracting parties for said purposes; maintain and
20 report required contract statistics for quarterly reports.

21
22 **Sec. 10-206. Penalties for noncompliance.**

23
24 (a) Refusal by the contractor or subcontractor to comply with any portion of this
25 division as herein stated and described may subject the offending party to any or all of the
26 following penalties:

- 27
28 (1) Withholding payments that are due to the contractor who is in violation
29 under the involved contracts until it is determined that the contractor or
30 subcontractor is in compliance with the provisions of the contract;
31
32 (2) Exclusion from bidding on any contracts with the city or any of its
33 departments or divisions until such time as the contractor or subcontractor
34 demonstrates that he has established and shall carry out the policies of the
35 program as herein outlined.

36
37 (b) In the event the sanctions or penalties contained in paragraph (1) or (2) of
38 subsection (a) are invoked, the following procedure shall be followed: The Public Works
39 Director will notify the contractor of the facts or circumstances which formed the basis for the
40 allegation that the contractor has not complied with the provisions of this division, and said
41 notice shall be in writing and received at least 10 days prior to any action being taken by the city
42 during which time the contractor may clarify or make corrections.

Sec. 10-207. Implementation reports.

The Public Works director in collaboration with the Human Rights and Relations Department shall report semi-annually to the mayor and the city council the results of the efforts made to implement this division. Said reports shall include a listing of all city contracts and the utilization of small and ESBs in each project or contract. If no small or ESB was utilized, the Public Works director shall specifically comment on why no such firm was utilized.

Sec. 10-208. Exempted contracts.

The provisions of this division shall not apply to any emergency contracts resulting from natural disasters, tornadoes, blizzards, floods, energy shortages or similar occurrences, provided the mayor declares such an occurrence to be an emergency by executive order.

Section 2. This ordinance shall be in full force and take effect thirty (30) days from and after the date its passage.

INTRODUCED BY COUNCIL MEMBER:

Ben S. Gray

APPROVED BY:

Jim Sells 11/5/09
MAYOR OF THE CITY OF OMAHA DATE

PASSED NOV - 3 2009 as amended 6-0

ATTEST:

Brooks Brown 11/5/09
CITY CLERK OF THE CITY OF OMAHA DATE

APPROVED AS TO FORM:

Michelle Peters 10-8-09
Scott CITY ATTORNEY DATE

1197

C. Carr.

ORDINANCE NO. 38564

AN ORDINANCE to amend Chapter 10 of the Omaha Municipal Code entitled "Finance," by creating a new Division 5, entitled "Small and Emerging Small Business Program"; and to provide the effective date thereof.

P\LAW - CITY COUNCIL
DOCUMENTS\2009\30138dlm

EO

PRESENTED TO COUNCIL

1st Reading OCT 20 2009 - Hearing
10/27/09

Hearing OCT 27 2009 - Over to
11/3/09

Final Reading _____
Ordinance read
Amendment "A" - Approved 6-0
Passed as amended 6-0

PUBLICATIONS

PUBLICATION OF HEARING

Date _____

PUBLICATION OF ORDINANCE

Date _____

BUSTER BROWN
City Clerk