

CHAPTER 360
EMERGING BUSINESS ENTERPRISE PROGRAM

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360-01. Definitions. In this chapter:

1. AT A DISADVANTAGE WITH RESPECT TO EDUCATION means failure to attain a high school degree or its equivalent for good reason or attendance in schools which have repeatedly achieved ratings below national, state and community averages in educational standards, educational standardized test scores and student grade point averages.

2. AT A DISADVANTAGE WITH RESPECT TO EMPLOYMENT means a pattern of nonachievement in hiring, promotion and other aspects of employment advancement due to factors beyond the individual's reasonable control, a lack of current knowledge and skills necessary for employment, career advancement or consistent earning of average annual income below the median income level of adults of comparable age in this city.

3. AT A DISADVANTAGE WITH RESPECT TO RESIDENCE OR BUSINESS LOCATION means location in an enterprise zone within the city for a period of not less than one year of the applicant's residence or the principal office and business of which the applicant is the sole owner or one of the owners and a principal operator.

4. AT A SOCIAL DISADVANTAGE means an applicant's experience of substantial difficulty in attaining employment or business success at least in part due to location of the individual's residence and lack of mobility, lack of traditional family structure, being raised in a household receiving or personally receiving income consistently at or below the poverty

line, being raised in a household requiring or personally requiring significant governmental assistance or support during the person's childhood, physical handicap or other causes beyond the individual's reasonable control.

5. AT AN ECONOMIC DISADVANTAGE means an inability to compete in the free enterprise system due to diminished capital, credit or bonding opportunities. Factors which will be considered as an indication that an individual has been economically disadvantaged include, but are not limited to, failure to accumulate adequate business capital or obtain sufficient credit to start or support a going business concern, failure to acquire business-related credit or bonding under terms or circumstances as favorable as those generally experienced by nondisadvantaged individuals, consistent failure to receive awards or bids of governmental contracts despite competitive pricing or other similar factors which have disadvantaged the applicant in the development of a business.

6. CONSTRUCTION means the erection, rehabilitation, alteration, conversion, extension, demolition or repair of improvements to real property, including facilities providing utility service and includes the supervision, inspection and other on-site functions incidental to construction.

7. CONTRACT means a binding agreement by which the city is committed to expend or does expend its funds or other resources for or in connection with any of the following purposes:

a. Construction of any public improvements.

b. Purchase of any personal property.

c. Purchase of any services, goods or supplies.

d. Lease of any personal or real property.

e. Concession agreements whereby the city grants a specific permission, privilege or license.

8. CONTRACTING DEPARTMENT means any city department, agency, board or commission that has contracting responsibilities.

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9. CONTRACTOR means a separate and distinguishable business entity participating or seeking to participate in the performance of a contract.

10. EMERGING BUSINESS ENTERPRISE means a small business concern that is owned, operated and controlled by one or more individuals who are at a disadvantage. The individuals must have day-to-day operational and managerial control and interest in capital, financial risks and earnings commensurate with the percentage of their ownership.

11. ENTERPRISE ZONE means an area within the city for which an application for designation as an enterprise zone has been submitted to or as designated by the United States secretary of housing and urban development as an enterprise zone pursuant to 42 U.S.C. § 11501 et seq., as amended, or similar area designated disadvantaged by the common council.

12. INDIVIDUAL AT A DISADVANTAGE means a person who is a citizen or lawful permanent resident of the United States and who has experienced and who continues to experience substantial difficulty in achieving business-related success in the greater Milwaukee area as a result of at least 3 of the following and the economic criteria described in sub. 5.

- a. At a disadvantage with respect to education.
- b. At a disadvantage with respect to employment.
- c. At a social disadvantage.
- d. At a disadvantage with respect to residence or business location.
- e. Lack of business training in the operation of a business concern in the construction field or another field of economic endeavor which has been designated by the manager, and in which the applicant has experience.

13. JOINT VENTURE means an association of 2 or more persons or businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge.

14. LACK OF BUSINESS TRAINING means an individual's lack of significant training and completion of an organized educational course of study in the financial and business aspects of owning and successfully operating a construction-related business enterprise, or such lack of training and education as to a

business enterprise in another field of economic endeavor designated by the manager and in which the individual has experience.

15. MANAGER means the emerging business enterprise manager.

16. OWNED, OPERATED AND CONTROLLED means a business which is one of the following:

a. A sole proprietorship legitimately owned and operated and controlled by an individual as defined in sub. 12.

b. A partnership or joint venture legitimately owned, operated and controlled by individuals who are at a disadvantage and who own at least 51% of the beneficial ownership interests in the enterprise and who hold at least 51% of the voting interests of the enterprise.

c. A corporation legitimately owned, operated and controlled by one or more individuals who are at a disadvantage and who own at least 51% of the outstanding shares and who hold at least 51% of the voting interests of the corporation.

17. SMALL BUSINESS CONCERN means a business which is independently owned, operated and controlled and which is not dominant in its local field of operation, and which has had annualized gross receipts consistent with the receipts based size standards set forth by the federal small business administration. A business which does not meet these requirements may nonetheless be deemed a small business concern if the business establishes by credible evidence that different standards should be applied in its field of endeavor.

360-02. Emerging Business Enterprise Program.

There is created an emerging business enterprise program to assist and protect the interests of individuals who are at a disadvantage and small business concerns in order to promote and encourage full and open competition in this city, and to enhance opportunities for individuals who are at a disadvantage to successfully compete in a free market as independent business owners in this city. The program shall apply to all contracts and shall include the taking of steps to increase the participation of emerging business enterprises, assisting in emerging business enterprise development programs and the identification and elimination of barriers that deny emerging business enterprises equal opportunity.

360-03. Criteria for Emerging Business Enterprise Status. Upon an appropriate finding by the emerging business enterprise administration that any group within the city, for example, the handicapped, is made up of members the predominant number of whom are individuals who qualify as individuals who are at a disadvantage, the administration may consider membership in such a group as prima facie evidence that the individual is at a disadvantage in the absence of a timely challenge filed with the administration or the administration's own finding of a lack of evidence that the individual is at a disadvantage. In the event of such a challenge or finding, the applicant has the burden of demonstrating that he or she is an individual at a disadvantage.

360-05. Administration. There is created an emerging business enterprise administration in the department of administration which shall be responsible for the administration, coordination and implementation of the city's emerging business enterprise program. Under the direction of the department of administration, the emerging business enterprise administration shall be administered by an emerging business enterprise manager. The manager shall be appointed by the mayor and confirmed by the common council and shall serve concurrently with the term of the mayor. The manager shall:

1. Establish criteria and procedures for reviewing contract performance and compliance with the requirements of the program, subject to approval by the common council.
2. Develop appropriate rules, procedures and regulations for assuring participation of emerging business enterprises in city contracts, subject to approval by the common council, and supervise, coordinate, monitor and enforce the implementation of emerging business enterprise participation goals for all city procurements in accordance with those rules, procedures and regulations.
3. Develop procedures for certification.
4. Provide appropriate management assistance and direction to emerging business enterprises so as to maximize their participation in contracts let by the city, with such assistance to include:

- a. Providing assistance and information in connection with the establishment, expansion and overall development of emerging business enterprises.

- b. Assisting in the introduction of business associations between individuals who are at a disadvantage and business enterprises that are not at a disadvantage or between 2 or more emerging business enterprises.

- c. Planning and participating in training seminars for the purpose of informing potential bidders of the emerging business enterprises program and of business opportunities available.

- d. Serving as a clearinghouse for information about training and educational programs.

- e. Developing various types of financial assistance for consideration by the common council to assist emerging business enterprises to obtain working capital to begin, continue and maintain a satisfactory level of business. These include, but are not limited to, a revolving loan program, guaranteed loan program, gap lending program and bond reduction and waivers where feasible.

5. Develop a reporting and evaluation system to reflect the city's emerging business enterprise program.

6. Review and monitor all city contracts with emerging business enterprises for compliance and notify in written form the contractor on the findings of the review and decisions concerning satisfaction of contractual deficiencies.

7. Serve as liaison with economic development organizations and agencies working in support of economic development in the community.

8. Coordinate any city-sponsored economic development programs for emerging business enterprises.

9. Review emerging business enterprise participation progress in the city's contract and procurement activities and submit a written report to the mayor and common council.

10. Establish reporting requirements for all city departments to document the percentage of contracts which have been awarded to emerging business enterprises.

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11. Devise rules, regulations and procedures governing requests for waivers from the requirements of the emerging business enterprise program, subject to approval by the common council.

12. Conduct hearings on requests by contracting departments for waivers from the requirements of the program. Upon a denial of a request for a waiver, the affected department may apply for such a waiver to the appropriate standing committee of the common council. The committee shall have the authority to waive any requirements of this chapter upon showing of good cause.

13. Develop and monitor affirmative action criteria for employment of minorities and women by contractors, subcontractors and suppliers consistent with law.

14. Provide staff to the equal rights commission pursuant to s. 109-15-4-e.

360-06. Requirements of Contracting Departments.

1. GOALS. The following requirements are adopted by the city for the purpose of increasing the level of emerging business enterprise participation in city contracts. It shall be the responsibility of each contracting department to attain such goals in accordance with the criteria herein specified. Each contracting department, and all other operating departments when contracting based upon authority therefrom, shall utilize emerging business enterprises for the following percentage of the total dollars, through prime contracts or subcontracts, annually expended on:

- a. Construction: 25%.
- b. The purchase of services: 18%.
- c. The purchase of professional services: 18%.
- d. The purchase of supplies: 18%.

2. REVIEW OF GOAL. In order to assure the percentage goals for emerging business enterprise participation, the manager shall annually review and adjust the percentage goal, with the approval of the common council.

3. JOINT VENTURES. Participation of emerging business enterprises in joint ventures with other emerging and mainstream business entities is encouraged. In the case of a certified joint venture, only that portion of the total dollar value of the contract equal to the percentage of participation of the emerging partner venturer in the joint venture will be counted toward the applicable requirement.

4. DUTIES OF DEPARTMENTS. Each contracting department is directed to:

a. Cooperate with the emerging business enterprise administration in the implementation of the emerging business enterprise program.

b. Develop lists of emerging business enterprises experienced in the various types of services, products or property typically contracted for.

c. Provide quarterly reports to the manager not later than 30 calendar days after the end of the previous quarterly period specifying with respect to contracts and subcontracts:

c-1. For the forthcoming quarterly period, the means by which it intends to meet the requirements established by this section and the projected opportunities for emerging business enterprises in the forthcoming quarter.

c-2. The dollar percentage and dollar amount of those contracts and subcontracts awarded to emerging business enterprises.

c-3. The degree to which the goals set forth in this section have been met, any past and current activities undertaken and being undertaken in trying to meet such goals and, if necessary, a detailed explanation of why the goals set forth in this section have not been met.

c-4. Such other information as may be requested by the manager.

d. Appoint a member of the contracting department or division to serve as a liaison between the contracting department and the emerging business enterprise administration.

e. Identify appropriate categories of contracts, on an annual basis, for the inclusion of goals specifying designated levels of participation of emerging business enterprises, and, where appropriate, include in each contract a requirement that the contractor achieve the stated goal.

5. PERFORMANCE ASSURANCE PROCEDURE. Each contracting department shall develop and implement procedures, unless inappropriate, to assure that suppliers, employees, agents or other persons providing goods or services to emerging business enterprises participating in city contracts shall be paid in full in a timely manner. Such procedures shall include joint check payments,

bonding requirements and other financial safeguards. Nothing contained in this subsection shall require the city to make payments in excess of the contract price.

360-07. Certification Standards and Procedures. All emerging business enterprise bidders, prime contractors, subcontractors and potential participants in a contract must be certified by the emerging business enterprise administration in order to participate in the emerging business program established pursuant to this chapter. Certification standards shall be specified by the emerging business enterprise administration.

360-08. Sanctions. Every city contract awarded under this chapter shall contain language indicating that if any document submitted to the emerging business enterprise administration by a contractor, subcontractor, bidder or individual to be certified as an emerging business enterprise for the purpose of participating in any city contract contains false, misleading or fraudulent information, the emerging business enterprise administration may direct the imposition of any of the following sanctions on the offending contractor, subcontractor, bidder or individual:

1. Withholding of payment.
2. Termination, suspension or cancellation of the contract in whole or in part.
3. Denial to participate in any further contracts awarded by the city.

360-09. Penalty. Any person, firm or corporation knowingly engaging in fraud, misrepresentation or in any attempt, direct or indirect, to evade the provisions of this chapter by providing false, misleading or fraudulent information shall, upon conviction, forfeit not less than \$2,000 nor more than \$5,000 together with the costs of prosecution, or upon default of payment, shall be imprisoned in the house of correction or county jail not to exceed 90 days.

**360--(HISTORY) Emerging Business
Enterprise Program**

**LEGISLATIVE HISTORY
CHAPTER 360**

Abbreviations:

am = amended
cr = created

ra = renumbered and amended
rc = repealed and recreated

rn = renumbered
rp = repealed

| <u>Section</u> | <u>Action</u> | <u>File</u> | <u>Passed</u> | <u>Effective</u> |
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| 360-01 | rc | 011712 | 8/1/2002 | 8/20/2002 |
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| 360-05-0 | am | 901415 | 12/21/90 | 1/12/91 |
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| 360-06-2 | am | 901415 | 12/21/90 | 1/12/91 |
| 360-06-4-c | am | 901415 | 12/21/90 | 1/12/91 |
| 360-06-4-c-4 | am | 901415 | 12/21/90 | 1/12/91 |
| 360-07 | rc | 000974 | 11/10/2000 | 1/1/2001 |
| 360-07 | am | 011712 | 8/1/2002 | 8/20/2002 |
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