

- CODE OF ORDINANCES  
Title 16 - PLANNING AND DEVELOPMENT

CHAPTER 423. SMALL AND UNDERUTILIZED BUSINESS ENTERPRISE PROGRAM

**CHAPTER 423. SMALL AND UNDERUTILIZED BUSINESS ENTERPRISE PROGRAM [\[11\]](#)**

[423.10. Purpose.](#)

[423.20. Policy.](#)

[423.30. Definitions.](#)

[423.40. Applicability and enforcement, construction and development projects.](#)

[423.50. Applicability and enforcement, professional and technical service projects.](#)

[423.60. Applicability and enforcement, commodities and supplies.](#)

[423.70. Rules.](#)

[423.80. Counting eligible business participation.](#)

[423.90. Good faith efforts.](#)

[423.100. Post-award substitutions.](#)

[423.110. Administration.](#)

[423.120. Penalties for non-compliance.](#)

[423.130. Non-compliance review process.](#)

[423.140. City departments.](#)

[423.150. Severability.](#)

[423.160. Expiration of chapter 423.](#)

**423.10. Purpose.**

This chapter is enacted pursuant to information and evidence of past and ongoing discrimination against qualified and available women-owned and minority-owned business enterprises in the awarding of City of Minneapolis construction and development contracts and contracts for the provision of goods and services. The presence of ongoing discrimination against women-owned and minority-owned business enterprises is evidenced by the study completed by National Economic Research Associates, Inc. (NERA) and submitted to the City of Minneapolis in December of 2010. This chapter is enacted to remedy past and ongoing discrimination against women-owned and minority-owned business enterprises found in the city's marketplace, to ensure a "level playing field", to foster equal opportunity in contracts with the City of Minneapolis and to reduce burdens on small businesses. (2011-Or-020, § 1, 3-10-11)

**423.20. Policy.**

It is the policy of the City of Minneapolis to provide equal opportunities to all contractors, and to redress the discrimination in the city's marketplace and in public contracting against women-owned ("WBE") and minority-owned ("MBE") business enterprises. The City of Minneapolis

- CODE OF ORDINANCES  
Title 16 - PLANNING AND DEVELOPMENT

CHAPTER 423. SMALL AND UNDERUTILIZED BUSINESS ENTERPRISE PROGRAM

shall set contract goals for the participation of MBEs and WBEs based upon their qualifications and availability. The level of participation of WBEs and MBEs shall be reviewed annually by the director to ensure that:

- (a) The Small and Underutilized Business Enterprise Program remedies no more than the effects of past discrimination;
- (b) The Small and Underutilized Business Enterprise Program does not become an entitlement or quota program for any group; and
- (c) The Small and Underutilized Business Enterprise Program does not limit, in any way, the participation of WBEs and MBEs in the marketplace. (2011-Or-020, § 1, 3-10-11)

**423.30. Definitions.**

For the purposes of this chapter, the following words and phrases shall have the meanings set forth in this section, except where the context clearly indicates that a different meaning is intended.

*Commercially useful function* means a function performed by a business enterprise that is responsible for the execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing, and supervising the work involved. Acting as a conduit to transfer funds to another business does not constitute a commercially useful function unless it is done as a normal business practice of a particular industry.

*Contract* means an agreement with the city or the Park and Recreation Board for construction; for a development project; for professional, technical and other personal services; and for the provision of non-construction-related equipment, food, material, commodities, and supplies.

*Contractor* means any individual, corporation, partnership, association, nonprofit organization, groups of persons, organization, company, firm, limited liability company, joint venture, enterprise, or any other legal or commercial entity, or combination thereof, which enters into a contract with the city or the Park and Recreation Board.

*Construction and development contracts* mean:

- (a) Construction and development contracts.
- (b) Any contract involving the construction, alteration, painting or repair of a building or any structure on land.
- (c) Any contract involving the construction, building, alteration, reconstruction, modernization or improvement of any structure.
- (d) Any contract involving the improvement of, or addition to, any capital asset.

*Department* means the Minneapolis Department of Civil Rights ("MDCR").

*Director* means the Director of the Minneapolis Department of Civil Right or his/her designee.

*Goods and services* mean the purchase of material, supplies or equipment, or the purchase of trade, technical or professional services.

*Marketplace* means the geographical area of the Minnesota counties of Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, and Wright.

- CODE OF ORDINANCES  
Title 16 - PLANNING AND DEVELOPMENT

CHAPTER 423. SMALL AND UNDERUTILIZED BUSINESS ENTERPRISE PROGRAM

*Master contract* means a contract awarded through the request for proposal process that results in an establishment of a pool of contractors to be used for the good and services or construction and development contract work specified in the contract.

*Minority* means a citizen of the United States or lawfully admitted permanent resident who is African American, Hispanic, Native American or Asian/Pacific Islander. Minority also means a citizen of the United States or lawfully admitted permanent resident who is determined, through a certification process, to be a socially and economically disadvantaged individual.

*Minority-owned business enterprise ("MBE")* means a business, including but not limited to, a sole proprietorship, corporation, partnership, association, groups of persons, organization, company, firm, limited liability company, joint venture, enterprise, or any other legal or commercial entity, or combination thereof, which enters into a contract with the city or the Park and Recreation Board:

- (a) That is a small business;
- (b) That has its principal place of business located within the marketplace at the time of bid opening or solicitation;
- (c) That is at least fifty-one (51) percent owned by one (1) or more minority persons;
- (d) That is an independent and continuing business for profit;
- (e) That performs a commercially useful function;
- (f) That is a socially and economically disadvantaged business; and
- (g) That has been accepted as certified by the director.

*North American Industry Classification System ("NAICS") Code* is the system used by business and government to classify business establishments according to type of economic activity.

*Prime or prime contractor* means a contractor engaging in construction and development projects by contract, or in prime contracts. The terms also include a developer that may enter into a contract for a particular construction and development project, and necessarily contemplates that the developer will also enter into other or further contracts for the completion of the project.

*Prime contract* means a contract with a prime contractor for the completion of a construction and development project, as to which it is reasonably likely that the prime contractor will use, contract with, or seek bids from one (1) or more subcontractors. A prime contract also includes a prime contract with a developer, where such contract or project necessarily contemplates that the developer will enter into other or further contracts for the completion of the project.

*Principal place of business* means the primary physical location at which or from which a business performs, is maintained, or operates.

*Small business* means a business meeting the United States Small Business Administration ("SBA") standards under the North American Industry Classification System ("NAICS") provided in 13 Code of Federal Regulations § 121.

*Small business enterprise* means:

- (a) A small business;
- (b) That has its principal place of business located within the marketplace at the time of bid opening or solicitation;
- (c) That is an independent and continuing business for profit;
- (d) That performs a commercially useful function;
- (e) That has been accepted as certified by the director.

- CODE OF ORDINANCES  
Title 16 - PLANNING AND DEVELOPMENT

CHAPTER 423. SMALL AND UNDERUTILIZED BUSINESS ENTERPRISE PROGRAM

*Socially and economically disadvantaged business* means a business, including but not limited to, a sole proprietorship, corporation, partnership, association, groups of persons, organization, company, firm, limited liability company, joint venture, enterprise, or any other legal or commercial entity, or combination thereof, that is at least fifty-one (51) percent owned by one (1) or more socially and economically disadvantaged individuals and whose management and daily business operations are controlled by one (1) or more of the socially and economically disadvantaged individuals who own it.

*Socially and economically disadvantaged individual* means an individual who is a citizen (or lawfully admitted permanent resident) of the United States: (1) who is found to be socially and economically disadvantaged on a case by case basis; or (2) who is an individual in any of the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged: African Americans, Hispanics, Native Americans, Asian/Pacific Islanders, Women; and (3) whose net worth does not exceed the personal net worth dollar amount limitation specified in [49](#) Code of Federal Regulations, Part 26.

*Subcontractor* means any individual, corporation, partnership, association, nonprofit organization, groups of persons, organization, company, firm, limited liability company, joint venture, enterprise, or any other legal or commercial entity, or combination thereof, which enters into a contract with a contractor to perform work related to a contract that the contractor has with the city or the Park and Recreation Board.

*Women-owned business enterprise ("WBE")* means a sole proprietorship, corporation, partnership, association, groups of persons, organization, company, firm, limited liability company, joint venture, enterprise, or any other legal or commercial entity, or combination thereof, which enters into a contract with the city:

- (a) That is a small business;
- (b) That has its principal place of business located within the marketplace at the time of bid opening or solicitation;
- (c) That is at least fifty-one (51) percent owned by one (1) or more women;
- (d) That is an independent and continuing business for profit;
- (e) That performs a commercially useful function;
- (f) That is a socially and economically disadvantaged business; and
- (g) That has been accepted as certified by the director. (2011-Or-020, § 1, 3-10-11)

**423.40. Applicability and enforcement, construction and development projects.**

This section applies to any construction contract or development project, or any part of combination thereof, in excess of one hundred thousand dollars (\$100,000.00). The department will set an overall, annual goal for MBE/WBE participation for all anticipated construction and development projects based on the overall availability of minority-owned and women-owned construction and development businesses in the city's marketplace. The department will also set project specific goals on construction and development projects based on the scopes of work of the contract; the availability of qualified, ready, willing and able MBEs/WBEs to perform those scopes; the city's progress towards meeting its annual goal; the location of the contract's performance; and any other relevant factors.

The department will monitor participation on projects to ensure MBEs/WBEs are utilized on the bid or proposals as submitted by the bidder or proposer. Any bid or proposal, where there is or has been a

- CODE OF ORDINANCES  
Title 16 - PLANNING AND DEVELOPMENT

CHAPTER 423. SMALL AND UNDERUTILIZED BUSINESS ENTERPRISE PROGRAM

material lack of compliance with the requirements of this chapter, shall be deemed to be an unresponsive bid or proposal by the department and such lack of compliance shall be a sufficient basis for the rejection of that bid or proposal by the city.

Every contract covered by this chapter shall be drafted in such a way as to comply with the terms of [section 139.50](#) of this Code, except to the extent that the terms of [section 139.50](#) conflict with the terms of this chapter.

The department shall promulgate such rules, regulations and forms as may be needed to carry out the duties and responsibilities set forth. The department shall establish and make readily available to all potential contractors, vendors and developers the rules of compliance with this chapter. Such rules shall set forth program methods for establishing participation goals, all outreach requirements for prime contractors and developers to eligible WBEs and MBEs, and all other requirements for demonstrating good faith efforts at compliance with the requirements of this chapter and the rules set forth by the department. (2011-Or-020, § 1, 3-10-11)

**423.50. Applicability and enforcement, professional and technical service projects.**

This section applies to any professional, technical and service contract, or any part of combination thereof, in excess of one hundred thousand dollars (\$100,000.00). The department will set an overall, annual goal for MBE/WBE participation for all anticipated professional, technical and service contracts based on the overall availability of minority-owned and women-owned professional and technical service businesses in the city's marketplace. The department may review each proposal, contract, and/or agreement to determine if specific goals will be placed based on the scopes of work of the contract; the availability of qualified, ready, willing and able MBEs/WBEs to perform those scopes; the city's progress towards meeting its annual goal; the location of the contract's performance; and any other relevant factors.

If the department places no specific goals on a professional, technical or service contract, the department may submit a list of MBEs/WBEs, which may have the capability to offer a proposal, to the proposing department or the Park and Recreation Board. If the city or the Park and Recreation Board seeks proposers on a master contract, the department will offer any and all available MBEs/WBEs to the soliciting department or the Park and Recreation Board seeking a master contract so that the soliciting department of the Park and Recreation Board may directly solicit the businesses for inclusion on the master agreement.

The department will monitor participation on projects to ensure MBEs and WBEs are utilized on the agreements or proposals as submitted by the proposer. Any proposal, where there is or has been a material lack of compliance with the requirements of this chapter, shall be deemed to be an unresponsive proposal by the department and such lack of compliance shall be a sufficient basis for the rejection of that proposal by the city.

Every contract covered by this chapter shall be drafted in such a way as to comply with the terms of [section 139.50](#) of this Code, except to the extent that the terms of [section 139.50](#) conflict with the terms of this chapter.

The department shall promulgate such rules, regulations and forms as may be needed to carry out the duties and responsibilities set forth herein. The department shall establish and make readily available to all potential proposers, contractors, and service providers the rules of compliance with this chapter. Such rules shall set forth program methods for establishing participation goals, all outreach requirements for prime contractors and developers to eligible WBEs and MBEs, and all other requirements for

- CODE OF ORDINANCES  
Title 16 - PLANNING AND DEVELOPMENT

CHAPTER 423. SMALL AND UNDERUTILIZED BUSINESS ENTERPRISE PROGRAM

demonstrating good faith efforts at compliance with the requirements of this chapter and the rules set forth by the department. (2011-Or-020, § 1, 3-10-11)

**423.60. Applicability and enforcement, commodities and supplies.**

This section applies to any contract for non-construction-related equipment, food, material or any part or combination thereof, in excess of fifty thousand dollars (\$50,000.00). The department will set an overall, annual goal for MBE/WBE participation for all anticipated commodity and supply contracts based on the overall availability of minority-owned and women-owned equipment, material and supplies vendors in the city's marketplace. The department may review each contract or agreement to determine if specific goals will be placed based on the scopes of work of the contract; the availability of qualified, ready, willing and able MBEs/WBEs to perform those scopes; the city's progress towards meeting its annual goal; the location of the contract's performance; and any other relevant factors.

If the department places no specific goals on MBEs/WBEs that may have the capability to offer a bid or a proposal, the department may submit a list of MBEs/WBEs, which may have the capability to offer a bid or proposal, to the soliciting department or the Park and Recreation Board. If the city seeks bidders or proposers on a master contract, the department will offer any and all available MBEs/WBEs to the soliciting department or the Park and Recreation Board seeking a master contract so that the soliciting department or the Park and Recreation Board may directly solicit the businesses for inclusion on the master agreement.

The department will monitor participation on projects to ensure MBEs and WBEs are utilized on the bids or proposals as submitted by the bidder or proposer. Any bid or proposal, where there is or has been a material lack of compliance with the requirements of this chapter, shall be deemed to be an unresponsive bid or proposal by the department and such lack of compliance shall be a sufficient basis for the rejection of that bid or proposal by the city.

Every contract covered by this chapter shall be drafted in such a way as to comply with the terms of [section 139.50](#) of the Minneapolis Code of Ordinances, except to the extent that the terms of [section 139.50](#) conflict with the terms of this chapter.

The department shall promulgate such rules, regulations and forms as may be needed to carry out the duties and responsibilities set forth herein. The department shall establish and make readily available to all potential proposers, bidders, contractors and suppliers the rules of compliance with this chapter. Such rules shall set forth program methods for establishing participation goals, all outreach requirements for prime contractors and developers to eligible WBEs and MBEs, and all other requirements for demonstrating good faith efforts at compliance with the requirements of this chapter and the rules set forth by the department. (2011-Or-020, § 1, 3-10-11)

**423.70. Rules.**

The department may create rules, regulations, processes, procedures and/or forms to implement any of the provisions of this chapter. (2011-Or-020, § 1, 3-10-11)

- CODE OF ORDINANCES  
Title 16 - PLANNING AND DEVELOPMENT

CHAPTER 423. SMALL AND UNDERUTILIZED BUSINESS ENTERPRISE PROGRAM

**423.80. Counting eligible business participation.**

The city will utilize the following guidelines in determining the percentage of eligible business participation that will be counted toward the project goal. The guidelines below may be supplemented or clarified through rules promulgated by the director:

- (a) If a business is not an MBE or WBE at the time of the execution of the contract, the business' participation toward any MBE/WBE project goals will not be counted.
- (b) The dollar value of work performed under a contract with a subcontractor after the subcontractor has ceased to be an MBE or WBE, as defined by this chapter, will not be counted toward the project goal.
- (c) The participation of an MBE or WBE subcontractor toward the prime contractor's project goal will not be counted until the amount being counted toward the goal has been paid to the MBE/WBE.
- (d) When an MBE or WBE participates in a contract, the value of the work actually performed will be counted as follows:
  - (1) The entire amount of that portion of a construction contract that is performed by the MBE's/WBE's own forces, including the cost of supplies and materials obtained by the MBE/WBE for the work of the contract, including supplies purchased or equipment leased by the MBE/WBE (except supplies and equipment the MBE/WBE subcontractor purchases or leases from the prime MBE/WBE contractor or its affiliate).
  - (2) The entire amount of fees or commissions charged by the MBE/WBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a contract toward MBE/WBE project goals, provided that the city determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  - (3) When an MBE/WBE subcontracts part of the work of its contract to another business, the value of the subcontract work may be counted toward MBE/WBE project goals only if the MBE's/WBE's subcontractor is itself an MBE/WBE. Work that an MBE/WBE subcontracts to a non-MBE/non-WBE will not count toward MBE/WBE project goals.
- (e) When an MBE/WBE performs as a participant in a joint venture, the city will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the MBE/WBE performs with its own forces toward MBE/WBE project goals.
- (f) The city will count expenditures of an MBE/WBE toward MBE/WBE project goals only if the MBE/WBE is performing a commercially useful function on that contract:
  - (1) An MBE/WBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the MBE/WBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (where applicable) and paying for the material itself. To determine whether an MBE/WBE is performing a commercially useful function, the department may evaluate the amount of work subcontracted, industry practices, whether the amount the MBE/WBE is to be paid under the contract is commensurate with the work it is actually performing, and other relevant factors.

- CODE OF ORDINANCES  
Title 16 - PLANNING AND DEVELOPMENT

CHAPTER 423. SMALL AND UNDERUTILIZED BUSINESS ENTERPRISE PROGRAM

- (2) An MBE/WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which the funds are passed in order to obtain the appearance of MBE/WBE participation. In determining whether an MBE/WBE is such an extra participant, the department may examine similar transactions, particularly those in which MBEs and WBEs do not participate, and other relevant factors.
- (3) If an MBE/WBE does not perform or exercise responsibility for at least thirty (30) percent of the total cost of its contract with its own work force, or the MBE/WBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the department may presume that it is not performing a commercially useful function.
- (4) When an MBE/WBE is presumed not to be performing a commercially useful function, the MBE/WBE may present evidence to rebut this presumption. The department may determine that the business is performing a commercially useful function given the type of work involved and normal industry practices, and other relevant factors. (2011-Or-020, § 1, 3-10-11)

**423.90. Good faith efforts.**

(a) The department shall develop such forms, affidavits and other documentation as the director deems appropriate for the showing by bidders or proposers of good faith efforts to meet project goals. The director shall determine what information is required from the bidder or proposer, MBE, WBE or others as the director deems appropriate for such good faith effort process, and shall determine what reviews, examinations and assessments of information are appropriate for such good faith efforts process. The good faith efforts process shall be a part of the pre-award review process as defined in [139.50\(d\)](#).

- (b) The director shall determine if a business has made adequate good faith efforts. If a bidder or proposer fails to meet the project goals and does not demonstrate good faith efforts, the bid or proposal will be rejected and the bidder or proposer shall not be awarded the contract.
- (c) The bid or proposal information provided by the contractor will be used to determine the total base bid amount of each bid or proposal. Each total base amount will be multiplied by the MBE/WBE percentage established for the project to determine the exact dollar amount of MBE/WBE goal participation for the project. This amount will then be compared against the exact dollar amounts that the bidder or proposer has listed as MBE/WBE participation. If the total dollar amount of participation listed meets or exceeds the established MBE/WBE goal participation for the project, then the department will determine that the goal has been met.
- (d) In addition, the department will determine the exact commitment percentage for each listed MBE/WBE by dividing the dollar amount listed for each MBE/WBE by the total base bid dollar amount. These individual percentages, when totaled for all listed MBE/WBE, will establish the total committed percentage level of MBE/WBE participation for the project.
- (e) In providing the exact dollar amount of participation for each listed MBE/WBE, a bidder or proposer should take care never to round up in determining whether or not the total of these amounts meets or exceeds the established percentage goal. The goal must be met or exceeded by dollar amounts and percentages for the department to determine that the bidder or proposer has met or exceeded the applicable MBE/WBE goal.



- CODE OF ORDINANCES  
Title 16 - PLANNING AND DEVELOPMENT

CHAPTER 423. SMALL AND UNDERUTILIZED BUSINESS ENTERPRISE PROGRAM

- (f) Compliance with the MBE/WBE goal will be determined on the base amount. If a bid or proposal contains alternates, MBE/WBE participation contained in any alternate will not count towards the project goal. However, should any designated alternate be selected by the city for inclusion in the contract ultimately awarded, the MBE/WBE goal percentage level submitted, on the base amount, will also apply to the selected alternates. Thus, even though such participation will not be considered in evaluating bids or proposals, bidders or proposers are urged to consider MBE/WBE participation in preparing bids or proposals for designated alternates.
- (g) If a bidder or proposer has not fully met the project goal, then it shall demonstrate its good faith efforts to do so. The bidder or proposer must make every necessary and reasonable effort to subcontract work to MBEs/WBEs in advance of the dates specified for submitting and opening of bids or requests for proposals. The bidder or proposer must furnish to the director at the time of bid or proposal any forms that the director deems appropriate, which may include, but not be limited to, the SUBP Participation form, bidders list and certificate of good faith efforts and an affidavit of good faith. The department may consider the following list of actions when reviewing if a business solicited in good faith:
  - (1) Soliciting through all reasonable and available means (attendance at pre-bid meetings, advertising and/or written notices) the interest of all MBEs/WBEs certified in the scopes of work of the contract. The bidder or proposer must solicit MBEs/WBEs in sufficient time prior to bid opening or the proposal deadline to allow MBEs/WBEs to respond to solicitations. The bidder or proposer must determine with certainty if the MBEs/WBEs are interested by taking appropriate steps to follow up on initial solicitations.
  - (2) Selecting portions of the work to be performed by MBEs/WBEs in order to increase the likelihood that the project goals will be achieved. This includes, where appropriate, breaking out contract work into smaller units to facilitate MBE/WBE participation, even when a contractor might otherwise prefer to perform these work items with its own forces.
  - (3) Providing interested MBEs/WBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
  - (4) The bidder or proposer must negotiate in good faith with interested MBEs/WBEs and provide written documentation of such negotiation with each such business. In determining whether the bidder or proposer negotiated in good faith, the department may consider a number of factors including price, scheduling and capabilities as well as the contract goal.
  - (5) The fact that there may be some additional costs involved in finding and using MBEs/WBEs is not itself sufficient reason for a bidder's or proposer's failure to meet the project goals as long as such costs are reasonable.
  - (6) If requested by a solicited MBE/WBE, the bidder or proposer must make reasonable efforts to assist such MBEs/WBEs in obtaining bonding, lines of credit or insurance as required by the city or by the bidder or proposer, provided that the bidder or proposer need not provide financial assistance toward this effort.
  - (7) Effectively using the services of minority/woman community organizations; minority/woman contractors' groups; local, state and federal business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the solicitation and placement of MBEs/WBEs. (2011-Or-020, § 1, 3-10-11)

- CODE OF ORDINANCES  
Title 16 - PLANNING AND DEVELOPMENT

CHAPTER 423. SMALL AND UNDERUTILIZED BUSINESS ENTERPRISE PROGRAM

**423.100. Post-award substitutions.**

A contractor shall not substitute subcontractors listed in the bid or proposal without the prior written approval of the director. The director may promulgate rules related to this written approval process. (2011-Or-020, § 1, 3-10-11)

**423.110. Administration.**

The director shall administer the Small and Underutilized Business Enterprise Program and may:

- (a) Formulate rules to carry out the purposes of this chapter.
- (b) Provide networking and informational resources to the business community and engage in other reasonable outreach efforts to develop and maintain contacts and relationships with the business community.
- (c) Make recommendations to the mayor and city council for their consideration and implementation.
- (d) Obtain upon request and utilize the services and involvement of city departments, offices and employees and the Park and Recreation Board.
- (e) Oversee the implementation of this chapter to ensure that city departments, offices and employees and the Park and Recreation Board are not circumventing the letter or spirit of this chapter.
- (f) Develop and disseminate technical assistance to persons subject to the provisions of this chapter.
- (g) Prepare reports to be submitted to the mayor and city council summarizing information pursuant to this program, including information about any other activities undertaken by or on behalf of the city to further the objectives of the Small and Underutilized Business Enterprise Program. (2011-Or-020, § 1, 3-10-11)

**423.120. Penalties for non-compliance.**

Compliance with this chapter and any rules or regulations related thereto shall be deemed to be a material condition of performance of the contract, and failure to comply shall be deemed a breach of the contract. If a developer, contractor, subcontractor, supplier, vendor or subrecipient does not make a good faith effort to fulfill its obligations under this chapter, or fails to materially comply with the provisions of this chapter, the city may take the following actions wholly, partly, or in any combination:

- (a) Temporarily withhold cash payments pending correction of the deficiency.
- (b) Disallow the use of funds for all or part of the cost of the activity or action not in compliance.
- (c) Suspend or debar the developer, contractor, subcontractor, supplier, vendor or subrecipient as ineligible for all current or potential contracts.
- (d) Designate the developer, contractor, subcontractor, supplier, vendor or subrecipient as high-risk for future contracts and require of the developer, contractor, subcontractor, supplier, vendor or

- CODE OF ORDINANCES  
Title 16 - PLANNING AND DEVELOPMENT

CHAPTER 423. SMALL AND UNDERUTILIZED BUSINESS ENTERPRISE PROGRAM

subrecipient increased reporting requirements, mandatory audits and similar measures. (2011-Or-020, § 1, 3-10-11)

**423.130. Non-compliance review process.**

The review process for non-compliance is the process provided in [section 139.50](#). (2011-Or-020, § 1, 3-10-11)

**423.140. City departments.**

All departments, offices and employees of the city and the Park and Recreation Board shall share in the responsibility for accomplishing the goals and objectives of the Small and Underutilized Business Enterprise Program. The director shall work with city departments, offices and employees and the Park and Recreation Board to establish levels of utilization of MBEs/WBEs in the provision of goods or services to those city departments and offices, and the Park and Recreation Board. Each city department and office and the Park and Recreation Board shall designate one (1) employee of the respective department, office or board to act as a liaison to the Small and Underutilized Business Enterprise Program. (2011-Or-020, § 1, 3-10-11)

**423.150. Severability.**

If any provision of this chapter is held invalid by any court, the invalidity of such provision shall not affect any of the remaining provisions of this chapter. (2011-Or-020, § 1, 3-10-11)

**423.160. Expiration of chapter 423.**

This chapter of the Minneapolis Code of Ordinances, [Chapter 423](#), shall expire and, absent other action by the city council based on an analysis of the continuing need for the Small and Underutilized Business Enterprise Program, the Small and Underutilized Business Enterprise Program shall cease all operations on April 1, 2016. (2011-Or-020, § 1, 3-10-11)

---

FOOTNOTE(S):

---

--- (11) ---

**Editor's note**— Ord. No. 2011-Or-019, § 1, adopted March 10, 2011, repealed former Ch. 423, §§ 423.10—423.80, which pertained to Small and Underutilized Business Enterprise Program. Ord. No. 2011-Or-020, § 1, adopted March 10, 2011, added provisions designated as a new Ch. 423, §§ 423.10—423.160, to read as herein set out See also the Code Comparative Table. ([Back](#))