

1 **BOARD BILL NO. 3 INTRODUCED BY ALDERMAN JOSEPH VACCARO**

2 An ordinance pertaining to construction contracts and containing a severability clause.

3 **BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:**

4 **SECTION ONE.** Construction contracts- minority and women participation.

5 1. In addition to other requirements set forth in this Code, invitations to bid and requests for  
6 proposals for construction materials or services which may result in a contract for more than  
7 \$1,000,000 shall include goals that 20% of all commercially useful functions, as measured by  
8 percentage of the dollar value of all work on the contract, be performed by minority business  
9 enterprises and that 5% of all commercially useful functions be performed by woman business  
10 enterprises; except, however, that the Purchasing Agent (Agent) may waive or reduce these  
11 percentages for a particular contract if the Agent determines, with concurrence of the City  
12 Counselor and the appropriate departmental director, that it is in the City's best interests due to  
13 limited competition or other valid reason.

14 2. The following contributions shall count toward the project goal: portions of work  
15 undertaken as contractors, joint ventures, subcontractors, and suppliers.

16 3. As used herein:

17 (a) "Business" or "Business enterprise" means a sole proprietorship, corporation, limited  
18 liability company, partnership, limited partnership, limited liability limited partnership, joint  
19 stock company, joint venture, professional association, or any other legal entity operated for  
20 profit that is properly licensed or registered, as applicable, owned and controlled by persons who  
21 are citizens or lawful permanent residents of the United States, and otherwise authorized to do  
22 business in the State of Missouri;

23 (b) "Certified MBE or WBE" means a business enterprise which is certified as a minority

May 1, 2015

Page 1 of 5

Board Bill No. 3 Sponsor: Alderman Joseph Vaccaro

1 business enterprise or a woman business enterprise by either (1) the City of St. Louis, Missouri,  
2 including Lambert-St. Louis International Airport, or 2) the State of Missouri or its certifying  
3 agencies, including the Office of Equal Opportunity, or 3) the St. Louis Minority Business  
4 Council;

5 (c) “Commercially useful function” means a real and actual service that is a distinct and  
6 verifiable element of the construction services based upon private sector trade or industry  
7 standards. An MBE or WBE performs a commercially useful function when it is responsible for  
8 executing the ordinary and necessary work of the construction services and is carrying out its  
9 responsibilities by actually performing, managing, and supervising the work involved. Factors  
10 considered in determining whether the construction services constitute a commercially useful  
11 function include but are not limited to the amount of construction services subcontracted,  
12 industry practices, whether the amount the MBE or WBE is to be paid under the contract is  
13 commensurate with the construction services it is actually performing, whether the MBE or  
14 WBE has the skill and expertise to perform the construction services for which it is being  
15 utilized, whether the MBE or WBE is responsible, with respect to materials and supplies used on  
16 the contract, for negotiating price, determining quality and quantity, ordering, installing (where  
17 applicable), and paying for the material and supplies itself, and credit claimed for its  
18 performance of the construction services;

19 (d) “Construction services” shall mean all services related to the construction phase of a  
20 project, including professional services ancillary to construction such as but not limited to  
21 architectural, engineering, land surveying, testing, and construction management services;  
22 except, however, that the provisions of this section shall not apply to contracts to be paid in whole  
23 or part with funds from the United States government or the State of Missouri to the extent that

1 such provisions are inconsistent with requirements, terms, or conditions imposed by those  
2 governments, or to highway projects as to which Disadvantaged Business Enterprise goals are  
3 applicable;

4 (e) "Subcontractor" means a business enterprise that directly contracts with a contractor  
5 or another subcontractor to perform construction services on a City contract;

6 (f) "Supplier" means a business enterprise that directly contracts with a contractor or  
7 subcontractor to provide materials, supplies, or equipment for a City contract and is a regular  
8 dealer, manufacturer, manufacturer's representative, or broker.

9 4. The bid or proposal specifications for each construction project shall require that all  
10 bidders or proposers seeking to contract with the City address the project goals either by  
11 committing to compliance therewith or by demonstrating inability to do so despite specific and  
12 identified good faith efforts. Good faith efforts must be demonstrated to be meaningful and not  
13 merely formalistic. The scope and intensity of the efforts will be considered in determining  
14 whether the bidder or proposer has achieved a good faith effort.

15 5. If the bidder or proposer is an MBE or WBE, the value of the commercially-useful function to  
16 be self-performed by the MBE or WBE shall count toward satisfaction of the project goal. The  
17 bidder or proposer shall count toward satisfaction of the project goal only that portion of each  
18 MBE or WBE subcontractor's work which is self-performed by that subcontractor.

19 6. The Agent shall review all bids or proposals for compliance with the requirements of this  
20 section. If the Agent determines that a bid or proposal meets the project goals or has shown  
21 adequate good faith efforts to achieve the goals, then the bid or proposal shall be deemed  
22 responsive as to the requirements of this section. If the Agent determines that a bid or proposal  
23 does not meet the project goals and that the bidder or proposer has failed to show good faith

1 efforts to achieve the goals, then the Agent shall designate the bid or proposal as nonresponsive  
2 with the concurrence of the City Counselor and no further consideration shall be given to it. A  
3 full and complete statement of the reasons for designating the bid or proposal as nonresponsive  
4 shall be filed with the other contract documents.

5 7. Any change orders that result in a net increase in compensation to the contractor shall be  
6 performed in compliance with the goals set forth in subsection one, unless the Agent determines  
7 that the contractor has shown adequate good faith efforts to achieve the goals in accordance with  
8 the procedure set forth in subsection six.

9 8. The Agent shall receive and investigate complaints concerning compliance with the  
10 requirements set forth herein, and may further initiate his or her own investigations concerning  
11 compliance either during the project or after completion. Business enterprises being investigated  
12 shall cooperate fully with the investigation and shall have a continuing burden of providing  
13 complete, truthful information to the Agent or the Agent's designee.

14 9. If a contractor is found to be in violation of the provisions of this section or any  
15 representations in the contractor's bid or proposal, City may suspend or terminate the contract  
16 and will reserve all of its rights at law or equity to pursue any available remedies against the  
17 contractor. Failure to meet the goal or to demonstrate good faith efforts to meet the goal may  
18 subject the contractor to liquidated damages and will be considered in determining the  
19 qualifications of the contractor as to future bids and/or proposals.

20 10. The Agent shall adopt such rules and regulations as are appropriate to implement the  
21 requirements of this section, which rules and regulations shall become effective when approved  
22 by order of the Board of Aldermen.

23 **SECTION TWO.** The sections of this Ordinance shall be severable. In the event that any

1 section of this Ordinance is found by a court of competent jurisdiction to be invalid, the  
2 remaining sections of this Ordinance are valid, unless the court finds the valid sections of the  
3 Ordinance are so essential and inseparably connected with and dependent upon the void section  
4 that it cannot be presumed that this Board would have enacted the valid sections without the void  
5 ones, or unless the court finds that the valid sections standing alone are incomplete and are  
6 incapable of being executed in accordance with the legislative intent.