

**EXECUTIVE ORDER NO. 2015 - \_\_\_\_\_**

**WHEREAS**, the Mayor of the City of Jackson is concerned with encouraging the participation of minority and women business enterprises in the public procurement process and addressing past discriminatory practices which presented barriers to public procurement within the City of Jackson by minority and women business enterprises; and

**WHEREAS**, the discriminatory practices and barriers to public procurement within the City of Jackson by minority and women business enterprises were documented in a report provided by Griffin and Strong, PC in the late 1990's and resulted in the Jackson City Council passing an Equal Business Opportunity Ordinance which sunset in April 2006; and

**WHEREAS**, the following barriers were documented in the first Griffin and Strong report:

- (1) Historical, systemic and institutionalized discrimination against minority and women owned businesses exists in the Jackson business sector, which has restricted their access to private and public contracting markets and which has emerged as the major factor responsible for their marginal economic position in the Jackson business population.
- (2) The specific industries that showed discrimination against women and other minorities include construction, commodity sales, and professional services.
- (3) The contracting and procurement practices of the City of Jackson, prior to the inception of a minority and female business enterprise program, were dominated by an historical, institutional and systematic network from which women and minorities were excluded.
- (4) Market place discrimination against minorities and women business owners occurred in the Jackson marketplace across a wide range of businesses, including evidence of double standards in work appraisals, denials of opportunities to bid, discrimination in bonding, financing and in payments, lack of access to contracts, unnecessarily restrictive specifications, the existence of and the exclusion from the historical, systematic, and institutional network, subcontracting, bid shopping, and bid manipulation.
- (5) The statistical comparison suggested by the U.S. Supreme Court in *Croson*, between the number of available qualified minority businesses, and the total contract dollar awards going to minority businesses, referred to as the Utilization Percentage Ratio (UPR), yields significant statistical disparities in all industries between majority and minority businesses who contract with the City of Jackson. Moreover, this comparison suggested by the court, although showing a significant degree of disparity, results in a deficient measure of discrimination, failing to take into account those minority or female individuals or firms who were discouraged, deterred and/or disadvantaged by the discriminating practice in the marketplace.
- (6) Race and gender neutral policies, including those suggested by the U.S. Supreme Court in *Croson*, although helpful in improving minority and women owned business development, are found to be inadequate standing alone to eliminate discriminatory practices which

continue to deny women and minority business owners access to public and private contracts in the Jackson marketplace.

- (7) Women and minorities have been discriminated against in public and private markets for contractual services. There is a presence of discrimination in Jackson in various industry classifications and by employer status which has persisted over time. Moreover, there is strong anecdotal and statistical evidence that African American businesses continue to suffer the effects of past and present discrimination in the Jackson business markets both public and private.
- (8) Female, African American, and other minority owned businesses continue to suffer discrimination in the local business market when competing for construction contracts. Given the strikingly low participation of minority enterprise in private construction markets, the City of Jackson should leverage behavior in the private market to assure the effective development of minority and female business enterprises and to eradicate discriminatory practices.
- (9) The City of Jackson was a passive participant in discriminatory practices in both public and the private commercial markets.
- (10) Past and present discrimination in public and private markets for contractual services and the inability of race and gender-conscious programs standing alone, make race and gender-conscious programs necessary in order to remedy economic disparities between minority, female and majority contractors.
- (11) Utilization goals, attainable by good faith efforts, not quotas, for African-American, Female, Hispanic, and Asian American owned businesses are necessary to mitigate the competitive disadvantages which are caused by discrimination and are justified by evidence in the record.

and;

WHEREAS, the City of Jackson retained Griffin and Strong to conduct a subsequent study concerning minority and female participation in public contracting which covered the period July 1, 2002 through June 30, 2007 hereinafter referred to as *GS Study # 2*; and

WHEREAS, *GS Study # 2* was submitted in August 2012 and included the following findings regarding the statistical evidence and data collected regarding the City's use of Minority and White Female Business Enterprises (MWFBE):

- (a) There was evidence suggestive of continued discrimination and the continuing effect of past discrimination against minority and woman-owned businesses in Jackson, Mississippi;
- (b) Disparity measures revealed that MWBE eligible firms were underutilized in categories under consideration;

- (c) MWFBEs were significantly underutilized as prime *construction* contractors in all racial, gender, and ethnic categories except African American owned businesses were overutilized in 2004 and 2005;
- (d) MWFBEs were underutilized in construction subcontracts for professional services during the study period with the exception of African-American males who were overutilized;
- (e) MWFBEs were underutilized during the study period for architecture and engineering services except for 2004 and 2005, and non-minority females were underutilized except in 2006;
- (f) During the study period, the City spent in excess of \$20 million with MWBE across all procurement categories at the prime level. Non-minority males represented more than \$202 million during the same period;
- (g) Procurement activities of the City flow through every sector of municipal government using a requisition process which does not include a requirement that MWBE firms be included in recommendations.

WHEREAS, the GS Study #2 contained several recommendations for remedial action and indicated that there was sufficient factual predicate for the continuation of program established by the City's previous Equal Business Opportunity Ordinance; and

WHEREAS, implementation of the remedial measures recommended in the GS Study # 2 has been delayed for a number of reasons, including but not limited to multiple elections and transitions in the Office of Mayor within the last year; and

WHEREAS, the continuation of the program established by the City's prior Equal Business Opportunity Ordinance is necessary to remedy the effects of discrimination in the City of Jackson's awarding of contracts in certain segments, including but not limited to, prime contracting for construction and professional service contracts;

WHEREAS, this Executive Order is being entered for the purpose of insuring that remedial measures and acts are implemented by municipal departments participating in procurement;

NOW therefore, I, Tony Yarber, Mayor of the City of Jackson hereby order that the following equal business opportunity provisions and policies be followed and the policies set forth in this Executive Order supersede any prior policies and Executive Orders related to Equal Business Opportunity:

#### **I. Definitions.**

For the purposes of this Executive Order, the following terms shall have the following meanings:

*African American* shall mean "black".

*African American Business Enterprise (AABE)* shall mean a business which is an independent and continuing enterprise for profit, performing a commercially useful function, as defined in subsection 127-4(7), and is owned and controlled by one or more African Americans and certified as such by the division of business development.

*Asian American Business Enterprise (ABE)* shall mean a business which is an independent and continuing enterprise for profit, performing a commercially useful function as defined in this Executive Order and is owned and controlled by one or more Asian Americans and certified as such by the division of business development.

*Bid* shall mean and include a quotation, proposal, or offer by a bidder or contractor to perform, or provide labor, materials, supplies or services to the City of Jackson for a price.

*Bidder* shall mean any person, partnership, corporation or other business that submits a quotation, bid, offer or proposal to provide labor, materials, supplies or services for a price in response to a procurement solicitation of the City of Jackson.

*Certified Business Enterprise* shall mean an AABE, HBE, ABE, MBE or FBE which meets the requirements of this Executive Order and has been approved by the City of Jackson's Division of Business Development.

*Commercially useful function* shall mean the performance of real and actual services in the discharge of any contractual endeavor. The contractor must perform a distinct element of work in which the business has the skill and expertise as well as the responsibility of actually performing, managing and supervising.

*Controlled* for purposes of determining whether a business is a minority business enterprise or female business enterprise, shall mean the minority or the female owner(s) shall: (a) possess and exercise the legal authority and power to manage business assets, good will and daily operations of the business; and (b) actively and continuously exercise such managerial authority and power in determining the policies and directing the operations of the business. If the owners who are not minorities or females are disproportionately responsible for the operation of the business, then the business is not controlled by minorities or females.

*Eligible project* shall mean any of the following:

- (a) Any city construction contract over \$15,000.00, except sole source procurements.
- (b) Any city non-construction contract or procurement, except sole source procurements.

*Female business enterprise (FBE)* shall mean a business which is an independent and continuing enterprise for profit, performing a commercially useful function, as defined in this Executive Order

and is owned and controlled by one or more females regardless of any race and certified as such by the City of Jackson's Division of Business Development.

*Hispanic business enterprise* (HBE) shall mean a business which is an independent and continuing enterprise for profit performing a commercially useful function, as defined in this Executive Order, and is owned and controlled by one or more Hispanics and certified as such by the City of Jackson's Division of Business Development.

*Joint venture* shall mean an association of two or more persons, partnerships, corporations or any combination of them, established to carry on a single business activity which is limited in scope and duration. The degree to which a joint venture may satisfy relevant equal business opportunity (EBO) goals cannot exceed the proportionate interest of the MBE or FBE held as a member of the joint venture in the work to be performed. The agreement establishing the joint venture, partnership or other multi-entity relationship shall be in writing. Further, MBE or FBE participation in a joint venture shall be based on the sharing of real economic interest in the venture and shall include proportionate control over management, interest in capital acquired by the joint venture, and interest in earnings.

*Minority business enterprise* (MBE) shall mean a business which is an independent and continuing operation for profit, performing a commercially useful function, as defined in this Executive Order and is owned and controlled by one or more non White persons regardless of gender.

*Owned*, for purposes of determining whether a business is a minority business enterprise or female business enterprise, shall mean that:

- (a) The minority or female owner(s) as the context requires, shall possess an ownership interest of at least 51 percent of the business;
- (b) The ownership is real and continuing and goes beyond the mere indicia of ownership which may be shown in ownership documents; and
- (c) The minority or female owner(s) shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by an examination of the substance, rather than the form of ownership arrangements.

*Small business enterprise* (SBE) shall mean a business which is an independent and continuing enterprise for profit, performing a commercially useful function, as defined in subsection 127-4(7), and is owned and controlled by one or more persons, not limited to members of minority groups, who have been historically deprived of the opportunity to develop and maintain a competitive position in the economy because of social and economic disadvantages and certified as such by the division of business development in accordance with current federal regulations.

*Supplier* shall mean a person engaged in the warehousing or manufacture of materials, supplies or equipment which contracts directly with a bidder to provide such materials, supplies or equipment on a project which involves a trade or service within the procurement category or categories of professional services, construction, or commodities (goods and non-professional services).

## **II. Policy**

It is the policy of the City of Jackson to promote full and equal business opportunity for all persons doing business with the City of Jackson. A previous study conducted by Griffin and Strong indicated that female, African American, Hispanic, and Asian American owned businesses have suffered the effects of racial and gender discrimination in both public and private markets, resulting in a disproportionate award of contract dollars to non-minority or non-female businesses. The City of Jackson has been addressing the effects of the discrimination by implementation of an Equal Business Opportunity Program. The Equal Business Opportunity Program shall continue to be implemented so that participation in public contracting by minority and women owned businesses continues.

**III. Application.** The provisions of this Executive Order shall apply to all eligible projects as defined previously.

## **IV. Divisions created within the Office of Economic Development**

In addition to any existing divisions within the City of Jackson Office of Economic Development, there shall be created two divisions which shall be known as (1) The Division of Equal Business Opportunity; and (2) The Division of Business Development. The two divisions are created to implement, enforce, and monitor compliance with this Executive Order and shall perform other duties which may be required by the Deputy Director of the Office of Economic Development.

### **A. Duties of the Equal Business Opportunity Officer**

The Equal Business Opportunity Officer within the Division of Equal Business Opportunity shall have the following authority and duties:

- (1) Implement the provisions of this Executive Order and enforce same;
- (2) Establish written procedures, guidelines and forms as may be necessary to implement this Executive Order subject to the approval of the Equal Business Opportunity Review Committee (EBORC).
- (3) Prepare written determinations, with reasons therefore, of whether potential contractors are in compliance with this Executive Order in accordance with the procedures recommended by the EBORC.
- (4) Attend pre-bid, pre-proposal, pre-contract, pre-construction conferences and project close-out meetings with potential contractors and subcontractors, for the purpose of ensuring that the Division of Equal Business Opportunity has all available information with which to make a determination of compliance;

- (5) Investigate alleged violations of this Executive Order and issue written findings concerning the investigations and recommending appropriate action and measures to be taken consistent with the provisions of this Executive Order;
- (6) Provide all forms, applications, documents and papers necessary to comply with this Executive Order to business entities of all types;
- (7) Determine whether any penalties are appropriate to be imposed for failure to meet or comply with the Equal Business Opportunity participation goals and standards;
- (8) Provide notice by certified mail to affected parties of appeal and other rights arising out of the compliance or non-compliance with this Executive Order;
- (9) Submit recommendations to the EBORC on measures and acts designed to promote and encourage participation by minorities and females in contracting and procurement in the City of Jackson;
- (10) Provide notice to the EBORC of any determination of noncompliance with the requirements of this Executive Order and any appeals received by persons aggrieved by decisions or determinations related to this Executive Order and the enforcement of its provisions;
- (11) Submit quarterly written reports to the EBORC on activities related to the implementation, monitoring, and enforcement of this Executive Order;
- (12) Provide support and assist the EBORC in its functioning;
- (13) Review bids, proposals, and other documents responding to the City's procurement solicitations for compliance with this Executive Order.
- (14) Review, compile, and submit a monthly report to the Mayor or his designee on the participation of minorities and female business enterprises in the City's contracts and procurements so that an assessment can be made on the effects of this Executive Order.

**B. Duties of the Manager of the Division of Business Development.**

The Manager of the Division of Business Development for the Office of Economic Development shall have the following authority and duties:

- (1) Develop a database of certified MBEs and FBEs to be maintained as a public record.
- (2) Maintain annual statistical data on availability and utilization of certified MBEs (AABEs, HBES, or ABES) and FBEs including but not limited to:
  - (a) The level of EBO participation achieved in the contracts subject to this chapter; and
  - (b) The current estimated availability of AABEs, HBES, ABES and FBEs to perform services; and

- (c) An assessment of the continuing need for EBO goals for specific projects; and
- (3) Implement and coordinate a business assistance program which will provide counseling and technical assistance to MBEs and FBEs and provide referral information on various service providers which may be of assistance to MBEs and FBEs;
- (4) Coordinate, manage or form a partnership alliance with a small business development center.
- (5) Review cases where contractors fail to implement previously made MBE or FBE commitments to determine whether there should be further efforts or alternative approaches, including but not limited to, contact with industry, or any pertinent federal agency, for information concerning the availability of qualified MBEs and FBEs;
- (6) Certify contractors, bidders or offerors as bona fide MBEs (AABEs, HBEs, or ABEs) or FBEs, in accordance with the standards set forth in this Executive Order;
- (7) Provide notice to an affected party by certified mail that it has the right to appeal a denial of certification as an MBE (AABE, HBE, or ABE) or FBE to the Deputy Director of the Office of Economic Development within seven (7) days of receipt of the notice of non-certification.
- (8) Notify the EBORC of any determination of non-certification with the requirements of this Executive Order or of any appeal from such determination of non-certification.

**C. Equal Business Opportunity Review Committee (EBORC).**

(a) The Equal Business Opportunity Review Committee consists of the following: (1) the Mayor's Coordinator of Economic Development and another designee of the Mayor's office; (2) the City Attorney or his designee; (3) the Chief Administrative Officer or his designee; (4) a Deputy Chief Administrative Officer; (5) the Director of the Department of Public Works or his designee; (6) the Director of the Department of Planning and Development or his designee; (7) the Business Development Manager or his designee; and (8) the Purchasing Manager or his designee. The Mayor's Coordinator of Economic Development shall serve as the chairperson of the EBORC.

(b) The Equal Business Opportunity Review Committee shall have the following authority and duties:

- (1) Review the quarterly reports of the Equal Business Opportunity Officer and submit recommendations to the Mayor on actions required and essential for the effective implementation of this Executive Order;
- (2) Review periodically Equal Business Opportunity participation goals and submit recommendations to the Mayor on revisions needed;
- (3) Review and consider appeals by persons aggrieved by the denial of certifications as

an MBE or FBE and persons aggrieved by determinations of the Equal Business Opportunity Officer concerning compliance with this Executive Order.

4. Review and hear requests for substitution and replacement of MBE and FBEs.
5. Perform other functions identified in this Executive Order and necessary to achieve the goals and ends of this Executive Order.

**V. Equal business opportunity participation goals.**

Consistent with the policy stated in this Executive Order, the following Equal Business Opportunity (EBO) participation goals are established and shall remain in effect until this Executive Order is amended or the Jackson City Council passes an ordinance containing participation goals to the contrary:

Procurement Category	Asian (ABE)	African American (AABE)	Hispanic (HBE)	Native American (NABE)	Female (FBE)
Architecture/Engineering & Professional Services	0.16	8.67	0.00	0.00	1.96
Construction	0.00	12.41	0.37	0.00	4.89
Goods (Commodities)& Non-Professional Services	0.04	6.78	0.02	0.00	3.03

**Alternative project participation goals.**

The applicability of the EBO participation goals established within this Executive Order on any project shall be reviewed evaluated by the Equal Business Opportunity Officer. If the goal is not appropriate for a specific project, the Equal Business Opportunity Officer shall set an appropriate alternative project goal for the project. In setting alternative goals on a particular project, the Equal Business Opportunity Officer shall consider: (1) the availability of AABEs, FBEs, HBEs, and ABEs in various industry classifications and professions which are ready, willing and able to provide goods and services on the particular contract, as identified in the City's certification database; (2) the level of participation by such firms in past contracts awarded by the City of Jackson; (3) the contract specifications (4) whether the vendor is located in the City limits of Jackson; (5) the number of Jackson residents employed by the vendor; and (6) any other relevant factors not specifically enumerated. To set a project goal, there must be at least one available AABE, FBE, HBE, or ABE for each specific goal. The vendor must provide documentation to the EBO Officer which establishes the vendor's efforts to secure participation by minority and female business enterprises

The alternative project goal established by the Equal Business Opportunity Officer shall be reviewed and approved by the Equal Business Opportunity Review Committee (EBORC). In

reviewing the alternative participation goals established for a project, the EBORC shall consider the availability and utilization data by which the Equal Business Opportunity Officer established the alternative participation goal.

**VI. Contractor's requirements regarding submission of an Equal Business Opportunity Plan.**

- A. Each bidder responding to a solicitation for goods and/or services shall complete and sign an Equal Business Opportunity Plan on forms provided by the City or its Equal Business Opportunity Officer for all eligible projects as defined by this Executive Order. The Equal Business Opportunity Plan shall be included in all solicitation materials for eligible projects.
- B. Notwithstanding its compliance with any other requirement of City ordinances or solicitation requirements established by the City, no bidder shall be awarded a contract on an eligible project unless an Equal Business Opportunity Plan is submitted with the bid response and the Equal Business Opportunity Officer has approved the plan or approved the waiving of the participation goals. The EBO plan shall be designed to meet the applicable participation goals set for the project and shall be incorporated into the contract.

The Equal Business Opportunity Plan shall include the following:

- (a) name, address, telephone number, electronic mail address and contact person of each subcontractor or supplier to be used in the contract;
  - (b) a description of the type and scope of work or service each business will perform;
  - (c) the dollar value of the work to be performed;
  - (d) the ownership of each business by race and/or gender, and, if applicable, the AABE, HBE, ABE, NABE or FBE certification number of each business that has been contacted by such bidder, and has agreed to be used in the contract.
  - (e) If a bidder include names of MBEs (AABE, HBE, ABE, NABE) or FBEs on their EBO Plan, and it is established that these entities were not contacted concerning the response or have been included as a participating entity without consent, then the submission will be considered fraudulent and may result in the disqualification of the response bid or proposal from further consideration in the procurement process and/or the rejection of the bid or proposal.
- C. Contractors may employ AABEs, HBES, ABES, or FBEs to meet the applicable project goals through a variety of methods, as follows:

**Subcontractor participation:**

1. If a prime contractor utilizes one or more subcontractors to satisfy its equal business opportunity commitment, the prime contractor may count toward its EBO plan only expenditures to MBE (AABE, HBE, or ABE) or FBE contractors that perform a commercially useful function in the work of the contract.
2. An MBE or FBE subcontractor is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing and supervising the work involved. In determining whether an MBE or FBE subcontractor, is performing a commercially useful function, factors, including but not limited to the following, will be considered:
  - i. The amount of work subcontracted;
  - ii. The type of prime contract;
  - iii. The business's skill, expertise, and capability to perform the work described based on its certification;
  - iv. The authority which will be exercised by the business in performing, managing, and supervising the work described and proposed in the Plan and whether the same is consistent with its certification;
  - v. If the business engages in the purchase of goods and services from minority or women business enterprises and then sells to the City, a City contractor, or other person doing business with the City for the purpose of allowing the goods to counted in the minority or women owned business enterprise participation goals;
  - vi. Standard industry practices.
3. Consistent with standard industry practices, an MBE or FBE subcontractor may enter into second tier subcontracts. In the event an MBE or FBE subcontractor subcontracts a significantly greater portion of the work of its subcontract to a non-minority, non-female owned firm than would be expected on the basis of standard industry practices, the MBE or FBE subcontractor shall be presumed not to be performing a commercially useful function.
  - a. **Supplier participation.**

If a prime contractor utilizes one or more suppliers to satisfy its EBO commitment, in whole or in part, the MBE or FBE supplier participation may be credited towards the applicable goal as follows:

- (1) For the purposes of calculating the percentage of total contract dollars awarded or paid to MBE or FBE suppliers, only amounts paid to MBE and FBE suppliers who manufacture the goods supplies, who are wholesalers warehousing the goods supplied, or who are manufacturer's representatives (distributors) of goods customarily and ordinarily used based upon standard

industry trade practices shall be counted. MBE and FBE suppliers as defined in this Executive Order must be certified to provide contracted supplies with both the Business Development Division and the Purchasing Division of the City of Jackson.

(2) For contracts in which an extraordinarily large proportion of the contract price is for equipment or supplies, the EBO officer with the approval of the EBORC may set a lower project goal than otherwise would be required.

**b. Joint ventures.**

1. The Division of Equal Business Opportunity shall review and determine on an individual project or contract basis whether it is feasible to establish a joint venture so as to insure prime contracting opportunities for African American, Hispanic, Asian American, Native American and female business enterprises on all eligible projects exceeding \$15,000.00.

In order to increase the likelihood that MBE's and FBE's will participate as prime contractors, a joint venture between a prime contractor and MBEs and FBEs is strongly encouraged on all projects exceeding \$3,000,000.00 even if the prime itself is an MBE or FBE, except where a significantly large portion of the contract is for the purchase of equipment or supplies. For projects that exceed \$1,000,000.00, the joint venture agreement must be submitted at the time of bid.

2. If a contractor engages in a joint venture to satisfy its equal business opportunity commitment, the Equal Business Opportunity Officer, shall review and approve all contractual agreements regarding the following prior to the award of the contract:
  - i. The initial capital investment of each venture partner;
  - ii. The proportional allocation of profits and losses to each venture partner;
  - iii. The sharing of the right to control the ownership and management of the joint venture;
  - iv. The actual participation of the venture partners in the performance of the contract;
  - v. The method of and responsibility for accounting;
  - vi. The methods by which disputes are resolved; and
  - vii. Any additional information required by the EBO officer.
3. The Equal Business Opportunity Officer shall review and determine the degree of AABE, HBE, ABE, and FBE participation resulting from the joint venture which may be credited toward the equal business opportunity participation goals using the factors and criteria set forth in this Executive Order.
4. The bidder shall provide the Equal Business Opportunity Officer access to review all records pertaining to joint venture agreements before and after the award of a contract in order to evaluate and assess compliance with this Executive Order.

**c. Mentor protege programs.**

1. The Division of Equal Business Opportunity shall encourage mentor protege agreements to assist African American, Hispanic, Asian American, and female business enterprises in financing,

bonding, construction management and technical assistance. Mentor-protege agreements will be reviewed by the Equal Business Opportunity Officer and approved using the following criteria:

- i. Type of technical assistance to be provided by mentor;
- ii. Rights and responsibilities of each mentor and protege contracting activity;
- iii. The specific duration of the agreement;
- iv. Continuation of the agreement if any, beyond the project;

Other factors not enumerated.

2. During the term of the contract the mentor and protege businesses must each provide to the EBO officer a quarterly summary of the mentor skills provided to the protege, which shall include:

- (a) The time spent between mentor and protege businesses in furtherance of the mentor protege relationship;
- (b) The nature and extent of managerial, technical, financial and/or bonding assistance provided;
- (c) A summary and explanation of any projects bid on or undertaken by the mentor-protégé team in the private sector or for a governmental entity other than the City of Jackson; and
- (d) Any additional or further information required by the EBO officer as set forth in bid documents or otherwise.

3. **Mediation of disputes between joint venture or mentor-protege team members.**

a. After a contract is awarded, if a member of a joint venture or a party to a mentor-protégé agreement believes that the terms and conditions of the agreement approved by the EBO officer have not been complied with, then the member may submit a written request to the EBORC to review and mediate the dispute.

Within 20 calendar days of receipt of a request for review, if the dispute has not already been resolved informally among the parties, the EBORC shall set a date for the mediation. The EBO officer shall provide written notice of the mediation date to each member of the joint venture or mentor-protege team.

b. The EBORC shall make recommendations for the resolution of the dispute to the Mayor within fifteen (15) and upon approval of the recommendation shall provide written notice of the decision to the interested parties of the joint venture or mentor protégé agreement within five (5) days of the Mayor's approval.

The parties to the joint venture or mentor protégé agreement shall provide notice of the City within seven (7) days of its willingness to adhere the recommendations. If the parties indicate an unwillingness to adhere to any recommendation, then the dispute shall be referred to a mediator mutually agreed upon by the parties, and the cost of the mediation shall be born equally by the parties. The decision of the mediator shall not be binding absent the parties agreeing in writing prior to the mediation that the decision shall be binding.

**d. Waiver Concerning Project Goals.**

1. *Inability to meet project goal.* If a bidder is unable to meet project goals for a specified minority or female business, he should request a partial or total waiver of the project goal for the minority or female business. The request for waiver of all or part of the project goals shall include full documentary evidence of the bidder's good faith outreach efforts to meet the project goals and an explanation as to why the request for waiver should be granted. The request for a waiver shall be in writing and submitted at the time of bid as a part of the bidder's EBO plan. It should include a signed narrative, and written documentation demonstrating the bidder's good faith outreach efforts to identify, contact, contract with or utilize certified MBEs and FBEs as subcontractors or suppliers, or in a joint venture or mentor-protége relationship which verify the good faith outreach efforts taken by the bidder to meet the goals.
2. *Good faith outreach efforts.* No bidder shall be granted a waiver on an eligible project unless the EBO officer determines that the bidder has satisfied the good faith outreach efforts requirements of this paragraph on such eligible project. The bidder shall provide documentation of all of the following as evidence of its good faith outreach efforts. The following documents shall be included as part of the EBO plan at the time of bid, and each bidder will be evaluated on the same:
  - (a) Bidder contacted the business development division to identify certified MBEs and FBEs available to work on the project.
  - (b) Copies of written notification to MBEs and FBEs that their interest in the subcontract is solicited. Such notices and invitations shall include a full disclosure of the criteria upon which bids, proposals or quotes will be evaluated, and also include contact information for inquiries, submissions, or requests to review any necessary bid documents.
  - (c) Bidder shall provide documentation verifying receipt of the solicitation notice by the MBEs and/or FBEs.
  - (d) Bidder placed notices of opportunities for qualified businesses to perform subcontracting work on the eligible project in newspapers, trade journals, and other relevant publications, including but not limited to publications specifically targeting MBE and FBEs in order to increase the likelihood of achieving the stated goals.

( e ) Evidence that bidder made an effort to divide the work into economically feasible segments in order to provide opportunities for MBE and FBE participation which would increase the likelihood of achieving the stated goals.

( f ) Evidence of the bidder's effort to secure participation of MBE and FBE's which shall include (1) names, addresses, telephone numbers of those contacted (2) the date contact was made with the MBE and FBE and the method by which the contact was made (3) a copy of the plans, specifications or document containing the solicitation (4) the response of the MBE and FBE to the solicitation (5) an explanation as to why the MBE or FBE was not considered or accepted.

( g ) Evidence that the bidder promptly responded to inquiries concerning subcontracting opportunities and provided required access to an MBE and FBE to review bid and proposal documents in a manner timely enough to facilitate the MBE and FBE's preparation of a response and submission of bid or quote on the subcontract work.

( h ) Evidence of efforts made to assist the MBEs and FBEs contacted in securing bonding and insurance required by the bidder.

( i ) A written statement of the reason the bidder considered an MBE and FBE contacted to be unqualified to perform the work.

( j ) A statement with supporting documents and affidavits on whether the bidder used the mentor-protégé relationship in prior contracts with the City of Jackson.

( k ) Evidence of the bidder's efforts to recruit MBE and FBEs to perform subcontract work for it, including but not limited to contact with MBE and FBE organizations and organizations providing assistance to MBE and FBE organizations.

( l ) Evidence that the number of aggregate purchase items was increased in order to eliminate the need for advance purchases of materials by many MBE and FBE subcontractors.

#### **e. Replacement and substitution.**

The replacement or substitution of an MBE/FBE may be made if the subcontractor is believed to be unable to perform or complete the work. The EBORC must approve all replacements and substitutions. All requests for replacement or substitution of an MBE or FBE shall be submitted by the prime contractor in writing.

The MBE/FBE shall be provided with notice and opportunity to respond at a hearing conducted by the EBORC before replacement or substitution is authorized.

#### **VII. Review of bid or offer submission.**

A. The Equal Business Opportunity Officer shall review each bid or offer on a contract to determine if the bidder included in its submission a completed and signed EBO plan, which meets the EBO goals for said contract, and approve or reject said plan. No bidder shall be awarded an eligible project unless an EBO plan is submitted with its bid submission. No contract on eligible project shall be executed unless the recommended bidder has submitted an EBO plan for such eligible project.

B. If a partial or total request for waiver of a project goal is made, the Equal Business Opportunity Officer shall determine whether a bidder has met the good faith outreach efforts requirement stated above in order to meet the project goals and whether a total or partial waiver of a project goal should be granted. In reviewing the EBO plan submitted by a Bidder to determine whether the bidder has satisfied the good faith outreach efforts requirements of this Executive Order, the EBO officer will consider the factors cited in the *Good Faith Outreach* section of this Executive Order and also the following:

1. the total project dollars subcontracted to or expended for services performed by other businesses including certified MBEs and FBES;
2. the availability of MBEs and FBES to perform commercially useful functions for the contract based upon standard industry trade practices;
3. if the amounts paid to supplier businesses are for goods customarily and ordinarily used based upon standard industry trade practices, and the availability of certified MBEs and FBES for the eligible project.

C. Any partial waiver granted by the equal business opportunity officer shall specify the amount to which the applicable goal has been reduced on the contract.

In cases where a waiver is requested because of the alleged unavailability of MBEs or FBES to deliver the specified goods and services, the equal business opportunity officer shall certify that AABEs, HBES, ABES, or FBES are not in fact available to provide the needed goods or services at competitive prices.

D. The Equal Business Opportunity Officer may declare a bid or offer non-responsive if it is determined that a bidder: (1) failed to provide a completed and signed EBO plan; (2) failed to identify the AABEs, HBES, ABES, or FBES by name, scope of work and dollar value of work in their bids or proposals sufficient to meet the applicable EBO goals for that project; (3) failed to achieve the dollar value of creditable participation by certified MBEs or FBES necessary to meet the EBO project goals as evaluated by the equal business opportunity officer; or (4) fails to meet the requirements for a total or partial waiver of the EBO goals.

E. If the Equal Business Opportunity Officer determines that the EBO plan submitted by a bidder is false or fraudulent, he shall recommend to the EBORC that the bid or offer be rejected. The EBORC shall determine whether the bid or offer should be rejected. If a contract has been awarded prior to finding that the EBO plan was false or fraudulent

submitted, then a recommendation may be submitted to the Mayor and governing authorities to cancel the contract.

- F. The EBORC shall review all projects for compliance with this Executive Order and the EBO participation goals on projects exceeding \$1,000,000.00.

**VIII. Gradual exemption from participation goals.**

- A. Certified AABEs, HBEs, ABES, or FBEs shall be gradually exempted from use to fulfill EBO participation goals if federal or state income tax returns reveal that any AABE, HBE, ABE, or FBE has maintained gross receipts for two consecutive years that are in excess of the average gross receipts or other indicia of income of those non-minority firms with the largest market shares which represent 50 percent of the industry sales among the firms in the same industry classification.
- B. Firms which have achieved the average gross receipts in their industry specified above will be presumed to have reached a competitive status in overcoming the effects of discrimination.
- C. Certified AABEs, HBEs, ABES, or FBEs shall be required to provide a copy of federal and state income tax returns to the Equal Business Opportunity Officer whenever a prime contractor proposes to use the firm to meet EBO participation goals.

**IX. Incorporating the equal business opportunity clause in contracts for eligible projects.**

All contracts for eligible projects entered into by the City shall include the EBO clause contained within this Executive Order. The requirement shall be considered to have been complied with when the stated EBO clause is set forth as an Exhibit attached to the contract and there is appropriate language incorporating the Exhibit as being a part of the contract as if fully reprinted.

**Equal business opportunity clause.**

The equal business opportunity clause shall read as follows:

The contractor agrees to exercise good faith in making available opportunities available opportunities for minority business enterprises (MBEs) which includes, but is not limited African American Business Enterprises, Female Business Enterprises, Hispanic Business Enterprises, and Asian Business Enterprises to perform commercially useful work described in Exhibit A to this agreement which is incorporated into this agreement as if fully reprinted in accordance with the provisions of this Executive Order and shall take the following actions as part of its good faith outreach efforts to comply with the terms of the agreement and the Executive Order implemented by Mayor Tony Yarber of the City of Jackson on July 29, 2014:

- (1) Notification to MBEs and FBES that the contractor has subcontracting opportunities available and maintenance of records of the MBEs and FBES responses.
- (2) Maintenance by the contractor of a file of the names and addresses of each MBE and FBE contacted and action taken with respect to each such contact.
- (3) Dissemination of the contractor's EBO policy externally by informing and discussing it with all management and technical assistance sources; by advertising in news and electronic media and by notifying and discussing it with all subcontractors and suppliers.
- (4) Specific and continuing personal (both written and oral) recruitment efforts directed at MBE and FBE contractor organizations and/or MBE and FBE assistance organizations.
- (5) Subdivision of the contract into economically feasible segments as practice to allow the greatest opportunity for participation by MBEs and FBES.
- (6) Increasing where possible the number of aggregate purchase items so as to eliminate the requirement of front-end purchases of material for as many MBE and FBE subcontractors as possible.
- (7) Adoption of the equal business opportunity plan submitted with its response to the invitation for bids or request for proposals obligations under this agreement, as approved by the equal business opportunity officer.
- (8) Submission of monthly reports on the forms and to the extent required by the equal business opportunity officer which shall be due on the 10th day of each month following the award of the work set forth in the agreement.

**X. Maintenance of records and reports by contractors.**

Contractors awarded eligible projects incorporating EBO requirements must submit monthly participation reports on a form provided by the Equal Business Opportunity Officer. The report shall be submitted to the Equal Business Opportunity Officer on the 10th day of each month following the award of the eligible project. Each report shall include the following:

- (a) the name, address, telephone number and contact person of each subcontractor or other business used until the present date;
- (b) the type of work or service each business has performed;
- (c) a summary of the dollar amounts contracted or committed to each business during the term of the contract;
- (d) the dollar amounts actually paid to each business during the current month;

- (e) the total dollar amounts actually paid each business by race or gender (denoted as either AABE, HBE, ABE, NABE or FBE).
- (f) Other information requested by the EBO Officer.

Bidders awarded contracts on eligible projects shall maintain participation reports for a period of two (2) years after the completion of the applicable contract or project. All bidders shall create and maintain for a minimum of two years following the project's completion all records and documents reasonably necessary to demonstrate and verify the bidder's compliance with the requirements of this Executive Order. Upon request by the EBO officer, a bidder shall either submit documents and records related to its compliance to the Division of Equal Business Opportunity or permit inspection of the documents for the purpose of assessing and verifying compliance.

#### **XI. Failure to meet equal business opportunity participation goals.**

A determination by the Equal Business Opportunity Officer that the contractor has failed to comply with any portion of this Executive Order shall subject the offending party to any or all of the following penalties:

- (1) Withholding from the violating contractor ten percent (10%) of all future payments for the current eligible project until it is determined that the contractor is in compliance;
- (2) Withholding from the violating contractor all future payments for the current eligible project until it is determined that the contractor is in compliance;
- (3) Rejection of all future bids or offers for any eligible project with the City of Jackson or any of its departments or divisions until such time as the contractor demonstrates that there has been established and there shall be carried out all of the provisions of this Executive Order;
- (4) The submission of a recommendation to the governing authorities that the contractor's agreement with the City be terminated.

#### **XII. Equal business opportunity certification.**

*A. Standards:* The Division of Business Development shall determine the eligibility of AABEs, HBEs, ABEs, and FBEs for participation in City eligible projects according to the following standards:

- (1) Bona fide minority (African American, Hispanic, or Asian American) group memberships shall be established on the basis of the individual's claim that he or she is a minority (African American, Hispanic, or Asian American) and is so regarded by that particular minority community.
- (2) An eligible MBE (AABE, HBE, or ABE) and FBE under this program shall be a viable, independent and continually operating for profit entity performing a commercially useful

function which is owned and controlled by one or more minority persons or females respectively. The ownership and control by minorities or females shall be real and substantial, and shall be indicated by customary incidents of ownership, as demonstrated by an examination of the substance rather than the form of ownership and operating arrangements.

(3) The minority or female owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day decisions, as well as any decisions on matters of management, policy and operations on a full time basis. The business shall not be subject to any formal or informal restrictions which limit the customary discretion of the minority or female owners. There shall be no restrictions by partnership agreements, charter requirements or other arrangements which prevent the minority and female owners from making a business decision without the cooperation or vote of any owner who is not minority or female.

(4) In an instance where the actual management of an MBE or FBE is contracted out to individuals other than the owner, those persons who have the ultimate power to hire and fire the managers can be considered as controlling the business for the purpose of this Executive Order.

(5) All securities which constitute ownership or control of an entity for purposes of establishing it as an MBE or FBE must be held directly by minority or female individuals. No securities held in trust or by any guardian for a minor shall be considered held by minorities or females in determining the ownership or control of a corporation.

(6) Ownership and control shall be measured as though not subject to the community property interest of a spouse if both spouses certify that: (i) only one spouse participates in the management of the business; (ii) community property interest in the subject business.

*B. Certification investigation.* The Division of Business Development shall investigate MBE (AABE, HBE, or ABE) and FBE ownership arrangements beyond formal documents submitted by such entities if:

- (1) The business is applying for certification with the City for the first time;
- (2) The business is newly formed or the firm has minority and/or female ownership of less than 100 percent;
- (3) There is a previous or continuing employer-employee relationship between or among present owners;
- (4) A business which is not an MBE and FBE has an interest in such entity;
- (5) The ownership of the business has changed since documents have been submitted to the Division of Business Development;

(6) A review of the documents submitted with the application raises serious concerns regarding either ownership or control of the business; and/or

(7) The manager of the business development division deems it appropriate.

C. *Period.* The Division of Business Development shall grant certification to an approved MBE (AABE, HBE, or ABE) or FBE for a period of one (1) year.

D. *Denial.* If an MBE or FBE is denied certification on the basis of information submitted, the company shall not be eligible to apply for certification for a period of six (6) months from the date of the notice denying certification. A company denied certification as MBE or FBE may appeal the denial to the EBORC. If the EBORC reverses the denial of the certification, the business shall be certified. If the EBORC does not reverse the denial of the certification, then the chair of the EBORC shall provide written notice of the denial to the company via certified mail. The reasons for the denial of the certification shall be set forth in the notice to the company.

E. *Application for certification.* AABEs, HBEs, ABEs NABEs or FBEs who wish to be certified as such by the division of the business development must submit a written certification application on a form approved and provided by the Division of Business Development. The manager of the Division of Business Development may deny certification to applicants who fail to promptly submit necessary documentation or fail to complete the application process within a reasonable period.

F. *Re-certification.* To remain certified, all MBEs and FBEs appearing in the certification database will be required to submit a new affidavit with required documentation annually.

1. The MBE or FBE will submit the completed disclosure affidavit with the required documentation to the division of business development.
2. The disclosure affidavit and related documents will be evaluated for completeness and accuracy to determine whether changes that have occurred affect the status of the business as a bona fide MBE or FBE. An investigation may be conducted to evaluate an applicant as deemed appropriate.
3. All certified MBEs or FBEs are subject to monitoring by the division of business development to assure that the appropriate ownership and control will continue.

G. *Decertification.* The Division of Business Development may decertify a business if it determines that it is no longer a bona fide MBE (AABE, HBE, or ABE) or FBE. Any of the following reasons, which are not intended to be all-inclusive, are sufficient grounds for decertification:

1. The entity has changed and no longer satisfies the requirements of ownership and/or control;

2. The MBE or FBE fails to submit within a reasonable time period information requested by the Equal Business Opportunity Officer or the Division of Business Development.

Businesses decertified for reasons other than by voluntary request may not apply for recertification for a period of six (6) months. A business that is decertified may appeal the decertification to the EBORC which shall review and hear the matter in the same manner as it hears other appeals under this Executive Order.

H. *Continuing duty.* Certified MBEs and FBEs shall be under a continuing duty to inform the Division of Business Development in writing of any changes in the MBEs' or FBEs' business if, as a result of the changes, the MBE or FBE no longer satisfies the criteria for classification as a minority business enterprise or female business enterprise.

### XIII. Appeals.

- A. *Determination of noncompliance and denial of certification.* When certification as an MBE or FBE is denied or when a determination is made that a contractor has failed to comply with the provisions of this Executive Order, the chairperson of the EBORC shall mail written notice of same to the affected party by certified or registered mail setting forth the reasons for the determination of noncompliance or denial of certification.
- B. *Time for filing notice of appeal.* Any bidder who has been denied certification as an MBE or FBE by the division of business development or against whom a determination of noncompliance with the requirements of this Executive Order has been made may appeal the determination of noncompliance or denial of certification by filing a notice of appeal with the Deputy Director of the Office of Economic Development by submitting a request for a review within seven (7) working days of receipt of the notice of the determination of noncompliance or denial of certification.

The Deputy Director of the Office of Economic Development shall review the denial or determination of noncompliance and either confirm, modify, or reverse same within three (3) working days of receipt of the written request for review.

If the affected party is aggrieved by the decision of the Deputy Director of Economic Development, then the affected party may request a hearing before the EBORC. The request for the hearing must be made in writing and contain a description or summary of the basis for the aggrieved party's request for the hearing. The request must be submitted to the Equal Business Opportunity Officer within three (3) working days of receipt of the decision by the Deputy Director of Economic Development.

- C. *Notices and appeals before EBORC.* The Equal Business Opportunity Officer shall provide copies of requests for hearings received from parties aggrieved by the Deputy Director of Economic Development's decision at the next regularly scheduled meeting following receipt of the notice. At the meeting, the EBORC shall schedule hearings and

direct that the Equal Business Opportunity Office provide notice written notice to the aggrieved party five (5) days prior to the scheduled hearing. A contract which touches and concerns the matter being appealed to the EBORC shall not be awarded pending the outcome of the hearing before the EBORC.

D. *The appellate duties of the Equal Business Opportunity Review Committee (EBORC)* shall be as follows:

(1) The EBORC shall set a hearing date within fourteen (14) days of the meeting in which the notice requesting the hearing is presented by the Equal Business Opportunity Officer. The EBORC shall cause notice of the hearing to be served upon all parties by certified or registered mail. The notice shall set forth with particularity the charges filed by the aggrieved business and shall include the hearing date, time and place.

(2) All parties shall be provided a fair and impartial hearing and shall be allowed to produce any and all evidence in either party's possession concerning the determination of noncompliance with the requirements of the Executive Order or the denial of certification as an MBE (AABE, HBE, or ABE) or FBE.

E. *Decision.* The EBORC shall issue a written decision on the outcome of the appeal within seven (7) working days following the conclusion of the hearing. Official holidays shall not be included in the seven (7) working day period. The written decision shall summarize the evidence presented, conclusions reached by the EBORC, and the basis of its decision. The EBORC's decision shall either affirm, modify or reverse the determination of noncompliance or the denial of certification. The EBORC shall decide whether the determination of non-compliance being appealed was in accordance with the law and the terms and conditions of the solicitation before the contract is awarded or penalties are imposed. If the EBORC finds for the aggrieved party, the business shall be certified as an MBE or FBE and added to the certification database maintained by the City or the business shall be found in compliance with the EBO requirements of this Order and its respective bid or proposal may be considered for an award in response to the City's solicitation. The decision of the EBORC shall be binding on all parties save for any rights of appeal which are afforded by law.

F. *Notice of decision.* The Equal Business Opportunity Officer shall provide notice of the EBORC's decision to all parties by registered or certified mail.

#### **XIV. Race neutral assistance program.**

The City of Jackson recognizes that race-neutral alternatives such as bonding assistance, technical and financial aid are instrumental in helping African American, Hispanic, Asian American and female businesses overcome the effects of past public and private discrimination in procurements within the City of Jackson. Past discrimination has affected the capacity and ability of minority and female businesses to compete for municipal procurements with non-minority, non-female owned businesses which have greater access to bonding and financial assistance. The City further recognizes that small businesses, limited in size and capital suffered similar difficulties in

competing for contract dollars in public and private markets. It is in the City's best interest to promote opportunities in purchasing and contracting for small business enterprises, minority business enterprises and female business enterprises. In order to facilitate the aforementioned, the following race neutral assistance measures are to be implemented and followed:

- A. *Bonding assistance.* The Division of Equal Business Opportunity shall develop a program or enter into an agreement with agencies or organizations that have programs to assist small business enterprises (SBEs) in obtaining information and resources in the availability of bonding for public sector contracts. This division, alone or in partnership with other agencies or organizations, shall provide (i) individualized counseling; (ii) conduct seminars relating to bonding; (iii) explore methods of creating a bonding program for small businesses with public and private sector resources; and (iv) monitor the bonding practices in the local market and to document any instances of discrimination in the bonding industry; and (v) provide advice and information to the construction management division or the appropriate user department as to the level of bonding generally available to subcontractors, so that such information may be considered in the process of reducing such projects to a size that small business enterprise might successfully bid.
- B. *Financial assistance.* The division of equal business opportunity will assist small business enterprises in locating available financial resources in the Jackson business sector. This division, alone or in partnership with other agencies/or organizations, shall act as a: (i) clearinghouse for information on financial assistance programs for SBEs; (ii) assist in packaging loan requests for SBEs; (iii) conduct seminars related to financing; (iv) monitor and document any instances of discrimination against SBEs, MBEs and FBEs; and (v) explore public and private resources to provide financial services to small business enterprises.
- C. *Construction management and technical assistance.* The Division of Equal Business Opportunity, alone or in partnership with other agencies or organizations, will offer services to assist small business enterprises in construction management and technical services. This will be facilitated by: (i) assisting SBEs with bidding and estimating on construction contracts; (ii) conducting seminars on construction management; (iii) assisting the equal business opportunity officer in identifying and solving technical problems on construction projects; (iv) providing information on construction assistance programs; and (v) documenting any identified discrimination against SBEs, MBEs or FBEs on construction projects.
- D. *Prohibition against discrimination in awarding subcontracts due to bonding.*
  1. The prime contractor shall be prohibited from denying a subcontract solely on the basis of that subcontractor's inability to obtain any payment and performance bond required by the contractor. The EBORC, in consultation with the Equal Business Opportunity Officer, shall adopt rules and regulations to implement the following:
    - a. The encouragement of prime contractors to accept increment bonding for subcontractors;

b. The encouragement of the prime contractor to accept the maximum bond that the subcontractor can provide for the job, in circumstances where the subcontractor cannot provide a bond to cover the total amount of the subcontract;

c. The encouragement of the prime contractor to waive bonding requirements when feasible for subcontractors.

2. The prime contractor shall be required to submit a bonding assistance program for small, minority and female businesses on all wrap-up insurance contracts on eligible projects which exceed \$5,000,000.00.

*E. Subcontractor payment certification.* Every contract by the City for the performance of work shall contain a provision requiring the prime contractor to certify in writing that all subcontractors and suppliers have been paid for work and materials from previous progress payments received (less any retainage) by the prime contractor prior to receipt of any further progress payments. If a contractor is unable to pay subcontractors or suppliers until it has received a progress payment from the City, the prime contractor shall pay all subcontractors or suppliers funds due from said progress payments within 48 hours of receipt of payment from the City. During the contract and upon completion of the contract, the City may request that the contractor provide documentation to confirm its payment to subcontractors or suppliers.

The City reserves the right to issue joint checks payable to both the contractor and the subcontractor to insure proper payments. This provision in no way creates any contractual relationship between any subcontractor and the City or any liability on the City for the contractor's failure to make timely payment to the subcontractor.

## **XV. Procurement and Purchases by Departments**

In addition to the compelling interest of remedying the effects of past discrimination in public sector procurements against minority and female business enterprises, the City of Jackson has a governmental interest in insuring that businesses located within its municipal boundaries remain viable; therefore, all municipal departments shall adhere to the provisions of the public purchasing laws and the following with respect purchasing goods and services:

### **A. Purchases less than \$5,000.00**

In accordance with Section 31-7-13(a) of the Mississippi Code, purchases may be made without advertising or requesting competitive bids where the purchase does not involve an expenditure of *more than \$5,000.00* exclusive of freight and shipping charges. Therefore, all municipal departments shall purchase goods and services in this category from businesses located within the City of Jackson when available. In addition, municipal departments shall review the availability of goods and services in this category from the list of certified MBE and FBE businesses maintained by the Division of Business Development and shall rotate the purchase of goods and services between MBE, FBE, and non-MBE and FBE entities.

**B. Purchases exceeding \$5,000.00 but less than \$50,000.00**

In accordance with Section 31-7-13(b) of the Mississippi Code, purchases exceeding \$5,000.00 but not more than \$50,000.00 exclusive of freight and shipping charges may be made from the lowest and best bidder without publishing or posting advertisement for bids by obtaining two (2) competitive written bids. Therefore, all municipal departments shall purchase goods and services in this category from businesses located within the City of Jackson when available. In addition, all municipal departments shall review the availability of goods and services in this category from the list of certified MBE and FBE businesses maintained by the Division of Business Development and shall when feasible request that the MBE and FBE provide a bid on the good or service. Purchases of goods and services in this category must include one (1) competitive written bid from a certified MBE and FBE unless there is no certified MBE and FBE available.

**C. Purchases exceeding \$50,000**

Purchases exceeding \$50,000.00 shall be made in accordance with the laws of the State of Mississippi but shall be subject to applicable provisions of this Executive Order.

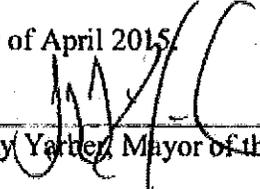
**D. Enforcement.** The Purchasing Division Manager shall not approve the purchase of goods and services by municipal departments for failure to adhere to the provisions of this Executive Order regarding the purchases not exceeding \$5,000.00 and purchases exceeding \$5,000.00 but not more than \$50,000.00.

**E. Exemption from Compliance.** Municipal departments may request that the Chief Administrative Officer exempt a particular purchase from meeting the requirements of this Executive Order concerning the purchases described in Section 15 A and 15 B above for cause. The exemption shall be in writing and set forth the basis for the request and must be approved in writing by the Chief Administrative Officer prior to purchase.

**XVI. Disciplinary Action.**

The failure to adhere to the provisions of this Executive Order may subject responsible personnel to disciplinary action including but not limited to termination of employment.

SO ORDERED this the 29<sup>th</sup> day of April 2015.

  
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Tony Yartez, Mayor of the City of Jackson 