

ORDINANCE NO. BL2013-523

An ordinance amending Title 4 of the Metropolitan Code to establish a Community Benefits Agreement (CBA) policy for the Metropolitan Government of Nashville and Davidson County providing for local and apprentice hiring requirements for certain Metropolitan Government construction and development projects, and modifying the composition of the Procurement Standards Board.

WHEREAS, the CBA is a leading model for economic development, and creates economic opportunities and career pathways for residents living in geographically-concentrated, impoverished communities; and

WHEREAS, the CBA builds trust and positive relationships between citizens, government, developers, and taxpayers; and

WHEREAS, the CBA provides training, career and employment opportunities for residents living in distressed communities; and

WHEREAS, the CBA calls for creating a pre-hiring policy that includes competitive wages for publicly-funding projects.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. Section 4.08.010 of the Metropolitan Code is hereby amended by deleting subsection B. in its entirety and substituting with the following new subsection B.:

B. Membership of the standards board. The standards board shall be composed of seven members as follows:

1. The director of finance of metropolitan government, who shall serve as chairperson of the board, and who may be represented by a designee;
2. The director of law of metropolitan government, who may be represented by a designee;
3. The head of another department of metropolitan government, to be appointed to the board by the mayor;
4. Two outside members, not employees or elected officials of metropolitan government, appointed by the mayor and confirmed by a majority vote of the whole membership of the council. These members shall serve a term of three years, respectively, or until a successor has been duly appointed and qualified; except, of the members first appointed, one shall serve for a term of two years and one shall serve for a term of three years;
5. One member appointed by the mayor and confirmed by the council representing a labor union in Davidson County;

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY



KARL F. DEAN  
MAYOR

DIRECTOR OF FINANCE  
METROPOLITAN COURTHOUSE  
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NASHVILLE, TENNESSEE 37201  
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**MEMORANDUM**

**To:** Vice Mayor Diane Neighbors

**From:** Richard M. Riebeling   
Director of Finance

**Date:** August 13, 2013

**Subject:** Ordinance amending Title 4 of the Metropolitan Code to establish a Community Benefits Agreement (CBA) policy for the Metropolitan Government of Nashville and Davidson County providing for local and apprentice hiring requirements for certain Metropolitan Government construction and development projects, and modifying the composition of the Procurement Standards Board

I am in receipt of a proposed Ordinance by Council Lady Erica Gilmore that amends Title 4 of the Metropolitan Code. The legislation was sent to me for signature certifying the availability of funds. Pursuant to rules of the Metropolitan Council, I am providing you with a brief statement as to why I have determined I cannot sign the proposed legislation at this time.

Since the fiscal impact to the Metropolitan Government of the proposed legislation cannot be determined, as well as significant legal concerns, I must decline to sign as to the availability of funds.

Please let me know if you have any questions or need additional information on this matter.

Copy: Members of the Metropolitan Council  
Jon Cooper

6. One member appointed by the mayor and confirmed by the council that is a resident of Davidson County having at least five years of experience working with employment initiatives that address disadvantaged communities provided by a non-profit community organization having an annual operating budget of \$150,000 or less.

7. Of the seven members, at least one shall be a female and one shall be a minority, provided however, that a minority female shall not satisfy the requirement of one female and one minority, and shall meet the requirement of only one such position.

Section 2. Title 4 of the Metropolitan Code is hereby amended by adding the following new Chapter 4.47:

### **Chapter 4.47 – COMMUNITY BENEFITS AGREEMENT POLICY**

#### **4.47.010 Definitions**

- (1) “Apprentice” means any worker who is contracted to work in a bona fide construction apprenticeship program.
- (2) “Area Median Income” (AMI) means the area median income for the Nashville-Davidson-Murfreesboro-Franklin, Tennessee Metropolitan Statistical Area.
- (3) “Board” means the Metropolitan Government Procurement Standards Board.
- (4) “Community Area Resident” means an individual whose primary place of residence is in Davidson County.
- (5) “Community Benefits Agreement” (CBA) means a pre-hiring policy that establishes the terms of agreement between community stakeholders, developers, government and training partners on publicly-funded projects exceeding \$2.5 million.
- (6) “Contractor” means any person, firm, partnership, limited liability company, corporation, joint venture, proprietorship, or other entity that enters into a contract for performance of construction work on the Project, including subcontractors of any tier.
- (7) “Metropolitan Government” means the Metropolitan Government of Nashville and Davidson County.
- (8) “Disadvantaged Populations” mean residents living in zip codes where the median household income is below \$40,000 as determined by the U.S. Census Bureau, and who fall into at least one of the following categories:
  - a. veterans of the Armed Forces of the United States
  - b. custodial single parents
  - c. persons having a criminal record that cannot legally be expunged under Tennessee law
  - d. suffering from chronic unemployment or underemployment

- e. homeless or transitional housing resident
  - f. receiving public assistance
  - g. lacking a GED or high school diploma
  - h. emancipated from the foster care system
  - i. an apprentice with less than fifteen percent (15%) of the required graduating apprenticeship hours in a program
- (9) "Local Hiring Plan" is the plan presented by the Contractor and approved by the purchasing agent as described in section 4.47.030 of this chapter.
- (10) "Local Resident" means an individual whose primary place of residence is within the Davidson-Murfreesboro-Franklin, Tennessee Metropolitan Statistical Area, and and is within a zip code with an unemployment rate that is greater than one and one-half (1½) times the unemployment rate for Davidson County as a whole.
- (11) "Policy" means the Construction Careers Policy. This Policy shall govern only construction work performed specifically for the Project work.
- (12) "Prime Contractor" means a Contractor that has entered into a Prime Contract with the Metropolitan Government for a Project.
- (13) "Program" means the detailed elements required to meet the intent of this Policy.
- (14) "Project" means a capital project funded by the Metropolitan Government with a total project cost in excess of \$2,500,000.

**4.47.020 Local and apprentice hiring requirements.**

The Prime Contractor is responsible for ensuring that the following Local and Apprentice hiring requirements are met.

- A. Local Hiring Requirements. The following Local Hiring Requirements shall be attained for the Project work.
- 1. 10% of total work hours on projects shall be allocated to individuals with barriers to employment.
  - 2. 30% of total work hours on projects shall be allocated to individuals with employment barriers who live in zip codes where the median household income is below \$40,000.
  - 3. 20% of total non-construction work hours on projects designated for individuals who live in zip codes where the median household income is below \$40,000.
- B. Apprenticeship Hiring Requirements. The following Apprentice Hiring Requirements shall be attained for the Project work.
- 1. The purchasing agent, working with Contractors, shall make every effort to provide significant opportunities for Community Area Residents and Local Residents.
  - 2. Contractors are required to submit Community Benefit Agreement hiring plans as part of their bids.
  - 3. Contractors must detail targeted hiring and training efforts with specific qualified training partners as part of the bid.

4. Contracts shall provide to the purchasing agent information regarding any reasons given by apprenticeship programs for not accepting Contractor-referred Local and Community Area residents into apprenticeship programs.

**4.47.030 Implementation.**

- A. Policy Inclusion in Construction Contracts. The purchasing agent shall include the terms of the CBA in all construction and development contracts.
- B. Scope of Application. This chapter applies only to Project work and the requirements of this chapter shall be incorporated into the construction contract.  
Construction Careers Oversight. The purchasing agent will monitor and enforce compliance with this chapter.
- C. Jobs Coordinator. The Prime Contractor shall, following the purchasing agent staff approval, shall designate a person to serve as a Jobs Coordinator to provide services in support of the Local and Apprentice Hiring Requirements. Among other responsibilities, the Jobs Coordinator will:
  1. Be the point of contact to provide information about available job opportunities;
  2. Work with community-based organizations or other groups to obtain certified listings of Disadvantaged Populations;
  3. Conduct outreach to Local and Community Area Residents in an effort to meet the provisions of this chapter;
  4. Develop and maintain an up-to-date list of qualified Local and Community Area Residents available for employment in the construction and development of the Project.
  5. To the extent possible, facilitate relationships among apprenticeship programs, labour unions and Contractors to enable prompt referrals.
  6. Assist contractors with reporting requirements and meeting the other requirements of this chapter.
- D. Local Hiring Plan. Each Prime Contractor shall submit to the purchasing agent a Local Hiring Plan for the entire Project work. The Prime Contractor must obtain approval of a Local Hiring Plan within 60 days after award of the contract to the Prime Contractor and thereafter as modified by the Prime Contractor. The purchasing agent will respond to the Local Hiring Plan with approval or suggestions for changes within two weeks of submission by the Prime Contractor.

**4.47.040. Sanctions and penalties for noncompliance.**

The failure of a Contractor to comply with the requirements of this chapter may be grounds for suspension or debarment by the Purchasing Agent pursuant to the standards set forth in section 4.36.020 of the Metropolitan Code. Sanctions shall not be imposed unless there is evidence of specific conduct on the part of the Contractor that is inconsistent with or in direct contravention of the applicable provisions of this chapter. In determining appropriate sanctions, the Purchasing Agent shall consider the following factors:

- (1) Whether the failure to comply with applicable requirements involved intentional conduct or, alternatively, may be reasonably concluded to have

resulted from a misunderstanding on the part of the Contractor of the duties imposed on them by this chapter;

- (2) The number of specific incidences of failure by the Contractor to comply;
- (3) Whether the Contractor has been previously suspended;
- (4) Whether the Contractor has failed or refused to provide the Purchasing Agent with any information required by this chapter;
- (5) Whether the Contractor has materially misrepresented any applicable facts in any filing or communication to the Purchasing Agent; and
- (6) Whether the Contractor has subsequently restructured or taken other action to cure the deficiencies in meeting applicable requirements.

Section 3. This Ordinance shall take effect from and after its enactment, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

APPROVED AS TO  
AVAILABILITY OF FUNDS:

INTRODUCED BY:



Erica Gilmore  
Member of Council

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Richard M. Riebeling  
Director of Finance