MINUTES OF THE 8th MEETING OF THE CONVENTION CENTER AUTHORITY OF THE METROPOLITAN GOVERNMENT OF NASHVILLE & DAVIDSON COUNTY

The 8th meeting of the Convention Center Authority of the Metropolitan Government of Nashville and Davidson County (CCA) was held on February 4, 2010 at 8:00 a.m., in Room 108-109 at the Nashville Convention Center, Nashville, Tennessee.

AUTHORITY MEMBERS PRESENT: *Mark Arnold, Marty Dickens, Darrell Drumwright, Ken Levitan, Vonda McDaniel, Willie McDonald, Luke Simons, Mona Lisa Warren, and Leo Waters

AUTHORITY MEMBERS NOT PRESENT: Vice-Mayor Diane Neighbors, Ex-Officio

OTHERS PRESENT: Councilman Phil Claiborne, Councilman Bo Mitchell, Rich Riebeling, Larry Atema, Charles Starks, Barbara Solari, Mark Sturtevant, Charles Robert Bone, Kristen Heggie, Roxianne Bethune, Michael Cass, Jeff Gossage, Kevin Glasgow, Peter Heidenreich, Ron Samuels, Ric Miller, Bill Phillips, Terry Clements, Joey Garrison, Keith Pyle, Mike Woodman. In addition, other members of the general public were present.

The meeting was opened for business by Chairman Marty Dickens who stated that a quorum was present. The Appeal of Decisions was shown.

ACTION: Appeal of Decisions from the Convention Center Authority of the Metropolitan Government of Nashville and Davidson County – Pursuant to the provisions of § 2.68.030 of the Metropolitan Code of Laws, please take notice that decisions of the Convention Center Authority may be appealed to the Chancery Court of Davidson County for review under a common law writ of certiorari. These appeals must be filed within sixty days after entry of a final decision by the Authority. Any person or other entity considering an appeal should consult with private legal counsel to ensure that any such appeals are timely and that all procedural requirements are met.

ACTION: Leo Waters made a motion to approve the 7th Meeting Minutes of January 28, 2010. The motion was seconded by Darrell Drumwright and approved unanimously by the Authority.

Chairman Dickens asked Larry Atema to give an update on construction.

*Denotes arrival of Mark Arnold

Charles Robert Bone was then asked to walk through the assignment of contracts. Mr. Bone asked if the order could be reversed and the procurement policy handled first and upon the Chairman's agreement he began discussing the procurement policy.

ACTION: Vonda McDaniel made a motion to approve the Procurement Policy (Attachment #1). The motion was seconded by Luke Simons and approved unanimously by the Authority.

Charles Robert Bone then began discussion on the core project contracts to be assigned and/or amended by the CCA. (Attachment #2)

ACTION: Mark Arnold made a motion to approve the assignment of the contracts to the Convention Center Authority and to authorize Marty Dickens to execute that assignment. The motion was seconded by Willie McDonald. After discussion the motion was approved unanimously by the Authority.

There was discussion about the amendments to the Commonwealth Development Group, Inc. contract and Bone McAllester Norton, PLLC contract.

ACTION: Leo Waters made a motion to approve the Willis brokerage services agreement that was originally procured through an RFP process with MDHA which would be an extension of that. The motion was seconded by Ken Levitan and approved unanimously by the Authority.

Next, Larry Atema was asked to explain the Bell/Clark Notice to Proceed with $16.9 million to be approved to continue to go forward. (Attachment #2)

ACTION: Willie McDonald made a motion to approve the Bell/Clark Change Order #2. The motion was seconded by Vonda McDaniel. After discussion the motion was approved unanimously by the Authority.

Marty Dickens announced the committee assignments.

Larry Atema was then asked to discuss the Construction and Development organizational chart. (Attachment #2)

ACTION: Mark Arnold made a motion to approve the Project Management organizational chart as presented. The motion was seconded by Willie McDonald and approved unanimously by the Authority.

Charles Starks was then asked to share information about the hotel/motel tax collections and money dedicated to the Music City Center. (Attachment #2)

Chairman Dickens opened the floor for discussion about meeting dates and times for the Authority suggesting the first Thursday of each month. After discussion it was decided the committees should meet consecutively on the last Thursday one week prior to the full Authority meeting with the first committee meeting date of February 25, 2010.

Mr. Dickens then announced that he had selected a subcommittee consisting of Vonda McDaniel, Mona Lisa Warren, Leo Waters, and Willie McDonald to review the Commonwealth Development Group, Inc. and Bone McAllester Norton, PLLC amendments in the next seven days.

ACTION: Mark Arnold made a motion to approve the Commonwealth Development Group, Inc. and Bone McAllester Norton, PLLC contract amendments subject to the review of the subcommittee appointed by the Chairman. The motion was seconded by Darrell Drumwright. After discussion the motion was approved unanimously by the Authority.

Mr. Dickens reviewed additional items that would be e-mailed to the Authority later today.

With no additional business a motion was made to adjourn, with no objection the CCA adjourned at 9:45 a.m.

Respectfully submitted,

Charles L. Starks
Executive Director
Nashville Convention Center

Approved:

Marty Dickens, Chairman
CCA 8th Meeting Minutes
Of February 4, 2010

Convention Center Authority
Procurement Policy

ARTICLE I
GENERAL PROVISIONS

1.1 Purposes and Rules of Policy. This document serves to set forth and establish the policies governing procurements by the Convention Center Authority of the Metropolitan Government of Nashville and Davidson County (the "Convention Center Authority"). The underlying purposes of this policy are as follows:

1.1.1 To permit the continued development of procurement policies and practices;

1.1.2. To provide for increased public confidence in the procedures followed in public procurement;

1.1.3. To ensure the fair and equitable treatment of all Persons who deal with the Convention Center Authority;

1.1.4. To provide increased economy in the Convention Center Authority's procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds of the Convention Center Authority;

1.1.5. To encourage the inclusion of, promote the growth of, and assist small, minority-owned and woman-owned business enterprises (SBE, MBE and WBE);

1.1.6. To foster effective broad-based competition within the free enterprise system while ensuring procurements meeting the needs of the Convention Center Authority; and

1.1.7. To provide safeguards for the maintenance of a procurement system of quality and integrity.

1.2 Singular-Plural and Gender Rules. In this policy, unless the context requires otherwise, words in the singular number include the plural and those in the plural include the singular. In addition, words of a particular gender include any gender and the neuter and when the sense so indicates, words of the neuter gender may refer to any gender.

1.3 Severability. If any provision of this policy or any application thereof to any Person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this policy which can be given effect without the invalid provision or application, and to this end, the provisions of this policy are declared to be severable.

1.4 Definitions. The words defined in this Section shall have the meanings set forth below wherever they appear in this policy unless the context in which they are used clearly requires a different meaning or different definition is prescribed for a particular Article or provision.

1.4.1 "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.

1.4.2 "Change Order" means any written alteration in specifications, scope of Construction, delivery point, rate of delivery, period of performance, price, quantity or other provision of any contract.

1.4.3 "Competitive Bidding" means:

Dollar Amount of Purchase	Requirements
Up to $999.99	One oral or written quotation required.
$1,000.00 to $3,999.99	A minimum of three verbal quotations required.
$4,000.00 to $9,999.99	A minimum of three written quotations required.
$10,000.00 and above	Competitive sealed bids or request for proposals.

1.4.4 "Conspicuously" means written in such special or distinctive format, print or manner that a reasonable person against whom it is to operate ought to have notice of it.

1.4.5 "Construction" means the process of building, altering, repairing, improving, or demolishing any structure or building or other property improvements of any kind. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

1.4.6 "Contract" means all types of Convention Center Authority agreements and contracts, regardless of what they may be called, for the procurement or disposal of supplies, Services, or Construction.

1.4.7 "Contractor" means any person having a contract with the Convention Center Authority.

1.4.8 "Data" means recorded information, regardless of form or characteristic.

1.4.9 "Designee" means a duly authorized representative of a person holding a superior position.

1.4.10 "Electronic" means electrical, digital, magnetic, optical, electromagnetic, and any similar technology.

1.4.11 "Employee" means an individual drawing a salary as other compensation for personal services from the Convention Center Authority, whether elected or not, but does not include independent contractors.

1.4.12 "Financial Interest" means [i] ownership of a direct or indirect interest or involvement in any relationship from which or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, directly or indirectly, more than five hundred dollars ($500.00) per year, or its equivalent; [ii] ownership of a direct or indirect interest in any property or any business, as may be specified by the procurement appeals board, of sufficient amount to provide influence over the activity of any corporation, partnership, limited liability company, unincorporated association or other entity, or owner of a general partnership interest of any size; or [iii] holding any compensated or uncompensated position in a business, such as an officer, director, trustee, partner or employee.

1.4.13 "Invitation to Bid" means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

1.4.14 "May" denotes the permissive.

1.4.15 "Minority-Owned Business Enterprise (MBE)" refers to a business enterprise maintaining a significant business presence in the Nashville Metropolitan Statistical Area (MSA) and performing a commercially useful function that is owned by one or more of the following: [i] African Americans, [ii] Native Americans, [iii] Hispanic Americans, and [iv] Asian Americans, who individually or collectively possess an ownership interest of at least fifty-one percent (51%) of the business. Racial and gender categories are separated for monitoring and tracking purposes only.

1.4.16 "Minority-Owned or Women-Owned Business Enterprise (MWBE)" refers to a business enterprise maintaining a significant business presence in the Nashville Metropolitan Statistical Area (MSA) and performing a commercially useful function that is owned by one or more of the following: [i] African Americans, [ii] Native Americans, [iii] Hispanic Americans, [iv] Asian Americans and [v] Women, who individually or collectively possess an ownership interest of at least fifty-one percent (51%) of the business. Racial and gender categories are separated for monitoring and tracking purposes only.

1.4.17 "Multi-Step Sealed Bidding/Proposal" is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the Convention Center Authority and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered. It is designed to obtain

the benefits of competitive sealed bidding by award of a contract to the lowest responsive, Responsible Bidder, and at the same time obtain the benefits of the competitive sealed proposals procedure through the solicitation of technical offers and the conduct of discussions to evaluate and determine the acceptability of technical offers.

1.4.18 "Official Information" means any information which was obtained through or in connection with an employee's government employment and which has not been made available to the general public.

1.4.19 "Person" means any business, individual, union, committee, club, other organization, or group of individuals.

1.4.20 "Procurement" means buying, purchasing, renting, leasing or otherwise acquiring any supplies, Services or Construction. It also includes all functions that pertain to the obtaining of any supply, service, or Construction, including description of requirements, selection and solicitation of sources, preparation and award of contract and all phases of contract administration.

1.4.21 "Public Notice" means the distribution or dissemination of information to interested parties using methods that are reasonably available. Such methods will often include publication in newspapers of general circulation, Electronic or paper mailing lists, and Web sites(s) designated by the Convention Center Authority and maintained for that purpose.

1.4.22 "Purchasing Agent" means the head of the Division of Purchases, within the Metropolitan Government, created and provided for by the Metropolitan Charter, Section 8.108.

1.4.23 "Purchase Request" means that document whereby the Convention Center Authority requests that a contract be entered into for a specified need, and may include, but is not limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation, suggested sources of supply and information supplied for the making of any written determination required by this code.

1.4.24 "Request for Proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

1.4.25 "Responsible Bidder or Offeror" means a Person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance.

1.4.26 "Responsive Bidder" means a Person who has submitted a bid which conforms in all material respects to the Invitation to Bid.

1.4.27 "Services" means the furnishing of labor, time or effort by a contractor, not primarily involving the delivery of a specific end product other than reports. This term shall not include employment agreements.

1.4.28 "Shall" denotes the imperative.

1.4.29 "Signature" means a manual or electronic identifier or the electronic result of an authentication technique, attached to or logically associated with a record, that is intended by the Person using it to have the same force and effect as a digital signature.

1.4.30 "Small Business Enterprise (SBE)" means a United States business which is independently owned and operated and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation.

1.4.31 "Specification" means any description of the physical or functional characteristics, or of the nature of a supply, service or Construction item. It may include a description of any requirement for inspection, testing or preparing a supply, service or Construction item for delivery.

1.4.32 "Women-Owned Business Enterprise (WBE)" means a business that is an independent and continuing enterprise for profit, performing a commercially useful function, in the Nashville Metropolitan Statistical Area (MSA), and which is owned and controlled by one or more women

1.4.33 "Written" or "in writing" means the product of any method of forming characters on paper, other materials, or viewable screens, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.

1.6 Application. This policy applies only to Contracts solicited or entered into after the effective date of its adoption, unless the parties agree to its application to a Contract solicited or entered into prior to the effective date of its adoption.

1.7 Authorization for the Use of Electronic Transmissions. The use of Electronic media, including acceptance of Electronic Signatures is authorized, consistent with the Convention Center Authority's applicable legal and regulatory requirements for use of such media, so long as the guidance provides for appropriate security to prevent unauthorized access to the bidding, approval, and award processes; and accurate retrieval or conversion of Electronic forms of such information into a medium which permits inspection and copying.

1.8 Public Access to Procurement Information. Procurement information shall be public records, open to inspection and copying during normal business hours. Information on a particular procurement shall be open to the public only after bid evaluation.

ARTICLE II
AUTHORITY TO CONTRACT

2.1 Convention Center Authority--Powers and Duties.

2.1.1 Authority. The Board of Directors of the Convention Center Authority (the "Board") has the authority to enter into Contracts or make purchases subject to all governing laws.

2.1.2 Power to Adopt Operational Procedures. The Convention Center Authority may adopt operational procedures governing the internal operations of the purchasing function.

2.1.3 Duties. Except as otherwise specifically provided by this policy, the Convention Center Authority shall:

a) Procure and lease all supplies, Services, and Construction needed by the Convention Center Authority;
b) Sell, trade, or otherwise dispose of surplus supplies belonging to the Convention Center Authority;
c) Establish and maintain programs for the inspection, testing and acceptance of supplies, Services and Construction; and
d) Establish and enforce standard specifications for all supplies, materials and equipment required by the Convention Center Authority which the Convention Center Authority has the authority to purchase or lease.

2.2 Authority to Contract for Professional Services. Contracts for legal services, accounting, fiscal agents, financial advisors or advisory services, consultants, architectural services, engineering services, and similar services by professional persons or groups of high ethical standards, shall not be based on competitive sealed bids, but shall be awarded on the basis of recognized competence and integrity.

2.3 Authority to Delegate Procurement Activities. The Board has the authority to delegate the performance of the procurement activities to another Metropolitan Government entity in whole or in part, complete or limited scope, subject to the Board's approval.

ARTICLE III
SOURCE SELECTION AND CONTRACT FORMATION

3.1 Methods of Source Selection. Convention Center Authority Contracts shall be awarded by and/or on the basis of competitive sealed bidding, competitive sealed proposals, small purchases, sole source procurement, emergency, utilities, or purchases through state and other governments, as set forth herein.

3.2 Competitive Sealed Bidding. Unless otherwise authorized by law or the policy set forth herein, all Convention Center Authority Contracts shall be awarded by competitive sealed bidding, as follows:

3.2.1 Invitation to Bid. An Invitation to Bid shall be issued and shall include a purchase description and all contractual terms and conditions applicable to the procurement.

3.2.2 Public Notice. Adequate Public Notice of the Invitation to Bid shall be given a reasonable time prior to the date set forth therein for the opening of bids. There may be different types of Public Notice on the basis of the size of the purchase or contract, or the type of supplies, Services or Construction. Such notice may include, but is not limited to, publication in a newspaper of general circulation a reasonable time prior to bid opening, mailing to suppliers on a list of established suppliers, and/or posting notice.

3.2.3 Bid Opening. Bids shall be publicly opened in the presence of one or more witnesses at the time and place designated in the Invitation to Bid. The amount of each bid and such other relevant information as may be specified by regulation, together with the name of each bidder, shall be read aloud and recorded and the record shall be open to public inspection.

3.2.4 Bid Acceptance and Bid Evaluation. Bids shall be accepted without alteration or correction, except as authorized in this policy. Bids shall be evaluated based on the requirements set forth in the Invitation to Bid, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs and total or life cycle costs. The Invitation to Bid shall set

forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the Invitation to Bid.

3.2.5 Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted. After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the Convention Center Authority or fair competition shall be permitted. The Board of the Convention Center Authority may permit the correction of mathematical errors. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Convention Center Authority or its Designee.

3.2.6 Multi-Step Sealed Bidding. When it is considered impractical to initially prepare a purchase description to support an award based on price, an Invitation to Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation. Discussions conducted for the purposes of facilitating understanding of technical offers or specifications may result in the obtaining of supplemental information, amendments of technical offers, and/or amendments of the specifications.

3.2.7 Award. The Contract shall be awarded with reasonable promptness by written notice to the lowest Responsible and Responsive Bidder whose bid meets the requirements and criteria set forth in the invitation for bids.

3.2.8 Rejection. The Convention Center Authority or its Designee may reject any and all bids received for purchases or sales.

3.3 Competitive Sealed Proposals. When the Convention Center Authority or Designee determines that the use of competitive sealed bidding is either not practicable or not advantageous to the Convention Center Authority, a contract may be entered into by competitive sealed proposals. The Board of the Convention Center Authority or its Designee may determine that it is either not practical or not advantageous to the Convention Center Authority to procure specified types of supplies, Services or Construction by competitive sealed bidding.

3.3.1 Request for Proposals. Proposals shall be solicited through a Request for Proposal.

3.3.2 Public Notice. Adequate Public Notice of the Request for Proposals shall be given in the same manner as provided in Section 3.2.2.

3.3.3 Receipt of Proposals. Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be prepared and shall be open for public inspection after contract award.

3.3.4 Evaluation Factors. The Request for Proposals shall state the relative importance of price and other evaluation factors.

3.3.5 Discussion with Responsible Offerors and Revisions to Proposals. As provided in the Request for Proposals, discussions may be conducted with Responsible Offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

3.3.6 Award. Award shall be made to the Responsible Offeror whose proposal is determined to be the most advantageous to the Convention Center Authority taking into consideration price and the evaluation factors set forth in the Request for Proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.

3.4 Small Purchases. Any procurement not exceeding the sum of one thousand dollars ($1,000.00) or such greater amount as may be permitted by the Convention Center Authority may be made in accordance with the small purchase procedures promulgated by the Convention Center Authority. "Split bidding," or the artificial division of procurement requirements so as to constitute a small purchase, is prohibited.

3.5 Sole Source Procurement. A contract may be awarded for a supply, Service or Construction item without competition when the Convention Center Authority or its Designee determines in writing that there is only one source for the required supply, Service or Construction item.

3.6 Emergency Procurements. The Convention Center Authority or its Designee may make or authorize others to make, emergency procurements when there exists a threat to public health, welfare or safety under emergency conditions provided that such emergency procurements shall be made with such competition as is practical under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

3.7 Utilities. The Convention Center Authority shall purchase or contract for all telephone or telecommunications, electricity, gas, power, water, postal, and other Services for which a rate for the use thereof has been established by a public authority in such manner as the Convention Center Authority deems to be in the best interest of the Convention Center Authority.

3.8 Purchases through State and Other Governments.

3.8.1 Purchase by State. As authorized by state law, the Convention Center Authority may request the State Department of General Services to purchase supplies and equipment for the Convention Center Authority.

3.8.2 Purchase from State Contracts. As authorized by state law the Convention Center Authority or its Designee may purchase, without public advertisement or competitive bidding, under the provisions of contracts or price agreements entered into by the State Department of General Services and open federal contracts in compliance with T.C.A. § 12-3-1001(c).

3.8.3 Purchase of Secondhand Articles from Government. As authorized by state law, the Convention Center Authority or its Designee may purchase from any federal, state or local governmental unit or agency secondhand articles or equipment or other materials, supplies, commodities and equipment without public advertising and competitive bidding.

3.8.4 Purchase for or from Local Governmental Units. As authorized by state law, the Convention Center Authority or its Designee may, upon request, purchase supplies, equipment or Services for any other municipality, county, utility district or other local governmental unit. The Convention Center Authority may request other local governments to purchase supplies, equipment or Services for the Convention Center Authority.

3.8.5 Purchasing or Contracting Cooperatives. The Convention Center Authority is authorized to enter into purchasing or contracting cooperatives with other governmental agencies and authorities outside the jurisdictional boundaries of the State of Tennessee, whether state or federal, to the extent permitted by Tennessee Code Annotated Section 12-9-104.

3.9 Cancellation of Invitations to Bid or Requests for Proposals. An Invitation to Bid, a Request for Proposal or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part, when it is in the best interests of the Convention Center Authority or its Designee.

3.10 Responsibility of Bidders and Offerors; Determination of Non-Responsibility. A written determination of non-responsibility of a bidder or offeror shall be made to support such determination. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such bidder or offeror.

3.11 Multi-Year Contracts. Unless otherwise provided by law, a Contract for supplies or Services may be entered into for any period of time deemed to be in the best interest of the Convention Center Authority provided the term of the Contract and any renewals or extensions do not exceed sixty months. The term of the Contract and conditions of renewal or extension, if any, must be included in the solicitation and funds must be available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.

3.12 Right to Inspect Plant. The Convention Center Authority or its Designee may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any Contract awarded or to be awarded by the Convention Center Authority.

3.13 Right to Audit Records. The Convention Center Authority or its Designee shall be entitled to audit the books and records of a contractor or any subcontractor under any Contract or subcontract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract, unless a shorter period is authorized in writing.

3.14 Retention of Procurement Records. All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the state's public records commission.

ARTICLE IV
SPECIFICATIONS

4.1 Duties of the Convention Center Authority. The Convention Center Authority shall [i] as necessary, promulgate regulations governing the preparation, maintenance and content of Specifications for supplies, Services and Construction; and

[ii] review Specifications in order to ensure that they identify minimum requirements, allow for maximum practicable competition, identify standards to be used in verifying compliance, and provide for an equitable award at the lowest possible cost. To the extent practicable, Specifications shall be written in terms of performance and outcomes.

4.2 Specifications Prepared by Architects, Engineers and Consultants. The requirements of this Article regarding the purposes and non-restrictiveness of Specifications shall apply to all Specifications, including, but not limited to, those prepared by architects, engineers, designers, draftsmen, and consultants for public contracts.

ARTICLE V
PROCUREMENT OF CONSTRUCTION CONTRACTS

5.1 Bid Security. The Convention Center Authority may require bid securities for all competitive sealed bids for Construction contracts. Bid security shall be a bond provided by a surety company authorized to do business in this state or the equivalent in cash or otherwise supplied in a form satisfactory to the Convention Center Authority or its Designee.

5.1.1 Amount of Bid Security. Bid security shall be in an amount equal to at least ten percent (10%) of the amount of the bid.

5.1.2 Rejection of Bids for Noncompliance with Bid Security Requirements. When the Invitation to Bid requires bid security, noncompliance or bid failure to comply in a non-substantial manner with the security requirements will result in the bid being rejected.

5.1.3 Withdrawal of Bids. After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids. If a bidder is permitted to withdraw its bid before award, no action shall be had against the bidder or the bid security.

5.2 Contract Performance and Payment Bonds.

5.2.1 When Required--Amounts. When a Construction contract is awarded in excess of one hundred thousand dollars ($100,000.00), the following bonds or security shall be delivered to the Convention Center Authority and shall become binding on the parties upon the execution of the contract:

a) A performance bond satisfactory to the Convention Center Authority, executed by a surety company authorized to do business in this state or otherwise secured in a manner satisfactory to the Convention Center Authority, in an amount equal to one hundred percent (100%) of the price specified in the contract; and
b) A payment bond satisfactory to the Convention Center Authority, executed by a surety company authorized to do business in this state or otherwise secured in a manner satisfactory to the Convention Center Authority for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent (100%) of the price specified in the contract.

5.2.2 Authority to Require Additional Bonds. Nothing in this section shall be construed to limit the authority of the Convention Center Authority to require a performance bond or other security in addition to those bonds or in circumstances other than specified in Section 5.2.1.

5.3 Fiscal Responsibility. Every contract modification, Change Order, or contract price adjustment under a Construction contract with the Convention Center Authority shall be subject to prior written certification by the financial authority for the Convention Center Authority that there is a sufficient unencumbered appropriation and allotment balance to cover said obligation.

5.4 Business Tax License Requirement. Any Person entering into any contractual agreement with the Convention Center Authority for any type of building or Construction work wherein any funds of the Convention Center Authority are appropriated or expended for such building or Construction work, other than those persons domiciled or located outside of Davidson County that are exempt from paying the minimum privilege tax pursuant to T.C.A. § 67-4-709(a)(4), shall obtain a business tax license from the Davidson County Clerk as required by T.C.A. § 67-4-706 prior to commencing any work on the project.

5.5 Declaration of Policy--Payment of Prevailing Wages Required. It is declared to be the policy of the Convention Center Authority that not less than prevailing wage rates be paid workmen on all building and Construction projects wherein any funds of the Convention Center Authority are expended for such purposes.

5.6 Prevailing Wages--Basis. Any Person entering into any contractual agreement with the Convention Center Authority for any type of building or Construction work wherein any funds of the Convention Center Authority may be appropriated or expended for such building or Construction work shall pay not less than the state prevailing wage rates for all types and classifications of such work as required by the Convention Center Authority.

5.7 Prevailing Wages--Rate Schedules to be Specification for Work--Posting. Before advertising for bids or entering into any contract for the Construction of any public work or improvement, the Convention Center Authority shall ascertain from the prevailing wage rates for workmen in the class of work called for in such Construction projects. This schedule of wages shall be attached to and made a part of the specifications for the work printed on the bidding blanks, made a part of every contract for the Construction of any public works or improvements, and posted on the main employee bulletin board of other conspicuous place on each job site by the contractor. In addition to the posting of the schedule of wages, the name, mailing address and telephone number of the Convention Center Authority shall be posted in the same manner with a statement that any person may report any violations of prevailing provisions to such office. Each employer that is subject to the provisions of this section shall provide to each employee, with the first payroll check, a written document which includes the contract number of the project, the job identification or classification of the employee and the prevailing wage rate for such job. Each employer shall maintain a written acknowledgment of the receipt by each employee of such document with its payroll records.

5.8 Payroll Records--Contractor Responsibility. Any Person who may enter into any contractual agreement with the Convention Center Authority shall, upon request, furnish the Convention Center Authority or Designee, certified copies of payroll records, including employees' names, hours worked and rates paid, and shall maintain and preserve such payroll records for one year, and such records shall be open for inspection. The contractor shall supply the requested documents within five working days of receipt of the request. The Convention Center Authority or its Designee may periodically examine the records required to be kept under this section. The Convention Center Authority is authorized to enter into a contract or contracts with the Metropolitan Development and Housing Agency of Nashville and Davidson County ("MDHA") pursuant to which MDHA shall perform the necessary review and investigation to determine compliance with the provisions of this chapter as requested by the Convention Center Authority. MDHA shall be paid an amount not to exceed its actual reasonable expenses of performance of such contract or contracts. This subsection is in no way

intended to subject the Convention Center Authority to any provision of the State Prevailing Wage Rates not formally adopted by ordinance.

5.9 Violation of Title 4 Provisions--Penalty. Each day that each employee is not paid in accordance with the provisions of this chapter shall constitute a separate offense. Any contractor found to have violated any provision hereof shall be disqualified from contracting with the authority for a period of six months and, upon a second conviction shall be disqualified for a period of one year, and a third conviction, for a period of three years. Furthermore, the Convention Center Authority may advertise the work and relet the contract in the same manner as the original letting.

5.10 Use of Employees who are not Legal Residents of the United States prohibited. It is declared to be the policy of the Convention Center Authority that any Person, and subcontractors of such Persons, contracting for building and Construction projects or furnishing supplies or Services to the Convention Center Authority, and to which any funds of the Convention Center Authority are expended, shall be prohibited from employing any person or having any employees who are not legal residents of the United States. The Convention Center Authority shall include in the Specifications to bidders or in the Invitations to Bid, a clause prohibiting the successful bidder, including any subcontract of such successful bidder, from permitting the employment of any person or having any employees who are not legal residents of the United States. Any contractor who knowingly violates the provisions of this section is subject to debarment or suspension.

ARTICLE VI
MODIFICATION AND TERMINATION OF CONTRACTS

6.1 Contract Clauses and their Administration.

6.1.1 Contract Clauses. The Convention Center Authority or its Designee may require the inclusion of clauses providing for adjustments in prices, time of performance or other contract provisions as appropriate covering the following subjects:

a) The unilateral right of the Convention Center Authority to order in writing: [i] changes in the work within the scope of the contract; and [ii] temporary stopping of the work or delaying performance; and
b) Variations occurring between estimated quantities of work in a contract and actual quantities.

6.1.2 Price Adjustments. Adjustments in price shall be computed in one or more of the following ways:

a) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
b) By unit price specified in the Contract or subsequently agreed upon;
c) By the cost attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;
d) In such other manner as the contracting parties may mutually agree; or
e) In the absence of agreement by the parties, by a unilateral determination by the Convention Center Authority of the cost attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by the Convention Center Authority in accordance with applicable sections of the regulations promulgated by the Convention Center Authority.

6.1.3 Additional Contract Clauses. The Convention Center Authority may permit or require the inclusion in contracts clauses providing for appropriate remedies and covering the following subjects liquidated damages as appropriate; specified excuses for delay or nonperformance; termination of the contract for default; and termination of the contract in whole or in part for the convenience of the Convention Center Authority.

6.2 Contract Modification and Change Orders. Before any change, revision or modification shall be made in any contract requiring the expenditure of money or the relinquishment of rights or privileges by the Convention Center Authority, such change, revision or alteration shall be approved by the Convention Center Authority. The Convention Center Authority shall disapprove any change, revision or alteration of such contract if, in its opinion, the best interests of the Convention Center Authority require that a new procurement be initiated for the items included in the proposed change or modification. Where any change, revision or alteration of a contract in which the Convention Center Authority is concerned requires an expenditure of money, such change, revision or alteration shall be approved by the Chair for the Convention Center Authority or by such other officer, member or employee as the Board, by resolution, may direct or authorize.

ARTICLE VII
LEGAL AND CONTRACTUAL REMEDIES

7.1 Authority to Resolve Protested Solicitations and Awards.

7.1.1 Right to Protest. Any actual or prospective bidder, offeror or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Convention Center Authority or its Designee. The protest shall be submitted in writing within ten days after such aggrieved person knows or should have known of the facts giving rise thereto.

7.1.2 Authority to Resolve Protests. The Convention Center Authority or its Designee has the authority to settle and resolve a protest of and/or with an actual or prospective aggrieved bidder, offeror or contractor concerning the solicitation or award of a contract.

7.1.3 Decision. If the protest is not resolved by mutual agreement, the Convention Center Authority or its Designee shall promptly issue a decision in writing. The decision shall state the reason for the action taken and inform the protestant of its right to administrative review as provided in this chapter.

7.1.4 Notice of Decision. A copy of the decision shall be mailed or otherwise furnished immediately to the protestant and any other interested party.

7.1.5 Finality. A decision shall be final and conclusive.

7.2 Authority to Debar or Suspend. After reasonable notice to the Person involved and reasonable opportunity for that Person to be heard, the Convention Center Authority shall have the authority to [i] suspend a Person or firm from consideration for award of Contracts for up to three months if there is probable cause for debarment; or [ii] debar a Person or firm from consideration for award of Contracts for up to three years.

7.2.1 Causes for Debarment or Suspension. The causes for debarment or suspension include, but are not limited to, the following:

a) Conviction of commission of a criminal offense as incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
b) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which currently,

seriously, and directly affects responsibility as a Convention Center Authority contractor;

c) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
d) Violation of contract provisions, as set out in regulation of the Convention Center Authority, of a character which is regarded by the Convention Center Authority to be so serious as to justify debarment actions;
e) Violation of the ethical, non-discrimination and assistance to small, minority-owned and/or woman-owned business enterprises standards, programs and policies, as set forth herein and as may be amended from time to time; and
f) Any other cause the Convention Center Authority determines to be so serious and compelling as to affect responsibility as a Convention Center Authority contractor, including debarment by another governmental entity.

7.2.2 Decision. The Convention Center Authority shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken; and inform the debarred or suspended Person involved of its rights to administrative review.

7.2.3 Notice of Decision. A copy shall be mailed or otherwise furnished immediately to the debarred or suspended Person and any other interested party.

7.2.4 Finality of Decision. A decision shall be final and conclusive, unless the debarred or suspended Person appeals administratively to the Convention Center Authority within thirty days of the receipt of a decision under Section 7.2.3.

7.2.5 Appeal. Upon such appeal, the Board shall promptly decide whether such action was in accordance with the Constitution, statutes, this policy, regulations, and the best interest of the Convention Center Authority, and was fair. The Board may order the reinstatement of any Person previously suspended or debarred.

7.3 Authority to Resolve Contract and Breach of Contract Controversies. This section applies to controversies between the Convention Center Authority and a contractor and which arise under, or by virtue of, a Contract between them. This includes without limitation controversies based upon breach of contract, mistake, misrepresentation or other cause for contract modification or recision.

7.3.1 Authority. The Convention Center Authority or its Designee is authorized, prior to commencement of an action in court concerning the controversy, to settle and resolve a controversy.

7.3.2 Decision. If such a controversy is not resolved by mutual agreement, the Convention Center Authority or its Designee shall promptly issue a decision in writing. The decision shall state the reason for the action taken.

7.3.3 Notice of Decision. A copy of the decision shall be mailed or otherwise furnished immediately to the contractor.

7.3.4 Failure to Render Timely Decision. If the Convention Center Authority does not issue the written decision within one hundred and twenty days after a written request for a final decision or within such longer period as may be agreed upon by the parties, the contractor may proceed as if an adverse decision had been received.

7.4 Remedies Prior to an Award of Contract. If prior to award it is determined that a solicitation or proposed award of a Contract is in violation of law, the solicitation or proposed award shall be canceled or revised to comply with the law.

7.5 Remedies After an Award of Contract. If after an award it is determined that a solicitation or award of a Contract is in violation of law, then:

7.5.1 If the Person awarded the Contract has not acted fraudulently or in bad faith:

a) The Contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of the Convention Center Authority; or
b) The Contract may be terminated and the Person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract prior to termination.

7.5.2 If the Person awarded the Contract has acted fraudulently or in bad faith:

a) The Contract may be declared null and void; or
b) The Contract may be ratified and affirmed if such action is in the best interests of the Convention Center Authority, without prejudice to the Convention Center Authority's rights to such damages as may be appropriate.

7.6 Protest of Solicitations or Awards. This section applies to an appeal addressed to the authority of a protest decision.

7.6.1 Time Limitations on Filing a Protest or an Appeal. For an appeal under this section, the aggrieved Person shall file an appeal within seven days of receipt of a decision to the Chairman of the Convention Center Authority or its Designee.

7.6.2 Decision. On any appeal under this section, the Board shall promptly decide whether the solicitation or award was in accordance with the Constitution, statutes, this policy, regulations, and the terms and conditions of the solicitation.

ARTICLE VIII
NONDISCRIMINATION PRACTICE

8.1 Equal Employment Opportunity Requirements. It is declared to be the policy of the Convention Center Authority that any Person contracting for building and Construction projects or furnishing supplies or Services to the Convention Center Authority, and to which any funds of the Convention Center Authority are expended, shall establish equal employment opportunities for all individuals so that no individual shall be excluded from employment by such persons because of race, creed, color, national origin, age or sex, and to ensure compliance with all applicable laws concerning the employment of individuals with disabilities. Any Person so contracting for building and Construction projects, or furnishing supplies or Services to the Convention Center Authority, wherein any funds of the Convention Center Authority may be appropriated or expended to such Person, shall not subscribe to any personnel policy which permits or allows the promotion, demotion, employment, dismissal or laying off of any individual due to his race, creed, color, national origin, age or sex, or which is in violation of applicable laws concerning the employment of individuals with disabilities.

8.2 Affidavit of Compliance--Contract Requirements. The Convention Center Authority shall include in all bid Specifications or Invitations to Bid a provision to the effect that no Contract shall be entered into for building and Construction projects or supplies or Services unless the successful bidder submits an affidavit to the Convention Center Authority stating that by his employment policy, standards and practices he does not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to this race, creed, color, national origin, age or sex, and that he is not in violation of and will not violate any applicable laws concerning the employment of individuals with disabilities. The Convention Center Authority shall include in the Specifications to bidders or in the

Invitations to Bid, a clause prohibiting the successful bidder from discriminating against any individual due to his race, creed, color, national origin, age or sex, and from violating applicable laws concerning the employment of individuals with disabilities.

8.3 Violations--Penalty. Any contractor who violates the provisions of this section is subject to debarment or suspension.

ARTICLE IX
ASSISTANCE TO SMALL, MINORITY-OWNED, AND WOMAN-OWNED BUSINESS ENTERPRISES

9.1 Statement of Policy and its Implementation. It shall be the policy of the Convention Center Authority to assist Small, Minority-Owned, and Woman-Owned Business Enterprises in learning how to do business with the Convention Center Authority. It is further the policy of Convention Center Authority that a fair proportion of government purchases be made from small, minority-owned, and woman-owned business enterprises. In furtherance of this policy, the Convention Center Authority shall:

9.1.1 Source Lists. The Convention Center Authority shall compile, maintain and make available source lists of Small, Minority-Owned, and Woman-Owned business enterprises for the purpose of encouraging procurement from small businesses.

9.1.2 Solicitation Mailing Lists. To the extent deemed appropriate by the Convention Center Authority, it shall include Small, Minority-Owned, and Woman-Owned Business Enterprises on solicitation mailing lists.

9.1.3 Bonding. The Convention Center Authority may reduce the level, or change the types of bonding normally required, or accept alternative forms of security to the extent reasonably necessary to encourage procurement from Small, Minority-Owned, and Woman-owned Business Enterprises.

9.1.4 Progress Payments. The Convention Center Authority may make such special provisions for progress payments as deemed reasonably necessary to encourage procurement from Small, Minority-Owned, and Woman-Owned Business Enterprises.

9.2 Additional Criteria. With respect to its policy of providing assistance to Small, Minority-Owned, and Woman-Owned Business Enterprises, the Convention Center Authority may establish such other criteria as it may deem desirable, including the number of employees, the dollar volume of business, and the comparative size with other businesses in the same or a similar field. The criteria and/or regulations may distinguish

between industries to the extent necessary to reflect the differing characteristics of each particular industry.

ARTICLE X
PROCUREMENT NONDISCRIMINATION PROGRAM

It is the policy of the Convention Center Authority to promote full and equal business opportunities for all Persons doing business with the Convention Center Authority by increasing the purchase of goods and Services from minority and women owned businesses within the Nashville Metropolitan Statistical Area (MSA). In furtherance of this policy, the Convention Center Authority hereby adopts the Metropolitan Government of Nashville and Davidson County Procurement Nondiscrimination Program, as set forth by the Metropolitan Code, Chapter 4.46, Procurement Nondiscrimination Program, set forth on Exhibit A, as it may be deemed applicable by the Board and otherwise amended from time to time.

ARTICLE XI
ETHICS IN PUBLIC CONTRACTING

11.1 Statement of Policy. Public employment is a public trust. It is the policy of the Convention Center Authority to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by the Convention Center Authority. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public service. Public employees must discharge their duties impartially so as to assure fair competitive access to government procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the Convention Center Authority procurement organization.

11.2 General Standards of Ethical Conduct.

11.2.1 General Ethical Standards for Employees. Each employee of the Convention Center Authority shall avoid any action, whether or not specifically prohibited by this code, which might result in, or create the appearance of:

a) Using public office for private gain;
b) Giving preferential treatment to any person;
c) Impeding government efficiency or economy;
d) Losing complete independence or impartiality;

e) Making a Convention Center Authority decision outside of official channels; or
f) Affecting adversely the confidence of the public in the integrity of the government.

11.2.2 General Ethical Standards for Non-Employees. Any effort to influence any public employee to breach the standards of ethical conduct set forth in this section shall be prohibited.

11.3 Employee Conflict of Interest.

11.3.1 Conflict of Interest. It shall be a breach of ethical standards for an employee to participate directly or indirectly in a procurement when the employee knows that:

a) The employee or any member of the employee's immediate family has a Financial Interest pertaining to the procurement;
b) A Business or organization in which the employee, or any member of the employee's immediate family, has a Financial Interest pertaining to the procurement; or
c) Any other person, business or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment involved in the procurement.

11.3.2 Financial Interest in a Blind Trust. Where an employee or any member of the employee's immediate family holds a Financial Interest in a blind trust, the employee shall not be deemed to have a conflict of interest with regard to matters pertaining to that Financial Interest, provided that disclosure of the existence of the blind trust has been made known to the procurement appeals board.

11.3.3 Discovery of Actual or Potential Conflict of Interest--Disqualification and Waiver. Upon discovery of an actual or potential conflict of interest, an employee shall promptly file a written statement of disqualification and shall withdraw from further participation in the transaction involved.

11.4 Gratuities and Kickbacks.

11.4.1 Gratuities. It shall be a breach of ethical standards for any Person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a

gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a Purchase Request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefore.

11.4.2 Kickback. It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a Contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

11.4.3 Contract Clause. The prohibition against gratuities and kickbacks prescribed in this section shall be conspicuously set forth in every Contract and solicitation therefore.

11.5 Prohibition Against Contingent Fees.

11.5.1 Contingent Fees. It shall be a breach of ethical standards for a Person to be retained, or to retain a Person, to solicit or secure a Convention Center Authority Contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

11.5.2 Representation of Contractor. Every Person, before being awarded a Convention Center Authority Contract, shall represent in writing, that such Person has not retained anyone in violation of this section. Failure to do so constitutes a breach of ethical standards.

11.5.3 Contract Clause. The representation concerning contingent fees prescribed in this section shall be Conspicuously set forth in every Contract and solicitation therefore.

11.6 Use of Official Information. It shall be a breach of ethical standards for any employee or former employee knowingly to use, disclose or allow the use of Official Information for the purpose of furthering the private interest or personal profit of any Person, including the employee.

11.7 Civil and Administrative Remedies against Employees who Breach Ethical Standards.

11.7.1 Existing Remedies Not Impaired. Civil and administrative remedies against employees which are in existence on the effective date of this policy shall not be impaired.

11.7.2 Supplemental Remedies. In addition to existing remedies for breach of ethical standards of this chapter, the Convention Center Authority may recommend any one or more of the following:

a) Oral or written warnings or reprimands;
b) Suspension with or without pay for specified periods of time; and
c) Termination of employment.

11.7.3 Right to Recover from Employee Value Received in Breach of Ethical Standards. The value of anything received by an employee in breach of the ethical standards of this chapter shall be recoverable by the Convention Center Authority.

11.8 Civil and Administrative Remedies against Non-Employees who Breach Ethical Standards.

11.8.1 Existing Remedies Not impaired. Civil and administrative remedies against non-employees which are in existence on the effective date of this policy shall not be impaired.

11.8.2 Supplemental Remedies. In addition to existing remedies for breach of ethical standards of this chapter, the Convention Center Authority may impose any one or more of the following;

a) Written warnings or reprimands;
b) Termination of transactions; and
c) Debarment or suspension from being a contractor or subcontractor under Convention Center Authority contracts.

11.8.3 Right to Recover from Non-Employee Value Transferred in Breach of Ethical Standards. The value of anything transferred in breach of the ethical standards of this Article shall be recoverable by the Convention Center Authority.

11.8.4 Right of the Convention Center Authority to Debar or Suspend. Debarment or suspension may be imposed by the Convention Center Authority for breach of ethical standards of this Article.

11.9 Recovery of Value Transferred or Received in Breach of Ethical Standards.

11.9.1 General Provisions. The value of anything transferred or received in breach of the ethical standards of this chapter by an employee or a non-employee may be recovered from both the employee and the non-employee.

11.9.2 Recovery of Kickbacks by the Convention Center Authority. Upon a showing that a subcontractor made a kickback to a prime contractor or a higher-tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the Convention Center Authority and will be recoverable from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

EXHIBIT A
PROCUREMENT NONDISCRIMINATION PROGRAM

4.46.001 Short title.

This program shall be known as the "Metropolitan Government of Nashville and Davidson County Procurement Nondiscrimination Program."

(Ord. BL2008-161 § 1, 2008)

4.46.010 Policy and objectives.

A. Policy Statement. It is the policy of the Metropolitan Government of Nashville and Davidson County to promote full and equal business opportunities for all persons doing business with the Metropolitan Government by increasing the purchase of goods and services from minority and women owned businesses within the area of the Metropolitan Government. It is further the policy of the Metropolitan Government that firms seeking to participate in contracting and procurement activities with the Metropolitan Government are not prevented from doing so on the basis of the race or gender of their owners and that the Metropolitan Government not be a passive participant in any private scheme of discrimination.

B. Promotion of Equal Opportunity. The Metropolitan Government strictly prohibits discrimination against businesses based on the race, color, national origin, or gender of their owners or employees in the conduct of any Metropolitan Government affairs. No person shall be denied the benefit of, or otherwise discriminated against, on the grounds of race, color, national origin or gender in connection with the award or performance of any contract paid for, in whole or in part, with funds of the Metropolitan Government.

C. Program Objectives. The objective of the Procurement Nondiscrimination Program ("the Program") is to promote and encourage full and open competition in all Metropolitan Government procurement and purchasing; encourage all Metropolitan Government personnel involved in procurement and contracting activities to utilize appropriate purchasing procedures; to prevent the Metropolitan Government from becoming a passive participant in any unlawful discrimination; to spur economic development in the public and private sectors of the local economy; and, to rectify that participation in such unlawful discrimination.

(Ord. BL2008-161 § 1, 2008)

4.46.020 Definitions.

For the purpose of this chapter, the following words, terms, phrases and abbreviations shall have the following meanings:

"African American" means persons having origins in any black racial group of Africa. It includes people who indicate their race as "Black, African American, or Negro," or provide written entries such as African American, Afro American, Kenyan, Nigerian, or Haitian.

"African American Business Enterprise (AABE)" means a business that is an independent and continuing enterprise for profit, performing a commercially useful function, and that is owned and controlled by one or more African Americans.

"Asian" means persons having origins in any of the original people of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

"Asian Business Enterprise (ABE)" means a business which is an independent and continuing enterprise for profit, performing a commercially useful function, and which is owned and controlled by one or more Asian individuals.

"Availability" means being "qualified" to perform work for the Metropolitan Government. This means that the Bidder does business within an industry group from which agencies of the Metropolitan Government make certain purchases; the firm's owner has demonstrated the belief that the firm is qualified and able to perform the work; the firm is located within the relevant geographical area such that it can do business with agencies of the Metro Government; and the bidder has demonstrated an interest in obtaining work by filling out a vendor application, has bid, or is going through the certification process.

"Bid" means a quotation, proposal, sealed bid or offer to perform or provide labor, materials, supplies or services to the Metropolitan Government for a price.

"Bidder" means any individual, sole proprietorship, partnership, joint venture, or corporation that submits a Bid to the Metropolitan Government.

"Benchmarking" means the method enabling the Metropolitan Government to track the inclusion of MWBEs in the procurement process. Benchmarks are not quotas or goals, rather, they are percentage ranges based on MWBE availability, current MWBE

participation, and previous MWBE participation in the Nashville Metropolitan Statistical Area ("MSA").

"Certification" means the qualifying process that assures buyers and local, state, and federal agencies that a particular business is an MWBE that performs a commercially useful function. Certification or Recertification shall mean official recognition and approval by the Metropolitan Government that a business meets the qualification criteria of an MWBE, as set forth in this Program. Certification or recertification relates to qualifications regarding ownership and control, not the quality of the service or product.

"Commercially useful function" means performance or provision of real and actual services by a Participant under a contract with the Metropolitan Government or under a subcontract with another business enterprise under a contract with the Metropolitan Government. In determining whether a business is performing a commercially useful function, the following non-exclusive factors will be considered:

(i) The nature and amount of work contracted;
(ii) Whether the MWBE has the skill and expertise to perform work for which it has been certified;
(iii) Whether the MWBE actually performs, manages and supervises the work;
(iv) Whether the MWBE intends to purchase commodities and/or services from a non-MWBE and simply resell same to the general or prime contractor for the purpose of allowing those commodities and/or services to be counted towards assessment of a Benchmark or fulfillment of a goal (if implemented);
(v) Standard industry practices relating to the use of subcontractors. Consistent with standard industry practices, a MWBE subcontractor may enter into second tier subcontracts provided that no more than twenty-five percent of the work thereunder will be performed by a non-MWBE unless the subcontractor demonstrates to the satisfaction of the Metropolitan Government that the subcontracting arrangement is consistent with standard industry practice.

"Compliance" means the condition existing when a Participant has met the requirements of this Program.

"Control" or "controlled" for the purpose of determining whether the owner or owners of a potential MWBE controls the potential MWBE, the Metropolitan Government shall consider all of the facts in the record viewed as a whole, including, without limitation the following:

(i) Whether the potential MWBE is an independent business, which means that its commercial viability does not depend on another firm or firms.
(ii) Whether the potential MWBE is subject to any formal or informal restrictions that limit the customary discretion of the MWBE owner. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices that prevent the owner of the potential MWBE from making any business decision without the cooperation of another individual. This paragraph does not preclude a spousal co-signature on documents.
(iii) Whether the owner of the potential MWBE possesses the power to direct or cause the direction of the management and policies of the business enterprise and to make the day-to-day as well as long term decisions on matters of management, policy and operations.
(iv) Whether the owner of the potential MWBE has an understanding of, and managerial and technical competence directly related to, the type of business in which the business enterprise is engaged and the business enterprises' operations. Generally, experience limited to office management, administration, or bookkeeping functions, unrelated to the principal business activities of the business enterprise is insufficient to demonstrate control.
(v) Whether, if a state or local law requires the owner of a particular type of firm to have a particular license or other credential, the owner of the potential MWBE possesses the required license or credential.

"Covenant of non-discrimination" means, collectively, one or more contractual affirmative promises (1) to adopt the policies of the Metropolitan Government relating to the participation of MWBEs in the procurement process; (2) to undertake certain good faith efforts to solicit MWBE participation; and (3) not to otherwise engage in discriminatory conduct against MWBEs.

"First ranked bidder" means an individual, sole proprietorship, partnership, joint venture, or corporation that has submitted a bid that, subject to review as contemplated in this chapter, has been tentatively determined pursuant to the requirements of this Title to be the lowest cost bid or highest ranked proposal.

"Goal" means race/gender-conscious corrective measures.

"Good faith efforts" means the voluntary actions of a Participant undertaken in good faith to ensure that it does not discriminate in its contracting practices.

"Hispanic American" means people who identify with the terms "Hispanic" or "Latino" and who classify themselves in a specific Hispanic or Latino category such as "Mexican," "Puerto Rican," "Cuban, "or "other Spanish, Hispanic, or Latino."

"Hispanic American Business Enterprise" means a business that is an independent and continuing enterprise for profit, performing a commercially useful function, and that is owned and controlled by one or more Hispanic American.

"Joint venture" means an association of two or more independent persons, partnerships, corporations (or any combination of them) formed, consistent with the laws of the State of Tennessee, to perform one or more specific contracts limited in scope and duration.

"Minority or Women Owned Business Enterprise ("MWBE")" refers to a business enterprise maintaining a significant business presence in the MSA and performing a commercially useful function that is owned by one or more of the following: (1) African Americans, (2) Native Americans, (3) Hispanic Americans, (4) Asian Americans and (5) Women. Racial and gender categories are separated for monitoring and tracking purposes only.

"Metropolitan Government" means the Metropolitan Government of Nashville and Davidson County, including any of its operating elements, officers, and/or employees acting with authority, but excluding the Metropolitan Development and Housing Authority, Nashville Electric Service, Metropolitan Transit Authority, the Metropolitan Nashville Public Schools, the Metropolitan Hospital Authority, the Metropolitan Sports Authority and the Metropolitan Nashville Airport Authority.

"Metropolitan Nashville Disparity Study" means the Disparity Study prepared by Griffin & Strong, P.C., and submitted to the Metropolitan Government on December 17, 2004.

"MSA" means the Nashville Metropolitan Statistical Area.

"MWBE owned" means that African American, Native American, Hispanic American, Asian American or woman owner(s) who are citizens or permanent residents of the United States individually or collectively possess an ownership interest of at least fifty-one percent of the business.

"Native American" means persons having origins in any of the original people of North America, including American Indians, Eskimos and Aleuts.

"Native American Business Enterprise (NABE)" means a business that is an independent and continuing enterprise for profit, performing a commercially useful function and which is owned and controlled by one or more Native Americans.

"Non-compliance" means the condition existing when a Participant has failed to meet the requirements of this Program.

"Notice" means written communication delivered to the recipient by hand, including express delivery, electronically or by certified mail.

"Participant" means an individual or entity that enters into a contract with the Metropolitan Government to provide goods or services within the scope of the Program, or a subcontractor or supplier to such an individual or entity.

"Program" means the Procurement Nondiscrimination Program.

"Purchasing agent: Shall have the meaning given in Section 8.108 of the Metropolitan Charter.

"Purchasing sector" means the UNSPSC category for the specific procurement of construction, non-professional services and professional services.

"Race/gender-conscious" means any governmental or legislative policy or programmatic action that uses race or gender as criteria for participation.

"Race/gender-neutral" means any governmental or legislative policy or a programmatic action in which race or gender is not among the criteria for participation.

"Satisfactorily completed" or "satisfactory completion" means all of the tasks called for in a contract or subcontract have been accomplished and documented as required by the Metropolitan Government.

"Significant business presence" means that a business enterprise with an established place of business in the MSA at which one or more of its employees is regularly based and that such place of business has a substantial role in the business' performance of a commercially useful function as herein defined. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not constitute a significant business presence.

"Supplier" means a warehouser or manufacturer of materials, supplies or equipment that contracts directly with a bidder to provide such materials, supplies or equipment on a project that involves a trade or service. For purposes of measuring the total contract dollars awarded or paid to suppliers on projects, only amounts paid to suppliers of goods customarily and ordinarily used based upon standard industry or trade practices shall be counted.

"Underutilization" means the percentage of dollars spent by the Metropolitan Government with MWBE's is less than participation of MWBE's than reasonably expected based on the availability of MWBE's within the MSA.

"UNSPSC" means the United Nations Standard Products and Services Code used to identify the Purchasing Sector.

"Women Business Enterprise (WBE)" means a business that is an independent and continuing enterprise for profit, performing a commercially useful function, and which is owned and controlled by one or more women.

(Ord. BL2008-161 § 1, 2008)

4.46.030 Office of minority and women business assistance.

A. In the department of finance, division of purchases, a minority and women business assistance section is created and shall be designated as the Office of Minority and Women Business Assistance ("Business Assistance Office" or "BAO").

B. Duties. The BAO shall be primarily responsible for the administration and enforcement of the Program. It shall encourage equal business opportunities to achieve the policies and objectives of the Program by:

(1) Preparing written rules, regulations and procedures consistent with this Program for submission to and approval by the Procurement Standards Board as provided in Section 4.08.020 of this code.
(2) Publishing and making public said rules, regulations and procedures at least thirty days prior to their effective date.
(3) Verifying certification of MWBEs.
(4) Maintaining outreach and assistance programs to promote equal contracting opportunities for MWBEs that wish to do business with the Metropolitan Government.

(5) Maintaining a current database of certified and available MWBEs and making this database accessible to interested parties; that will include the types of services provided by the business enterprise and contact information for the business enterprise. A list from the database will be made available to Participants to assist them in their efforts to meet the Benchmarks of the Program. The list prepared from the database will specify which firms the Metropolitan Government has determined to be certified in accordance with the Metropolitan Government definitions for MWBEs.

(6) Monitoring utilization of MWBE participation on projects for data gathering and informational purposes.

(7) In consultation with the Purchasing Agent, recommending reasonable MWBE Benchmark ranges and, should Goals become necessary pursuant to Section 4.46.110 of this Code, recommending reasonable Goals to the Director of Finance and the Director of Law.

(8) Developing and supplying to each Bidder as part of each Bid solicitation forms for (a) the Covenant of Non-Discrimination, Statement of Successful Subcontractors, (b) Statement of Written Notification to MWBEs, (c) Statement of Interested Subcontractors/Vendors, (d) Statement of Bid Proposals/Price Quotations and (e) Letter of Intent to Perform as a Subcontractor/Joint Venturer. The BAO shall revise these forms as necessary consistent with the purpose and requirements of this chapter.

(9) Investigating written complaints as provided below.

(10) Notifying affected parties in writing of their right to review an adverse recommendation of the BAO.

(11) Preparing reports as requested by the Purchasing Agent or the Finance Director as well as semiannual and annual reports as required by subsection C and D, below, and Section 4.46.110(E).

(12) Performing other tasks as may be required to fulfill the above-stated duties of the Business Assistance Office.

C. Authorization to Monitor. The BAO shall be authorized to collect from all Participants such data and information as is necessary to monitor this Program. This information may include information regarding business ownership, supplier information, subcontractor information, all of which shall reflect the race, ethnic origin, gender, and business location of the identified businesses. The BAO shall continuously monitor the participation of MWBEs in the procurement of construction, non-professional services and professional services for Metropolitan Government. Such monitoring shall include, without limitation, a statistical

analysis of each construction trade, non-professional service and professional services to determine whether there is utilization of MWBEs in a manner that is proportionate to the identified availability range. The BAO will provide written reports to the Purchasing Agent, Finance Director, and Mayor upon request but not less frequently than semiannually.

D. Duty to Report. The Business Assistance Office shall submit an annual report to the Metropolitan Council regarding the effectiveness of the Program. Such report shall include, without limitation, a summary of the purchases, contracts and subcontracts placed with MWBEs for the period and the relative percentage to the total of purchases and contracts for that period. The reports shall also emphasize quantity and quality of MWBE involvement by dollar volume. The report shall specify the race, national origin, gender, and UNSPSC with each category reported separately. Payments made to non-certified MWBEs shall be included as a separate set of figures for purposes of tabulating the total contract dollars going to MWBEs. The report shall include an analysis of the percentage for the reporting period of MWBE awards of the total awards for each MWBE category and Purchasing Sector and the percentage of availability of MWBEs in the MSA for each MWBE category and Purchasing Sector.

E. Contractors' Closeout Activity Reports: In accordance with the Rules and Regulations for the Program, prime contractors and prime consultants shall provide closeout activity reports to the BAO identifying activities of all subcontractors and sub-consultants in order to monitor MWBE participation.

F. Authority to Investigate Discriminatory Practices: Should a Bidder or Participant submit a written complaint of discrimination, the BAO is authorized to investigate the complaint. An investigation may be initiated based solely on a finding of a significant statistical disparity from the Benchmark in the Participant's utilization of MWBEs. Further, such investigations may be initiated when the BAO receives information that provides a reasonable basis to believe that an individual contractor seeking to contract or contracting with Metropolitan Government may be engaging in discriminatory conduct with relation to the Bid process. The details of that investigation, including findings, shall be recorded and maintained by the BAO.

G. Evaluation of Compliance: Pursuant to Section 4.46.090, prior to issuing a notice of award the BAO shall review a Bid when the Purchasing Agent has reached an intent to award.

(Ord. BL2008-161 § 1, 2008)

4.46.040 Program scope and applicability.

The following are the categories of Metropolitan Government contracts covered by the Program:

Category A --Construction: Includes any and all contracting relating to buildings, facilities and other erected structures on real estate owned by the Metropolitan Government such as new construction, rehabilitations, remodeling and repairs.

Category B --Non-professional Services: Encompasses the procurement of advertising, printing, non-construction repairs, janitorial services, training seminars and workshops, computer and information systems, security, shipping and mailing, microfiche and microfilm, courier, storage, travel, consulting and other non-professional services.

Category C --Professional Services: Includes the purchase of any or all services covered by Section 4.08.080 for which applicable selection criteria may require a Participant to possess a license or other certificate of competency such as accounting, auditing, architectural, and engineering.

(Ord. BL2008-161 § 1, 2008)

4.46.050 MWBE designation.

A. Certification. Certification is the qualifying process that ensures that a particular business is a MWBE that performs a commercially useful function. Certification assures that interested MWBEs have the proper ownership, control, and management as defined in the Program. Current contact information about the certifying entity shall be maintained by the BAO and provided to interested persons upon request.

B. Reciprocal Certification. Subject to the approval of the Director of Finance, the BAO may accept certification of a MWBE from another government or private entity having certification standards at least as stringent as those created in this chapter.

(Ord. BL2008-161 § 1, 2008)

4.46.060 Benchmarks.

A. Definition and Purpose. The Metropolitan Government has a compelling interest in providing equal business opportunities for all persons wishing to do business with it. Therefore, the Metropolitan Government will monitor and track MWBE availability and participation in the procurement process through Benchmarks. Benchmarks are not quotas but a method enabling the Metropolitan Government to compare the participation of MWBE's in the procurement process with expected participation rates based on the availability of MWBE's within the MSA.

B. Procedure for Establishing Benchmarks. The BAO shall establish and recommend proposed Benchmarks to the Purchasing Agent and Finance Director annually. The BAO shall evaluate the levels of MWBE participation for the Metropolitan Government's overall procurement program. As part of the review, the BAO may consider data regarding MWBE participation for the preceding three fiscal years for a more accurate portrayal of MWBE participation. The BAO shall review available MWBE totals and percentages for the MSA that shall be reported in ranges showing expected MWBE participation rates on Metropolitan Government projects for each Procurement Sector based on MWBE availability within the MSA. MWBE availability shall be determined in accordance with current legal, economic, statistical and social science standards. The Purchasing Agent may employ one or more qualified consultants each year to assist the BAO in determining MWBE availability. Benchmarks during the first year of the Program shall be based on data compiled in the Metropolitan Nashville Disparity Study, a copy of which shall be placed on file in the office of the Metropolitan Clerk.

C. Comment Period. The Purchasing Agent shall publish proposed Benchmarks in a newspaper of general circulation at least once each week for four consecutive weeks and shall receive public comments submitted within ten days after the final such publication. The Purchasing Agent shall consider all public comments duly submitted, additional recommendations of the BAO, make any necessary changes to the Benchmarks, and submit the proposed Benchmarks to the Finance Director. The Finance Director shall make any revisions the Finance Director feels are necessary and shall then issue the final Benchmarks, a copy of which shall be filed with the Metropolitan Clerk.

D. Review of Benchmarks. The Benchmarks shall be in effect for a period of one year. BAO shall review Benchmarks semiannually and shall report its findings to

the Purchasing Agent and Finance Director. All total contract dollars awarded to MWBEs shall count towards Benchmark percentages.

(Ord. BL2008-161 § 1, 2008)

4.46.070 Bid requirements.

No Bid submitted to the Metropolitan Government for work within the scope of the Program shall be considered responsive unless it includes each of the following documents:

A. Covenant of Non-Discrimination. Each Bidder must submit a duly executed and notarized Covenant of Non-Discrimination. This written instrument shall contain promises, averments and/or affirmations made by the Bidder:

(1) To adopt the policies of the Metropolitan Government relating to equal opportunity in contracting on projects and contracts funded, in whole or in part, with funds of the Metropolitan Government;
(2) To attempt certain good faith efforts to solicit MWBE participation on projects and contracts in addition to regular and customary solicitation efforts;
(3) Not to otherwise engage in discriminatory conduct;
(4) To provide a discrimination-free working environment;
(5) That this Covenant of Non-Discrimination shall be continuing in nature and shall remain in full force and effect without interruption;
(6) That the Covenant of Non-Discrimination shall be incorporated by reference into any contract or portion thereof which the Bidder may hereafter obtain; and
(7) That the failure of the Participant to satisfactorily discharge any of the promises of nondiscrimination as made and set forth herein shall constitute a material breach of contract.

B. Statement of Written Notification to MWBEs. Each Bidder must provide a statement that the Bidder has delivered written notice to at least three available certified MWBEs if use of MWBEs is reasonable and if BAO can provide at least three MWBEs for the applicable category. Upon request, names, addresses, and telephone numbers for available MWBEs shall be provided by the BAO for each potential subcontracting or supply category in the solicitation. In addition, a Bidder must deliver written notice to all individuals or entities requesting

information on the solicitation. The written notice sent to potential subcontractors or vendors shall contain the following:

(1) Sufficient information about the plans, specifications, and relevant terms and conditions of the solicitation to permit development of an understanding of work requirements. This may include information about the work that will be subcontracted or the goods that will be obtained from subcontractors and suppliers;
(2) A contact person knowledgeable of the project documents within the Bidder's office to answer questions about the conditions of the contract;
(3) Information regarding the Bidder's bonding requirements;
(4) The deadline for submission of price quotations.

C. Statement of Successful Subcontractors. Each Bidder shall submit a Statement of Subcontractors. The Statement shall include each successful subcontractor's name, UNSPSC Code, race, gender, national origin, business location, work to be performed, dollar value of the project, and percentage attributable to each subcontractor. In addition, copies of each successful subcontractor's price quotes must be submitted by the close of business on the second business day following submission of a Bid.

D. Statement of Interested Subcontractors/Vendors. Each Bidder shall submit a Statement of Interested Subcontractors/Vendors that shall include each individual or entity requesting information about the project or solicited for participation on the project. The list of subcontractors shall include those persons who did not actually submit a price quotation or a bid, rather just requested information. The statement shall include the individual's or entity's name, UNSPSC Code, race, gender, national origin, business location, and information requested.

E. Statement of Bid Proposals/Price Quotations. Each Bidder shall submit a Statement of Bid Proposals/Price Quotations. The Statement shall include each potential subcontractor's vendor's name, UNSPSC Code, race, gender, national origin, business location, work requested to be performed, and price quotation and/or bid. The statement shall include only those potential subcontractors not selected that actually submitted a bid or proposal for the project.

F. Letter of Intent to Perform as a Subcontractor/Joint Venture. In the event that a Bidder or Participant proposes to use subcontractors or joint ventures if awarded a contract with the Metropolitan Government, such Bidder shall be required to submit to the BAO a letter of intent signed by both the subcontractor/joint venturer and Bidder. This form is to be completed and submitted by the apparent

successful Bidder by the end of the second business day following issuance by the Purchasing Agent of a notice of award of contract.

G. Other Information and Data. The BAO may request additional information and data prior to a contract award. This information may include, without limitation, information regarding business ownership of all subcontractors to be utilized on the project, all of which shall reflect the race, gender, ethnic origins, location, and structure of the identified businesses, in order to be eligible for contract award. The BAO with the approval of the Purchasing Agent may declare any Bid non-responsive upon failure or refusal of the Bidder to provide information and data required by this Program and requested by the Metropolitan Government pursuant to this paragraph.

H. Reporting Subcontractor Substitution or Replacement. The prime contractor shall report any replacements or substitutions of the use of subcontractors to BAO in advance of making the substitution. For reporting purposes, the prime contractor shall report to the BAO statistical data pertaining to the new subcontractor, including race, gender, national origin, and business location.

(Ord. BL2008-161 § 1, 2008)

4.46.080 Good faith efforts.

A. Good Faith Efforts. In addition to regular and customary solicitation processes for contacting potential subcontractors and/or vendors, all Bidders are required to:

(1) Make efforts to include MWBEs in the procurement process;
(2) Make efforts to ensure that businesses are not discriminated against on the basis of race, ethnicity or gender;
(3) Ensure that prospective subcontractors, vendors, suppliers and others are not denied opportunities to compete for work for the Metropolitan Government on the basis of their race, ethnicity, or gender;
(4) Afford all firms, including those owned by racial or ethnic minorities and women, opportunities to participate in the performance of the business of the Metropolitan Government to the extent of their availability, capacity and willingness to compete;
(5) Demonstrate compliance with these Program requirements with appropriate documentation submitted with their Bids;

(6) Maintain for a minimum of three years after completion of the contract and final payment detailed records of all correspondence and responses thereto, logs of all telephone calls made and received regarding Metropolitan Government solicitations, copies of advertisements in publications and other media, and other relevant papers required by the Program or Section 4.12.180.

B. Methods of Demonstrating Good Faith Efforts. Bidders shall demonstrate Good Faith Efforts by demonstrating efforts that may include, but are not limited to, the following:

(1) Attending informational meetings to update potential subcontractors or vendors of subcontracting or supply opportunities.
(2) Dividing the contract, in accordance with normal industry practice, into small, economically feasible segments that could be performed by a MWBE. Under no circumstances, however, shall a Bidder segment work solely for the purpose of utilizing MWBEs as subcontractors where such segmentation is not in accordance with common and accepted industry practices relating to the utilization of other firms as subcontractors.
(3) Providing a written explanation for rejection of any potential subcontractor or vendor to the Bidder, including the name of the firm awarded the subcontract or supply agreement. The BAO will maintain these records and make same available to any subcontractor or vendor rejected by the Bidder.
(4) Providing a non-discriminatory work site. Maintaining a work environment free of harassment, intimidation and coercion at all construction sites, offices and other facilities at which the Bidder's employees are assigned to work. The Bidder shall specifically ensure that all labor supervisors, superintendents, and other on-site supervisory personnel are aware of and carry out the Bidder's obligation to maintain a non-discriminatory work environment.
(5) Soliciting specific individual MWBEs whose availability as potential sources of goods or services can be reasonably ascertained. This measure includes sending letters or making other personal contacts with specific certified MWBEs including those that the Bidder has contracted with in the past as well as other MWBEs with which the Bidder may be unfamiliar, but whose identities can be ascertained from a directory of certified MWBEs maintained by the BAO.
(6) Sending letters or making other personal contacts with other programs as well as private trade associations in the MSA which are

known to publicize contracting and procurement opportunities for the benefit of their respective associates and/or members.

(7) Advertising in trade publications of general circulation in the MSA. The advertisement shall identify and describe the specific subcontracting or other opportunity in reasonable detail.

(8) Following up initial solicitations by contacting potential subcontractors or vendors to determine, with certainty, whether these firms are interested in participating on the contract.

(9) Thoroughly investigating the potential subcontractor or vendor's capabilities in good faith.

(10) Providing reasonable assistance to a MWBE in need of equipment, supplies, bonding, letters of credit and/or insurance.

(11) Providing reasonable technical assistance to MWBEs to ameliorate any deficiencies of technical knowledge or advance skill, where such assistance is undertaken by the Bidder to facilitate the MWBE's successful participation on a project or contract.

(Ord. BL2008-161 § 1, 2008)

4.46.090 Evaluation of bid for program compliance.

A. If the Bid submitted by the First Ranked Bidder in response to a solicitation issued by the Purchasing Agent includes the documents required by Section 4.46.070 of this chapter, the Purchasing Agent shall forward the Bid to the BAO. The BAO shall then evaluate whether it believes the First Ranked Bidder has engaged in and adequately documented with its Bid efforts to ensure that its process of soliciting, evaluating and awarding subcontracts, placing orders, and partnering with other companies has met the criteria of the Program including the use of Good Faith Efforts. Upon a recommendation of compliance by the First Ranked Bidder, the BAO shall notify the Purchasing Agent. The Purchasing Agent shall proceed to award a contract upon concurrence with the BAO recommendation.

B. If the BAO's preliminary analysis suggests that the First Ranked Bidder has failed to comply with the good faith or other requirements of the Program, the BAO shall send written notice to the Bidder. The notice shall set forth with particularity the reasons for the questioning of non-compliance and shall schedule a conference at which the issue may be reviewed with the Bidder. The Bidder shall be permitted to present any additional materials relevant to the question of non-compliance for consideration by the BAO. If, after the conference and upon

consideration of all relevant materials, the BAO is convinced that the Bidder is in fact compliant with the requirements of this chapter, the BAO shall notify the Purchasing Agent, who shall proceed with an award of contract upon concurrence with the BAO recommendation. If the BAO concludes that the Bidder is not compliant with the requirements of this chapter, the BAO shall so notify the Purchasing Agent, who shall, upon concurrence with the conclusion, reject that Bidder's Bid, identify another Bidder as the First Ranked Bidder, and forward that Bidder's Bid to the BAO. The BAO shall then proceed to evaluate the Bid submitted by the new First Ranked Bidder. The Purchasing Agent shall decide whether a determination of nonresponsiveness shall be made pursuant to Section 4.12.110. Decisions of the Purchasing Agent under this section are subject to protest in accordance with Section 4.36.010, et seq., and the rules and regulations of the Purchasing Division.

(Ord. BL2008-161 § 1, 2008)

4.46.100 Sanctions and penalties for non-compliance.

The BAO shall recommend appropriate mechanisms to enforce the provisions of this Program to the Purchasing Agent. Further, the failure of a Bidder or Participant 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 Metropolitan Code of Laws § 4.36.020. Sanctions shall not be imposed unless there is evidence of specific conduct on the part of Participant that is inconsistent with or in direct contravention of the applicable provisions of this Program. 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 Participant of the duties imposed on them by this Program;
(2) The number of specific incidences of failure by the Participant to comply;
(3) Whether the Participant has been previously suspended;
(4) Whether the Participant has failed or refused to provide the BAO with any information required or requested by this Program;
(5) Whether the Participant has materially misrepresented any applicable facts in any filing or communication to the BAO; and
(6) Whether the Participant has subsequently restructured or taken other action to cure the deficiencies in meeting applicable requirements.

(Ord. BL2008-161 § 1, 2008)

4.46.110 Goals.

A. Goals are race/gender-conscious measures that may be established in the event that periodic review of the Metropolitan Government procurement practices reveal a continuing pattern of underutilization of and discrimination against MWBEs by the Metropolitan Government. Goals shall only be considered in the event the Metropolitan Government has exhausted all race/gender neutral remedies and continues to fall below identified Benchmarks in contracting.

B. Procedure for Adopting Goals. After using Benchmarks and Good Faith Efforts of the Program for 24 months, if the BAO semiannual review shows continuing underutilization of MWBEs and can demonstrate a compelling interest to support imposition of goals in specific subcategories, upon concurrence of the Purchasing Agent, the BAO shall recommend to the Finance Director and the Director of Law the implementation of goals for selected contracts in the identified subcategories. If the Finance Director and the Director of Law agree that goals are warranted and necessary and that the goals proposed by the BAO and the Purchasing Agent are reasonably likely to result in achieving satisfactory utilization, the BAO shall publish the proposed goals three times over a period of thirty days in a newspaper of general circulation. After such time BAO will hold a ten (10) day comment period to receive written comments from any interested individual or entity regarding implementation of a race/gender-conscious program. Subsequent to this comment period, upon approval of the Finance Director and the Director of Law, the BAO with the concurrence of the Purchasing Agent, shall prepare a resolution for submission to the Metropolitan Council with a proposal to implement goals and the proposed goals.

C. Goals in Bids/Proposals. Should the Metropolitan Council approve the imposition of goals by a resolution receiving twenty-one affirmative votes, the Purchasing Agent may consider the inclusion or underutilization of MWBEs in specific industry subcategory as an additional factor in the evaluation of a Bid. The Purchasing Agent may consider the following types of participation toward achievement of a goal:

(1) The total dollar value of the contract may be counted toward the specified goal. This includes the fees and commissions charged for

professional services, legal counsel, manufacturers, financial consultants, and insurance agents.
(2) The actual portion of MWBE participation in a joint venture is counted toward the goal.

D. MWBE Participation in Meeting Goals. In the event that goals are established, all Participants, including MWBE Participants, shall make good faith efforts to attain goals through all subcontractor work.

(1) Prime Contractors: A Participant may subcontract portions of its contract consistent with industry standards. However, should a prime contractor subcontract greater portions of the project than are consistent with industry standards, then the MWBE will not have performed a commercially useful function as defined herein. Therefore, such participation by a MWBE will not be counted towards any goal.
(2) Subcontractor Participation: Where a Participant utilizes one or more subcontractors or sub-subcontractors to attain any goal(s) for an underutilized subcategory, the prime contractor may count said subcontractor or sub-subcontractor work toward goals. In no way shall subcontractors' or sub-subcontractors' work or dollar amount be construed to count toward said goal more than once. Only expenditures to MWBE subcontractors that perform a commercially useful function in the work of the project or contract may be counted.
(3) Supplier Participation: Where a Participant utilizes suppliers to satisfy the goal(s) in whole or in part, the MWBE suppliers must perform a commercially useful function. Supplier participation may be approved upon review of the following factors:

(a) The nature and amount of supplies to be furnished;
(b) Whether the MWBE is a manufacturer, wholesaler or distributor of the supplies and has the capabilities to deliver same in accordance with its certification;
(c) Whether the MWBE actually performs, manages and supervises the work to furnish the supplies; and
(d) Whether the MWBE intends to purchase supplies from a non-MWBE and simply resell same to the general or prime contractor for allowing those supplies to be counted towards fulfillment of the goal(s).

(4) Joint Venture Participation: Where Participants engage in a joint venture to meet a goal, the prime contractor shall demonstrate that the

MWBE joint venturer's participation meets the standards for a commercially useful function. The BAO shall review and approve all contractual agreements and other supporting documentation to determine the percentage of MWBE participation resulting from the joint venture that may be credited towards applicable goals of the project; and shall make the determination based on the following factors:

(a) The initial capital investment of each venture partner;
(b) The proportional allocation of profits and losses to each venture partner;
(c) The sharing of the right to control the ownership and management of the joint venture;
(d) Actual participation of the venture partners in the performance of work under the project or contract; and
(e) Other pertinent factors of the joint venture.

(5) The degree to which any goals have been attained by joint ventures between MWBE firms, and between MWBE and non-MWBE firms, shall be calculated as follows:

(a) A joint venture consisting of a MWBE and non-MWBE firm functioning as a prime contractor will be credited with MWBE participation based on the percentage of the dollar amount of the work to be performed by the MWBE.
(b) In joint venture Proposals in which all joint venture Participants are MWBEs, the joint venture will be credited with MWBE participation for that portion of the dollar amount of the contract which MWBEs perform and that portion subcontracted to MWBE firms.
(c) In joint venture Proposals, Participants will receive credit toward the goal for the dollar amount purchased from MWBE suppliers.

E. BAO Monitoring: Ending Goals. In the event that goals are established, the BAO shall review and report to the Purchasing Agent semi-annually and to the Metropolitan Council, the Finance Director, and Director of Law annually, the effectiveness of the goals in reducing underutilization of MWBEs. The BAO shall recommend termination of a goal for a Purchasing Sector established by the Metropolitan Council when the semiannual review shows underutilization has

ceased. In any event, a goal for a Purchasing Sector shall automatically expire two years after adoption by the Metropolitan Council.

(Amdt. 1 to Ord. BL2008-161 § 1, 2008; Ord. BL2008-161 § 1, 2008)

4.46.120 Outreach program.

To ensure that opportunities to participate in Metropolitan Government contracts are available to the widest feasible universe of willing, available and qualified businesses, the BAO shall develop and engage in outreach designed to increase public awareness of the Program. This outreach may consist of any of the following:

A. Public Awareness of the Program. To increase the effectiveness of the BAO and to increase the awareness of the Program, the BAO shall disseminate at community events, trade shows, and other appropriate business functions, and publish at regular intervals information describing the Program. This information shall also identify ongoing contracting opportunities.

B. Outreach to MWBEs. The BAO shall assist MWBEs in obtaining certification by disseminating information, providing individualized counseling, and/or conducting seminars regarding the certification process.

(Ord. BL2008-161 § 1, 2008)

4.46.130 Mentor-protege initiative.

The BAO shall encourage all contractors and subcontractors to participate in a Mentor/Protege initiative on a voluntary basis for the purpose of enhancing the potential of all MWBEs by building business capability to expand contracting opportunities within an agreed framework of conditions. The initiative is intended to assist in integration of on-the-job training for all emerging businesses and permit a prime contractor to offer assistance on a limited term agreement, generally one project. Any interested contractor or subcontractor may submit with a Bid a completed Mentor/Protege Promise demonstrating that such a relationship has been formed. The BAO shall make available a database of potential Mentor and Protege firms. No contractor or vendor shall be penalized or preferred based upon participation or non-participation in this initiative. All administrative functions should be performed by the Protege personnel. The Protege is expected to maintain final decision-making responsibilities regarding the scope of its work.

(Ord. BL2008-161 § 1, 2008)

4.46.140 Severability.

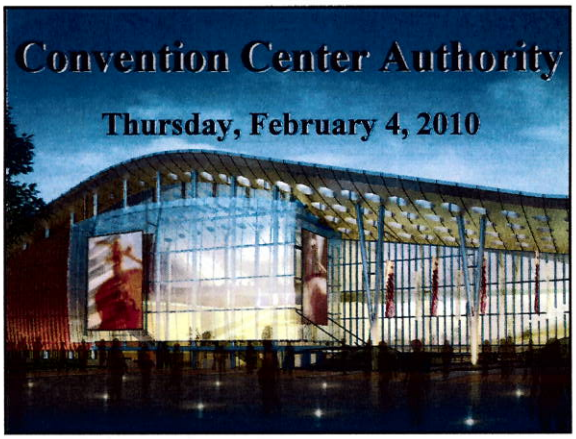
If any of the provisions set forth in this chapter, or any section, subsection, paragraph, sentence, clause, phrase, or word thereof shall be found to be invalid, illegal or unenforceable for any reason, the application of the remainder of this chapter shall not be affected by such invalidity.

(Ord. BL2008-161 § 1, 2008)

4.46.150 Application.

This chapter shall not apply to any contract entered into by the Metropolitan Government or any solicitation issued prior to the effective date of the adopting ordinance.

(Ord. BL2008-161 § 1, 2008)



Appeal of Decisions

Appeal of Decisions from the Convention Center Authority – *Pursuant to the provisions of § 2.68.030 of the Metropolitan Code of Laws, please take notice that decisions of the Convention Center Authority may be appealed to the Chancery Court of Davidson County for review under a common law writ of certiorari. These appeals must be filed within sixty days after entry of a final decision by the Authority. Any person or other entity considering an appeal should consult with private legal counsel to ensure that any such appeals are timely and that all procedural requirements are met.*

Project Contracts Ongoing

- **Bell/Clark, a Joint Venture – September 1, 2009**
- **Nashville Commercial Real Estate Services LLC and Genesis Real Estate Group, LLC – July 9, 2009**
- **TTL, Inc. – January 13, 2009**
- **Thompson, Ventulett, Stainback & Associates – July 1, 2009**
- **Commonwealth Development Group, Inc. – August 17, 2009**
- **Bone McAllester Norton, PLLC and Blackshear Capital and Legal, PLLC – May 13, 2008**
- **Willis of Tennessee, Inc. – October 23, 2008**

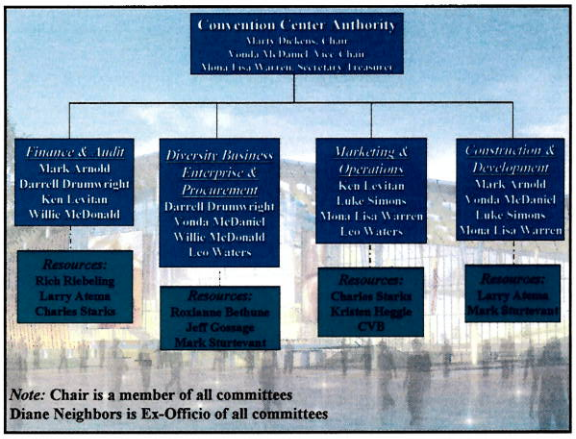
Procurement Policy

- **Approval of Procurement Policy**
- **Bell/Clark**
- **Process for Going Forward**

BELL CLARK
A JOINT VENTURE
In Association with harmony

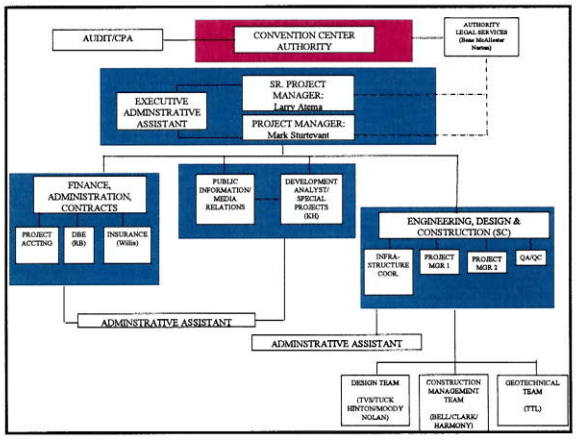
- **Purchase building permit, relocate existing utilities**
- **Demolition of existing structures**
- **Access tunnel to Sommet Center**
- **Excavation for new structure**
- **Purchase long lead items**
- **Project management, general conditions**

Total Notice to Proceed $16.9 million



Note: **Chair is a member of all committees**
Diane Neighbors is Ex-Officio of all committees

Construction & Development Organization



Hotel Tax Collection

As of November 30, 2009

	5% Tax FY 08-09	5% Tax FY 09-10	5% Tax % Change	Additional MCC Taxes FY 08-09	Additional MCC Taxes FY 09-10	Additional MCC Tax % Change
July	$2,257,815	$1,850,177	-18.05%	$1,475,132	$1,303,610	-11.63%
August	$2,091,987	$1,709,551	-18.28%	$1,390,454	$1,206,205	-13.25%
September	$1,807,532	$1,767,539	-2.21%	$1,181,727	$1,208,328	2.25%
October	$2,426,977	$2,155,206	-11.20%	$1,483,607	$1,399,769	-5.65%
November	$2,032,881	$1,826,391	-10.16%	$1,249,352	$1,202,153	-3.78%
December	$1,839,033			$1,154,837		
January	$1,510,652			$1,020,915		
February	$1,777,679			$1,141,318		
March	$1,833,711			$1,195,980		
April	$1,882,543			$1,258,976		
May	$1,855,817			$1,228,475		
June	$2,109,245			$1,374,112		
YTD Total	$10,617,192	$9,308,864	-12.32%	$6,780,272	$6,320,065	-6.78%

Note: Of the 5% hotel tax the MCC receives 2%

Music City Center Taxes

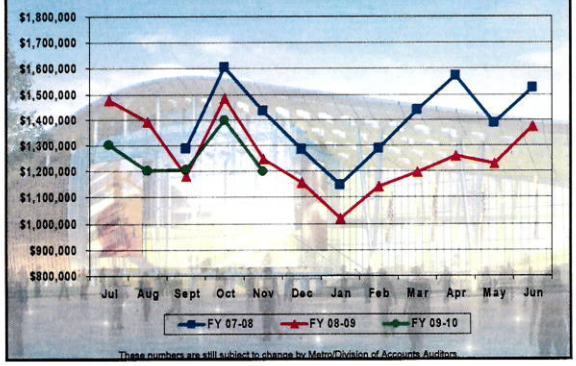
November 2008 vs. 2009

	2008	2009	Variance
1% Occupancy Tax	$406,576	$365,278	-10.16%
$2 Room Tax	$732,264	$721,856	-1.42%
Contracted Vehicle	$29,410	$33,831	15.03%
Rental Vehicle	$81,102	$81,188	0.11%
Total November	$1,249,353	$1,202,153	-3.78%

These numbers are still subject to change by Metro/Division of Accounts Auditors

MCC Tax Collection

As of November 30, 2009



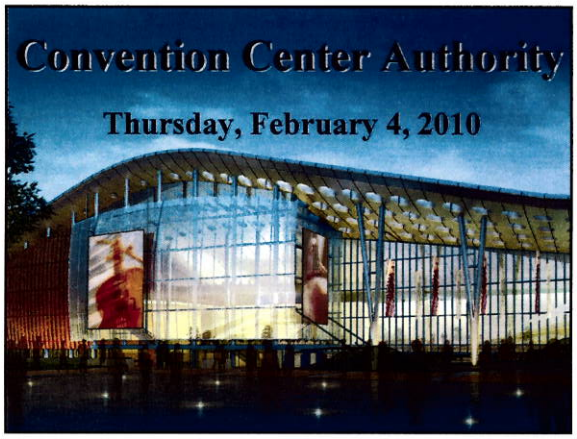
These numbers are still subject to change by Metro/Division of Accounts Auditors

Future Meetings Schedule

Monthly – 1st Thursday at 8:00am

Thursday, March 4th

Committees meet once per month prior to each regular Authority meeting

Other Items to be E-mailed

- Executive Summary – Monthly Progress Report
- Parking and Road Closure Information