

ORDINANCE NO. BL2018-1189

An Ordinance amending Chapter 4.46 of the Metropolitan Code pertaining to the Procurement Non-Discrimination Program.

WHEREAS, since 1999, the Metropolitan Government of Nashville and Davidson County has conducted two (2) disparity studies which concluded that Minority and Women Owned Businesses (MWBE's) were "significantly underutilized" within the Metropolitan Government's procurement practices; and

WHEREAS, despite the recommendations from these studies, procurement non-discrimination legislation was enacted in 2008 that relied upon "good faith effort." To date, that legislation has resulted in only 2.18% of all sub-contractor awards, and 1.88% of all prime awards, over the last 5 years being awarded to African-American businesses; and

WHEREAS, because of these results, amendments that adhere more closely to the recommendations from previous studies should be made to the Procurement Non-Discrimination Program.

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

Section 1. That Section 4.46.080 of the Metropolitan Code of Laws is hereby amended by deleting this Section in its entirety and substituting in lieu thereof the following:

4.46.080 - Good Faith Efforts

In its bid or proposal, and subsequently in performing under its resulting contract, a Bidder shall provide evidence of good faith, including a detailed description showing the techniques that it has used and will use to encourage and obtain the maximum practical participation of minority and women owned businesses. Such techniques shall include, but not be limited to:

1. Segmenting the totality of the work into two or more smaller portions where feasible and can be accomplished in accordance with common and accepted industry practices relating to the utilization of sub-contractors;
2. Attending pre-solicitation, pre-bid and other conferences and forums that allow interested minority and women owned firms to market their goods and services;
3. Sending letters/emails and other direct communication to minority and women owned firms;
4. Advertising in publications in general circulation, as well as those directed to specific trades or marketed to small businesses, and those owned by racial minorities and women;
5. Providing reasonable assistance with bonding, insurance and technical matters;
6. Cooperating with Metro Government in administration and monitoring of compliance with its non-discrimination policies;
7. Allowing minority sub-contractors to participate in any upgrade, change order or contract extension associated with the original sub-contracting agreement;
8. Reaching out only to firms that have expertise in the business segment that is required for the bid;
9. Paying sub-contractors within net 15 -30 days of work completed; and

10. Good Faith effort contacts shall be made at least 10 business days prior to the bid closing.

Section 2. That Section 4.46.100 of the Metropolitan Code of Laws is hereby amended by deleting the section in its entirety and substituting in lieu thereof the following:

4.46.100 - Sanctions and penalties for non-compliance.

- A. The Business Assistance Office shall have the authority and power to enforce these provisions and shall be provided with adequate staff resources to perform all of the functions necessary to create an environment that insures "Good Faith Efforts" on the part of a Bidder or Participant. Failure by a Bidder or Participant to comply with the requirements of these non-discrimination provisions shall subject the non-complying party to administrative sanctions that may include declaration of non-responsiveness, cancellation of contract, rejection of future bids, limited partial withholding of progress payments, partial withholding of payments commensurate with the portion of the contract not in compliance, total withholding of payments, limited suspension and debarment or permanent debarment.
- B. The Business Assistance Office (BAO) shall have the authority to reject any bid that does not have MWBE participation, with the exception of the Bidder being able to provide evidence of non-availability of a MWBE within the Nashville MSA that can perform any of the jobs required in the contract.
- C. The BAO and/or designated Purchasing Agent must contact each MWBE contractor identified on the Bidder's submission to ensure that the minority contractor has experience in the appropriate subject matter/industry segment and has indeed engaged in a "Good Faith" discussion with the Bidder.
- D. Purchasing shall allow MWBE businesses use of third party financing vehicles like joint/shared purchase orders for contract awarded or project undertaken.

Section 3. That this ordinance shall take effect from and after its passage, the welfare of the Metropolitan Government of Nashville and Davidson County requiring it.

INTRODUCED BY:

Scott Davis

Sharon Hurt
Members of Council