ORDINANCE NO. BL2019-____

An ordinance amending Chapter 4.12 of the Metropolitan Code pertaining to the definition of Responsible bidder or offeror and the evaluation factors considered in procurement and amending Chapter 4.20 of the Metropolitan Code regarding information reported by employers.

WHEREAS, under Tennessee Code Annotated § 7-3-306, procured items costing more than ten thousand dollars ($10,000) are subject to competitive sealed bidding; and

WHEREAS, under additional provisions of the Tennessee Code Annotated, procurement bids are required to be evaluated on the basis of both objective and subjective components – specifically, cost and quality; and

WHEREAS, Tennessee Code Annotated § 12-3-1204(d) provides that local metropolitan governments retain the right to establish, in accordance with charter amendment or private act, whichever is applicable, requirements for competitive bids and competitive proposals; and

WHEREAS, the procurement of quality goods and services by the Metropolitan Government of Nashville and Davidson County must be conducted within budgetary constraints, requiring the careful allocation of available funds efficiently, economically, and without waste; and

WHEREAS, the Metropolitan Government of Nashville and Davidson County acts as a market participant when engaging in procurement and purchasing activities. In instances in which a bidder violates federal, state or local law, regulations, or standards – including health and safety standards and employment laws – the Metropolitan Government risks exposure to liability. It is in the best interests of the Metropolitan Government to reduce its potential exposure to liability in its contracting practices; and

WHEREAS, it is fitting and proper that the Metropolitan Government of Nashville and Davidson County adopt standards ensuring the execution of procurement and purchasing activities in a manner that best serves its interests as a market participant.

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

Section 1. Section 4.12.010 of the Metropolitan Code of Laws is hereby amended by deleting the definition of "Responsible bidder or offeror" in its entirety and substituting in lieu thereof the following:

> 'Responsible bidder or offeror" means a person who possesses the capability in all respects to perform fully the contract requirements and the integrity and reliability which assures good faith performance. In the event a court of competent jurisdiction or a governmental regulatory agency rules, declares, or finds a bidder or offeror to have committed a violation of any federal or state law or regulation regarding employment practices or safety standards within the preceding five (5) years prior to submission of the bid, such determination shall be evidence of a lack of integrity and reliability and shall disqualify a person from meeting the definition of "responsible bidder or offeror".

Section 2. Section 4.12.030 of the Metropolitan Code of Laws is hereby amended by deleting Subsection B in its entirety and substituting in lieu thereof the following:

> B. 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. The invitation to bid shall require that the bidder execute an affidavit, in a form prescribed in the invitation to bid, certifying that the bidder is and will remain in compliance with the provisions of this Chapter and the contents of its bid as submitted, and further that the bidder understands that failure to remain in such compliance shall constitutes a material breach of its contract with the Metropolitan Government. The affidavit required by this

section shall be submitted with bidder's bid.

Section 3. Section 4.12.040 of the Metropolitan Code of Laws is hereby amended by deleting Subsection E in its entirety and substituting therefore the following:

E. Evaluation Factors. The request for proposals shall state the relative importance of price and other evaluation factors, using criteria identified in the RFP. The evaluation factors may use criteria establishing a Qualified Workforce.

As used herein, "Qualified Workforce" shall refer to a workforce that participates in each of the following:

- Utilization of federally registered apprenticeship programs;
- Utilization of MC3 training curriculum;
- OSHA 10- and OSHA 30-certified workforce;
- Employment of OSHA 100-certified individuals on project;
- Provision of health benefits to workforce; and
- Workers' compensation coverage for all workforce on project.

Section 4. Chapter 4.20 of the Metropolitan Code of Laws is hereby amended by adding the following new section 4.20.105 as follows:

4.20.105 – Utilization of Apprentice, Training, and Certification Programs – Employer Information

Any person who may enter into any contractual agreement with the metropolitan government of agency thereof for any public works or improvements shall furnish the purchasing agent or the agency under whose jurisdiction such work is to be performed with the following information:

A. Employer's utilization of federally registered apprenticeship programs;
B. Employer's utilization of MC3 training curriculum;
C. Number of OSHA 10-certified and OSHA 30-certified individuals on project;
D. Number of OSHA 100-certified individuals on project;
E. Percentage of employees on project covered by health benefits offered by the employer; and
F. Percentage of employees on project covered by workers' compensation by employer.

Section 5. This ordinance shall take effect from and after its final passage, the welfare of the Metropolitan Government of Nashville and Davidson County, Tennessee, requiring it.

INTRODUCED BY:

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Anthony Davis
Member of Council