



Louisville Metro Government

Legislation Text

File #: O-394-19, Version: 2

ORDINANCE NO. 031. SERIES 2020

AN ORDINANCE AMENDING SECTIONS 37.65-37.69 AND 37.71 OF THE LOUISVILLE METRO CODE OF ORDINANCES (“LMCO”) RELATING TO MINORITY, FEMALE, DISABLED OWNED BUSINESS ENTERPRISES, LESBIAN, GAY, BISEXUAL, AND TRANSGENDER (“LGBT”) OWNED BUSINESS ENTERPRISES. SPONSORED BY: COUNCIL MEMBERS GREEN, HOLLANDER, SEXTON SMITH, SHANKLIN AND PRESIDENT JAMES

WHEREAS, Louisville Metro is one of the most diverse and progressive cities in the United States of America with an active LGBT community residing within its boundaries;

WHEREAS, Louisville Metro is committed to providing historically underrepresented business owners with equal opportunities to compete and succeed in procuring government contracts, and is equally committed to increasing the number and diversity of business supplier options for goods and services;

WHEREAS, Louisville Metro adheres to non-discrimination, affirmative action, and equal employment opportunity (EEO) policies that includes LGBT individuals with regards to individual hiring practices;

WHEREAS, Louisville Metro has implemented aggressive inclusionary measures that include an identification and certification processes for underrepresented business entities, which are Minority, Female, and Disabled Business Enterprises; and

WHEREAS, Louisville Metro is seeking to better understand the LGBT Business Enterprise owned community by identifying and certifying such businesses that are utilized by Louisville Metro Government in the procurement of goods and services, which are keys to driving innovation and promoting economic growth throughout this entire region.

NOW, THEREFORE, BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE

LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AS FOLLOWS:

SECTION VI: The definitions in LMCO § 37.65 are amended as follows:

DISABLED HANDICAPPED OWNED BUSINESS. A business enterprise legally constituted under the laws of the state, including but not limited to an individual, partnership, corporation (including nonprofit), joint venture, association, or cooperative, which enterprise is not an affiliate or a subsidiary of a business dominant in its field of operation and has employees identified in its own payroll records, working specifically for such entity and which entity is majority owned and controlled by a person or a combination of persons who are disabled-handicapped.

DISABLED HANDICAPPED PERSON. Any person A legal resident of the United States with a physical or mental disability caused by birth defect, bodily injury, illness, or other reason or as certified by a physician, and while constituting a physical or mental impairment is not otherwise related to a person's ability, either individually or as a participant in a partnership, corporation, joint venture, or other business enterprise, to engage in contractual relations with the Metro Government.

LGBT BUSINESS ENTERPRISE. means a business enterprise that is at least 51 percent owned by a lesbian, gay, bisexual, or transgender (LGBT) person or persons; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more LGBT persons; and whose management and daily business operations are controlled by one or more of those individuals.

MINORITY. Any person legal resident of the United States having ethnic origin in the black racial groups of Africa; a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish cultures; a person having ethnic origin in any of the original peoples of the Far East, Middle East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, Korea, China, the Philippines, Malaysia, Hawaii, and Samoa; a person having origins in any of the original peoples of North America who is an enrolled member of an Indian tribe recognized as such by the government of the United States or Canada; or a person having origins in the Eskimo or Aleut peoples and who is recognized as such by either a tribe, tribal counsel, or a suitable authority in the community, which authority may be an educational institution, religious organization, or a federal or state agency.

SECTION VII: LMCO § 37.66 is amended as follows:

(A) The Executive Director of the Louisville and Jefferson County Human Relations Commission, or his or her designee, shall develop and implement an eligibility process to identify and certify those minority, female, and disabled handicapped, and LGBT business enterprises as are defined in this subchapter. Any business applying for certification shall have the burden of providing sufficient information and documentation to the Director to demonstrate it is eligible for certification. Failure of the business to provide the information requested by the Director will result in denial or revocation of certification.

(B) The Director may establish policies and procedures for accepting certifications from agencies, whether local, regional, or national, which certify minority, female, and disabled, and LGBT handicapped business enterprises, if the Director finds such agencies certification standards to be no less rigorous than the Director's own standards. The Director may recognize business certifications granted by legitimate certifying organizations, provided such organizations have been in the business

of certifying LGBT businesses for a period of not less than five years.

(C) The Louisville/Jefferson County Human Relations Commission-Enforcement Board shall act as an Advisory Board to the Director in connection with the policies, procedures, and determinations to be made in this subchapter. Any recommendation of the Advisory Board to the Director may be by vote or unanimous written consent.

SECTION VIII. LMCO § 37.67 is amended as follows:

The Metro Government, by and through its agencies and individual departments, adopts the following minimum goals for the utilization of certified minority, certified female, and certified disabled ~~handicapped~~ owned businesses: 15%, certified minority owned businesses; 5%, certified female owned businesses; 0.5%, certified disabled ~~handicapped~~ owned businesses, of its annual procurement expenditures.

SECTION IX: LMCO § 37.68 is amended as follows:

(A) In any procurement by or on behalf of the Metro Government, where such procurement activity is required to be advertised pursuant to this chapter, all such advertisements shall include, in addition to all other necessary information, the following language: Participation by certified female owned, certified disabled ~~handicapped~~ owned, ~~or~~ certified minority owned, and certified LGBT owned business entities or utilization by contractors of certified female, certified disabled, ~~handicapped~~, ~~or~~ certified minority, and certified LGBT owned business enterprises as subcontractors, if the instant contract requires or warrants the use of subcontractors, is strongly encouraged and will be a consideration in determining the award of this contract.

(B) (1) In any procurement by or on behalf of the Metro Government, where such procurement activity is required to be advertised pursuant to this chapter, the Chief Procurement Officer, or a designee, shall advise, in writing, all contractors or participants in such procurement that they are to utilize their best good faith efforts to utilize subcontractors, certified female owned, certified disabled ~~handicapped~~ owned, and certified minority owned, and certified LGBT owned businesses, if the procurement situation requires or warrants the use of subcontractors. Good faith efforts by contractors shall be made to reach the goals established by § 37.67

<[http://library.amlegal.com/nxt/gateway.dll?f=jumpink&jumpink_x=Advanced&jumpink_vpc=first&jumpink_xsl=querylink.xsl&jumpink_sel=title;path;content-type;home-title;item-bookmark&jumpink_d=kentucky\(loukymetro\)&jumpink_q=%5bfield%20folio-destination-name:%2737.67%27%5d&jumpink_md=target-id=JD_37.67](http://library.amlegal.com/nxt/gateway.dll?f=jumpink&jumpink_x=Advanced&jumpink_vpc=first&jumpink_xsl=querylink.xsl&jumpink_sel=title;path;content-type;home-title;item-bookmark&jumpink_d=kentucky(loukymetro)&jumpink_q=%5bfield%20folio-destination-name:%2737.67%27%5d&jumpink_md=target-id=JD_37.67)>

(2) While the foregoing guidelines on the utilization of certified female, certified disabled, ~~handicapped~~, and certified minority, and certified LGBT owned businesses as subcontractors are recommended goals, failure to meet such goals will not result in disqualification from participation in the particular procurement process. Contractors, however, will be expected to provide written explanations to the Executive Director of the Human Relations Commission and Chief Procurement Officer of efforts they have made to utilize as subcontractors from certified minority, female ~~and disabled~~, and LGBT ~~handicapped~~ owned businesses. Good faith efforts of a potential bidder include, but are not limited to the following:

(a) Attendance at pre-bid meetings, if any, scheduled to inform minority, female, disabled, and LGBT owned businesses enterprises ~~MFHBEs~~ of prime and subcontracting opportunities;

(b) Advertisement in general circulation media, trade association publications, minority, LGBT, and female business enterprise media to provide notice of subcontracting opportunities;

(c) Communication with the Human Relations Commission Office seeking assistance and identifying available qualified minority, female, disabled, and LGBT owned businesses enterprises MFHBEs;

(d) Efforts made to select portions of work for minority, female, disabled, and LGBT owned businesses enterprises MFHBE subcontracting in areas with established availability or minority, female, disabled, and LGBT owned businesses enterprises MFHBE subcontractors;

(e) Providing a minimum of ten days written notice to known qualified minority, female, disabled, and LGBT owned businesses enterprises MFHBEs that their interest in prime and subcontracting opportunities or furnishing supplies is solicited;

(f) Efforts to negotiate with qualified minority, female, disabled, and LGBT owned businesses enterprises MFHBEs for specific sub-bids, including reasons for rejection of any such sub-bids offered;

(g) Efforts made to assist qualified minority, female, disabled, and LGBT owned businesses enterprises MFHBEs meet bonding, insurance, or other governmental contracting requirements; and

(h) As to each minority, female, disabled, and LGBT owned businesses enterprises MFHBE contacted which the bidder, contractor or vendor, considered not to be qualified, a statement of the reasons for the conclusion.

(C) The exercise of these good faith efforts shall establish a rebuttable presumption that a potential bidder has complied with this good faith provision.

(D) In any procurements by the Metro Government not required to be advertised pursuant to this chapter, every effort shall be made by the Chief Procurement Officer, or his or her designee, to ensure that certified female owned, certified disabled ~~handicapped~~ owned, and certified minority owned, and certified LGBT owned businesses are included in the pool of persons or business entities otherwise qualified and considered for the particular procurement.

SECTION X: LMCO § 37.69 is amended as follows:

The Mayor or his or her designee shall confer on a continuing basis with the Chief Procurement Officer and Executive Director of the Human Relations Commission to ascertain how best to assist certified female owned, certified minority owned, and certified disabled ~~handicapped~~ owned, and certified LGBT owned businesses in learning how to participate in the procurement process of the Metro Government. With the assistance of the Chief Procurement Officer and the Executive Director of the Human Relations Commission, the Mayor or his or her designee may:

(A) Produce brochures or other written materials designed to help female, minority, and disabled, and LGBT owned ~~handicapped~~ business enterprises to learn the procurement process of the Metro Government;

(B) Develop a list of certified female owned, certified disabled ~~handicapped~~ owned, and certified minority owned, and certified LGBT owned businesses which list may be utilized to solicit the participation of certified female owned, certified disabled ~~handicapped~~ owned, and certified minority owned, and certified LGBT owned businesses in procurements for which such businesses may be

qualified;

(C) Initiate training sessions to assist female, minority, ~~and disabled, and LGBT owned~~ handicapped business enterprises in learning how to effectively participate in the procurement process of the Metro Government;

(D) Partner with organizations in the Louisville Metro community that focus organizational efforts to increase the procurement opportunities of minority-owned, female women-owned and disabled, and LGBT-handicapped- owned businesses; and

(E) Initiate such programs as may be beneficial to the purposes of this subchapter.

SECTION XI. LMCO § 37.71 is amended as follows:

(A) The provisions and policies of this subchapter shall be reviewed annually by the Mayor and the Metro Council in conjunction with the establishment of goals. Reports by the Director shall be submitted to the Mayor and each Metro Council member on a quarterly basis within 30 days of the end of each quarter. At a minimum, the report shall include the following:

(1) The total number of Louisville metro contracts by type;

(2) The total number of certified minority, female, disabled, and LGBT owned businesses enterprises MFHBEs available within Louisville Metro to provide work, by type;

(3) The percentage of contracts awarded to certified minority, female, disabled, and LGBT owned businesses enterprises MFHBEs; and

(4) The percentage of contracts awarded to certified minority, female, disabled, and LGBT owned businesses enterprises MFHBEs in Louisville Metro regional competitive cities.

(B) Rules and regulations governing the implementation of this subchapter shall be established by the Mayor. The Mayor shall provide those rules and regulations to the Metro Council.

SECTION XII: This Ordinance shall take effect upon its passage and approval.

Sonya Harward Metro Council Clerk

David James President of the Council

Greg Fischer Mayor

Approved Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

File #: O-394-19, **Version:** 2

BY: _____

O-394-19 - LGBT Ordinance RE Procurement jf. (10.10.19).docx