

Item #: 14A

Moved by: TURNER

Prepared by: Van D. Turner, Jr.

Seconded by: ROLAND

Reviewed by: Marcy Ingram

RESOLUTION SETTING GUIDELINES FOR THE EQUAL
OPPORTUNITY OFFICE WITH RESPECT TO THE MINORITY
AND WOMAN BUSINESS ENTERPRISE PROGRAM'S PRIME
AND SUBCONTRACTING GOALS. SPONSORED BY
COMMISSIONER VAN D. TURNER, JR.

WHEREAS, It is the policy of the Shelby County Government (County) as articulated in Articles II and V of the Shelby County Government Charter (Charter) to implement a procurement program geared toward increasing the percentage of procurement dollars spent with Minority and Woman Business Enterprises (M/WBE) correlated to the availability level of M/WBEs operating within the County; and

WHEREAS, The Supreme Court of the United States, in *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989), required governmental entities to make an empirical assessment to determine whether past discriminatory practices or laws have contributed to the minimum participation of disadvantaged or historically underutilized businesses in the provision of goods and services prior to implementing a race-conscious program; and

WHEREAS, On March 26, 1992, the United States District Court for the Western District of Tennessee, Western Division, enjoined the County from enacting an Ordinance, law, or policy containing race-conscious criteria without complying with the standards set forth in *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989); and

WHEREAS, On July 7, 1999, the United States District Court for the Western District of Tennessee, Western Division, dissolved the March 26, 1992 injunction, allowing the County to enact an Ordinance containing race-conscious criteria that is consistent with the standards set forth in *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989); and

WHEREAS, On December 29, 2014, the County commissioned Mason Tillman Associates, Ltd. to conduct a 2016 Legal Analysis and Disparity Study; and

WHEREAS, The 2016 Legal Analysis and Disparity Study conforms to the legal tenets, set forth in *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989), and its progeny, identifying any barriers to economic development and parity for M/WBEs and to address any such barriers; and

WHEREAS, The 2016 Legal Analysis and Disparity Study revealed statistically significant disparity in the County's award of construction and professional services contracts to available M/WBEs at both the prime contract and subcontract levels, and goods and services contracts to available M/WBEs at the prime contract level; and

WHEREAS, On March 28, 2016, the findings of the 2016 Legal Analysis and Disparity Study were adopted by the Shelby County Board of Commissioners in a public meeting, at which public comment on the Study's findings was received; and

WHEREAS, The County shall be committed to using its spending power in a manner that promotes a robust and inclusive economy that fully utilizes all segments of its business population regardless of race or gender; and

WHEREAS, The County is committed to ensuring that all citizens of Shelby County participate in its economic growth and development and that no citizen be

denied an opportunity to participate in the procurement of goods and services because of discrimination based on race or gender; and

WHEREAS, The County enacted the M/WBE Ordinance (Ordinance), on December 19, 2016, to adopt the race and gender-conscious and race and gender-neutral remedies stipulated in the 2016 Legal Analysis and Disparity Study in order to establish an M/WBE Program based on the factual predicate set forth in the 2016 Legal Analysis and Disparity Study to address the documented disparity; and

WHEREAS, The purpose of the M/WBE Program shall be to establish constitutionally sound and narrowly tailored M/WBE contracting goals to remedy the documented disparity in the award of prime contracts and subcontracts to M/WBEs; and

WHEREAS, The M/WBE Program's policies and objectives shall be communicated to the County's internal and external stakeholders; and

WHEREAS, The County's Office of Equal Opportunity Compliance (EOC) shall have responsibility for the administration of the M/WBE Program per Article V, Section 5.13 (B) (4) of the Charter and work in conjunction with the Shelby M/WBE Compliance Committee (the "Committee") as stated in the Ordinance; and

WHEREAS, The County Contract Compliance Committee shall serve as an oversight working group to ensure that the rules and regulations set forth in the Ordinance are implemented as stated. The Contract Compliance Committee's mission is threefold: (1) to advocate for M/WBE access to the County's procurement process, (2) review procurement procedures, and policies that impact M/WBE participation, and (3) monitor M/WBE utilization on the County's contracts to ensure that all County

departments, offices, boards and agencies adhere to the M/WBE Program requirements; and

WHEREAS, The Contract Compliance Committee shall have nine members. The Committee staff shall include County managers and the business community members appointed by the Shelby County Board of Commissioners. The business members shall reflect the underutilized business populations as reported in the 2016 Legal Analysis and Disparity Study. The Contract Compliance Committee members shall include:

- Chairman of the Shelby County Board of Commissioners or its designee
- Shelby County Board Commissioner
- County Mayor or designee

The business Committee members shall be representative of the following associations:

- Latino Memphis
 - National Association of Women Business Owners
 - Mid-South Minority Business Continuum
 - Black Business Association
 - Minority Contractors Association
 - Associated Builders and Contractors, West Tennessee Chapter;
- and

WHEREAS, The Administrator of EOC shall serve as the secretary and voting member of the Compliance Committee. The secretary shall submit a monthly compliance report to the County Commission, listing utilization by department, MBE and WBE status, non-compliant departments, and non-compliant prime contractors. Public members of the Contract Compliance Committee shall serve for a two year term. Members shall serve a maximum of three (3) full two year terms; and

WHEREAS, The EOC Office and Administrator is ultimately designated with ensuring fair and equitable contract compliance regarding contract participation and

engagement with County Government and the EOC Administrator is appointed directly by the County Commission.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE, That a prime contractor may petition the EOC Administrator with respect to the M/WBE Contracting and subcontracting goals and:

1. Upon written notification sent to the attention of the EOC Administrator, a prime contractor can meet the M/WBE prime or subcontracting goals if it has demonstrated that it has complied with the good faith efforts and other requirements of the M/WBE contracting and subcontracting goals at the time of bidding as outlined in the M/WBE Ordinance; and

2. The prime contractor demonstrates that it is a certified Locally Owned Small Business ("LOSB") or is utilizing a LOSB as a subcontractor to the meet the goals of the M/WBE Ordinance.

BE IT FURTHER RESOLVED That nothing contained in this Resolution shall serve to contradict or contravene any provision of the Shelby County M/WBE or LOSB Ordinances.

BE IT FURTHER RESOLVED That nothing contained in this Resolution shall limit the County's ability to comply with the provisions of any federal or state grant in which the requirements or conditions of the grant exceed the requirements of this M/WBE Program.

BE IT FURTHER RESOLVED, That the provisions of this Resolution are hereby declared to be severable, and if any of its sections, provisions, sentences, phrases, or parts be held unconstitutional or void, the remainder of this Resolution shall continue in full force and effect, it being the legislative intent now hereby declared that this

Resolution would have been passed even if such unconstitutional or void matter had not been included herein.

BE IT FURTHER RESOLVED, That this Resolution shall take effect in accordance with the Shelby County Charter, Article II, Section 2.06(B).



Mark H. Luttrell, Jr.
Shelby County Mayor

Date: 12-22-16

ATTEST:

Clerk of County Commission

ADOPTED: December 19, 2016