

Item #: 20

Moved by: SHAFER

Prepared by: Marcy Ingram

Seconded by: TURNER

Reviewed by: Marcy Ingram

ORDINANCE NO.: 473

ORDINANCE TO AMEND ORDINANCE NO. 472, WHICH ESTABLISHED THE SHELBY COUNTY MINORITY AND WOMAN BUSINESS ENTERPRISE PROGRAM (M/WBE), TO REQUIRE THE BUSINESS OWNER(S) TO PROVIDE PROOF OF SHELBY COUNTY RESIDENCY AS A PREQUALIFICATION FOR THE M/WBE CERTIFICATION AND TO CLARIFY THE APPEALS PROCESS. SPONSORED COMMISSIONER HEIDI SHAFER.

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WHEREAS, It is the policy of the Shelby County Government (County) as articulated in Articles II and V of the County's 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 2016 Legal Analysis and Disparity Study conformed to the legal tenets set forth in *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989), and its progeny, and it 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, The Shelby County Board of Commissioners (County Commission) created the County's M/WBE program pursuant to Ordinance No. 472, adopted on December 19, 2016, to address the disparities identified in the findings of the 2016 Legal Analysis and Disparity Study; 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 Commission desires to amend Ordinance No. 472, adopted on December 19, 2016, to include proof of Shelby County residency as a prequalification for the M/WBE certification.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE, That the following amendments to M/WBE Ordinance No. 472, adopted on December 19, 2016, are hereby promulgated, adopted and incorporated into the current policies and procedures for the Equal Opportunity Compliance Office (EOC) to implement:

## SECTION 2.

### DEFINITIONS

**“Minority Business Enterprise”** shall mean a for-profit business enterprise that is 51 percent (51%) owned and controlled by one or more minority persons who shall provide proof of being a resident of Shelby County for at least six (6) months prior to the time of the application for certification. The qualifying minority groups are defined by the United States Small Business Administration under *13 CFR 124.103* and the United States Equal Employment Opportunity Commission.

**“Woman Business Enterprise”** shall mean a for-profit business enterprise that is 51 percent (51%) owned and controlled by one or more women who shall provide proof of being a resident of Shelby County for at least six (6) months prior to the time of the application for certification.

## SECTION 6.

### M/WBE PROGRAM CERTIFICATION

Participants included in the race and gender-conscious provisions of the M/WBE Program must be certified by the EOC. M/WBE certification standards include eligibility criteria for ethnicity and gender, ownership and control, residency, and license.

#### i. Ethnic Groups

The qualifying ethnic groups shall include African Americans, Hispanic Americans, Asian Americans, and Native Americans.

#### ii. Ownership and Control

An eligible minority business shall be a for-profit enterprise that is 51 percent (51%) or more owned and controlled by one or more minority persons.

An eligible woman business shall be a for-profit enterprise that is 51 percent (51%) or more owned and controlled by one or more women.

iii. Residency and Licensing

An eligible business owner shall provide proof of being a resident of Shelby County for at least six (6) months prior to the time of application for certification and have a physical business address located within the County and have continuously maintained the physical address for at least six (6) months prior to the time of application. In addition, the business shall be authorized to do business under the laws of the State of Tennessee, and eligible to do business in the County.

An exemption to the Shelby County residency requirement may be granted by the Administrator of EOC to those eligible minority and/or women business owners who have operated the qualifying business within Shelby County for a minimum of ten (10) years **and** employ a minimum of eight (8) employees who are residents of Shelby County.

iv. Certification Process

- (a). The EOC shall design, implement, and manage the M/WBE certification process. The certification program shall include reciprocity with local agencies that have an M/WBE certification program which comports with the County's standards.
- (b). The principals of a business applying for certification shall certify under penalty of perjury that the information submitted to obtain certification was provided without collusion and that no violation of any federal or Tennessee antitrust laws had occurred.
- (c). Additionally, the above-mentioned principles and businesses that knowingly falsify ownership and control of said business will be prohibited from conducting business with Shelby County Government for a minimum of three (3) years after a thorough investigation and administrative hearing conducted by Shelby County Commission or an Ad Hoc Committee established by the Shelby County Commission and composed of individuals without a conflict of interest.
- (d). If principals change ownership and control of their business under contract with Shelby County Government and active participant with rights and privileges conferred under this ordinance, said new principals must inform the EOC Administrator. If after a change in ownership and control, and the new principal qualifies as minority or women owned and controlled business under this ordinance, said new principal shall certify with the EOC Administrator and be subject to the same penalties mentioned in Section 6(iv)(b)and (c).

- (e). If the above-mentioned principals of an certified and reciprocally accepted M/WBE changes control and ownership while NOT under contract with Shelby County Government, said new principals and business must inform the EOC Administrator before bidding on any business with Shelby County Government under this MWBE Ordinance and subject to the same penalties in Section 6(iv)(b)(c).
- (f). In the event that the EOC determines that the business is not eligible for the M/WBE certification, the written communication to the business shall include a detailed explanation for the denial.
- (g). To appeal the denial, the business must submit a written request to the EOC within 10 business days of receiving the denial notification.
- (h). If the denial is not reversed, then the business may appeal the EOC's decision to the EOC Appeals Board within 10 business days of receiving the denial notification. The members of the EOC Appeals Board are appointed by the chairman of the County Commission. The decision of the EOC Appeals Board shall be final.

BE IT FURTHER ORDAINED, That the provisions of this Ordinance 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 Ordinance shall continue in full force and effect, it being the legislative intent now hereby declared that this Ordinance would have been passed even if such unconstitutional or void matter had not been included herein.

BE IT FURTHER ORDAINED, That this Ordinance shall take effect 15 days after its passage, the public welfare requiring it.



*Mark H. Luttrell, Jr.*

Mark H. Luttrell, Jr.  
County Mayor

Date: 7-6-17

ATTEST

*Rosalind Michals*

Clerk of County Commission

FIRST READING: May 22, 2017

SECOND READING: June 12, 2017

ADOPTED  
THIRD READING: June 26, 2017