

SUBSTITUTE ORDINANCE NO. BL2021-676

An ordinance amending Title 4 of the Metropolitan Code pertaining to the membership of the Procurement Standards Board and certain contract requirements.

WHEREAS, recent examples of informal subcontracting practices in the private sector demonstrate that the Metropolitan Government, when contracting for certain work in the public sector, may incur substantial risk of liability if awardees similarly fail to follow transparent subcontracting standards; and

WHEREAS, the death of 16-year old Gustavo Ramirez demonstrates that certain practices in the construction industry place the workers in Nashville and Davidson County at risk for serious injury and death; and

WHEREAS, Nashville and Davidson County are now experiencing a shortage of adequately trained, skilled craft laborers, diminishing the Metropolitan Government's ability to maintain public infrastructure and carry out public works in a safe, efficient and workmanlike manner; and

WHEREAS, it is in the best interest of the Metropolitan Government to ensure quality work performed pursuant to publicly procured contracts in order to minimize liability due to employment and safety violations of contracting parties.

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

Section 1. Section 4.08.010 of the Metropolitan Code is hereby amended by deleting subsection B. in its entirety and substituting with the following new subsection B.:

B. Membership of the standards board. The standards board shall be composed of seven members as follows:

1. The director of finance of metropolitan government, who shall serve as chairperson of the board, and who may be represented by a designee;
2. The director of law of metropolitan government, who may be represented by a designee;
3. The head of another department of the metropolitan government, to be appointed to the board by the mayor;
4. One (1) outside member, not an employee or elected official of the metropolitan government, appointed by the metropolitan county council, who shall be selected by that body by a majority vote of its membership, to serve a term of three (3) years, or until a successor has been duly appointed and qualified;
5. Three other outside members, not employees or elected officials of metropolitan government, two of whom shall be appointed by the mayor and one of whom shall be appointed by the ~~Director of the~~ Metro Human Relations Commission, as provided herein, and all shall be confirmed by a majority vote of the whole membership of the council. These members shall serve a term of three years, respectively, or until a successor has been duly appointed and qualified; except, of the members first appointed, one shall serve for a term of two years and one shall serve for a term of three years. Of these two outside members appointed by the mayor, at least one shall be a representative of labor.

6. Provided, however, of the seven members, at least one shall be a female and at least one shall be an African American, provided however, that an African-American female shall not satisfy the requirement of one female and one African American, and shall meet the requirement of only one such position.

Section 2. Chapter 4.08 of the Metropolitan Code is hereby amended by adding the following new subsection C of Section 4.08.020:

C. The Standards Board shall provide the public an established process for comment relative to the promulgation of regulations.

Section 3. Section 4.04.080 of the Metropolitan Code is hereby amended by adding the following paragraph:

The Purchasing Division shall also maintain a list of all persons or entities with which Metro Government (inclusive of all departments, agencies, and other public entities) contracts. The list shall note which of those persons or entities have voluntarily disclosed that they employ or utilize temporary laborers as defined in Section 4.20.130. As used in this Section, "temporary laborer" shall mean a natural person who contracts for employment with any person or entity engaged in the business, for profit, of employing such laborers to perform work or provide services to or for any entity performing work within the scope of an award. The Purchasing Division shall create this list by no later than November 1, 2021 and, at least once a year every year thereafter, it shall update and present the list to the Standards Board and the Metro Council.

Section 4. Section 4.12.010 of the Metropolitan Code is hereby amended by deleting the definition of "Responsible bidder or offeror" in its entirety and substituting it with the following new definition:

"Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance. A ruling by a court or a finding of a governmental agency of competent jurisdiction of such person's violation of any federal or state law or regulation regarding employment practices or a final finding citation or penalty issued by a governmental agency of competent jurisdiction of such person's serious covered violation of any federal or state safety standards shall disqualify that person from meeting the definition of "responsible bidder or offeror" for three (3) years after the ruling or finding, citation, or penalty. Further, a person's failure to comply with Section 4.20.055 on any prior award shall disqualify that person from meeting the definition of "responsible bidder or offeror" for a period of seven (7) years after the violation.

As used in this Section, "employment practices" shall refer to matters regulated under The Fair Labor Standards Act of 1938, 29 U.S.C. § 201-219; The Family Medical Leave Act, 29 U.S.C. §2601, et seq.; Title VII of the Civil Rights Act of 1964 and 42 U.S.C. 1981 (Section 1981); The Age Discrimination in Employment Act, 29 U.S.C. § 621, et seq.; The Americans with Disabilities Act of 1990, 42 U.S.C. § 12101; The Rehabilitation Act of 1973, 29 U.S.C. § 701, et seq.; the Education Amendments Act of 1972, 20 U.S.C. § 1681, et seq.; the National Labor Relations Act of 1935, 29 U.S.C. § 151, et seq.; or the Tennessee Wage Regulation Act, Tenn. Code. Ann. § 50-2-101, et seq. As used in this section, "a serious covered violation of any federal or state safety standards" shall include "willful" violations, "repeated" violations and any other violations that result in a "fatality" or "catastrophe," as those terms are have the same meaning as the term is shall used in the Tennessee Occupational Safety and Health Act of 1972, Tenn. Code. Ann. § 50-3-101, et seq., and applicable federal law.

Section 5. Chapter 4.20 of the Metropolitan Code is hereby amended by adding the following new Section 4.20.055:

4.20.055 Subcontractor contracts required.

A. ~~To the maximum extent permitted by Tennessee law, a~~A person awarded a contract pursuant to this Chapter shall require and obtain written contracts for all work performed within the scope of the award, regardless of the awardee's privity with the person performing the work. Such contracts shall include a description of the work to be performed, the timeframe for completing such work, and the compensation (or method for calculating the compensation) to be paid for the work performed. ~~To the maximum extent permitted by Tennessee law, E~~every person awarded a contract pursuant to this Chapter is responsible for ensuring that any and all subcontractors, lower tier subcontractors, independent contractors, and any other person performing work within the scope of the award are paid in accordance with the terms of their written contracts.

B. A person awarded a contract pursuant to this Chapter shall furnish to the Procurement Department all such written contracts within 30 days of execution of the contract. Such contracts shall constitute public records subject to public inspection and shall be made readily accessible to the public via posting, whether on a publicly available internet site or by physical posting at the site of the contract work.

C. Failure to comply with either A or B of this Section shall be sufficient evidence of lack of integrity and reliability to disqualify the person from meeting the definition of "responsible bidder or offeror" as defined in this Chapter.

D. Every contract issued pursuant to this Chapter shall contain the following clause (where the "Contractor" shall mean the person awarded a contract with the metropolitan government):

Contractor understands and agrees that it alone is responsible to Metro for all of the work under this Contract. Contractor is responsible for all aspects of the Contract, including those performed by a subcontractor. Contractor is responsible for monitoring any subcontractor or other parties performing work under the Contract and is responsible for ensuring that all responsibilities under the Contract are fulfilled. Contractor will be held responsible in the event of non-compliance by any subcontractor.

Section 6. Chapter 4.20 of the Metropolitan Code is hereby amended by deleting subsections A and B of Section 4.20.100 in their entirety and substituting with the following:

A. ~~Any~~ No person who ~~may~~ enters into any contractual agreement with the metropolitan government or any agency thereof for any public works or improvements shall be required to furnish personnel information to the metropolitan government. For purposes of this section, "personnel information" means social security numbers, official state or government issued driver licenses or identification numbers, and employee addresses, but does not include ~~maintain for inspection by the purchasing agent certified copies of monthly payroll records, including payroll records that contain employees' names, hours worked, and rates paid, but excluding addresses and social security numbers which shall be deleted or redacted, and~~ Persons entering into a contractual agreement with the metropolitan government or agency thereof for any public works project or improvements shall maintain and preserve such payroll records for the previous three hundred sixty-five days on an ongoing basis. The purchasing agent or his designee may periodically examine the records required to be kept under this section.

B. The purchasing agent is authorized to enter into a contract or contracts with qualified, independent firms to perform the necessary review and investigation to determine compliance with the provisions of this chapter; Except that, for every procurement exceeding the sum of one million dollars, the purchasing agent shall enter into a contract or contracts with qualified, independent firms to perform the necessary review and investigation to determine compliance with the provisions of this ~~title chapter~~. This subsection is in no way intended to subject the metropolitan government to any provision of the federal Davis-Bacon Act.

Section 7. Chapter 4.20 of the Metropolitan Code is hereby amended by deleting Section 4.20.105 in its entirety and substituting with the following:

**4.20.105 - Utilization of apprentice, training, and certification programs—Employer information.**

A. ~~Any~~ Every person submitting a ~~bid or~~ proposal for any construction or public works infrastructure project shall furnish the purchasing agent with the following information:

1. The extent of the employer's utilization of federally registered apprenticeship programs;
2. The extent of the employer's utilization of MC3 and MCCR training curriculum;
3. Number of OSHA 10-certified and OSHA 30-certified individuals on project;
4. Number of OSHA 100-certified individuals on project;
5. Percentage of employees on project covered by health benefits offered by the employer; and
6. Percentage of employees on project covered by workers' compensation by employer.

B. To the maximum extent permitted by Tennessee law, ~~t~~The procurement standards board shall establish criteria for weighing the factors set forth in subsection A of this section when evaluating a ~~bid or~~ proposal for any construction or public works infrastructure projects.

C. Nothing herein shall be deemed to require a person submitting a proposal for any construction or public works infrastructure project to provide health insurance benefits to persons employed by such person unless required by state or federal law.

Section 8. Chapter 4.20 of the Metropolitan Code is hereby amended by adding the following new Section 4.20.130:

**4.20.130 – Sanitation Measures.**

Every person awarded a contract for construction or public works infrastructure projects shall ensure that all individuals performing work on the project have, at a minimum, completed OSHA 10 training prior to commencing work.

Every person awarded a contract for construction projects shall ensure there is at least one handwashing station on every floor of the facility being constructed. Further, every person awarded a contract for construction projects shall ensure that toilets are provided consistent with OSHA Standard No. 1926.51, as amended; except that in no event shall there be fewer than two (2) toilets on the site of the contract work. During the pendency of an emergency order from the State or County Health Department, persons awarded a contract for construction shall provide any personal protective equipment recommended by the Department at no cost to individuals working within the scope of the award.

Section 9. Chapter 4.20 of the Metropolitan Code is hereby amended by adding the following new Section 4.20.140:

**4.20.140 – Temporary Labor.**

A person awarded a contract or any subcontractor in privity with that person must offer, in writing, direct employment to any temporary laborer that performs 30 days of work within the scope of the award. As used in this Section, "temporary laborer" shall mean a natural person who contracts for employment with any person or entity engaged in the business, for profit, of employing such laborers to perform work or provide services to or for any entity performing work within the scope of an award.

Section 10. This Ordinance shall take effect from and after its enactment, the welfare of the Metropolitan Government of Nashville and Davidson County requiring it.

INTRODUCED BY:

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