

ORDINANCE

CITY OF NEW ORLEANS

CITY HALL: January 14, 2021

CALENDAR NO. 33,225

NO. _____ MAYOR COUNCIL SERIES

BY: COUNCILMEMBERS NGUYEN AND MORENO

AN ORDINANCE to amend and reordain Chapter 70, Article IV, Division 2 of the Code of the City of New Orleans in its entirety to rename, restructure, and simplify the City’s disadvantaged business enterprise program; and otherwise to provide with respect thereto.

1 **SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY**
2 **ORDAINS**, That Chapter 70, Article IV, Division 2 of the Code of the City of New Orleans is
3 hereby amended and reordained to read as follows:

4 **“DIVISION 2. – EQUITABLE BUSINESS OPPORTUNITIES PROGRAM**

5 **Sec. 70-456. - Definitions.**

6 The following definitions shall apply to this division:

7 *Commercially Useful Function* means a discrete task or group of tasks performed pursuant
8 to a contract by a DBE using its own forces or by directly and actively supervising the
9 execution of the tasks by another entity for whose work the DBE is responsible. In
10 determining whether a DBE is performing a commercially useful function, factors include,
11 but are not limited to:

- 12 A. Whether the DBE has the skill, licensure, and expertise to perform the work;
- 13 B. Whether the DBE is in the business of performing, managing, or supervising the
14 work; and

15 C. Whether work constitutes a real and actual service that is a distinct, meaningful, and
16 verifiable element of the work called for in a contract.

17 *CAO* means Chief Administrative Officer for the City of New Orleans.

18 *Disadvantaged business enterprise* or *DBE* means an entity or individual certified as a
19 socially and economically disadvantaged business through the SLDBE or LAUCP-DBE
20 program, or such other certification program as the city may designate.

21 *Equity goal* means the anticipated aggregate portion of work to be performed by DBEs in
22 connection with a contract subject to this division.

23 *Equitable Business Opportunities program* or *EBO program* means the City of New
24 Orleans' initiative to provide equal access for qualifying DBEs.

25 *OSD* means the Office of Supplier Diversity for the City of New Orleans.

26 *Vendor* means any individual or entity in a contract, or seeking to be in a contract, with the
27 city involving public spending, public funding, and/or public incentives, including tax
28 credits or waivers through which the city forgoes its normal taxes and fees, except as
29 otherwise provided in this division.

30 **Sec. 70-457. - Policy.**

31 The city shall provide opportunities to businesses owned and controlled by socially and
32 economically disadvantaged persons to participate meaningfully in the contracting activities of
33 the city that involve public spending or private projects that utilize public funding or incentives.

34 The provisions of this Article should be interpreted liberally to implement the foregoing policy to
35 the maximum extent permissible by law.

36 **Sec. 70-458. - DBE or EBO program registry.**

37 The city shall create and maintain a publicly-available registry of all businesses or individuals
38 certified through the EBO program or otherwise certified as a DBE.

39 **Sec. 70-459. - Equity goal.**

40 There is an overall equity goal of 35 percent for all public spending or private projects that utilize
41 public funding or incentives, subject to any equity goal otherwise established pursuant to this
42 division.

43 **Sec. 70-460. - Equity goal setting.**

44 A. Each city department, agency, board, and commission, and each corporation established
45 by the city, shall independently attempt to ensure that its contracts, in the aggregate, attain
46 the 35 percent equity goal established by Sec. 70-459.

47 B. The city shall implement a procedure for establishing equity goals for each contract subject
48 to this division based on the availability of DBEs in the relevant market sector.

49 C. Proposed contracts routed without a stated equity goal shall have a default goal of 35
50 percent.

51 **Sec. 70-461. - Contracting requirements for contracts executed by the City of New Orleans.**

52 A. The CAO shall develop standards and criteria for evaluating whether a vendor has made
53 good-faith efforts to meet applicable equity goals, which may include:

54 1. the extent to which the vendor has solicited potential DBEs through reasonable and
55 available means;

56 2. the extent to which the vendor has identified commercially useful functions to be
57 performed by DBEs; and

58 3. the extent to which the vendor has negotiated with DBEs in good-faith.

- 59 B. A vendor may count toward its contract equity goal only those DBE
60 subcontractors/suppliers performing a commercially useful function. This shall include the
61 entirety of any and all charges imposed by the DBE in connection with its performance of
62 the contract.
- 63 C. Only DBEs certified as of the date that bids or proposals are opened may be considered for
64 the purpose of determining whether a vendor is in compliance with this Division. Should a
65 DBE lose its certification before commencing its work under a contract, or otherwise
66 become unable to perform, the prime vendor shall use best efforts to secure a replacement
67 DBE vendor.
- 68 D. Subcontracting by DBEs shall be subject to rules promulgated by the CAO in accordance
69 with Sec. 70-465. Subcontracting of work allocated to DBEs shall not be allowed if it will
70 frustrate the purposes of this division or cause an unreasonable portion of the work
71 allocated to DBEs to be performed by non-DBEs.
- 72 E. A DBE that is the prime vendor on a particular contract shall be deemed to have achieved
73 100 percent DBE utilization with respect to that contract, subject to a review of good faith
74 efforts and equity goal achievement as determined by OSD.
- 75 F. The CAO may waive the equity goal applicable to a particular city contract upon request.
76 A request to waive the equity goal for a particular contract must be submitted to the CAO
77 in writing and must set forth in reasonable detail the reasons for the request. No waiver
78 shall be granted until the OSD reviews the request and provides the CAO a written
79 recommendation.

80 G. Except as otherwise provided in Sec. 70-467 or by rule of the City Council, the
81 requirements of this Section shall apply to city council professional services contracts
82 procured in accordance with Section 6-308(5)(c) of the Home Rule Charter.

83 **Sec. 70-462. - Reporting for contracts executed by the City of New Orleans.**

84 A. The CAO shall submit an EBO program report to the City Council by October 15th of each
85 year identifying the city's equity goals and attainment rates for the prior two years.

86 B. OSD shall prepare and submit an annual report on all contracts executed by the City
87 pursuant to Section 6-308(1) of the Home Rule Charter, sorted by department, to the CAO
88 by October 1st of each year identifying equity goals and attainment rates for the prior two
89 years. The DBE report shall include the following information:

- 90 a. The total number and value of all contracts awarded during the reporting period;
- 91 b. The total number and value of all contracts awarded to DBEs as prime contractors
92 (expressed as a percentage and dollar value of (a));
- 93 c. The total number and value of all contracts awarded by non-DBE prime contractors
94 to DBEs as subcontractors (expressed as a percentage and dollar value of (a));
- 95 d. The overall number and value of all contracts awarded to DBEs during the reporting
96 period (the sum of (b) and (c)); and
- 97 e. Whether the contract is a procurement, professional services, personal services, or
98 construction contract.
- 99 f. Documentation of waivers requested from the provisions of this section for any city
100 contract, with the recommendations of OSD and CAO determination on the waiver
101 request outcome.

102 **Sec. 70-463. - Reporting for contracts executed by city agencies, corporations, boards, and**
103 **commissions.**

104 A. Each city agency, board, and commission, and each corporation established by the city,
105 shall prepare and submit an annual report to the City Council by October 1st of each year
106 identifying their equity goals and attainment rates for the prior two years. The DBE report
107 shall include the following information:

- 108 a. The total number and value of all contracts awarded during the reporting period;
- 109 b. The total number and value of all contracts awarded to DBEs as prime contractors
110 (expressed as a percentage and dollar value of (a));
- 111 c. The total number and value of all contracts awarded by non-DBE prime contractors
112 to DBEs as subcontractors (expressed as a percentage and dollar value of (a));
- 113 d. The overall number and value of all contracts awarded to DBEs during the reporting
114 period (the sum of (b) and (c)); and
- 115 e. Whether the contract is a procurement, professional services, personal services, or
116 construction contract.

117 B. Any city agency, board, or commission, or corporation established by the city, that does
118 not attain the overall equity goal of 35 percent shall submit with their annual EBO report
119 to the City Council a detailed explanation as to why the overall goal was missed and outline
120 a plan to meet applicable equity goals.

121 C. The reporting requirement set forth in this section is the sole responsibility of each city
122 agency, board, or commission, or corporation established by the city. OSD shall not be
123 responsible for enforcing the reporting requirement in this section or monitoring the

124 compliance of contracts that are not executed by the City pursuant to Section 6-308(1) of
125 the Home Rule Charter.

126 **Sec. 70-464. - Remedies for non-compliance for contracts executed by the City of New**
127 **Orleans.**

128 In addition to any other corrective action allowed by law, contract, or city policy, any vendor in
129 contract with the city that fails to comply with the provisions of this division may be subject to
130 corrective action, which may include but need not be limited to:

- 131 1. Withholding of all or any portion of payments due to the vendor until the non-compliance
132 is cured;
- 133 2. Liquidated damages;
- 134 3. Termination of any or all of the vendor's contracts with the city; and
- 135 4. Suspension, debarment, or determination of non-responsibility.

136 **Sec. 70-465. - Authority.**

137 The CAO shall have authority to implement this division and shall promulgate regulations pursuant
138 to City Code Sec. 2-1000 to implement the provisions of this division, including without limitation
139 establishing procurement and contract requirements that shall address but need not be limited to:

- 140 1. Designation of representative(s) to implement this division;
- 141 2. Determination of equity goals;
- 142 3. Vendor reporting of DBE utilization;
- 143 4. Standards and criteria for the evaluation and documentation of vendors' good faith efforts;
- 144 5. The prompt payment of DBEs in accordance with law;
- 145 6. The modification of DBE utilization by vendors;
- 146 7. Subcontracting by DBEs; and

147 8. Monitoring vendor compliance with determined equity goals.

148 **Sec. 70-466. - Application.**

149 A. Except as otherwise provided and subject to all local, state, and federal laws affecting the
150 city's procurement of goods and services or use of funds, this division shall apply to all
151 contracts of the city, including all departments, agencies, corporations, boards, and
152 commissions, that utilize any public spending, public funding, and/or public incentives,
153 including tax credits, Payment In Lieu of Taxes (PILOT) incentives or waivers through
154 which the city forgoes its normal taxes and fees.

155 B. The following city boards and commissions are subject to the provisions of this division,
156 and shall submit their annual report regarding any of their contracts that are not executed
157 by the City pursuant to Section 6-308(1) of the Home Rule Charter to the City Council by
158 October 1st of each year:

- 159 1. Board of Building Standards and Appeals
- 160 2. Board of Zoning Adjustments
- 161 3. Delgado Albania Plantation Commission
- 162 4. Board of Trustees of the Municipal Employees' Retirement System
- 163 5. Board of Trustees to the Police Pension Fund
- 164 6. Board of Trustees of the Firemen's Pension and Relief Fund
- 165 7. Board of Liquidation, City Debt
- 166 8. Public Belt Railroad Commission
- 167 9. Sewerage and Water Board
- 168 10. Public Library Board
- 169 11. New Orleans Aviation Board

- 170 12. Vieux Carré Commission
- 171 13. Audubon Park Commission
- 172 14. New Orleans Alcoholic Beverage Control Board
- 173 15. New Orleans Recreational Development Commission
- 174 16. Human Rights Commission
- 175 17. Civil Service Commission
- 176 18. Board of City Trusts
- 177 19. Central Business District Historic District Landmarks Commission
- 178 20. New Orleans Historic District Landmarks Commission
- 179 21. Mosquito Control Board
- 180 22. Ethics Review Board
- 181 23. Children Youth and Planning Board
- 182 C. The following corporations are subject to the provisions of this division, and shall submit
- 183 their annual report regarding any of their contracts that are not executed by the City
- 184 pursuant to Section 6-308(1) of the Home Rule Charter to the City Council by October 1st
- 185 of each year:
- 186 1. French Market Corporation
- 187 2. Industrial Development Board
- 188 3. Municipal Yacht Harbor Management Corporation
- 189 4. New Orleans Access Television Board
- 190 5. New Orleans Building Corporation
- 191 6. New Orleans Tourism and Cultural Fund
- 192 7. Parking Facilities Corporation

193 D. New Orleans Redevelopment Authority (NORA) will work to implement policies and
194 procedures consistent with its enabling legislation and the objectives of this division as it
195 relates to the utilization of DBEs when disposing of property in the aggregate of 25 or
196 more residential properties in connection with a program funded by the city. These
197 policies and procedures must be approved by the board of commissioners of NORA as
198 deemed appropriate subject to Louisiana Revised Statute 33:4720.55 and prior to
199 implementation.

200 E. Exempt contracts. This division shall not apply to:

- 201 1. The procurement of immovable property;
- 202 2. The resolution of any legal claim;
- 203 3. Cooperative endeavor agreements;
- 204 4. Any procurement to satisfy declared emergency needs;
- 205 5. Restoration tax abatement credits for owner-occupied residential properties not
206 exceeding six residential units;
- 207 6. Any procurement or contract, except those for public works, valued at less than the
208 applicable formal competitive procurement threshold; and
- 209 7. Any procurement or contract valued at \$15,000.00 or less.

210 **Sec. 70-467. - City Council contracts.**

211 A. Before the Council votes to award a contract pursuant to this Section, a selection review
212 committee composed of the City Council Chief of Staff and two other staff members
213 designated by the chief of staff shall review all proposed vendors and evaluate whether
214 the proposal complies with the equity goal and/or whether the respondent has made a
215 good-faith effort to comply with the equity goal.

- 216 B. In determining whether a vendor has made good-faith efforts, the selection committee shall
217 consider the criteria set forth in Sec. 70-461(A)(1)-(3) and such other factors as a the
218 committee deems appropriate, including the availability of DBEs in the relevant market
219 and the extent to which the contract is susceptible of performance by being subcontracted.
- 220 C. The City Council Chief of Staff, upon consultation with Councilmembers, may waive the
221 equity goal applicable to a particular contract. No waiver shall be granted until the OSD
222 reviews the request and provides the Council Chief of Staff a written recommendation.
- 223 D. This Division does not apply to the following City Council contracts:
- 224 1. Professional services contracts for an individual Councilmember
 - 225 2. The City Council's annual audit; and
 - 226 3. Emergency situations, as provided nu Council rule.
- 227 E. Ongoing monitoring of the equity goals provided herein shall be performed by the OSD
228 to ensure that all applicable council contracts after award continue to meet their goals or
229 make good faith efforts relative thereto, throughout the duration of the contract. Any
230 determinations of non-compliance shall be timely reported in writing to the City Council.
- 231 F. The City Council research office or the council fiscal office shall compile an annual
232 report to the City Council and submit such report by March 31 of each year identifying
233 the council's DBE participation goals and attainment rates for professional service
234 contracts granted the prior year. The EBO program report shall include the following
235 information:
- 236 a. The total number and value of all contracts awarded during the prior year;
 - 237 b. The total number and value of all contracts awarded to DBEs as prime contractors
238 (expressed as a percentage and dollar value of (a));

- 239 c. The total number and value of all contracts awarded by non-DBE prime contractors to
 240 DBEs as subcontractors (expressed as a percentage and dollar value of (a)); and
 241 d. The overall number and value of all contracts awarded to DBEs during the reporting
 242 period (the sum of (b) and (c)).
- 243 G. OSD shall monitor all contracts issued pursuant to this section to ensure ongoing and
 244 continued compliance with the goals provided herein throughout the entire contract term.
 245 OSD shall notify the Council's Chief of Staff in writing within five business days of
 246 determining that a contract is not in compliance with the goals provided herein.

247 **Secs. 70-468—70-495. - Reserved.”**

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS _____

PRESIDENT OF THE COUNCIL

DELIVERED TO THE MAYOR ON _____

APPROVED:
DISAPPROVED: _____

MAYOR

RETURNED BY THE MAYOR ON _____ AT _____

CLERK OF COUNCIL

ROLL CALL VOTE:

YEAS:

NAYS:

ABSENT:

RECUSED: