

RESOLUTION NO. _____ - 2024

A RESOLUTION AMENDING AND RESTATING RESOLUTION NO. 167-91 AND RESOLUTION NO. 319-2015, TO ADOPT A REVISED MINORITY AND WOMEN BUSINESS ENTERPRISE AN INITIAL 17% MINIMUM GOAL—INCLUDING MINIMUM SUBGOALS OF 5% FOR MINORITY BUSINESS ENTERPRISES AND 12% FOR WOMEN BUSINESS ENTERPRISES—AND TO RESTATE A CERTIFIED VETERAN-OWNED SMALL BUSINESS AND CERTIFIED SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS MINIMUM 3% GOAL FOR GOVERNMENT CONTRACTS; AND ESTABLISHING EVIDENTIARY CRITERIA FOR THE DIVISION OF PROCUREMENT TO MODIFY THESE GOALS ON AN ANNUAL BASIS.

WHEREAS, the Urban County Council by Resolution No. 167-91 adopted an administrative plan implementing a ten percent (10%) minimum goal for minority and women business enterprises;

WHEREAS, the Urban County Council by Resolution No. 319-2015 adopted a three percent (3%) minimum goal for certified veteran-owned small businesses and certified service-disabled veteran-owned small businesses;

WHEREAS, the Urban County Council completed a disparity study (“hereafter referred to as “2022 Disparity and Availability Study”) to assess whether substantial disparities exist between the availability and utilization of minority and women business enterprises for government contracts;

WHEREAS the 2022 Disparity and Availability Study found that there are substantial disparities between the availability and utilization of minority and women business enterprises for government contracts and that minority business enterprises are available for five percent (5%) of government contracts and women business enterprises are available for twelve percent (12%) of government contracts, for a combined total of seventeen percent (17%); and

WHEREAS, it is now the desire of the Urban County Council to amend and restate Resolution No. 167-91 and Resolution No. 319-2015 to better align with the findings of the 2022 Disparity and Availability Study.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – That Resolution No. 167-91 and Resolution No. 319-2015, be and hereby are amended, restated, and replaced in their entirety with the contents of this Resolution.

Section 2 - That the following definitions shall be used throughout this Resolution:

(a) Certified. The business is appropriately certified, licensed, verified, or validated by an organization or entity recognized by the Division of Procurement as having the appropriate credentials to make a determination as to the status of the business.

(b) Certified Disadvantaged Business Enterprise (DBE). A business in which at least fifty-one percent (51%) is owned, managed, and controlled by a person(s) who is socially and economically disadvantaged as defined by 49 CFR subpart 26.

(c) Certified Minority Business Enterprise (MBE). A business in which at least fifty-one percent (51%) is owned, managed, and controlled by an ethnic minority (i.e. Black American, Asian American, Hispanic American, or Native American).

(d) Certified Women Business Enterprise (WBE). A business in which at least fifty-one percent (51%) is owned, managed, and controlled by a woman.

(e) Certified Veteran-Owned Small Business. The term Certified Veteran-Owned Small Business shall be defined and interpreted consistent with federal law or regulation as it may be amended from time-to-time.

(f) Certified Service-Disabled Veteran Owned Small Business. The term Certified Service-Disabled Veteran Owned Small Business shall be defined and interpreted consistent with federal law or regulation as it may be amended from time-to-time.

(g) Black American, Asian American, Hispanic American, and Native American shall have the same definitions as provided in the Minority Business Enterprise Program Manual, a copy of which shall be kept by the Division of Procurement, as it may be amended from time-to-time.

Section 3 – That the Urban County Council be and hereby adopts an initial annual aspirational goal of utilizing at least seventeen percent (17%) of public funds spent from certain discretionary government construction, professional services, and goods and services agreements, with the following businesses, as provided in the following subgoals: (a) a separate annual aspirational goal of five percent (5%) with Certified Minority Business Enterprises (MBEs); and (b) a separate annual aspirational goal of twelve percent (12%) with Certified Women Business Enterprises (WBEs).

Section 4 – That the Urban County Council be and hereby re-adopts and restates

an aspirational goal of utilizing, at least three percent (3%) of public funds spent from certain discretionary government construction, professional services, and goods and services agreements with Certified Veteran-Owned Small Businesses and Certified Service-Disabled Veteran-Owned Small Businesses, collectively.

Section 5 – That the Urban County Council be and hereby adopts an annual aspirational goal of otherwise utilizing Certified Disadvantaged Business Enterprises on government contracts, where applicable.

Section 6 – That the Division of Procurement and its appropriate personnel shall take the following actions with respect to meeting these goals:

(a) Ensure that all appropriate bid, proposal, and solicitation documents, including contracts, include appropriate language and provisions related to these goals and compliance and reporting related thereto.

(b) Adopt policies, procedures, or guidelines consistent with the intent and purpose of this resolution.

(c) Track, monitor, and report information related to compliance with these goals.

(d) Establish good faith efforts and request supported documentation; and

(e) Evaluate and, as deemed appropriate, adopt programs or policies based on information and recommendations from the 2022 Disparity and Availability Study, organizational resources, and other considerations. Such measures may include:

(i) Race- and gender-neutral measures such as prompt payment mechanisms, advertising and outreach (expansion) activities, establishing subcontracting minimums, unbundling large contracts, establishing small business set-asides, expanding supportive services, and data collection and monitoring activities.

(ii) Race- and gender-conscious measures such as contract-specific goals and price and/or evaluation preferences.

Section 7 – That (a) The Division of Procurement shall review the goals and actions taken to meet these goals annually. The Division of Procurement shall determine whether the goals are being met, whether the conditions giving rise to these goals continue to exist, and whether the goals and/or actions taken to meet the goals should be modified

or rescinded.

(b) The Director of the Division of Procurement and designated Minority Business Enterprise Program Staff may increase these goals, in whole or in part, annually, if the availability of Certified Minority Business Enterprises (MBEs) or Certified Women Business Enterprises (WBEs) in the market increases, as determined by the Division of Procurement from the following evidence related to the Urban County Government's contracts and procurements:

- (i) Evidence that participation of minority- and women-owned businesses has increased;
- (ii) Evidence that policies and programs throughout the market area have been created that may positively impact the ability of minority- and woman-owned businesses to compete and participate;
- (iii) Evidence regarding increased upcoming contract and procurement opportunities that may positively impact the ability of minority- and woman-owned businesses to compete and participate;
- (iv) Evidence indicating increased employment, business ownership, education, training, and unions, that may positively impact the ability of minority- and woman-owned businesses to compete and participate; or
- (v) Evidence indicating positive changes in financing, bonding, and insurance requirements that may positively impact the ability of minority- and woman-owned businesses to compete and participate in the past twelve (12) months.

(c) The Division of Procurement shall publish any changes to the aspirational goals provided herein online, as well as within the Minority Business Enterprise Program Manual, at least sixty (60) days prior to implementation.

Section 8 – If any section, subsection, sentence, clause, phrase, or portion of this Resolution is for any reason held invalid or unlawful by a court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 9 – Unless earlier revoked or amended, this Resolution shall be in effect

for five (5) years from the date on which it became effective.

Section 10 – That this Resolution shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL:

MAYOR

ATTEST:

CLERK OF URBAN COUNTY COUNCIL