

**RESOLUTION**

**NO. R-24-125**

**CITY HALL: April 4, 2024**

**BY: COUNCILMEMBER MORENO**

**SECONDED BY: COUNCILMEMBER MORRELL**

**WHEREAS**, in June 2023, Governor John Bel Edwards signed Act 230, a first-of-its-kind law for New Orleans that allows the city to set aside up to 25% of city contracts for socially and economically disadvantaged business enterprises (DBEs) ensuring that for designated contracts, DBEs will be able to bid for work among themselves instead of against larger and prime contractors; and

**WHEREAS**, despite critical progress made, more is needed to build long-term wealth for minority entrepreneurs and small businesses; and

**WHEREAS**, thanks to Act 230, the City has new opportunities to set aside more City dollars for local small and minority businesses which will catalyze long-term growth and give new energy to our local businesses trying to level the playing field, a goal that benefits us all in the city of New Orleans; and

**WHEREAS**, as required by Section 6-308(1) of the Home Rule Charter to encourage the participation of disadvantaged business enterprises in city contracts, the City Council established the Equitable Business Opportunities Program in the City Code; and

**WHEREAS**, pursuant to its authority under La. R.S. § 38:2233.5, the City Council established the Procurement Set-Aside Program (City Code sec. 70-468), for awarding to socially and economically disadvantaged businesses, an amount not less than 10% nor more than 25% of the value of anticipated local procurement of goods and services, including construction or doing of any public work; and

**WHEREAS**, in accordance with City Code Section 2-1000, the Office of Supplier Diversity and Chief Administrative Officer held a public hearing, properly advertised and noticed according to law, on the regulations recommended for consideration, and, after seeking and receiving public comment, agreed upon the regulations as set forth in Exhibit "A" attached hereto and hereby made a part of this Resolution; and

**WHEREAS**, the new rules and regulations attached as Exhibit "A" have been proposed in accordance with Section 2-1000 of the Code of the City of New Orleans; **NOW THEREFORE**

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS**, That in accordance with Section 2-1000 of the City Code, the Regulations for the Procurement Set-Aside Program within the Equitable Business Opportunities Program (the "Regulations"), attached hereto as Exhibit "A" and made apart hereof, are ratified and approved.

**BE IT FURTHER RESOLVED**, That pursuant to Section 4-107(3)(c) of the Home Rule Charter, a final promulgation of the Regulations and notice of its availability to the public shall be published in the official journal.

**BE IT FURTHER RESOVLED**, That in accordance with Section 4-107(3)(d) of the Home Rule Charter, the Regulations shall become effective and shall become legally enforceable at 12:01 a.m. on the twenty-second day beginning on the day following adoption of this resolution.

**BE IT FURTHER RESOLIVED**, That the Clerk of Council shall forward a certified copy of this resolution and the Regulations attached as Exhibit "A" to the City Attorney for maintenance in accordance with Section 4-107(3)(d) of the Home Rule Charter.

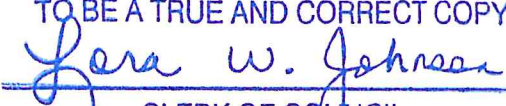
**THE FOREGOING RESOLUTION WAS READ IN FULL, THE ROLL WAS CALLED ON THE ADOPTION THEREOF, THE RESULT WAS AS FOLLOWS:**

**YEAS:** Giarrusso, Green, Harris, King, Moreno, Morrell, Thomas - 7

**NAYS:** 0

**ABSENT:** 0

**AND THE RESOLUTION WAS ADOPTED.**

THE FOREGOING IS CERTIFIED  
TO BE A TRUE AND CORRECT COPY  
  
CLERK OF COUNCIL

**Equitable Business  
Opportunities Program:  
Procurement Set-Aside  
Program Regulations  
City of New Orleans**







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## General Provisions

### I. Authority

Pursuant to Section 6-308(1) of the Home Rule Charter of the City of New Orleans, the City is required to establish and maintain a program to encourage disadvantaged business enterprises to participate in all formal contracts to which the City is a party. Accordingly, the City Council has ordained and subsequently amended Division 2 of Article IV of Chapter 70 of the Code of the City of New Orleans, currently entitled the Equitable Business Opportunities Program (EBO Program).

Pursuant to Louisiana Revised Statute 38:2233.5, the City now has the authority to, for each fiscal year, designate and set aside, for awarding to socially and economically disadvantaged businesses, an amount not less than ten percent nor more than twenty-five percent of the value of anticipated local procurement of goods and services, including construction or doing of any public work, including alteration or repair. In accordance with La. R.S. 38:2233.5, the Council has established the Procurement Set-Aside Program within Division 2 of Article IV of Chapter 70 in Section 70-468 of the City Code.

Also within Division 2, Section 70-465 of the City Code provides that the Chief Administrative Officer (CAO) has the authority to implement the division and must promulgate regulations pursuant to Section 2-1000 of the City Code to implement the provisions of the division. Pursuant to Sections 70-465 and 2-1000 of the City Code and Section 2 of Ordinance Number 29,654 M.C.S., the Chief Administrative Officer hereby promulgates the regulations herein to govern the Procurement Set-Aside Program.

### II. The Procurement Set-Aside Program, Generally

Pursuant to Section 70-468 of the City Code and subject to certain exceptions and exemptions in Section 70-466, the CAO and the Director of Finance shall annually designate and set aside an amount equal to at least ten percent but not more than twenty-five percent of anticipated local procurement of goods and services for contracting directly with certified DBE vendors. This program will be referred to as the Procurement Set-Aside Program, which is the title of Section 70-468 of the City Code.

### III. Definitions

The Procurement Set-Aside Program (or “the Program”) will annually set aside 10-25% of the anticipated local procurement of goods and services for contracting directly with certified DBE vendors, subject to certain exceptions and exemptions in City Code Section 70-466. The phrase “anticipated local procurement of goods and services” is not defined in Division 2 or in Louisiana Revised Statute 38:2233.5, which authorized the local procurement set-aside ordinance (No. 29,654 M.C.S.). Thus, this section of these regulations will define certain terms used herein. Louisiana Revised Statute 38:2211 contains definitions applicable to Chapter 10 of Title 38 of the Louisiana Revised Statutes, which includes La. R.S. 38:2233.5, so the definition of “public work” herein reflects La. R.S. 38:2211. Additionally, Section 70-468 of the City Code provides a



requirement that dictates what a certified DBE is, so “certified DBE” will become a defined term herein. Finally, the definitions of “goods” and “services” herein are from Black’s Law Dictionary.

The following words, terms, and phrases, when used in these regulations, shall have the meanings ascribed to them in this section:

“**All Anticipated Procurements**” shall mean all anticipated procurements of goods and services by the City, including all departments, agencies, corporations, and attached and unattached boards and commissions, regardless of funding source or eligibility for inclusion in the Procurement Set-Aside Program.

“**Certified DBE**” shall mean a business that has met the certification requirements through the State and Local Disadvantaged Business Enterprise (SLDBE) program, Louisiana Unified Certification Program (LAUCP), or such other certification program as the City may designate.

“**Designated Procurements**” shall mean the pool of Eligible Procurements that have been set aside for inclusion in the Procurement Set-Aside Program.

“**Eligible Procurements**” shall mean the pool of All Anticipated Procurements with the procurements that are made ineligible by the exceptions and exemptions in the City Code removed.

“**Exempt Procurements**” shall mean the procurements preceding the contracts listed as exempt from Division 2 of Article IV of Chapter 70 of the City Code, pursuant to Section 70-466(e) of the City Code.

“**Goods**” shall mean tangible or movable personal property other than money, especially articles of trade or items of merchandise.

“**Public work**” shall mean the erection, construction, alteration, improvement, or repair of any public facility or immovable property owned, used, or leased by a public entity.

“**Services**” shall mean intangible commodities in the form of human efforts, such as labor, skill, or advice.

## **IV. Applicability**

Pursuant to Section 70-466(a) of the City Code, except as otherwise provided and subject to all local, state, and federal laws affecting the City’s procurement of goods and services or use of funds, these regulations shall apply to all contracts of the City, including all departments, agencies, corporations, and attached and unattached boards and commissions, that utilize any public spending, public funding, and/or public incentives, including tax credits, Payment In Lieu of Taxes (PILOT) incentives or waivers through which the City forgoes its normal taxes and fees.

### **Exempt Procurements**

Pursuant to Section 70-466(e) of the City Code, Division 2 of Article IV of Chapter 70 of the City Code, and thus these regulations, shall not apply to the following exempt contracts:

1. The procurement of immovable property;
2. The resolution of any legal claim;
3. Cooperative endeavor agreements;



4. Any procurement to satisfy declared emergency needs;
5. Restoration tax abatement credits for owner-occupied residential properties not exceeding six residential units;
6. Any procurement or contract, except those for public works, valued at less than the applicable formal competitive procurement threshold; and
7. Any procurement or contract valued at \$15,000.00 or less.

### **Federally Funded Procurements**

Pursuant to federal law, City procurements funded by federal dollars must comply with the federal regulations governing the receipt and use of those federal dollars. In practice, this may result in procurements funded by federal dollars being exempt from the Procurement Set-Aside Program, such as is the case with procurements funded by federal dollars distributed by the Federal Emergency Management Agency (FEMA) and the Department of Housing and Urban Development (HUD). Generally, in order to comply with federal law, these procurements must participate in the EBO Program and attempt to attain the equity goals established therein, but the specific controlling rules for these procurements are established by federal law and appropriate federal regulations.

### **City Council Procurements**

City Council contracts are subject to specific provisions in the Home Rule Charter and Division 2 of Article IV of Chapter 70 of the City Code. If a conflict exists between the laws governing Council contracts and the provisions of these regulations, the provisions of law governing Council contracts shall govern.

### **Procurements that are not Designated and Set Aside**

The failure to set aside particular procurements shall not be considered to prohibit or discourage socially and economically disadvantaged businesses from seeking the procurement award through the normal solicitation and bidding processes. Thus, socially and economically disadvantaged businesses may seek a procurement award through normal solicitation and bidding processes even if the procurement is not set aside as part of the Procurement Set-Aside Program.

## **V. Effective Date**

These regulations shall be effective as provided in Section 2-1000(g) of the City Code.

## **VI. Future Amendments**

Due to the complexity inherent in the City's procurement landscape, it may become necessary to amend these regulations following their effective date.

City Code Section 2-1000(a)(3) defines what a regulation is, and the term regulation includes the amendment or repeal of an existing regulation. Thus, any amendments to these regulations must comply with the procedures required by Section 2-1000 for the initial adoption of regulations, including the public hearing and submittal to the City Council for consideration.





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## Procurement Set-Aside Program

### **I. Process to Designate and Set Aside Procurements for the Program**

Pursuant to Division 2 of Article IV of Chapter 70 of the City Code and subject to the exemptions and exceptions therein, the CAO and Director of Finance shall annually designate and set aside an amount equal to at least ten percent but not more than twenty-five percent of anticipated local procurement of goods and services for contracting directly with certified DBE vendors.

#### **All Anticipated Procurements**

In accordance with Section 70-466(a) of the City Code, the initial pool of procurements to be considered for the Program shall be established as all anticipated procurements of goods and services by the City, including all departments, agencies, corporations, and attached and unattached boards and commissions (defined as “All Anticipated Procurements” above).

#### **Eligible Procurements**

Due to the exceptions in Section 70-466(a) and exemptions listed in Section 70-466(e), there must be an eligibility determination for each anticipated procurement in the initial pool. Section 70-466(e) provides that certain contracts are exempt from the entire division of the City Code, and Section 70-466(a) highlights the fact that specific local, state, and federal laws supersede these City Code provisions and govern certain procurements. Thus, the CAO and Director of Finance shall commission an eligibility determination for each procurement in the initial pool of All Anticipated Procurements. Procurements that are made ineligible by the exceptions and exemptions in the City Code shall be removed from the pool of All Anticipated Procurements as necessary, resulting in a pool of Eligible Procurements.

#### **Designated Procurements**

The CAO and Director of Finance shall then designate and set aside an amount equal to at least ten percent but not more than twenty-five percent of the eligible procurements for inclusion in the Program, subject to the variety requirement in Section 70-468(b).

Due to the number of variables involved in determining eligibility and designating a variety of goods and services for inclusion in the Program, exact percentages will not be set in these initial regulations. The goal for each procurement type and department or agency will be twenty-five percent, but only the minimum and maximum percentages will be established initially.

#### **Variety**

The CAO and Director of Finance shall attempt to vary Designated Procurements to allow for procurements for a variety of goods and services to be set aside for contracting directly with certified DBE vendors.

The result of the eligibility determination, variety consideration, and designation will be a set of Designated Procurements to be offered initially only to certified DBE vendors, as detailed below.



## II. Contracting Directly with Certified DBE Vendors

In accordance with City Code Section 70-468(f), no business may be awarded a contract designated and set aside for the Procurement Set-Aside Program unless it has met the certification requirements through the SLDBE or LAUCP-DBE program, or such other certification program as the city may designate (i.e., it must be a “certified DBE,” as defined above). Thus, the Procurement Set-Aside Program will only include anticipated procurements to be offered initially only to certified DBE vendors.

Certification Requirements for the SLDBE certification have been established by the Chief Administrative Office and Office of Supplier Diversity in the set of regulations promulgated pursuant to Motion M-22-95 and Ordinance Number 28,587 M.C.S. and submitted to the City Council on June 10, 2022. The certification requirements are in the EBO Program Rules and Regulations, which are available on the City’s Office of Supplier Diversity website, <https://nola.gov/next/supplier-diversity/home/> (or [here](#)).

LAUCP Certification Requirements have been established by the state of Louisiana, and more details are available on the state’s website, <http://www8.dotd.la.gov/ucp/>.

### Normal Rules and Schedule

Pursuant to City Code Section 70-468(j) and La. R.S. 38:2233.5(E), all laws and rules pertaining to solicitations, bid evaluations, contract awards, and other procurement regulations shall apply to procurements set aside for certified DBEs, including penalties for noncompliance.

### Schedules Shall Adhere to Current Federal Guidelines

Pursuant to City Code Section 70-468(h) and La. R.S. 38:2233.5(C)(2), schedules to publicize requests for proposals, requests for qualifications, and bid solicitations in the Procurement Set-Aside Program shall adhere to current federal guidelines.

Therefore, the Program shall employ the City’s ordinary procurement processes and comply with the aforementioned laws and rules, with the only distinction being that the procurements in the Program shall be offered to certified DBEs only. Potential vendors who are not certified DBEs are not eligible to seek procurements in the Procurement Set-Aside Program.

## III. Procurements in the Program but not Awarded Successfully

If procurements in the Procurement Set-Aside Program are not successfully awarded to certified DBEs, the City may then, pursuant to City Code Section 70-468(i) and La. R.S. 38:2233.5(D), offer those procurements in accordance with existing solicitation, bid evaluation, and contract award provisions *otherwise provided by law*. In practice, such unsuccessful procurements will be pursued through the ordinary City procurement processes, including the EBO Program, to the much larger pool of potential City vendors. For example, if an RFP is only released to the pool of certified DBEs through the Procurement Set-Aside Program and no one responds, an RFP for those services could then be released by the City to the City’s ordinary pool of potential vendors rather than only being released to the pool of certified DBEs.



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Notably, pursuing a procurement through the Procurement Set-Aside Program is not an alternative for the EBO Program, due to City Code Section 70-468(k).

#### **IV. Equity Goal Applies to All Procurements**

In accordance with City Code Section 70-468(k), nothing in the Procurement Set-Aside Program shall be deemed to eliminate or reduce the equity goal established by City Code Section 70-459 for procurements that are not subject to the Program. The equity goal in the City's EBO Program shall apply to procurements that are not eligible for the Procurement Set-Aside Program, procurements that are awarded through the Procurement Set-Aside Program, and procurements that are part of the Program but were not successfully awarded through the Program.



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## Implementation Plan

### **I. Peer Benchmarking and Technical and Legal Assessments**

Step 1 of the implementation plan, which will occur concurrently with the other initial steps of the implementation plan and has already begun, will include peer benchmarking, internal technical assessments, and legal analysis.

Since the adoption of Ordinance No. 29,654 M.C.S. on September 21, 2023, the City has begun a survey of set-aside programs in other jurisdictions, outreach to stakeholders to help inform the City's implementation of the Procurement Set-Aside Program, and internal project team meetings to begin the implementation process. These initial steps have resulted in a general consensus that the City needs to continue the following program development and refinement activities:

- A. Peer benchmarking, including (1) a broader survey of local, regional, and national set-aside programs; (2) a comparison of peer cities' programs with the City's Program; (3) a comparison of best practices in set-aside programs with the City's Program; and (4) further analysis into the additional programmatic infrastructure needed to ensure that the City's Procurement Set-Aside Program will be successful.
- B. Technical assessments, including (1) legacy systems assessments, (2) functionality gap assessments, (3) existing procurement data and vendor data assessments, and (4) a technical needs assessment, including cost and timeline.
- C. Legal analysis, including assessments of (1) any restrictions on the use of federal funding in set-aside programs, (2) any restrictions on the use of bond funds, and (3) any other legislative or contractual impacts on eligibility for inclusion in the Program.

### **II. Internal Procedure Development and Staff Assignments**

The Procurement Set-Aside Program will involve several departments and offices and require procedural and staffing coordination. Several teams within the Department of Finance and Chief Administrative Office will have to coordinate with the departments originating procurements to timely and properly forecast procurements, determine eligibility for the Program, communicate the opportunities to the appropriate certified DBEs, support those DBEs as they respond to procurement opportunities in the Program, and successfully award and execute contracts. Staffing levels and assignments will be reassessed due to the Program's shift in operations, and operational efficiencies will be assessed as the Program is implemented, to ensure that the goals of the Procurement Set-Aside Program are being met and that services are being timely provided to the public. In order to meet timelines identified in Ordinance No. 29,654 M.C.S., internal procedures will be solidified and staff will be assigned (or reassigned) as the Program is implemented, using a six-month pilot program with a small number of departments and an aggressive training and reassessment timeline.



### **III. Initial Pilot Period and Working Group**

The first six months of 2024 will be used as a pilot period to test the propriety and effectiveness of these regulations, identify and resolve pain points, and solidify procedures to be adopted by all departments and agencies. During this initial pilot period, five City departments will participate in a Procurement Set-Aside Working Group, which will convene at least monthly and review the procurements to be set aside by those departments for inclusion in the Program. The five departments are as follows: Capital Projects Administration, Department of Sanitation, Department of Property Management, Chief Administrative Office, and Department of Finance. Representatives of the City Council, Bureau of Purchasing, Chief Administrative Office, and Office of Supplier Diversity will also participate, and additional stakeholders will be asked to participate when appropriate to provide feedback and expertise.

### **IV. Training Development**

It is anticipated that buyers within the Bureau of Purchasing, contract managers within departments, Office of Supplier Diversity staff members, certified DBE vendors, and departmental directors will need to be trained to properly implement the new Procurement Set-Aside Program. The departmental representatives participating in the initial pilot period will develop training materials based on their experiences with the new Program, and new Purchasing forms and written training materials dedicated to the Program will be developed and distributed to departments as needed. In-person training with department leaders and contract managers will be scheduled as needed.

External stakeholders, including City vendors who are already certified DBEs, certified DBEs who are not yet City vendors, business owners who are eligible for certification who are not certified DBEs or City vendors, and technical assistance providers in the DBE community will be provided written materials regarding the Program and asked for feedback. In-person training with external stakeholders will be scheduled as needed, and City support for external stakeholders will be ongoing, including industry days, procurement fairs, and technical support.

### **V. Reporting, Community Outreach, and Internal Reassessments**

In accordance with City Code Section 70-462(b)(16), compliance with the Procurement Set-Aside Program must be reported with the EBO Scorecard required by Section 70-462, broken down by City department or agency and contract type. EBO Scorecards must be submitted to the City Council by October 1 of each year.

In addition to the annual reports to Council, the City will report progress on the Procurement Set-Aside Program during its implementation, using the City's website to post regulations, informational materials, Program procurement opportunities, and requests for feedback. This ongoing reporting will coincide with the implementation of the DBE Advisory Council by the Office of Supplier Diversity, which will be a forum for reporting progress, seeking feedback, and discussion with the stakeholder community. DBE Advisory Council subject matter will not be restricted to the Procurement Set-Aside Program, but the Program will be a priority of the DBE Advisory Council.



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Based on the initial six-month pilot period and community feedback, internal reassessments of staff assignments, internal procedures, training, data collection and management, and reporting related to the Procurement Set-Aside Program will be undertaken roughly midway through 2024. If amendments to these regulations or changes to internal processes are necessary, they will be implemented with the goal of full implementation of a tested and refined Procurement Set-Aside Program at the beginning of 2025.

## **VI. Amendments to Regulations, if Necessary**

If amendments to these regulations become necessary, City Code Section 2-1000(a)(3) requires that any amendments to these regulations must comply with the procedures required by Section 2-1000 for the initial adoption of regulations, including the public hearing and submittal to the Council for consideration.