

ORDINANCE
CITY OF NEW ORLEANS

CITY HALL: September 6, 2018

CALENDAR NO. _____

NO. _____ MAYOR COUNCIL SERIES

BY: COUNCILMEMBER MORENO AND BANKS

AN ORDINANCE to ordain Section 70-466 of the Code of the City of New Orleans, relative to City Council’s award of professional service contracts and adhering to the City’s Disadvantaged Business Enterprise (DBE) goals, to codify certain provisions, processes, and requirements; and to otherwise provide with respect thereto.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, that Section 70-466 of the Code of the City of New Orleans is hereby ordained to read as follows:

“Sec. 70-466 – City Council Contracts

Pursuant to Section 6-308 of the Home Rule Charter of the City of New Orleans, the City Council is authorized to administer its own competitive selection process for professional service contracts that regard its legislative authority and responsibilities, and regulatory authority and responsibilities. Accordingly, the following provisions shall control evaluation and satisfaction of DBE goals for such contracts. This Section weds Rule 45 of the City Council Rules, which governs the competitive selection process, to include specific processes relative to the review of DBE goals relative to requests for qualifications and requests for proposals relative to professional service contracts and follow the DBE certification and compliance procedures required by the Office of Economic Development, Office of Supplier Diversity:

- A. There is an overall goal of 35 percent for the utilization of DBEs for City Council Professional Service Contracts.
- B. The City Council should reject contract submittals that are subject to the requirements of this Section, and must not award, enter into or amend any contract subject to this Section that is not supported by documentation establishing that a respondent has either met the applicable DBE goal, or made good faith efforts to meet the applicable DBE goal.

20 C. Whether and to what extent a respondent's good faith efforts shall count towards
21 fulfillment of their DBE contract goal, shall depend on the following considerations,
22 which shall be specifically considered by the Selection Review Committee's in their
23 recommendation to the Council:

24 (1) That only business entities certified as SLDBE or LAUCP-DBE may be counted
25 toward the contract DBE participation goal. DBEs must be certified by the
26 proposal deadline date. Should a DBE fail to maintain their DBE certification
27 after contract award, but before performance commences, additional good faith
28 efforts to secure another certification shall be required.

29 (2) The entire amount of fees or commissions charged by a DBE for providing a bona
30 fide service, which includes such professional, technical, consultant, or
31 managerial services specifically required for the performance of the contract, shall
32 count toward fulfillment of DBE goals.

33 (3) When the respondent is in a joint venture with one or more DBE business entities,
34 after reviewing the joint venture agreement submitted by a respondent, must
35 provide a recommendation to the Council as to the percent of participation that
36 will be counted toward the achievement of the contract DBE participation goal.

37 (4) A DBE can be a prime respondent and count as one hundred percent (100%) of
38 the contract DBE participation goal, provided that the Prime DBE has met the
39 contract goal and will perform at least thirty percent (30%) of the work with its
40 own forces. A DBE as a prime contractors that fails to maintain DBE
41 certification throughout the term of the contract shall utilize and document their
42 Good Faith Efforts to achieve a reasonable amount of DBE participation on the
43 remaining work on the Contract.

44 (5) A respondent may count toward its contract goal only those DBE
45 subcontractors/suppliers performing a Commercially Useful Function.

46 i. “Commercially Useful Function” is defined as a discrete task or group of
47 tasks, the responsibility for performance of which shall be discharged by
48 the DBE firm by using its own forces or by actively supervising on-site
49 the execution of the tasks by another entity for whose work the DBE firm
50 is responsible.

51 ii. In determining whether a certified firm is performing a commercially
52 useful function, the factors include, but are not limited to:

53 a. Whether the business entity has the skill and expertise to perform
54 the work for which it is being utilized and possesses all necessary
55 licenses;

56 b. Whether the firm is in the business of performing, managing, or
57 supervising the work for which it has been certified and is being
58 utilized;

59 c. Whether the DBE subcontractor is performing a real and actual
60 service that is a distinct and verifiable element of the work called
61 for in a contract.

62 d. Whether the DBE subcontractor work performed constituted at
63 least fifty-one percent (51%) of the value of the sub-contract with
64 their own forces.

65 D. The Selection Review Committee is responsible for reviewing and submitting to the
66 Council, based on a respondent’s submittals, an evaluation of DBE participation to assess
67 DBE certification status, percentage of DBE participation, the value of sub-contract
68 dollars committed to a DBE, and whether the DBE will perform a commercially useful
69 function under the contract to conclude one of the following that:

70 (1) a respondent has met the goal;

71 (2) a respondent did not meet the goal, but did make Good Faith Efforts to meet
72 the goal; or

73 (3) a respondent did not meet the goal and did not make Good Faith Efforts to
74 meet the goal.

75 E. This Section does not apply to the following City Council contracts:

76 a. Professional services contracts for an individual Councilmember;

77 b. The City Council's annual audit; and

78 c. Emergency situations as provided in Rule 45.

79 F. Ongoing monitoring of the DBE goals provided herein shall be performed by the Office
80 of Economic Development, Office of Supplier Diversity to ensure that all applicable
81 Council Contracts after award continue to meet their goals or make good faith efforts
82 relative thereto, throughout the duration of the contract. Any determinations of non-
83 compliance shall be timely reported in writing to the City Council.

84 G. The City Council Research Office or the Council Fiscal Office shall compile an annual
85 report to the City Council and submit such report by March 31st of each year identifying
86 the Council's DBE participation goals and attainment rates for professional service
87 contracts granted the prior year. The DBE report shall include the following information:

88 a. The total number and value of all contracts awarded during the prior year;

89 b. The total number and value of all contracts awarded to DBEs as prime
90 contractors (expressed as a percentage and dollar value of (a));

91 c. The total number and value of all contracts awarded by non-DBE prime
92 contractors to DBEs as subcontractors (expressed as a percentage and dollar
93 value of (a)); and

94 d. The overall number and value of all contracts awarded to DBEs during the
95 reporting period (the sum of (b) and (c)).

96 H. The Office of Supplier Diversity (OSD) shall monitor all contracts issued pursuant to this
97 section to ensure ongoing and continued compliance with the goals provided herein,
98 throughout the entire contract term. OSD shall notify the Council's Chief-of-Staff in
99 writing within five business days of determining that a contract is not in compliance with
100 the goals provided herein.

101 I. A waiver from the provisions of the section may be submitted to the Office of Supplier
102 Diversity (OSD) prior to the issuance of a Request for Proposals (RFP) or Request for
103 Qualifications (RFQ) for a professional services contract. Submittal of a waiver request
104 shall be on forms provided by OSD and shall be submitted along with a copy of the
105 proposed RFP/RFQ. The Director of OSD shall recommend to the City Council, in
106 writing, with regards to the waiver request. Upon receipt of a waiver recommendation
107 from OSD, the final execution of a waiver shall be authorized by the Council's Chief-of-
108 staff upon consultation with councilmembers.

109 **SECTION 2.** This ordinance shall not apply to contracts already awarded and contracts already
110 in the process of competitive selection pursuant to Rule 45.

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: