



BUSINESS DEVELOPMENT DIVISION

Interoffice Memorandum

**Public Hearing
Agenda Item**

TO: Mayor Jerry L. Demings
and
County Commissioners

FROM: Sheena Ferguson, Manager
Business Development Division

THROUGH: Anne Kulikowski, Director
Administrative Services Department

DATE: July 15, 2020

RE: **Public Hearing for Board Meeting on August 11, 2020**
Approval of an ordinance amendment pertaining to Minority/Women Business Enterprise participation, deleting Section 17-321(D) from Chapter 17, Article III, Orange County Code, Division 4, Section 17-321 ("Contract and Subcontract Goals") and providing for codification and an effective date.

I. EXPLANATION & SUMMARY:

By enacting Chapter 17, Article III, Division 4 of the Orange County Code (the "Minority/Business Enterprise Ordinance"), the Board established contracting and subcontracting participation goals for minority and women business enterprises ("M/WBE(s)") that are related to the County's procurement of construction, professional services, other services, and goods (the "M/WBE Participation Goal(s)"); and

Presently, pursuant to subsection (d) of Section 17-321, Orange County Code, so long as construction firms are the lowest bidders within the thresholds presented in a "sliding scale" therein, the County is required to award construction contracts to firms that have neither: (1) met the County's M/WBE Participation Goal; nor (2) made a good faith effort in assisting the County in meeting such goal.

This provision has contributed to lower than desired achievement of the M/WBE Participation Goal related to construction contracts. As a result, staff requests the Board's

Mayor Jerry L. Demings
and
County Commissioners
July 15, 2020
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approval of the presented ordinance amendment, which deletes the above-discussed "sliding scale" provision. Once deleted, all construction contractors could be required to either: (1) meet the County's M/WBE Participation Goal; or (2) provide the County with evidence that it made a good faith effort to meet such goal, in order to be awarded a construction contract.

Please contact me at (407) 836-7345 with any questions.

II. BOARD ACTION REQUESTED:

APPROVAL OF AN ORDINANCE AMENDMENT PERTAINING TO MINORITY/WOMEN BUSINESS ENTERPRISE PARTICIPATION, DELETING SECTION 17-321(D) FROM CHAPTER 17, ARTICLE III, ORANGE COUNTY CODE, DIVISION 4, SECTION 17-321 ("CONTRACT AND SUBCONTRACT GOALS") AND PROVIDING FOR CODIFICATION AND AN EFFECTIVE DATE.

Attachment

cc: Byron Brooks, County Administrator
Randy Singh, Deputy County Administrator
Anne Kulikowski, Director, Administrative Services
Jeffrey Newton, Orange County Attorney
Cristina T. Berrios, Assistant County Attorney

ORDINANCE NO. 2020-_____

AN ORDINANCE AMENDMENT PERTAINING TO
MINORITY/WOMEN BUSINESS ENTERPRISE
PARTICIPATION, DELETING SECTION 17-321(D) FROM
CHAPTER 17, ARTICLE III, ORANGE COUNTY CODE,
DIVISION 4, SECTION 17-321 (“CONTRACT AND
SUBCONTRACT GOALS”) AND PROVIDING FOR
CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, the Orange County Board of County Commissioners (the “Board”) has a demonstrated compelling government interest in remedying past and current discrimination in the procurement of goods and services by Orange County, Florida (the “County”); and

WHEREAS, in Chapter 17, Article III, Division 4 of the Orange County Code (the “Minority/Business Enterprise Ordinance”) the Board established contracting and subcontracting participation goals for minority and women business enterprises (“M/WBE(s)”) that are related to the County’s procurement of construction, professional services, other services, and goods (the “M/WBE Participation Goal(s)”); and

WHEREAS, under certain circumstances, subsection (d) of Section 17-321, Orange County Code, requires that the County award construction contracts to firms that have neither: (1) met the County’s M/WBE Participation Goal; nor (2) made a good faith effort in assisting the County in meeting its M/WBE Participation Goals; and

WHEREAS, based on lower than desired achievement of the M/WBE Participation Goal related to construction contracts, the Board now finds it necessary to amend Section 17-321, Orange County Code, to remove that above-referenced requirement.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ORANGE COUNTY, FLORIDA:

Section 1. Amendment; In General. Throughout this ordinance, additions are shown by underlines, deletions are shown by strikethroughs, and asterisks (***) indicate portions of text which have not changed.

Section 2. Amendment to Section 17-321. Section 17-321 (“Contract and subcontract goals.”) is amended as follows:

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Section 17-321. Contract and subcontract goals.

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~~(d) — If in the bidding for a construction contract the established level and percentage subcontract goals are not achieved by the low bidder, and it is deemed that a good faith effort for compliance has not been shown by the low bidder, then the bid shall be rejected by the purchasing manager as nonresponsive but only if the next lowest responsive bid does not exceed the low bid by more than:~~

~~(1) — Eight (8) percent on contract awards up to one hundred thousand dollars (\$100,000.00);~~

~~(2) — Seven (7) percent on contract awards from one hundred thousand dollars (\$100,000.00) to five hundred thousand dollars (\$500,000.00);~~

~~(3) — Six (6) percent on contract awards from five hundred thousand dollars and one cent (\$500,000.01) to seven hundred fifty thousand dollars (\$750,000.00);~~

~~(4) — Five (5) percent on contract awards from seven hundred fifty thousand dollars and one cent (\$750,000.01) to two million dollars (\$2,000,000.00);~~

~~(5) — Four (4) percent on contract awards from two million dollars and one cent (\$2,000,000.01) to five million dollars (\$5,000,000.00); or~~

~~(6) — Three (3) percent on contract awards over five million dollars and one cent (\$5,000,000.01).~~

~~Notwithstanding the foregoing provisions, if the next low bid is responsive only because of the bidder having made good faith effort (not because of having met the goals set forth in subsection (a)), the board may award the contract to the next low bidder only if the value of its minority/women business enterprise~~

participation will be equal to or greater than that of the low bidder.

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Section 3. Inclusion in Code. It is the intention of the Board that the provisions of this Ordinance shall become and be made a part of the Orange County Code; and that the sections of this Ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intentions.

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Section 4. Effective date. This Ordinance shall take effect pursuant to general law.

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ADOPTED THIS ___ DAY OF _____, 2020.

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ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

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By: _____
Jerry L. Demings
Orange County Mayor

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ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

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By: _____
Deputy Clerk

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