THE CITY OF ASHEVILLE

STAFF REPORT

Council Meeting Date: October 27, 2020

Subject: City of Asheville Business Inclusion Policy

Staff Resource(s): Sam Powers, Community and Economic Development
Rosanna Mulcahy, Business Inclusion Manager
Nikki Reid, Economic Development Program Director
Brad Branham, City Attorney
Aarin Miles, Assistant City Attorney

Action Requested: Approval of a resolution to adopt the "City of Asheville Business Inclusion Policy" that seeks to address race- and gender-based disparities in City contracting and procurement.

Background:

- In 2018, a disparity study was conducted which revealed significant disparities in the Asheville regional area among minority- and women-owned businesses in the awarding of City contracts.
- This study provides significant legal evidence for the City to implement a policy to address the documented disparities.
- The City's now-expired Minority Business Plan, adopted in 1998, was race and gender-neutral and did not adequately address the disparities in City contracting, as documented in the Disparity Study.
- The City of Asheville Business Inclusion Policy is intended to replace and expand upon the Minority Business Plan as guidance for the Business Inclusion Office and city departments.
- Since January 2020, City staff from various departments have worked on drafting and reviewing the new policy.
- Policy measures were developed with careful research of comparable North Carolina municipal policies and practices and federal, state, and local laws.
- The policy's completion aligns with the 30-60-90 day benchmarks set by the City Manager for reworking city government priorities as a response to the recent protests about racial justice in Asheville.
- In addition, the responses from the grantee groups included in the 2019 Racial Healing Mini-Grant indicated that Black community members desire to see more opportunities for Black-owned businesses to win City contracts and greater clarity and guidance in the contracting process.
- The policy outlines the following steps that the City will take to help reduce disparities in contracting:
    - Defining management and staff roles and responsibilities;
    - Maintaining an updated database of available small and minority- and women-owned businesses;
    - Providing certification, networking opportunities, workshops, and training for such businesses;
    - Requiring that prime contractor, bidding on contracts, perform outreach in the form of good faith efforts to obtain a utilization percentage of such businesses following contract-specific goals set by the City; and
    - Many other key measures.
- The policy aims to become effective on January 1, 2021.
- In the coming months, staff will:
    - Develop procedures for implementation;

    - Conduct community outreach with stakeholders to inform them of the new policy and seek feedback on policy implementation;
    - Work through a budget to assist with policy implementation;
    - Begin certifying small and minority- and women-owned businesses;
    - Build and maintain a database of such businesses; and
    - Develop plain-language materials for all businesses and bidders who may participate in City contracting.

Council Goal(s):
- An Equitable and Diverse Community
- Thriving Local Economy

Committee(s) and Commission(s):
- Human Relations Commission of Asheville - 09/30/2020 - For information only
- Planning and Economic Development Committee - 10/12/2020, recommended by unanimous approval

Pro(s):
- Provides the necessary framework to help ensure greater participation in City contracts by small, minority- and women-owned businesses
- Advances the Equity Action Plan by implementing the necessary steps to achieve equitable outcomes within City contracting and procurement
- Demonstrates the City of Asheville's commitment to reducing racial disparities and discrimination
- Reduce income gaps between black and white-owned businesses
- Increases the City's awareness of available minority, women, and small business vendors
- Increases Minority, Women, and Small Business Enterprises (MWSBEs) utilization in City contracting
- Promotes existing and start-up development of small business growth and profitability in the Asheville Regional Area
- Monitors, evaluate, and reports on Minority and Women Business Enterprises
- Directs the City to maintain a database of available & certified MWSBEs
- Defines the parameters for MWSBE Certification
- Defines the Roles and Responsibilities of key City personnel
- Provides guidance on other measures the City may take to promote Business Inclusion
- Establishes annual aspirational and contract-by-contract subcontracting goals for MWSBEs participation in City contracts;
- Establishes standards for good faith efforts;
- Directs City Manager to ensure the integration of the Asheville Business Inclusion Policy components into all City Departments' practices and processes.

Con(s):
- The current staffing levels of the Business Inclusion Office are not sufficient to meet the policy's demands.
- Staff will be evaluating the needs and address staffing needs in the FY 22 budget.
- The adoption of this policy adds another level of compliance to City bidding and contracting processes.
- There may be additional costs associated with no longer choosing the lowest bids on contracts in some cases, as the standard of responsiveness will change to include adequate MWBE outreach to facilitate utilization.
- Suppose the apparent lowest bidder does not perform outreach, in the form of good faith efforts, for each MWBE utilization goal. In that case, their bid may be rejected in favor of the next-lowest bidder who did meet the standard of responsiveness.

- This is difficult to quantify as it is unknown how many bidders would be non-compliant with the standard.

Fiscal Impact:
- The staff is working closely with the Budget Division to produce a budget for policy implementation.
- Likely impacts include the addition of a staff position to the Business Inclusion Office, investment in a co-working space for minority business owners, funding for future disparity studies, and funding for training.

Suggested Motion:
- Motion to approve a resolution to adopt and establish the City of Asheville Business Inclusion Policy.

Attachment(s):
- Draft of Policy
- Resolution

RESOLUTION NO: 20-_____

RESOLUTION ESTABLISHING THE CITY OF ASHEVILLE BUSINESS INCLUSION POLICY TO PROMOTE ECONOMIC INCLUSION AND FULL EQUITABLE UTILIZATION OF FIRMS THAT ENGAGE IN BUSINESS WITH THE CITY IN THE ASHEVILLE REGIONAL AREA

WHEREAS, the City of Asheville has committed to Equity and Inclusion within all City practices to include City contracting; and

WHEREAS, the City of Asheville's Minority Business Plan expired in 2013; and

WHEREAS, the City of Asheville contracted with BBC Consulting to conduct a Disparity Study in 2018 to review City contracting ("the Disparity Study"); and

WHEREAS, the Disparity Study Final Report was presented to the Asheville City Council in April 2019. The results indicated that some minority-owned and women-owned businesses, viewed together, received lower participation in city contracts compared to business availability within the relevant geographic market ("Asheville Regional Area"), thus displaying substantial disparities in areas of City contracting; and

WHEREAS, the Disparity Study demonstrated a strong evidentiary basis for racial and gender disparities, which is supported by both substantial statistical evidence and anecdotal evidence of discrimination. There is, therefore, a compelling government interest in remedying such disparities; and

WHEREAS, such a compelling government interest has been accepted by federal courts as legally sufficient for governmental entities to incorporate a race and gender-conscious contracting policy which is narrowly tailored to remedy the aforementioned disparities; and

WHEREAS, implementing such a policy would promote equal opportunity through City contracts which will enhance competition on City projects and promote equal opportunity and full participation by all segments of the business community; and

WHEREAS, this policy is consistent with the City of Asheville's Living Comprehensive plan in promoting a resilient economy and interwoven equity by providing opportunities for small, minority-owned, and women-owned businesses to participate in City contracting.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

1. The Asheville Business Inclusion Policy ("ABI Policy") be and is hereby adopted.

2. The Asheville City Manager shall manage the implementation of the ABI Policy.

3. The Asheville City Manager shall have the authority to make modifications and amendments to the policy that are minor in nature. All other modifications and amendments shall be brought before the City Council for consideration.

4. In the form of a request for a budget amendment, the policy shall be brought before the City Council every five (5) years for consideration on funding for further disparity studies.

5. Should any section or provision of this policy be declared invalid or unconstitutional by any court of competent jurisdiction, the declaration shall not affect the validity of this policy as a whole or any part thereof that is not specifically declared to be invalid or unconstitutional.

6. The policy shall be implemented and effective, not before January 1, 2021.

Read, approved, and adopted this 27th day of October 2020.

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CITY CLERK MAYOR

Approved as to form:

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CITY ATTORNEY