A-1

SHELBY COUNTY GOVERNMENT

ENGINEERING DEPARTMENT

REQUEST FOR PROPOSAL

Shelby County

Tennessee
Mayor

A C Wharton, Jr.,

Request for Proposal

Shelby County Government

Purchasing Department

160 N. Main, Suite 550
Memphis, TN 38103

Issued: April 22, 2009
Due: May 26, 2009 @ 2:30 p.m. (Central Standard Time)
RFP # 09-004-73

CONGESTION MANAGEMENT PROGRAM
PROJECT SET #3

Shelby County Government is soliciting proposals for the provision of Construction Services to provide, improvements for various corridors of intersections in Shelby County, Tennessee. The RFP is located on the County's website at www.shelbycountytn.gov. Copies of the project manual, drawings and specification must be obtained from the Office of the County Engineer, 160 North Main Street, Room 350, Memphis, Tennessee 38103, upon receipt of a $250.00 non-refundable deposit.

A non-mandatory pre-bid conference will be held Monday, May 18, 2009 at 9:30 A.M.., at the Office of the Shelby County Engineer, Suite 350, 160 North Main Street, Memphis, Tennessee 38103.

All bids will be opened and publicly read by the Shelby County Government at the time mentioned below in the Purchasing Department, Suite 550, 160 North Main Street, Memphis, Tennessee 38103.

The proposal, as submitted, should include all estimated cost related to the services requested in this RFP. If selected, your proposal will be the basis for negotiating a contract with Shelby County Government. Respondents requesting additional information or clarification are to contact, Nelson Fowler at nelson.fowler@shelbycountytn.gov.

Proposals must be received in the office of the Administrator of Purchasing **no later than 2:30 P.M. on, May 26, 2009.** Proposals should be addressed to:

Nelson Fowler, Manager A
Shelby County Government
160 N. Main, Rm. 550
Memphis, TN 38103

The package containing the original proposal (clear identified as original) and two (2) copies of your proposal must be sealed and marked with the Proposers name and "**CONFIDENTIAL, "Congestion Management Program Project Set #3", RFP # 09-004-73** noted on the outside.

Sincerely,

Nelson Fowler, Manager A
Purchasing Department Shelby County Government

cc: Ahmad Nemati, PE

TABLE OF CONTENTS

I. INTRODUCTION
II. MINIMUM PROPOSER REQUIREMENTS
III. CORRESPONDENCE
IV. PROPOSAL SUBMISSION DEADLINE
V. PROPOSAL TIMELINE
VI. PROPOSAL CONDITIONS
VII. GENERAL REQUIREMENTS AND INFORMATION
VIII. AWARD OF CONTRACT
IX. GRATUITY DISCLOSURE FORM
X. NOTICE TO BIDDERS

Note: Please make sure you pay close attention to Sections: I-V, IX & XI. These sections will clearly outline what information is required to properly respond and prepare your RFP response.

I. INTRODUCTION

Shelby County Government (the "County"), is seeking proposals from interested and qualified firms for the construction of intersection improvements. This Request for Proposal ("RFP") is being released to invite interested and qualified firms to prepare and submit proposals in accordance with instructions provided where the lowest responsive bidder will be selected and invited to enter into a contractual relationship with Shelby County for the Services outlined in this RFP. All work shall be completed in accordance with the most current version of the Tennessee Department of Transportation Standard Specifications for Road and Bridge Construction and the Tennessee Department of Transportation Roadway and Structures Drawings and additional specifications and special provisions contained in the plans and contract documents.

II. MINIMUM PROPOSER REQUIREMENTS

All Proposers must:

1. Must have a current EOC number at the moment of the bid opening.
2. Must submit a Bid Bond in the amount of 5% of their bid. This bond must be submitted with your bid.
3. Must be able to demonstrate before the award of the contract that the proposer (and subcontractors if applicable) has all appropriate licenses and certifications required in the State of Tennessee to perform the Services.
4. Meet all other requirements for the performance of the Services in accordance with the provisions of this RFP.
5. TDOT DBE contractors must be pre-qualified by and in good standing with the Tennessee Department of Transportation. To be considered for prequalification prospective bidders' shall file a "Prequalification Questionnaire" with the Tennessee Department of Transportation at least fourteen (14) days prior to the date of opening of proposals. (A prospective subcontractor must be prequalified by and in good standing with the Tennessee Department of Transportation prior to being approved as a subcontractor and before any work takes place).

III. CORRESPONDENCE

All correspondence, proposals and questions concerning the RFP are to be submitted to:

Nelson Fowler, Manager A
Shelby County Government
160 N. Main St. Suite 550
Memphis, TN 38103
(901) 545-4360

Respondents requesting additional information or clarification are to contact Nelson Fowler in writing at nelson.fowler@shelbycountytn.gov or at the address listed above. Questions should reference the section of the RFP to which the question pertains and all contact information for

the person submitting the questions. ***IN ORDER TO PREVENT AN UNFAIR ADVANTAGE TO ANY RESPONDENT, VERBAL QUESTIONS OUTSIDE OF OUR PRE-BID CONFERENCE WILL NOT BE ANSWERED. The deadline for submitting questions will be Thursday, May 21, 2009 at 12:00 p.m.***

These guidelines for communication; have been established to ensure a fair and equitable process for all respondents. Please be aware that contact with any other personnel (other than the person clearly identified in this document) within Shelby County or its benefit administrators regarding this RFP may disqualify your company from further consideration.

IV. PROPOSAL SUBMISSION DEADLINE

All proposals must be received at the address listed above no later than 2:30 PM on Tuesday, May 26, 2009. Facsimile or electronically transmitted proposals will not be accepted since they do not contain original signatures. Postmarks will not be accepted in lieu of actual receipt. Late or incomplete proposals may not be opened and considered. Under no circumstances, regardless of weather conditions, transportation delays, or any other circumstance, will this deadline be extended.

V. PROPOSAL TIMELINE

Shelby County reserves the right to modify this timeline at any time. If the due date for proposals is changed, all prospective Proposers shall be notified.

Request for Proposals Released	Wednesday, April 22, 2009
Pre-Bid Conference	Monday, May 18, 2009, 2009 at 9:30 AM
Note:	The Pre-Bid Conference is Non-Mandatory
Proposal Due Date	Tuesday, May 26, 2009
Notification of Award	June, 2009

The County may reproduce any of the Proposers proposal and supporting documents for internal use or for any other purpose required by law.

VI. PROPOSAL CONDITIONS

A. Contingencies

This RFP does not commit the County to award a contract. The County reserves the right to accept or reject any or all proposals if the County determines it is in the best interest of the County to do so. The County will notify all Proposers, in writing, if the County rejects all proposals.

B. Modifications

The County reserves the right to issue addenda or amendments to this RFP.

C. Proposal Submission

To be considered, all proposals must be submitted in the manner set forth in this RFP. It is the Proposers responsibility to ensure that its proposals arrive on or before the specified time.

D. Incurred Costs

This RFP does not commit the County to pay any costs incurred in the preparation of a proposal in response to this RFP and Proposers agree that all costs incurred in developing this RFP are the Proposers responsibility.

E. Final Authority

The final authority to award a contract rests solely with the Shelby County Purchasing Department.

F. Proposal Validity.

Proposals submitted hereunder will be firm for one hundred twenty (120) calendar days from the due date unless otherwise qualified.

G. Living Wage

Shelby County Government Ordinance # 328 "Living Wages" is hereby incorporated into this Request for Proposal and any resulting contract. Please make sure that you review and apply the requirements of the ordinance to your proposal response. Failure to do so will result in disqualification from the review and award process. You may view and print the ordinance as a separate attachment for this RFP (***please do not forget to download ALL the additional attachments***).

H. LOSB

SHELBY COUNTY GOVERNMENT
LOCALLY OWNED SMALL BUSINESS (LOSB) PROGRAM
FOR CONSTRUCTION SERVICES

Congestion Management Program
Project Set #3

General

Shelby County Government is committed to a policy of non-discrimination pursuant to the Equal Protection provisions of the United States Constitution. It is further the policy of Shelby County that it's purchasing and contracting practices encourage the use of Locally-Owned Small Businesses (LOSB's) in all solicitations. In furtherance of these policy objectives, Shelby County seeks to afford all citizens equal opportunities to do business on county contracts and to ensure that all bidders, proposers, or Contractors doing business with Shelby County provide to LOSB's, maximum practicable opportunities, commensurate with availability, price and capabilities required, to participate on contracts which are paid for, in whole or in part, with monetary appropriations from Shelby County.

Shelby County seeks to prevent discrimination against any person or business in pursuit of these opportunities on the basis of race or gender. Shelby County will conduct its contracting and purchasing programs so as to discourage any discrimination and will actively seek to resolve all claims of discrimination brought against Shelby County or any Contractors involved in such contracting and purchasing programs.

Shelby County has determined that 20% of the contract sum will be contracted with LOSB vendors. For assistance and information regarding LOSB participation, Bidders shall contact:

Ms. Doris Vester-Mickens
Office of Equal Opportunity Compliance
Board of Commissioners of Shelby County
160 North Main Street, Suite 969
Memphis, Tennessee 38103
Phone: 901-545-4336
Fax: 901-545-3473
E-mail: Doris.Vester-Mickens@shelbycountytn.gov

Definitions

The definitions used in this document are as follows:

1. **"Bidder"** or **"Proposers"** means any person, firm, partnership, association, or joint venture seeking to be awarded a contract or subcontract to provide goods, commodities or services.
2. **"Certification"** or **"Certified"** means a Business that is certified by Shelby County Government under the LOSB program.
3. **"Commercially useful function"** means being responsible for the management and performance of a distinct element of the total work.
4. **"Contractor"** shall mean any person or business enterprise that submits a bid or proposal to provide labor, goods or services to Shelby County by contract for profit in the area of construction or construction-related activities; and, any person or firm who supplies or provides labor, goods or services to Shelby County by contract for profit.
5. **"Efforts to Achieve LOSB Participation"** means that the Contractor will solicit LOSB Participation with respect to the procurement and will consider all sub-bids and quotations received from LOSB's. When a subcontract is not awarded to the LOSB, the Contractor must document the reason(s) the award was not made and substantiate that documentation in writing pursuant to the provisions of this Program.
6. **"Locally Owned Small Business (LOSB)"** means a business whose home office is located in Shelby County, whose annual revenues do not exceed $3,000,000 and who has been certified by Shelby County Office of Equal Opportunity Compliance.
7. **"Non-LOSB"** means a business which is not certified as a LOSB.
8. **"Unavailable"** means either that: (1) there is no LOSB providing goods or services requested; or, (2) no LOSB submitted a bid.

Requirements and Compliance

All firms or entities seeking to become Contractors as outlined herein are required to make good faith efforts to achieve LOSB participation when submitting a proposal or bidding on Shelby County procurements. Bidders and Proposers shall not discriminate on the basis of race or gender when soliciting bids in the performance of Shelby County's procurements. Discrimination complaints brought to the attention of Shelby County Office of Equal Opportunity Compliance (or its designee) will be reviewed and investigated to the extent necessary to determine the validity of such complaints and what actions, if any, should be taken by Shelby County.

Policies and Procedures

Shelby County may adopt policies and procedures as necessary to carry out and implement its powers and duties with regard to the LOSB Program. It is the goal of Shelby County to encourage participation by LOSB's and to adopt rules and regulations which achieve to the greatest extent possible a level of participation by LOSB's taking into account the total number of all Contractors and suppliers. Therefore, Shelby County will review each procurement request to determine the maximum potential for utilization of LOSB's. This review is based on the availability of qualified LOSB's providing goods or services as it relates to the scope of the bid or procurement process. The following procedures may be utilized during the procurement process.

1. **Pre-Bid Activity**
   a. Bid Language
      Shelby County may insert language into each bid specification describing the LOSB Program to assure that all prospective bidders are aware of the requirements to make efforts to utilize LOSB's.
   b. Notification
      Shelby County may provide written notification to Contractors and LOSB's regarding: pre-bid conferences; technical assistance to LOSB's; LOSB Program procedures and required documentation; and, provide a list of LOSB's who have expressed an interest in competing for the bid or in performing as a subcontractor.

2. **Contractor's Responsibilities**
   a. Efforts to Achieve LOSB Participation
      All entities seeking to become Contractors are required to make efforts to achieve maximum LOSB participation, as outlined in this LOSB Program, when submitting a response to a bid or negotiated proposal in response to a Shelby County procurement opportunity. Such Efforts should be documented on **LOSB Form "A"**.
   b. Utilization
      Contractors are required to utilize legitimate LOSB's in order to receive credit for the utilization of a LOSB. Contractors must document all LOSB's to be utilized, the percentage of utilization and the intended scope of work. Such information should be submitted on **LOSB Form "B"**. This documentation must be submitted with the bid or negotiated proposal document.
   c. Commercially Useful Functions
      All LOSB's identified on **LOSB Form "C"** or **LOSB Form "D"** shall perform a Commercially Useful Function.
   d. Unavailability
      If a potential Contractor's efforts to obtain LOSB participation are unsuccessful due to the unavailability of a LOSB, the Contractor will submit a statement of unavailability. **LOSB Form "A**."
   e. Pre-Work Conference
      Any Contractor who is the successful bidder shall be required to attend a conference with Shelby County prior to beginning the work. The primary purpose of this conference is to review the project scope and review LOSB participation as outlined in **LOSB Form "B"**. Shelby County will also review the Statement of Intent to Perform as a Subcontractor or Provide Supplies or Services as documented on **LOSB Form "C"**.

f. Post-Award Change

Any Contractor who determines that a LOSB identified on **LOSB Form "B"** cannot perform shall request approval from Shelby County to contract with an alternate subcontractor pursuant to this LOSB Program. Such request will be reviewed and approved only after adequate documentation for the proposed change is presented.

g. LOSB Certification

Each month the Contractor shall submit **LOSB Form "D"** certifying all payments made to LOSB's.

3. LOSB Responsibilities

a. Commercially Useful Function

It is the responsibility of each LOSB providing subcontracted goods and/or services to submit **LOSB Form "C"** certifying that it is performing the work and that it is a Commercially Useful Function.

Written Agreement

Shelby County policies and procedures on LOSB participation are designed to create contractual relationships between Contractors and LOSB's. Therefore, a Contractor may utilize the services of a LOSB in estimating and satisfying the scope of work, provided that a written contract/agreement is executed between the Contractor and the LOSB.

Certification

To ensure that the ownership and control over decision-making and day-to-day operations of a Certified LOSB is legitimate, Shelby County reserves the right to verify the ownership and control of each LOSB utilized.

Monitoring LOSB Utilization

Shelby County intends to monitor and enforce this LOSB Program. Shelby County reserves the right to conduct random audits of each of its Contractor's LOSB's. Shelby County reserves the right to reevaluate a LOSB's certification at any time.

Efforts to Achieve LOSB Participation

The Contractor shall consider all bids and/or quotations received from LOSB's. When a subcontract is not awarded by a Contractor to any of the competing LOSB's, the Contractor must document the reason(s) the award was not made to the LOSB's. It is the responsibility of the Contractor to prove that it employed Efforts to Achieve LOSB participation. Evidence supporting the Contractor's Efforts must be documented on **LOSB Form "A"**, which must include, but is not limited to, the following:

1. Contractor must submit proof that it solicited LOSB participation through reasonable and available means including, but not limited to:
    a. Written notices to LOSB's who have the capability to perform the work of the contract or provide the service;
    b. Direct mailing, electronic mailing, facsimile or telephone requests.
2. Contractor must submit proof that it provided interested LOSB's with adequate information about plans, requirements and specifications of the contract in a timely manner to assist them in responding to a solicitation.
3. Contractor must submit proof that it made Efforts to Achieve LOSB Participation including, but not limited to, proof that it made opportunities available to LOSB suppliers and identified opportunities commensurate with opportunities made available and identified to Non LOSB's. Such proof will includes the names of businesses, contact person(s), addresses, telephone numbers, and, a description of the specifications for the work selected for subcontracting.
4. Contractor must submit proof that it allowed LOSB's the opportunity to review bid specifications, blue prints and all other bid related items at no charge. The Contractor must allow sufficient time for review prior to the bid deadline.
5. Contractor must submit proof that it made Efforts to Achieve LOSB Participation by not rejecting a LOSB as unqualified or unacceptable without sound reasons based on a thorough investigation of their capabilities. Contractor must submit proof of the basis for rejecting any LOSB deemed unqualified or unacceptable by the Contractor. The Contractor will not impose unrealistic conditions of performance on LOSB's seeking subcontracting opportunities.

The Contractor must fully cooperate with Shelby County in its post-contract award LOSB Program audit and compliance efforts.

Substitution of LOSB's after Contract Award

In order to make a substitution of a LOSB, a Contractor must make a request to Shelby County. This request must be submitted in writing to Shelby County. Shelby County reserves the right to approve any substitution of a LOSB. The Contractor has the responsibility to provide Shelby County with a reasonable basis for the substitution. If the Contractor desires to substitute the LOSB with a Non-LOSB, then the Contractor must comply with the Effort to Achieve LOSB Participation provisions set forth herein.

Noncompliance with LOSB Program

Any of the following reasons, individually or collectively, may result in suspension from bidding, prohibition from contracting, or cancellation of contracts:

1. The failure to perform according to contract provisions relating to this LOSB Program;
2. Violation of, circumvention of, or failure to comply with the LOSB Program; and/or,
3. Other reasons deemed appropriate by Shelby County.

Questions and Information

Questions regarding this LOSB Program and requests for information should be directed to:

Ms. Doris Vester-Mickens
Office of Equal Opportunity Compliance
Board of Commissioners of Shelby County
160 North Main Street, Suite 969
Memphis, Tennessee 38103
Phone: 901-545-4336
Fax: 901-545-3473
E-mail: Doris.Vester-Mickens@shelbycountytn.gov

Construction

This LOSB Program is consistent with Shelby County Policies and Procedures. Wherever conflicts exist, the provision in the Shelby County Policies and Procedures will prevail.

LOSB Program Forms Description

- **LOSB Form A -- Certification of Efforts**

  Contractors are required to submit **LOSB Form "A"** with proposals as evidence and documentation of efforts that have been made to contact LOSB's for participation as subcontractors, joint venture partners or suppliers of goods and services. Contractors are required to contact LOSB's and solicit quotes for goods and services. All responses to the Contractor's solicitation should be recorded and reported.

- **LOSB Form B -- LOSB Utilization Plan**

  A Contractor is required to submit **LOSB Form "B"** with its Proposal in order to identify all LOSB's they propose to utilize in providing the goods and services included in the Proposal. Contractors may only include a proposed provider of goods or services on **LOSB Form "B"**, if the entity is a legitimate LOSB. Additionally, if such entity will provide services, Contractors may only list LOSB's on **LOSB Form "B"** if the entity will perform a Commercially Useful Function. The Successful Contractor will be required to finalize and submit **LOSB Form "B"** prior to award of a contract. **LOSB Form "B"** will be incorporated into the contract and will become a contractual obligation of the Successful Contractor. **LOSB Form "B"** shall not be changed or altered after award of a contract without approval from Shelby County. The Contractor is required to provide written notice describing the reasons for any proposed change to Shelby County and to obtain approval from Shelby County of any changes to **LOSB Form "B"**.

- **LOSB Form C –Statement of Intent to Perform as a Subcontractor or Provide Supplies or Services**

  Contractors are required to have each subcontracted LOSB providing services complete **LOSB Form "C"** certifying that it is performing the work and that it is a Commercially Useful Function.

- **LOSB Form D – Statement of Payments to LOSB's**

  Contractors are required to record and maintain information regarding the utilization of LOSB's and all other information during the performance of awarded contracts. This information shall be recorded and maintained on **LOSB Form "D"**. The form is required to be submitted to Shelby County each month. **LOSB Form "D"** must be completed in its entirety with information regarding the types of goods purchased from LOSB's or the types of services rendered by LOSB's and dollars amounts paid for their goods or services.

Shelby County
LOSB Program

LOSB FORM A

CERTIFICATION OF EFFORTS TO ACHIEVE LOSB PARTICIPATION
(To Be Submitted with the Bid/Proposal)

Company Name: White Contracting, Inc.
Bid No.: _____

I certify that the following efforts where made to achieve LOSB participation:

NO		YES	
A	Provided written notices to LOSB's who have the capability to perform the work of the contract or provide the service	✓	
B	Direct mailing, electronic mailing, facsimile or telephone requests		
C	Provided interested LOSB's with adequate information about plans, requirements and specifications of the contract in a timely manner to assist them in responding to a solicitation	✓	
D	Allowed LOSB's the opportunity to review bid specifications, blue prints and all other bid/RFP related items at no charge, and allowed sufficient time for review prior to the bid deadline	✓	
E	Acted in good faith with interested LOSB's, and did not reject LOSB's as unqualified or unacceptable without sound reasons based on a thorough investigation of their capabilities	✓	
F	Did not impose unrealistic conditions of performance on LOSB's seeking subcontracting opportunities	✓	

Additionally, I contacted the referenced LOSB's and requested a bid/proposal. The responses I received were as follows:

Name and Address of LOSB	Type of Work And Contract Items, Supplies or Services to be Performed	Response	Reason for Not Accepting Bid/Proposal
Charles Hill Contractors	Trucking Erosion Control	Bidding	
1956 Dunn Ave Memphis, TN	Landscape		
The State Guardian Co. Box 1026 Collierville TN	Guardian	Bidding	
The Surveyor	Construction Staking	Bidding	

(If additional space is required this form maybe duplicated)

If applicable, please complete the following:

I hereby certify that LOSB's were "Unavailable" as defined in the LOSB Program to submit bids to provide goods and services for this RFP/Bid's purpose.

Reasons for the "Unavailability":

_____

_____

Submitted by:

Charles W. White — C.O.O.

Authorized Representative Signature — Title

5/29/09

Date

Shelby County
LOSB Program

LOSB FORM B

LOSB UTILIZATION PLAN
(To Be Submitted with the Bid/Proposal)

Company: White Contracting, Inc.
Bid No.: _____

I, Tommy Sandel, do certify that on the following procurement opportunity,
(Contractor)
White Contracting, Inc, the following LOSB's will be utilized as sub-contractors, suppliers,
(Opportunity)
or to provide professional services:

Name	Description of Work	Contract Value	LOSB Number
Tay Jno	Survey	13,000.00	VS-0709 13394
Charles Hill	Erosion Cont, Seeding, Trucking	49,830.00	VS 1209 13947
Tri State G.R.	Guardrail	20,370.00	

(If additional space is needed this form may be duplicated)

TOTAL CONTRACT VALUE: 416,000.00 = 616,000. Elig 200,000.00
TOTAL % OF LOSB PARTICIPATION: 20%

The successful bidder/proposer is required to finalize and submit this form prior to award of a contract. Joint Venture Agreements, partnering agreements and all pertinent information must be presented prior to contract award. This information will be incorporated into the contract and will become a contractual obligation of the successful bidder/proposer. The finalized LOSB Form B shall not be changed or altered after award of a contract without approval from Shelby County. The successful bidder/proposer is required to provide written notice describing the reasons for the change to Shelby County to obtain approval of any changes to LOSB Form B.

Submitted by:
_____
Authorized Representative Signature
Vice President
Title
5-26-09
Date

Shelby County
LOSB Program

LOSB FORM C

STATEMENT OF INTENT TO PERFORM AS A SUBCONTRACTOR OR PROVIDE SUPPLIES OR SERVICES
(To Be Submitted Prior to Contract Award)

Company Name: _____
Bid No.:_____

I, _____, intend to provide supplies or services in connection with the
(Subcontractor/Provider)
above **bid/proposal** request as a LOSB.

I am prepared to perform a **"Commercially Useful Function"** in connection with the above project.

The following are the work items to be performed:

_____

_____

at the following price: $_____.

If applicable, please complete the following:

I have or will enter into a formal agreement with _____ for the above-
(Company)
described scope of work, supplies or services conditioned upon the execution of a contract

with Shelby County.

I hereby certify that this statement is true and correct:

Business Information:

Business: _____

Address: _____

_____

Phone: _____

Facsimile: _____

Submitted by:

_____
Authorized Representative (Print)

_____
Title

_____
Authorized Representative's Signature

_____
Date

Shelby County
LOSB Program

LOSB FORM D

STATEMENT OF PAYMENTS TO LOSB'S
(To Be Submitted Monthly and with Final Payment Request)

Company Name: _____
Name/Contract No.: _____
Payment Request Number: _____

Name of Firm	Description of work	Total Amount Due This Month	Total Dollars Paid To Date	% of Contract Complete d	Start Date of Contract	End Date of Contract

(If additional space is needed this form may be duplicated)

I hereby certify that this statement is true and that above payments have been made.

Business Information:

Business: _____

Address: _____

_____

Phone: _____

Facsimile: _____

Submitted by:

_____
Authorized Representative (Print)

Title _____

_____
Authorized Representative's Signature

Date _____

B. LOCALLY OWNED SMALL BUSINESS PURCHASING PROGRAM RULES AND REGULATIONS:

(i) The Administrator of Purchasing in conjunction with the Administrator of EOC shall identify certain goods and services required by the County to be set aside for special purchasing procedures for locally owned small businesses.

(ii) Only certified locally owned small businesses will be allowed to submit competitive bids on the goods or services identified under paragraph (i) above.

(iii) The Administrator of Purchasing shall, in conjunction with the Administrator of EOC, annually review the Shelby County Capital Improvement Program to determine those projects with a construction cost of $250,000 or more. Contracts amounting to at least ten (10%) of the construction costs of such project shall be awarded to locally owned small businesses as defined herein, except as set forth in sub-paragraph (vi) of this section, either as part of the conditions of the solicitation for general contractors bidding on these projects, or as separate bids issued by the County for subcontracts that may be assigned to general contractors.

(iv) After adhering to all other bidding and purchasing requirements of the County, not inconsistent with this part, if no bids are received from locally owned small businesses, then the County may solicit bids for the goods or services from all other sources.

(v) On all purchases and/or contracts entered into by the County, the Purchasing Administrator or his or her designee shall have the right to negotiate with any supplier of goods or services to the County for the inclusion of locally owned small business subcontractors and/or suppliers in the contract award.

(vi) Failure by a supplier or contractor to include locally owned small business sub-contractors or suppliers in its bid or contract may be grounds for rejection of said bid or contract unless the supplier or contractor can show documented evidence of good cause why none were included.

(vii) Any locally owned small business awarded a contract or purchase order under this section shall not sublet, subcontract or assign any work or services awarded to it without the prior written consent of the Mayor or the Purchasing Administrator.

(viii) As to those purchases below the requirement for a formal bid solicitation (currently, under $15,000) and not included in the locally owned small business set aside, the Administrator of Purchasing shall determine if any locally owned small business offers that product or service. If so, at least one such eligible locally owned small business should be included in the vendors contacted for an opportunity to bid, and the Administrator of Purchasing may, at his discretion, designate in a purchase order the purchase of such goods and services from the identified locally owned small business.

(ix) In those situations where a locally owned small business as defined herein, engages in open competitive bidding for County contracts, the Administrator of Purchasing shall provide for a preference for the locally owned small business where responsibility and quality are equal. Said preferences shall not exceed five percent (5%) of the lowest possible bidder meeting specifications. The preference shall be applied on a sliding scale in the following manner:

a. A preference of up to five percent (5%) shall be allowed for contracts up to $500,000.00;

b. A preference of up to three and five-tenths percent (3.5%) shall be allowed for contracts up to $750,000.00;

c. A preference of two and one-half percent (2.5%) shall be allowed for contracts up to $1,000,000.00;

d. A preference of two percent (2%) shall be allowed for contracts that exceed $1,000,000.00.

(x) For construction contracts over $2,000,000.00, the Administrator of Purchasing shall provide for a preference of two percent (2%) to general contractors meeting the requirements of Section 1, Subparagraph B, if fifty percent (50%) or more of the total work comprising the bid has been or will be awarded to certified locally owned small businesses. The fifty percent subcontracting threshold must be met prior to contract execution.

(xi) The Administrator of Purchasing may divide a single bid package for any purchase of goods and services into two or more smaller bid packages in any case that the Administrator of Purchasing reasonably believes that the smaller bid packages will result in a greater number of bids by locally owned small businesses.

(xii) The Administrator of Purchasing, upon approval of the County Mayor, may establish special insurance and bonding requirements for certified locally owned small businesses so long as they are not in conflict with the laws of the State of Tennessee.

(xiii) The Administrator of Purchasing, with the approval of the County Mayor, shall adopt and promulgate, and may from time to time, amend rules and regulations not inconsistent with the provisions of this ordinance, governing the purchase of goods and services from locally owned small business concerns to effectuate and implement the Locally Owned Small Business Purchasing Program within the intent of this ordinance.

(xiv) The Administrator of EOC shall, in conjunction with the Administrator of Purchasing, provide a written quarterly report to the Mayor and Board of Commissioners which shall include a summary of the purchases selected for this program, a listing of the contracts awarded to locally owned small businesses for the period, and the dollar amounts of each such contract, and the percentage which such contracts bear to the total amount of purchases for the period.

I. DBE

TENNESSEE DEPARTMENT OF TRANSPORTATION
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

Congestion Management Program
Project Set # 3

General

The Tennessee Department of Transportation (TDOT) is committed to a policy of non-discrimination pursuant to the Equal Protection provisions of the United States Constitution. It is further the policy of the TDOT that it's purchasing and contracting practices encourage the use of Disadvantages Business Enterprise (DBE) in all solicitations.

In furtherance of these policy objectives, TDOT seeks to afford all citizens equal opportunities to do business on county contracts and to ensure that all bidders, Proposers, or Contractors doing business with Shelby County provide to DBE's, maximum practicable opportunities, commensurate with availability, price and capabilities required, to participate on contracts which are paid for, in whole or in part, with monetary appropriations from Shelby County.

TDOT seeks to prevent discrimination against any person or business in pursuit of these opportunities on the basis of race or gender. TDOT will conduct its contracting and purchasing programs so as to discourage any discrimination and will actively seek to resolve all claims of discrimination brought against the State of Tennessee or any Contractors involved in such contracting and purchasing programs.

TDOT has determined that 6% of the contract sum will be contracted with DBE vendors. An approved list of DBE subcontractors can be found at: http://www.tdot.state.tn.us/construction/DBE%20list/dbe_list.pdf

For assistance and information regarding DBE participation, Bidders shall contact:

Tennessee Department of Transportation
Small Business Development Program
Suite 1800, James K. Polk Building
505 Deaderick Street
Nashville, TN 37243-0347
(888) 370-3647
(615) 741-3681
www.tdot.state.tn.us/civil%2Drights/smallbusiness

Definitions

The definitions used in this document are as follows:

9. **"Bidder"** or **"Proposers"** means any person, firm, partnership, association, or joint venture seeking to be awarded a contract or subcontract to provide goods, commodities or services.
10. **"Certification"** or **"Certified"** means a Business that is certified by TDOT under the DBE program.
11. **"Commercially useful function"** means being responsible for the management and performance of a distinct element of the total work.
12. **"Contractor"** shall mean any person or business enterprise that submits a bid or proposal to provide labor, goods or services to Shelby County by contract for profit in the area of construction or construction-related activities; and, any person or firm who supplies or provides labor, goods or services to Shelby County by contract for profit.
13. **"Efforts to Achieve DBE Participation"** means that the Contractor will solicit DBE Participation with respect to the procurement and will consider all sub-bids and quotations received from DBE's. When a subcontract is not awarded to the DBE, the Contractor must document the reason(s) the award was not made and substantiate that documentation in writing pursuant to the provisions of this Program.
14. **"Disadvantaged Business Enterprise (DBE)"** means a business who is at least 51%-owned by a socially and economically disadvantaged individual(s) who also controls the firm. The business must meet the Small Business Administration's (SBA's) size standard and does not exceed $20,410,000 in gross annual receipts.
15. **"Non-DBE"** means a business which is not certified as a DBE.
16. **"Unavailable"** means either that: (1) there is no DBE providing goods or services requested; or, (2) no DBE submitted a bid.

Requirements and Compliance

All firms or entities seeking to become Contractors as outlined herein are required to make good faith efforts to achieve DBE participation when submitting a proposal or bidding on TDOT procurements. Bidders and Proposers shall not discriminate on the basis of race or gender when soliciting bids in the performance of TDOT's procurements. Discrimination complaints brought to the attention of Shelby County Office of Equal Opportunity Compliance (or its designee) will be reviewed and investigated to the extent necessary to determine the validity of such complaints and what actions, if any, should be taken by Shelby County.

Policies and Procedures

Tennessee Department of Transportation (TDOT) may adopt policies and procedures as necessary to carry out and implement its powers and duties regarding the DBE Program. It is the goal of TDOT to encourage participation by DBE's and to adopt rules and regulations which achieve to the greatest extent possible a level of participation by DBE's taking into account the total number of all Contractors and suppliers. Therefore, TDOT will review each procurement request to determine the maximum potential for utilization of DBE's. This review is based on the availability of qualified DBE's providing goods or services as it relates to the scope of the bid or procurement process. The following procedures may be utilized during the procurement process.

1. **Pre-Bid Activity**
   a. Bid Language
      TDOT may insert language into each bid specification describing the DBE Programs to assure that all prospective bidders are aware of the requirements to make efforts to utilize DBE's.
   b. Notification
      TDOT may provide written notification to Contractors and DBE's regarding: pre-bid conferences; technical assistance to DBE's, and DBE Program procedures and required documentation.

2. **Contractor's Responsibilities**
   a. Efforts to Achieve DBE Participation
      All entities seeking to become Contractors are required to make efforts to achieve maximum DBE participation, as outlined in the DBE Program, when submitting a response to a bid or negotiated proposal in response to a TDOT opportunity. Such efforts should be documented.
   b. Utilization
      Contractors are required to use legitimate DBE's in order to achieve credit for the utilization of a DBE. Contractors must document all DBE's to be utilized, the percentage of utilization and the intended scope of work. This documentation must be submitted with the bid or negotiated proposal document.
   c. Commercially Useful Functions
      All DBE's identified shall perform a Commercially Useful Function.
   d. Unavailability
      If a potential Contractor's efforts to obtain DBE participation are unsuccessful due to the unavailability of a DBE, the Contractor will submit a statement of unavailability.
   e. Post-Award Change
      Any Contractor who determines that a DBE identified cannot perform shall request approval to contract with an alternate subcontractor pursuant to this DBE program. Such requests will be reviewed and approved only after adequate documentation for the proposed change is presented.
   f. DBE Certification
      The Contractor shall submit reports certifying all payments made to DBEs compared to the projected commitments.

3. **DBE Responsibilities**
   a. Commercially Useful Function
      It is the responsibility of each DBE providing subcontracted goods and/or services to submit certification that it is performing the work and that it is a Commercially Useful Function.

Written Agreement

TDOT policies and procedures on DBE participation are designed to create contractual relationships between Contractors and DBEs. Therefore, a Contractor may utilize the services of a DBE in estimating and satisfying the scope of work, provided that a written contract/agreement is executed between the Contractor and the DBE.

Certification

To ensure that the ownership and control over decision-making and day-to-day operations of a Certified DBE is legitimate, TDOT reserves the right to verify the ownership and control of each DBE utilized.

Monitoring DBE Utilization

TDOT intends to monitor and enforce this DBE Program. TDOT reserves the right to conduct random audits of each of its Contractor's DBEs. TDOT reserves the right to reevaluate a DBEs certification at any time.

Efforts to Achieve DBE Participation

The Contractor shall consider all bids and/or quotations received from DBEs. When a subcontract is not awarded by a Contractor to any of the competing DBE's, the Contractor must document the reason(s) the award was not made to the DBEs. It is the responsibility of the Contractor to prove that it employed Efforts to Achieve DBE participation. Evidence supporting the Contractor's Efforts must be documented and must include, but is not limited to, the following:

1. Contractor must submit proof that it solicited DBE participation through reasonable and available means including, but not limited to:
   a. Written notices to DBEs who have the capability to perform the work of the contract or provide the service;
   b. Direct mailing, electronic mailing, facsimile or telephone requests
   c. Attendance at pre-bid meetings
2. Contractor must submit proof that it provided interested DBEs with adequate information about plans, requirements and specifications of the contract in a timely manner to assist them in responding to a solicitation.
3. Contractor must submit proof that it made Efforts to Achieve DBE Participation including, but not limited to, proof that it made opportunities available to DBE suppliers and identified opportunities commensurate with opportunities made available and identified to Non DBE's. Such proof will includes the names of businesses, contact person(s), addresses, telephone numbers, and, a description of the specifications for the work selected for subcontracting.

4. Contractor must submit proof that it allowed DBEs the opportunity to review bid specifications, blue prints and all other bid related items at no charge. The Contractor must allow sufficient time for review prior to the bid deadline.
5. Contractor must submit proof that it made Efforts to Achieve DBE Participation by not rejecting a DBE as unqualified or unacceptable without sound reasons based on a thorough investigation of their capabilities. Contractor must submit proof of the basis for rejecting any DBE deemed unqualified or unacceptable by the Contractor. The Contractor will not impose unrealistic conditions of performance on DBEs seeking subcontracting opportunities.
6. Contractor must submit proof that it made efforts to assist interested DBE's in obtaining bonding or insurance required by the bidder.
7. Contractor must submit proof that is effectively used the services of available minority community organizations, contractor groups, or other organizations that provide assistance in the recruitment and replacement of DBEs.

The Contractor must fully cooperate with TDOT in its post-contract award DBE Program audit and compliance efforts.

Substitution of DBEs after Contract Award

When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, the Contractor must make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal established for the procurement.

If the Contractor desires to substitute the DBE with a Non-DBE, then the Contractor must comply with the Effort to Achieve DBE Participation provisions set forth herein.

Questions and Information

Questions regarding this DBE Program and requests for information should be directed to:

Tennessee Department of Transportation
Small Business Development Program
Suite 1800, James K. Polk Building
505 Deaderick Street
Nashville, TN 37243-0347
(888) 370-3647
(615) 741-3681
www.tdot.state.tn.us/civil%2Drights/smallbusiness

DBE Award Information

For Contractors and Consultants on Locally Let Federal Aid Contracts

County: [illegible]

Project Number: RPI #09-004-73

Contract Award Amount: $

Federal Dollars in the Contract: $

Contract Award Date:

Name of Prime Contractor/Consultant: White Contracting Inc

Proposed DBE Goal (6 %) or (None)

Names of Subcontractors	Ethnicity**	Gender	Subcontract Amount
[illegible]	[illegible]	M	$ 13,000.00
A.H. Hill	[illegible]	[illegible]	$ 23,900.00
			$
			$
			$
			$
			$
			$
			$
			$

Total DBE Commitment	$ 36,960.00

Submitted by _____ Date 5-26-09

**Ethnicity= Black American (BA), Hispanic American (HA), Native American (NA), Subcontinent Asian American (SAA), Asian-Pacific American (APA), Non-Minority Women (WFBE), Other (OT)

TENNESSEE DEPARTMENT OF TRANSPORTATION
SMALL BUSINESS DEVELOPMENT OFFICE
CERTIFICATION REGARDING MONEY PAID TO DISADVANTAGED BUSINESS ENTERPRISES

I certify that to the best of my knowledge, as of _____, the named Disadvantaged Business Enterprise has either been paid the amount of money stated herein or has been partially paid said amount and is due the remainder for actual work performed on:

Contract No. _____, County _____.
I further certify that I am duly authorized to make this certification on behalf of the named contractor.

DISADVANTAGES BUSINESS ENTERPRISE	AMOUNT	
_____ Firm Name	_____	Paid to date
	_____	Est. final pmt.
	_____	Retainage
CONTRACTOR: _____	_____	TOTAL

By: _____

TITLE: _____

Date: _____

I certify that to the best of my knowledge, as of _____, the named contractor has either paid the named DBE the amount of money stated herein paid set amount and owes remainder to said enterprise on the named project as shown in the spaces provided:

I further certify that I am duly authorized to make this certification on behalf of the named DBE.

DISADVANTAGES BUSINESS ENTERPRISE	AMOUNT	
_____ Firm Name	_____	Paid to date
	_____	Est. final pmt.
	_____	Retainage
By: _____	_____	TOTAL

TITLE: _____

Date: _____

J. **DRUG-FREE WORKPLACE AFFIDAVIT**

STATE OF Tennessee

COUNTY OF Shelby

The undersigned, principal officer of White Contractors Inc, an employer of five (5) or more employees contracting with Shelby County government to provide construction services, here states under oath as follows:

1. The undersigned is a principal officer of Tomas Sanchez (hereinafter referred to as the "Company"), and is duly authorized to execute this Affidavit on behalf of the Company.

2. The Company submits this Affidavit pursuant to T.C.A. §50-9-113, which requires each employer with no less than five (5) employees receiving pay who contracts with the state or any local government to provide construction services to submit an affidavit stating that such employer has a drug-free workplace program that complies with Title *50,* Chapter 9, of the *Tennessee Code Annotated.*

3. The Company is in compliance with T.C.A. § 50-9-113.

Further affiant saith not.

Principal Officer

STATE OF Tennessee

COUNTY OF Shelby

Before me personally appeared Tomas Sanchez, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that such person executed the foregoing affidavit for the purposes therein contained.
Witness my hand and seal at office this 26 day of May, 2009.

Melody A. White
Notary Public
MY COMMISSION EXPIRES 03/20/2013

MELODY A. WHITE STATE OF TENNESSEE NOTARY PUBLIC COUNTY OF SHELBY

My commission expires: _____

K. **FORMS TO BE SUBMITTED**

LOSB FORM A: MUST BE COMPLETED AND SUBMITTED IN YOUR BID ENVELOPE

LOSB FORM B: MUST BE COMPLETED, SUBMITTED WITH YOUR BID AND ATTACHED TO THE OUTSIDE OF THE ENVELOPE DOCUMENTING ALL LOSB'S TO BE UTILIZED, THE PERCENTAGE OF UTILIZATION AND THE INTENDED SCOPE OF THE WORK.

LOSB FORM C- MUST BE COMPLETED AND SUBMITTED BY EACH LOSB PROVIDING SUBCONTRACTED GOODS AND OR SERVICES CERTIFYING THAT THEY ARE PERFORMING THE WORK AND THAT IT IS A COMMERCIALLY USEFUL FUNCTION.

LOSB FORM D-MUST BE COMPLETED AND SUBMITTED BY THE SUCCESSFUL CONTRACTOR EACH MONTH CERTIFYING ALL PAYMENTS MADE TO LOSB'S.

DRUG FREE WORKPLACE AFFIDAVIT-MUST IS COMPLETED AND SUBMITTED WITH YOUR BID.

BID BOND- ALL BIDS MUST BE ACCOMPANIED BY A BANK CERTIFIED CHECK OF BANK DRAFT, LETTER OF CREDIT ISSUED BY ANY NATIONAL BANK OR APPROVED BID BOND FOR NOT LESS THAN 5% (PERCENT) OF THE AMOUNT OF THE BID. ALL PROPOSAL GUARANTEES SHALL BE MADE OUT TO THE COUNTY OF SHELBY.

NOTE: LOSB FORM C AND D WILL BE SUBMITTED BY THE SUCCESSFUL CONTRACTOR.

FAILURE TO SUBMIT THE REQUIRED FORMS MAY RESULT IN YOUR BID BEING REJECTED AS BEING IN NON-COMPLIANCE WITH BID REQUIREMENTS.

VII. GENERAL REQUIREMENTS

A. Scope of Contract

The County wishes to engage in a contractual relationship with the lowest responsive Contractor selected through a low bid process.

B. Project Time Frame

The County is looking to enter into a contract with the lowest responsive bidder using the terms and conditions as the original RFP to provide these services.

C. Reservation of Rights

The County reserves the right to reject any or all Proposals, to waive technicalities or to advertise for new Proposals, if in the judgement of the County, the best interest of the County will be promoted thereby. The County reserves the right to cancel the award of any Contract, at any time prior to execution of said Contract by all parties without any liability against the County.

D. Selection Criteria

Contract(s) will be awarded based on the lowest responsive proposals received. The contents of the proposal of the successful Proposers will become contractual obligations and failure to accept these obligations in a contractual agreement may result in cancellation of the award.

E. Additional Information and References

Any additional information that would be helpful to the County evaluating your proposal including a list of current and former clients with a similar profile to Shelby County should be submitted. At least three former clients who have terminated in the last five years should be included on this list.

VIII. Award of Contract

Proposers are advised that the lowest responsive proposal will be awarded the contract.

GRATUITY DISCLOSURE FORM

Shelby County Ethics Commission

INSTRUCTIONS: *This form is for all persons receiving any Shelby County Government contract, land use approval or financial grant money to report any gratuity that has been given, directly or indirectly, to any elected official, employee or appointee (including their spouses and immediate family members) who is involved in the decision regarding the contract, land use approval, or financial grant of money.*

1. **NAME**

   N/A

2. **DATE OF GRATUITY**

   N/A

3. **NATURE AND PURPOSE OF THE GRATUITY**

   N/A

4. **NAME OF THE OFFICIAL, EMPLOYEE, APPOINTEE, OR FAMILY MEMBER WHO RECEIVED THE GRATUITY**

   N/A

5. **NAME OF THE PERSON OR ENTITY THAT PROVIDED THE GRATUITY**

   N/A

6. **ADDRESS OF THE PERSON OR ENTITY THAT PROVIDED THE GRATUITY**

   N/A

7. **DESCRIPTION OF THE GRATUITY**

N/A

8. **COST OF THE GRATUITY (If cost is unknown and not reasonably discernible by the person giving the gratuity, then the person giving the gratuity shall report a good faith estimate of the cost of the gratuity.)**

N/A

9. **The information contained in this Gratuity Disclosure Form, and any supporting documentation or materials referenced herein or submitted herewith, is true and correct to the best of my knowledge, information and belief and affirm that I have not given, directly or indirectly, any gratuity to any elected official, employee or appointee (including spouse and immediate family members) that has not been disclosed and I affirm that I have not violated the provisions of the Shelby County Government Code of Ethics.**

Charles W. White
Signature

8/13/09
Date

Charles W. White
Print Name

A copy of your completed form will be placed on the Shelby County Internet website.

X. NOTICE TO BIDDERS

RFP # 09-004-73

NOTICE TO BIDDERS

1. Time and Place of Opening of Bids:
Sealed proposals for the improvements described herein will be received at THE OFFICE OF THE SHELBY COUNTY ADMINISTRATOR OF PURCHASING, ROOM 550, until May 26, 2009 @ 2:30 P.M.

2 Description of Work:
(a) The proposed work is officially known as: CONGESTION MANAGEMENT PROGRAM PROJECT SET #3

(b) The proposed improvements consist of:

Canada Road at Interstate 40: Roadway construction to include a right turn lane on Ramp C, a right turn lane on Canada Road to Ramp D, and a right turn lane on Canada Road to Ramp A. Construction of an earth retaining structure near Ramp D and installation of a new traffic signal.

Raleigh Lagrange Road at Macon Road/Dexter Road: Roadway construction including installation of drainage and installation of a new traffic signal including video vehicle detection and emergency vehicle preemption equipment.

3 All interested bidders are asked to attend a non-mandatory pre-bid meeting to be held on Monday, May 18, 2009 at 9:30 AM AT THE SHELBY COUNTY ENGINEERING DEPARTMENT LOCATED AT 160 NORTH MAIN, SUITE 350.

4. Instruction to Bidders:
(a) Proposal forms may be obtained from: THE OFFICE OF THE COUNTY ENGINEER, 160 NORTH MAIN, ROOM 350, MEMPHIS, TENNESSEE 38103, UPON RECEIPT OF A $250.00 NONREFUNDABLE DEPOSIT.

(b) All proposals must be accompanied by a bank cashier's check or bank draft, letter of credit issued by any national bank or certificate of deposit therein, duly assigned, or certified check or approved bid bond for not less than 5 per cent of the amount of the bid. All proposal guarantees shall be made out to the County of Shelby.

(c) All bidders must be prequalified by and in good standing with the Tennessee Department of Transportation. To be considered for prequalification prospective bidders shall file a "Prequalification Questionnaire" with the Tennessee Department of Transportation at least fourteen (14) days prior to the date of the opening of proposals. (A prospective subcontractor must be prequalified by and in good standing with the Tennessee Department of Transportation prior to being approved as a subcontractor and before any work takes place). Upon award of the contract the apparent low bidder and subcontractors must demonstrate

evidence of being licensed by the Tennessee State Board of Licensing General Contractors in accordance with TCA 62-6-119.

(d) Opportunity Compliance Eligibility Number" which must be attached to each bid submission. To receive an E.O.C. Eligibility Number, specific information must be received by the E.O.C. Department at least 48 hours prior to the bid opening. To verify your E.O.C. Number or receive information for obtaining a number, contact the E.O.C. Department, 545-4336.

(e) Use of Locally Owned Small Business (LOSB) participation on County projects is required.

(f) Bidders are encouraged to contact County-Certified LOSB firms from the listing enclosed in the bid documents. Bidders may also provide the names of firms they believe would qualify as LOSB firms, by notifying the E.O.C. Department and filing the required forms at least five (5) working days prior to the bid opening. Bidders choosing to utilize non-certified subcontractors may submit their bid with the understanding that they must provide certification documents to the E.O.C. Department within 5 days after the bid opening in order to be considered for contract award.

(g) Bidders must list their LOSB subcontractors, work to be performed by those contractors and the amount of the subcontract on the bid form.

(h) Use of Disadvantaged Business Enterprise (DBE) participation on projects is required.

(i) Bidders are encouraged to contact TDOT certified DBE firms from the official register of DBE firms. Firms must be certified as DBE firms at the time that the prime contractor submits a bid to Shelby County.

(j) Bidders must list their DBE subcontractors, work to be performed by those contractors, and the amount of the subcontract on the bid form and submit this information with their bid or within three business days of the bid opening.

5. Rejection of Bids:
The COUNTY OF SHELBY reserves the right to reject any and all proposal and to waive technicalities in any proposal.

BY ORDER OF: CLIFTON DAVIS
PURCHASING ADMINISTRATOR
SHELBY COUNTY GOVERNMENT

_____, 2009

Response Checklist:

Please make sure that basic information listed below is provided in your RFP before you submit your response.

- ☐ Cover Sheet/Proposal Response Sheet (Required)
- ☐ Utilization Report (Required)
- ☐ Comprehensive Response to Minimum Requirements & Required Services
- ☐ Cost & Fees
- ☐ Experience of Respondent
- ☐ References
- ☐ Additional Information (optional)

(This checklist <u>does not</u> absolve the Respondent of any other required documentation indicated in the document not listed above. Please use the information highlighted above as a reference only)

REP UTILIZATION REPORT

	MALE						FEMALE				
	Subtotals	White	African Americans	Hispanic	Asian Pacific Islander	Other	White	African American	Hispanic	Asian Pacific Islander	Other
Officials and Managers											
Professionals											
Technicians											
Sales Workers											
Office and Clerical											
Crafts workers (Skilled)											
Operative (Semi-Skilled)											
Laborers (Unskilled)											
Service Workers											
Totals											

How was the above information as to race or ethnicity established?

☐ A) Visual Survey ☐ B) Employee Records

Please list the date for employment information reported _____ ☐ Other Please Specify: _____

The Concept of race used by the Equal Employment Opportunity Commission does not denote clear-cut scientific definitions of anthropologic origins. For the purpose of this report an employee may be include in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic category

NOTE: 1 The Category "HISPANIC" while not a race identification is included as separates race/ethnic category because of the employment discrimination often encountered bt this group; for this reason do not include HISPANIC under either "white" or "black".

For the purpose of this report the following race/ethnic categories will be used:

a) The Category "White" (not of Hispanic origin): All persons having origins in any of the original peoples of Europe North Africa or Middle East.

b) The Category "African American persons having origins in any of the original peoples of Africa

c) The Category "Hispanic" All persons of Mexican, Puerto Rican, Cuban, Central or South American. For other Spanish culture regardless of race

d) The Category "Asian or Pacific Islander". All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Sub-Continent, or the Pacific Islands. This area includes for example, China, Japan, Korea, the Philippine Islands, and Samoa

e) The Category "American Indian or Alaskan Native": All persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation community recognition

Source: Bureau of the Census

Item #: 27 Prepared By: Marcy N. Ingram

Commissioner: MALONE Approved By: _____

ORDINANCE NO. 328

AN ORDINANCE TO AMEND CHAPTER 12, CODE OF ORDINANCES, SHELBY COUNTY GOVERNMENT, SO AS TO ESTABLISH A LIVING WAGE STANDARD

WHEREAS, A Civil Service Merit System for employees of Shelby County was established by the Private Acts of 1971, Chapter 110 § 1; and

WHEREAS, It is important to the health and welfare of all residents of Shelby County that working people are paid a wage that enables them to lift their families out of poverty; and

WHEREAS, The County awards taxpayer-funded contracts to businesses to provide services to the public and to the County government; and

WHEREAS, The purpose of this Ordinance is to ensure that Shelby County Government as well as businesses receiving service contracts from the County pay employees a living wage.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE, That

SECTION 1. Chapter 12, Code of Ordinances, Shelby County Government, be amended so as to create the following:

Chapter 12
Employees

Art. V Living Wage **12-113 — 12-125**

ARTICLE V – Living Wage

Section 12-113. Definitions:

For purposes of this article, the following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Contractor means any person that enters into a service contract with the county.

County means Shelby County Government, including those County departments, which exercise independent control over their expenditure of funds.

Director means the Director of the Division of Administration and Finance and/or his or her designee.

Employee means all persons employed by the County, including but not limited to, classified, unclassified, seasonal workers, law/judicial clerks, miscellaneous

temporary workers or any person who is employed full-time, part-time, or on a temporary basis as a service employee of a contractor or subcontractor on a County service contract. This term is subject to the exemptions set forth in §12-122.

Employer means any person, company or corporation that employs two or more employees at any one time within a calendar year and who is a contractor or subcontractor provided, however, that corporations organized under Section 501(c)(3) of the Internal Revenue Code of 1965, 226 U.S.C. §501(c)(3) shall be exempted as to all employees other than child care workers.

Health benefits mean comprehensive family medical coverage in which the Employer contributes a minimum of fifty percent of the employee health benefits costs.

Living Wage means either:

a. One hundred and four percent of the federal poverty level for a family of four, divided by 52 weeks per year x 40 hours of work per week. In 2007 the wage level equals $10.02 per hour; or

b. One hundred and twenty percent of the federal poverty level for a family of four without health benefits, divided by 52 weeks per year x 40 hours of work per week. In 2007 the wage level without benefits equals $12.01 per hour.

RFP means any proposal and/or sealed bid requested by the County.

Service Contract means a contract awarded to a contractor by the County primarily for the furnishing of services to or for the County (as opposed to the purchase of goods or other property or the leasing of property). Service contract includes subcontracts but does not include any contract, whether or not a subcontract, which: (1) involves only the purchase of goods; (2) involves services provided primarily by student interns; (3) is a contract in existence prior to the effective date of this article; or (4) is a contract with a school district, municipality or other unit of the government.

Subcontractor means any person, not an employee, that enters into a contract with a contractor (and that employs for such purpose) to assist the contractor in performing service contracts.

Section 12-114. Living Wage Applicable to Employees of Shelby County Government, Service Contracts and Service Contractors

All employees shall receive a Living Wage as defined in this article.

All persons/entities engaged in service contracts, including but not limited to both prime and subcontractors, with the County shall pay a Living Wage for all work done pursuant to the service contract.

Section 12-115. Annual Adjustment of Living Wage

a. The Living Wage rate shall be modified annually as of July 1 to incorporate the adjustments, if any, made to the federal poverty level income. Such annual adjustment shall take effect automatically every year, absent an affirmative vote by a majority of the County Commission to suspend the adjustment for that year.

b. The Living Wage rate for employees of service contractors shall be modified in accordance with the date the RFP is issued, and such RFP will contain the actual rate (in dollars per hour, with and without benefits) which applies for that RFP.

c. In the case of contract renewals, the Living Wage rate applicable as of the date of the renewal shall be the effective Living Wage rate.

Section 12-116. Monitoring and Enforcement.

a. The Director shall monitor compliance with this law and may contract with non-governmental agencies to investigate possible violations.

b. The Mayor or his or her designee may promulgate rules to the Director.

c. The Director shall submit an annual report to the Mayor and the County Board of Commissioners summarizing and assessing the implementation of and compliance with this new law during the preceding year.

d. Any contractor/service provider subject to the terms of this Ordinance shall, within five business days, make available upon request by the Director any and all payroll records, including hourly wages of individual employees, as needed to verify compliance with the terms and conditions contained herein.

e. Upon receipt of any complaint of non-compliance, whether complaint is made by the Administration and/or affected employee(s), the Director shall request from the contractor/service provider documentation to verify compliance with the terms of this Ordinance contained herein. The contractor/service provider shall submit a statement of compliance certified by penalty of perjury.

f. Service contracts under $25,000.00 are not required to be monitored for compliance, however violations reported will be investigated and upon the validation of the complaint will be subject to the penalties as defined in Section 12-120.

Section 12-117. Required records

(a) Contractor to submit.

For each service contract, the service contractor shall submit appropriate documents verifying compliance with this Ordinance, as set out in the RFP. Each RFP shall specify the necessary documentation and verification procedures.

(b) Contents.

The verifying documents shall include the following information, only as it pertains to the county service contract:

(1) The name of the prime service contractor and any subcontractor:

(2) A designation of the project and location; and

(3) Such other data as may be required by the Director from time to time.

(c) Prime contractor responsible for subcontractors.

The prime service contractor shall be responsible for the submission of all subcontractors' payrolls covering work performed.

(d) Signed statement of compliance certified by penalty of perjury.

Each verifying document shall be accompanied by a statement signed by the contractor or subcontractor, as the case may be, indicating:

(1) that the information contained is correct;

(2) that the wage rates contained therein are not less than those established by this ordinance as set forth in the contract; and

(3) that the service contractor has complied with the provisions of this article.

Section 12-118. Article to be applicable to new service contracts.

The provisions of this article pertaining to service contacts shall ONLY apply to service contracts with Shelby County Government for which the RFP is issued after the effective date of this article.

Section 12-119. Retaliation and Discrimination Barred.

It shall be unlawful for any employer to retaliate, discharge, demote, suspend, or take adverse employment action in the terms and conditions of employment or otherwise discriminate against any employee for reporting or asserting a violation of this law, for seeking or communicating information regarding rights conferred by this law, for exercising any other rights protected under this law, or for participating in any investigatory or court proceeding relating to this law. This protection shall also apply to any employee or his or her representative who in good faith believes this law applies.

Taking adverse employment action against a covered employee(s) or his or her representative within sixty days of the covered employee engaging in any of the abovementioned activities shall raise a rebuttable presumption of having done so in retaliation for those activities. A covered employee subjected to any action that violates a subsection may pursue administrative remedies or bring a civil action against the offending party in a court of competent jurisdiction.

Section 12-120. Penalties.

(a) Debarment (or ineligibility) for three years.

In the event the Director determines that any service contractor has failed to pay the Living Wage rate or has otherwise violated the provisions of this article, he or she shall notify the service contractor of the violation and give the contractor ninety days to get into compliance, including the payment of restitution to all affected employees in the form of back pay owed. If the service contractor does not comply with these requirements, the Director shall then cancel the contract and debar the contractor for a period of three (3) years.

(b) Civil remedies.

i. If the Director determines that the violation was willful, the Director shall cancel the contract, require the contractor to pay affected employees restitution in the form of back pay owed within ninety days and debar the contractor for a period of no less than three years. In the event that the service contractor, who has willfully violated the provisions of this article, fails to pay restitution to its affected employees, Shelby County Government reserves the right to pursue civil remedies, up to and including remedies for treble damages, against such service contractor for breach of contract.

ii. In the event that any contractor/service provider fails to pay its affected employees restitution, the provisions of this Ordinance do not create a private right of action against Shelby County Government for such contractor/service provider's violation of the provisions herein.

Section 12-121. Memorandum of Understanding ("MOU")

Parties subject to this article may, by the labor organization agreement, provide that such agreements shall supersede the requirements of this article.

Section 12-122. Exemptions

The following are not covered employees for purposes of this article:

(1) A person who provides solely volunteer services that are uncompensated, or otherwise compensated by a nominal fee, except for reimbursement of expenses such as meals, parking, or transportation, and election day officers assigned to precincts on election day which include Officers of Election, Judges, Inspectors, Precinct Registrars, Assistant Precinct Registrars and Machine Operations; and

(2) A person employed in construction work that is subject to the provisions pursuant to any legally recognized Prevailing Wage standard; and

(3) Any and all employees in the Hospitality industry, including but not limited to, any and all employees working for restaurants and limited and full-service hotels and lodging establishments within the city limits of Memphis and Shelby County.

(4) Any person employed pursuant to an emergency contract. For purposes of this Ordinance, the term emergency contract will be defined in the same manner in which it is defined by the provisions outlined in the Shelby County Government Purchasing Policy, as it may be amended from time to time.

(5) Any and all employees who hold a professional license issued by the State of Tennessee, in medicine, law, engineering, architecture, landscape architecture, and accounting;

(6) A person employed by or as a financial or swap advisor, underwriter, counsel, securities broker or dealer, transfer agent, trustee, paying agent, rating agency, bond insurance company, dealer, escrow agent, liquidity facility provider, information or securities repository, remarketing agent, swap counterparty or tender agent in connection with the issuance of debt by the county, including bonds, commercial paper, swaps and notes.

(7) Any person under the age of 18; and

(8) Any person participating in any Student Internship.

(9) Any Locally Owned Small Business (LOSB) as defined by the LOSB Ordinance of Shelby County, Tennessee, with ten employees or less.

Sections 12-123 -- 125. Reserved.

SECTION 2. BE IT FURTHER ORDAINED, That the provisions of this Ordinance are hereby severable. If any of these sections, provisions, or sentences, clauses, phrases or parts is held unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect.

SECTION 3. BE IT FURTHER ORDAINED, That this Ordinance shall take effect beginning July 1, 2007.

Joe Ford
Chairman of Commission

A C Wharton, Jr.
County Mayor

Date: 5/27/07

ATTEST:

Clerk of County Commission

FIRST READING: APRIL 23, 2007

SECOND READING: MAY 7, 2007

ADOPTED
THIRD READING: MAY 21, 2007