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Increasing Disadvantaged Business Opportunities in the Town of Brookline, Massachusetts

To see if the Town will amend the General by-laws:

- ARTICLE 4.3** CONTRACTS – PROHIBITED ACTION,
- ARTICLE 4.4** FAIR EMPLOYMENT PRACTICES WITH REGARD TO CONTRACTS and
- ARTICLE 4.5** DISCRIMINATION PROHIBITION WITH REGARD TO CONTRACTS
- ARTICLE 4.6** ESTABLISHING A DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

SECTION 4.6 xx.1 Establishing a Disadvantaged Business Enterprise Program

Town of Brookline ensures that it shall work to eliminate discrimination in the award and administration of Brookline’s grants, contracts, and professional services agreements. The Town of Brookline shall create an equitable environment in which “Disadvantaged Businesses Enterprises” (DBE) may compete fairly for contracts and subcontracts in Brookline. The Town of Brookline encourages the Brookline Housing Authority and the Public Schools of Brookline to adopt comparable policies with regards to a DBE program so that the entire Town demonstrates its uniform commitment to diversity and inclusion in the awarding of contracts and grants.

SECTION 4.6 xx.2 Disadvantaged Business Enterprise Program Objectives:

- 1) Ensure nondiscrimination in the award and administration of all contracts, subcontracts and grants;
- 2) Create a level playing field on which DBEs can compete fairly for contracts and subcontracts, including: removing barriers to participate in the procurement process, promoting the use of DBEs, and providing opportunities for DBEs to participate;
- 3) Ensure that the Brookline’s DBE program is narrowly tailored in accordance with applicable Commonwealth and federal laws;
- 4) Assist the development of diverse firms that can compete successfully in the marketplace outside the DBE program; and
- 5) Provide appropriate flexibility to Brookline in establishing a DBE program.

SECTION 4.6xx.3 Requirements for DBE Designation

To be considered a DBE for purposes of the Town of Brookline's DBE program, the entity must be a small business owned and controlled by socially and economically disadvantaged individuals. They must receive certification from the Massachusetts Supplier Diversity Office as either a Minority Business Enterprises (MBE), Women Business Enterprises (WBE), Veteran Business Enterprises (VBE), and/or Portuguese Business Enterprises (PBE).

Section 4.6xx.4 Brookline DBE Goals

1. This by-law will achieve only the amount of DBE participation that would be obtained in a nondiscriminatory market.
2. The Town of Brookline's goals shall be narrowly tailored to serve the compelling state interest in remedying discrimination in public contracting.
3. Brookline's DBE programming will:

(a) Conduct a disparity study. Analyze for racial and gender discrimination such that the program includes race-neutral and gender-neutral alternatives,

(i) The disparity study will address four main issues: (1) Is there substantial evidence of discrimination against the targeted group? (2) If so, is there evidence of government participation, active or passive? (3) Have race-neutral alternatives been ineffective? If so, why? (4) Can the remedy be narrowly tailored?

(ii) The Town will analyze:

a. Total dollars received by particular minority-owned business group

Total dollars received by all businesses in a given area
(Utilization)

b. Total number of minority-owned businesses in a particular group

Total number of all businesses in a given area

(Availability)

c. = Disparity Index

(b) Set goals with reference to actual market conditions,

- (c) Allow for certain waivers for contractors who cannot meet contract-specific DBE goals. and
 - (d) Design the program so as to not unduly burden third parties in service of remedying discrimination.
- 6) Brookline prohibits using quotas.
 - 7) Brookline shall impose a personal net worth cap of \$500,000 on persons seeking designation as a DBE. This means that, regardless of race, gender or the size of their business, any individual whose personal net worth exceeds \$500,000 is not considered economically disadvantaged and is not eligible for the DBE program.
 - 8) Brookline will annually review its DBE goals to coincide with applicable market and contracting data.

SECTION 4.6xx.5 Policies and Procedures

- 1) The Town will develop applicable policies and procedures to meet the DBE goals and affirmative employment program consistent with applicable state and federal laws. The Town Administrator shall be responsible for the design and implementation of this DBE program. The Director of Finance shall be responsible for implementing the program and the Director of Office of Diversity, Inclusion and Community Relations shall be responsible for monitoring compliance with this law.
- 2) If the Director of Office of Diversity, Inclusion and Community Relations determines the contractor has failed to meet established Brookline DBE program regulations, has not demonstrated good faith efforts, or failed to correct DBE program deficiencies, in coordination with Town Counsel's office, the Town will initiate administrative action against the prime contractor as permitted by law. Judicial and administrative actions may include the following:
 - (a) Withholding all or a percentage of monthly partial payments
 - (b) Liquidated damages
 - (c) Initiation of appropriate suspension or debarment or decertification proceedings
 - (d) Termination of the contract
 - (e) Suspension and debarment
 - (f) Referral of any unlawful actions to the appropriate enforcement agencies
 - (g) Other actions as appropriate

The Town will notify the contractor in writing of the determination. The notice will include the reasons for the determination and specify the administrative action.

Section 4.6xx.7 Applicability

The Section shall apply to all municipal officers, Town employees, and Town departments and committees as well as their contractors and grantees.

Section 4.6xx.8 Effective Date

This section, 4.5.4, shall take effect July 1, 2022.

Or act on anything relative thereto.

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