

7/24/2014 5:35pm P.H.

ORDINANCE NUMBER 2014- 29

AN ORDINANCE OF ESCAMBIA COUNTY, FLORIDA AMENDING VOLUME 1, CHAPTER 46, ARTICLE II, DIVISION 3, SECTION 46-111 OF THE ESCAMBIA COUNTY CODE OF ORDINANCES RELATING TO SMALL BUSINESS ENTERPRISE PROGRAM; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, by Board action on December 5, 2013, the Board of County Commissioners previously adopted Ordinance Number 2013-52 creating a small business enterprise program to provide qualified small businesses the maximum opportunity to participate in the public procurement of goods and services; and

WHEREAS, the Board of County Commissioners finds that provisions of the County's ordinance relating to the small business enterprise program for the County's procurement of goods and services require amendment to better implement the program; and

WHEREAS, the Board of County Commissioners finds that the proposed Ordinance amending the ordinance creating the small businesses enterprise program for the County's procurement of goods and services serves a compelling public purpose for the benefit of the taxpayers and residents of Escambia County.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ESCAMBIA COUNTY, FLORIDA:

Section 1. That Volume I, Chapter 46, Article II, Division 3, Section 46-111 of the Escambia County Code of Ordinances is hereby amended to read as follows:

Sec. 46-111. Small Business Enterprise Program.

A. Purpose and intent of article.

The purpose and intent of this article is to provide the maximum opportunity for increased participation of qualified small businesses in the County's procurement system.

B. Definitions.

Commercially useful business function means adding value to the goods and services supplied under a contract. A small business is considered to perform a commercially useful business function when it is responsible for execution of a distinct element of work of a contract or transaction and carrying out its responsibilities by actually performing, managing and supervising the work performed. Businesses who merely act as a conduit do not perform a commercially useful business function and will

Verified By: *J. Carraw*
Date: *7/24/2014*

not be eligible for certification as a SBE. In determining whether a business performs a commercially useful business function, consideration will include, but not be limited to, whether the business adds a value to the product or service provided; whether the business has a distributorship agreement with the manufacturer of goods supplied; whether the business takes possession of the product or service provided; whether the business warrants the product or service provided; whether the business maintains sufficient storage space to keep the product in inventory; whether the business maintains sufficient inventory to meet the requirements of its contracts; whether the business provides the product or service to the public or other business other than a governmental agency.

SBE means a small business enterprise certified by Escambia County.

C. Scope.

Unless otherwise prohibited by federal or state law, this chapter shall apply to the solicitation of all goods, services and construction by the County which are governed by the county purchasing code. Whenever possible, the County shall utilize a solicitation process which encourages SBE participation even on those items which are exempted from the requirements of the purchasing code.

D. SBE Program Goals.

~~(1) *Annual goals:* The cumulative annual SBE goal for county procurement contracts shall be a minimum expenditure of up to **fifteen (15) percent** of the total annual expenditures for operating and capital costs for the current fiscal year as calculated in accordance with County SBE Program policies and procedures. —competitive procurement monies for materials, supplies, equipment services and construction. The annual goal shall be applied to each individual county procurement of goods, services or construction unless otherwise approved by the County Administrator. The cumulative annual SBE goal may be adjusted annually by the Board of County Commissioners.~~

~~(2) *Evaluation of goal attainment:* The goal shall be applied to the full monetary value of the contract and be reflected in the full monetary portion spent on subcontracts for goods, services, supplies, consulting or and construction services to be that may be awarded to those SBEs meeting contract specifications~~

E. Certification.

(1) *Requirements.* For the purposes of this section, the following certification requirements shall govern:

- (a) The business must currently perform a *commercially useful business function*;
- (b) The business must be a local business as defined in Sec. 46-110;

- (c) The business must be an independently owned and operated, for-profit entity;
- (d) The business may employ 10 or fewer full time employees; and
- (e) The business may have a net worth of not more than one million dollars.

(2) *Application procedure.* All applicants wishing to be considered as certified businesses for the benefits of the SBE program must complete the small business self certification form which can be obtained through the office of purchasing. ~~Applicants must submit the necessary documentation as appropriate to their business and all of its affiliates. The Office of Purchasing may request any other documentation necessary to determine eligibility. This is a self-certification process and shall require a signed affidavit attesting to the accuracy of the data provided on the form.~~

(3) The purchasing department shall ~~certify~~ accept SBEs for use by the County in its purchasing and procurement process based upon the eligibility requirements provided herein. The purchasing department shall maintain an up-to-date electronic list of SBEs, and encourage the use of this list by all departments in their procurement activities.

(4) Any change of ownership or circumstances that may affect certification eligibility of an SBE must be reported to the purchasing department within 30 days of the change taking place. In the event of a change, the current owner is responsible for fulfilling this reporting requirement prior to seeking business with the County.

(5) *Recertification.* Certified SBEs are required to submit an affidavit of their continued eligibility as a SBE every year. If there has been a change in operation, ownership, control, activities, domicile or gross receipts, the SBE must identify such change on their application for recertification. ~~Supporting documentation may be required for continued certification.~~ A company that fails to submit its affidavit of continued eligibility or fails to submit documentation requested by the office of purchasing will no longer be deemed certified for purposes of participation in the small business program.

(6) *Decertification.* If during any period of certification, the County has reason to believe that the SBE was not properly certified or that there has been a substantial change of ownership or circumstances that may affect certification eligibility then the ~~purchasing department~~ County Administrator may conduct an investigation and decertify an SBE if the investigation indicates that continued certification would be contrary to the County's SBE program requirements. The County Administrator ~~purchasing department~~ shall notify the SBE by certified mail that it has been decertified. Any business that is decertified may not be recertified for one (1) year from the date of decertification.

(7) *Appeal of Decertification.* Any business that believes it was wrongfully denied certification may submit a written request with the office of purchasing to appeal the decertification. The appeal shall be filed within twenty (20) days of receipt of the notice

of decertification. The request for appeal shall state with particularity the reasons why the business believes the denial was erroneous.

(8) *Hearing on Appeal of Decertification.* If an appeal is requested, an administrative review will be conducted by the County Administrator, or designee, within forty-five (45) days of receipt of the notice of appeal. Upon review, the County Administrator, or designee shall take one of the following actions:

(a) Grant the appeal. If a determination is made that decertification was contrary to County's SBE program requirements, the appeal shall be granted and the business recertified;

(b) Deny the appeal. If a determination is made that certification would be contrary to the County's SBE program requirements, the appeal shall be denied and the applicant may request that the matter be referred to a special master for further proceedings in accordance with Sec. 46-102(4)-(7); or

(c) Refer the appeal to a special master. If no administrative determination is made, the matter may be referred to a special master for further proceedings in accordance with Sec. 46-102(4)-(7).

F. False representation.

(1) It is unlawful for any individual or entity to knowingly submit false information in order to qualify for SBE certification.

(2) Any contractor that falsely represents to the county that it is an SBE, or knowingly submits false information or represents that it will use the services or commodities of an SBE and subsequently does not, shall be deemed in breach of contract. Upon a determination that a breach has occurred, all payments under the contract or any other arrangement shall be immediately suspended. The contractor may show that it attempted in good faith to comply with the terms of the contract but was unable to comply. If the county determines that the contractor did not act in good faith, all amounts paid to the contractor under the county contract or agreement intended for expenditure with the SBE shall be forfeited and recoverable by the county. In addition, the contract or agreement may be rescinded and the department or division may return all unused goods received and recover all amounts paid under the contract.

(3) Any contractor or affiliate determined to have falsely represented that it or a subcontractor is an SBE, or determined to have not acted in good faith to fulfill the terms of a contract calling for it to use the services or commodities of an SBE, will be considered under the county's suspension and debarment policy.

G. Reservation of Contracts.

(1) Unless otherwise prohibited by federal or state law, the County may reserve contracts to be awarded only to SBEs. The County shall ~~may~~ review all of its needs and requirements in each fiscal year and the Board of County Commissioners may shall determine which contracts may be reserved for bidding only by SBEs. This reservation may only be used when it is determined, before dissemination of the request for proposals or invitation to bid, that there are capable, qualified, SBEs available who are interested and willing to bid on these contracts in order to provide for effective competition. Once a decision has been made to reserve a contract, the County shall estimate what it expects the dollar amount of the contract to be based on the nature of the contract and its value under prevailing market conditions. If all the bids received are over this estimate, the County may reject the bids and open the bidding to all vendors and contractors. Before contracts can be reserved for bidding only by SBEs, the Board of County Commissioners Administrator, ~~in conjunction with the purchasing manager~~, must determine that such a reservation is in the best interest of the County.

(2) Unless otherwise prohibited by federal or state law, the County may reserve any construction contract for competitive bidding for contractors who agree to utilize SBEs as subcontractors or subvendors. The percentage of funds which must be expended with SBE subcontractors shall be determined by the County before the contract is reserved. In order to bid on a construction contract so reserved, the contractor shall identify those SBEs that will be utilized as subcontractors or subvendors. Once a decision has been made to reserve a contract, but before bids are requested, the County shall estimate what it expects the amount of the contract to be based on the nature of the contract involved and its value under prevailing market conditions. If all the bids received are over this estimate, the County may reject the bids and open the bidding to all vendors and contractors. It is the express responsibility of the contractor to verify that all SBEs that will be utilized as subcontractors or subvendors are currently certified by the County.

H. SBE Preference.

(1) The County may award a bid preference on any single bid, as provided in Sec. 46-110, to a certified SBE.

~~(2) The County may award a bid preference on any single bid, as provided in Sec. 46-110, to any contractor that agrees to use SBEs as subcontractors or subvendors for at least 15-51 percent or more of the total dollar value of the bid.~~

~~(3) The County may award a preference in evaluation points to SBEs or contractors that meet the SBE participation goal in its RFP response.~~

~~(4) The purchasing department will formulate and present for adoption any rules necessary to implement the SBE preference in order to guide the county toward having~~

~~a certain percentage of its expenditures for materials, supplies, equipment, goods, services or construction placed with SBEs.~~

(52) SBE preference does not apply to contracts that are reserved in accordance with this section. Preferences as provided in this chapter may not be combined. Only one preference may be awarded on any single solicitation to any certified SBE or contractor. Any SBE bid preference awarded pursuant to this section shall take priority over any local business bid preference that may apply to any single solicitation.

I. Responsiveness of bids—Good faith efforts.

(1) Every competitive bid ~~or proposal~~, if not submitted by a SBE, must demonstrate good faith efforts to utilize SBEs as subcontractors or subvendors.

(2) The County may consider written documentation submitted with the bid package ~~or proposal~~ in determining whether a contractor has made one or more good faith efforts including, but not limited to:

(a) Whether the contractor attended any presolicitation or prebid meeting that was scheduled by the county to inform SBEs of contracting and subcontracting opportunities;

(b) Whether the contractor advertised in a general circulation, trade association, and/or SBE focus media concerning the subcontracting opportunities;

(c) Whether the contractor provided written notice to a reasonable number of SBEs that their interest in the contract was being solicited in sufficient time to allow the SBE to participate effectively;

(d) Whether the contractor followed up initial solicitations of interest by contacting SBEs to determine whether a SBE is interested;

(e) Whether the contractor selected portions of the work to be performed by SBEs in order to increase the likelihood of meeting the SBE goals of the county, including, where possible, breaking down contracts into economically feasible units to facilitate SBE participation;

(f) Whether the contractor negotiated in good faith with interested SBEs, not rejecting SBE as unqualified without sound reasons based on investigation of their capabilities;

(g) Whether the contractor made efforts to assist interested SBEs in obtaining bonding, lines of credit, or insurance required by the county and/or the contractor; and

(h) Whether the contractor effectively used the services of available small business community organizations; small business contractors' groups; local, state, and federal business assistance offices; and other organizations that provide assistance in the recruitment and placement of small businesses.

(3) The County may waive the good faith requirement for procurement where sub-contracting is not applicable or in order to ensure adequate competition.

J. SBE Assistance Program.

(1) The SBE assistance program is established within the Office of Purchasing and will report all recommendations and activities associated with the SBE program directly to the County Administrator. This program will assist, and encourage, and serve as a liaison for a-SBEs to become a supplier of materials, supplies, equipment, or services to the County participate in the County solicitation process.

(2) In addition, the purchasing department, in conjunction with the County Administrator, shall:

(a) Review and comment on any changes to a county policy, rule or regulation relating to SBE procurement;

(b) Receive, compile and disseminate information on procurement opportunities, availability of SBEs and available technical assistance;

(c) Refer all information on any business suspected of misrepresenting its SBE status to the County Administrator's office;

(d) Maintain a central list of certified SBEs, and provide it upon request, and maintain a process for timely and independent verification of the status of businesses currently certified and seeking certification from the County as a SBE; and

(e) Host, not less than annually, a workshop to assist small businesses located in Escambia County to obtain SBE certification and to do business with the county.

(f) ~~Present an annual written report to the Board of County Commissioners on the SBE Program.~~

K. Implementation of policy; monitoring of compliance.

In order to systematically augment a viable SBE component within the County's purchasing and procurement system, the purchasing manager shall be delegated the following powers and duties to fulfill their responsibilities and functions:

- 1) Establish and compile a system of coordinated, uniform procurement policies, procedures, and practices ~~to implement~~ supporting the SBE program.
- 2) ~~Establish and strongly encourage the annual expenditure of up to fifteen (15) percent of the total competitive procurement monies with SBEs for materials, supplies, equipment services and construction~~ Encourage the use of SBE's in County contracting and procurement for goods, services and construction that may be provided or performed by SBEs and strive to achieve the stated SBE annual program goal.
- 3) ~~Formulate and establish a system~~ Manage and maintain the Information System or other automated interface with the County's Finance System to record and measure the use of SBEs in county contracting. This system shall maintain information and statistics on SBE participation, in order to analyze the progress of the SBE program.
- 4) ~~The purchasing manager shall annually~~ Provide an annual written report to the County Administrator detailing the contractual or procurement disbursements made to SBEs to the County Administrator for goods, services and construction. This information shall be made available to the Board of County Commissioners as well as the public at large. ~~The purchasing department shall be responsible for the accuracy of information provided.~~

Section 2. Severability.

That if any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any Court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

Section 3. Inclusion in the Code.

It is the intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made a part of the Escambia 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.

Section 4. Effective Date.

This Ordinance shall become effective upon filing with the Department of State.

DONE AND ENACTED THIS 24th DAY OF July, 2014.

**BOARD OF COUNTY COMMISSIONERS
ESCAMBIA COUNTY, FLORIDA**

BY: *Lumon J. May*
Lumon J. May, Chairman

ATTEST: **PAM CHILDERS**
Clerk to the Circuit Court

 BY: *Elizabeth Carraway*
Deputy Clerk

Enacted: July 24, 2014

Filed with Department of State: July 29, 2014

Effective: July 29, 2014

Approved as to form and legal
sufficiency.

By/Title: *Kathleen A. A. A.*
Date: *7/29/14*

Date Executed

7/29/2014



BOARD OF COUNTY COMMISSIONERS
Escambia County, Florida

AI-6511

Public Hearings 13.

BCC Regular Meeting

Meeting Date: 07/24/2014

Issue: 5:35 p.m. Public Hearing Concerning the Small Business Enterprise Program Ordinance

From: Kristin Hual, Assistant County Attorney

Organization: County Attorney's Office

CAO Approval: 

RECOMMENDATION:

5:35 p.m. Public Hearing for consideration of adopting an Ordinance amending Volume 1, Chapter 46, Article II, Division 3, Section 46-11, of the Escambia County Code of Ordinances, relating to the Small Business Enterprise Program Ordinance.

Recommendation: That the Board adopt an Ordinance amending Volume I, Chapter 46, Article II, Division 3, Section 46-111, of the Escambia County Code of Ordinances, relating to the Small Business Enterprise Program.

BACKGROUND:

At its July 10, 2014 meeting the Board approved setting the Public Hearing for consideration of amending the Small Business Enterprise Ordinance.

By Board action on December 5, 2013, the Board of County Commissioners previously adopted Ordinance Number 2013-52 creating a small business enterprise program to provide qualified small businesses the maximum opportunity to participate in the public procurement of goods and services. The proposed amendment will serve to clarify certain provisions relating to the implementation of the program.

BUDGETARY IMPACT:

N/A

LEGAL CONSIDERATIONS/SIGN-OFF:

Kristin Hual, Assistant County Attorney drafted the proposed amendment and advertised in the *Pensacola News Journal* on July 12, 2014.

PERSONNEL:

N/A

POLICY/REQUIREMENT FOR BOARD ACTION:

N/A

IMPLEMENTATION/COORDINATION:

A copy of the Ordinance will be filed with the Department of State.

Attachments

Ordinance

ORDINANCE NUMBER 2014-_____

AN ORDINANCE OF ESCAMBIA COUNTY, FLORIDA AMENDING VOLUME 1, CHAPTER 46, ARTICLE II, DIVISION 3, SECTION 46-111 OF THE ESCAMBIA COUNTY CODE OF ORDINANCES RELATING TO SMALL BUSINESS ENTERPRISE PROGRAM; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.

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WHEREAS, the Board of County Commissioners finds that provisions of the County's ordinance relating to the small business enterprise program for the County's procurement of goods and services require amendment to better implement the program; and

WHEREAS, the Board of County Commissioners finds that the proposed Ordinance amending the ordinance creating the small businesses enterprise program for the County's procurement of goods and services serves a compelling public purpose for the benefit of the taxpayers and residents of Escambia County.

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Sec. 46-111. Small Business Enterprise Program.

A. Purpose and intent of article.

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B. Definitions.

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not be eligible for certification as a SBE. In determining whether a business performs a commercially useful business function, consideration will include, but not be limited to, whether the business adds a value to the product or service provided; whether the business has a distributorship agreement with the manufacturer of goods supplied; whether the business takes possession of the product or service provided; whether the business warrants the product or service provided; whether the business maintains sufficient storage space to keep the product in inventory; whether the business maintains sufficient inventory to meet the requirements of its contracts; whether the business provides the product or service to the public or other business other than a governmental agency.

SBE means a small business enterprise certified by Escambia County.

C. Scope.

Unless otherwise prohibited by federal or state law, this chapter shall apply to the solicitation of all goods, services and construction by the County which are governed by the county purchasing code. Whenever possible, the County shall utilize a solicitation process which encourages SBE participation even on those items which are exempted from the requirements of the purchasing code.

D. SBE Program Goals.

~~(1) *Annual goals:* The cumulative annual SBE goal for county procurement contracts shall be a minimum expenditure of up to fifteen (15) percent of the total annual expenditures for operating and capital costs for the current fiscal year as calculated in accordance with County SBE Program policies and procedures. —competitive procurement monies for materials, supplies, equipment services and construction. The annual goal shall be applied to each individual county procurement of goods, services or construction unless otherwise approved by the County Administrator. The cumulative annual SBE goal may be adjusted annually by the Board of County Commissioners.~~

~~(2) *Evaluation of goal attainment:* The goal shall be applied to the full monetary value of the contract and be reflected in the full monetary portion spent on subcontracts for goods, services, supplies, consulting or and construction services to be that may be awarded to those SBEs meeting contract specifications~~

E. Certification.

(1) *Requirements.* For the purposes of this section, the following certification requirements shall govern:

- (a) The business must currently perform a *commercially useful business function*;
- (b) The business must be a local business as defined in Sec. 46-110;

- (c) The business must be an independently owned and operated, for-profit entity;
 - (d) The business may employ 10 or fewer full time employees; and
 - (e) The business may have a net worth of not more than one million dollars.
- (2) *Application procedure.* All applicants wishing to be considered as certified businesses for the benefits of the SBE program must complete the small business self certification form which can be obtained through the office of purchasing. ~~Applicants must submit the necessary documentation as appropriate to their business and all of its affiliates. The Office of Purchasing may request any other documentation necessary to determine eligibility.~~ This is a self-certification process and shall require a signed affidavit attesting to the accuracy of the data provided on the form.
- (3) The purchasing department shall ~~certify~~ accept SBEs for use by the County in its purchasing and procurement process based upon the eligibility requirements provided herein. The purchasing department shall maintain an up-to-date electronic list of SBEs, and encourage the use of this list by all departments in their procurement activities.
- (4) Any change of ownership or circumstances that may affect certification eligibility of an SBE must be reported to the purchasing department within 30 days of the change taking place. In the event of a change, the current owner is responsible for fulfilling this reporting requirement prior to seeking business with the County.
- (5) *Recertification.* Certified SBEs are required to submit an affidavit of their continued eligibility as a SBE every year. If there has been a change in operation, ownership, control, activities, domicile or gross receipts, the SBE must identify such change on their application for recertification. ~~Supporting documentation may be required for continued certification. A company that fails to submit its affidavit of continued eligibility or fails to submit documentation requested by the office of purchasing will no longer be deemed certified for purposes of participation in the small business program.~~
- (6) *Decertification.* If during any period of certification, the County has reason to believe that the SBE was not properly certified or that there has been a substantial change of ownership or circumstances that may affect certification eligibility then the ~~purchasing department~~ County Administrator may conduct an investigation and decertify an SBE if the investigation indicates that continued certification would be contrary to the County's SBE program requirements. The County Administrator ~~purchasing department~~ County Administrator shall notify the SBE by certified mail that it has been decertified. Any business that is decertified may not be recertified for one (1) year from the date of decertification.
- (7) *Appeal of Decertification.* Any business that believes it was wrongfully denied certification may submit a written request with the office of purchasing to appeal the decertification. The appeal shall be filed within twenty (20) days of receipt of the notice

of decertification. The request for appeal shall state with particularity the reasons why the business believes the denial was erroneous.

(8) *Hearing on Appeal of Decertification.* If an appeal is requested, an administrative review will be conducted by the County Administrator, or designee, within forty-five (45) days of receipt of the notice of appeal. Upon review, the County Administrator, or designee shall take one of the following actions:

(a) Grant the appeal. If a determination is made that decertification was contrary to County's SBE program requirements, the appeal shall be granted and the business recertified;

(b) Deny the appeal. If a determination is made that certification would be contrary to the County's SBE program requirements, the appeal shall be denied and the applicant may request that the matter be referred to a special master for further proceedings in accordance with Sec. 46-102(4)-(7); or

(c) Refer the appeal to a special master. If no administrative determination is made, the matter may be referred to a special master for further proceedings in accordance with Sec. 46-102(4)-(7).

F. False representation.

(1) It is unlawful for any individual or entity to knowingly submit false information in order to qualify for SBE certification.

(2) Any contractor that falsely represents to the county that it is an SBE, or knowingly submits false information or represents that it will use the services or commodities of an SBE and subsequently does not, shall be deemed in breach of contract. Upon a determination that a breach has occurred, all payments under the contract or any other arrangement shall be immediately suspended. The contractor may show that it attempted in good faith to comply with the terms of the contract but was unable to comply. If the county determines that the contractor did not act in good faith, all amounts paid to the contractor under the county contract or agreement intended for expenditure with the SBE shall be forfeited and recoverable by the county. In addition, the contract or agreement may be rescinded and the department or division may return all unused goods received and recover all amounts paid under the contract.

(3) Any contractor or affiliate determined to have falsely represented that it or a subcontractor is an SBE, or determined to have not acted in good faith to fulfill the terms of a contract calling for it to use the services or commodities of an SBE, will be considered under the county's suspension and debarment policy.

G. Reservation of Contracts.

(1) Unless otherwise prohibited by federal or state law, the County may reserve contracts to be awarded only to SBEs. The County shall ~~may~~ review all of its needs and requirements in each fiscal year and the Board of County Commissioners may shall determine which contracts may be reserved for bidding only by SBEs. This reservation may only be used when it is determined, before dissemination of the request for proposals or invitation to bid, that there are capable, qualified, SBEs available who are interested and willing to bid on these contracts in order to provide for effective competition. Once a decision has been made to reserve a contract, the County shall estimate what it expects the dollar amount of the contract to be based on the nature of the contract and its value under prevailing market conditions. If all the bids received are over this estimate, the County may reject the bids and open the bidding to all vendors and contractors. Before contracts can be reserved for bidding only by SBEs, the Board of County Commissioners Administrator, ~~in conjunction with the purchasing manager,~~ must determine that such a reservation is in the best interest of the County.

(2) Unless otherwise prohibited by federal or state law, the County may reserve any construction contract for competitive bidding for contractors who agree to utilize SBEs as subcontractors or subvendors. The percentage of funds which must be expended with SBE subcontractors shall be determined by the County before the contract is reserved. In order to bid on a construction contract so reserved, the contractor shall identify those SBEs that will be utilized as subcontractors or subvendors. Once a decision has been made to reserve a contract, but before bids are requested, the County shall estimate what it expects the amount of the contract to be based on the nature of the contract involved and its value under prevailing market conditions. If all the bids received are over this estimate, the County may reject the bids and open the bidding to all vendors and contractors. It is the express responsibility of the contractor to verify that all SBEs that will be utilized as subcontractors or subvendors are currently certified by the County.

H. SBE Preference.

(1) The County may award a bid preference on any single bid, as provided in Sec. 46-110, to a certified SBE.

~~(2) The County may award a bid preference on any single bid, as provided in Sec. 46-110, to any contractor that agrees to use SBEs as subcontractors or subvendors for at least 15.51 percent or more of the total dollar value of the bid.~~

~~(3) The County may award a preference in evaluation points to SBEs or contractors that meet the SBE participation goal in its RFP response.~~

~~(4) The purchasing department will formulate and present for adoption any rules necessary to implement the SBE preference in order to guide the county toward having~~

~~a certain percentage of its expenditures for materials, supplies, equipment, goods, services or construction placed with SBEs.~~

(52) SBE preference does not apply to contracts that are reserved in accordance with this section. Preferences as provided in this chapter may not be combined. Only one preference may be awarded on any single solicitation to any certified SBE or contractor. Any SBE bid preference awarded pursuant to this section shall take priority over any local business bid preference that may apply to any single solicitation.

I. Responsiveness of bids—Good faith efforts.

(1) Every competitive bid ~~or proposal~~, if not submitted by a SBE, must demonstrate good faith efforts to utilize SBEs as subcontractors or subvendors.

(2) The County may consider written documentation submitted with the bid package ~~or proposal~~ in determining whether a contractor has made one or more good faith efforts including, but not limited to:

(a) Whether the contractor attended any presolicitation or prebid meeting that was scheduled by the county to inform SBEs of contracting and subcontracting opportunities;

(b) Whether the contractor advertised in a general circulation, trade association, and/or SBE focus media concerning the subcontracting opportunities;

(c) Whether the contractor provided written notice to a reasonable number of SBEs that their interest in the contract was being solicited in sufficient time to allow the SBE to participate effectively;

(d) Whether the contractor followed up initial solicitations of interest by contacting SBEs to determine whether a SBE is interested;

(e) Whether the contractor selected portions of the work to be performed by SBEs in order to increase the likelihood of meeting the SBE goals of the county, including, where possible, breaking down contracts into economically feasible units to facilitate SBE participation;

(f) Whether the contractor negotiated in good faith with interested SBEs, not rejecting SBE as unqualified without sound reasons based on investigation of their capabilities;

(g) Whether the contractor made efforts to assist interested SBEs in obtaining bonding, lines of credit, or insurance required by the county and/or the contractor; and

(h) Whether the contractor effectively used the services of available small business community organizations; small business contractors' groups; local, state, and federal business assistance offices; and other organizations that provide assistance in the recruitment and placement of small businesses.

(3) The County may waive the good faith requirement for procurement where sub-contracting is not applicable or in order to ensure adequate competition.

J. SBE Assistance Program.

(1) The SBE assistance program is established within the Office of Purchasing and will report all recommendations and activities associated with the SBE program directly to the County Administrator. This program will assist, and encourage, ~~and serve as a liaison for a-SBEs to become a supplier of materials, supplies, equipment, or services to the County participate in the County solicitation process.~~

(2) In addition, the purchasing department, in conjunction with the County Administrator, shall:

(a) Review and comment on any changes to a county policy, rule or regulation relating to SBE procurement;

(b) Receive, compile and disseminate information on procurement opportunities, availability of SBEs and available technical assistance;

(c) Refer all information on any business suspected of misrepresenting its SBE status to the County Administrator's office;

(d) Maintain a central list of certified SBEs, and provide it upon request, ~~and maintain a process for timely and independent verification of the status of businesses currently certified and seeking certification from the County as a SBE;~~ and

(e) Host, not less than annually, a workshop to assist small businesses located in Escambia County to obtain SBE certification and to do business with the county.

(f) ~~Present an annual written report to the Board of County Commissioners on the SBE Program.~~

K. Implementation of policy; monitoring of compliance.

In order to systematically augment a viable SBE component within the County's purchasing and procurement system, the purchasing manager shall be delegated the following powers and duties to fulfill their responsibilities and functions:

- 1) Establish and compile a system of coordinated, uniform procurement policies, procedures, and practices ~~to implement~~ supporting the SBE program.
- 2) ~~Establish and strongly encourage the annual expenditure of up to fifteen (15) percent of the total competitive procurement monies with SBEs for materials, supplies, equipment services and construction~~ Encourage the use of SBE's in County contracting and procurement for goods, services and construction that may be provided or performed by SBEs and strive to achieve the stated SBE annual program goal.
- 3) ~~Formulate and establish a system~~ Manage and maintain the Information System or other automated interface with the County's Finance System to record and measure the use of SBEs in county contracting. This system shall maintain information and statistics on SBE participation, in order to analyze the progress of the SBE program.
- 4) ~~The purchasing manager shall annually~~ Provide an annual written report to the County Administrator detailing the contractual or procurement disbursements made to SBEs to the County Administrator for goods, services and construction. ~~This information shall be made available to the Board of County Commissioners, as well as the public at large. The purchasing department shall be responsible for the accuracy of information provided.~~

Section 2. Severability.

That if any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any Court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

Section 3. Inclusion in the Code.

It is the intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made a part of the Escambia 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.

Section 4. Effective Date.

This Ordinance shall become effective upon filing with the Department of State.

DONE AND ENACTED THIS ____ DAY OF _____, 2014.

BOARD OF COUNTY COMMISSIONERS
ESCAMBIA COUNTY, FLORIDA

BY: _____
Lumon J. May, Chairman

ATTEST: PAM CHILDERS
Clerk to the Circuit Court

BY: _____
Deputy Clerk

(SEAL)

Enacted:

Filed with Department of State:

Effective:

Approved as to form and legal
sufficiency.

By/Title: Kathal AEA

Date: 7/14/14