

Sec. 46-111. - Small Business Enterprise Program.

(a) **Purpose and Intent of Section:** The purpose and intent of this section is to provide the maximum opportunity for increased participation of qualified small businesses in the county's procurement system.

(b) **Definitions:** The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

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 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:**

Annual Goal: The cumulative annual SBE goal shall be up to 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. The cumulative annual SBE goal may be adjusted annually by the board of county commissioners.

(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 section 46-110;
- c. The business must be an independently owned and operated, for-profit entity;
- d. The business may employ ten or fewer full time employees; and
- e. The business may have a net worth of not more than \$1,000,000.00.

(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. 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 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. A company that fails to submit its affidavit of continued eligibility 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 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 shall notify the SBE by certified mail that it has been decertified. Any business that is decertified may not be recertified for one 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 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 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 subsections 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 subsections 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 may review all of its needs and requirements in each fiscal year and the board of county commissioners may 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 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 sub-vendors. 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 sub-vendors. 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 sub-vendors are currently certified by the county.

(h) **SBE Preference:**

- (1) The county may award a bid preference on any single bid, as provided in section 46-110, to a certified SBE.
- (2) 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, if not submitted by a SBE, must demonstrate good faith efforts to utilize SBEs as subcontractors or sub-vendors.
- (2) The county may consider written documentation submitted with the bid package in determining whether a contractor has made one or more good faith efforts including, but not limited to:
 - a. Whether the contractor attended any pre-solicitation or pre-bid 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 SBEs to 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
 - 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.
- (k) ***Implementation of Policy:*** 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 supporting the SBE program.
 - (2) Encourage the use of SBEs 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) 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) Provide an annual written report to the county administrator detailing disbursements made to SBEs for goods, services and construction.

(Ord. No. 2013-52, § 2, 12-5-2013; Ord. No. 2014-29, § 1, 7-24-2014)