

6-30-11

ORDINANCE NO. 7271

AN ORDINANCE TO AMEND THE AUGUSTA, GEORGIA CODE, ARTICLE ONE, CHAPTER TEN, RELATING TO THE PROCUREMENT OF GOODS AND SERVICES, THE LOCAL SMALL BUSINESS OPPORTUNITIES PROGRAM AND THE DBE PROGRAM FOR FEDERALLY ASSISTED PROJECTS SO AS TO PROVIDE UPDATES AND TO ESTABLISH POLICIES, PROCEDURES AND GUIDELINES REGARDING THE PROCUREMENT PROCESS AND THE LOCAL SMALL BUSINESS OPPORTUNITIES PROGRAM; TO REPEAL ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH; TO PROVIDE AN EFFECTIVE DATE AND FOR OTHER PURPOSES.

WHEREAS, it is the desire of the Augusta, Georgia Commission to update Code provisions relating to the procurement of goods and services so as to reflect changes in Georgia law and to improve the efficiency of the procurement process;

WHEREAS, it is the desire of the Augusta, Georgia Commission to increase the effectiveness of the Local Small Business Opportunities Program and to broaden the number of businesses eligible to participate in the program and to implement race and general neutral measures to reduce discrimination in Augusta, Georgia;

WHEREAS, it is the desire of the Augusta, Georgia Commission to update and improve its DBE Program for Department of Transportation (DOT), Federal Transportation Administration (FTA), Federal Aviation Administration (FAA) and other federally funded projects and to ensure full compliance with state and federal regulations;

WHEREAS, the DBE Program for DOT, FTA and FAA funded projects is to be approved by the Department of Transportation before it is effective;

WHEREAS, based on the foregoing, the Augusta, Georgia Commission recommends amending Article one, Chapter ten of the AUGUSTA, GA CODE.

THE AUGUSTA, GEORGIA COMMISSION ordains as follows:

SECTION 1. AUGUSTA, GA. CODE Article one, Chapter ten as set forth in the AUGUSTA, GA. CODE, re-adopted July 10, 2007, is hereby amended by striking this

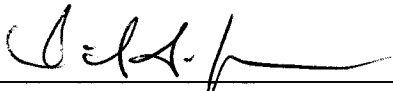
chapter in its entirety. A new Chapter ten is hereby inserted to replace the repealed Code Chapter ten as set forth in "Exhibit A" hereto.

SECTION 2. This ordinance shall become effective upon its adoption in accordance with applicable laws. ~~Chapter 10B~~ (DBE Program) shall be effective only following approval of the Department of Transportation.

SECTION 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed.


Adopted this 30 day of June, 2011.


1st reading June 21 2011



AGM David S. Copenhaver
As its Mayor
6/30/11

Attest:



Lena J. Bonner, Clerk of Commission
Seal:  EST. 1996
AUGUSTA, GEORGIA

CERTIFICATION

The undersigned Clerk of Commission, Lena J. Bonner, hereby certifies that the foregoing Ordinance was duly adopted by the Augusta, Georgia Commission on June 30, 2011 and that such Ordinance have not been modified or rescinded as of the date hereof and the undersigned further certifies that attached hereto is a true copy of the Ordinance which was approved and adopted in the foregoing meeting(s).



Lena J. Bonner, Clerk of Commission

Published in the Augusta Chronicle.

Date: July 14

Chapter 10B

LOCAL SMALL BUSINESS OPPORTUNITY PROGRAM

Sec. 1-10-122. Title.

Augusta, Georgia Local Small Business Opportunities Program (“LSBOP”).

Sec. 1-10-123. Objective.

Augusta, Georgia is firmly committed to the principles of equal opportunity and in keeping with these principles, hereby sets forth a program and establishes a mechanism for developing, approving, and implementing procedures by which local small business enterprises shall be identified, informed and educated regarding opportunities for supplying goods, general services, and construction services required by Augusta, Georgia, and providing for objectives for bidders to incorporate the use of Local Small Businesses as commercially useful sub-contractors, thereby promoting balanced economic and community growth throughout Augusta, Georgia. The LSBOP is a race and gender-neutral program.

Sec. 1-10-124. Policy, intent and purpose.

- (a) *Policy.* It is the policy of Augusta, Georgia that all necessary and reasonable steps shall be taken to ensure that local small business enterprises have the maximum opportunity to compete for and participate in all contracts and subcontracts funded by or through the Augusta, Georgia governing authority. Further, the Augusta, Georgia Commission has determined as a means to ensure full economic participation by small local business that a mechanism for developing, approving and implementing a LSBOP is required.

Augusta, Georgia has established the LSBOP to promote opportunities for registered Local Small Business to participate in Augusta, Georgia’s contracting and procurement activities by requiring contractors to utilize registered Local Small Businesses to perform commercially useful functions to the maximum extent possible and as economically feasible, as partners or subcontractors for service delivery or as suppliers of various goods required in the performance of a contract. This LSBOP is in addition to and shall not supplant the Local Preference of Code § 1-10-6.

- (b) *Intent and Purpose.* The Augusta, Georgia Local Small Business Opportunity Program is established to encourage equal opportunity,

diversity, and equity in Augusta, Georgia's contracting and procurement activities. In a race and gender neutral manner, the Program will promote fair and equal opportunities for all local small businesses. It is specifically intended that the encouragement of local small businesses will allow for the development and growth of such businesses to increase competition for construction and procurement opportunities.

- (1) It is the intent and purpose of this Program to encourage equal opportunity in Augusta, Georgia's contracting and procurement and to eliminate discrimination and the effects of past discrimination therein.
- (2) It is also the intent and purpose of this Program to encourage the use of the Local Small Business Opportunity Program, which will have the benefit to Augusta, Georgia of assisting the local economy with job formation while remedying the discrimination against minority owned business enterprises in the Augusta, Georgia contracts and procurement in a race and gender-neutral manner.
- (3) It is also the intent and purpose of the LSBOP to develop evidence relevant to whether future race and gender conscious programs are necessary to remediate the effects of past or current discrimination, as required by applicable laws.

Sec. 1-10-125. Definitions.

- (a) *Generally.* Those definitions set forth in Chapter 10 of this Code shall also apply to Chapter 10B, except as provided in this section.
- (b) *Specifically.*
 - (1) *Citizen's Small Business Advisory Board (CSBAB).* Is a council to advise the Commission and the Director of minority and small business opportunities of matters pertaining to the LSBOP, and to meet with small businesses to review and advise as to the issues in program administration. See Ga. Laws 1995, p. 3648, § 14(d) (hereinafter Consolidation Act).
 - (2) *Commercially Useful Function.* For the purpose of determining whether a registered Local Small Business is performing a commercially useful function, Director of minority and small

business opportunities shall consider all of the facts in the record, viewed as a whole, including without limitation the following:

- (i) A Local Small Business performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved.
 - (ii) To perform a commercially useful function, the Local Small Business must be responsible, with respect to material and supplies used on the contract or sub-contract for which it is engaged, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.
 - (iii) A Local Small Business does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of Local Small Business participation. In determining whether a Local Small Business is such an extra participant, the Director of minority and small business opportunities will examine similar transactions, particularly those in which Local Small Businesses do not participate.
- (3) *Director of minority and small business opportunities.* The person designated by the Commission “to serve as equal employment opportunity director and as director of minority and small business opportunities” in accordance with § 14(c) of the Consolidation Act.
- (4) *Good Faith Efforts.* Techniques used by a bidder/proposer to seek Local Small Businesses to participate as a subcontractor or supplier required to fulfill the bid/proposal request for participation. Such good faith efforts of a bidder/proposer include, but are not necessarily limited to, the following actions:
- (i) Including qualified local small businesses in the prime contractor’s solicitations for subcontractors and suppliers.
 - (ii) Assuring that local small businesses are solicited whenever such business enterprises can perform a commercially useful function.

- (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation of local small businesses.
 - (iv) Establishing delivery schedules, where the requirements of the prime contract permit, which encourage participation of local small businesses.
 - (v) Using the services and the assistance of the Director of minority and small business opportunities in the identification of qualified local small business and negotiating subcontracts and supply contracts with such enterprises.
 - (vi) Requiring each first tier subcontractor to take the affirmative steps outlined in sub paragraphs 1 through 5 above with respect to the identification and usage of second or third tier subcontractors.
 - (vii) Placing notices of opportunities for qualified local small business to perform subcontracting work on the eligible project in newspapers, trade journals, and other relevant publications, including publications specifically targeted to local small businesses, or communicating such notices of opportunities via the Internet or by other available media or means.
 - (viii) Designating portions of the work for local small businesses subcontracting in trades with available local small business subcontractors.
 - (ix) Providing a minimum of five (5) days notice to local small businesses when requesting bids or proposals for furnishing material or services as a subcontractor or supplier.
- (5) *Gross Receipts.* Total income or, in the case of sole proprietorship gross income, plus “cost of goods sold” as these terms are defined or reported on Internal Revenue Service (IRS) Federal tax return forms; Form 1120 for corporations; Form 1120S for Subchapter S corporations; Form 1065 for partnerships; and Form 1040, Schedule F for farm or Schedule C for sole proprietorships.

- (6) *Joint Venture.* An association of two or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills, and knowledge.
- (7) *Local Small Business.* A corporation, sole proprietorship, partnership or other business organization that meets the requirements for registration as such with Augusta, Georgia in accordance with Section 1-10-128 of this Code.
- (8) *Monthly Utilization Report or MUR.* A memorialization by a prime contractor of all subcontracting and Local Small Business participation utilized on a contract. Contractors/vendors are required to submit the Monthly Utilization Reports on all subcontracting participation to the Director of minority and small business opportunities.
- (9) *Non-Discrimination Statement.* Written affirmation made by a bidder relating to the bidder's conduct prior to submission of a bid as well as after award of a contract that the bidder agrees to:
 - (i) Follow the policies of Augusta, Georgia relating to the participation of local small businesses.
 - (ii) Undertake certain measures to ensure the maximum practicable participation by local small businesses; and
 - (iii) Not engage in discriminatory conduct against local small businesses inconsistent with this Policy.
- (10) *Personal Net Worth.* Net value of the assets of an individual owner, after total liabilities are deducted must not exceed seven hundred and fifty thousand dollars (\$750,000). An individual's Personal Net Worth does not include the individual's ownership interest and the individual's equity in his or her primary place of residence. An individual's Personal Net Worth includes his or her share of assets held jointly with the individual's spouse. Property held by the entireties is deemed to be owned equally by the spouse.
- (11) *Prime Contractor.* A person or firm who is awarded a contract from Augusta, Georgia for provision of goods or services and has the

primary responsibility for performance of the contract. The Prime Contractor may subcontract portions of the work required to Subcontractors, as indicated in the bid or solicitation documents.

- (12) *Registered Local Small Business.* Any business entity registered by the Director of minority and small business opportunities, providing goods or services, which has its principal office and place of doing business in Augusta, Georgia; with three (3) year average gross annual receipts being not more than one and one half million dollars (\$1,500,000); and whose owners meet the personal net worth threshold, all as defined herein. The term Local Small Business shall also include a manufacturer with seventy-five (75) employees or less or wholesaler with fifty (50) employees or less without regard to gross revenues.
- (13) *Schedule of local small business participation.* Written data sheet which is a required submittal for a bid or proposal that lists proposed local small business subcontractors and the estimated value of proposed sub-contracts.

Sec. 1-10-126. Application; effective date.

Except as otherwise provided, this ordinance shall apply to all bids, proposals, contracts, expenditures and purchases commenced by Augusta, Georgia except sole source or emergency procurements and certain federally funded projects as provided herein. The effective date of this ordinance shall be the date it is approved by the Augusta, Georgia Commission.

Sec. 1-10-127. Program administration.

- (a) *Services to be provided by the Local Small Business Opportunities Program.* The Director of minority and small business opportunities shall have the primary responsibility to assure that the LSBOP is effectively and equitably carried out in Augusta, Georgia. Other Augusta, Georgia officials, the Procurement Director, Department Directors and management personnel shall give their full cooperation towards the implementation of the LSBOP.

- (b) *Program.* The LSBOP administration consists of performing vendor registration, education and outreach, and review of bid and proposal documents. Specifically, the program shall consist of:
- (1) Developing and administering local small business registration criteria and procedures.
 - (2) Establishing and maintaining a directory available to the public of registered local small businesses capable of supplying the type and quality of equipment, supplies, general services, construction, and professional services required by Augusta, Georgia.
 - (3) Regularly seeking out and registering new local small businesses to bid on Augusta, Georgia purchases and solicitations.
 - (4) Notifying vendors of their registration status and advising non-registered parties of their right to appeal the denial of registration which shall be filed with the Director of minority and small business opportunities within five (5) days of receipt of such notice.
 - (5) Developing annual forecasts and periodically updating same based on a review of anticipated purchases and registered local small businesses.
 - (6) Monitoring and reporting on legislative and judicial actions relevant to local, small business interests.
 - (7) Reviewing specifications and bid documents with the Procurement Department to ensure maximum opportunities for registered local small businesses to compete on an equal basis for contracting opportunities and to perform commercially useful functions.
 - (8) Convening and/or participating in information sessions with local small businesses regarding bid requirements and contract performance.
 - (9) Providing technical assistance, conducting seminars, visiting vendors, and performing other outreach services to encourage and increase participation in Augusta, Georgia's bidding process by local small businesses.

- (10) Exploring and developing other means of expanding the program, and attracting and increasing local small business participation including joint efforts with other governmental agencies and authorities.
- (11) Refer local small businesses to third party development assistance providers when appropriate for bonding, financial and technical assistance.
- (12) Attend pre-bid, pre-qualification or pre-proposal conferences to provide information on the LSBOP.
- (13) Preparing and presenting an annual LSBOP report to the Augusta, Georgia Commission.
- (14) Assist prime contractors and other potential bidders in identifying and contacting local small businesses.
- (15) Develop outreach programs specifically targeted to educate local small businesses about the LSBOP.
- (16) The Director of minority and small business opportunities shall work with User Departments to set contracting goals for each project over \$100,000 to include those with subcontracting and/or supplier possibilities. The Director of minority and small business opportunities and User Departments shall have the authority to reduce or eliminate such local small business goals on a project based on the type of contract, the type of subcontracting work that will be required, and the availability of local small businesses.
- (17) At Risk Management Construction Project Prime bidders will also be subject to the contract goals for subcontractors.
- (18) Augusta, Georgia shall indicate goals for local small businesses in Project Specific solicitations over \$100,000 to provide opportunities for local small business participation.
- (19) Where a bid provides a goal for local small business participation, the Director of minority and small business opportunities and User Department shall recommend a bidder be awarded a contract only where the bidder has demonstrated Good Faith Efforts to meet the designated goals.

- (20) Notify all registered vendors of formal bid opportunities through direct solicitation or public advertisement, including information on the LSBOP.
 - (21) Work with project managers or user agencies to divide larger projects into smaller projects or contracts when commercially appropriate, in order to create more opportunities for local small businesses to participate in contracts let by Augusta, Georgia.
 - (22) Provide data and technical assistance to support the outreach efforts of the LSBOP as necessary and appropriate.
 - (23) Ensure specifications are open and competitive.
 - (24) The Director of minority and small business opportunities, the Using Agency and the Finance Director, may make special provision for progress payments as deemed reasonable to assist local small businesses to carry out the terms of a contract.
 - (25) When a local small business is awarded a contract with Augusta, Georgia, the Procurement Director may furnish written confirmation of the same, providing the terms of the contract which may be used by the local small business in negotiating lines of credit with lending institutions.
- (c) *Evaluation of the Local Small Business Opportunity Program.* The LSBOP shall be evaluated on an annual basis. Each annual report shall be compiled by the Director of minority and small business opportunities and shall compare the fiscal year ending with the previous fiscal year. Evaluation of the program may include:
- (1) Number of local small business firms registered;
 - (2) Training and technical assistance offered to local small businesses;
 - (3) Dissemination of LSBOP information at pre-bid conferences; and
 - (4) Evaluation of the effectiveness of the local small business in relation to the achievement of Augusta, Georgia's goals set forth under this policy, including the utilization of local small businesses on contracts.

Sec. 1-10-128. Registration and certification procedures.

- (a) *Registration Criteria; acceptance of certification by other governmental agencies.* The LSBOP requires prior registration or evidence of current certification by other governmental agencies Local Small Business in order to count the participation of that toward program goals. Eligibility requirements for registration are:
- (1) Certification as to small business status may be accepted from other local governmental, state or federal agencies that apply criteria substantially similar to that imposed by this ordinance.
 - (2) Applicant firm must complete an appropriate application form obtained from the Director of minority and small business opportunities and must qualify as a local small business, as the term is defined in this Article as to principle place of business, gross annual receipts and personal net worth thresholds.
 - (3) Applicant firm must have its principal place of business located within the geographic limits of Richmond County. A location utilized solely as a post office box, mailbox, mail drop, virtual office, telephone message center, or any combination thereof, with no substantial work function, shall not be deemed to be a significant local presence sufficient to qualify as a local small business.
 - (4) Applicant firm must possess a valid Augusta, Georgia business license for six (6) months prior to submitting their LSBOP registration application;
 - (5) The firm's three (3) year average annual gross receipts, as defined herein, must not exceed \$1.5 million (\$1,500,000) in annual gross receipts; the annual gross receipts limitation shall not apply to manufacturers with seventy-five (75) employees or less or wholesalers with fifty (50) employees or less.
 - (6) Applicant firm owner must be a citizen or lawfully admitted permanent resident of the United States;

- (7) Applicant firm must be a business, including a sole proprietorship, partnership, corporations, limited liability company, or any other business or professional entity:
 - (i) which is at least fifty-one (51) percent owned by one (1) or more of the applicant individuals identified, and the ownership must have been in existence for one (1) year or more; and
 - (ii) in the case of a publicly-owned business, at least fifty-one (51) percent of all classes of stock which is owned by one (1) or more of such persons, each of whom meets the net worth criteria as defined herein.
 - (8) No individual owner of an applicant firm, or if a sole proprietorship or partnership the individuals themselves, may have a personal net worth that exceeds \$750,000, as that term is defined in this Article.
 - (9) No local small business shall be registered on the basis of the race or gender of its ownership regime.
- (b) *Renewal of Registration.* Local small business registration is valid for a two-year period beginning on the date Augusta, Georgia registers the business. To re-apply, a local small business must submit a new application and evidence of continuing eligibility.

It is the responsibility of the local small business to notify the Director of minority and small business opportunities of any change in its circumstances affecting its continued eligibility for the program. Failure to do so may result in the firm's de-registration and preclusion from future participation in the LSBOP;

- (1) A Local Small Business that no longer meets registration criteria shall not be re-registered by the Director of minority and small business opportunities;
- (2) Firms that have been denied registration or re-registration may protest the denial as follows:
 - (i) Within five (5) days of receipt of denial of registration or re-registration, the firm may protest such action in writing to the

Director of minority and small business opportunities. Protests filed after the five (5) day period shall not be considered and are deemed a failure on the part of the protestor to exhaust administrative remedies.

- (ii) A hearing shall be held by Augusta, Georgia Administrator (or his or her designee) at which time the firm may present additional facts and evidence in support of its eligibility. Augusta, Georgia Administrator (or his or her designee) shall control all aspects of the hearing, including scheduling, conduct, witnesses, and evidence, and may request the attendance of witnesses and production of particular documents.
 - (iii) Augusta, Georgia Administrator shall send written notice of the decision to the firm within thirty (30) days of the hearing.
 - (iv) A firm found to be ineligible cannot apply for registration or re-registration for a period of one year after the effective date of the final decision.
- (c) *Limitations.* Notwithstanding any other provision of this program except on a finding of good cause by Augusta, Georgia, a registered local small business is no longer eligible to participate in the LSBOP after being enrolled for ten (10) consecutive years regardless of whether the firm received contracts or prime contracts under the program. If a firm has been released from the program before graduation as a result of exceeding the LSBOP thresholds, it will still be eligible to receive contracts from Augusta, but such participation will not be counted toward the LSBOP goal of identifying and employing local small businesses to the greatest extent possible.

In determining whether a good cause exists for a firm to continue participation beyond ten (10) consecutive years, Augusta may review all relevant factors such as amount of business previously received by the firm, and capability of other small firms to provide goods and services, impact on a potential contract opportunity for other local businesses to compete. In no event shall a firm's participation in the program extend beyond fifteen (15) years.

Participation or registration as a local small business in the LSBOP shall not preclude a registered firm from competing for a prime contract with Augusta, Georgia on the same basis as other prime contractors or suppliers.

- (d) *Graduation.* Augusta, Georgia shall graduate a local small business from eligibility as a local small business. The local small business will be graduated from local small business if any one of the following occurs:
- (1) The local small business' gross revenues in each of the previous consecutive three (3) years exceed an average of \$1.5 million;
 - (2) The net worth of any owner of a local small business exceeds an average of \$750,000 for each of the previous consecutive three (3) years, exclusive of principal residence and the value of the local small business; or
 - (3) The local small business has participated in the LSBOP for ten (10) years and Augusta, Georgia has not approved an extension of participation based on good cause.

Sec. 1-10-129. Local small business opportunities program participation.

- (a) *Sealed Bids, Sealed Proposals, Professional Services And Other Major Purchasing.* The following procedures and contract requirements will be used to insure that local small businesses are encouraged to participate in Augusta, Georgia contracts, including but not limited to construction contracts, requests for professional services and the performance of public works contracts. The Augusta, Georgia user department shall indicate goals for local small business in all solicitations for contracts over \$100,000 in value:
- (1) Bid conditions, requests for proposals, and all other specifications for contracts awarded by Augusta, Georgia will require that, where subcontracting goal is utilized in performing the contract, the bidder or proponent, will make Good Faith Efforts to subcontract with or purchase supplies from local small businesses. Bid specifications will require the bidder or proponent to keep records of such efforts that are adequate to permit a determination of compliance with this requirement.

- (2) Each bidder shall be required to provide documentation of achieving goal or provide documentation of Good Faith Efforts to engage local small businesses as subcontractors or suppliers, the names of local small businesses and other subcontractors to whom it intends to award subcontracts, the dollar value of the subcontracts, and the scope of the work to be performed, recorded on the form(s) provided or made available as part of the bid package. If there are no sub-contracting opportunities, bidder shall so indicate on the appropriate form.
- (3) For all such contracts, the Procurement Department will provide the Director of minority and small business opportunities with a copy of the invitation to bid or bid specifications including scope of work. The Director of minority and small business opportunities will identify the existence of registered local small businesses which are qualified to submit bids as prime contractors.
- (4) The Director of minority and small business opportunities shall identify subcontracting opportunities and shall make available trade-specific lists of registered local small businesses to potential prime contractors. Prime contractors are encouraged to form Joint Ventures with local small businesses to perform major contracts, particularly in the areas of construction and professional services.
- (5) Within thirty (30) days of the adoption of this Ordinance, the Procurement Department will include a copy of this ordinance in each bid or proposal package or shall publish and make available an internet link at which the LSBOP Ordinance and related forms may be found on the official website of Augusta, Georgia.
- (6) All bid documents shall require bidders or proponents to submit with their bid the following written documents, statements or forms, which shall be made available by the Procurement Department.
 - (i) Non-Discrimination Statement which shall affirm the bidder's:
 - (a) adherence to the policies of Augusta, Georgia relating to equal opportunity in contracting;
 - (b) agreement to undertake certain measures as provided in this policy to ensure maximum practicable participation of local small businesses; and
 - (c) agreement not to engage in discriminatory conduct of any type.

- (ii) Proposed Local Small Business Subcontractor/Supplier Utilization Plan.
- (iii) Documentation of Good Faith Efforts to use local small businesses.

Failure to submit the above documentation shall result in the bid or proposal being declared non-responsive.

- (7) Before advertising and soliciting bids, the Director of minority and small business opportunities and using department will assess if large contracts can be segmented into multiple contracts. Methods to be considered include:
 - (i) The term of a contract may be shortened that results in a dual effect; the reduction of quantity required, and the risk inherent in guaranteeing prices over a longer period of time.
 - (ii) Work to be performed may be grouped according to geographic location within Augusta, Georgia.
- (8) When the Solicitation bid document contains a local small business goal, each Bidder must either: meet the local small business goal or comply with the Good Faith Effort requirement set for in section 1-10-125(b)(4). **Failure to do so constitutes grounds for rejecting the Bid.**
- (9) When the Solicitation bid document does not contain a local small business goal, each bidder must negotiate in good faith with each local small business that responds to the Bidder's solicitation and each local small business that contacts the Bidder on its own accord.
- (10) Self-Performance. Self performance does not exempt Bidders from the LSBOP requirements unless the self performer is a qualified and registered local small business. Bidders that do not meet the local small businesses goal and desire to self-perform all or part of the construction contract must nevertheless demonstrate that they complied with the Good Faith Efforts requirements as set forth in section 1-10-125(b)(4).

- (b) *Departmental Purchase Requirements (All Formal Bids over \$100,000).* User Departments making purchases or issuing solicitations for projects over \$100,000 (including project management, contract management, and/or construction, and/or design contracts) shall have the following duties and responsibilities with regard to the LSBOP:

Departments shall:

- (1) Establish Project Specific Goals on all projects \$100,000 and above.
- (2) Submit the scope of work and cost estimate evaluations to the Director of minority and small business opportunities so appropriate local small business subcontracting goals may be determined.
- (3) Assist the Director of minority and small business opportunities with setting Project Specific Goals.
- (4) Assist in identification of available local small businesses.
- (5) Gather and maintain data for those contracts which they manage.
- (6) Submit subcontracting data to the Director of minority and small business opportunities within fourteen (14) days of progress payments and thirty (30) days of contract closeout.
- (7) Submit to the Director of minority and small business opportunities, on or before the beginning of each Fiscal year, the Department's annual list of projects, listing all upcoming projects, estimating the probable monetary value, and stating the projected bid advertisement date.
- (8) Indicate goals for local small businesses in solicitations for contracts that provide opportunities for local small business participation.
- (9) Work with User Departments to monitor contracts to facilitate prompt payments to local small business and to be in compliance with Project Specific Goals and commitments.
- (10) Track and report statistics regarding the effectiveness of the LSBOP, as measured by a review of data indicating prime and subcontractor spending with local small business, as required by the policies and procedures.

- (c) *Methodology for Setting Local Small Business Project Specific Goals.* The Director of minority and small business opportunities in consultation with User Department shall establish a local small business goal for all contracts through rules and guidelines for the implementation of the LSBOP. Such methodology shall take into account the reasonably known availability of subcontracting opportunities that local small businesses can perform on each contract. Local small business goals should be calculated based upon specific contracting, subcontracting, and/or supplier opportunity and the availability of local small business registered in Augusta, Georgia's directory. For federally funded projects, this will be achieved by applying the Federal Guidelines for setting Goals 49 CFR Parts 26-45.
- (d) *Post Contract Award Requirements.* The purpose of this sub-section is to establish requirements for contractor compliance with the LSBOP after a contract has been awarded. This is incorporated into all Augusta, Georgia Contracts for which a local small business goal has been established or negotiated.
- (1) Contractors shall have an affirmative, ongoing obligation to meet or exceed the committed local small business goal for the duration of the contract. The Augusta, Georgia may deem a contractor to be in violation of the LSBOP and in breach of its contract if at any time Augusta, Georgia determines that: (a) The contractor will not meet the committed local small business goals; and (b) the reasons for the contractor's failure are within the contractor's control. For example, if a contractor does not meet the local small business goal because the contractor terminated a local small business without cause or if the contractor caused and local small business to withdraw from the project without justification, then Augusta, Georgia is justified in finding the contractor to be in violation of the LSBOP.
- (2) Exceptions. A contractor shall not be deemed in violation of this Program for failure to meet the committed local small business goal to the extent such failure is directly attributable to:
- (i) Augusta, Georgia reducing the scope of a contract so as to eliminate or reduce work that was going to be performed by local small businesses (whether through a change order, contract amendment, force account or otherwise);

- (ii) A local small businesses voluntary withdrawal from the project, if the contract demonstrates that such withdrawal was beyond the contractor's reasonable control, so long as the contractor complied with the Good Faith Efforts to replace the local small business with another local small business; or
 - (iii) Termination or reduction in the work of a local small business, if the contractor demonstrates that such termination was consistent with the terms of this Program, and that the contractor complied with the Good Faith Efforts to replace the local small business with another local small business.
- (3) Contractors have an ongoing, affirmative obligation to ensure that local small businesses performing on the contract are performing a Commercially Useful Function. A contractor shall be in violation of the LSBOP and in breach of its contract if it lists a local small business to receive credit toward a committed local small business goal with knowledge that the local small business will be acting as a conduit or will otherwise not be performing a Commercially Useful Function reasonably commensurate with the payment amount for which the contractor will be seeking credit.
- (4) Contractors shall not terminate, replace or reduce the work of a local small business that the contractor has counted toward meeting the committed local small business unless:
 - (i) The local small business refuses to enter into a contract consistent with the local small business' Letter of Intent;
 - (ii) The local small business materially breaches its contract with the contractor;
 - (iii) Augusta, Georgia reduces the contract scope of work so as to eliminate or reduce the work that the local small business was to perform; or
 - (iv) The local small business voluntarily withdraws from the contract for reasons not within the contractor's reasonable control.

- (5) Contractor shall provide the User Department, the Director of minority and small business opportunities and the Procurement Director written notice prior to replacing or terminating a local small business on a contract. The notice shall identify the local small business and the contract; state the reason for the termination or replacement and state the proposed date on which such termination or replacement will occur. Unless the circumstances necessitate immediate termination or replacement, the contractor shall provide such notice to the User Department, and the Director of minority and small business opportunities at least five (5) Business Days before the contractor terminates the local small business. The contractor shall further provide written notice to the local small business stating the reasons for the termination. Unless circumstances dictate otherwise, the contractor shall provide such notice before termination is to occur.
 - (6) Good Faith Efforts to replace a local small business to a contract. When a local small business withdraws or is terminated from a contract for any reason, the contractor shall comply with the Good Faith Efforts requirement to replace the departing local small business with another local small business. Likewise, when new opportunities for subcontracting arise on a contract and Augusta, Georgia sets a supplemental local small business goal, the contractors shall comply with the Good Faith Efforts set in an effort to meet the supplemental local small business goal.
 - (7) Utilization Reports and Documentation of Payment. Contractors shall report to Augusta, Georgia the total dollars paid to each local small business on each contract, and shall provide such payment affidavits, regarding payment to subcontractors as may be requested by Augusta, Georgia. Such documents shall be in the format specified by the Director of minority and small business opportunities, and shall be submitted at such times as required by Augusta, Georgia. Failure to provide such reports within the time period specified by Augusta, Georgia shall entitle Augusta, Georgia to exercise any of the remedies set forth, including but not limited to, withholding payment from the contractor and/or collecting liquidated damages.
- (e) *Departmental purchase requirements (small purchases, quotations, or informal bids)*. Subject to the dollar limits set forth under Augusta, Georgia ordinance, departments are authorized to make small purchases using Agency Purchase Orders. Departments shall be directed by Augusta,

Georgia Administrator to utilize local small businesses on small purchases whenever possible and appropriate.

- (1) The Director of minority and small business opportunities shall make available to every Augusta, Georgia department a directory of registered local small businesses and encourage their use of by departments.
 - (2) The Director of minority and small business opportunities shall provide annual training to all Augusta, Georgia Departments on the LSBOP.
 - (3) The Director of minority and small business opportunities shall ensure that all Augusta, Georgia specifications for goods and services do not contain any unnecessary impediment to local small business participation in the bid process.
 - (4) For small purchases, quotations or informal bids, the Using Department will solicit bids from registered local small businesses to supply the required materials, equipment, supplies or services using the local small business Registry created and maintained by the Director of minority and small business opportunities.
 - (5) The Director of minority and small business opportunities and Procurement Department will attempt to identify qualified local small businesses and will include such local small business in bid/quote solicitation lists.
 - (6) The Director of minority and small business opportunities will make recommendations to the Procurement Director and User Departments when specification appears to impede local small businesses from competitively participating in a bid.
- (f) *Procurement Department and User Agency Responsibilities.*
- (1) For purchases on which written bids are sought, registered local small businesses which are ready, willing and able to perform the required services or provide the required commodity will be solicited for a written quotation or bid.

- (2) Purchases from local small businesses shall be tracked by the Director of minority and small business opportunities with the assistance and cooperation of the user Departments.

(g) *Maintenance of Records.*

- (1) The Director of minority and small business opportunities, with the assistance of the Department of Information Technology, shall compile data on local small business participation as well as women and minority owned business participation. Information on prime contract awards and subcontractor utilization will be maintained by the Director of minority and small business opportunities which will gather information from all user Departments on a quarterly basis.
- (2) Local small business utilization statistics shall be maintained in the following manner:
 - (i) Contracts and purchases shall be grouped into four categories: construction, professional services, general services and materials/equipment/supplies.
 - (ii) Statistics shall measure overall awards to local small businesses and to women and minority owned businesses by category of purchase (i.e. construction, professional services, general services, and materials/equipment/supplies).
 - (iii) All data necessary to evaluate the effectiveness of the LSBOP in reducing discrimination against minority and women owned businesses shall be kept and maintained by the Director of minority and small business opportunities.
- (3) Data collection is an important aspect of evaluating the effectiveness of the LSBOP. The LSBOP is a race and gender neutral program and all data collection efforts shall be for evaluating purposes only. The following statistics shall be reported not less than annually to the Augusta, Georgia Commission by the Director of minority and small business opportunities.

- (i) Regarding purchases of professional services, general services and material/equipment/supplies made through the competitive bid and quotation process:
 - (a) Total value of purchases.
 - (b) Total value of purchases from local small businesses.
 - (c) Total value of purchases from women owned businesses.
 - (d) Total value of purchases from minority owned businesses.

- (ii) Regarding small purchases by operating department using Agency Purchase Orders:
 - (a) Total value of small purchases by Augusta, Georgia Department.
 - (b) Total value of small purchases from local small businesses by Department.
 - (c) Total value of small purchases from women owned businesses by Department.
 - (d) Total value of small purchases from minority owned businesses by Department.

- (iii) Regarding construction purchases:
 - (a) Total value of construction contract awards.
 - (b) Total value of construction contracts awarded to local small businesses as prime contractors.
 - (c) Total value of subcontracts awarded to local small businesses.
 - (d) Total value of subcontracts awarded to women owned businesses.
 - (e) Total value of subcontracts awarded to minority owned businesses.

(h) *Compliance.*

- (1) It will be the duty of the Procurement Director to ensure that bids or proposals issued from the Procurement Department adhere to the provisions set forth in this Policy.
- (2) The Director of minority and small business opportunities, and all department directors will assume responsibility for evaluating compliance with this program in their respective contract areas and will review, on a continuing basis, all aspects of the program's operations to assure that the purpose is being attained and reporting same to the Director of minority and small business opportunities for tracking and annual report purposes.
- (3) Each Augusta, Georgia contract will contain a provision requiring compliance with this policy including maintenance of records, good faith efforts, and maintenance of information necessary to document compliance with, and effectiveness of the LSBOP. This shall include the right of the Director of minority and small business opportunities and any compliance personnel to inspect such records. Compliance records will be a part of the official files located in the Procurement Office.
- (4) The Director of minority and small business opportunities shall be responsible for evaluating good faith efforts documentation and subcontractor information submitted by bidders in conformance with, the AUGUSTA, GA. CODE and any State and Federal Laws applicable to any bid specifications for competitive sealed bid or competitive sealed proposal projects prior to award of the contract.
- (5) Each Augusta, Georgia contract will contain a provision prohibiting any agreements between a contractor and a local small business in which the local small business promises not to provide subcontracting quotations to other bidders or potential bidders.

(i) *Competitive Bids.*

Nothing in this Policy is to be construed to require Augusta, Georgia to award a bid contract to other than the lowest responsible bidder, or to require contractors to award to subcontractors, or to make significant material purchases from local small businesses who do not submit the best overall pricing to Augusta, Georgia.

(j) *Outreach.*

To maximize the identification, registration and utilization of local small businesses, the following efforts will be undertaken by the Director of minority and small business opportunities:

- (1) Increase efforts to locate and register additional vendors, service providers, and construction contractors that can provide goods and services for Augusta, Georgia through media, vendor fairs, and electronic message boards.
- (2) As Georgia Department of Transportation, Federal Transit Administration, Department of Defense and Federal Aviation Administration certified construction contractors are located, invite local firms to register with Augusta, Georgia in accordance with the requirements of this Article in order to create an enhanced resource to using departments, buyers and prime contractors to locate registered local small businesses for projects that can utilize local small businesses for a commercially useful function.
- (3) Supply information to the Board of Commissioners regarding the LSBOP and offer opportunities for ways in which the Board of Commission can be an advocate of the LSBOP.

Sec. 1-10-130. Exceptions – federally funded projects.

In accordance with § 1-10-8 and Chapter 10B, the LSBOP shall only be utilized with federally funded projects, solicitations or contracts as authorized by federal (and Georgia) laws, regulations and conditions applicable to such projects. To the extent that there are any conflicts between any such laws, regulations or conditions and the LSBOP, the federal (and Georgia) laws, regulations and conditions shall control.

Sec. 1-10-131. Citizens Small Business Advisory Board.

A Citizens' Small Business Advisory Board (CSBAB) shall be constituted to advise the Commission and Director of minority and small business opportunities on matters related to this ordinance, and to meet with local small businesses, to review and provide input as to the issues in program administration. *See* Consolidation Act § 14(d). Members are appointed by the Mayor, Commission

and the Richmond County Legislative Delegation. A list of the appointees is maintained in the Clerk of Commission's Office and is incorporated herein by reference.

Sec. 1-10-132 through Sec. 1-10-999. Reserved.