

RESOLUTION NO. 970214

A RESOLUTION OF THE CITY OF  
GAINESVILLE ESTABLISHING A  
LOCAL MINORITY BUSINESS AND  
LOCAL SMALL BUSINESS  
PROCUREMENT PROGRAM;  
PROVIDING A REPEALING CLAUSE;  
AND PROVIDING AN EFFECTIVE  
DATE

WHEREAS, the City Commission of the City of Gainesville has determined that an objective of City government should be to encourage the development of local minority businesses and local small businesses, and the diversification of goods and services provided by such businesses, and

WHEREAS, the development of these enterprises would be encouraged by increasing the amount of business transacted by the City with local minority businesses and local small businesses,

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of Gainesville:

Section 1. It is the policy of the City of Gainesville to ensure nondiscrimination in all aspects of the City's contracting and procurement programs, including, but not limited to, professional services, construction services and commodities.

Section 2. It is the policy of the City of Gainesville to develop specific programs to create significant opportunities for eligible local minority businesses and

eligible local small businesses to participate, on a nondiscriminatory basis, in business transactions of the City.

Section 3. It is the policy of the City of Gainesville to assist the development of firms that can compete successfully in the marketplace outside the Local Minority Business and Local Small Business Enterprise Procurement Program.

Section 4. To achieve compliance with the policies contained in Sections 1-3, the City Commission hereby adopts the Local Minority Business and Local Small Business Procurement Program, a copy of which is attached hereto as Exhibit "A" and made a part hereof as if set forth in full.

Section 5. All resolutions, or parts of resolutions, in conflict herewith are to the extent of such conflict hereby repealed.


Section 6. This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED this 28th day of July, 1997.

  
\_\_\_\_\_  
BRUCE DELANEY  
Mayor-Commissioner

ATTEST:

BY

  
\_\_\_\_\_  
Clerk of the Commission  
Kurt Lannon

APPROVED AS TO FORM AND  
LEGALITY:

BY

  
\_\_\_\_\_  
CITY ATTORNEY  
Marion J. Radson

**AUG - 3 1997**

CITY OF GAINESVILLE

LOCAL MINORITY BUSINESS  
AND  
LOCAL SMALL BUSINESS  
ENTERPRISE  
(MBE/SBE)  
PROCUREMENT  
PROGRAM

POLICIES AND PROCEDURES

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## **I. SCOPE AND APPLICABILITY**

The Program outlined herein shall apply to all applicable purchasing transactions by any and all City departments reporting to the City Manager.

## **II. OBJECTIVE**

The objective of the Local Minority Business and Local Small Business Enterprise Procurement Program is to identify local minority (MBE) and local small (SBE) businesses and provide assistance so that they can successfully participate in City of Gainesville procurement opportunities thereby supporting the overall economic development of the City.

## **III. PROGRAM DESCRIPTION**

It is the intent and policy of the City Manager of the City of Gainesville to institute and maintain a Local MBE/SBE Procurement Program which provides for the following:

1. Encourage the maximum utilization of local minority and local small businesses in all aspects of the City's procurement activities.
2. Discourage and/or prevent barriers to the award of contracts to local MBE's/SBE'S by ensuring greater participation by local MBE's/SBE's through the use of various procurement techniques, if consistent and in the best interests of the City.
3. Distribute information and provide training to local MBE's/SBE's relating to how to do business with the City.
4. Periodically review and revise implementation actions to promote participation by local MBE's/SBE's in procurement opportunities with the City.
5. Award contracts for construction and procurement of goods and services based upon the lowest, responsive or best bid or proposal in accordance with the City's policies and procedures.
6. As warranted, implement a realistic goals program for MBE/SBE participation in general government purchases and adjust annually.

## **IV. ORGANIZATION AND RESPONSIBILITY**

### City Manager

The City Manager or designee is responsible for:

- a. The overall administration of the Local MBE/SBE Procurement Program.
- b. Resolution of vendor grievances that are filed pursuant to the Bid Protest Procedure.
- c. Waiver of Local MBE/SBE Procurement Program policies and procedures for purchases and/or contracts in case of emergencies.
- d. Promulgation of any amendments to ensure consistency with any Federal, State or local law, regulation or grant requirement or as may otherwise be required by changing circumstances.
- e. Report on program progress to the City Commission.

#### MBE Coordinator

The MBE Coordinator is responsible for:

- a. Administering and managing the Local MBE/SBE Procurement Program on a day-to-day basis.
- b. Identifying and verifying eligibility of local minority business and local small business enterprises to participate.
- c. Receiving and evaluating periodic Local MBE/SBE Procurement Program Participation Reports and providing an annual report on local MBE/SBE participation to the City Manager.
- d. Reviewing City contracts and purchases to generate an awareness of potential purchase and contractual opportunities for local minority businesses and local small businesses.
- e. Providing technical assistance and training to local minority businesses and local small businesses to facilitate a better understanding of bidding and contracting procedures.
- f. Providing ongoing public information of the City policy regarding local minority business and local small business participation.
- g. Maintaining communication with minority and small business contractors' associations, the construction industry, financial institutions, community organizations and businesses in general.
- h. Developing, maintaining and distributing the Local Minority/Small Business Enterprise Directory and annual update.
- i. Monitoring City contracts with local MBE/SBE participation.
- j. Reviewing local MBE/SBE status for removal from program when appropriate.

### The Purchasing Division

The Purchasing Division shall be responsible for managing and enforcing the City's Local MBE/SBE Procurement Program and will proactively pursue the utilization of local minority vendors and local small vendors by:

- a. Providing information to local MBE's/SBE's relating to the City's present and future procurement needs;
- b. Scheduling workshops/seminars to familiarize local MBE's/SBE's with the City's bid specifications, procurement policies, and general bidding requirements;
- c. Providing applicable contractor associations with Invitations to Bid and Requests for Proposals;
- d. Attending pre-bid and pre-construction conferences to discuss the City's Local MBE/SBE Procurement Program requirements;
- e. Assisting in the monitoring of vendor, contractor and subcontractor compliance with local MBE/SBE utilization commitments throughout the performance period of contracts;
- f. Providing appropriate information to local MBE's/SBE's related to the implementation of this policy.
- g. Evaluating and reporting the level of participation by local MBE's/SBE's in the City's procurement of goods and services;
- h. Performing other related duties as assigned to facilitate the utilization of local MBE's/SBE's in the City's procurement activities; and
- i. Assuring all purchases for goods and services are made in conformance with the City's Purchasing Policies and Procedures.

### City Departments

City departments reporting to the City Manager are responsible for:

- a. Assisting in the promotion of local minority business and local small business opportunity and participation within their respective departments.
- b. Complying with the policies and procedures set forth in this Local MBE/SBE Procurement Program.
- c. Working with the MBE Coordinator to improve the utilization of local minority businesses and local small businesses within each department.

- d. Utilizing the Local Minority/Small Business Enterprise Directory and documenting efforts to secure local minority business and local small business participation.
- e. Reporting local MBE/SBE participation to the Purchasing Division.

## V. DEFINITIONS

The following words defined in this section shall have the meanings set forth below whenever they appear in this chapter:

1. *Commercially Useful Function* - shall exist when the local MBE/SBE 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. The criteria proposed in 49 CFR Part 26.49(e), Proposed Rules, shall be utilized when determining whether a commercially useful function exists.
2. *Contract* - a contract is a legal agreement prepared by the City, duly executed between the City and a business, naming the terms and obligations of a business transaction.
3. *Contractor* - shall mean a person or firm who is qualified and responsible for the entire project contracted.
4. *Control* - means having the primary power, direct or indirect, to influence the management of a business enterprise. The controlling party must have the demonstrable ability to make independent and unilateral business decisions on a day-to-day basis, as well as the independent and unilateral ability to make decisions which may influence and chart the future course of the business. In determining whether socially and economically disadvantaged owners control a firm, the City may utilize the criteria proposed in 49 CFR Part 26.61, Proposed Rules.
5. *Local Business* - a business which is duly licensed and authorized to engage in the business at issue and which maintains a permanent principal place of operation with full time personnel within the corporate limits of the City of Gainesville.
6. *Minority* - means a person who is a citizen or lawful permanent resident of the United States and who is both socially and economically disadvantaged which includes, but is not limited to, individuals who have been subjected to racial, ethnic, cultural or gender-based bias. Socially and economically disadvantaged are defined as proposed in 49 CFR Part 26.5, Proposed Rules.
7. *Minority Business Enterprise*- is defined as a currently functioning business enterprise which: (A) is an independent for-profit business concern that is at least 51% owned by minority group members; (B) is independently operated and controlled by the minority



group members; (C) demonstrates the capability (i.e., expertise, employees, equipment, facilities, supplies, etc.) to perform a line of business; (D) provides a commercially useful business function; and (E) is certified as set forth in Section VI.

8. *Small Business* - means an independently owned and operated business concern that employs 100 or fewer permanent full-time employees and that together with its affiliates, has a net worth of not more than \$3 million and an average net income after federal income taxes, excluding any carryover losses, for the preceding two years of not more than \$2 million. As applicable to sole proprietorships, the \$3 million net worth requirement shall include both personal and business investments.
9. *Subcontractor* - shall mean a person or firm who performs any part or parts of the contracted work of the general contractor, including labor, or providing materials and/or supplies required for the performance of the contract.

## **VI. MBE/SBE BUSINESS CERTIFICATION/QUALIFICATION**

The City, in ascertaining which businesses are qualified to participate in the City's Program as a local MBE/SBE, will recognize and accept MBE/SBE certifications issued by governmental entities of the State of Florida, who have certified minorities in accordance with an established certification program. In addition, the City will accept certification from the United States Government and any other governmental body in the United States which has an established certification program. The City will also qualify both minority and small businesses located within the corporate limits of the City of Gainesville which make application and provide sufficient documentation.

## **VII. PROCEDURES FOR UTILIZATION OF LOCAL MBE AND SBE SUBCONTRACTORS**

The City will encourage the use of local MBE's/SBE's on large projects by requesting each bidder to utilize local minority businesses and local small businesses as subcontractors whenever possible and to provide, with its bid, a list of the names of all subcontractors, together with the scope of work and price to complete such work and to specifically identify which subcontractors are local MBE's/SBE's. Such list may not be changed without approval. A bidder must be able to demonstrate, to the satisfaction of the Purchasing Division, that such bidder made a good faith effort to contract with qualified local MBE's/SBE's. Good faith efforts may include, but not be limited to, the following:

1. Whether the Bidder attended any pre-solicitation or pre-bid meetings that were scheduled by the City to inform local MBE's/SBE's of contracting and subcontracting opportunities.
2. Whether the Bidder advertised, concerning the subcontracting opportunities, in general circulation, trade association, small business or minority-focus media.

3. Whether the Bidder followed up initial solicitations of interest by contacting local MBE's/SBE's who responded; and whether the Bidder provided detailed information about pre-bid meetings, access to plans, specifications, contractor's project manager, subcontractor bonding requirements, if any, payment terms and schedules, bid addenda, and other assistance to enhance local MBE/SBE.
4. Whether the Bidder provided interested local MBE's/SBE's with adequate information about the plans, specifications, and requirements of the contract or the availability of jobs before or when such information was provided to other subcontractors/suppliers.
5. Whether the Bidder effectively used the services of available minority community organizations; minority contractors' groups; local, state, and federal minority business assistance centers or offices; and other organizations that provide assistance in the recruitment and placement of local MBE's/SBE's.

#### **VIII. PROCEDURES FOR UTILIZATION OF LOCAL MBE AND SBE BUSINESSES IN THE PROCUREMENT OF GOODS AND SERVICES**

The following procedures shall apply:

1. Formal Sealed Bids and Proposals. Formal Invitations to Bid or Requests for Proposals shall be sent to all identified local MBE and small local business suppliers and at least one minority-focused newspaper or publication, if available.
2. Quotations. Competitive quotations shall be requested from local MBE's and local Small Businesses whenever available.

#### **IX. ENFORCEMENT OF PROGRAM**

1. Any individual or entity that engages in fraud, misrepresentation, or other wrongful conduct, whether by act or omission, related to its participation in or eligibility to participate in the City's Local MBE/SBE Procurement Program or in the performance of its MBE/SBE obligation under a City contract, shall be in violation of the Program. This determination shall be solely at the decision of the City.
2. Violators of the City's Local MBE/SBE Procurement Program may be subject to, on an individual and/or entity basis, the debarment or suspension from participating in the City's contracts in accordance with the City of Gainesville's Debarment and Suspension Policy.

#### **X. AMENDMENT**

In order to provide appropriate flexibility in establishing and providing opportunities to local MBE's and local SBE's, this Program may be amended by the City Manager of the City of Gainesville.