

**ORDINANCE NO: 210-07-123**

**AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LAUDERHILL, FLORIDA AMENDING THE CODE OF ORDINANCES, CHAPTER 2, ADMINISTRATION, ARTICLE III, DEPARTMENTS OF GOVERNMENT, DIVISION 8, DIVISION OF PURCHASING; AMENDING SECTION 2-139, FORMAL CONTRACT PROCEDURE, SUBSECTION F (3), LOCAL VENDOR PREFERENCE PROGRAM; CREATING A PART III, SMALL BUSINESS ENTERPRISE; PROVIDING FOR AN EFFECTIVE DATE (REQUESTED BY COMMISSIONER MELISSA P. DUNN)**

SECTION 1. That the City of Lauderhill Code of Ordinances Chapter 2, Administration, Article III, Departments of Government, Division 8, Division of Purchasing, Section 2-139, Formal Contract Procedure, Subsection f(3), Local Vendor Preference Program, is hereby amended to Create a Part III, Small Business Enterprise Program, to read as follows:

**Sec. 2-139. Formal contract procedure.**

\* \* \*

(f) *Award of contract.*

\*\*\*<sup>(3)</sup> *Local Vendors.*

\*\*\*

**PART III. SMALL BUSINESS ENTERPRISE PROGRAM.**

**Sec. 1. Objectives and Definitions.**

- (1) *Lauderhill Small Business Development Program or Program* means the City's initiatives to aid and assist the interests of small businesses in the City of Lauderhill to ensure that small businesses have a fair opportunity to participate in City contracts, preserve free competitive enterprise, and maintain and strengthen the overall economy of the City of Lauderhill.
- (2) *Continuous Operating Presence* means an entity with a current business tax receipt issued by the City of Lauderhill; that has a physical address located within the geographical limits of the City of Lauderhill (not a P.O. Box or address provided by a business service center); a business entity that has maintained a permanent place of business with full-time employees within the City limits prior to the date of issuance of this bid. The permanent place of business must be the primary place of business of the entity and may not be a post office box or a personal residence. A business occupying a co-working space, shall be deemed a permanent place of business if all other conditions are met. The business must actually distribute goods, supplies, materials, equipment or services from the permanent place of business. The business must have a current valid Certificate of Use from the City of Lauderhill and must not be publicly traded.
- (3) *Good Faith Efforts* means that the Bidder, without an intent to defraud or to seek an unfair advantage, took all necessary steps to secure and maximize SBE participation to meet or exceed the established SBE goal for the project. The determination of Good Faith Efforts shall be made by the Purchasing Director upon evaluation of the Bidder's response to the solicitation.
- (4) *Personal Net Worth* means the value of the assets of an individual after total liabilities (not including contingent liabilities) are deducted. For purposes of SBE certification, an individual's personal net worth

shall not include either the individual's ownership interest in any SBE applying for certification or certified by the City, or the individual's equity in his or her primary place of residence.

(5) Prime Contractor means an entity awarded a City contract.

(6) Small Business Enterprise or SBE means an entity certified as an SBE by the City as provided herein.

(7) Subcontractor means an entity that enters into a contract with a Prime Contractor to perform work required by a City contract.

## **Sec. 2. Certification standards.**

(a) SBE Eligibility Requirements. An entity is eligible for certification as an SBE if it meets the following criteria:

(1) The entity shall employ fifteen (15) or fewer permanent full-time employees. In addition, eligibility is subject to the following gross revenue limitations: Professional consultants, when combined with any and all Affiliates, shall have less than Five Hundred Thousand Dollars (\$500,000) in average annual gross revenue, calculated over the previous three (3) calendar years, unless that entity is a professional consultant providing architectural or engineering services. For professional consultants providing architectural or engineering services, the entity shall, when combined with any and all Affiliates, have an average annual gross revenue less than Five Hundred Thousand Dollars (\$500,000), calculated over the previous three (3) calendar years; however, the gross revenue calculation shall exclude amounts paid for work under an architectural or engineering services agreement with the City that the SBE professional consultant subcontracts to a nonaffiliated architectural or engineering firm and where no fee or other compensation for such subcontracted work is retained by the SBE professional consultant. Entities providing construction services shall, when combined with any and all Affiliates, have less than Three Million Dollars (\$3,000,000) in average annual gross revenue calculated over the previous three (3) calendar years. Entities providing services other than professional consulting or construction shall, when combined with any and all Affiliates, have less than One Million Dollars (\$1,000,000) in average annual gross revenue calculated over the previous three (3) calendar years. Entities offering to sell commodities to the City shall be subject to the employee limitation above but are not subject to any gross revenue limitation with regard to certification as a commodities firm;

(2) No person with a legal or beneficial ownership interest, direct or indirect, in the entity or any Affiliate of the entity shall have a personal net worth exceeding One Million Three Hundred Twenty Thousand Dollars (\$1,320,000);

(3) The entity shall have a Continuous Operating Presence in the city of Lauderhill and may only operate in areas zoned to permit its operations. The entity must allow the City to conduct site visits of its primary place of business and any other place of operation by the entity at any time during normal operating hours. The entity's obligation to allow site visits shall continue throughout its certification as an SBE, and its failure to allow such site visitation may constitute grounds for decertification; and

(4) The entity must not be a joint venture, as joint ventures are not eligible for certification. However, an entity otherwise eligible for certification is not disqualified from certification by its participation in a joint venture.

(b) Required disclosure and notification. During the application process, an applicant must disclose all of its Affiliates and other entities that employ or share principals, management, or key personnel with the applicant entity. Once the applicant entity has become certified as a SBE, that entity must notify the City within thirty (30) calendar days after any changes in the ownership, affiliation, management, or key personnel. Failure to provide timely notice of any such changes shall constitute grounds for decertification.

(c) Discriminatory actions forbidden. No person or entity shall be denied SBE certification on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity or expression.

(d) Application for Certification.

- (1) An entity seeking certification as a SBE shall submit an application demonstrating that the entity meets the eligibility requirements of paragraphs (b) or (c) above, as applicable. In addition, the entity must identify the general type(s) of goods or services it provides or sells in the ordinary course of its business to customers. An entity will only be certified to provide goods or services to the City that the entity also provides to other customers in the ordinary course of its business. Brokers are not eligible for certification.
- (2) Applications for certification must be submitted on the form provided by City of Lauderhill Division of Purchasing (DOP). Applications must be completed in their entirety, and entities applying for certification must supply all of the information requested therein, agree to supply any additional information requested by the DOP, and agree to be bound by the provisions and regulations of the Program governing the certification and decertification process, as applicable.
- (3) The burden of establishing certification eligibility is on the entity seeking certification as a SBE. All required documentation must be provided before a certification decision will be rendered by DOP.
- (4) Entities seeking certification as a SBE must maintain compliance with the certification standards under the Program throughout the duration of certification with the City. Failure to do so shall constitute grounds for decertification.
- (e) *Continuing Certification.* In order to maintain its certification, a certified SBE shall submit a form affidavit of continuing eligibility, on an annual basis, on or before the anniversary date on which the entity was first certified as a SBE, and shall participate in periodic DOP certification eligibility reviews. Failure to fully complete the form affidavit on or before the anniversary date of the entity's SBE certification may result in suspension of certification or decertification, as applicable.

### **Sec. 3. SBE reserves.**

- (a) When the City issues a solicitation that is anticipated to result in a contract with a value of less than Two Hundred Thousand Dollars (\$250,000), the contract shall be reserved for SBEs, except those contracts that are otherwise ineligible pursuant to state or federal law. However, no contract shall be reserved for SBEs if the DOP determines that there are fewer than two (2) certified SBEs available to perform the work required under the contract.
- (b) If an SBE reserve is established, only SBEs will be eligible to bid on the solicitation. In the event that no SBE responds or no SBE is responsive, the Purchasing Director shall cancel the solicitation.
- (c) Notwithstanding anything to the contrary in paragraphs (a) and (b) above, in the event that none of the responses to an SBE reserve solicitation would result in a contract with a value of less than Two Hundred Fifty Thousand Dollars (\$250,000), the Purchasing Director may elect to either accept the response(s) and proceed to the award stage, or reject the response(s) and request that DOP determine whether a SBE reserve should be established for any new solicitation.
- (d) Prior to making any determination that an otherwise eligible contract shall not, under this section, be reserved for SBEs due to there being fewer than two (2) certified SBEs available to perform the applicable work under the contract, the Purchasing Director shall engage in all appropriate additional outreach efforts designed to increase the number of certified, available firms. The Purchasing Director, in consultation with the City Attorney, may extend, by up to thirty (30) days, any procurement deadlines and any other applicable deadlines to provide sufficient time for these additional outreach efforts to be completed. If additional firms eligible for certification are identified through these outreach efforts, the Purchasing Director shall, to the greatest extent practicable, expedite the certification of those firms so as to minimize procurement delays.

#### **Sec. 4. Participation requirements and enforcement.**

- (a) Participation Requirements. Entities may not participate in a City contract as a SBE unless they are certified as a SBE prior to Bid submittal to perform the type of work required by the contract. However, if it becomes necessary to substitute a SBE in order to meet the contract's participation requirements, a SBE may be substituted, upon the approval of the Purchasing Director, provided that such SBE is certified at the time of the substitution.
- (1) Only the work actually performed by a SBE (whether as a Prime Contractor or Subcontractor) shall be counted toward satisfaction of the applicable goal.
  - (2) Contractors that use SBEs as Subcontractors on a City contract must pay those Subcontractors directly for all goods or services provided by the Subcontractors within fifteen (15) days after receipt of payment from the City.
- (b) Fair Dealing. It is the City's policy that all business activities related to this Act shall be conducted in a fair and reasonable manner, free of fraud, coercion, collusion, intimidation, or bad faith. Violation of this policy by any Prime Contractor, Subcontractor, Bidder, or other individual or entity that seeks to engage in business with the City may result in a written determination by the Director of Purchasing, after consulting with the Purchasing Director and the Office of the City Attorney, that the City should consider termination of any or all business relationships between the violating individual(s) or entity(ies) and the City, including cancellation of solicitations, cessation of negotiations, revocation of SBE certification, and suspension or debarment for cause from consideration for award of future contracts. Such written determination shall state the reasons for the action taken and inform the individual(s) and entity(ies) involved of their right to administrative review in accordance with the Procurement Code. Any determination made by the Director of Purchasing pursuant to this paragraph may be appealed in accordance with the Procurement Code.
- (c) SBEs may participate in a City contract only if they are performing a Commercially Useful Function in the contract and are not acting as Brokers.
- (d) Enforcement. The provisions of this Act, unless noted otherwise, are primarily enforced through the issuance of Notices to Cure and Notices of Violation by DOP. The DOP may issue such notices for any infraction of the SBE programs. Failure to respond timely and completely to such notices will place the alleged violator in a state of noncompliance.
- (1) Notice to Cure. A Notice to Cure is formal notification to a SBE of an alleged violation of the Act. A Notice to Cure may be issued if the entity fails to timely provide requested information or documentation, or if the entity:
    - a. Engages in a practice that contravenes the SBE program;
    - b. Fails to meet certified Subcontractor participation;
    - c. Fails to meet prompt payment requirements;
    - d. Fails to supply required utilization reports;
    - e. Fails to utilize certified Subcontractors as agreed or, without approval from the Purchasing Director, substitutes, deletes, or otherwise adjusts the certified subcontracting team; or
    - f. Fails to comply with any other Program requirement, as determined by the Purchasing Director.
  - (2) Notice of Violation. A Notice of Violation results from a substantiated violation of the Act. DOP may issue a Notice of Violation if a SBE fails to comply with a Notice to Cure after being given opportunity to do so through the Notice to Cure process. However, for willful or egregious violations of the Act, as determined by the DOP, a Notice of Violation may issue without the prior issuance of a Notice to Cure.
- (e) Penalties for Violations of the Act. The Purchasing Director may determine, upon reasonable notice to the person or entity involved and reasonable opportunity for that person or entity to be heard, that a person or

entity has violated the Act. Upon such a determination, the Purchasing Director may suspend or debar such entity for cause from consideration for award of future contracts for a period of up to three (3) years.

- (1) The City will maintain a public list of entities suspended or debarred from contracting with the City. The list will detail actions taken in response to the Purchasing Director's recommendations.
  - (2) For all recommendations from the Purchasing Director for suspension or debarment due to violations of the Act, the Purchasing Director will review the allegations and determine what action(s), if any, shall be taken against the alleged violator.
  - (3) Any person or entity having a substantial interest in the alleged violation of the Act who is dissatisfied or aggrieved with the Purchasing Director's determination regarding such violation may appeal said determination in accordance with the procedures contained in the Procurement Code.
- (f) The administrative procedures adopted pursuant to this Act shall include procedures by which the DOP will monitor SBE participation on City contracts for which SBE goals or reserves are set.
- (g) Each contract setting a SBE goal shall provide that, prior to a Prime Contractor terminating its contract with a SBE Subcontractor for any reason, including for cause, the Prime Contractor shall provide the Purchasing Director with written notice of the proposed termination. Thereafter, when a SBE Subcontractor is terminated by a Prime Contractor for any reason, including for cause, the Prime Contractor shall, with notice to and the concurrence of the Purchasing Director, substitute another SBE in order to meet the level of SBE participation provided in the Prime Contractor's contract with the City. The contract shall also provide that such substitution shall not be required in the event the termination results from the City changing the scope of work under the contract and there is no available SBE to perform the new scope of work.
- (h) All entities that bid on or participate in City contracts subject to this Act are responsible for meeting the requirements of this Act and the requirements of any administrative procedures adopted pursuant to this Act. If an entity fails to comply with these requirements, the City may exercise any administrative remedies it has under the City's Procurement Code, administrative procedures adopted pursuant to this Act, or any other right or remedy provided in the contract or under applicable law, with all of such rights and remedies being cumulative.

## **Sec. 5. Administrative requirements and other remedies.**

- (a) *Required Contract Language.* The City shall require that each solicitation and contract that contains SBE requirements, and each subcontract a Prime Contractor executes with a SBE in connection with that City contract, shall include the following requirements:
- (1) The contractor (Prime or SBE) shall comply with all applicable requirements of the City of Lauderhill Small Business Program in the award and administration of this contract. Failure by the Prime Contractor to carry out any of these requirements shall constitute a material breach of contract, which shall permit the City to terminate its contract with the Prime Contractor or to exercise any other remedy provided under the contract, under the City of Lauderhill Code of Ordinances or Administrative Code, or under applicable law, with all of such remedies being cumulative.
  - (2) For solicitations and contracts where the Prime Contractor is required to satisfy a SBE goal or SBE reserve, as applicable, substantially the following language shall be included in the contract: "The parties stipulate that if the Prime Contractor fails to meet the SBE commitment, as applicable (the "Commitment"), the damages to the City arising from such failure are not readily ascertainable at the time of contracting. Therefore, if the Prime Contractor fails to meet the Commitment and the City determines, in the sole discretion of the Purchasing Director, that the Prime Contractor failed to make Good Faith Efforts to meet the Commitment, the Prime Contractor shall pay the City liquidated damages in an amount equal to fifty percent (50%) of the actual dollar amount by which the Prime Contractor failed to achieve the Commitment, up to a maximum amount of ten percent (10%) of the total contract amount (excluding costs and reimbursables). For example, if the contract amount (excluding costs and reimbursables) is One Million Dollars (\$1,000,000), there is a twenty-five percent (25%) SBE goal, and SBEs receive only

twenty percent (20%) of the amounts paid by the City (excluding costs and reimbursables), then the Prime Contractor would have fallen short of the Commitment by Fifty Thousand Dollars (\$50,000), and the liquidated damages due the City would equal Twenty-Five Thousand Dollars (\$25,000). Such liquidated damages amount shall be either credited against any amounts due from the City or paid to the City within thirty (30) days after written demand, as elected by the City. These liquidated damages shall be the City's sole contractual remedy for the Prime Contractor's breach of the Commitment, but shall not affect the availability of administrative remedies under this Act. Any failure to meet the Commitment attributable solely due to force majeure, changes to the scope of work by the City, or inability to substitute a Subcontractor under the Act where the Purchasing Director has determined that such inability is due to no fault of the Prime Contractor, shall not be deemed a failure by the Prime Contractor to meet the Commitment."

- (b) Establishment of SBE Directory. The Purchasing Director shall maintain a directory listing all SBEs. The listing shall include each entity's address, phone number, and the type(s) of work the entity has been certified to perform as a SBE on a City contract. The directory shall be revised monthly, and shall be made available to contractors and the public through the City website. The Purchasing Director shall manage directory listings for the U.S. Department of Transportation certification programs in accordance with the requirements of those programs and the State of Florida Unified Certification Program.

## **Sec. 6. Small Business Development.**

- (a) Program Graduation. A SBE that exceeds the SBE gross revenue or personal net worth eligibility requirements of this Act, as applicable, will be designated by the Purchasing Director as a graduate of the Program. Program graduates may complete their work under all current City projects under their previous SBE status provided that the Bid submission date of those projects occurred prior to the SBE's date of Program graduation. SBEs decertified for cause shall not be considered Program graduates under this ordinance.

**SECTION 2.** All ordinances or parts of ordinances, all resolutions or parts of resolutions in conflict herewith be and the same are hereby repealed as to the extent of such conflict.

**SECTION 3.** This ordinance shall take effect immediately upon its passage and adoption.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2021.

PASSED on first reading this \_\_\_\_ day of \_\_\_\_\_, 2021.

PASSED AND ADOPTED on second reading this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
PRESIDING OFFICER

ATTEST:

\_\_\_\_\_  
CITY CLERK

	FIRST READING	SECOND READING
MOTION	_____	_____
SECOND	_____	_____
M. DUNN	_____	_____
D. GRANT	_____	_____
L. MARTIN	_____	_____
S. MARTN	_____	_____
K. THURSTON	_____	_____