

ARTICLE 11 – SMALL BUSINESS ENTERPRISE PROGRAM; STATE AND FEDERAL ASSISTANCE REQUIREMENTS AND ENVIRONMENTAL PROCUREMENT PROGRAMS

Part A – Definitions

22.11-101 Definitions of Terms Used in this Article.

- (1) A "useful Business function" is one which results in the provision of materials, Supplies, equipment, or Services to customers. For this reason, merely acting as a financial conduit to transfer funds to a non-Small Business Enterprise will not constitute a useful Business function, unless it is done as a part of normal industry practices.

Part B – Small Business Enterprise Program

22.11-201 Purpose and Intent

The lack of small business participation in the natural economy is reflected in state and local contracting for the purchasing of supplies, services and construction. Therefore, the purpose and intent of this article is to provide the maximum for increased participation of small businesses in the County's procurement system

22.11-202 Certification.

- (1) The County shall certify Small Business Enterprises (SBE) for use by the County in its Procurement process and will maintain an up-to-date Electronic list of SBE.
- (a) To become certified, a Small Business must be currently performing a useful Business function, located in the SBE zone, have 25 or fewer permanent, full-time employees and have a net worth not exceeding \$1,000,000.
- (b) The County will approve a list of neighboring counties to comprise the SBE zone.
- (c) Certifications for SBE are valid for one year from certification date.
- (2) This list of SBE shall be used in the bid Solicitation process, and all departments are encouraged to utilize this list in their Procurement activities.
- (3) The County shall continually endeavor to identify Small Businesses which are eligible for certification in all areas of county Procurement.

22.11-203 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 Supplies 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, may be considered under the County's suspension and debarment policy.

22.11-204 Acquisition of Professional Services

- (1) When procuring Professional Services, the County shall endeavor to include SBE. The County's administrative Procedures for the formal evaluation of Professional Services shall include but not be limited to SBE status.

22.11-205 Reservation of Contracts

- (1) The County may reserve Contracts to be awarded only to SBE. The County shall review all of its needs and requirements in each fiscal year, and shall determine which Contracts may be reserved for bidding only by SBE. 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, SBE available within the SBE zone 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 SBE, the County must determine that such a reservation is in the best interest of the County.

(2) The County may reserve any Construction Contract for competitive bidding only among Contractors who agree to utilize SBE as Subcontractors or sub-vendors. The percentage of funds which must be expended with SBE Subcontractors and sub-vendors 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 which 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 which will be utilized as Subcontractors or sub-vendors are currently certified by the County.

22.11-206 SBE Preference

- (1) The County will award a five-percent bid Price preference, not to exceed \$50,000.00 on any single bid, to any SBE that submits a bid to the County.
- (2) The County will award a three-percent bid Price preference, not to exceed \$50,000.00 on any single bid, to any Contractor that agrees to use SBE for at least 15 percent of the dollar value of the bid.
- (3) The monetary value of the bid Price preference given to a certified SBE in any particular Procurement shall not exceed \$50,000.00.
- (4) If the adjusted bid Price of the SBE vendor is equal to or lower than the original lowest responsive bid, the SBE will be awarded the Contract.
- (5) The County will award a preference in evaluation points to SBE or Contractors that meet the SBE participation goal in its RFP response.
- (6) The County will promulgate procedures necessary to implement the SBE preference.
- (7) SBE preference does not apply to Contracts that are reserved in accordance with Section 22.11-204 (Acquisition of Professional Services).
- (8) SBE bid preferences will not be combined.

22.11-207 Responsiveness of bids – Good faith effort

- (1) Every competitive bid or Proposal, if not submitted by an SBE, must demonstrate good faith efforts to utilize SBE as Subcontractors or sub-vendors.
- (2) The County may consider written documentation submitted with the bid package or Proposal in determining whether a Contractor has made one or more good faith efforts including, but not limited to:
 - (a) Whether the Contractor attended any pre-Solicitation or pre-bid meeting that was scheduled by the County to inform SBE 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 SBE 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 SBE to determine whether a SBE is interested;
 - (e) Whether the Contractor selected portions of the work to be performed by SBE 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 SBEs 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 aid 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.

22.11-208 Assistance Program.

Through the SBE assistance program, vendors will be encouraged and assisted in becoming certified as an SBE with the County. The County will promulgate procedures necessary to implement the Assistance Program.

22.11-209 Implementation of policy; monitoring of compliance

(1) The County will:

- (a) Establish and compile a system of coordinated, uniform Procurement policies, Procedures and practices to implement the SBE program.
- (b) Strongly encourage the expenditure of 15 percent of the total competitive Procurement monies with SBE for materials, Supplies, equipment, Services and Construction.
- (c) Formulate and establish a system to record and measure the use of SBE in County contracting. This system shall maintain information and statistics on SBE participation, in order to analyze the progress of the SBE program.

(2) The Procurement Manager shall annually report the contractual or Procurement disbursements made to SBEs to the County Manager. This information shall be made available to the County Commissioners as well as the public at large.

Part C – State or Federal Assistance or Contract Procurement Requirements**22.11-301 Compliance with State or Federal Requirements.**

Where a Procurement action involves the expenditure of state or federal assistance or Contract funds, the Procurement shall comply with such state or federal law and authorized Regulations which are mandatorily applicable and which are not presently reflected in this Code.

Part D – Environmental Procurement Programs**22.11-401 Environmental Procurement Program.**

Wherever feasible the County will stipulate energy efficiency, reduced packaging, recycled content and recyclability in Specifications. Further the County may implement Procedures implementing these policies.