

1 AN ORDINANCE BY THE FULTON COUNTY BOARD OF COMMISSIONERS
2 AMENDING AND REAUTHORIZING SUBPART B - CODE OF RESOLUTIONS,
3 CHAPTER 102 - ADMINISTRATION, ARTICLE V - PURCHASES AND CONTRACTS,
4 DIVISION 10 - SMALL BUSINESS ENTERPRISE PROGRAM OF THE FULTON
5 COUNTY CODE TO BE EFFECTIVE JANUARY 1, 2023; AND FOR OTHER
6 PURPOSES.

7 **WHEREAS**, Fulton County (“the County”) steadfastly promotes the economic
8 welfare of the people of Fulton County and provides full and equal business opportunities
9 for all persons seeking to do business with the County; and

10 **WHEREAS**, the County proactively encourages small businesses to seek bid
11 opportunities as either a prime contractor or subcontractor; and

12 **WHEREAS**, the County is committed to providing training, education, and
13 technical assistance to small businesses, which enables them to compete for business
14 opportunities, to be successful in a competitive bid process, and to ultimately grow their
15 base; and

16 **WHEREAS**, the County recognizes that small business enterprises, as defined in
17 the Fulton County Code, are essential to a competitive economy and may need
18 assistance in competing for County contracts; and

19 **WHEREAS**, on October 15, 2016, the Fulton County Board of Commissioners
20 approved Resolution 16-0864 to amend the section of the Fulton County Code governing
21 County purchases, to create a Small Business Enterprise Program (“SBE”) within Chapter
22 102 - Administration, Article V - Purchases and Contracts, Division 10 - Small Business
23 Enterprise Program; and

24 **WHEREAS**, Fulton County Code § 102-449.14 requires there be a periodic review
25 and analysis of the program to determine if adjustments need to be made prior to its
26 sunset; and

1 **WHEREAS**, pursuant to Fulton County Code § 102-449.15, the County's SBE
2 program is scheduled to sunset on December 31, 2022; and

3 **WHEREAS**, on June 6, 2022, via Agenda Item # 22-0435, the BOC approved Keen
4 Independent Research, LLC ("Keen Independent") to assist the County in performing an
5 evaluation of the County's current SBE program prior to the December 31, 2022 sunset
6 date; and

7 **WHEREAS**, based on this assessment, an evaluation of the current SBE program,
8 and an availability/market analysis, Keen Independent recommends that the County
9 make certain amendments to the SBE sections of the Fulton County Code, and
10 reauthorize the SBE program for a longer term, with those revisions provided in Appendix
11 A, Division 10, Small Business Enterprise Program; and

12 **WHEREAS**, the County is a sub-recipient of federal funds from the Federal
13 Highway Administration ("FHWA") and the Federal Aviation Administration ("FAA") and
14 has an established Disadvantaged Business Enterprise ("DBE") Program; and

15 **WHEREAS**, under 49 CFR § 26.39 (Fostering Small Business Participation), the
16 County's DBE program must have in place contracting elements to facilitate competition
17 by small business concerns, taking all reasonable steps to eliminate obstacles to their
18 participation, including unnecessary and unjustified bundling of contract requirements
19 that may preclude small business participation in procurements as prime contractors or
20 sub-contractors; and

21 **WHEREAS**, the County, as the largest county in the state of Georgia, has
22 determined that there is a need to reauthorize its SBE program for purchasing and

1 contracting functions to ensure competitive opportunities for all businesses and to comply
2 with DBE requirements; and

3 **WHEREAS**, the County desires to be proactive in ensuring that economic
4 opportunities in the Atlanta region are equally available to all individuals or businesses
5 regardless of race, gender or ethnicity; and.

6 **WHEREAS**, the reauthorization of the County's SBE program with the suggested
7 amendments will enable the County to continue "to promote commerce by assisting SBEs
8 to actively participate in the county's procurement process" as set forth in Fulton County
9 Code § 102-447.

10 **NOW, THEREFORE, IT IS ORDAINED**, that the Board of Commissioners hereby
11 amends and reauthorizes Subpart B - Code of Resolutions, Chapter 102 - Administration,
12 Article V - Purchases and Contracts, Division 10 - Small Business Enterprise Program of
13 the Fulton County Code, attached hereto as Appendix A.

14 **BE IT FINALLY ORDAINED**, that this Ordinance shall become effective on
15 January 1, 2023 and that all ordinances and resolutions and parts of ordinances and
16 resolutions in conflict with this Ordinance are hereby repealed to the extent of the conflict.

17 **SO, PASSED AND ADOPTED**, this 7th day of December, 2022.

18 **FULTON COUNTY**
19 **BOARD OF COMMISSIONERS**

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23 Robert L. Pitts, Chairman

24 ATTEST:

25 
26 Tonya R. Grier
27 Clerk to the Commission
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ITEM # 22-0933 RM 127 22
REGULAR MEETING

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APPROVED AS TO FORM:



Y. Soo Jo
County Attorney

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ITEM # 22-0933 RM 12.7.22
REGULAR MEETING

Subpart B - CODE OF RESOLUTIONS
Chapter 102 - ADMINISTRATION
ARTICLE V. - PURCHASES AND CONTRACTS
DIVISION 10. SMALL BUSINESS ENTERPRISE PROGRAM

DIVISION 10. -SMALL BUSINESS ENTERPRISE PROGRAM¹

Sec. 102-445. Short title.

This program shall be known as the "Fulton County Small Business Enterprise Program."

(Res. No. 16-0864, App. A(A), 10-5-16; Ord. No. 19-0854, Exh. A, 11-20-19)

Editor's note(s)—See editor's note to div. 10.

Sec. 102-446. Definitions.

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

Atlanta-MSA region shall mean the geographical area consisting of the following 20 counties: Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Pickens, Rockdale, Spalding and Walton.

Bid shall mean a quotation, proposal, sealed bid or offer to perform or provide labor, materials, supplies or services to the county for a price on an eligible project, or for an eligible project that generates revenue for the county.

Bidder shall mean any individual, sole proprietorship, partnership, joint venture, or corporation that submits a bid or proposal to the county.

Certification shall mean official recognition and approval by the department of purchasing and contract compliance (DPCC) that a business meets the qualification criteria of a small business enterprise as determined by accepting SBE-related certifications from (1) the United States Small Business Administration for a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations

¹Editor's note(s)—Res. No. 16-0864, App. A(A—T), adopted Oct. 5, 2016, repealed the former Div. 10 §§ 102-443—102-447, and enacted a new Div. 10, § 102-443—102-447.15, as set out herein. The former Div. 10 pertained to first source jobs and derived from Res. No. 13-0052, adopted Jan. 23, 2013. Subsequently, Ord. No. 19-0854, Exh. A, adopted Nov. 20, 2019, renumbered former §§ 102-443—102-447.15 as §§ 102-445—102-449.15.

implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in § 26.65(b) that establishes that the firm is certified as an 8(a) firm or HUBZone firm; (2) from MARTA or Georgia Department of Transportation (GDOT) that establishes the firm is certified as a disadvantaged business enterprise (DBE); (3) the City of Atlanta that the firm is certified as a small business enterprise (SBE); or (4) other agencies that Fulton County deems appropriate. the United States Department of Transportation and Small Business Administration, Georgia Department of Transportation, MARTA, City of Atlanta and other cities and counties within the Atlanta MSA, and other agencies Fulton County deems appropriate.

Commercially useful function (CUF): for the purpose of determining whether a business enterprise is performing a commercially useful function, DPCC shall consider all of the facts in the record, viewed as a whole, including without limitation the following:

- (1) An SBE 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.
- (2) To perform a commercially useful function, the SBE must be responsible, with respect to material and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.
- (3) To determine whether an SBE is performing a commercially useful function, DPCC will evaluate the amount of work subcontracted by the SBE, industry practices regarding subcontracting, whether the amount the SBE is to be paid under the contract is commensurate with the work it is actually performing, the SBE credit claimed for its performance of the work and other relevant factors.
- (4) An SBE 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 SBE participation. In determining whether an SBE is such an extra participant, DPCC will examine similar transactions, particularly those in which SBEs do not participate.

Contract shall mean and include any agreement between the county and a person or business enterprise to provide or procure labor, materials, equipment, supplies and services to, for or on behalf of the county. A "contract" shall include an agreement between the county and a person or business enterprise to perform professional architectural and engineering services, construction related services or fund the performance of such services, non-professional services and/or goods. Except as otherwise specifically defined in this section, a "contract" does not include:

- (1) Awards made by the county to a non-profit entity which the county offers assistance, guidance, or supervision on a project or program and the recipient of the grant award uses the grant monies to provide services to the community;
- (2) Sales transactions where the county sells its personal or real property;
- (3) A loan transaction where the county is acting as a debtor or a creditor;
- (4) Lease and franchise agreements;
- (5) Agreements to use county real property; or
- (6) Gifts of materials, equipment, supplies or services to the county.

Contractor shall mean a prime contractor or vendor on a county contract.

County shall mean Fulton County.

Day or days shall refer to calendar days.

Department of purchasing and contract compliance (DPCC) shall mean the department of purchasing and contract compliance for Fulton County.

Eligible project shall mean:

- (1) Any county contract with an SBE participation goal attached as identified by the DPCC administrator excluding sole source procurement, emergency procurement and contracts governed by 49 CFR Parts 23 and 26; or procurement with federal funds.
- (2) For purposes of this program, contract or project "value" shall mean either the expenditure of funds by the county, or the generation of revenue for the county by a contractor as a direct result of a county contract.

Joint venture shall mean an association of two or more persons, partnerships, corporations, or any combination of them, established to carry on a single business activity that is limited in scope and duration. The agreement establishing the joint venture, partnership or other multi-entity relationship shall be in writing. Further, participation in a joint venture shall be based on the sharing of real economic interest in the venture and shall include proportionate control over management, interest in capital acquired by the joint venture and interest in earnings.

Small business enterprise (SBE) shall mean a firm with a location in the Atlanta ~~MSA~~ region which is an independent and continuing enterprise for profit, performing a commercially useful function, for which the gross revenues or number of employees, inclusive of any affiliates as defined by 13 CFR § 121.103, does not exceed the size standard for its industry as defined by 13 CFR § 121.201 (as further explained in 13 CFR §§ 121.104 through 121.107), and which has: either (1) filed a letter or other documentation from the United States Small Business Administration that establishes that the firm is a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in § 26.65(b) ~~certified as an 8(a) firm, small business enterprise, or HUBZone firm;~~ (2) a letter or other documentation from the City of Atlanta, MARTA, or Georgia Department of Transportation (GDOT) that establishes that the firm is certified as a DBE; ~~or~~ (3) a letter or other documentation from the City of Atlanta that the firm is certified as an SBE; or (4) documentation from other agencies that Fulton County deems appropriate, submit proof of small business certification from a certifying agency within Georgia that applies the small business size standards consistent with or less than the applicable revenue and employment size standards for small businesses established by the United States Small Business Administration, and meets other county criteria related to SBE certification.

SBE status shall mean whether a firm meets the qualification criteria of an SBE, as set forth in this program.

Supplier shall mean a warehouse or manufacturer of materials, supplies or equipment which contracts directly with a bidder to provide such materials, supplies or equipment on an eligible project which involves a trade or service. For purposes of measuring the total contract dollars awarded or paid to suppliers on eligible projects, only amounts paid to suppliers of goods customarily and ordinarily used based upon standard industry or trade practices shall be counted towards SBE goals.

(Res. No. 16-0864, App. A(B), 10-5-16; Ord. No. 19-0854, Exh. A, 11-20-19)

Editor's note(s)—See editor's note to div. 10.

Sec. 102-447. Statement of policy.

It is the purpose of this small business enterprise program to promote the economic welfare of the people of Fulton County, to promote full and equal business opportunity for all persons doing business with Fulton County and to promote commerce by assisting SBEs to actively participate in the county's procurement process.

(Res. No. 16-0864, App. A(C), 10-5-16; Ord. No. 19-0854, Exh. A, 11-20-19)

Editor's note(s)—See editor's note to div. 10.

Sec. 102-448. Duties of the department of purchasing and contract compliance.

Under this program, DPCC may have the following authority and duties for the implementation of the small business enterprise program:

- (1) Administration and enforcement of this program.
- (2) Administration and enforcement of the disadvantaged business enterprise program.
- (3) Establishment of written procedures, informal guidelines and forms as may be necessary to effectuate this program.
- (4) Monitoring compliance with the requirements of this program.
- (5) Acceptance of certification of businesses as SBEs in accordance with the standards set forth in this program.
- (6) Investigation of alleged violations of this program, and the issuance of written statements following any determination of such investigation, stating the reasons therefore and any penalty to be imposed.
- (7) Collaborating with the various county departments to ensure maximum outreach to SBEs.
- (8) Determination of whether any of the penalties set forth in section 102-449.8 should be applied to a business.
- (9) Attendance at pre-bid, pre-proposal, pre-construction and pre-work conferences.
- (10) Provision to business entities of all forms, applications, documents and papers necessary to comply with this program.
- (11) Provision of information to potential bidders, upon request by the potential bidder, which may include names and contact information of certified SBEs, to reinforce and support outreach efforts by potential bidders.
- (12) Notification by certified mail that a bidder who has bid on and who otherwise would have been awarded a contract has the right to appeal a determination of noncompliance with this program, said appeal to be determined by the DPCC within seven calendar days of receipt of the notice of noncompliance.
- (13) Notification to the Purchasing Director of any determination of noncompliance with this program and of any appeal from any such determination.

E. Division 10. Small Business Enterprise Program

- (14) Monitoring, for data gathering and informational purposes, utilization of SBEs on eligible projects.
- (15) Maintenance of documents, forms, records or data regarding this program as provided in this program including documents, forms, records or data regarding the dollar amounts subcontracted to or expended for services performed by subcontractors and suppliers on eligible projects, including the SBE status of each subcontractor and supplier.
- (16) Development and implementation of outreach and assistance programs to promote equal contracting opportunities for all businesses that wish to do business with the county, regardless of SBE status.

(Res. No. 16-0864, App. A(D), 10-5-16; Ord. No. 19-0854, Exh. A, 11-20-19)

Editor's note(s)—See editor's note to div. 10.

Sec. 102-449. Small business assistance and procedures to ensure that SBEs have an equitable opportunity to compete for contracts and subcontracts.

- (1) *Procedures to ensure opportunities.* To the extent feasible and that there are available resources, Fulton County may utilize the following measures to ensure maximum practicable opportunities for SBE participation on county contracts:
 - (a) Assist SBEs in obtaining insurance and surety bonds where necessary in the performance of contracts, including but not limited to:
 - i. Packaging contracts so that dollar amounts do not require bonding;
 - ii. Encouraging prime contractors to waive bonding or assist SBE subcontractors in obtaining bonding;
 - iii. Encouraging staged bonding where feasible, when bonding is carried over from one project stage to the next; and
 - iv. Relaxing bonding requirements for projects, to the extent permitted by Fulton County Code or state law.
 - (b) Encourage the formation of joint ventures between SBEs. DPCC may also assist prime contractors in identifying interested SBEs for subcontracts;
 - (c) Provide information on Fulton County's organization and contractual needs and offer instructions on bid specifications, procurement policy, procedures and general bidding requirements;
 - (d) Provide specifications and requests for proposals to the SBE community in a timely manner to allow SBEs adequate time to develop responsive bids. In instances where the cost of obtaining specifications or requests for proposal is prohibitive, copies of the material would be made available at no charge to SBE development agencies;
 - (e) Establish prorated payment and delivery schedules where feasible, to minimize cash flow problems faced by small firms. The county may provide guidance to SBE contractors regarding maintenance of positive flow in order that current obligations can be met;
 - (f) Hold pre-bid conferences to explain SBE requirements as well as forms that must be submitted with a bid;

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- (g) Permit bidders to review and evaluate successful bid documents of similar procurements via the Georgia Open Records Act;
 - (h) Provide projected procurement information and contracting schedules through the office of contract compliance and other outreach efforts;
 - (i) Conduct internal information workshops to inform and acquaint the county staff with the goals and objectives of Fulton County's Small Business Enterprise program and to sensitize them to the challenges faced by SBEs;
 - (j) Maintain records showing specific efforts to identify and award contracts to SBEs and establish a monitoring system to ensure that all contractors, subcontractors, consultants and vendors comply with contract specifications related to SBE utilization; and
 - (k) Inform SBEs of bid notices and specifications related to their capability by placing bid notices in major local newspapers and other periodicals or on the Fulton County Website. Bid notices may also be sent to local trade associations, technical assistance agencies, economic development groups and SBEs with capabilities that may be relevant to the bid notice as identified by Fulton County's SBE data bank. Bid specifications may be made available to SBE contractor associations and technical assistance agencies. Lists of potential firms bidding as primes may also be made available to SBEs.
 - (l) Provide in contracts a provision requiring the contractor to certify it has complied with the prompt payment requirements pursuant to County Code at section 102-435(j).
- (2) *Direct assistance to SBEs.* In addition to the procedures set forth above, the DPCC may also undertake special measures to assist SBEs in overcoming barriers to participation on county contracts. This assistance may be offered directly by the county, as well as by county referral to other assistance agencies with established, comprehensive and continuous SBE development programs. Businesses requiring management and technical assistance may be identified through a questionnaire, through personal experience with these businesses and through requests for assistance. The DPCC may, to the extent feasible, offer the following direct assistance to SBEs:
- (a) Act as a resource for technical assistance. DPCC may collect, organize and disseminate information regarding available technical assistance providers in the Atlanta ~~MSA~~region.
 - (b) Act as a resource for financial assistance. DPCC may collect, organize and disseminate information regarding available capital or financing sources in the Atlanta ~~MSA~~region.
 - (c) The DPCC may provide SBEs with information regarding bonding including, providing a list of qualified service providers that supply bonding services; and may coordinate the development of programs with existing service providers in the Atlanta ~~MSA~~region.
 - (d) Provide counseling and training sessions for SBEs. County staff may be available to interested business representatives to explain (in detail) instructions for preparation of bid specifications, the county's procurement policies, procedures and general bid requirements. DPCC would then coordinate and follow-up all requests for assistance to ensure that all necessary information was provided.
 - (e) Provide coordination and referral to existing business development organizations.
 - (f) Sponsor workshops and training sessions on identified SBE problem areas, including pricing and estimating, joint venture formation, accounting principles, marketing and related areas.

(Res. No. 16-0864, App. A(E), 10-5-16; Ord. No. 19-0854, Exh. A, 11-20-19)

Editor's note(s)—See editor's note to div. 10.

Sec. 102-449.1. County-maintained records and reports.

The effectiveness of this program will be measured by a review of data indicating SBE participation as prime contractors, subcontractors and suppliers. In order to ensure the effective tracking of these efforts, the following shall be done:

- (1) On eligible projects, each contractor shall continuously maintain, compile, and provide to DPCC, monthly information relating to its use of SBEs on the county project. This information may include without limitation the following information for each of the SBE subcontractors and suppliers utilized by the contractor on the county project: a description of the categories of contracts awarded to SBEs; the dollar value of contracts awarded to SBEs; and contact information for the SBEs. Additionally, the contractor shall provide information regarding its progress toward attaining the SBE goal on the eligible county project.
- (2) Within 30 days after the end of a contract in which there was an SBE goal, each contractor shall provide DPCC with a report that summarizes the outcome of the project information, including without limitation: the identity of and contact information for each SBE to whom the contractor has awarded a subcontract or supplier agreement; the type of work performed or supplies provided by each subcontractor/supplier; the dollar value of each of the subcontracts/supplier agreements; and the total percentage of the value of the county contract subcontracted to SBE subcontractors and/or suppliers.
- (3) DPCC shall track information regarding every county contract on which the prime contractor is an SBE or on which an SBE is part of a joint venture team serving as the prime contractor. The information shall include the name and contact information of the SBE, the type of contract and the dollar value of the contract.
- (4) DPCC shall prepare a consolidated report based on a compilation and analysis of the reports submitted by each contractor regarding the county's use of SBEs as prime contractors. The consolidated report will identify and assess the awards to SBEs of county contracts, prime contractors' use of SBE subcontractors and suppliers, prime contractors' progress in achieving SBE subcontract goals and other SBE development and contracting efforts. Specifically, DPCC will maintain records and prepare reports showing:
 - (a) Awards to SBE subcontractors and suppliers, including names of contractors and subcontractors, nature of the work/services performed, and the percentage of SBE participation per contract. Fulton County will obtain regular reports from prime contractors on their progress in meeting contractual SBE commitments;
 - (b) Specific efforts by contractors to identify and award contracts to SBEs;
 - (c) Electronic lists of direct mailings by contractors to SBEs;
 - (d) County contracts awarded to SBEs or prime contractors in which an SBE was a joint venture partner. This information shall include without limitation the name and contact information of the SBEs, the type of contract and the dollar value of the contract.

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(Supp. No. 51, Update 1)

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- (e) Pre-bid conference information as it relates to the small business enterprise program;
 - (f) Requests for assistance from SBEs interested in bidding/proposing on Fulton County contracts and subcontracts;
 - (g) Attendance of SBEs at county-sponsored workshops, seminars and training programs; and
 - (h) Efforts to assist SBEs in acquiring bonding and insurance.
- (5) DPCC will submit annual SBE participation reports to the Board of Commissioners. These reports shall include a summary of the information described above, plus an analysis of the total dollar value of county contracts/subcontracts awarded to SBEs during the preceding year, categorized by prime contracting dollars, subcontracting dollars and supplier dollars. The percentage of the total dollar value of these contracts that was awarded to SBEs during the preceding year shall also be provided.

(Res. No. 16-0864, App. A(F), 10-5-16; Ord. No. 19-0854, Exh. A, 11-20-19)

Editor's note(s)—See editor's note to div. 10.

Sec. 102-449.2. Small business enterprise program goals and counting procedures.

- (1) The purchasing director will set a specific percentage SBE goal on a contract-by contract basis for prime contracts, for contracts with subcontracting opportunities, and for supplier contracts, and shall have the authority to establish such SBE goal on a contract-by-contract basis based upon the type of contract, the type of subcontracting work that will be required, and the availability of SBEs to perform the work for that specific contract. Every bidder on an eligible project that has an SBE goal shall be required to submit, with its bid submission, the names, address, certification numbers, if applicable, of certified SBEs and any other information required by DPCC as set forth in the project's solicitation documents.
- (2) SBE participation is counted as follows:
- (a) Once a firm is certified as an SBE, the total dollar value of the prime contract, subcontract or supplier contract awarded to the SBE by the county or the contractor is counted toward the applicable SBE goal. However, if an SBE fails to be recertified during the term of the contract, or if an SBE is decertified during the term of the contract, the dollar value of the contract awarded to that SBE cannot be counted toward the applicable SBE goal.
 - (b) The county will count toward its SBE goal a portion of the total dollar value of a contract with a joint venture equal to the percentage of the ownership and contractual commitment to the SBE partner in the joint venture.
 - (c) The county will count toward its SBE goal only expenditures to SBEs that perform a commercially useful function in the work of the contract.
 - (d) The county will count toward its SBE goals the following expenditures to SBE firms that are not suppliers:
 - i. The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the contract, provided that the fee or commission is determined by the county to be reasonable and not excessive as compared with fees customarily allowed for similar services.

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(Supp. No. 51, Update 1)

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- ii. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of, or a regular dealer in, the materials and supplies, provided that the fee is determined by the county to be reasonable and not excessive as compared with fees customarily allowed for similar services. The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract, provided that the fee or commission is determined by Fulton County to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(Res. No. 16-0864, App. A(G), 10-5-16; Ord. No. 19-0854, Exh. A, 11-20-19)

Editor's note(s)—See editor's note to div. 10.

Sec. 102-449.3. Certification as a small business enterprise.

- (1) Prime contractors are required to provide DPCC documentation of its certification as an SBE, if applicable, and any subcontractor SBE certification at the time of bid, per the eligible project's solicitation documents, in order to count participation of a business towards an SBE goal. Certified SBEs must submit to DPCC or, if applicable, to the prime contractor, either (1) a letter or other documentation from the United States Small Business Administration that establishes that the firm qualifies as a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.5(b) and §(a) or small business enterprise firm or HUBZone firm with the United States Small Business Administration; or (2) a letter or other documentation from the City of Atlanta, MARTA or, GDOT or the United States Department of Transportation that establishes that the firm qualifies as a DBE; or (3) from the City of Atlanta that the firm is certified as a small business enterprise; or (4) other agencies that Fulton County deems appropriate. ~~submit proof of small business certification from a certifying agency within Georgia that applies small business size standards consistent with or less than the applicable revenue and employment size standards for small businesses established by the United States Small Business Administration, and meets other county criteria related to SBE status.~~
- (2) Certified SBEs must provide the prime with any information requested to verify location of the business within the Atlanta ~~MSA~~region.
- (3) When a firm which has previously been designated as an SBE exceeds the size standard for its industry as defined pursuant to 13 CFR § 121.201 (as further explained in 13 CFR §§ 121.104 through 121.107), it must notify the DPCC and, if applicable, the prime contractor of the change in status.

(Res. No. 16-0864, App. A(H), 10-5-16; Ord. No. 19-0854, Exh. A, 11-20-19)

Editor's note(s)—See editor's note to div. 10.

Sec. 102-449.4. Decertification of small business enterprise.

If an SBE is decertified, the SBE has an affirmative obligation to notify the DPCC and the prime contractor of such decertification. If the prime contractor no longer meets the county's SBE goals after the decertification of the former SBE, the prime contractor shall be required, within 30 days after notification by the SBE, to demonstrate good faith efforts to substitute the decertified SBE with another certified SBE. Failure to demonstrate good faith efforts to substitute a

decertified SBE with a certified SBE will result in the contractor being declared non-responsive, if done prior to the award of the contract, or the contractor being held in default of the contract, if done after the award of the contract.

(Res. No. 16-0864, App. A(I), 10-5-16; Ord. No. 19-0854, Exh. A, 11-20-19)

Editor's note(s)—See editor's note to div. 10.

Sec. 102-449.5. Appeals.

A responsible bidder that is determined to be non-responsive to the requirements of the SBE program, and that otherwise would have been awarded a contract, as determined in consultation with DPCC, shall receive a written determination by the DPCC, via certified mail, setting forth the reasons for the determination of non-responsiveness.

Any appeal regarding the SBE program shall be subject to the appeal process provided in the County Code at section 102-453.

(Res. No. 16-0864, App. A(J), 10-5-16; Ord. No. 19-0854, Exh. A, 11-20-19)

Editor's note(s)—See editor's note to div. 10.

Sec. 102-449.6. Small business enterprise directory.

The county will create an SBE directory that lists SBEs categorized by types of firms to facilitate identifying businesses with capabilities relevant to a particular specification. Each business listing will contain the business name, contact person, address, phone number, legal structure of the business, and details concerning the company's business specialties. North American Industrial Classification System (NAICS) Codes will be identified for each company. The DPCC will continuously update and maintain a public online the directory on the computer and on hard copy. In compiling this directory, the DPCC will identify as many SBEs as possible that perform the types of work or provide the types of supplies needed by the county. The county will maintain and have available an updated SBE directory and source list(s) for each bid/proposal solicitation to facilitate identifying SBEs working in areas relevant to county contracting requirements and the particular solicitations.

(Res. No. 16-0864, App. A(K), 10-5-16; Ord. No. 19-0854, Exh. A, 11-20-19)

Editor's note(s)—See editor's note to div. 10.

Sec. 102-449.7. Methods by which the county may require contractors and subcontractors to comply with applicable SBE requirements.

The county's staff is available to assist contractors and subcontractors in implementing this program. As a standard procedure, such assistance may include:

- (1) Clearly setting forth any Fulton County SBE goals in specific applicable Fulton County solicitations;
- (2) Attending pre-proposal/bid conferences to explain the county's SBE program;
- (3) Identifying certified SBEs in Fulton County's database and providing a list of available, certified SBEs upon request;
- (4) Providing plan holder lists and pre-bid sign-in sheets made available to interested SBEs upon request;
- (5) Remaining available to assist bidders in developing their SBE programs;
- (6) Monitoring SBE participation levels on eligible projects throughout the duration of a contract. Contractors violating contract provisions regarding SBE participation are subject to the sanctions set forth in section 102-449.8 below; and
- (7) Monitoring prompt payment by prime contractors to SBE subcontractors, pursuant to County Code at section 102-435(j), "Methods for promoting nondiscrimination in purchasing and contracting."

(Res. No. 16-0864, App. A(L), 10-5-16; Ord. No. 19-0854, Exh. A, 11-20-19)

Editor's note(s)—See editor's note to div. 10.

Sec. 102-449.8. Means to ensure bidders and contractors make good faith efforts to meet SBE contract goals.

The county shall request documentation of good faith efforts from bidders at the time of bid.

- (1) For all contracts for which SBE contract goals have been established, the bidder shall be required to submit SBE participation information to Fulton County. The award of the contract will be conditioned upon satisfaction of the requirements established by the county. The bidder shall submit, with its bid submission, the following information:
 - (a) The name, address, certification number and certifying agency of the SBE firm(s) that will participate in the contract;
 - (b) The description of the work each named SBE will perform and associated NIGP code(s); and
 - (c) The dollar amount of participation by each named SBE firm.
- (2) If the SBE participation submitted by the bidder does not meet the SBE contract goals, the bidder must submit with its bid submission evidence demonstrating that "good faith efforts" were made to meet the goals. The county will review documents submitted at the time of bid and make its

determination of good faith efforts based on those submitted documents. Additional submissions will not be permitted. To determine sufficient "good faith efforts" to meet the SBE contract goal, a bidder/proposer shall document the steps it has taken to obtain SBE participation, which may include, but are not limited to, the following types of actions that are not meant to be mandatory or exhaustive:

- (a) Attendance at a pre-bid meeting, if any, scheduled by the county to inform SBEs of subcontracting opportunities under a given solicitation;
- (b) Advertisement in general circulation media, trade association publications, the county website and other media for at least 15 days before bids or proposals are due;
- (c) Written notification to SBEs that their interest in the contract is solicited;
- (d) Efforts made to select portions of the work proposed to be performed by SBEs in order to increase the likelihood of achieving the stated goal;
- (e) Good faith efforts to negotiate with SBEs for specific subcontracts, including at a minimum:
 - i. The names, addresses and telephone numbers of SBEs that were contacted;
 - ii. A description of the information provided to SBEs regarding the plans and specifications for portions of the work to be performed;
 - iii. A statement of why additional agreements with SBE were not reached;
 - iv. Concerning each SBE, the SBE contacted but rejected as unqualified and the reasons for the bidder's conclusion; and
 - v. Efforts made to assist the SBEs contacted that needed assistance in obtaining bonding or insurance required by the competitor or the county.
- (f) To determine whether a bidder that has failed to meet SBE goals may be awarded the contract, the county will determine whether the efforts the bidder made to obtain SBE participation were "good faith efforts." Efforts that are merely pro forma are not "good faith efforts" to meet the goals. In order to award a contract to a bidder that has failed to meet SBE contract goals, DPCC will determine whether the bidder made good faith efforts to meet the county's SBE goals.
- (g) A bidder making a good faith effort would consider a number of factors in negotiating with subcontractors, including SBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using SBEs is not in itself sufficient reason for a bidder's failure to meet the contract SBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts.
- (h) Prime contractors are not, however, required to accept higher quotes from SBEs if the price difference is excessive or unreasonable. In determining whether a bidder has made good faith efforts, DPCC will take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, DPCC may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent

successful bidder fails to meet the goal but meets or exceeds the average SBE participation obtained by other bidders, the county may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

- (i) Bidders that fail to meet SBE goals and fail to demonstrate "good faith efforts" shall be deemed non-responsive to the county's SBE requirements and shall not be eligible to be awarded the contract.
- (j) To ensure that all obligations under contracts awarded to SBEs are met, the county shall review the contractor's SBE involvement efforts during the performance of the contract. The contractor shall bring to the attention of the county any situation in which regularly scheduled progress payments are not made to SBE subcontractors.

The county may also request documentation of good faith efforts from contractors after award of a contract with SBE goals. Specifically, in the event that a subcontractor becomes decertified as an SBE after contract award, the subcontractor will be required to notify the prime contractor of decertification and the prime contractor shall either replace the decertified SBE subcontractor by an equivalent SBE certified firm or provide documentation of good faith efforts.

(Res. No. 16-0864, App. A(M), 10-5-16; Ord. No. 19-0854, Exh. A, 11-20-19)

Editor's note(s)—See editor's note to div. 10.

Sec. 102-449.9. Penalties for noncompliance.

A contractor who fails to comply with any portion of this program, and whose failure to comply continues for a period of 30 calendar days after the contractor receives written notice of such noncompliance from the Purchasing Director, shall be subject to any or all of the following penalties:

- (1) Withholding of ten percent of all future payments for the eligible project until DPCC determines that the contractor is in compliance with this program.
- (2) Withholding of all future payments under the eligible project until it is determined that the contractor is in compliance with this program.
- (3) Cancellation of the eligible project.
- (4) Refusal of all future contracts or subcontracts with the county for a minimum of one year and a maximum of five years from the date upon which this penalty is imposed.

(Res. No. 16-0864, App. A(N), 10-5-16; Ord. No. 19-0854, Exh. A, 11-20-19)

Editor's note(s)—See editor's note to div. 10.

Sec. 102-449.10. Outreach to SBEs.

Fulton County considers information dissemination and communication with SBEs as an integral part of the county's SBE program. As a part of its outreach program, DPCC may solicit input from representatives of SBEs, trade associations and community organizations. This input will serve several important functions, including:

- (1) Providing information to identify additional SBE firms;
- (2) Assisting in refining SBE program goals and procedures;
- (3) Disseminating procurement opportunities to SBEs; and
- (4) Providing an independent assessment of the effectiveness of the county's SBE program.

(Res. No. 16-0864, App. A(O), 10-5-16; Ord. No. 19-0854, Exh. A, 11-20-19)

Editor's note(s)—See editor's note to div. 10.

Sec. 102-449.11. Procedures to require that participating SBEs are identified by name, by bidders for contracts.

The county may indicate, in specific solicitations for contracts that are determined to provide opportunities for SBE participation, goals for the use of SBE firms. Solicitations may require all bidders to submit a written assurance of meeting the goals in their bids or proposals. Bids may also include a proposed schedule of SBE participation that lists the names of SBE subcontractors, a description of the work each is to perform and the dollar value of each proposed SBE subcontract. If the SBE participation does not meet the SBE contract goals, the bidders must submit sufficient information and evidence demonstrating that the bidder made good faith efforts to meet the goals on designated contracts.

Bidders may be required to submit this information at a time to be determined by DPCC. Agreements between a bidder and an SBE in which the SBE promises not to provide subcontracting quotations to other bidders shall be prohibited.

(Res. No. 16-0864, App. A(P), 10-5-16; Ord. No. 19-0854, Exh. A, 11-20-19)

Editor's note(s)—See editor's note to div. 10.

Sec. 102-449.12. Prime contracting guidelines.

- (1) As early in the acquisition planning process as practicable, but no later than 30 days before the issuance of a solicitation, a user or procuring agency must coordinate with DPCC when a procurement is valued over \$100,000.00 in order to determine potential measures to be taken to maximize prime participation of SBEs in the procurement.
- (2) If DPCC believes that a proposed procurement will render SBE prime contract participation unlikely, then DPCC may recommend to the procuring agency alternative procurement methods which would increase SBE prime contract participation. Such alternatives may include:

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- (a) Breaking up the procurement into smaller discrete procurements; and
 - (b) Breaking out one or more discrete components.
- (3) Where methods under subsection (2)(b) are not feasible, DPCC will work with the procuring agency to recommend a strategy that preserves SBE prime contract participation to the maximum extent practicable. DPCC will also work to recommend that SBE participation is maximized through teaming arrangements and subcontracting opportunities.
- (4) Nothing in this section shall be interpreted to mandate increased participation of SBEs where such increased participation would significantly affect the ability of a user agency to complete a given project.

(Res. No. 16-0864, App. A(Q), 10-5-16; Ord. No. 19-0854, Exh. A, 11-20-19)

Editor's note(s)—See editor's note to div. 10.

Sec. 102-449.13. Severability.

If any provision of this program or any application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this division which can be given effect without the invalid provisions or applications, and are to this end declared to be severable.

(Res. No. 16-0864, App. A(R), 10-5-16; Ord. No. 19-0854, Exh. A, 11-20-19)

Editor's note(s)—See editor's note to div. 10.

Sec. 102-449.14. Periodic review.

There shall be a periodic review and analysis of the program to determine if adjustments need to be made prior to its sunset within five years.

(Res. No. 16-0864, App. A(S), 10-5-16; Ord. No. 19-0854, Exh. A, 11-20-19)

Editor's note(s)—See editor's note to div. 10.

Sec. 102-449.15. Sunset.

This program shall sunset on December 31, ~~2022~~2027.

(Res. No. 16-0864, App. A(T), 10-5-16; Ord. No. 19-0854, Exh. A, 11-20-19)

Editor's note(s)—See editor's note to div. 10.

Sec. 102-449.16. Small business reserve program.

The purchasing agent, in consultation with the OCC, may designate certain procurement projects or contracts as available for bid and award only to certified small business enterprises ("SBEs"), as identified and discussed in the small business enterprise program herein (division 10). The small business reserve designation for a particular project is discretionary on the part of the purchasing agent and should be applied only where there is a reasonable expectation that there will be at least three responsible and responsive bids for certified SBEs and that the award will be made at a fair market price/value.

The intention of the small business reserve program is to increase opportunities for SBEs to perform as prime contractors on county projects/contracts, growing capacity and gaining valuable experience. Accordingly, to obtain a small business reserve program project, the bidding SBE must self-perform a significant percentage of the contracted work (a minimum of 50 percent), limiting its ability to subcontract the work.

(Ord. No. 19-0854, Exh. A, 11-20-19)