

## ARTICLE IV. - SMALL LOCAL BUSINESS ENTERPRISE PROGRAM

### Sec. 18-80. - General.

This article establishes a small local business enterprise program in order to increase employment opportunities for city residents and to enhance the city's tax base by promoting city contracting opportunities for small local business enterprises. If a contract is in the SLBE program, it will be awarded to only a small local business enterprise.

(Ord. No. 14431, 4-1-2013)

### Sec. 18-81. - Definitions.

As used in this article, the following definitions have the meaning indicated, except where the context clearly requires a different meaning:

*Bid* means the offer to furnish services to the city.

*Bidder* means a person that has submitted a bid to the city.

*Contract* means any contract through which the city procures services.

*Contractor* means a person that has a contract with the city to provide services.

*Director* means the director of the equal opportunity/equity assurance department or his or her designee.

*EO/EA* means the city's equal opportunity/equity assurance department.

*Small local business enterprise (SLBE)* means a small business enterprise that is certified by the city as a SLBE.

*SLBE program* means the program authorized by this article.

*SLBE project* means a city project identified by the user departments, in consultation with the EO/EA department, as suitable for receiving bids from only from only SLBEs.

*User department* means a city department with primary responsibility for administering the relevant contract.

(Ord. No. 14431, 4-1-2013)

### Sec. 18-82. - Administration.

The city manager shall:

- (1) Adopt rules to implement the SLBE program.
- (2) Encourage participation from as many potentially eligible SLBEs as practicable.
- (3) Certify small business entities as SLBEs, maintain certification records, and maintain a SLBE availability data base.
- (4) Coordinate with user departments to identify and classify contracting opportunities in order to solicit bids from SLBE with the expertise to perform the work.
- (5) Collect data to evaluate the SLBE program.

(Ord. No. 14431, 4-1-2013)

Sec. 18-83. - Eligibility and certification process

- (a) A person including an SDBE certified under article III, may be certified as an SLBE if the city manager finds that it:
  - (1) Is not a governmental person, as defined in section 1-2;
  - (2) Meets the size standards described in the U.S. Small Business Administration pursuant to 13 CFR 121.201, averaged over the last three years;
  - (3) Has (a) its principal office located within the geographic area defined by the counties of Durham, Chatham, Orange and Person (Durham MSA), or (b) a regional, branch or satellite office in which at least 25 percent of the full time employees reside in the Durham MSA and that has been established within the MSA for at least one year prior to the date of submission of application to the city for SLBE certification. "Principal office" means the physical location where the majority of the bidder's (a) employees, (b) principals, and (c) managers are required to work and where the majority of the bidder's accounting, financial, and payroll activities originate and are managed.
- (b) Certification will be granted for only the specific areas of work in which the SLBE has been found by the city manager to have the skills, knowledge, and ability to perform in the field of endeavor in which certification is sought, as defined by normal industry practices, including licensure where required. Certification for specific areas of work does not mean the SLBE is prequalified to bid on any city contract, including contracts included in the SLBE program. Certification does not constitute a finding that the SLBE meets the requirements that the city may have for contract award.
- (c) The city shall certify the eligibility of joint ventures in which the joint venture partners are SLBEs.

(Ord. No. 14431, 4-1-2013)

Sec. 18-84. - Maintenance of SLBE certification status and recertification.

- (a) Certification as an SLBE expires two years after being granted. Certification may be revoked when the director finds that the SLBE:
  - (1) Ceases to meet the certification requirements to be an SLBE, or
  - (2) Provided materially false or misleading information to the city in seeking certification.
- (b) Failure of an SLBE to seek recertification by filing the necessary documentation with the city manager within 90 [days] of notification of the expiration of its certification shall result in automatic decertification until such time that the city is able to recertify the SLBE pursuant to its normal application process.
  - (1) It is the responsibility of the SLBE to notify the city manager of any change in its circumstances affecting its continued eligibility for the SLBE program. Failure to do so within a reasonable time of the change may result in the firm's decertification.
  - (2) The city manager shall decertify a firm that does not continuously meet the eligibility criteria.

(Ord. No. 14431, 4-1-2013)

Sec. 18-85. - Protest if denied certification or recertification or decertification.

A person that has been denied certification or recertification or that has been decertified may protest the denial or decertification only as follows:

- (1) Within seven days of receipt of denial of certification or recertification, or notice of decertification, the person may protest such action in writing to the city manager. The written protest must evidence that it was sent or postmarked within the seven days of receipt of denial of certification or recertification, or notice of decertification.
- (2) A hearing shall be held by the city manager at which hearing the protester may present additional facts and evidence in support of its eligibility. The city manager shall control all aspects of the hearing, including scheduling, conduct, witnesses, and evidence, and may request the attendance of witnesses and production of documents. The protester's failure to comply promptly with these requests may be grounds for denial of relief sought by the protester.
- (3) The city manager shall send notice of the written decision to the protester within 30 days of the hearing. The city manager's decision shall be final.
- (4) A protester found to be ineligible to be certified as a SLBE shall not apply for certification for one year after the effective date of the final decision. However, if the denial or decertification is made in whole or in part because the protester had previous to the protest provided materially false or misleading information in support of its SLBE status the protester shall not apply for certification for two years after the effective date of the final decision.

(Ord. No. 14431, 4-1-2013)

Sec. 18-86. - Selection of contracts for SLBE program; contract award.

A proposed contract shall not be awarded to a bidder that is not an SLBE if the contract meets the standards in subsections (1) and (2).

- (1) The contract is for:
  - a. Construction and repair work involving the expenditure of public money less than \$500,000.00;
  - b. Architectural, engineering or surveying services when the estimated contract price is less than \$100,000.00; or
  - c. Other services, in which the estimated expenditure of city money is less than \$500,000.00 if the city manager has, in his or her discretion, designated the contract for the SLBE program.
- (2) That the city manager has found a sufficient number, but not fewer than three, of the SLBEs certified for the specific area of work, if applicable, may be available to bid on the proposed contract.

(Ord. No. 14431, 4-1-2013)

Sec. 18-87. - Termination of contract if SLBE status ends.

When the award of a contract is restricted to SLBEs pursuant to section 18-86, and the contractor's SLBE certification is revoked pursuant to section 18-84, the city manager has the authority to terminate the services of the contractor as of the date of revocation or as of a later date as provided by the notice of revocation. The termination does not affect accrued amounts owed to the contractor as of the date of termination.

(Ord. No. 14431, 4-1-2013)

Sec. 18-88. - Effect on equal business opportunity program.

Nothing in this article is intended to prevent the operations of the provisions of article III (the equal business opportunity program) with respect to contracts placed in the SLBE program, when article III would apply in the absence of this article.

(Ord. No. 14431, 4-1-2013)

Sec. 18-89. - Applicability to grants from other governments.

This article shall not apply to contracts funded from grants from other government entities, if such grant conditions restrict or prohibit the use of local preferences in contracting.

(Ord. No. 14431, 4-1-2013)