

ALACHUA COUNTY
BOARD OF COUNTY COMMISSIONERS

ORDINANCE NO. 2024 -__

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF ALACHUA COUNTY, FLORIDA; AMENDING ALACHUA COUNTY CODE OF ORDINANCES, PART II, TITLE 2, CHAPTER 22-PROCUREMENT CODE, ARTICLE XI, TITLED ‘SMALL BUSINESS ENTERPRISE PROGRAM; STATE AND FEDERAL ASSISTANCE REQUIREMENTS AND ENVIRONMENTAL PROCUREMENT PROGRAMS’; PROVIDING FOR MODIFICATION; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR THE ORDINANCE TO BE LIBERALLY CONSTRUCTED; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on January 28, 2020, the Alachua County Board of County Commissioners (“Board”) adopted Ordinance 2020-01, amending and updating the portion of the Alachua County Code of Ordinances known as the ‘Alachua County Procurement Code’; and

WHEREAS, event prior to 2020, the Board recognized the need to provide the maximum for increased participation of small businesses in the county’s procurement system; and

WHEREAS, on December 4, 2023, the Board reviewed the current Alachua County Small Business Enterprise (“SBE”) Program and agreed to continue the encouragement of the expenditure of a percentage of the total competitive procurement monies with small businesses enterprises for materials, supplies, equipment, services and construction; and

WHEREAS, by this Ordinance there is no change to the identified Small Business Enterprise Zone for the SBE Program which includes Alachua, Bradford, Clay, Columbia, Gilchrist, Levy, Marion, Putnam, and Union counties; and

WHEREAS, by the Ordinance this Board desires to update and amend the certification requirements for the Alachua County Small Business Enterprise Program; and

WHEREAS, the Board finds that this Ordinance is in the best interest of public health, safety and welfare and provides a benefit to the local community.

NOW, THEREFORE, BE IT DULY ORDAINED BY THE BOARD OF COUNTY

1 **COMMISSIONERS OF ALACHUA COUNTY, FLORIDA, AS FOLLOWS:**

2 SECTION 1. Recitals. The above recitals are correct and are incorporated herein.

3 SECTION 2. Amendment. Alachua County Code, Part II, Title 2, Chapter 22, Article I, Part C
4 titled Definitions of Terms Used in this Code, Section 22.1-301 is amended to remove the following two
5 definitions from this Section. All other definitions contained in that Section remain unchanged by this
6 Ordinance.

7 ~~Small business means an independently owned and operated business currently performing a~~
8 ~~useful business function, headquartered in the small business enterprise zone, having 25 or fewer~~
9 ~~permanent fulltime employees and having a net worth of less than \$1,000,000.~~

10 ~~Small business enterprise zone means the area comprised of a list of neighboring counties~~
11 ~~approved by the county manager, or designee.~~

12 SECTION 3. Amendment. The portion of the Alachua County Code known as the Alachua
13 County Procurement Code, located in Alachua County Code, Part II, Title 2, Chapter 22, Article XI and
14 titled ‘Small Business Enterprise Program; State and Federal Assistance Requirements and Environmental
15 Procurement Programs’, shall be amended as follows. Unless referenced below, Parts C and D and all other
16 provisions in Alachua County Code Chapter 22, Article XI remain unchanged by this Ordinance.

17 **ARTICLE XI. - SMALL BUSINESS ENTERPRISE PROGRAM; STATE AND FEDERAL**
18 **ASSISTANCE REQUIREMENTS AND ENVIRONMENTAL PROCUREMENT**
19 **PROGRAMS**

20 * * *

21 **Part A. – Definitions**

22 The following words in this article shall have the meanings set forth below:

23 ~~(1)~~ A ~~u~~Useful ~~b~~Business ~~f~~Function is one which results in the provision of materials,
24 supplies, equipment, or services to customers. For this reason, merely acting as a financial
25 conduit to transfer funds to a non-small business enterprise will not constitute a ~~u~~Useful Business
26 ~~f~~Function, unless it is done as a part of normal industry practices.

27 Small Business means an independently owned and operated business currently performing
28 a Useful Business Function that is headquartered in the Small Business Enterprise Zone, and
29 meets the requirements of Section 22.11-202(1), whether emerging or established.

30 Small Business Enterprise Zone means the area comprised of a list of neighboring counties
31 approved by the county.

1 **Part B. - Small Business Enterprise Program**

2 **Sec. 22.11-201. - Purpose and intent.**

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

7 **Sec. 22.11-202. - Certification.**

8 (1) The county shall certify small business enterprises (SBE) for use by the county in its
9 procurement process and will maintain an up-to-date electronic list of SBE.

10 (a) To become certified as an SBE, a ~~small~~-business must be currently performing a ~~u~~Useful
11 ~~b~~Business ~~f~~Function, be located in the Small Business Enterprise Zone~~SBE-zone~~, and be
12 either an:

13 (i) Emerging Small Business: have 25 or fewer permanent, full-time employees and
14 have a net worth not exceeding \$1,000,000.00; or

15 (ii) Established Small Business: have 25 or fewer permanent, full-time employees
16 and have a net worth not exceeding \$5,000,000.00.

17 (b) The county will approve a list of neighboring counties to comprise the Small Business
18 Enterprise Zone.

19 (c) Certifications for SBE are valid for one year from certification date.

20 (2) This list of SBE shall be used in the bid solicitation process, and all departments are
21 encouraged to utilize this list in their procurement activities.

22 (3) The county shall continually endeavor to identify small businesses which are eligible for
23 certification in all areas of county procurement.

24 **Sec. 22.11-203. - False representation.**

25 (1) It is unlawful for any individual or entity to knowingly submit false information in order to
26 qualify for SBE certification.

27 (2) Any contractor that falsely represents to the county that it is an SBE, or knowingly submits
28 false information or represents that it will use the services or commodities of an SBE and
29 subsequently does not, shall be deemed in breach of contract. Upon a determination that a
30 breach has occurred, all payments under the contract or any other arrangement shall be
31 immediately suspended. The contractor may show that it attempted in good faith to comply
32 with the terms of the contract but was unable to comply. If the county determines that the
33 contractor did not act in good faith, all amounts paid to the contractor under the county
34 contract or agreement intended for expenditure with the ~~sbe~~SBE shall be forfeited and
35 recoverable by the county. In addition, the contract or agreement may be rescinded and the
36 department or division may return all unused supplies received and recover all amounts paid
37 under the contract.

38 (3) Any contractor or affiliate determined to have falsely represented that it or a subcontractor
39 is an SBE, or determined to have not acted in good faith to fulfill the terms of a contract
40 calling for it to use the services or commodities of an SBE, may be considered under the
41 county's suspension and debarment policy.

1 **Sec. 22.11-204. - Acquisition of professional services.**

2 When procuring professional services, the county shall endeavor to include SBE. The county's
3 administrative procedures for the formal evaluation of professional services shall include but not
4 be limited to SBE status.

5 **Sec. 22.11-205. - Reservation of contracts.**

6 (1) The county may reserve contracts to be awarded only to SBE. The county shall review all of
7 its needs and requirements in each fiscal year, and shall determine which contracts may be
8 reserved for bidding only by SBE. This reservation may only be used when it is determined,
9 before dissemination of the request for proposals or invitation to bid, that there are capable,
10 qualified, SBE available within the SBE zone who are interested and willing to bid on these
11 contracts in order to provide for effective competition. Once a decision has been made to
12 reserve a contract the county shall estimate what it expects the dollar amount of the contract
13 to be, based on the nature of the contract and its value under prevailing market conditions. If
14 all the bids received are over this estimate, the county may reject the bids and open the
15 bidding to all vendors and contractors. Before contracts can be reserved for bidding only by
16 SBE, the county must determine that such a reservation is in the best interest of the county.

17 (2) The county may reserve any construction contract for competitive bidding only among
18 contractors who agree to utilize SBE as subcontractors or sub-vendors. The percentage of
19 funds which must be expended with SBE subcontractors and sub-vendors shall be determined
20 by the county before the contracts is reserved. In order to bid on a construction contract so
21 reserved, the contractor shall identify those SBEs which will be utilized as subcontractors or
22 sub-vendors. Once a decision has been made to reserve a contract, but before bids are
23 requested, the county shall estimate what it expects the amount of the contract to be, based
24 on the nature of the contract involved and its value under prevailing market conditions. If all
25 the bids received are over this estimate, the county may reject the bids and open the bidding
26 to all vendors and contractors. It is the express responsibility of the contractor to verify that
27 all SBEs which will be utilized as subcontractors or sub-vendors are currently certified by
28 the county.

29 **Sec. 22.11-206. - SBE preference.**

30 (1) The county will award a five-percent bid price preference, not to exceed \$50,000.00 on any
31 single bid, to any SBE that submits a bid to the county.

32 (2) The county will award a three-percent bid price preference, not to exceed \$50,000.00 on any
33 single bid, to any contractor that agrees to use SBE for at least 15 percent of the dollar value
34 of the bid.

35 (3) The monetary value of the bid price preference given to a certified ~~sbe~~SBE in any particular
36 procurement shall not exceed \$50,000.00.

37 (4) If the adjusted bid price of the SBE vendor is equal to or lower than the original lowest
38 responsive bid, the SBE will be awarded the contract.

39 (5) The county will award a preference in evaluation points to ~~sbe~~SBE or contractors that meet
40 the SBE participation goal in its RFP response.

41 (6) The county will promulgate procedures necessary to implement the SBE preference.

42 (7) SBE preference does not apply to contracts that are reserved in accordance with section 22.11-
43 204 (acquisition of professional services).

(8) SBE bid preferences will not be combined.

Sec. 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.

Sec. 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.

Sec. 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~~SBE for materials, supplies, equipment, services and construction.

1 (c) Formulate and establish a system to record and measure the use of SBE in county
2 ~~contracting~~procurement. This system shall maintain information and statistics on SBE
3 participation, in order to analyze the progress of the SBE program.

- 4 (2) The procurement manager shall annually report the ~~contractual or~~ procurement disbursements
5 made to SBEs to the county manager. This information shall be made available to the county
6 commissioners as well as the public at large.

7 * * *

8 SECTION 4. Modification. It is the intent of the Board that the provisions of this ordinance
9 may be modified as a result of considerations that may arise during public hearings. Such modifications
10 shall be incorporated into the final version of the ordinance adopted by the Board and filed by the Clerk to
11 the Board.

12 SECTION 5. Inclusion in the Code. It is the intent of the Board, and it is hereby provided that
13 the provisions of this ordinance shall become and be made a part of the Code of Ordinances of Alachua
14 County, Florida; that the section of this ordinance may be renumbered or re-lettered to accomplish such
15 intent and that the word “ordinance” may be changed to “section”, “article”, or other appropriate
16 designation.

17 SECTION 6. Ordinance to be Liberally Construed. This ordinance shall be liberally construed
18 in order to effectively carry out the purposes hereof which are deemed not to adversely affect public health,
19 safety, or welfare.

20 SECTION 7. Severability. If any word, phrase, clause, paragraph, section or provision of this
21 ordinance or the application hereof to any person or circumstance is held invalid or unconstitutional, such
22 finding shall not affect the other provisions or applications of the ordinance which can be given effect
23 without the invalid or unconstitutional provisions or application, and to this end the provisions of this
24 ordinance are declared severable.

25 SECTION 8. Effective Date. A certified copy of this ordinance shall be filed with the
26 Department of State by the Clerk of the Board within ten days after enactment by the Board and shall take
27 effect upon filing with the Department of State.

