

LOCAL SMALL BUSINESS ENTERPRISE PROGRAM

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Sec. ____ . - Definitions.

For the purposes of this purchasing and contract program, certain terms and words are defined. Where words have not been defined, but are defined in section 1-2, those words shall have the meaning as defined therein. The following words, terms, and phrases, when used in this purchasing and contract program shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Affiliate means any business, including, but not limited to, a parent business, subsidiary business or a sibling business, that has any of the following relationships to another business:

- (1) Directly or indirectly owns or holds with the power to vote, five (5) percent or more of the outstanding voting securities of such other business;
- (2) Five (5) percent or more of whose outstanding voting securities are directly or indirectly owned or held with power to vote by such other business; or
- (3) Directly or indirectly controlling, controlled by, or under common control with such other business. For the purposes of this subsection, the term "control" means the power to exercise a controlling influence over the management policies of a business.

Applicant firm shall mean the business applying for certification in the local small business enterprise program.

Business shall mean any association, cooperative, corporation, individual, joint venture, limited liability corporation (hereinafter referred to as "LLC"), partnership, sole proprietorship, trust or other legal entity.

Business concern shall mean a business entity organized for profit, with a place of business located in Escambia County (hereinafter referred to as "County"), and which operates primarily within the County or which makes a significant contribution to the economy.

Director, purchasing and contracting shall mean the Director of the City of Pensacola Purchasing and Contracting Department.

Contact compliance division (hereinafter referred to as "CCD") shall mean the contract compliance division of the purchasing and contracting department.

Escambia county shall mean Escambia County, Florida.

Deputy director, contract compliance shall mean the deputy director of a division within the City of Pensacola Purchasing and Contracting Department.

Good faith effort shall mean the efforts undertaken by a contractor to obtain local small business enterprise participation in a contract issued by the City.

Invitation to bid shall mean the complete assembly of related documents, whether attached or incorporated by reference, furnished to prospective bidders for the purpose of inviting bids.

Local small business enterprise (hereinafter referred to as "LSBE") shall mean a locally-based small business operating inside of Escambia County.

Locally-based shall mean a business located and operating in Escambia County, Florida.

(1) For the purposes of this definition, to be "located" in Escambia County means to have a physical presence within the geographic boundaries of the county such as having office space, a plant, warehouse, or other physical business facility, but specifically excluding the existence of a post office box without any other physical presence, for at least ninety (90) days prior to submitting an application for local small business certification.

(2) For the purposes of this definition, to "operate" in Escambia County means to be the current holder of a valid business license issued by Escambia County at least ninety (90) days prior to submitting an application for local small business certification.

Mentor shall mean the established prime contractor approved by the purchasing and contracting department, submitting bid quotations over five million dollars (\$5,000,000.00).

Principal place of business shall mean the business location where the individuals who manage the business concern's day-to-day operations spend most working hours and where top management's business records are kept.

Protégé shall mean the subcontractor certified as a LSBE seeking opportunities for contracts in City of Pensacola.

Purchasing and contracting department shall mean the City of Pensacola Purchasing and Contracting Department.

Qualified sealed solicitation shall mean any invitation to bid, request for proposal issued by the City released for response to bidders and proposers after the effective date of this purchasing and contract program, and determined by the director of purchasing and contracting department or designee to be qualified for the application of the LSBE Benchmarks delineated in this purchasing and contract program.

Receipts shall mean total income or, in the case of sole proprietorship gross income, plus "cost of goods sold" as these terms are defined or reported on Internal Revenue Service (IRS) Federal tax return forms; Form 1120 for corporations; Form 1120S for Subchapter S corporations; Form 1065 for partnerships; and Form 1040, Schedule F for farm or Schedule C for sole proprietorships.

Request for proposals shall mean the complete assembly of related documents, whether attached or incorporated by reference, furnished to prospective responders for the purpose of soliciting proposals.

Request for quotations shall mean the complete assembly of related documents, whether attached or incorporated by reference, furnished to prospective vendors for the purpose of soliciting price quotations.

Small business shall mean an independently owned and operated business concern whose average annual gross receipts, as defined herein, for the previous three years must not exceed:

- (1) Construction firms—Three million dollars (\$3,000,000.00);
- (2) Professional services firms—Two million dollars (\$2,000,000.00);
- (3) Commodity suppliers—One million dollars (\$1,000,000.00), and the individual owners of such business concern may not possess a personal net worth that exceeds one million dollars (\$1,000,000.00), including a spouse or adult child's net worth but excluding the individual's ownership interest in their primary residence.

Solicitation shall mean any invitation to bid, request for proposal or request for quotation issued by the City and released for response to bidders and proposers after the effective date of this purchasing and contract program.

Subcontract shall mean an agreement between a subcontractor and a contractor, pursuant to which the subcontractor will provide to the contractor equipment, goods, materials, services or supplies.

Subcontractor shall mean businesses providing equipment, goods, materials, service or supplies to a contractor.

Sec. ____ - LSBE certification.

(a) All businesses certified as a LSBE pursuant to the resolution pertaining to the LSBE program as adopted on or about _____, and thereafter amended, shall retain their certification until its expiration date. Thereafter, all applicant firms must be certified under the provisions set forth below.

(b) To be certified as a LSBE, an individual owner shall be required to meet the following criteria:

- (1) The business concern must qualify as a small business as that term is defined in this purchasing and contract program;
- (2) Applicant firm must qualify as a locally-based business and possess a valid Escambia County for ninety (90) days prior to submitting LSBE certification application;
- (3) Applicant firm owner must be a citizen or lawfully admitted permanent resident of the United States and be compliant with the residency requirements of the LSBE program;
- (4) Applicant firm must be a business, including a sole proprietorship, partnership, corporation, limited liability company, or any other business or professional entity:

a. Which is at least fifty-one (51) percent owned by one (1) or more of the applicant individuals identified and the ownership must have been in existence for ninety (90) days or more and the applicant individual must have maintained such fifty-one (51) percent ownership for at least ninety (90) days; and

b. In the case of a publicly owned business, at least fifty-one (51) percent of all classes of stock of which is owned by one (1) or more of such persons each of whom meets the net worth criteria as defined herein.

(5) Applicant firm owner's net worth must be compliant with the net worth threshold for small businesses as defined herein; and

(6) The firm's average annual gross receipts, as defined herein, for the previous three (3) years must not exceed: (1) Construction firms—Three million dollars (\$3,000,000.00); (2) Professional services firms—Two million dollars (\$2,000,000.00); (3) Commodity suppliers—One million dollars (\$1,000,000.00).

Sec. ____ - Continuing obligations of LSBE and graduation.

(a) All certifications issued under the LSBE program shall be reviewed every two (2) years by the purchasing director, contract compliance or designee.

(b) Each certified firm must submit a re-certification application to be reconsidered for the program. Failure of the firm to seek re-certification by filing the necessary application and corresponding documents with the contract compliance division within ninety (90) days from the date of receipt of written notification of certification expiration from the contract compliance division shall result in decertification of the firm.

(c) It is the responsibility of the LSBE to notify the contract compliance division of any change in its circumstances affecting its continued eligibility for the program. Failure to do so may result in the firm's de-certification and preclusion from future participation in the LSBE program.

(d) The LSBE that no longer meets certification may be decertified at the expiration of the initial certification period by the deputy director, contract compliance, or designee.

(e) The LSBE that has participated in the program for a total of ten (10) years shall automatically graduate from the program at the expiration of the ten (10) year period and shall no longer be entitled to be certified as a LSBE. Once the ten (10) year period expires, the former LSBE is encouraged to participate in the mentor-protégé program.

Sec. ____ - De-certification, denial and appeal procedure for a LSBE.

(a) The deputy director, contract compliance or designee may decertify a LSBE that repeatedly fails to honor quotations provided to the City and prime contractors in good faith, or otherwise fails to comply with the LSBE program requirements and the provisions of this purchasing and contract program.

(b) An applicant business that has been denied certification or re-certification or been de-certified may protest the denial or de-certification as follows:

(1) Within fifteen (15) days of receipt of denial of certification or re-certification, or notice of intent to decertify, the firm may protest such action in writing to the deputy director, contract compliance, or designee.

(2) A meeting shall be scheduled with the applicant business, the deputy director, contract compliance, or designee, and the assistant director, purchasing and contracting, or designee, at which time the business may present additional facts and evidence in support of its eligibility. The deputy director, contract compliance, or designee may request the attendance of any witness and

production of any documents concerning the applicant business's affairs. The applicant business' failure to comply within ten (10) days of these requests may be grounds for denial of the appeal.

(3) The assistant director, purchasing and contracting shall determine the applicant business' eligibility on the basis of the information provided at the meeting and make a recommendation to the director, purchasing and contracting, whose final written decision shall be communicated to the business within ten (10) days of the meeting.

(4) A business denied or found to be ineligible may not apply for certification for ninety (90) days after the effective date of the final decision issued by the director, purchasing and contracting.

Sec. ____ - Administrative application.

(a) In order to further the participation of qualified LSBEs, the purchasing and contracting department shall do the following:

(1) LSBEs that are locally-based and prime contractors utilizing LSBEs that are locally-based shall receive ten (10) percentage points in the initial evaluation of their response to any request for proposal;

(2) LSBEs that are locally-based and prime contractors utilizing LSBEs that are locally-based shall receive a ten (10) percent preference on all responses to invitations to bid and request for quotations;

(b) The purchasing and contracting department shall consider LSBE for emergency contracts or for purchases made on the statewide contract selection although specific goal(s) shall not be set for LSBEs on such emergency procurements or statewide contract procurements;

(c) The purchasing and contracting department shall notify all certified LSBEs of Escambia County solicitations for procurement processed by the purchasing and contracting department as follows:

(1) Notification shall be sent through mail, email, facsimile or telephone; and

(2) The director, purchasing and contracting shall ensure that the certified vendor's list will be made available for all qualified sealed solicitations issued by the purchasing and contracting department.

(d) The purchasing and contracting department shall implement a training program to provide quarterly seminars and workshops to LSBEs addressing the issues facing the small business community. Seminars and workshops should include a component on how to do business with City of Pensacola and encourage participation in the mentor-protégé initiative; and

(e) The purchasing and contracting department shall require prompt payment and certification for all contracts with City of Pensacola for performance of work or procurement of goods.

(1) The purchasing and contracting department shall ensure that all contracts covered by this purchasing and contract program contain a provision requiring the prime contractor to certify in writing that all subcontractors and suppliers have been promptly paid for work and materials, no later than seven (7) calendar days from prime contractor's receipt of payment from City of Pensacola.

(2) On a monthly basis and throughout the duration of the contract and upon completion thereof,

the contract compliance division shall request documentation from the prime contractor to certify payments to subcontractors or suppliers.

Sec. ____ - LSBE contract pre-award compliance procedures.

(a) For all qualified sealed solicitations, the bidder/proposer shall submit a notarized affidavit of the Schedule of LSBE participation detailing all LSBE businesses sub-contractors from which the bidder/proposer solicited bids or quotations. The certified LSBE vendor list compiled by the contract compliance division establishes the group from which the bidder/proposer must solicit subcontractors under this program. The notarized schedule of LSBE participation shall be due at the time set forth in the solicitation documents.

(b) For all qualified sealed solicitations, the director of the purchasing and contracting department or designee shall determine if the bidder/proposer has included written documentation showing that at least twenty (20) percent of the total contract award will be performed by a certified LSBE. If this twenty (20) percent benchmark is not achieved, then the director of purchasing and contracting or designee shall determine if the bidder or proposer has exhausted its good faith efforts as delineated in this purchasing and contract program.

Sec. ____ - Good faith efforts in lieu of meeting benchmarks.

(a) A contractor must either meet the LSBE benchmarks or demonstrate good faith efforts to achieve those benchmarks. In determining whether a bidder/proposer has made good faith efforts, the deputy director, contract compliance or designee shall consider all relevant factors, which may include, but are not limited to the following:

- (1) Contractors shall advertise in general circulation media at least seven (7) calendar days prior to bid or proposal opening any and all sub-contractor opportunities. Proof of advertisements must be submitted with the bid;
- (2) A contact log showing the name, address, and contact number (phone or fax) used to contact the proposed certified subcontractors, nature of work requested for quote, date of contact, the name and title of the person making the effort;
- (3) The full detailed description of the scope of work for which a quote was requested;
- (4) The amount of the quoted price, if one was obtained;
- (5) The list of divisions of work not subcontracted and the corresponding reasons for not including them;
- (6) Subcontractor information as requested by forms provided by the contract compliance division;
- (7) For all contracts a signed letter of intent from all certified LSBEs describing the work, materials, equipment or services to be performed or provided by the LSBE(s) and the agreed upon dollar value shall be due with the bid or proposal documents.

(b) The purchasing director, contract compliance or designee will also consider, at a minimum, the bidder/proposer's efforts to:

- (1) Solicit certified subcontractors in the scopes of work of the contract. The bidder/proposer shall provide interested LSBE businesses with timely, adequate information about the plans,

specifications, and other such requirements of the contract to facilitate their quotation. The bidder/proposer must follow up initial solicitations with interested LSBEs, including but not limited to, submitting evidence of contact via telephone, email or facsimile;

(2) Identify a portion of the work available to LSBEs consistent with their availability;

(3) Negotiate in good faith with interested LSBEs. The bidder/proposer shall provide evidence as requested and it shall include the names, addresses, and telephone numbers of LSBEs that were contacted; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and why agreements could not be reached with them. The ability or desire of a bidder/proposer to perform the work of a contract with its own organization does not relieve it of the responsibility to make good faith efforts on all scopes of work subject to subcontracting; and

(4) Where feasible, facilitate the leasing of supplies or equipment when they are of such a specialized nature that the LSBE could not readily and economically obtain them in the marketplace.

(c) The purchasing director, contract compliance or designee shall maintain documentation of the good faith efforts performed by a prime contractor, and a copy of these records shall be kept with the official bid/contract file, in compliance with all record retention laws or for two (2) years, whichever is longer.

(d) If the purchasing director, contract compliance or designee determines that a bidder/proposer did not make sufficient good faith efforts, the purchasing director, contract compliance, or designee shall report and record this finding in writing, to the director, purchasing and contracting. The user department shall be notified by the purchasing department in writing and the bid/proposal may be rejected. The director of purchasing and contracting will notify the CEO or his designee of the proposal/bidder's failure to obtain the LSBE benchmarks or satisfactory good faith efforts.

(e) Prior to placement on the city council' agenda for award, the mayor, or designee, shall have the authority to reject any response to any qualified sealed solicitation if the bidder/proposer fails to achieve the LSBE benchmarks and fails to demonstrate good faith efforts as determined by the mayor or designee.

(f) After placement on the city council' agenda for award, the governing authority shall have the authority to reject any response to any qualified sealed solicitation if the bidder/proposer fails to achieve the LSBE benchmarks and fails to demonstrate good faith efforts as determined by the governing authority.

Sec. ____ - Pre-award review of compliance with benchmarks, including good faith efforts.

(a) The contract compliance division shall review the notarized schedule of LSBE participation prior to award, including the scope of work and the letters of intent from LSBEs. The purchasing director, contract compliance or designee may request clarification in writing of items listed in the schedule of LSBE participation, provided such clarification shall not include the opportunity to augment listed LSBE participation or good faith efforts. The purchasing director, contract compliance or designee shall review all submittals and record and report the participation of each submittal.

(b) Once the purchasing director, contract compliance or designee determines that the notarized schedule of LSBE participation demonstrates that the benchmarks set forth in this purchasing and contract program have been achieved or good faith efforts have been made, the contract compliance division will notify the user department, and the director, purchasing and contracting.

(c) Each LSBE shall deliver a monthly report to the contract compliance division listing the work completed and payment received from the prime contractor. The report shall be supported by copies of checks, invoices and any other relevant documents to substantiate that payment to the subcontractor has been received.

Sec. ____ - Post award and contract performance compliance procedures.

(a) Upon award of a contract by the City that includes the benchmarks identified in this purchasing and contract program, the prompt pay obligations in the City's contract with the prime contractor, and the contract between the prime contractor and the subcontractors and sub consultants named in response to this purchasing and contract program become covenants of performance by the contractor in favor of the City. The benchmarks shall be included as terms and conditions of the contract between the City and the contractor and failure to achieve or maintain the agreed upon applicable benchmarks may constitute a breach of the contract.

(b) The contractor shall provide a listing of all LSBE and any other subcontractors to be used in the performance of the contract, with each request for payment submitted to the City. The contract compliance division shall monitor subcontractor participation during the course of the contract and shall have reasonable access to all contracts for the project held by the contractor.

(c) After the city council makes the award, the contract compliance division shall verify with each LSBE that a sub-contract in the specified amount recommended to the city council, has been awarded by the prime contractor to the LSBE.

(d) The contractor cannot make changes to the notarized schedule of LSBE participation or substitute subcontractors named in the notarized schedule of LSBE participation without the prior written approval of the contract compliance division. Unauthorized changes or substitutions shall be a violation of this chapter, and may constitute grounds for rejection of the bid or proposal or cause termination of the contract for breach. In such instances, the City may withhold payment and/or impose penalties or other sanctions. Written approval for changes shall not be unreasonably withheld from the contractor.

(e) All requests for changes or substitutions of the subcontractors named in the notarized schedule of LSBE participation shall be made in writing to the director, purchasing and contracting with a copy to the contract compliance division, and shall clearly and fully set forth the basis for the request. A contractor shall not substitute a subcontractor or perform the work designated for a subcontractor with its own forces unless and until the contract compliance division approves such substitution in writing. A contractor shall not allow a substituted subcontractor to begin work until the contract compliance division has reviewed the substitution.

(f) The facts supporting the request must not have been known nor reasonably should have been known by either party prior to the submission of the notarized schedule of LSBE participation. Bid shopping is prohibited.

(g) The final decision whether to permit or deny the proposed substitution and the basis therefore, will be communicated to the parties in writing by the director, purchasing and contracting.

(h) If a contractor plans to hire a subcontractor on any scope of work that was not previously disclosed in the notarized schedule of LSBE participation, the contractor shall obtain the approval of the contract compliance division to modify the notarized schedule of LSBE participation and must make good faith efforts to ensure that LSBEs have a fair opportunity to bid on the new scope of work.

(i) Changes to the scopes of work shall be recorded and reported by the user department at the time they arise, to establish the reasons for the change and the effect on achievement of the benchmarks identified in this purchasing and contract program.

Sec. ____ - Counting subcontracting participation of a LSBE.

(a) The entire amount of that portion of a construction subcontract that is performed by the LSBE shall be counted, including the cost of supplies and materials obtained by the LSBE for the work of the subcontract, and supplies purchased or equipment leased by the LSBE. Supplies and equipment the LSBE purchases or leases from the prime contractor or its affiliate shall not count as LSBE participation.

(b) The entire amount of fees or commissions charged by a LSBE for providing a bona fide service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of a contract shall be counted.

(c) If a firm ceases to be a certified LSBE during a contract, the dollar value of work performed under a contract with that firm after it has ceased to be certified shall not be counted. No contractor shall be penalized as a result of the failure of a project to achieve the benchmarks set forth in this purchasing and contract program if the LSBE fails to remain certified as required by the provisions of this purchasing and contract program.

(d) In determining the achievement of a benchmark, the participation of a LSBE shall not be counted until the amount being counted has been paid to that entity.

(e) Achievement of benchmarks authorized by this purchasing and contract program shall be evaluated after the completion of the project.

Sec. ____ - Requirements for mentor-protégé relationships.

(a) Based upon the scope of work and market availability, the office of contract compliance shall determine on a project-by-project basis on eligible projects for LSBEs whether good faith efforts to enter into a mentor-protégé relationship shall be required for such contract. On such contracts in which good faith efforts to enter into a mentor-protégé relationship are required, no bid shall be accepted unless submitted by a mentor-protégé team, unless the office of contract compliance has determined that good faith efforts to enter into a mentor-protégé relationship have been demonstrated. The office of contract compliance shall determine whether good faith efforts to enter into a mentor-protégé relationship have been adequately demonstrated based on a review of relevant facts, documents and circumstances.

(b) On such eligible projects for LSBEs in which good faith efforts to enter into a mentor-protégé relationship are required, the mentor and protégé team members must have different race ownership, different gender ownership, or both. LSBEs members of the mentor-protégé team must be certified as such by the office of contract compliance, and the mentor-protégé team shall include in its bid submittal the LSBEs certification number of each LSBE team member. A bid submitted by a mentor-protégé team comprised of bidders with both the same race and gender ownership shall be deemed nonresponsive and rejected.

(c) As to each mentor-protégé relationship under this section, a written mentor-protégé agreement must be completed by both parties to the mentor-protégé relationship and executed before a notary public, which clearly delineates the rights and responsibilities of the mentor and protégé, complies with any requirements of the office of contract compliance as set forth in bid documents or otherwise, and provides that the mentor-protégé relationship shall continue for, at a minimum, the duration of the project.

(d) The office of contract compliance shall review and approve all contractual agreements regarding the terms and provisions of the mentor-protégé relationship prior to the award of a contract on an eligible projects for LSBEs to the mentor protégé team. Mentor-protégé teams may submit agreements for pre-approval no later than 14 calendar days prior to the date set for receipt of bids on an eligible project. Otherwise, agreements must be submitted on or before the date set for receipt of bids on an eligible project. A bid submitted by a mentor-protégé team that does not include a satisfactory written mentor-protégé agreement in accordance with the requirements of this section shall be deemed non-responsive and rejected.

(e) During the term of the contract the mentor and protégé businesses must each provide to the office of contract compliance a quarterly summary of the mentor skills provided to the protégé, which shall include:

- (1) The time spent between mentor and protégé businesses in furtherance of the mentor-protégé relationship;
- (2) The nature and extent of managerial, technical, financial and/or bonding assistance provided;
- (3) A summary and explanation of any projects bid on or undertaken by the mentor-protégé team in the private sector or for a governmental entity other than the city; and
- (4) Any additional or further information required by the office of contract compliance as set forth in bid documents or otherwise.
- (5) No officer, director, employee or member of the mentor-protégé team shall be allowed to bid or otherwise participate independently on a contract where the mentor protégé team is bidding or otherwise participating.
- (6) Each member of the mentor-protégé team shall provide the office of contract compliance access to review all records pertaining to mentor-protégé agreements before and after the award of a contract in order to reasonably assess compliance with this subdivision.
- (7) Penalties for noncompliance. Any responsible bidder who fails to comply with this section shall be subject to any or all of the penalties contained in section _____.

Sec. ____ - Requirements for joint ventures.

(a) Based upon the scope of work and market availability, the office of contract compliance shall determine on a project-by-project basis on all eligible projects for LSBEs whether good faith efforts to enter into a joint venture shall be required for such project. Only projects valued over \$5,000,000.00 are eligible for consideration under this section. On such projects in which good faith efforts to enter into a joint venture relationship is required, no bid shall be accepted unless submitted by a joint venture, unless the office of contract compliance has determined that good faith efforts to enter into a joint venture have been demonstrated. The office of contract compliance shall determine whether good faith efforts to enter into a joint venture have been adequately demonstrated based on a review of relevant facts, documents and circumstances.

(b) On such eligible projects for LSBEs in which good faith efforts to enter into a joint venture relationship is required, the joint venture member businesses must have different race ownership, different gender ownership, or both. LSBE members of the joint venture must be certified as such by the office of contract compliance, and the joint venture team shall include in its bid submittal the LSBE certification number of each LSBE joint venture member. A bid submitted by a joint venture comprised of bidders with both the same race and gender ownership shall be deemed non-responsive and rejected.

(c) As to each joint venture under this section, a written joint venture agreement must be completed by all parties to the joint venture and executed before a notary public, which clearly delineates the rights and responsibilities of each member or partner, complies with any requirements of the office of contract compliance as set forth in bid documents or otherwise, and provides that the joint venture shall continue for, at a minimum, the duration of the project.

(d) The office of contract compliance shall review and approve all contractual agreements regarding the terms and provisions of each joint venture relationship prior to the award of a contract on an eligible projects for LSBEs to the joint venture, including agreements pertaining to:

- (1) The initial capital investment of each venture partner;
- (2) The proportional allocation of profits and losses to each venture partner; no LSBE venture partner's liability should ever exceed said partners percentage of revenue earned while a participant in the joint venture.
- (3) The sharing of the right to control the ownership and management of the joint venture;
- (4) Actual participation of the venture partners on the project;
- (5) The method of and responsibility for accounting;
- (6) The method by which disputes are resolved; and
- (7) Any additional or further information required by the office of contract compliance as set forth in bid documents or otherwise.

Joint ventures may submit agreements for pre-approval no later than 14 calendar days prior to the date set for receipt of bids on an eligible-project. Otherwise, agreements must be submitted on or before the date set for receipt of bids on an eligible project. A bid submitted by a joint venture that does not include a satisfactory written joint venture agreement in accordance with the requirements of this section shall be deemed non-responsive and rejected.

(e) The joint venture, and each member of the joint venture, shall provide the office of contract compliance access to review all records pertaining to joint venture agreements before and after the award of a contract in order to reasonably assess compliance with this subdivision.

(f) *Penalties for noncompliance.* Any responsible bidder who fails to comply with this section shall be subject to any or all of the penalties contained in section _____.

Section ____ - Mediation of disputes between joint venture and mentor-protégé team members and prime and subcontractors.

(a) If, after the award of a contract to a joint venture or mentor-protégé team, any member of the joint venture or mentor-protégé team believes that the terms and conditions of the agreement as approved by

the office of contract compliance have not been complied with, then such member may seek review and mediation of such agreement before the director of the office of contract compliance. The request for review must be made in writing.

(b) If, after the award of a contract, a dispute arises between the prime contractor and a subcontractor regarding performance of work or provision of services or supplies on the eligible project, then such prime contractor or subcontractor may seek review and mediation of the issue before the director of the office of contract compliance. The request for review must be made in writing. If the dispute involves an alleged violation of the city's prompt payment requirement, as set forth in section _____ below, the contractor, subcontractor and the city shall proceed as is set forth in section _____.

(c) Within 20 calendar days of receipt of a request for review, if the dispute has not already been resolved informally among the parties, the director shall set a mediation date, and the director shall provide written notice of the mediation date to each of the interested parties.

(d) The director shall have authority to make recommendations in an attempt to resolve the dispute.

(e) In the event that the mediation with the director of contract compliance does not resolve all disputes, the director of the office of contract compliance shall have the option of referring mediation proceedings to a qualified outside mediator, contingent upon the consent of the interested parties.

Sec. ____ - Effective date.

This purchasing and contract program shall become effective sixty (60) days after adoption by the city council and execution by the mayor.

Sec. ____ - Disclaimer.

By enacting this purchasing and contract program, the City is assuming an undertaking only to promote the general welfare of its citizens. By this enactment, the City, its officers, agents, or its employees are not to be considered joint employers with a contractor. The City, its officers, agents and employees shall not be liable to any person, including but not limited to contractors and persons whose names appear on the certified vendor's listing, who claim that the enactment, enforcement or violation of this purchasing and contract program caused injury or loss of any kind. This purchasing and contract program is not intended to and does not require a contractor to hire a particular certified LSBE firm who does not satisfy the minimum qualifications or other requirements of the contract as set forth by the contractor.

Secs. ____ — ____ - Reserved.