

**City of Orlando
Small and Local Business Enterprise Preference
Policy and Procedure**

1. PURPOSE

The purpose of the Small and Local Business Enterprise Preference (“Program”) is to encourage and promote the participation of certified small and local businesses in contracting and procurement opportunities with the City of Orlando (“City”).

2. SCOPE

The Program applies to all eligible procurement and contracting activities conducted by the City including goods, services, and construction projects.

3. DEFINITIONS

A. *Average Annual Gross Receipts* means all revenue received or accrued from any source, including the sale of goods and services, interest, dividends, rents, royalties, fees or commissions, less returns and allowances, averaged over the past three (3) years, or the duration of the business’s existence (if less than three (3) years).

B. *Commercially Useful Business Function* means executing a distinct element of work of a contract and carrying out the associated responsibilities by performing, managing and supervising the work involved. Businesses that do not perform the work under the contract and merely act as a conduit for non SBE or LBE Certified businesses do not perform a commercially useful business function. In determining whether a business performs a commercially useful business function, consideration will include, but not be limited to, the following factors, as applicable:

- i. Whether the business holds State Certification and/or local Certificates of Competency.;
- ii. Whether the business has a sufficient labor force or capability to obtain such force.;
- iii. Whether the business has sufficient equipment, tools, etc. to perform the work of a contract.;
- iv. Whether the business operates or maintains a store, warehouse or other establishment in which sufficient quantities of supplies are bought, kept and sold to the public in the usual course of business.;
- v. Whether a business owns and maintains available equipment to be leased/rented to the public and/or contractors.;
- vi. Whether the business owns, operates or maintains a factory or establishment that produces supplies on the premises.; or
- vii. Whether the business warrants the product or service.

- C. **Contract** means a legally binding City agreement for the procurement or disposal of equipment, supplies, services, professional services, or construction. It includes contracts for a fixed price, cost, cost plus a fixed fee, incentive contracts, contracts providing for the issuance of job or task orders, leases, letter contracts, revenue generating contracts, and purchase orders. It also includes supplemental agreements with respect to any of the foregoing, except those acquisitions exempt from competitive procurement under City Policy 2510.2 and Chapter 7, Orlando City Code and those contracts entered into by Greater Orlando Aviation Authority or Orlando Utilities Commission, either solely by those entities or with the City as co-signatory.
- D. **Construction** means the process of building, altering, repairing, improving, or demolishing any public structure, building, roadway, or other public improvements of any kind to any public real property. It does not include the routine operation, repair or maintenance of existing structures, buildings or real property.
- E. **Headquarters.** In determining whether a business is headquartered wholly within the MSA or city limits of the City of Orlando, Florida, the following will be considered: the principal address on file with the State of Florida Division of Corporations; the principal address listed on any licenses issued to the business or principals within the business; the principal address listed on any business tax receipts; invoices, letterhead, business cards, or addresses listed on the website for the business.
- F. **Local Business Enterprise (LBE)** means a for-profit corporation, partnership, sole proprietorship or other legal entity certified by the City that meets the Small Business Enterprise requirements and whose headquarters are located wholly within the city limits of the City of Orlando, Florida.
- G. **Metropolitan Statistical Area (MSA)** means the area including Lake, Orange, Osceola and Seminole Counties.
- H. **Professional Services** means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the State of Florida, or those performed by an architect, professional engineer, landscape architect or registered surveyor and mapper in connection with his or her professional employment or practice.
- I. **Services** means the furnishing of labor, time, or effort by a contractor. This term includes services from licensed professionals except professional architectural, engineering, landscape architectural and surveying and mapping services, but does not include employment agreements or collective bargaining agreements.
- J. **Small Business Enterprise (SBE)** means a for-profit corporation, partnership, sole proprietorship or other legal entity certified by the City, and:
 - i. For which the Average Annual Gross Receipts does not exceed the following:
 - a. For Construction Services: Thirteen Million One Hundred Thousand Dollars (\$13,100,000).
 - b. For Professional Services: Seven Million Dollars (\$7,000,000).
 - c. For Supplies: Seven Million Dollars (\$7,000,000).

- d. For General Services: Five Million Seven Hundred Thousand (\$5,700,000).
- e. The amounts listed in (a) through (d) above will be adjusted every five (5) years by a percentage equal to the percentage changes in the Consumer Price Index (CPI) for urban consumers, rounded to the nearest one hundred thousand.; and
 - ii. For which the owner, or majority shareholder, is a lawful permanent resident of the State of Florida.; and
 - iii. Whose headquarters are located wholly within the MSA.; and
 - iv. Provides a Commercially Useful Business Function according to customs and practices of the industry.; and
 - v. Which operates independently from another firm in such areas as personnel, facilities, equipment, financial and/or bonding support or other resources. Franchises, subsidiaries, joint ventures and affiliates are not eligible for certification.; and
 - vi. Has no more than 100 employees.

K. *Small Business Enterprise Review Committee* means a three (3) member committee established to review appeals of the Business Development Division’s decision to deny, suspend or revoke a business entity’s SBE or LBE Certification. The committee shall be comprised of the following: (1) the Public Works Director, or their designee; (2) the Chief Procurement Officer, or their designee; and (3) the Business Development Division Manager, or their designee.

L. *Supplies* means all personal property including, but not limited to, equipment and materials, excluding services and real property.

5. CERTIFICATION

The Business Development Division Manager, and their designees (hereinafter referred to as the “Business Development Division”), shall be authorized to review all applications for SBE or LBE Certification and render a decision to either grant or deny SBE or LBE Certification. Applicants are required to indicate on their application whether they are pursuing certification as an SBE or LBE. A business entity may obtain certification as either an SBE or LBE, but not both.

SBE or LBE Certification will be granted for specific commercially useful business functions only. SBE or LBE Certification in one commercially useful business function does not automatically extend to other areas. To be certified in more than one commercially useful business function, applicants must submit the required documentation for each line of business, subject to review and approval by the Business Development Division.

All applications for certification must meet the following requirements to be accepted by the Business Development Division for review:

- A. All application forms must be complete.;
- B. All required documentation must be provided within the time frame specified by the Business Development Division.;

- C. The application must be verified by the applicant on an affidavit form provided by the Business Development Division.

If an incomplete application is submitted to the Business Development Division for review, applicants will be notified and given five (5) business days to submit the missing information or documentation to the Business Development Division. If the applicant fails to provide the requested information or documentation within this time frame, the application for certification shall be denied.

Certifications shall be valid for a period of two (2) years.

5.1 RECIPROCITY CERTIFICATION

Business entities certified as a small business enterprise by another governmental agency that has materially similar certification requirements and is recognized by the Business Development Division as an approved jurisdiction, may be eligible for an expedited certification process.

Applicants must complete the Business Development Division's Expedited Application Form and provide a copy of their valid small business enterprise certification issued by an approved governmental agency, to be accepted for review by the Business Development Division.

Nothing herein shall prevent the Business Development Division from requesting additional information or documentation, as needed. Applicants will be notified and given five (5) business days to submit any additional information or documentation requested. If an applicant fails to provide the requested information or documentation within this timeframe, the application for certification shall be denied.

5.2 RENEWAL OF CERTIFICATION

Applications for renewal of SBE or LBE Certification shall be submitted no later than thirty (30) calendar days prior to the date of expiration of the existing certification. Applications for recertification must comply with Section 5 or 5.1 above, as applicable.

The failure to timely apply for recertification shall result in the expiration of a business entity's SBE or LBE Certification.

Renewals shall be valid for a period of two (2) years.

5.3 DENIAL OF CERTIFICATION

The Business Development Division shall deny SBE or LBE Certification to any business entity that fails to meet the requirements set forth in this Policy & Procedure and/or City Code. If an application is denied, the applicant will be notified and provided with the basis for denial in writing. An applicant may appeal the denial in accordance with Section 8 below.

Business entities denied certification will not be permitted to reapply for certification for a period of one (1) year following receipt of their denial by the Business Development Division. If a business entity was previously denied certification, they must provide a detailed explanation of how they now meet the criteria for which they were previously denied.

5.4 REVOCATION OF CERTIFICATION

SBE or LBE Certification may be revoked by the Business Development Division for any of the following reasons:

- A. Failure to maintain headquarters wholly within the MSA.;
- B. Failure to maintain headquarters wholly within the city limits of the City of Orlando, Florida (for LBE Certified businesses).;
- C. Fraud, deceit, and/or misrepresentation in obtaining SBE or LBE Certification.;
- D. Failure to report substantial changes in the status or activities of the SBE or LBE certified business entity that affect the business entity's eligibility for continued certification. Substantial changes include, but are not limited to, changes in the number of employees, changes in ownership, changes in business location, etc.;
- E. Failure to comply with the terms of the applicable contract and/or the failure to perform with regard to the Program requirements.; or
- F. Revocation of certification by the initial certifying entity.

If an SBE or LBE Certification is revoked, the business entity will be notified and provided with the basis for revocation in writing. A business entity may appeal the revocation in accordance with Section 8 below.

A business entity whose SBE or LBE Certification has been revoked will not be permitted to reapply for certification for a period of two (2) years following receipt of revocation from the Business Development Division. If a business entity's SBE or LBE Certification was previously revoked, they must provide an explanation detailing how the reasons for revocation have been remedied.

6. SBE AND LBE PREFERENCES IN PROCUREMENT

Bidders or proposers may receive a preference in procurement for SBE Participation or LBE Participation as set forth below. A preference may be granted for SBE Participation or LBE Participation, but not both.

6.1 COMPETITIVE SEALED PROPOSALS, INVITATIONS TO NEGOTIATE AND REQUESTS FOR QUALIFICATIONS PREFERENCES

For procurement by competitive sealed proposals, invitations to negotiate and requests for qualifications, SBE Participation or LBE Participation shall receive a preference as follows:

- A. SBE Participation shall receive six percent (6%) of the points in the scoring as provided in the solicitation, when weighted evaluation criteria with score sheets are utilized in the solicitation.
- B. LBE Participation shall receive ten percent (10%) of the points in the scoring as provided in the solicitation, when weighted evaluation criteria with score sheets are utilized in the solicitation.

If there are two (2) or more responsive proposals that have identical scores and ranking, the proposer meeting SBE or LBE Participation shall receive the higher ranking, as applicable. Notwithstanding the foregoing, if one (1) of the other identical proposals is submitted by an LBE Certified business entity, the LBE Certified business entity shall receive the higher ranking.

6.2 BID PREFERENCES

For solicitations by competitive sealed bidding and requests for quotation, SBE Participation or LBE Participation shall receive a preference as follows:

- A. SBE Participation shall receive a four percent (4%) bid preference; provided its bid does not exceed the lowest responsive and responsible bid by the amount of preference provided.
- B. LBE Participation shall receive a five percent (5%) bid preference, provided its bid does not exceed the lowest responsive and responsible bid by the amount of preference provided.

If there are two (2) or more low, responsive bids from responsible bidders that are identical in price, the bid shall be awarded to the bidder meeting SBE Participation or LBE Participation, as applicable. Notwithstanding the foregoing, if one (1) of the other identical bids is submitted by an LBE Certified business entity, the contract shall be awarded to the LBE Certified business entity.

6.3 SBE AND LBE PARTICIPATION REQUIREMENTS

- A. The SBE Participation preferences set forth in Sections 6.1 and 6.2 above shall be granted only if the following conditions are met:
 - a. For Construction Services, Professional Services and General Services contracts:
 - i. The bidder or proposer commits to subcontracting a minimum of 15% of the total dollar value of the contract to SBE or LBE Certified business entities.; or
 - ii. The bidder or proposer is an SBE Certified business entity.
 - b. For Supplies contracts:
 - i. The bidder or proposer is an SBE Certified business entity.
- B. The LBE Participation preferences set forth in Sections 6.1 and 6.2 above shall be granted only when the bidder or proposer is an LBE Certified business entity.

7. COMPLIANCE REVIEW

The Business Development Division may periodically review the practices and status of an SBE or LBE Certified business entity to determine whether it continues to meet the eligibility requirements for certification and is conducting its business activities within these requirements,

and in accordance with the solicitation requirements. The review may be initiated by the Business Development Division, or upon receipt of an inquiry or complaint by any person, or the report of an alleged violation from a government agency.

Compliance review may include, but not be limited to, monitoring reports, requesting information, on-site visits, audits and/or interviews.

7.1. OPPORTUNITY TO CURE

If non-compliance is found, the Business Development Division may seek compliance from the SBE or LBE Certified business entity prior to instituting further proceedings. The Business Development Division shall provide notice of the alleged non-compliance and recommend steps to be taken to correct the deficiencies. If the SBE or LBE Certified business entity fails to come into compliance within the time provided by the Business Development Division, further penalties, as set forth in Section 7.1 below, may be imposed.

The Business Development Division shall not be required to provide notice and an opportunity to remedy any finding of non-compliance where such non-compliance is determined to be irrevocable by the Business Development Division. Upon such determination, the Business Development Division may impose appropriate penalties against the SBE or LBE Certified business entity.

7.2 PENALTIES

Upon a finding of a non-compliance, the Business Development Division may impose one of the following penalties against the non-compliant SBE or LBE Certified business entity:

- i. Revoke the business entity's SBE or LBE Certification; or
- ii. Suspend the business entity's SBE or LBE Certification for a period not to exceed ninety (90) calendar days.

If an SBE or LBE Certification is suspended, prior to reinstatement of certification, the business entity must provide a detailed explanation of how the non-compliance for which they were previously suspended has been cured.

An SBE or LBE Certification shall be revoked if such business entity's SBE or LBE Certification has been suspended two (2) or more times within a consecutive twenty-four (24) month period. A business entity whose SBE or LBE certification has been revoked shall not be permitted to reapply for SBE or LBE Certification for a period of two (2) years following receipt of revocation from the Business Development Division. If an SBE or LBE Certification was previously revoked, the business entity must provide a detailed explanation of how the basis for the revocation has been remedied.

8. APPEAL OF DENIAL, SUSPENSION OR REVOCATION OF CERTIFICATION

A business entity may appeal the Business Development Division's decision to deny, suspend or revoke an SBE or LBE Certification to the Small Business Enterprise Review Committee by filing a written request with the Business Development Division no less than ten (10) calendar days after receipt of a notice of denial, notice of suspension, or notice of revocation.

8.1 REVIEW PROCEDURES

Upon receipt of a written request for an appeal to the Small Business Enterprise Review Committee, the Business Development Division shall schedule an appeal hearing and provide at least twenty (20) calendar days' notice of the date and time of the hearing to the business entity requesting an appeal. The business entity may waive the twenty (20) day notice period. If such notice period is waived, the Business Development Division shall provide no less than seven (7) calendar days' notice of the date and time of the hearing. The business entity may request a one-time continuance of the hearing upon a showing of good cause.

Business entities requesting a hearing shall have the right to be represented by counsel and present written materials and/or oral presentations to the Small Business Enterprise Review Committee. The Small Business Enterprise Review Committee may only consider information and documentation made available to the Business Development Division at the time of its decision. Business entities may not present new information or documentation.

8.2 FINAL ACTION

After hearing and review, the Small Business Enterprise Review Committee may:

- i. Uphold the Business Development Division's denial, suspension or revocation of a business entity's SBE or LBE Certification.; or
- ii. Overturn the Business Development Division's denial, suspension or revocation of a business entity's SBE or LBE Certification and issue or reinstate SBE or LBE Certification, as applicable.

The Small Business Enterprise Review Committee shall issue written findings within twenty (20) calendar days of the hearing. The written findings issued by the Small Business Enterprise Review Committee shall be the final action of the City.