

SPONSOR: MAYOR ROBERT A.B. REICHERT

**AN ORDINANCE OF THE MACON-BIBB COUNTY COMMISSION TO AMEND THE MACON-BIBB COUNTY CODE OF ORDINANCES, PART III, CHAPTER 19, ARTICLE II, BY ADDING DIVISION III, SMALL LOCAL BUSINESS ENTERPRISE PROGRAM, SEC. 19-61. AFFIRMATIVE PROCUREMENT INITIATIVES FOR ENHANCING SLBE CONTRACT PARTICIPATION; AND FOR OTHER LAWFUL PURPOSES.**

**WHEREAS**, in response to the request of the Macon-Bibb County Office of Small Business affairs, the Macon-Bibb County Commission retained the law firm of Tydings & Rosenberg LLP, to design a comprehensive program necessary for the creation and implementation of legally defensible economic inclusion policies and practices for Macon-Bibb County so as to effectively increase capacity and maximize contract participation by small, local, and minority businesses; and

**WHEREAS**, in coordination with the Office of Small Business Affairs, Tydings & Rosenberg, LLP sought the input of Macon-Bibb County's small, local, and minority community stakeholders in seeking to design a Small Local Business Enterprise Program for the purpose of transforming the Macon-Bibb marketplace into a national model of economic inclusion of minority and women-owned businesses in the mainstream of commercial activity; and

**WHEREAS**, the Macon-Bibb County Commission believes that the adoption of this amendment to the Small Local Enterprise Program is in the best interest of the citizens of Macon-Bibb County;

**NOW, THEREFORE, BE IT ORDAINED** by the Macon-Bibb County Commission and it is hereby so ordained by the authority of the same that:

**SECTION I.**

The Macon-Bibb County Code of Ordinances, Part III, Chapter 19, Article II; Division III, Small Local Business Enterprise Program, Sec. 19-61. Affirmative Procurement Initiatives for Enhancing SLBE Contract Participation; is hereby established to read as follows:

**Sec. 19-61. Affirmative Procurement Initiatives for Enhancing SLBE Contract Participation.**

(a) The County, in conjunction with the Procurement Department and the Director of the OSBA, may utilize the following Affirmative Procurement Initiatives in promoting the award of County contracts to SLBEs.

1. *Bonding and Insurance Waiver:* Except as prohibited by state and/or federal law, the County, at its discretion, may waive or reduce the bonding, or insurance requirements depending on the type of contract and whether the County determines that the bonding and or insurance requirements would deny the SLBE an opportunity to perform the contract which the SLBE has shown itself otherwise capable of performing.

2. *Price Preferences:* The County may award a contract to an SLBE which submits a bid within 5% (inclusive) of a low bid by a non-SLBE. However, this price preference would not apply if the award to the SLBE would result in a total contract cost that is, on an annual basis, more than \$250,000 higher than the low bid; nor would it apply on a contract in which the total contract cost would exceed the County's budgeted price for the contract. A non-SLBE may partner with a certified SLBE(s) for purposes of receiving the 5% price preference provided that written confirmation is provided in the bid certifying that the participating SLBE(s) will be performing clearly defined and monetarily valued commercially useful functions of at least 33 $\frac{1}{3}$  percent of the total contract cost.

3. *Evaluation Preferences:* The County may reserve from 10% up to 20% of the total points available for evaluation purposes for respondents to an RFP to firms that are certified as SLBE firms, or to joint ventures that have SLBE partners that collectively own at least 51% of the joint venture entity, and are performing clearly defined and monetarily valued commercially useful functions on that contract.

a. For Architectural & Engineering, Professional Services, Other Services, and design / build or CM at risk contracts that are awarded based on evaluation criteria and that are let with the Evaluation Preference at the predetermined percentage of total points, there shall be SLBE participation criterion (based upon percentage dollar value of total work that is to be performed by the SLBE participants on the team) for all contracts let at predetermined percentage of the total points awarded. The determination of the Evaluation Preference points awarded to each bidder will be made using the suggested model outlined in the "Point Evaluation Table" below:

**POINT EVALUATION TABLE**

<b>10 Points for SLBE Participation</b>	<b>20 Points for SLBE Participation</b>
> 51% = 10 points	> 51% = 20 points
> 45% = 7 points	> 45% = 17 points
> 40% = 6 points	> 40% = 16 points
> 35% = 5 points	> 35% = 14 points
> 30% = 4 points	> 30% = 12 points
> 25% = 3 points	> 25% = 10 points
> 20% = 2 points	> 20% = 8 points
> 15% = 1 points	> 15% = 6 points
	> 10% = 4 points



4. *Mandatory Subcontracting:*

a. The Goal Selection Committee may, on a contract-by-contract basis, at its discretion, require that a predetermined percentage of a specific contract, up to 40%, be subcontracted to eligible SLBEs, provided however, that if the prime contractor is a certified SLBE, then the prime contractor shall be able to count the dollar value of the work performed by its own forces towards satisfaction of the Mandatory Subcontracting goal for that contract.

b. An SLBE prime contractor may not subcontract more than 49% of the contract value to one or more non-SLBE firms.

c. A prospective bidder on a County contract shall submit at the time of bid SLBE – Form S providing the name of the SLBE subcontractor or subcontractors and describing both the percentage of total contract dollar value being subcontracted to the SLBE, and the work to be performed by the SLBE for those dollars. A bidder may request a full or partial waiver of this mandatory subcontracting requirement from the Director of the OSBA for good cause by submitting the SLBE Unavailability Certification form to the Director of the OSBA at the time of bid. Under no circumstances shall a waiver of a mandatory subcontracting requirement be granted without submission of adequate documentation of Good Faith Efforts by the bidder and careful review by the Director of the OSBA. The Director of the OSBA shall base his or her determination on a waiver request on the following criteria:

(1) Whether the requestor of the waiver has made Good Faith Efforts to subcontract with qualified and available SLBEs;

(2) Whether subcontracting would be inappropriate and/or not provide a “Commercially Useful Function” under the circumstances of the contract; and

(3) Whether there are no certified SLBE firms that are qualified and available to provide the goods or services required.

d. In the absence of a waiver granted by the Director of the OSBA, failure of a Prime Contractor to commit in its bid or proposal to satisfying the mandatory SLBE subcontracting goal shall render its bid or proposal non-responsive. The OSBA will notify the Procurement Department in advance of contract award, the pending review of a waiver request from a bidder and the issuance of a waiver to a Prime Contractor.

e. In the absence of a waiver granted by the Director of the OSBA, failure of a Prime Contractor to attain a mandatory subcontracting goal for SLBE participation in the performance of its awarded contract shall be considered a material breach of its contract and grounds for termination of all existing contracts with the County, debarment from performing future County contracts, and / or any other remedies available under the terms of its contract with the County or under the law. The OSBA will notify the Procurement

Department of the determination of the failure of a Prime Contractor to attain a mandatory subcontracting goal.

f. A Prime Contractor is required to notify and obtain written approval from the Director of the OSBA in advance of any reduction in subcontract scope, termination, or substitution for a designated SLBE Subcontractor. Failure to do so shall constitute a material breach of its contract with the County. The OSBA will notify the Procurement Department of the reduction in scope, termination, or substitution for a designated SLBE Subcontractor.

5. *Sheltered Market:*

a. The Director of the OSBA, in conjunction with the Director of Procurement, may select certain contracts which have a contract value of \$25,000 or less and reserve them for limited competition and award to a SLBE or a joint venture with a SLBE through the Sheltered Market program. Similarly, the Director of OSBA, in conjunction with the Director of Procurement may select certain contracts that have a value of \$10,000 or less and reserve them for limited competition and award to an Emerging SLBE firm through the Sheltered Market program.

b. In determining whether a particular contract is eligible for the Sheltered Market Program, the Director of the OSBA and Director of Procurement shall consider: (1) whether there are at least three SLBEs or Emerging SLBEs that are available and capable to participate in the Sheltered Market Program for that contract; (2) the degree of underutilization of the SLBE and Emerging SLBE prime contractors in the specific industry categories; and (3) the extent to which the County's SLBE and Emerging SLBE prime contractor utilization goals are being achieved.

c. If a responsive and responsible bid or response is not received for a contract that has been designated for the Sheltered Market Program, or if the apparent low bid is determined in the Procurement Director's discretion to be too high in price, the contract shall be removed from the Sheltered Market Program for purposes of rebidding.

6. *Competitive Business Development Demonstration Project:*

a. With the concurrence of the Director of the OSBA, in conjunction with the Director of Procurement, the County may reserve certain contracts for placement into a Competitive Business Development Demonstration Project ("CBD Demonstration Project") wherein those contracts require the purchase of goods or services from an industry that routinely has too few sources of bidders to provide meaningful or sufficient competition for such County contracts. The purpose for the placement of a contract into the CBD Demonstration Project shall be to encourage the development of new capacity within an industry to competitively bid on the future supply of specialized goods or services to the County.



b. Contracts reserved for CBD Demonstration Projects shall be subject to a Request for Proposals process whereby the selected firm will be required to be a joint venture between an established firm or experts in that relevant industry and an SLBE firm. The scope of work for the selected joint venture shall include teaching a hands-on curriculum to SLBE firms that have expressed an interest in diversifying into the relevant industry, in addition to performing the customary functions of the contract. This curriculum shall include both administrative skills (e.g. cost estimating, bidding, staffing, project management) and technical skills (e.g., hands-on demonstration of how to perform necessary tasks in the field) required to qualify for future County contracts and to successfully compete in the industry.

c. The Director of OSBA, in conjunction with the Director of Procurement, shall be required to select SLBE candidate firms for participation on such CBD Demonstration Projects on the basis of an assessment of their current capabilities and their likely success in diversifying into the new relevant industry once given technical assistance, training, and an opportunity to develop a performance track record in the industry.

## **SECTION II.**

If any section, subsection, or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

## **SECTION III.**

In accordance with Sec. 1-4(c) of the Code of Ordinances of Macon-Bibb County, Georgia, it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of Ordinances of Macon-Bibb County, Georgia, and the sections of this Ordinance may be renumbered to accomplish such intention.

## **SECTION IV.**

The Commission hereby declares that the foregoing preamble and whereas provisions set forth hereinabove constitute, and shall be considered to be, substantive provisions of this Ordinance and are hereby incorporated by reference into this provision.

## **SECTION V.**

In the event scrivener's errors shall be discovered in this Resolution or in the Exhibits hereto after the adoption hereof, the Commission hereby authorizes and directs that each such scrivener's error shall be corrected in all multiple counterparts of this Ordinance.

## **SECTION VI.**

The Commission grants the Mayor the authority to take any and all further actions necessary to carry out the intents and purposes of this Ordinance.

**SECTION VII.**

This Ordinance shall become effective immediately upon its approval by the Mayor or upon its adoption into law without such approval.

ORDERED AND ORDAINED this 16 day of May, 2017.

By: Robert A. B. Reichert  
ROBERT A.B. REICHERT, Mayor

Attest: Janice S. Ross  
JANICE S. ROSS, Clerk of Commission



**Routing/File Form**

**Document Type:**  Contract  Deed  Ordinance  Resolution  Grant  Other  
 (Check one of the above document types)

**Purpose:** AN ORDINANCE OF THE MACON-BIBB COUNTY COMMISSION TO AMEND THE MACON-BIBB COUNTY CODE OF ORDINANCES, PART III, CHAPTER 19, ARTICLE II, BY ADDING DIVISION III, SMALL LOCAL BUSINESS ENTERPRISE PROGRAM, SEC. 19-61. AFFIRMATIVE PROCUREMENT INITIATIVES FOR ENHANCING SLBE CONTRACT PARTICIPATION; AND FOR OTHER LAWFUL PURPOSES.

**Annual Cost:** \_\_\_\_\_

**Total Contract Amount:** \_\_\_\_\_

**Administering Department or Officer:** \_\_\_\_\_

**Contractor(s):** \_\_\_\_\_

**Contract Start Date:** \_\_\_\_\_ **Contract End Date:** \_\_\_\_\_

**Funding Source(s):** \_\_\_\_\_

**Automatic Renewals:** \_\_\_\_\_ yes \_\_\_\_\_ no

**Number of Renewals:** \_\_\_\_\_ **Final Expiration Date:** \_\_\_\_\_

<b><u>Reviewed By:</u></b>	<b><u>Ordinance/Resolution</u></b>		<b><u>Contracts/Other</u></b>	
	<b><u>Initials</u></b>	<b><u>Month/Day/Year</u></b>	<b><u>Initials</u></b>	<b><u>Month/Day/Year</u></b>
Assistant County Attorney	<i>cf</i>	4 / 13 / 17	_____	___ / ___ / ___
County Attorney	_____	___ / ___ / ___	_____	___ / ___ / ___
Department Head	_____	___ / ___ / ___	_____	___ / ___ / ___
Finance Director	_____	___ / ___ / ___	_____	___ / ___ / ___
County Manager	_____	___ / ___ / ___	_____	___ / ___ / ___
Mayor	<i>Robert</i>	4 / 13 / 2017	_____	___ / ___ / ___
Clerk of Commission	_____	___ / ___ / ___	_____	___ / ___ / ___
Grants Director	_____	___ / ___ / ___	_____	___ / ___ / ___

**Commission Approval (if applicable)** \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

**Additional comments, instructions, etc.:** \_\_\_\_\_

**ALL FULLY-EXECUTED CONTRACTS ARE TO BE PLACED ON FILE IN THE CLERK OF COMMISSION'S OFFICE AS SOON AS POSSIBLE AFTER EXECUTION.**





SPONSORED BY

*Robert A. B. Reichert*  
 Mayor Robert A.B. Reichert

VOTE

	Yes	No	Abstain	Absent
Bechtel	✓			
Schlesinger	✓			
Lucas	✓			
Jones	✓			
Bivins	✓			
Allen	✓			
Shepherd				✓
Watkins	✓			
Tillman	✓			
Mayor				
Reichert				
<b>Total:</b>				

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Referred to the Committee on \_\_\_\_\_

Date: \_\_\_\_\_

REPORT

Rendered *May 2, 2017*  
 and *Returned to Committee*  
*Rendered: May 14, 2017*  
*and approve*

COMMITTEE REPORT

	Yes	No
<i>[Signature]</i>	✓	
<i>[Signature]</i>	✓	
<i>[Signature]</i>	✓	
<i>[Signature]</i>		

ACTION TAKEN AND DATE:

RECOMMEND: *Approved*

(Approved/Disapproved/Approved as Amended)  
*April 25, 2017*  
 Date

*Recommend: approved*  
*Date: May 9, 2017*

APPROVED AS TO FORM FOR COUNTY ATTORNEY BY

*Crystal Jones*  
 Crystal Jones  
 Assistant County Attorney