

HEARING TYPE
Action

DEKALB COUNTY
BOARD OF COMMISSIONERS
BUSINESS AGENDA / MINUTES
MEETING DATE: September 27, 2016

ITEM NO. *16*

ACTION TYPE
Ordinance

SUBSTITUTE

SUBJECT: DeKalb First Local Small Business Enterprise Ordinance

DEPARTMENT: Purchasing and Contracting

PUBLIC HEARING: YES NO

ATTACHMENT: YES NO

PAGES:

INFORMATION CONTACT: Talisa Clark

PHONE NUMBER: 404-687-3478

PURPOSE:

To consider adopting the attached “DeKalb First Local Small Business Enterprise Ordinance”

NEED/IMPACT:

This is a proposed revision to the current LSBE Ordinance. The success of local small businesses remains a permanent goal of the DeKalb County government. DeKalb County has a significant interest in fostering the success of its small resident businesses. Furthermore, because DeKalb County is a major purchaser of goods and services, it stands to gain from improvements in expanded business opportunities for local small businesses through the additional tax revenues thereby generated. DeKalb County Government is committed to ensuring that small businesses have adequate opportunities to succeed.

RECOMMENDATION(S):

To adopt the attached “DeKalb First Local Small Business Enterprise Ordinance”, and authorize the CEO to execute all necessary documents.

ORDINANCE

AN ORDINANCE TO AMEND THE CODE OF DEKALB COUNTY, GEORGIA, PERTAINING TO THE ADMINISTRATION OF A LOCAL SMALL BUSINESS ENTERPRISE (LSBE) DEKALB FIRST PROGRAM, AND/OR OTHER PURPOSES

WHEREAS, Article 9, § 2, para. I (a) *et seq.* of the Constitution of Georgia empowers the governing authority of DeKalb County with the legislative power to adopt reasonable ordinances and/or resolutions relating to its property, affairs, and local government for which no provision has been made by general law and which are not inconsistent with the Constitution of Georgia;

WHEREAS, the County spends significant revenue on purchasing supplies, materials, and equipment, and retaining contractual and professional services;

WHEREAS, the dollars used in making these purchases are derived in some measure from taxes and fees paid by local businesses; thus, the Governing Authority has determined that funds generated in the community should, to the extent possible, be used to put “DeKalb First” thereby allowing the funds to be re-invested in the local County economy;

WHEREAS, the Governing Authority believes there is an inherent benefit in procuring services or goods from local small businesses who contribute to the County’s economy and tax base and thus there is a substantial reason to offer a portion of publicly funded contracting opportunities to those qualified local small businesses;

WHEREAS, “DeKalb First” means that whenever possible, appropriate and authorized by applicable law, the County intends to buy its materials, and procure services from certified, qualified local small businesses in DeKalb County and the metropolitan Atlanta area;

WHEREAS, to encourage larger contractors, vendors and professional firms to partner with such local small businesses, the County enacts this amended ordinance giving certain incentives to larger businesses if they use qualified, certified local small businesses or at least make a good faith effort to secure subcontracts with such local small businesses when performing services for or selling goods to the County;

WHEREAS, to incentivize larger contractors, professional firms and vendors to hire or make good faith efforts to hire local small businesses, the Governing Authority has determined that failure to achieve the “DeKalb First” goals or to submit proper documentation of good faith efforts to achieve those goals, shall result in a prime contractor or vendor’s qualified sealed solicitation being deemed non-responsive;

WHEREAS, the Governing Authority believes that “DeKalb First” is an initiative that protects and enhances the economic development of the County and improves the financial well-being of its citizenry because the program creates local jobs and improves the County’s economic base by helping DeKalb businesses grow. As DeKalb County businesses grow and expand tax revenue and fees paid by such businesses increases and opportunities for taxpayers to work in the County where they live increases;

WHEREAS, enactment of this ordinance encourages local small businesses to remain in DeKalb County and grow and prosper thereby directly and indirectly increasing the financial stability of DeKalb County government;

WHEREAS, the Governing Authority has determined that the structure and administration of “DeKalb First” will be enhanced and improved by the enactment of this amended ordinance; and

WHEREAS, the Governing Authority makes the success of local small businesses a permanent goal by implementing the DeKalb First: Local Small Business Enterprise Program (hereinafter referred to as “DeKalb First”);

NOW, THEREFORE, BE IT ORDAINED by the governing authority of DeKalb County, Georgia, that the Code of DeKalb County, Georgia, as Revised 1988, is hereby amended as follows:

PART I. ENACTMENT

By deleting Chapter 2, Article VI, of the Code of DeKalb County, Georgia, as Revised 1988, in its entirety and inserting a new article VI to read as follows:

ARTICLE VI.

”DEKALB FIRST”LOCAL SMALL BUSINESS ENTERPRISE PROGRAM

Sec. 2-200. Short title and purpose.

- (a) *Short title.* This article shall be known as the "DeKalb First ordinance" or the "LSBE ordinance" and may be cited as such.

- (b) *Purpose and intent.* The purpose of this article is to create the DeKalb First which requires vendors interested in doing business with the County to employ or make good faith efforts to employ local businesses to fulfill a portion of the work. The Constitution of Georgia empowers DeKalb County with the legislative power to adopt reasonable ordinances and/or resolutions relating to its property, affairs, and local government for which no provision has been made by general law and which are not inconsistent with the Constitution of Georgia. The County spends significant revenue on purchasing supplies, materials, and equipment, and retaining contractual and professional services. The dollars used in making these purchases are derived in some measure from taxes and fees paid by local businesses; thus, funds generated in the community should, to the extent possible, be used to "DeKalb First" thereby allowing the funds to be re-invested in the local County economy. There is an inherent benefit in procuring services or goods from local small businesses who contribute to the County's economy and tax base and thus there is a substantial reason to offer a portion of publicly funded contracting opportunities to those qualified local small businesses. "DeKalb First" means that whenever possible, appropriate and authorized by applicable law, the County intends to buy its materials, and procure services from certified, qualified local small businesses in DeKalb County and the metropolitan Atlanta area. To encourage larger contractors, vendors and professional firms to partner with such local small businesses, the County enacts this article giving certain incentives to larger businesses if they use qualified, certified local small businesses or at least make a good faith effort to secure subcontracts with such local small businesses when performing services for or selling goods to the County. "DeKalb First" is an initiative that protects and enhances the economic development of the County and improves the financial well-being of its citizenry because the program creates local jobs and improves the County's economic base by helping DeKalb businesses grow. As DeKalb County businesses grow and expand tax revenue and fees paid by such businesses increases and opportunities for taxpayers to work in the County where they live increases. Enactment of this ordinance encourages local small businesses to remain in DeKalb

County and grow and prosper thereby directly and indirectly increasing the financial stability of DeKalb County government.

Sec. 2-201. Definitions.

Words or phrases not defined in this chapter, but defined in applicable state law or the Code of DeKalb County, as Revised 1988, shall be given that meaning. All other words or phrases shall be given their common ordinary meaning unless the context requires otherwise. The following words, terms, and phrases, when used in this chapter shall have the meanings ascribed to them below except where the text 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 percent (5%) or more of the outstanding voting securities of such other business;
- (2) Five percent (5%) 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 definition, the term “control” means the power to exercise a controlling influence over the management policies of a business.

“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 interested in doing business with DeKalb County.

“Decertification Event” shall mean any occurrence, infraction, or event that causes a business to be decertified as an LSBE or denied recertification as an existing LSBE.

“Director” shall mean the Director of the DeKalb County Purchasing and Contracting Department or his/her designee.

“DeKalb County” shall mean DeKalb County, Georgia (hereinafter referred to as “DeKalb County” or “County”).

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

“Local and Small Business Enterprise” (hereinafter referred to as “LSBE”) shall mean a Business Concern, certified under the requirements of this article as a Local LSBE or a MSA LSBE.

“LSBE DeKalb firm” shall mean a business located and operated in DeKalb County, Georgia.

- (1) For the purposes of this definition, to be “located” in DeKalb County means to have a physical presence within the geographic boundaries of DeKalb County such as having office space, a plant, warehouse, or other physical business facility presence (not including a post office box), for at least one year prior to submitting an application for LSBE certification.
- (2) For the purpose of this definition, to “operate” in DeKalb County means to be the current holder of a valid business license issued by DeKalb County at least one year prior to submitting an application for LSBE certification.

“LSBE MSA firm” shall mean a business located and operated outside the geographical boundaries of DeKalb County, Georgia but within the MSA.

- (1) For the purposes of this definition, to be “located” in the MSA means to have a physical presence within the geographic boundaries of the Counties within the MSA, but outside of DeKalb 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 one year prior to submitting an application for LSBE certification.
- (2) For the purposes of this definition, to “operate” in the MSA means to be the current holder of a valid business license issued by a local government within the MSA for at least one year prior to submitting an application for LSBE certification.

“LSBE Review Panel” shall mean a panel of decision makers comprised of the Director, the Executive Assistant, and the User Department Director or designee. If more than one User Department exists, the Director will select one representative to serve as the third panelist on the LSBE Review Panel.

“Metropolitan Statistical Area (MSA)” shall mean the geographical area consisting of Cherokee, Clayton, Cobb, Douglas, Fayette, Fulton, Gwinnett, Henry and Rockdale counties.

“Principal place of business” shall mean the business location where the business’ high level officers direct, control, and coordinate the business activities and where business records are kept.

“Prime Contractor” means (i) business concern, bidder or proposer who submits a qualified sealed solicitation to the County or (ii) a business concern that enters into a contract with the County.

“Protest Meeting” shall mean any meeting between an LSBE and the Executive Assistant in response to a possible or potential denial of certification or a Decertification Event.

“Public works construction” has the same meaning as it is given in state law, O.C.G.A. §36-91-2, now and as it may be amended hereafter.

“Purchasing and Contracting Department” (hereinafter referred to as “Department”) shall mean the DeKalb County Purchasing and Contracting Department.

“Qualified Sealed Solicitation” shall mean any Invitation to Bid or Request for Proposal issued by DeKalb County and released for response to bidders and proposers after the effective date of this article.

“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.

“Small Business” shall mean an independently owned and operated business concern who meets the requirements of section 2-203.

“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 a business providing equipment, goods, materials, service or supplies to a contractor.

Sec. 2-202. Program Administration.

- (a) The Director shall have the primary responsibility to ensure that DeKalb First is effectively and equitably implemented in DeKalb County.
- (b) The DeKalb First program shall be evaluated on a semi-annual basis. A written semi-annual report shall be compiled by the Director and shall compare the current year with the previous year. The semi-annual report shall be provided to the chief executive officer and each member of the board of commissioners. The semi-annual report should include, at a minimum:
 - (1) Number of LSBEs certified and de-certified;
 - (2) Number and financial impacts of mentor/protégé partnerships;
 - (3) Evaluation of the effectiveness of the LSBE in relation to the achievement of DeKalb County’s goals set forth under this article, including the utilization of LSBE’s on contracts;
 - (4) Number of LSBEs subcontracted by non-LSBE prime contractors;
 - (5) Number of LSBEs contracted as a prime contractor;
 - (6) Total LSBE contracted dollars and total contracted dollars; and

- (7) Other information about DeKalb First, if requested by the board of commissioners or the chief executive officer.
- (c) In order to encourage the participation of prime contractors, the Department shall create a trade-specific categorization of potential LSBE subcontractors and make it available via electronic and hard copy to all prime contractors who seek to participate in DeKalb County contracts.
- (d) The Department shall encourage other county departments to use LSBEs for emergency contracts although specific goal(s) shall not be set.
- (e) The Department will keep LSBEs aware of County solicitations by advertising and/or posting them on DeKalb County's website.
- (f) The Department shall implement a training program to provide quarterly seminars and workshops to LSBEs addressing how to do business with DeKalb County and encouraging participation in DeKalb County's solicitation process and affiliated programs.
- (g) The Department shall require every business concern who desires to submit a response to a qualified sealed solicitation to attend a mandatory LSBE meeting, in person or via video conference, with interested LSBE(s) in an effort to encourage partnerships and use of LSBEs. Such meeting shall occur at a designated place within a county building within two (2) weeks of issuance of the qualified sealed solicitation. Notice of the time, date, and location of such meeting shall be posted on the County's website at the time of the solicitation's posting. At the LSBE meeting, prime contractors shall provide relevant information about the plans, requirements, and specifications of the contract. Each LSBE will be allowed the opportunity to submit an email address to the prime contractor at the LSBE meeting and the prime contractor shall advise those LSBE's by email of any new relevant information, if any, at least 5 business days prior to submission of the prime contractor's bid or proposal.

Sec. 2-203. LSBE Certification.

- (a) *Criteria for LSBE Certification.* Through appropriately promulgated written procedures, the Director or his/her designee shall certify as an LSBE any business concern that meets the following criteria:
- (1) The business concern must qualify as a LSBE as defined in this article;
 - (2) The business concern must be owned and controlled by individuals who are citizens or lawfully admitted permanent residents of the United States;
 - (3) The business concern must be a for-profit enterprise that performs a commercially useful function, including a sole proprietorship, partnership, joint venture, corporation, limited liability company, or any other business or professional entity;

- (4) The business concern owner(s) applying for certification must own at least 51% of the business and have maintained this ownership for at least one year prior to application;
 - (5) If the business concern is publicly owned, the applicant owner must own at least 51% of all classes of stock;
 - (6) The principal place of the business concern must be located in DeKalb County, Georgia or within the MSA, as defined in this article;
 - (7) The business concern's average gross annual receipts from the prior three (3) fiscal years must not exceed the following amounts:
 - a. Construction: \$35,000,000.00
 - b. Professional Services: \$5,000,000.00
 - c. Commodity Suppliers: \$3,000,000.00
- (b) *Qualifications.* The Director shall certify each LSBE in a particular area or areas of expertise. To obtain certification, the LSBE shall prove it is qualified in a demonstrated area of expertise, by providing certain information to the Director, including but not limited to, a resume and/or list of previous contracts or work in the LSBE's demonstrated area of expertise; references from individuals who have contracted with the LSBE in its demonstrated area of expertise; and all relevant licenses and certifications.
- (c) *Prior Certification.* All businesses certified as a LSBE prior to the enactment of this article, shall remain certified until their current certification expires or a Decertification Event occurs.

Sec. 2-204. Benchmarks and Incentives.

- (a) To qualify for incentives under the DeKalb First ordinance, a prime contractor shall be a certified LSBE or submit written documentation showing that at least twenty percent (20%) of the total contract award will be performed by a LSBE(s) unless the prime contractor can demonstrate sufficient good faith efforts as set forth in this article
- (b) The LSBE Review Panel, stating the reason in writing, may waive, decrease, or increase this 20% benchmark for any particular contract prior to release of the qualified sealed solicitation or as an addendum to such solicitation. The Department shall grant lower incentives if the LSBE Review Panel lowers the LSBE benchmark for participation as outlined in this section. The percentage by which the benchmark is lowered shall be used to calculate the lower amount of incentive.
- (c) The incentives are:

Requests for Proposals.

- (1) Ten (10) points in the initial evaluation of a response to a Request for Proposal for meeting the LSBE benchmark with a prime contractor who is a local LSBE or is a prime contractor using local LSBE(s);
- (2) Five (5) points in the initial evaluation of responses to any Request for Proposal for meeting the applicable LSBE benchmark with a prime contractor that is an MSA LSBE or a prime contractor utilizes MSA LSBE(s); and
- (3) Prime Contractors who demonstrate sufficient good faith efforts in accordance with the requirements of this article shall be granted two (2) points in the initial evaluation of responses to a Request for Proposal.

Invitations to Bid.

- (4) If a prime contractor who is deemed responsible and remains responsive to an Invitation to Bid because it is or has obtained 20% participation of an LSBE DeKalb or LSBE MSA firm, submits the lowest bid price in response to a qualified sealed solicitation, that prime contractor shall be deemed the lowest responsible and responsive bidder and submitted to the chief executive officer or the governing authority, whichever is appropriate under law, for award of the contract;
 - (5) In addition to meeting all other requirements for responsiveness, prime contractors who demonstrate sufficient good faith efforts in accordance with the requirements of this article shall be deemed responsive in the initial evaluation of responses to an Invitation to Bid.
 - (6) If a prime contractor who is deemed responsible and remains responsive to an Invitation to Bid because of its good faith efforts, submits a lower bid price than a prime contractor who actually achieves the 20% or otherwise required benchmark, then the prime contractor who actually met the benchmark will be given the opportunity to match the lowest bid price of the prime contractor who only made good faith efforts. If that prime contractor chooses NOT to match that bid price, the prime contractor who made the good faith effort will be deemed the lowest responsible responsive bidder and submitted to the chief executive officer or the governing authority, whichever is appropriate under law, for award of the contract.
- (d) Where a mixture of LSBE DeKalb and LSBE MSA firms are utilized, pro-rated points shall be granted by the Department based upon the utilization for each based upon the terms of the qualified sealed solicitation.
- (e) If the prime contractor fails to meet the required benchmark for LSBE participation or fails to make sufficient good faith efforts as set forth in section 2-206 in response to an Invitation to Bid or a Request for Proposal, then the prime contractor's bid or proposal shall be

deemed nonresponsive. If the bid or proposal is deemed nonresponsive, the cost proposal shall not be considered.

Sec. 2-205. Calculation of LSBE Participation.

- (a) The entire amount of that portion of a subcontract that is performed by the LSBE shall be counted as its participation, including the cost of supplies and materials obtained by the LSBE for the work for 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 as LSBE participation.
- (c) If an LSBE has a Decertifying Event during the term of a contract, the dollar value of work performed under a contract with that business after it is decertified shall not be counted toward the prime contractor's LSBE participation goal. No contractor shall be penalized as a result of the failure of a project to achieve the benchmarks set forth in its contract if the LSBE fails to meet the conditions of Section 2-207.
- (d) In determining the achievement of a benchmark, the participation of a LSBE shall not be counted until the dollar amount being counted has been received by that LSBE.
- (e) Achievement of benchmarks authorized by this article shall be evaluated after the project is 25%, 50%, and then 75% complete. Meeting or failing to meet contractual benchmarks may be used for evaluative and/or award purposes in considering the prime contractor and/or LSBE in future qualified sealed solicitations.

Sec. 2-206. Good Faith Efforts in Lieu of Meeting Benchmarks.

- (a) A prime contractor must meet the required LSBE benchmark of 20% (unless otherwise modified in the qualified sealed solicitation), unless it can demonstrate that good faith efforts yielded no qualified LSBEs and document those good faith efforts in writing.
- (b) Prime contractors are expected to make sufficient good faith efforts at the outset of preparing a response to a qualified sealed solicitation, so that LSBEs have an adequate opportunity to partner with prime contractors in response to a solicitation. Failure of any prime contractor to attend the mandatory LSBE meeting required in this article, in person or via video conference, shall mean that the prime contractor has not demonstrated sufficient good faith efforts and its bid or proposal, if submitted, shall be deemed non-responsive without any further review by the Department.

- (c) Factors for determining if sufficient good faith efforts were made, shall include but are not limited to the compilation of a contact log including the date of contact, name, address and contact number or email address used to contact the proposed LSBE subcontractors, the name and title of the person making the effort for the prime contractor; the nature of work requested and full detailed description of the scope of work for which a quote was requested; the amount of the quoted price, if one was obtained; and any additional LSBE subcontractor information as requested on forms promulgated by the Department. The Director also maintains the right to interview any proposed LSBE subcontractor included on the contact log to verify the effort made.
- (d) During the evaluation of the bid or proposal, the Director shall determine if sufficient good faith efforts were made by the prime contractor. If the determination is made that a prime contractor did not make sufficient good faith efforts, the bid/proposal will be deemed non-responsive and shall not receive any further review by the Department.
- (e) The Department of Purchasing and Contracting shall maintain documentation of all 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 two (2) years, whichever is longer.
- (f) If all prime contractors for a particular qualified sealed solicitation fail to meet the required benchmark for LSBE participation and fail in making good faith efforts, as defined by this article, the LSBE benchmark requirement may be waived by the chief executive officer or designee.

Sec. 2-207. Prime Contractor Responsibility.

- (a) Any business concern may submit a response to a qualified sealed solicitation regardless of their certification status under section 2-203.
- (b) When subcontracting, every prime contractor must independently evaluate each LSBE and confirm qualifications, and previous practical, demonstrable experience in the area in which the LSBE intends to perform services and references prior to including the LSBE in a qualified sealed solicitation. Information obtained by the County in this regard may be provided to the prime contractor by the Director upon request, but each prime contractor understands that it must investigate, and independently verify an LSBE's qualifications and ability to perform the service or work at issue.
- (c) In each qualified sealed solicitation, all prime contractors shall identify a portion of the work available to LSBEs consistent with their previous demonstrable expertise, and shall submit a proposed work schedule that identifies the work to be completed by the LSBE(s) with their bid/proposal, if any. This proposed work schedule shall be finalized and submitted to the County within ten (10) days of the Notice to Proceed meeting. This work schedule shall become the basis for determining compliance with the terms of this article after execution of the contract.

- (d) The prime contractor shall attend the LSBE meeting in person or via video conference and shall provide interested LSBEs with timely, adequate information about the plans, specifications, and other such requirements of the qualified sealed solicitation to facilitate their bid or proposal submission and document all communications, in accordance with the requirements of this article.
- (e) The prime contractor shall submit a notarized Schedule of LSBE Participation detailing all LSBE businesses from which the prime contractor solicited bids. This schedule shall be submitted at the qualified sealed solicitation due date and time in order to be granted any preferential points.
- (f) Each prime contractor shall be required to sign an affidavit declaring under penalty of perjury its intention to comply fully with the provisions of this article and attesting to the truth and accuracy of all information provided to the County. All prime contractors and LSBEs must adhere to all Federal, State, and local law, and applicable provisions of this Code.

Sec. 2-208. LSBE Subcontractor Responsibilities.

- (a) A current LSBE certification letter and a signed letter of intent from all LSBEs describing the work, materials, equipment or services to be performed or provided by the LSBE and the agreed upon dollar value shall be submitted to the prime contractor to be included with the qualified sealed solicitation.
- (b) Post-award, the LSBE shall deliver a monthly report to the Department 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 has been received.
- (c) The LSBE shall review and comply with applicable Federal, State, and local law, and applicable provisions of this Code.

Sec. 2-209. Contract Performance Compliance.

- (a) At or around the time of award, but no later than the kickoff meeting, the Director shall verify that a subcontract for the agreed upon percentage or dollar amount of the total contract price adopted and approved by the Governing Authority, has been executed by the prime contractor and the LSBE(s), and the prime contractor shall provide each LSBE's subcontract and an email address for the LSBE for notification purposes, to the Director. Failure to provide the requisite subcontract(s) shall be grounds for rejection of a qualified sealed solicitation and/or termination of the prime contract.

- (b) The prime 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 consent of the LSBE Review Panel. Unauthorized changes or substitutions shall be a violation of this section, and may constitute grounds for rejection of a qualified sealed solicitation or cause termination of the contract for breach. In such instances, DeKalb County may withhold payment and/or impose other sanctions. Written consent for changes shall not be unreasonably withheld from the prime contractor.
- (c) All requests for changes or substitutions of the subcontractors named in the notarized schedule of LSBE Participation shall be made in writing to the LSBE Review Panel and shall clearly and fully set forth the basis for the request, including documentary proof or affidavits of individuals, where necessary. The LSBE Review Panel will review the request and make a final decision. 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. Post-award LSBE shopping is prohibited and may be cause for cancellation, rejection or other punitive remedies against the prime contractor.
- (d) Performance issues between the prime contractor and LSBE are governed by the subcontract between the prime contractor and the LSBE, and should be resolved by the LSBE and the prime contractor. If a prime contractor alleges poor performance by an LSBE and desires a substitution for that reason, the prime contractor shall submit a detailed written report with supporting documentation to the Director. The Director will meet with representatives from the prime contractor, the LSBE, and the County's user department with the goal of moving the project forward. If there is no meaningful resolution, the prime contractor may then submit a request to substitute LSBE(s) to the LSBE Review Panel.
- (e) If a prime contractor plans to hire a subcontractor on any scope of work that was not previously disclosed in the notarized Schedule of LSBE Participation the prime contractor shall inform the existing LSBE(s) of the new scope of work and if the LSBE(s) accepts the offer of work, the percent of work shall flow to the LSBE subcontractor in the same manner as outlined in the original contract. If the existing LSBE subcontractor declines the work, the prime contractor shall obtain the approval of the LSBE Review Panel 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.
- (f) Changes to the scopes of work shall be recorded and reported by the DeKalb County department responsible for overseeing the work to be performed at the time they arise, to establish the reasons for the change and the effect on achievement of the benchmarks identified in this article.
- (g) In the event a "stop work" order is issued to the prime contractor, the Director shall notify the LSBE(s) and provide the LSBE(s) with a copy of the stop work order via the email address provided in the LSBE subcontract.

- (h) In the event of non-payment by a prime contractor to any LSBE, the LSBE has the right to request a meeting with the Director. This meeting will include representatives from the prime contractor, the LSBE, the County's user department and the Director with the goal of payment for performance. A finding of repeated non-payment by any prime contractor without reasonable cause may be cause for contract cancellation for breach, and other administrative remedies as allowed under applicable County policy.
- (i) Each prime contractor shall deliver a monthly report form to the Director and to the LSBE, listing all work completed by the LSBE and payments made. The report shall be supported by copies of checks, invoices and any other documents to substantiate that work and payments to the subcontractor have been made. Failure to submit a report may result in declaring a contract in default and subsequent termination of the contract.

Sec. 2-210. Payment Obligations.

- (a) Upon award of a contract by DeKalb County that includes the applicable LSBE benchmarks identified in this article, the prompt pay obligations in DeKalb County's contract with the prime contractor, and the contract between the prime contractor and the subcontractors, become covenants of performance by the contractor in favor of DeKalb County. The applicable LSBE benchmarks shall be included as terms and conditions of the contract between DeKalb County and the contractor and failure to achieve or maintain the agreed upon applicable LSBE benchmarks may constitute a breach of the contract.
- (b) The Department shall require prompt payment for all contracts with DeKalb County for performance of work or procurement of goods.
 - (1) The Department shall ensure that all contracts covered by this article contain a provision requiring the prime contractor to certify in writing that all subcontractors and suppliers have been promptly paid for acceptable work and materials, no later than seven (7) calendar days from prime contractor's receipt of payment from DeKalb County.
 - (2) Upon request, such prompt pay certifications shall be emailed to any LSBE(s) at the email address listed in the LSBE subcontract. It is the prime contractor's sole and exclusive responsibility to pay the LSBE subcontractor promptly for acceptable work and materials.
- (c) The contractor shall provide a listing of all LSBEs and any other subcontractors to be used in the performance of the contract, with each request for payment submitted to DeKalb County. The Director shall monitor LSBE subcontractor participation during the course of the contract.

Sec. 2-211. Renewal of Certification.

- (a) All certifications issued under the LSBE program shall be reviewed every three (3) years and may be renewed by the Director.
- (b) Each LSBE must submit a complete recertification application to be reconsidered for the LSBE program. Failure to seek recertification within ninety (90) days of certification expiration shall result in decertification of the LSBE.
- (c) It is the responsibility of the LSBE to notify the Department of any change in its circumstances affecting its continued eligibility for the program. Failure to do so may result in the LSBE's decertification and preclusion from future participation in the LSBE program.

Sec. 2-212 Decertification, Denial and Protest Meeting for a LSBE.

- (a) The Director may, upon written notice to a business concern, deny LSBE certification, decertify a LSBE or deny re-certification of a LSBE for failing to comply with the LSBE program requirements and the applicable provisions of this article, this Code or state law.
- (b) A business concern that has been denied certification, recertification or has been decertified may protest the action, in writing, within thirty (30) days of receipt of notification of any of the aforementioned actions. Upon the filing of a protest, the decertification shall not become effective and the following shall occur:
 - (1) A Protest Meeting shall be scheduled with the business concern and the Executive Assistant at which time the business concern may present additional facts and evidence in support of its eligibility. The Director and the business concern may present up to two witnesses. The Director and the business concern have the right to be represented by a lawyer, at their own expense. The Director may request the business concern to produce documents relevant to the denial or decertification event. The business concern's failure to comply within ten (10) days of these requests may be grounds for denial of the protest at the discretion of the Executive Assistant.
 - (2) The Executive Assistant shall make the final determination based on the information presented at the Protest Meeting and supplemental information provided, if any, within ten (10) days of the Protest Meeting. However, the Executive Assistant may direct the business concern to cure any certification, recertification, or decertification matter within a set time period and issue a final determination within ten (10) days of the cure period.
 - (3) A business concern denied or found to be ineligible for certification or re-certification may not re-apply for certification for one (1) year after the effective date of the final determination issued by the Executive Assistant.

Sec. 2-213. Graduation.

- (a) The Director shall graduate a LSBE from eligibility, at the expiration of the certification period, if the LSBE grows to exceed the limits as specified in this Article.
- (b) If an LSBE graduates from the LSBE program and later becomes eligible for re-entry, it may reapply for certification under §2-203.

Sec. 2-214. Mentor-Protégé Initiative

- (a) In an effort to develop local small business talent and provide technical, administrative, and other assistance as required for contracting with DeKalb County, all projects valued over \$5,000,000.00 are required to be performed by entities who have engaged in a mentor-protégé partnership.
- (b) Prime Contractors must agree to become mentors and take on an LSBE protégé in an effort to enhance the potential of future LSBEs. These protégés will include all LSBEs on the certified LSBE list maintained by the County.
- (c) If participation in the mentor-protégé initiative is required to submit a bid or proposal, prime contractors must also comply with all other applicable sections of this Article including §2-204 and §2-206.
- (d) Qualifying projects shall be performed by both Mentor and Protégé through a subcontract between those parties.
- (e) The Protégé will perform an agreed-upon amount of the contract assuming full responsibility for and supervision of that portion of the work and should be given credit or acknowledgement as the prime contractor for that portion of the work in future solicitations.
- (f) During the term of the contract the Mentor and Protégé business must collectively provide to the Department, a quarterly summary of the skills provided to the Protégé, which shall include:
 - (1) The type of collaborations and training being provided to the Protégé to assist in the growth and development of their business. The areas of assistance that are encouraged include but are not limited to, bonding and insurance support, management and scheduling support;
 - (2) Names and titles of the individuals from the Mentor who are responsible for working directly with the Protégé in the areas identified above;

- (3) Names and titles of the individuals from the Protégé who are responsible for working directly with the Mentor in the areas identified above;
 - (4) The amount of time, nature and extent of managerial, technical, financial and bonding assistance provided;
 - (5) A summary and explanation of any projects bid on or undertaken by the Mentor-Protégé partnership in the private sector or for a governmental entity other than DeKalb County; and
 - (6) Any additional or further information required by the Director.
- (g) Protégés agree not to subcontract any of their work to other contractors without the written approval of the Director.

Sec. 2-215. Disclaimer.

By enacting this ordinance, DeKalb County is assuming an undertaking only to promote the general welfare of its citizens. By this enactment, DeKalb County, its officers, agents, or its employees are not to be considered joint employers with a contractor and do not control the relationship between a prime contractor and an LSBE. DeKalb County, its officers, agents, and employees shall not be liable to any person or business concern claiming that the enactment, enforcement or violation of this article caused injury or loss of any kind.

PART II. EFFECTIVE DATE

This article shall become effective within sixty (60) days after adoption by the Board of Commissioners and execution by the Chief Executive Officer.

PART III. SEVERABILITY

Should any section or provision of this ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the ordinance as a whole nor any part thereof other than the part so declared to be invalid or unconstitutional. All ordinances or resolutions, or parts thereof, conflict with this ordinance are repealed.

ADOPTED by the DeKalb County Board of Commissioners, this

27 day of September
Larry Johnson

2016.

LARRY JOHNSON, MPH
Presiding Officer
Board of Commissioners
DeKalb County, Georgia

September, 2016. APPROVED by the Chief Executive Officer of DeKalb County, this 29 day of

Lee May

LEE MAY
Interim Chief Executive Officer
DeKalb County, Georgia

ATTEST:

Barbara Sanders-Norwood

BARBARA SANDERS-NORWOOD, CCC, CMA
Clerk to the Board of Commissioners and
Chief Executive Officer
DeKalb County, Georgia

APPROVED AS TO SUBSTANCE:

Talisa Clark

TALISA CLARK
Interim Chief Procurement Officer/P&C Director
DeKalb County, Georgia

APPROVED AS TO FORM:

O.V. Brantley

O.V. BRANTLEY
County Attorney
DeKalb County, Georgia

ORDINANCE

AN ORDINANCE TO AMEND THE CODE OF DEKALB COUNTY, GEORGIA, PERTAINING TO THE ADMINISTRATION OF A LOCAL SMALL BUSINESS ENTERPRISE (LSBE) ~~BUY DEKALB~~ DEKALB FIRST PROGRAM, AND/OR OTHER PURPOSES

WHEREAS, Article 9, § 2, para. I (a) *et seq.* of the Constitution of Georgia empowers the governing authority of DeKalb County with the legislative power to adopt reasonable ordinances and/or resolutions relating to its property, affairs, and local government for which no provision has been made by general law and which are not inconsistent with the Constitution of Georgia;

WHEREAS, the County spends significant revenue on purchasing supplies, materials, and equipment, and retaining contractual and professional services;

WHEREAS, the dollars used in making these purchases are derived in some measure from taxes and fees paid by local businesses; thus, the Governing Authority has determined that funds generated in the community should, to the extent possible, be used to put "DeKalb First" ~~"Buy DeKalb"~~ thereby allowing the funds to be re-invested in the local County economy;

WHEREAS, the Governing Authority believes there is an inherent benefit in procuring services or goods from local small businesses who contribute to the County's economy and tax base and thus there is a substantial reason to offer a portion of publicly funded contracting opportunities to those qualified local small businesses;

WHEREAS, ~~"Buy DeKalb"~~ "DeKalb First" means that whenever possible, appropriate and authorized by applicable law, the County intends to buy its materials, and procure services from certified, qualified local small businesses in DeKalb County and the metropolitan Atlanta area;

WHEREAS, to encourage larger contractors, vendors and professional firms to partner with such local small businesses, the County enacts this amended ordinance giving certain incentives to larger businesses if they use qualified, certified local small businesses or at least make

a good faith effort to secure subcontracts with such local small businesses when performing services for or selling goods to the County;

WHEREAS, to incentivize larger contractors, professional firms and vendors to hire or make good faith efforts to hire local small businesses, the Governing Authority has determined that failure to achieve the ~~Buy DeKalb~~ “DeKalb First” goals or to submit proper documentation of good faith efforts to achieve those goals, shall result in a prime contractor or vendor’s qualified sealed solicitation being deemed non-responsive;

WHEREAS, the Governing Authority believes that ~~“Buy DeKalb”~~ “DeKalb First” is an initiative that protects and enhances the economic development of the County and improves the financial well-being of its citizenry because the program creates local jobs and improves the County’s economic base by helping DeKalb businesses grow. As DeKalb County businesses grow and expand tax revenue and fees paid by such businesses increases and opportunities for taxpayers to work in the County where they live increases;

WHEREAS, enactment of this ordinance encourages local small businesses to remain in DeKalb County and grow and prosper thereby directly and indirectly increasing the financial stability of DeKalb County government;

WHEREAS, the Governing Authority has determined that the structure and administration of ~~Buy DeKalb~~ “DeKalb First” will be enhanced and improved by the enactment of this amended ordinance; and

WHEREAS, the Governing Authority makes the success of local small businesses a permanent goal by implementing the ~~Buy DeKalb~~ DeKalb First: Local Small Business Enterprise Program (hereinafter referred to as ~~“Buy DeKalb~~ DeKalb First”);

NOW, THEREFORE, BE IT ORDAINED by the governing authority of DeKalb County, Georgia, that the Code of DeKalb County, Georgia, as Revised 1988, is hereby amended as follows:

PART I. ENACTMENT

By deleting Chapter 2, Article VI, of the Code of DeKalb County, Georgia, as Revised 1988, in its entirety and inserting a new article VI to read as follows:

ARTICLE VI.

BUY ~~DEKALB~~ DEKALB FIRST

LOCAL SMALL BUSINESS ENTERPRISE PROGRAM

Sec. 2-200. Short title and purpose.

- (a) *Short title.* This article shall be known as the "~~Buy DeKalb~~ DeKalb First ordinance" or the "LSBE ordinance" and may be cited as such.
- (b) *Purpose and intent.* The purpose of this article is to create the ~~Buy DeKalb~~ DeKalb First which requires vendors interested in doing business with the County to employ or make good faith efforts to employ local businesses to fulfill a portion of the work. The Constitution of Georgia empowers DeKalb County with the legislative power to adopt reasonable ordinances and/or resolutions relating to its property, affairs, and local government for which no provision has been made by general law and which are not inconsistent with the Constitution of Georgia. The County spends significant revenue on purchasing supplies, materials, and equipment, and retaining contractual and professional services. The dollars used in making these purchases are derived in some measure from taxes and fees paid by local businesses; thus, funds generated in the community should, to the extent possible, be used to "~~Buy DeKalb~~ DeKalb First" thereby allowing the funds to be re-invested in the local County economy. There is an inherent benefit in procuring services or goods from local small businesses who contribute to the County's economy and tax base and thus there is a substantial reason to offer a portion of publicly funded contracting opportunities to those qualified local small businesses. "~~Buy DeKalb~~ DeKalb First" means that whenever possible, appropriate and authorized by applicable law, the County intends to buy its materials, and procure services from certified, qualified local small businesses in DeKalb County and the metropolitan Atlanta area. To encourage larger contractors, vendors and professional firms to partner with such local small businesses, the County enacts this article giving certain incentives to larger businesses if they use qualified, certified local small businesses or at least make a good faith effort to secure subcontracts with such local small businesses when performing services for or selling goods to the County. "~~Buy DeKalb~~ DeKalb First" is an initiative that protects and enhances the economic development of the County and improves the financial well-being of its citizenry because the program creates local jobs and improves the County's economic base by helping DeKalb businesses grow. As DeKalb County businesses grow and expand tax revenue and fees paid by such businesses increases and opportunities for taxpayers to work in the County where

they live increases. Enactment of this ordinance encourages local small businesses to remain in DeKalb County and grow and prosper thereby directly and indirectly increasing the financial stability of DeKalb County government.

Sec. 2-201. Definitions.

Words or phrases not defined in this chapter, but defined in applicable state law or the Code of DeKalb County, as Revised 1988, shall be given that meaning. All other words or phrases shall be given their common ordinary meaning unless the context requires otherwise. The following words, terms, and phrases, when used in this chapter shall have the meanings ascribed to them below except where the text 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 percent (5%) or more of the outstanding voting securities of such other business;
- (2) Five percent (5%) 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 definition, the term “control” means the power to exercise a controlling influence over the management policies of a business.

“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 interested in doing business with DeKalb County.

“Decertification Event” shall mean any occurrence, infraction, or event that causes a business to be decertified as an LSBE or denied recertification as an existing LSBE.

“Director” shall mean the Director of the DeKalb County Purchasing and Contracting Department or his/her designee.

“DeKalb County” shall mean DeKalb County, Georgia (hereinafter referred to as “DeKalb County” or “County”).

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

“Local and Small Business Enterprise” (hereinafter referred to as “LSBE”) shall mean a Business Concern, certified under the requirements of this article as a Local LSBE or a MSA LSBE.

“LSBE DeKalb firm” shall mean a business located and operated in DeKalb County, Georgia.

- (1) For the purposes of this definition, to be “located” in DeKalb County means to have a physical presence within the geographic boundaries of DeKalb County such as having office space, a plant, warehouse, or other physical business facility presence (not including a post office box), for at least one year prior to submitting an application for LSBE certification.
- (2) For the purpose of this definition, to “operate” in DeKalb County means to be the current holder of a valid business license issued by DeKalb County at least one year prior to submitting an application for LSBE certification.

“LSBE MSA firm” shall mean a business located and operated outside the geographical boundaries of DeKalb County, Georgia but within the MSA.

- (1) For the purposes of this definition, to be “located” in the MSA means to have a physical presence within the geographic boundaries of the Counties within the MSA, but outside of DeKalb 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 one year prior to submitting an application for LSBE certification.
- (2) For the purposes of this definition, to “operate” in the MSA means to be the current holder of a valid business license issued by a local government within the MSA for at least one year prior to submitting an application for LSBE certification.

“LSBE Review Panel” shall mean a panel of decision makers comprised of the Director, the Executive Assistant, and the User Department Director or designee. If more than one User Department exists, the Director will select one representative to serve as the third panelist on the LSBE Review Panel.

“Metropolitan Statistical Area (MSA)” shall mean the geographical area consisting of Cherokee, Clayton, Cobb, Douglas, Fayette, Fulton, Gwinnett, Henry and Rockdale counties.

“Principal place of business” shall mean the business location where the business’ high level officers direct, control, and coordinate the business activities and where business records are kept.

“Prime Contractor” means (i) business concern, bidder or proposer who submits a qualified sealed solicitation to the County or (ii) a business concern that enters into a contract with the County.

“Protest Meeting” shall mean any meeting between an LSBE and the Executive Assistant in response to a possible or potential denial of certification or a Decertification Event.

“Public works construction” has the same meaning as it is given in state law, O.C.G.A. §36-91-2, now and as it may be amended hereafter.

“Purchasing and Contracting Department” (hereinafter referred to as “Department”) shall mean the DeKalb County Purchasing and Contracting Department.

“Qualified Sealed Solicitation” shall mean any Invitation to Bid or Request for Proposal issued by DeKalb County and released for response to bidders and proposers after the effective date of this article.

“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.

“Small Business” shall mean an independently owned and operated business concern who meets the requirements of section 2-203.

“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 a business providing equipment, goods, materials, service or supplies to a contractor.

Sec. 2-202. Program Administration.

- (a) The Director shall have the primary responsibility to ensure that ~~Buy DeKalb~~ DeKalb First is effectively and equitably implemented in DeKalb County.
- (b) The ~~Buy DeKalb~~ DeKalb First program shall be evaluated on a semi-annual basis. A written semi-annual report shall be compiled by the Director and shall compare the current year with the previous year. The semi-annual report shall be provided to the chief executive officer and each member of the board of commissioners. The semi-annual report should include, at a minimum:
 - (1) Number of LSBEs certified and de-certified;
 - (2) Number and financial impacts of mentor/protégé partnerships;
 - (3) Evaluation of the effectiveness of the LSBE in relation to the achievement of DeKalb County’s goals set forth under this article, including the utilization of LSBE’s on contracts;
 - (4) Number of LSBEs subcontracted by non-LSBE prime contractors;
 - (5) Number of LSBEs contracted as a prime contractor;
 - (6) Total LSBE contracted dollars and total contracted dollars; and

- (7) Other information about ~~Buy DeKalb~~DeKalb First, if requested by the board of commissioners or the chief executive officer.
- (c) In order to encourage the participation of prime contractors, the Department shall create a trade-specific categorization of potential LSBE subcontractors and make it available via electronic and hard copy to all prime contractors who seek to participate in DeKalb County contracts.
 - (d) The Department shall encourage other county departments to use LSBEs for emergency contracts although specific goal(s) shall not be set.
 - (e) The Department will keep LSBEs aware of County solicitations by advertising and/or posting them on DeKalb County's website.
 - (f) The Department shall implement a training program to provide quarterly seminars and workshops to LSBEs addressing how to do business with DeKalb County and encouraging participation in DeKalb County's solicitation process and affiliated programs.
 - (g) The Department shall require every business concern who desires to submit a response to a qualified sealed solicitation to attend a mandatory LSBE meeting, in person or via video conference, with interested LSBE(s) in an effort to encourage partnerships and use of LSBEs. Such meeting shall occur at a designated place within a county building within two (2) weeks of issuance of the qualified sealed solicitation. Notice of the time, date, and location of such meeting shall be posted on the County's website at the time of the solicitation's posting. At the LSBE meeting, prime contractors shall provide relevant information about the plans, requirements, and specifications of the contract. Each LSBE will be allowed the opportunity to submit an email address to the prime contractor at the LSBE meeting and the prime contractor shall advise those LSBE's by email of any new relevant information, if any, at least 5 business days prior to submission of the prime contractor's bid or proposal.

Sec. 2-203. LSBE Certification.

- (a) *Criteria for LSBE Certification.* Through appropriately promulgated written procedures, the Director or his/her designee shall certify as an LSBE any business concern that meets the following criteria:
 - (1) The business concern must qualify as a LSBE as defined in this article;
 - (2) The business concern must be owned and controlled by individuals who are citizens or lawfully admitted permanent residents of the United States;
 - (3) The business concern must be a for-profit enterprise that performs a commercially useful function, including a sole proprietorship, partnership, joint venture, corporation, limited liability company, or any other business or professional entity;

- (4) The business concern owner(s) applying for certification must own at least 51% of the business and have maintained this ownership for at least one year prior to application;
- (5) If the business concern is publicly owned, the applicant owner must own at least 51% of all classes of stock;
- (6) The principal place of the business concern must be located in DeKalb County, Georgia or within the MSA, as defined in this article;
- (7) The business concern's average gross annual receipts from the prior three (3) fiscal years must not exceed the following amounts:

- a. Construction: ~~\$50~~35,000,000.00
- b. Professional Services: \$5,000,000.00
- c. Commodity Suppliers: \$3,000,000.00

- (b) *Qualifications.* The Director shall certify each LSBE in a particular area or areas of expertise. To obtain certification, the LSBE shall prove it is qualified in a demonstrated area of expertise, by providing certain information to the Director, including but not limited to, a resume and/or list of previous contracts or work in the LSBE's demonstrated area of expertise; references from individuals who have contracted with the LSBE in its demonstrated area of expertise; and all relevant licenses and certifications.
- (c) *Prior Certification.* All businesses certified as a LSBE prior to the enactment of this article, shall remain certified until their current certification expires or a Decertification Event occurs.

Sec. 2-204. Benchmarks and Incentives.

- (a) To qualify for incentives under the ~~Buy DeKalb~~ DeKalb First ordinance, a prime contractor shall be a certified LSBE or submit written documentation showing that at least twenty percent (20%) of the total contract award will be performed by a LSBE(s) unless the prime contractor can demonstrate sufficient good faith efforts as set forth in this article
- (b) The LSBE Review Panel, stating the reason in writing, may waive, decrease, or increase this 20% benchmark for any particular contract prior to release of the qualified sealed solicitation or as an addendum to such solicitation. The Department shall grant lower incentives if the LSBE Review Panel lowers the LSBE benchmark for participation as outlined in this section. The percentage by which the benchmark is lowered shall be used to calculate the lower amount of incentive.
- (c) The incentives are:

Requests for Proposals.

- (1) Ten (10) points in the initial evaluation of a response to a Request for Proposal for meeting the LSBE benchmark with a prime contractor who is a local LSBE or is a prime contractor using local LSBE(s);
- (2) Five (5) points in the initial evaluation of responses to any Request for Proposal for meeting the applicable LSBE benchmark with a prime contractor that is an MSA LSBE or a prime contractor utilizes MSA LSBE(s); and
- (3) Prime Contractors who demonstrate sufficient good faith efforts in accordance with the requirements of this article shall be granted two (2) points in the initial evaluation of responses to a Request for Proposal.

Invitations to Bid.

- (4) If a prime contractor who is deemed responsible and remains responsive to an Invitation to Bid because it is or has obtained 20% participation of an LSBE DeKalb or LSBE MSA firm, submits the lowest bid price in response to a qualified sealed solicitation, that prime contractor shall be deemed the lowest responsible and responsive bidder and submitted to the chief executive officer or the governing authority, whichever is appropriate under law, for award of the contract;
 - (5) In addition to meeting all other requirements for responsiveness, prime contractors who demonstrate sufficient good faith efforts in accordance with the requirements of this article shall be deemed responsive in the initial evaluation of responses to an Invitation to Bid.
 - (6) If a prime contractor who is deemed responsible and remains responsive to an Invitation to Bid because of its good faith efforts, submits a lower bid price than a prime contractor who actually achieves the 20% or otherwise required benchmark, then the prime contractor who actually met the benchmark will be given the opportunity to match the lowest bid price of the prime contractor who only made good faith efforts. If that prime contractor chooses NOT to match that bid price, the prime contractor who made the good faith effort will be deemed the lowest responsible responsive bidder and submitted to the chief executive officer or the governing authority, whichever is appropriate under law, for award of the contract.
- (d) Where a mixture of LSBE DeKalb and LSBE MSA firms are utilized, pro-rated points shall be granted by the Department based upon the utilization for each based upon the terms of the qualified sealed solicitation.
 - (e) If the prime contractor fails to meet the required benchmark for LSBE participation or fails to make sufficient good faith efforts as set forth in section 2-206 in response to an Invitation to Bid or a Request for Proposal, then the prime contractor's bid or proposal shall be

deemed nonresponsive. If the bid or proposal is deemed nonresponsive, the cost proposal shall not be considered.

Sec. 2-205. Calculation of LSBE Participation.

- (a) The entire amount of that portion of a subcontract that is performed by the LSBE shall be counted as its participation, including the cost of supplies and materials obtained by the LSBE for the work for 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 as LSBE participation.
- (c) If an LSBE has a Decertifying Event during the term of a contract, the dollar value of work performed under a contract with that business after it is decertified shall not be counted toward the prime contractor's LSBE participation goal. No contractor shall be penalized as a result of the failure of a project to achieve the benchmarks set forth in its contract if the LSBE fails to meet the conditions of Section 2-207.
- (d) In determining the achievement of a benchmark, the participation of a LSBE shall not be counted until the dollar amount being counted has been received by that LSBE.
- (e) Achievement of benchmarks authorized by this article shall be evaluated after the project is 25%, 50%, and then 75% complete. Meeting or failing to meet contractual benchmarks may be used for evaluative and/or award purposes in considering the prime contractor and/or LSBE in future qualified sealed solicitations.

Sec. 2-206. Good Faith Efforts in Lieu of Meeting Benchmarks.

- (a) A prime contractor must meet the required LSBE benchmark of 20% (unless otherwise modified in the qualified sealed solicitation), unless it can demonstrate that good faith efforts yielded no qualified LSBEs and document those good faith efforts in writing.
- (b) Prime contractors are expected to make sufficient good faith efforts at the outset of preparing a response to a qualified sealed solicitation, so that LSBEs have an adequate opportunity to partner with prime contractors in response to a solicitation. Failure of any prime contractor to attend the mandatory LSBE meeting required in this article, in person or via video conference, shall mean that the prime contractor has not demonstrated sufficient good faith efforts and its bid or proposal, if submitted, shall be deemed non-responsive without any further review by the Department.

- (c) Factors for determining if sufficient good faith efforts were made, shall include but are not limited to the compilation of a contact log including the date of contact, name, address and contact number or email address used to contact the proposed LSBE subcontractors, the name and title of the person making the effort for the prime contractor; the nature of work requested and full detailed description of the scope of work for which a quote was requested; the amount of the quoted price, if one was obtained; and any additional LSBE subcontractor information as requested on forms promulgated by the Department. The Director also maintains the right to interview any proposed LSBE subcontractor included on the contact log to verify the effort made.
- (d) During the evaluation of the bid or proposal, the Director shall determine if sufficient good faith efforts were made by the prime contractor. If the determination is made that a prime contractor did not make sufficient good faith efforts, the bid/proposal will be deemed non-responsive and shall not receive any further review by the Department.
- (e) The Department of Purchasing and Contracting shall maintain documentation of all 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 two (2) years, whichever is longer.
- (f) If all prime contractors for a particular qualified sealed solicitation fail to meet the required benchmark for LSBE participation and fail in making good faith efforts, as defined by this article, the LSBE benchmark requirement may be waived by the chief executive officer or designee.

Sec. 2-207. Prime Contractor Responsibility.

- (a) Any business concern may submit a response to a qualified sealed solicitation regardless of their certification status under section 2-203.
- (b) When subcontracting, every prime contractor must independently evaluate each LSBE and confirm qualifications, and previous practical, demonstrable experience in the area in which the LSBE intends to perform services and references prior to including the LSBE in a qualified sealed solicitation. Information obtained by the County in this regard may be provided to the prime contractor by the Director upon request, but each prime contractor understands that it must investigate, and independently verify an LSBE's qualifications and ability to perform the service or work at issue.
- (c) In each qualified sealed solicitation, all prime contractors shall identify a portion of the work available to LSBEs consistent with their previous demonstrable expertise, and shall submit a proposed work schedule that identifies the work to be completed by the LSBE(s) with their bid/proposal, if any. This proposed work schedule shall be finalized and submitted to the County within ten (10) days of the Notice to Proceed meeting. This work schedule shall become the basis for determining compliance with the terms of this article after execution of the contract.

- (d) The prime contractor shall attend the LSBE meeting in person or via video conference and shall provide interested LSBEs with timely, adequate information about the plans, specifications, and other such requirements of the qualified sealed solicitation to facilitate their bid or proposal submission and document all communications, in accordance with the requirements of this article.
- (e) The prime contractor shall submit a notarized Schedule of LSBE Participation detailing all LSBE businesses from which the prime contractor solicited bids. This schedule shall be submitted at the qualified sealed solicitation due date and time in order to be granted any preferential points.
- (f) Each prime contractor shall be required to sign an affidavit declaring under penalty of perjury its intention to comply fully with the provisions of this article and attesting to the truth and accuracy of all information provided to the County. All prime contractors and LSBEs must adhere to all Federal, State, and local law, and applicable provisions of this Code.

Sec. 2-208. LSBE Subcontractor Responsibilities.

- (a) A current LSBE certification letter and a signed letter of intent from all LSBEs describing the work, materials, equipment or services to be performed or provided by the LSBE and the agreed upon dollar value shall be submitted to the prime contractor to be included with the qualified sealed solicitation.
- (b) Post-award, the LSBE shall deliver a monthly report to the Department 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 has been received.
- (c) The LSBE shall review and comply with applicable Federal, State, and local law, and applicable provisions of this Code.

Sec. 2-209. Contract Performance Compliance.

- (a) At or around the time of award, but no later than the kickoff meeting, the Director shall verify that a subcontract for the agreed upon percentage or dollar amount of the total contract price adopted and approved by the Governing Authority, has been executed by the prime contractor and the LSBE(s), and the prime contractor shall provide each LSBE's subcontract and an email address for the LSBE for notification purposes, to the Director. Failure to provide the requisite subcontract(s) shall be grounds for rejection of a qualified sealed solicitation and/or termination of the prime contract.

- (b) The prime 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 consent of the LSBE Review Panel. Unauthorized changes or substitutions shall be a violation of this section, and may constitute grounds for rejection of a qualified sealed solicitation or cause termination of the contract for breach. In such instances, DeKalb County may withhold payment and/or impose other sanctions. Written consent for changes shall not be unreasonably withheld from the prime contractor.
- (c) All requests for changes or substitutions of the subcontractors named in the notarized schedule of LSBE Participation shall be made in writing to the LSBE Review Panel and shall clearly and fully set forth the basis for the request, including documentary proof or affidavits of individuals, where necessary. The LSBE Review Panel will review the request and make a final decision. 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. Post-award LSBE shopping is prohibited and may be cause for cancellation, rejection or other punitive remedies against the prime contractor.
- (d) Performance issues between the prime contractor and LSBE are governed by the subcontract between the prime contractor and the LSBE, and should be resolved by the LSBE and the prime contractor. If a prime contractor alleges poor performance by an LSBE and desires a substitution for that reason, the prime contractor shall submit a detailed written report with supporting documentation to the Director. The Director will meet with representatives from the prime contractor, the LSBE, and the County's user department with the goal of moving the project forward. If there is no meaningful resolution, the prime contractor may then submit a request to substitute LSBE(s) to the LSBE Review Panel.
- (e) If a prime contractor plans to hire a subcontractor on any scope of work that was not previously disclosed in the notarized Schedule of LSBE Participation the prime contractor shall inform the existing LSBE(s) of the new scope of work and if the LSBE(s) accepts the offer of work, the percent of work shall flow to the LSBE subcontractor in the same manner as outlined in the original contract. If the existing LSBE subcontractor declines the work, the prime contractor shall obtain the approval of the LSBE Review Panel 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.
- (f) Changes to the scopes of work shall be recorded and reported by the DeKalb County department responsible for overseeing the work to be performed at the time they arise, to establish the reasons for the change and the effect on achievement of the benchmarks identified in this article.
- (g) In the event a "stop work" order is issued to the prime contractor, the Director shall notify the LSBE(s) and provide the LSBE(s) with a copy of the stop work order via the email address provided in the LSBE subcontract.

- (h) In the event of non-payment by a prime contractor to any LSBE, the LSBE has the right to request a meeting with the Director. This meeting will include representatives from the prime contractor, the LSBE, the County's user department and the Director with the goal of payment for performance. A finding of repeated non-payment by any prime contractor without reasonable cause may be cause for contract cancellation for breach, and other administrative remedies as allowed under applicable County policy.
- (i) Each prime contractor shall deliver a monthly report form to the Director and to the LSBE, listing all work completed by the LSBE and payments made. The report shall be supported by copies of checks, invoices and any other documents to substantiate that work and payments to the subcontractor have been made. Failure to submit a report may result in declaring a contract in default and subsequent termination of the contract.

Sec. 2-210. Payment Obligations.

- (a) Upon award of a contract by DeKalb County that includes the applicable LSBE benchmarks identified in this article, the prompt pay obligations in DeKalb County's contract with the prime contractor, and the contract between the prime contractor and the subcontractors, become covenants of performance by the contractor in favor of DeKalb County. The applicable LSBE benchmarks shall be included as terms and conditions of the contract between DeKalb County and the contractor and failure to achieve or maintain the agreed upon applicable LSBE benchmarks may constitute a breach of the contract.
- (b) The Department shall require prompt payment for all contracts with DeKalb County for performance of work or procurement of goods.
 - (1) The Department shall ensure that all contracts covered by this article contain a provision requiring the prime contractor to certify in writing that all subcontractors and suppliers have been promptly paid for acceptable work and materials, no later than seven (7) calendar days from prime contractor's receipt of payment from DeKalb County.
 - (2) Upon request, such prompt pay certifications shall be emailed to any LSBE(s) at the email address listed in the LSBE subcontract. It is the prime contractor's sole and exclusive responsibility to pay the LSBE subcontractor promptly for acceptable work and materials.
- (c) The contractor shall provide a listing of all LSBEs and any other subcontractors to be used in the performance of the contract, with each request for payment submitted to DeKalb County. The Director shall monitor LSBE subcontractor participation during the course of the contract.

Sec. 2-211. Renewal of Certification.

- (a) All certifications issued under the LSBE program shall be reviewed every ~~five (5)~~ three (3) years and may be renewed by the Director.
- (b) Each LSBE must submit a complete recertification application to be reconsidered for the LSBE program. Failure to seek recertification within ninety (90) days of certification expiration shall result in decertification of the LSBE.
- (c) It is the responsibility of the LSBE to notify the Department of any change in its circumstances affecting its continued eligibility for the program. Failure to do so may result in the LSBE's decertification and preclusion from future participation in the LSBE program.

Sec. 2-212 Decertification, Denial and Protest Meeting for a LSBE.

- (a) The Director may, upon written notice to a business concern, deny LSBE certification, decertify a LSBE or deny re-certification of a LSBE for failing to comply with the LSBE program requirements and the applicable provisions of this article, this Code or state law.
- (b) A business concern that has been denied certification, recertification or has been decertified may protest the action, in writing, within thirty (30) days of receipt of notification of any of the aforementioned actions. Upon the filing of a protest, the decertification shall not become effective and the following shall occur:
 - (1) A Protest Meeting shall be scheduled with the business concern and the Executive Assistant at which time the business concern may present additional facts and evidence in support of its eligibility. The Director and the business concern may present up to two witnesses. The Director and the business concern have the right to be represented by a lawyer, at their own expense. The Director may request the business concern to produce documents relevant to the denial or decertification event. The business concern's failure to comply within ten (10) days of these requests may be grounds for denial of the protest at the discretion of the Executive Assistant.
 - (2) The Executive Assistant shall make the final determination based on the information presented at the Protest Meeting and supplemental information provided, if any, within ten (10) days of the Protest Meeting. However, the Executive Assistant may direct the business concern to cure any certification, recertification, or decertification matter within a set time period and issue a final determination within ten (10) days of the cure period.
 - (3) A business concern denied or found to be ineligible for certification or re-certification may not re-apply for certification for one (1) year after the effective date of the final determination issued by the Executive Assistant.

Sec. 2-213. Graduation.

- (a) The Director shall graduate a LSBE from eligibility, at the expiration of the certification period, if the LSBE grows to exceed the limits as specified in this Article.
- (b) If an LSBE graduates from the LSBE program and later becomes eligible for re-entry, it may reapply for certification under §2-203.

Sec. 2-214. Mentor-Protégé Initiative

- (a) In an effort to develop local small business talent and provide technical, administrative, and other assistance as required for contracting with DeKalb County, all projects valued over \$5,000,000.00 are required to be performed by entities who have engaged in a mentor-protégé partnership.
- (b) Prime Contractors must agree to become mentors and take on an LSBE protégé in an effort to enhance the potential of future LSBEs. These protégés will include all LSBEs on the certified LSBE list maintained by the County.
- (c) If participation in the mentor-protégé initiative is required to submit a bid or proposal, prime contractors must also comply with all other applicable sections of this Article including §2-204 and §2-206.
- (d) Qualifying projects shall be performed by both Mentor and Protégé through a subcontract between those parties.
- (e) The Protégé will perform an agreed-upon amount of the contract assuming full responsibility for and supervision of that portion of the work and should be given credit or acknowledgement as the prime contractor for that portion of the work in future solicitations.
- (f) During the term of the contract the Mentor and Protégé business must collectively provide to the Department, a quarterly summary of the skills provided to the Protégé, which shall include:
 - (1) The type of collaborations and training being provided to the Protégé to assist in the growth and development of their business. The areas of assistance that are encouraged include but are not limited to, bonding and insurance support, management and scheduling support;
 - (2) Names and titles of the individuals from the Mentor who are responsible for working directly with the Protégé in the areas identified above;

- (3) Names and titles of the individuals from the Protégé who are responsible for working directly with the Mentor in the areas identified above;
- (4) The amount of time, nature and extent of managerial, technical, financial and bonding assistance provided;
- (5) A summary and explanation of any projects bid on or undertaken by the Mentor-Protégé partnership in the private sector or for a governmental entity other than DeKalb County; and
- (6) Any additional or further information required by the Director.

(g) Protégés agree not to subcontract any of their work to other contractors without the written approval of the Director.

Sec. 2-215. Disclaimer.

By enacting this ordinance, DeKalb County is assuming an undertaking only to promote the general welfare of its citizens. By this enactment, DeKalb County, its officers, agents, or its employees are not to be considered joint employers with a contractor and do not control the relationship between a prime contractor and an LSBE. DeKalb County, its officers, agents, and employees shall not be liable to any person or business concern claiming that the enactment, enforcement or violation of this article caused injury or loss of any kind.

PART II. EFFECTIVE DATE

This article shall become effective within sixty (60) days after adoption by the Board of Commissioners and execution by the Chief Executive Officer.

PART III. SEVERABILITY

Should any section or provision of this ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the ordinance as a whole nor any part thereof other than the part so declared to be invalid or unconstitutional. All ordinances or resolutions, or parts thereof, conflict with this ordinance are repealed.

ADOPTED by the DeKalb County Board of Commissioners, this _____ day of _____, 2016.

LARRY JOHNSON, MPH
Presiding Officer
Board of Commissioners
DeKalb County, Georgia

APPROVED by the Chief Executive Officer of DeKalb County, this _____ day of _____, 2016.

LEE MAY
Interim Chief Executive Officer
DeKalb County, Georgia

ATTEST:

BARBARA SANDERS-NORWOOD, CCC, CMA
Clerk to the Board of Commissioners and
Chief Executive Officer
DeKalb County, Georgia

APPROVED AS TO SUBSTANCE:

APPROVED AS TO FORM:

TALISA CLARK
Interim Chief Procurement Officer/P&C Director
DeKalb County, Georgia

O.V. BRANTLEY
County Attorney
DeKalb County, Georgia