

AN ORDINANCE

2007-04-12-0396

**AMENDING THE SMALL BUSINESS ECONOMIC DEVELOPMENT  
ADVOCACY ORDINANCE EVALUATION STANDARDS FOR  
ALTERNATIVE CONSTRUCTION DELIVERY METHODS.**

\* \* \* \* \*

**WHEREAS**, the current Small Business Economic Development Advocacy (“SBEDA”) policy provides for evaluation criteria for Alternative Construction Delivery Methods (“ACDM”) which include Design/Build, Competitive Sealed Proposal, and Construction Manager at Risk; and

**WHEREAS**, the SBEDA evaluation criteria is designed to promote the utilization of small, minority, women and African-American owned businesses by prime contractors bidding City projects; and

**WHEREAS**, San Antonio is experiencing a tremendous increase in construction related projects with approximately \$3 billion dollars in construction contracts estimated to be awarded within the next four years by federal, state and local governments in the San Antonio region; and

**WHEREAS**, the City of San Antonio needs to attract a large pool of respondents on construction contract solicitations to assure responsiveness to City policy objectives; and

**WHEREAS**, the SBEDA scoring includes 20% (20 points out of a 100 point scale) for consideration of local status, small business status, small business outreach as well as performance in achieving SBEDA goals; and

**WHEREAS**, an amendment is proposed for ACDM projects that will incorporate criteria to evaluate a respondent’s local economic impact to replace the local business enterprise evaluation points, and which will also establish evaluation criteria for a respondent’s Emerging-Diversity initiative; and

**WHEREAS**, Emerging-Diversity is a business teaming program to provide opportunities for local small, minority, women and African-American owned businesses and, as part of a construction project, respondents will be required to identify teaming opportunities for small businesses within that project; and

**WHEREAS**, a summary of the proposed scoring criteria is as follows:

- **ECONOMIC IMPACT (Up to 5-Points)**
  - Local resources, to include, local suppliers, equipment providers, subcontractors
  - Firms’ principal office and the home office location of key staff on this project

- Headquartered or has local office in San Antonio
- Identify local (presently living in or relocating to San Antonio) versus non-local staffing of your team, and the percent of their work expected to be done locally

– **SBEDA EXPERIENCE (Up to 5-Points)**

- Respondent's experience in implementing small business programs in private & public sector projects

– **SBEDA UTILIZATION (Up to 5-Points)**

- Extent of utilization already identified by the Respondent

– **EMERGING-DIVERSITY BUSINESS PLAN (Up to 5-Points)**

- Emerging-Diversity Business plan on eligible projects for Diversity Participation, including but not limited to:
  - Plan to package work element into economically feasible units that facilitate diversity participation
  - Bonding & Insurance Assistance
  - Negotiating Joint Venture and/or Partnership
  - Quick Pay Agreements
  - Outreach Efforts; and

**WHEREAS**, Attachment I describes the contract compliance measures to be used to monitor respondents' implementation of the SBEDA provision and program, with compliance and penalty provisions incorporated into contracts; and

**WHEREAS**, it is anticipated that the Construction Manager at Risk Solicitation for the San Antonio International Airport Expansion Program will be the first project to utilize the proposed scoring criteria; and

**WHEREAS**, the City of San Antonio Economic Development Department's SBEDA Evaluation Criteria must remain current with economic trends, but also remain narrowly tailored to be legally defensible; and

**WHEREAS**, the proposed amendment retains the local business development strategy with a restructured format to result in more meaningful development and utilization of local businesses with potentially greater economic impact to the local economy; and

**WHEREAS**, the intent of the SBEDA policy is to grow local businesses and create a level playing field to remedy underutilization, while still remaining narrowly tailored, with the amended scoring criteria for ACDM projects complimenting the current policy; and

**WHEREAS**, the City Council-appointed Small Business Advocacy Committee (“SBAC”) approved a resolution in support of the proposed policy at their regular monthly meeting held on March 20, 2007 and recommended approval of this ordinance; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The scoring criteria listed within the recitals of this ordinance shall be utilized and replace the existing local business enterprise evaluation points within the SBEDA ordinance for Alternative Construction Delivery Method (“ACDM”) projects.

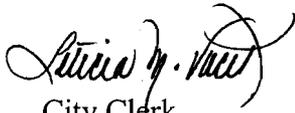
**SECTION 2.** The contract compliance measures outlined in Attachment I shall be utilized to monitor respondents’ implementation of the SBEDA provision and program. Contracts executed as part of an ACDM project shall incorporate compliance and penalty provisions pursuant to this policy.

**SECTION 3.** This ordinance shall be effective on the tenth (10th) day after passage.

PASSED AND APPROVED this 12<sup>th</sup> day of April, 2007.

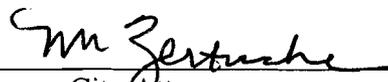
  
M A Y O R

ATTEST:

  
City Clerk

**PHIL HARDBERGER**

APPROVED AS TO FORM:

  
for City Attorney

# Agenda Voting Results

**Name:** 6.

**Date:** 04/12/07

**Time:** 12:00:11 PM

**Vote Type:** Multiple selection

**Description:** 6. An Ordinance amending the Small Business Economic Development Advocacy Ordinance Evaluation Standards for Alternative Construction Delivery Methods. [Presented by Manuel Longoria, Assistant Director, Economic Development; Jelynne LeBlanc Burley, Deputy City Manager

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1		x		
SHEILA D. MCNEIL	DISTRICT 2		x		
ROLAND GUTIERREZ	DISTRICT 3		x		
RICHARD PEREZ	DISTRICT 4	Not present			
PATTI RADLE	DISTRICT 5		x		
DELICIA HERRERA	DISTRICT 6		x		
ELENA K. GUAJARDO	DISTRICT 7		x		
ART A. HALL	DISTRICT 8		x		
KEVIN A. WOLFF	DISTRICT 9		x		
CHIP HAASS	DISTRICT_10		x		
MAYOR PHIL HARDBERGER	MAYOR		x		

# ATTACHMENT I

## Attachment I

### Small Business Contract Compliance Measures on Non-Federally Funded Projects

#### For Alternative Construction Delivery Methods

1) **PURPOSE.**

The purpose of this document is to provide guidance on the SBEDA Contract Compliance issues.

2) **POLICY**

It is the policy of the City of San Antonio to encourage contracting opportunities and assistance to small, minority and women-owned business enterprises.

3) **DEFINITIONS**

All definitions set forth in the City of San Antonio's SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SMALL BUSINESS) PROGRAM POLICY ORDINANCE apply.

4) **COMPLIANCE WITH GOOD FAITH EFFORT PLAN**

A prime contractor may receive credit toward the SBEDA or DBE goal for work performed by his-her own forces and work subcontracted to SBEDA or DBE subcontractors. A prime contractor must make a good faith effort to meet the goals. In the event a SBEDA or DBE prime contractor intends to subcontract to a non-SBEDA or non-DBE, that information must be reported to the Contracting Agency for approval.

(a) A Prime Contractor who cannot meet the contract goal, in whole or in part, shall document the "Good Faith Efforts" taken to obtain SBEDA or DBE participation. The following is a sample list of actions by the Prime Contractor that may be considered as good faith efforts. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

- (1) Soliciting through all reasonable and available means for the interest of all certified SBEDA and DBE subcontractors who have the capability to perform the work of the contract. The solicitation must be done within sufficient time to allow the potential SBEDA and DBE subcontractors to respond to it. Appropriate steps must be taken to follow up initial solicitations to determine, with certainty, if any SBEDA or DBE subcontractors are interested.
- (2) Selecting portions of the work to be performed by SBEDA and DBE subcontractors in order to increase the likelihood that the goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate SBEDA and DBE participation, even when the Prime Contractor might otherwise prefer to perform the work items with its own forces.

- (3) Providing interested SBEDA and DBE subcontractors with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
  - (4) Negotiating in good faith with interested SBEDA and DBE subcontractors by making a portion of the work available to SBEDA and DBE subcontractors and suppliers and selecting those portions of the work or material needs consistent with the available subcontractors and suppliers.
  - (5) The ability or desire of the Prime Contractors to perform the work of a contract with its own organization does not relieve the Prime Contractor's responsibility to make a good faith effort. Additional costs involved in finding and using SBEDA and DBE subcontractors is not in itself sufficient reason for a Prime Contractor's failure to meet the contract goal, as long as such costs are reasonable. Prime Contractors are not, however, required to accept higher quotes from SBEDA and DBE subcontractors if the price difference is excessive or unreasonable.
  - (6) Not rejecting the SBEDA or DBE subcontractors as being unqualified without sound reasons based on a thorough investigation of their capabilities.
  - (7) Making efforts to assist interested SBEDA and DBE subcontractors in obtaining bonding, lines of credit, or insurance as required by the City.
  - (8) Making efforts to assist interested SBEDA and DBE subcontractors in obtaining necessary equipment, supplies, materials or related assistance or services.
  - (9) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of SBEDA and DBE subcontractors.
- (b) The preceding information shall be submitted directly to the Director of Economic Development Department for review and approval of good faith efforts.
- (c) The Prime Contractor shall make all reasonable efforts to honor commitments to SBEDA and DBE subcontractors named in the Good Faith Effort Plan submitted and attached to the approved contract. Prior to the Prime Contractor terminating or removing a SBEDA or DBE subcontractor named in the approved contract, the Prime Contractor must demonstrate to the satisfaction of the Director of Economic Development Department that the originally designated SBEDA or DBE subcontractor was not able or willing to perform.
- (d) The Prime Contractor shall make a good faith effort to replace a SBEDA or DBE subcontractor that is terminated or removed with another SBEDA or DBE subcontractor, to the extent needed to meet the contract goal. The Prime Contractor shall submit a completed request form for the substitute firm(s). Any substitution of SBEDA and DBE subcontractors shall be subject to approval by the Director of Economic Development Department.
- (e) Failure to carry out the requirements set forth above shall constitute a material breach of this contract and may result, in termination of the contract by the City; in a deduction of the amount of SBEDA or DBE goal not accomplished by the Prime Contractor, not as a penalty but as liquidated damages to the City; or such other remedy or remedies as the City deems appropriate.

5) **DETERMINATION OF SMALL BUSINESS PARTICIPATION**

A firm must be a certified SBEDA or DBE and perform a professional or technical function relating to the project. Once a firm is determined to be a certified SBEDA or DBE, the total amount paid to the SBEDA or DBE subcontractor for work performed with his/her own forces is counted toward the contract goal. When a SBEDA or DBE subcontractor subcontracts part of the work to another firm, the value of the subcontracted work may be counted toward the contract goals only if the subcontractor is a certified SBEDA or DBE. Work that a SBEDA or DBE subcontractor subcontracts to a non-certified SBEDA or DBE firm does not count toward contract goals.

A SBEDA or DBE subcontractor may subcontract no more than 70% of a contract. The SBEDA or DBE subcontractor shall perform not less than 30% of the value of the contract work with assistance of employees employed and paid directly by the firm; and equipment owned or rented directly by the firm. SBEDA or DBE subcontractors must perform a commercially useful function required in the contract in order for payments to be credited toward meeting the contract goal. A SBEDA or DBE subcontractor performs a commercially useful

function when it is responsible for executing the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the SBEDA or DBE subcontractor must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. When a SBEDA or DBE subcontractor is presumed not to be performing a commercially useful function, the subcontractor may present evidence to rebut this presumption. However, the Director of Economic Development Department will make the final determination.

Proof of payment, such as copies of canceled checks, properly identifying the City's contract number or project number will be required to substantiate the payment, as deemed necessary by the City.

6) **RECORDS AND REPORTS**

During the term of the contract, the Prime Contractor must report the actual payments to all the SBEDA or DBE subcontractors in the time intervals and format prescribed by the City.

- a. After the Prime Contractor receives a payment from the City; the Prime Contractor will be required to report all payment dates and amounts actually paid to the SBEDA or DBE subcontractors. The SBEDA or DBE subcontractors will be required to verify the information submitted by the Prime Contractors. Subsequent payments may be withheld from the Prime Contractor for noncompliance with this requirement. Only actual payments made to subcontractors are to be reported. This requirement will continue until all SBEDA or DBE subcontractor activity is completed. The City may verify the amounts being reported as paid by requesting copies of canceled checks paid to SBEDA or DBE subcontractors on a random basis.
- b. These reports will be due within fifteen days after receiving payment by the City. Reporting is required even when no SBEDA or DBE activity has occurred in a City payment cycle.
- c. All such records must be retained for a period of four years following final payment or until any investigation, audit, examination, or other review undertaken during the four years is completed, and shall be available at reasonable times and places for inspection by authorized representatives of the City.
- d. Prior to receiving final payment, the Prime Contractor shall ensure that all of the SBEDA or DBE payments have been submitted to the City. If the SBEDA or DBE goal is not met documentation of the good faith efforts made to meet the goal must be submitted to the City for review and approval.

7) **PENALTIES FOR NONCOMPLIANCE**

A Contractor who fails to comply with any portion of this Program, and whose failure to comply continues for a period of 30 calendar days after the Contractor receives written notice of such noncompliance from the City of San Antonio, may be subject to any or all of the following penalties:

- a. Withholding of ten percent of all future payments for the Eligible Project until the City determines that the Contractor is in compliance.
- b. Withholding of all future payments under the Eligible Project until it is determined that the Contractor is in compliance.
- c. Cancellation of the Eligible Project.
- d. Refusal of all future contractors or subcontracts with the City for a minimum of one year and a maximum of three years from the date upon which this penalty is imposed. In the event a penalty is imposed, the Contractor continues to be obligated to pay its subcontractors, laborers, suppliers, etc.

The City of San Antonio will provide a cure-period to allow contractors to comply with the terms of the contract and associated default.

