

## **PART 6B. JACKSONVILLE SMALL EMERGING BUSINESS PROGRAM**

### **Sec. 126.608. [Percentage of work to be accomplished by JSEBs.]**

(a) The City shall identify at least 20 percent of its work in its CIP program during the annual budget submission which shall be accomplished with JSEBs, using set-asides, prime contracting opportunities and subcontracting goals. The City, through each Department head shall commit in its budget to award at least 20 percent of its contracts for services, and non-construction contracts to JSEBs, provided, however, that such awards shall comply with local, state, and federal law and that there exist certified JSEBs to perform the work.

(b) In implementing the Program, the Director shall first provide opportunities for direct or prime contracting. Such opportunities should be created by breaking procurement packages into smaller components, and separating work that requires licenses from that which does not in separate bid or proposal requests where feasible.

(c) Subcontracting opportunities should be provided within vertical construction projects, with horizontal construction project opportunities being provided to the maximum extent possible, by prime or direct contracting. Nevertheless, the subcontracting opportunities shall be provided to those trades typically established as subcontractors.

(d) The City may issue joint checks upon the request of the JSEB in order to facilitate bonding, financing, or other requirements of contracting with the City.

(Ord. 2004-602-E, § 4)

### **Sec. 126.609. Jacksonville Small Emerging Businesses defined.**

(a) All businesses certified as SBE, or SDBEs pursuant to the former Parts 6A, and 6B Chapter 126 as it existed on July 1, 2003, shall continue to be certified until March 31, 2005 and goals in Section 126.611(a) have been met or within 90 days of the date after which certification would otherwise expire; provided, however, that new certification applications must be filed within 90 days of the effective date of this Chapter. Thereafter the businesses must be certified under the provisions set forth below. Certifications will be granted only in those areas for which the owner(s) has the ability and expertise to manage and control the firm's operations and work.

(b) Certifications granted after July 1, 2004 are valid for one year; provided however, that a certification, once granted, can be extended for up to four one-year terms upon the submission of an affidavit, under penalty of perjury, confirming the continued accuracy of the original certification, or identifying changes thereto; and provided further however that the JSEBs must submit the above affidavit no sooner than 60 days before certification expires, in the form created by the Procurement Department. Deceptive or fraudulent affidavits will result in the owner being barred from the program for three years, subject to the appeals process set forth in Section 126.623, below; and provided, further, that to remain or become certified after July 1, 2005, the JSEB must have participated in either the accounting grant program or the Fiscal Physical or provide audited financial statements by a Certified Public Accountant and one or more training, education, or mentoring programs during each 12-month period and provide evidence of such to the Director. For the initial certification, such evidence may be provided in arrears, but must be provided on or before the submission of the second year certification affidavit.

(c) To be certified as a JSEB, an individual owner must meet the following criteria:

(1) Reside in Duval County for a minimum of one year prior to the application; or have an established business headquartered for a minimum of three years in Jacksonville, and reside in Duval, St. Johns, Nassau, Baker, or Clay County for one year total within the five County area;

(2) Have a personal net worth less than \$605,000, excluding personal residence, including but not limited to business value and assets (measured as book value), ownership in other businesses and all other assets personally owned, held in trust for the individual owner's benefit, or held by a spouse; provided, however, that, notwithstanding personal net worth, certification hereunder shall require that annual gross receipts, averaged over the immediately preceding three-year period, not exceed \$6,000,000. This annual gross receipts threshold amount shall be subject to annual

analysis by the Director, who may recommend to the City Council Committee responsible for Audit review for consideration by the City Council an amount that may be more appropriate;

(3) Have not been in the program for a total of more than 13 years, provided, however, that participation may be increased by two one-year periods for good cause;

(4) Own and control more than 51 percent of the business entity being certified;

(5) Own any license required by local, state, or federal law;

(6) Have expertise normally required by the industry for the field for which certification is sought;

(7) Be a for-profit small business concern.

(8) not be a front, a broker, or a pass-through;

(9) Perform a commercially useful function typical of the field for which certification is granted;

(10) Not be controlled or operate as front by non-JSEB family, former or present employers. Familial relationships where capital is provided for the business will be subject to scrutiny and possible rejection;

(11) The JSEB owner(s) contributions of capital or expertise to acquire the ownership interest must be real and substantial; and

(12) Be a business, including a sole proprietorship, partnership, corporation, limited liability company, or any other business or professional entity:

(i) Which is at least 51 percent owned by one or more of the individuals identified herein in paragraph (c)(1) the ownership of any such business that has been in existence for a year or over must have maintained such 51 percent ownership for at least one year; and

(ii) In the case of a publicly owned business, at least 51 percent of all classes of the stock of which is owned by one or more of such persons each of whom meets the personal net worth criteria set forth above; and

(iii) Be a citizen or lawfully admitted permanent resident of the United States and be compliant with the residency requirements of this Program.

(d) Only a firm that is managed and controlled by a JSEB or MBE person(s) may be certified under this Program. The JSEB and MBE owner(s) must actually exercise control over the firm's operations, work, management and policy. Indicia of such control are set forth below.

(1) A firm must not be subject to any formal or informal restrictions that limit the customary discretion of such owner(s). There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices that prevent the JSEB or MBE owner(s), without the cooperation or vote of a non-qualifying person or entity from making any business decision of the firm.

(2) The JSEB or MBE owner(s) may delegate various areas of the management or daily operations of the firm to persons who would not qualify to be JSEBs or MBEs only if such delegation is typical in the industry for such businesses. Such delegations of authority must be revocable, and the JSEB or MBE must retain the power to hire and fire any such person. The JSEB or MBE owner must have an overall understanding of, and managerial and technical competence, experience and expertise, directly related to the firm's operations and work.

(3) The JSEB or MBE owner cannot engage in outside employment or other business interests that conflicts with the management of the firm or prevents the owner from devoting sufficient time and attention to the affairs of the firm to manage and control its activities unless such activities would be appropriate with commensurate businesses, in order to avoid sham or fraudulent certifications.

(e) Only an independent firm may be certified as a JSEB. An independent firm is one whose viability does not depend on its relationship with another firm. Recognition of an applicant as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is independent. In determining whether an applicant is an independent business, the Director will:

(1) Scrutinize relationships with non-JSEBs in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.

(2) Consider whether present or recent family, or employer/employee relationships between the

JSEBs owner(s) of the applicant compromise the applicant's independence.

(3) Examine the applicant's relationships with non-JSEB prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the applicant's independence.

(4) Consider the consistency of relationships between the applicant and non-JSEBs with normal industry practices.

(5) An owner shall be certified only for specific types of work for which the owner(s) has the ability and expertise to manage and control the firm's operations and work.

(f) To be certified as an MBE, an individual must meet the following criteria:

(1) Own a business certified as a JSEB;

(2) And be an individual who is a member of one of the following categories:

(i) Blacks/African-Americans, which includes persons having origins in any of the Black racial groups of Africa;

(ii) Hispanic-Americans, which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) Native-Americans, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

(iv) Asian-Americans (persons whose origins are in any of the original peoples of the Far East, Southeast Asia, the islands of the Pacific or the Northern Marianas, or the Indian Subcontinent); or

(v) Women.

(Ord. 2004-602-E, § 4; Ord. 2005-944-E, § 1)

### **Sec. 126.610. JSEB Program administration.**

(a) The Director shall manage the Program, including:

(1) Implementing and enforcing rules and regulations hereunder and, implementation and monitoring of the Program.

(2) Breaking larger contracts into smaller components where such actions will facilitate competition and provide opportunities under the Program.

(3) Providing information and assistance to MBES and JSEBs relating to City procurement opportunities, practices and procedures, and bid and proposal specifications, requirements and prerequisites.

(4) Certifying businesses as MBES and JSEBs, maintaining certification records, and ensuring that such information is available on the City's Procurement website identifying all such certified entities.

(5) Establishing Project Specific Goals after ensuring that adequate MBES and JSEBs are available to do the work.

(6) Evaluating contractors' achievement of Project Specific Goals or Good Faith Efforts to meet Project Specific Goals.

(7) Working with City departments to ensure prompt, timely, payments to JSEBs for work performed in accordance with 126.605 herein.

(8) Receiving, reviewing, and acting upon complaints and suggestions concerning the Program. The Director shall create a complaint form as part of this process that identifies both parties.

(9) Providing quarterly open houses to answer questions regarding the operation of the Program.

(10) Posting all contracting opportunities on the Department website under "JSEB Program".

(11) Identifying all certified companies on its website within three business days of certification.

(12) As appropriate, advertising all pre-bid conferences in applicable JSEB and MBE newspapers, direct-mail or e-mail notices to certified JSEBs, and otherwise seek to increase the interest of all JSEBs certified in the scopes of work of the contract.

(13) The Director shall provide interested JSEBs with timely, adequate information about the plans, specifications and requirements of the contract to allow them to respond to the solicitation either directly or by referral to the City department seeking the procurement.

(14) The Director shall maintain a list of certified MBEs and JSEBs, shall have copies available for distribution and shall post such information on the City's Procurement website.

(15) The Director shall be allowed to adjust the annual gross receipts for good cause shown. An appeal of the decision of the director may be appealed pursuant to 126.616.

(b) Each City department shall identify to the Director the person with the responsibility of ensuring JSEB and MBE participation; said person shall receive diversity training and shall prepare quarterly reports to the Director identifying the extent of non-JSEB, JSEB and MBE participation in any procurement within their Department that month.

(Ord. 2004-602-E, § 4)

### **Sec. 126.611. Numerical goals.**

The percentages set forth below for MBEs and JSEBs are annual goals and are considered to be targets, not quotas, set to achieve participation levels commensurate with available businesses. The following goals shall pertain to all of the following subsections as applicable: Construction (19 percent), Construction-Related Professional Services (17 percent), Contractual Services (19 percent) and Commodities Contracts (19 percent).

(a) *Minorities and Women.* Based upon the historical data referenced above, and consistent with records of the City's Procurement Department, the following percentages of contract value are adopted as goals to be achieved by this program from July 1, 2004 to September 30, 2005:

(i) For African Americans - 7 percent and 7 percent for construction related professional services

(ii) For Hispanic Americans - 2 percent and 1.50 percent for construction related professional services

(iii) For Asian Americans and/or Native Americans - 2 percent and 1.50 percent for construction related professional services

(iv) For Women - 8 percent and 7 percent for construction related professional services

(b) The Director shall make an evaluation of the relevant contracting data to determine the performance of the program and whether the individual and specific goals set forth in section 126.611(a) have been achieved. Such evaluation shall be conducted on or about September 30, 2005 (data collected from 10/1/04 to 9/30/05), and evaluations shall be conducted annually thereafter. The individual and specific goals set forth in subsection (a) shall not be adjusted as required in subsection (c) without a report to the Audit Committee, Council and the Mayor, that demonstrates the goals in section 126.611(a) have been met. The report shall be due annually on or about November 1.

(c) The Director is authorized to include the following as numerical goals in conjunction with the JSEB program:

(1) For October 1, 2005/September 30, 2006:

(i) For African Americans - 75 percent of 7 percent = 5.25 percent and 75 percent of 7 percent = 5.25 percent for construction related professional services

(ii) For Hispanic Americans - 75 percent of 2 percent = 1.5 percent and 75 percent of 1.50 percent = 1.13 percent for construction related professional services

(iii) For Asian Americans and/or Native Americans - 75 percent of 2 percent = 1.5 percent and 75 percent of 1.50 percent = 1.13 percent for construction related professional services

(iv) For Women - 75 percent of 8 percent = 6 percent and 75 percent of 7 percent =

5.25 percent for construction related professional services

(2) For October 1, 2006/September 30, 2007:

(i) For African Americans - 50 percent of 7 percent = 3.5 percent and 50 percent of 7 percent = 3.50 percent for construction related professional services

(ii) For Hispanic Americans - 50 percent of 2 percent = 1 percent and 50 percent OF 1.50 percent = 0.75 percent for construction related professional services

(iii) For Asian Americans and/or Native Americans - 50 percent of 2 percent = 1 percent and 50 percent of 1.50 percent = 0.75 percent for construction related professional services

(iv) For Women - 50 percent of 8 percent = 4 percent and 50 percent of 7 percent = 3.50 percent for construction related professional services

(3) For October 1, 2007/September 30, 2008:

(i) For African Americans - 25 percent of 7 percent = 2 percent and 25 percent of 7 percent = 1.75 percent for construction related professional services

(ii) For Hispanic Americans - 25 percent of 2 percent = .5 percent and 25 percent OF 1.50 percent = 0.38 percent for construction related professional services

(iii) For Asian Americans and/or Native Americans - 50 percent of 2 percent = .5 percent and 25 percent of 1.50 percent = 0.38 percent for construction related professional services

(iv) For Women - 25 percent of 8 percent = 2 percent and 25 percent of 7 percent = 1.75 percent for construction related professional services

(d) *Sunset and Review Provision.* This Section 126.611 shall sunset on September 30, 2009, provided, however, that Council shall, prior to the Sunset date, review the JSEB program and this Section 126.611, and determine whether City procurement with race and gender conscience goals have been achieved. If by September 30, 2009, the City has not achieved the goals outlined in Section 126.611(a), the City shall conduct a disparity study and complete an analysis of the Program. The goals outlined in Section 126.611(a) shall continue until the disparity study and analysis is completed. Then the City shall consider legislation to modify the goals as applicable.

(Ord. 2004-602-E, § 4)

### **Sec. 126.612. Jacksonville Small Emerging Business goals.**

The following goals are for JSEBs in the Program.

(a) The overall small business goal is at least 20 percent, such that the City shall award at least 20 percent of total City contracts to JSEBs; provided that such awards do not violate state or federal law and provided further that there are certified JSEBs to perform the work. The Director shall award at least 50 percent of the JSEBs contracts through direct contracting.

(b) It is expected that the provisions of the race and gender neutral program will be sufficient to provide the remaining contracts to achieve the goal for the race and gender contract goals set forth above.

(Ord. 2004-602-E, § 4)

### **Sec. 126.613. Contract pre-award compliance procedures.**

(a) For all solicitations, the bidder/proposer shall submit a Schedule of Participation detailing all JSEB, MBE, and non-JSEB subcontractors from which the bidder/proposer solicited bids or quotations. The entities comprising the JSEB goal of at least 20 percent, or the MBE goals as set forth supra, shall be identified, or the basis for a waiver for good faith efforts shall be provided with the bid or proposal. The lists of JSEBs or MBEs posted on the City's website establishes the group from which a bidder/proposer must solicit subcontractors under this program. The Schedule of Participation shall be due at the time set out in the solicitation documents.

(b) Any agreement between a bidder/proposer that prevents a JSEB or MBE from providing quotations to other bidders/proposers is prohibited.

(c) Joint ventures shall only be allowed under this Program in cases that demonstrate legitimate, detailed JSEB partnerships with non-JSEBs, proof of which shall be provided to the Director.

(d) Where the bidder/proposer cannot achieve the Project Specific Goal(s), the Director will determine whether Good Faith Efforts have been made. In making this determination, the Director will consider, at a minimum, a matrix to determine the bidder/proposer's efforts to:

(1) Solicit certified subcontractors in the scopes of work of the contract. The bidder/proposer shall provide interested JSEBs or MBEs with timely, adequate information about the plans, specifications, and other such requirements of the contract to facilitate their quotation. The bidder/proposer must follow up initial solicitations with interested JSEBs and MBEs.

(2) Identify a portion of the work available to JSEBs and MBEs consistent with their availability.

(3) Negotiate in good faith with interested JSEBs and MBEs. Price sharing is prohibited in negotiations. Evidence of such negotiation includes the names, addresses, and telephone numbers of JSEBs and MBEs that were contacted; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and why agreements could not be reached with them. The ability or desire of a bidder/proposer to perform the work of a contract with its own organization does not relieve it of the responsibility to make Good Faith Efforts on all scopes of work subject to subcontracting.

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

(Ord. 2004-602-E, § 4)

#### **Sec. 126.614. Good faith efforts in lieu of meeting Program goals.**

For a contract with MBE or JSEB subcontracting goals, a contractor must comply by either meeting the goal or demonstrating Good Faith Efforts to achieve it that are consistent with the requirements set forth in this Chapter. In determining whether a bidder/proposer has made Good Faith Efforts, in lieu of achieving the stated goals, the Director shall consider all relevant factors, which include:

(a) The ability of other bidders/proposers in meeting the Project Specific Goal(s) may be considered.

(1) A contact log showing the name, address, and contact number (phone or fax) used to contact the proposed certified subcontractors, nature of work requested for quote, date of contact, person making the effort;

(2) The description of work for which a quote was requested;

(3) The amount of the quote given, if one was obtained;

(4) The list of divisions of work not subcontracted and an explanation why not; and

(5) Subcontractor information as requested by forms developed by the Department.

(b) For contracts other than for construction related professional services, a signed letter of intent from all listed JSEBs and MBEs describing the work, materials, equipment or services to be performed or provided by the JSEBs and MBEs and the agreed upon dollar value shall be due with the bid documents but in no event before the expiration of 48 hours after the submission of the bid.

(c) For construction related professional services contracts, the highest ranked proposer must deliver at the time of fee and contract negotiations signed letters of intent between itself and the JSEBs and MBEs(s) to be utilized.

If the Director finds that a bidder/proposer did not make sufficient Good Faith Efforts, the Director shall communicate this finding to the User Department and recommend that the bid/proposal be rejected. A bidder/proposer may protest this determination pursuant to the City's bid protest procedures.

(Ord. 2004-602-E, § 4)

### **Sec. 126.615. Continuing obligations of JSEBs and MBEs and graduation.**

The certification status of all JSEBs and MBEs shall be reviewed annually by the Director through re-certification application. Failure of the firm to seek re-certification by filing the necessary documentation with the Department within 90 days from the date of receipt of written notification from Department may result in de-certification.

- (a) It is the responsibility of the JSEB or MBE 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 firm's de-certification and preclusion from future participation.
- (b) The JSEB or MBE that no longer meets certification may be decertified at any time.
- (c) A firm, or qualifying individuals, who have participated in the JSEB program for a total of 15 years shall graduate from the Program.

(Ord. 2004-602-E, § 4)

### **Sec. 126.616. De-certification, Denial and appeal procedure.**

(a) The Director may move to decertify a JSEB or MBE that repeatedly fails to honor quotations in good faith, or otherwise comply with Program requirements.

(b) A firm that has been denied certification or re-certification or been decertified may protest the denial or de-certification as follows:

(1) Within 15 days of receipt of denial of certification or re-certification, or notice of intent to decertify, the firm may protest such action in writing to the Director.

(2) An informal hearing shall be held by the Director, at which the firm may present additional facts and evidence in support of its eligibility. The Director may request the attendance of any witness and production of any documents concerning the applicant's affairs. The applicant's failure to comply promptly with these requests may be grounds for denial of the appeal.

(3) The Director shall determine the firm's eligibility on the basis of the information provided at the hearing. The Director's written decision shall be communicated to the firm within ten days of the hearing.

(4) The applicant may appeal the Director's decision in writing to the City's Government Awards Committee or the Professional Services Evaluation Committee within five days of receipt of the determination. The Committee shall hold a hearing within ten days of receipt of the written notice of appeal, and render a final decision within 30 days of the hearing. The presumption that the decertified firm is eligible shall remain in effect until the City renders a final decision.

(5) A firm denied or found to be ineligible may not apply for certification for one year after the effective date of the final decision.

(c) A third party may challenge the eligibility of an applicant for certification or a certified firm. The presumption that the challenged firm is eligible shall remain in effect until the City renders a final decision.

(1) The challenge shall be made in writing to the Director and shall include all information relied upon by the challenging party.

(2) The Director shall notify the challenged firm in writing of the challenge, identify the challenging party and summarize the grounds for the challenge. The notice may also require the challenged firm to provide the Director, within a reasonable time, any information requested to permit the Director to evaluate the eligibility of the firm.

(Ord. 2004-602-E, § 4)

### **Sec. 126.617. Project goals.**

(a) The Director shall establish Project Specific Goal(s) based on the availability of at least normal industry practice, as determined in consultation with the User Department, the availability of at least two

JSEBs or MBEs to perform the functions of those individual contracts and the City's utilization of such to date. Project Specific Goal(s) may be set for African Americans, Hispanic, Asian, and Native-American or in an aggregation of groups of such individuals, or for such individuals as a whole.

(b) Project Specific Goal(s) shall not be set on emergency contracts as defined by City Code or for purchases made in conjunction with the State although JSEBs and MBEs shall be considered for such sole-source or emergency procurements if qualified.

(Ord. 2004-602-E, § 4)

#### **Sec. 126.618. Pre-award review of compliance with numerical goals, including good faith efforts.**

(a) The Director shall timely review the Schedule of Participation prior to award, including the scope of work and the letters of intent from JSEBs or MBEs. The Director may request clarification in writing of items listed in the Schedule of Participation, provided such clarification shall not include the opportunity to augment listed JSEBs or MBEs participation or Good Faith Efforts. The Director shall review all submittals and document the participation of each submittal.

(b) If the Director determines that the Schedule of Participation demonstrates that the Project Specific Goal(s) have been achieved or Good Faith Efforts made, and the User Department concurs, the Director shall recommend award to the General Awards Committee. The Director shall verify with each JSEB that a contract in the specified amount has been awarded.

(Ord. 2004-602-E, § 4)

#### **Sec. 126.619. Contract performance compliance procedures.**

(a) Upon award of a contract by the City that includes Project Specific Goal(s), the prompt pay obligations in the City's contract with the prime contractor, and the contract between the prime contractor and the subcontractors and subconsultants named in response to this Act become covenants of performance by the contractor in favor of the City.

(b) The contractor shall provide a listing of all JSEBs, MBEs and any other subcontractors to be used in the performance of the contract, and subcontractor payment information to the City with each request for payment submitted to the City. The Director and the User Department shall monitor subcontractor participation during the course of the contract and shall have reasonable access to all contract-related documentation held by the contractor.

(c) The contractor cannot make changes to the Schedule of Participation or substitute subcontractors named in the Schedule of Participation without the prior written approval of the Director upon recommendation of the Ombudsman. Unauthorized changes or substitutions shall be a violation of this chapter, and may constitute grounds for rejection of the bid or proposal or cause termination of the executed contract for breach, the withholding of payment and/or subject the contractor to contract penalties or other sanctions.

(1) All requests for changes or substitutions of the subcontractors named in the Schedule of Participation shall be made to the Ombudsman with a copy to the Director in writing, and shall clearly and fully set forth the basis for the request. A contractor shall not substitute a subcontractor or perform the work designated for a subcontractor with its own forces unless and until the Director approves such substitution in writing. A contractor shall not allow a substituted subcontractor to begin work until both the Director and the City's project manager have approved the substitution.

(2) 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 Schedule of Participation. Bid shopping is prohibited. The contractor must bring this dispute to the Ombudsman for resolution.

(3) The Director's final decision whether to permit or deny the proposed substitution, and the basis therefore, will be communicated to the parties in writing by the Director, with a copy to the COO.

(4) If the City requires the substitution of a subcontractor listed in the Schedule of Participation, the contractor shall undertake Good Faith Efforts to fulfill the Schedule of Participation if the Project Specific Goals would not otherwise be met. If the Goal(s) cannot be reached and Good Faith Efforts have been made, the contractor may substitute with a non-JSEBs or MBEs.



(d) If a Contractor plans to hire a subcontractor on any scope of work that was not previously disclosed in the Schedule of Participation, the contractor shall obtain the approval of the Director to modify the Schedule of Participation and must make Good Faith Efforts to ensure that JSEBs or MBEs have a fair opportunity to bid on the new scope of work.

(e) Changes to the scopes of work shall be documented by the User Department at the time they arise, to establish the reasons for the change and the effect on achievement of the Project Specific Goal(s).

(Ord. 2004-602-E, § 4)

### **Sec. 126.620. Other provisions of purchasing code to apply.**

Except as provided in this part to implement the Program, the provisions of Parts 1, 2, 3 and 4, of Chapter 126, apply. The Director shall establish rules that specify the manner in which conflicts between the provisions of Parts 1, 2, 3, or 4 of this chapter are to be resolved.

(Ord. 2004-602-E, § 4)

### **Sec. 126.621. JSEB and Program eligibility.**

(a) Only businesses that meet the criteria of JSEBs and MBEs may be certified for participation in the Program. The applicant has the burden of persuasion.

(b) Only an independent firm may be certified as a JSEB. An independent business is one whose viability does not depend on its relationship with another firm. Recognition of an applicant as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is independent. The Director must determine that an owner has an independent business in order to certify the business as a JSEB. In doing so, the Director will take into account all reasonable criteria for reviewing control of a business.

(c) The certification status of all JSEBs and MBEs shall be reviewed annually by the Department. Failure of the firm to seek re-certification by filing the necessary documentation with the Department within 60 days from the date of receipt of written notification from the Department may result in de-certification.

(d) It is the responsibility of the JSEBs and MBEs 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 firm's de-certification.

(e) The Director shall decertify a firm that does not meet the eligibility criteria.

(f) A JSEB or MBE may receive no more than five prime contracts set aside per year or an aggregate total prime contracts set aside per year in the amount of \$4,000,000, which ever is greater.

(g) Joint ventures between JSEBs and non-JSEBs are not eligible for the Program, unless they provide structured, detailed, mentoring opportunities, proof of which shall be provided to the Director.

(Ord. 2004-602-E, § 4)

### **Sec. 126.622. Counting subcontracting participation of JSEBs and MBEs.**

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

(b) The entire amount of fees or commissions charged by a JSEBs and MBEs 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, provided the fee is reasonable and not excessive as compared with fees customarily charged for similar services.

(c) If a firm ceases to be a certified JSEBs and MBEs during a contract, the dollar value of work performed under a contract with that firm after it has ceased to be certified shall be counted in the City's

internal accounting. No contractor shall be penalized in any way as a result of the failure of a project to achieve its Project Specific Goals because of the operation of this Section.

(d) In determining achievement of a Subcontracting Participation Goal, the participation of a JSEB or MBE shall not be counted until the amount being counted has been paid to that entity.

(e) Achievement of Project Specific Goal(s) shall be evaluated following the completion of the project.

(Ord. 2004-602-E, § 4; Ord. 2005-944-E, § 1)

### **Sec. 126.623. Acts which may result in expulsion from the JSEB program; fines, and criminal offenses.**

(a) The following violations of this chapter are unlawful and may be prosecuted in Municipal Court as Class D offenses:

(1) Providing information to the City in connection with an application for or challenge to certification, re-certification or de-certification as JSEBs or MBEs that the providing party knew or should have known to be false or misleading.

(2) Providing information to the City in connection with submission of a bid, responses to requests for qualifications or proposals, Good Faith Efforts documentation, post-award compliance, or other Program operations that the providing party knew or should have known to be false or misleading.

(3) Falsely attesting to re-certification under this program.

(4) Substituting JSEBs or MBEs subcontractors without first receiving approval for such substitutions.

(5) Committing any other violations of the provisions of this chapter.

(6) Submitting false documentation for payments.

(b) A bidder, proposer, contractor, or subcontractor is subject to withholding of payments under the contract, termination of the contract for breach, contract penalties, de-certification as a JSEB, or being barred or deemed non-responsive in future City solicitations and contracts for up to two years, if it is found to have:

(1) Provided information in connection with an application for certification or re-certification that it knew or should have known to be false or misleading.

(2) Provided information in connection with the submission of a bid or proposal or documentation of Good Faith Efforts, post-award compliance, or other Program operations that it knew or should have known to be false or misleading.

(3) Failed in bad faith to fulfill the Subcontracting Participation Goal, thereby materially breaching the contract.

(4) Repeatedly failed to comply in good faith with substantive provisions of this chapter.

(Ord. 2004-602-E, § 4)

### **Sec. 126.624. Annual Budget Appropriation.**

The JSEB and MBE programs, as provided for in this Chapter, shall be funded at a minimum of \$500,000 or greater excluding staff.

(Ord. 2004-602-E, § 4)