

STATE OF SOUTH CAROLINA
COUNTY COUNCIL FOR RICHLAND COUNTY
ORDINANCE NO. 016-14HR

JEANNETTE W. ...
C.C.P. & G.
2014 JUN 25
RICHLAND COUNTY
FILED

AN ORDINANCE AMENDING THE RICHLAND COUNTY CODE OF ORDINANCES, CHAPTER 2, ADMINISTRATION; ARTICLE X, PURCHASING; DIVISION 7, SMALL LOCAL BUSINESS ENTERPRISE PROCUREMENT REQUIREMENTS; SO AS TO AMEND CERTAIN SECTIONS REFERENCING SIZE STANDARDS TO DELETE SUCH STANDARDS FROM THE ORDINANCE AND REPLACE WITH LANGUAGE ALLOWING THE RICHLAND COUNTY COUNCIL TO SET SUCH STANDARDS IN A SEPARATE "SLBE SCHEDULE OF SIZE STANDARD ELIGIBILITY REQUIREMENTS"; AND AMENDING THE RICHLAND COUNTY CODE OF ORDINANCES, CHAPTER 2, ADMINISTRATION; ARTICLE X, PURCHASING; BY ADDING A NEW DIVISION ENTITLED 8, COMMERCIAL NONDISCRIMINATION ORDINANCE.

WHEREAS, on September 17, 2013, Richland County Council enacted the Small Local Business Enterprise Procurement Requirements (Richland County Code of Ordinances sections 2-639 et seq.); and

WHEREAS, as a part of said ordinance, Richland County Council adopted certain size standards for eligible businesses, making the standards part of the ordinance language; and

WHEREAS, Richland County Council now desires to remove the size standards from the ordinance to allow for greater flexibility in amending the size standards commensurate with data gathered during Program implementation; and

WHEREAS, Richland County Council desires to adopt a separate "SLBE Schedule of Size Standard Eligibility Requirements," which it will do concurrently with third reading of this ordinance;

NOW THEREFORE, pursuant to the authority granted by the Constitution and the General Assembly of the State of South Carolina, BE IT ENACTED BY THE COUNTY COUNCIL FOR RICHLAND COUNTY:

SECTION I. The Richland County Code of Ordinances; Chapter 2, Administration; Article XI, Inquiries and Investigation; Section 2-647, Short title; is hereby renumbered to read as Section 2-649, and all remaining paragraphs in Article XI are renumbered in appropriate chronological order.

SECTION II. The Richland County Code of Ordinances, Chapter 2, Administration; Article X, Purchasing; Division 7, Small Local Business Enterprise Procurement Requirements; Section 2-639, General Provisions; Subsection (c), Definitions; is hereby amended by the insertion of the following language, to be alphabetized accordingly:

SLBE Schedule of Size Standard Eligibility Requirements – a document, separate and apart from this ordinance, adopted by the Richland County Council, which defines the SLBE size standard eligibility requirements, in number of employees and annual gross revenue dollars, applicable to the SLBE Program. The size standards shall be reviewed not less than annually and adjusted periodically by the Richland County Council to meet changes in market conditions.

SECTION III. The Richland County Code of Ordinances, Chapter 2, Administration; Article X, Purchasing; Division 7, Small Local Business Enterprise Procurement Requirements; Section 2-639, General Provisions; Subsection (c), Definitions; Subparagraph entitled Small Business Enterprise ("SBE"); is hereby amended to read as follows:

Small Business Enterprise ("SBE") - a small business enterprise is any for-profit enterprise as defined by South Carolina Code of Laws, Title 33, Chapter

31 that is not a broker, that is independently owned and operated, that is not a subsidiary of another business, and that is not dominant in its field of operation; and that also meets the size standard limitations as adopted and periodically amended in the SLBE Schedule of Size Standard Eligibility Requirements. Once the gross annual receipts of a business exceed the gross sales average limits, it should no longer be eligible to benefit as an SLBE firm and should be graduated from the program. The size standards in number of employees and annual gross revenue dollars should be reviewed annually and adjusted periodically to meet economic changes. Joint ventures must be certified on a bid-by-bid basis. The joint venture shall not be subject to the average gross receipts and employee limits imposed by this section. However, each individual business participating in the joint venture must be certified by the Procurement Department as an SLBE.

SECTION IV. The Richland County Code of Ordinances, Chapter 2, Administration; Article X, Purchasing; Division 7, Small Local Business Enterprise Procurement Requirements; Section 2-641, Eligibility for the SLBE Program; Subsection (a)(2); is hereby amended to read as follows:

2. It meets size standard eligibility requirements for Small Business Enterprises as adopted and periodically amended in the SLBE Schedule of Size Standard Eligibility Requirements.

Once the gross annual revenues of a business exceed the three-year average gross annual revenue limits, it should no longer be eligible to benefit as an SLBE firm and should be permanently graduated from the program. The size standards in number of employees and annual gross revenue dollars should be reviewed annually and adjusted periodically to meet changes in market conditions. Joint ventures must be certified on a bid-by-bid basis. The joint venture itself shall not be subject to the size standard limitations imposed by this section. However, each individual business participating in the joint venture must be certified by the Procurement Department as an SLBE in order for the joint venture to receive the benefits of the SLBE program.

SECTION V. The Richland County Code of Ordinances, Chapter 2, Administration; Article X, Purchasing; is hereby amended by the creation of a new Division, to read as follows:

DIVISION 8: COMMERCIAL NONDISCRIMINATION ORDINANCE

Sec. 2-647. General Provisions.

(a) Statement of Policy.

It is the policy of the County not to enter into a contract or to be engaged in a business relationship with any business entity that has discriminated in the solicitation, selection, hiring or commercial treatment of vendors, suppliers, subcontractors or commercial customers on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, gender identity, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's or commercial customer's employees or owners; provided that nothing in this policy shall be construed to prohibit or limit otherwise lawful efforts to remedy the effects of discrimination that have occurred or are occurring in the relevant marketplace.

(b) Implementation.

The Small Local Business Enterprise Division shall implement this Ordinance by periodically conducting outreach and distributing educational materials to the County's contracting and vendor community and related trade associations to advise such contractors, vendors and prospective Offerors of this Ordinance and

the procedures to be followed in submitting complaints alleging violations of this Ordinance. The Director of Procurement, in consultation with the County Attorney, shall promulgate regulations and procedures to establish due process for the filing of complaints pursuant to this Ordinance, as well as for the investigation of complaints, the conduct of administrative hearings, the issuance of factual determinations, the establishment of an appeals process, and the establishment and application of sanctions and other remedies pursuant to this Ordinance. In addition, the County Administrator or designee, the Director of Procurement, and the County Attorney's Office shall insure that the following commercial nondiscrimination clause language is set forth in, and incorporated into, all the County contracts that result from formally advertised solicitations:

1. Every contract and subcontract shall contain a nondiscrimination clause that reads as follows:

As a condition of entering into this agreement, the Contractor represents and warrants that it will comply with the County's Commercial Nondiscrimination Ordinance, as described under Section 2-647 of the Richland County Code of Ordinances. As part of such compliance, the Contractor shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, gender identity, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the Contractor retaliate against any person for reporting instances of such discrimination. The Contractor shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the County's relevant marketplace. Moreover, the Contractor affirms that it will cooperate fully with any County inquiries regarding Contractor's compliance with this Ordinance. The Contractor understands and agrees that a material violation of this clause shall be considered a material breach of this agreement and may result in termination of this agreement, disqualification of the Contractor from participating in County contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

2. All Formal Solicitations issued for County contracts shall include the following certification to be completed by the Offeror:

The undersigned Offeror hereby certifies and agrees that the following information is correct:

In preparing its response on this project, the Offeror has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in "discrimination" as defined in the County's Commercial Nondiscrimination Ordinance, Section 2-647; to wit: discrimination in the solicitation, selection or commercial treatment of any subcontractor, vendor, supplier or commercial customer on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, gender identity, or on the basis of disability or other unlawful forms of discrimination. Without limiting the foregoing, "discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination". Without limiting any other provision of the solicitation for responses on this project, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the County to reject the response submitted by the Offeror

on this project, and terminate any contract awarded based on the response. As part of its response, the Offeror shall provide to the County a list of all instances within the immediate past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of South Carolina that the Offeror discriminated against its subcontractors, vendors, suppliers or commercial customers, and a description of the status or resolution of that complaint, including any remedial action taken. As a condition of submitting a response to the County, the Offeror agrees to comply with the County's Commercial Nondiscrimination Ordinance, Section 2-647 of the Richland County Code of Ordinances, and further agrees to fully cooperate with the County in its inquiries relating to compliance with this Ordinance.

SECTION VI. The Richland County, South Carolina, SLBE Schedule of Size Standard Eligibility Requirements (the "Schedule") attached to this Ordinance is hereby adopted. Amendments to this Schedule shall hereafter be approved by Resolution of Richland County Council duly and lawfully adopted.

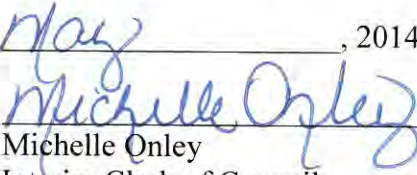
SECTION VII. Severability. If any section, subsection, or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

SECTION VIII. Conflicting Ordinances Repealed. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

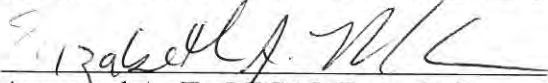
SECTION IX. Effective Date. This ordinance shall be effective from and after May 6, 2014.

RICHLAND COUNTY COUNCIL

BY: 
Norman Jackson, Chair

Attest this 27th day of
May, 2014.

Michelle Onley
Interim Clerk of Council

RICHLAND COUNTY ATTORNEY'S OFFICE


Approved As To LEGAL Form Only.
No Opinion Rendered As To Content.

First Reading: March 18, 2014
Second Reading: April 1, 2014
Third Reading: May 6, 2014
Public Hearing: May 6, 2014

Richland County, South Carolina

SLBE SCHEDULE OF SIZE STANDARD ELIGIBILITY REQUIREMENTS

1. Small Business Enterprise (“SBE”)

A Small Business Enterprise, as defined by Section 2-639 of the Richland County Code of Ordinances, effective May 6, 2014, shall have the following size limitations:

a. The SBE must not have employed more than **fifty (50)** full-time employees at any one time during the last three years; and

b. The SBE must have annual gross revenues within its largest primary NAICS commodity code as averaged over its most recent past three fiscal years of not more than **\$7 million** for construction firms, specialty trade contractors, and manufacturing firms; not more than **\$3 million** for architectural firms; not more than **\$3 million** for professional services firms (e.g., scientific, real estate, insurance, accounting, legal, etc.); not more than **\$2.5 million** for engineering firms; and not more than **\$2 million** for wholesale operations, retail firms, and all other services firms (e.g., truck transportation, administrative support services, repair and maintenance services).

c. If a business has not existed for 3 years, the employment and gross sales limits described above shall be applied based upon the annual averages over the course of the existence of the business not to exceed the three years. Once the gross annual receipts of a business exceed the gross sales average limits, it should no longer be eligible to benefit as an SLBE firm and should be graduated from the program.

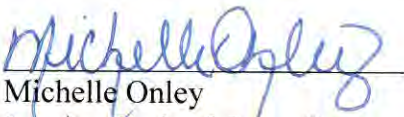
2. Eligibility for the SLBE Program

To be certified as being eligible to benefit from, the SLBE Program as an “SLBE” firm or an “SLBE Joint Venture”, per Section 2-641(a)(2) of the Richland County Code of Ordinances, a firm (or each member firm of the Joint Venture) must comply with the size standards outlined in section 1 above. To be certified as being eligible to benefit from the SLBE Program as an “Emerging SLBE” firm, a firm must comply with the requirements of Sections 2-641 (e)(1) – (e)(4) of the Richland County Code of Ordinances.

ADOPTED THIS the 6th day of May, 2014.



Norman Jackson, Chair
Richland County Council

Attest: 
Michelle Onley
Interim Clerk of Council