

1 **OGC DRAFT - 3/16/2021 Finance & Rules Committee Meetings**

2
3 Council Member Pittman offers the following Substitute to file no.
4 2021-117:

5
6 Co-Introduced by Council Members Pittman, Freeman and Dennis:

7
8 **ORDINANCE 2021-117**

9 AN ORDINANCE AMENDING CHAPTER 24 (FINANCE AND
10 ADMINISTRATION DEPARTMENT), PART 6, SECTION
11 24.605 (EQUAL BUSINESS OPPORTUNITY OFFICE
12 FUNCTIONS), *ORDINANCE CODE*; AMENDING CHAPTER
13 126 (PROCUREMENT CODE), PART 1 (GENERAL
14 REGULATIONS), SECTIONS 126.102 (DEFINITIONS)
15 AND 126.114 (BUY AMERICAN PREFERENCE IN
16 CONTRACTS FOR GOODS), *ORDINANCE CODE*; AMENDING
17 CHAPTER 126 (PROCUREMENT CODE), PART 2
18 (SUPPLIES, CONTRACTUAL SERVICES, AND CAPITAL
19 IMPROVEMENTS), SECTION 126.201 (GENERAL),
20 *ORDINANCE CODE*; REPEALING CHAPTER 126
21 (PROCUREMENT CODE), PART 6A (SMALL BUSINESS
22 CAPITAL, BONDING, AND OUTREACH PROGRAM) AND
23 PART 6B (JACKSONVILLE SMALL EMERGING BUSINESS
24 PROGRAM), *ORDINANCE CODE*; CREATING A NEW
25 CHAPTER 126, PART 6 (JACKSONVILLE SMALL
26 EMERGING BUSINESS PROGRAM), SUBPART A (GENERAL
27 PROVISIONS), SUBPART B (PROGRAM
28 ADMINISTRATION), SUBPART C (PROGRAM SUPPORT
29 SERVICES; MARKETING AND OUTREACH; DISPARITY
30 STUDY UPDATE), SUBPART D (PROGRAM ELIGIBILITY,
31 PROCEDURES, AND OTHER REQUIREMENTS); REPEALING

1 ORDINANCE 2019-759-E (AN ORDINANCE APPROVING
2 AND ADOPTING REVISED UNDERWRITING GUIDELINES
3 FOR THE JSEB ACCESS TO CAPITAL PROGRAM TO
4 CLARIFY PRE-QUALIFICATION CRITERIA AND
5 REQUIRED DOCUMENTATION); PROVIDING FOR
6 CODIFICATION INSTRUCTIONS; PROVIDING AN
7 EFFECTIVE DATE.

8
9 **WHEREAS**, the City of Jacksonville ("City") determined in 2004
10 that growing Jacksonville small and emerging businesses ("JSEBs")
11 was beneficial to the City and its individual residents; and

12 **WHEREAS**, to that end, the City devised the Jacksonville Small
13 Emerging Business Program (the "Program") to address several
14 concerns that were found to impede the growth of small businesses,
15 including bonding issues, access to capital, training, city
16 procurement barriers, and lack of resources for growth; and

17 **WHEREAS**, a Special Committee on the Jacksonville Small &
18 Emerging Business ("Special Committee") was established in August
19 2020 to review the Program and make improvements and
20 recommendations to the Program supported by evidence, disparity
21 studies, and applicable federal and state law; and

22 **WHEREAS**, the Special Committee held multiple meetings and
23 heard from various guest speakers and presenters, including JSEB
24 vendors, prime contractors, the City's Procurement Division, other
25 interested parties, and the public; and

26 **WHEREAS**, a copy of the Special Committee's Final Report is
27 attached hereto as **Exhibit 1**; and

28 **WHEREAS**, based on the Special Committee's review of the
29 Program, the City desires to further improve certain aspects of the
30 Program to better assist JSEBs in growing and graduating from the
31 Program; now therefore

1 BE IT ORDAINED by the Council of the City of Jacksonville:

2 Section 1. Amending Chapter 24 (Finance and
3 Administration Department), Section 24.603 (Duties of Chief of
4 Procurement), Ordinance Code. Chapter 24 (Finance and
5 Administration Department), Part 6 (Procurement Division), Section
6 24.605 (Equal Business Opportunity Office Functions), Ordinance
7 Code, is hereby amended to read as follows:

8 CHAPTER 24 - FINANCE AND ADMINISTRATION DEPARTMENT

9 * * *

10 PART 6. PROCUREMENT DIVISION

11 * * *

12 Sec. 24.605. - Equal Business Opportunity Office functions.

13 The Equal Business Opportunity Office ("EBO Office") is hereby
14 an office under the Procurement Division, and the responsibilities
15 set forth below shall be managed by the JSEB Administrator. All
16 employees within the EBO ~~office~~ Office shall be responsible for
17 deployment and administration of Chapter 126, Part 6, and shall:

18 * * *

19 (f) Provide support services to assist ~~certified vendors~~
20 JSEBs in their efforts to secure training, bonding and access
21 to capital pursuant to Chapter 126, Parts 6A and 6B, ~~Ordinance~~
22 of the Code;

23 (g) Provide annual training, together with the Chief of
24 Procurement, to department heads and divisions chiefs, or
25 their designees, and applicable staff of City boards and
26 commissions pursuant to Chapter 126, Part 6B, ~~Ordinance~~ of the
27 Code; and

28 * * *

29 Section 2. Amending Chapter 126 (Procurement Code), Part
30 1 (General Regulations), Sections 126.102 (Definitions) and 126.114
31 (Buy American Preference in Contracts for Goods), Ordinance Code.

1 Chapter 126 (Procurement Code), Part 1 (General Regulations),
2 Sections 126.102 (Definitions) and 126.114 (Buy American Preference
3 in Contracts for Goods), Ordinance Code, are hereby amended to read
4 as follows:

5 **CHAPTER 126 - PROCUREMENT CODE**

6 * * *

7 **PART 2. PROCUREMENT DIVISION**

8 * * *

9 **Sec. 126.102. - Definitions.**

10 As used in this Chapter:

11 * * *

12 (h) Local bidder means a bidder who maintains a permanent place of
13 business in the City and is a separate and distinct term from that
14 used in Part 6A and 6B, herein, which contains differing
15 requirements. If, with respect to a purchase or contract, there
16 shall be no local bidder within the City, the term local bidder
17 shall include a bidder whose principal office is located in and
18 whose principal business is conducted in the State of Florida.

19 * * *

20 **Sec. 126.114. - Buy American Preference in Contracts for Goods.**

21 * * *

22 (b) *Exemptions.* The provisions of this section do not apply to:

23 * * *

24 8. Contracts awarded pursuant to Jacksonville Small Emerging
25 Business Program, as provided in Chapter 126, Part 6B, ~~Chapter~~
26 ~~126, Ordinance of the~~ Code, including those contracts where a
27 low bidder is a prime JSEB contractor on a non-set aside bid.

28 * * *

29 **Section 3. Amending Chapter 126 (Procurement Code), Part**
30 **2 (Supplies, Contractual Services, and Capital Improvements),**
31 **Section 126.201 (General), Ordinance Code.** Chapter 126 (Procurement

1 Code), Part 2 (Supplies, Contractual Services, and Capital
2 Improvements), Sections 126.201 (General), Ordinance Code, is
3 hereby amended to read as follows:

4 * * *

5 (b) *Bid bond and/or security.* Except as otherwise provided
6 herein, all bids under this Part 2 shall be submitted in
7 sealed form to the Chief, who may require that each bid be
8 accompanied by a bid security in the form of a certified or
9 cashier's check or bid bond in the amount as shall be
10 prescribed in the invitation for bid. The purpose of bid
11 security is to discourage the withdrawal of bids, to encourage
12 that bidders comply with the instructions and/or requirements
13 of the invitation for bids, and that the apparent low bidder
14 will enter into a binding contract to perform the work in
15 accordance with the bid documents and the apparent low
16 bidder's bid proposal. Bid securities ensure that a certain
17 amount of money will be paid in the event that an apparent low
18 bidder fails to abide by the instructions and/or requirements
19 of the invitation for bids or fails to enter into a formal
20 contract pursuant to the same. As such, unless otherwise
21 permitted by the Chief, bid securities shall not be discharged
22 until a contract has been executed and a performance bond
23 accepted in lieu of the bid securities. In lieu of the
24 furnishing of surety with each individual transaction, bidders
25 who regularly do business with the City shall be permitted to
26 file with the Chief an annual or continuing bid bond in an
27 amount established by the Chief. For projects with a value
28 under \$500,000: (i) bid bonds shall not be required for
29 ~~certified JSEBs and MBEs (which, by definition in 6B, includes~~
30 ~~minority and women owned businesses)~~, as defined in Chapter
31 126 Part 6; and (ii) the Chief shall have the discretion to

1 waive the requirement for bid bonds where there is a written
2 determination that the imposition of a bid bond may detract
3 from competition without adding a material benefit to the
4 City.

5 * * *

6 (g) Formal contract. The Mayor may require the successful bidder
7 to promptly execute a formal contract approved as to its form,
8 terms and conditions, and legal sufficiency by the Office of
9 General Counsel and to execute and deliver to the Chief a good and
10 sufficient payment and/or performance bonds in a form approved by
11 the Office of General Counsel, in an amount equal to 100 percent of
12 the contract price of a capital improvement project and in an
13 amount established by the Chief for all other projects, subject to
14 the discretion of the GGAC or as otherwise provided herein, and
15 executed by a surety company authorized to do business in Florida;
16 however, a successful bidder who is awarded a formal contract for
17 equal to or less than the discretionary threshold payment and
18 performance bond exemption or waiver amounts indicated set forth in
19 F.S. § 255.05(1)(a), Florida Statutes, for a county, city,
20 political subdivision, or public authority, or such higher amount
21 as may be permitted by law Section 18.11 of the City Charter (the
22 "Discretionary Bond Threshold"), may, at the discretion of the
23 GGAC, upon the request of the using agency and recommendation of
24 the Chief, be exempted from executing the otherwise required
25 payment and performance bonds. Formal contracts shall not be
26 executed and notices to proceed shall not be issued for projects,
27 on which successful bidders are required to provide and/or have not
28 been exempted from providing payment and performance bonds, until
29 such time as the requisite payment and performance bonds have been
30 furnished by the successful bidder. The successful bidder's failure
31 to execute the formal contract and to secure the payment and

1 performance bonds and return the same to the City within the time
2 period set forth in the invitation for bids may result in the
3 successful bidder's forfeiture of the award and forfeiture of the
4 bid security to the City. The award may then be made to the next
5 lowest responsive, responsible bidder or re-advertised as the Chief
6 may elect. For ~~certified~~ JSEBs, as defined in Chapter 126, Part 6,
7 performance bonds shall not be required on City projects with a
8 value equal to or less than the Discretionary Bond Threshold. Final
9 determinations on the need for payment bonds for projects ~~under~~
10 equal to or less than the Discretionary Bond Threshold shall be
11 made by the Chief after determining if there is an alternate form
12 of security or payment method more readily available or
13 appropriate.

14 * * *

15 **Section 4. Repealing Chapter 126 (Procurement Code), Part**
16 **6A (Small Business Capital, Bonding, and Outreach Program) and Part**
17 **6B (Jacksonville Small Emerging Business Program), Ordinance Code.**
18 Chapter 126 (Procurement Code), Part 6A (Small Business Capital,
19 Bonding, and Outreach Program) and Part 6B (Jacksonville Small
20 Emerging Business Program), *Ordinance Code*, are hereby repealed in
21 their entirety. Copies of the repealed Chapter 126, Parts 6A and
22 6B, are attached hereto as **Exhibit 2**.

23 **Section 5. Creating a new Chapter 126 (Procurement Code),**
24 **Part 6 (Jacksonville Small Emerging Business Program), Subpart A**
25 **(General Provisions), Subpart B (Program Administration), Subpart C**
26 **(Program Support Services; Marketing and Outreach), and Subpart D**
27 **(Program Eligibility, Procedures, and Other Requirements),**
28 **Ordinance Code.** Chapter 126 (Procurement Code), Part 6
29 (Jacksonville Small Emerging Business Program), Subpart A (General
30 Provisions), Subpart B (Program Administration), Subpart C (Program
31 Support Services; Marketing and Outreach; Disparity Study Update),

1 and Subpart D (Program Eligibility, Procedures, and Other
2 Requirements), Ordinance Code, are hereby created to read as
3 follows:

4 **CHAPTER 126 - PROCUREMENT CODE**

5 * * *

6 **PART 6. JACKSONVILLE SMALL AND EMERGING BUSINESS PROGRAM**

7 **SUBPART A. GENERAL PROVISIONS**

8 **Sec. 126.601 - Legislative Intent.** It is the intent of the City in
9 enacting this law to provide a comprehensive and robust program to
10 benefit local small and emerging businesses in the City known as
11 the "Jacksonville Small and Emerging Business Program".

12 **Sec. 126.602 - Legislative Findings.**

13 The Council finds and declares that:

14 (1) Several issues impede the progress of small and emerging
15 businesses including, but not limited to, bonding issues,
16 access to capital, education and training, insurance and lack
17 of resources for growth; and

18 (2) Growing Jacksonville small and emerging businesses
19 ("JSEBs") is beneficial to the City and its residents.

20 **Sec. 126.603 - Purpose.** The purpose of the JSEB Program is to
21 support and assist local small and emerging businesses in obtaining
22 direct contracting or subcontracting business opportunities with
23 the City.

24 **Sec. 126.604 - Definitions.** The following words and phrases as
25 used in this Part shall have the following meaning:

26 "Chief" shall mean the Chief of Procurement pursuant to Chapter 24,
27 Part 6 of the Code.

28 "Director" shall mean the Director of Finance pursuant to Chapter
29 24, Part 1 of the Code.

1 "Direct contracting" shall mean any contract between the City and a
2 JSEB that has been awarded to a JSEB as a prime contractor pursuant
3 to Chapter 126 of the Code.

4 "EBO Office" shall mean the Equal Business Opportunity Office
5 established pursuant to Chapter 24, Part 6 of the Code.

6 "front, broker, or pass-through" shall mean a JSEB that is not
7 registered as a supplier or distributor through the Florida
8 Department of Revenue, or a JSEB subcontractor who does not self-
9 perform 100 percent of the subcontractor work pursuant to the
10 Schedule of Participation, or a JSEB prime contractor who does not
11 self-perform at least 40 percent of the work for the project;

12 "JSEB" shall mean a person or entity certified as a "Jacksonville
13 Small and Emerging Business" pursuant to the requirements set forth
14 in Subpart D of this Part 6.

15 "JSEB Administrator" shall mean the individual responsible for
16 administering and managing the JSEB Program pursuant to Chapter 24,
17 Part 6 of the Code.

18 "micro-business JSEB" shall mean a JSEB who has a personal net
19 worth of \$300,000 or less and be a 51 percent majority owner of the
20 business.

21 "Program" shall mean the Jacksonville Small and Emerging Business
22 Program set forth in this Part 6.

23 "Project Specific Goals" shall mean specific JSEB subcontractor
24 participation goals, as set by the JSEB Administrator and Chief of
25 Procurement, that a prime contractor must adhere to in a City
26 awarded contract.

27 "Program Goals" shall mean the goals for the Program set forth in
28 Subpart D herein.

29 "Schedule of Participation" shall mean the bidder/proposer's
30 detailed list of all JSEB and non-JSEB subcontractors from which

1 the bidder/proposer solicited bids or quotations in accordance with
2 Section 126.616 herein.

3 **Sec. 126.605. - Minimum Program Funding Requirement.** Subject to
4 availability of funding, the Program, as provided for in this Part,
5 shall be funded at a minimum of \$500,000, excluding staff, in the
6 annual budget appropriation. A minimum of \$200,000 of such
7 \$500,000 minimum funding requirement shall be used to fund the
8 training programs, community outreach and program marketing set
9 forth in Section 126.610 herein.

10 **SUBPART B. PROGRAM ADMINISTRATION**

11 **Sec. 126.606. - JSEB Administrator.**

12 (a) *Responsibilities.* The JSEB Administrator shall administer and
13 manage the Program, including:

14 (1) Implementing, monitoring, and enforcing the rules and
15 regulations of the Program;

16 (2) Unbundling or breaking larger contracts into smaller
17 components where such actions will facilitate competition and
18 provide opportunities under the Program;

19 (3) Providing information and assistance to JSEBs relating to
20 City procurement opportunities, practices and procedures, and
21 bid and proposal specifications, requirements and
22 prerequisites;

23 (4) Certifying businesses as JSEBs, maintaining certification
24 records, and ensuring that such information is available on
25 the ~~City's Procurement Division~~ Equal Business Opportunity
26 Office website identifying all such ~~certified entities~~ JSEBs;

27 (5) Establishing Project Specific Goals after ensuring that
28 adequate JSEBs are available to do the work;

1 (6) Evaluating prime contractors' achievement of Project
2 Specific Goals or Good Faith Efforts (as defined in Section
3 126.618 herein) to meet Project Specific Goals;

4 (7) Working with City departments to ensure prompt payments to
5 JSEBs for work performed in accordance with Section 126.615
6 herein;

7 (8) Receiving, reviewing, and acting upon complaints and
8 suggestions concerning the Program and creating a complaint
9 form as part of this process that identifies both parties;

10 (9) Providing quarterly open houses to answer questions from
11 Program participants or prospective participants regarding
12 Program operations;

13 (10) Posting all contracting opportunities on the Equal
14 Business Opportunity Office website under "JSEB Program";

15 (11) Identifying all ~~certified companies~~ JSEBs on the Equal
16 Business Opportunity Office website within three business days
17 of certification;

18 (12) Advertising all pre-bid conferences in applicable JSEB
19 newspapers, direct-mail or e-mail notices to JSEBs, as
20 appropriate, and otherwise seek to increase the interest of
21 all JSEBs certified in the scopes of work of the contract;

22 (13) Providing interested JSEBs with timely, adequate
23 information about the plans, specifications and requirements
24 of the contract to allow them to respond to the solicitation
25 either directly or by referral to the City department seeking
26 the procurement;

27 (14) Maintaining a list of JSEBs and posting such list on the
28 Equal Business Opportunity Office website;

1 (15) Adjusting the annual averaged gross receipts for good
2 cause shown, subject to the appeals procedure set forth in
3 126.621 herein;

4 (16) Performing onsite inspections of the JSEB local offices
5 and business locations; and

6 (17) Facilitating and coordinating all aspects of the Program
7 so as to provide Program participants and prospective
8 participants with a primary Program contact.

9 (b) *Department Training.* Each City department, office or board
10 shall identify to the JSEB Administrator the person with the
11 responsibility of ensuring JSEB participation in such department,
12 office or board. Such person shall receive diversity training and
13 shall prepare quarterly reports to the JSEB Administrator
14 identifying for the three month quarter period the extent of non-
15 JSEB and JSEB participation in any procurement within its
16 department, office or board.

17 (c) *Courtesy Application Reviews and Meeting Conferences.* The JSEB
18 Administrator, or his designee, shall provide courtesy reviews of a
19 small business's JSEB application to confirm whether the
20 application has complied with the requirements of this Part. The
21 JSEB Administrator may conduct such courtesy reviews in person or
22 electronically with the small business upon request and
23 appointments shall be scheduled on a first come, first serve basis
24 as time allows. Additionally, the JSEB Administrator, or his
25 designee, may meet with prospective JSEBs or small businesses
26 interested in the Program to provide information regarding the
27 Program's support and outreach services available to JSEBs as set
28 forth in this Part.

29 **Sec. 126.607. - JSEB Monitoring Committee; Annual Program Review.**

1 (a) *Establishment; purpose.* There is established a seven-member
2 JSEB Monitoring Committee ("Committee"), to annually review, in
3 consultation with the JSEB Administrator: (i) the status of the
4 Program Goals, including, but not limited to, the percentage,
5 number, and dollar value of contracts awarded to JSEBs through
6 direct contracting and subcontracts; (ii) the training programs,
7 the "AC Program," and the bond enhancement program required herein;
8 (iii) difficulties or accomplishments of the Program; (iv) a
9 comparison of the achievements under the Program compared with the
10 Program Goals; (v) the maximum threshold amounts for personal net
11 worth and annual averaged gross receipts referenced in Section
12 126.613(c); and (vi) the limitation on the number of program
13 participation years in Section 126.613(c) to determine if such
14 amounts and limitation on the number of years are appropriate for
15 the Program. Based on the Committee's required Program review, the
16 Committee may recommend to the Mayor or City Council amendments to
17 the Program in the form of a report.

18 (b) *Composition; appointments.* The Mayor shall appoint three
19 members of the Committee, and the City Council shall appoint four
20 members. The Committee shall be comprised as follows:

21 (1) one non-JSEB contractor who is a professional engineer or
22 architect appointed by the Mayor;

23 (2) one non-JSEB contractor who is a licensed general
24 contractor appointed by the City Council;

25 (3) two JSEB contractors, one appointed by the Mayor and one
26 appointed by the City Council;

27 (4) two private citizens, one appointed by the Mayor and one
28 appointed by the City Council; and

1 (5) one representative from the Northeast Florida Builders
2 Association, Inc., or similar trade association, appointed by
3 the City Council.

4 Members shall serve for three-year staggered terms. The two non-
5 JSEB contractor members must have a current contract with the City
6 or have had a contract with the City in the past. The Mayor shall
7 appoint a Chair and the Chair shall serve until such a time as
8 another Chair shall be appointed by the Mayor. The Mayor and City
9 Council shall strive to reflect the diversity of Duval County in
10 its appointments; each of the seven members shall be confirmed by
11 City Council.

12 (c) *Meetings; applicable laws.* The Committee shall meet quarterly
13 with the JSEB Administrator, who shall then generate a quarterly
14 report for the Mayor and City Council no later than 14 days after
15 each quarterly meeting. The JSEB Administrator, or his designee,
16 shall provide staff support to the Committee. The JSEB Monitoring
17 Committee shall be governed by Chapters 286 and 112, Part 3,
18 *Florida Statutes*, and Chapters 50 (Boards and Commissions) and 602
19 (Jacksonville Ethics Code), of the Code.

20 **SUBPART C. PROGRAM SUPPORT SERVICES; MARKETING AND OUTREACH;**
21 **DISPARITY STUDY UPDATE**

22 **Sec. 126.608. - Creation of bond enhancement program.**

23 (a) Subject to the availability of funds, the JSEB Administrator
24 shall competitively procure and maintain annually a contract with a
25 third-party contractor or contractors to provide a bond enhancement
26 program for the benefit of JSEBs. The bond enhancement program
27 shall provide support services to assist JSEBs in their efforts to
28 secure performance and payment bonds for public and private
29 contracts. The program shall not provide the underlying bond but
30 shall provide a refined basis for underwriting bonds, small

1 business support services, and contractor monitoring necessary for
2 such bond underwriting, as well as improvement plans for JSEBs who
3 do not qualify.

4 (b) Section 126.201(a)(2) herein provides that JSEBs are not
5 required to submit bid bonds for projects under \$500,000. Section
6 126.201(g) provides that JSEBs may be exempt from obtaining a
7 payment and performance bond for projects that are equal to or less
8 than the "Discretionary Bond Threshold" amount as defined in
9 Chapter 126, Part 2 of the Code.

10 **Sec. 126.609. - Access to capital.**

11 (a) Subject to availability of funds, the City shall create a
12 funding source to assist JSEBs with obtaining access to capital
13 (the "AC Program"). The JSEB Administrator, or a third-party
14 contractor engaged through the JSEB Administrator ("Program
15 Manager"), shall manage the distribution of said funds, in
16 accordance with guidelines developed and approved by the JSEB
17 Administrator in order to ensure proper administration and
18 monitoring and to ensure continuity for the program. Such
19 guidelines may be developed and approved by the JSEB administrator
20 without further Council approval. All funds deposited into the
21 Access to Capital Special Revenue Fund shall be the subject of a
22 permanent and continuing appropriation when used for the purpose of
23 loans to assist JSEBs with obtaining access to capital. In the
24 event that the JSEB Administrator, or his designee, serves as the
25 Program Manager of the AC Program, the Mayor, or his designee, is
26 authorized to execute on behalf of the City all loan agreements and
27 related documents authorized pursuant to the AC Program. In the
28 event a third-party contract serves as the Program Manager, such
29 third-party shall act as an agent of the City and is authorized to
30 execute on behalf of the City all loan agreements and related
31 documents authorized pursuant to the AC Program.

1 (b) The JSEB Administrator shall monitor and enforce the contract
2 for disbursing funds and ensure that JSEBs are receiving funding
3 assistance consistent with this Part.

4 (c) The JSEB Administrator, on a quarterly basis, shall provide a
5 report on the activity in the AC Program for the preceding three-
6 month period. Such reports will be posted on the Equal Business
7 Opportunity Office website.

8 (d) The JSEB Administrator or the Program Manager shall host
9 workshops no less than twice a year to inform potential JSEB
10 participants about available the AC Program.

11 (e) The JSEB Administrator shall provide a quarterly activity
12 report for the preceding three months to the JSEB Monitoring
13 Committee for its use in complying with the reporting requirements
14 pursuant to Section 126.607 herein.

15 **Sec. 126.610. - Training programs; program marketing; community**
16 **outreach.**

17 (a) *Continuing education, training and mentoring programs.* The EBO
18 Office shall be responsible for developing and implementing
19 continuing education, training, and mentoring programs. Such
20 continuing education, training, and mentoring programs may include,
21 but not be limited to, the following topic areas:

22 (1) Requirements related to doing business with the City;

23 (2) Subcontracting documentation requirements;

24 (3) Accounting for the small business;

25 (4) Construction related contractors and subcontractors,
26 including technology, bidding, bonding, and project
27 management;

1 (5) Key management issues such as cash-flow management,
2 business planning, marketing, accounting, record keeping, and
3 human resources management;

4 (6) Business plans, financial plans and continued education
5 plans;

6 (7) Business profile reviews, to include a SWOT (strength,
7 weakness, opportunities, threats) analysis;

8 (8) Mentoring with veteran JSEBs and/or industry leaders; and

9 (9) Business development education.

10 Subject to availability of funds, the EBO Office may procure a
11 third-party contractor or contractors, including, but not limited
12 to, educational institutions, to assist with developing and
13 implementing the education, training, and mentoring programs
14 required under this Section.

15 (b) *Program marketing and community outreach.* The Equal Business
16 Opportunity Office shall be responsible for developing and
17 implementing marketing campaigns, recruitment activities, and
18 scholarship programs to increase the number of JSEBs in the
19 Program. Any funds appropriated for such activities shall be
20 inclusive of scholarships. The Equal Business Opportunity Office
21 shall also engage in community outreach by hosting small business
22 program workshops regarding the Program and the support services
23 available to prospective JSEBs. Additionally, the Equal Business
24 Opportunity Office shall survey JSEBs every two years on a survey
25 form approved by the JSEB Monitoring Committee to ascertain what
26 education, training and mentoring programs JSEBs need most. The
27 Equal Business Opportunity Office shall consider such survey
28 results in determining which education, training, and mentoring
29 programs to pursue under this Section.

1 **Sec. 126.611. - Insurance program review.** The City's Risk Manager
2 shall prepare a report on available insurance programs for Florida
3 small businesses and make recommendations regarding methods or
4 programs to assist JSEBs in obtaining requisite insurance. Said
5 report shall be prepared and submitted every six months to the JSEB
6 Administrator. The JSEB Administrator and the City's Risk Manager
7 shall meet quarterly regarding available insurance programs. The
8 JSEB Administrator shall publish a copy of the report on the Equal
9 Business Opportunity Office website.

10 **Sec. 126.612. - Disparity Study Update.** Subject to availability of
11 funds, the Equal Business Opportunity Office shall have completed
12 an update to the 2013 disparity study regarding the City of
13 Jacksonville contracts on or before August 31, 2023. Upon receipt
14 and review of the completed disparity study update, the JSEB
15 Administrator shall provide a report to the Mayor and City Council
16 regarding the analysis and results of the disparity study update.

17 **SUBPART D. - PROGRAM ELIGIBILITY, PROCEDURES, AND OTHER**
18 **REQUIREMENTS**

19 **Sec. 126.613. - Jacksonville Small and Emerging Businesses defined.**

20 (a) All businesses must be certified under the provisions set forth
21 below. Certifications will be granted only in those areas for which
22 the business owner(s) has the ability and expertise to manage and
23 control the firm's operations and work.

24 (b) A JSEB must provide financial statements prepared by a
25 certified public accountant and participate in one or more
26 training, education, or mentoring programs during each 24-month
27 period commencing from the certification date and provide evidence
28 of such to the JSEB Administrator.

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

1 (1) Either reside currently in Duval County for a minimum
2 twelve consecutive month period immediately preceding the JSEB
3 application date or have an established business with a
4 principal place of business in Duval County for a minimum of
5 eighteen (18) months and reside in Duval, St. Johns, Nassau,
6 Baker, or Clay County for one year total within the five
7 County area;

8 (2) Have a personal net worth, excluding personal residence,
9 that is equal to or less than \$1,320,000, such personal net
10 worth to include business value and assets (measured as book
11 value), ownership in other businesses, and all other assets
12 personally owned or held in trust for the individual owner's
13 benefit; provided, however, that, notwithstanding personal net
14 worth, certification hereunder shall require that annual gross
15 receipts, averaged over the immediately preceding three-year
16 period, not exceed \$12,000,000. The averaged annual gross
17 receipts and personal net worth maximum threshold amounts
18 shall be subject to annual analysis by the JSEB Administrator
19 and reviewed by the JSEB Monitoring Committee pursuant to
20 Section 126.607 herein;

21 (3) Have not been in the program for a total of more than nine
22 (9) years from the date of the JSEB's first contract as a
23 prime contractor of the City or as a subcontractor retained by
24 a prime contractor of the City, whichever is earlier,
25 provided, however, that participation may be increased by two
26 one-year periods for good cause as determined by the Director;

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

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

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

3 (7) Be a for-profit small business concern;

4 (8) Not be a front, broker, or pass-through as defined in
5 Subpart A of this Chapter;

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

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

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

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

18 (i) Which is at least 51 percent owned by an individual
19 who meets the criterion in paragraph (c)(1) above and has a
20 business that has been in existence and has had a principal
21 place of business in Duval County for a year or more. Such
22 individual must have maintained such 51 percent ownership in
23 the business for at least one year; and

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

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

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

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

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

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

28 (e) Only an independent firm may be certified as a JSEB. An
29 independent firm is one whose viability does not depend on its
30 relationship with another firm. Recognition of an applicant as a
31 separate entity for tax or corporate purposes is not necessarily

1 sufficient to demonstrate that a firm is independent. In
2 determining whether an applicant is an independent business, the
3 JSEB Administrator will:

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

7 (2)Consider whether present or recent family, or
8 employer/employee relationships between the JSEBs owner(s) of
9 the applicant compromise the applicant's independence.

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

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

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

19 **Sec. 126.614. - JSEB and Program eligibility.**

20 (a) Only businesses that meet the criteria of the Program may be
21 certified for participation in the Program. The applicant has the
22 burden of persuasion.

23 (b) Only an independent firm may be certified as a JSEB. An
24 independent business is one whose viability does not depend on its
25 relationship with another firm or partners. Recognition of an
26 applicant as a separate entity for tax or corporate purposes is not
27 necessarily sufficient to demonstrate that a firm is independent.
28 The JSEB Administrator must determine that an owner has an
29 independent business in order to certify the business as a JSEB. In

1 doing so, the JSEB Administrator will take into account all
2 reasonable criteria for reviewing control of a business.

3 (c) The certification status of all JSEBs shall be reviewed every
4 twenty-four (24) months from the date of initial certification
5 through a re-certification application. Failure of the firm to seek
6 re-certification by filing the necessary documentation with the
7 Equal Business Opportunity Office within 60 days from the date of
8 receipt of written notification from the Equal Business Opportunity
9 Office may result in de-certification.

10 (d) It is the responsibility of the JSEBs to notify the JSEB
11 Administrator of any change in its circumstances affecting its
12 continued eligibility for the Program. Failure to do so may result
13 in the firm's de-certification.

14 (e) The JSEB Administrator shall decertify a firm that does not
15 meet the eligibility criteria.

16 (f) A JSEB may receive no more than five prime contracts set aside,
17 including prime contracts from participation goals, per year or an
18 aggregate total prime contracts set aside per year in the amount of
19 \$4,000,000, which ever is greater.

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

24 **Sec. 126.615. - Jacksonville Small Emerging Business Program Goals;**
25 **Other Program Directives.**

26 (a) *Program Goals.* The JSEB Program shall be subject to the
27 following Program Goals:

- 28 (1) *JSEB Contract goals.* The overall small business goal is
29 at least 20 percent, such that the City shall award at least
30 20 percent of total City contracts to JSEBs; provided that

1 such awards do not violate state or federal law and provided
2 further that there are JSEBs to perform the work. The Chief,
3 in consultation with the JSEB Administrator, shall award at
4 least 50 percent of the JSEBs contracts through direct
5 contracting.

6 (2) *JSEB CIP goals.* The City shall identify a goal of at least
7 20% of its work in its CIP program during the annual budget
8 submission which shall be accomplished with JSEBs, using
9 direct contracting opportunities and subcontracting goals.

10 (3) *JSEB Project Specific Goals.* The Chief upon the
11 recommendation of the JSEB Administrator shall establish
12 Project Specific Goal(s) based on the availability of at least
13 normal industry practice, as determined in consultation with
14 the user department, the availability of at least two JSEBs to
15 perform the functions of those individual contracts and the
16 City's utilization of such to date. Project Specific Goal(s)
17 shall not be set on emergency contracts as defined by City
18 Code or for purchases made in conjunction with the State
19 although JSEBs shall be considered for such single source or
20 emergency procurements if qualified.

21 (b) *Department Program commitments; training.* The City, through
22 each department head, shall commit in its budget to award at least
23 20 percent of its contracts for services, including contractual
24 services, professional services, professional design services,
25 construction services or other services, to JSEBs, provided,
26 however, that such awards shall comply with local, state, and
27 federal law and that there exist JSEBs to perform the work. To
28 assist the City in implementing the Program requirements of this
29 Part, the Equal Business Opportunity Office, through the JSEB
30 Administrator and in consultation with the Chief of Procurement
31 shall provide annual training to department heads and divisions

1 chiefs, or their designees, and applicable staff of City boards and
2 commissions regarding the JSEB program and the requirements set
3 forth in this Part.

4 (c) *Direct Contracting.* In implementing the Program, the JSEB
5 Administrator shall first provide opportunities for direct
6 contracting. Such opportunities should be created by breaking
7 procurement packages into smaller components, and separating work
8 that requires licenses from that which does not in separate bid or
9 proposal requests where feasible.

10 (d) *Subcontracting.* Opportunities for subcontracting through City
11 awarded non-JSEB prime contractors should be provided within
12 vertical construction projects, with horizontal construction
13 project opportunities being provided to the maximum extent possible
14 by direct contracting. Nevertheless, the subcontracting
15 opportunities shall be provided to those trades typically
16 established as subcontractors.

17 (e) *Joint checks; Semi-monthly payments to JSEBs.* The City may
18 issue joint checks upon the request of the JSEB in order to
19 facilitate bonding, financing, or other requirements of contracting
20 with the City. The City shall pay JSEBs semi-monthly, upon proper
21 payment application to the applicable City department. City
22 departments are to perform all necessary inspections and otherwise
23 endeavor to ensure that prompt review and as applicable approval of
24 JSEB work is completed within four days of receipt of invoice. The
25 City shall pay all approved invoices from JSEBs within three
26 business days of receipt by the Finance and Administration
27 Department. City departments shall provide monthly statements to
28 the Director identifying the timing of JSEB payments for contracts
29 within their departments. These statements are to be organized and
30 provided to the Mayor, with a copy to the City's Chief
31 Administrative Officer ("CAO"), quarterly by the Director. Prime

1 contractors shall be obligated to pay subcontractors within three
2 days of receipt from the City of funds, and must confirm payment to
3 the City. Subcontractors will be notified by the City when a
4 payment application from a prime contractor has been submitted
5 reflecting work performed by a subcontractor.

6 (f) *Micro-business program.* The JSEB Administrator in
7 consultation with the Chief shall be responsible for developing and
8 implementing a micro-business program. The purpose of the micro-
9 business program shall be to ensure that a micro-business JSEB (as
10 defined in Subpart A of this Chapter) has an adequate share of
11 direct contracting and subcontracting opportunities in the Program.
12 Such program may include participation requirements based on tiered
13 levels of personal net worth and annual averaged gross receipts,
14 not to exceed the maximum personal net worth and annual averaged
15 gross receipt amounts set forth in Section 126.613 herein. The JSEB
16 Administrator shall promulgate rules and guidelines regarding such
17 program with further Council approval.

18 **Sec. 126.616. - Contract pre-award compliance procedures.**

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

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

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

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

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

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

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

28 (4) Facilitate the leasing of equipment supplies or equipment
29 when they are of such a specialized nature that the JSEB could

1 not readily and economically obtain them in the marketplace,
2 where feasible.

3 (5) Provide JSEBs with the scope of work for the project, which
4 entails the specific work to be performed by the JSEB
5 contractor, and a pricing proposal from the JSEB based on the
6 specific scope of work provided. The bidder/proposer shall
7 provide evidence in the bid documents of meeting this
8 requirements.

9 **Sec. 126.617. - Pre-award review of compliance with numerical**
10 **goals, including good faith efforts.**

11 (a) The JSEB Administrator shall timely review the Schedule of
12 Participation prior to award, including the scope of work and the
13 letters of intent from JSEBs. The JSEB Administrator may request
14 clarification in writing of items listed in the Schedule of
15 Participation, provided such clarification shall not include the
16 opportunity to augment listed JSEBs participation or Good Faith
17 Efforts. The JSEB Administrator shall review all submittals and
18 document the participation of each submittal.

19 (b) If the JSEB Administrator determines that the Schedule of
20 Participation demonstrates that the Project Specific Goal(s) have
21 been achieved or Good Faith Efforts made, and the user department
22 concurs, the Chief shall recommend award to the General Awards
23 Committee. The JSEB Administrator shall verify with each JSEB that
24 a contract in the specified amount has been awarded.

25 (c) The JSEB Administrator may, in consultation with the Chief,
26 promulgate Program rules to ensure equitable distribution of work
27 by prime contractors among JSEBs that are certified to do the
28 subcontract scope of work.

29 **Sec. 126.618. - Good faith efforts in lieu of meeting Program**
30 **goals. For a contract with JSEB subcontracting goals, a contractor**

1 must comply by either meeting the goal or demonstrating Good Faith
2 Efforts to achieve it that are consistent with the requirements set
3 forth in this Part. In determining whether a bidder/proposer has
4 made Good Faith Efforts, in lieu of achieving the stated goals, the
5 JSEB Administrator shall consider all relevant factors, which
6 include:

7 (a)The ability of other bidders/proposers in meeting the Project
8 Specific Goal(s) may be considered as follows:

9 (1)A contact log showing the name, address, and contact number
10 (phone or fax) used to contact the proposed JSEB certified in
11 the scope of work, nature of work requested for quote, date of
12 contact, person making the effort;

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

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

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

17 (5)Subcontractor information as requested by forms developed
18 by the Equal Business Opportunity Office.

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

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

29 If the JSEB Administrator finds that a bidder/proposer did not make
30 sufficient Good Faith Efforts, the JSEB Administrator shall

1 communicate this finding to the user department and recommend that
2 the bid/proposal be rejected. A bidder/proposer may protest this
3 determination pursuant to the City's bid protest procedures.

4 **Sec. 126.619. - Contract performance compliance procedures.**

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

11 (b) The contractor shall provide a listing of all JSEBs and any
12 other subcontractors to be used in the performance of the contract,
13 and subcontractor payment information to the City with each request
14 for payment submitted to the City. The JSEB Administrator and the
15 user department shall monitor subcontractor participation during
16 the course of the contract and shall have reasonable access to all
17 contract-related documentation held by the contractor.

18 (c) The contractor cannot make changes to the Schedule of
19 Participation or substitute subcontractors named in the Schedule of
20 Participation without the Chief's prior written approval based on
21 the Ombudsman's recommendation and JSEB Administrator's compliance
22 review. Unauthorized changes or substitutions shall be a violation
23 of this chapter, and may constitute grounds for rejection of the
24 bid or proposal or cause termination of the executed contract for
25 breach, the withholding of payment and/or subject the contractor to
26 contract penalties or other sanctions.

27 (1) All requests for changes or substitutions of the
28 subcontractors named in the Schedule of Participation shall be
29 made to the Ombudsman with a copy to the JSEB Administrator in
30 writing, and shall clearly and fully set forth the basis for

1 the request. A contractor shall not substitute a subcontractor
2 or perform the work designated for a subcontractor with its
3 own forces unless and until the Chief approves such
4 substitution in writing. A contractor shall not allow a
5 substituted subcontractor to begin work until the Chief has
6 approved the substitution based on the recommendation of the
7 JSEB Administrator.

8 (2)The facts supporting the request must not have been known
9 nor reasonably should have been known by either party prior to
10 the submission of the Schedule of Participation. Bid shopping
11 is prohibited. The contractor must bring this dispute to the
12 Ombudsman for resolution.

13 (3)The Chief's final decision whether to permit or deny the
14 proposed substitution, and the basis therefore, will be
15 communicated to the parties in writing by the Chief, with a
16 copy to the CAO.

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

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

1 (e)Changes to the scopes of work shall be documented by the user
2 department at the time they arise, to establish the reasons for the
3 change and the effect on achievement of the Project Specific
4 Goal(s).

5 **Sec. 126.620. - Continuing obligations of JSEBs and graduation.**

6 A JSEB shall apply for re-certification every twenty-four (24)
7 months from the date of initial certification through a re-
8 certification application developed by the JSEB Administrator.
9 Failure of the firm to seek re-certification by filing the
10 necessary documentation with the Equal Business Opportunity Office
11 within 60 days from the date of receipt of written notification
12 from the Equal Business Opportunity Office may result in de-
13 certification.

14 (a)It is the responsibility of the JSEB to notify the Equal
15 Business Opportunity Office of any change in its circumstances
16 affecting its continued eligibility for the Program. Failure to do
17 so may result in the firm's de-certification and preclusion from
18 future participation.

19 (b)The JSEB that no longer meets certification may be decertified
20 at any time.

21 (c)A firm, or qualifying individuals, who have participated in the
22 JSEB program for a total of nine (9) years from the date of the
23 JSEB's first contract as a prime contractor of the City or as a
24 subcontractor retained by a prime contractor of the City, whichever
25 is earlier, and subject to the extensions for good cause provided
26 in Section 126.613, shall graduate from the Program.

27 **Sec. 126.621. - De-certification, Denial and appeal procedure.**

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

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

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

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

14 (3)The JSEB Administrator shall determine the firm's
15 eligibility on the basis of the information provided at the
16 hearing. The JSEB Administrator's written decision shall be
17 communicated to the firm within ten days of the hearing.

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

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

1 (c)A third party may challenge the eligibility of an applicant for
2 certification or a certified firm. The presumption that the
3 challenged firm is eligible shall remain in effect until the City
4 renders a final decision. A third party challenge shall be made as
5 follows:

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

9 (2)The JSEB Administrator shall notify the challenged firm in
10 writing of the challenge, identify the challenging party and
11 provide the challenged firm with a copy of the challenge. The
12 notice may also require the challenged firm to provide the
13 JSEB Administrator, within a reasonable time, any information
14 requested to permit the JSEB Administrator to evaluate the
15 eligibility of the firm.

16 **Sec. 126.622. - Other provisions of purchasing code to apply.**

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

22 **Sec. 126.623. - Counting subcontracting participation of JSEBs.**

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

1 (b)The entire amount of fees or commissions charged by a JSEBs for
2 providing a bona fide service, such as professional, technical,
3 consultant or managerial services, or for providing bonds or
4 insurance specifically required for the performance of a contract
5 shall be counted, provided the fee is reasonable and not excessive
6 as compared with fees customarily charged for similar services.

7 (c)If a firm ceases to be a certified JSEBs during a contract, the
8 dollar value of work performed under a contract with that firm
9 after it has ceased to be certified shall be counted in the City's
10 internal accounting. No contractor shall be penalized in any way as
11 a result of the failure of a project to achieve its Project
12 Specific Goals because of the operation of this Section.

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

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

18 **Sec. 126.624. - Acts which may result in expulsion from the JSEB**
19 **program; fines, and criminal offenses.**

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

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

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

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

2 (4) Substituting JSEBs subcontractors without first receiving
3 approval for such substitutions.

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

6 (6) Submitting false documentation for payments.

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

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

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

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

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

24 **Section 6. Repealing Ordinance 2019-759-E.** Ordinance
25 2019-759-E (An Ordinance Approving and Adopting Revised
26 Underwriting Guidelines for the JSEB Access to Capital Program to
27 Clarify Pre-Qualification Criteria and Required Documentation) is
28 hereby repealed as of the effective date of this ordinance. A copy
29 of Ordinance 2019-759-E is attached here to as **Exhibit 3**. The JSEB
30 Access to Capital Program shall be governed by the program

1 guidelines developed and approved by the JSEB Administrator
2 pursuant to Chapter 126, Part 6 of the Code, without further
3 approval by the City Council.

4 **Section 7. Codification Instructions.** The Codifier and
5 the Office of General Counsel are authorized to make all chapter
6 and division "tables of contents" consistent with the changes set
7 forth herein. Such editorial changes and any others necessary to
8 make the Ordinance Code consistent with the intent of this
9 legislation are approved and directed herein, and changes to the
10 Ordinance Code shall be made forthwith and when inconsistencies are
11 discovered.

12 **Section 8. Effective Date.** This ordinance shall become
13 effective upon signature by the Mayor or upon becoming effective
14 without the Mayor's signature.

15 Form Approved:

16 _____
17 Office of General Counsel

18 Legislation Prepared By: Lawsikia J. Hodges

19 GC-#1420196-v3-CM_Pittman_Substitute_to_Bill_No__2021-117.docx