

1 Co-Introduced by Council Members Pittman, Freeman, Dennis, Morgan,
2 Hazouri, Carlucci, Gaffney, Becton, Boylan, DeFoor and Jackson and
3 substituted by the Finance Committee:
4

5 **ORDINANCE 2021-117**

6 AN ORDINANCE AMENDING CHAPTER 24 (FINANCE AND
7 ADMINISTRATION DEPARTMENT), PART 6 (PROCUREMENT
8 DIVISION), SECTION 24.605 (EQUAL BUSINESS
9 OPPORTUNITY OFFICE FUNCTIONS), *ORDINANCE CODE*;
10 AMENDING CHAPTER 126 (PROCUREMENT CODE), PART 1
11 (GENERAL REGULATIONS), SECTIONS 126.102
12 (DEFINITIONS) AND 126.114 (BUY AMERICAN
13 PREFERENCE IN CONTRACTS FOR GOODS), *ORDINANCE*
14 *CODE*; AMENDING CHAPTER 126 (PROCUREMENT CODE),
15 PART 2 (SUPPLIES, CONTRACTUAL SERVICES, AND
16 CAPITAL IMPROVEMENTS), SECTION 126.201
17 (GENERAL), *ORDINANCE CODE*; REPEALING CHAPTER 126
18 (PROCUREMENT CODE), PART 6A (SMALL BUSINESS
19 CAPITAL, BONDING, AND OUTREACH PROGRAM) AND PART
20 6B (JACKSONVILLE SMALL EMERGING BUSINESS
21 PROGRAM), *ORDINANCE CODE*; CREATING A NEW CHAPTER
22 126, PART 6 (JACKSONVILLE SMALL AND EMERGING
23 BUSINESS PROGRAM), SUBPART A (GENERAL
24 PROVISIONS), SUBPART B (PROGRAM
25 ADMINISTRATION), SUBPART C (PROGRAM SUPPORT
26 SERVICES; MARKETING AND OUTREACH; DISPARITY
27 STUDY UPDATE), SUBPART D (PROGRAM ELIGIBILITY,
28 PROCEDURES, AND OTHER REQUIREMENTS); REPEALING
29 ORDINANCE 2019-759-E (AN ORDINANCE APPROVING AND
30 ADOPTING REVISED UNDERWRITING GUIDELINES FOR THE
31 JSEB ACCESS TO CAPITAL PROGRAM TO CLARIFY PRE-

1 QUALIFICATION CRITERIA AND REQUIRED
2 DOCUMENTATION); PROVIDING FOR CODIFICATION
3 INSTRUCTIONS; PROVIDING AN EFFECTIVE DATE.
4

5 **WHEREAS**, the City of Jacksonville ("City") determined in 2004
6 that growing Jacksonville small and emerging businesses ("JSEBs") was
7 beneficial to the City and its individual residents; and

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

13 **WHEREAS**, a Special Committee on the Jacksonville Small &
14 Emerging Business ("Special Committee") was established in August
15 2020 to review the Program and make improvements and recommendations
16 to the Program supported by evidence, disparity studies, and
17 applicable federal and state law; and

18 **WHEREAS**, the Special Committee held multiple meetings and heard
19 from various guest speakers and presenters, including JSEB vendors,
20 prime contractors, the City's Procurement Division, other interested
21 parties, and the public; and

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

24 **WHEREAS**, based on the Special Committee's review of the Program,
25 the City desires to further improve certain aspects of the Program
26 to better assist JSEBs in growing and graduating from the Program;
27 now therefore

28 **BE IT ORDAINED** by the Council of the City of Jacksonville:

29 **Section 1. Amending Chapter 24 (Finance and Administration**
30 **Department), Section 24.605 (Equal Business Opportunity Office**
31 **Functions), Ordinance Code.** Chapter 24 (Finance and Administration

Department), Part 6 (Procurement Division), Section 24.605 (Equal Business Opportunity Office Functions), *Ordinance Code*, is hereby amended to read as follows:

CHAPTER 24 - FINANCE AND ADMINISTRATION DEPARTMENT

* * *

PART 6. PROCUREMENT DIVISION

* * *

Sec. 24.605. - Equal Business Opportunity Office functions.

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

* * *

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

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

* * *

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

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

CHAPTER 126 - PROCUREMENT CODE

* * *

PART 2. PROCUREMENT DIVISION

* * *

Sec. 126.102. - Definitions.

As used in this Chapter:

* * *

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

* * *

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

* * *

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

* * *

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

* * *

Section 3. Amending Chapter 126 (Procurement Code), Part 2 (Supplies, Contractual Services, and Capital Improvements), Section 126.201 (General), Ordinance Code. Chapter 126 (Procurement Code), Part 2 (Supplies, Contractual Services, and Capital Improvements), Sections 126.201 (General), *Ordinance Code*, is hereby amended to read as follows:

* * *

1
2 (b) *Bid bond and/or security.* Except as otherwise provided
3 herein, all bids under this Part 2 shall be submitted in sealed
4 form to the Chief, who may require that each bid be accompanied
5 by a bid security in the form of a certified or cashier's check
6 or bid bond in the amount as shall be prescribed in the
7 invitation for bid. The purpose of bid security is to discourage
8 the withdrawal of bids, to encourage that bidders comply with
9 the instructions and/or requirements of the invitation for bids,
10 and that the apparent low bidder will enter into a binding
11 contract to perform the work in accordance with the bid documents
12 and the apparent low bidder's bid proposal. Bid securities
13 ensure that a certain amount of money will be paid in the event
14 that an apparent low bidder fails to abide by the instructions
15 and/or requirements of the invitation for bids or fails to enter
16 into a formal contract pursuant to the same. As such, unless
17 otherwise permitted by the Chief, bid securities shall not be
18 discharged until a contract has been executed and a performance
19 bond accepted in lieu of the bid securities. In lieu of the
20 furnishing of surety with each individual transaction, bidders
21 who regularly do business with the City shall be permitted to
22 file with the Chief an annual or continuing bid bond in an amount
23 established by the Chief. For projects with a value under
24 \$500,000: (i) bid bonds shall not be required for ~~certified~~
25 ~~JSEBs and MBEs (which, by definition in 6B, includes minority~~
26 ~~and women-owned businesses)~~, as defined in Chapter 126 Part 6;
27 and (ii) the Chief shall have the discretion to waive the
28 requirement for bid bonds where there is a written determination
29 that the imposition of a bid bond may detract from competition
30 without adding a material benefit to the City.

* * *

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

1 of the award and forfeiture of the bid security to the City. The
2 award may then be made to the next lowest responsive, responsible
3 bidder or re-advertised as the Chief may elect. For ~~certified~~ JSEBs,
4 as defined in Chapter 126, Part 6, payment and performance bonds
5 shall not be required on City projects with a value equal to or less
6 than the Statutory Discretionary Bond Threshold or equal to or less
7 than the payment and performance bond waiver amount permitted in
8 Section 18.11 of the Charter. ~~Final determinations on the need for~~
9 ~~payment bonds for projects under the Discretionary Bond Threshold~~
10 ~~shall be made by the Chief after determining if there is an alternate~~
11 ~~form of security or payment method more readily available or~~
12 ~~appropriate.~~

13 * * *

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

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

Requirements), *Ordinance Code*, are hereby created to read as follows:

CHAPTER 126 - PROCURMENT CODE

* * *

PART 6. JACKSONVILLE SMALL AND EMERGING BUSINESS PROGRAM

SUBPART A. GENERAL PROVISIONS

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

Sec. 126.602 - Legislative Findings.

The Council finds and declares that:

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

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

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

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

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

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

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

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

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

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

12 "JSEB Administrator" shall mean the individual responsible for
13 administering and managing the JSEB Program pursuant to Chapter 24,
14 Part 6 of the Code.

15 "*micro-business JSEB*" shall mean a JSEB who has a personal net worth
16 of \$300,000 or less and be at least a 51 percent majority owner of
17 the business.

18 "*Program*" shall mean the Jacksonville Small and Emerging Business
19 Program set forth in this Part 6.

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

24 "*Program Goals*" shall mean the goals for the Program set forth in
25 Subpart D herein.

26 "*Schedule of Participation*" shall mean the bidder/proposer's detailed
27 list of all JSEB and non-JSEB subcontractors from which the
28 bidder/proposer solicited bids or quotations in accordance with
29 Section 126.616 herein.

30 **Sec. 126.605. - Minimum Program Funding Requirement.** Subject to

1 availability of funding, the Program, as provided for in this Part,
2 shall be funded at a minimum of \$500,000, excluding staff, in the
3 annual budget appropriation. A minimum of \$200,000 of such \$500,000
4 minimum funding requirement shall be used to fund the training
5 programs, community outreach and program marketing set forth in
6 Section 126.610 herein.

7 **SUBPART B. PROGRAM ADMINISTRATION**

8 **Sec. 126.606. - JSEB Administrator.**

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

11 (1) Implementing, monitoring, and enforcing the rules and
12 regulations of the Program;

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

16 (3) Providing information and assistance to JSEBs relating to
17 City procurement opportunities, practices and procedures, and
18 bid and proposal specifications, requirements and prerequisites;

19 (4) Certifying businesses as JSEBs, and maintaining
20 certification records, ~~and ensuring that such information is~~
21 ~~available on the City's Procurement Division website identifying~~
22 ~~all such certified entities;~~

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

25 (6) Evaluating prime contractors' achievement of Project
26 Specific Goals or Good Faith Efforts (as defined in Section
27 126.618 herein) to meet Project Specific Goals;

28 (7) Working with City departments to ensure prompt payments to
29 JSEBs for work performed in accordance with Section 126.615

1 herein;

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

5 (9) Providing quarterly open houses to answer questions from
6 Program participants or prospective participants regarding
7 Program operations;

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

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

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

17 (13) Providing interested JSEBs with timely, adequate
18 information about the plans, specifications and requirements of
19 the contract to allow them to respond to the solicitation either
20 directly or by referral to the City department seeking the
21 procurement;

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

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

27 (16) Performing onsite inspections of the JSEB local offices and
28 business locations; and

29 (17) Facilitating and coordinating all aspects of the Program

1 so as to provide Program participants and prospective
2 participants with a primary Program contact.

3 (b) *Department Training.* Each City department, office or board shall
4 identify to the JSEB Administrator the person with the responsibility
5 of ensuring JSEB participation in such department, office or board.
6 Such person shall receive diversity training and shall prepare
7 quarterly reports to the JSEB Administrator identifying for the three
8 month quarter period the extent of non-JSEB and JSEB participation
9 in any procurement within its department, office or board.

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

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

22 (a) *Establishment; purpose.* There is established a seven-member JSEB
23 Monitoring Committee ("Committee"), to annually review, in
24 consultation with the JSEB Administrator: (i) the status of the
25 Program Goals, including, but not limited to, the percentage, number,
26 and dollar value of contracts awarded to JSEBs through direct
27 contracting and subcontracts; (ii) the training programs, the "AC
28 Program," and the bond enhancement program required herein; (iii)
29 difficulties or accomplishments of the Program; (iv) a comparison of
30 the achievements under the Program compared with the Program Goals;
31 (v) the maximum threshold amounts for personal net worth and annual

1 averaged gross receipts referenced in Section 126.613(c); and (vi)
2 the limitation on the number of program participation years in Section
3 126.613(c) to determine if such amounts and limitation on the number
4 of years are appropriate for the Program. Based on the Committee's
5 required Program review, the Committee may recommend to the Mayor or
6 City Council amendments to the Program in the form of a report.

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

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

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

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

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

18 (5) one representative from the Northeast Florida Builders
19 Association, Inc., or similar trade association, appointed by
20 the City Council.

21 Members shall serve for three-year staggered terms. The two non-JSEB
22 contractor members must have a current contract with the City or have
23 had a contract with the City in the past. The Mayor shall appoint a
24 Chair and the Chair shall serve until such a time as another Chair
25 shall be appointed by the Mayor. The Mayor and City Council shall
26 strive to reflect the diversity of Duval County in its appointments;
27 each of the seven members shall be confirmed by City Council.

28 (c) *Meetings; applicable laws.* The Committee shall meet quarterly
29 with the JSEB Administrator, who shall then generate a quarterly
30 report for the Mayor and City Council no later than 14 days after

1 each quarterly meeting. The JSEB Administrator, or his designee,
2 shall provide staff support to the Committee. The JSEB Monitoring
3 Committee shall be governed by Chapters 286 and 112, Part 3, *Florida*
4 *Statutes*, and Chapters 50 (Boards and Commissions) and 602
5 (Jacksonville Ethics Code), of the Code.

6 **SUBPART C. PROGRAM SUPPORT SERVICES; MARKETING AND OUTREACH;**
7 **DISPARITY STUDY UPDATE**

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

9 (a) Subject to the availability of funds, the JSEB Administrator
10 shall competitively procure and maintain annually a contract with a
11 third-party contractor or contractors to provide a bond enhancement
12 program for the benefit of JSEBs. The bond enhancement program shall
13 provide support services to assist JSEBs in their efforts to secure
14 performance and payment bonds for public and private contracts. The
15 program shall not provide the underlying bond but shall provide a
16 refined basis for underwriting bonds, small business support
17 services, and contractor monitoring necessary for such bond
18 underwriting, as well as improvement plans for JSEBs who do not
19 qualify.

20 (b) Section 126.201(b) of the Code provides that JSEBs are not
21 required to submit bid bonds for projects under \$500,000. Section
22 126.201(g) provides that JSEBs shall be exempt from obtaining a
23 payment and performance bond for projects that are (i) equal to or
24 less than the "Discretionary Bond Threshold" amount, as defined in
25 Chapter 126, Part 2 of the Code; and (ii) equal to or less than the
26 payment and performance bond waiver amount permitted in Section 18.11
27 of the Charter.

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

29 (a) Subject to availability of funds, the City shall create a funding
30 source to assist JSEBs with obtaining access to capital (the "AC

1 Program"). The JSEB Administrator, or a third-party contractor
2 engaged through the JSEB Administrator ("Program Manager"), shall
3 manage the distribution of said funds, in accordance with guidelines
4 developed and approved by the JSEB Administrator in order to ensure
5 proper administration and monitoring and to ensure continuity for the
6 program. Such guidelines may be developed and approved by the JSEB
7 administrator without further Council approval. All funds deposited
8 into the Access to Capital Special Revenue Fund shall be the subject
9 of a permanent and continuing appropriation when used for the purpose
10 of loans to assist JSEBs with obtaining access to capital. In the
11 event that the JSEB Administrator, or his designee, serves as the
12 Program Manager of the AC Program, the Mayor, or his designee, is
13 authorized to execute on behalf of the City all loan agreements and
14 related documents authorized pursuant to the AC Program. In the
15 event a third-party contract serves as the Program Manager, such
16 third-party shall act as an agent of the City and is authorized to
17 execute on behalf of the City all loan agreements and related
18 documents authorized pursuant to the AC Program.

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

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

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

29 (e) The JSEB Administrator shall provide a quarterly activity report
30 for the preceding three months to the JSEB Monitoring Committee for
31 its use in complying with the reporting requirements pursuant to

1 Section 126.607 herein.

2 **Sec. 126.610. - Training programs; program marketing; community**
3 **outreach.**

4 (a) *Continuing education, training and mentoring programs.* The EBO
5 Office shall be responsible for developing and implementing
6 continuing education, training, and mentoring programs. Such
7 continuing education, training, and mentoring programs may include,
8 but not be limited to, the following topic areas:

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

10 (2) Subcontracting documentation requirements;

11 (3) Accounting for the small business;

12 (4) Construction related contractors and subcontractors,
13 including technology, bidding, bonding, and project management;

14 (5) Key management issues such as cash-flow management, business
15 planning, marketing, accounting, record keeping, and human
16 resources management;

17 (6) Business plans, financial plans and continued education
18 plans;

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

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

23 (9) Business development education.

24 Subject to availability of funds, the EBO Office may procure a third-
25 party contractor or contractors, including, but not limited to,
26 educational institutions, to assist with developing and implementing
27 the education, training, and mentoring programs required under this
28 Section.

29 (b) *Program marketing and community outreach.* The Equal Business

1 Opportunity Office shall be responsible for developing and
2 implementing marketing campaigns, recruitment activities, and
3 scholarship programs to increase the number of JSEBs in the Program.
4 Any funds appropriated for such activities shall be inclusive of
5 scholarships. The Equal Business Opportunity Office shall also engage
6 in community outreach by hosting small business program workshops
7 regarding the Program and the support services available to
8 prospective JSEBs. Additionally, the Equal Business Opportunity
9 Office shall survey JSEBs every two years on a survey form approved
10 by the JSEB Monitoring Committee to ascertain what education, training
11 and mentoring programs JSEBs need most. The Equal Business Opportunity
12 Office shall consider such survey results in determining which
13 education, training, and mentoring programs to pursue under this
14 Section.

15 **Sec. 126.611. - Insurance program review.** The City's Risk Manager
16 shall prepare a report on available insurance programs for Florida
17 small businesses and make recommendations regarding methods or
18 programs to assist JSEBs in obtaining requisite insurance. Said report
19 shall be prepared and submitted every six months to the JSEB
20 Administrator. The JSEB Administrator and the City's Risk Manager
21 shall meet quarterly regarding available insurance programs. The
22 JSEB Administrator shall publish a copy of the report on the Equal
23 Business Opportunity Office website.

24 **Sec. 126.612. - Disparity Study Update.** Subject to availability of
25 funds, the Equal Business Opportunity Office shall have completed an
26 update to the 2013 disparity study regarding the City of Jacksonville
27 contracts on or before August 31, 2023. Upon receipt and review of
28 the completed disparity study update, the JSEB Administrator shall
29 provide a report to the Mayor and City Council regarding the analysis
30 and results of the disparity study update.

31 **SUBPART D. - PROGRAM ELIGIBILITY, PROCEDURES, AND OTHER**

REQUIREMENTS

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

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

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

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

(1) Either reside currently in Duval County for a minimum twelve consecutive month period immediately preceding the JSEB application date or have an established business with a principal place of business in Duval County for a minimum eighteen (18) month consecutive period 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, excluding personal residence, that is equal to or less than \$1,320,000, such personal net worth to include business value and assets (measured as book value), ownership in other businesses, and all other assets personally owned or held in trust for the individual owner's benefit; 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 \$12,000,000. The averaged annual gross receipts and personal net worth maximum threshold amounts shall

1 be subject to annual analysis by the JSEB Administrator and
2 reviewed by the JSEB Monitoring Committee pursuant to Section
3 126.607 herein;

4 (3) Have not been in the program for a total of more than nine
5 (9) years from the date of the JSEB's first contract as a prime
6 contractor of the City or as a subcontractor retained by a prime
7 contractor of the City, whichever is earlier, provided, however,
8 that participation may be increased by two (2) one-year periods
9 for good cause as determined by the JSEB Administrator;

10 (4) Own and control at least 51 percent of the business entity
11 being certified;

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

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

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

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

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

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

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

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

29 (i) Which is at least 51 percent owned by an individual

1 who meets the criterion in paragraph (c)(1) above and has a
2 business that has been in existence and has had a principal
3 place of business in Duval County for a year or more. Such
4 individual must have maintained at least 51 percent ownership
5 in the business for at least one year; and

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

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

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

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

24 (2) The JSEB owner(s) may delegate various areas of the
25 management or daily operations of the firm to persons who would
26 not qualify to be JSEBs only if such delegation is typical in
27 the industry for such businesses. Such delegations of authority
28 must be revocable, and the JSEB must retain the power to hire
29 and fire any such person. The JSEB owner must have an overall
30 understanding of, and managerial and technical competence,

1 experience and expertise, directly related to the firm's
2 operations and work.

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

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

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

20 (2)Consider whether present or recent family, or
21 employer/employee relationships between the JSEB owner of the
22 applicant compromise the applicant's independence.

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

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

29 (5)An owner shall be certified only for specific types of work
30 for which the owner(s) has the ability and expertise to manage

1 and control the firm's operations and work.

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

3 (a) Only businesses that meet the criteria of the Program may be
4 certified for participation in the Program. The applicant has the
5 burden of persuasion.

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

13 (c) It is the responsibility of the JSEB to notify the JSEB
14 Administrator of any change in its circumstances affecting its
15 continued eligibility for the Program. Failure to do so may result
16 in the firm's de-certification.

17 (d) The JSEB Administrator shall decertify a firm that does not meet
18 the eligibility criteria.

19 (e) A JSEB may receive no more than five prime contracts set aside,
20 including prime contracts from participation goals, per year or an
21 aggregate total prime contracts set aside per year in the amount of
22 \$4,000,000, which ever is greater.

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

27 **Sec. 126.615. - Jacksonville Small and Emerging Business Program**
28 **Goals; Other Program Directives.**

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

1 (1) *JSEB Contract goals.* The overall small business goal is at
2 least 20 percent, such that the City shall award at least 20
3 percent of total City contracts to JSEBs; provided that such
4 awards do not violate state or federal law and provided further
5 that there are JSEBs to perform the work. The Chief, in
6 consultation with the JSEB Administrator, shall award at least
7 50 percent of the JSEB contracts through direct contracting.

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

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

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

1 consultation with the Chief of Procurement shall provide annual
2 training to department heads and division chiefs, or their designees,
3 and applicable staff of City boards and commissions regarding the
4 JSEB program and the requirements set forth in this Part.

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

11 (d) *Subcontracting.* Opportunities for subcontracting through City
12 awarded non-JSEB prime contractors should be provided within vertical
13 construction projects, with horizontal construction project
14 opportunities being provided to the maximum extent possible by direct
15 contracting. Nevertheless, the subcontracting opportunities shall be
16 provided to those trades typically 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 facilitate
19 bonding, financing, or other requirements of contracting with the
20 City. The City shall pay JSEBs semi-monthly, upon proper payment
21 application to the applicable City department. City departments are
22 to perform all necessary inspections and otherwise endeavor to ensure
23 that prompt review and as applicable approval of JSEB work is
24 completed within four days of receipt of invoice. The City shall pay
25 all approved invoices from JSEBs within three business days of receipt
26 by the Finance and Administration Department. City departments shall
27 provide monthly statements to the Director identifying the timing of
28 JSEB payments for contracts within their departments. These
29 statements are to be organized and provided to the Mayor, with a copy
30 to the City's Chief Administrative Officer ("CAO"), quarterly by the
31 Director. Prime contractors shall be obligated to pay subcontractors

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

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

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

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

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

30 (c) Joint ventures shall only be allowed under this Program in cases

1 that demonstrate legitimate, detailed JSEB partnerships with non-
2 JSEBs, proof of which shall be provided to the JSEB Administrator.

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

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

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

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

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

30 (5)Provide JSEBs with the scope of work for the project, which

1 entails the specific work to be performed by the JSEB contractor,
2 and a pricing proposal from the JSEB based on the specific scope
3 of work provided. The bidder/proposer shall provide evidence
4 in the bid documents of meeting this requirements.

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

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

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

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

25 **Sec. 126.618. - Good faith efforts in lieu of meeting Program goals.**

26 For a contract with JSEB subcontracting goals, a contractor must
27 comply by either meeting the goal or demonstrating Good Faith Efforts
28 to achieve it that are consistent with the requirements set forth in
29 this Part. In determining whether a bidder/proposer has made Good
30 Faith Efforts, in lieu of achieving the stated goals, the JSEB

1 Administrator shall consider all relevant factors, which include:

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

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

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

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

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

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

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

20 (c)For construction related professional services contracts, the
21 highest ranked proposer must deliver at the time of fee and contract
22 negotiations signed letters of intent between the proposer and any
23 JSEBs the proposer intends to use on the project.

24 If the JSEB Administrator finds that a bidder/proposer did not make
25 sufficient Good Faith Efforts, the JSEB Administrator shall
26 communicate this finding to the user department and recommend that
27 the bid/proposal be rejected. A bidder/proposer may protest this
28 determination pursuant to the City's bid protest procedures.

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

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

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

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

23 (1) All requests for changes or substitutions of the
24 subcontractors named in the Schedule of Participation shall be
25 made to the Ombudsman with a copy to the JSEB Administrator in
26 writing, and shall clearly and fully set forth the basis for the
27 request. A contractor shall not substitute a subcontractor or
28 perform the work designated for a subcontractor with its own
29 forces unless and until the Chief approves such substitution in
30 writing. A contractor shall not allow a substituted
31 subcontractor to begin work until the Chief has approved the

1 substitution based on the recommendation of the JSEB
2 Administrator.

3 (2)The facts supporting the request must not have been known nor
4 reasonably should have been known by either party prior to the
5 submission of the Schedule of Participation. Bid shopping is
6 prohibited. The contractor must bring this dispute to the
7 Ombudsman for resolution.

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

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

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

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

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

28 A JSEB shall apply for re-certification every twenty-four (24) months
29 from the date of initial certification through a re-certification
30 application developed by the JSEB Administrator. Failure of the firm

1 to seek re-certification by filing the necessary documentation with
2 the Equal Business Opportunity Office within 60 days from the date
3 of receipt of written notification from the Equal Business Opportunity
4 Office may result in de-certification.

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

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

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

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

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

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

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

28 (2) An informal hearing shall be held by the JSEB Administrator,
29 at which the firm may present additional facts and evidence in
30 support of its eligibility. The JSEB Administrator may request

1 the attendance of any witness and production of any documents
2 concerning the applicant's affairs. The applicant's failure to
3 comply promptly with these requests may be grounds for denial
4 of the appeal.

5 (3)The JSEB Administrator shall determine the firm's eligibility
6 on the basis of the information provided at the hearing. The
7 JSEB Administrator's written decision shall be communicated to
8 the firm within ten days of the hearing.

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

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

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

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

27 (2)The JSEB Administrator shall notify the challenged firm in
28 writing of the challenge, identify the challenging party and
29 provide the challenged firm with a copy of the challenge. The
30 notice may also require the challenged firm to provide the JSEB

1 Administrator, within a reasonable time, any information
2 requested to permit the JSEB Administrator to evaluate the
3 eligibility of the firm.

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

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

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

11 (a) The entire amount of that portion of a construction subcontract
12 that is performed by the JSEB's own forces shall be counted, including
13 the cost of supplies and materials obtained by the JSEB for the work
14 of the subcontract, and supplies purchased or equipment leased by the
15 JSEB. Supplies and equipment purchased or leased by a JSEB from the
16 prime contractor or its affiliate shall not count as JSEB
17 participation.

18 (b) The entire amount of fees or commissions charged by a JSEB for
19 providing a bona fide service, such as professional, technical,
20 consultant or managerial services, or for providing bonds or insurance
21 specifically required for the performance of a contract shall be
22 counted, provided the fee is reasonable and not excessive as compared
23 with fees customarily charged for similar services.

24 (c) If a firm ceases to be a certified JSEB during a contract, the
25 dollar value of work performed under a contract with that firm after
26 it has ceased to be certified shall be counted in the City's internal
27 accounting. No contractor shall be penalized in any way as a result
28 of the failure of a project to achieve its Project Specific Goals
29 because of the operation of this Section.

30 (d) In determining achievement of a Subcontracting Participation Goal,

1 the participation of a JSEB shall not be counted until the amount
2 being counted has been paid to that entity.

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

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

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

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

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

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

19 (4) Substituting JSEB subcontractors without first receiving
20 approval for such substitutions.

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

23 (6) Submitting false documentation for payments.

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

29 (1) Provided information in connection with an application for

1 certification or re-certification that it knew or should have
2 known to be false or misleading.

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

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

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

11 **Section 6. Repealing Ordinance 2019-759-E.** Ordinance 2019-
12 759-E (An Ordinance Approving and Adopting Revised Underwriting
13 Guidelines for the JSEB Access to Capital Program to Clarify Pre-
14 Qualification Criteria and Required Documentation) is hereby repealed
15 as of the effective date of this ordinance. A copy of Ordinance
16 2019-759-E is attached here to as **Exhibit 3**. The JSEB Access to
17 Capital Program shall be governed by the program guidelines developed
18 and approved by the JSEB Administrator pursuant to Chapter 126, Part
19 6 of the Code, without further approval by the City Council.

20 **Section 7. Codification Instructions.** The Codifier and the
21 Office of General Counsel are authorized to make all chapter and
22 division "tables of contents" consistent with the changes set forth
23 herein. Such editorial changes and any others necessary to make the
24 Ordinance Code consistent with the intent of this legislation are
25 approved and directed herein, and changes to the Ordinance Code shall
26 be made forthwith and when inconsistencies are discovered.

27 **Section 8. Effective Date.** This ordinance shall become
28 effective upon signature by the Mayor or upon becoming effective
29 without the Mayor's signature.

1 Form Approved:

2

3 /s/ Mary E. Staffopoulos

4 Office of General Counsel

5 Legislation Prepared By: Lawsikia J. Hodges

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