

## Chapter 10B

### LOCAL SMALL BUSINESS PROGRAM

#### **Sec. 1-10-122. Title.**

Augusta, Georgia Local Small Business Program (“LSBP”).

#### **Sec. 1-10-123. Objective.**

Augusta, Georgia is firmly committed to the principles of equal opportunity and in keeping with these principles, hereby sets forth a program and establishes a mechanism for developing, approving, and implementing procedures by which Local Small Business enterprises shall be identified, informed and educated regarding opportunities for supplying goods, general services, and construction services required by Augusta, Georgia. The LSBP is a race and gender-neutral program intended to provide Local Small Businesses opportunities to perform as Prime Contractors on City contracts, provide encouragement for bidders to incorporate the use of Local Small Businesses as commercially useful Subcontractors, and promote balanced economic and community growth throughout Augusta, Georgia.

#### **Sec. 1-10-124. Policy, intent and purpose.**

- (a) *Policy.* It is the policy of Augusta, Georgia that all necessary and reasonable steps shall be taken to ensure that Local Small Business enterprises have the maximum opportunity to compete for and participate in all contracts and subcontracts funded by or through the Augusta, Georgia governing authority. Further, the Augusta, Georgia Commission has determined, as a means to ensure full economic participation by small local businesses, that a mechanism for developing, approving and implementing a LSBP is required.

Augusta, Georgia has established the LSBP to promote opportunities for registered Local Small Businesses to participate in Augusta, Georgia’s contracting and procurement activities by providing opportunities for Local Small Businesses to perform as Prime Contractors on certain City contracts and by encouraging contractors to utilize registered Local Small Businesses to perform commercially useful functions to the maximum extent possible and as economically feasible, as partners or subcontractors for service delivery or as suppliers of various goods required in the performance of a contract. This LSBP is in addition to and shall not supplant the Local Preference of Code § 1-10-6.

- (b) *Intent and Purpose.* The Augusta, Georgia Local Small Business Program is established to encourage equal opportunity, diversity, and equity in Augusta, Georgia’s contracting and procurement activities. In a race and gender-neutral manner, the Program will promote fair and equal opportunities for all Local Small Businesses. It is specifically intended that the encouragement of Local Small Businesses will allow for the development and growth of such businesses to increase competition for construction and procurement opportunities.
- (1) It is the intent and purpose of this Program to encourage equal opportunity in Augusta, Georgia’s contracting and procurement, to increase utilization of Local Small Businesses in City procurement, and to increase capacity of Local Small Businesses to compete for City contracts.

- (2) It is also the intent and purpose of this Program to encourage the use of the Local Small Business Program, which will have the benefit to Augusta, Georgia of assisting the local economy with job formation.
- (3) It is also the intent and purpose of the LSBP to develop evidence relevant to whether future race and gender conscious programs are necessary to remediate the effects of past or current discrimination, as required by applicable laws.

**Sec. 1-10-125. Definitions.**

- (a) *Generally.* Those definitions set forth in Chapter 10 of this Code shall also apply to Chapter 10B, except as provided in this section.
- (b) *Specifically.*
  - (1) *Commercially Useful Function.* For the purpose of determining whether a registered Local Small Business is performing a commercially useful function, the Director of Minority and Small Business Opportunities shall consider all of the facts in the record, viewed as a whole, including without limitation the following:
    - (i) A Local Small Business performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved.
    - (ii) To perform a commercially useful function, the Local Small Business must be responsible, with respect to material and supplies used on the contract or sub-contract for which it is engaged, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.
    - (iii) A Local Small Business does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of Local Small Business participation. In determining whether a Local Small Business is such an extra participant, the Director of Minority and Small Business Opportunities will examine similar transactions, particularly those in which Local Small Businesses do not participate.
  - (2) *Director of Minority and Small Business Opportunities.* The person designated by the Commission “to serve as equal employment opportunity director and as Director of Minority and Small Business Opportunities” in accordance with § 14(c) of the Consolidation Act.
  - (3) *Gross Receipts.* Total income or, in the case of sole proprietorship gross income, plus “cost of goods sold” as these terms are defined or reported on Internal Revenue Service (IRS) Federal tax return forms; Form 1120 for corporations; Form 1120S for Subchapter S corporations; Form 1065 for partnerships; and Form

1040, Schedule F for farm or Schedule C for sole proprietorships.

- (4) *Local Small Business.* A corporation, sole proprietorship, partnership or other business organization that meets the requirements for registration as such with Augusta, Georgia in accordance with Section 1-10-128 of this Code.
- (5) *Non-Discrimination Statement.* Written affirmation made by a bidder relating to the bidder's conduct prior to submission of a bid as well as after award of a contract that the bidder agrees to:
  - (i) Follow the policies of Augusta, Georgia relating to the participation of Local Small Businesses.
  - (ii) Undertake certain measures to ensure the maximum practicable participation by Local Small Businesses; and
  - (iii) Not engage in discriminatory conduct against Local Small Businesses inconsistent with this Policy.
- (6) *Personal Net Worth.* Net value of the assets of an individual owner, after total liabilities are deducted must not exceed one million, two hundred and fifty thousand dollars (\$1,250,000). An individual's Personal Net Worth does not include the individual's ownership interest and the individual's equity in his or her primary place of residence. An individual's Personal Net Worth includes his or her share of assets held jointly with the individual's spouse. Property held by the entireties is deemed to be owned equally by the spouse.
- (7) *Prime Contractor.* A person or firm who is awarded a contract from Augusta, Georgia for provision of goods or services and has the primary responsibility for performance of the contract. The Prime Contractor may subcontract portions of the work required to Subcontractors, as indicated in the bid or solicitation documents.
- (8) *Registered Local Small Business.* Any business entity registered by the Director of Minority and Small Business Opportunities, providing goods or services, which has its principal office and place of doing business in Richmond County, Georgia; with three (3) year average gross annual receipts being not more than two and one half million dollars (\$2,500,000); and whose owners meet the personal net worth threshold, all as defined herein. The term Local Small Business shall also include a manufacturer with seventy-five (75) employees or less or wholesaler with fifty (50) employees or less without regard to gross revenues.

**Sec. 1-10-126. Application; effective date.**

Except as otherwise provided, this ordinance shall apply to all bids, proposals, contracts, expenditures, and purchases commenced by Augusta, Georgia except sole source or emergency procurements and certain federally funded projects as provided herein. The effective date of this

ordinance shall be the date it is approved by the Augusta, Georgia Commission.

**Sec. 1-10-127. Program administration.**

- (a) *Services to be provided by the Local Small Business Program.* The Director of Minority and Small Business Opportunities shall have the primary responsibility to assure that the LSBP is effectively and equitably carried out in Augusta, Georgia. Other Augusta, Georgia officials, the Procurement Director, Department Directors and management personnel shall give their full cooperation towards the implementation of the LSBP.
- (b) *Program.* The LSBP administration consists of performing vendor registration, education and outreach, and review of bid and proposal documents. Specifically, the program shall consist of:
  - (1) Developing and administering Local Small Business registration criteria and procedures.
  - (2) Establishing and maintaining a directory available to the public of registered Local Small Businesses capable of supplying the type and quality of equipment, supplies, general services, construction, and professional services required by Augusta, Georgia.
  - (3) Regularly seeking out and registering new Local Small Businesses to bid on Augusta, Georgia purchases and solicitations.
  - (4) Notifying vendors of their registration status and advising non-registered parties of their right to appeal the denial of registration which shall be filed with the Director of Minority and Small Business Opportunities within five (5) days of receipt of such notice.
  - (5) Developing annual forecasts and periodically updating the same based on a review of anticipated purchases and registered Local Small Businesses.
  - (6) Monitoring and reporting on legislative and judicial actions relevant to Local Small Business interests.
  - (7) Reviewing specifications and bid documents with the Procurement Department to ensure maximum opportunities for registered Local Small Businesses to compete on an equal basis for contracting opportunities and to perform commercially useful functions.
  - (8) Convening and/or participating in information sessions with Local Small Businesses regarding bid requirements and contract performance.
  - (9) Providing technical assistance, conducting seminars, visiting vendors, and performing other outreach services to encourage and increase participation in Augusta, Georgia's bidding process by Local Small Businesses.
  - (10) Exploring and developing other means of expanding the program and attracting and

increasing Local Small Business participation including joint efforts with other governmental agencies and authorities.

- (11) Refer Local Small Businesses to third party development assistance providers when appropriate for bonding, financial and technical assistance.
- (12) Attend pre-bid, pre-qualification or pre-proposal conferences to provide information on the LSBP.
- (13) Preparing and presenting an annual LSBP report to the Augusta, Georgia Commission.
- (14) Assist prime contractors and other potential bidders in identifying and contacting Local Small Businesses.
- (15) Develop outreach programs specifically targeted to educate Local Small Businesses about the LSBP.
- (16) The Director of Minority and Small Business Opportunities shall work with User Departments to determine the LSBP eligibility for each project between \$101,000 and \$300,000 to include those with subcontracting and/or supplier possibilities. The Director of Minority and Small Business Opportunities and User Departments shall have the authority to reduce or eliminate the LSBP eligibility on a project based on the type of contract, the type of subcontracting work that will be required, and the availability of Local Small Businesses.
- (17) Notify all registered vendors of formal bid opportunities through direct solicitation or public advertisement, including information on the LSBP.
- (18) Work with project managers and/or User Departments to divide larger projects into smaller projects or contracts when commercially appropriate, in order to create more opportunities for Local Small Businesses to participate in contracts let by Augusta, Georgia.
- (19) Provide data and technical assistance to support the outreach efforts of the LSBP as necessary and appropriate.
- (20) Ensure specifications are open and competitive.
- (21) The Director of Minority and Small Business Opportunities, the User Department and the Finance Director, may make special provision for progress payments as deemed reasonable to assist Local Small Businesses to carry out the terms of a contract.
- (22) When a Local Small Business is awarded a contract with Augusta, Georgia, the Procurement Director may furnish written confirmation of the same, providing the terms of the contract which may be used by the Local Small Business in negotiating lines of credit with lending institutions.

- (c) *Evaluation of the Local Small Business Program.* The LSBP shall be evaluated on an annual basis. Each annual report shall be compiled by the Director of Minority and Small Business Opportunities and shall compare the fiscal year ending with the previous fiscal year. Evaluation of the program may include:
- (1) Number of Local Small Business firms registered;
  - (2) Training and technical assistance offered to Local Small Businesses;
  - (3) Dissemination of LSBP information at pre-bid conferences; and
  - (4) Evaluation of the effectiveness of the Local Small Business in relation to the achievement of Augusta, Georgia's goals set forth under this policy, including the utilization of Local Small Businesses on contracts.

**Sec. 1-10-128. Registration and certification procedures.**

- (a) *Registration Criteria; acceptance of certification by other governmental agencies.* The LSBP requires prior registration or evidence of current certification by other governmental agencies Local Small Business Program. Eligibility requirements for registration are:
- (1) Certification as to small business status may be accepted from other local governmental, state, or federal agencies that apply criteria substantially similar to that imposed by this ordinance.
  - (2) Applicant firm must complete an appropriate application form obtained from the Director of Minority and Small Business Opportunities and must qualify as a Local Small Business, as the term is defined in this Article as to principal place of business, gross annual receipts, and personal net worth thresholds.
  - (3) Applicant firm must have its principal place of business located within the geographic limits of Richmond County. A location utilized solely as a post office box, mailbox, mail drop, virtual office, telephone message center, or any combination thereof, with no substantial work function, shall not be deemed to be a significant local presence sufficient to qualify as a Local Small Business.
  - (4) Applicant firm must possess a valid Augusta, Georgia business license for six (6) months prior to submitting their LSBP registration application;
  - (5) The firm's three (3) year average annual gross receipts, as defined herein, must not exceed two and one half million (\$2,500,000) in annual gross receipts; the annual gross receipts limitation shall not apply to manufacturers with seventy-five (75) employees or less or wholesalers with fifty (50) employees or less.
  - (6) Applicant firm owner must be a citizen or lawfully admitted permanent resident of the United States;
  - (7) Applicant firm must be a business, including a sole proprietorship, partnership,

corporations, limited liability company, or any other business or professional entity:

- (i) which is at least fifty-one (51) percent owned by one (1) or more of the applicant individuals identified, and the ownership must have been in existence for one (1) year or more; and
  - (ii) in the case of a publicly-owned business, at least fifty-one (51) percent of all classes of stock which is owned by one (1) or more of such persons, each of whom meets the net worth criteria as defined herein.
- (8) No individual owner of an applicant firm, or if a sole proprietorship or partnership the individuals themselves, may have a personal net worth that exceeds \$1,250,000, as that term is defined in this Article.
- (9) No Local Small Business shall be registered on the basis of the race or gender of its ownership regime.
- (b) *Affidavit of No Change.* Local Small Business registration is valid for a three-year period beginning on the date Augusta, Georgia registers the business into the LSBP. On the 1<sup>st</sup> year anniversary of registration, the Local Small Business must provide a completed Affidavit of No Change and evidence of continuing eligibility. Upon review and determination of continued eligibility the Local Small Business will remain registered with the City for an additional two years.
- (c) *Renewal of Registration.* Local Small Business registration is valid for a three-year period beginning on the date Augusta, Georgia registers the business into the LSBP. Sixty (60) days prior to the expiration of the registration of the Local Small Business, the Local Small Business must reapply by submitting a renewal application and evidence of continuing eligibility. Upon review and determination of continued eligibility, the Local Small Business will be renewed for an additional three years.

It is the responsibility of the Local Small Business to notify the Director of Minority and Small Business Opportunities of any change in its circumstances affecting its continued eligibility for the program. Failure to do so may result in the firm's de-registration and preclusion from future participation in the LSBP;

- (1) A Local Small Business that no longer meets registration criteria shall not be re-registered by the Director of Minority and Small Business Opportunities;
- (2) Firms that have been denied registration or re-registration may protest the denial as follows:
  - (i) Within five (5) days of receipt of denial of registration or re-registration, the firm may protest such action in writing to the Director of Minority and Small Business Opportunities. Protests filed after the five (5) day period shall not be considered and are deemed a failure on the part of the protestor to exhaust administrative remedies.

- (ii) A hearing shall be held by Augusta, Georgia Administrator (or his or her designee) at which time the firm may present additional facts and evidence in support of its eligibility. Augusta, Georgia Administrator (or his or her designee) shall control all aspects of the hearing, including scheduling, conduct, witnesses, and evidence, and may request the attendance of witnesses and production of particular documents.
  - (iii) Augusta, Georgia Administrator shall send written notice of the decision to the firm within thirty (30) days of the hearing.
  - (iv) A firm found to be ineligible cannot apply for registration or re- registration for a period of one year after the effective date of the final decision.
- (d) *Limitations.* Notwithstanding any other provision of this program except on a finding of good cause by Augusta, Georgia, a registered Local Small Business is no longer eligible to participate in the LSBP after being enrolled for ten (10) consecutive years regardless of whether the firm received contracts or prime contracts under the program. If a firm has been released from the program before graduation as a result of exceeding the LSBP thresholds, it will still be eligible to receive contracts from Augusta.

In determining whether a good cause exists for a firm to continue participation beyond ten (10) consecutive years, Augusta may review all relevant factors such as amount of business previously received by the firm, and capability of other small firms to provide goods and services, impact on a potential contract opportunity for other local businesses to compete. In no event shall a firm's participation in the program extend beyond fifteen (15) years.

Participation or registration as a Local Small Business in the LSBP shall not preclude a registered firm from competing for a prime contract with Augusta, Georgia on the same basis as other prime contractors or suppliers.

- (e) *Graduation.* Augusta, Georgia shall graduate a Local Small Business from eligibility in the LSBP if any one of the following occurs:
- (1) The Local Small Business' gross revenues in each of the previous consecutive three (3) years exceed an average of \$2.5 million;
  - (2) The net worth of any owner of a Local Small Business exceeds an average of \$1,250,000 for each of the previous consecutive three (3) years, exclusive of principal residence and the value of the Local Small Business; or
  - (3) The Local Small Business has participated in the LSBP for ten (10) years and Augusta, Georgia has not approved an extension of participation based on good cause.

#### **Sec. 1-10-129. Local Small Business program.**

- (a) Projects in certain dollar thresholds may be made available for Bid/award only to Local Small Businesses (LSBs) under the LSBP. The designation of the projects as eligible is a discretionary



decision by the Director of Minority and Small Business Opportunities, in consultation with the User Department, and is based primarily on confirmation of availability -- i.e., there is a reasonable expectation that there will be at least three (3) responsible and responsive bids by certified LSBs and that the award will be made at a fair market price/value.

The purpose of this policy is to increase opportunities for LSBs to perform as Prime Contractors on City projects/contracts, growing capacity and gaining valuable experience. Therefore, LSBs must commit to self-performing a significant percentage of the contracted work (a minimum of 50 percent), limiting its ability to subcontract the work.

(b) *Departmental purchase requirements (small purchases, quotations, or informal bids).* Subject to the dollar limits set forth under Augusta, Georgia ordinance, departments are authorized to make small purchases using Agency Purchase Orders. Departments shall be directed by Augusta, Georgia Administrator to utilize Local Small Businesses on small purchases whenever possible and appropriate.

- (1) The Director of Minority and Small Business Opportunities shall make available to every Augusta, Georgia department a directory of registered Local Small Businesses and encourage their use of by departments.
- (2) The Director of Minority and Small Business Opportunities shall provide annual training to all Augusta, Georgia Departments on the LSBP.
- (3) The Director of Minority and Small Business Opportunities shall ensure that all Augusta, Georgia specifications for goods and services do not contain any unnecessary impediment to Local Small Business participation in the bid process.
- (4) For small purchases, quotations or informal bids, the Using Department will solicit bids from registered Local Small Businesses to supply the required materials, equipment, supplies or services using the Local Small Business Registry created and maintained by the Director of Minority and Small Business Opportunities.
- (5) The Director of Minority and Small Business Opportunities and Procurement Department will attempt to identify qualified Local Small Businesses and will include such Local Small Business in bid/quote solicitation lists.
- (6) The Director of Minority and Small Business Opportunities will make recommendations to the Procurement Director and User Departments when specification appears to impede Local Small Businesses from competitively participating in a bid.

(c) *Procurement Department and User Agency Responsibilities.*

- (1) For purchases on which written bids are sought, registered Local Small Businesses which are ready, willing, and able to perform the required services or provide the required commodity will be solicited for a written quotation or bid.
- (2) Purchases from Local Small Businesses shall be tracked by the Director of Minority and Small Business Opportunities with the assistance and cooperation of the user

Departments.

(d) *Maintenance of Records.*

- (1) The Director of Minority and Small Business Opportunities, with the assistance of the Department of Information Technology, shall compile data on Local Small Business participation as well as women and minority owned business participation. Information on prime contract awards and subcontractor utilization will be maintained by the Director of Minority and Small Business Opportunities which will gather information from all user Departments on a quarterly basis.
- (2) Local Small Business utilization statistics shall be maintained in the following manner:
  - (i) Contracts and purchases shall be grouped into four categories: construction, professional services, general services, and materials/equipment/supplies.
  - (ii) Statistics shall measure overall awards to Local Small Businesses and to women and minority owned businesses by category of purchase (i.e., construction, professional services, general services, and materials/equipment/supplies).
  - (iii) All data necessary to evaluate the effectiveness of the LSBP in reducing discrimination against minority and women owned businesses shall be kept and maintained by the Director of Minority and Small Business Opportunities.
- (3) Data collection is an important aspect of evaluating the effectiveness of the LSBP. The LSBP is a race and gender-neutral program and all data collection efforts shall be for evaluating purposes only. The following statistics shall be reported not less than annually to the Augusta, Georgia Commission by the Director of Minority and Small Business Opportunities.
  - (i) Regarding purchases of professional services, general services and material/equipment/supplies made through the competitive bid and quotation process:
    1. Total value of purchases.
    2. Total value of purchases from Local Small Businesses.
    3. Total value of purchases from women owned businesses.
    4. Total value of purchases from minority owned businesses.
  - (ii) Regarding small purchases by operating department using Agency Purchase Orders:

1. Total value of small purchases by Augusta, Georgia Department.
2. Total value of small purchases from Local Small Businesses by Department.
3. Total value of small purchases from women owned businesses by Department.
4. Total value of small purchases from minority owned businesses by Department.

(iii) Regarding construction purchases:

1. Total value of construction contract awards.
2. Total value of construction contracts awarded to Local Small Businesses as prime contractors.
3. Total value of subcontracts awarded to Local Small Businesses.
4. Total value of subcontracts awarded to women owned businesses.
5. Total value of subcontracts awarded to minority owned businesses.

(e) *Compliance.*

- (1) It will be the duty of the Procurement Director to ensure that bids or proposals issued from the Procurement Department adhere to the provisions set forth in this Policy.
- (2) The Director of Minority and Small Business Opportunities, and all department directors will assume responsibility for evaluating compliance with this program in their respective contract areas and will review, on a continuing basis, all aspects of the program's operations to assure that the purpose is being attained and reporting same to the Director of Minority and Small Business Opportunities for tracking and annual report purposes.
- (3) Each Augusta, Georgia contract will contain a provision requiring compliance with this policy including maintenance of records, good faith efforts, and maintenance of information necessary to document compliance with, and effectiveness of the LSBP. This shall include the right of the Director of Minority and Small Business Opportunities and any compliance personnel to inspect such records. Compliance records will be a part of the official files located in the Procurement Office.
- (4) The Director of Minority and Small Business Opportunities shall be responsible for evaluating good faith efforts documentation and subcontractor information submitted by bidders in conformance with, the AUGUSTA, GA. CODE and any

State and Federal Laws applicable to any bid specifications for competitive sealed bid or competitive sealed proposal projects prior to award of the contract.

- (5) Each Augusta, Georgia contract will contain a provision prohibiting any agreements between a contractor and a Local Small Business in which the Local Small Business promises not to provide subcontracting quotations to other bidders or potential bidders.

(f) *Competitive Bids.*

Nothing in this Policy is to be construed to require Augusta, Georgia to award a bid contract to other than the lowest responsible bidder, or to require contractors to award to subcontractors, or to make significant material purchases from Local Small Businesses who do not submit the best overall pricing to Augusta, Georgia.

(g) *Outreach.*

To maximize the identification, registration and utilization of Local Small Businesses, the following efforts will be undertaken by the Director of Minority and Small Business Opportunities:

- (1) Increase efforts to locate and register additional vendors, service providers, and construction contractors that can provide goods and services for Augusta, Georgia through media, vendor fairs, and electronic message boards.
- (2) As Georgia Department of Transportation, Federal Transit Administration, Department of Defense and Federal Aviation Administration certified construction contractors are located, invite local firms to register with Augusta, Georgia in accordance with the requirements of this Article in order to create an enhanced resource to using departments, buyers and prime contractors to locate registered Local Small Businesses for projects that can utilize Local Small Businesses for a commercially useful function.
- (3) Supply information to the Board of Commissioners regarding the LSBP and offer opportunities for ways in which the Board of Commission can be an advocate of the LSBP.

**Sec. 1-10-130. Exceptions – federally funded projects.**

In accordance with § 1-10-8 and Chapter 10B, the LSBP shall only be utilized with federally funded projects, solicitations or contracts as authorized by federal (and Georgia) laws, regulations and conditions applicable to such projects. To the extent that there are any conflicts between any such laws, regulations or conditions and the LSBP, the federal (and Georgia) laws, regulations and conditions shall control.

**Sec. 1-10-132 through Sec. 1-10-999. Reserved.**