

RICHLAND COUNTY
OFFICE OF SMALL BUSINESS AD HOC
COMMITTEE

AGENDA



TUESDAY MARCH 25, 2025

4:00 PM

COUNCIL CHAMBERS

Richland County Council 2024-2025



Derrek Pugh
District 2
Vice Chair



Jason Brantham
District 1



Gretchen D. Barron
District 7



Tyra Little
District 3



Paul Livingston
District 4



Allison Terracio
District 5



Don Weaver
District 6



Tish Dozier Alleyne
District 8



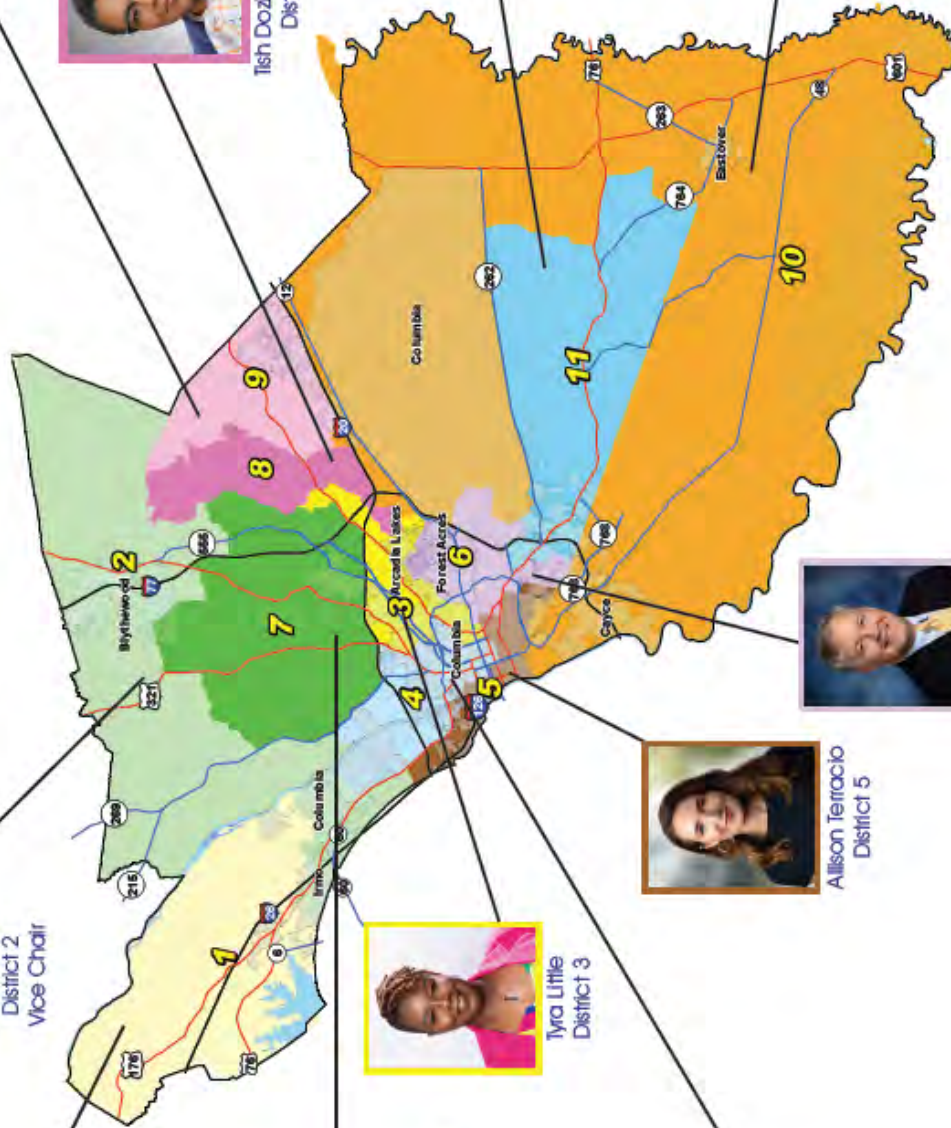
Chakisse Newton
District 11



Cheryl D. English
District 10



Jessica Mackley
District 9
Chair





**Richland County
Office of Small Business Ad Hoc Committee**

AGENDA

March 25, 2025 - 4:00 PM
2020 Hampton Street, Columbia, SC 29204

The Honorable Derrek Pugh	The Honorable Tyra K. Little	The Honorable Gretchen Barron	The Honorable Tish Dozier Alleyne	The Honorable Chakisse Newton
County Council District 2	County Council District 3	County Council District 7	County Council District 8	County Council District 11

- 1. Call to Order** The Honorable Derrek Pugh
 - a. Roll Call
- 2. Election of Chair** The Honorable Derrek Pugh
- 3. Approval of Minutes**
 - a. December 10, 2024 [\[PAGES 5-7\]](#)
- 4. Adoption of Agenda**
- 5. Items for Action**
 - a. SLBE Eligibility Requirements [\[PAGES 8-52\]](#)
 - b. Disparity Study Next Steps [Pursuant to SC Code of Laws, Sec. 30-4-70(a)(2)]
- 6. Items for Discussion/Action**
 - a. Revolving Loan Fund
- 7. Adjournment**



Special Accommodations and Interpreter Services Citizens may be present during any of the County's meetings. If requested, the agenda and backup materials will be made available in alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), as amended and the federal rules and regulations adopted in implementation thereof. Any person who requires a disability-related modification or accommodation, including auxiliary aids or services, in order to participate in the public meeting may request such modification, accommodation, aid or service by contacting the Clerk of Council's office either in person at 2020 Hampton Street, Columbia, SC, by telephone at (803) 576-2061, or TDD at 803-576-2045 no later than 24 hours prior to the scheduled meeting.



Richland County Council
Office of Small Business Ad Hoc Committee
MINUTES
December 10, 2024 – 4:00 PM
Council Chambers
2020 Hampton Street, Columbia, SC 29204

COUNCIL MEMBERS PRESENT: Derrek Pugh, Chair; Gretchen Barron, and Chakisse Newton

OTHERS PRESENT: Paul Livingston, Allison Terracio, Jesica Mackey, Anette Kirylo, Jackie Hancock, Leonardo Brown, Lori Thomas, Jennifer Wladischkin, Tamar Black, Pamela Green, Patrick Wright, Michelle Onley, Kenny Bowen, Phil Harris, Ashiya Myers, Angela Weathersby, and Kyle Holsclaw

1. **CALL TO ORDER** – Chairman Derrek Pugh called the meeting to order at approximately 2:00 PM.

2. **APPROVAL OF MINUTES**

a. September 17, 2024 – Ms. Newton moved to approve the minutes as distributed, seconded by Ms. Barron.

In Favor: Pugh, Barron, and Newton

The vote in favor was unanimous.

3. **ADOPTION OF THE AGENDA** – Ms. Newton moved to adopt the agenda as published, seconded by Ms. Barron.

In Favor: Pugh, Barron, and Newton

The vote in favor was unanimous.

4. **ITEMS FOR DISCUSSION/ACTION**

a. Revolving Loan Fund – Ms. Pamela Green, Office of Small Business Opportunity Director, indicated the Revolving Loan Program would align with three (3) of the strategic goals: Economic Development, Plan for Growth, and Achieve Positive Public Engagement. The purpose of the Revolving Loan Fund is for those businesses that have difficulty obtaining financing through traditional measures. It would be in place to ensure that we are creating jobs or retaining jobs. It will also be a capacity builder and support revitalizations of some designated areas in unincorporated Richland County.

Currently, the City of Columbia has a Revolving Loan Program that only serves within the city limits. They often turn away business owners who request lending because they are outside the city limits.

Three potential primary funding sources have been identified: Economic Development Administration–Economic Adjustment Assistance (EDA–EAA) Funds, CDBG Funds, and Richland County General Funds.

The “EDA” fund is a unit of the Department of Commerce. The awards range from \$500,000 to \$2M and are used to capitalize or recapitalize revolving loan programs. The main evaluation criterion is that they must satisfy at least one of the seven investment priorities. The investment priorities are Equity, Recovery & Resilience, Workforce Development, Manufacturing, Technology-Based ED, Environmentally Sustainable Development, and Export & Foreign Direct Investment. She noted that the Revolving Loan Program would be consistent with Equity and Workforce Development in terms of creating and retaining jobs.

The CDBG funds would have HUD low-to-moderate income (LMI) requirements. Currently, \$50,000 has been designated for the Office of Small Business Opportunity. In February, they would like to apply for an additional \$25,000. These funds would be considered for potentially forgivable loans or smaller loan amounts due to the HUD requirements that will be attached.

Finally, a review of the City of Columbia's program shows the need for 25% match funds from the General Fund.

The Revolving Loan Fund would be "gap funding." Everything would be collateralized. The minimum loan would be \$10,000, and the maximum would be \$200,000. Potentially, there would be tiered pricing, which helps mitigate the risks associated with these types of loans. There are allowable administrative expenses under "EDA." It was noted the City of Columbia utilizes a third-party loan servicing agent. The cost for this service would be approximately \$18-\$25 per loan recipient. This third-party entity would be responsible for billing and collecting payment.

To effectively administer the program, there would need to be designated staff with an in-house loan officer and a compliance coordinator to ensure we are meeting Federal guidelines. In addition, a seven-person loan committee will be appointed by Council and will have two-year terms. The committee could adjust fees, interest terms, etc., but we would have baseline guidelines from "EDA."

The EDA requires a five-year loan strategy based on the Comprehensive Economic Development Strategy with the Central Midlands Council of Governments. The County's Revolving Loan Fund goals and objectives would be:

- Education and Workforce: Support programs focused on removing barriers for small local businesses;
- Economy: Support entrepreneurship and small business development, build capacity for the growth and creation of quality, livable wages by expanding lending/funding opportunities, building stronger entrepreneurial ecosystems
- Resilience: Build SLBE capacity for growth and development by providing access to capital and supporting micro-lending programs

The financing strategy would relate to building construction, expansion, land acquisition, machinery, equipment, supplies, and working capital. The proposed terms would include a balloon feature for extended years.

The Revolving Loan Fund would be managed through the Office of Small Business Opportunity. The OSBO Director and Commercial Loan Officer would be primarily responsible for managing the Revolving Loan Fund and coordinating the activities of the Revolving Loan Committee. Essentially, the Commercial Loan Officer would underwrite the loans and submit them to the committee for review. The committee will be diverse and include attorneys, bankers, small business owners, and a representative from the County.

Ms. Barron inquired if the proposal is to use a combination of sources to make up the budget or will the funds be pulled from one source.

Ms. Green responded that matching funds would be needed to utilize the "EDA" funds. The CDBG funds can be counted towards the match. She noted the City of Columbia pulled funds from CDBG, the Economic Development Investment Fund, and their Renaissance Project.

There will be three (3) buckets: "EDA," "CDBG," and the General Fund. As part of the "EDA" piece, we will work with other banks, mostly Community Development Financial Institutions "CDFIs," because we are a gap funder. In most cases, we will be in a second position, but we would have worked with the "CDFIs" for some of the other "BDCs" for those looking for lending opportunities. We will be required to follow HUD requirements for the CDBG funds. The General Fund matching piece would allow us some flexibility with other types of loans. It will be essential to have a great Coordinator to ensure we adhere to all of the guidelines.

Ms. Barron requested more details regarding the tier type pricing.

Ms. Green replied we may want to look at tiered pricing from \$10,000 to \$20,000, etc. The lower amount may be a higher interest rate, but it also serves a particular market.

Ms. Newton inquired what the budget would be for this type of program.

Ms. Green replied there would be an additional \$125,000 for staffing. If we utilize a third party for the loan services, it would be taken out of the interest fees from the program. We would have to determine how to structure the matching piece. The other pieces and the funds available are new parts to her. She will look to Council for guidance on that part.

Ms. Newton inquired if the staff funding would come from the General Fund. In addition, would the referenced committee function similarly to the Hospitality Tax Committee (i.e., would the committee members be appointed by Council)?

Ms. Green indicated the General Fund would be the easiest way to fund staff. The committee would be appointed by Council and make recommendations to the body.

Ms. Barron stated, for clarification, that the committee's only responsibility would be to review the applications and would not serve as a governing body.

Ms. Green replied the committee would have input on some of the procedures (e.g., terms, policies, etc.). The goal is to have a banker and an attorney on the committee.

Ms. Mackey requested examples of what other counties and large metropolitan areas are doing that closely reflect Richland County's demographics. Additionally, what investment would the Council need to make to administer the Revolving Loan Fund Program?

Ms. Green noted that most of the funds will be expensed through the "EDA" bucket. When you look at the Central Midlands Council of Government's Five-Year Plan, the "EDA" is a core piece of it. The County would have to invest at least 25% in matching funds.

Mr. Pugh asked if Ms. Green had come across entities that utilized multiple third-party partners when she was researching revolving loan funds.

Ms. Green pointed out that the County works with eight third-party sources. They have discussed, in general terms, what we would like to do regarding revolving loans. Third-party loan servicers strictly service the loan. They would be responsible for sending out billing and past-due statements and providing the County with notice of those in default.

Mr. Pugh inquired if the 7-person committee would be an ad hoc committee.

Ms. Green responded in the affirmative. The OSBO Office will put together a Five-Year Lending Strategy. Then, they would assemble the components of the Code/Ordinance for how it will operate. We would have the committee review and make suggestions on these policies.

Mr. Pugh asked if this type of committee is standard across the industry.

Ms. Green replied in the affirmative. She noted you want to ensure you have an objective review.

Mr. Pugh inquired if the committee members would go through the Rules and Appointments Committee process or if it would be more in line with the P3.

Ms. Green believes it would be more in line with the P3. She pointed out that staff would create the framework. The lending strategy would be based on the Central Midlands Council of Governments strategy. The committee would not have free reign.

Ms. Terracio asked what measures would be built into the plan if the loan was not repaid to recoup the funds.

Ms. Green stated there are default measures and levels. All of the loans will be collateralized. The goal is never to repossess anything but to endeavor to remedy the matter. We may have to restructure loans to accommodate the situation. Of course, this will be handled case by case.

Ms. Terracio expressed that she has a lot of concerns regarding this program.

Ms. Newton requested a general timeline of the process, including how the criteria will be created and whether we will be creating policies and/or ordinances.

b. Disparity Study Report [Pursuant to SC Code of Laws, Sec. 30-4-70(a)(2)]

Ms. Barron moved to go into Executive Session, seconded by Ms. Newton.

In Favor: Pugh, Barron, and Newton

The vote in favor was unanimous.

***The Committee went into Executive Session at approximately 4:41 PM
and came out at approximately 4:57 PM***

Ms. Barron moved to come out of Executive Session, seconded by Ms. Newton.

In Favor: Pugh, Barron, and Newton

Mr. Pugh indicated that the Committee entered into Executive Session to receive legal advice. No actions were taken in Executive Session.

5. **ADJOURNMENT** – Ms. Barron moved to adjourn the meeting, seconded by Ms. Newton.

In Favor: Pugh, Barron, and Newton

The vote in favor was unanimous.

The meeting adjourned at approximately 4:58 PM.

**Agenda Briefing**

Prepared by:	Pam Green	Title:	Director
Department:	Office of Small Business Opportunity	Division:	
Date Prepared:	March 4, 2025	Meeting Date:	March 25, 2025
Legal Review	Patrick Wright via email	Date:	March 12, 2025
Budget Review	Maddison Wilkerson via email	Date:	March 12, 2025
Finance Review	Stacey Hamm via email	Date:	March 12, 2025
Approved for consideration:		County Administrator	Leonardo Brown, MBA, CPM
Meeting/Committee	OSBO Ad Hoc		
Subject	SLBE Program Eligibility Adjustments		

RECOMMENDED/REQUESTED ACTION:

The Office of Small Business Opportunity staff requests an increase in the current "Schedule of Size Standards" for the following certifying industry categories:

Industry Category	Current Size Standard	Requested Size Standard
Construction	\$7M	\$10M
Architecture	\$3M	\$5M
Engineering	\$2.5M	\$5M

The increase represents averaged annual gross revenues within primary North American Industry Classification System (NAIC)s code over a three-year period.

The OSBO staff also requests to change the certification period from two (2) years to three (3) years to better align with similar programs and the timeline of requested documentation for certification.

Request for Council Reconsideration: ☐ Yes

FIDUCIARY:

Are funds allocated in the department's current fiscal year budget?	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
If not, is a budget amendment necessary?	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No

ADDITIONAL FISCAL/BUDGETARY MATTERS TO CONSIDER:

The requested actions have no budgetary impact.

Applicable fund, cost center, and spend category: not applicable.

OFFICE OF PROCUREMENT & CONTRACTING FEEDBACK:

Not applicable.

COUNTY ATTORNEY'S OFFICE FEEDBACK/POSSIBLE AREA(S) OF LEGAL EXPOSURE:

There are no legal concerns regarding this matter.

REGULATORY COMPLIANCE:

Originating Ordinance No. 049-13HR, October 2, 2013. Ordinance No. 016-14HR, Sections II, III, IV- SLBE Schedule of Size Standard Eligibility Requirements effective May 6, 2014. Division 7: Small Business Procurement Requirements Sec.2-641 Eligibility for SLBE program.

MOTION OF ORIGIN:

There is no associated Council motion of origin.

STRATEGIC & GENERATIVE DISCUSSION:

Small Local Business Enterprise (SLBE) eligibility requirements have remained the same since inception of the program; however, the County Ordinance requires an annual review of program and eligibility components with periodic adjustments to meet current market conditions. Additionally, the COVID-19 pandemic has had a direct impact on the cost of doing business across all industry categories, with construction seeing a huge increase in the cost of goods sold.

Staff reviewed current size standards and certification periods and compared them to standards established by the Small Business Association (SBA), cities, and counties with demographics similar to Richland County. SBA size standards in Construction, Architecture, and Engineering are \$39.5M, \$7.5M, and \$16.5M, respectively. Similar City/County standards are \$10-12M for Construction and \$5M for architecture and engineering (A/E).

The requests make necessary adjustments to reflect changes in the market and brings the County in alignment with similar counties. The size adjustments also help to provide additional opportunities and build increased capacity for local small businesses. Local businesses will engage in a larger, robust pool with increased competition to support contract work for Public Works, Transportation, Utilities and other departments within the County.

For the certification period, staff reviewed certification across other cities, counties and states, and found timeframes ranging from three to five (3-5) years. Three years provides ample time for SLBEs to understand the program and properly source for opportunities provided by OSBO. The timeframe also allows staff to effectively log business credentials and licenses. All current SLBE certifications would be extended a year to reflect the change.

ASSOCIATED STRATEGIC GOAL, OBJECTIVE, AND INITIATIVE:

Goal: Invest in Economic Development

Goal: Establish Operational Excellence

ATTACHMENTS:

1. Redlined ordinances with recommended changes

STATE OF SOUTH CAROLINA COUNTY
COUNCIL FOR RICHLAND COUNTY
ORDINANCE NO. 049-13HR

AN ORDINANCE AMENDING THE RICHLAND COUNTY CODE OF ORDINANCES, CHAPTER 2, ADMINISTRATION; ARTICLE X, PURCHASING; BY ADDING A NEW DIVISION ENTITLED 7, SMALL LOCAL BUSINESS ENTERPRISE PROCUREMENT REQUIREMENTS; AND AMENDING CHAPTER 2, ADMINISTRATION; ARTICLE XI, INQUIRIES AND INVESTIGATIONS; SO AS TO RENUMBER THE PARAGRAPHS THEREIN.

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

SECTION I. The Richland County Code of Ordinances; Chapter 2, Administration; Article XI, Inquiries and Investigation; Section 2-639, Short title; is hereby renumbered to read as Section 2-647, and all remaining paragraphs in Article XI are renumbered in appropriate chronological order.

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

DIVISION 7. SMALL LOCAL BUSINESS ENTERPRISE PROCUREMENT
REQUIREMENTS

Sec. 2-639. General Provisions.

(a) *Purpose*

The purpose of this division is to provide a race- and gender-neutral procurement tool for the County to use in its efforts to ensure that all segments of its local business community have a reasonable and significant opportunity to participate in County contracts for construction, architectural & engineering services, professional services, non-professional services, and commodities. The Small Local Business Enterprise ("*SLBE*") Program also furthers the County's public interest to foster effective broad-based competition from all segments of the vendor community, including, but not limited to, minority business enterprises, small business enterprises, and local business enterprises. This policy is, in part, intended to further the County's compelling interest in ensuring that it is neither an active nor passive participant in private sector marketplace discrimination, and in promoting equal opportunity for all segments of the contracting community to participate in County contracts. Moreover, the SLBE Program provides additional avenues for the development of new capacity and new sources of competition for County contracts from the growing pool of small and locally based businesses.

(b) *Scope and Limitations*

This SLBE Program may be applied by the County on a contract-by-contract basis to the maximum practicable extent permissible under federal and state law.

(c) *Definitions*

Affirmative Procurement Initiatives – refers to any procurement tool to enhance contracting opportunities for SLBE firms including: bonding / insurance waivers, bid incentives, price preferences, sheltered market, mandatory subcontracting, competitive business development demonstration projects, and SLBE evaluation preference points in the scoring of proposal evaluations.

Award- the final selection of a bidder or offeror for a specified prime contract or subcontract dollar amount. Awards are made by the County to prime contractors or vendors or by prime contractors or vendors to subcontractors or sub-vendors, usually pursuant to an open invitation to bid ("ITB") or request for proposal ("RFP") process. (Contract awards are to be distinguished from contract payments in that they only reflect the anticipated dollar amounts instead of actual dollar amounts that are to be paid to a bidder or offeror under an awarded contract.)

Bid Incentives – additional inducements or enhancements in the bidding process that are designed to increase the chances for the selection of SLBE firms in competition with other firms. These bid incentives may be applied to all solicitations, contracts, and letter agreements for the purchase of Architectural & Engineering services, Construction, Professional Services, Non-professional Services, and Commodities including change orders and amendments.

Centralized Bidder Registration System ("CBR") -- a web-based software application used by the County of Richland to track and monitor SLBE availability and utilization (i.e., "Spend" or "Payments") on County contracts.

County- refers to the County of Richland, South Carolina.

Commercially Useful Function – an SLBE 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. To perform a commercially useful function, the SLBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an SLBE is performing a commercially useful function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the SLBE firm is to be paid under the contract is commensurate with the work it is actually performing and the SLBE credit claimed for its performance of the work, and other relevant factors. Specifically, an SLBE 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 meaningful and useful SLBE participation, when in similar transactions in which SLBE firms do not participate, there is no such role performed.

Emerging SLBE – an emerging firm that meets all of the qualifications of a Small Local Business Enterprise, and that is less than five years old, but has no more than five full-time employees and annual gross sales as averaged over the life of the firm that are less than \$1 million.

Goal – a non-mandatory annual aspirational percentage goal for SLBE contract participation is established each year for Architectural & Engineering services, Construction, Professional Services, Non-professional Services, and Commodities contracts. Mandatory percentage goals for SLBE subcontract participation may be established on a contract-by-contract basis by either the Director of Procurement or a Goal Setting Committee.

Goal Setting Committee – a committee established by the Director of Procurement for the County (including a representative of the Procurement Department and a representative of the end-user agency) and chaired by the Director of Procurement that establishes SLBE Program goals and selects appropriate SLBE Affirmative Procurement Initiatives to be applied to each contract for the County based upon industry categories, vendor availability, and project-specific characteristics. The Director of Procurement may establish as many as five separate Goal Setting Committees (i.e., one for each industry category).

Good Faith Efforts -documentation of the Bidder's intent to comply with SLBE Program goals and procedures, including, but not limited to the following: (1) documentation within a bid submission or proposal reflecting the Bidder's commitment to comply with SLBE Program goals as established by the Director of Procurement or a Goal Setting Committee for a particular contract; or (2) documentation of efforts made towards achieving the SLBE Program goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SLBE subcontract opportunities on the County web site; solicitations of bids from all qualified SLBE firms listed in the County's SLBE Directory of certified SLBE firms; correspondence from qualified SLBE firms documenting their unavailability to perform SLBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to SLBE firms; documentation of efforts to assist SLBE firms with obtaining financing, bonding, or insurance required by the bidder; and documentation of consultations with trade associations and consultants that represent the interests of small and local businesses in order to identify qualified and available SLBE subcontractors.)

Graduation -An SLBE firm permanently graduates from the County's SLBE program when it meets the criteria for graduation set forth in this policy.

Independently Owned, Managed, and Operated – ownership of an SLBE firm must be direct, independent, and by individuals only. Business firms that are owned by other businesses or by the principals or owners of other businesses that cannot themselves qualify under the SLBE eligibility requirements shall not be eligible to participate in the SLBE program. Moreover, the day-to-day management of the SLBE firm must be direct and independent of the influence of any other businesses that cannot themselves qualify under the SLBE eligibility requirements.

Industry Categories – procurement groupings for County contracts for purposes of the administration of Affirmative Procurement Initiatives shall be inclusive of Architectural & Engineering, Construction, Professional Services, and Non-professional Services, and Commodities procurements. Industry Categories may also be referred to as "business categories."

Joint Venture - an association of two or more persons or businesses carrying out a single business enterprise for which purpose they combine their capital, efforts, skills, knowledge and/or property. Joint ventures must be established by written agreement.

Local Business Enterprise ("LBE") - a firm having a Principal Place of Business or a Significant Employment Presence in Richland County, South Carolina. This definition is subsumed within the definition of Small Local Business Enterprise.

Non-professional Services – non-construction, non-architectural, and non-engineering services that are other than Professional Services, and such "other" services that do not require any license or highly specialized training and credentials to perform.

Points – the quantitative assignment of value for specific evaluation criteria in the selection process.

Prime Contractor – The vendor or contractor to whom a purchase order or contract is awarded by the County for purposes of providing goods or services to the County.

Principal Place of Business – a location wherein a firm maintains a company headquarters or a physical office and through which it obtains no less than fifty percent of its overall customers or sales dollars, or through which no less than twenty-five percent of its employees are located and domiciled in the County of Richland and/or Richland County.

Professional Services – any non-construction and non-architectural & engineering services that require highly specialized training and / or licensed credentials to perform, such as legal, accounting, scientific, technical, insurance, investment management, medical, or real estate services.

Responsive - a firm's bid or proposal conforms in all material respects to the invitation to bid or request for proposal and shall include compliance with SLBE Program requirements.

Sheltered Market – An Affirmative Procurement Initiative designed to set aside a County contract bid for bidding exclusively among SLBE firms.

Significant Employee Presence- no less than twenty-five percent of a firm's total number of full and part-time employees are domiciled in Richland County.

Small Local Business Enterprise ("SLBE")- an independently owned firm that is not dominant in its industry, and that satisfies all requirements of being both a "Small Business Enterprise" and a "Local Business Enterprise."

SLBE Plan Execution Certification (SLBE Form – C) - The form certifying the general contractor's intent to use a SLBE subcontractor, verifying that an agreement has been executed between the prime and the SLBE.

SLBE Directory - A listing of the small local businesses that have been certified by the Procurement Department for participation in the SLBE Program.

SLBE Certification/Re-certification Application (SLBE Form – R) – This form shall be completed by Small Local Business Enterprises (SLBEs) when applying for and/or recertifying SLBE status for participation in the County's Small Local Business Enterprise Program. This form shall be completed every two years by certified Small Local Business Enterprises by the anniversary date of their original certification.

SLBE Schedule for Subcontractor Participation (SLBE Form – S) – This form must be completed by all non-SLBE firms that subcontract to SLBE firms. A form must be submitted for each SLBE subcontractor. This form(s) must be reviewed and approved by the Director of Procurement before contract award.

SLBE Unavailability Certification (SLBE Form- U) -This form demonstrates a bidder's unsuccessful good faith effort to meet the small, local participation requirements of the contract. This form will only be considered after proper completion of the outreach and compliance efforts and methods used to notify and inform SLBE firms of contracting opportunities have been fully exhausted.

Small Business Enterprise ("SBE") a small business enterprise is any for-profit enterprise as defined by South Carolina Code of Laws, Title 33, Chapter 31 that is not a broker, that is independently owned and operated, that is not a subsidiary of another business, and that is not dominant in its field of operation; and that also meets the following size standard limitations: (1) the SBE must have no more than fifty full-time employees; and (2) the SBE must have annual gross revenues within its largest primary NAICS commodity code as averaged over its most recent past three fiscal years of not more than \$10 million for construction firms, specialty trade contractors, and manufacturing firms; not more than \$5 million for architectural firms; not more than \$3 million for professional services firms (e.g., scientific, real estate, insurance, accounting, legal, etc.); not more than \$2.5 million for engineering firms; and not more than \$2 million for wholesale operations, retail firms, and all other services firms (e.g., truck transportation, administrative support services, repair and maintenance services). If a business has not existed for 3 years, the employment and gross sales limits described above shall be applied based upon the annual averages over the course of the existence of the business not to exceed the three years. Once the gross annual receipts of a

business exceed the gross sales average limits, it should no longer be eligible to benefit as an SLBE firm and should be graduated from the program. The size standards in number of employees and annual gross revenue dollars should be reviewed annually and adjusted periodically to meet economic changes. Joint ventures must be certified on a bid-by-bid basis. The joint venture shall not be subject to the average gross receipts and employee limits imposed by this section. However, each individual business participating in the joint venture must be certified by the Procurement Department as an SBE. *This definition is subsumed within the definition of Small Local Business Enterprises.*

Small Local Business Enterprise ("SLBE")- A Local Business Enterprise that is also a Small Business Enterprise.]

Spend Dollars – dollars actually paid to prime and / or subcontractors and vendors for County contracted goods and/or services.

Subcontractor – any vendor or contractor that is providing goods or services to a Prime Contractor in furtherance of the Prime Contractor's performance under a contract or purchase order with the County.

Suspension – the temporary stoppage of a SLBE firm's participation in the County's contracting process under the SLBE Program for a finite period of time due to the cumulative contract payments the SLBE received during a fiscal year.

Sec. 2-640. Program Objectives and General Responsibilities.

(a) To meet the objectives of this Program, the County is committed to:

1. Increasing the participation of Small Local Business Enterprises ("SLBEs") in County contracting, and, to the extent possible, ameliorating through race- and gender-neutral means, any disparities in the participation of minority business enterprises or women business enterprises on County contracts.
2. Regular evaluation regarding the progress of the Program using accumulated availability and utilization data to determine specific program provisions that require modification, expansion, and/or curtailment;
3. Establishing one or more Goal Setting Committee(s) ("GSCs") to provide guidance on the implementation of the rules under this Policy;
4. Continuous review and advice of the GSC in administering the policy and goals herein. The County's Director of Procurement shall determine the size of each GSC that is to be chaired by the Procurement Director. The Procurement Director shall also appoint the remaining members of the GSC from the County's procurement personnel and other County departments affected by this Program; and
5. Providing accountability and accuracy in setting goals and in reporting program results through the implementation of a mandatory centralized bidder registration process capable of identifying with specificity the universe of firms that are available and interested in bidding on and /or performing on County contracts, and of providing the means of tracking actual County bids, contract awards, and prime contract and subcontract payments to registered bidders on the basis of firm ownership status, commodity or sub-industry codes, firm location, and firm size. Accordingly, Prime Contractors and Subcontractors will be required to register and input data into the CBR or other related forms and systems as a condition of engaging in business with the County.

(b) At a minimum, the Procurement Director shall:

- 1. Report to the County Administrator and the County Council on at least an annual basis as to the County's progress towards satisfying SLBE program objectives;
- 2. Formulate Program waivers, improvements and adjustments to the GSC goal-setting methodology and other Program functions;
- 3. Have substantive input in a contract specification review process to be undertaken in advance of the issuance of County's RFPs and bid solicitations to ensure that contract bid specifications are not unnecessarily restrictive and unduly burdensome to small, local, minority-owned, and other businesses;
- 4. Receive and analyze external and internal information including statistical data and anecdotal testimonies it deems appropriate to effectively accomplish its duties; and
- 5. Monitor and support the implementation of the rules under this Program, and where appropriate, make recommendations to the County Administrator for approval of changes to established size standards for SLBE firms, and provide notice of all approved changes to the County Council.

(c) At a minimum, each Goal Setting Committee shall:

- 1. Meet as often as it deems necessary to accomplish its duties but not less than twice annually;
- 2. Develop the SLBE goal setting methodology to be implemented by the Director of Procurement on a contract-by-contract basis; and
- 3. Monitor and support the implementation of the rules under this Program policy.

Sec. 2-641. Eligibility for the SLBE Program.

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(a) For the purpose of this program, a firm will be certified as a Small and Local Business Enterprise (*SLBE*) with the Procurement Department upon its submission of a completed certification form (SLBE Form-R), supporting documentation, and a signed affidavit stating that it meets all of the SLBE eligibility criteria as set forth below:

- 1. It is an independently owned and operated for-profit business concern as defined by South Carolina Code of Laws, Title 33, Chapter 31 that is not a broker, that is not a subsidiary of another business, that is not dominant in its field of operation; whose owners are actively involved in day-to-day management and control of the business, and that also is performing a commercially useful function;
- 2. It meets size standard eligibility requirements for Small Business Enterprises as defined below:

a. Construction firms, specialty trade firms, and manufacturing firms have not employed more than 50 full-time persons at any time during the last three years, and the gross annual revenues of the business for its largest primary NAICS code have not exceeded an average of \$7-10million in its most recently completed 3 fiscal years;

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b. Architectural business firms have not employed more than 50 persons at any time during the last three years, and the gross annual revenues of the business for its largest primary NAICS code have not exceeded an average of \$3-5million in its most recently completed 3 fiscal years;

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c. Professional services business firms have not employed more than 50 persons at any time during the last three years, and the gross annual revenues of the business for its largest primary NAICS code have not exceeded an average of \$3 million in its most recently completed 3 fiscal years;

d. Engineering business firms, have not employed more than 50 persons at any time during the last three years, and the gross annual revenues of the business for its largest primary NAICS code have not exceeded an average of ~~\$2.5~~ \$5 million in its most recently completed 3 fiscal years;

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e. Wholesale operations, retail firms, and all other services business firms have not employed more than 50 persons at any time during the last three years, and the gross annual revenues of the business for its largest primary NAICS code have not exceeded an average of \$2 million in its most recently completed 3 fiscal years; and

If a business has not existed for 3 years, the employment and gross revenue limits described above shall be applied based upon the annual averages not to exceed three years.

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

This definition is subsumed within the definition of Small Local Business Enterprises.

3. The firm is a Local Business Enterprise as defined by this Policy with a principal place of business or significant employment presence in Richland County, SC as defined herein;

4. The firm has been established for at least one year or the managing principals of the business each have at least three years of relevant experience prior to forming or joining the business; and

5. In the year preceding the date of the initial certification application, the applicant has not received more than \$1,000,000 in County contract payments as a result of contract awards from the County achieved through an open competitive bidding process.

(b) Upon receipt of SLBE certification or re-certification applications, the Director of Procurement or designated Procurement Department staff shall review all enclosed forms affidavits and documentation to make a prima facie determination as to whether the applicant satisfies the SLBE eligibility requirements as set forth in this policy. Applicants determined ineligible to participate as a SLBE shall receive a letter from the Director of Procurement stating the basis for the denial of eligibility. Applicants determined ineligible shall not be eligible to submit a new application for one year after the date of the notice of denial of eligibility.

(c) Applicants determined eligible to participate in the SLBE program shall submit a completed re-certification form (SLBE-R) every ~~two~~ three years to the Procurement OSBO Department for review and continued certification. However, upon application for re-certification, a SLBE firm must be an independently owned and operated business concern, and maintain a Principal Place of Business or

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Significant Employment Presence in the County of Richland in accordance with this Section 2-641 of Division 7, "Eligibility for the SLBE Program," of this Policy. To qualify for recertification, an SLBE's maximum employment numbers and annual gross revenues average for the three fiscal years immediately preceding the application for recertification shall not exceed the size standard eligibility requirements.

(d) In the course of considering the certification or re-certification status of any SLBE firm, the Director of Procurement or his or her designees shall periodically conduct audits and inspect the office, job site, records, and documents of the firm, and shall interview the firm's employees, subcontractors, and vendors as reasonably necessary to ensure that all eligibility standards are satisfied and that the integrity of the SLBE Program is maintained.

(e) For purposes of this Program, a firm will be certified as an *Emerging SLBE* by the Procurement Department upon its submission of a completed certification form (SLBE Form-R), supporting documentation, and a signed affidavit stating that it meets all of the Emerging SLBE eligibility criteria as set forth below:

1. The firm complies with SLBE criteria as specified above in Sec. 2-641 (a)(1) and (a)(3);
2. The firm has been in existence for less than five years;
3. The firm has no more than five full-time employees; and
4. The firm's annual gross revenues as averaged over the life of the firm are less than **\$1** million.

Sec. 2-642. Graduation and Suspension Criteria.

(a) A bidder may not count towards its SLBE or Emerging SLBE participation the amount subcontracted to an SLBE or Emerging SLBE firm that has graduated or been suspended from the program as follows:

1. An SLBE firm shall be permanently graduated from the SLBE Program after it has received a cumulative total of \$5 million of County-funded prime contract or subcontract payments in at least five separate contracts since its initial certification as an SLBE firm;
2. An SLBE firm shall be permanently graduated from the SLBE program after its three fiscal year average gross sales exceeds the size standard eligibility requirements;
3. An SLBE firm shall be temporarily suspended by the Director of Procurement for the balance of any fiscal year after it has received a cumulative total of \$1.5 million in payments as a prime contractor and / or subcontractor for that fiscal year; provided, however, that the SLBE firm shall be eligible to participate in Affirmative Procurement Initiatives in the following fiscal year so long as the firm has not yet satisfied the graduation criteria;
4. An SLBE firm may have its SLBE eligibility permanently revoked by the Director of Procurement if it fails to perform a Commercially Useful Function under a contract, or if it allows its SLBE status to be fraudulently used for the benefit of a non-SLBE firm or the owners of a non-SLBE firm so as to provide the non-SLBE firm or *firm* owners benefits from Affirmative Procurement Initiatives for which the non-SLBE firm and its owners would not otherwise be entitled;
5. An Emerging SLBE firm shall be permanently graduated from Emerging SLBE status after it has received a cumulative total of \$2.5 million of County-funded prime contracts or subcontract payments in at least five separate contracts since its initial certification as an Emerging SLBE firm;

6. An Emerging SLBE firm shall be permanently graduated from Emerging SLBE status once its three-year average annual gross sales exceeds \$2 million; and

7. An Emerging SLBE firm shall be temporarily suspended from Emerging SLBE status by the Director of Procurement for the balance of any fiscal year after it has received a cumulative total of \$750,000 in payments as a prime contractor and / or subcontractor for that fiscal year; provided, however, that the Emerging SLBE firm shall be eligible to continue participating in Affirmative Procurement Initiatives as an SLBE firm for the remainder of the fiscal year, and may also participate in Affirmative Procurement Initiatives as an Emerging SLBE firm in the following fiscal year so long as the firm has not yet satisfied the graduation criteria for such status.

(b) The Director of Procurement shall provide written notice to the SLBE firm or Emerging SLBE firm upon graduation or suspension from the SLBE program, and such notice shall clearly state the reasons for such graduation or suspension.

Sec. 2-643. Appeals.

A business concern that is denied eligibility as an SLBE or as an Emerging SLBE, or who has its eligibility revoked, or who has been denied a waiver request can appeal the decision to the County Administrator. A written notice of appeal must be received by the County Administrator within 15 days of the date of the decision. Upon receipt of a timely notice of appeal and request for hearing, the Director of Procurement, or designee (other than the Director of Procurement), shall also participate in a hearing conducted by the County Administrator or the County Administrator's designee soon as practicable. The decision of the County Administrator, or designee, shall be the final decision of the County.

Sec. 2-644. Affirmative Procurement Initiatives for Enhancing SLBE and Emerging SLBE Contract Participation.

(a) The County in conjunction with the appropriate Contract Officer and the Director of Procurement may utilize the following Affirmative Procurement Initiatives in promoting the award of County contracts to SLBEs or Emerging SLBEs.

1. *Bonding and Insurance Waiver:* The County, at its discretion, may waive or reduce the bonding, or insurance requirements depending on the type of contract and whether the County determines that the bonding and or insurance requirements would deny the SLBE or Emerging SLBE an opportunity to perform the contract which the SLBE or Emerging SLBE has shown itself otherwise capable of performing.

2. *Price Preferences:* The County may award a contract to a SLBE or Emerging SLBE which submits a bid within 10% (inclusive) of a low bid by a non-SLBE. However, this price preference would not apply if the award to the SLBE would result in a total contract cost that is, on an annual basis, more than \$25,000 higher than the low bid; nor would it apply on a contract in which the total contract cost would exceed the County's budgeted price for the contract.

3. *Evaluation Preferences:* The County may reserve up to 20% of the total points available for evaluation purposes for respondents to an RFP to firms that are certified as SLBE or Emerging SLBE firms, or to joint ventures that have SLBE and/or Emerging SLBE partners

a. For Architectural & Engineering, Professional Services, Other Services, and design / build or CM at risk contracts that are awarded based on evaluation criteria, there shall be SLBE or Emerging SLBE participation criterion for all contracts let at predetermined percentage of the total points awarded. The

determination will be made using the suggested model outlined in the "Point Evaluation Table" below:

POINT EVALUATION TABLE

10 Points for SLBE Participation	20 Points for SLBE Participation
>51%=10 points	>51%= 20 points
> 45% = 7 points	> 45% = 17 points
> 40% = 6 points	> 40% = 16 points
> 35% = 5 points	> 35% = 14 points
> 30% = 4 points	> 30% = 12 points
> 25% = 3 points	> 25% = 10 points
> 20% = 2 points	>20%= 8 points
> 15% = 1 points	> 15%= 6 points
	> 10%= 4 points

Contractors may be evaluated on their SLBE or Emerging SLBE participation by utilizing the following schedule, which is most often used by Architectural & Engineering:

Points Awarded	% of Participation Criteria
5.0 51-100	Proposals by registered SLBE owned and/or controlled firms
4.0 36-50	Majority pnme with registered SLBE participation
3.0 30-35	Majority prime with registered SLBE participation
2.0 24-29	Majority pnme with registered SLBE participation
0 0-23	Less than the goal for registered SLBE participation

4. Mandatory Subcontracting:
- a. The Goal Selection Committee may, on a contract-by-contract basis, at its discretion, require that a predetermined percentage of a specific contract, up to 40%, be subcontracted to eligible SLBEs or to eligible Emerging SLBEs, provided however, that if the prime contractor is a certified SLBE or Emerging SLBE, then the prime contractor shall be able to count the dollar value of the work performed by its own forces towards satisfaction of the Mandatory Subcontracting goal for that contract.

b. An SLBE or Emerging SLBE prime contractor may not subcontract more than 49% of the contract value to a non-SLBE.

c. A prospective bidder on a County contract shall submit at the time of bid SLBE – Form S providing the name of the SLBE or Emerging SLBE subcontractor or subcontractors and describing both the percentage of subcontracting by the SLBE or Emerging SLBE, and the work to be performed by the SLBE or Emerging SLBE. A bidder may request a full or partial waiver of this mandatory subcontracting requirement from the Director of Procurement for good cause by submitting the SLBE Unavailability Certification form to the Director of Procurement at the time of bid. Under no circumstances shall a waiver of a mandatory subcontracting requirement be granted without submission of adequate documentation of Good Faith Efforts by the bidder and careful review by the Director of Procurement. The Director of Procurement shall base his or her determination on a waiver request on the following criteria:

(1) Whether the requestor of the waiver has made Good Faith Efforts to subcontract with qualified and available SLBEs or Emerging SLBEs;

(2) Whether subcontracting would be inappropriate and/or not provide a "Commercially Useful Function" under the circumstances of the contract; and

(3) Whether there are no certified SLBE or Emerging SLBE firms that are qualified and available to provide the goods or services required.

d. In the absence of a waiver granted by the Director of Procurement, failure of a Prime Contractor to commit in its bid or proposal to satisfying the mandatory SLBE subcontracting goal shall render its bid or proposal non-responsive.

e. In the absence of a waiver granted by the Director of Procurement, failure of a Prime Contractor to attain a mandatory subcontracting goal for SLBE participation in the performance of its awarded contract shall be grounds for termination of existing contracts with the County, debarment from performing future County contracts, and / or any other remedies available under the terms of its contract with the County or under the law.

f. A Prime Contractor is required to notify and obtain written approval from the Director of Procurement in advance of any reduction in subcontract scope, termination, or substitution for a designated SLBE or Emerging SLBE Subcontractor. Failure to do so shall constitute a material breach of its contract with the County.

5. *Sheltered Market:*

a. The Director of Procurement and the appropriate County Contracting Officer may select certain contracts which have a contract value of \$250,000 or less for award to a SLBE or a joint venture with a SLBE through the Sheltered Market program. Similarly, the Director of Procurement and the appropriate County Contracting Officer may select certain contracts that have a value of \$50,000 or less for award to an Emerging SLBE firm through the Sheltered Market program.

b. In determining whether a particular contract is eligible for the Sheltered Market Program, the County's Contracting Officer and Director of Procurement shall consider: whether there are at least three SLBEs or Emerging SLBEs that are available and capable to participate in the Sheltered Market Program for that contract; the degree of underutilization of the SLBE and Emerging SLBE prime contractors in the specific industry categories; and the extent to which the County's SLBE and Emerging SLBE prime contractor utilization goals are being achieved.

c. If a responsive and responsible bid or response is not received for a contract that has been designated for the Sheltered Market Program or the apparent low bid is determined in the Procurement Director's discretion to be too high in price, the contract shall be removed from the Sheltered Market Program for purposes of rebidding.

6. *Competitive Business Development Demonstration Project:*

a. With the concurrence of the Director of Procurement, the appropriate County Contracting Officer may reserve certain contracts for placement into a Competitive Business Development Demonstration Project ("CBD Demonstration Project") wherein those contracts require the purchase of goods or services from an industry that routinely has too few sources of bidders to provide meaningful or sufficient competition for such County contracts. The purpose for the placement of a contract into the CBD Demonstration Project shall be to encourage the development of new capacity within an industry to competitively bid on the future supply of specialized goods or services to the County.

b. Contracts reserved for CBD Demonstration Projects shall be subject to a Request for Proposals process whereby the selected firm will be required to be a

joint venture between an established firm or experts in that relevant industry and an SLBE firm. The scope of work for the selected joint venture shall include teaching a hands-on curriculum to SLBE firms that have expressed an interest in diversifying into the relevant industry, in addition to performing the customary functions of the contract. This curriculum shall include both administrative skills (e.g. cost estimating, bidding, staffing, project management) and technical skills (e.g., hands-on demonstration of how to perform necessary tasks in the field) required to qualify for future County contracts and to successfully compete in the industry.

c. The Director of Procurement shall be required to select SLBE candidate firms for participation on such CBD Demonstration Projects on the basis of an assessment of their current capabilities and their likely success in diversifying into the new relevant industry once given technical assistance, training, and an opportunity to develop a performance track record in the industry.

Sec. 2-645. SLBE Program Performance Review.

(a) The Director of Procurement or designee shall monitor the implementation of this Policy and the progress of this Program. On at least an annual basis, the Director of Procurement or designee shall report to the County Administrator and County Council on the progress of achieving the goals established for awards to certified SLBE and Emerging SLBE firms, reporting both dollars awarded and expended. In addition, the Director of Procurement or designee shall report on the progress in achieving the stated Program Objectives, including, but not limited to, enhancing competition, establishing and building new business capacity, and removing barriers to and eliminating disparities in the utilization of available minority business enterprises and women business enterprises on County contracts.

(b) The County shall periodically review the SLBE Program to determine whether the various contracting procedures used to enhance SLBE contract participation need to be adjusted or used more or less aggressively in future years to achieve the stated Program Objectives. The County Council shall conduct a public hearing at least once every two years in order to solicit public comments on the Program.

Sec. 2-646. Conflicts.

To the extent language in this Division conflicts with other language in Article X, the language in this Division controls only with respect to contracts wherein the Small Local Business Enterprise Program is being applied by the Director of Procurement. In all other respects, prior language in this Article shall remain in full force and effect.

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

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

SECTION V. Effective Date. This ordinance shall be effective from and after September 17, 2013.

RICHLAND COUNTY COUNCIL

BY: 
Kelvin E. Washington, Sr., Chair

Attest this – ----day of
October, 2013.
Michelle Ogley

RICHLAND COUNTY ATTORNEY'S OFFICE
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Appm-\l&l As To LEGAL Form Only.
No Opinion Rendered As To Content.

First Reading:	May 21,2013
Second Reading:	July 2, 2013
Third Reading:	September 17, 2013
Public Hearing:	June 18, 2013

STATE OF SOUTH CAROLINA

1

COUNTY COUNCIL FOR RICHLAND COUNTY
ORDINANCE NO. 016-14HR

1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DIVISION 8: COMMERCIAL NONDISCRIMINATION ORDINANCE

Sec. 2-647. General Provisions.

(a) *Statement of Policy.*

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

(b) *Implementation .*

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

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

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

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

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

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

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

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

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

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

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

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

RICHLAND COUNTY COUNCIL

BY:

Norman Jackson, Chair

Attest this 27th day of

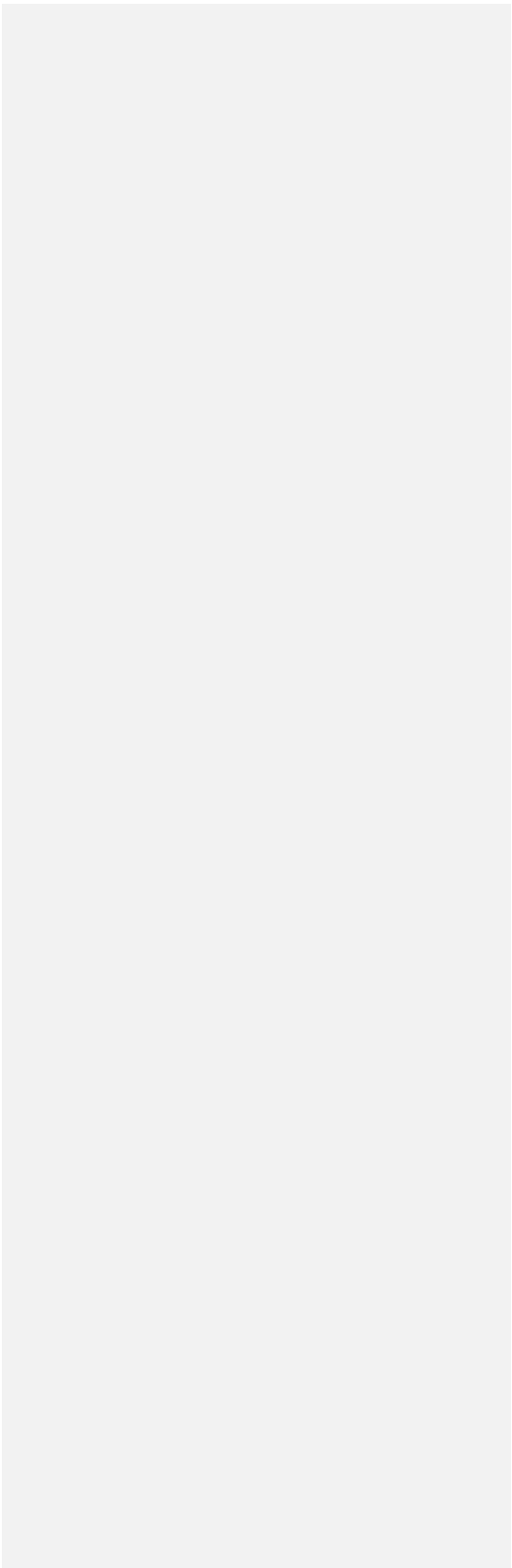
May, 2014.

Michelle Onley
Interim Clerk of Council

RICHLAND COUNTY ATTORNEY'S OFFICE

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



Richland County, South CarolinaSLBE SCHEDULE OF SIZE STANDARD ELIGIBILITY REQUIREMENTS

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1. Small Business Enterprise ("SBE")

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

a. The SBE must not have employed more than five (5) full-time employees at any one time during the last three years; and

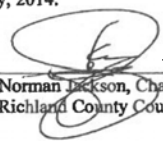
b. The SBE must have annual gross revenues within its largest primary NAICS commodity code as averaged over its most recent past three ~~fiscal~~ ~~fiscal~~ years of not more than ~~\$7-\$10 million~~ for construction firms, specialty trade contractors, and manufacturing firms; not more than \$35 million for architectural firms; not more than \$3 million for professional services firms (e.g., scientific, real estate, insurance, accounting, legal, etc.); not more than \$2.5 million for engineering firms; and not more than \$2 million for wholesale operations, ~~retail~~ ~~retail~~ firms, and all other services firms (e.g., truck transportation, administrative support services, repair and maintenance services).

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

2. Eligibility for the SLBE Program

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

ADOPTED THIS the 6th day of May, 2014.


Norman Jackson, Chair
Richland County Council

Attest: *nWh1UOJ1g*
Michell Onley /
Interim Clerk of Council

DIVISION 7. SMALL BUSINESS ENTERPRISE PROCUREMENT REQUIREMENTS

Sec. 2-639. General provisions.

(a) Purpose. The purpose of this division is to provide a race- and gender-neutral procurement tool for the county to use in its efforts to ensure that all segments of its local business community have a reasonable and significant opportunity to participate in county contracts for construction, architectural and engineering services, professional services, non-professional services, and commodities. The small local business enterprise ("SLBE") Program also furthers the county's public interest to foster effective broad-based competition from all segments of the vendor community, including, but not limited to, minority business enterprises, small business enterprises, and local business enterprises. This policy is, in part, intended to further the county's compelling interest in ensuring that it is neither an active nor passive participant in private sector marketplace discrimination, and in promoting equal opportunity for all segments of the contracting community to participate in county contracts. Moreover, the SLBE program provides additional avenues for the development of new capacity and new sources of competition for county contracts from the growing pool of small and locally based businesses.

(b) Scope and limitations. This SLBE program may be applied by the county on a contract-by-contract basis to the maximum practicable extent permissible under federal and state law.

(c) Definitions.

Affirmative procurement initiatives. Refers to any procurement tool to enhance contracting opportunities for SLBE firms including: bonding/ insurance waivers, bid incentives, price preferences, sheltered market, mandatory subcontracting, competitive business development demonstration projects, and SLBE evaluation preference points in the scoring of proposal evaluations.

Award. The final selection of a bidder or offeror for a specified prime contract or subcontract dollar amount. Awards are made by the county to prime contractors or vendors or by prime contractors or vendors to subcontractors or sub-vendors, usually pursuant to an open invitation to bid ("ITB") or request for proposal ("RFP") process. (Contract awards are to be distinguished from contract payments in that they only reflect the anticipated dollar amounts instead of actual dollar amounts that are to be paid to a bidder or offeror under an awarded contract.)

Bid incentives. Additional inducements or enhancements in the bidding process that are designed to increase the chances for the selection of SLBE firms in competition with other firms. These bid incentives may be applied to all solicitations, contracts, and letter agreements for the purchase of architectural and engineering services, construction,

professional services, non-professional services, and commodities including change orders and amendments.

Centralized bidder registration system ("CBR"). A web-based software application used by the County of Richland to track and monitor SLBE availability and utilization (i.e., "spend" or "payments") on county contracts.

County. Refers to the County of Richland, South Carolina.

Commercially useful function. An SLBE 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. To perform a commercially useful function, the SLBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an SLBE is performing a commercially useful function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the SLBE firm is to be paid under the contract is commensurate with the work it is actually performing and the SLBE credit claimed for its performance of the work, and other relevant factors. Specifically, an SLBE 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 meaningful and useful SLBE participation, when in similar transactions in which SLBE firms do not participate, there is no such role performed.

Emerging SLBE. An emerging firm that meets all of the qualifications of a small local business enterprise, and that is less than five (5) years old, but has no more than five (5) full-time employees and annual gross sales as averaged over the life of the firm that are less than one million (\$1,000,000) dollars.

Goal. A non-mandatory annual aspirational percentage goal for SLBE contract participation is established each year for architectural and engineering services, construction, professional services, non-professional services, and commodities contracts. Mandatory percentage goals for SLBE subcontract participation may be established on a contract- by-contract basis by either the director of the Office of Small Business Opportunity or a goal setting committee.

Goal setting committee. A committee established by the director of the Office of Small Business Opportunity for the county (including a representative of the procurement department and a representative of the end-user agency) and chaired by the director of the Office of Small Business Opportunity that establishes SLBE program goals and selects appropriate SLBE affirmative procurement initiatives to be applied to each contract for the county based upon industry categories, vendor availability, and project-specific characteristics. The director of the Office of Small Business Opportunity may establish as many as five (5) separate goal setting committees (i.e., one (1) for each industry category).

Good faith efforts. Documentation of the bidder's intent to comply with SLBE program goals and procedures, including, but not limited to the following: (1) documentation within

a bid submission or proposal reflecting the bidder's commitment to comply with SLBE program goals as established by the director of the Office of Small Business Opportunity or a goal setting committee for a particular contract; or (2) documentation of efforts made towards achieving the SLBE program goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SLBE subcontract opportunities on the county web site; solicitations of bids from all qualified SLBE firms listed in the county's SLBE directory of certified SLBE firms; correspondence from qualified SLBE firms documenting their unavailability to perform SLBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to SLBE firms; documentation of efforts to assist SLBE firms with obtaining financing, bonding, or insurance required by the bidder; and documentation of consultations with trade associations and consultants that represent the interests of small and local businesses in order to identify qualified and available SLBE subcontractors.)

Graduation. An SLBE firm permanently graduates from the county's SLBE program when it meets the criteria for graduation set forth in this policy.

Independently owned, managed, and operated. Ownership of an SLBE firm must be direct, independent, and by individuals only. Business firms that are owned by other businesses or by the principals or owners of other businesses that cannot themselves qualify under the SLBE eligibility requirements shall not be eligible to participate in the SLBE program. Moreover, the day-to-day management of the SLBE firm must be direct and independent of the influence of any other businesses that cannot themselves qualify under the SLBE eligibility requirements.

Industry categories. Procurement groupings for county contracts for purposes of the administration of affirmative procurement initiatives shall be inclusive of architectural and engineering, construction, professional services, and nonprofessional services, and commodities procurements. Industry categories may also be referred to as "business categories."

Joint venture. An association of two (2) or more persons or businesses carrying out a single business enterprise for which purpose they combine their capital, efforts, skills, knowledge and/or property. Joint ventures must be established by written agreement.

Local business enterprise ("LBE"). A firm having a principal place of business or a significant employment presence or a significant business presence in Richland County, South Carolina. This definition is subsumed within the definition of "small local business enterprise."

Non-professional services. Non- construction, non-architectural, and non-engineering services that are other than professional services, and such "other" services that do not require any license or highly specialized training and credentials to perform.

Office of Small Business Opportunity. The office which shall manage and administer the SLBE Program (see Section 2-639 et seq.) and shall undertake other functions and duties as assigned by the county administrator or county council.

Points. The quantitative assignment of value for specific evaluation criteria in the selection process.

Prime contractor. The vendor or contractor to whom a purchase order or contract is awarded by the county for purposes of providing goods or services to the county.

Principal place of business. A location wherein a firm maintains a company headquarters or a physical office and through which it obtains no less than fifty percent (50%) of its overall customers or sales dollars, or through which no less than twenty-five percent (25%) of its employees are located and domiciled in the County of Richland and/or Richland County.

Professional services. Any non-construction and non-architectural and engineering services that require highly specialized training and/or licensed credentials to perform, such as legal, accounting, scientific, technical, insurance, investment management, medical, or real estate services.

Responsive. A firm's bid or proposal conforms in all material respects to the invitation to bid or request for proposal and shall include compliance with SLBE program requirements.

Sheltered market. An affirmative procurement initiative designed to set aside a county contract bid for bidding exclusively among SLBE firms.

Significant business presence. A physical office within Richland County through which a firm obtains no less than fifty percent (50%) of its overall customers or sales dollars.

Significant employee presence. Having a physical office within Richland County and no less than twenty-five percent (25%) of a firm's total number of full and part-time employees are domiciled in Richland County.

SLBE certification/re-certification application (SLBE Form-R). This form shall be completed by small local business enterprises (SLBEs) when applying for and/or recertifying SLBE status for participation in the county's small local business enterprise program. This form shall be completed every two (2) years by certified small local business enterprises by the anniversary date of their original certification.

SLBE directory. A listing of the small local businesses that have been certified by the procurement department for participation in the SLBE program.

SLBE plan execution certification (SLBE Form-C). The form certifying the general contractor's intent to use a SLBE subcontractor, verifying that an agreement has been executed between the prime and the SLBE.

SLBE schedule for subcontractor participation (SLBE Form-S). This form must be completed by all non-SLBE firms that subcontract to SLBE firms. A form must be submitted for each SLBE subcontractor. This form(s) must be reviewed and approved by the director of the Office of Small Business Opportunity before contract award.

SLBE schedule of size standard eligibility requirements. A document separate and apart from this division, adopted by the county council, which defines the SLBE size standard eligibility requirements, in number of employees and annual gross revenue dollars, applicable to the SLBE program. The size standards shall be reviewed not less than annually and adjusted periodically by the county council to meet changes in market conditions.

SLBE unavailability certification (SLBE Form-U). This form demonstrates a bidder's unsuccessful good faith effort to meet the small, local participation requirements of the contract. This form will only be considered after proper completion of the outreach and compliance efforts and methods used to notify and inform SLBE firms of contracting opportunities have been fully exhausted.

Small business enterprise ("SBE"). A small business enterprise is any for-profit enterprise as defined by S.C. Code 1976, Title 33, Chapter 31 that is not a broker, that is independently owned and operated, that is not a subsidiary of another business, and that is not dominant in its field of operation; and that also meets the size standard limitations as adopted and periodically amended in the SLBE schedule of size standard eligibility requirements. Once the gross annual receipts of a business exceed the gross sales average limits, it should no longer be eligible to benefit as an SLBE firm and should be graduated from the program. The size standards in number of employees and annual gross revenue dollars should be reviewed annually and adjusted periodically to meet economic changes. Joint ventures must be certified on a bid-by-bid basis. The joint venture shall not be subject to the average gross receipts and employee limits imposed by this section. However, each individual business participating in the joint venture must be certified by the procurement department as an SLBE.

Small local business enterprise ("SLBE"). An independently owned firm that is not dominant in its industry, and that satisfies all requirements of being both a "small business enterprise" and a "local business enterprise."

Spend dollars. Dollars actually paid to prime and/or subcontractors and vendors for county contracted goods and/or services.

Subcontractor. Any vendor or contractor that is providing goods or services to a prime contractor in furtherance of the prime contractor's performance under a contract or purchase order with the county.

Suspension. The temporary stoppage of a SLBE firm's participation in the county's contracting process under the SLBE program for a finite period of time due to the cumulative contract payments the SLBE received during a fiscal year.

(Ord. No. 049-13HR, § II, 9-17-13; Ord. No. 016-14HR, §§ II, III, 5-6-14; Ord. No. 050-14HR, § I, 10-21-14; Ord. No. 058-16HR, § II, 12-6-16)

Sec. 2-640. Program objectives and general requirements.

(a) To meet the objectives of this program, the county is committed to:

(1) Increasing the participation of small local business enterprises ("SLBEs") in county contracting, and, to the extent possible, ameliorating through race- and gender- neutral means, any disparities in the participation of minority business enterprises or women business enterprises on county contracts;

(2) Regular evaluation regarding the progress of the program using accumulated availability and utilization data to determine specific program provisions that require modification, expansion, and/or curtailment;

(3) Establishing one (1) or more goal setting committee(s) ("GSCs") to provide guidance on the implementation of the rules under this policy;

(4) Continuous review and advice of the GSC in administering the policy and goals herein. The county's director of the Office of Small Business Opportunity shall determine the size of each GSC that is to be chaired by the procurement director. The procurement director shall also appoint the remaining members of the GSC from the county's procurement personnel and other county departments affected by this program; and

(5) Providing accountability and accuracy in setting goals and in reporting program results through the implementation of a mandatory centralized bidder registration process capable of identifying with specificity the universe of firms that are available and interested in bidding on and/or performing on county contracts, and of providing the means of tracking actual county bids, contract awards, and prime contract and subcontract payments to registered bidders on the basis of firm ownership status, commodity or sub-industry codes, firm location, and firm size. Accordingly, prime contractors and subcontractors will be required to register and input data into the CBR or other related forms and systems as a condition of engaging in business with the county.

(b) At a minimum, the procurement director shall:

(1) Report to the county administrator and the county council on at least an annual basis as to the county's progress towards satisfying SLBE program objectives;

(2) Formulate program waivers, improvements and adjustments to the GSC goal-setting methodology and other program functions;

(3) Have substantive input in a contract specification review process to be undertaken in advance of the issuance of county's RFPs and bid solicitations to ensure that contract bid specifications are not unnecessarily restrictive and unduly burdensome to small, local, minority- owned, and other businesses;

(4) Receive and analyze external and internal information including statistical data and anecdotal testimonies it deems appropriate to effectively accomplish its duties; and

(5) Monitor and support the implementation of the rules under this program, and where appropriate, make recommendations to the county administrator for approval of changes to established size standards for SLBE firms, and provide notice of all approved changes to the county council.

(c) At a minimum, each goal setting committee shall:

(1) Meet as often as it deems necessary to accomplish its duties but not less than twice annually;

(2) Develop the SLBE goal setting methodology to be implemented by the director of the Office of Small Business Opportunity on a contract-by-contract basis; and

(3) Monitor and support the implementation of the rules under this program policy.

(Ord. No. 049-13HR, § II, 9-17-13; Ord. No. 058-16HR, § III, 12-6-16)

Sec. 2-641. Eligibility for SLBE program.

(a) For the purpose of this program, a firm will be certified as a small and local business enterprise (SLBE) with the ~~procurement OSBO~~ department upon its submission of a completed new/renewal certification ~~form application (SLBE Form-R)~~, supporting documentation, and a signed affidavit stating that it meets all of the SLBE eligibility criteria as set forth below:

(1) It is an independently owned and operated for-profit business concern as defined by S.C. Code 1976, Title 33, Chapter 31 that is not a broker, that is not a subsidiary of another business, that is not dominant in its field of operation; whose owners are actively involved in day-to-day management and control of the business, and that also is performing a commercially useful function;

(2) It meets size standard eligibility requirements for small business enterprises as adopted and periodically amended in the SLBE schedule of size standard eligibility requirements;

Once the gross annual revenues of a business exceed the three (3)-year average gross annual revenue limits, it should no longer be eligible to benefit as an SLBE firm and should be permanently graduated from the program. The size standards in number of employees and annual gross revenue dollars should be reviewed annually and adjusted periodically to meet changes in market conditions. Joint ventures must be certified on a bid-by-bid basis. The joint venture itself shall not be subject to the size standard limitations imposed by this section. However, each individual business participating in the joint venture must be certified by the ~~procurement OSBO~~ department as an SLBE in order for the joint venture to receive the benefits of the SLBE program;

(3) The firm is a local business enterprise as defined in this division with a principal place of business or significant employee presence or significant business presence in Richland County as defined herein;

(4) The firm has established its principal place of business or significant employee presence or significant business presence in Richland County for at least one (1) year prior to seeking certification as an SLBE; and

(5) In the year preceding the date of the initial certification application, the applicant has not received more than one million (\$1,000,000) dollars in county contract payments as a result of contract awards from the county achieved through an open competitive bidding process.

(b) Upon receipt of SLBE certification or re-certification applications, the director of the Office of Small Business Opportunity or designated ~~procurement-OSBO~~ department staff shall review all enclosed forms affidavits and documentation to make a prima facie determination as to whether the applicant satisfies the SLBE eligibility requirements as set forth in this policy. Applicants determined ineligible to participate as a SLBE shall receive a letter from the director of the Office of Small Business Opportunity stating the basis for the denial of eligibility. Applicants determined ineligible shall not be eligible to submit a new application for one (1) year after the date of the notice of denial of eligibility.

(c) Applicants determined eligible to participate in the SLBE program shall submit a completed re-certification ~~form (SLBE Form-R)-application~~ every ~~two-three~~ (32) years to the ~~procurement-OSBO~~ department for review and continued certification. However, upon application for re-certification, an SLBE firm must be an independently owned and operated business concern, and maintain a principal place of business or significant employment presence in Richland County in accordance with this Section 2-641. To qualify for re-certification, an SLBE's maximum employment numbers and annual gross revenues average for the three (3) fiscal years immediately preceding the application for re-certification shall not exceed the size standard eligibility requirements.

(d) In the course of considering the certification or re-certification status of any SLBE firm, the director of the Office of Small Business Opportunity or his or her designees shall periodically conduct audits and inspect the office, job site, records, and documents of the firm, and shall interview the firm's employees, subcontractors, and vendors as reasonably necessary to ensure that all eligibility standards are satisfied and that the integrity of the SLBE program is maintained.

(e) For purposes of this program, a firm will be certified as an emerging SLBE by the ~~procurement-OSBO~~ department upon its submission of a completed certification form (SLBE Form-R), supporting documentation, and a signed affidavit stating that it meets all of the emerging SLBE eligibility criteria as set forth below:

(1) The firm complies with SLBE criteria as specified above in Section 2-641 (a)(1), (a)(3) and (a)(4);

(2) The firm has been in existence for less than five (5) years;

(3) The firm has no more than five (5) full-time employees; and

(4) The firm's annual gross revenues as averaged over the life of the firm are less than one million (\$1,000,000 dollars).

(Ord. No. 049-13HR, § II, 9-17-13; Ord. No. 016-14HR, § IV, 5-6-14; Ord. No. 050-14HR, § II, 10-21-14; Ord. No. 058-16HR, § III, 12-6-16)

Sec. 2-642. Graduation and suspension criteria.

(a) A bidder may not count towards its SLBE or emerging SLBE participation the amount subcontracted to an SLBE or emerging SLBE firm that has graduated or been suspended from the program as follows:

(1) An SLBE firm shall be permanently graduated from the SLBE program after it has received a cumulative total of five million (\$5,000,000) dollars of county- funded prime contract or subcontract payments in at least five (5) separate contracts since its initial certification as an SLBE firm;

(2) An SLBE firm shall be permanently graduated from the SLBE program after its three (3) fiscal year average gross sales exceeds the size standard eligibility requirements;

(3) An SLBE firm shall be temporarily suspended by the director of the Office of Small Business Opportunity for the balance of any fiscal year after it has received a cumulative total of one and one-half million (\$1,500,000) dollars in payments as a prime contractor and/or subcontractor for that fiscal year; provided, however, that the SLBE firm shall be eligible to participate in affirmative procurement initiatives in the following fiscal year so long as the firm has not yet satisfied the graduation criteria;

(4) An SLBE firm may have its SLBE eligibility permanently revoked by the director of the Office of Small Business Opportunity if it fails to perform a commercially useful function under a contract, or if it allows its SLBE status to be fraudulently used for the benefit of a non-SLBE firm or the owners of a non-SLBE firm so as to provide the non-SLBE firm or firm owners benefits from affirmative procurement initiatives for which the non-SLBE firm and its owners would not otherwise be entitled;

(5) An emerging SLBE firm shall be permanently graduated from emerging SLBE status after it has received a cumulative total of two and one-half million (\$2,500,00) dollars of county-funded prime contracts or subcontract payments in at least five (5) separate contracts since its initial certification as an emerging SLBE firm;

(6) An emerging SLBE firm shall be permanently graduated from emerging SLBE status once its three (3)-year average annual gross sales exceeds two million (\$2,000,000) dollars; and

(7) An emerging SLBE firm shall be temporarily suspended from emerging SLBE status by the director of the Office of Small Business Opportunity for the balance of any fiscal year after it has received a cumulative total of seven hundred fifty thousand (\$750,000) dollars in payments as a prime contractor and/or subcontractor for that fiscal year; provided, however, that the emerging SLBE firm shall be eligible to continue participating in affirmative procurement initiatives as an SLBE firm for the remainder of the fiscal year, and may also participate in affirmative procurement initiatives as an emerging SLBE firm in the following fiscal year so long as the firm has not yet satisfied the graduation criteria for such status.

(b) The director of the Office of Small Business Opportunity shall provide written notice to the SLBE firm or emerging SLBE firm upon graduation or suspension from the SLBE program, and such notice shall clearly state the reasons for such graduation or suspension.

(Ord. No. 049-13HR, § II, 9-17-13; Ord. No. 058-16HR, § III, 12-6-16)

Sec. 2-643. Appeals.

A business concern that is denied eligibility as an SLBE or as an emerging SLBE, or who has its eligibility revoked, or who has been denied a waiver request can appeal the decision to the county administrator. A written notice of appeal must be received by the county administrator within fifteen (15) days of the date of the decision. Upon receipt of a timely notice of appeal and request for hearing, the director of the Office of Small Business Opportunity, or designee (other than the director of the Office of Small Business Opportunity), shall also participate in a hearing conducted by the county administrator or the county administrator's designee soon as practicable. The decision of the county administrator, or designee, shall be the final decision of the county.

(Ord. No. 049-13HR, § II, 9-17-13; Ord. No. 058-16HR, § III, 12-6-16)

Sec. 2-644. Affirmative procurement initiatives for enhancing SLBE and emerging SLBE contract participation.

(a) The county in conjunction with the appropriate contract officer and the director of the Office of Small Business Opportunity may utilize the following affirmative procurement initiatives in promoting the award of county contracts to SLBEs or emerging SLBEs.

(1) Bonding and insurance waiver. The county, at its discretion, may waive or reduce the bonding, or insurance requirements depending on the type of contract and whether the county determines that the bonding and or insurance requirements would deny the SLBE or emerging SLBE an opportunity to perform the contract which the SLBE or emerging SLBE has shown itself otherwise capable of performing.

(2) Price preferences. The county may award a contract to a SLBE or emerging SLBE which submits a bid within ten percent (10%) (inclusive) of a low bid by a non-SLBE. However, this price preference would not apply if the award to the SLBE would result in a total contract cost that is, on an annual basis, more than twenty- five thousand (\$25,000) dollars higher than the low bid; nor would it apply on a contract in which the total contract cost would exceed the county's budgeted price for the contract.

(3) Evaluation preferences. The county may reserve up to twenty percent (20%) of the total points available for evaluation purposes for respondents to an RFP to firms that are certified as SLBE or emerging SLBE firms, or to joint ventures that have SLBE and/or emerging SLBE partners:

a. For architectural and engineering, professional services, other services, and design/build or CM at risk contracts that are awarded based on evaluation criteria, there shall be SLBE or emerging SLBE participation criterion for all contracts let at predetermined percentage of the total points awarded. The determination will be made using the suggested model outlined in the Point Evaluation Table below:

POINT EVALUATION TABLE

10 Points for SLBE Participation

20 Points for SLBE Participation

POINT EVALUATION TABLE

10 Points for SLBE Participation

20 Points for SLBE Participation

> 51% =10 points

>51% = 20 points

> 45% = 7 points

> 45% =17 points

> 40% = 6 points

> 40% =16 points

> 35% = 5 points

> 35% =14 points

> 30% = 4 points

> 30% =12 points

> 25% = 3 points

> 25% =10 points

> 20% = 2 points

> 20% = 8 points

> 15% = 1 point

> 15% = 6 points

> 10% = 4 points

Contractors may be evaluated on their SLBE or emerging SLBE participation by utilizing the following schedule, which is most often used by architectural and engineering:

Points Awarded	% of Participation Criteria
5.0 51- 100	Proposals by registered SLBE owned and/or controlled firms
4.0 36-50	Majority prime with registered SLBE participation
3.0 30-35	Majority prime with registered SLBE participation
2.0 24-29	Majority prime with registered SLBE participation
0 0-23	Less than the goal for registered SLBE participation

(4) Mandatory subcontracting.

a. The goal selection committee may, on a contract-by-contract basis, at its discretion, require that a predetermined percentage of a specific contract, up to forty percent (40%), be subcontracted to eligible SLBEs or to eligible emerging SLBEs, provided however, that if the prime contractor is a certified SLBE or emerging SLBE, then the prime contractor shall be able to count the dollar value of the work performed by its own forces towards satisfaction of the mandatory subcontracting goal for that contract.

b. An SLBE or emerging SLBE prime contractor may not subcontract more than forty-nine percent (49%) of the contract value to a non-SLBE.

c. A prospective bidder on a county contract shall submit at the time of bid SLBE - Form S providing the name of the SLBE or emerging SLBE subcontractor or subcontractors and describing both the percentage of subcontracting by the SLBE or emerging SLBE, and the work to be performed by the SLBE or emerging SLBE. A bidder may request a full or partial waiver of this mandatory subcontracting requirement from the director of the Office of Small Business Opportunity for good cause by submitting the SLBE unavailability certification form to the director of the Office of Small Business Opportunity at the time of bid. Under no circumstances shall a waiver of a mandatory subcontracting requirement be granted without submission of adequate documentation of good faith efforts by the bidder and careful review by the director of the Office of Small Business Opportunity. The director of the Office of Small Business Opportunity shall base his or her determination on a waiver request on the following criteria:

1. Whether the requestor of the waiver has made good faith efforts to subcontract with qualified and available SLBEs or emerging SLBEs;

2. Whether subcontracting would be inappropriate and/or not provide a "commercially useful function" under the circumstances of the contract; and

3. Whether there are no certified SLBE or emerging SLBE firms that are qualified and available to provide the goods or services required.

d. In the absence of a waiver granted by the director of the Office of Small Business Opportunity, failure of a prime contractor to commit in its bid or proposal to satisfying the mandatory SLBE subcontracting goal shall render its bid or proposal non-responsive.

e. In the absence of a waiver granted by the director of the Office of Small Business Opportunity, failure of a prime contractor to attain a mandatory subcontracting goal for SLBE participation in the performance of its awarded contract shall be grounds for termination of existing contracts with the county, debarment from performing future county contracts, and/or any other remedies available under the terms of its contract with the county or under the law.

f. A prime contractor is required to notify and obtain written approval from the director of the Office of Small Business Opportunity in advance of any reduction in subcontract scope, termination, or substitution for a designated SLBE or emerging SLBE subcontractor. Failure to do so shall constitute a material breach of its contract with the county.

(5) Sheltered market.

a. The director of the Office of Small Business Opportunity and the appropriate county contracting officer may select certain contracts which have a contract value of five hundred thousand (\$500,000) dollars or less for award to a SLBE or a joint venture with a SLBE through the sheltered market program. Similarly, the director of the Office of Small Business Opportunity and the appropriate county contracting officer may select certain contracts that have a value of fifty thousand (\$50,000) dollars or less for award to an emerging SLBE firm through the sheltered market program.

b. In determining whether a particular contract is eligible for the sheltered market program, the county's contracting officer and director of the Office of Small Business Opportunity shall consider: whether there are at least three (3) SLBEs or emerging SLBEs that are available and capable to participate in the sheltered market program for that contract; the degree of underutilization of the SLBE and emerging SLBE prime contractors in the specific industry categories; and the extent to which the county's SLBE and emerging SLBE prime contractor utilization goals are being achieved.

c. If a responsive and responsible bid or response is not received for a contract that has been designated for the sheltered market program or the apparent low bid is determined in the procurement director's discretion to be too high in price, the contract shall be removed from the sheltered market program for purposes of rebidding.

(6) Competitive business development demonstration project.

a. With the concurrence of the director of the Office of Small Business Opportunity, the appropriate county contracting officer may reserve certain contracts for placement into a competitive business development demonstration project ("CBD demonstration project") wherein those contracts require the purchase of goods or services from an industry that

routinely has too few sources of bidders to provide meaningful or sufficient competition for such county contracts. The purpose for the placement of a contract into the CBD demonstration project shall be to encourage the development of new capacity within an industry to competitively bid on the future supply of specialized goods or services to the county.

b. Contracts reserved for CBD demonstration projects shall be subject to a request for proposals process whereby the selected firm will be required to be a joint venture between an established firm or experts in that relevant industry and an SLBE firm. The scope of work for the selected joint venture shall include teaching a hands-on curriculum to SLBE firms that have expressed an interest in diversifying into the relevant industry, in addition to performing the customary functions of the contract. This curriculum shall include both administrative skills (e.g. cost estimating, bidding, staffing, project management) and technical skills (e.g., hands-on demonstration of how to perform necessary tasks in the field) required to qualify for future county contracts and to successfully compete in the industry.

c. The director of the Office of Small Business Opportunity shall be required to select SLBE candidate firms for participation on such CBD demonstration projects on the basis of an assessment of their current capabilities and their likely success in diversifying into the new relevant industry once given technical assistance, training, and an opportunity to develop a performance track record in the industry.

(Ord. No. 049-13HR, § II, 9-17-13; Ord. No. 028-16HR, § I, 7-26-16; Ord. No. 058-16HR, § III, 12-6-16)

Sec. 2-645. SLBE program performance review.

(a) The director of the Office of Small Business Opportunity or designee shall monitor the - implementation of this policy and the progress of this program. On at least an annual basis, the director of the Office of Small Business Opportunity or designee shall report to the county administrator and county council on the progress of achieving the goals established for awards to certified SLBE and emerging SLBE firms, reporting both dollars awarded and expended. In addition, the director of the Office of Small Business Opportunity or designee shall report on the progress in achieving the stated program objectives, including, but not limited to, enhancing competition, establishing and building new business capacity, and removing barriers to and eliminating disparities in the utilization of available minority business enterprises and women business enterprises on county contracts.

(b) The county shall periodically review the SLBE program to determine whether the various contracting procedures used to enhance SLBE contract participation need to be adjusted or used more or less aggressively in future years to achieve the stated program objectives. The county council shall conduct a public hearing at least once every two years in order to solicit public comments on the program.

(Ord. No. 049-13HR, § II, 9-17-13; Ord. No. 058-16HR, § III, 12-6-16)

Sec. 2-646. Conflicts.

To the extent language in this division conflicts with other language in Article X, the language in this division controls only with respect to contracts wherein the small local business enterprise program is being applied by the director of the Office of Small Business Opportunity. In all other respects, prior language in this article shall remain in full force and effect.

(Ord. No. 049-13HR, § II, 9-17-13; Ord. No. 058-16HR, § III, 12-6-16)

DIVISION 8. COMMERCIAL NONDISCRIMINATION ORDINANCE

Sec. 2-647. General provisions.

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

(b) Implementation. The small local business enterprise division shall implement this ordinance by periodically conducting outreach and distributing educational materials to the county's contracting and vendor community and related trade associations to advise such contractors, vendors and prospective offerors of this ordinance and the procedures to be followed in submitting complaints alleging violations of this ordinance. The director of procurement, in consultation with the county attorney, shall promulgate regulations and procedures to establish due process for the filing of complaints pursuant to this ordinance, as well as for the investigation of complaints, the conduct of administrative hearings, the issuance of factual determinations, the establishment of an appeals process, and the establishment and application of sanctions and other remedies pursuant to this ordinance. In addition, the county administrator or designee, the director of procurement, and the county attorney's office shall insure that the following commercial nondiscrimination clause language is set forth in, and incorporated into, all the county contracts that result from formally advertised solicitations:

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

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

(2) All formal solicitations issued for county contracts shall include the following certification to be completed by the offeror:

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

In preparing its response on this project, the Offeror has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in "discrimination" as defined in the County's Commercial Nondiscrimination Ordinance, Section 2-647; to wit: discrimination in the solicitation, selection or commercial treatment of any subcontractor, vendor, supplier or commercial customer on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, gender identity, or on the basis of disability or other unlawful forms of discrimination. Without limiting the foregoing, "discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination". Without limiting any other provision of the solicitation for responses on this project, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the County to reject the response submitted by the Offeror on this project, and terminate any contract awarded based on the response. As part of its response, the Offeror shall provide to the County a list of all instances within the immediate past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of South Carolina that the Offeror discriminated against its subcontractors, vendors, suppliers or commercial customers, and a description of the status or resolution of that complaint, including any remedial action taken. As a condition of submitting a response to the County, the Offeror agrees to comply with the County's Commercial Nondiscrimination Ordinance, Section 2-647 of the Richland County Code of Ordinances, and further agrees to fully cooperate with the County in its inquiries relating to compliance with this Ordinance.

(Ord. No. 016-14HR, § V, VI, 5-6-14)

DIVISION 9. PROMPT PAYMENT REQUIRED

Sec. 2-648. Prompt payment required.

(a) Right of county prime contractor and subcontractor to prompt payment.

(1) Performance by a prime contractor in accordance with the provisions of its Richland County contract entitles prime contractor to payment from the county in a prompt manner. Provided there are no bona fide disputes relating to the adequacy of performance by the contractor, the county shall pay contractor no later than thirty (30) days after receipt of a proper invoice from the contractor that summarizes the services provided or goods delivered to county by contractor and the cost of same. For each thirty (30)-day interval that payment from the county is late, contractor shall be entitled to interest penalty payments from the county equal to five percent (5%) of the late balance. This late penalty fee payment shall be in addition to the payment of the undisputed original balance due by the county.

(2) Performance by a subcontractor in accordance with the provisions of its subcontract agreement with county's prime contractor while providing goods or services on behalf of Richland County entitles subcontractor to payment from the prime contractor in a prompt manner. Provided there are no bona fide disputes relating to the adequacy of performance by the subcontractor, the prime contractor shall pay subcontractor no later than seven (7) days after prime contractor has received payment from the county for the goods or services that subcontractor has properly invoiced prime contractor for by summarizing the goods or services delivered on behalf of the county through the prime contractor.

Alternatively, in instances where, through no fault of subcontractor, prime contractor has not been paid by the county for goods or services rendered by subcontractor, and more than thirty-seven (37) days have lapsed since prime contractor received a proper invoice from subcontractor, the prime contractor shall authorize the county to pay subcontractor's undisputed invoice directly and to then deduct subcontractor's payment portion from prime contractor's account receivables due under its contract with the county. For each thirty (30)-day interval beyond thirty-seven (37) days that payment to subcontractor is late, subcontractor shall be entitled to an interest penalty fee equal to five percent (5%) of the late balance. This late penalty fee shall be in addition to the payment of the undisputed original balance due by the prime contractor, and shall be payable by either the prime contractor or the county depending upon which party is responsible for the late payment under these terms.

(3) The county shall place language establishing these prompt payment terms as described above in (1) and (2) in any county bid solicitation and resulting contract awarded under county ordinance, Chapter 2, Administration, Article X, Purchasing, § 2-591

and in each instance wherein the county determines to apply the provisions of county ordinance, Chapter 2, Administration, Article X, Purchasing, Division 7 to a solicitation. In addition, each prime contractor shall be required to include similar prompt payment flow-down provisions for each tier of subcontractors that perform services or provide goods on behalf of the county through the prime contractor or a subcontractor.

(4) Any prevailing party that makes a final written demand for payment and late penalty fees to the responsible party pursuant to this ordinance and fails to receive payment in full within thirty (30) days, and subsequently takes legal recourse to enforce these prompt payment provisions, shall also be entitled to the award of reasonable attorneys' fees by a court of competent jurisdiction.

(b) Grounds on which county, prime contractor, or subcontractor may withhold application and certification for payment; contract terms unaffected.

(1) Nothing in this ordinance prevents the county, the contractor, or a subcontractor from withholding application and certification for payment because of the following: unsatisfactory job progress, defective construction not remedied, disputed work, third party claims filed or reasonable evidence that claim will be filed, failure of contractor or subcontractor to make timely payments for labor, equipment, and materials, damage to county, contractor, or another subcontractor, reasonable evidence that contract or subcontract cannot be completed for the unpaid balance of the contract or subcontract sum, or a reasonable amount for retainage.

(2) Nothing in this ordinance requires that payments due a contractor from the county be paid any more frequently than as set forth in the construction documents, nor shall anything in this ordinance affect the terms of any agreement between the county and any lender.

(c) Failure of contractor or subcontractor to make timely payments. In addition to the interest on late payments provided in section (a), if any contractor or subcontractor makes late payments more than three (3) times during the course of a contract, unless sufficient justification is made to the county and the county determines not to count the payment as late, the county can withhold the amount of the late payment due from the contractor to the subcontractor or to the lower tier subcontractor and make such late payment directly to the subcontractor or the lower tier subcontractor.

(Ord. No. 029-14HR, § I, 6-3-14)

ARTICLE XI. INQUIRIES AND INVESTIGATIONS

State law reference(s)--Investigative powers of council, S.C. Code 1976, § 4-9-660.

Sec. 2-649. Short title.

This article shall be known and may be cited as the "Inquiries and Investigations Ordinance of Richland County."

(Code 1976, § 2-9001; Ord. No. 526-79, § 1, 3-21-79; Ord. No. 049-13HR, § I, 9-17-13; Ord. No. 016-14HR, § I, 5-6-14)

Sec. 2-650. Definitions.

For the purpose of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section unless a contrary intention is clearly evident:

Chair. The person duly selected by the county council to chair the county council or the vice-chair in the absence of the chair.

County attorney. The person duly selected by the county council to serve as county attorney or any member of the staff of the legal department in the absence of the county attorney.

Department head. Head of any department of government of the county whether permanent, temporary or otherwise, acting in the course and scope of his employment and in his official capacity.

Employee. Any person officially employed by the county whether permanent, temporary or otherwise, acting in the course and scope of his employment in his official capacity. Unless otherwise specified, "employee" shall include the county administrator and department heads.

Inquiry. A request for information or a systematic investigation often of a matter of public interest.

Investigation. A systematic examination or an official inquiry.

Major problems or complaints. Those matters relating to the operations of the county and conduct of employees, department heads and/or other members of the county family constituting criminal conduct; dereliction of duty; misuse of county funds, property or personnel; gross abuse of discretion; misfeasance, malfeasance or nonfeasance.

Member of council. Any duly qualified and acting member of county council in his official capacity.

Member of the general public. Any person, including a member of the county council not acting in an official capacity.

Minor problems or complaints. Those matters relating to the operations of the county and conduct of employees, department heads and/or other members of the county family not reaching the level of major problems or complaints, including, but not limited to, road and street repairs, failures to repair, request for information, missing signs, garbage collection and other services as well as the conduct and attitude of such employees while in the course and scope of their employment with the county.

Public interest. A matter pertaining to the operation and conduct of the departments and business of the county government.

Private reprimand. A private censure or reprimand by a majority vote of council after opportunity for hearing.

Public reprimand. A public censure or reprimand by a two-thirds (2/3) vote of council after opportunity for hearing.

(Code 1976, § 2-9002; Ord. No. 526-79, § 2, 3-21-79; Ord. No. 049-13HR, § I, 9-17-13; Ord. No. 016-14HR, § I, 5-6-14)

Cross reference(s)--Rules of construction and definitions generally, § 1-2.

Sec. 2-651. Policy.

It shall be the policy of the county to encourage citizens' inquiries and to expeditiously resolve their problems and complaints when the public interest is involved. As a matter of policy, department heads should be given an opportunity to resolve complaints pertaining to their departments regardless of whether or not the complaint originates from a member of the general public, an employee or a member of council. When a member of council receives a citizen's complaint or is otherwise aware of a problem, he should immediately pass it on in accordance with the directions and policies set forth herein. It is anticipated that all county personnel will exercise common sense and good judgment in dealing with the public and in carrying out their duties and responsibilities. Employees are expected to act quickly and efficiently with a view toward realizing a minimum of delay. Nothing contained herein shall be so construed as to prohibit any member of council, employee or other person from immediately reporting major problems or complaints to the proper authorities including the sheriff, the solicitor, the coroner, the state law enforcement division and/or the Federal Bureau of Investigation.

(Code 1976, § 2-9003; Ord. No. 526-79, § 3, 3-21-79; Ord. No. 049-13HR, § I, 9-17-13; Ord. No. 016-14HR, § I, 5-6-14)

Sec. 2-652. Conduct of investigations.

(a) It shall be deemed a violation of this article and of section 4-9-660 of the 1976 South Carolina Code of Laws for any member of the county council to individually do any of the following:

(1) Commence any official investigation or utilize the manpower or facilities of the county for any such official investigation without first obtaining the approval of the county council. For purposes of this article, an official investigation shall be one which is a systematic investigation, examination or official inquiry. A request for information shall not be deemed an official investigation, although council members are encouraged to make such requests through the county administrator's office.

(2) To give orders or instructions to any employee subject to the direction and supervision of the county administrator.

(3) To give orders or instructions to any employee concerning the hiring, firing, reprimanding, promotion, demotion or other personnel action concerning any employee subject to, or who will be subject to, the direction and supervision of the county administrator.

(b) It shall not be deemed a violation of this chapter and of section 4-9-660 of the 1976 South Carolina Code of Laws for a member of council to individually do any of the following:

(1) Contact the proper department head and/or employee concerning potholes, missing signs, garbage collection or otherwise relate minor problems and/or complaints directly to the proper person when the public health, welfare and/or safety is involved.

(2) Make a request for public information on behalf of any citizens although it should be considered that such request ought to be in writing on a form provided signed by the person who actually seeks the information.

(3) Visit departments of the county, observe operations thereof and generally demonstrate a genuine interest in the operations of the county government.

(c) The council may initiate an investigation of any member of council, employee or other person by a majority vote of council in regular, special, executive or open session provided the notice requirements for the particular type of meeting have been met. Such investigation may be conducted:

(1) By the council;

(2) By a duly appointed committee of council of no less than five (5) members;

(3) By the county administrator and/or county attorney;

(4) By any duly constituted law enforcement agency;

(5) By the independent auditing firm;

(6) By the chair of council upon the authorization of seven (7) members of council or in the absence of a majority of council from the confines of the county. Such authority shall immediately terminate upon the return of a majority of the council to the confines of the county;

(7) By a private C.P.A., attorney and/or investigator upon the authorization of seven (7) members of council; provided, however, that funds for such shall be made available as soon as possible under legal budgeting and appropriating procedure;

(8) All such hearings, reports, investigations and minutes thereof shall be confidential and for council members only until such time as council has officially disposed of such investigations. In the event eight (8) members of council vote to seal the investigative

record, it shall be a violation of this article for any member of council, employee, witness or other person to disclose any proceedings so long as such record remains sealed.

(d) Subpoenas.

(1) The council, by and through its chair, may for the purposes of this article, subpoena witnesses, administer or cause to be administered oaths and examine or cause to be examined such parts of the books and records necessary to proceedings as relate to investigations and inquiries.

(2) In the event a witness fails to comply with any such subpoena, the council may enforce same by application for writ, show cause or other proceedings to the court of common pleas for the county.

(Code 1976, § 2-9004; Ord. No. 526-79, § 4, 3-21-79; Ord. No. 049-13HR, § I, 9-17-13; Ord. No. 016-14HR, § I, 5-6-14)

State law reference(s)--Freedom of Information Act, S.C. Code 1976, § 30-4-10 et seq.

Sec. 2-653. Reports.

Upon the completion of the investigation, however, and by whomever conducted, each member of council shall receive a confidential copy thereof. Public release thereof shall not be had until council completes its action thereon subject to the restraints of section 2-642(c)(8) of this article. Nothing contained herein shall be construed as an effort to avoid the requirements of the Freedom of Information Act, South Carolina Code 1976, § 30-4-10 et seq.

(Code 1976, § 2-9005; Ord. No. 526-79, § 5, 3-21-79; Ord. No. 049-13HR, § I, 9-17-13; Ord. No. 016-14HR, § I, 5-6-14)

Sec. 2-654. Decisions.

The council may reach any of the following decisions:

- (1) No merit to investigation.
- (2) Results should be referred to appropriate law enforcement, appointing and/or funding agency.
- (3) Recommend civil suit.
- (4) Recommend criminal prosecution.
- (5) Recommend reprimand of employee.
- (6) Recommend termination of employee.

(7) Public reprimand of member of council by a two-thirds (2/3) vote of council.

(8) Private reprimand of member of council by a majority vote of council.

(Code 1976, § 2-9006; Ord. No. 526-79, § 6, 3-21-79; Ord. No. 049-13HR, § I, 9-17-13; Ord. No. 016-14HR, § I, 5-6-14)

Sec. 2-655. Interference with investigation.

It shall be unlawful for any person to interfere with, hinder or molest any person carrying out any phase of any duly authorized investigation in the performance of his duty or seek to obtain information concerning such investigation other than as provided herein.

(Code 1976, § 2-9007; Ord. No. 526-79, § 7, 3-21-79; Ord. No. 049-13HR, § I, 9-17-13; Ord. No. 016-14HR, § I, 5-6-14)