

Code Change

ORDINANCE NO. 2017 - 28

AN ORDINANCE OF THE CITY OF TAMPA, FLORIDA, MAKING REVISIONS TO CITY OF TAMPA CODE OF ORDINANCES, CHAPTER 26.5 (EQUAL BUSINESS OPPORTUNITY PROGRAM); AMENDING CERTAIN SECTIONS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Tampa conducted duly noticed public hearings as required by law at which public hearings all residents and interested persons were given an opportunity to be heard regarding the recommendation of narrowly tailored remedies for the specific discrimination together with certain specific areas of contracting and procurement all found to have a strong basis in evidence of discrimination as well as the group or groups who are subjected to such discrimination; and

WHEREAS, in the interests of clarity and transparency, the City of Tampa wishes to modify certain provisions of Chapter 26.5 Equal Business Opportunity Program together with other changes to facilitate the operation of city departments and programs supporting the intent and purpose of this chapter; and

WHEREAS, the City Council of the City of Tampa has determined that the following amendments benefit the residents of the City of Tampa by assisting the local economy with job formation while remedying discrimination against minority- and women-owned business enterprises in city contracting and procurement.

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TAMPA, FLORIDA:

Section 1. That Chapter 26.5 of the City of Tampa Code, entitled "Equal Business Opportunity Program", is hereby amended by deleting the stricken words and adding the underlined words as follows:

Chapter 26.5 - EQUAL BUSINESS OPPORTUNITY PROGRAM
ARTICLE I. - IN GENERAL

Sec. 26.5-1. - Intent and purpose.

- (a) It is the intent and purpose of this chapter to encourage equal opportunity in city contracting and procurement and to eliminate discrimination and the effects of past discrimination therein. It shall also be a violation hereof for ancillary providers to discriminate in the provision of ancillary services related to city contracting and procurement.
- (b) It is also the intent and purpose of this chapter to encourage the use of small local business enterprises (see section 25-5.7 et seq.), which have the benefit to the city of assisting the local economy with job formation while increasing remedying discrimination against minority- and women-owned business enterprises in city contracting and procurement in a race and gender neutral manner.
- (c) It is also the intent and purpose of this chapter to develop evidence relevant to whether race- and gender-conscious programs are necessary to remediate the effects of past or current discrimination.

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1 as required by the applicable law.

2
3 Sec. 26.5-2. - Definitions.

4
5 As used throughout this Chapter 26.5, certain abbreviations, terms, phrases, words and their
6 derivatives shall have the following meanings:

7
8 *Ancillary providers* means those persons and businesses providing services, materials or supplies to
9 persons or businesses competing for city contracts and procurements including but not limited to
10 financing, performance or bid bonds, materials or supplies or other items, products or services used in
11 performing public contracts or meeting public procurement requirements.

12
13 *Bid* means and includes as context may require a quotation, proposal, solicitation or offer by a bidder
14 or contractor to perform or provide labor, materials, supplies, goods, or services to the city for a price.

15
16 *Bidder* means as context may require any business that submits a quotation, bid, proposal, statement
17 of qualifications or offer to provide labor, materials, supplies, goods, or services to the city.

18
19 *Certified* means a business that has met the eligibility criteria and been approved as a SLBE and/or
20 WMBE by the City of Tampa manager pursuant to this chapter city ordinance.

21
22 *City business day* shall have the meaning set forth in section 2-282 of the City of Tampa Code.

23
24 *Commercially useful function* means contractual responsibility for the execution of a distinct element
25 of the work of a contract by a business enterprise and the carrying out of its contractual responsibilities by
26 actually performing, managing, and supervising the work involved. The determination of whether a
27 business is performing a commercially useful function shall include an evaluation of the amount of work
28 subcontracted; normal industry practices, the skills, qualifications, or expertise of the business to perform
29 the work; whether the business owners perform, manage, or supervise the work involved; and other
30 relevant factors. Acting as a broker is not considered a commercially useful function.

31
32 *Compliance plan* is a report detailing a business' achievement of a goal, or its good faith efforts to
33 meet such goal. The report may be required to be filled out on forms developed by the manager.

34
35 *Construction or construction services* is defined as the construction, reconstruction, alteration, repair,
36 and/or maintenance of public improvements or the prosecution or completion of a public work of the City
37 of Tampa. Construction management and design-build services are considered as construction services.

38
39 *Construction-related professional services* are defined as those services within the scope of the
40 practice of architecture, professional engineering, landscape architecture, or registered surveying and
41 mapping.

42
43 *Contract* means and includes any agreement or bid award, and all requirements of the city associated
44 therewith, regardless of what it may be called, between the city and a person to provide or procure labor,
45 materials, supplies or services to, for or on behalf of the city.

46
47 *Contracting category* means (i) construction services; (ii) construction-related professional services;
48 (iii) goods; (iv) non-professional services; (v) non-construction related professional services.

49
50 *Contractor (prime contractor)* means a person ~~other than a materialman or laborer or business~~

1 enterprise who enters into a contract with the City of Tampa to construct, reconstruct, alter, repair and/or
2 maintain a public improvement or a public work. As context requires, this term may also include
3 professional (consultant) business enterprises, vendors, or other entities provided they are in direct privity
4 with the city.

5
6 *Discrimination* means the denial of any of the rights of any person to the equal protection of the laws
7 occurring within the jurisdiction of the City of Tampa or otherwise in City of Tampa contracting and
8 procurement. It is specifically the intent hereof that such discrimination when used as the basis of race
9 and gender based remedies must have a substantial basis in evidence and be identified with the
10 particularity required by the Fourteenth Amendment and the United States Supreme Court cases
11 interpreting it.

12
13 *Diversity management initiative (DMI)* is a citywide process to collect, track, and report
14 comprehensive information on vendors, contractors and subcontractors engaged in business with the City
15 of Tampa. Its primary function is to manage data for statistical analysis and reporting.

16
17 *Domicile* requires that the business concern: (i) has majority owner(s) of a business concern that are
18 be a lawful permanent resident(s) of the State of Florida, (ii) is lawfully licensed within the relevant
19 jurisdiction, and (iii) has have an office located within the relevant jurisdiction.

20
21 *Double counting* is a prohibited process where minority, woman, and/or small business participation
22 in a city contract is counted more than one time.

23
24 *Eligible contract* means any contract or procurement subject to the provisions and requirements
25 hereof and shall mean any and all contracts or procurements entered into by the city, the issuance of
26 which is not otherwise governed by City of Tampa Charter Section 8.04. Contracts that by City of Tampa
27 Charter are not subject to a bid process are not eligible contracts. Further, eligible contracts will not
28 include instances where the requirements of this chapter conflict with either federal or state law, where
29 the contract under consideration is funded in whole or in part by or through federal and/or state programs
30 or entities, etc.).

31
32 *Equal business opportunity advisory committee (EBOAC)* is a citizen task force of sixteen (16)
33 members (nine (9) mayoral and seven (7) city council appointees), representing a cross section of
34 contractors, service providers, and stakeholder organizations. The purpose of the EBOAC is to serve as a
35 citizen advisory committee to promote the participation and use of SLBEs and WMBEs in city
36 contracting and procurement.

37
38 *Estimated cost (or estimated contract cost)* means the projected cost established in accordance with
39 generally accepted cost-accounting principles by the user or soliciting department at the time the contract
40 is offered for the initial term of the contract (excluding any anticipated renewal terms). For example, if
41 the city intends to enter into a three (3) year contract with two (2) renewal terms of five (5) years each,
42 where the user department-projected a cost of \$5,000 per year, the estimated contract cost would be
43 \$15,000 (or 3 year initial term x \$5,000/year). If a one (1) year contract at the same user-department
44 projected cost, the estimated contract cost would be \$5,000.

45
46 *Goal setting committee* is as set forth in section 26.5-23 below.

47
48 *Goods* are defined as all supplies, printing, materials, equipment, machinery, appliances, and other
49 commodities.
50

1 Manager refers to the manager (or his or her designee) of the City of Tampa Minority and Small
2 Business Development Program or (its successor program) his or her designee.

3
4 Minority business enterprise (MBE) means a business which is domiciled in Florida and fifty-one
5 (51) percent owned by an individual or individuals who is/are a male member(s) of one (1) of the
6 following groups: African American, Asian, Hispanic or Native American. An MBE also means a
7 business which is domiciled in Florida and fifty-one (51) percent owned by an individual or individuals
8 who is/are female member(s) of one (1) of the following groups: African American, Asian, Hispanic or
9 Native American. Such male or female individuals must also control and operate the business, and be
10 domiciled within lawful permanent residents of the State of Florida.

11
12 Non-professional services are defined as services not related to a specific professional discipline,
13 such as lawn maintenance or painting.

14
15 Non-construction related professional ~~Professional~~ services are defined as services relating to a
16 specific profession, such as an attorney, accountant, medical doctor, veterinarian or consultant.

17
18 Small local business enterprise (SLBE) means that:

- 19 (1) The owner(s) is a lawful permanent resident of the State of Florida;
20 (2) The business is domiciled in the Tampa Market Area;
21 (3) The business is independently owned and operated;
22 (4) The business' annual gross receipts, averaged over the past three (3) years was two million
23 dollars (\$2,000,000.00) or less. The manager shall include in his annual report any
24 recommended adjustment to this threshold; and
25 (5) Business is certified as a SLBE by the City of Tampa or is similarly certified by another
26 manager-recognized jurisdiction, and is located within the Tampa Area Market.

27
28
29 Sheltered market means a city contract or procurement that is reserved for SLBEs eligible to
30 participate in and respond to the specific procurement; provided, however, pursuant to Article III below,
31 such reservation may be expanded to include underutilized WMBEs.

32
33 SLBE review committee is as set forth in section 26.5-15 below.

34
35 SLBE review plan, if any, is as set forth in section 26.5-15 below.

36
37 Subcontractor shall mean a sole proprietorship, individual, partnership, corporation, limited liability
38 company, business enterprise, or combination thereof having a direct contract with a prime contractor for
39 any portion of the advertised work that is awarded by the city/owner's representative. As context requires,
40 subcontractor may include "consultants" or "suppliers" provided they are in direct privity with a prime
41 contractor. Lower tier subcontractors (e.g. sub-subcontractors in privity with a subcontractor) may be
42 included in the definition of "subcontractor" as the manager may recommend.

43
44 Supplier shall mean a business enterprise that ~~either directly contracts with a prime~~
45 ~~contractor/consultant or directly contracts with a subcontractor under such prime contractor/consultant to~~
46 provide materials, supplies or equipment in connection with a contract awarded by the city/owner's
47 representative. A supplier may be a regular dealer, distributor or manufacturer. Lower tier suppliers may
48 be included in the definition of "supplier" as the manager may recommend.

49
50 Tampa Market Area means the City of Tampa and other contiguous or nearby counties serving as the

1 location for contractors and vendors that predominate in procurements and contracts awarded by the City
2 of Tampa as determined by a statistical analysis.

3
4 Underutilized means one or more racial or gender group that has been shown pursuant to Article III
5 to have experienced specifically identified historic discrimination in city contracting and as further
6 identified by DMI and other methods required by applicable law as experiencing underutilization within a
7 specific contracting category such that a narrowly tailored remedy within a specific contracting category
8 is appropriate. Underutilization is calculated for each contracting category. The declaration of
9 underutilization does not amount to an admission of impermissible conduct. It is neither a finding of
10 discrimination nor a finding of a lack of good faith affirmative action efforts. Rather, underutilization is a
11 technical targeting term used exclusively by affirmative action planners who seek to apply good faith
12 efforts to increase in the future the percentage of utilization of minorities and women in a contracting
13 category. An underutilized WMBE may also be referred to as a UWMBE.

14
15 Vendor means anyone selling furniture, fixtures, equipment, materials, supplies or other goods,
16 services or products directly to the City of Tampa.

17
18 Women business enterprise (WBE) means a business which is domiciled in Florida and at least fifty-
19 one (51) percent owned by a Caucasian woman or women who also control and operate the business and
20 who must also be domiciled within lawful permanent residents of the State of Florida.

21
22 Women and minority business enterprise (WMBE) means a WBE or MBE certified as a WMBE by
23 the city pursuant to the requirements set forth herein.

24 Sec. 26.5-3. - Administrative authority, powers and duties.

25
26 (a) The provisions of the programs herein shall be administered and enforced by the manager.

27
28 (b) The manager's powers and duties include the following:

- 29
30 (1) Establish written rules and procedures consistent with this chapter to implement the programs
31 provided herein;
- 32
33 (2) Provide information and assistance to SLBEs to increase their ability to compete effectively for
34 the award of city solicitations for procurements and subcontracts on city procurements and
35 monitor that progress;
- 36
37 (3) Keep SLBEs apprised of opportunities for technical assistance and training;
- 38
39 (4) Develop procedures and forms for contractors to facilitate monitoring and reporting of the
40 solicitation and utilization of all subcontractors in city procurement and contracting;
- 41
42 (5) Compile reports and information in order to identify: (a) eligible firms in the Tampa Market
43 Area; (b) the bidding by same on city procurements and contracts and associated subcontracts;
44 and (c) the SLBE and WMBE utilization on city contracts and procurements and associated
45 subcontracts awarded to the various categories of bidders for the identified types of contracts
46 and procurements. These reports shall detail the total dollars and total contracts and
47 subcontracts awarded and paid, and shall be provided to city council and the EBOAC on a semi-
48 an annual basis. The first report and disparity analysis with corresponding recommendations
49 shall be provided to city council no later than twelve (12) months after the enactment of this
50 chapter;

- 1
2 (6) Serve as administrative liaison to the equal business opportunity advisory committee (EBOAC);
3
4 (7) Recommend annual goals for SLBE and WMBE, prime and subcontractor, utilization and report
5 such recommendations to city council for approval;
6
7 (8) Facilitate the establishment of mentor-protégé program(s) to encourage majority and minority
8 trade associations to work jointly to connect SLBE and WMBE protégés with well-established
9 mentor firms. The program(s) may include appropriate incentives to encourage firms to mentor
10 such protégés;
11
12 (9) In consultation with the directors of the soliciting departments, create procedures that will
13 facilitate the use and solicitation of SLBEs (or upon an appropriate finding of discrimination
14 pursuant to Article III below affected WMBEs) for eligible contracts whose estimated cost is
15 less than \$2,000 (e.g. p-card, phone quotes, etc.);
16
17 (10) As otherwise necessary to carry out the programs, policies, intent, and initiatives
18 described herein.
19
20 (c) All department heads/directors shall recommend to the manager all goods and services procurements
21 for SLBE-sheltered markets for any eligible contract.
22
23 (d) City's role in dispute resolution.
24
25 If, after the award of a contract, a dispute arises between the prime contractor and a subcontractor
26 regarding performance of work or provision of services or supplies on the eligible project, then such
27 non-city parties may voluntarily agree to seek review and mediation of the issue before the manger
28 (facilitated negotiations). The request for review must be made in writing to the manager who will,
29 upon such receipt, provide a copy to the city attorney and director of the soliciting department.
30
31 Within 20 calendar days of receipt of a request for mediation, if the dispute has not already been
32 resolved informally among the parties – and the manager in consultation with the city attorney and
33 soliciting department determine mediation is an appropriate forum – the manager shall set a
34 mediation date. The manger shall provide written notice of the mediation date to each of the
35 interested parties copying the city attorney and soliciting department. The manager shall have
36 authority to make recommendations in an attempt to resolve the dispute no such recommendations
37 shall be binding unless voluntarily agreed to by the interested parties. In the event that mediation
38 with the manager does not resolve all disputes, the manager shall have the option of referring
39 mediation proceedings to a qualified outside mediator, contingent upon the consent of the
40 interested parties.
41
42 All actions taken hereunder to ensure the fair and equitable treatment of subcontractors or mentor
43 protégé partners or teaming agreement members working on City of Tampa projects or seeking work
44 on City of Tampa projects are done pursuant to the city's prohibition against discrimination and
45 required business ethics commitment and shall not be construed as the city taking a position as to the
46 merits of the dispute nor creating any privity of contract between the city and any contractor or
47 subcontractor. Further, no contractor working on a City of Tampa project or seeking work from the
48 City of Tampa shall have any claim against the city for any actions taken to ensure the fair and
49 equitable treatment of subcontractors working on City of Tampa projects or seeking work on City of
50 Tampa projects.

1
2 Secs. 26.5-4—26.5-6 - Reserved.

3
4 ARTICLE II. - SMALL LOCAL BUSINESS ENTERPRISE PROGRAM

5
6 DIVISION 1. - IN GENERAL

7
8 Sec. 26.5-7. - Title.

9
10 This article shall be known and may be cited as the "City of Tampa Small Local Business Enterprise
11 (SLBE) Ordinance." The program hereby created shall be known as the City of Tampa Small Local
12 Business Enterprise Program or SLBE Program.

13
14 Sec. 26.5-8. - Purpose and declaration of policy.

15
16 The City of Tampa Small Local Business Enterprise Program is established to encourage equal
17 opportunity, diversity, and equity in the city's contracting and procurement activities. In a race- and
18 gender-neutral manner, the program will promote fair and equal opportunities for all SLBEs. It is
19 specifically intended that the encouragement of SLBEs will allow for the development and growth of
20 such enterprises to increase competition for city construction and procurement opportunities. The city
21 shall continue to monitor its contracting and procurement processes to determine whether subsequent city
22 procurement and contracting or other evidence suggests that the city is a passive participant in a
23 discriminatory marketplace, in which event the city shall adopt remedies narrowly tailored to that
24 evidence. These remedies may include the use of narrowly tailored race- and gender-conscious measures
25 such as outreach to minority- and women-owned business enterprises and subcontracting goals for the
26 participation of such firms as set forth in Article III hereof, but which shall not be applicable unless there
27 is a strong basis in evidence for finding discrimination in city contracting and procurement as described in
28 Article III below.

29
30 Sec. 26.5-9. - Applicability.

31
32 The provisions of the program shall apply to all eligible contracts for the procurement of
33 construction services, non-construction-related professional services, goods, non-professional services
34 and professional services by the city awarded by bid, request for proposal (RFP), request for
35 qualifications (RFQ), or job order contracting services (JOCS).

36
37 Sec. 26.5-10. - Certification.

38
39 The manager shall be responsible for reviewing and certifying businesses as small business local
40 enterprises pursuant to an application and review process established by the manager implementing the
41 following requirements and guidelines:

- 42
43 (1) Any SLBE, operating as such for at least one (1) year prior to application, wishing to qualify to
44 participate in city contracting and procurement activities as a SLBE must be certified by the
45 manager. All certifications shall be effective for a period of three (3) years from the date the city
46 provides notification of certification. If, during the certification period, an SLBE experiences
47 changes in ownership, employment, control or location, it shall be the SLBE's responsibility to
48 report said changes to the manager. Failure to report said changes may result in revocation of
49 certification, or denial of re-certification for a period not to exceed three (3) years.

- 1 (2) A business entity qualified as a small local business enterprise by Hillsborough County or other
2 jurisdiction, may be recognized as a SLBE hereunder, if the manager reviews the program for
3 certification in such jurisdiction and confirms it complies with the essential requirements for
4 certification contained herein.
5
6 (3) If the manager denies or revokes certification as a SLBE because the business is not eligible, or
7 the business fails to maintain the eligibility criteria upon which it was certified by the manager
8 as a SLBE, the business may reapply to the manager no sooner than one (1) year after receipt of
9 the notice of denial or revocation.
10
11 (4) Any applicant for SLBE certification which makes any willful misstatement, deceptive or
12 fraudulent statement or misrepresentation to the manager may, in addition to any other
13 penalties, have its certification revoked, or be denied certification or recertification for a period
14 not to exceed three (3) years.
15
16 (5) A SLBE is expected to perform all contract requirements as directed by the city. If a SLBE fails
17 to so perform as required or violates the requirements of section 26.5-16(9) or (10) below, the
18 manager shall place the offending party on probationary status if the failure to perform is not
19 significant in terms of indicating an inability or unwillingness to perform, or disqualify such
20 SLBE for eligibility for sheltered markets or revoke the SLBE's certification if the failure to
21 perform is a significant indication of such SLBE's ability or willingness to perform the
22 requirements. In the event of disqualification or revocation of status, such penalty shall expire
23 on the earlier of one (1) year from commencement of such disqualification or revocation or until
24 the SLBE can demonstrate the capacity to completely and competently perform such contracts.
25 Any probation shall last for one (1) year with a subsequent failure to perform resulting in
26 disqualification or revocation. Any disqualification or revocation prevents the certified entity
27 from participating in the benefit of any sheltered markets or selective procurement process or
28 bid discount/rating preference/waiver that otherwise would be applicable. The manager shall
29 keep contractors, directors of the soliciting departments, SLBE review committee, and goal
30 setting committee, informed of an SLBE's probationary, suspended, or disqualified status as
31 applicable.
32
33 (6) All applicants for SLBE certification shall be required to attend a SLBE orientation. The
34 purpose of this orientation is to familiarize applicants with the policies and procedures for doing
35 business with the city. An applicant that previously has conducted business with the City of
36 Tampa or previously submitted bids, proposals or quotes may be exempted by the manager
37 from attending the orientation, if the manager is satisfied that it already possesses the
38 information or knowledge that would be obtained from such orientation.
39

40 Secs. 26.5-11—26.5-13. - Reserved.

41
42 DIVISION 2. - SMALL LOCAL BUSINESS ENTERPRISE OUTREACH AND SHELTERED
43 MARKETS

44
45 Sec. 26.5-14. - Sheltered market outreach Outreach; notification.

46
47 For all procurements subject to a SLBE sheltered market, the user or soliciting department shall
48 consult with the manager and send written or electronic notification promptly to all SLBEs that perform
49 the type of services or provide the type of goods to be solicited. The user or soliciting department shall
50 send a copy of the notice to the manager. The notification shall advise the SLBEs:

- (1) Of the specific services or goods the city is soliciting;
- (2) That their interest is being solicited; and
- (3) How to obtain requests for proposals, invitations to bid, or information or specifications for the solicitation.

Any respondent to a sheltered market invitation to bid must be certified as of the date their bid is submitted or they will be deemed to be in noncompliance with the provisions of this chapter and the bid automatically rejected.

Sec. 26.5-15. - Small local business enterprise committee review.

(a) An SLBE review committee is hereby established to ~~de advise and oversee the program(s) created by this chapter, including doing the following in support of this chapter:~~

- (1) Review the identifying and designating of ~~Identify designate~~ projects appropriate for a SLBE sheltered market based upon the availability of SLBEs to perform such projects as provided by the manager in consultation with the various user or soliciting departments;
- (2) Review periodic reports that are prepared by the manager utilizing information provided by the user or soliciting departments of the city;
- (3) Review the identifying and designating by the manager, in ~~In~~ conjunction with the user or soliciting department, ~~identify and designate~~ larger procurements that lend themselves to downsizing into smaller procurements;
- (4) Review the user or soliciting department identifying and designating ~~Identify and designate~~ procurements for waiver of payment and/or performance bonds to the extent permitted by applicable law; ~~and~~
- (5) Review determinations of ~~Determine~~ the applicability of bid discounts in non-sheltered markets as the same may be permitted elsewhere herein; ~~and~~
- (6) Such powers as necessary to carry out the intent of this chapter.

(b) The committee shall meet as often as is necessary to satisfy such responsibilities. The meetings place, time and date shall be arranged by the chairperson of the committee.

(c) The SLBE review committee shall be composed of seven (7) ~~members~~ City of Tampa officers:

- (1) Mayor, who shall serve as the chairperson;
- (2) Manager;
- (3) Purchasing director;
- (4) City attorney (in an advisory role);
- (5) Public works administrator;
- (6) Contract administration director; and
- (7) Administrator for economic development.

In the event one (1) or more of the above officials is unable to perform his or her duties in connection with any meeting(s) of the SLBE review committee, he or she shall name a designee to represent him or her. When sheltered markets are involved, the SLBE review committee's membership shall be (i) the chief of staff, (ii) the manager (who will serve as the chairperson), (iii) the purchasing director, (iv) the contract administration director, (v) the director of the user department most familiar with the contract being considered for sheltering, and (vi) the city attorney (in an advisory role) or their

1 designee.

2
3 (d) From time to time, the SLBE review committee may in writing request that the manager submit a
4 plan drafted in consultation with the City Attorney's office to more responsively address
5 SLBE review committee operations, including modifications to the sheltered market process that
6 may by way of example, change threshold amounts, administratively set both formal contract and
7 informal contract sheltered markets subject to SLBE review committee oversight together with
8 section 26.5-21 regarding non-sheltered market general bidding and procurement, including bid
9 discount percentages and thresholds, rating preference point thresholds. Once such a manager-
10 proposed plan has been accepted by the SLBE review committee ("SLBE review committee plan"),
11 it will be presented by to city council for approval and, upon such approval, the SLBE review
12 committee plan, as amended, will be placed on file in the city clerk's office and on the City of
13 Tampa website. Once so filed, the terms and conditions of the SLBE review committee plan shall
14 have the full force and effect of law.

15
16 (e) Upon the finding of discrimination on the basis of race, gender or ethnicity with respect to city
17 contracting or procurement, eligible contracts for sheltering that are for a type of contract that has
18 been found to evidence discrimination as provided herein will, pursuant to section 26.5-196 below,
19 be reviewed within in the context of section 26.5-196 below, to as appropriate institute narrowly
20 tailored participation by those WMBEs who were the subject of such discrimination.

21
22 Sec. 26.5-16. - Sheltered markets: eligible contracts for construction and construction services; general
23 requirements applicable to all sheltered markets.

24
25 TheSubject to the SLBE review committee plan, if any, the following requirements shall apply to all
26 eligible contracts for construction and construction services in the City of Tampa:

27
28 (1) ~~The~~Unless precluded by applicable law, the SLBE review committee may find it is appropriate
29 to shelter eligible contracts for construction ~~projects and construction management~~ services
30 ("construction projects") for bid only by SLBEs for an estimated contract cost less than or equal
31 to the maximum amount permitted by F.S. § 255.20(1) for exclusion from the competitive
32 bidding process. Such procurements shall be contracts that SLBEs are capable of performing in
33 an economically feasible manner, i.e., at the customary and usual market rate. Such an amount
34 may be increased by the SLBE ~~Committee review committee~~ to an amount not to exceed the
35 increase to such threshold permitted by F.S. § 255.20(2) ~~which allows an increase tied to the~~
36 ~~percentage change in the Consumer Price Index from January 1, 1994 to January 1 of the year in~~
37 ~~which the project is to begin.~~ In order to assure necessary competition, at least three (3) SLBEs
38 must be available and capable of performing the scope of the respective construction project to
39 be solicited or the construction project cannot be sheltered.

40
41 (2) By November 15th of each year, all user or soliciting departments that undertake construction
42 projects shall submit a report to the SLBE review committee containing a complete list of all
43 proposed eligible construction projects with an estimated cost of two hundred thousand dollars
44 (\$200,000.00) or less, or such increased amount pursuant to section 26.5-16(1), from which the
45 SLBE review committee will select as appropriate for sheltering. The report shall also indicate
46 which proposed construction projects are recommended by the user or soliciting department for
47 shelter, together with the justifications for such recommendations and, when applicable, which
48 proposed construction projects should be subject to bid, payment and/or performance bond
49 requirements or a waiver from such requirements, together with the justifications for such
50 recommendations. The final decision shall be made by the SLBE review committee. In any

event, no waiver of the performance bond requirements shall be in excess of that permitted by F.S. § 255.05.

- (3) In order to shelter an eligible contract for construction and construction services, the manager shall determine and identify for the SLBE review committee at least three (3) SLBEs who are available and capable of performing the type of work within the scope of each proposed construction project contained in such reports.
- (4) At the time of bid solicitation, following: (i) a review of such reports; (ii) the manager's determinations regarding the availability of at least three (3) SLBEs; and (iii) the nature, scope and complexity of each construction project contained in such reports; the SLBE Committee review committee shall determine which construction projects among those so recommended will be sheltered for SLBEs, and, in accordance with the procedures provided for herein, whether the construction projects so sheltered may obtain a waiver of payment and/or performance bond requirements.
- (5) If, in the judgment of the user or soliciting department, bids received in response to an invitation for bids for a construction project sheltered pursuant hereto are deemed to be non-responsive, excessive or unreasonable, all bids shall be rejected and a new invitation for bids open to all bidders, i.e., not sheltered, will be issued by the city. Nothing contained within ~~this section~~ the foregoing shall be deemed to preclude the use of the other ~~SLBE-general bidding and procurement~~ provisions contained herein (e.g. bid discount as authorized in Code section 26.5-21-26.5-22) from being counted with regard to said new, not sheltered, invitation to bid.
- (6) When necessary, all user or soliciting departments that undertake construction projects shall submit a report to the SLBE review committee and the manager containing any proposed modifications to previously approved sheltered construction projects, together with the justifications for such modifications. The SLBE review committee shall determine whether any proposed modifications to previously approved sheltered construction projects are appropriate, and make any necessary modifications to such previously approved action.
- (7) All user or soliciting departments that undertake such eligible construction projects shall submit a report to the SLBE review committee containing all new or additional proposed construction projects with an estimated cost of two hundred thousand dollars (\$200,000.00) or less, or such increased amount pursuant to section 26.5-16(a1), not included in the report due by November 15th of each year. The SLBE review committee may prefer to address all new or additional proposed construction projects, not included in the report due by November 15th of each year, on a project-by-project basis at the time of solicitation or periodically for groups of projects or otherwise. The procedures set forth in this section 26.5-16 shall be applied to such projects to determine which projects from such report, if any, will be sheltered.
- (8) Pursuant to F.S. § 255.05(1)(a), payment and performance bonds for city construction projects of two hundred thousand dollars (\$200,000.00) or less currently may be waived. The following procedures shall be followed to determine whether to recommend that payment and performance bonds be waived for a sheltered construction project to the maximum extent allowed by applicable law. The SLBE review committee ~~shall~~ will review the nature, scope and complexity of each such construction project to determine the appropriateness of waiving payment and performance bond requirements. The factors to be considered include, but are not limited to:
 - a. Complexity of the construction project;

- b. Contractor's experience with the type of construction project under review;
- c. Exceptional risk factors; and
- d. The recommendations of the user or soliciting departments.

(9) The following procedures shall apply to such eligible construction projects for which payment and performance bond requirements have been waived:

- a. Ten (10) percent of each approved request for payment by the SLBE shall be retained by the city until fifty (50) percent completion of the construction project, after which the retained amount may be reduced to five (5) percent of each approved request for payment until the construction project has been completed;
- b. The SLBE shall provide an affidavit, in a form acceptable to the manager and the user or soliciting department, showing in detail all amounts then due and unpaid by the SLBE, or its subcontractors, to all laborers, workmen and mechanics employed by the SLBE under the contract, for daily or weekly wages, or to other persons for materials, equipment or supplies delivered to the site of the work, during the period covered by the payment under consideration;
- c. Prior to final payment, the SLBE shall submit to the city an affidavit that all of its bills for labor, services, materials and subcontractors have been paid and that there are no suits pending in connection with the work provided under the contract, and waivers from all material suppliers and subcontractors as defined in F.S. § 713.01, attesting that they have no claims against the SLBE resulting from completion of the work provided under the contract for the construction project; and
- d. Notwithstanding the waiver of payment and performance bond requirements, a bid bond may be waived for a sheltered construction project. The procedures outlined within subsection ~~(h)~~26.5-16(8) above shall be followed to determine whether to recommend such waiver.

(10) ~~SLBEs~~Those selected for sheltered market projects shall perform at least fifty-one (51) percent of the contract, including the cost of materials, goods, and supplies, with their own manpower, resources and equipment, unless a prior written waiver is provided by the manager and the user or soliciting department. The user or soliciting department shall be responsible for monitoring such performance and shall notify the manager of a possible violation. A finding of a violation of this requirement without a showing of good cause may result in a loss of SLBE certification pursuant to section 26.5-10 above. Absent a waiver, a sheltered market bid will be rejected as nonresponsive if the percentage of work to be performed will be less than 51%.

Sec. 26.5-17. - Sheltered markets: eligible contracts for construction-related professional services.

~~The~~Subject to the SLBE review committee plan, if any, the following requirements shall apply to all eligible contracts for construction-related professional services in the City of Tampa:

- (1) Unless precluded by applicable law, the SLBE review committee may find it appropriate to shelter procurements of eligible contracts for construction-related professional services, including, but not limited to, architectural and engineering services, to which F.S. § 287.055 do not apply as set out in F.S. § 287.055(4)(c). Such procurements shall be contracts that SLBEs are capable of performing in an economically feasible manner, i.e., at the customary and usual for market rate. In order to assure necessary competition, at least three (3) SLBEs must be available and capable of providing the services to be solicited or the procurement cannot be sheltered.

- (2) The manager shall determine and identify for the SLBE review committee at least three (3) SLBEs who are available and capable of providing the services for each proposed procurement contained in such reports.
- (3) Following a review of such reports and the manager's determinations regarding the availability and capability of the three (3) SLBEs, the SLBE review committee ~~shall~~may determine which procurements ~~will~~are appropriate to be sheltered. The SLBE review committee shall also determine whether any proposed modifications to previously approved sheltering of procurements for such construction-related professional services are appropriate, and make any necessary modifications to such previously approved action.
- (4) If, in the judgment of the user or soliciting department, proposals received in response to a request for proposals for sheltered market procurement pursuant hereto are deemed to be non-responsive, excessive or unreasonable, all proposals shall be rejected and a new, non-sheltered request for proposals open to all proposers will be issued by the city. Nothing contained within ~~this section~~the foregoing shall be deemed to preclude the use of the other SLBE provisions contained herein (e.g., bid discount as authorized in Code section 26.5-2221) from being counted for the SLBE with regard to said new, i.e. non-sheltered, invitation to bid.

Sec. 26.5-18. - Sheltered markets: eligible contracts for goods.

~~The~~Subject to the SLBE review committee plan, if any, the following requirements shall apply to all eligible contracts for goods in the ~~city~~City of Tampa:

- (1) The SLBE review committee may find it appropriate to shelter procurements of goods relating to eligible contracts with an estimated cost of twenty-five thousand dollars (\$25,000.00) to ~~two~~three hundred thousand dollars (~~\$200,000.00~~\$300,000.00) for SLBEs. Such procurements shall be contracts that SLBEs are capable of performing in an economically feasible manner, i.e., at the customary and usual market rate. In order to assure necessary competition, at least three (3) SLBEs must be available and capable of providing the goods to be solicited or the procurement cannot be sheltered.
- (2) The manager shall determine and identify for the SLBE review committee at least three (3) SLBEs who are available and capable of providing the respective goods for each proposed procurement contained in such reports.
- (3) Following a review of such reports and the manager's determinations regarding the availability and capability of the three (3) SLBEs, the SLBE review committee ~~shall~~may determine which procurements ~~will~~are appropriate to be sheltered for SLBEs, and whether the sheltered procurements should be subject to payment and/or performance bond requirements. The SLBE review committee shall also determine whether any proposed modifications to previously approved sheltering of procurements of goods and non-professional services are appropriate, and make any necessary modifications to such previously approved action.

If, in the judgment of the user or soliciting department, bids received in response to an invitation for bids for a sheltered procurement pursuant hereto are deemed to be non-responsive, excessive or unreasonable, based upon the nature or purchase price of similar procurements in the market area, all bids shall be rejected and a new invitation for bids open to all bidders, i.e., not sheltered, will be issued by the city. Nothing contained within the foregoing shall be deemed to preclude the use of the other general bidding and procurement provisions contained herein (e.g.,

bid discount as authorized in Code section 26.5-21) from being counted with regard to said new, i.e. not sheltered, invitation to bid.

- (4) The purchasing director and manager, with notice to the SLBE review committee, may shelter certain eligible contracts for procurements of goods with an estimated cost of two thousand dollars (\$2,000.00) to twenty-four thousand nine hundred ninety-nine dollars (\$24,999.00); or
- a. Upon receipt of requests for procurements of goods with an estimated cost of two thousand dollars (\$2,000.00) to twenty-four thousand dollars—nine hundred ninety-nine dollars (\$24,999.00) from user departments, the director of purchasing shall consult with and cause copies thereof to be provided to the manager for review and outreach;
 - b. For projected solicitations, the director of purchasing shall submit a report to the SLBE review committee and the manager of all potential procurements within commodity codes containing at least three (3) SLBEs. Upon concurrence by the director of purchasing and the manager, all such procurements shall be sheltered, whether conducted by a user department or the purchasing department, for SLBEs. For each procurement awarded to a SLBE, the user department shall submit proper documentation to the purchasing department in order for a requisition to be released as a purchase order to the SLBE that has received the procurement award; and
 - c. If, in the judgment of the director of purchasing, bids received in response to an invitation for bids for a sheltered procurement pursuant hereto are deemed to be non-responsive, excessive or unreasonable, based upon the nature or purchase price of similar procurements in the market area, all bids shall be rejected and a new invitation for bids open to all bidders, i.e. Not sheltered, will be issued by the city. In the event all such bids are rejected pursuant hereto, the director of purchasing shall cause the manager to be notified of such rejection. Nothing contained within the foregoing shall be deemed to preclude the use of the other general bidding and procurement provisions contained herein (e.g. bid discount as authorized in Code section 26.5-21) from being counted with regard to said new, i.e. not sheltered, invitation to bid.

The SLBE review committee ~~shall have~~ has oversight responsibility for procurement under this section 26.5-18(d)(4) and may at anytime ~~require-ensure~~ that all such requests for procurement be ~~approved-accepted~~ in advance by the SLBE review committee in order to be eligible for sheltering hereunder.

Sec. 26.5-19. - Sheltered markets: eligible contracts for non-professional services.

~~The~~ Subject to the SLBE review committee plan, if any, the following requirements shall apply to all eligible contracts for non-professional services in the City of Tampa:

- (1) The SLBE review committee may find it is appropriate to shelter procurements for non-professional services relating to eligible contracts with an estimated cost of twenty-five thousand dollars (\$25,000.00) to ~~two three~~ three hundred thousand dollars (~~\$200,000.00~~ \$300,000.00) for SLBEs. Such procurements shall be economically feasible contracts that SLBEs are capable of performing. In order to assure necessary competition, at least three (3) SLBEs must be available and capable of providing the non-professional services to be solicited or the procurement cannot be sheltered.
- (2) The manager shall determine and identify for the SLBE review committee at least three (3) SLBEs who are available and capable of providing the respective non-professional services for each proposed procurement contained in such reports.

- 1
2 (3) Following a review of such reports and the manager's determinations regarding the availability
3 and capability of the three (3) SLBEs, the SLBE review committee ~~shall~~ may determine which
4 procurements ~~will be appropriate to be~~ sheltered for SLBEs, and whether the sheltered
5 procurements should be subject to payment and/or performance bond requirements. The SLBE
6 review committee shall also determine whether any proposed modifications to previously
7 approved sheltering of procurements of non-professional services are appropriate, and make any
8 necessary modifications to such previously approved action.
9

10 If, in the judgment of the SLBE review committee, or the user or soliciting department, bids
11 received in response to an invitation for bids for a sheltered procurement pursuant hereto are
12 deemed to be non-responsive, excessive or unreasonable, based upon the nature or purchase
13 price of similar procurements in the market area, all bids shall be rejected and a new invitation
14 for bids open to all bidders i.e. not sheltered, will be issued by the city. Nothing contained
15 within the foregoing shall be deemed to preclude the use of the other general bidding and
16 procurement provisions contained herein (e.g. bid discount as authorized in Code section 26.5-
17 21) from being counted with regard to said new, i.e. not sheltered, invitation to bid.
18

- 19 (4) The purchasing director and manager with notice to the SLBE review committee may find it is
20 appropriate to shelter certain eligible contracts for procurements of non-professional services
21 with an estimated cost of two thousand dollars (\$2,000.00) to twenty-four thousand-dollars nine
22 hundred ninety-nine dollars (\$24,999.00); or
23 a. Upon receipt of requests for procurements of non-professional services with an estimated
24 cost of two thousand dollars (\$2,000.00) to twenty-four thousand-dollars nine hundred
25 ninety-nine dollars (\$24,999.00) from user departments, the director of purchasing shall
26 cause copies thereof to be provided to the manager for review and outreach;
27 b. For projected solicitations, the director of purchasing shall submit a report to the
28 SLBE review committee and the manager of all potential procurements within commodity
29 codes containing three (3) or more SLBEs. Upon concurrence by the director of purchasing
30 and the manager, all such procurements shall be sheltered whether conducted by a user
31 department or the purchasing department, for SLBEs. For each procurement awarded to a
32 SLBE, the user department shall submit proper documentation to the purchasing
33 department in order for a requisition to be released as a purchase order to the SLBE that
34 has received the procurement award; and
35 c. If, in the judgment of the director of purchasing, bids received in response to an invitation
36 for bids for a sheltered procurement pursuant hereto are deemed to be non-responsive,
37 excessive or unreasonable, based upon the nature or purchase price of similar procurements
38 in the market area, all bids shall be rejected and a new invitation for bids open to all
39 bidders, i.e. ~~Not~~ not sheltered, will be issued by the city. In the event all such bids are
40 rejected pursuant hereto, the director of purchasing shall cause the manager to be notified
41 of such rejection. Nothing contained within the foregoing shall be deemed to preclude the
42 use of the other general bidding and procurement provisions contained herein (e.g. bid
43 discount as authorized in Code section 26.5-21) from being counted with regard to said
44 new, i.e. not sheltered, invitation to bid.
45

46 **Sec. 26.5-20. - Sheltered markets: eligible contracts for non-construction related professional services.**
47

48 TheSubject to the SLBE review committee plan, if any, the following requirements shall apply to all
49 eligible contracts for non-construction related professional services in the City of Tampa:
50

- (1) Unless precluded by applicable law, the SLBE review committee may find it is appropriate to shelter procurements of professional services, relating to eligible contracts, including, but not limited to, consulting services, with an estimated fee or cost of two hundred thousand dollars (\$200,000.00) or less for SLBEs. Such an amount may be increased by the SLBE review committee to an amount not to exceed five hundred thousand dollars (\$500,000.00), if the SLBE review committee determines that there are SLBEs available to perform the scope(s) of work of the contract. Such procurements shall be contracts that SLBEs are capable of performing in an economically feasible manner, i.e., at the customary and usual for market rate. In order to assure necessary competition, at least three (3) SLBEs must be available and capable of providing the services to be solicited or the procurement cannot be sheltered.
- (2) The manager shall determine and identify for the SLBE review committee at least three (3) SLBEs who are available and capable of providing the services for each proposed procurement contained in such reports.
- (3) Following a review of such reports and the manager's determinations regarding the availability and capability of the three (3) SLBEs, the SLBE review committee ~~shall~~ may determine which procurements ~~will be appropriate to~~ be sheltered. The SLBE review committee shall also determine whether any proposed modifications to previously approved sheltered market procurements of professional services are appropriate, and make any necessary modifications to such previously approved action.
- (4) If, in the judgment of the user or soliciting department, proposals received in response to a request for proposals for a sheltered market procurement pursuant hereto are deemed to be non-responsive, excessive or unreasonable, all proposals shall be rejected and a new, non-sheltered request for proposals open to all proposers will be issued by the city. Nothing contained within ~~this section~~ the foregoing shall be deemed to preclude the use of the other SLBE provisions contained herein (e.g., bid discount as authorized in Code section 26.5-2221) from being counted with regard to said new, i.e. non-sheltered, invitation to bid.

DIVISION 3. - SMALL LOCAL BUSINESS ENTERPRISE PARTICIPATION IN GENERAL BIDDING AND PROCUREMENT

Sec. 26.5-21. - General bidding and procurement (non-sheltered markets).

~~The~~ Subject to the SLBE review committee plan, if any, the following shall apply to all eligible contracts (non-sheltered):

- (1) For bid evaluation and quote evaluation purposes only, in a non-sheltered market, the city when procuring services or goods may include in invitations to bid objectively measurable discounts for bids and quotes submitted by SLBEs when the applicability of same is determined by the SLBE review committee.
- (2) When such discounts are established as applicable by the SLBE review committee, the procuring department shall apply up to a five (5) percent discount to bids submitted by SLBEs. The bid discount shall be used for evaluation and quote purposes only. In no event, shall any such discount exceed ten thousand dollars (\$10,000.00).
- (3) The city shall grant a rating preference of up to five (5) additional bonus points to SLBEs when

1 evaluating and rating bids subject to request for proposal or request for qualifications.

- 2
- 3 (4) The city shall consider the reduction or waiver of insurance requirements to the maximum
- 4 extent possible to ensure the limitation of liability to the city and completion of the service
- 5 being procured in a professional and/or workmanlike manner. The procuring department,
- 6 together with the purchasing department or as applicable, contract administration department,
- 7 and the city's risk management department, shall establish the appropriate level of insurance
- 8 required prior to issuance of the solicitation.
- 9

10 Sec. 26.5-22. - Subcontracting goals.

11

12 An annual subcontracting goal for the utilization of SLBEs, for contracts not subject to sheltering

13 under this chapter, shall be recommended by the manager in the annual report. The annual subcontracting

14 goal shall be approved by city council. On contracts not subject to sheltering, the SLBE goal setting

15 committee may set a SLBE subcontracting goal for participation for specific, individual contracts. The

16 contract goal shall be based upon the availability of SLBEs to perform the anticipated subcontractable

17 scope of the contracts. A bidder or contractor must make good faith efforts to meet the SLBE

18 subcontracting goal. Good faith efforts means actions undertaken by a bidder or contractor to achieve a

19 SLBE contract specific goal that, by their scope, intensity, and appropriateness to the objective, can

20 reasonably be expected to fulfill the program's requirements.

21

22 The bidder or contractor shall submit a compliance plan detailing its achievement of the SLBE goal

23 or its good faith efforts to meet the goals. The compliance plan shall be due at the time set out in the

24 solicitation documents. Failure of a bidder to submit a compliance plan together with compliance plan

25 documentation, if any, required by the bid specifications may result in a determination of noncompliance.

26 Where the bidder or contractor cannot achieve the goal, its compliance plan shall document its good faith

27 efforts to achieve the goal. The manager will determine whether the bidder or contractor has made such

28 good faith efforts prior to the award of the project.

29

30 GoodWhen determining good faith efforts the manager will, at a minimum, review the following

31 include, but need not be limited to:

32

- 33 (1) Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings,
- 34 advertising, written notices) the interest of SLBEs that have the capability to perform the work
- 35 of the contract. The bidder or contractor must solicit this interest within sufficient time to allow
- 36 the SLBEs to respond. If the city makes available to bidders as part of the bid a list of certified
- 37 SLBE enterprises, the bidder shall be deemed to have solicited those listed SLBE interests
- 38 through reasonable and available means within sufficient time if it initially solicits same by
- 39 email and facsimile or certified U.S. mail not less than five (5) city business days prior to the
- 40 opening of a bid to which such list is included. The bidder or contractor must take appropriate
- 41 steps to follow up initial solicitations with interested SLBEs.
- 42
- 43 (2) Providing interested SLBEs with adequate information about the plans, specifications, and
- 44 requirements of the contract, including addenda, in a timely manner to assist them in responding
- 45 to the solicitation.
- 46
- 47 (3) Negotiating in good faith with interested SLBEs that have submitted bids. Documentation of
- 48 negotiation must include the names, addresses, and telephone numbers of SLBEs that were
- 49 solicited; the date of each such solicitation; a description of the information provided regarding
- 50 the plans and specifications for the work selected for subcontracting; and evidence as to why

1 agreements could not be reached with SLBEs to perform the work. That there may be some
2 additional costs involved in soliciting and using SLBEs is not a sufficient reason for a
3 contractor's failure to meet the goals, as long as such costs are reasonable.

- 4
- 5 (4) Not rejecting SLBEs as being unqualified without sound reasons based on a thorough
6 investigation of their capabilities. The SLBEs standing within its industry, membership in
7 specific groups, organizations, or associations and political or social affiliations are not
8 legitimate causes for rejecting or not soliciting bids to meet the goals.
- 9
- 10 (5) Making a portion of the work available to SLBE subcontractors and suppliers and to select
11 those portions of the work or material consistent with the available SLBE subcontractors and
12 suppliers, so as to facilitate meeting the goal.
- 13
- 14 (6) Making good faith efforts, despite the ability or desire of a bidder or contractor to perform the
15 work of a contract with its own organization. A bidder or contractor who desires to self-perform
16 the work of a contract must demonstrate good faith efforts unless the goal has been met.
- 17
- 18 (7) Selecting portions of the work to be performed by SLBEs in order to increase the likelihood that
19 the goals will be met. This includes, where appropriate, breaking out contract work items into
20 economically feasible units to facilitate SLBE participation, even when the bidder or contractor
21 might otherwise prefer to perform these work items with its own forces.
- 22
- 23 (8) Making efforts to assist interested SLBEs in obtaining bonding, lines of credit, or insurance as
24 required by the city or contractor.
- 25
- 26 (9) Making efforts to assist interested SLBEs in obtaining necessary equipment, supplies, materials,
27 or related assistance or services, including participation in a city-sponsored mentor-protége
28 program; and
- 29
- 30 (10) Effectively using the services of the city and other organizations that provide assistance in the
31 recruitment and placement of SLBEs.

32

33 Bidder or contractors are not required to accept higher quotes in order to meet the goal. In
34 determining whether a bidder or contractor has made good faith efforts, the performance of other bidder
35 or contractors in meeting the contract goal may be considered. The determination of whether a bidder has
36 made a good faith effort will be made by the manager prior to the award of the project.

37

38 ~~Any appeal of the manager's finding shall be to the SLBE committee. Any appeal from the SLBE~~
39 ~~committee shall be by writ of certiorari filed with the Circuit Court in and for Hillsborough County within~~
40 ~~thirty (30) calendar days of the SLBE committee rendering its final decision. The SLBE committee's~~
41 ~~decision shall be deemed rendered on the day its written decision is postmarked to the bidder or~~
42 ~~contractor.~~

43

44 Sec. 26.5-23. - ~~SLBE goal~~ Goal setting committee.

45

46 The goal setting ~~committees~~ committee shall be comprised of the director of contract administration,
47 manager (acting as chairperson), director of the procuring or user department, director of
48 purchasing, director of contract administration, and the city attorney (in an advisory role) or their
49 designees together with one (1) EBOAC member selected by the manager ("goal setting
50 committees committee").

1
2 Sec. 26.5-24 - Additional measures to assist small local business enterprises.

3
4 In addition to the above measures, the city shall undertake the following:

- 5 (1) Arranging solicitation times for the presentations of bids, quantities, specifications, and delivery
6 schedules to facilitate the participation of interested contractors and subcontractors.
7 (2) Segmenting contracts where feasible to facilitate the participation SLBEs.
8 (3) Providing assistance to SLBEs in overcoming barriers such as difficulty in obtaining bonding
9 and financing.
10 (4) Providing timely information programs on contracting procedures, bid preparation, and specific
11 contracting opportunities.
12 (5) Holding pre-bid conferences, where appropriate, to explain the projects and to encourage
13 contractors to use SLBEs as subcontractors.
14 (6) Adopting prompt payment procedures, including requirements by contract that prime
15 contractors pay subcontractors within specified days of receipt of payment from the city and,
16 participating in payment resolution issues.
17 (7) Reviewing bonding, insurance and retainage requirements on all eligible contracts to eliminate
18 unnecessary barriers to and reduce the burdens of contracting with the city.
19 (8) Encouraging prime bidders to include start-up and mobilization costs for SLBEs in submitted
20 bids and in schedules of values submitted by awarded contractors.
21 (9) Providing information concerning small business loan programs and other programs providing
22 access to capital for SLBEs.
23

24 Secs. 26.5-25—26.5-85. - Reserved.

25
26 DIVISION 4. - REQUIREMENTS OF BIDDERS AND CONTRACTORS

27
28 Sec. 26.5-86. - General requirements; provision of information of subcontractor use.

- 29
30 (a) At the time of bid submittal, all bidders must submit as part of their bid documentation of the
31 following:
32 (1) Schedule of all subcontractors solicited, including the dollar amounts and description of
33 services or supplies;
34 (2) Schedule of all anticipated subcontractors, suppliers or joint venturers, including the dollar
35 amounts and description of services or supplies of such participation.
36
37 (b) After bid award, the winning bidder shall provide a complete summary of the payments to
38 subcontractors and suppliers, on a schedule and on forms determined by the city.
39
40 (c) At the completion of the contract, but prior to final payment by the city, the bidder shall provide
41 updated and complete summary of the payments to subcontractors and suppliers, on a schedule and
42 on forms determined by the city.
43
44 (d) A bidder's failure to submit any information required by this chapter may render the bid non-
45 responsive or in breach of an awarded contract.
46
47 (e) Notwithstanding the requirement for the documentation indicated within this section, bidders shall
48 not be required to provide information regarding the solicitation or utilization of de minimus
49 suppliers. De minimus suppliers are suppliers providing services or goods for less than five thousand
50 dollars (\$5,000.00).

Secs. 26.5-87—26.5-180. - Reserved.

DIVISION 5. - NON-COMPLIANCE NONCOMPLIANCE

Sec. 26.5-181. - ~~Non-compliance~~ Noncompliance by bidders, contractors or vendors.

- (a) A determination of noncompliance by the manager that an individual or entity the bidder, contractor or vendor has failed to comply with any other of the provisions of this chapter, it shall be subject same to any or all of the following penalties:
- (1) Declaration by the director of the soliciting department (including when the director is acting as review officer pursuant to section 2-282 of the City Code) that based on this Chapter 26.5 the bid is non-responsive and the bidder is ineligible to receive the contract;
 - (2) If the bidder, contractor/vendor/subcontractor/supplier is a SLBE/WMBE, denial or revocation of the applicable city certification as a SLBE for a period not to exceed one (1) year;
 - (3) To the extent not prohibited by applicable law, withholding by the city from the contractor in violation ten (10) percent of all future payments under the involved project until it is determined that the contractor is in compliance;
 - (4) Termination by the city of the contract.
- (b) The city may require such reports, information and documentation from bidders, contractors or SLBEs/WMBEs as are reasonably necessary to determine compliance with the requirements of this chapter.
- (c) An appeal by a bidder/contractor/vendor/subcontractor/supplier, SLBE/WMBE or applicant for certification who has standing under Florida law ("aggrieved party") under this chapter or a request by a party with standing under Florida law for relief from the misapplication of the provisions of this chapter will stay the manager's actions.

Sec. 26.5-182. - Reserved.

DIVISION 6. - PROTEST AND APPEALS

Sec. 26.5-183. - Notification of noncompliance; denial or revocation of certification.

This division shall govern any protest made of any determination by the manager except if such determination of noncompliance results the action described in subsections 26.5-181(a)(1) above (a "noncompliance based department declaration/review").

- (a) Noncompliance based department declaration/review. In such case, for purposes of administrative efficiency and as the determination of noncompliance is effectuated by the director's declaration, the declaration of the soliciting department (and not the manger's determination of noncompliance) shall be protested (including any noncompliance that formed its basis) pursuant to section 2-282 of the City Code. The director of the soliciting department shall provide a copy of the section 2-282 notice of protest together with all submissions by interested parties, including said notice of protest, the documentation from any other interested party, and documentation related to the protested solicitation provided to the director of the soliciting department from that department to the manager. The manager shall within ten (10) city business days, forward his written determination of chapter 26.5 compliance based solely on same. Said determination of compliance shall include direction to the review officer per section 26.5-181 above. The presentation of information before the

1 appeals hearing officer from the director of the soliciting department and its legal counsel described
2 in subsection 2-282(5)c. of the City Code shall include a presentation of information from the
3 manager on his determination of noncompliance.

4
5 For solicitations where the estimated amount of expenditures associated with the solicitation is
6 sufficiently high that the city posts the notice of intent to award by means specified in the solicitation
7 by the city, said posting shall include a reference to this section if said notice of intent to award is
8 impacted by a determination of noncompliance by the manager (e.g. a bid-related noncompliance
9 decision). As shall any section 2-282 City Code review officer decision based upon a manager
10 determination of noncompliance.

11
12 Except for solicitations where per section 2-282 City Code places the responsibility of ascertaining
13 whether the city has made a decision of intent to award on the impacted party, the manager shall
14 send the impacted party a copy of the written notification of his determination of noncompliance
15 setting forth the manager's reasons for the determination of noncompliance together with direction to
16 the director of the soliciting department and the penalty, if any, concurrently. Said notice shall
17 include a statement in substantially the following form: "This determination of noncompliance made
18 by the manager pursuant to Chapter 26.5 of the Tampa City Code has or will result in a declaration
19 by the director of the soliciting department that the bid at issue is non-responsive and the bidder
20 ineligible to receive the contract. You are advised, pursuant to City Code Section 26.5-183, that City
21 Code Section 2-282 – Procurement Protest Procedures – applies to any protest of said soliciting
22 department director's declaration, including to the extent based on this determination of
23 noncompliance. This determination of noncompliance is further exempt from Division 6 of Chapter
24 26.5 of the Tampa City Code."

25
26 (b) *Protests governed by this Division 6.* Upon a determination of noncompliance with the provisions
27 of this chapter, any city procedures established pursuant hereto, or denial or revocation of certification-as
28 a SLBE by the manager, the manager shall notify the affected party in writing by certified mail, return
29 receipt requested, email, fax (original copy sent immediately following), or hand-delivered, setting forth
30 the reasons for the determination of noncompliance or denial or revocation of certification.

31
32 Sec. 26.5-184. - Filing time limit; notice of protest; notice of appeal-appointment of hearing officers.

33
34 (a) A~~Except as exempted by section 26.5-183(a) above, any aggrieved party, who has been denied~~
35 SLBE certification or has had its certification revoked or against whom a determination of
36 noncompliance with the provisions of this chapter, or city procedures established pursuant
37 thereto, has been found by the manager, may~~appeal~~ file a protest of the manager's determination
38 of discrimination, noncompliance, denial or revocation of certification by filing a written notice
39 of~~appeal~~ protest with the SLBE committee (exclusive of the manager) within fifteen (15) calendar
40 days of receipt of the notice of the determination of noncompliance, denial or revocation of
41 certification. The notice of protest will be deemed given on the date and time received by the
42 manager. Any protest received outside of the applicable timeframe or that is incomplete will not
43 be considered.

44
45 The notice of protest must include the following:

- 46 (1) The name, postal and email address, telephone and facsimile numbers of the party
47 protesting;
48 (2) Information sufficient to identify the matter protested;
49 (3) A concise statement indicating the grounds and evidence, including facts, rules, regulations,
50

1 statutes and constitutional provisions, the factual and legal basis, upon which the protest is
2 based, with inclusion of all supporting documentation;

3 (4) A statement of the specific ruling or relief requested;

4 (5) Signature by an authorized agent of the party protesting.

5
6 (b) Hearing officers or other appropriate body shall be appointed by the mayor and approved by the
7 city council for a term not to exceed two (2) years. Unless a hearing officer is a hearing officer under
8 F.S. Ch. 120 or pursuant to any other ordinance of the City of Tampa that allows for compensation of
9 hearing officers, hearing officers shall not be entitled to compensation; however, all hearing officers
10 shall receive reimbursement for parking in city garages and for mileage for any hearing related
11 business. Such reimbursement shall be consistent with city policy. Interested parties, other than the
12 aggrieved party and the city, which will be directly affected by the resolution of the protest, and have
13 legal standing, shall have the right to intervene in such protest proceeding by providing written
14 documentation related to the protested solicitation. Said interested parties shall bear the
15 responsibility of determining whether a protest has been filed with the city. Documentation
16 submitted by these interested parties must be filed with the manager within five (5) city business
17 days of receipt of the protest by the city. Any documentation submitted by these interested parties
18 must be received by the manager or designee by 4:30 p.m. on the date as specified above.
19 Documentation received after this timeframe will not be considered. Delivery by certified or
20 registered mail, email, fax (original copy sent immediately following), or hand delivered to the
21 director of the soliciting department or designee is acceptable. Said documentation shall be date and
22 time stamped upon receipt and if hand-delivered a receipt shall be issued to the party stating the date
23 and time the said documentation was filed. Any said interested party may be represented by legal
24 counsel at its own expense. Any said interested party shall bear all costs of its submissions to the
25 city. The notice of protest shall be made available to said interested parties upon a written request for
26 same. Interested party documentation shall include the following information:

27 (1) The name, postal and email address, telephone and facsimile numbers of the interested party;

28 (2) Information sufficient to identify the matter at issue;

29 (3) A concise statement indicating the grounds and evidence, including facts, rules, regulations,
30 statutes and constitutional provisions, the factual and legal basis, upon which the
31 intervention is based, with inclusion of all supporting documentation;

32 (4) A statement of the specific ruling or relief requested;

33 (5) Signature by an authorized agent of the interested party.

34
35
36 (c) The manager shall serve as review officer to evaluate submissions including the notice of protest,
37 together with documentation related to the determination or protest provided by the manager and
38 issue a written decision to uphold or reject the protest, containing the basis of the decision within
39 fifteen (15) city business days after the manager's receipt of the notice of protest. If additional time
40 is required to review the protest, the protesting party shall be notified by the manager. In no event
41 shall the additional time exceed more than fifteen (15) additional city business days. The decision by
42 the review officer will be based on written submissions only.

43
44 (d) If a protest is denied, the protesting party may submit a written request for appeal with the manger by
45 certified or registered mail within three (3) city business days of the issuance of the decision of the
46 manger as review officer. Any appeal received outside of this timeframe will not be considered.
47 Appeals will be date and time stamped upon receipt. If the hearing officer process is instituted, the
48 chief of staff or supervisor of the manager, if it is not the chief of staff, shall assign a hearing officer
49 to hear a particular case. No hearing officer shall hear a matter if he or she has participated
50

1 personally and substantially in the matter on appeal.

2
3 The request for appeal must include the following:

4 (1) The name, postal and email address, telephone and facsimile numbers of the party appealing;

5 (2) Information sufficient to identify the matter being appealed;

6 (3) A concise statement indicating the grounds and evidence, including facts, rules, regulations,
7 statutes and constitutional provisions, the factual and legal basis, upon which the protest is
8 based, with inclusion of all supporting documentation. New grounds or evidence not
9 previously set forth in the written protest that reasonably could have been raised when the
10 protest was initially submitted will not be considered;

11 (4) A statement of the specific ruling or relief requested;

12 (5) Signature by an authorized agent of the party appealing.

13
14 ~~(e) If the hearing officer process is instituted, the chief of staff or supervisor of the manager, if it is not~~
15 ~~the chief of staff, shall assign a hearing officer or a panel of hearing officers to hear a particular case.~~
16 ~~No hearing officer shall hear a matter if he or she has participated personally and substantially in the~~
17 ~~matter on appeal.~~

18 ~~Sec. 26.5-185. Notice of hearing date and hearing.~~

19
20 Sec. 26.5-185. - Appointment of hearing officers; notice of appeal hearing date and hearing.

21
22 (a) Hearing officers appointed to hear appeals governed by this Division 6 shall be appointed by the
23 mayor and approved by the city council for a term not to exceed two (2) years. Unless a hearing
24 officer is a hearing officer under F.S. Ch. 120 or pursuant to any other ordinance of the City of
25 Tampa that allows for compensation of hearing officers, hearing officers shall not be entitled to
26 compensation; however, all hearing officers shall receive reimbursement for certified mail delivery,
27 parking in city garages and for mileage for any hearing-related business. Such reimbursement shall
28 be consistent with city policy.

29
30 (b) The duties of the hearing officer shall be as follows:

31
32 (1) Set a hearing date not more than ~~seven (7)~~ ten (10) city business days after receipt of the notice
33 of appeal. Notice of the hearing shall be served upon all parties by certified mail, return receipt
34 requested. Such notice shall set forth with particularity the actions appealed from by the
35 aggrieved party and shall include the hearing date, time and place.

36
37 (2) At the hearing, all parties shall be provided a fair and impartial hearing and shall be allowed to
38 produce any and all evidence in either party's possession concerning the determination of
39 noncompliance with the provisions of this chapter, any city procedures established pursuant
40 hereto, or the denial or revocation of certification as a SLBE.

41
42 (3) Strict rules of evidence shall not apply to these proceedings. The parties and their counsel, if
43 any, may submit witnesses and evidence as appropriate to the issue in review. All examinations
44 and cross-examinations shall be conducted by the ~~SLBE committee or the~~ hearing officer, if
45 instituted. The ~~SLBE committee (or the~~ hearing officer) may further direct production of
46 documents as necessary. Any decision shall be based on substantial competent evidence. The
47 hearing officer shall conduct a de novo hearing. The burden of proof shall rest with the
48 appealing party. The standard of proof shall be whether the decision by the manager as review
49 officer was clearly erroneous, arbitrary or capricious, fraudulent, or otherwise without basis in
50 fact or law. The hearing shall begin with a statement by the hearing officer of the rules and

1 procedures of the hearing, followed by a general statement of the facts by the manager.
2 Representatives of the appealing party, limited to its owners, officers, employees and/or legal
3 counsel, will then be required to present its case. Those parties, other than the appealing party,
4 who have standing and will be directly affected by the resolution of the appeal, limited to its
5 owners, officers, employees and/or legal counsel, will be given an opportunity to be heard and
6 to present information, which will be followed by a statement and presentation of information
7 from the director of the soliciting department and its legal counsel. Party presentations shall not
8 exceed two (2) hours per party.
9

10 Sec. 26.5-186. - Decision and notice of decision.
11

12 (a) ~~The SLBE committee (or the hearing officer) or other officer or body serving in his stead shall,~~
13 ~~within fifteen (15) calendar days of the hearing, make a written decision on the appeal to~~
14 ~~all parties, which decision shall set forth the reasons for the hearing officer's decision and affirm,~~
15 ~~alter or reverse or deny the decision of the manager as review officer determination of non-~~
16 ~~compliance noncompliance, denial or revocation of certification by the manager. The opinion shall~~
17 ~~decide whether the determination of noncompliance or denial of certification being appealed was in~~
18 ~~accordance with this chapter, relevant laws and the terms and conditions of the solicitation before the~~
19 ~~contract is awarded or penalties are imposed. If the SLBE review committee (or the hearing officer)~~
20 ~~finds for the aggrieved party, as appropriate, the business shall be certified as a SLBE and added to~~
21 ~~the list of SLBEs/WMBEs maintained by the city, or the business shall be found in compliance with~~
22 ~~the provisions of this chapter and, among other things, permitted to have its bid considered by the~~
23 ~~city. If the SLBE committee (or the hearing officer) affirms the administrative decision of the~~
24 ~~manager, the manager, as appropriate, shall make recommendations and findings of the final~~
25 ~~disposition to the mayor.~~

26
27 (b) ~~Any appeal from the hearing officer shall be by writ of certiorari filed with the circuit court in and~~
28 ~~for Hillsborough County within thirty (30) days of the date of the hearing officer's decision. The~~
29 ~~SLBE committee (or the hearing officer) shall issue written notice of the decision on the appeal to all~~
30 ~~parties within fourteen (14) business days of the hearing. The notice of the decision shall be sent to~~
31 ~~all parties by certified mail, return receipt requested, and shall set forth the reasons for the decision.~~
32

33 ARTICLE III. - WOMEN AND MINORITY BUSINESS ENTERPRISE PROGRAM
34

35 DIVISION 1. - IN GENERAL
36

37 Sec. 26.5-187. - Title.
38

39 This Article III shall be known and may be cited as the "City of Tampa Women and Minority
40 Business Enterprises (WMBE) Ordinance." The program shall be known as the City of Tampa Women
41 and Minority Business Enterprise Program ("~~WMBE Program~~program").
42

43 Sec. 26.5-188. - Purpose; declaration of policy.
44

45 The WMBE program is intended to eliminate discrimination against WMBEs with respect to eligible
46 contracts. The SLBE program described above is race and gender neutral. If there is a strong basis in
47 evidence sufficient to meet the requirements of applicable law, establishing that there is discrimination in
48 the subcontracting portion of city contracting and procurement notwithstanding the SLBE program, then
49 the city shall implement a narrowly tailored WMBE program to address the specific discrimination both
50 with respect to the type of contract or procurement in which the discrimination has been demonstrated and

1 the race, gender or ethnicity of those subject to the discrimination.

2
3 Upon a showing of such discrimination, founded upon a strong basis in evidence, the city has a
4 compelling interest in implementing race and gender conscious initiatives to eliminate that specific
5 discrimination relating to city contracting and procurement.

6
7 Sec. 26.5-189. - Applicability.

8
9 The certification program provisions pursuant to section 26.5-190, shall apply immediately upon this
10 chapter becoming effective. The requirement for the provision of reports to city council and the
11 establishment of an equal business opportunity committee, pursuant to sections 26.5-207 and 26.5-208
12 respectively, also shall apply immediately upon this chapter becoming effective. However, the provisions
13 of this Article III exclusive of sections 26.5-187, 26.5-188, 26.5-189, 26.5-190, 26.5-207, and 26.5-208
14 ("the balance of the WMBE program") shall only be operative if discrimination in city contracting and
15 procurement is shown to exist pursuant to a substantial basis in evidence. In such event, implementation
16 (or continuance or modification as applicable) of the balance of the WMBE program shall be narrowly
17 tailored to the specific area of contracting or procurement and the race, gender and ethnicity of those
18 subject to the discrimination as governed by this section.

19
20 The determination that discrimination in city procurement or contracting exists ~~shall be~~ was made by
21 the SLBE review committee based on the data gathered and analyzed by the manager and any necessary
22 outside consultant and shall be reported to the mayor for review and approval for a finding of
23 discrimination as further described in public hearings and presentations to city council on or about 2012.
24 The finding must have a strong basis in evidence and meet all the other requirements of applicable law as
25 necessary to implement narrowly tailored race or gender based remedies. It also must specifically identify
26 the type of contract or procurement subject to discrimination and the nature of the discrimination in terms
27 of the race, gender or ethnicity of those subject to such discrimination.

28
29 Upon such findings together with public hearings and confirmation by city council as applicable, the
30 balance of the WMBE program ~~shall become~~ became effective, including the WMBE participation goals,
31 which shall become applicable as provided in this Article III for those identified areas of procurement and
32 contracting shown to evidence such discrimination in favor of those specifically shown to have been
33 discriminated against.

34
35 On or before November 1, 2020, and every three (3) years after, the SLBE review committee subject
36 to the SLBE review committee plan (if any is adopted per section 26.5-15 above) shall review this
37 Chapter 26.5 in order to determine whether adjustments or revisions to this Chapter 26.5 or additional
38 studies or inquiries in furtherance of this Article III are deemed appropriate and should be undertaken or
39 recommended, in order to further and maintain the purpose and intent of this Article III. The
40 recommendation of the SLBE review committee, including any new or continuance of narrowly tailored
41 remedies for the specific discrimination found shall be ~~made by~~ reported to the mayor for review and
42 approval and recommendations then the mayor (or mayor's designee) shall report the recommendations to
43 the city council within forty-five (45) days of the semi-annual SLBE review committee's triennial (once
44 every three years) report to the mayor, especially wherein the specific discrimination ~~Discrimination~~ was
45 identified. That recommendation, as applicable, shall specify the area of contracting and procurement
46 found to have a strong basis in evidence of discrimination as well as the group or groups who are
47 subjected to such discrimination. The council shall hold a public hearing or hearings, within thirty (30)
48 days of the mayor's recommendation, as shall be necessary for ~~the city council~~ to confirm the substantial
49 basis in evidence of such findings and to insure that the remedies recommended are sufficiently narrowly
50 tailored. Thereafter, the manager shall implement the program within sixty (60) days of city council's

1 confirmation, as applicable, of the evidence and approval of the goals. To the extent said
2 recommendations require modifications to this Chapter 26.5, same shall be effectuated as appropriate
3 concurrent to or within thirty (30) days of said city council confirmation.

4
5 Sec. 26.5-190. - Certification.

- 6
7 (a) Any woman, Black, Hispanic, Asian or Native American business enterprise, operating as such for at
8 least one (1) year prior to application and subject to other qualifications and requirements established
9 by the manager consistent with this chapter, wishing to qualify to participate in projects as a WMBE
10 under this chapter must be certified as WMBE by the manager. All certifications shall be effective
11 for a period of two (2) years from the date of notification of certification. If, during the certification
12 period, the WMBE experiences changes in ownership, employment, control or location, it shall be
13 the business' responsibility to report said changes to the manager. Failure to report said changes may
14 result in revocation of certification, or denial of certification or recertification for a period not to
15 exceed two (2) years.
- 16
17 (b) If the manager denies or revokes certification as a WMBE because the business is not a woman,
18 Black, Hispanic, Asian or Native American business enterprise, the aggrieved party may reapply to
19 the manager no sooner than one (1) full year after receipt of the notice of denial or revocation.
- 20
21 (c) Any applicant for WMBE certification which makes any willful misstatement, deceptive or
22 fraudulent statement or representation in the WMBE certification documents may, in addition to any
23 other penalties, have its certification revoked, or be denied certification or recertification for a period
24 not to exceed three (3) years.
- 25
26 (d) All applicants for WMBE certification shall be required to attend a WMBE orientation. The purpose
27 of this orientation is to familiarize applicants with the policies and procedures for doing business
28 with the city. An applicant that previously has conducted business with the City of Tampa or
29 previously submitted bids, proposals or quotes may be exempted by the manager from attending the
30 orientation, if the manager is satisfied that it already possesses the information or knowledge that
31 would be obtained from such orientation.
- 32
33 (6) A WMBE is expected to perform all contract requirements as directed by the city. If a WMBE fails
34 to so perform as required or violates the requirements of section 26.5-16(9) or (10) above, the
35 manager shall place the offending party on probationary status (if the failure to perform is not
36 significant in terms of indicating an inability or unwillingness to perform), or disqualify such WMBE
37 for eligibility for sheltered markets, or revoke the WMBE's certification (if the failure to perform is a
38 significant indication of such WMBE's ability or willingness to perform the requirements). In the
39 event of disqualification or revocation of status, such penalty shall expire on the earlier of one (1)
40 year from commencement of such disqualification or revocation or until the WMBE can demonstrate
41 the capacity to completely and competently perform such contracts. Any probation shall last for one
42 (1) year with a subsequent failure to perform resulting in disqualification or revocation. Any
43 disqualification or revocation prevents the entity from participating in the benefit of any sheltered
44 markets or selective procurement process or bid discount/rating preference/waiver that otherwise
45 would be applicable. The manager shall keep contractors, directors of the soliciting departments,
46 SLBE review committee, and goal setting committee, informed of a WMBE's probationary,
47 suspended, or disqualified status as applicable.

48
49 Sec. 26.5-191. - Outreach.

1 Upon an appropriate finding of discrimination on the basis of race, gender or ethnicity for identified
2 areas of contracting and procurement, the following outreach efforts shall be conducted in favor of the
3 groups discriminated against in order to achieve the purposes and policies of this Article III with respect
4 to the specific area and type of procurement subject to the discrimination:
5

- 6 (1) *Eligible contracts for construction or construction related projects.* For all eligible contracts for
7 construction or construction related projects that have been found to evidence discrimination as
8 provided herein the user or soliciting department will send electronic notification in accordance
9 with approved methods (currently quote wire and demand star) to all city certified WMBEs who
10 are members of the group subject to such discrimination and that perform the type of work to be
11 contracted in sufficient time to allow said WMBEs to participate effectively. The notice shall
12 solicit said WMBE's interest in working on the project and shall advise such WMBEs:
13 a. Of the specific work the city intends to contract;
14 b. That their interest in the project is being solicited; and
15 c. How to obtain request for proposals or invitations to bid or information or specifications on
16 the proposed contract.
17
18 (2) *Eligible contracts for goods and non-professional services.* For all eligible contracts pertaining
19 to the procurement of goods and non-professional services that have been found to evidence
20 discrimination as provided herein the director of the purchasing department, or the soliciting
21 department, will notify the manager and notify all city certified WMBEs who are members of
22 the group subject to such discrimination and are available to provide all such goods or services.
23 The notification shall advise such WMBEs:
24 a. Of the specific work the city intends to contract;
25 b. That their interest in the project is being solicited; and
26 c. How to obtain request for proposals or invitations to bid or information or specifications on
27 the proposed contract.
28
29 (3) *Eligible contracts for professional services.* For eligible contracts for the procurement of
30 professional services that have been found to evidence discrimination as provided herein the
31 soliciting department, will make good faith efforts to promptly identify and notify all city
32 certified WMBEs who are members of the group subject to discrimination and are available to
33 provide all such goods or services. The notification shall advise WMBEs:
34 a. Of the specific work the city intends to contract;
35 b. That their interest in the project is being solicited; and
36 c. How to obtain request for proposals or invitations to bid or information or specifications on
37 the proposed contract.
38
39 (4) The manager shall provide ~~semi~~-annual reports to city council with respect to the outreach
40 efforts described above and the annual goals, project goals and bid preference contracts. The
41 equal business opportunity advisory committee (EBOAC) shall be delivered copies of any and
42 all reports prepared for delivery to the city council as provided herein. The manager and the
43 SLBE review committee (with a quorum of members) ~~shall~~may meet with the EBOAC at least
44 annually, in order to update its members on the progress of the programs and remedies that meet
45 the requirements of this chapter, and receive any comment there from.
46
47 (5) The manager shall reinforce and support outreach efforts by city departments and potential
48 bidders by, for example, providing information to potential bidders which shall include names
49
50

1 and contact information of certified WMBEs for each eligible contract solicitation and at pre-
2 bid, pre-proposal meetings.

3
4 Secs. 26.5-192—26.5-194. - Reserved.

5
6 DIVISION 2. - OBJECTIVE AND GOALS

7
8 Sec. 26.5-195. - Objectives and goals.

9
10 (a) *Objective.* The objective of Article III of this chapter is to eliminate discrimination in order to ensure
11 equal business opportunity and retain diverse workforce opportunities in city contracting and
12 procurement. Upon an appropriate finding of discrimination against specified groups for identified
13 areas of contracting and procurement as provided for herein, the manager shall make
14 recommendations to city council to approve annual goals for the utilization of such specified groups
15 in order to eliminate such discrimination. Goals shall be set for the specific areas and type of
16 procurement subject to discrimination. Such goals will determine the baseline for assessing the
17 success of the programs used to eliminate such discrimination. The primary method or measurement
18 to assess the success of these efforts will be the diversity management initiative ("DMI").

19
20 (b) *Annual WMBE goals for city contracting and procurement.* Annual goals shall be set in each area or
21 type of procurement subject to discrimination for appropriate utilization rates of the certified WMBE
22 providers who were subject to discrimination for the various categories of the city contracting and
23 procurement. Such annual goals are estimates only and shall be based upon the findings contained
24 within the annual program performance reports and the fiscal year budget. The project goals are the
25 standards by which compliance will be measured. The manager shall identify the availability of
26 certified WMBE contractors and subcontractors and suppliers ("available WMBEs") with respect to
27 city procurement of construction, construction-related services, goods, non-professional services
28 and/or professional services shown to have evidenced discrimination and project goals shall be based
29 on the availability of certified WMBEs ("available WMBEs") to perform the anticipated
30 subcontractable scopes of the contract. The manager shall advise all bidders and responders of such
31 information in a readily accessible form.

32
33 Sec. 26.5-196. - Setting project goals; establishing sheltered markets.

34
35 (a) *Project goals.* Upon the finding of discrimination on the basis of race, gender or ethnicity with
36 respect to city contracting or procurement and the adoption of annual goals, specific goals shall be
37 set on a project by project basis in an effort to eliminate such discrimination. Goals shall be set for
38 eligible contracts in each area of contracting or type of procurement found to have been subject to
39 discrimination. The goals may be set for each race, gender or ethnic group so discriminated against
40 on the basis of their availability.

41
42 (b) ~~[Goal setting committees.]~~committee. The goal setting ~~committees~~committee shall be ~~comprised of~~
43 ~~the director of contract administration, manager, director of the procuring or user department,~~
44 ~~director of purchasing and the city attorney or their designees ("goal-setting committees") as set forth~~
45 in section 26.5-23 above.

46
47 (e)(1) *Construction projects goals.* ~~The respective~~ To the extent permitted by applicable law, the
48 goal setting committee shall determine appropriate rates of anticipated WMBE participation
49 based on the proportionate availability of the group discriminated against for each type of
50 bid construction project found to have been subject to discrimination.

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- (d)(2) *Construction-related professional service projects.* To the extent permitted by applicable law, the respective goal setting committee shall determine appropriate rates of WMBE participation based on the proportionate availability of the group discriminated against for each type of construction-related professional services area found to have been subject to discrimination.
- (e)(3) *Goods.* The respective goal setting committee shall determine appropriate rates of WMBE participation based on the proportionate availability of the group discriminated against for the procurement of goods found to have been subject to discrimination.
- (f)(4) *Non-professional services projects.* The respective goal setting committee shall determine appropriate rates of WMBE participation for each type of non-professional services project found to have been subject to discrimination.
- (g)(5) *Non-construction related professional Professional-services projects.* To the extent allowed by applicable law, the respective goal setting committee shall establish appropriate rates of WMBE participation based upon the proportionate availability of the group discriminated against for the type of non-construction related professional service projects found to have been subject to discrimination.
- (c) *Sheltered markets.* Upon an appropriate finding of discrimination provided for in Article III below, each type of eligible contract subject to such discrimination that is sheltered for SLBEs shall include as participants (in addition to SLBEs) those WMBEs that were the subject of such discrimination and the sheltered market process described in sections 26.5-16. – 26.5-20 of Division 2 above, shall be automatically modified to the extent necessary to allow the narrowly tailored remedy of including the WMBEs experiencing such discrimination within the term “SLBE” or “SLBEs” as applicable to the extent applicable. For example, the requirement of having at least three (3) available and capable SLBEs will be read upon an appropriate finding of discrimination to be deemed to mean having at least three (3) certified businesses available and capable, made up of any combination of SLBEs and/or affected WMBEs. Concurrent with adoption of this section, if applicable, and periodically thereafter as required by law, DMI, subsequent findings or discrimination, etc. the manager shall file with the clerk’s office and post on the City of Tampa website a chart (similar to the FY 2012 Procurement Guidelines to Implement Minority & Small Business Initiatives) that indicates which WMBE groups found subject to discrimination by eligible contract category type be included in any subsequent applicable sheltered market solicitations. Once filed, the chart shall have the full force and effect of law. Regardless of the foregoing, SLBEs shall always be eligible to respond to any sheltered market solicitation, except when upon an appropriate finding of discrimination provided for in Article III below for those eligible contract types that are both subject to such discrimination and whose estimated contract cost is between \$2,000 to \$24,999.99 (“informal contracts”). In such case, SLBEs may be supplanted in any subsequent sheltered market solicitations where to ensure adequate competition there are at least three (3) or more WMBEs from the affected group that are available and capable of performing the scope of the informal contract to be so solicited. For example, upon an appropriate finding of discrimination provided for in Article III below, to the extent allowed by law if the type of construction-related professional services being solicited is both an informal contract (estimated contract cost of between \$2,000 and \$24,999.99) and is subject to such discrimination, then where the manager finds there are at least three (3) or more WMBEs from the affected group that are available and capable of performing the scope of the construction related professional services contract to be solicited, said sheltered solicitation will be targeted to only WMBE(s).

(d) This section may be impacted by the SLBE review committee plan, if any is in place per Sec. 26.5-15, above.

Sec. 26.5-197. - Bid preferences for eligible contracts (non-sheltered market).

(a) Each type of eligible contracts for construction, construction-related services, goods, and construction-related professional, non-construction related professional, and non-professional services found to have been subject to discrimination may grant bid preferences of five (5) percent or twenty thousand dollars (\$20,000.00), whichever is less, on construction, non-professional, and goods contracts ~~projects~~ to WMBEs who were the subject of such discrimination. Once all bids are received pursuant to this subsection, the bids of each such certified WMBE who was the subject of such discrimination will be reduced by a dollar amount of five (5) percent or twenty thousand dollars (\$20,000.00), whichever is less, for the purposes of establishing the apparent low bidder. Then, the low responsible, responsive bidder will be awarded the contract at the bid amount submitted; or

(b) Each type of eligible contracts for construction-related professional services or non-construction related professional services may grant a rating preference, on professional services ~~such~~ projects to be put out for RFP or RFQ of an estimated amount of ~~one hundred-fifty thousand dollars (\$10050,000.00)~~ or more, to WMBEs who were the subject of such discrimination or firms utilizing WMBEs which were subjected to such discrimination. Said rating preference will be one (1) to five ~~(5)-ten (10)~~ additional/ bonus points, based on the level of such WMBE participation in the bid and how such level meets the WMBE program goals, on a ~~ninety-five (95)~~ one hundred (100) point scale (in other words, when this remedy is available and employed, the maximum number of points achievable for WMBE and/or SLBE participation will not exceed a total of 10 points) used when evaluating and rating bids for construction-related and non-construction related professional services to the extent permitted by applicable law.

(c) This section 26.5-197 shall apply only in non-sheltered markets. This section may be impacted by the SLBE review committee plan, if any is in place per Sec. 26.5-15, above.

Secs. 26.5-198—26.5-200 - Reserved.

DIVISION 3. - REQUIREMENTS OF BIDDERS AND CONTRACTORS

Sec. 26.5-201. – General (DMI) information requirements.

Upon the appropriate finding of discrimination on the basis of race, gender or ethnicity with respect to specific contract or procurement activities of the city, the following information must be provided with respect to each such contract or procurement activity for each racial, gender or ethnic group subject to such discrimination:

- (1) At the time of bid submittal, all bidders on such an eligible contract shall submit, as part of their bid documents, information and documentation adequate to evidence their efforts, at that point in time to obtain participation of the racial, gender or ethnic group discriminated against, to meet the project goal. Such documentation shall include, but need not be limited to, the following:
 - a. Schedule of all such WMBE subcontractors solicited;
 - b. Schedule of all such WMBE subcontractors, suppliers or joint venturers anticipated to participate therein, including the dollar amounts and scopes of work of such participation;

1 c. Any letters of intent in existence as of submittal from all such participating WMBE
2 subcontractors; and

3 d. An affidavit declaring the bidder's intention to fully comply with the provisions of this
4 chapter and all city procedures established pursuant hereto.

5
6 (2) Prior to award of the bid, any changes to the participation of such a WMBE in a bidder's bid,
7 must be provided in writing to the user department and the manager and approved in writing by
8 the user department and the manager.

9
10 (3) After bid award, the winning bidder shall provide a complete summary of all deviations in
11 actual use of subcontractors and suppliers including actual payments, on or before thirty (30)
12 days after completion of the contract or procurement.

13
14 (4) A bidder's failure to submit any information required by this chapter or by the city's WMBE
15 program procedures may render the bid non-responsive.

16
17 Sec. 26.5-202. - Prohibition on brokering services.

18
19 It is prohibited hereunder to use a WMBE provider, contractor or subcontractor as a broker of
20 services, rather than an actual provider thereof. Accordingly, to qualify as a WMBE award the following
21 shall apply:

22
23 (1) WMBEs are required to perform a commercially useful function on contracts let or made
24 pursuant to this chapter.

25
26 (2) Only expenditures to or contracts with WMBEs that perform a commercially useful function in
27 the work of a contract may be counted towards the WMBE utilization. A WMBE is considered
28 to perform a commercially useful function when it is responsible for execution of a distinct
29 element of the work of a contract and carrying out its responsibilities by actually performing,
30 managing and/or supervising the work involved. To determine whether a WMBE is performing
31 a commercially useful function, the city will evaluate all relevant factors such as, for example,
32 the amount of work subcontracted and industry practices.

33
34 (3) Consistent with normal industry practice, a WMBE may enter into subcontracts. If a WMBE
35 subcontracts fifty (50) percent or more of the work of a contract, the WMBE shall be presumed
36 not to be performing a commercially useful function. The WMBE may present evidence to
37 rebut this presumption to the city, with any decision in that regard being based upon normal
38 industry standards.

39
40 Sec. 26.5-203. - Goal achievement.

41
42 (a) All contractors, subcontractors and suppliers are subject to the reporting requirements applicable to
43 eligible contracts as set forth herein. All WMBE participation goals are intended as an indication of
44 contract and procurement awards reflective of reasonable utilization of competent, available WMBE
45 certified providers. In the event of specifically identified discrimination established in a manner
46 required by applicable law, the participation goals based on such specifically identified
47 discrimination are mandatory and must be met, unless there is a showing that the goals could not be
48 met notwithstanding good faith effort to do so. The manager shall hear, review and evaluate the
49 evidence and argument that good faith effort has been made pursuant to the requirements contained
50 herein. ~~Any appeal of the manager's finding shall be to the SLBE committee. Any appeal from the~~

1 ~~SLBE committee shall be by writ of certiorari filed with the circuit court in and for Hillsborough~~
2 ~~County within thirty (30) days of the SLBE committee rendering its final decision on such appeal.~~
3 ~~The SLBE committee decision shall be deemed rendered on the day its written decision is~~
4 ~~postmarked to the contractor, subcontractor or supplier subject thereto.~~

5
6 (b) All parties seeking city contractors or procurements are responsible for achieving participation goals
7 established to remedy specifically identified discrimination established in a manner required by
8 applicable law. It shall also be the responsibility of such parties to maintain said goals for the
9 duration of the project.

10
11 (c) If the prime contractor or bidder on a construction project is subject to WMBE participation goals, it
12 may count its own participation towards the goal provided it is a certified WMBE. However, such
13 contractor or bidder shall not be exempt from good faith efforts and the requirement to meet the
14 participation goals for all other applicable WMBE classifications.

15
16 (d) This section may be affected pursuant to the SLBE review committee plan pursuant to Sec. 26.5-15,
17 above.

18
19 Sec. 26.5-204. - Good faith efforts.

20
21 Any bidder, submitting a bid on eligible contracts, which does not meet any mandatory participation
22 project goals established by this chapter to remedy specifically identified discrimination established in a
23 manner required by applicable law, must provide in its bid, documentation of its good faith efforts to
24 achieve said goals. The ability or desire of a bidder or contractor to perform the work of a contract with
25 its own organization does not remove the requirement to make good faith efforts to meet the goals. When
26 determining Evidence of good faith efforts the manager will include, but not be limited to at a minimum,
27 review the following (which the manager, in his discretion, may combine with the review described in
28 Sec. 26.5-22 above):

29
30 (1) Attendance at pre-bid conference, if held.

31
32 (2) Soliciting through reasonable and available means the interest of WMBEs that have the
33 capability to perform the work of the contract. The bidder or contractor must solicit this interest
34 within sufficient time to allow the WMBEs to respond. If the city makes available to bidders as
35 part of the bid a list of WMBEs, the bidder shall be deemed to have solicited those listed
36 WMBE interests through reasonable and available means within sufficient time if it initially
37 solicits same by email and facsimile or certified U.S. mail not less than five (5) city business
38 days prior to the opening of a bid to which such list is included. The bidder or contractor must
39 take appropriate steps to follow up initial solicitations with interested WMBEs.

40
41 (3) Providing interested WMBEs with adequate information about the plans, specifications, and
42 requirements of the contract, including addenda, in a timely manner to assist them in responding
43 to the solicitation.

44
45 (4) Negotiating in good faith with interested WMBEs that have submitted bids. Documentation of
46 negotiation must include the names, addresses, and telephone numbers of WMBEs that were
47 solicited; the date of each such solicitation; a description of the information provided regarding
48 the plans and specifications for the work selected for subcontracting; and evidence as to why
49 agreements could not be reached with WMBEs to perform the work. That there may be some
50 additional costs involved in soliciting and using WMBEs is not a sufficient reason for a

contractor's failure to meet the goals, as long as such costs are reasonable.

- (5) Not rejecting WMBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The WMBEs standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations are not legitimate causes for rejecting or not soliciting bids to meet the goals.
- (6) Making a portion of the work available to WMBE subcontractors and suppliers and to select those portions of the work or material consistent with the available WMBE subcontractors and suppliers, so as to facilitate meeting the goals.
- (7) Making good faith efforts, despite the ability or desire of a bidder or contractor to perform the work of a contract with its own organization. A bidder or contractor who desires to self-perform the work of a contract must demonstrate good faith efforts unless the goal has been met.
- (8) Selecting portions of the work to be performed by WMBEs in order to increase the likelihood that the goals will be met. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate WMBE participation, even when the bidder or contractor might otherwise prefer to perform these work items with its own forces.
- (9) Making efforts to assist interested WMBEs in obtaining bonding, lines of credit, or insurance as required by the city or contractor, where applicable.
- (10) Making efforts to assist interested WMBEs in obtaining necessary equipment, supplies, materials, or related assistance or services, including participation in a city-sponsored mentor-protégé program, where applicable; and
- (11) Effectively using the services of the city and other organizations that provide assistance in the recruitment and placement of WMBEs.
- (12) So long as the bidder provides the potential WMBEs with sufficient advance notice of its deadline for accepting bids, the refusal to use a WMBE contractor or provider who does not meet such deadline shall not be a basis for refusing to find a good faith effort has been made.

Bidders or contractors are not required to accept higher quotes in order to meet the goal. In determining whether a bidder or contractor has made good faith efforts, the performance of other bidders or contractors in meeting the contract project goal may be considered.

The determination of whether a bidder has made good faith effort will be made by the manager prior to the award of the project in compliance with the terms hereof. ~~Any appeal of the manager's finding shall be to the SLBE committee. Any appeal from the SLBE committee shall be by writ of certiorari filed with the circuit court in and for Hillsborough County within thirty (30) days of the SLBE committee rendering its final decision on such appeal. The SLBE committee decision shall be deemed rendered on the day its written decision is postmarked to the contractor, subcontractor or supplier subject thereto.~~

Sec. 26.5-205. - Post-award contract compliance.

With respect to all participation goals set to eliminate specifically identified discrimination established in a manner required by applicable law, all awardees shall provide the manager a written report and verification of the utilization and solicitation of all subcontractors sufficient for the manager to

1 ascertain and confirm the amount of utilization of such WMBEs subject to the discrimination, both in
2 awards and dollar value actually paid. All contractors shall provide the manager a written report and
3 verification of all dollars paid to all subcontractors, including the following:

- 4 (1) The contractor shall submit monthly reports in such form, manner and time as required by the
5 manager summarizing the ongoing participation of all subcontractors in the project.
- 6 (2) A payment schedule in the form of a signed statement must be submitted by the contractor or
7 awardee with the monthly pay request denoting the amount paid to all subcontractors as
8 providers.
- 9 (3) The contractor shall bring to the attention of the user department and the ~~minority business~~
10 ~~development (MBD) program office~~ manager any situations in which regularly scheduled
11 payments are not made to any subcontractors.
- 12 (4) At the completion of performance on the construction project, the contractor or awardee is
13 required to contract, the contractor shall submit a final schedule by affidavit of all participating
14 subcontractors to the user department and the ~~MBD office~~ manager. This document will be an
15 affidavit denoting final contract amount and payments made to all subcontractors.

16 Sec. 26.5-206. - Exceptions and waivers.

- 17 (a) Participation goals shall not apply to projects that by City of Tampa Charter are not subject to a bid
18 process.
- 19 (b) The manager will waive compliance with mandatory goals when the bidder demonstrates he has
20 made reasonable good faith efforts to meet such goals.
- 21 (c) The manager shall make a finding that the bidder has satisfied its obligation to make good faith
22 efforts at meeting mandatory goals under the following circumstances:
 - 23 (1) Whenever the bidder has obtained the list of available WMBEs from the manager and provides
24 proof of his efforts to contact such available WMBEs; and
 - 25 (2) An insufficient number of available WMBEs submitted a proposal or bid to participate in the
26 project that was either responsive to the request or reasonable in terms of comparable dollar
27 amounts for such work or goods in the Tampa Bay area, and those that did were selected for
28 participation.

29 Sec. 26.5-207. - Reports to council.

30 The manager shall prepare ~~semi-annual~~ annual reports to city council delineating the utilization rates
31 of WMBEs compared to availability on the basis of procurements and total dollars awarded. When
32 applicable, the reports shall measure goal achievement, compliance, good faith efforts, and exceptions
33 and waivers. The equal business opportunity advisory committee (EBOAC) shall be given the opportunity
34 to include a statement within the report to city council. The goals contained within the reports shall be
35 submitted to city council for approval.

36 Sec. 26.5-208. - Equal business opportunity advisory committee.

- 1 (a) The city shall create the equal business opportunity advisory committee (EBOAC), a citizen task
2 force of sixteen (16) members (nine (9) mayoral and seven (7) city council appointees), representing
3 a cross section of contractors, service providers, and stakeholder organizations.
4
5 (b) The purpose of the EBOAC is to serve as a citizen advisory committee (i) to promote the
6 participation and use of SLBE and, when authorized by law, WMBE businesses in city contracting
7 and procurement and (ii) to relay concerns of minority contractors, women contractors, non-minority
8 contractors and citizens at-large to the city about the operation of this program.
9
10 (c) The EBOAC shall meet at least quarterly and shall be provided with all reports provided to city
11 council and may include a statement to city council within the manager's ~~semi-annual~~ annual report.
12

13 Sec. 26.5-209. – Mentor-protégé relationships.
14

- 15 (a) Unless otherwise precluded by law, based upon the scope of work, market availability, and
16 underutilization found, the manager in consultation with the director of purchasing and the director
17 of contract administration may determine on a project-by-project basis whether good faith efforts to
18 enter into one or more mentor-protégé relationship(s) shall be required or incentivized for such
19 contract. Only projects valued between \$4,999,999.99 and \$9,999,999.99 are eligible for
20 consideration under this section. On such contracts in which good faith efforts to enter into a mentor-
21 protégé relationship are required, no bid shall be accepted unless submitted by a mentor-protégé
22 team, unless the manager has determined that good faith efforts to enter into a mentor-protégé
23 relationship have been demonstrated. The manager shall determine whether good faith efforts to
24 enter into a mentor-protégé relationship have been adequately demonstrated based on a review of
25 relevant facts, documents and circumstances.
26 For projects where a formal mentor-protégé relationship is being incentivized the procuring
27 department shall either:
28 (i) apply up to a five (5) percent discount to bids submitted by firms showing a mentor-protégé
29 relationship. The bid discount shall be used for evaluation and quote purposes only. In no
30 event, shall any such discount exceed twenty thousand dollars (\$20,000.00) or
31 (ii) grant a rating preference of up to ten (10) additional bonus points to those showing a mentor-
32 protégé relationship when evaluating and rating bids subject to request for proposal or request
33 for qualifications.
34
35 (b) On such eligible projects in which good faith efforts to enter into a mentor-protégé relationship are
36 required, the mentor and protégé team members must have different race ownership, different gender
37 ownership, or both, subject to the underutilization at issue or the manager may find the mentor-
38 protégé team noncompliant. The mentor-protégé team shall include in its bid submittal proof of
39 certification of each protégé team member.
40
41 (c) As to each mentor-protégé relationship under this section, a written mentor-protégé agreement must
42 be completed by both parties to the mentor-protégé relationship and executed before a notary public,
43 which clearly delineates the rights and responsibilities of the mentor and protégé, complies with any
44 requirements complies with any requirements of the City of Tampa Minority and Small Business
45 Development Program as set forth in bid documents or otherwise, and provides that the mentor-
46 protégé relationship shall continue for, at a minimum, the duration of the project.
47
48 (d) The manager shall, in consultation with the city attorney, review and approve all contractual
49 agreements regarding the terms and provisions of the mentor-protégé relationship prior to the award
50

1 of a contract on an eligible projects to the mentor protégé team. Mentor-protégé teams may submit
2 agreements for pre-approval no later than fifteen (15) city business days prior to the date set for
3 receipt of bids on an eligible project or as otherwise set forth in the bid documents. A bid submitted
4 by an entity claiming to be a mentor-protégé team that does not include a satisfactory written
5 mentor-protégé agreement in accordance with the requirements and goals of this section shall be
6 deemed noncompliant by the manager.

7
8 (e) During the term of the contract the mentor and protégé businesses must each provide to manager a
9 quarterly summary of the mentor skills provided to the protégé, which shall include:

- 10 (1) The time spent between mentor and protégé businesses in furtherance of the mentor-protégé
11 relationship;
12 (2) The nature and extent of managerial, technical, financial and/or bonding assistance provided;
13 (3) A summary and explanation of any projects bid on or undertaken by the mentor-protégé team in
14 the private sector or for a governmental entity other than the city; and
15 (4) Any additional or further information required by the manager as set forth in bid documents or
16 otherwise.
17

18
19 (f) No officer, director, employee or member of the mentor-protégé team shall be allowed to bid or
20 otherwise participate independently on a contract where the mentor protégé team is bidding or
21 otherwise participating.

22
23 (g) Each mentor and protégé businesses, shall provide the manager access to review all records
24 pertaining to the relationship before and after the award of a contract in order to reasonably assess
25 compliance with this section.

26
27 Secs. 26.5-210. – Teaming agreements.

28
29 (a) Requirements for teaming agreements. Based upon interest, the scope of work, market availability,
30 and underutilization found, the manager in consultation with the soliciting department may on a
31 project by project basis request that the SLBE goalsetting committee determine whether good faith
32 efforts to enter into a mentor-protégé teaming relationship shall be required for such contract. Only
33 projects valued over \$10,000,000.00 are eligible for consideration under this section. On such
34 projects in which good faith efforts to enter into a mentor-protégé teaming agreement is required, no
35 bid shall be accepted that is not submitted by a team subject to an approved teaming agreement,
36 unless the manager has determined that good faith efforts to enter into such a relationship have been
37 demonstrated. The manager shall determine, as a matter of compliance, whether good faith efforts to
38 enter into a teaming agreement have been adequately demonstrated based on a review of relevant
39 facts, documents and circumstances.

40
41 On such eligible projects in which good faith efforts to enter into a mentor-protégé teaming
42 agreement relationship is required, team member businesses must have different race ownership,
43 different gender ownership, or both reflective of the specific underutilization at issue or the manager
44 may find the mentor-protégé team noncompliant. The team shall include in its bid submittal the
45 proof of certification of each team member as appropriate.

46
47 As to each mentor-protégé teaming relationship under this section, a written teaming agreement must
48 be completed by all parties to the teaming agreement and executed before a notary public, which
49 clearly delineates the rights and responsibilities of each member or partner, complies with any
50 requirements of the City of Tampa Minority and Small Business Development Program as set forth

1 in bid documents or otherwise, and provides that the teaming agreement shall continue for, at a
2 minimum, the duration of the project.

3 The manager shall, in consultation with the city attorney, review and approve all contractual
4 agreements regarding the terms and provisions of each teaming relationship prior to the award of a
5 contract on an eligible project to the team, including:

- 6 (1) The initial capital investment of each team member;
7
8 (2) The proportional allocation of profits and losses to each team member; no WMBE team
9 member's liability should ever exceed said partners percentage of revenue earned while a
10 participant in the teaming agreement.
11 (3) The sharing of the right to control the ownership and management of the team;
12 (4) Actual participation of the team members on the project;
13 (5) The method of and responsibility for accounting;
14 (6) The method by which disputes are resolved, including a mechanism for each member of the
15 agreement to initially seek mediation of such agreement before the manager (manager-
16 facilitated negotiations); and
17 (7) Any additional or further information required by the manager as set forth in bid documents or
18 otherwise.
19

20 (b) Teaming agreements may be submitted for pre-approval no earlier than two (2) years and no later
21 than fifteen (15) city business days prior to the date set for receipt of bids on an eligible-project or as
22 otherwise set forth in the bid documents. An unsatisfactory teaming agreement shall be deemed
23 noncompliant by the manager.
24

25 (c) The team, and each member of the team, shall provide the manager access to review all records
26 pertaining to teaming agreement before and after the award of a contract in order to reasonably
27 assess compliance with this section.
28

29 **Section 2.** That should a court of competent jurisdiction declare any part of this ordinance
30 invalid the remaining parts hereof shall not, in any way, be affected by such determination as to the
31 invalid part.

32 **Section 3.** That all ordinances or parts of ordinances in conflict herewith are hereby
33 repealed to the extent of any conflict.
34

35 **Section 4.** That this ordinance shall take immediately upon becoming a law and shall be
36 effective as set forth herein.
37

38 PASSED AND ORDAINED BY THE CITY COUNCIL OF THE CITY OF TAMPA,
39 FLORIDA, ON FEB 16 2017.

40
41 ATTEST:

42 
43
44 CITY CLERK/DEPUTY CITY CLERK

45 
46 CHAIR/CHAIR PRO-TEM, CITY COUNCIL

47 APPROVED AS TO LEGAL SUFFICIENCY:

48 APPROVED BY ME ON FEB 17 2017
49 
50 BOB BUCKHORN, MAYOR