

ORDINANCE NO. 2012 - 229

CLAYTON COUNTY SMALL LOCAL BUSINESS
AND PROCUREMENT NON-DISCRIMINATION ORDINANCE

An ordinance amending Part II, Chapter 2, Article IV of Clayton County Code of Laws to establish a small local business and procurement nondiscrimination program.

WHEREAS Clayton County, Georgia engaged Mason Tillman Associates Ltd, a management consulting firm based in Oakland, California, with expertise in conducting Disparity Studies and working with local governments in the implementation of programs to reduce unlawful discrimination based upon race, gender, or ethnicity, and

WHEREAS upon reviewing the results of the Disparity Study Clayton County has concluded that it has become a passive participant in unlawful discrimination against minorities and women in some of its procurements, and

WHEREAS Clayton County desires to remedy the underutilization of minorities and women that have resulted from its passive participation in discrimination in a way that is narrowly tailored to achieve the result in the specific categories identified, and

WHEREAS Griffin & Strong, P.C., a law and public policy consulting firm based in Atlanta, Georgia, has recommended a plan to achieve this result in a manner that in its opinion will comply with the requirements of the U. S. Constitution, federal case law, and federal statutes,

NOW, THEREFORE, BE IT ENACTED BY THE CLAYTON COUNTY COMMISSION:

Section 1. Findings

Based on Mason Tillman's 2011 study, a statistically significant disparity was found for African American,-Asian American, and Hispanic American owned businesses in sub-contracting for construction and for African American owned businesses in professional services. The findings of this study and an independent review conducted by Griffin & Strong, P.C. have revealed that a major goal of any program taken on by Clayton County should be to address the issue of sub-contracting disparities for these groups.

Evidence from Mason Tillman's statistical data indicates that there are also significant barriers to prime contracting for MWBE firms in construction, professional services, and goods and other services. Sections of anecdotal interviews also indicate that some have had difficulty breaking into prime contracting with the county, because the largest proportion of contracts go to the same few firms. Mason Tillman's data supports these statements.

In addition Mason Tillman's regression analysis shows that MWBE's have significantly more difficulty obtaining loans. Many owners are quoted in the anecdotal section

expressing the opinion that bonding and insurance difficulties have barred them from participation in bidding processes.

Mason Tillman's anecdotal analysis and recommendations suggest that some MWBE owners are either unaware of any processes in place for registration as an MWBE firm or are dissatisfied with this measure due to a perceived lack of benefit in registering as an MWBE.

Mason Tillman's 2011 statistical disparity findings are as follows:

1. Statistically significant disparities were found for African American, Hispanic American, and women owned businesses in construction prime contracts under \$500,000.
2. Statistically significant disparities were found for African American, Asian American, Hispanic American, and women owned businesses in professional services prime contracts under \$500,000.
3. Statistically significant disparities existed for African American, Asian American, and women owned firms in goods and services prime contracts under \$500,000.
4. Statistically significant disparities were found for African American, Asian American, and Hispanic American construction prime contracts under \$25,000.
5. Statistically significant disparities were found for African American and Asian American owned businesses in professional services prime contracts under \$25,000.
6. Statistically significant disparities existed for African American and Asian American firms in goods and services prime contracts under \$25,000.
7. Statistically significant disparities existed for African American, Asian American and Hispanic American owned businesses in construction subcontracts.
8. Statistically significant disparities existed for African American owned businesses in professional services subcontracts.

Lack of business capacity and experience was not a sufficient explanation for the disparities in MWBE utilization by Clayton County. Regression analyses, that controlled for differences in firm size and educational characteristics of firm owners indicate that race and gender remained significant factors in explaining some of the observed statistically significant disparities.

Section 2. That Part II, Chapter 2, Article IV of the Clayton County Code of Laws is hereby amended by adding the following new Division 5:

Division 5. Small Local Business and Procurement Nondiscrimination Program

2-149. Short Title.

This program shall be known as the "Clayton County Small Local Business and Procurement Nondiscrimination Program."

2-150. Policy and Objectives.

- A. Policy Statement. It is the policy of Clayton County Government to promote full and equal business opportunities for all persons doing business with the County by increasing the purchase of goods and services from minority and women owned businesses within the area of Clayton County Government. It is further the policy of the County Government that firms seeking to participate in contracting and procurement activities with Clayton County are not prevented from doing so on the basis of the race or gender of their owners and that Clayton County Government not be a passive participant in any private scheme of discrimination.
- B. Promotion of Equal Opportunity. Clayton County Government strictly prohibits discrimination against businesses based on the race, color, national origin, or gender of their owners or employees in the conduct of any Clayton County Government affairs. No person shall be denied the benefit of, or otherwise discriminated against, on the grounds of race, color, national origin or gender in connection with the award or performance of any contract paid for, in whole or in part, with funds of the County Government.
- C. Program Objectives. The objective of the Small Local Business and Procurement Nondiscrimination Program ("the Program") is to promote and encourage full and open competition in all Clayton County Government procurement and purchasing; encourage all Clayton County Government personnel involved in procurement and contracting activities to utilize appropriate purchasing procedures; to prevent Clayton County Government from becoming a passive participant in any unlawful discrimination; to spur economic development in the public and private sectors of the local economy; to create growth in the Clayton County business community; increase the capacity of local small businesses; and, to rectify that participation in such unlawful discrimination.

2-151. Definitions.

For the purpose of this Chapter, the following words, terms, phrases and abbreviations shall have the following meanings:

African American: Means persons having origins in any black racial group of Africa. It includes people who indicate their race as "Black, African Am., or Negro," or provide written entries such as African American, Afro American, Kenyan, Nigerian, or Haitian.

African American owned business Enterprise (AABE): Means a business that is an independent and continuing enterprise for profit, performing a commercially useful function, and that is owned and controlled by one or more African Americans.

Asian: Means persons having origins in any of the original people of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

Asian Business Enterprise (ABE): Means a business which is an independent and continuing enterprise for profit, performing a commercially useful function, and which is owned and controlled by one or more Asian individuals.

Availability: Means being "qualified" to perform work for Clayton County Government. This means that the Bidder does business within an industry group from which agencies of Clayton County Government make certain purchases; the firm's owner has demonstrated the belief that the firm is qualified and able to perform the work; the firm is located within the relevant geographical area such that it can do business with agencies of Clayton County Government; and the bidder has demonstrated an interest in obtaining work by filling out a vendor application, has bid, or is going through the certification process.

Bid: Means a quotation, proposal, sealed bid or offer to perform or provide labor, materials, supplies or services to the Clayton County Government for a price.

Bidder: Means any individual, sole proprietorship, partnership, joint venture, or corporation that submits a Bid to the Clayton County Government.

Benchmarking: Means the method enabling the Clayton County Government to track the inclusion of MWBEs in the procurement process. Benchmarks are not quotas or goals, rather, they are percentage ranges based on MWBE availability, current MWBE participation, and previous MWBE participation in the Clayton County Area. The Benchmarking will be developed by the Contract Compliance Manager and the Contracts Administrator and approved by the Director of Central Services.

Brokerage: "Brokerage" or "Broker" shall mean a person or firm which contracts with third parties on behalf of the broker's principal or specialist who represents buyers of goods, without taking possession or ownership of these goods or an agent employed to make bargains and contracts for compensation. A broker acts as middleman in transactions between a buyer and a seller, generally receiving a commission or fee for work performed. An independent manufacturer's representative or a distributor is not a broker.

Certification: Means the qualifying process that assures buyers and local, state, and federal agencies that a particular business is an MWBE and/or SLBE, either inside or outside Clayton County that perform a commercially useful function. Certification or Recertification shall mean official recognition and approval by Clayton County Government that a business meets the qualification criteria of an MWBE, SLBE inside Clayton County, or SLBE outside Clayton County, as set forth in this Program. Certification or recertification relates to qualifications regarding ownership and control, not the quality of the service or product.

Clayton County Government: Means the Government of Clayton County, Georgia, including any of its operating elements, officers, and/or employees acting with authority.

Clayton County Disparity Study: Means the Disparity Study prepared by Mason Tillman Oct. 2011

Commercially Useful Function: Means performance or provision of real and actual services by a Participant under a contract with Clayton County Government or under a

subcontract with another business enterprise under a contract with Clayton County Government. In determining whether a business is performing a commercially useful function, the following non-exclusive factors will be considered:

- i. The nature and amount of work contracted
- ii. Whether the SLBE has the skill and expertise to perform work for which it has been certified;
- iii. Whether the SLBE actually performs, manages and supervises the work;
- iv. Whether the SLBE intends to purchase commodities and/or services from a non-SLBE and simply resell same to the general or prime contractor for the purpose of allowing those commodities and/or services to be counted towards assessment of a Benchmark or fulfillment of a goal (if implemented);
- v. Standard industry practices relating to the use of subcontractors. Consistent with standard industry practices, a SLBE subcontractor may enter into second tier subcontracts provided that no more than twenty-five percent of the work thereunder will be performed by a non-SLBE unless the subcontractor demonstrates to the satisfaction of the County Government that the subcontracting arrangement is consistent with standard industry practice.

Compliance: Means the condition existing when a Participant has met the requirements of this Program.

Contract: shall mean a contract in excess of \$1,000.00

Control or Controlled: For the purpose of determining whether the owner or owners of a potential SLBE controls the potential SLBE, the County Government shall consider all of the facts in the record viewed as a whole, including, without limitation the following:

- i. Whether the potential SLBE is an independent business, which means that its commercial viability does not depend on another firm or firms.
- ii. Whether the potential SLBE is subject to any formal or informal restrictions that limit the customary discretion of the SLBE owner. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices that prevent the owner of the potential SLBE from making any business decision without the cooperation of another individual. This paragraph does not preclude spousal co-signature on documents.
- iii. Whether the owner of the potential SLBE possesses the power to direct or cause the direction of the management and policies of the business enterprise and to make the day-to-day as well as long term decisions on matters of management, policy and operations.

- iv. Whether the owner of the potential SLBE has an understanding of, and managerial and technical competence directly related to, the type of business in which the business enterprise is engaged and the business enterprises' operations. Generally, experience limited to office management, administration, or bookkeeping functions, unrelated to the principal business activities of the business enterprise is insufficient to demonstrate control.
- v. Whether, if a state or local law requires the owner of a particular type of firm to have a particular license or other credential, the owner of the potential SLBE possesses the required license or credential.

Covenant of Non-discrimination: Means, collectively, one or more contractual affirmative promises (1) to adopt the policies of the County Government relating to the participation of SLBEs in the procurement process; (2) to undertake certain good faith efforts to solicit SLBE participation; and (3) not to otherwise engage in discriminatory conduct against SLBEs.

Eligible Individuals: Individuals who qualify as an MWBE or meet the criteria to be an SLBE

First Ranked Bidder: Means an individual, sole proprietorship, partnership, joint venture, or corporation that has submitted a Bid that, subject to review as contemplated in this Chapter, has been tentatively determined pursuant to the requirements of this Title to be the lowest cost bid or highest ranked proposal.

Goal: Means race/gender-conscious corrective measures.

Good Faith Efforts: Means the voluntary actions of a Participant undertaken in good faith to ensure that it does not discriminate in its contracting practices.

Hispanic American: Means people who identify with the terms "Hispanic" or "Latino" and who classify themselves in a specific Hispanic or Latino category such as "Mexican," "Puerto Rican," "Cuban," or "other Spanish, Hispanic, or Latino."

Hispanic American owned business Enterprise: Means a business that is an independent and continuing enterprise for profit, performing a commercially useful function, and that is owned and controlled by one or more Hispanic American.

Independent Ownership and Control: shall mean the degree to which businesses own and participate in the management of the partnership, corporation or joint venture, by considering the SLBE or MWBEs participation in the decisions affecting the day-to-day operations of the business, by considering the ability of the SLBEs and MWBEs to function and carry out daily business activities without assistance from the majority partner other than in ways specified in the partnership or corporation papers, and by considering the business' proportionate interest in the capital, assets, profits and losses of the business. In determining whether a partnership or corporation is at least 51% independently owned and controlled by eligible individuals and in determining whether such SLBEs have at least 51% independent ownership and control, the Director of Central Services may use

discretion in weighing the foregoing factors, as well as any other factor, which in the County's opinion affects independent ownership and control.

Joint Venture: shall mean a combination of two or more persons, firms or corporations who, without any partnership or corporate designation, join to carry out a single business project or undertaking which is limited in scope and duration. Under this chapter, SLBEs shall be allowed to joint venture only with other SLBEs. The certification of a joint venture will terminate upon completion of the County contract for which the joint venture was formed

Locally based inside Clayton County: shall mean a business located and operating in Clayton County, Georgia.

- 1) For the purposes of this definition, to be "located" in Clayton County means to have a physical presence within the geographic boundaries of the county such as having office space, a plant, warehouse, or other physical business facility, but specifically excluding the existence of a post office box or virtual office without any other physical presence, for at least one (1) year prior to submitting an application for local small business certification.
- 2) For the purposes of this definition, to "operate" in Clayton County means to be the current holder of a valid business license issued by Clayton County at least one (1) year prior to submitting an application for local small business certification.

Locally based outside Clayton County shall mean a business located and operating outside the geographical boundaries of Clayton County, Georgia but operating inside the Counties that are contiguous to Clayton County, specifically the counties of DeKalb, Fayette, Fulton, Henry and Spalding.

- 1) For the purposes of this definition, to be "located" in the MSA means to have a physical presence within the geographic boundaries of the counties within the MSA, but outside of Clayton county such as having office space, a plant, warehouse, or other physical business facility, but specifically excluding the existence of a post office box without any other physical presence for at least one (1) year prior to submitting an application for local small business certification.
- 2) For the purposes of this definition, to "operate" in the MSA means to be the current holder of a valid business license issued by a local government within the MSA for at least one (1) year prior to submitting an application for local small business certification.

Minority or Women Owned Business Enterprise ("MWBE"): Refers to a business enterprise maintaining a significant business presence in the MSA and performing a commercially useful function that is owned by one or more of the following: (1) African Americans, (2) Native Americans, (3) Hispanic Americans, (4) Asian Americans and (5) Women. Racial and gender categories are separated for monitoring and tracking purposes only.

MSA: (Atlanta) Metropolitan Statistical Area

MWBE Owned: Means that African American, Native American, Hispanic American, Asian American or woman owner(s) who are citizens or permanent residents of the United States individually or collectively possess an ownership interest of at least fifty-one percent (51%) of the business.

Native American: Means persons having origins in any of the original people of North America, including American Indians, Eskimos and Aleuts.

Native American owned business Enterprise (NABE): Means a business that is an independent and continuing enterprise for profit, performing a commercially useful function and which is owned and controlled by one or more Native Americans.

Non-Compliance: Means the condition existing when a Participant has failed to meet the requirements of this Program.

National Institute of Governmental Purchasing Code (hereinafter referred to as "NIGP Code"): Shall be used to identify the work category of any firm registering to do business with Clayton County and such NIGP Code shall be required to be included in all data or other systems that reference a firm, including bid submissions, subcontractor solicitations, contract awards, and payment systems.

Notice: Means written communication delivered to the recipient by hand, including express delivery, electronically or by certified mail.

Participant: Means an individual or entity that enters into a contract with the County Government to provide goods or services within the scope of the Program, or a subcontractor or supplier to such an individual or entity.

Program: Means the Procurement Nondiscrimination Program.

Purchasing Agent: Shall have the meaning given in Article IV, Division 2, Section 2-106 of Clayton County Code.

Purchasing Sector: Means the NIGP Code category for the specific procurement of construction, non-professional services and professional services.

Race/Gender-Conscious: Means any governmental or legislative policy or programmatic action that uses race or gender as criteria for participation.

Race/Gender-Neutral: Means any governmental or legislative policy or a programmatic action in which race or gender is not among the criteria for participation.

Satisfactorily Completed or Satisfactory Completion: Means all of the tasks called for in a contract or subcontract have been accomplished and documented as required by the County Government.

Significant Business Presence: Means that a business enterprise with an established place of business in the MSA at which one or more of its employees is regularly based and that such place of business has a substantial role in the business' performance of a commercially useful function as herein defined. A location utilized solely as a post office

box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not constitute a significant business presence.

Small Local Business Enterprise (hereinafter referred to as "SLBE") shall mean a locally based small business operating inside or outside of Clayton County, which meets the criteria outlined in Section 2-153 F.

Supplier: Means a warehouse or manufacturer of materials, supplies or equipment that contracts directly with a Bidder to provide such materials, supplies or equipment on a project that involves a trade or service. For purposes of measuring the total contract dollars awarded or paid to suppliers on projects, only amounts paid to suppliers of goods customarily and ordinarily used based upon standard industry or trade practices shall be counted.

Underutilization: Means the percentage of dollars spent by the County Government with MWBE's is less than participation of MWBE's than reasonably expected based on the availability of MWBE's within the MSA.

Women Business Enterprise (WBE): Means a business that is an independent and continuing enterprise for profit, performing a commercially useful function, and which is owned and controlled by one or more women.

2-152. Central Services/Contract Compliance Division

A small local business and procurement non-discrimination section is created and shall be designated as the Contract Compliance Division ("CCD"). The CCD will report directly to the Director of Central Services.

- A. Creation. There is hereby created a Contract Compliance Division (CCD) for the County. The CCD shall consist of a Contract Compliance Manager, a Contract Compliance Specialist and such subordinate personnel as may be provided from time to time by the Board of Commissioners. Until such time as CCD has been fully staffed, the Board of Commissioners has appointed a Consultant to set up and perform the duties of the CCD and assist the County in setting up and monitoring the capture and administration of data as needed under this Ordinance. Such Consultant may continue to perform certain duties of the CCD as directed by the Board of Commissioners or the Purchasing Agent, after the CCD is operational.
- B. Duties. The CCD shall be primarily responsible for the administration and enforcement of the Program. It shall encourage equal business opportunities to achieve the policies and objectives of the Program by:
 - (1) Preparing written rules, regulations, and procedures consistent with the Program for submission to and approval by the Director of Central Services.
 - (2) Publishing and making public said rules, regulations and procedures at least thirty (30) days prior to their effective date.
 - (3) Verifying certification of MWBEs and SLBEs.

- (4) Maintaining outreach and assistance programs to promote equal contracting opportunities for MWBEs and SLBEs that wish to do business with the County Government.
- (5) Maintaining a current database of certified and available MWBEs and SLBEs and making this database accessible to Participants and other interested parties, that will include the NIGP Codes indicating the types of services provided by the business enterprise and contact information for the business enterprise. A list from the database will be made available to Participants to assist them in their efforts to meet the Benchmarks of the Program. The list prepared from the database will specify which firms the County has determined to be certified in accordance with the County definitions for MWBEs and SLBEs.
- (6) Monitoring utilization of MWBE and SLBE participation on projects for data gathering and informational purposes.
- (7) In consultation with the Contracts Administrator, recommending reasonable SLBE Benchmark ranges and Goals to the Director of Central Services.
- (8) Developing and supplying to each Bidder as part of each Bid solicitation forms for (a) the Covenant of Non-Discrimination, (b) Statement of Successful Subcontractors, (c) Statement of Interested Subcontractors/Vendors, (d) Statement of Bid Proposals/Price Quotations, and (e) Letter of Intent to Perform as a Subcontractor/Joint Venturer. The CCD shall revise these forms as necessary, consistent with the purpose and requirements of this Section.
- (9) Investigating written complaints as provided below.
- (10) Notifying affected parties in writing of their right to review an adverse recommendation of the CCD.
- (11) Preparing reports as requested by the Director of Central Services as well as semiannual and annual reports as required by subsections C and D below.
- (12) Performing other tasks as may be required to fulfill the above-stated duties of the CCD.

C. Authorization to Monitor. The CCD shall be authorized to collect from all Participants such data and information as is necessary to monitor this Program. This information may include information regarding business ownership, supplier information, subcontractor information, all of which shall reflect the race, ethnic origin, gender, and business location of the identified businesses. The CCD shall continuously monitor the participation of MWBEs and SLBEs in the procurement of construction, non-professional services and professional services for County Government. Such monitoring shall include, without limitation, a statistical analysis of each construction trade, non-professional service and professional services to determine whether there is utilization of MWBEs in a manner that is proportionate to the identified availability range. The CCD will provide written reports to the Director of Central Services upon request but not less frequently than semiannually.

- D. Duty to Report. The CCD shall submit an annual report to the Director of Central Services regarding the effectiveness of the Program. Such report shall include, without limitation, a summary of the purchases, contracts and subcontracts placed with MWBEs for the period and the relative percentage to the total of purchases and contracts for that period. The reports shall also emphasize quantity and quality of MWBE involvement by dollar volume. The report shall specify the race, national origin, gender, and NIGP Code with each category reported separately. Payments made to non-certified MWBEs shall be included as a separate set of figures for purposes of tabulating the total contract dollars going to MWBEs. The report shall include an analysis of the percentage for the reporting period of MWBE awards of the total awards for each MWBE category and Purchasing Sector and the percentage of availability of MWBEs in the MSA for each MWBE category and Purchasing Sector.
- E. Contractors' Closeout Activity Reports: In accordance with the Rules and Regulations for the Program, prime contractors and prime consultants shall provide closeout activity reports to the CCD identifying activities of all subcontractors and sub-consultants in order to monitor MWBE and SLBE participation.
- F. Authority to Investigate Discriminatory Practices: Should a Bidder or Participant submit a written complaint of discrimination, the CCD is authorized to investigate the complaint. An investigation may be initiated based solely on a finding of a significant statistical disparity from the Benchmark in the Participant's utilization of MWBEs. Further, such investigations may be initiated when the CCD receives information that provides a reasonable basis to believe that an individual contractor seeking to contract or contracting with County Government may be engaging in discriminatory conduct with relation to the Bid process. The details of that investigation, including findings, shall be recorded and maintained by the CCD.
- G. Evaluation of Compliance: Pursuant to Section 2-156.1, prior to issuing a notice of award the CCD shall review a Bid when the Contract Administrator has reached an intent to award.

2-153. Small Local Business Opportunity Program

- A. Purpose.
 - 1) The purpose of the SLBE program of the County is to promote the economic welfare of the people of Clayton county and to promote full and equal business opportunity for all persons doing business with the County by providing assistance to SLBEs that would allow them to actively participate in the County's procurement process, and by working to eliminate discrimination in both public and private markets. The County seeks to determine whether eliminating discrimination against and assisting all small firms in a race and gender-neutral fashion will eliminate identified discrimination against MWBEs and eliminate the need for race and gender conscious actions.
 - 2) The County, through the CCD and in accordance with this section, in its ongoing effort to evaluate the utilization of MWBEs to assure equal opportunity with regard to County procurement activities and assist in collecting data to

determine whether a race-conscious initiative will be necessary to effectuate that objective, will monitor the progress of this program in that regard.

B. Responsibilities

Affected County offices shall be responsible for the performance of the following duties and obligations for purposes of implementing and achieving the policies and objectives of this program:

1). Contract Compliance Division (CCD)

The Contract Compliance Division shall collect and evaluate reporting data, which will be submitted to the Director of Central Services.

The Contract Compliance Division is charged with the responsibility of investigating and coordinating administrative hearings to evaluate and address program protest matters.

2). Reporting and Compliance Monitoring

The CCD shall monitor and collect data concerning program activity within the respective departments to assure compliance.

3). Rules and Regulations.

The CCD shall issue and enforce rules and regulations for the Small Local Business and Procurement Non-Discrimination Program authorized by this chapter.

4). Small Business Assistance

Information. The CCD shall act as a resource for small business information.

Outreach. The CCD shall undertake to raise the consciousness of SLBE communities about County business opportunities and how to take advantage of the program benefits.

Certification. The CCD shall be responsible for certification, recertification, and decertification of SLBEs and MWBEs under this division.

Records and Reports of Contractors. Contractors shall submit reports in accordance with the provisions of this division.

Access to Training - Technical Assistance. The CCD shall act as a resource for technical assistance. The department shall collect, organize and disseminate information regarding available training resources in Clayton County.

Access to Capital - Financing. The CCD shall act as a resource for financial assistance. The department shall collect, organize and disseminate information regarding available capital or financing sources in the Clayton County economy.

Access to Markets. The CCD will facilitate access to markets for SLBEs.

C. County-Maintained Records and Reports.

1). The effectiveness of this program will be measured by a review of prime and subcontract utilization of all firms indicating awards made to SLBEs inside Clayton County, SLBEs outside Clayton County, and MWBEs. Program effectiveness measurements will also include efforts by the CCD to provide prime contracting opportunities for SLBEs. At the end of each contract, the CCD will prepare a report on the utilization of firms in the SLBE Opportunity Program as compared to all firms utilized by the County. Data in this report will include information on the gross income size of the firms participating on each contract with their NIGP Codes, race or ethnicity and gender status, and address, including county. Each project manager and procurement officer will continuously maintain, and compile monthly, information relating to the department's use of SLBE, including information regarding subcontractors and attainment toward the SLBE Opportunity Program participation goal.

Data on MWBE utilization will be used to determine if there are barriers to their participation that persists despite efforts to assist SLBEs.

2). At the end of a contract, the CCD shall require a contractor to report to the CCD the identity of each SLBE to whom the contractor has awarded a subcontract for the purchase of supplies, materials and equipment.

3). The CCD shall prepare a consolidated report based on a compilation and analysis of the reports submitted by each project manager and reports of payments provided by the Finance Department. This consolidated report will identify and assess SLBE and MWBE contract awards, prime contractors' progress in achieving SLBE subcontract goals, and other SLBE development and contracting efforts. Specifically, the CCD will maintain records showing:

- a. Awards to SLBEs, including names of contractors and subcontractors, nature of the work/services performed, NIGP Codes, and the percentage of SLBE and MWBE participation per contract. The CCD will obtain regular reports from prime contractors on their progress in meeting contractual SLBE commitments;
- b. Specific efforts to award contracts to SLBEs;
- c. Copies of direct mailings to SLBEs;
- d. Pre-bid conference information as it relates to SLBE Program;
- e. Requests for assistance from SLBEs interested in bidding/proposing on County contracts and subcontracts;
- f. Workshops, seminars and training programs conducted for SLBEs and MWBEs;
- g. Efforts to assist SLBEs in acquiring bonding and insurance.

4) The Contract Compliance Division will submit quarterly SLBE development reports to the Central Services Director. These reports shall include:

- a. The number of contracts awarded to SLBEs and MWBEs;
- b. A description of the general categories of contracts awarded to SLBEs and MWBEs;
- c. The dollar value of contracts awarded to SLBEs and MWBEs;
- d. The percentage of the dollar value of all contracts awarded to SLBEs and MWBEs during the preceding quarter; and
- e. An indication of whether or not, and the extent to which, the percentage was a reasonable representation of SLBE and MWBE utilization for the region.

5) The MWBE information will be further disaggregated by the following minority group designations as defined supra:

- a. African American
- b. Hispanic American
- c. Asian American
- d. Native American

6) The County does not discriminate against any company or group of companies in its contracting and procurement activities on the basis of race, color, age, religion, sex, national origin, handicap/disability or veteran status. The SLBE program does not propose any numeric goals determined by the rate of participation of minorities or women, but will require that this information be reported. The Program is designed to include all segments of the County's business community by increasing the competitiveness and profitability of all small businesses as defined within this Program.

E. Program Goals

The Contract Compliance Division will set contract goals for SLBEs on a contract by contract basis for each specific prime contract with subcontracting possibilities. Contract goals for SLBEs based inside Clayton County may be set separately from contract goals set for SLBEs based outside Clayton County.

SLBE participation is counted as follows:

- 1) Once a firm is determined to be an eligible SLBE, in accordance with this policy, the total dollar value of the contract awarded to the SLBE is counted toward the applicable SLBE goals.
- 2) The County or a contractor may count toward its SLBE goals a portion of the total dollar value of a contract with an eligible joint venture equal to the percentage of the ownership and contractual commitment to the SLBE partner in the joint venture.

- 3) SLBE performance of a "commercially useful function" and SLBEs as contractors:
 - a. The County or a contractor may count toward its SLBE goal only expenditures to SLBEs that perform a "commercially useful function" in the work of a contract. An SLBE is considered to perform a "commercially useful function" when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether an SLBE is performing a commercially useful function, the County or a contractor shall evaluate the amount of work subcontracted, industry practices, and other relevant factors.
 - b. Consistent with normal industry practices, SLBEs may enter into subcontracts. If an SLBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the SLBE shall be presumed not to be performing a commercially useful function. The SLBE may present evidence to rebut this presumption to the County.
- 4) The County or a contractor may count toward its SLBE goals 50 percent of its expenditures for materials and supplies obtained from SLBE regular dealers and 100 percent of such expenditures to a manufacturer, provided that the SLBE assumes the actual and contractual responsibility for the provision of the materials and supplies as follows:
 - a. For purposes of this section, a manufacturer is a firm that operates or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this section.
 - b. The County or a contractor may count toward its SLBE goals the following expenditures to SLBE firms that are not manufacturers or regular dealers:
 - i. The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the contract, provided that the fee or commission is determined by the County to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - ii. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler,

trucker, or delivery service is not also the manufacturer of, or a regular dealer in, the materials and supplies, provided that the fee is determined by the County to be reasonable and not excessive as compared with fees customarily allowed for similar services. The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract, provided that the fee or commission is determined by the County to be reasonable and not excessive as compared with fees customarily allowed for similar services.

F. Eligible Firms

1) Requirements

To be eligible for certification as a SLBE, each applicant must:

- a. Demonstrate that the firm's gross revenues or number of employees averaged over the past three years, inclusive of any affiliates as defined by 13 C.F.R. § 121.103, et al. does not exceed the size standards as defined pursuant to 13 C.F.R. §121.201 et al.;
- b. Submit a certification of the net worth of each owner of the firm;
- c. Demonstrate that the net worth of each owner does not exceed \$750,000, exclusive of principal residence and the value of the SLBE.
- d. Provide information regarding the ethnicity and gender of its original owners.
- e. Demonstrate that the firm is located or has an office in Clayton County.

2) Certification Process

- a. A business seeking certification as a SLBE must submit an application to the County on the prescribed form, affirming under penalty of perjury that the business qualifies as a Clayton County SLBE.
- b. If requested by the County, the applicant must provide any and all materials and information necessary to demonstrate active participation in the control, operation, and management of the business.
- c. The County will certify the applicant as a SLBE or provide the applicant with written justification of denial of certification within 90 days after the date the County receives a satisfactorily completed application from the applicant.
- d. The County's staff will review and evaluate applications, and may reject an application based on one or more of the following:
 - i. The applicant does not meet the requirements of the definition of a SLBE;
 - ii. The application is not satisfactorily completed;
 - iii. The application contains false information;

- iv. The applicant does not provide required information in connection with the certification review conducted by the County.
- e. The County may develop partnerships with government agencies and other organizations to identify appropriate businesses and assist these businesses in obtaining certification.

3) Protests

An applicant may protest the County's denial of its application for certification by filing a written protest with the County within 30 days after the date of the notice of the disposition to the applicant. The CCD will then prepare a recommendation for review by the Contract Compliance Manager. The Director of Central Services will initiate an administrative investigation and conduct a hearing on the matter. All review decisions of the County are final.

4) Recertification

- a. The certification is valid for a two year period beginning on the date the County certified the applicant as a SLBE concern.
- b. Upon expiration of the two year period, a business that desires recertification must:
 - i. Return a completed recertification form as provided by the County; and
 - ii. Comply with the requirements specified in this section that apply to the certification process.

5) Revocation

The County shall revoke the certification of a business if it is determined that a business does not meet the definition of a SLBE or that the business fails to provide requested information in connection with a certification review conducted by the County. Prior to taking formal action, the County staff shall provide the business with written notice of the proposed revocation. The CCD shall then prepare a recommendation regarding the proposed revocation for review by the Central Services Director. The decision of the Central Services Director is final.

6) Certification Reviews

- a. Clayton County will conduct random certification reviews of certified businesses by auditing them to verify that the information submitted by a business is accurate, and that the business remains eligible after certification has been granted. Certification is subject to revocation if it is determined that a business does not qualify as a Clayton County SLBE under the terms of this program. Certification reviews may be conducted for any business for which Clayton County determines a certification review is warranted.

- b. Businesses subject to certification reviews must provide Clayton County with any information requested to verify the certification eligibility of the business.

G. Small Local Business Enterprise Directory

The CCD will create an SLBE Directory that lists SLBEs categorized by types of firms to facilitate identifying businesses with capabilities relevant to a particular specification. Each business listing will contain the business name, contact person, address, phone number, legal structure of the business, and details concerning the company's business specialties. National Institute of Governmental Purchasing (NIGP) Codes will be identified for each company. The directory will be continuously updated and maintained on the computer and on hard copy. In compiling this directory, the CCD will identify and certify as many SLBEs as possible that have the potential of doing business with the County. The County will maintain and have available an updated SLBE Directory and source list(s) for each bid/proposal solicitation to facilitate identifying SLBEs with capabilities relevant to general contracting requirements and to particular solicitations. CCD will make the directory and source list(s) available to bidders and proposers in their efforts to meet the SLBE requirements.

H. Procedures to Ensure That SLBEs Have an Equitable Opportunity to Compete for Contracts and Subcontracts

1) Procedures to Ensure Opportunities

Specific affirmative procedures to be utilized by the Contract Compliance Division to ensure maximum practicable opportunities for SLBE participation include the following:

- a. Assist SLBE in obtaining insurance and surety bonds where necessary in the performance of contracts, including but not limited to:
 - i. Packaging contracts so that dollar amounts do not require bonding;
 - ii. Encouraging prime contractors to waive bonding or assist SLBE subcontractors in obtaining bonding;
 - iii. Encouraging staged bonding where feasible, when bonding is carried over from one project stage to the next; and
 - iv. Relaxing bonding requirements for projects less than \$25,000;
- b. Encourage the formation of joint ventures among SLBEs and between SLBEs. The County's Contract Compliance Staff will assist prime contractors in identifying interested SLBEs for subcontracts;
- c. Provide information on Clayton County's organization and contractual needs and offer instructions on bid specifications, procurement policy, procedures, and general bidding requirements;

- d. Provide specifications and requests for proposals to the SLBE community in a timely manner to allow SLBEs adequate time to develop responsible and responsive bids, quotations, and proposals. In instances where the cost of obtaining specifications or requests for proposal is prohibitive, copies of the material will be made available at no charge to SLBE development agencies. CCD will allow a reasonable amount of time for completion of bids and proposals. Except in the case of emergency needs, the minimum time allowed for completion of bids will be fifteen (15) days;
- e. Establish prorated payment and delivery schedules where feasible, to minimize cash flow problems faced by small firms. The County will provide guidance to SLBE contractors regarding maintenance of positive flow in order that current obligations can be met;
- f. Use the least complicated bid forms appropriate for each procurement solicitations
- g. Hold pre bid conferences to explain SLBE requirements as well as forms that must be submitted with a bid or proposal;
- h. Permit bidders/proposers to review and evaluate successful bid documents of similar procurements and use debriefing sessions to explain why certain bids were unsuccessful;
- i. Provide projected procurement information and contracting schedules through the Office of Contract Compliance and other outreach efforts;
- j. Conduct internal information workshops to inform and acquaint the Clayton County staff with the goals and objectives of Clayton County's SLBE Plan, and to sensitize them to the problems of SLBE's;
- k. Maintain records showing specific efforts to identify and award contracts to SLBE's and establish a monitoring system to ensure that all contractors, subcontractors, consultants, and vendors comply with contract specifications related to SLBE enterprise utilization;
- l. Develop a written handbook containing the following:
 - i. Procedures outlining specific steps on how to bid;
 - ii. Prerequisites for bidding on contracts;
 - iii. Information on how plans and specifications can be obtained;
 - iv. Names of persons to contact concerning questions on bid documents;
 - v. Names of CCD staff and office hours;
 - vi. Types of supplies and services purchased; and

- vii. Explanations of standard contract implementation procedures and requirements, concerning such matters as timely performance of work, contract changes, and payment schedules.
- m. Inform SLBEs of bid notices and specifications related to their capabilities by placing bid notices in major local newspapers, and other periodicals. Bid notices will also be sent to local trade associations, technical assistance agencies, economic development groups, and SLBEs with capabilities relevant to the bid notice as identified by Clayton County's SLBE data bank. Bid specifications will be made available to SLBE contractor associations and technical assistance agencies. Lists of potential firms bidding as primes are also available to SLBEs; and

2) Direct Assistance to SLBEs

The CCD will assist SLBEs in overcoming barriers to program participation. This assistance will be offered directly by Clayton County, as well as by referral to other assistance agencies through established, comprehensive, and continuous programs. Businesses requiring management and technical assistance will be identified through a questionnaire, personal experience with these businesses, and requests for assistance.

The CCD will offer the following assistance directly to SLBEs:

- a. The CCD will provide information on Clayton County's contractual requirements and projected procurement opportunities.
 - b. The CCD will provide counseling and training sessions for SLBEs. County staff will be available to interested business representatives to explain (in detail) instructions for preparation of bid specifications, the County's procurement policies, procedures and general bid requirements. The CCD will coordinate and follow up all requests for assistance to insure that all necessary information was provided.
 - c. The CCD will provide coordination and referral to existing business development organizations.
 - d. Upon request, SLBEs will be provided with information on specific reasons for unsuccessful bids through debriefing sessions. The CCD will review individual solicitations to ensure that insurance and bonding provisions are not excessive. Assistance in obtaining insurance and bonding will be provided to SLBEs.
 - e. The CCD will provide intensive workshops and training sessions on identified SLBE problem areas, i.e., pricing and estimating, joint venture formation, accounting principles, marketing, etc.
 - f. Information on the County's SLBE program will be disseminated through written materials, seminars, workshops, and specialized assistance to individual firms.
- I. Methods By Which the County Will Require Contractors and Subcontractors to Comply with Applicable SLBE Requirements

The CCD staff is available to assist contractors and subcontractors in implementing this program. As a standard procedure, such assistance includes:

- 1) Clear identification of the County's SLBE provisions in all the Clayton County solicitations;
- 2) Pre-proposal/bid conference to explain the County's SLBE Program;
- 3) Identification of certified SLBEs per the County's solicitation including a list of certified SLBE available to all document holders;
- 4) Lists of document holders made available to interested SLBEs, as well as CCD staff available to assist bidders/proposers in developing their SLBE Programs.
- 5) County staff's monitoring SLBE participation levels on projects throughout the duration of a contract. Contractors violating contract provisions regarding SLBE participation are subject to sanctions, including contract termination.

J. Means To Ensure That Competitors Make Good Faith Efforts To Meet SLBE Contract Goals

- 1) For all contracts for which contract goals have been established, Clayton County shall in the solicitation inform competitors that the competitors will be required to submit SLBE participation information to Clayton County and that the award of the contract will be conditioned upon satisfaction of the requirements established by the County. The apparent successful competitor shall submit, at the time of the bid opening or proposal review, the following information:
 - a. The name and address of SLBE firms that will participate in the contract;
 - b. The description of the work each named SLBE will perform; and
 - c. The dollar amount of participation by each named SLBE firm.
- 2) If the SLBE participation submitted by the competitor does not meet the SLBE contract goals, the competitor must submit evidence demonstrating that "good faith efforts" were made to meet the goals. To determine sufficient "good faith efforts" to meet the SLBE contract goal, a bidder/proposer shall document the steps it has taken to obtain SLBE participation, including but not limited to the following:
 - a. Attendance at a pre-bid meeting, if any, scheduled by the County to inform SLBEs of subcontracting opportunities under a given solicitation;
 - b. Advertisement in general circulation media, trade association publications, and other media for at least 15 days before bids or proposals are due;
 - c. Written notification to SLBEs that their interest in the contract is solicited;
 - d. Efforts made to select portions of the work proposed to be performed by SLBEs in order to increase the likelihood of achieving the stated goal;

- e. Good faith efforts to negotiate with SLBEs for specific sub bids, including, at a minimum:
 - i. The names, addresses, and telephone numbers of SLBEs that were contacted;
 - ii. A description of the information provided to SLBEs regarding the plans and specifications for portions of the work to be performed; and
 - iii. A statement of why additional agreements with SLBEs were not reached.
 - iv. Concerning each SLBE, the competitor contacted but rejected as unqualified, the reasons for the competitor's conclusion; and
 - v. Efforts made to assist the SLBEs contacted that needed assistance in obtaining bonding or insurance required by the competitor or the County.
- 3) To determine whether a competitor that has failed to meet SLBE goals may be awarded the contract, the County will determine whether the efforts the bidder/proposer made to obtain SLBE participation were "good faith efforts." Efforts that are merely pro forma are not "good faith efforts" to meet the goals. In order to award a contract to a bidder/proposer that has failed to meet SLBE contract goals, the County will determine whether the bidder/proposer actively and aggressively made efforts to meet the County's SLBE goals. Competitors that fail to meet SLBE goals and fail to demonstrate "good faith efforts" shall not be eligible to be awarded the contract.
- 4) To ensure that all obligations under contracts awarded to SLBEs are met, the County shall review the contractor's SLBE involvement efforts during the performance of the contract. The contractor shall bring to the attention of the County any situation in which regularly scheduled progress payments are not made to SLBE subcontractors.

K. Outreach to SLBEs

Information dissemination and communication with SLBEs is an integral part of the County's SLBE Program. As a part of its outreach program, the CCD will solicit input from representatives of SLBEs, trade associations and community organizations. This input will serve several important functions, including:

- 1) Providing information to identify additional SLBE firms;
- 2) Assisting in refining SLBE Program goals and procedures; and
- 3) Providing an independent assessment of the effectiveness of the County's SLBE Program.

L. Procedures To Require That Participating SLBEs Are Identified By Name By Competitors For Contracts

The CCD shall indicate, in solicitations for contracts that provide opportunities for SLBE participation, goals for the use of SLBE firms. Solicitations shall require all bidders/proposers to submit a written assurance of meeting the goals in their bids or proposals. Bids must also include a proposed schedule of SLBE participation that lists the names of SLBE subcontractors, a description of the work each is to perform, and the dollar value of each proposed SLBE subcontract. If the SLBE participation does not meet the SLBE contract goals, the bidders/proposers must submit sufficient information and evidence demonstrating that the bidder/proposer made "good faith efforts" to meet the goals. Bidders/proposers are required to submit this information prior to the issuance of the Notice to Proceed and bidders and proposers are so informed at the time of solicitation. Agreements between a bidder/proposer and a SLBE in which the SLBE promises not to provide subcontracting quotations to other bidders/proposers shall be prohibited.

M. Maintenance of Records and Reports

1) Records

- a. The CCD will maintain an electronic monitoring and reporting system which tracks the progress of the County's SLBE Program. At a minimum, this electronic record keeping system will identify and assess SLBE contract awards, prime contractors' progress in achieving SLBE subcontract goals, and other efforts to assist SLBEs. Specifically, the CCD will maintain records showing:
 - i. Procedures that have been adopted to comply with the County's requirements;
 - ii. Awards to SLBEs, including names of contractors and subcontractors, nature of the work/services to be performed, and the percentage of SLBE participation per contract. To assist in this effort, the CCD will obtain regular reports from prime contractors on their progress in meeting

contractual SLBE obligations and specific efforts to identify and award contracts to SLBEs.

2) Reports

- a. The CCD shall compile data and prepare reports including, but not limited to the following:
 - i. The copies of direct mailings to SLBEs;
 - ii. Pre-bid conference information as it relates to the County's SLBE provisions;
 - iii. Requests for assistance from SLBEs interested in bidding/proposing on Clayton County contracts and subcontracts;
 - iv. Workshops, seminars and training programs conducted for SLBEs; and
 - v. Efforts to assist SLBEs in acquiring bonding and insurance.
- b. The CCD will submit, at least, annual SLBE reports to the Director of Central Services. These reports shall include at a minimum:
 - i. The number of contracts awarded to SLBEs;
 - ii. A description of the general categories of contracts awarded to SLBEs;
 - iii. The dollar value of contracts awarded to SLBEs;
 - iv. The percentage of the dollar value of all contracts awarded to SLBE during the preceding quarter; and an indication of whether the percentage met or exceeded the SLBE goals specified per contract.

2-154. Procurement Non-Discrimination Program.

- A. MWBE Certification. Certification is the qualifying process that ensures that a particular business is a MWBE that performs a commercially useful function. Certification assures that interested MWBEs have the proper ownership, control, and management as defined in the Program. Current contact information about the certifying entity shall be maintained by the CCD and provided to interested persons upon request.
- B. Reciprocal Certification. Subject to the approval of the Director of the Central Services, Clayton County may accept certification of a MWBE from another government or private entity having certification standards at least as stringent as those created in this Chapter.

2-155. Benchmarks.

- A. Definition and Purpose. The County has a compelling interest in providing equal business opportunities for all persons wishing to do business with it. Therefore, the County will monitor and track MWBE availability and participation in the procurement process through Benchmarks. Benchmarks are not quotas, but a method enabling the County to compare the participation of MWBEs in the procurement process with expected participation rates based on the availability of MWBEs within the MSA.
- B. Procedure for Establishing Benchmarks. The CCD shall establish and recommend proposed Benchmarks to the Director of Central Services semiannually. The CCD shall evaluate the levels of MWBE participation for the County Government's overall procurement program. As part of the review, the CCD may consider data regarding MWBE participation for the preceding three fiscal years for a more accurate portrayal of MWBE participation. The CCD shall review available MWBE totals and percentages for the MSA that shall be reported in ranges showing expected MWBE participation rates on County Government projects for each Procurement Sector based on MWBE availability within the MSA. MWBE availability shall be determined in accordance with current legal, economic, statistical and social science standards. The Contract Compliance Manager shall consult with the Contracts Administrator in developing the Benchmarks. The Contract Compliance Manager may employ one or more qualified consultants each year to assist the CCD in determining MWBE availability. Benchmarks during the first year of the Program shall be based on data compiled in the Clayton County Disparity Study, a copy of which shall be placed on file in the office of the Director of Central Services.
- C. Comment Period. The CCD shall publish proposed Benchmarks in a newspaper of general circulation at least once each week for four consecutive weeks and shall receive public comments submitted within ten (10) days after the final such publication. The CCD shall consider all public comments duly submitted, additional recommendations of the CCD, make any necessary changes to the Benchmarks, and submit the proposed Benchmarks to the Central Services Director. The CCD shall make any revisions the County Commission feels are necessary and shall then issue the final Benchmarks, a copy of which shall be filed with the County Clerk.
- D. Review of Benchmarks. The Benchmarks shall be in effect for a period of one (1) year. The CCD shall review Benchmarks semiannually and shall report its findings to the County Commission. All total contract dollars awarded to MWBEs shall count towards Benchmark percentages.

2-156. Bid Requirements

No Bid submitted to the County for work within the scope of the Program shall be considered responsive unless it includes each of the following documents:

- A. Covenant of Non-Discrimination. Each Bidder must submit a duly executed and notarized Covenant of Non-Discrimination. This written instrument shall contain promises, averments and/or affirmations made by the Bidder:

- (1) to adopt the policies of the County relating to equal opportunity in contracting on projects and contracts funded, in whole or in part, with funds of the County Government;
- (2) Not to otherwise engage in discriminatory conduct;
- (3) To provide a discrimination-free working environment;
- (4) That this Covenant of Non-Discrimination shall be continuing in nature and shall remain in full force and effect without interruption;
- (5) That the Covenant of Non-Discrimination shall be incorporated by reference into any contract or portion thereof which the Bidder may hereafter obtain; and
- (6) That the failure of the Participant to satisfactorily discharge any of the promises of nondiscrimination as made and set forth herein shall constitute a material breach of contract.

- B. Statement of Successful Subcontractors. Each Bidder shall submit a Statement of Successful Subcontractors. The Statement shall include each successful subcontractor's name, NIGP Code, race, gender, national origin, business location, work to be performed, dollar value of the project, and percentage attributable to each subcontractor. In addition, copies of each successful subcontractor's price quotes must be submitted by the close of business on the second business day following submission of a Bid.
- C. Statement of Interested Subcontractors/Vendors. Each Bidder shall submit a Statement of Interested Subcontractors/Vendors that shall include each individual or entity requesting information about the project or solicited for participation on the project. The list of subcontractors shall include those persons who did not actually submit a price quotation or a bid, rather just requested information. The statement shall include the individual's or entity's name, NIGP Code, race, gender, national origin, business location, and information requested.
- D. Statement of Bid Proposals/Price Quotations. Each Bidder shall submit a Statement of Bid Proposals/Price Quotations. The Statement shall include each potential subcontractor's vendor's name, NIGP Code, race, gender, national origin, business location, work requested to be performed, and price quotation and/or bid. The statement shall include only those potential subcontractors not selected that actually submitted a bid or proposal for the project.
- E. Letter of Intent to Perform as a Subcontractor/Joint Venture. In the event that a Bidder or Participant proposes to use subcontractors or joint ventures if awarded a contract with the County, such Bidder shall be required to submit to the CCD a letter of intent signed by both the subcontractor/joint venturer and Bidder. This form is to be completed and submitted by the apparent successful Bidder by the end of the second business day following issuance by the Contracts Administrator of a notice of award of contract.

- F. Other Information and Data. The CCD may request additional information and data prior to a contract award. This information may include, without limitation, information regarding business ownership of all subcontractors to be utilized on the project, all of which shall reflect the race, gender, ethnic origins, location, and structure of the identified businesses, in order to be eligible for contract award. The CCD with the approval of the Contracts Administrator may declare any Bid non-responsive upon failure or refusal of the Bidder to provide information and data required by this Program and requested by the County pursuant to this paragraph.
- G. Reporting Subcontractor Substitution or Replacement. The prime contractor shall report any replacements or substitutions of the use of subcontractors to the CCD in advance of making the substitution. For reporting purposes, the prime contractor shall report to the CCD statistical data pertaining to the new subcontractor, including race, gender, national origin, and business location.

2-156.1 Evaluation of Bid for Program Compliance

- A. If the Bid submitted by the First Ranked Bidder in response to a solicitation issued by the Contracts Administrator includes the documents required by Section 2-156 of this Chapter, the Contracts Administrator shall forward the Bid to the CCD. The CCD shall then evaluate whether the First Ranked Bidder has engaged in and adequately documented with its Bid efforts to ensure that its process of soliciting, evaluating, and awarding subcontracts, placing orders, and partnering with other companies has met the criteria of the Program including the use of Good Faith Efforts. Upon a recommendation of compliance by the First Ranked Bidder, the CCD shall notify the Contracts Administrator. The Contracts Administrator shall proceed to award a contract upon concurrence with the CCD recommendation.
- B. If the CCD's preliminary analysis suggests that the First Ranked Bidder has failed to comply with the good faith or other requirements of the Program, the CCD shall send written notice to the Bidder. The notice shall set forth with particularity the reasons for the questioning of non-compliance and shall schedule a conference at which the issue may be reviewed with the Bidder. The Bidder shall be permitted to present any additional materials relevant to the question of non-compliance for consideration by the CCD. If, after the conference and upon consideration of all relevant materials, the CCD is convinced that the Bidder is in fact compliant with the requirements of this Chapter, the CCD shall notify the Contract Administrator, who shall proceed with an award of contract upon concurrence with the CCD recommendation. If the CCD concludes that the Bidder is not compliant with the requirements of this Chapter, the CCD shall so notify the Contract Administrator, who shall, upon concurrence with the conclusion, reject that Bidder's Bid, identify another Bidder as the First Ranked Bidder, and forward that Bidder's Bid to the CCD. The CCD shall then proceed to evaluate the Bid submitted by the new First Ranked Bidder. The Contract Compliance Manager shall decide whether a determination of non-responsiveness shall be made pursuant to Section 2-156.2. Decisions of the Contract Compliance Manager under this section are subject to protest by filing a written protest letter with the Director of Central Services within seven (7) days. The Director of Central Services will issue the final determination of the County within fourteen (14) days of receipt of the protest.

2-156.2 Sanctions and Penalties for Non-Compliance.

The CCD shall recommend appropriate mechanisms to enforce the provisions of this Program to the Contract Administrator. Further, the failure of a Bidder or Participant to comply with the requirements of this Chapter may be grounds for suspension or debarment by the Contracts Administrator pursuant to the standards set forth in County Code of Laws § 2-145.4. Sanctions shall not be imposed unless there is evidence of specific conduct on the part of Participant that is inconsistent with or in direct contravention of the applicable provisions of this Program. In determining appropriate sanctions, the Contracts Administrator shall consider the following factors:

- (1) Whether the failure to comply with applicable requirements involved intentional conduct or, alternatively, may be reasonably concluded to have resulted from a misunderstanding on the part of the Participant of the duties imposed on them by this Program;
- (2) The number of specific incidences of failure by the Participant to comply;
- (3) Whether the Participant has been previously suspended;
- (4) Whether the Participant has failed or refused to provide the CCD with any information required or requested by this Program;
- (5) Whether the Participant has materially misrepresented any applicable facts in any filing or communication to the CCD; and
- (6) Whether the Participant has subsequently restructured or taken other action to cure the deficiencies in meeting applicable requirements.

2-157. Outreach Program.

To ensure that opportunities to participate in Clayton County contracts are available to the widest feasible universe of willing, available and qualified businesses, the CCD shall develop and engage in outreach designed to increase public awareness of the Program. This outreach may consist of any of the following:

- A. Public Awareness of the Program. To increase the effectiveness of the CCD and to increase the awareness of the Program, the CCD shall disseminate at community events, trade shows, and other appropriate business functions, and publish at regular intervals information describing the Program. This information shall also identify ongoing contracting opportunities.
- B. Outreach. The CCD shall assist SLBEs in obtaining certification by disseminating information, providing individualized counseling, and/or conducting seminars regarding the certification process.

2-157.1 Mentor-Protégé Initiative.

The CCD shall encourage all contractors and subcontractors to participate in a Mentor/Protégé initiative on a voluntary basis for the purpose of enhancing the potential of all SLBEs by building business capability to expand contracting opportunities within an

agreed framework of conditions. The initiative is intended to assist in integration of on-the-job training for all SLBEs and permit a prime contractor to offer assistance on a limited term agreement, generally one project. Any interested contractor or subcontractor may submit with a Bid a completed Mentor/Protégé Promise demonstrating that such a relationship has been formed. The CCD shall make available a database of potential Mentor and Protégé firms. No contractor or vendor shall be penalized or preferred based upon participation or non-participation in this initiative. All administrative functions should be performed by the Protégé personnel. The Protégé is expected to maintain final decision-making responsibilities regarding the scope of its work.

2.157.2 Severability.

If any of the provisions set forth in this Division, or any section, subsection, paragraph, sentence, clause, phrase, or word thereof, shall be found to be invalid, illegal or unenforceable for any reason, the application of the remainder of this Division shall not be affected by such invalidity.

2-158. Application.

This Division shall not apply to any contract entered into by the County Government or any solicitation issued prior to the effective date of the adopting ordinance.

Section 3. This Ordinance shall take effect on January 1, 2013, or such other earlier or later date as certified by the Chairman of the Board of Commissioners that the offices and processes contemplated by this ordinance have been established, the welfare of the County Government of Clayton County requiring it. Notwithstanding the foregoing, set up and training activities related to the administration of this ordinance shall be authorized by the Chairman of the Board of Commissioners to commence at any time after passage of this Ordinance.

{SIGNATURES ON FOLLOWING PAGE}

SO ORDAINED this the 6th day of November, 2012.

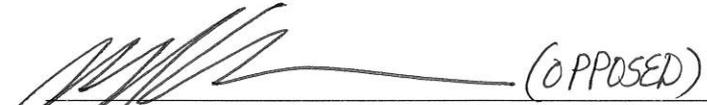
CLAYTON COUNTY BOARD OF COMMISSIONERS


ELDRIN BELL, CHAIRMAN


WOLE RALPH, VICE-CHAIRMAN


GAIL B. HAMBRICK, COMMISSIONER


SONNA SINGLETON, COMMISSIONER

 (OPPOSED)
MICHAEL EDMONDSON, COMMISSIONER

ATTEST:


SHELBY D. HAYWOOD, CLERK