



COURT ORDER 2021-0413

Small Business Enterprise Policy Update.

On a motion made by Commissioner Dr. Elba Garcia, and seconded by Commissioner John Wiley Price, the following order was passed and adopted by the Commissioners Court of Dallas County, State of Texas:

BRIEFING DATE: April 20, 2021

FUNDING SOURCE: N/A

Be it resolved and ordered that the Dallas County Commissioners Court does hereby
Authorize the acceptance and approval of the amended Small Business Enterprise (SBE) Policy.

Done in open Court April 20, 2021 by the following vote:

IN FAVOR:	County Judge Clay Jenkins, Commissioner Dr. Theresa Daniel, Commissioner JJ Koch, Commissioner John Wiley Price, and Commissioner Dr. Elba Garcia
OPPOSED:	None
ABSTAINED:	None
ABSENT:	None

Recommended by: Daniel Garza
Originating Department: SBE



Dallas County
BRIEFING / COURT ORDER
Commissioners Court - Apr 20 2021

- Resolution
- Solicitation/Contract
- Executive Session
- Addendum

Small Business Enterprise Policy Update.

Briefing Date: Apr 20 2021
Funding Source: N/A
Originating Department: SBE
Prepared by: Daniel Garza, SBE Director
Recommended by: Daniel Garza, SBE Director

BACKGROUND INFORMATION:

On August 20, 2019, Commissioners Court approved and adopted the amended SBE Policy through Court Order 2019-0873. The SBE Department reviewed and made additional corrections to the SBE Policy with discussion and approval by the Small Business Advisory Committee.

OPERATIONAL IMPACT:

This is no operational impact with this action.

FINANCIAL IMPACT:

This is no financial impact with this action.

LEGAL IMPACT:

The DA's Office reviewed and approved the recommended revisions.

PROJECT SCHEDULE:

Amended SBE Policy will be in effect upon Commissioners Court acceptance, approval and Court Order.

SBE PARTICIPATION:

N/A

ADMINISTRATIVE PLAN COMPLIANCE:

This action adheres to the Administrative Plan and Vision as follows:

"Dallas County is the destination of choice for businesses and residents."

RECOMMENDATION:

Acceptance and approval of the amended Small Business Enterprise (SBE) Policy.

OTHER:

N/A

MOTION:


On a motion made by TBD, and seconded by TBD, the following order will be voted on by the Commissioners Court of Dallas County, State of Texas:

Be it resolved and ordered that the Dallas County Commissioners Court does hereby Authorize the acceptance and approval of the amended Small Business Enterprise (SBE) Policy.

ATTACHMENTS:

[SBE Policy Redlined 2-24-21 dg](#)

[SBE POLICY Final 2-24-21](#)



**DALLAS COUNTY
SMALL BUSINESS ENTERPRISE
(SBE)
PROGRAM**




TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
SECTION 1. SMALL BUSINESS ENTERPRISE PROGRAM OVERVIEW	2
A. Statement of Policy.....	2
B. Leadership of Small Business Enterprise Program.....	2
C. Administration of the SBE Program.....	3
D. Sunset Review Periods.....	4
SECTION 2. DEFINITIONS.....	4
SECTION 3. NON-DISCRIMINATION	8
A. Non-Discrimination Policy Overview	8
B. Non-Discrimination Policy for Contracting.....	8
SECTION 4. SBE PROGRAM COMPONENTS	9
A. SBE Program Goals	9
B. Contract Specific Goals	10
C. Request for Waiver of SBE Goals	11
D. Counting Toward Goals.....	11
E. Good Faith Efforts	14
F. Reporting Utilization of Small Business Enterprises.....	16
G. Small Business Enterprise Program Records and Reports	17
H. Availability Database.....	18
I. Payment to Contractors and Prompt Payment to Subcontractors	18
J. Assistance to Small Enterprises by Contract Administration and Staff	19
K. Outreach to Small Business Enterprises by the SBE Director.....	20
L. Small Business Enterprise Contractor and Subcontractor Assistance	22
M. Small Business Enterprise Contractor and Subcontractor Request	22
SECTION 5. SMALL BUSINESS ADVOCACY COUNCIL.....	23
SECTION 6. SMALL BUSINESS ENTERPRISE CERTIFICATION	26
A. Small Business Enterprise Definition and Requirements	26
B. Brokers.....	27

C. Joint Venture SBE Certification	27
D. Certification Termination due to Change in Ownership, Control, Etc.	27
SECTION 7. JOINT VENTURE PROGRAM	28
SECTION 8. EXCEPTIONS	29
SECTION 9. COMPLAINTS	30
A. General Policy.....	30
B. Complaints of Discrimination or Retaliation	30
C. Complaint Procedure, Initial Findings, and Recommendations	30
SECTION 10. REMEDIES.....	30
A. Falsification of Small Business Enterprise Subcontracts.....	30
B. Penalties for Non-Compliance	30
C. Remedies for Discrimination or Retaliation	31
D. Fraud / Dishonesty	31

EXECUTIVE SUMMARY

The Dallas County Small Business Enterprise Program (“SBE Program”) sets forth the policies and procedures for Dallas County to provide contracting opportunities for small businesses in all of its’ procurements. The SBE Program is divided into Ten (10) sections which detail the various elements of the program.

Section 1 is the overview of the program and states that it is the policy of Dallas County to contract with small business enterprises (“SBE”) to promote economic opportunity and increase the participation of SBEs in all aspects of Dallas County’s procurement activities. The administrative leadership of the SBE Program is the responsibility of the County Administrator or his/her designee. The Small Business Enterprise Department (“SBE Department”) is designated with the responsibility of implementing the SBE Program, and the program is set to sunset in five years from the date of adoption unless extended by the Commissioners Court.

Section 2 sets forth a list of terms and definitions for the program.

Section 3 reaffirms Dallas County’s commitment to a policy of non-discrimination as required by Title VI and applicable federal and state laws and regulations. Further, the section outlines procedures for the processing of discrimination or retaliation complaints or for violations of the SBE Program.

Section 4 outlines the process for the SBE Department to set annual SBE Program goals and the setting of contract specific goals on prime contracts for SBE firms in those procurements that have subcontracting opportunities. The SBE Program also addresses submittal of a Good Faith Effort Plan and the documentation required by Respondents unable to meet the SBE Aspirational Goal. This section also details the criteria for counting SBE participation toward the goal and the documentation of SBE utilization and reporting by the contractor. The SBE Department is delegated the responsibility to work with other department management and staff to conduct outreach to notify the SBE community of upcoming opportunities and as deemed appropriate provide technical assistance and training on doing business with Dallas County.

Section 5 establishes a seven-member Small Business Advocacy Council (“Council”) that will assist with the development of outreach programs addressing areas such as small business needs, education tools, contracting obstacles, etc. The Council will serve as a forum for the community to share ideas concerning small business opportunities and growth.

Section 6 governs the certification of Small Business Enterprises for the Dallas County SBE Program.

Section 7 provides detailed information relating to Joint Venture when businesses want to partner in response to a Dallas County advertised formal solicitation.

Section 8 establishes exceptions to the competitive process in accordance with Texas Local Gov’t Code Section 262.023.

Section 9 addresses the process of filing complaints for discrimination and retaliation.

Section 10 provides penalties for non-compliance with the SBE Program and authorizes the withholding of progress payments and liquidated damages for non-compliance. Further, the County Administrator may find a contractor non-responsive for failing to comply with the SBE Program as well as disbar or suspend a business from doing business with the Dallas County for engaging in fraudulent conduct.

SECTION 1
SMALL BUSINESS ENTERPRISE PROGRAM OVERVIEW

A. Statement of Policy:

Dallas County is committed to increasing business opportunities for small businesses and continue to provide economic opportunities to the Dallas business community. Small businesses are critical to the local and national economic climate and are responsible for the largest percentage of job growth in the United States economy. The inclusion of small businesses in contracting opportunities will promote higher employment with local businesses and strengthen the County's business tax base.

The Dallas County Commissioners Court established the SBE Program for the purpose of promoting equal opportunities for small businesses. In addition, Dallas County aspires to increase the participation of small businesses in all aspects of contracting with Dallas County to include contracting with SBE firms directly or indirectly through contracting, subcontracting, and/or other procurement activities. It is also the goal of Dallas County to utilize eligible small businesses to enhance the capacity of small businesses. The SBE Program, lastly, has been established to ensure non-discrimination in the award and administration of Dallas County contracts and procurements to SBE's.

Where procurement involves the expenditure of state or federal assistance or contract funds, Dallas County shall comply with such state or federal laws and authorized regulations which are mandatorily applicable, and which are not presently reflected in this SBE Program. Where procurement involves the expenditure of funds, which are proceeds of bonds or certificates of participation, other than financing instruments or documents, Dallas County shall comply with the terms of such financing as they relate to the disbursement of funds and/or management of projects, insofar as such terms are mandatorily applicable and which are not presently reflected in this SBE Program.

B. Leadership of Small Business Enterprise Program:

The Dallas County Administrator or his designee ("County Administrator"), is responsible for the administration of the SBE Program. The County Administrator and the relevant direct reports to the County Administrator shall:

- 1) Participate in internal training (as designated in Section 4 Part L.6 of these Rules and Guidelines) in the use and value of the SBE Program.
- 2) Track and monitor the performance of contractors in meeting the SBE goals.
- 3) Enhance the opportunities for SBEs to participate as prime contractors as well as subcontractors.
- 4) Actively review the results of the SBE Program performance with internal management personnel on a quarterly basis.
- 5) Include performance on SBE objectives into evaluation of individual job performance among personnel responsible for or involved in contracting and procurement of construction, professional services, supplies/services, and general services for Dallas County.
- 6) Issue an annual report to internal and external stakeholders.

- 7) Engage in other leadership activities contributing to increasing the utilization of SBE.

C. Administration of the SBE Program:

The Director of the SBE Department (“SBE Director”) and staff is responsible for the implementation, coordination and monitoring of the SBE Program. The SBE Department shall coordinate and cooperate with the County’s Departments as necessary for effective implementation of the SBE Program. The SBE Department’s duties and responsibilities include, but are not limited, to the following:

- 1) Establishment of written procedures, informal guidelines, and forms as may be necessary to effectuate the SBE Program and the requirements set forth herein.
- 2) Development and modification of written SBE solicitation language, procedures, informal guidelines and forms for RFPs, RFQ, CMARs, IDIQs, IFB and other such solicitation processes as may be necessary to effectuate the SBE Program requirements, as allowed by law and the County’s procurement rules.
- 3) Development and implementation of outreach and technical assistance programs to assist businesses in gaining the ability to compete successfully in the marketplace and to promote equal contracting opportunities for all businesses who want to do business with Dallas County, regardless of SBE status.
- 4) Monitoring of compliance with the requirements of the SBE Program.
- 5) Provision of information to potential bidders, upon request by the potential bidder, which shall include names and contact information of certified SBEs to reinforce and support outreach efforts by potential bidders, in compliance with the Purchasing Code of Ethics.
- 6) Promulgation, amendment, and enforcement of procedures consistent with this SBE Program as may be necessary and appropriate to promote the ethical practice of contracting and subcontracting and to carry out the provisions, intents, and purposes of this SBE Program.
- 7) Investigation of alleged violations of this SBE Program, and the issuance of written reports following any determination of such investigation, stating the reasons therefore and any penalty imposed.
- 8) Notification to an affected party by certified mail that it has the right to appeal a denial of certification as a SBE to Dallas County within seven (7) days of receipt of the notice of refusal to certify the affected party.
- 9) Tracking and reporting on the effectiveness of the SBE Program as measured by a review of data indicating Contractor and subcontractor spending with SBEs as required by Section 4, Part G.1- 5.
- 10) Submission of an annual report and scorecard to the County Administrator and to senior management reviewing the performance in meeting the goals established under the SBE Program.
- 11) Recommendation to the County Administrator of annual goals for the SBE Program.
- 12) Recommendation to the County Administrator of any further efforts needed to ensure participation by SBE's in contracting with Dallas County.

13) Reviewing and verifying the certification status of SBEs.

D. Sunset Review Periods:

The SBE Program, upon its original adoption by the Dallas County Commissioners Court, shall thereafter be subject to review and reauthorization by the Commissioners Court every five years. If no formal action to reauthorize the Program is taken by the Commissioners Court prior to the end of a five-year period, the Program shall expire and cease to be operated.

The County, through its Commissioners Court, may, in advance of any five-year sunset review and at any time, also undertake any revisions or modifications to the SBE Program that it deems are necessary.

SECTION 2
DEFINITIONS

Annual Aspirational Goal: A non-mandatory annual aspirational percentage goal for SBE prime and/or subcontractor participation in Dallas County contracts is established each year for construction, Engineering, Professional Services, Commodity Procurement and General Services. This Annual Aspirational Goal is to be set by the SBE Director, in consultation with the Purchasing Director/Agent, and approved by the Commissioners Court, on an annual basis.

Awarded: The final selection by the Dallas County Commissioners Court of a Respondent for a specified Prime Contract. A contract is awarded when the bid/proposal is selected by the County Commissioners and the contract is executed by the County. Contract awards are made by Dallas County to Prime Contractors; and by Prime Contractors to Subcontractors, usually pursuant to a solicitation process.

Bid: A quotation, proposal, or offer by a bidder or contractor to perform or provide labor, material, goods, services, or supplies to County for a price.

Brokerage or Broker: A firm or person who contracts with third parties on behalf of the broker's principal or a specialist who represents purchasers of goods, or an agent employed to make bargains and contracts for compensation. A broker acts as a middleman in transactions between a buyer and a seller, generally receiving a commission or fee for work performed. An independent manufacturer's representative or distributor is not a broker.

Business or Firm: A corporation, partnership, sole proprietorship, Joint Venture, joint stock company, professional association, or any other legal entity, that is properly licensed and/or otherwise authorized to do business in the State of Texas.

Certification or Re-Certification: The process by which the North Texas Regional Certification Agency, Dallas/Fort Worth Minority Suppliers Development Council and the Women's Business – Southwest verifies a SBE is 51% owned, operated and controlled by someone who is legally resides in or a citizen of the United States and the business structure meets the U.S. Small Business Administration ("SBA") size standard for a small business within the appropriate industry category.

Commercially Useful Function: A business that is directly responsible for providing the supplies or services to Dallas County as required by the solicitation or request for quotes, bids, or proposals. A SBE is considered to perform a commercially useful function when responsible for the execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. A business that stocks sufficient quantities of supplies in direct inventory, held for

sale or resale, to cover anticipated future demands for the suppliers is performing a commercially useful function.

Commodity/Commodity Codes: The County's system to describe a vendor's goods, or services, including, but not limited to, the purchase of all construction, supplies, and service, and professional services by Dallas County departments. All vendors identify the commodity code associated with their business from the Dallas County's list of commodity codes.

Construction: Any type of newly-created infrastructure, demolition, alteration, rehabilitation, or repair identified by Contract Administration as a common unit for purchasing purposes.

Contract: An award by Dallas County whereby the County expends or commits the expenditure of funds in return for work, labor, services, supplies, equipment, materials, goods, or any combination of the foregoing. A legally binding relationship obliging the seller to furnish supplies, goods, or services (including, but not limited to construction and professional services) and the buyer to pay. Except as otherwise specifically defined in this section, does not include:

- a) Sales transactions where the County sells its personal or real property;
- b) A loan transaction where the County is acting as a debtor or creditor;
- c) lease and franchise agreements;
- d) Agreements to use county real property;
- e) Gifts of materials, equipment, supplies, or services to the county;
- f) Interlocal or intergovernmental organization (agreements); or
- g) Procurement(s) of commodities of services that are sole-source by a virtue of intellectual property rights or other exclusive rights and for which there are no other subcontracting opportunities.

Contractor: An individual, company, or entity that submits a response to a solicitation with the intention of competing for the Award of a contact to provide goods or services to the County, and any person or entity who is Awarded a Contract to provide such goods or services. A Contractor includes but is not limited to a contractor, consultant, or vendor.

Distributors: Individuals or companies that sell or disseminate a product of another company or corporation. They can hold title and/or take possession of the product(s) they are distributing, but it is not mandatory. The term "distributor" can be distinguished from "broker". A distributor affects transactions of his own account and keeps inventory for resale; a broker affects transactions for the account of others.

Good Faith Effort: Those efforts set forth in this SBE Program, inclusive of required documentation that demonstrates a contractor's efforts to seek and utilize SBEs for contracts with Dallas County.

Good Faith Effort Plan: The plan submitted with the Proposal detailing the Respondent's plan to achieve the Aspirational Goals or documenting its Good Faith Efforts to meet the Aspirational Goals for all elements of the Solicitation.

Independent Ownership: The degree to which SBEs own and participate in the management of the partnership, corporation or joint venture, by considering: 1) the SBE's participation in the decisions affecting day-to-day operations of the business; 2) the ability of SBEs 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 3) the SBE's 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 a SBE, and in determining whether such SBE has at least 51% independent ownership and control, the Director of Business Enterprise may use discretion in weighing the foregoing factors, as well as any other factor which, in the Director's determination, affects independent ownership and control.

Joint Venture: An association of two or more businesses established to carry on a single business activity that is limited in scope and duration. SBE participation in a joint venture shall be based on the sharing of real economic interests in the venture and shall include proportionate control over management, interest in capital acquired by the joint venture, and interest in earnings.

Limited Liability Company: An incorporated form of a business organization similar to a general or limited partnership, but possessing a limited shield which protects its owners from liability to the same extent that stockholders or a corporation are insulated from the debts and obligations of the corporation. If properly structured, the LLC will be treated as a partnership for federal and state income tax purposes. The LLC can offer flexibility, in the allocation of profits, losses and distributions, a factor that usually has great significance to investors. SBE certification requires the LLC to meet SBE ownership criteria and documentation of equity, and profit/loss distribution formula. The operation agreement must meet requirements reflecting SBE ownership, management and control.

Manufacturer's Representative: An independent sales agent for a manufacturer or a group of manufacturers (principal) in a described sales territory who takes neither title nor possession of the merchandise he or she sells. This person or individual may not be certified.

Marketplace: The geographic market defined by the Dallas County Metropolitan Statistical Area ("MSA"). The Dallas County MSA includes the following counties: Dallas, Tarrant, Denton, and Collin.

Operate: To be actively involved in the day-to-day management of the business.

Own: To have possession of at least 51% ownership of a business. Ownership is interpreted to ensure that the small business member(s) enjoy the normal and customary incidents of ownership.

Owner: An individual or entity that has possession of at least 51% ownership of a business. Ownership is interpreted to ensure that the small business member(s) enjoy the normal and customary incidents of ownership.

Participation: The rate of SBE utilization.

Payment: Dollars actually paid to Prime Contractors and/or Subcontractors for County contracted goods and/or services.

Prime Contractor: The Respondent to whom a purchase order or contract is issued by the County for the purposes of providing goods or services to the County.

Proposal/Submittal: A complete, properly signed response to a Solicitation that, if accepted and awarded, would bind the Respondent to perform the resultant Contract (i.e., An Invitation for Bid, Best Value Bid, Request for Qualifications, Request for Proposals, Request for Competitive Sealed Proposal, Construction Manager at Risk, Design-Build, or other competitive methods used to procure services or goods by the County).

Respondent: A general terms that refers to a contractor, consultant, vendor or any individual, company, or corporate entity seeking to do work for Dallas County regardless of the method used to procure the services or products.

Responsible: A firm that is capable in all respects to fully preform contract requirements, and has the integrity and reliability which will assure good faith performance of contract specifications.

Responsive: A firm's submittal (Bid or Proposal) that conforms in all material respects to a solicitation (Invitation for Bid, Best Value Bid, Request for Qualifications, Request for Proposals, or Request for Competitive Sealed Proposals, Construction Manager at Risk, Design-Build) and shall include compliance with the SBE Program requirements.

SBE Director: The individual responsible for oversight, tracking, monitoring, administration, implementation, and reporting of the County's SBE Program. The SBE Director is also responsible for the enforcement of Contractor compliance with subcontractor participation requirements, and ensuring all aspects of the programs objectives are met.

Significant Local Business Presence: A Firm has a Significant Local Business Presence if it has an established place of business in the Dallas County Metropolitan Statistical Area, at which one or more of its employees is regularly based. Such place of business must have a substantial role in the SBE's performance of a Commercially Useful Function. A location utilizing solely as a post office box, mail drop, or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a Significant Local Business Presence.

Small Business Enterprise Department: The Department within Dallas County that is responsible for the oversight and administration of the SBE Program.

Small Business Enterprise (SBE): As defined pursuant to Section 3 of the Small Business Act¹ and relevant regulations², a SBE is a firm for which the gross revenues or number of employees averaged over the past three years, inclusive of any affiliates as defined by 13 C.F.R. Sec. 121.201.

Subcontractor Payment Reporting: A Prime Contractor will be required to report the actual payments to all Subcontractors by using the County's Subcontractor Payment Reporting System, in the time intervals and format prescribed by the County. This information will be utilized for subcontractor payment tracking purposes, regardless of a subcontractor's certification status. Any unjustified failure to comply with the Good Faith Effort Plan may be considered breach of contract. Additions, substitutions, deletions, or modifications of the utilization amount of the Subcontractors requires a hard copy request to be submitted to the SBE Director and approved by the SBE Director before any changes can be made. Any changes without the SBE Director's approval may be considered a breach of contract and may be debarred from doing business with the County on future contracts.

Specialty Items: An area of construction where there are no certified SBEs or where no SBEs have the capacity, financial resources or experience, to perform.

Strategic Partnership: A type of contractual alliance between two commercial enterprises that is not a formal legal partnership.

Subcontractor: A vendor that receives work from a Prime Contractor under a contract with Dallas County. Generally, a prime contractor or developer contracts with another vendor (subcontractor) to perform or complete some construction craft trade work that the Contractor or developer cannot or will not be performing on a project or contract.

Submittal: A response to an Invitation for Bid, Best Value Bid, Request for Qualifications, Request for Proposals, or Request for Competitive Sealed Proposal, Construction Manager at Risk, Design-Build solicitation, or such other request as defined by the County, that has been submitted to the County for the purpose of competing for the Award of a Contract.

Vendor Registration: The making known to Dallas County those supplies or services a business wishes to provide to Dallas County. This entails completing a vendor registration form through the County of Dallas County purchasing division vendor registration system.

Waiver: Dallas County approval relinquishing a contractor's obligation to comply with one or more provision(s) of the SBE Program.

¹ Small Business Act, 15 U.S.C. 631 et seq.

² 13 CFR part 121.

SECTION 3 **NON-DISCRIMINATION**

A. Non-Discrimination Policy Overview

Dallas County is committed to a policy of non-discrimination as required by Title VI and other federal or state legislation and regulations.

Every contract for or on behalf of the County of Dallas, for the construction, alteration, or repair of any public building or public work in the state shall contain provisions by which the contractor agrees to both of the following:

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, gender, or sexual orientation/expression in the performance of this contract. The contractor shall carry out applicable requirements of the SBE Program in the award and administration of Dallas County contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, and may result in the termination of this contract or such other remedy as Dallas County deems appropriate.

The Contractor, if awarded the solicitation, shall notify subcontractors of the Contractor's obligations under this Policy and have the above provision included in every subcontract and sub-subcontract, including procurements of materials and supplies.

B. Non-Discrimination Policy for Contracting

No respondent, proposer, vendor, and/or Contractor doing business with Dallas County who competes for or is awarded a public contract may discriminate or retaliate against a SBE.

Dallas County has the right to debar or disqualify a respondent from contracting with Dallas County if found to have violated this policy in the awarding of a subcontract in connection with a contract advertised by Dallas County or a contract between Dallas County and the respondent.

Dallas County may not investigate an allegation of an occurrence of discrimination or retaliation in subcontracting as a basis for debarring or disqualifying a bidder more than three (3) years after the contract has ended.

A respondent shall certify in the documents accompanying the respondent's offer to enter into a public contract that the respondent has not discriminated or retaliated, and will not discriminate or retaliate against any SBE in obtaining any required subcontract. In considering a Contractor's conduct to determine discrimination or retaliation, where relevant, the SBE Director may consider the failure to timely pay a subcontractor or services as a form of discrimination or retaliation based upon a review of the circumstances.

After a respondent is awarded a public contract, if the respondent violates the certification provisions of these Rules and Guidelines, Dallas County may regard the violation as a breach of contract that permits one or more actions in Section 10, Remedies.

SECTION 4 **SBE PROGRAM COMPONENTS**

A. SBE Program Goals

The SBE Department shall establish annual goals for SBE participation, directly or indirectly through contracting, subcontracting, and/or procurement activities of Contractors, contracts, and procurements (the "SBE Goal"). Attainment of the annual SBE Goal will be based on contract dollars spent and not contracts awarded. In order to achieve the SBE Goal, SBE Department will encourage both the utilization of small businesses as Contractors and as subcontractors in the performance of Dallas County contracts.

The annual SBE Goal will be reviewed each year before January 1st by the SBE Director, or his/her designee, the Purchasing Director/Agent, and the County Administrator. These overall goals are only intended to be benchmarks for evaluating overall performance of the SBE Program on an annual basis. These participation goals are not and shall not be quotas.

The following factors may be used by the SBE Department as part of its goal-setting methodology in establishing annual SBE goals:

- 1) The number of small businesses certified or eligible for certification;
- 2) The availability of small businesses eligible for certification that are willing to do business with Dallas County;
- 3) Annual participation figures for qualified small businesses in both Dallas County contracting and the private marketplace;
- 4) Analysis of disparities between the availability and participation of qualified small businesses;

- 5) The findings and conclusions contained in any Disparity Studies and other reports undertaken by the County of Dallas, and other governmental and quasi-governmental entities, which studies and reports may be relevant or beneficial to Dallas County and its SBE Program;
- 6) Reviews and analysis of the reports generated by the Director of Business Enterprise or other governmental or quasi- governmental entities in the Dallas County market area; and
- 7) Other relevant factors deemed appropriate by the SBE Director.

The following commodity categories are hereby established to identify the contracting and procurement activities covered by this SBE Program, which categories may be amended from time- to-time by the SBE Department:

Architecture & Engineering: Limited to services for which applicable selection criteria may require a respondent or Contractor to possess a license in the areas of architecture and engineering.

Construction: Including, but not limited to, any and all contracts relating to new construction and the construction of commercial or industrial buildings and facilities, jails, roads, bridges, for renovation and/or maintenance of buildings, facilities, underground utilities, and other erected structures owned or leased by Dallas County; and the rehabilitation, remodeling and repairs of roads, and other non- building structures.

Supplies / Services: Including, but not limited to the purchase of all goods, equipment, office and other supplies, art, furniture, and other tangible personal property, and services such as the procurement of advertising, printing, non-construction repairs, janitorial services, training seminars and workshops, computer and information systems security, shipping and mailing, microfiche and microfilm, courier, storage, travel, consulting, and other non-professional services.

Professional Services: Including, but not limited to, any and all services for which applicable selection criteria may require a respondent or Contractor to possess a license or other certificate of competency, such as in the areas of accounting and auditing, technology, insurance, laboratory, legal, medical, and transportation, education, or as otherwise identified.

B. Contract Specific Goals

The SBE Director, in consultation with the Purchasing Director/Agent or his/her designee, will set SBE participation contracting and procurement goals for each specific prime contract, including those with subcontracting and/or supplier possibilities, and will include goals for SBE subcontracting where applicable, with said participation goals and contracts being approved by the Commissioners Court. The SBE Director or his/her designees, on a contract-by-contract basis, shall first reference the annual SBE Goal for the specific contract category and then shall also have the authority to maintain, increase, reduce, or eliminate such SBE goals based on the type of contract, the type of subcontracting work that will be required, and the availability of SBEs. The respondents will also be subject to the participation contract goals for SBE subcontractors as well. These goals are based on the criteria cited above.

If awarded a contract or procurement with Dallas County, a Contractor shall use its good faith efforts at all times to implement and accomplish the objectives with respect to the use of SBEs as set forth in the Good Faith Effort Plan. Following the award, the Good Faith Effort Plan and Good Faith Effort Affirmation shall become a part of the contract between the Contractor and Dallas County.

All contracts and procurements solicited by Dallas County will be awarded utilizing the invitation for bid (IFB) process, resulting in "lowest and best" bidder being recommended for the award. While the inability of a respondent to meet goals established under the SBE Program may not alone exclude a respondent from award of a contract or procurement, the respondent's adequate Good Faith efforts to meet the goal, or efforts to engage SBE subcontractors may be considered in determining whether the bid is the lowest and best bid.

For the procurement of professional services contracts, awards will use the established evaluated proposal process for contract awards, in accordance with Texas law for the acquisition of professional services.

C. Request for Waiver of SBE Goals:

If the respondent fails to meet the SBE Aspirational Goals, in addition to its Good Faith Effort Plan and Good Faith Affirmation, the respondent shall also submit with its bid documentary evidence to support the Good Faith Efforts made by the respondent to meet the Aspirational Goals. The SBE Director, or his/her designee, will review the documents submitted and make its determination of adequate Good Faith Efforts based on those submitted documents. Additional submittals will not be permitted, with the exception of evidence requested by the SBE Director or his/her designee, as allowed by the bid/solicitation and/or applicable law.

In determining a Good Faith Effort, the SBE Director or his/her designee shall be guided by the principle, if given all relevant circumstances, the contractors efforts could reasonably be expected to produce a level of SBE participation sufficient to meet the goal. The SBE Program shall apply the Good Faith Efforts criteria outlined in 49 CFR Part 26, as outlined below, in considering a Contractor's Good Faith Efforts.

D. Counting Toward Goals:

A respondent is required to either meet the aspirational goal or demonstrate adequate Good Faith Efforts to meet the goal for the utilization of SBEs as set by the SBE Director or his/her designee. When a SBE participates in a contract, only the payments to the SBE for value of the work actually performed shall be counted towards the goal, in accordance with the following provisions:

- 1) The SBE Director, or his/her designee, shall count the 50% of that portion of a Construction, Supplies/Services, Information Technology, or Professional Services contract that is performed by a SBE Prime's own forces.

The SBE Director, or his/her designee, shall include the cost of supplies and materials obtained by the SBE Prime for the work of the contract, including supplies purchased or equipment leased by the SBE Prime (except supplies and equipment the SBE Prime purchases or leases from the Contractor or its affiliate).

- 2) The SBE Director, or his/her designee, shall count the 50% of the entire fee or commissions charged by a SBE Prime for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance contract toward SBE goals, provided the fee was determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.

- 3) When a SBE subcontracts part of the work of its contract to another business, the total value of the subcontracted work may be counted toward the SBE goals only if the SBE's subcontractor is itself a certified SBE. Work that a SBE subcontracts to a non-SBE business does not count toward the SBE goals.
- 4) When calculating participation, SBE subcontractors, suppliers, and/or vendors must be 1st, 2nd or 3rd tier subcontractors, suppliers, and/or vendors. When a SBE performs as a participant in a joint venture, the SBE Director, or his/her designee, shall count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the SBE performs with its own forces toward the SBE goals.
- 5) The SBE Director, or his/her designee, shall count expenditures to a SBE Contractor toward SBE goals only if the SBE is performing a commercially useful function on that contract. To determine whether a SBE is performing a commercially useful function the SBE Director, or his/her designee, will look at any relevant factors including those listed in this section. The following factors that must be considered in making this determination are:
 - a. A SBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the SBE must also be responsible with respect to materials and supplies used on the contract, negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a SBE is performing a commercially useful function, the following factors may be considered:
 - i. The amount of work subcontracted;
 - ii. That the work conforms to industry standards and practices;
 - iii. That the amount the SBE is to be paid under the contract is commensurate with the work it is actually performing and;
 - iv. The amount of SBE credit claimed for its performance of the work.
 - b. A SBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of SBE participation. In determining whether a SBE is such an extra participant, the SBE Director, or his/her designee, will examine similar transactions, particularly those in which SBEs do not participate.
 - c. If a SBE prime contractor does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own work force, or the SBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the SBE Director, or his/her designee, shall presume that it is not performing a commercially useful function.
 - d. When a SBE is presumed to not be performing a Commercially Useful Function the SBE may present evidence to rebut this presumption. The SBE Director, or his/her designee, may determine that the business is performing a commercially useful function given the type of work involved and normal industry practices.

6) The SBE Director, or his/her designee, shall count expenditures by SBEs for materials or supplies toward SBE goals as provided in the following manner:

- a. If the materials or supplies are obtained from a SBE manufacturer, the SBE Director, or his/her designee, shall count 100% of the cost of the materials or supplies toward SBE goals.

For purposes of this section, a manufacturer is a business that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications

- b. If the materials or supplies are purchased from a SBE regular dealer, the SBE Director, or his/her designee, shall count 60% of the cost of the materials or supplies toward SBE goals.

For purposes of this section, a regular dealer is a business that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

- i. To be a regular dealer, the business must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
 - ii. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this section 2(b) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
 - iii. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this Section.
- c. With respect to materials or supplies purchased from a SBE which is neither a manufacturer nor a regular dealer, the SBE Director, or his/her designee, shall count only the amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, towards SBE goals, provided the SBE Director, or his/her designee, determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. However, the SBE Director, or his/her designee, shall not count any portion of the cost of the materials and supplies themselves toward SBE goals

7) If a business is not certified as a SBE, the SBE Director or his/her designee, shall not count the business's participation toward any SBE goals.

8) If an SBE is a prime contractor, the SBE may count 50% of the participation performed by its' own forces toward the SBE Goal.

- 9) The SBE Director, or his/her designee, shall not count the dollar amount of work performed under a contract with a SBE after it: 1) has ceased to be a certified SBE; 2) no longer has a significant local business presence in the Dallas County Metropolitan Statistical Area; or 3) has ceased performing a commercially-useful function.
- 10) The SBE Director, or his/her designee, shall not count the participation of a SBE subcontractor toward a Contractor's final compliance with its SBE obligations on a contract until the amount being counted has actually been paid to the SBE.

E. Good Faith Efforts

For all contracts and procurements for which SBE Aspirational Goals have been established, the respondent shall be required to complete, sign, and submit section A and B of the Good Faith Effort Plan and Good Faith Effort Affirmation. If the SBE goals will not be met, the respondent shall also complete, sign and submit Section C of the Good Faith Effort Form along with documentation of the Respondent's efforts to reach the goal with its bid. To be eligible for award of a contract or procurement in a case where the SBE goals will not be met, a respondent must submit all documentation of its SBE outreach efforts with its bid or proposal, except for IFBs. IFB documentation must be provided upon request. The County has the right to reject a bid as non-responsive if the Respondent fails to submit the required documentation. Outreach and Good Faith Efforts include, but are not limited to, the following:

1) **Identification of Sufficient Subcontracting Work:**

Respondent has identified and selected specific work items to be performed and/or procurement to be filled by SBEs. Respondent subdivided total contract work requirements and/or procurements into smaller portions or quantities to permit maximum active participation by SBEs. Content of advertisements and written notices to subcontractors may demonstrate compliance with this objective.

2) **Broad-Based Advertisement:**

Respondent conducted an advertising campaign designed to reach all segments of the community by advertising in newspapers, trade association publications, special interest publications, trade journals, community papers, or another media.

Advertisement must be specific to the Dallas County contract or procurement, not generic, and may not be a plan holder advertisement provided by the publication. Advertisement must be worded to ensure it does not exclude or limit the number of potential respondents, and must include the project name; the name of the respondent; areas of work available for subcontracting; contact person's name and phone number; information on the availability of plans and specifications; date the subcontractor's interest and written bid/estimate are due to the respondent; and, respondent's policy concerning assistance to subcontractors, suppliers, and vendors in obtaining bonds, financing, and/or insurance.

Respondents are encouraged to advertise not less than two weeks prior to the bid submittal due date, when time permits. Also, the due date for subcontractor written bid/estimate to the respondent should not be less than seventy-two (72) hours prior to the respondent's bid submittal due date to Dallas County. Documentation that may satisfy this requirement includes copies of advertisements and proof of publication dates.

3) **Written Notice to SBE Subcontractors, Suppliers, and Vendors:**

Not less than fourteen (14) days prior to bid submittal, respondent provided written notice of its interest in receiving subcontractor, supplier, and vendor bids related to the Dallas County contract or procurement to small businesses with an interest in performing identified work items.

Contents of the notice must include the project name; the name of the respondent; areas of work available for subcontracting and procurement opportunities; contact person's name and phone number; information on availability of plans and specifications; date the subcontractor's interest and written bid/estimate are due to the respondent; and, respondent's policy concerning assistance to subcontractors, suppliers, and vendors in obtaining bonds, financing, and/or insurance. Respondents are encouraged to review all appropriate website to view a list of SBEs available for use to meet the SBE subcontractor participation goals. Documentation that will demonstrate satisfaction of this requirement includes, but is not limited to, a copy of each notice sent to subcontractors by the respondent for each item of work to be performed or procured.

If there is only one master notification, the respondent should submit a copy with a list of its recipients. Faxed copies of the notice and copies sent by electronic transmission or e-mail must include fax transmittal confirmation slip or written confirmation of receipt by e-mail, as the case may be, from the recipient, showing the date of transmission.

4) **Follow-up to Initial Solicitations:**

Respondent followed up to initial written notices to SBE subcontractors, suppliers, and vendors to determine interest in specific portions of project work and/or procurement; answered questions, recorded phone quotes; and recorded interest of subcontractors, suppliers, and/or vendors in bidding on any portion of subject project. Required documentation shall include a copy of telephone logs, including name of caller, name of and telephone number of subcontractor, supplier or vendor's contact person. Telephone logs must be submitted to demonstrate follow-up with all subcontractors, suppliers, and vendors to whom respondent sent written notices.

5) **Provision of Plans, Specifications, and Requirements:**

Respondent provided interested SBE subcontractors, suppliers, and/or vendors with access to plans, specifications, and requirements for the subject project. Documentation that will demonstrate compliance with this requirement includes the content of advertisements and written notices to subcontractors, suppliers, and vendors.

6) **Assistance with Bonds, Financing, and Insurance:**

Respondent made efforts to advise and assist interested subcontractors, suppliers, and vendors in obtaining information regarding bonds, financing, and insurance required for the subject project. Documentation that will demonstrate compliance with this requirement includes, but is not limited to, the content of advertisements and written notices to SBE subcontractors, suppliers, and vendors.

7) Not rejecting SBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the Contractor's efforts to meet the project goal.

8) Effectively using the services of community organizations; contractors' groups; local, state, and Federal business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of SBEs. Required documentation shall include a copy of telephone logs, including name of caller and name of and telephone number of the organization's and/or agency's contact person.

In determining whether a respondent has made adequate Good Faith Efforts, the SBE Director may, in his/her sole discretion, consider any or all of the foregoing efforts as well as the performance of other respondents in meeting the SBE participation goals as submitted with their bids. For example, when the apparent low bidder fails to meet the contract goal, but other bidders meet it, it may reasonably raise the question of whether, with additional reasonable efforts, the apparent low bidder could have met the goal. If the apparent low bidder fails to meet the goal, but meets or exceeds the average SBE participation obtained by other bidders, the SBE Director may view this, in conjunction with other factors, as evidence of the apparent low bidder having made adequate Good Faith Efforts. Respondents that fail to meet SBE aspirational goals and fail to demonstrate adequate Good Faith Efforts shall be deemed non-responsive to Dallas County's solicitation for bids and shall not be eligible to be awarded the contract.

F. Reporting Utilization of Small Business Enterprises:

In order to achieve the SBE Goal, Dallas County encourages the use of small businesses in the performance and awarding of contracts and procurements. Contractors shall be required to electronically submit Subcontractor utilization and payment information by reporting payment data into the County's Subcontractor Payment Compliance System ("SPCS") beginning with the first County payment for services under the Contract, and with every payment thereafter (for the duration of the Contract).

If the payment data is not in compliance, the SBE Director, or his/her designee, shall contact the Contractor to discuss the reasons for non-compliance. A Contractor's failure to comply with the reporting requirements of this provision may result in the withholding of payment to the Contractor.

When a Contractor uses one or more subcontractors, suppliers, and/or vendors to satisfy the SBE Goal, only expenditures to SBEs that perform a commercially useful function in the satisfaction of the contract or procurement will be counted toward the SBE Goal (see Section 4, Part D). When calculating participation, SBE subcontractors, suppliers, and/or vendors must be first or second-tier subcontractors, suppliers, and/or vendors. Subcontractors, suppliers and/or vendors of subcontractors will not be included in the calculation of participation, except as specifically permitted herein (see Section 4, Part D). Their roles as subcontractors, suppliers, and/or vendors must be meaningful and must contribute positively to successful completion of the Dallas County contract or procurement.

All SBE subcontractor certifications must be verified by the SBE Director, or his/her designee, before commencing work on a Dallas County contract. Failure to secure such prior approval may subject the Contractor to any and all of the following actions:

- 1) Withholding of 10% of all future payments under the contract or procurement until it is determined by the SBE Director that the Contractor is in compliance with this SBE Program;
- 2) Withholding of all future payments under the contract or procurement until it is determined by the SBE Director that the Contractor is in compliance with this SBE Program;
- 3) Rejection of other bids or proposals related to Dallas County contracts or procurements submitted by that Contractor; and/or
- 4) Declaring the contractor to be in breach or default, subject to specific performance of the terms of the contract or procurement.

As noted above, each bidder for a contract or procurement related to Dallas County must complete and submit with its bid a Good Faith Effort Plan and Good Faith Affirmation, signed by an authorized officer or representative of the respondent. If awarded a contract or procurement for Dallas County, a Contractor shall use its Good Faith Efforts to implement and accomplish the objectives with respect to the use of SBEs as set forth in the Contractor's Good Faith Effort Plan. The Good Faith Effort Plan shall be incorporated as part of the contract at the time of award.

Contractor further agrees to provide information and/or documentation of SBE participation after contract closeout as requested by Dallas County. The Contractor is expressly prohibited from enforcing any type of exclusive arrangement, non-competition requirement or any restriction on the discretion of an SBE contractor to bid or submit on current or future solicitations.

G. Small Business Enterprise Program Records and Reports:

The effectiveness of this program will be measured by a review of data indicating Contractor and subcontractor spending with SBEs. Program effectiveness measurements will also include efforts by the Business Enterprise to provide contracting opportunities for SBEs. In order to ensure the effective tracking of these efforts, the following shall be done:

- 1) Each Contractor shall continuously maintain, compile, and provide to Dallas County monthly information relating to its use of SBEs as stated in Part F. This information shall include without limitation the following information for each of the SBE subcontractors, suppliers, and/or vendors utilized by the Contractor: a description of the categories of contracts awarded to and spent with SBEs; the dollar value of contracts awarded to and spent with SBEs; the contract number(s), and contact information for the SBEs. Additionally, the Contractor shall provide information regarding its progress toward attaining the SBE goal for the contract.
- 2) Within thirty (30) days after the end of a contract in which there were SBE goals, each Contractor shall provide the Director of Business Enterprise with a report that summarizes the information provided pursuant to Part F above, including without limitation: the identity of and contact information for each SBE to whom the contractor has awarded a subcontract or supplier agreement; the type of work performed or supplies provided by each subcontractor/supplier; the dollar value of each of the subcontracts/supplier agreements; and the total percentage of the value of the Dallas County contract subcontracted to SBE subcontractors, suppliers, and/or vendors.
- 3) The Contract Administration shall provide the SBE Director, or his/her designee, with information regarding every Dallas County contract or procurement on which the Contractor is an SBE or on which an SBE is part of a joint venture or strategic partnership team serving as the Contractor. The information shall include the name and contact information of the SBE, the type of contract, and the dollar value of the contract.
- 4) The SBE Director, or his/her designee, shall prepare quarterly consolidated reports based on a compilation and analysis of the reports submitted by each Contractor and information from Contract Administration of procurement regarding Dallas County's use of SBEs as contractors and subcontractors. The consolidated reports will identify and assess the awards and payments to SBEs of Dallas County contracts; Contractors' use of SBE subcontractors and suppliers, and/or vendors; Contractors' progress in achieving SBE subcontract goals, and other SBE development and contracting efforts. Specifically, the SBE Director, or his/her designee, will maintain records and prepare reports showing information such as, but not limited to:

- a. Awards and payments to SBE Contractors, subcontractors, suppliers, and/or vendors including the contract name and number, names of Contractors and subcontractors, contact persons, nature of the work/services performed, and the percentage of SBE participation per contract. The SBE Director, or his/her designee, will obtain regular reports from Contractors on their progress in meeting contractual SBE commitments;
 - b. Specific efforts by Contractors to identify and award contracts to SBEs;
 - c. Copies or summaries of utilization reports and outreach efforts by Contractors to SBEs;
 - d. Dallas County awards to SBE Contractors in which a SBE was a joint venture partner. This information shall include without limitation the contract name and number, the name and contact information of the SBEs, the type of contract, and the dollar value of the contract;
 - e. Pre-bid information as it relates to small business opportunities;
 - f. Requests for assistance from SBEs interested in bidding/proposing on Dallas County contracts and subcontracts;
 - g. Workshops, seminars and training programs conducted for SBEs;
 - h. Workshops, seminars and training programs conducted for SBEs;
 - i. Any additional information gained in Assistance and Outreach by Dallas County.
- 5) The SBE Director, or his/her designee, will submit an annual SBE Utilization Report to the County Administrator. These reports shall include a summary of the information described in Part F above, plus an analysis of the total dollar value of SBE contracts/subcontracts awarded and paid to SBEs during the preceding year, categorized by prime contracting dollars and subcontracting dollars. The percentage of the total dollar value of these contracts that were awarded and paid to SBEs during the preceding year shall also be provided.

H. Availability Database:

The SBE Director, or his/her designee, will maintain an availability database of SBEs to assist respondents in identifying SBEs with capabilities commensurate with general contracting and Procurement requirements. The website for the availability database shall be developed and maintained. A list from the availability database will be made available to respondents to assist them in their efforts to use SBEs. This list is not exhaustive and will be frequently updated. Therefore, if a respondent proposes to use a firm not listed in the database, the respondent should confer with the SBE Director, or his/her designee, to ascertain whether the firm has been certified as an SBE in accordance with these Rules and Guidelines or whether the firm may be eligible for such SBE certification.

I. Payment to Contractors and Prompt Payment to Subcontractors:

The SBE Department shall be responsible for monitoring payments to SBE subcontractors. A Contractor shall be required to certify in writing upon after submission of the initial project invoice that all of its subcontractors, suppliers, and/or vendors have been paid for work and materials by the Contractor for previous disbursements before additional disbursements of contract and/or procurement payments are made to the Contractor. The Texas Prompt Payment Act requires Dallas County to make payments to Contractors within thirty (30) days of receipt of a complete and responsive invoice.

Contractors shall pay subcontractors for complete and responsive invoices within ten (10) days after they receive payment from Dallas County. Contractors are encouraged to pay electronically in order to minimize the time delay between invoice and payment. Further, the Contractor shall pay an interest penalty on unpaid balances not paid within ten (10) days to subcontractors as required under Texas law. In the event of a dispute regarding an invoice, the Contractor shall pay a subcontractor the undisputed amount of any invoice within ten (10) days and may make partial payments for partial deliveries if authorized by the terms and conditions of the contract.

The Prime Contractor also agrees to promptly release retainage withheld from subcontractors within seven (7) days upon acceptance of the work by Dallas County and upon satisfactory completion, substantial completion or final completion/acceptance as defined in the General Conditions of the contract. Furthermore, the Prime Contractor agrees to pay the subcontractor its retainage within seven (7) days after the date receives the subcontractor's retainage payment from Dallas County.

The SBE Director may direct Dallas County to make direct payments to an SBE contractor if the Contractor fails to timely pay its SBE subcontractors. During the contract and upon completion of the contract, Dallas County may request documentation to certify payment to subcontractors or suppliers. The subcontractor or supplier may be required to sign off on the certification of payment form or affidavit, by the subcontractor or supplier, to attest to the receipt of payment from the Contractor.

J. Assistance to Small Enterprises by Contract Administration and Staff:

Dallas County is committed to maximizing subcontracting and procurement opportunities for all qualified and available SBEs. Dallas County shall establish SBE utilization goals for each contract where there are opportunities to do so. Dallas County considers information distributed and communicated with SBEs as an integral part of the SBE Program.

The SBE Department and other department management and staff involved in any contracting and/or procurement activities shall do the following to assist in meeting the outcomes included in these Rules and Guidelines:

- 1) Establish direct notification of bid opportunities to SBEs.
- 2) Provide that the appropriate Dallas County staff actively participate in trade fairs and association meetings for small, minority, and female businesses.
- 3) Maintain a tracking chart of the number of SBEs contacted, including the quotes received, which data can be classified into the different commodity categories.
- 4) Conduct bi-annual, in-house training sessions for Dallas County staff involved in contracting and procurement, including activities to ensure awareness of the SBE Program Rules and Guidelines.
- 5) Evaluate the effectiveness and performance of all Dallas County staff and managers involved in any contracting and/or procurement activities in utilizing SBEs in purchasing all services.
- 6) Implement procedures to include SBEs in all contracts and procurements funded by Dallas County, where feasible.

- 7) Provide feedback, where feasible, to unsuccessful SBE respondents about their proposal upon request. Conduct debriefing sessions with the cooperation of the functional unit involved to explain and analyze why certain SBE bids were unsuccessful.
- 8) Involve the SBE Director, or his/her designee, in the contract or procurement review process.
- 9) Develop a centralized list of all user divisions whereby all contracts and procurements are identified as the source from which solicitations can be made by contract or procurement category.
- 10) Permit SBEs, upon request, to review and evaluate successful bids.
- 11) Ensure that certified SBEs are included in the contacted solicitation lists at least fourteen (14) days prior to the bid date.

K. Outreach to Small Business Enterprises by SBE Director:

To ensure that opportunities to participate with Dallas County contracts and procurements are available to the widest feasible universe of interested, available, and qualified businesses, the SBE Director, and or his/her designee, shall develop and implement a written comprehensive outreach program aimed at increasing SBE participation in Dallas County's subcontracting and procurement process. This program may include, without limitation, any or all of the following:

- 1) Dallas County may disseminate at community events, trade shows, and other appropriate business functions, and publish at regular intervals in print and in electronic media (including publications or electronic media targeted to SBEs), information describing the SBE Program, and the functions of the SBE Department.
- 2) The SBE Director, and/or his/her designee, may establish a procedure to engage in continuous recruitment and outreach efforts directed at business assistance organizations, such as: Regional Hispanic Contractors Association, Black Contractors Association, Black and Hispanic Chambers of Commerce, Asian Contractor's Association, Dallas Fort Worth Minority Business Development Council and others, to increase the pool of businesses available to do business with Dallas County. The SBE Director, or his/her designee, may identify suppliers through regional business development organizations and participation at various trade shows, supplier diversity groups, and work with various local, state, and national supplier development counsels and organizations.
- 3) The SBE Director, and/or his/her designee, may disseminate at community events, trade shows, and other appropriate business functions, and publish at regular intervals in print and in electronic media, information identifying ongoing contracting opportunities with Dallas County, and providing contact information by which businesses may obtain additional information from the SBE Director, and/or his/her designee. To the extent feasible, the SBE Director may enter into arrangements to share data regarding upcoming Dallas County projects and subcontracting opportunities on Dallas County projects, with other businesses and agencies or jurisdictions in the region.
- 4) The SBE Director, and/or his/her designee, may assist businesses in submitting bids for eligible projects by disseminating information in print and electronic form, by providing individualized counseling, and/or by conducting seminars regarding the process for submitting a bid and how to do business with Dallas County.

- 5) The SBE Director, and/or his/her designee, may actively encourage businesses to attend the pre-bid conferences, providing face-to-face and one-on-one meeting opportunities with employees of Dallas County with the departments that are involved with the contracting and procurement process.
- 6) The SBE Director, and/or his/her designee shall establish and implement training and awareness programs with the employees of Dallas County to educate them with regard to increasing utilization of a wide array of businesses. The SBE Director, and/or his/her designee, will include training and awareness activities in its quarterly reports.

The SBE Director, or his/her designee, may provide information and advice to the various procurement divisions regarding the effectiveness of current bidding procedures in facilitating bids on eligible projects with the widest feasible universe of interested businesses. This information may include suggestions regarding how to arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules, in ways that facilitate the participation of all interested businesses.

The SBE Director, and/or his/her designee, may create workshops for businesses located within the region to instruct them on how to compete for bids, including advice on marketing, soliciting, and preparing a bid. The SBE Director, and/or his/her designee, may establish a program that will incorporate business and entrepreneurial training and assistance mentoring, matchmaking, individual consulting, and regular training workshops and seminars. To accomplish this, the SBE Director, and / or his/her designee, may reach out to and collaborate with the organizations mentioned in Section 3.L.2 above, as well as regional higher education institutions, state and national supplier development councils, and similar organizations.

- 7) The SBE Director, and/or his/her designee, may develop communications and other written materials that are meant to encourage and provide information to Contractors to increase their utilization of SBE subcontractors. In addition, the SBE Director may sponsor networking events that allow businesses to meet each other and which create an opportunity for Contractors to discuss their upcoming needs with SBE subcontractors.
- 8) The SBE Director may recommend to the County Administrator policies to prohibit discrimination in the provision of credit or bonding for Dallas County contracts.
- 9) The SBE Director, and/or his/her designee may work with existing service providers in the region to:
 - a. Develop a technical assistance program to prepare small businesses to compete for specific contracts;
 - b. Implement and monitor a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for businesses;
 - c. Develop and provide services to help businesses improve their long-term development, to increase their opportunities to participate in a variety of work, to handle increasingly significant projects, and to achieve self-sufficiency;
 - d. Establish a program to assist new, start-up, or emerging businesses; and,
 - e. Assist businesses in developing their capability to utilize technology and conduct business through electronic media.

- 10) The SBE Director, or his/her designee, may create and maintain records of all subcontractor participation on Dallas County projects. The SBE Director, or his/her designee, may perform investigations regarding the actual utilization of SBE subcontractors during the term of the contract as compared with the anticipated use of SBE subcontractors at the time of bid submittal. SBE subcontractors shall report the amount of work they anticipate performing on the contract, and will report the actual work performed and the amount billed and paid. The SBE Director will allow SBE subcontractors to confirm the status of their subcontracts and the payments received thereunder.
- 11) The SBE Director, or his/her designee, may continue to develop its website to provide general information on: doing business with Dallas County, the bid process, how to get certified, a directory of SBEs to provide a calendar of events, bid lists, bid status reports, to post solicitation notices, and to provide downloadable forms and other appropriate information. In addition, Contractors that have been awarded Dallas County contracts may be posted on the website to allow a small business to target their marketing efforts to Contractors that have worked with Dallas County.
- 12) The SBE Director, and/or his/her designee, may assist SBEs in gaining access to training and technical assistance in the areas of cost estimating and bonding. In addition, the SBE Director, and/or his/her designee, may provide technical assistance to SBEs through the collection, organization, and dissemination of information regarding available capital or financing resources. The SBE Director, and/or his/her designee, may provide such other general assistance to SBEs to enhance the participation of SBEs in doing business with Dallas County.

L. Small Business Enterprise Contractor and Subcontractor Assistance:

Assistance is available to Contractors and subcontractors with respect to compliance with the SBE Program. Such assistance includes:

- 1) Clear identification of the SBE provisions in all bid solicitations;
- 2) Pre-bid/proposal conferences to explain the SBE Program, when appropriate;
- 3) Identification of SBEs, including a list of SBEs available to all respondents and prospective respondents for contracts and/or procurements;
- 4) List of respondents and prospective respondents for contracts and/or procurements; and
- 5) Local Procurement Technical Assistance Centers.

M. Small Business Enterprise Subcontractor Substitution Request:

Contractors shall request prior approval for any substitution of a SBE subcontractor, supplier, or vendor used or proposed to be used by a Contractor, by completing and submitting a copy of the SBE Subcontractor Substitution Form. Contractor shall make a good faith effort to substitute an SBE firm with another SBE firm. Written request for approval shall provide the name of the listed SBE subcontractor, supplier, or vendor; the name of the replacement; the reason(s) for the proposed substitution; a brief description of the work to be performed by the substituted party; and, the dollar amount of the subcontract or procurement involved. The selection process for the substitute subcontractor, supplier, or vendor shall be evaluated by the SBE Director for fairness and outreach efforts.

SECTION 5
SMALL BUSINESS ADVOCACY COUNCIL

Name

The name of the committee is the Dallas County Small Business Advocacy Council. The Small Business Advocacy Council is an advocacy group to the Office of Small Business Enterprise.

Purpose

The purpose of the Small Business Advocacy Council is to involve the community in small business opportunities. The Small Business Advocacy Council will work with staff in the formulation and/or modification of effective Small Business Outreach programs; it will provide recommendations concerning programs addressing areas such as small business needs, education tools, contracting obstacles, etc., and it will serve as a forum for the community to share ideas concerning small business opportunities and growth.

Eligibility for Membership

The Small Business Advocacy Council is responsible for reviewing, discussing and providing recommendations on outreach programs, training and policy relating to increasing small business capacity and utilization. Membership of the Small Business Advocacy Council shall be open to any taxpayer, resident, property owner, or business operator within the Dallas County limits. Each member represents a constituency and may facilitate the flow of ideas and concerns from the community to Dallas County SBE staff, and assure the flow of information from the County to the business community.

Qualifications

The Dallas County Code, Section 2-31, establishes certain qualifications that must be met by all members of county boards and commissions. A board member must:

- 1) Have been a resident of Dallas County for at least six months prior to the date of appointment.
- 2) Be a qualified Dallas County voter at the time of appointment.
- 3) Not be in arrears on any county taxes, fines, fees or other obligations owed the county.
- 4) Has not been charged with the commission of a class A or class B misdemeanor or in the case of a felony offense under an information or indictment.
- 5) Has not, in the five years preceding the date of application, been convicted of a class A or class B misdemeanor.
- 6) Has not been convicted of a felony within the ten years preceding the date of application or been adjudicated as having engaged in delinquent conduct violating a penal law of the grade of felony in the ten years preceding the date of application.
- 7) Have a creditable record of attendance and performance in any previous Dallas County board service.
- 8) In addition, applicants must disclose:
 - a. Whether he/she is an adversary party to pending litigation against the county;
 - b. Is an employee or a business associate of either an adversary party or a representative of an adversary party;
 - c. Has a pecuniary interest in any pending litigation or claim, other than an eminent domain proceeding;
 - d. Whether he/she or their spouse either individually or through an employer has any financial interest, directly or indirectly in any contract or subcontract with the county or in the sale to the county of land, materials, supplies or services or any pending bids, proposals or negotiations in connection with a county contract.

Composition

The Committee's membership will reflect and represent the diverse stakeholder interests of the business community, and the membership will possess a variety of skills and backgrounds necessary to be effective as an advisory group. Each year, prior to making recommendations to the Dallas County Commissioners regarding the Small Business Advocacy Council membership, the County Administrator shall review the Committee's stakeholder representation to ensure balanced representation of various business industries, while reflecting the racial, ethnic, geographic and gender diversity of the greater Dallas County community. The Small Business Advocacy Council membership should reflect a broad range of interests and expertise to include:

Area Chambers of Commerce	Design/Engineering Professions
Industry Associations	Construction Professionals
Prime Business Owners	Legal
Minority Development Officers	Real Estate
Small Business Owners	Social Advocacy
Finance	Marketing/Public Relations

Membership Term

Small Business Advocacy Council members will serve two-year terms, and will be eligible to serve no more than three consecutive two-year terms (six years).

Membership Size

Annually, the Small Business Advocacy Council may have up to seven (7) members appointed by Commissioners Court.

Nomination Procedures

The County Administrator will be responsible for presenting the official slate of prospective members to the Court for consideration. The slate of nominations will consist of one (1) member nominated by each Commissioner Court member, one (1) member nominated by the full Court and one (1) member nominated by the County Administrator. The Court may choose to appoint all, none, or some of the nominees.

Resignation, Termination and Absences

Resignation from the Small Business Advocacy Council must be in writing and provided to the Committee Chairperson and the Small Business Enterprise Director. A member may be asked to resign from the committee due to excess absences, two consecutive unexcused absences or three total absences from meetings in a year.

Vacancies

When a vacancy on the Small Business Advocacy Council exists mid-term, the County Administrator may nominate a replacement to the Court. The Court must approve the appointment of the nominee to serve out the term of the member who created the vacancy.

Selection and term of Chairperson

The Chairperson shall be nominated by general membership and appointed by majority vote of the council. The Chairperson will serve for a term of two (2) years and is eligible to serve for three (3) two year consecutive terms.

Chairperson Duties

Responsibilities include, but are not limited to: presiding over all Small Business Advocacy Council meetings; encouraging members to participate in discussions and to arrive at decisions in a timely and democratic manner; undertaking certain administrative duties, such as approving Committee agendas, draft minutes, proposed meeting

venues, and dates. The Chairperson will serve as the principle spokesperson for the Small Business Advocacy Council, maintain communication with County staff and report on the Small Business Advocacy Council progress to Commissioners Court.

Selection and term of Vice-Chairperson

The Vice-Chairperson is to be selected from the general membership by the membership. The term is for two (2) years but the individual may serve consecutive terms if he or she is asked by the membership to continue as Vice-Chairperson. The Vice-Chairperson may also be asked to serve in a different leadership capacity after serving as Vice-Chairperson for one term.

Vice-Chairperson Duties

The Vice-Chairperson is responsible for assisting the Chairperson on all assigned tasks and will perform the duties of the Chairperson when necessary. The Vice-Chairperson assists in the orienting new members to the committee.

General Meetings

The Small Business Advocacy Council will meet on an as needed bases, but no less than 4 general meetings per calendar year. The committee will vote on the time and dates of the required meetings. A meeting schedule will be provided to the members for the entire year at the first meeting of the year. There will be no meeting scheduled in July or December, unless the chair deems it necessary.

Special Meetings

Special meetings of the Small Business Advocacy Council may be called at the request of the chair or a majority of the Committee.

Notice of Meetings

Printed and/or electronic notice of each meeting shall be given to each voting member not less than one week prior to the meeting.

Meeting Agenda

Office of Small Business Enterprise staff will draft meeting agendas for review and approval by the Chairperson. Any two members can request an item to be added to the agenda for a meeting agenda.

Quorum

More than half of the currently appointed membership must be present to constitute a quorum. A quorum is needed for any vote when the Committee is determining whether to make an official recommendation to the county staff and/or Commissioners Court. A meeting may proceed without a quorum; however, no action may be taken without a quorum present.

Decision Making

There shall be an effort extended to achieve a consensus of members present for all issues that require decision making. It is particularly desirable for a policy change to be completed through consensus, but the Chairperson may decide to proceed with completion through a vote. If the Chairperson deems that a vote is necessary, issues to be voted on will be decided by a simple majority of the Small Business Advocacy Council membership present provided there is a quorum.

Conduct

Committee members shall not engage in any act of discrimination with regard to race, color, sex, age, disability, religion, political affiliation and national origin. Comments and/or conduct calculated to be offensive or degrading to others is strictly prohibited.

Subcommittee Formation

The Small Business Advocacy Council or County staff may create Sub-committees, as needed, to further discuss any aspect of programing, planning or outreach. Subcommittees will be comprised of volunteers from the overall membership, community stakeholder groups and subject matter experts. Sub-committees may make recommendations to the full Committee, which will in turn make decisions regarding the recommendations of the sub-committee. Sub-committees will provide minutes of their meetings to the full Committee and will provide reports of their activities to the full Committee at regular meetings.

Workgroup Formation

The Small Business Advocacy Council may create a workgroup, as needed, to complete a short term task that cannot be completed within the hours of the regular Committee meeting. Workgroups will be comprised solely from the Committee membership and a representative from the Office of Small Business Enterprise. Workgroups will provide written minutes and any relevant work products to the Committee membership.

Amendments

A change to the bylaws may be recommended to the County Administrator when necessary by a two-thirds majority vote of the Committee members after reading and consideration of the amendment during a general meeting. Proposed amendments must be submitted to the Office of Small Business Enterprise staff in writing to be sent out with regular Committee announcements.

Provisions

The Provisions of these bylaws notwithstanding, in recognition that a primary goal of the Small Business Advocacy Council is to provide high quality input to County staff, the County Administrator may request that Commissioners Court waive one or more bylaw provisions to enhance the Committee's ability to provide constructive feedback. The request must be justified by identification of special conditions that make it imperative for the success of the system.

Certification

After any action by the Commissioner Court in adopting/amending these bylaws, the Small Business Advocacy Council membership will be provided with the updated bylaws.

SECTION 6 **SMALL BUSINESS ENTERPRISE CERTIFICATION**

A. Small Business Enterprise Definition and Requirements:

Small Business Enterprise shall be defined as stated in Section 2, Definitions.

To be recognized as a SBE by Dallas County, firms must be certified as an SBE by one of three County approved entities: North Texas Regional Certification Agency (NCTRCA), DFW Minority Supplier Development Council and/or the Women's Business Council of Southwest, at the time of the proposal/bid submission. Other certifications are not acceptable.

In addition to having a valid certification from one of the entities listed above, the SBE must have a Significant Local Business Presence in the County's Marketplace at the time the bid or proposal is submitted for credit towards meeting the SBE goal, which includes the following counties: Dallas, Tarrant, Denton, and Collin.

The Contractor must submit to the SBE Director or his/her designee a properly completed SBE Certification Certificate or letter, with all required attachments, for all SBEs proposed to be utilized to meet the Contract Specific Goal at the time of Bid/Proposal. The County reserves the right to reject the participation of a certified firm for credit towards meeting the Contract Specific Goal, in its sole discretion, for good cause. Good cause includes but is not limited to:

- 1) the SBE Director has concerns regarding the Contractor's SBE Certification and the Contractor refuses or fails to timely provide necessary information to address such concerns;
- 2) Contractor refuses or fails to provide the information required in the Bid/Proposal for the SBE assessment, including the good faith assessment or marketplace requirements;
- 3) Contractor has a documented history of not complying with the County's SBE Policy and/or the SBE Bid/Proposal/Contract requirements subsequent to being awarded the Contract.

Such rejection shall be in writing and state the reason(s) for the rejection. A prime contractor whose proposed certified firm is rejected for goal credit may request reconsideration of the rejection to the Purchasing Director/Agent in writing.

The request for reconsideration must be received by Purchasing Director/Agent within seven (7) business days of the notification of rejection. The Purchasing Director/Agent shall respond to the request for reconsideration within seven (7) business days and the Purchasing Director's decision on the request shall be final. The Purchasing Director/Agent's decision does not preclude the Contractor from utilizing the County's Purchasing Departments Protest Procedures, if applicable.

Dallas County utilizes the SBA size standards to determine whether a firm may be considered a Small Business Enterprise. A full table of Small Business Size Standards matched to the North American Industry Classification System ("NAICS"), and any amendments thereto, may be obtained at www.sba.gov/size.

B. Brokers:

The participation of brokers in the suppliers/non-professional services category is specifically prohibited. A firm is not considered a broker if it: a) provides documentation verifying that the firm or business is a distributor or an independent manufacturer's representative for another firm, or b) maintains, in the ordinary course of business, inventory for each commodity for which the firm or business is seeking certification that would be available for inspection during a site visit.

C. Joint Venture SBE Certification:

Joint ventures between non-SBEs and SBEs may be certified for construction contracts in excess of \$1,000,000 where the SBE's participation is 30% or greater, and for supplies/services and professional services contracts in excess of \$100,000 where the SBE's participation is in excess of 20%. The SBEs must perform a clearly defined portion of the work equal to or greater than the SBE's share in the ownership, control, management, responsibility, risk, and profits of the joint venture. Dallas County shall be guided by the Federal Aviation Administration's Joint Venture Guidance in reviewing and approving a Joint Venture.

D. Certification Termination due to Change in Ownership, Control, Etc.:

Certified SBEs shall provide written notice to the SBE Director, or his/her designee, of any change in ownership or control of the SBE within ten (10) days of such change, to include sale, exchange, or transfer of ownership or change in control of the certified SBE as specified in the application which was the basis for the SBE's certification. Upon notification, their certification as a SBE by Business Enterprise shall be designated "under review", and the SBE shall have designee, to apply for recertification. During the re-certification

process, the SBE will remain in good standing as certified by the original certifying body. Failure to apply for recertification, by one of the three recognized certification agencies, within the 30-day period will result in the termination of the good standing with Dallas County.

SECTION 7

JOINT VENTURE PROGRAM

For purposes of the Program, Joint Ventures must be pre-approved by Business Enterprise and at least one participant in the Joint Venture must be a SBE. Application for pre-approval will be made on an as proscribed by Business Enterprise for a specific Dallas County contract or project. Joint Venture approval will terminate upon completion of the contract for which the Joint Venture was approved.

Based upon the scope of work and market availability, the Director of Business Enterprise shall determine on a contract-by-contract and/or project-by-project basis, for all eligible projects valued over \$5,000,000 for construction and over \$100,000 for professional services or supplies/services, whether Good Faith Efforts to enter into a joint venture shall be required for such contract and/or project. On such projects in which Good Faith Efforts to enter into a Joint Venture relationship are required, no bid shall be accepted unless submitted by a Joint Venture, unless the Director of Business Enterprise has determined that Good Faith Efforts to enter into a Joint Venture have been demonstrated. The Director of Business Enterprise shall determine whether Good Faith Efforts to enter into a joint venture have been adequately demonstrated based on a review of relevant facts, documents and circumstances.

As to each Joint Venture under this section, a written joint venture agreement must be completed by all parties to the Joint Venture and executed before a notary public. Said agreement must clearly delineate the rights and responsibilities of each member or partner, must comply with any requirements of the Director of Business Enterprise set forth in bid documents or otherwise, and must attest that the Joint Venture shall continue for, at a minimum, the duration of the contract or project.

The Director of Business Enterprise shall review all contractual agreements regarding the terms and provisions of each Joint Venture relationship, prior to the award of a contract or project, including agreements pertaining to:

- 1) The initial capital investment of each venture partner;
- 2) The proportional allocation of profits and losses to each venture partner (no SBE venture partner's liability should ever exceed said partner's percentage of revenue earned while a participant in the joint venture);
- 3) The sharing of the right to control the ownership and management of the Joint Venture;
- 4) Actual participation of the venture partners on the project;
- 5) The method of and responsibility for accounting;
- 6) The method by which disputes are resolved; and
- 7) Any additional or further information required by the Director of Small Business Enterprise as set forth in bid documents or otherwise.

For Strategic Partnerships, each partner shall provide Business Enterprise access to review all records pertaining to the agreement between the partners, before and after the award of the contract, in order to reasonably assess compliance with their agreement, to include agreements pertaining to:

- 1) The SBE strategic partner's liability versus its partner percentage of revenue earned for the project (the SBE liability should not ever exceed the percentage of revenue);
- 2) The actual participation of the strategic partners on the project;
- 3) The method of and the responsibility for accounting; and
- 4) The method by which disputes are resolved.

Agreements must be submitted on or before the date set for receipt of bids on an eligible project. A bid submitted by a Joint Venture or Strategic Partnership that does not include a satisfactory written joint venture or strategic partnership agreement in accordance with the requirements of this section, may be deemed non-responsive and rejected.

The Joint Venture or Strategic Partnership and each member of the Joint Venture or Strategic Partnership shall provide the Director of Business Enterprise access to review all records pertaining to joint venture or strategic partnership agreements, before and after the award of a contract in order to reasonably assess compliance with this subdivision.

Penalties for non-compliance: Any responsible respondent who fails to comply with this section shall be subject to any or all of the penalties contained in Section 10 Part B.

SECTION 8 **EXCEPTIONS**

The SBE Program does not apply to the following:

1. A contract for the purchase of items exempted from the requirements established by Section 262.023 of the Texas Local Government Code, if the commissioners court by order grants the exemption, including but not limited to: 1) an item that must be purchased in a case of public calamity if it is necessary to make the purchase promptly to relieve the necessity of the citizens or to preserve the property of the county; 2) an item necessary to preserve or protect the public health or safety of the residents of the county; 3) an item necessary because of unforeseen damage to public property; or 4) a personal or professional service.
2. A professional services contract for legal services.

SECTION 9 **COMPLAINTS**

A. General Policy:

Dallas County is committed to enforcing this SBE Program as written, and in turn encourages all SBEs, firms, or individuals to promptly report any suspected unlawful or illegal activities by others. Such activities may include, but are not limited to, falsification of information or documentation provided to Dallas County or other certifying bodies for purposes of obtaining SBE certification status or vendor registration, bidding on contracts, reporting SBE participation on contracts awarded, discrimination against others in whatever form or capacity, and any retaliation against others for any reason purpose associated with this Program.

Any person or organization with information which supports the unlawful or illegal participation by a business enterprise, firm, or individual in the SBE Program should provide a detailed statement in writing to the Director of Business Enterprise, specifying such unlawful or illegal acts and explaining the basis for such claim or statement.

B. Complaints of Discrimination or Retaliation:

Any adult person, business entity, association, organization, or government agency may file a sworn complaint with the SBE Director stating facts showing or tending to show that a respondent has, within the preceding three (3) year period from the date of the alleged incident, engaged in discrimination or retaliation in connection with a Dallas County contract or solicitation. Within fourteen (14) days, the Director of Business Enterprise, or his/her designee, shall notify the respondent against whom the complaint was filed that a sworn complaint has been received.

C. Complaint Procedure, Initial Findings, and Recommendations:

The SBE Director or his/her designee shall be responsible for investigating complaints of discrimination or violation of the SBE Program.

SECTION 10 **REMEDIES**

A. Falsification of Small Business Enterprise Subcontracts:

Falsification or misrepresentation of a sub-agreement as to company name, contract amount and/or actual work performed by subcontractor, submitted on any contracts or forms required or otherwise requested by Dallas County, will result in sanctions including assessment of penalty fines, termination of contract, and/or debarment.

B. Penalties for Non-Compliance:

- 1) The provisions of this section shall be incorporated into all Dallas County contracts. The Contractor shall agree that a breach of the provisions of these Rules and Guidelines or the contract shall subject the Contractor to any or all of the following penalties: Withholding of 10% of all future payments under the contract until it is determined that the Contractor is in compliance;
- 2) Withholding of all future payments under the contract until it is determined that the Contractor is in compliance;

- 3) Default or Termination of an existing contract or future contract with Dallas County;
- 4) A minimum of two (2) years' suspension from new awards to do business with Dallas County;
- 5) Permanent debarment from doing business with Dallas County; and or referral to the appropriate law enforcement body for criminal prosecution;
- 6) Dallas County may retain from the final payment to Contractor, as liquidated damages, an amount equal to the difference between (x) the total SBE participation goal set forth in the contract, and (y) the amount of SBE participation credit given to the Contractor for SBE work performed under a Dallas County contract as determined by the SBE Department. The parties agree that the damage for failure to meet the SBE goal is difficult to determine and that the amount retained represents the party's best calculation of such damages. The parties agree that the liquidated damage for the failure to achieve the SBE contract goal is not a penalty and may be assessed in the sole discretion of Dallas County.

For good cause shown, the SBE Director may grant a stay of the penalty pending appeal. However, in no case shall the stay impede Dallas County's contracting authority.

C. Remedies for Discrimination or Retaliation:

When an allegation is sustained, the Director of Business Enterprise shall recommend to the County Administrator or his/her designee any one or more of the following actions (listed in the order of severity:

- 1) Finding that the respondent business is not a responsive bidder within the meaning of the bid statutes, with respect to specific contracts that Dallas County has put out for bids or intends to put out for bids at the time of such finding;
- 2) Exercise of any other rights or remedies available to Dallas County under any current contract between the respondent business and Dallas County other than rescission, suspension or termination of the contract, including but not limited to liquidated damages;
- 3) Rescission, suspension (for a period up to one year) or termination of any current contract between the respondent business and Dallas County under the terms thereof; or
- 4) Disqualification of the respondent business from bidding and contract awards on Dallas County projects and from participating in Dallas County contracts as a prime. subcontractor, vendor or supplier, for a period of not more than two years, provided that the respondent business shall have the right to petition Dallas County for reinstatement of its active bidder status by demonstrating to Dallas County's reasonable satisfaction that the problems for which it was disqualified have been cured;
- 5) Permanent debarment from doing business with Dallas County; and
- 6) Referral of the matter for criminal prosecution of fraud and/or other violations of state law, if appropriate under the circumstances.

D. Fraud / Dishonesty:

Dallas County has the right to report any suspected false, fraudulent or dishonest conduct or documents in the commitment and attainment of any SBE goal on Dallas County solicitations to the Dallas County District Attorney's office or any applicable enforcement agency including the State Attorney General's Office.