

ORDINANCE NO. 2009-40

AN ORDINANCE ESTABLISHING THE VALDOSTA SMALL EMERGING BUSINESS PROGRAM TO BE KNOWN AS THE VSEB PROGRAM

WHEREAS, Valdosta, Georgia, had previously established a leadership training program in partnership with the Small Business Development Center at Valdosta State University focusing on barriers for small businesses in the community in conducting commerce with the City of Valdosta; and

WHEREAS, the Mayor and Council established as a goal the development of a program in support of small and emerging businesses in the community in their effort to conduct business with the City of Valdosta and, possibly, other government entities in the area; and

WHEREAS, the elected officials and staff conducted extensive research in other communities to develop a program outline addressing the issues impacting the success of small businesses in the community in conducting commerce with the City of Valdosta and other government entities in the community.

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Council of the City of Valdosta, Georgia and it is hereby ordained by authority of same, as follows:

The Valdosta Small Emerging Business Program (VSEB Program), and all related components contained herein, is hereby established to build capacity and remove barriers for small businesses and to provide opportunities for qualified VSEBs to conduct business with the City of Valdosta.

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1.0 **DEFINITIONS.**

As used herein the following terms shall have the following meanings:

- 1.1 **Access to Capital Program (AC Program)** - A framework and set of guidelines adopted by participating area lenders and approved by the City to secure financial assistance providing the VSEBs essential credit, which will be used for a variety of necessary business costs and expenses related to a VSEB program project.
- 1.2 **Capital Project** - A project set forth in the City's Capital Improvement Program funded by the City of Valdosta through taxes, bonds, or other sources of revenue to provide adequate or enhanced services for the citizens.
- 1.3 **Capital Improvement Program (CIP)** - An annual list of specific construction projects to be completed by the City of Valdosta.
- 1.4 **Designated User Department** - The City of Valdosta Department requisitioning the work or services to be performed as part of an overall Capital Project or VSEB eligible project.
- 1.5 **Goal** - Targeted outcome of the program. Also refers to the ratio or dollar amount of project potential for qualified, sub-contracting VSEBs.
- 1.6 **Independent Firm** - A business which is owned, operated, controlled and managed by an individual with at least 51% ownership, and upon whom the success and/or failure of the firm depends.
- 1.7 **Price Sharing** - A form of collusion in which information is shared between two or more parties for a fraudulent, illegal, or deceitful purpose.
- 1.8 **Prime Contractor** - The principal contractor who has been awarded the contract for the capital project.
- 1.9 **Prime Contracts** - Contracts to perform on whole or principal capital projects. A VSEB may receive up to five of these per year, but there is a monetary cap on participation.
- 1.10 **Program** - The components that comprise the VSEB program, including processes.
- 1.11 **Program Coordinator** - City of Valdosta staff person who performs the day to day duties regarding the VSEB program, working directly with the Purchasing Agent and Small Emerging Businesses and reporting directly to the Deputy City Manager for Administration.
- 1.12 **Project Manager** - City of Valdosta staff person who directly oversees the specific, on-going capital project(s) for the User Department(s).
- 1.13 **Request for Qualifications (RFQ)** - A competitive process conducted by the City of Valdosta whereby the Purchasing Division publicly advertises requests for businesses to submit a proposal outlining the entity's qualifications for the pre-qualification and procurement of professional services, service contracts, etc.
- 1.14 **Subcontractor** - The one who takes a portion of contract from principal contractor or another subcontractor.

- 1.15 Valdosta Metropolitan Statistical Area (Valdosta MSA)** - The area composed of Brooks, Echols, Lanier, and Lowndes Counties. As designated by the United States Department of Management and Budget in 2003.
- 1.16 Valdosta Small Emerging Business (VSEB)** - All businesses who meet all of the criteria established under this ordinance and are certified hereunder.
- 1.17 Valdosta Small Emerging Business Advisory Committee** - A five member group who advises and helps oversee the program, insuring that the program remains within the function and intent of the purpose of the program.

2.0 PURPOSE AND OVERVIEW OF THE PROGRAM

The purpose of the Program is to provide opportunities for qualified VSEBs to conduct business with the City of Valdosta. Valdosta Small Emerging Businesses must meet a series of qualifications and be certified by the City as having adequately met those criteria as defined herein to qualify to participate in the program prior to gaining access to the program's bidding opportunities. A series of key assistance areas have been assembled to support the VSEBs. In addition to requirements for certification prior to participation, the program provides on-going rules and expectations for both the VSEBs and the City. Accountability, processes of appeal, and an end-date graduation of participation are clearly defined within the program.

3.0 CRITERIA FOR CERTIFICATION

Certification will be granted only in those areas for which the owner has the ability and expertise to manage and control the firm's operations and work.

- 3.1** To be certified as a VSEB, an individual owner must meet the following criteria:
 - 3.1.1** reside in one of the counties in the Valdosta Metropolitan Statistical Area (MSA) for a minimum of one year at the time the application is submitted; or have an established business headquartered for a minimum of three years in Valdosta, and reside in one of the surrounding counties;
 - 3.1.2** have a personal net worth less than \$750,000, excluding personal residence, including but not limited to business value and assets (measured as book value), ownership in other businesses and all other assets personally owned, held in trust for the individual owner's benefit, or held by a spouse. Provided, however, that the following caps apply: 1) for capital improvement (a), \$3,000,000 in annual gross receipts on average, over the immediately preceding three year period; 2) for suppliers, \$2,000,000 in annual gross receipts on average, over the immediately preceding three year

period; 3) for professional services, \$2,000,000 in annual gross receipts on average, over the immediately preceding three year period; and 4) for contractual services, \$1,000,000 in annual gross receipts on average, over the immediately preceding three year period. These amounts shall be subject to annual analysis by the DCMA or his designee who, should the annual gross receipts in any category change by 5%, will recommend to the Mayor and Council amounts that may be more appropriate;

3.1.3 have not been in the program for a total of more than eight years, provided, however, that participation may be increased by two one-year periods for good cause;

3.1.4 own and control more than 51% of the business entity being certified;

3.1.5 own any license required by local, state, or federal law;

3.1.6 have expertise normally required by the industry for the field for which certification is sought;

3.1.7 be a for-profit small business concern;

3.1.8 not be a front, a broker, or a pass-through;

3.1.9 perform a commercially useful function typical of the field for which certification is granted;

3.1.10 not be controlled or operate as front by non-VSEB family, former or present employers. Familial relationships where capital is provided for the business will be subject to scrutiny and possible rejection;

3.1.11 the VSEB owner(s) contributions of capital or expertise to acquire the ownership interest must be real and substantial; and

3.1.12 be a business, including a sole proprietorship, partnership, corporation, limited liability company, or any other business or professional entity;

3.1.12.1 Which is at least 51% owned by one or more of the individuals identified herein in paragraph (c)(1) the ownership of any such business that has been in existence for a year or over must have maintained such 51% ownership for at least one year; and

3.1.12.2 in the case of a publicly owned business, at least 51% of all classes of the stock of which is owned by one or more of such persons each of whom meets the personal net worth criteria set forth above; and

3.1.12.3 be a citizen or lawfully admitted permanent resident of the United States and be compliant with the residency requirements of the VSEB program.

3.2 Only a firm that is managed and controlled by a VSEB may be certified under the VSEB program. The VSEB owner(s) must actually exercise control over the firm's operations, work, management and policy. Evidence of such controls is as follows:

3.2.1 A firm must not be subject to any formal or informal restrictions that limit the customary discretion of such owner. There can be no

restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices that prevent the VSEB owner, without the cooperation or vote of a non-qualifying person or entity from making any business decision of the firm.

- 3.2.2** The VSEB owner may delegate various areas of the management or daily operations of the firm to persons who would not qualify to be VSEBs only if such delegation is typical in the industry for such businesses. Such delegations of authority must be revocable, and the VSEB must retain the power to hire and fire any such person. The VSEB owner must have an overall understanding of, and managerial and technical competence, experience and expertise, directly related to the firm's operations and work.
- 3.2.3** The VSEB owner cannot engage in outside employment or other business interests that conflicts with the management of the firm or prevents the owner from devoting sufficient time and attention to the affairs of the firm to manage and control its activities unless such activities would be appropriate with commensurate businesses, in order to avoid sham or fraudulent certifications.
- 3.3** Only an independent firm may be certified as a VSEB. An independent firm is one whose viability does not depend on its relationship with another firm. Recognition of an applicant as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is independent. In determining whether an applicant is an independent business, the VSEB Program Coordinator will:
 - 3.3.1** Scrutinize relationships with non-VSEBs in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.
 - 3.3.2** Consider whether present or recent family, or employer/employee relationships between the applicant compromises the applicant's independence.
 - 3.3.3** Examine the applicant's relationships with non-VSEB prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the applicant's independence.
 - 3.3.4** Consider the consistency of relationships between the applicant and non-VSEBs with normal industry practices.
 - 3.3.5** An owner shall be certified only for specific types of work for which the owner(s) has the ability and expertise to manage and control the firm's operations and work.

4.0 PROGRAM ADMINISTRATION GUIDELINES

4.1 Valdosta Small Emerging Business Program.

- 4.1.1** The City shall identify at least a cumulative total of 10% of its work in its CIP program during the annual budget submission which shall be accomplished with VSEBs, using sheltered opportunities, prime

contracting opportunities and subcontracting goals. The City, through each Department head shall commit in its budget to award at least 10% of its contracts for services, and non-construction contracts to VSEBs, provided, however, that such awards shall comply with local, state, and federal law and that there exist certified VSEBs to perform the work. These goals are established for the first year of the VSEB program and will be revised based on measurable results after year one.

4.1.2 In implementing the program, the VSEB Program Coordinator shall first provide opportunities for direct or prime contracting. Such opportunities should be created by breaking procurement/contracting opportunities packages into smaller components, and separating work that requires licenses from that which does not in separate bid or proposal requests where feasible.

4.1.3 Subcontracting opportunities should be provided within vertical construction projects, with horizontal construction project opportunities being provided to the maximum extent possible, by prime or direct contracting. Nevertheless, the subcontracting opportunities shall be provided to those trades typically established as subcontractors.

4.1.4 The City may issue joint checks upon the request of the VSEB in order to facilitate bonding, financing, or other requirements of contracting with the City.

4.2 VSEB Program Administration.

4.2.1 The Deputy City Manager for Administration or designee shall manage and direct the Program through supervision of the VSEB Program Coordinator.

4.3 Access to Capital

4.3.1 An Access to Capital Program may be established by the City in conjunction with lending institutions to assist VSEBs with obtaining essential access to capital. Refer to Section 7.4.

4.4. Numerical goals.

The percentages set forth below for VSEBs are annual goals and are considered to be targets, not quotas, set to achieve participation levels commensurate with available businesses. The following goals shall pertain to all of the following subsections as applicable: Construction (10%), Construction-Related Professional Services (10%), Contractual Services (10%) and Commodities Contracts (10%).

4.4.1 Review Provision. The goals outlined in Section 4.4 shall be reviewed on an annual basis and any changes recommended to the DCMA to legislation to modify the goals as applicable.

4.5 Valdosta Small Emerging Business goals.

The following goals are for VSEBs in the Program.

4.5.1 The overall small business goal is at least 10% of the total dollar amount of all eligible contracts on a project by project basis, such that the City may award at least 10% of total City contracts to

VSEBs; provided that such awards do not violate state or federal law and provided further that there are certified VSEBs to perform the work.

4.6 Contract pre-award compliance procedures.

- 4.6.1** For all solicitations, the bidder/proposer shall submit a Schedule of Participation detailing all VSEB and non-VSEB subcontractors from which the bidder/proposer solicited bids or quotations. The entities comprising the VSEB goal of at least 10% goals as set forth supra shall be identified, or the basis for a waiver for good faith efforts shall be provided with the bid or proposal. The list of VSEBs posted on the City's website establishes the group from which a bidder/proposer must solicit subcontractors under this program. The VSEBs participation shall be due at the time established in the solicitation documents.
- 4.6.2** Any agreement between a bidder/proposer that prevents a VSEB from providing quotations to other bidders/proposers is prohibited.
- 4.6.3** Joint ventures shall only be allowed under this Program in cases that demonstrate legitimate, detailed VSEB partnerships with non-VSEBs, proof of which shall be provided to and approved by the Coordinator.
- 4.6.4** Where the bidder/proposer cannot achieve the Project Specific Goal(s), the Coordinator and DCMA will determine whether Good Faith Efforts have been made. In making this determination, the staff will consider, at a minimum, a matrix to determine the bidder/proposer's efforts to:
 - 4.6.4.1** Solicit certified subcontractors in the scopes of work of the contract. The bidder/proposer shall provide interested VSEBs with timely, adequate information about the plans, specifications, and other such requirements of the contract to facilitate their quotation. The bidder/proposer must follow up initial solicitations with interested VSEBs.
 - 4.6.4.2** Identify a portion of the work available to VSEBs consistent with their availability.
 - 4.6.4.3** Negotiate in good faith with interested VSEBs. Price sharing is prohibited in negotiations. Evidence of such negotiation includes the names, addresses, and telephone numbers of VSEBs that were contacted; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and why agreements could not be reached with them. The ability or desire of a bidder/proposer to perform the work of a contract with its own organization does not relieve it of the responsibility to make Good Faith Efforts on all scopes of work subject to subcontracting.
 - 4.6.4.4** Facilitate the leasing of equipment supplies or equipment when they are of such a specialized nature that the VSEB

could not readily and economically obtain them in the marketplace, where feasible.

4.7 Good faith efforts in lieu of meeting program goals.

For a contract with VSEB subcontracting goals, a contractor must comply by either meeting the goal or demonstrating Good Faith Efforts to achieve it that are consistent with the requirements set forth in this Chapter. In determining whether a bidder/proposer has made Good Faith Efforts, in lieu of achieving the stated goals, the Coordinator, in conjunction with the DCMA, shall consider all relevant factors, which include:

4.7.1 The ability of other bidders/proposers in meeting the Project Specific Goal(s) may be considered.

4.7.1.1 A contact log showing the name, address, and contact number (phone or fax) used to contact the proposed certified subcontractors, nature of work requested for quote, date of contact, person making the effort;

4.7.1.2 The description of work for which a quote was requested;

4.7.1.3 The amount of the quote given, if one was obtained;

4.7.1.4 The list of Departments of work not subcontracted and an explanation why not; and

4.7.1.5 Subcontractor information as requested by forms developed by the Purchasing Department.

4.7.2 For contracts other than for construction related professional services, a signed letter of intent from all listed VSEBs describing the work, materials, equipment or services to be performed or provided by the VSEBs and the agreed upon dollar value shall be due with the bid documents but in no event before the expiration of forty-eight hours after the submission of the bid.

4.7.3 For construction related professional services contracts, the highest ranked proposer must deliver at the time of fee and contract negotiations signed letters of intent between itself and the VSEBs to be utilized. If the Purchasing Agent finds that a bidder/proposer did not make sufficient Good Faith Efforts, the Purchasing Agent shall communicate this finding to the User Department and recommend that the bid/proposal be rejected. A bidder/proposer may protest this determination pursuant to the City's bid protest procedures.

4.8 Continuing obligations of VSEBs and graduation.

The certification status of all VSEBs shall be reviewed annually by the Program Coordinator through re-certification application. Failure of the firm to seek re-certification by filing the necessary documentation with the Program Coordinator within sixty days from the date of receipt of written notification from Program Coordinator may result in being removed from the list of certified VSEBs.

4.8.1 It is the responsibility of the VSEB to notify the Finance Department of any change in its circumstances affecting its continued eligibility for the Program. Failure to do so may result in the firm's de-

certification and preclusion from future participation.

4.8.2 The VSEB that no longer meets certification may be decertified at any time.

4.8.3 A firm, or qualifying individuals, who have participated in the VSEB program for a total of eight years shall graduate from the Program.

4.9 Contract performance compliance procedures.

4.9.1 Upon award of a contract by the City that includes Project Specific Goal(s), the prompt pay obligations in the City's contract with the prime contractor, and the contract between the prime contractor and the subcontractors and sub-consultants named in response to this Act become covenants of performance by the contractor in favor of the City.

4.9.2 The contractor shall provide a listing of all VSEBs and any other subcontractors to be used in the performance of the contract, and subcontractor payment information to the City with each request for payment submitted to the City. The Coordinator and the User Department shall monitor subcontractor participation during the course of the contract and shall have reasonable access to all contract-related documentation held by the contractor.

4.9.3 The contractor cannot make changes to the Schedule of Participation or substitute subcontractors named in the Schedule of Participation without the prior written approval of the DCMA or designee upon recommendation of the Coordinator or designated staff person. Unauthorized changes or substitutions shall be a violation of this chapter, and may constitute grounds for rejection of the bid or proposal or cause termination of the executed contract for breach, the withholding of payment and/or subject the contractor to contract penalties or other sanctions.

4.9.3.1 All requests for changes or substitutions of the subcontractors named in the Schedule of Participation shall be made to the Coordinator or designated staff person with a copy to the DCMA in writing, and shall clearly and fully set forth the basis for the request. A contractor shall not substitute a subcontractor or perform the work designated for a subcontractor with its own forces unless and until the DCMA or designated staff person approves such substitution in writing. A contractor shall not allow a substituted subcontractor to begin work until both the DCMA and the User Department have approved the substitution.

4.9.3.2 The facts supporting the request must not have been known nor reasonably should have been known by either party prior to the submission of the Schedule of Participation. Bid shopping is prohibited. The contractor must bring this dispute to the Coordinator or designated staff person for resolution.

4.9.3.3 The DCMA's final decision whether to permit or deny

the proposed substitution, and the basis therefore, will be communicated to the parties in writing by the Program Coordinator.

4.9.3.4 If the City requires the substitution of a subcontractor listed in the Schedule of Participation, the contractor shall undertake Good Faith Efforts to fulfill the Schedule of Participation if the Project Specific Goals would not otherwise be met. If the Goal(s) cannot be reached and Good Faith Efforts have been made, the contractor may substitute with non-VSEBs.

4.9.4 If a Contractor plans to hire a subcontractor on any scope of work that was not previously disclosed in the Schedule of Participation, the contractor shall obtain the approval of the DCMA or designee to modify the Schedule of Participation and must make Good Faith Efforts to ensure that VSEBs have a fair opportunity to bid on the new scope of work.

4.9.5 Changes to the scopes of work shall be documented by the User Department at the time they arise, to establish the reasons for the change and the effect on achievement of the Project Specific Goal(s).

4.10 VSEB and Program eligibility

4.10.1 Only businesses that meet the criteria of VSEBs may be certified for participation in the Program. The applicant has the burden of persuasion.

4.10.2 Only an independent firm may be certified as a VSEB. An independent business is one whose viability does not depend on its relationship with another firm. Recognition of an applicant as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is independent. The Coordinator must determine that an owner has an independent business in order to certify the business as a VSEB. In doing so, the Coordinator will take into account all reasonable criteria for reviewing control of a business.

4.10.3 The certification status of all VSEBs shall be reviewed annually by the Program Coordinator. Failure of the firm to seek re-certification by filing the necessary documentation with the Division within sixty days from the date of receipt of written notification from the Finance Department may result in de-certification.

4.10.4 It is the responsibility of the VSEBs to notify the Finance Department of any change in its circumstances affecting its continued eligibility for the Program. Failure to do so may result in the firm's de-certification.

4.10.5 The DCMA shall decertify a firm that does not meet the eligibility criteria.

4.10.6 A VSEB may receive no more than five Prime Contracts per year or an aggregate total value of prime contracts per year in the amount

of \$4,000,000, whichever is greater.

4.10.7 Joint ventures between VSEBs and non-VSEBs are not eligible for the Program, unless they provide structured, detailed, mentoring opportunities, proof of which shall be provided to the Coordinator.

5.0 COUNTING SUBCONTRACTING PARTICIPATION OF VSEBS

- 5.1** The entire amount of that portion of a construction subcontract that is performed by the VSEBs own forces shall be counted, including the cost of supplies and materials obtained by the VSEBs for the work of the subcontract, and supplies purchased or equipment leased by the VSEBs, excluding supplies and equipment purchased or leased by the VSEBs from the prime contractor or its Affiliate, which shall not count as VSEB participation.
- 5.2** The entire amount of fees or commissions charged by VSEBs 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 of a contract shall be counted, provided the fee is reasonable and not excessive as compared with fees customarily charged for similar services.
- 5.3** If a firm ceases to be a certified VSEB during a contract, the dollar value of work performed under a contract with that firm after it has ceased to be certified shall not be counted in the City's internal accounting. No contractor shall be penalized in any way as a result of the failure of a project to achieve its Project Specific Goals because of the operation of this Section.
- 5.4** In determining achievement of a Subcontracting Participation Goal, the participation of a VSEB shall not be counted until the amount being counted has been paid to that entity.
- 5.5** Achievement of Project Specific Goal(s) shall be evaluated following the completion of the project.

6.0. ACTS WHICH MAY RESULT IN EXPULSION FROM THE VSEB PROGRAM; FINES AND CRIMINAL OFFENSES

- 6.1** The following violations of this chapter are unlawful:
 - 6.1.1** Providing information to the City in connection with an application for or challenge to certification, recertification or de-certification as VSEBs that the providing party knew or should have known to be false or misleading.
 - 6.1.2** Providing information to the City in connection with submission of a bid, responses to requests for qualifications or proposals, Good Faith Efforts documentation, post-award compliance, or other Program operations that the providing party knew or should have known to be false or misleading.
 - 6.1.3** Falsely attesting to re-certification under this program.

- 6.1.4 Substituting VSEBs subcontractors without first receiving approval for such substitutions.
 - 6.1.5 Committing any other violations of the provisions of this ordinance.
 - 6.1.6 Submitting false documentation for payments.
- 6.2 A bidder, proposer, contractor, or subcontractor is subject to withholding of payments under the contract, termination of the contract for breach, contract penalties, de-certification as a VSEB, or being barred or deemed non-responsive in future City solicitations and contracts for up to two years, if it is found to have:
 - 6.2.1 Provided information in connection with an application for certification or re-certification that it knew or should have known to be false or misleading.
 - 6.2.2 Provided information in connection with the submission of a bid or proposal or documentation of Good Faith Efforts, post-award compliance, or other Program operations that it knew or should have known to be false or misleading.
 - 6.2.3 Failed in bad faith to fulfill the Subcontracting Participation Goal, thereby materially breaching the contract.
 - 6.2.4 Repeatedly failed to comply in good faith with substantive provisions of this ordinance.
 - 6.2.5 Failure to comply with remediation due to contract performance: If a vendor is removed from a project due to the inability to perform contracted job(s) and then neglects to comply with the staff's recommended remediation, the vendor may be expelled from the VSEB Program.

7.0 CITY RESPONSIBILITIES

7.1 VSEB Program Administration.

- 7.1.1 The DCMA or designee shall manage the Program, including:
 - 7.1.1.1 Implementing and enforcing rules and regulations hereunder and, implementation and monitoring of the Program.
 - 7.1.1.2 Breaking larger contracts into smaller components where such actions will facilitate competition and provide opportunities under the Program.
 - 7.1.1.3 Providing information and assistance to VSEBs relating to City procurement opportunities, practices and procedures, and bid and proposal specifications, requirements and prerequisites.
 - 7.1.1.4 Certifying businesses as VSEBs, maintaining certification records, and ensuring that such information is available on the City's Procurement website identifying all such certified entities.
 - 7.1.1.5 Establishing Project Specific Goals after ensuring that adequate VSEBs are available to do the work.

- 7.1.1.6 Evaluating contractors' achievement of Project Specific Goals or Good Faith Efforts to meet Project Specific Goals.
- 7.1.1.7 Working with City departments to ensure prompt, timely, payments to VSEBs for work performed herein.
- 7.1.1.8 Receiving, reviewing, and acting upon complaints and suggestions concerning the Program. The VSEB Program Coordinator shall create a complaint form as part of this process that identifies both parties.
- 7.1.1.9 Providing bi-annual open houses to answer questions regarding the operation of the Program.
- 7.1.1.10 Posting all contracting opportunities on the City's website under "VSEB Program".
- 7.1.1.11 Identifying all certified companies on its website within three business days of certification.
- 7.1.1.12 As appropriate, advertising all pre-bid conferences in applicable VSEB newspapers, direct-mail or e-mail notices to certified VSEBs, and otherwise seek to increase the interest of all VSEBs certified in the scopes of work of the contract.
- 7.1.1.13 The VSEB Program Coordinator shall provide interested VSEBs with timely, adequate information about the plans, specifications and requirements of the contract to allow them to respond to the solicitation either directly or by referral to the City department seeking the procurement.
- 7.1.1.14 The Purchasing Agent shall maintain a list of certified VSEBs, shall have copies available for distribution and shall post such information on the City's Procurement website.
- 7.1.1.15 The DCMA shall be allowed to adjust the annual gross receipts for good cause shown. An appeal of the decision of the Coordinator may be appealed to the DCMA or a designated staff person.

7.1.2 Each City department shall identify to the Purchasing Agent the person with the responsibility of ensuring VSEB participation; said person shall receive diversity training and shall prepare quarterly reports to the Purchasing Agent identifying the extent of non-VSEBs and VSEBs participation in any procurement within their Department that each month.

7.2 Project goals.

7.2.1 The DCMA or designee shall establish Project Specific Goal(s) based on the availability of at least normal industry practice, as determined in consultation with the User Department, the availability of at least two VSEBs to perform the functions of those

individual contracts and the City's utilization of such to date.

7.2.2 Project Specific Goal(s) shall not be set on emergency contracts as defined by City Code or for purchases made in conjunction with the State although VSEBs shall be considered for such sole-source or emergency procurements if qualified.

7.3 Creation of Bond Enhancement Program.

The City may, in its sole discretion, establish, develop and provide a bond enhancement program for the benefit of VSEBs as defined below, with an established bond enhancement program entity. The purpose of this program is to provide support services to assist vendors certified hereunder in their efforts to secure performance and payment bonds for public and private contracts. The program shall not provide the underlying bond but shall provide in-house technical assistance in securing bonding, small business support services and contractor monitoring necessary for such bond underwriting, as well as improvement plans for contractors who do not qualify.

7.3.1 Georgia Code provides that VSEBs do not have to submit bid bonds for projects under \$100,000. Section 13-10-21(b) provides that VSEBs do not need to provide performance bonds for projects under \$300,000, or such other minimum amount set by the Georgia legislature under Ga. Stat. Section 13-10-20(a) as amended.

7.4 Access to capital.

7.4.1 The City will work in conjunction with lending institutions to assist VSEBs with obtaining access to capital (the "AC Program"). A designated entity approved by the lending institutions may manage the distribution of said funds, in accordance with guidelines adopted by the lenders and approved by the City in order to ensure proper administration and monitoring and to ensure continuity for the program.

7.4.1.1 The City's VSEB Program Coordinator (Coordinator) or designated staff person shall work closely with the existing business specialist and other key members or similar private entities when outsourcing program components to ensure that only certified VSEBs are receiving recommended assistance.

7.4.1.2 The Coordinator or designated staff person working with government or similar private entities shall gather information on all available programs for access to capital, including but not limited to local bank liaisons and any other program which assists small businesses to obtain capital.

7.4.1.3 The DCMA or designee shall provide biannual reports to the Mayor and Council, identifying the size and number of businesses assisted in the two preceding quarters. Said reports shall include the nature of the service or product provided; the program (whether VSEB or Majority); the nature of the contracts awarded and the dollar value of each

contract awarded.

7.4.1.4 The Coordinator or designated staff person working with other local agencies/ organizations shall also hold biannual open houses or workshops to showcase available assets and obtain information from VSEBs on available programs.

7.4.2 The Coordinator or designated staff person shall staff a series of meetings initiated by the DCMA between the City and any Financial Institutions with offices in Valdosta who wish to participate in the creation of VSEBs banking managers who will assist VSEBs in obtaining credit.

7.5 Continuing education and mentoring programs

7.5.1 The City shall engage local educational institutions to advise and implement continuing education, training and mentoring programs, including but not limited to training on doing business with the City, subcontracting documentation requirements, accounting for the small business, and related matters for construction related contractors and subcontractors, including technology, bidding, and bonding, and project management.

7.6 Semi-monthly payments to certified VSEBs.

The City shall pay certified VSEBs semi-monthly, upon proper payment application to the applicable City Department. City Departments are to perform all necessary inspections and otherwise endeavor to ensure that prompt review and as applicable approval of certified VSEB work is paid within ten days of receipt of invoice. The City shall pay all approved invoices within five business days of receipt by the Finance Department. The Finance Department shall provide quarterly statements to the DCMA or designee identifying the timing of VSEB payments for contracts within their departments. These statements are to be organized and provided to the DCMA or designee. Prime contractors shall be obligated to pay subcontractors within three days of receipt from the City of funds, and must confirm payment to the City.

7.7 Insurance program review

The VSEB Program Coordinator for the City shall prepare a report on available insurance programs for Georgia small businesses, and make recommendations regarding methods or programs to assist certified VSEBs in obtaining requisite insurance. Said report shall be provided to the DCMA or his designee, on or before January 15, 2010 and thereafter shall be prepared and submitted biannually, with a copy being sent to VSEBs.

7.8 Pre-award review of compliance with numerical goals, including good faith efforts.

7.8.1 The Program Coordinator shall timely review the Schedule of Participation prior to award, including the scope of work and the letters of intent from VSEBs. The Program Coordinator may request clarification in writing of items listed in the Schedule of

Participation, provided such clarification shall not include the opportunity to augment listed VSEBs participation or Good Faith Efforts. The Program Coordinator shall review all submittals and document the participation of each submittal.

7.8.2 If the Program Coordinator determines that the Schedule of Participation demonstrates that the Project Specific Goal(s) have been achieved or Good Faith Efforts made, and the User Department concurs, the Purchasing Agent shall recommend award of the contract to the appropriate approval authority based on the current city ordinance regarding contract awards. The Program Coordinator shall verify with each VSEB that a contract in the specified amount has been awarded.

7.9 Collecting data to evaluate the VSEB program.

7.9.1 City Staff shall develop and use measures to quantify and categorize the contracts being awarded to all contractors and consultants, including VSEBs. The coordinator shall submit the format for its work to the City Manager and DCMA with a copy to the Mayor and Council within sixty days of the adoption of the VSEB Program.

7.9.2 The Coordinator shall prepare quarterly reports and shall include data on prime contractors and subcontractors bidding on and awarded city projects, including at a minimum without limitation: the race, gender, or nationality of the contractor or consultant, along with the scope of services, commodity code, size of contracts awarded in the categories used by Georgia Statute. The DCMA/designee shall report on a quarterly and an annual basis to the Mayor and Council on the number and value of contracts awarded, by category or work, contract size, and characteristic of company (i.e., African American, Hispanic, Native American, Asian, Women, non-minority male owned small businesses) and whether certified or not.

7.9.3 There is established a VSEB Advisory Committee, following the second year of the program, consisting of 5 members to review the status of the goals of this program, including the number and dollar value of contracts awarded, the training, capital, and bonding programs, and difficulties or accomplishments of the program, along with a comparison of the achievements under the program compared with the goals. This committee shall meet with the Coordinator, who shall generate a report for the City Manager, Mayor and Council within fourteen days of each quarterly meeting. The Mayor and Council shall appoint 5 members. The committee shall be comprised of two non-VSEB contractors, two VSEB contractors and one private citizen for four year terms. The Mayor and Council shall strive to reflect the diversity of the community in its appointments; each of the five members shall be confirmed by the Mayor and Council. The VSEB Program Coordinator shall

serve as staff to the committee.

7.10 Valdosta Small Emerging Business Advisory Committee

There is to be established, following the second year of the VSEB Program, a VSEB Support Committee consisting of five members, appointed by the Mayor and Council, shall serve staggered four year terms each and comprised of two non-VSEB contractors, two VSEB contractors and one private citizen for four year terms. The terms shall be staggered with the first appointee serving one year before reappointment, the second two serving two years before reappointment, and the final two serving three years before reappointment. The Mayor and Council shall strive to reflect the diversity of the community in its appointments; each of the five members shall be confirmed by the Mayor and Council. The VSEB Program Coordinator shall serve as staff to the committee. Additional criteria can be found in the City's Boards, Authorities, and Commissions Policy on the City's website at www.valdostacity.com and in the City Manager's Office. The purpose of this committee is to review the status of the goals of this program, including the number and dollar value of contracts awarded, the training, capital, and bonding programs, and difficulties or accomplishments of the program, along with a comparison of the achievements under the program compared with the goals. This committee shall meet with the Coordinator, who shall generate a report for the City Manager, Mayor and Council within fourteen days of each quarterly meeting.

7.11 Continuing obligations of VSEBs and graduation.

The certification status of all VSEBs shall be reviewed annually by the Program Coordinator through re-certification application. Refer to Section 4.8.

7.12 De-certification, Denial and appeal procedure.

7.12.1 The DCMA or designee may move to decertify a VSEB that repeatedly fails to honor quotations in good faith, or otherwise comply with VSEB Program requirements.

7.12.2 A firm that has been denied certification or recertification or been decertified may appeal the denial or decertification as follows:

7.12.2.1 Within fifteen days of receipt of denial of certification or re-certification, or notice of intent to decertify, the firm may appeal such action in writing within 15 days to the Office of the DCMA or designee.

7.12.2.2 An informal hearing shall be held by the DCMA, at which the firm may present additional facts and evidence in support of its eligibility. The DCMA may request the attendance of any witness and production of any documents concerning the applicant's affairs. The applicant's failure to comply promptly with these requests may be grounds for denial of the appeal.

7.12.2.3 The DCMA or designee shall determine the firm's eligibility on the basis of the information provided at

the hearing. The DCNA's written decision shall be communicated to the firm within ten days of the hearing.

7.12.2.4 The presumption that the decertified firm is eligible shall remain in effect until the City renders a final decision.

7.12.2.5 A firm denied or found to be ineligible may not apply for certification for one year after the effective date of the final decision.

7.12.3 A third party may challenge the eligibility of an applicant for certification or a certified firm. The presumption that the challenged firm is eligible shall remain in effect until the City renders a final decision.

7.12.3.1 The challenge shall be made in writing to the Coordinator and shall include all information relied upon by the challenging party.

7.12.3.2 The DCMA or designee shall notify the challenged firm in writing of the challenge, identify the challenging party and summarize the grounds for the challenge. The notice may also require the challenged firm to provide the DCMA, within a reasonable time, any information requested to permit the DCMA to evaluate the eligibility of the firm.

SO ORDAINED, this 24th day of September, 2009.

Mayor, City of Valdosta

ATTEST:

Clerk of Council