

*Item -V-K.1*

**ORDINANCES/RESOLUTIONS**

**ITEM #63712**

*Upon motion by Vice Mayor Jones, seconded by Council Lady Wilson, City Council **ADOPTED, BY CONSENT**, Ordinance to **AMEND** various portions of Section 2 of the City Code re the Small Business Enhancement Program*

*Voting: 11-0*

*Council Members Voting Aye:*

*Robert M. Dyer, Amelia N. Ross-Hammond, Barbara M. Henley, Vice Mayor Louis R. Jones, Shannon DS Kane, Brad Martin, John D. Moss, Mayor William D. Sessoms, Jr., John E. Uhrin, Rosemary Wilson and James L. Wood*

*Council Members Voting Nay:*

*None*

*Council Members Absent:*

*None*

**REQUESTED BY COUNCILMEMBERS DYER AND KANE**

1 AN ORDINANCE TO AMEND SECTIONS 2-  
2 224.1, 2-224.2, 2-224.3, 2-224.5, 2-224.6 AND 2-  
3 224.8 OF THE CITY CODE PERTAINING TO  
4 THE SMALL BUSINESS ENHANCEMENT  
5 PROGRAM  
6

7 SECTIONS AMENDED: §§ 2-224.1, 2-224.2,  
8 2-224.3, 2-224.4, 2-224.5, 2-224.6, 2-224.8  
9

10 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VIRGINIA  
11 BEACH, VIRGINIA:

12  
13 That Sections 2-224.1, 2-224.2, 2-224.3, 2-224.4, 2-224.5, 2-224.6, and 2-224.8  
14 of the Code of the City of Virginia Beach, Virginia, is hereby amended and reordained to  
15 read as follows:  
16

17 **Sec. 2-224.1. Definitions.**  
18

19 For purposes of this subsection, the following words shall have the meanings  
20 ascribed to them in this section:  
21

22 ~~DMBE-SWAM-certified small business~~ means a small business that has been  
23 certified by the Virginia Department of Minority Business Enterprises or successor  
24 department of the Commonwealth.  
25

26 ~~DMBE-SWAM-certified small business, including woman, service disabled~~  
27 ~~veteran and minority owned businesses, subcontracting participation plan:~~ A plan  
28 detailing, at a minimum: Whether the contractor intends to utilize any subcontractors;  
29 what, if any, ~~DMBE SWAM-certified small business, including woman-owned, service~~  
30 ~~disabled veteran-owned and minority-owned,~~ subcontractors the contractor intends to  
31 utilize; the work to be performed by each ~~DMBE SWAM-certified small business,~~  
32 ~~including woman-owned, service disabled veteran owned and minority-owned~~  
33 subcontractor; and the anticipated amount or percentage to be paid to each ~~DMBE~~  
34 ~~SWAM-certified small business, including woman-owned, service disabled veteran-~~  
35 ~~owned and minority-owned subcontractor;~~ SWAM-certified small businesses include  
36 small businesses that are SWAM-certified as being minority owned, woman owned, or  
37 disabled veteran owned. Prime contractors are strongly encouraged to utilize minority  
38 contractors as part of their overall small business subcontracting plan. The City Council  
39 has established a goal of 10% minority-owned business participation in City contracts.  
40

41 Prime Contractor Workforce Composition Form means a document providing the  
42 following information: the composition of the contractor's workforce, specifically  
43 indicating the percentage of woman, service disabled veteran and minority employees  
44 in their company; the percentage of woman, service disabled veteran and minorities in  
45 management positions, supervisory positions, professional positions, and  
46 nonprofessional positions; ~~what steps the contractor has taken to solicit subcontracting~~  
47 ~~bids from DMBE-certified small businesses, including woman-owned, service disabled~~

48 ~~veteran-owned and minority-owned subcontractors; which DMBE certified small~~  
49 ~~businesses, including woman-owned, service disabled veteran-owned and minority-~~  
50 ~~owned businesses the contractor has solicited; if the contractor has elected not to utilize~~  
51 ~~a DMBE certified small business, including woman-owned, service disabled veteran-~~  
52 ~~owned or minority-owned, subcontractor, an explanation of the decision; and any~~  
53 ~~additional good faith minority-owned, service disabled veteran-owned and woman-~~  
54 ~~owned business participation efforts the contractor intends to make in connection with~~  
55 ~~the contract.~~

56  
57 ~~*Good-faith Minority-owned, Service Disabled Veteran-owned and Woman-owned*~~  
58 ~~*Business Participation Efforts:* The sum total of efforts by a particular business bidder to~~  
59 ~~provide for the equitable participation of minority, service disabled veteran and woman~~  
60 ~~employees and SWAM-certified small business subcontractors in response to a City~~  
61 ~~procurement. the operations and contracts of such business.~~

62  
63 ~~Specificity means sufficient information necessary to enable the City staff to~~  
64 ~~substantiate or confirm the matter asserted. For example, "specificity" in the context of a~~  
65 ~~quote requires at a minimum, the following information: the firm providing the quote; the~~  
66 ~~contract person or representative for the quote; the date the quote was provided; and~~  
67 ~~the scope of work attributed to such quote.~~

68  
69 ~~(1) For past efforts, this sum total shall be comprised of the record of minority,~~  
70 ~~service disabled veteran and woman participation over the past two (2) years~~  
71 ~~through employment, retention, and promotion; subcontracting or joint ventures~~  
72 ~~in the private sector; or a combination thereof.~~

73  
74 ~~(2) In connection with the performance of a particular city contract, "good faith~~  
75 ~~efforts" shall mean those measures which are proposed to allow equitable~~  
76 ~~participation of minority, service disabled veteran and woman employees and~~  
77 ~~subcontractors.~~

78  
79 ~~*Minority, Service Disabled Veteran and Woman Contractors Bid List:* A list of~~  
80 ~~contractors who have completed and filed with the purchasing agent the city's bidder~~  
81 ~~application indicating that their firm is a minority-owned, service disabled veteran or~~  
82 ~~woman-owned business. The purchasing agent shall maintain the list and shall organize~~  
83 ~~the list by category of business. Such list shall be provided, upon request, in its entirety~~  
84 ~~or by relevant category, to any interested party. The list shall not be deemed to~~  
85 ~~constitute an endorsement of the qualifications of any business included on the list.~~

86  
87 ~~*Minority-owned Business:* A business or other entity that is at least fifty-one (51)~~  
88 ~~percent owned and controlled by one (1) or more socially and economically~~  
89 ~~disadvantaged person(s). For purposes of this definition, the term "control" shall mean~~  
90 ~~exercising the power to make policy decisions and being actively involved in day-to-day~~  
91 ~~management. Such disadvantage may arise from cultural, racial, chronic economic~~  
92 ~~circumstance or background, or other similar cause. Such persons include, but are not~~

93 limited to, Black Americans, Hispanic Americans, Asian Americans, Eskimos, and  
94 Aleuts.

95  
96 *Service disabled veteran:* means a veteran who (i) served on active duty in the  
97 United States military ground, naval, or air service, (ii) was discharged or released  
98 under conditions other than dishonorable, and (iii) has a service-connected disability  
99 rating fixed by the United States Department of Veterans Affairs.

100  
101 *Service disabled veteran business:* means a business concern that is at least  
102 51% owned by one or more service disabled veterans or, in the case of a corporation,  
103 partnership, or limited liability company or other entity, at least 51% of the equity  
104 ownership interest in the corporation, partnership, or limited liability company or other  
105 entity is owned by one or more individuals who are service disabled veterans and both  
106 the management and daily business operations are controlled by one or more  
107 individuals who are service disabled veterans.

108  
109 *Small business* means a business, independently owned and controlled by one  
110 or more individuals who are U.S. citizens or legal resident aliens, and together with  
111 affiliates, has two hundred fifty (250) or fewer employees, or annual gross receipts of  
112 ten million dollars (\$10,000,000.00) or less averaged over the previous three years. One  
113 or more of the individual owners shall control both the management and daily business  
114 operations of the small business.

115  
116 *Woman-owned Business:* A business or other entity that is at least fifty-one (51)  
117 percent owned and controlled by a woman or women. For purposes of this definition,  
118 the term "control" shall mean exercising the power to make policy decisions and being  
119 actively involved in day-to-day management.

120  
121 **Sec. 2-224.2. Reserved. Process to Determine Sufficiency of Good Faith Efforts.**

122  
123 When a subcontracting participation plan does not provide the 50% SWAM-  
124 certified participation requirement set forth in 2-224.6(b)(i) and a responsiveness  
125 determination is required pursuant to 2-224.6(b)(ii), the determination of whether the  
126 materials submitted with the bid satisfy the "good-faith" requirement is a question of fact  
127 to be rendered by the purchasing agent. The following factors are relevant to such  
128 determination:

- 129  
130 (1) What steps the bidder has taken to solicit and negotiate subcontracting bids  
131 from SWAM-certified small businesses;  
132  
133 (2) Whether the bidder utilized the City outreach list, if applicable;  
134  
135 (3) Whether the bidder debundled or right-sized project components to allow for  
136 meaningful small business participation;  
137  
138 (4) Whether the bidder provided assistance in bonding, insurance, equipment,  
139 supplies, or other assistance or services;  
140

- 141 (5) Whether the bidder has taken other steps to identify and engage small  
142 businesses that would be willing and able to perform the subcontracted work;  
143 and  
144  
145 (6) Whether the efforts undertaken by the bidder appear to be reasonably  
146 calculated to lead to the maximization of SWAM-certified small business  
147 participation.  
148

149 The review of the above factors should identify the reasons why the 50% SWAM-  
150 certified small business subcontracting requirement was not met. If the Purchasing  
151 Agent is satisfied that the documentation submitted with the bid evidences the bidder  
152 made a good faith effort to provide for the equitable participation of SWAM-certified  
153 small business in the procurement, the purchasing agent shall memorialize such  
154 determination in the bid file. If the purchasing agent is unable to make such  
155 determination, the rationale for such determination shall be communicated to the bidder  
156 at the time of posting intent to award.  
157

158 **Section 2-224.3. DMBE SWAM-certified small business, including woman and**  
159 **minority-owned business opportunities—Construction contracts; bid**  
160 **requirements.**  
161

- 162 (a) Notice of every invitation to bid on city construction contracts in excess of fifty  
163 thousand dollars (\$50,000.00) shall be provided to ~~each business included in the~~  
164 ~~relevant category of the minority, service disabled veteran and woman contractors~~  
165 bid list all SWAM-certified small businesses in the relevant industry sector located  
166 within fifty (50) miles of the city. In addition, the purchasing agent shall also forward  
167 such notices, upon request, to any minority organization or other interested party.  
168 ~~Notice of the solicitation shall be provided to all DMBE certified small businesses in~~  
169 ~~the relevant industry sector located within fifty (50) miles of the city.~~  
170  
171 (b) If a pre-bid meeting is held, the purchasing agent or designee shall provide  
172 prospective contractors with direction regarding the resources for locating DMBE  
173 SWAM-certified small businesses offered by the Virginia Department of Minority  
174 Business Enterprises or successor department.  
175  
176 (c) Every bid submitted in response to an invitation to bid on a city construction contract  
177 in excess of fifty thousand dollars (\$50,000.00) shall be required to contain a  
178 proposed DMBE SWAM-certified small business, ~~including woman, service disabled~~  
179 ~~veteran and minority owned businesses,~~ subcontracting participation plan. The  
180 ~~successful contractor shall update his DMBE certified small business, including~~  
181 ~~woman, service disabled veteran and minority owned businesses, subcontracting~~  
182 ~~participation plan prior to the execution of the contract with the city. The final DMBE-~~  
183 ~~certified small business, including woman, service disabled veteran and minority-~~  
184 ~~owned businesses, subcontracting participation plan shall become a part of the~~  
185 ~~contract with the city.~~  
186  
187 (d) The purchasing agent shall provide, upon request, to all prospective prime  
188 construction contractors, a list of all businesses included in the relevant categories  
189 of the minority, service disabled veteran and woman contractors bid list; provided,

190 however, that the list shall not be deemed to include all available minority-owned or  
191 woman-owned subcontractors, nor shall it be deemed to constitute an endorsement  
192 of the qualifications of any subcontractor included on the list.  
193

194 (e) For purposed of this section, "bid" shall include a request for proposals ("RFP") for  
195 construction, where permitted, design-build proposals, construction manager at risk  
196 contracts, and PPEA proposals (Detail Phase) for construction.  
197

198 (f) Prior to contract execution and provided the bidder meets the requirements of this  
199 section and Section 2-224.6, the bidder shall be afforded the opportunity to update  
200 or validate the subcontracting plan in the 10 days after the posting of notice of intent  
201 to award. This update or validation will not be accepted if it substantially decreases  
202 the utilization, either by dollar amount or percentage, of subcontracted work to  
203 SWAM-certified small business subcontractors. The final SWAM-certified small  
204 business subcontracting participation plan shall become a part of the contract with  
205 the City.  
206

207 **Sec. 2-224.4. Same—Contracts for provision of goods and services.**  
208

209 Solicitations for goods and services contracts of more than fifty thousand dollars  
210 (\$50,000.00) shall include at least three (3) ~~DMBE~~-SWAM-certified small businesses,  
211 including minority-owned businesses, service disabled veteran-owned businesses or  
212 woman-owned businesses that are included on the list maintained pursuant to section  
213 2-224.1 and are in the business of supplying goods or services of the kind to be  
214 procured, unless the list of available SWAM-certified vendors contains less than three  
215 (3) such businesses. ~~DMBE-certified small businesses, including minority-owned~~  
216 ~~businesses, service disabled veteran-owned businesses and woman-owned businesses~~  
217 ~~which are in the business of supplying goods or services of the kind to be procured.~~ In  
218 addition, the purchasing agent shall forward such solicitations, upon request, to any  
219 minority organization or other interested party.  
220

221 **Sec. 2-224.5. Same—Procurement of professional and other than professional**  
222 **services by competitive negotiation.**  
223

224 (a) Notice of every request for proposals ("RFP") for professional services shall be  
225 provided to ~~each business included in the relevant category of the minority, service~~  
226 ~~disabled veteran and woman contractors bid list~~ all SWAM-certified small  
227 businesses in the relevant industry sector located within fifty (50) miles of the city. In  
228 addition, the purchasing agent shall also forward such notices, upon request, to any  
229 minority organization or other interested party. ~~Notice of the solicitation shall be~~  
230 ~~provided to all DMBE certified small businesses in the relevant industry sector~~  
231 ~~located within fifty (50) miles of the city.~~  
232

233 (b) If a pre-bid meeting is held, the purchasing agent or designee shall provide  
234 prospective contractors with direction regarding the resources for locating ~~DMBE~~  
235 SWAM-certified small businesses offered by the Virginia Department of Minority  
236 Business Enterprises or successor department.  
237

- 238 (c) ~~Every proposal submitted in response to a RFP shall be required to contain a~~  
239 ~~proposed DMBE certified small business, including woman, service disabled~~  
240 ~~veteran and minority owned businesses, subcontracting participation plan. The~~  
241 ~~successful contractor shall update his DMBE certified small business, including~~  
242 ~~woman, service disabled veteran and minority owned businesses, subcontracting~~  
243 ~~participation plan prior to the execution of the contract with the city. The final DMBE-~~  
244 ~~certified small business, including woman, service disabled veteran and minority-~~  
245 ~~owned businesses, subcontracting participation plan shall become a part of the~~  
246 ~~contract with the city. To the extent practicable, the submitted proposal should~~  
247 ~~provide possible consultants and subcontractors that the offeror intends to utilize~~  
248 ~~in the execution of the services and whether such firms are SWAM-certified.~~  
249  
250 (d) ~~Compliance with the provisions of section 2-224.2, "Employment discrimination by~~  
251 ~~contractor prohibited," shall be considered in the RFP evaluation and contractor~~  
252 ~~selection process.~~  
253

254 **Sec. 2-224.6. Responsible and responsive bidder; qualified offeror.**  
255

- 256 (a) The provisions of this subdivision shall be used as criteria in determining whether a  
257 bidder is deemed to be responsible and responsive, ~~or whether an offeror is~~  
258 ~~deemed to be fully qualified,~~ and no contract shall be awarded to a bidder ~~or offeror~~  
259 who has not complied with the provisions herein. Failure to submit a proposed  
260 DMBE SWAM-certified small business, including woman, service disabled veteran  
261 and minority owned businesses, subcontracting participation plan or sufficient  
262 documentation of good-faith participation efforts with a bid ~~or proposal~~ shall result in  
263 the bid ~~or proposal~~ being declared nonresponsive.  
264  
265 (b) For construction contracts with a value exceeding fifty thousand dollars  
266 (\$50,000.00) where the contractor intends to utilize subcontractors, the ~~DMBE~~  
267 ~~SWAM-certified small business, including woman, service disabled veteran and~~  
268 ~~minority owned businesses,~~ subcontracting participation plan required by this  
269 section article must either: (i) provide for at least fifty (50) percent of the value of the  
270 subcontracted work to be provided by one or more DMBE SWAM-certified small  
271 businesses; or (ii) provide documentation showing, with specificity, the good-faith  
272 participation efforts undertaken by the prospective contractor to attempt to meet the  
273 fifty (50) percent usage requirement. In fulfilling the fifty percent SWAM-certified  
274 small business subcontracting requirement, prime contractors are strongly  
275 encouraged to utilize minority-owned businesses as subcontractors.  
276  
277 (c) If a subcontracting plan does not meet the requirements of subsection (b), the entire  
278 bid or proposal shall be declared nonresponsive to the solicitation.  
279

280 **Sec. 2-224.8. Penalties.**  
281

- 282 (a) Any bidder or contractor that intentionally makes a material misrepresentation in  
283 connection with any of the information required by subdivision shall be debarred  
284 from contracting with the city for a period of two (2) years from the date of  
285 notification of such debarment.  
286

- 287 (b) Prior to final payment, each contractor shall submit a report documenting its efforts  
 288 undertaken in compliance with its final ~~DMBE~~ SWAM-certified small business,  
 289 ~~including woman, service disabled veteran and minority owned businesses,~~  
 290 subcontracting participation plan. The report shall include, at a minimum: A  
 291 statement of whether any ~~DMBE~~ SWAM-certified small business subcontractors  
 292 were utilized; a list of any ~~DMBE~~ SWAM-certified small businesses, ~~including~~  
 293 ~~woman owned and minority owned subcontractors utilized;~~ a brief description of the  
 294 work performed by each ~~DMBE~~ SWAM-certified small business, ~~including woman~~  
 295 ~~owned and minority owned subcontractors;~~ the amount paid to each ~~DMBE~~ SWAM-  
 296 certified small business, ~~including, woman owned and minority owned~~  
 297 ~~subcontractors;~~ and any additional good-faith minority-owned, service disabled  
 298 veteran-owned and woman-owned business participation efforts the contractor  
 299 made in connection with the contract. A contractor will not receive final payment  
 300 under a contract until he submits the documentation required by this subsection.  
 301
- 302 (c) If actual woman, service disabled veteran and minority participation substantially  
 303 deviates below the levels outlined in the final ~~DMBE~~ SWAM-certified small  
 304 business, ~~including woman, service disabled veteran and minority owned~~  
 305 ~~businesses,~~ subcontracting participation plan, the contractor shall provide an  
 306 explanation for the deviation within ten (10) days of a request by the city for such  
 307 explanation. If the explanation for the deviation lacks reasonable justification that  
 308 rises to the level of dishonesty or in the event the contractor refuses to submit an  
 309 explanation for the deviation, the contractor may be debarred from contracting with  
 310 the city for a period of up to two (2) years from the date of notification of such  
 311 debarment.  
 312
- 313 (d) The debarment of any bidder or contractor pursuant to this subdivision shall be  
 314 deemed to include the debarment of any successor corporation, partnership, firm or  
 315 other entity controlled or managed by any officer, director, partner or controlling  
 316 shareholder of the debarred bidder or contractor.

Adopted by the Council of the City of Virginia Beach, Virginia, on the 22nd day  
 of April, 2014.

APPROVED AS TO CONTENT:

APPROVED AS TO LEGAL SUFFICIENCY:

  
 Finance Department

  
 City Attorney's Office

CA12700  
 R-5  
 April 14, 2014