

ARTICLE 136
Small and Disadvantaged Business Enterprise Program

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136.01 PURPOSE.

Council finds it to be in the interest of the residents of the City to provide for the regulation of a Small and Disadvantaged Business Enterprise Program to stimulate new employment opportunities, to assist in the development of existing City businesses, and to encourage businesses to locate and remain in the City, and to this end, Council enacts this article. (Ord. 18-1993 Sec. 1. Passed 8-3-93.)

136.02 DEFINITIONS.

The following words and terms, when used in this article, shall have the following meanings:

- (a) "Agency" means an agency, department or office of the City of York government.
- (b) "Enterprise zone" means an area within the City which has been designated by the United States Government, the Commonwealth of Pennsylvania, and/or the City as an Enterprise Zone.
- (c) "Joint venture" means a combination of the property, capital, efforts, skills, or knowledge of two or more persons or businesses to carry out a single project.
- (d) "Local business enterprise" means:
 - (1) A business enterprise with its principal office located physically in the City; or
 - (2) A partnership, joint venture or corporation which is owned at least fifty-one percent (51%) by a City resident(s) and whose employees are comprised of at least fifty percent (50%) City residents.

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- (e) "Small business enterprise" means:
- (1) A business which meets four of the following criteria:
 - A. The principal office of the business is located in the York Standard Metropolitan Area.
 - B. More than thirty percent (30%) of the assets of the business are located in the City.
 - C. More than fifty percent (50%) of the employees of the business are residents of the City.
 - D. The owners of more than fifty percent (50%) of the business are residents of the City.
 - E. More than thirty percent (30%) of the total sales or other revenues are derived from the transactions of the business in the City; and
 - (2) In addition, has had averaged annualized gross receipts or average number of employees (for at least one full fiscal year preceeding certification) not exceeding the following limits:

	<u>Average Annualized Gross Receipts</u>	<u>Average Number of Employees *</u>
Construction:		
Heavy (street and highways, bridges, etc)	\$500,000	20
Building (general construction, etc.)	350,000	15
Specialty Trades	225,000	10
Goods and Equipment	125,000	5
General Services	350,000	10
Professional Services:		
Personal (hotels, beauty, laundry, etc.)	100,000	5
Business services	200,000	5
Health and Legal Services	200,000	5
Health Facilities Management	350,000	10
Manufacturing Services	200,000	10
Transportation and Hauling Services	225,000	15
Financial Institutions in assets	6,500,000	20

* Full-time or full-time equivalent.

(Ord. 18-1993 Sec. 1. Passed 8-3-93.)

136.03 CONTRACTING.

Each agency of the City, including those agencies that contract a portion of their procurement through the Department of Business Administration, unless otherwise determined by the Office of Economic Development, shall:

- (a) Allocate its construction contracts in order to reach a goal of fifty percent (50%) (or such other goal as may be determined) of the dollar volume of all construction contracts to be let to small business enterprises;
- (b) Allocate its procurement of goods and services other than construction in order to reach the goal of fifty percent (50%) (or such goal as may be determined) of the dollar volume to small business enterprises;
- (c) Allocate five percent (5%) of its contract to prime contractors that agree to subcontract a portion of the contract work with local business enterprises; and
- (d) Provide quarterly reports to Council within thirty days after the end of a quarter specifying with respect to the contracts and subcontracts subject to the provisions of this section:
 - (1) The means by which it intends to implement the programs provided in Section 136.04 during the next twelve months;
 - (2) The dollar percentage of all contracts and subcontracts during the quarter which were let to local business enterprises and small business enterprises;
 - (3) The dollar volume of contracts and subcontracts let during the quarter to local business enterprises and small business enterprises; and
 - (4) A description of its past and current activities under Section 136.04.
- (e) Upon receipt of the semi-annual report from the Office of Economic Development, Council shall review the goals set forth under this section and consider appropriate amendments to this article.
(Ord. 18-1993 Sec. 1. Passed 8-3-93.)

136.04 ASSISTANCE PROGRAMS.

(a) To achieve the goals set forth in Section 136.03, programs designed to assist contractors, who are certified as local business enterprises or small business enterprises, shall be established by regulations issued by the Mayor pursuant to Section 136.07.

Such programs shall be implemented by each agency within sixty days of the effective date of this article.

(b) The Mayor shall include among these programs a bid preference mechanism for local business enterprises and small business enterprises. In evaluating bids and proposals, agencies shall award preferences, in the form of points (in the case of proposals) or a percentage reduction in price (in the case of bids) as follows:

- (1) Eight points of a possible 100, eight percent (8%), for local business enterprises.
- (2) Two points of a possible 100, two percent (2%), for businesses located in enterprise zones.
- (3) Four points of a possible 100, four percent (4%), for a small business enterprise as defined herein.
- (4) However, in no event shall any bidder receive greater than twelve points of a possible 100, twelve percent (12%), preference.
(Ord. 18-1993 Sec. 1. Passed 8-3-93.)

136.05 CONTRACT PERFORMANCE.

(a) A prime contractor certified shall perform at least fifty percent (50%) of the contracting effort, excluding the cost of materials, goods and supplies, with its own organization and resources, and if it subcontracts, fifty percent (50%) of the subcontracted effort excluding the cost of materials, goods and supplies shall be with certified local or small business enterprises. The contract shall include a certified statement to this effect. Any request for waiver from this subsection shall be submitted in writing at time of bid submission.

(b) For construction contracts of up to one million dollars (\$1,000,000), a prime contractor shall perform at least fifty percent (50%) of the on-site work with its own work force, excluding the cost of materials, goods, supplies and equipment and if it subcontracts fifty percent (50%) of its subcontracts, excluding the cost of materials, goods, supplies and equipment, shall be with local and/or small business enterprises. The bid document shall contain a certification form to be signed by all bidders to this effect. Any request for waiver from this subsection shall be submitted in writing at time of bid submission.
(Ord. 18-1993 Sec. 1. Passed 8-3-93.)

136.06 CERTIFICATE OF REGISTRATION.

(a) Notwithstanding any other provisions of the law, no enterprise shall be permitted to participate in the program established under Section 136.04, unless it has been issued a certificate of registration under the provisions of this article or is self-certified pursuant to regulations issued pursuant to this eligibility criteria or pursuant to regulations issued pursuant to this article. Eligibility criteria for certification shall include the following:

- (1) Written evidence that the applicant is:
 - A. A bona fide local business enterprise;
 - B. A bond fide small business enterprise;
 - C. A bond fide local business enterprise located in an enterprise zone.
- (2) Compliance with the regulations set forth in subsection (b) hereof.

(b) Any enterprise seeking to be registered as a local business enterprise or a small business enterprise in the City shall make and file with the Office of Economic Development a written application as may be prescribed, which shall include a certification of the correctness of the information provided. The applicant shall be required to furnish evidence of eligibility, ability, character and financial statement prepared by a public accountant or certified public accountant, as of no more than ninety days prior to the application date. If the information provided in the application changes, the applicant shall report the change to the Office of Economic Development and the City Human Relations Commission. If the information submitted complies with the criteria of this article, the Office and the Commission shall jointly issue the applicant a certificate of registration to engage in the programs established under Section 136.04.

(c) If the Office and the Commission are unable to agree on a certification request, such request shall be submitted within thirty days to Council for decision, and such decision shall be binding on both the Office and the Commission. Such decision shall be in the form of a resolution voted upon by Council at a regularly scheduled Council meeting.

(d) The Office and the Commission may decertify for cause as defined in Section 136.99(a). If there is a disagreement on the appropriateness of decertification, the issue shall be submitted within thirty days to Council for decision, and such decision shall be binding on both the Office and Commission. Such decision shall be in the form of a resolution voted upon by Council at a regularly scheduled Council meeting.

(e) A certificate of registration shall expire three years from the date of approval of the application.
(Ord. 18-1993 Sec. 1. Passed 8-3-93.)

136.07 OFFICE OF ECONOMIC DEVELOPMENT; POWERS AND DUTIES.

The Office of Economic Development shall:

- (a) Establish procedures and guidelines for the implementation of the programs established pursuant to this article.
- (b) Determine which local business enterprise or small business enterprise shall be eligible for certification under this article and establish criteria to identify those enterprises which shall be given priority consideration for government contracts.
- (c) Review the procurement plans of each agency of the City and determine, if it deems appropriate, which contracts, or parts thereof, shall be reserved for the programs established under Section 136.04. Where an agency has failed to meet the goals set forth in Section 136.03, the Office of Economic Development shall reserve portions of the agency's contracts to be performed in accordance with the programs established under Section 136.04, so that such agency's failings shall be timely remedied.
- (d) Consider agency requests for adjustment of goals in particular instances, provided, that the Office of Economic Development report to the Mayor and Council on a semi-annual basis recommendations for changes of the goals under Section 136.03, on an agency basis if appropriate, and accompanied by necessary supporting data.
- (e) Determine that portion of the dollar amount of a joint venture which may be attributed toward an agency's percentage goal.
- (f) Recommend that an agency waive bonding in excess of the standard waiver provided to require that contracts for construction, alteration or repair of any public building or public work of the City be accompanied by a performance bond protecting the City and by an additional bond for the protection of persons furnishing material and labor, and for other purposes, where such a waiver is appropriate and necessary to achieve the purposes of this article.

- (g) Recommend that an agency make advance payments to a certified contractor or to subdivide a contract into smaller parts where the Office of Economic Development has determined that such payments or such subdivisions are necessary to achieve the purposes of the article. Subdivision may be recommended in order to fall within bond exemption provided.
- (h) Review bids in the small business enterprise administrative arrangements established under Section 136.04 and may authorize agencies to refuse to let a contract where the Office of Economic Development determines that bids for particular contracts are excessive.
- (i) Maintain contracts with the business community (financial institutions and bonding companies) and solicit cooperation for development for the City.
- (j) Review contracting problems and make further recommendations that increase small and local contractor participation with the City government. Recommendations shall include, but not be limited to, improved schedules that ensure prompt payment to contractors, special geographic radii requirements on certain contracts, innovative contract advertising procedures, the encouragement of joint ventures and advising the Mayor on methods to be utilized to ensure participation.
- (k) Review and determine the continued eligibility of contractors certified by the Office of Economic Development and the City Human Relations Commission.
- (l) Insert in bid solicitations for procurement of property or services, a provision limiting advance or progress payments to local and small business enterprises, to provide that payments may not exceed the unpaid contract price.
(Ord. 18-1993 Sec. 1. Passed 8-3-93.)

136.08 IMPLEMENTING REGULATIONS.

The Mayor shall issue regulations to implement this article, including rules that establish a procedure to provisionally certify, self-certify or to challenge the certifications that a business enterprise is a small or local business enterprise.
(Ord. 18-1993 Sec. 1. Passed 8-3-93.)

136.99 PENALTY.

- (a) The Office of Economic Development and the City Human Relations Commission may revoke or suspend the certificate of registration of any enterprise registered who is found guilty of any of the following conditions:
- (1) Fraud or deceit in obtaining the registration;
 - (2) Furnishing of inaccurate or incomplete ownership or financial information;
 - (3) Failure to report changes which affect the requirement for certification;
 - (4) Gross negligence, incompetence, financial irresponsibility or misconduct in the performance of a contract with the City; or
 - (5) Willful violation of any provision of this article or regulations adopted pursuant to this article.

(b) Any person may file with the Commission a complaint alleging a violation of this article against any applicant for registration or contractor registered pursuant to this article. The complaint shall be in writing and sworn to by the complainant. The Commission may, without a hearing, dismiss a complaint which is frivolous or otherwise without merit. Any hearing shall be heard within three months of the filing of the complaint. The Commission shall determine the time and place for the hearing. The Commission shall cause to be issued and served on the person or organization alleged to have committed the violation, hereinafter called the respondent, a written notice of the hearing together with a copy of the complaint at least thirty days prior to the scheduled hearing. Notice shall be served by registered or certified mail, return receipt requested, or by personal service. At the hearing the respondent shall have the right to appear personally or by a representative and to cross-examine witnesses and to present evidence and witnesses. The Commission shall have authority to issue subpoenas requiring the attendance of witnesses and to compel the production of records, papers and other documents. If, at the conclusion of the hearing, the Commission determines that the respondent has violated the provisions of this article, the Commission shall issue and cause to be served on the respondent, a decision and order, accompanied by findings of fact and conclusions of law, requiring the respondent's registration to be revoked or suspended, or take any other action as it deems appropriate.

(c) In addition to the penalties provided in subsection (b) hereof, the City Solicitor may bring a civil action against a business enterprise, and/or its directors, officers or principals, when there is reasonable basis to believe that certification has been obtained by fraud or deceit, and where there is a basis for asserting damages sustained by the City as a result of such fraud or deceit. In addition, the City Solicitor is hereby authorized to work in conjunction with, and with the approval of, the District Attorney's office in proceeding against any individual supplying false information, based upon the Pennsylvania Crimes Code section pertaining to unsworn falsification to public officials.

(Ord. 18-1993 Sec. 1. Passed 8-3-93.)