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DIVISION 4. - NONDISCRIMINATION IN PURCHASING AND CONTRACTING

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| Sec. 102-466. - Scope and applicability.

- (a) *Definitions.* For the purpose of this article, the following words, terms, phrases and abbreviations shall have the following meanings:

Availability means the percent of firms seeking to do business with Fulton County that are ready, willing and able to do business with Fulton County.

Bidder shall mean any contractor, vendor or other person, partnership, corporation or other business entity that submits or desires to submit a bid to Fulton County.

Board means the Board of Commissioners of Fulton County.

Certified MBE/FBE shall mean an MBE (AABE, HBE, ABE, NABE) or FBE which meets the definitions of this Section, and has been "certified" (i.e., approved) as an MBE, or FBE by the department of contract compliance.

Commercially useful function shall mean the performance of real and actual services in the discharge of a contractual endeavor; or with respect to a contract relating to the sale of goods or other items, contractual liability for the failed delivery thereof. The business must perform some distinct element of work which the business has the skill, expertise or other necessary capabilities and/or attributes as well as the responsibility for actually performing, managing and supervising the work or manufacture and/or delivery of goods.

Compliance means the condition existing when a bidder has met the requirements of this code section.

Contract means any binding legal obligation of Fulton County created to acquire some good and/or service from one or more bidders, which is paid or which is to be paid for, in whole or in part, with monetary appropriations of the board. In this context, the terms "contracting," "purchasing" and "procurement" are synonymous and refer to the process or processes under which Fulton County undertakes such acquisitions.

Disparity means that the availability of various businesses is greater than the utilization of any such businesses.

Disparity index means the ratio of utilization to availability (U/A) for a particular racial or gender group.

Disparity ratio means the ratio of availability to utilization (A/U) for a particular racial or gender group.

EBO plan means equal business opportunity plan which is designed to enhance the utilization of a particular racial, gender or ethnic group by a Fulton County bidder, contractor, or vendor or by Fulton County.

Female business enterprise (FBE) shall mean a business which is an independent and continuing enterprise for profit, performing a commercially useful function and is owned and controlled by one or more females, and certified as such by the department of contract compliance.

Good faith efforts means those active and aggressive affirmative actions of a bidder, undertaken in good faith, to meet the goals, if any, established under this code section; and pursuant to which a determination is made whether the bidder is entitled to a waiver of noncompliance.

Independent means that with respect to the ownership, control and activity of a MFBE, the business shall operate separate and apart from the ownership, control or undue influence of another business not owned and controlled by one or more minorities or females.

Joint venture shall mean an association of two or more independent persons, partnerships, corporations, limited liability corporations (or any combination of them) formed, consistent with the laws of the State of Georgia, to perform one or more specific contracts limited in scope and duration; and for which purpose, the entities combined their property, capital, effort, skills, knowledge and other assets.

MFBE shall mean, alternatively, (1) severally, a minority business enterprise or a female business enterprise, or (2) collectively, minority business enterprises and female business enterprises, depending on the context in which it is used.

Minority business enterprise (MBE) shall mean a business which is an independent and continuing operation for profit, performing a commercially useful function, and is owned and controlled by one or more minority persons, and is certified as such by the department of contract compliance. MBE's shall include but not be limited to the following:

(1) *African American Business Enterprise (AABE)* means a business which is owned and controlled by one or more African American minority persons.

(2) *Asian American Business Enterprise (ABE)* means a business which is owned and controlled by one or more Asian American minority persons.

(3) *Hispanic Business Enterprise (HBE)* means a business which is owned and controlled by one or more Hispanic minority persons.

(4) *Native American Business Enterprise (NABE)* means a business which is owned and controlled by one or more Native American minority persons.

Minority person shall mean a United States citizen or permanent resident alien (as defined by the Immigration and Naturalization Service) of the United States, including but not limited to, one who is a member of any of the following groups and meeting the definition(s) for same:

(1) *African American* shall mean persons having ancestry with origins in any of the Black racial groups of Africa.

(2) *Asian American* shall mean persons having ancestry with origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

(3) *Hispanic American* shall mean persons of Spanish or Portuguese culture and ancestry with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race.

(4) *Native American* shall mean persons having ancestry with origins in any of the original peoples of North America, including American Indians, Eskimos and Aleuts.

MSA shall mean the Atlanta Metropolitan Statistical Area.

Noncompliance means the condition existing when a bidder has failed to meet the requirements of this program.

Owned for purposes of determining whether a business is a minority business enterprise or female business enterprise, means that the minority or female owner(s) possess an ownership interest of at least 51 percent of the business.

Person means an individual, sole proprietorship, corporation, partnership, limited partnership, limited liability corporation, or other business association.

Promise of nondiscrimination means, collectively, one or more voluntary contractual affirmative promises and other promises of forbearance made by a bidder relating to the bidder's conduct occurring prior to submission of a bid as well as after award of a contract.

Sole source means the awarding of a contract or contracts to a single bidder without benefit of competition because the bidder is the only appropriate and/or qualified contractor or vendor available from whom the commodity, equipment, good or service can be procured.

Small business concern means a business enterprise which is not dominant in its field of operation and is regarded as small in size as measured by certain standards and criteria adopted by the department of contract compliance upon consideration and review of federal regulations promulgated pursuant to the Small Business Act of 1953, as amended, and currently codified at 15 U.S.C. Section 631, et seq.

Underutilization means that the percentage of Fulton County dollars spent with a particular racial, gender or ethnic group which is less than what would be expected for a given racial, gender or ethnic group's business availability (U<A).

Waiver means a determination of excused nonresponsiveness or noncompliance with the requirements of this Code section, including that of nondiscrimination, such that a bidder, contractor or vendor who has failed to achieve said requirements but has otherwise satisfactorily demonstrated efforts to do so shall be deemed to be responsive and compliant and the bidder, contractor or vendor shall be excused from the applicable penalties or sanctions.

(b) *General applicability.* Except as provided hereinbelow, the provisions of this Code section shall apply to Fulton County contracting and procurement, including construction and the acquisition of all commodities, equipment, goods, and services (including professional and nonprofessional services), however titled, and irrespective of the modality or manner procured, and irrespective as to whether purchased or leased. The following categories are initially established by the board to identify the nature and type of Fulton County

contracting and procurement encompassed under this Code section. From time to time, and upon recommendation of the county manager, the board may amend (by addition or deletion) these categories:

- (1) *Category A - construction* (including prime contractors and subcontractors): including, for example, and without limitation, any and all contracting relating to buildings, facilities and other erected structures on real estate of Fulton County such as new construction, rehabilitation, remodeling and repairs;
 - (2) *Category B - commodities*: including, for example, and without limitation, the purchase of all goods, equipment, food stuffs, office and other supplies, art, furniture and other tangible personal property not associated with and subsumed under the provision of a service identified in categories A, C, D, E, F and G;
 - (3) *Category C - nonprofessional services*: including, for example, and without limitation, the procurement of advertising, printing, nonconstruction repairs, janitorial services, computer and information systems, security, shipping and mailing, microfiche and microfilm, courier, storage, travel, consulting, and any other nonprofessional services;
 - (4) *Category D - professional services*: including, for example, and without limitation, the purchase of any and all services which applicable selection criteria may require a bidder to possess a license or other certificate of competency such as auditing, architectural, legal services and engineering services.
 - (5) *Category E - cafeteria*: foodstuffs and other items purchased to operate any Fulton County food services program.
 - (6) *Category F - original equipment manufacturers*: those items that can only be procured from the manufacturer of a particular item and that are typically purchased as sole source items.
 - (7) *Category G - authorized exclusions*: items that are excluded from the competitive bid process, but which are necessary purchases for Fulton County such as items that are purchased pursuant to installment contract payments, software licenses, fees for professional memberships and functions, postage, standardized tests, subscriptions, government agencies, public utilities and such other items as are set forth in subsection (c).
- (c) *Exclusions*. The provisions of this article shall not apply to the following:
- (1) The acquisition of any interest or interests in real property including leaseholds;
 - (2) Unique contracting where the unique nature of the item or service to be acquired renders the application of other bidder selection criteria inappropriate such that a sole source procurement may be required under Fulton County purchasing policies and regulations;
 - (3) Emergency purchases as provided for in County Code Section 2.5.2.1;
 - (4) Any other categories or subcategories of goods or services the board may from time to time establish as excluded contracts upon recommendation of director of the department of contract compliance and approval by the county manager.

(99-0960, § 1, 7-7-99)

Sec. 102-467. - Monitoring, evaluation and reporting.

- (a) *Monitoring*. The department of contract compliance shall continuously monitor the procurement, by contract or other means, of goods and services for Fulton County. Such monitoring shall include, but is not necessarily limited to, a statistical analysis of each commodity, construction trade, and professional and nonprofessional service which is the subject of the Fulton County purchasing process; and to determine whether in any such classification there is any underutilization. While this monitoring function may be performed on an ongoing, as needed, basis, the director of the department of contract compliance shall report to the board quarterly with regards to its findings as to any such statistical analysis.
- (b) *Identified underutilization*. In the event that the monitoring function of the director of the department of contract compliance identifies under-utilization, the director of the department of contract compliance is authorized to conduct further investigation into the reasons for any such underutilization.
- (c) *Recommendations for remedial action*. In the event that any investigation of underutilization performed pursuant to subsection (b) shows that the underutilization involves either active or passive discrimination by Fulton County in its own contracting and procurement practices, or involves the passive participation by Fulton County in the discriminatory conduct by private persons or entities, or occurs for any other reason, the director of the department of contract compliance shall report such finding to the county manager, who shall report the same to the board with a recommendation for remedial action to eliminate any such discrimination. In the event that any investigation of underutilization performed pursuant to subsection (b) shows that the underutilization involves no discrimination or discriminatory conduct, the director of the department of contract compliance may report same to the board with a recommendation for remedial action to remedy any such underutilization.
- (d) *Reporting*.
 - (1) *Scheduled reports*. The director of the department of contract compliance shall conduct quarterly and annual reviews of the monitoring that is required herein and submit reports to the county manager with a copy to the board.
 - (2) *Additional reports*. In addition to the reports required under subsection (d)(1) above, the director of the department of contract compliance at any time is authorized to make recommendations to the county manager regarding the implementation of this section.

Sec. 102-468. - Methods for promoting nondiscrimination in contracting and procurement.

- (a) *Policy of nondiscrimination by Fulton County.* It is the policy of Fulton County to promote and encourage full and open competition in Fulton County contracting and procurement.
- (b) *Cooperation.* The director of the department of contract compliance and the county purchasing agent shall cooperate and coordinate the resources and procedures of their respective offices to implement the following measures.
- (c) *Advertisement.* Advertise upcoming Fulton County commodity contracts in the appropriate media, including minority and gender oriented newspapers or publications; public television, if appropriate; and other methods;
- (d) *Telephone hotline.* Maintain a telephone "hotline" that contractors and vendors can call to get information on bids or certification;
- (e) *MBE/FBE certification.* Encourage MBE's/FBE's to apply for certification by the department of contract compliance.
- (f) *Purchasing administrative process.* The director of the department of contract compliance shall, in consultation with the county purchasing agent, investigate complaints, or on its own, initiate investigations, with regard to whether the Fulton County purchasing process, or any part thereof, inhibits the ability of any business to contract with Fulton County by reason of the race, color, gender or national origin of the ownership of any such business.
- (g) *Unified bidder's list.* A single unified list of all Fulton County bidders (vendors and contractors) shall be maintained. The list shall be coded to reflect designations relating to the type of vendor or contractor, small or large business, MFBE or non-MFBE, or other relevant information as determined by the county purchasing agent, the director of the department of contract compliance or other departments. This unified bidder's list shall be maintained on a current basis.
- (h) *Bidder solicitations.* For all purchases by solicitation, and irrespective of whether the purchase arises from oral quotations or written solicitations, a system for the maintenance of all data regarding bidders on the unified bidder's list shall be developed. Such data shall include, but not necessarily be limited to, the race, gender or ethnicity of the vendor; whether a small or a large vendor; the number of occasions that such vendor was utilized in a given fiscal year; and the ability of such vendor to provide the requested goods or services to Fulton County. Each Fulton County buyer and any other Fulton County employee having the authority to procure goods and services for Fulton County shall be required to document his/her utilization of the unified bidder's list.
- (i) *Elimination of unnecessarily restrictive contract specifications.* The county manager, the county purchasing agent, the director of the department of contract compliance and representatives from other departments involved with contracting and procurement practices, shall review and, where appropriate, eliminate unnecessarily restrictive contract specifications.
- (j) *Enhancement of contracting opportunities.* The county manager, the county purchasing agent, the director of the department of contract compliance, and representatives from other departments involved with contracting and procurement practices shall review contracting and procurement practices such as sole source, multiyear, blanket and emergency purchases and shall also review size of contracts in order to determine whether such practices and contract size unnecessarily inhibit the ability of businesses to participate in the contracting and procurement activities of Fulton County by reason of the race, color, gender or national origin of the ownership of any such business. Where such practices and contract size are identified as inhibitive, they shall be eliminated and/or diminished where practicable.
- (k) *Special publications.* The county purchasing agent, in cooperation with other appropriate private and governmental agencies, shall issue or cause to be issued one or more pamphlets, brochures or other publications designed to instruct, direct, assist and/or acquaint small businesses with the procurement procedures of Fulton County.
- (l) *Training programs.* The county purchasing agent shall assist the director of the department of contract compliance, other appropriate Fulton County divisions, and representatives of small business groups, in conducting seminars and workshops on how to do business with Fulton County.
- (m) *Bonding assistance.* The director of the department of contract compliance shall work closely with local governmental entities in providing (1) individualized counseling; (2) seminars relating to bonding; (3) methods of creating a bonding program for small businesses with public and private sector resources; and (4) advice and information to the construction management division or the appropriate user department as to the level of bonding generally available to subcontractors, so that such information may be considered in determining the process of reducing projects to a size such that small businesses may successfully bid.

In addition, the county purchasing agent, in consultation with the director of the department of contract compliance, shall, to the extent as is authorized by law, develop rules and regulations to implement a policy minimizing the adverse impact of Fulton County bonding requirements including:

- (1) Waiving payment and performance bond requirements on service contracts. Upon review and approval by the county manager, the county purchasing agent may recommend such waivers based on the dollar amount of the contract, the potential exposure to liability and other pertinent criteria.
- (2) Increase bond waiver limit on construction projects to maximum amount allowable under law.
- (3) Dissuading or prohibiting bidders desiring to bid as prime contractors from denying

opportunities to a potential subcontractor solely on the basis of the subcontractor's inability to obtain a bid, payment or performance bond as required by the prime contractor. Rather, prime contractors shall be encouraged to:

- a. Accept increment bonding for subcontractors;
 - b. Accept the maximum bond that the subcontractor can provide for the job, in circumstances where the subcontractor cannot provide a bond to cover the total amount of the subcontract; and
 - c. Waive bonding requirements for subcontractors where feasible.
- (n) *Progress payments and letter of contract award.* The county purchasing agent, in consultation with the using agency and the director of the department of finance may make special provisions for reasonable progress payments so as to assist small businesses in financing the performance of a contract. When a small business receives a contract with Fulton County, the county purchasing agent may, upon request, furnish a letter stating the dollar value of the contract, its duration and other information about the contract which may be used by the small business to establish lines of credit with lending institutions.
- (o) *Prompt payment and certification.*
- (1) *Prompt payment.* Every contract with Fulton County for performance of work or purchase of any item shall contain a provision requiring the prime contractor to certify in writing that all subcontractors and suppliers have been promptly paid for work and materials and previous progress payments received (less any retainage by the prime contractor prior to receipt of any further progress payments). In the event a contractor is unable to pay subcontractors or suppliers until it has received a progress payment from Fulton County, the prime contractor shall pay all subcontractors or suppliers funds due from said progress payments within 48 hours of receipt of payment from Fulton County.
 - (2) *Certification of prompt payment.* Throughout the duration of a construction project or other contract, and upon completion thereof, Fulton County may request documentation to certify payments to subcontractors or suppliers. Fulton County reserves the right to issue joint checks payable to both the contractor and the subcontractor/supplier to ensure proper payments. This provision shall in no way create any contractual relationship between the subcontractor and Fulton County or create any liability on Fulton County for a prime contractor's failure to make timely payment to a subcontractor or supplier.
- (p) *Mentor/protege program.* The director of the department of contract compliance shall encourage contractors and subcontractors to participate in any Fulton County Mentor/Protege Program.

(99-0960, § 3, 7-7-99)

Sec. 102-469. - Contractor discrimination.

- (a) *Policy statement.* It is the policy of Fulton County that discrimination against businesses by reason of the race, color, gender or national origin of the ownership of any such business is prohibited. Furthermore, it is the policy of the board that Fulton County and all vendors and contractors doing business with it shall provide to all businesses the opportunity to participate in contracting and procurement paid, in whole or in part, with monetary appropriations of the board without regard to the race, color, gender or national origin of the ownership of any such business. Similarly, it is the policy of Fulton County that the contracting and procurement practices of Fulton County should not implicate Fulton County as a passive participant in discriminatory practices engaged in by private contractors or vendors who seek to obtain contracts with Fulton County.
- (b) *Authority to investigate.* The director of the department of contract compliance shall be authorized to investigate discriminatory practices of a bidder, contractor or vendor who contracts with or seeks to contract with Fulton County. Such investigation may be initiated by the director of the department of contract compliance on the director's own initiative, or by complaint from another, when information available to the director provides a reasonable basis to believe that such contractor or vendor may be engaging in private discriminatory conduct.
- (c) *Promise of nondiscrimination.* In consideration of, and as condition precedent to, the right and privilege to bid on or obtain construction projects and other procurement contracts of Fulton County, each bidder, contractor, or vendor shall be required to submit to the director of the department of contract compliance a duly executed and attested promise of nondiscrimination, enforceable at law, which by agreement, affidavit or other written instrument, unless subsequently amended by the board's attorney, shall provide substantially as follows: "Know all persons by these presents, that I/WE, (Name(s)), (Title(s)), (Name of bidder/contractor/vendor hereinafter "Company"), in consideration of the privilege to bid on or obtain contracts funded, in whole or in part, by Fulton County, hereby consent, covenant and agree as follows:
- (1) No person shall be excluded from participation in, denied the benefit of, or otherwise discriminated against on the basis of race, color, national origin or gender in connection with any bid submitted to Fulton County for the performance of any contract resulting therefrom:
 - (2) That it is and shall be the policy of this company to provide equal opportunity to all businesses seeking to contract or otherwise interested in contracting with this company without regard to the race, color, gender or national origin of the ownership of this business.
 - (3) That the promises of nondiscrimination as made and set forth herein shall be continuing in nature and shall remain in full force and effect without interruption;
 - (4) That the promises of nondiscrimination as made and set forth herein shall be made a part of, and incorporated by reference into, any contract or portion thereof which this company may hereafter

obtain; and

(5) That the failure of this company to satisfactorily discharge any of the promises of nondiscrimination as made and set forth herein shall constitute a material breach of contract entitling the board to declare the contract in default and to exercise any and all applicable rights and remedies, including but not limited to cancellation of the contract, termination of the contract, suspension and debarment from future contracting opportunities, and withholding and/or forfeiture of compensation due and owing on a contract.

(6) That the bidder shall provide such information as may be required by the director of contract compliance pursuant to subsection (d) of the Fulton County Nondiscrimination in Purchasing and Contracting Ordinance.

(d) *Required information.*

(1) Where the director of contract compliance has reason to believe that a bidder, contractor or vendor is engaged in unlawful discriminatory conduct, the director of the department of contract compliance may require such person, contractor, its subcontractors and/or suppliers to provide to the department of contract compliance, under oath, such information as may assist the director of the department of contract compliance in the investigation that is authorized by subsection (b) of this Code section. Such information may include, but is not necessarily limited to the following:

a. Documents that show what, if any, good faith efforts the bidder, contractor, or vendor has taken to insure the participation of all businesses without regard to the race, color, gender or national origin of the ownership of any such business for participation in the contract or proposed contract with Fulton County;

b. Documents which show that the bidder, contractor, or vendor has attempted to segment the totality of work required under the proposed project or contract into two or more smaller economically feasible units or portions so as to permit participation of all businesses without regard to the race, color, gender or national origin of the ownership of any such business; provided, however, under no circumstances shall a bidder, contractor, or vendor be required to segment work solely for the purpose of utilizing any particular racial or gender group participant as subcontractors where such segmentation is not in accordance with common and accepted industry practices relating to the utilization of other firms or persons as subcontractors.

c. Documents that show whether the bidder, contractor, or vendor attended any pre-solicitation meeting and/or pre-bid conference (if such meeting or conference is held) so as to permit interested businesses a meaningful opportunity to market their goods and services to the bidder, contractor, or vendor without regard to the race, color, gender or national origin of the ownership of any such business.

d. Documents that show whether the bidder, contractor, or vendor solicited specific individual racial, gender or ethnic businesses whose availability as potential sources of goods or services can be reasonably ascertained. This measure includes the sending of letters or making other personal contacts with specific certified MFBE's including those with whom the bidder, contractor or vendor has contracted in the past as well as other MFBE's with whom the bidder, contractor, or vendor may be unfamiliar, but whose identities can be ascertained from a directory of certified MFBE's maintained by the director of the department of contract compliance.

e. Letters or documented personal contacts with any minority or female or business enterprise programs, or programs for disadvantaged businesses, as well as private minority trade associations in the Atlanta MSA which programs and associations are known to publicize contracting and procurement opportunities for the benefit of their respective participants and/or members.

f. Documents that show whether the bidder, contractor, or vendor advertised in publications of general circulation and/or trade publications and other media owned by, or otherwise focused or marketed to racial minorities, women and any disadvantaged individuals and/or businesses owned and operated by them. The publication or media shall be one that reasonably covers the metropolitan area. The advertisement shall identify and describe the specific subcontracting or other opportunity in reasonable detail.

g. Documents that show whether the bidder, contractor, or vendor provided all interested business concerns with adequate information about the plans, specifications and requirements of the project or contract in question.

h. Documents that show whether the bidder, contractor, or vendor conducted negotiations with any interested business in good faith without regard to the race, color, gender or national origin of the ownership of any such business and not rejecting them as unqualified or for other reasons without having thoroughly investigated any such business' capabilities or other bases of rejection.

i. Documents that show whether the bidder, contractor, or vendor provided reasonable assistance to an otherwise qualified business without regard to the race, color, gender or national origin of the ownership of any such business in need of equipment, supplies, bonding, letters of credit and/or insurance. The bidder, contractor or vendor may waive such bonding, credit and/or insurance as may be ordinarily required by it or provide reasonable assistance to any such business so as to obtain such equipment, supplies, bonding, credit and/or insurance.

j. Documents that show whether the bidder, contractor, or vendor provided reasonable technical assistance to any business without regard to the race, color, gender or national

origin of the ownership of any such business to ameliorate any deficiencies of technical knowledge or advance skill, where such assistance is undertaken by the bidder, contractor, or vendor for the purpose of facilitating such business' successful participation on a project or contract.

k. Documents that show whether the bidder, contractor, or vendor provided equal opportunity to all businesses without regard to the race, color, gender or national origin of the ownership of any such business when replacing nonperforming subcontractors or suppliers. The director of the department of contract compliance shall approve all replacements prior to engagement of the substituting firm.

l. Documents that show whether the bidder, contractor, or vendor provides a nondiscriminatory work site. Bidders, contractors and vendors shall ensure and maintain a work environment free of harassment, intimidation and coercion at all construction sites, offices and other facilities at which the bidder's, contractor's or vendor's employees are assigned to work. The contractor shall specifically show that all labor supervisors, superintendents, and other on-site supervisory personnel are aware of and carry out the bidder's, contractor's or vendor's obligation to maintain a nondiscriminatory work environment.

m. Documents that show all subcontractor's and suppliers that were contacted by the bidder, contractor, or vendor detailing, among other things, their race, gender or ethnicity, discipline, requirements, the manner in which such contact was made, if the supplier or subcontractor submitted a bid or quote, the nature of same and, if rejected, the reasons therefor.

n. Documents which show whether the bidder, contractor, or vendor cooperated with the director of the department of contract compliance. Bidders, contractors and vendors shall be required to furnish reports and information sufficient to allow the director of the department of contract compliance to determine whether the requirements of this Code section are being met.

o. Bidders, contractors and vendors shall provide such other information as the director of the department of contract compliance may from time to time reasonably require, whether orally or in writing.

(2) *Failure to respond.* If a bidder to whom a request for information was sent pursuant to subsection (d)(1) fails to provide such information, or provides substantially inadequate responses to such requests, the director of the department of contract compliance may determine that the bid is not responsive and the bid shall be rejected; if a contractor or vendor to whom a request for information was sent pursuant to subsection (d)(1) fails to provide such information, or provides substantially inadequate responses to such requests, the director of the department of contract compliance may determine that the contractor is in breach of its contract with Fulton County.

(3) *Review.* If the director of the department of contract compliance, in consultation with the county attorney, determines, on the basis of all relevant information, that he/she has a reasonable basis to believe that a bidder has not satisfactorily rebutted any inference of discrimination as may be determined pursuant to subsection (c) above, the director of the department of contract compliance shall determine that the bid is nonresponsive and the bid shall be rejected by the county purchasing agent. If the director of the department of contract compliance, in consultation with the county attorney, determines, on the basis of all relevant information, that he/she has a reasonable basis to believe that a contractor or vendor has not satisfactorily rebutted any inference of discrimination as may be determined pursuant to subsection (c) above, the director of the department of contract compliance shall determine that the contractor is in breach of its contract with Fulton County and shall immediately notify the county purchasing agent of this determination.

(e) *Notice to bidder, contractor or vendor.* When the investigation authorized herein leads to a determination by the director of the department of contract compliance that said department has probable cause to believe that a bidder, contractor or vendor is engaging in discriminatory conduct, the county purchasing agent shall give notice of such determination to the bidder, contractor or vendor which notice shall include a rejection of any bid or a determination of breach and a copy of such notice shall be provided to the county manager and the county attorney.

(f) *Hearing.* Any bidder, contractor, or vendor who is adversely affected by a determination under this section shall have the right to appeal such adverse determination pursuant to section 102-471 of this Code. Any request for appeal under this section must be made as provided in section 102-472 of this Code [and] a hearing shall be conducted pursuant to section 102-472 of this Code.

(g) *Sanctions.* Where, after hearing held pursuant to section 102-471 of this Code, the contract compliance hearing officer determines that a bidder, contractor, or vendor has engaged or is engaging in discriminatory practices, the director of the department of contract compliance, the county purchasing agent and the county attorney shall determine the appropriate sanctions. In addition to any other sanctions that are authorized by this section, the director of the department of contract compliance, the county purchasing agent and the county attorney may impose the sanctions that are set forth in section 102-471 of this Code; provided, however, that at any time after a determination of discrimination is made pursuant to this Code section, the director of the department of contract compliance, the county purchasing agent and the county attorney may negotiate a settlement with the affected bidder, contractor or vendor regarding sanction. Such negotiated sanction may include, but is not necessarily limited to, the sanctions that are enumerated in section 102-471 of this Code or a voluntary EBO Plan that is approved by the director of the department of contract compliance.

(99-0960, § 4, 7-7-99)

Sec. 102-470. - Contract compliance hearing officers.

- (a) *Appointment and tenure.* The county manager shall bi-annually recommend a panel of five hearing officers to be approved by the board. Neither Fulton County employees and elected officials, nor any person who in any way does business with Fulton County (including, but not limited to, as contractor, vendor, or subcontractor), nor any person owning any interest in an entity doing business with Fulton County shall be eligible for recommendation. The hearing officers shall serve for a two-year term; and in no event shall they be eligible to serve more than four consecutive years.
- (b) *Qualifications.* The hearing officers panel shall consist of five persons.
- (c) *Authority and scope of review.* With the exception of controversies that are the subject-matter of litigation or pending administrative review members of the hearing officers panel shall have the authority to review and determine any issue or matter in controversy arising from the adoption, implementation and enforcement of this article,
- (d) *Compensation and access to facilities.* The hearing officers shall receive fair compensation at an hourly rate to be determined by the county manager for all time expended in the performance of duties created by this section. All hearings shall be open to the public and shall be held in a suitable place within a Fulton County building. Administrative and support services, as may be required by the hearing officers in the performance of such duties, shall be furnished by Fulton County and the cost of same shall be borne by Fulton County.

(99-0960, § 5, 7-7-99)

Sec. 102-471. - Sanctions and penalties.

The board or its designee, the director of the department of contract compliance, shall have the authority and power to enforce the provisions of this Code section. Failure by a bidder, contractor, or vendor to comply with the requirements of this Code section shall subject the noncomplying party to administrative sanctions. In addition, a violation of this Code section shall constitute a material breach of contract, enforceable at law or in equity as with all other contract provisions. The following sanctions and penalties are established for the enforcement of this Code section:

- (1) *Declaration of nonresponsiveness.* Declare a bid nonresponsive.
- (2) *Cancellation or termination of contract.* Declare a contract null and void, cancelled or terminated where, after such contract has been awarded, it is determined that the bidder's, contractor's or vendor's bid or other relevant document contains false or misleading information.
- (3) *Rejection of future bids.* Fulton county may reject any or all future bids of a bidder until such time as the bidder shall have demonstrated that it is in compliance or shall come into compliance with the provisions of the Code section.
- (4) *Limited partial withholding of payments.* Fulton County may withhold an amount not to exceed more than ten percent of all progress payments otherwise due and payable under contract until the bidder, contractor, or vendor is in compliance with the provisions of this Code section.
- (5) *Total withholding of payments.* Fulton County may withhold the entirety of all progress payments otherwise due and payable under contract until the bidder, contractor or vendor is in compliance with the provisions of this Code section.
- (6) *Limited suspension and debarment.* For falsifications and misrepresentations, Fulton County may remove a bidder, contractor or vendor from its list of pre-qualified or otherwise eligible entities entitled to do business with Fulton County for a period not to exceed one year.
- (7) *Permanent debarment.* For repeated violations, Fulton County may remove a bidder, contractor, or vendor from its list of pre-qualified or otherwise eligible entities entitled to do business with Fulton County.
- (8) *Waiver.* The director of the department of contract compliance, the county purchasing agent and the county attorney may issue a determination of excused noncompliance with the requirements of this Code section such that where there has been a finding of nonresponsiveness, noncompliance or discrimination by the director of the department of contract compliance pursuant to section 102-469 of this Code regarding a bidder, contractor, or vendor but such bidder, contractor, or vendor has otherwise satisfactorily demonstrated good faith efforts to comply with the policies as expressed in this Code section, or for other reasons, such bidder, contractor, or vendor may be excused from the sanctions and penalties for noncompliance.

(99-0960, § 6, 7-7-99)

Sec. 102-472. - Appeals.

- (a) *Availability.* Any bidder, contractor or vendor or other party aggrieved by the provisions of this Code section may appeal said grievance or grievances to the director of the department of contract compliance or to the county manager, as provided herein. By these provisions, it is the intent of the board to ensure all parties basic guarantees of due process consisting of the right to be heard by an impartial trier of fact; and the same are

hereby so guaranteed.

(b) *Appealable matters.* Upon a denial of certification as an MFBE by the department of contract compliance, the director of the department of contract compliance shall notify the affected party in writing and by registered mail, (hereinafter, "notice of determination") setting forth with particularity the reasons for the determination. Upon a determination of noncompliance, nonresponsiveness or discrimination within the meaning of this Code section, or for any other alleged grievance under this Code section, the purchasing agent shall notify the affected party in writing and by registered mail, (hereinafter, "notice of determination") setting forth with particularity the reasons for the determination.

(c) *Time for filing notice of appeal.* Any party who has a grievance under this Code section regarding a determination of nonresponsiveness, noncompliance or discrimination may appeal an adverse decision by filing a written notice of appeal with the county manager within seven days of receipt of the notice of determination, but no later than 15 days after the determination or within seven days of notice.

(d) *Notice of hearing.* Upon receipt of the notice of appeal from the aggrieved party, the director of the department of contract compliance or the county manager shall forward the notice to a contract compliance hearing officer (hereinafter "hearing officer") within three days of receipt. Within ten days of the date of receipt of the notice of appeal from the director of the department of contract compliance or the county manager, the hearing officer shall set the matter for hearing, which hearing shall be held not more than 30 days from the date the hearing officer received the notice of appeal. The hearing officer shall cause a written notice of hearing to be served upon all parties by registered mail, which shall state the date, time and place of hearing. Said notice shall also inform the parties of due process rights and relevant procedural matters.

(e) *Hearing.* At the hearing, all parties shall be provided a full and fair opportunity to be heard. Each party may be represented by counsel. Each party may present documentary evidence and the testimony of witnesses and shall have the right to object to the introduction of documents and to cross-examine opposing witnesses. Although formal rules of evidence shall not apply, the hearing officer shall cause a record to be made of the proceeding through the use of a court reporter or by way of electronic tape recording with subsequent transcription.

(f) *Decision.* Within seven days of the conclusion of the hearing, and based upon a preponderance of the evidence presented, the hearing officer shall render a written decision (i.e., an "order") which shall contain findings of fact, conclusions of law, and a deposition, nonresponsiveness, discrimination or denial of MFBE certification of the department of contract compliance or the purchasing agent.

(99-0960, § 7, 7-7-99)

| Secs. 102-473—102-490. - Reserved.