

ORDINANCE

AN ORDINANCE TO AMEND THE CODE OF DEKALB COUNTY, GEORGIA, PROHIBITING BINDING ARBITRATION IN ALL SUBCONTRACTS ON COUNTY PROJECTS, AND FOR OTHER PURPOSES.

WHEREAS, the Governing Authority has determined that County projects generally and the structure of the Local Small Business Enterprise Program (hereinafter referred to as “LSBE”) will be enhanced by the enactment of an amended ordinance which prohibits prime contractors from imposing binding arbitration on all sub-contractors, including LSBEs, who perform work on County projects pursuant to County contracts; and

WHEREAS, binding arbitration clauses prevent small businesses from pursuing all legal avenues of relief in the courts and often result in unequal bargaining power being held by prime contractors when a dispute arises between a subcontractor and a prime contractor; and

WHEREAS, subcontractors on County projects should be placed on equal footing with prime contractors when a dispute arises between a prime contractor and a subcontractor; and

WHEREAS, the Governing Authority has made the success of local small businesses a permanent goal of DeKalb County and this prohibition will benefit LSBEs and all other subcontractors;

NOW, THEREFORE, BE IT ORDAINED by the governing authority of DeKalb County, Georgia, that the Code of DeKalb County, Georgia, as Revised 1988, is hereby amended as follows:

PART I. ENACTMENT

By deleting Chapter 2, Article VII, Sections 2-207(f) and 2-209(a) of the Code of DeKalb County, Georgia, as Revised 1988, in their entirety and inserting new Sections 2-207(f) and 2-209(a) to read as follows:

Sec. 2-207(f).

- (a) Each prime contractor shall be required to sign an affidavit declaring under penalty of perjury its intention to comply fully with the provisions of this article, and attesting to the truth and accuracy of all information provided to the county. All prime contractors and LSBEs must adhere to all federal, state, and local law, and applicable provisions of this Code. All such affidavits shall also contain a provision whereby the prime contractor declares under penalty of perjury that no subcontract(s), LSBE or otherwise, shall contain language requiring mandatory, binding arbitration or in any other way limit subcontractor(s) from addressing disputes with the prime contractor(s) through any and all legal means.

Sec. 2-209(a).

- (a) At or around the time of award, but no later than the kickoff meeting, the director shall verify that a subcontract for the agreed upon percentage or dollar amount of the total contract price adopted and approved by the governing authority, has been executed by the prime contractor and the LSBE(s), and the prime contractor shall provide each LSBE's subcontract and an email address for the LSBE for notification purposes, to the director. The director shall also verify that all subcontract(s), including LSBE subcontracts, do not require mandatory, binding arbitration or in any other way limit the subcontractor(s) from addressing disputes with the prime contractor(s) through any

and all legal means. Failure to provide the requisite subcontract(s) shall be grounds for rejection of a qualified sealed solicitation and/or termination of the prime contract.

PART II. SEVERABILITY

Should any section or provision of this ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the ordinance as a whole nor any part thereof other than the part so declared to be invalid or unconstitutional. All ordinances or resolutions, or parts thereof, in conflict with this ordinance are repealed

PART III. EFFECTIVE DATE

This article shall become effective upon adoption by the Board of Commissioners and approval by the Chief Executive Officer.

ADOPTED by the DeKalb County Board of Commissioners, this ____ day of _____, 2018.

JEFF RADER
Presiding Officer
Board of Commissioners

June 19, 2018

APPROVED by the Chief Executive Officer of DeKalb County, this ____ day of _____, 2018.

MICHAEL THURMOND
Chief Executive Officer

ATTEST:

APPROVED AS TO FORM:

BARBARA SANDERS-NORWOOD, CCC
Clerk to the
Board of Commissioners and
Chief Executive Officer

VIVIANE H. ERNSTES
Interim County Attorney