Memorandum

MIAMI-DADE COUNTY

Date: January 21, 2010

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

Agenda Item No. 8(A)(1)(A)

From: George M. Burgess
County Manager

Subject: First Amendment to the Professional Services Agreement between Miami-Dade County and Brown & Brown Architects, Inc., increasing the contract limit by $802,000

Recommendation

It is recommended that the Board approve the First Amendment to the Professional Services Agreement between Brown & Brown Architects and Miami-Dade County to increase the dollar limit of the contract by $802,000 to a new maximum of $3,809,500. The increase is only a contract limit increase and not a budget increase. This amendment includes a CBE goal of 20 percent of the $800,000 increased amount, in addition to the 18 percent DBE goal assigned to the original Agreement and a $2,000 increase to the Inspector General Audit Account.

Scope

Projects implemented under this Agreement are located at Miami International Airport (MIA) (Commission District Six), Opa-locka Executive Airport (OPF) (Commission District One), and Kendall-Tamiami Executive Airport (TMB) (Commission District Eleven); but the impact is countywide as the airports are regional assets.

Funding Source

The funding source is the Miami-Dade Aviation Department (MDAD) Improvement Fund.

Project Description

Brown & Brown Architects was selected to provide architectural/engineering design and construction administration services for MDAD, to include professional design services for architectural, civil, structural, mechanical, electrical, telecommunications and other specialty services for terminal, landside, and associated structures and security projects at MIA and general aviation airports. The scope included screen enclosures for screening checkpoints, closed-circuit television (CCTV) cameras and equipment at various locations, facilities hardening, additional security rooms, access control additional devices, and fuel storage facility access control.

Background

In consideration of continuously changing security/safety regulations after the September 11, 2001 terrorist attacks and as a consequence of many of the older facilities at MIA and general aviation airports needing updates for safety and Code compliance, MDAD requested the selection of architectural/engineering firms. On May 11, 2004, the Board approved a Professional Services Agreement (PSA) between the County and Brown & Brown (Resolution No. R-542-04). The Consultant services were utilized for the following projects:

TMB Runway 9R-27L Extension Project	Project # L141A
MIA Fire Protection Upgrade of Security Rooms (8)	Project # J011A*
MIA Fire Protection Upgrade of Security Rooms (10)	Project # J012A*
MIA Cc E-G, J & S. Terminal Center Checkpoints Security Screen Enclosures	Project # G004A*
MIA Warehouse Addition to Commissary Building 3074	Project # K001D

OPF Security Camera Project	Project # I111C-1
MIA Park 6 Area Surface Parking	Project # N001A

Note*: As part of periodic re-evaluation of its financial capacity and Capital Improvement Program (CIP) priorities, in March 2008, MDAD placed projects # J011A, J012A & G004A on hold.

In view of the economic downturn that has affected MIA traffic and its financial capacity, MDAD Properties staff identified Buildings 700, 704, 707, 845, 896, 3040 & 3050 as non-performing assets that offered annual rent-producing opportunities in the range of $7 to $8 million in revenues, provided that deficient life-safety systems, roof leaks, electrical and mechanical shortcomings in these buildings could be corrected. The selection of a new architectural/engineering consultant to prepare construction documents to correct these repairs would take approximately one year.

Since Projects J011A, J012A & G004A had been placed on hold, and the fees in Brown & Brown Architects' PSA designated for those projects became available, utilization of Brown & Brown Architects' contract for Buildings 700, 704, 707, 845, 896, 3040 & 3050 offered an opportunity to expedite these projects. The firm was authorized to produce design and construction documents. By using Brown & Brown Architects' services, MDAD was able to reduce the project development duration by approximately one year. Meanwhile, the projects that were placed on hold on March 14, 2008 (# J011A, # J012A, & # G004A), once again were given a higher priority and were resumed in June 2008.

The firm also designed the extension of the Tamiami Executive Airport runway 9R-27L (Project #L141A). MDAD has an opportunity to take advantage of available matching State funds that may be available as well as advantageous current contract bids to further improve the safety of the runway by extending it to its full permitted length. The additional extension will require the firm to extend the current design from 1,000 feet to a total extension of 2,350 feet.

It is in the County's best interest to keep the original architects/engineers because they are familiar with the projects' scope. Furthermore, selection of new architects/engineers via the A/E Selection process will cause delays and would incur additional costs to the County. Therefore, an amendment to the PSA is recommended.

FIRM NAME & ADDRESS:	Brown & Brown Architects 6100 Blue Lagoon Drive, Suite 300 Miami, Florida 33126 Phone: (305) 461-5484
OWNERSHIP:	J.J. Suarez, Ph.D., P.E. President, CEO, 305-461-5484
TIME IN BUSINESS:	Since 1984
PREVIOUS AGREEMENTS WITH COUNTY WITHIN LAST FIVE (5) YEARS:	Two contracts, including this PSA, for a total amount of $ 3,157,500.
ORIGINAL AGREEMENT:	Three million, seven thousand, five hundred dollars ($3,007,500).

TERM OF AGREEMENT:	Five years from May 11, 2004, with three one-year renewal options. MDAD has authorized two one-year extensions for the current contract expiration date of May 11, 2011. The remaining one-year extension will be authorized only if necessary.
RECOMMENDED MODIFICATION:	Increase professional services fee limit from $3,007,500 by eight hundred and two thousand dollars ($802,000) to a new total of $3,809,500.
PERCENT CHANGE THIS MODIFICATION:	Twenty Seven percent (27%)
CONTRACT MEASURES:	18% DBE Goal ($ 540,000)
CONTRACT MEASURES PAID TO DATE:	19.7% ($591,439)
CONTRACT MEASURES FOR FIRST AMENDMENT:	20% CBE Goal ($160,000)
AFFIRMATIVE ACTION PLAN DATE:	December 9, 2008
LIVING WAGE:	No
TRACK RECORD:	Six evaluations, average 3.8, Satisfactory
USING DEPARTMENT:	Miami Dade Aviation Department
INSPECTOR GENERAL:	$ 9,500
PROJECT MANAGER: NAME/PHONE/EMAIL:	Tyrone Browne (305) 876-0529, tbrowne@miami-airport.com

Assistant County Manager

MEMORANDUM
(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: January 21, 2010

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 8(A)(1)(A)

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

__✓__ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(A)(1)(A)
1-21-10

RESOLUTION NO. _____

RESOLUTION APPROVING FIRST AMENDMENT TO THE NON-EXCLUSIVE AGREEMENT BETWEEN MIAMI-DADE COUNTY AND BROWN & BROWN ARCHITECTS FOR ARCHITECTURAL/ENGINEERING DESIGN AND CONSTRUCTION ADMINISTRATION SERVICES AT MIAMI-DADE COUNTY AIRPORTS, INCREASING THE CONTRACT LIMIT BY $802,000; ESTABLISHING CBE MEASURES AND AUTHORIZING THE MAYOR OR HIS DESIGNEE TO EXECUTE SAME

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the First Amendment to the Non-Exclusive Agreement between Miami-Dade County and Brown & Brown Architects for architectural/engineering design and construction administration services at Miami-Dade County Airports, in substantially the form attached hereto and made a part hereof, which amendment increases the contract limit by $802,000 and establishes CBE measures for the increased contract amount; and authorizes the Mayor or his designee to execute same on behalf of the County.

The foregoing resolution was offered by Commissioner ,

who moved its adoption. The motion was seconded by Commissioner

and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 21st day of January, 2010. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Deborah Bovarnick Mastin

FIRST AMENDMENT TO THE NON-EXCLUSIVE AGREEMENT BETWEEN BROWN & BROWN ARCHITECTS, INC. AND MIAMI-DADE COUNTY FOR PROFESSIONAL SERVICES AGREEMENT

This first amendment is made this _____ of _____, 2009 to the Non-Exclusive Agreement between Brown & Brown Architects and Miami-Dade County for architectural/engineering design and construction administration services for the Miami-Dade Aviation Department.

Whereas, by Resolution No. R-542-04, passed and adopted by the Board of County Commissioners, an Agreement was awarded for architectural / engineering Design and Construction Administration services for the Miami-Dade Aviation Department to Brown & Brown Architects; and

Whereas, at the request of the County, the Architect / Engineer undertook several urgent projects which depleted their contractual limits, the County wishes to add $800,000 to the subject Agreement and increase the Agreement amount from $3,007,500 to $3,809,500 ($9,500 included for Inspector General); and

NOW THEREFORE, in consideration of the revised terms and conditions of the Agreement, the parties to this First Amendment agree as follows:

1. Modify the first paragraph of Article 8 as follows:

   "Unless otherwise authorized by Amendment to this Agreement, payments to the Consultant for Services performed shall not exceed $3,809,500 and shall be disbursed as reflected herein."

2. Modify Sub-article 8.6 of the agreement as follows:

   "INSPECTOR GENERAL AUDIT ACCOUNT: One audit account is herby established to pay for mandatory random audits by the County's Inspector General pursuant to County Code Section 2-1076. The amount for the Inspector General Audit Account is hereby set at $9500.00 (Nine Thousand Five Hundred Dollars and no Cents). The Consultant shall have no entitlement to any of these funds. The Owner retains all rights to these funds, may expend this funds at it sole discretions, and any funds not expended from these audit accounts remain the property of the County."

3. Modify Sub-article 8.7 of the Agreement as follows:

   "TOTAL AUTHORIZED AMOUNT FOR THIS AGREEMENT: Except as otherwise provided for herein, the Total Authorized Amount for this Agreement, including Reimbursable, and Audit Account is $3,809,500 (Three million, eight hundred, nine thousand and five hundred dollars and no cents). The Owner retains all rights to these funds, may expend these funds at its sole discretion,

and any funds not expended from this authorized Agreement amount remain the property of the County."

4. Modify Article 9, Special Provisions, RE: Article 7.7 to read as follows:
   The contract measures for this Agreement are:

   Disadvantaged Business Enterprise (DBE) 18% Goal (original agreement)
   Community Business Enterprise (CBE) 20% of the $800,000 increase recommended for this First Amendment. A "Letter of Agreement" from Brown & Brown, Inc., to meet the 20% CBE goal is included as attachment #1. This amendment supplements the original agreement by including the CBE-A/E Provisions dated March 2009 (attachment # 2).

IN WITNESS WHEREOF, the parties have executed this First Amendment to the Agreement the date and year first above written.

Brown and Brown Architects:

Brown & Brown Architects
(Legal Name of Corporation)

ATTEST:
Secretary _____
(Signature and Seal)

_____
(Type Name & Title)

By: _____
Authorized Officer - Signature

Name: Reinaldo Vera

Sr. Vice Pres.
(Type Name & Title)

BOARD OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

By: _____
Mayor

Approved for Form
And Legal Sufficiency

_____
Assistant County Attorney

Attest: Harvey Ruvin, Clerk

By: _____
Deputy Clerk

MIAMI-DADE COUNTY

Letter of Agreement

Community Business Enterprise Program

From: Brown + Brown Architects
Name of Proposer / Design-Builder

In response to Miami-Dade County's Project Number A02-MDAD-01, the undersigned hereby agrees to utilize the Community Business Enterprise (CBE) firm listed below, performing the stated work at the stated percentage, if awarded the contract. The undersigned further certifies that the firm has been contacted and properly apprised of the projected work assignment(s) to be performed upon execution of the contract with Miami-Dade County. Further, by signing this Letter of Agreement the undersigned consents to be bound by all the Provisions of the CBE Ordinance No. 01-103 as amended.

Name of Firm: Vital Engineering, Inc.
(Proposed Community Business Enterprise Subconsultant)

Name of Proposer (CBE meeting the goal)	CBE-A/E Certification No.	CBE-A/E Certification Exp.	Type of Work to be Performed (Technical Certification Categories)	Percentage Amount of Design Fee
NA	NA	NA	NA	0%

Name of Subconsultant	CBE-A/E Certification No.	CBE-A/E Certification Exp.	Type of Work to be Performed (Technical Certification Categories)	Percentage Amount of Design Fee
Vital Engineering, Inc.	2472	05.31.2010	MEP	10%

I certify that the representations contained in this form are to the best of my knowledge true and accurate

Proposer's / Design Builder Signature	Alberto Llorente - Program Manager Proposer's / Design-Builder's Name/Title (Print)	07.23.2009 (Date)

THIS SECTION MUST BE COMPLETED BY THE CBE SUBCONSULTANT

ACKNOWLEDGMENT BY THE PROPOSED COMMUNITY BUSINESS ENTERPRISE FIRM

The undersigned has reasonably uncommitted capacity sufficient to provide the required services, all licenses and technical certifications necessary to provide such services, the ability to provide such services consistent with normal industry practice, and the ability to otherwise meet the proposal specifications.

CBE Subconsultant Signature	July 23, 2009 Date
Helson Vital CBE Subconsultant Name (Print)	President Title

Vital Engineering, Inc.
Name of CBE Firm

Department of Small Business Development - **CBE FORM 105**

Letter of Agreement

Community Business Enterprise Program

From: Brown + Brown Architects
Name of Proposer / Design-Builder

In response to Miami-Dade County's Project Number A02-MDAD-01, the undersigned hereby agrees to utilize the Community Business Enterprise (CBE) firm listed below, performing the stated work at the stated percentage, if awarded the contract. The undersigned further certifies that the firm has been contacted and properly apprised of the projected work assignment(s) to be performed upon execution of the contract with Miami-Dade County. Further, by signing this Letter of Agreement the undersigned consents to be bound by all the Provisions of the CBE Ordinance No. 01-103 as amended.

Name of Firm: Louis J. Aguirre & Associates, P.A.
(Proposed Community Business Enterprise Subconsultant)

Name of Proposer (CBE meeting the goal)	CBE-A/E Certification No.	CBE-A/E Certification Exp.	Type of Work to be Performed (Technical Certification Categories)	Percentage Amount of Design Fee
NA	NA	NA	NA	0%

Name of Subconsultant	CBE-A/E Certification No.	CBE-A/E Certification Exp.	Type of Work to be Performed (Technical Certification Categories)	Percentage Amount of Design Fee
Louis J. Aguirre & Assoc.	1486	06.30.2010	MEP	10%

I certify that the representations contained in this form are to the best of my knowledge true and accurate

Proposer's / Design Builder Signature	Alberto Llorente - Program Manager Proposer's / Design-Builder's Name/Title (Print)	07.23.2009 (Date)

THIS SECTION MUST BE COMPLETED BY THE CBE SUBCONSULTANT

ACKNOWLEDGMENT BY THE PROPOSED COMMUNITY BUSINESS ENTERPRISE FIRM

The undersigned has reasonably uncommitted capacity sufficient to provide the required services, all licenses and technical certifications necessary to provide such services, the ability to provide such services consistent with normal industry practice, and the ability to otherwise meet the proposal specifications.

CBE Subconsultant Signature	07.23.09 Date

Louis J. Aguirre, P.E., LEED® AP, President
CBE Subconsultant Name (Print) Title

Louis J. Aguirre & Associates, P.A.
Name of CBE Firm

Department of Small Business Development - **CBE FORM 105**

MIAMI-DADE COUNTY
FLORIDA

DEPARTMENT OF SMALL BUSINESS DEVELOPMENT

COMMUNITY BUSINESS ENTERPRISE PROGRAM FOR ARCHITECTURAL, LANDSCAPE ARCHITECTURAL, ENGINEERING, SURVEYING AND MAPPING PROFESSIONAL SERVICES (CBE-A/E)

(ORDINANCE 01-103 as amended AND A.O. 3-32)

PARTICIPATION PROVISIONS

There are two (2) Contract Measures:
First Tier Set-Aside and Subconsultant Goal

THE CBE-A/E MEASURE(S) APPLICABLE TO THIS PROJECT:

Set-Aside	
Subcontractor Goal	

DEPARTMENT OF SMALL BUSINESS DEVELOPMENT
111 N.W. 1st Street, 19th FLOOR
MIAMI, FLORIDA 33128
PHONE: (305) 375-3111 FAX: (305) 375-3160

March 2009

Attachment 2
Pages 1-22

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1. Forms

a. Letter of Agreement (CBE 105)
b. Certificate of Unavailability (CBE 103)
c. Architecture & Engineering Utilization Report

Ordinance 01-103, as amended and Administrative Order 3-32 can be obtained from the Clerk of the Board located at the Stephen P. Clark Building, 111 N.W. 1 Street, Suite 17-202, Miami, Florida.

A. DEFINITIONS

The definitions in this section apply only to these Participation Provisions, hereinafter referred to as "Provisions".

1. Agreement means an agreement proposed by the County, Fire, or Public Health Trust staff, or approved by the County Commission, Fire or Public Health Trust for architectural, landscape architectural, engineering, or surveying and mapping professional services.

2. Available or Availability means to have, prior to proposal submission, the ability to provide professional services under an agreement or subconsultant agreement by having reasonably estimated, uncommitted capacity and expertise; all licenses, permits, registrations, insurances and certifications; that are reasonably required to perform the agreement or subconsultant agreement consistent with normal industry practice; and the ability to otherwise meet all the proposal specifications.

3. Bonding Assistance may include providing assistance in preparing and completing bond packages as well as providing funding to be used for bonding purposes.

4. Business Day means a regular weekday (Monday through Friday) normally starting at 8:00 a.m. and finishing at 5:00 p.m., excluding Saturdays and Sundays and excluding all legal holidays recognized by the Federal, State or Miami-Dade County governments.

5. Calendar Day means a twenty-four (24) hour period covering all days of the week (Monday through Sunday, including all holidays), starting at 12:00 a.m. and finishing at 11:59 p.m.

6. CBE-A/E Program is the Community Business Enterprise Program for architectural, engineering, landscape architectural, surveying and mapping professionals.

7. Commercially Useful Function means contractual responsibility for the execution of a distinct element of the work of an agreement by a firm and the carrying out of the contractual responsibilities by actually performing, managing, and supervising the work involved. Acting as a broker is not considered a commercially useful function. The determination of whether an activity is a commercially useful function shall include: the evaluation of the amount of work subconsulted; normal industry practices; the skills, qualifications, or expertise of the firm to perform the work; whether the firm's own personnel perform, manage, and/or supervise the work involved; and other relevant factors.

8. Community Business Enterprise (CBE-A/E) means a firm providing architectural,

landscape architectural, engineering, or surveying and mapping professional services, including a design-build firm, which has an actual place of business in Miami-Dade County and whose three (3) year average annual gross revenues do not exceed two million ($2,000,000) dollars for first tier CBE-A/Es, four million five hundred thousand ($4, 500,000) dollars for second tier CBE-A/Es in the case of architectural services, or six Million ($6,000,000) dollars for second tier CBE-A/Es in the case of landscape architectural services, engineering, or surveying and mapping services. A CBE-A/E will graduate out of the Program once it has exceeded these second tier CBE-A/E size limits based on its three-year average annual gross revenues. As part of the process, CBE-A/Es must go through a technical certification process, which will determine the technical certification categories. A firm's eligibility to participate in the CBE-A/E program shall be based on the cumulative adjusted gross revenues of the applicant firm in combination with that of all of the firm's affiliates as provided in Appendix A pursuant to the Miami-Dade County Ordinance number 01-103 (as amended). Representations as to gross revenues shall be subject to audit.

9. Completed Fiscal Year means a taxable year including any short period. Taxable year and short period have the meaning attributed to them by the IRS.

10. Construction means the building, renovating, retrofitting, rehabbing, restoration, painting, altering, or repairing of a public improvement.

11. SBD means Miami-Dade County Department of Small Business Development.

12. Debar means to exclude a consultant, its individual officers, its shareholders with significant interests, its qualifying agent or its affiliated businesses from County agreements, whether as a prime consultant or subconsultant, for a specified period of time, not to exceed five (5) years.

13. Design-Build Contract means a single contract with a design-build firm for the design and construction of a public construction project.

14. Design-Build Firm means a partnership, corporation, or other legal entity with the following characteristics:

    a. A partnership or joint venture, having at least one partner in compliance with either of the following two requirements:

        i. Is certified under Section 489.119, Florida Statutes, to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent; or

        ii. Is certified under Section 471.023, Florida Statutes, to practice engineering; certified under Section 481.219 to practice architecture; or certified under Section 481.319 to practice landscape architecture.

b. An individual or corporation in compliance with the following two requirements:

i. Is certified under Section 489.119, Florida Statutes, to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent; and

ii. Is certified under Section 471.023, Florida Statutes, to practice engineering; certified under Section 481.219 to practice architecture; or certified under Section 481.319 to practice landscape architecture.

15. DPM means Miami-Dade County Department of Procurement Management.

16. Firm means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice architecture, engineering, landscape architecture, design-build, and/or land surveying and mapping services.

17. Graduation means the CBE-A/E has exceeded the specific size limits stated for the Program and thus will no longer be eligible for participation in the Program.

18. Gross Revenues is defined to include all revenue in whatever form received or accrued from whatever source, including from the sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns and allowances. However, the term revenues excludes proceeds from sales of capital assets and investments, proceeds from transactions between a firm and its domestic and foreign affiliates, amounts collected for another by a travel agent or real estate agent, and taxes collected for remittance to a taxing authority.

19. Joint Venture means an association of two or more CBE-A/Es. Joint ventures shall be subject to the size limitations set forth in Ordinance 01-103 (as amended).

20. Multiple Projects Contract is a contract for a "project" which constitutes a grouping of minor or substantially similar study of activities or substantially similar construction, rehabilitation or renovation activities as defined in Sec. 2-l0.4(1)(e)(I) and (2) of the Code of Miami-Dade County.

21. Net Worth for the purposes of the size limits is defined as total assets minus total liabilities, of owners.

22. Owned means having all the customary incidents of ownership, including the right of disposition, and the right or obligation to share in all risks and profits commensurate with the degree of ownership interest.

23. Pre-Qualification Certification is the certification process required of all firms providing architectural, engineering, landscape architectural, land surveying and mapping professional services. It consolidates technical certification, affirmative

action plan certification, and vendor registration and affidavit execution, into one application process.

24. Professional Services are those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of Florida, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.

25. Project Specific Awards are contracts for professional services between Miami-Dade County and a firm whereby the firm provides professional services to the agency for work of a specified nature for a fixed capital study or planning activity.

26. Prompt Payment is the intent of the County that all firms providing professional services to the County shall receive payments promptly in order to maintain sufficient cash flow.

    a. Contracts with CBE-A/E set-asides or subconsultant goals shall require that billings from consultants under prime professional services agreements with Miami-Dade County, Fire or the Public Health Trust shall be promptly reviewed and payment made by the County, Fire or Trust on those amounts not in dispute within fourteen (14) calendar days of receipt of such billing by the County, Fire, or the Trust.

    b. The Department of Small Business Development may investigate reported instances of late payments to CBE-A/Es.

    c. The County Manager shall establish an administrative procedure for the resolution of written complaints pertaining to underpayment of professional services.

27. Proposal means a proposal, letter of interest, letter of participation or offer by any proposer in response to any kind of invitation, request or public announcement to submit such proposal, letter of interest, letter of participation or offer to perform the agreement.

28. Proposer means any firm that submits a proposal to provide professional services.

29. Qualifier means the individual who qualified the firm license holder as required by Florida Statute.

30. Review Committee or RC means the committee established by the County Manager to review proposed projects for the application of contract measures.

31. Review Committee Process involves the County Manager or his or her designee's establishment of an administrative procedure for the review of each proposed County

agreement to which Ordinance 01-103 (as amended), Administrative Order 3-32 and these Provisions apply, including the establishment of a committee to recommend whether CBE-A/E measures should be applied.

32. Set-aside means reservation for competition solely among first tier CBE-A/Es of given prime County agreements for architectural, landscape architectural, engineering, or surveying and mapping professional services.

33. Subconsultant Goal means a proportion of a prime agreement value stated as a percentage to be subconsulted to first and/or second tier CBE-A/Es to perform a commercially useful function.

34. Suspension means temporary debarment for a period not to exceed two (2) years.

35. Technical Certification means a certification approved by the Miami-Dade County Technical Certification Committee that allows a firm to submit proposals on, and receive award of, County agreements for architectural, engineering, landscape architecture, or surveying and mapping services.

B. GENERAL INFORMATION

Except where federal or state laws or regulations mandate to the contrary, these Provisions shall require the review of all project specific contracts, design-build contracts and multiple contracts for architecture, landscape architecture, engineering, and surveying and mapping professional services funded in whole or in part with County funds to determine the appropriateness of applying measures as set forth in Ordinance 01-103 (as amended) and Administrative Order 3-32.

These Provisions shall apply to all departments and agencies of the County, Fire and the Public Health Trust. These Provisions shall apply to every agreement to which a CBE-A/E set-aside or subconsultant goal is applied. The phrase "CBE-A/E contract measure(s)" means to apply the contract measure to this agreement as indicated on the cover sheet. Only the contract measure in the CBE-A/E program indicated on the cover sheet applies.

NOTE: THESE PROVISIONS ARE IN ADDITION TO FEDERAL REQUIREMENTS GOVERNING DISADVANTAGED BUISNESS ENTERPRISES.

1. The proposer shall fully comply with these Provisions which implement Miami-Dade County's Ordinance 01-103 (as amended) and Administrative Order 3-32, respectively.

2. Miami-Dade County shall not award an agreement to any proposer which it determines fails to comply with the applicable requirements of these Provisions.

3. Forms necessary for submittal of information pertaining to these Provisions are included in the appendix. Additional copies may be obtained by contacting the

Compliance Monitor at the Department of Small Business Development (SBD), 111 N.W. 1st Street, 19th Floor, Miami, Florida 33128 or by telephone (305) 375-3111, facsimile (305) 375-3160.

C. CERTIFICATION

1. SBD is the County agency responsible for certifying applicants, decertifying and recertifying CBE-A/Es, and maintaining the Certification List. SBD shall maintain and publish at least monthly an updated list of CBE-A/Es, identifying each listed CBE-A/E based on each SIC/NAICS category, and each Technical Certification Category.

2 Proposers must utilize the most current certification list in complying with these Provisions. A current certification list may be obtained by contacting the Miami-Dade County Department of Small Business Development at 111 N.W. 1st Street, 19th Floor, Miami, Florida 33128 or by telephone at (305) 375-3111, facsimile (305) 375-3160. A copy of the certification application and list are also available on SBD's Web Page through Miami-Dade County's Internet Portal at http://www.miamidade.gov/sba/.

3. A CBE-A/E must have a Pre-Qualification certification and a valid CBE-A/E certification in effect at the time of proposal submittal. For successful proposers, certification must be maintained from the time of proposal submittal throughout the duration of the agreement. With the exception of provisions described in the CBE-A/E Ordinance for graduation from the CBE-A/E program, loss of CBE-A/E certification may lead to removal of the firm from continued participation in the CBE-A/E program. CBE-A/Es shall allow site visits by SBD staff to determine continuing compliance with certification requirements.

D. JOINT VENTURES

Only joint ventures approved by SBD in accordance with Administrative Order 3-32 are eligible to participate as joint ventures in the CBE-A/E program. Joint ventures must be lawfully established. All members of the joint venture must be certified as CBE-A/Es before the joint venture can be approved. Joint ventures can participate under the CBE-A/E program on contracts with CBE-A/E set-asides or subconsultant goals.

Joint ventures must submit, prior to proposal submission, a Joint Venture Agreement containing the following information:

1. A description of the financial contribution of each member;

2. A list of the personnel and equipment used by each member;

3. A detailed breakdown of the responsibility of each member and the work to be performed by each member;

4. An explanation of how the profits and/or losses will be distributed;

5. The bonding capacity of each member;

6. A description of any management or incentive fees for any of the members;

7. A statement of the percentage of the joint venture that is owned and controlled by the qualifying member(s) and the basis for claiming such percentage; and

8. A copy of any required State certificates or registrations.

E. CONTRACT MEASURES

Project specific and multiple project agreements for the purchase of architectural, landscape architectural, engineering, or surveying and mapping services, shall be reviewed for the application of agreement set-asides or subconsultant goals on such purchases.

1. Set-Aside Agreements

   a. Respondent's Responsibilities for Agreement Set-Asides:

      i. In order to submit a proposal on a set-aside agreement, the proposer (and all sub-consultants) must be certified as first-tier CBE-A/Es prior to proposal submission date. A CBE-A/E awarded a set-aside agreement shall not transfer to a non-CBE-A/E or a second-tier CBE-A/E, through subconsulting or otherwise, any part of the actual work of the agreement unless the proposal documents expressly and specifically permit such transfer as consistent with normal industry practice or the CBE-A/E requests and receives prior to agreement award, an approval letter from SBD.

      ii. A first tier CBE-A/E that performs the work of a set-aside agreement with its own forces may count such work towards reducing the CBE-A/E set-aside applied to the agreement by a maximum of one hundred (100) percent.

      iii. Respondents on agreement set-asides must submit completed "Letter(s) of Agreement" (Form CBE 105) at the time of proposal submission. Respondents who fail to submit the required Letter(s) of Agreement shall be considered non-responsive.

      iv. Defective Letter(s) of Agreement that are incomplete or inaccurate upon notification by the Department of Small Business Development may be corrected within 48 hours from notification by the department. Examples of defects include, but are not limited to, improperly executed letters, the

listing of unidentifiable CBE-A/Es and percentage miscalculations that are not mere clerical errors apparent on the face of the Letter of Agreement.

b. The following shall constitute a violation of these Provisions as they relate to an agreement that is set-aside:

i. Submission of Letter(s) of Agreement of first-tier CBE-A/E subconsultants that the respondent knew or should have known is incomplete or inaccurate;

ii. After proposal submission due date, deviations from the Letter of Agreement without the written approval of the Compliance Monitor;

iii. The utilization of a non-certified or a second-tier CBE-A/E.

iv. A first-tier CBE-A/E serving as a conduit for set-aside CBE-A/E work awarded to a firm as a first-tier CBE-A/E but which is being performed by a non-CBE-A/E or a second-tier CBE-A/E firm;

v. Not obtaining or retaining first-tier CBE-A/E certification while performing work on a set-aside designated for first-tier CBE-A/E firms;

vi. Failure to submit "Architecture & Engineering Utilization Reports";

vii. Failure to comply with first-tier CBE-A/E certification requirements including not maintaining a place of business in Miami-Dade County, not reporting organizational and operational changes, providing inaccurate or false information, and other certification related violations;

viii. Modifications to the terms and/or prices of payment to a first-tier CBE-A/E without prior approval from SBD; or

ix. Unjustified failure to enter into a written subconsultant agreement with a first-tier CBE-A/E after listing the firm on a "Letter of Agreement."

2. Subconsultant Goals

The purpose of a subconsultant goal is to have portions of the work under the prime consultant performed by available subconsultants that are certified CBE-A/Es for agreement values totaling not less than the percentage of the prime agreement value set out in the proposal form.

a. Respondent's Responsibilities for Subconsultant Goals:

i. Respondents must submit a completed Letter of Agreement (Form CBE 105) at the time of proposal submission identifying all CBE-A/Es to

be utilized to meet the subconsultant goal, the professional service designation of work each will perform, and the percentage of such work. The Letter of Agreement constitutes a written representation by the respondent that, to the best of the respondent's knowledge, the CBE-A/E/s listed is/are qualified and available to perform as specified. The Letter of Agreement is a commitment by the respondent that, if awarded the agreement, it will enter into written subconsultant agreements with the identified CBE-A/Es for the scope of work at the percentage set forth in the Letter of Agreement.

ii. Respondents who fail to submit the required Letter of Agreement at the time of proposal submission shall be considered non-responsive.

iii. Defective Letters of Agreement that are incomplete or inaccurate upon notification by the Department of Small Business Development may be corrected within 48 hours from notification by the department. Examples of defects include, but are not limited to, improperly executed letters, the listing of unidentifiable CBE-A/Es and percentage miscalculations that are not mere clerical errors apparent on the face of the Letter of Agreement.

iv. A successful respondent that is a CBE-A/E or a CBE-A/E joint venture may perform up to one hundred percent (100%) of a CBE-A/E subconsultant goal with its own forces.

v. Expenditures to subconsulting CBE-A/Es shall be counted toward meeting specified subconsultant goals as follows:

(1) One hundred percent (100%) of the expenditures to a CBE-A/E that performs a commercially useful function in the supply of services required for the fulfillment of the agreement;

(2) One hundred percent (100%) of the expenditures to CBE-A/Es that subconsult work further to non-CBE-A/Es, only if the proposal documents expressly and specifically permit such subconsulting as consistent with normal industry practice, or if the respondent or CBE-A/E requests and receives prior to agreement award an approval letter from SBD;

(3) One hundred percent (100%) of the expenditures to CBE-A/Es that perform actual work with their own forces;

(4) None of the expenditures to a CBE-A/E that acts essentially as a conduit to transfer funds to a non-CBE-A/E unless the proposal documents expressly and specifically permit such transfers as consistent with normal industry practice or the respondent or CBE-A/E requests and receives prior to agreement award an approval

letter from SBD; and

(5) Only expenditures to CBE-A/Es made under a written subconsultant agreement executed by both the prime consultant and the CBE-A/E shall be counted towards meeting the subconsultant goal.

vi. Respondents whose proposals do not meet the specified goal, in order to remain eligible, must submit to the Contracting Officer no later than 4:00 p.m. on the second business day following proposal submission, evidence proving the lack of available CBE-A/Es to afford effective competition to provide the services to meet the goal. To prove lack of availability, respondents must submit the following:

(1) Unavailability Certificates (Form CBE 103) either completed and signed by all of the CBE-A/Es certified to perform the scopes of work or completed and signed by the respondent explaining the contacts with all of the CBE-A/Es certified to perform the scopes of work, statements or actions of the CBE-A/Es showing unavailability, and the reason(s) why the CBE-A/Es' signature could not be obtained;

(2) A listing of any proposals received from a CBE-A/E, the scope of work, percentage of work and the respondent's reasons for rejecting each proposal;

(3) A statement of the respondent's contacts with SBD for assistance in determining available CBE-A/Es;

(4) A description of the respondent's process for soliciting and evaluating proposals from CBE-A/Es, including copies of telephone logs detailing time, date and name of contacts with potential subconsultants;

(5) Respondents may establish a CBE-A/E as unavailable if its proposal is not reasonably competitive with comparable proposals of non-CBE-A/E s for the same scope of work. To establish a CBE-A/E as unavailable if its proposal is not considered reasonably competitive, the prime consultant must furnish SBD with copies of all proposals received from all firms, both CBE-A/Es and non-CBE-A/Es, for each specific scope of work for which they are claiming that the proposal is not reasonably competitive. A CBE-A/E's proposal will be considered reasonably competitive if its proposal, for the same scope of work, is within 25% of the proposal of comparably sized non-CBE-A/E firms;

b. Respondents whose proposals do not meet the specified goal, and who do not

prove lack of availability as indicated in 2. (a.) (vi.) above are not in compliance with these Provisions. The following shall constitute non-compliance with these Provisions as it relates to an agreement which has a CBE-A/E subconsultant goal:

i. The utilization of a non-certified CBE-A/E;

ii. A CBE-A/E serving as a conduit for CBE-A/E work awarded to a firm as a CBE-A/E but which is being performed by a non-CBE-A/E firm;

iii. A prime consultant not meeting CBE-A/E subconsultant goal requirements;

iv. Not obtaining or retaining CBE-A/E certification while performing work designated for CBE-A/E firms;

v. Failure to submit Architecture & Engineering Utilization Reports;

vi. Deviations from the Letter of Agreement without prior approval from SBD;

vii. Termination of the CBE-A/E's agreement without prior approval from SBD;

viii. Reduction of the scope of work of a CBE-A/E subconsultant without prior approval from SBD;

ix. Modifications to the terms and/or prices of payment to a CBE-A/E without prior approval from SBD; or

x. Unjustified failure to enter into a written subconsultant agreement with a CBE-A/E after listing the firm on a Letter of Agreement.

c. County Responsibilities for Agreements Set-Asides and Subconsultant Goals:

i. SBD shall review the Letter/s of Agreement, and Unavailability Certificates to determine compliance with the agreement set-aside, or subconsultant goal stated in the proposal documents. The Compliance Monitor may meet with a respondent before recommending that the Contracting Officer determine non-compliance. This written recommendation shall be forwarded to the respondent and the Contracting Officer.

ii. In the event that the Contracting Officer receives a recommendation of non-compliance from the Compliance Monitor, he or she may conduct a meeting or hearing at which the respondent shall be afforded an

opportunity to present data supporting its compliance with the goal. The Contracting Officer shall consider the evidence and make a determination as to compliance.

F. DESIGN-BUILD CONTRACTS

The design portion of the design-build contract is subject to the procedures outlined in these Provisions.

G. PROMPT PAYMENT

It is the County's intent that all firms, including CBE-A/Es providing professional services to the County, shall receive payments promptly in order to maintain sufficient cash flow.

1. Prime Consultant Responsibilities

   a. A prime consultant shall include in its billing to Miami-Dade County, Fire or the Public Health Trust copies of those portions of the billings from CBE-A/E subconsultants utilized to meet the subconsultant goal applicable to the agreement which the prime consultant approves and whose cost is included in the payment amount requested from Miami-Dade County, Fire or the Public Health Trust.

   b. Prime consultant agreements to which a CBE-A/E subconsultant goal has been applied shall require that billings from CBE-A/Es be promptly reviewed and payment made to such CBE-A/Es on those amounts not in dispute within two (2) business days of receipt of payment therefore. The foregoing notwithstanding, the prime consultant shall pay billings from CBE-A/E subconsultants with whom they are in direct privity that are not in dispute within the timeframe recommended by the CBE-A/E Advisory Board and implemented by Administrative Order 3-32 as approved by the Board of County Commissioners.

   c. The prime consultant on an agreement to which a CBE-A/E subconsultant goal has been applied shall inform SBD, the Contracting Officer, and the CBE-A/E subconsultant, in writing, of those amounts billed by the CBE-A/E which are in dispute, and the specific reasons why they are in dispute, within seven (7) calendar days of submittal of such billing by the CBE-A/E subconsultant to the prime consultant.

   d. Failure of the prime consultant to comply with the applicable requirements of Section (G)(1)(c) above shall result in the prime consultant's forfeiture of the right to use the dispute as justification for not paying the CBE-A/E subconsultant and payment shall be forthcoming from the prime consultant.

2. County Responsibilities

a. Proposal documents for agreements with CBE-A/E agreement set-asides, or subconsultant goals shall require that billings from subconsultants under prime consultant agreements with Miami-Dade County, Fire or the Public Health Trust that are a CBE-A/E agreement set-aside or which contain a subconsultant goal shall be promptly reviewed and payment made by the County, Fire or Trust on those amounts not in dispute within fourteen (14) calendar days of receipt of such billing by the County, Fire or the Trust.

b. SBD may investigate reported instances of late payment to CBE-A/Es.

3. Finance Department Responsibilities

The Finance Department shall review billings from prime consultants under prime consultant agreements with Miami-Dade County, Fire, or the Public Health Trust that are a CBE-A/E agreement set-aside or which contain a subconsultant goal and make payment on those amounts not in dispute within fourteen (14) calendar days of receipt of billing.

H. AGREEMENT COMPLIANCE AND MONITORING

1. Compliance Review

a. The Compliance Monitor shall review respondent's submission for compliance with these Provisions on every agreement to which a CBE-A/E agreement set-aside, or subconsultant goal has been applied. The purpose of this review shall be for the Compliance Monitor to consider whether to recommend the respondent's proposal is determined to be in compliance or non-compliance with the requirements of these Provisions. The Compliance Monitor may consider relevant information from any person in making this decision. The Compliance Monitor may require the respondent to produce information deemed pertinent and appropriate and may obtain further information from whatever sources the Compliance Monitor deems appropriate.

b. The Compliance Monitor shall notify the respondent in writing stating the facts and the reasons on which the non-compliance is based. The respondent may request a meeting within five (5) business days from the date of the notification of non-compliance. The respondent shall supply further relevant information as required by the Compliance Monitor. No new or altered Letter of Agreement will be accepted.

c. The Compliance Monitor shall make a written recommendation to the Contracting Officer, which shall include a statement of the facts and reasons for which the non-compliance is based.

d. Following receipt of a recommendation of non-compliance from the

Compliance Monitor, the Contracting Officer shall review the Compliance Monitor's recommendation of respondent's non-compliance with these Provisions. The Contracting Officer shall notify the respondent of such non-compliance. The respondent may request a meeting within five (5) business days from the date of notification of non-compliance with the Contracting Officer if the Contracting Officer was not present at the first meeting referenced in Subsection (1)(b) above. The respondent shall supply further relevant information as required by the Compliance Monitor. No new or altered Letter of Agreement will be accepted.

e. The Contracting Officer, in conjunction with the Compliance Monitor, may conduct an informal meeting with the respondent. Other parties may be invited to offer information relevant to the issue of the respondent's non-compliance.

f. The Contracting Officer shall provide a written determination of the respondent's compliance with these Provisions, along with a recommendation whether to award the agreement to the respondent, to the County Manager. A copy of such recommendation shall be sent to the respondent. Such recommendation shall not affect the power of the Board of County Commissioners to reject the respondent's bid for any other reason or to take such action on the recommendation of the Contracting Officer as the Board deems appropriate.

g. Consideration of other proposals. If the Contracting Officer or Compliance Monitor deems it advisable in the interest of expediting the award of the agreement, the procedures set forth in this subsection may be carried out with respect to the proposals of one or more additional respondents at the same or different time with each such proceeding to be separately conducted.

h. Failure of respondent to participate. The respondent will be bound by the proceedings under this subsection to which they have been given required notice without regard to their participation or lack of participation. A lack of participation upon receiving notices and requests pursuant to these Provisions shall not be grounds for reconsideration of any action taken in the proceedings.

i. Miami-Dade County shall not award an agreement to any respondent which, in its determination, fails to comply with the applicable requirements of these Provisions. Nothing herein shall relieve any respondent from any of the terms, conditions or requirements of the contract or modify Miami-Dade County's rights as reserved in the agreement document.

2. Post-Award Compliance and Monitoring

a. Approval of Subconsultant Agreements

The Successful Respondent shall submit to the Contracting Officer, for approval, written subconsultant agreements corresponding in all respects to the Successful Respondent's Letter of Agreement. The Successful Respondent shall enter into a written subconsultant agreement with each listed CBE-A/E subconsultant and shall thereafter neither terminate any such subconsultant agreement, nor reduce the scope of work to be performed by, or decrease the price to be paid to the first tier CBE-A/Es thereunder, without in each instance obtaining prior written approval of the Contracting Officer. The Contracting Officer shall not give a final written determination without a recommendation from the Compliance Monitor.

b. Access to Records

Successful respondents and CBE-A/Es shall permit the County to have access during normal business hours to books and records relating to the respondent's compliance with the agreement set-aside, or subconsultant goal applied to the agreement or relating to CBE-A/E compliance with certification requirements. Such books and records include but are not limited to corporate documents, charters, organizational filings, tax filings, registrations, licenses, stock registrations, partnership agreements, contracts, subcontracts, joint venture agreements, telephone logs, checking accounts, journals, ledgers, correspondence, pension and benefits documents, and documents and records between the respondent or the CBE-A/E and other entities. This right of access shall be granted for one year after completion of the work or full payment of the agreement obligation, whichever comes last, or for one year after the expiration of CBE-A/E certification.

c. Access to Job Site

Successful respondents and CBE-A/Es shall permit the County to have access to project locations during normal business hours in order to conduct visual inspections and employee interviews.

d. Monthly/Quarterly Reporting

The successful respondent on a project that is a CBE-A/E agreement set-aside or on a project with CBE-A/E subconsultant goals shall submit monthly a Architecture & Engineering Utilization Report to the Compliance Monitor through the Contracting Officer on or before the tenth working day following the end of the month the report covers. The Compliance Monitor shall give standard reporting forms to the successful respondent. The Architecture & Engineering Utilization Report is to be completed by the successful respondent. Where a subconsultant goal has been imposed, the Architecture & Engineering Utilization Report shall include information on CBE-A/Es utilized to meet such subconsultant goal. Failure to comply with the reporting requirements may result in the imposition of contractual sanctions or

administrative penalties by the County.

e. Deviations from the Letter of Agreement

i. In the event that, during the performance of an agreement, the CBE-A/E is not able to provide the services specified on the Letter of Agreement, the successful respondent must locate a CBE-A/E to substitute for the unavailable CBE-A/E, unless the respondent can prove the lack of an available CBE-A/E to provide the services to be provided by the prior CBE-A/E. The successful respondent must receive approval for substitution from SBD by submitting a request in writing addressed to the Director of SBD through the Contracting Officer. The request must include a revised Letter of Agreement to include the substitute CBE-A/E. The Compliance Monitor will review the request and make a recommendation regarding the substitution to the Contracting Officer. A successful respondent that cannot secure a substitute CBE-A/E must provide a written statement to the Compliance Monitor and Contracting Officer that includes a list of the names, addresses, and telephone numbers of all CBE-A/Es contacted, and the date of contact for each CBE-A/E. All certified CBE-A/Es certified in the appropriate professional service area under the technical certification categories must be contacted in order to prove lack of an available CBE-A/E.

ii. The Compliance Monitor shall be responsible for monitoring the performance of the successful respondent regarding compliance with agreement set-asides, or subconsultant goals applied to the agreements. The Compliance Monitor may, at his or her discretion, investigate deviations in the utilization of CBE-A/Es from that described on the Schedule of Participation, and make recommendations regarding compliance to the Contracting Officer. The Contracting Officer shall not make a final determination without a recommendation regarding compliance from the Compliance Monitor. Deviations from the goal stated in the agreement that shall be monitored include, but are not limited to:

(1) Termination of a CBE-A/E's subconsultant agreement;

(2) Reduction in the scope of work to be performed by a CBE-A/E;

(3) Modifications to the terms of payment or price to be paid to a CBE-A/E; or

(4) Failure to enter into a subconsultant agreement with a CBE-A/E being utilized to meet a subconsultant goal.

iii. Excuse from entering into subconsultant agreements:

If, prior to execution of a subconsultant agreement required by these Provisions, the successful respondent submits a written request to the Contracting Officer demonstrating to the satisfaction of the Contracting Officer that, as a result of a change in circumstances beyond his/her control of which he/she was not aware and could not reasonably have been aware until subsequent to the date of the award of the agreement, a CBE-A/E who is to enter into such subconsultant agreement has unreasonably refused to execute the subconsultant agreement, or is not available, the successful respondent shall be excused from executing such subconsultant agreement. The procedures of paragraphs (v.) and (vi.) below shall apply to this paragraph.

iv. Termination of Subconsultant Agreements:

If, after execution of a subcontract required by these Provisions the successful respondent submits a written request to the Contracting Officer and demonstrates to the satisfaction of the Contracting Officer that, as a result of a change in circumstances beyond his/her control of which he/she was not aware and could not be reasonably have been aware until subsequent to the date of execution of such subconsultant agreement, a CBE-A/E, who entered into such subconsultant agreement has committed a material breach of the subconsultant agreement, the successful respondent shall be entitled to exercise such rights as may be available to him/her to terminate the subconsultant agreement. The procedures of paragraphs (v.) and (vi.) below apply to this paragraph.

v. County's Determination of Respondent's Excuse or Termination:

If the successful respondent at any time submits a written request to the Contracting Officer under the prior two paragraphs, the Contracting Officer as soon as practicable, shall determine whether the Successful Respondent has made the requisite demonstration, and shall not determine that such a demonstration has not been made without first providing the successful respondent, upon notice, an opportunity to present pertinent information and arguments. The procedures of paragraph (vi.) below apply to this paragraph.

vi. Alternative Subconsultant Agreements:

(1) If the successful respondent is excused from entering into a subconsultant agreement or rightfully terminates a subconsultant agreement under this Administrative Order and without such subconsultant agreement, the Successful Respondent will not achieve the level of CBE-A/E participation upon which the agreement was awarded, the Successful Respondent shall make every reasonable effort to propose and enter into an alternative

subconsultant agreement or subconsultant agreements for the same work to be performed by another available CBE-A/E as appropriate, for a subconsultant agreement price or prices totaling not less than the subconsultant agreement price under the excused or terminated subconsultant agreement, less all amounts previously paid thereunder.

(2) The Successful Respondent must submit to the Compliance Officer a revised Letter of Agreement to include the substitute CBE-A/E.

(3) A successful respondent that cannot secure a substitute CBE-A/E must provide a written statement to the Compliance Monitor and Contracting Officer that includes a list of the names, addresses, telephone numbers, and the date of contact for each CBE-A/E. All CBE-A/Es certified within the appropriate professional service area under the technical certification categories must be contacted.

(4) The Compliance Monitor may require the successful respondent to produce such information as the Compliance Monitor deems appropriate and may obtain further information from other sources. The Compliance Monitor shall make his/her recommendation under this paragraph to the Contracting Officer and forward a copy to the respondent.

(5) The Contracting Officer will consider objections to the Compliance Monitor's recommendation only if such written objections are received by the Contracting Officer within five (5) calendar days from the successful respondent's receipt of the Compliance Monitor's recommendation. The Contracting Officer with or without a hearing, and as he/she in his/her discretion may determine, will reply to the successful respondent's written objection within ten (10) days of receipt of these objections.

I. SANCTIONS FOR AGREEMENT VIOLATIONS

Proposal and agreement documents shall provide that, notwithstanding any other penalties or sanctions provided by law, a respondent's violation of or failure to comply with the CBE-A/E Ordinance, Administrative Order and these Provisions may result in the imposition of one or more of the following sanctions:

1. The suspension of any payment or-part thereof until such time as the issues concerning compliance are resolved;

2. Work stoppage;

3. Issuance of fines of up to two (2%) percent of the contract amount, said fines to be deducted from invoices;

4. Termination, suspension, or cancellation of the agreement in whole or part;

5. In the event a respondent or CBE-A/E attempts to comply with the provisions of this ordinance through fraud, misrepresentation, or material misstatement, or is found after a hearing to have discriminated in violation of Article VII of Chapter II A of the Miami-Dade County Code, the County shall, whenever practicable, terminate the agreement or require the termination or cancellation of the subconsultant agreement for the project on which the respondent or CBE-A/E committed such acts. In addition, and as a further sanction, the County Manager or his or her designee may impose any of the above-stated sanctions on any other agreements or subconsultant agreements the respondent or CBE-A/E has on County projects. In each instance, the respondent or CBE-A/E shall be responsible for all direct and indirect costs associated with such termination or cancellation including attorney's fees and costs. The respondent or CBE-A/E may also be subject to debarment.

6. In the event that a respondent fails to achieve the CBE-A/E measures after the agreement completion, the respondent will be required to make up the CBE-A/E deficit for an amount equal to double the amount of the CBE-A/E measure deficiency. The procedures for making up the CBE-A/E deficit are as follows:

   a. Upon completion of a County agreement with CBE-A/E measures, the compliance monitor for SBD, in accordance with County Code governing the CBE-A/E program, will obtain the final Architecture & Engineering Utilization Report and determine if the respondent has met the CBE-A/E measures.

   b. If the respondent has not met the CBE-A/E measures, the compliance officer will notify the respondent in writing of the CBE-A/E deficit.

   c. If the respondent is found in non-compliance with the CBE-A/E measures, the compliance officer may issue a letter of non-compliance requesting that the respondent make up the CBE-A/E deficit on an existing or future County agreement for double the amount of the deficit on the agreement in question. The respondent will also be required to submit a plan indicating any current or future County agreements in which the CBE-A/E deficit will be remedied.

   d. The respondent must respond to SBD in writing within ten (10) business days from the date of the non-compliance letter. The respondent must acknowledge receipt of the non-compliance letter and provide a plan to make up the CBE-A/E measure.

   e. The compliance monitor will review the plan for approval.

   f. When an agreement is identified in which the CBE-A/E measure deficit will be

remedied, the respondent will provide Letter(s) of Agreement for the CBE-A/E firm(s) that will be utilized in making up the deficit.

g. The respondent will remain in a non-compliance status until the CBE-A/E make-up goal has been achieved.

h. Failure of the respondent to make up the CBE-A/E measure when opportunities are available on existing or future County agreements will result in the sanctions or the imposition of other penalties, or as referenced in Sections I. and J.

Some of the agreement violations that may result in the imposition of the sanctions listed in Section I. above include, but are not limited to, the following:

i. A CBE-A/E serving as a conduit for CBE-A/E work awarded to a final as a CBE-A/E but which is being performed by a non-CBE-A/E firm;

ii. A prime consultant not meeting CBE-A/E Program subconsultant goal requirements;

iii. Not obtaining or retaining CBE-A/E certification while performing work designated for CBE-A/E firms;

iv. Failure to submit Architecture & Engineering Utilization Reports;

v. Failure to comply with CBE-A/E certification requirements, including not-maintaining a place of business in Miami-Dade County, not reporting organizational and operational changes, providing inaccurate or false information, and other certification related violations;

vi. Failure to maintain certification;

vii. Deviations from the Letter of Agreement without prior approval from SBD;

viii. Termination of the CBE-A/E's agreement without prior approval from SBD;

ix. Reduction of the scope of work of a CBE-A/E subconsultant agreement without prior approval from SBD;

x. Modifications to the terms and/or prices of payment to a CBE-A/E without prior approval from SBD; or

xi. Unjustified failure to enter into a written subconsultant agreement with a

CBE-A/E after listing the firm on a Letter of Agreement to meet a subconsultant goal.

J. ADMINISTRATIVE PENALTIES

1. DEBARMENT

   a. The County may debar a CBE-A/E or a non-CBE-A/E for violation of, or non-compliance with, the provisions of the County Code governing the CBE-A/E Program and implementing proposal documents.

   b. Causes for debarment are as noted in Section 10-38 of the Code. These include but are not limited to, a preponderance of evidence that the CBE-A/E has forfeited a bond or defaulted on financial assistance, either of which was provided under the CBE-A/E program; or if any individual or corporation, partnership or other entity, or any individual officer, shareholder with a significant interest, director or partner of such entity, qualifying agent or affiliated business of such entity attempts to comply with these Provisions through fraud, misrepresentation, or material misstatement.

2. DECERTIFICATION

   Violations of certification requirements are addressed in Section II of this Administrative Order 3-32.

K. APPEALS PROCESS

1. This appeals process does not apply to appeals of decisions made pursuant to proposal documents implementing the CBE-A/E program when such proposal documents provide procedures for appeals of such decisions.

2. Upon a denial of certification, a decertification, a determination of non-compliance with the requirements of provisions of the County Code governing the CBE-A/E program, or implementing proposal documents, which decision will be final unless appealed, the Compliance Monitor shall notify the affected party, in writing, setting forth the reasons for the determination and advising of this appeals process.

3. The affected party may appeal the determination by filing a written appeal with the Director of SBD within thirty (30) days of receipt of the notice.

4. SBD shall forward all written appeals to the RC. The RC or a committee thereof appointed by the chairperson shall hear all appeals and forward recommendations regarding the appeal to the County Manager.

5. Decisions by the County Manager shall be final unless the County Commission agrees in its sole discretion upon request by the affected party to review the County

Manager's decision.

L. APPENDICES

1. Forms
   a. Letter of Agreement (CBE 105)
   b. Certificate of Unavailability (CBE 103)
   c. Architecture & Engineering Utilization Report