

# Memorandum



**Date:** April 6, 2010

Agenda Item No. 1(F)2

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

**From:** George M. Burgess  
County Manager

A handwritten signature in black ink, appearing to read "Burgess".

**Subject:** Sunset Review of County Boards for 2010 – Community Small Business Enterprise  
Advisory Board

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In accordance with the provisions of Section 2-11.40 of the Code of Miami-Dade County, I am transmitting the 2010 Sunset Review of County Boards Report for the Community Small Business Enterprise Advisory Board. The Board approved the attached report at its meeting on November 16, 2009 and has recommended the continuation of its board.

A handwritten signature in black ink, appearing to read "Howard Piper".

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Howard Piper  
Special Assistant, Management and Performance Assessment

cmo17710

**Date:** December 14, 2009  
**To:** George M. Burgess  
County Manager  
**From:** William R. Derrer  
Acting Chairperson, Community Small Business Enterprise Advisory Board  
**Subject:** Sunset Review of County Boards for 2010 - Community Small Business Enterprise  
Advisory Board

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Pursuant to Section 2-11.40 of the Code of Miami-Dade County, I am submitting the 2010 Sunset Review of County Boards Report for the Community Small Business Enterprise Advisory Board for transmittal to the Board of County Commissioners (BCC). The Board approved the attached report at its meeting of November 16, 2009.

It is recommended that the BCC approve the continuation of the Community Small Business Enterprise Advisory Board.

**BACKGROUND**

The Community Small Business Enterprise (CSBE) Advisory Board was created May 20, 1997, for the purpose of providing general program oversight and assisting the Department of Small Business Development (SBD) in tracking and monitoring the results and effectiveness of the CSBE Program. The Board should continue to function because it's imperative to oversee the CSBE Program to verify and confirm proper implementation and maximize the benefit to small construction businesses seeking contracts with Miami-Dade County capital departments. The Advisory Board provides guidance to the BCC and SBD staff, and oversight, to ensure that CSBE Program goals are met.



William R. Derrer  
Acting Board Chairperson

**SUNSET REVIEW QUESTIONNAIRE  
MIAMI-DADE COUNTY BOARDS  
2010**

**I. GENERAL INFORMATION**

1. Name of Board reporting: Community Small Business Enterprise Advisory Board
2. Indicate number of board members, terms of office, and number of vacancies:  
Number of Board Members: There are thirteen (13) Advisory Board members  
Terms of Office: Appointed for a two (2) year terms  
Number of Vacancies: One (1)
3. Identify number of meetings and members' attendance (Attach records reflecting activity from **Jan. 1, 2008** through **December 31, 2009**):  
Number of Meetings: 21  
Number of Meetings with a Quorum: 18  
Attendance Records: See Attachment No. 1

What is the source of your funding? There is no dedicated staff or budgeted funding source for the associated costs.

4. Date of Board Creation: May 20, 1997
5. Attach a copy of the ordinance creating the Board (Please include all subsequent amendments).  
See Attachment No. 2
6. Include the Board's Mission Statement or state its purpose:  
The Community Small Business Enterprise Advisory Board was created for the purpose of reviewing Program activities and results, and for making recommendations to the Department of Small Business Development (SBD) and the Board of County Commissioners (BCC) on matters pertaining to the program.
7. Attach the Board's standard operating procedures, if any.  
There are no standard operating procedures.
8. Attach a copy of the Board's By-Laws, if any.  
No bylaws exist.
9. Attach a copy of the Board minutes approving the Sunset Review Questionnaire, **including a vote of the membership**.  
See Attachment No. 3

**II. EVALUATION CRITERIA**

1. Is the Board serving the purpose for which it was created? (Please provide detailed information) Yes, the Advisory Board is serving an important purpose in overseeing that the CSBE program is implemented to maximize the benefit to small construction businesses seeking contracts with Miami-Dade County capital departments. The Advisory Board provides guidance to the BCC and SBD staff, and oversight to ensure that CSBE program goals are applied and met. In sum, the Advisory Board is serving the purpose for which it was created.
2. Is the Board serving current community needs? (Please provide detailed information) The Board is serving the community needs by acting as an advocate for small business community participating or desiring to participate on County construction contracts.

**SUNSET REVIEW QUESTIONNAIRE  
MIAMI-DADE COUNTY BOARDS  
2010**

3. What are the Board's major accomplishments?
- a. Last 24 months The Board monitored and reviewed the CSBE participation for 19 Construction Management (CM) type contracts or contracts valued greater than \$25 million on a quarterly basis, and reviewed and addressed concerns from the CSBE community on the rotation process administered by the Office of Capital Improvements for work orders issued on the County's miscellaneous construction contract.
  - b. Since established The Board has overseen a number of enhancements to the CSBE Program, to include amending the Ordinance to increase size standards for additional CSBE participation, and updates to the program that serve to encourage private sector utilization of CSBE's in major Seaport, Arena, Performing Arts Center, Water and Sewer, Airport projects and Jackson Memorial Hospital. Guidance has been provided in the Mentor-Protégé and Bonding and Financial Assistance Programs.
4. Is there any other board, either public or private, which would better serve the function of this board?  
No, there are no other boards which would better serve the function of this board.
5. Should the ordinance creating the Board be amended to better enable the Board to serve the purpose for which it was created? (If "Yes", attach proposed changes)  
The ordinance should be amended on a periodic basis, as circumstances may require, to accommodate the variations in the economy and the construction industry. No amendments are being proposed at this time.
6. Should the Board's membership requirements be modified?  
The CSBE Program was developed, at the request of the County, by a Committee comprised of representatives of all segments of the local construction industry to afford small construction businesses the opportunity to gain experience, knowledge and resources by participating in County and Public Health Trust construction contracting. Many of the members of this Committee served as the first members of the CSBE Advisory Board and are still serving today.

The Advisory Board Members were recently notified that they were term limited as a result of §2-11.38.02 of the Code of Miami-Dade County which dictates that no board member shall serve more than eight (8) consecutive years on any one (1) board but may be reappointed to a County board after a hiatus of two (2) years. Eleven of the fourteen current Board Members were affected by these term limits. We believe this will have a negative impact on the work of the Board and have submitted a request through the County Clerk to the Board of County Commissioners to waive the term limits for this Board, or provide for a staggered replacement.

Two (2) of the 12 organizations that recommend appointees no longer have active corporations in the State of Florida. Specifically, Association of Women Architects and Engineers, and The Black Business Association. In addition, two (2) organizations, Air Conditioning and Refrigeration Association, Inc. and Association of Black Architects and Engineers, do not exist in State of Florida corporate records. The County Attorney has advised that the ordinance must be amended to remove these organizations from the list of organizations that can recommend appointees to the CSBE Advisory Board; and that the membership of the appointees does not meet the criteria established and are no longer eligible to serve. The County Attorney

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2010**

further advises that the remaining term limited members may continue to serve on the board until such time as new appointments are made by the respective associations.

7. What is the operating cost of the Board, both direct and indirect? (Report on FY 2008 and FY 2009)

Fiscal Year 2008/2009 Un-Funded Staff Support \$14,044

Fiscal Year 2009/2010 Un-Funded Staff Support \$13,342 based on the anticipated 5% reduction in salaries.

8. Describe the Board's performance measures developed to determine its own effectiveness in achieving its stated goals.

The CSBE Advisory Board's performance measures are to ensure that the small business participation requirements, dictated by the County's Community Small Business Program, that a minimum of 10% of dollars spent on construction projects are sheltered for CSBEs is met. Accordingly, on a monthly basis, the Board reviews all projects awarded by the County, the dollar amount of the awards and the corresponding dollars set aside for CSBE participation. In addition, the Board also reviews quarterly reports of CSBE participation made by firms working as Construction Managers (CMs) on projects and firms with contracts valued greater than \$25 million. The Board is vigilant in monitoring the 10% objective is maintained.

Also: Include a diskette, saved in Word, of the County Manager's transmittal memorandum to the Board of County Commissioners with the Board's recommendation.

Community Small Business Enterprise Advisory Board  
 CSBE Advisory Board Appointed Representatives Attendance Record - 15 Slots Total

NAME	January 1/14/08	February 2/19/08	March 3/17/08	April 4/21/08	May 5/19/08	June 6/16/08	July 7/21/08	August Recess	September 9/15/08	October 10.20.08	November 11.17.08	December 12/15/08
Ronald Frazier				X					X	X		X
Rick Derrer	X		X		X				X	X	X	X
Frank Telfort	X	X	X						X	X	X	X
Eloise Gonzalez	X		X	X	X				X	X		X
Randy Pierson	X	X	X	X	X				X	X	X	X
John Slegle	X	X								X		
Bob Baer	X	X								X		
Hector Paredes	X	X		X	X					X		
Elsie Hamler				X	X					X		
Charlie Johnson				X	X				X		X	
Ismailia Rashid	X	X	X	X	X				X		X	
Charles Nielson (Appointed 07/08)									X		X	X
Amaury Betancourt (Appointed 09/08)											X	X
Vacancy												
Vacancy												

NAME	January No Meeting	February 2/17/09	March 3/16/09	April 4/20/09	May 5/18/09	June 6/15/09	July 7/20/09	August Recess	September 9/21/09	October 10/19/09	November 11/16/09	December 12/14/09
Ronald Frazier			X				X		X	X		X
Rick Derrer		X	X	X	X	X	X		X	X		X
Frank Telfort		X	X	X	X	X	X		X	X		
Eloise Gonzalez		X	X	X	X	X	X		X	X		X
Randy Pierson		X	X	X	X	X	X		X	X		X
John Slegle		X			X	X	X					
Bob Baer		X				X						
Hector Paredes		X	X	X								X
Elsie Hamler		X	X	X					X	X		X
Charlie Johnson		X	X	X	X		X		X	X		X
Ismailia Rashid		X	X	X	X	X	X					
Charles Nielson		X			X	X	X		X		X	X
Amaury Betancourt												
Kurt Dyer (Appointed 09/09)									X		X	X

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**Sec. 10-33.02. Community Small Business Enterprise Program.**

(1) *Title.* This section shall be referred to as the Miami-Dade County Community Small Business Enterprise ("CSBE") Program.

(2) *Definitions.* The following definitions shall apply in this section:

*Advisory board* means the Community Small Business Enterprise Board created for the purpose of reviewing program activities and results, and for making recommendations to the Department of Business Development (DBD) and the Board of County Commissioners (BCC) on matters pertaining to the program.

*Aggregate Set-Aside* means an aggregated value of small construction contracts, no one contract of which exceeds five million dollars, which are to be bid during a fixed period of time on a contract-by-contract basis with bidding therefor reserved solely among qualified CSBEs classified in the applicable Contracting Participation Level and SIC or NAICS Code for the contract.

*Available or availability* means to have, prior to bid submission, the ability to provide construction services under a prime contract that is being considered for a set-aside or under a first or second, third, or fourth tier subcontract on a contract being considered for a first or lower tier subcontractor goal by having:

1. Reasonably estimated, uncommitted capacity and expertise;
2. All licenses, permits, registrations and certifications;
3. The ability to obtain bonding that is reasonably required to perform the contract or subcontract consistent with normal industry practice; and
4. The ability to otherwise meet bid specifications.

*Bid* means a quotation, proposal, letter of interest or offer by any bidder in response to any kind of invitation, request or public announcement to submit such quotation, proposal, letters of interest or offer to perform the contract.

*Bid preference* means an amount deducted (for evaluation purposes only) from the total bid price in order to calculate the bid price to be used to evaluate the bid on a competitively bid prime county construction contract, which is not set-aside for bidding solely by CSBEs.

*Bidder* means any person, partnership, corporation or other business entity that submits a bid.

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

*Business day* means a regular week day (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.

*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.

*Commercially useful function* means contractual responsibility for the execution of a distinct element of the work of a contract by a business enterprise 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:

1. The evaluation of the amount of work subcontracted;
2. Normal industry practices;

## ARTICLE II. BIDDING ON PUBLIC PROJECTS\*

3. The skills, qualifications, or expertise of the enterprise to perform the work;
4. Whether the business' own personnel perform, manage, and/or supervise the work involved; and
5. Other relevant factors.

*Commitment letter* means a letter signed by an officer or other authorized representative of a bidder or proposer for a County construction contract containing a second, third or fourth tier subcontractor goal which specifically commits the bidder or proposer to meet such subcontractor goal.

*Community Small Business Enterprise (CSBE)* means a construction related enterprise, including a design-build firm, and any firm providing trades and/or services for the completion of a construction project, as defined in Chapter 10 of the Code of Miami-Dade County, which has an actual place of business in Miami-Dade County and whose average annual gross revenues for the last three (3) years do not exceed: ten million dollars (\$10,000,000.00) for SIC 15 - Building Construction, General Contractors and Operative Builders; six million dollars (\$6,000,000.00) for SIC 16 - Heavy Construction, other than Building Construction; or five million dollars (\$5,000,000.00) for SIC 17 - Specialty Trade Contractors. CSBEs shall be categorized by the type of construction they perform in accordance with the two-digit Standard Industrial Classification (SIC) code, or the six-digit North American Industry Classification System (NAICS), of the Census applicable to such type of construction. A CSBE will graduate out of the program once it has exceeded these size limits based on its three-year average annual gross revenues. A certified CSBE that graduates out of the program shall continue to submit financial information as to cumulative gross revenue and bonding capacity to DBD annually for 3 years thereafter in order to further the County's ability to assess the effectiveness of the program.

CSBEs must be certified by SIC or NAICS code, and classified into one (1) of the three (3) contracting participation levels. The lack of bonding capacity shall not preclude an applicant from being certified as a CSBE. As part of the certification process, CSBEs must go through a prequalification process which will be used to determine which of the three (3) contracting participation levels the CSBE will be placed in based on the firm's three (3) year average gross revenues. The contracting participation levels are as follows:

1. Level I--Three-year average gross revenues of \$0.00--\$2,000,000.00;
2. Level II--Three-year average gross revenues above \$2,000,000.00 but not exceeding \$5,000,000.00; or
3. Level III--Three-year average gross revenues above \$5,000,000.00 but not exceeding \$10,000,000.00.

A firm's eligibility to participate in the CSBE program and the contracting participation level at which it will participate shall be determined based on the three-year average gross revenues of the applicant firm in combination with that of all of the firm's affiliates as provided in Appendix A [which can be found in the County Clerk's office attached to Ordinance Number 97-52]. No firm shall be certified as a CSBE where the aggregate net worth of all its owners is more than one million five hundred thousand dollars (\$1,500,000.00). Representations as to gross revenues and net worth of owners shall be subject to audit.

Notwithstanding any other provision of this Section 10-33.02, Level II and Level III CSBEs certified in SIC Code 17 - Specialty Trade Contractors, may bid on a specialty trade contract set aside for CSBEs whose estimated cost is above \$50,000 and may participate in any specialty trade portion of the work of a contract subject to a CSBE subcontractor goal where the cost of the specialty trade portion of the contract work is above \$50,000.

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

*Construction manager-at-risk ("CM-at-risk")* replaces the general contractor and works for a fee

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with the County and the Architect through the design phase to contain the budget and schedule. The CM-at-risk may provide a guaranteed maximum price ("GMP"), and bids the work out to local trade contractors. The CM-at-risk mobilizes to the site and manages the trade contractors for quality and schedule.

*Contract* means an agreement proposed by the County or Public Health Trust staff, or approved by the County Commission or Public Health Trust for construction.

*Contracting participation level* refers to the level in which a CSBE firm is classified based on the average gross revenues of the firm over a three-year period. In addition, construction contracts of five million dollars (\$5,000,000.00) or less (which may be reserved for limited competition amongst CSBEs) will be classified into one (1) of the three (3) contracting participation levels based on estimated project cost. The three (3) contracting participation levels are:

TABLE INSET:

1.	Level I..... Three-year average gross revenues of \$0--\$2,000,000.00
2.	Level II..... Three-year average gross revenues above \$2,000,000.00 but not exceeding \$5,000,000.00
3.	Level III..... Three-year average gross revenues above \$5,000,000.00 but not exceeding \$10,000,000.00

Notwithstanding any other provision of this Section 10-33.02, Level II and Level III CSBEs certified in SIC Code 17 - Specialty Trade Contractors, may bid on a specialty trade contract set aside for CSBEs whose estimated cost is above \$50,000 and may participate in any specialty trade portion of the work of a contract subject to a CSBE subcontractor goal where the cost of the specialty trade portion of the contract work is above \$50,000.

Prime contracts with estimated project construction cost in excess of five million dollars (\$5,000,000.00) shall be "open market" contracts which all firms can bid on.

CSBEs prequalified in one (1) contracting participation level may not bid on a set-aside contract whose estimated cost falls within a lower contracting participation level (e.g., a CSBE classified in Level III may not bid on set-aside contracts whose estimated cost falls within Level II or I). CSBEs can bid on set-aside contracts whose estimated cost exceeds the limits of the contracting participation level in which they are classified (e.g., a Level I CSBE can bid on set-aside contracts whose estimated cost falls within Level II or III).

*CSBE objective* means the objective of assuring that not less than ten (10) percent of the County's total annual expenditures for construction are expended with CSBEs. The foregoing CSBE objective may be increased by subsequent resolution of the Board of County Commissioners, adopted after recommendation for an increase by the Advisory Board. Forty (40) percent of the foregoing objective may be accomplished through set-aside of smaller prime contracts and use of subcontractor goals on larger prime contracts falling within Standard Industrial Classification (SIC) code 15; forty (40) percent of the foregoing objective may be accomplished through set-aside of smaller prime contracts and use of subcontractor goals on larger prime contracts falling within SIC 16; and twenty (20) percent of the foregoing objective may be accomplished in prime contracts falling within SIC 17. The percentage of the overall CSBE objective allocated to each SIC category may be adjusted by resolution of the Board of County Commissioners in direct correlation to CSBE availability.

*Draw* means a request for payment submitted by the prime contractor to the County or County's designee. A scheduled draw occurs, according to the contract's payment schedule, when the prime contractor is allowed to submit its request for payment. The date(s) of a scheduled draw may be stated with specificity in the contract in the form of a payment schedule or may be stated as a reoccurring event taking place, for example, on the 30th of each month.

*Graduation* means the CSBE has exceeded the specific size limits stated for the program,

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based on the firm's three-year average annual gross revenues, and will no longer be eligible for participation in the program.

*Guaranteed maximum price ("GMP")* is the cost of the project that the CM-at-risk guaranteed will not be exceeded.

*Joint venture* means an association of two (2) or more CSBEs. Joint ventures shall be subject to the size limitations set forth in this section; such size limitations include affiliates as set forth in Appendix A [which can be found in the County Clerk's office attached to Ordinance Number 97-52].

*Management and Technical Assistance (MTA)* means a program designed to provide direct and indirect assistance for small business enterprise development. Specific details of the program are shown in Attachment 3 [which can be found in the County Clerk's office attached to Ordinance Number 97-52].

*Mentor-Protégé Program* is a program whose purpose is to build effective working relationships between leaders of mature established companies and emerging small business enterprises in order for the latter to benefit from the knowledge and experience of the established mentor firms. A copy of the Miami-Dade County Mentor-Protégé Program is provided as Attachment 1 [which can be found in the County Clerk's office attached to Ordinance Number 97-52].

*Prequalification* is defined as provided elsewhere in this ordinance.

*Primary Trade Contractor* means those contractors who directly contract with the CM-at-risk. This definition only applies to contracts for a construction manager-at-risk.

*Program incentive* is an incentive that a firm can choose to use in a bid or proposal based on the firm's participation in certain programs. The incentive consists of either a bid preference or selection factor that will be used in evaluating the firm's bid on a specific project. The program incentives available are as follows:

1. For participation in the Mentor-Protégé Program--Two (2) percent of bid price or up to ten (10) percent of the total evaluation points;
2. For participation in the Worker Training Program--Two (2) percent of the bid price or up to ten (10) percent of the total evaluation points.

*Qualifier* means the individual who has qualified a contractor for its current, valid certificate of competency or eligibility as required by Subsection (a) of Section 10-3 of this Code.

*Review committee* The County Manager shall establish an administrative procedure for the review of each proposed County contract to which this section applies, including the establishment of a committee to recommend whether CSBE measures provided in this section should be applied.

*Selection factor* means a percentage of total evaluation points added to the points scored by a proposer responding to an RFP or RFQ for a prime County construction contract which is not set-aside for competition solely amongst CSBEs.

*Services* means construction, maintenance, painting, alteration or repair of a public improvement or any performance of work offered for public consumption that does not consist primarily of goods.

*Set-aside* means reservation for competition solely among CSBEs of a given prime County contract whose estimated cost is five million dollars (\$5,000,000.00) or less.

*SIC (Standard Industrial Classification) or the equivalent North American Industry Classification System (NAICS) code* is a code that was developed by the Federal Office of Management and Budget for use in the classification of establishments by type of activity in which they are engaged.

*Subcontractor goal* means a proportion of a prime contract value stated as a percentage to be subcontracted to CSBEs to perform a commercially useful function. A first tier subcontract goal may be imposed where there is CSBE availability at such tier level. A second, third and fourth tier subcontract

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goal may be imposed on those contracts whose estimated cost exceeds twenty-five million dollars (\$25,000,000.00) where there is CSBE availability at such lower tier levels.

*Trade set-aside* means that an entire specialty trade component(s) of a County miscellaneous construction contract is reserved for first tier subcontracting amongst certified CSBEs (for example, the entire plumbing or roofing or electrical component of a specific contract is reserved for limited competition amongst certified CSBEs). No CSBE may be awarded more than one (1) trade set-aside on any one (1) specific miscellaneous construction contract.

*Worker Training Program* is a qualified training program or technical school or other such construction industry related training program, as approved by the advisory board.

(3) *Program components:*

A. *Application.* Except where federal or state laws or regulations mandate to the contrary, the provisions of this ordinance shall require review of all construction contracts funded in whole or in part with County funds to determine the appropriateness of applying contract measures as set forth in this section. The County Manager shall prepare administrative orders, bid, and contract documents implementing the Bonding and Financial Assistance Program, the Management and Technical Assistance Programs, the Mentor-Protege Program and other related programs addressed in this section. The words County Manager in this section shall mean the County Manager or his or her designee.

B. *Miami-Dade County Community Small Business Enterprise (CSBE) Program.* The prompt payment provisions of this section shall take precedence over Section 2-8.1.4 of the Code ("Sherman S. Winn Prompt Payment Ordinance"), as to the contracts specified below:

## 1. Prompt payment.

a. The County Manager and the President of the Public Health Trust shall establish administrative procedures requiring that billings from contractors under prime construction contracts with Miami-Dade County or the Public Health Trust that are a CSBE contract set-aside or which contain a trade set-aside or subcontractor goal, shall be promptly reviewed and payment made to the prime contractor by the County or Trust on those amounts not in dispute within fourteen (14) calendar days of receipt of such billing by the County or the Trust.

The County and Trust shall notify the prime contractor, and the Department of Business Development (DBD), in writing, of those billings submitted by the prime which are in dispute, and the reasons why they are in dispute, within fourteen (14) calendar days of receipt of such billing by the County or Trust. This provision is applicable regardless of whether the disputed billing pertains to the work performed and/or billing of CSBE subcontractors. Reference is hereby made to Section 2-8.1.4(6) of the Code, which sets forth the procedures for improper invoices and resolution of disputes.

b. A prime contractor shall include in its billing to the County or Trust copies of those billings from CSBE subcontractors utilized to meet the subcontractor goal applicable to the contract which the contractor approves and whose cost is included in the payment requested from the County or Trust. A prime contract which contains a second, third or fourth tier subcontractor goal shall require all subcontractors in direct privity with a second or lower tier CSBE subcontractor, and all successive subcontractors on up to and including the first tier subcontractor level, to include portions of any lower tier CSBE subcontractor's billings which are

approved by such subcontractors and are included in any payment amount they request.

Undisputed portions of billings from CSBEs that are submitted to the prime at least five (5) days or more before the date of the prime's next scheduled draw, must be submitted by the prime to the County in the prime's next scheduled draw, according to the contract's payment schedule. For example: if the County's billing cycle on the specific contract allows the prime to submit its draw on the 30th of each month, a CSBE that submits its billing to the prime on or before the 25th of the month shall have its billing included in the prime's next scheduled draw submitted to the County on the 30th.

Undisputed portions of billings from CSBEs that are submitted to the prime less than five (5) days before the prime's next scheduled draw, may be submitted in the next draw; however, said billings shall be submitted no later than in the prime's next subsequent scheduled draw. For example, if the County's billing cycle on the specific contract allows the prime to submit its draw on the 30th of each month, a CSBE that submits its billing to the prime after the 25th of the month but before the 30th of the month shall, at the latest, have its billing included in the prime's subsequent scheduled draw submitted to the County on the 30th of the following month.

Failure by the prime to include the CSBE's billing(s) in its next scheduled draw or subsequent scheduled draw to the County as outlined above, and absent notification of disputes, as set forth in subsection (3)(A)(1) herein, shall result in the prime making full payment directly to the CSBE for the full amount of the submitted billing(s). Full payment to the CSBE subcontractor for the particular billing(s) shall be made within the same number of days that the County has mandated as the billing cycle for said contract in operation, or within forty (40) calendar days of submittal of such billing(s) by the CSBE to the prime, whichever is less, regardless of whether the prime has received its payment from the County.

c. If for any reason, the prime contractor chooses not to submit any billings to the County on its next or subsequent scheduled draw, the prime contractor shall make full payment to the CSBE subcontractor(s) for billings submitted by the CSBE subcontractor(s) in accordance with the subsection above. Full payment to the CSBE subcontractor(s) for the particular billing(s) shall be made by the prime contractor within the same number of days that the County has mandated as the billing cycle for said contract in operation, or within forty (40) calendar days of submittal of such billing(s) by the CSBE subcontractor(s) to the prime contractor, whichever is less, regardless of whether the prime has received its payment from the County.

d. Prime construction contracts to which a CSBE trade set-aside or subcontractor goal has been applied shall require that billings from CSBEs at whatever subcontractor tier level for which the contract measure has been applied, shall be promptly reviewed and payment made to such CSBEs on those amounts not in dispute within two (2) business days of receipt of payment therefor. The foregoing obligation to promptly review and pay CSBE billings shall apply to prime contractors and subcontractors who are in direct privity with the CSBE and to each successive subcontractor on up the line to the level of prime contractor. The two (2) day payment provision shall equally apply to retainage

payments received by prime contractors from the County, and subsequently passed on to subcontractors.

e. The prime contractor agrees to the contract requirements of Miami-Dade County, Florida Code, Section 10-35, Release of Claim by Subcontractors Required. The requirements found in Section 10-35 are hereby fully incorporated into this CSBE Prompt Payment Subsection and non-compliance, by failing to pay subcontractors and failing to provide the requisite subcontractor affidavit and/or consent of surety to requisition payment, shall be enforceable through this Subsection.

f. The prime contractor on a prime construction contract to which a CSBE trade set-aside or a first tier subcontractor goal has been applied shall inform the Department of Business Development, the Contracting Officer, and the first tier CSBE subcontractor, in writing, of those amounts billed by the CSBE which are in dispute, and the specific reasons why they are in dispute, within five (5) calendar days of submittal of such billing by the first tier CSBE subcontractor to the prime contractor. Prime contracts to which a second or lower tier subcontractor goal has been applied shall provide that subcontractors in direct privity with any CSBE utilized to meet such lower tier subcontractor goal, shall inform the affected CSBE in writing, with copies to the prime contractor and the Department of Business Development, of those amounts of such CSBE's billings that are disputed and the specific reasons therefor within five (5) calendar days of submittal of such billing from the CSBE.

Failure of the prime contractor to comply with the applicable requirements of this Subsection shall result in the prime contractor's forfeiture of the right to use the dispute as justification for not paying the first tier CSBE subcontractor and payment shall be forthcoming from the prime contractor. Prime contracts to which a second or lower tier subcontractor goal has been applied shall provide that a subcontractor in direct privity with a CSBE utilized to meet such goal who fails to comply with the applicable provisions of this Subsection shall result in such subcontractor's forfeiture of the right to use the dispute as justification for not paying the CSBE subcontractor and payment shall be forthcoming from such subcontractor.

g. None of the provisions of Section (3)(B)1 requiring the prime contractor to make full payment on any billing by a subcontractor due to failure to comply with this section shall be construed as also requiring the County to make a similar full payment of that billing to the prime contractor. The County shall not be precluded from disputing billings submitted by prime contractors in accordance with the notice requirements of subsection (3)(B)1a as stated herein.

h. Failure of the prime contractor to comply with any of the requirements found in Section 10-33.02 (3)(B)1 et seq. shall result in the imposition of one (1) or more of the following sanctions:

1. The suspension of any payment or part thereof until such time as the issues concerning compliance have been resolved;
2. Work stoppage;
3. Termination, suspension, or cancellation of the contract in whole or part;
4. The contractor may also be subject to debarment.

i. The County Manager, or his or her designee, shall establish administrative procedures to apply similar provisions, as found in this subsection, (3)(B)1, to CSBEs that are being used to meet 2nd, 3rd and/or 4th tier CSBE measures on County contracts.

j. In addition to any sanction available pursuant to Subsection (3)(B)1.h. above, construction contracts to which a CSBE trade set-aside or subcontractor goal at any subcontractor tier level has been applied shall provide that failure of the prime contractor or any subcontractor in direct privity to the CSBE to make prompt payment as provided in Section 10-33.02 (3)(B)1, *et seq.*, shall result in the imposition of a penalty of \$75.00 per day for each day payment to a CSBE subcontractor is not made within the time frames specified in these provisions. Any such penalty shall be paid into the Minority Business Development Trust Fund administered by the department of business development by deduction from the prime contractor's next invoice. Contractual documents shall also require the prime contractor or any subcontractor in direct privity to the CSBE to make payment to the CSBE of one (1) percent interest per month on any balance not paid by the time frame specified in these provisions; unpaid balance shall bear interest from thirty (30) days after the due date at a rate of one (1) percent per month. The CSBE must invoice the prime contractor for any interest accrued in order to receive the interest payment. Any overdue period of less than one (1) month shall be considered as one (1) month in computing interest. Unpaid interest shall compound monthly. With respect to each past due payment, interest shall cease to accrue after interest on that payment has accrued for twelve (12) months. For purposes of this section, one (1) month shall constitute a period beginning on any day of one month and ending on the same day of the following month. No contract between the prime contractor and the CSBE or any subcontractor in privity thereto shall prohibit the CSBE from invoicing for late payment interest charges allowed under this section.

2. *Mentor-Protege Program*: This program is a community based effort involving leaders of major firms, financial and bonding institutions, contracting associations, small business enterprises, and support service organizations. The program is an effort to overcome difficulties that typically inhibit or restrict the success of small businesses and is designed to produce a broad base of high quality, competitive and profitable companies through incremental improvement. It is expected that as a result of the Mentor-Protege Program, Protege will experience a greater than industry average success rate and realize the growth and profitability objectives of their business plans as well as long range stability. The program will provide a community benefit by strengthening emerging businesses and providing them with opportunities for growth, expansion and increased participation in Miami-Dade County's economic development. To be eligible for incentives under the Mentor-Protege Program, the Mentors and Protege must be registered by the Department of Business Development in the Mentor-Protege Program. The specific details of the proposed program are shown in Attachment 1 [which can be found in the County Clerk's office attached to Ordinance Number 97-52].

3. *Bonding and Financial Assistance Program*: This program will provide CSBEs with assistance in obtaining bonding and/or financial assistance for construction projects. Bonding assistance will include providing assistance in preparing and completing bond packages as well as providing funding to be used for bonding purposes. Financial assistance will include providing financial

assistance such as mobilization capital, line of credit and/or working capital loans through partnering relationships with financial institutions. The specific details of the proposed program are shown in Attachment 2 as amended.

4. *Management and Technical Assistance Program:* This program will provide direct and indirect assistance for small business development. Program management provides direction, coordinates access to services, and maintains continual communications to assure knowledge and use of available resources. Technical assistance will also be provided such as accounting services and business plan preparation, which will assist firms in developing documents needed for bonding and financial assistance as well as business and management workshops and seminars. CSBEs may have access to resources that focus on developing their management capacity and enhancing the marketability of their products. Specific details of the proposed program are shown in Attachment 3 [which can be found in the County Clerk's office attached to Ordinance Number 97-52].

5. *Trade set-asides:* Trade set-aside means that an entire specialty trade component(s) of a County miscellaneous construction contract which the prime contractor shall subcontract at the first tier level to certified CSBEs (for example, the entire plumbing or roofing or electrical component of a specific contract). All such subcontracts shall be in writing and shall be executed by the prime contractor and the first tier CSBE subcontractor. Miscellaneous construction contract shall mean a construction contract managed by a construction manager selected on the basis of a management fee that will be added to the cost of specialty trade work for various projects bid by the construction manager as a trade set-aside for CSBEs.

6. *Subcontractor goals:*

a. *In general.* The County Commission or Public Health Trust may establish subcontractor goals for any specialty and/or construction related trade or service portion of the work in a contract based on estimates made prior to bid advertisement of the quality, quantity and type of subcontracting opportunities provided by the contract, and of the availability of CSBEs to afford effective subcontracting competition therefor. After bid advertisement, or other formal public notice, the established subcontractor goal may be reduced only with the approval of the County Commission, Public Health Trust.

Where a first tier subcontractor goal has been imposed, bid documents shall require bidders to submit a Schedule Intent Affidavit, on the bid submittal due date identifying all CSBEs to be utilized to meet the first tier subcontractor goal and the trade designation of work each will perform. Where a second, third and fourth tier subcontractor goal has been imposed, the bid documents shall require bidders to submit a commitment letter committing the bidder to meet such goal. Upon notification by the Department of Business Development, bidders may correct defects that exist on the Schedule of Intent Affidavit within forty-eight (48) hours after bid submission. Failure to submit the required Schedule of Intent Affidavit or commitment letter at the time of bid submission shall render the bid non-responsive. Failure to correct identified defects on the Schedule of Intent Affidavit, within forty-eight (48) hours shall render the bid non-responsive. All responsive bids will be opened 48 hours after the bid submission due date and non-responsive bids will not be opened.

Bidders whose bids fail to meet the specified first tier subcontractor goal, in order to remain eligible for award of the contract, must submit

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evidence, on the bid submission due date, proving the lack of available CSBEs to afford effective competition therefor.

A successful prime bidder that is a CSBE or a joint venture may perform up to fifty (50) percent of a first tier CSBE subcontractor goal with its own forces. The remaining percentage of such first tier subcontractor goal work shall be performed by other CSBEs.

Bid documents shall provide that:

(i) Only expenditures to CSBEs for performing a commercially useful function shall be counted toward meeting a specified subcontractor goal;

(ii) Expenditures to CSBEs for acting essentially as a conduit to transfer funds to a non-CSBE shall not be counted toward meeting a subcontractor goal unless such conduct receives prior approval from the Department of Business Development as consistent with normal industry practice; and

(iii) Expenditures to CSBEs who subcontract work further to non-CSBEs shall not be counted toward meeting a subcontractor goal unless such subcontracting receives prior approval from the Department of Business Development as consistent with normal industry practice.

(iv) Only expenditures to CSBEs made under a written first tier subcontract executed by both the prime contractor and the CSBE shall be counted towards meeting a first tier subcontractor goal. Only expenditures made under a written second, third or fourth tier subcontract executed by both the next tier level subcontractor and the lower tier CSBE subcontractor shall be counted towards meeting a second, third or fourth tier subcontracting goal.

(v) The bidder who is awarded a contract having a second, third or fourth tier subcontractor goal shall notify DBD in writing, prior to initiating the process to select lower tier CSBEs whose participation will be utilized to meet such goal, of the name, address and tier level of the subcontractor who will award the lower tier subcontract to a CSBE, the scope of work for such lower tier subcontract and the bid submission date for such lower tier subcontract. The prime contractor shall obtain DBD's approval prior to the award of any lower tier subcontract that will be utilized to meet a lower tier subcontractor goal.

(vi) Contracts in excess of twenty-five million dollars (\$25,000,000.00) which have subcontractor goals shall require the prime contractor during the term of the contract to make a quarterly presentation to the Review Committee on his or her performance in meeting such goal.

Bid documents shall allow bidders to challenge or protest a subcontractor goal established under this section by submitting no later than ten (10) business days prior to the scheduled bid opening date the reasons for such challenge or protest in writing to the department responsible for the contract. Challenges or protests to a CSBE subcontractor goal by bidders after the time specified in the preceding sentence shall not be heard by the County Commission or Public Health Trust.

b. *Application to construction manager-at-risk contracts.*

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(i) *Construction management services portion.* For Construction Manager-at-Risk contracts, the County Commission may establish, where appropriate and upon the recommendation of the Review Committee, first tier CSBE subcontractor goals applicable to the construction management portion thereof. Such goal shall not be applicable to the procurement of trade packages on the actual construction project. Bidders for CM at risk contracts to which a first tier CSBE subcontractor goal has been established for construction management services under this paragraph shall submit the Schedule of Intent Affidavit and follow the procedures and timing therefor applicable to contracts in general under subpart a) above.

(ii) *Actual construction portion of the work.* For CM-at-risk contracts, subcontractor goals for the actual construction portion of the work may be established where appropriate by the County Manager or the Manager's designee for 1st, 2nd, 3rd or 4th tier subcontractors upon the recommendation of the Review Committee based on estimates made prior to advertisement of the bid package of the quality, quantity and type of subcontracting opportunities provided by the bid package and of the availability of CSBEs to afford effective subcontracting therefor.

(a) *Overall subcontracting goal.* Where an overall CSBE subcontracting goal has been established for the actual construction portion of the work, the CM-at-risk shall submit the Schedule of Intent Affidavit to the County at the time the Final Guaranteed Maximum Price is due identifying all CSBEs utilized to meet the overall goal, and the trade designation of work and percentage of the Final Guaranteed Maximum Price each will perform.

(b) *First tier subcontractor goal.* Where a first tier CSBE subcontracting goal has been established, bidders to the CM-at-risk for contracts as Primary Trade Contractors shall submit at the time of bid submission to the CM-at-risk the Schedule of Intent Affidavit identifying all CSBEs to be utilized to meet such goal, the trade designation of the work and the percentage of the bid each identified CSBE will perform. Failure to submit the required Schedule of Intent Affidavit within the required time frame may render the bid non-responsive, or subject to sanctions or penalties as outlined in the contract or the Administrative Order. The use of CSBEs at the Primary Trade Contractor level and at the level of contractors that directly contract with the Primary Trade Contractors shall count towards meeting the first-tier CSBE subcontractor goal on the contract. In addition, if the CM-at-risk exceeds the first-tier CSBE subcontractor goal, the amount by which the first-tier CSBE subcontractor goal is exceeded shall count towards fulfillment of the second, third and fourth tier subcontractor goal on that contract. However, if the CM-at-risk exceeds the second, third and fourth tier subcontractor goal, the amount that the second, third and fourth tier subcontractor goal is exceeded shall not count towards fulfillment of the first-tier subcontractor goal.

(c) *Second, third and fourth tier subcontractor goals.* Where a second, third or fourth tier subcontractor goal has been established for the actual construction portion of the work under a CM-at-risk contract, the construction manager at risk awarded the contract shall notify DBD in writing, prior to initiating the process to select lower tier CSBEs whose participation will be utilized to meet such goal, of the name, address and tier level of the subcontractor who will award the lower tier subcontract to a CSBE, the scope of work for such lower tier subcontract and the bid submission date therefor. The construction manager at risk awarded the contract shall obtain DBD's approval prior to the award of any lower tier subcontract that will be utilized to meet a lower tier subcontract goal.

(iii) *Reduction in established subcontractor goal and periodic reporting to the Commission.* After bid advertisement, or other formal public notice, the established subcontractor goal on a CM-at-risk contract for construction management services may be reduced only with the approval of the County Commission or Public Health Trust. After bid advertisement or other formal notice, the established subcontractor goal applicable to the actual construction portion of the work may be reduced only with the approval of the Manager. The County Manager shall periodically report to the Board of County Commissioners on all goals on construction manager-at-risk contracts.

(iv) *Compliance responsibilities.* The construction manager at risk shall comply with the requirements of this subsection regarding any CSBE subcontractor goal that has been applied to any portion of the work of the CM-at-risk contract.

c. *Application to contracts for environmental services where construction tasks are involved.* For contracts for environmental services where construction tasks are involved, CSBE subcontractor goals may be established by the County Manager upon the recommendation of the Review Committee based on estimates made prior to awarding such tasks and of the availability of CSBEs to afford effective subcontracting therefor.

7. *Contract measures:*

a. *Contract set-asides:* The County Commission or Public Health Trust may determine it is in its best interest to waive any competitive bidding or selection requirement and set-aside a prime County construction contract for CSBEs when determined, prior to bid advertisement, that there are at least three (3) CSBEs available in the Standard Industrial Classification (SIC) category, as well as in the contracting participation level that the contract is classified in (based on the estimated project construction cost). Contracts with estimated project construction cost less than or equal to five million dollars (\$5,000,000.00) may be set-aside for competition by CSBEs. Such contracts will be placed into one (1) of three (3) contracting participation levels based on the estimated project construction cost, and will be classified by Standard Industrial Classification (SIC) or North American Industry Classification System (NAICS) code. The three (3) contracting participation levels, based on average gross revenues for the past three (3) years are:

TABLE INSET:

1.	Level I.....Three-year average gross revenues of \$0.00--\$750,000.00
2.	Level II.....Three-year average gross revenues above \$750,000.00 but not exceeding \$2,000,000.00
3.	Level III.....Three-year average gross revenues above \$2,000,000.00 but not exceeding \$5,000,000.00

CSBEs will also be categorized by contracting participation level, which will be determined by the Department of Business Development (based, in part, on the CSBE's prequalification package).

CSBEs prequalified in one (1) Contracting Participation Level (e.g. those in Contracting Participation Level III) may not bid on a lower level prime County contract set-aside for CSBEs (e.g., a three hundred thousand dollar (\$300,000.00) project which falls into Level I). However, a CSBE prequalified in a lower level may bid on contracts whose estimated cost falls within a higher level (e.g., a Level I CSBE may bid on a Level II or III contract).

Transferring to a non-CSBE through subcontracting or otherwise all or part of the actual work of a set-aside contract is prohibited unless such transfer receives prior approval from the Department of Business Development as consistent with normal industry practice.

A CSBE may compete for any set-aside prime construction contract in the SIC code which the CSBE is certified.

In the case of an Aggregate Set-Aside, the aggregated value of the set-aside shall be established after taking into account the CSBE objective and the effect of any measures that may be applied to other County construction contracts not included in the Aggregate Set-Aside. The particular level of CSBEs that may bid for a particular contract under an Aggregate Set-Aside shall be determined by Contracting Participation Level based on the contract's estimated cost and by SIC or NAICS Code. At the time a proposed Aggregate Set-Aside is presented to the County Commission for waiver of competitive bidding and set-aside for CSBEs, staff shall present an analysis of the availability of sufficient CSBEs in the various Contracting Participation Levels to compete for the contracts proposed to be included in the aggregated value of contracts proposed for the Aggregate Set-Aside. As part of such presentation, staff shall advise the Commission of the mechanisms that will be applied to assure an equitable distribution of awards to all qualified CSBEs.

b. *Selection factor:* A contractor responding to an RFP or RFQ for a prime county construction contract which is not set-aside for competition solely amongst CSBEs shall be entitled to a program incentive of up to ten (10) percent of the total evaluation points for participation in the Worker Training Program or the Mentor-Protege Program. The County Manager shall establish a sliding scale which provides the extent of preference given a contractor hereunder. In no event shall the cumulative effect of the selection factor hereunder, exceed ten (10) percent of the total evaluation points on any one (1) RFP or RFQ.

Any committee formed to evaluate a response to an RFP or RFQ with a CSBE selection factor shall include a voting representative from the

Department of Business Development.

- c. *Bid preference*: A contractor bidding on a competitively bid prime county construction contract which is not set-aside for competition solely amongst CSBEs shall be entitled to a program incentive of up to two (2) percent of such contractor's bid price (for bid evaluation purposes only) for participation in the Worker Training Program or the Mentor-Protege Program. The County Manager shall establish a sliding scale which provides the extent of preference given a contractor hereunder. In no event shall the cumulative effect of the bid preference hereunder, exceed two (2) percent of such contractor's bid price.
- d. *Trade set-aside*: The County Commission or Public Health Trust may authorize a trade set-aside as outlined in this section.
- e. *Subcontractor goals*: The County Commission or Public Health Trust may establish subcontractor goals as outlined in this section.
8. *Advisory board*: There is hereby created a Miami-Dade County Advisory Board for the CSBE Program. Board members shall be appointed by the Board of County Commissioners and shall consist of one (1) each of the following:
1. One (1) member from the list of recommended appointees submitted by the Allied Minority Contractor's Association, Inc.;
  2. One (1) member from the list of recommended appointees submitted by the South Florida Chapter of the Associated General Contractors of America;
  3. One (1) member from the list of recommended appointees submitted by the Association of Women Architects and Engineers;
  4. One (1) member from the list of recommended appointees submitted by the Black Business Association;
  5. One (1) member from the list of recommended appointees submitted by the Construction Association of Florida, Inc.;
  6. One (1) member from the list of recommended appointees submitted by the engineering Contractor's Association of South Florida, Inc.;
  7. One (1) member from the list of recommended appointees submitted by the Latin Builders' Association;
  8. One (1) member from the list of recommended appointees submitted by the Air Conditioning and Refrigeration Association, Inc.;
  9. One (1) member from the list of recommended appointees submitted by the Underground Contractors' Association of South Florida, Inc.;
  10. One (1) member from the list of recommended appointees submitted by the Association of Black Architects and Engineers;
  11. One (1) member from the list of recommended appointees submitted by the Contractor's Resource Center;
  12. One (1) member from the list of recommended appointees submitted by the UPPAC;
  13. A representative of the local bonding industry;
  14. A representative of the local banking and financial industry; and
  15. A certified CSBE.

The terms of each member shall be two (2) years. Members shall serve without compensation.

The advisory board is created for the purpose of providing general program oversight and assisting the Department of Business Development in tracking and monitoring the results and effectiveness of the CSBE Program. The advisory board shall not assume the Department of Business Development's administrative or other responsibilities. The advisory board may serve as liaison between program participants and the local business community, recommend additional program incentives, participate in the recruitment of prospective participant's for the CSBE program, and review and report on the program's progress. Within one (1) year after inception of the CSBE program, the advisory board shall recommend to the County Commission the maximum length of time a CSBE may participate in the program.

Sections 2-11.1(c) and (d) of the Conflict of Interest and Code of Ethics Ordinance of Miami-Dade County are waived for Advisory Board members for transactions arising from the exercise of those powers given the advisory board by this section.

9. *Graduation:* Upon recertification review, any CSBE that exceeds the size limits, based on the firm's three-year average annual gross revenues, established by this section shall be immediately graduated from the CSBE program. These firms shall be allowed to complete any currently awarded contract. However, the graduated firm will not be eligible to receive any new contracts under the CSBE program.

(4) *Certification requirements:* The County Manager shall implement eligibility criteria and procedures for entities to be certified as CSBEs based on regulations outlined in this section. Firms exceeding size limits established hereunder and under Appendix A [which can be found in the County Clerk's office attached to Ordinance Number 97-52] are not eligible for contract measures or participation in these programs.

1. The Department of Business Development shall maintain and publish at least every other week an updated list of CSBEs, identifying each listed CSBE based on each SIC category and each specialty trade the CSBE is certified in, and noting what contracting participation level the firm is classified in.
2. The Department of Business Development shall not certify an applicant, shall not recertify a CSBE, and shall decertify a CSBE that fails to comply with the criteria or procedures for obtaining or maintaining certification. The Department of Business Development shall have authority to suspend the certification of a CSBE during any appeal of a decertification decision.
3. Applicants and certified CSBEs must be properly licensed to conduct business in Miami-Dade County, must perform a commercially useful function with an actual place of business in Miami-Dade County, and must continue to perform a commercially useful function in Miami-Dade County to be eligible for certification or to remain certified.
4. The qualifier of the certified CSBE firm must own at least ten (10) percent of the certified firm's issued stock.
5. Certification shall be renewed annually, and must be in effect at the time of bid submittal. For successful bidders, certification must be maintained from the time of bid submittal throughout the duration of the contract. With the exception of provisions previously described for graduation from the CSBE program, loss of CSBE certification may lead to removal of the firm from continued participation in the CSBE program. CSBEs experiencing changes in ownership shall notify the County Manager within thirty (30) days of the effective date of such changes.

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6. A business owner, alone or as a member of a group, shall own or control only one (1) CSBE at a time. A business owner, alone or as a member of a group, and any CSBE may not hold more than a ten (10) percent equity ownership in any other CSBE.

7. Applicants for CSBE certification shall, as part of their application, disclose the information specified in Subsections (d)(1) and (2) of Section 2-8.1 of this Code.

8. The Department of Business Development may require applicants and CSBEs to submit information regarding their business operations, including but not limited to a breakdown of the applicant's or CSBE's ownership, and/or workforce as to race, national origin, gender, and gross annual sales.

(5) *Enforcement:* Bid and contract documents shall provide that, notwithstanding any other penalties or sanctions provided by law, a bidder's violation of or failure to comply with this ordinance or its implementing administrative orders may result in the imposition of one (1) or more of the following sanctions:

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

ii. Work stoppage;

iii. Termination, suspension, or cancellation of the contract in whole or part;

iv. In the event a bidder or CSBE 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 11A of the Miami-Dade County Code, the County shall, whenever practicable, terminate the contract or require the termination or cancellation of the first tier subcontract for the project on which the bidder or CSBE committed such acts. In addition, and as a further sanction, the County Manager or his designee may impose any of the above-stated sanctions on any other contracts or first tier subcontracts the bidder or CSBE has on County projects. In each instance, the bidder or CSBE shall be responsible for all direct and indirect costs associated with such termination or cancellation including attorney's fees and costs. The bidder or CSBE may also be subject to debarment.

v. The foregoing notwithstanding, the County Manager shall include language in all prospective contracts containing a CSBE measure which provides that, in addition to any other sanction for failure to fulfill the CSBE measure requirements, the contractor's eligibility to receive any future county contracts may be conditioned upon the contractor making up the deficit in CSBE participation in such future contracts by having CSBE(s) perform equal to double the dollar value of the deficiency in the CSBE measure in the prior contract. Contract language shall provide that in order to be eligible for future county contracts, a contractor who fails to meet an established CSBE goal shall submit a CSBE Make-up Plan for the approval of the Director. A Make-up Plan and a corresponding Schedule of Intent Affidavit must be submitted as part of any bid or proposal submitted for future contracts at the time of bid or proposal submittal. The Schedule of Intent Affidavit must identify all CSBEs to be utilized to meet the first tier subcontractor goal and the trade designation of work each firm will perform in satisfaction of a make-up, in addition to any other goals that may be applicable. Failure to include the required Schedule of Intent Affidavit with bids or proposals for any future contracts shall result in the submittal being deemed nonresponsive. Any contractor subject to an approved Make-up Plan that fails to comply with any of the material terms of that Make-up plan, without good cause, shall be subject to an automatic suspension from bidding and/or otherwise participating on County contracts as a prime or subcontractor for a six (6) month period. A contractor that fails to comply with any of the material terms of a second Make-up plan, without good cause, shall be subject to an automatic suspension from bidding and/or otherwise participating on County contracts

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as a prime or subcontractor for a one (1) year period. A contractor that fails to comply with any of the material terms of a third Make-up plan, without good cause, may be subject to debarment and shall automatically be referred to the debarment committee. After serving a debarment for failure to satisfy a make-up plan for no good cause, the subject firm shall be deemed ineligible for bidding on county contracts with measures for 1 additional year unless the County Manager determines that an emergency exists justifying such participation, and the Board of County Commissioners approves such decision. The foregoing obligation shall be in addition to any CSBE measure otherwise applicable to the future contract.

Some of the contractual violations that may result in the imposition of the sanctions listed in Subsection (5) above include, but are not limited to, the following:

1. A CSBE serving as a conduit for CSBE work awarded to a firm as a CSBE but which is being performed by a non-CSBE firm;
2. A prime contractor not meeting CSBE Program trade set-aside or subcontractor goal requirement;
3. Not obtaining or retaining CSBE certification while performing work designated for CSBE firms.
4. Failure to submit monthly utilization reports;
5. Failure to comply with CSBE 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;
6. Failure to maintain certification;
7. Deviation from the schedule of participation without prior approval from DBD;
8. Termination of the CSBE's contract without prior approval from DBD;
9. Reduction of the scope of work of a first tier CSBE subcontract without prior approval from DBD. Reduction of the scope of work of a second, third or fourth tier CSBE subcontract utilized to meet a second, third or fourth tier subcontractor goal without prior approval of DBD;
10. Modifications to the terms and/or prices of payment to a CSBE without prior approval from DBD;
11. Unjustified failure to enter into a written first tier subcontract with a CSBE after listing the firm on a schedule of participation. Unjustified failure to enter into a written second, third or fourth tier subcontract with a CSBE utilized to meet a second, third or fourth tier subcontractor goal.

(6) *Administrative penalties.* For violation of or noncompliance with this ordinance or its implementing administrative orders, bid, and competitive selection documents, the County Manager or his designee may impose the loss of eligibility to be certified as a CSBE for a specified period of time, not to exceed three (3) years, for an applicant or a CSBE, its individual officers, its shareholders with significant interests, and its affiliated businesses.

(7) *Appeals.*

A. Any firm that is denied certification, decertified, or issued a determination of noncompliance with the requirements of this ordinance or its implementing order may appeal such action to the County Manager by submitting a written request to the County Manager along with a nonrefundable filing fee to be established by implementing order, within 30 days of issuance of the notice. Upon timely receipt of a request for an administrative hearing, the County Manager shall appoint a hearing officer and fix a time

for an administrative hearing thereon. Such hearing officers may be paid a fee for their services, but shall not be deemed County officers or employees within the purview of Sections 2-10.2, or 3-11.1, or otherwise.

B. Upon completion of the administrative hearing, the hearing officer shall render a final decision, in writing, addressing all matters before him or her, including, where appropriate, a determination of the sanction to be imposed; provided, however, the Mayor or designee may appeal the hearing officer's decision to the Board of County Commissioners. The decision of the hearing officer or the Board of County Commissioners may be reviewed by an appropriate court in the manner provided in the Florida Rules of Appellate Procedure.

(8) *County responsibilities.* The Department of Small Business Development (or other County department designated by the County Manager) shall:

1. Administer, or provide oversight for, the CSBE program and incentives outlined in this section;
2. Provide staff assistance to the review committee and the advisory board;
3. Compile and maintain the data necessary to make the appropriate determinations as to the certification and decertification of CSBEs, and to make recommendations for the application of contract measures to a given contract;
4. Ensure that an integrated system exists for information gathering, reporting, and statistical analysis including (but not limited to) interfacing with other County financial systems such as FAMIS, Seaport, Aviation, HUD and WASAD to obtain actual amount of work orders authorized to firms versus the project award amount (for prime contractors as well as for subcontractors), and interfacing with the GSA mainframe system to access data on vendors and awards;
5. Monitor all contracts for which program measures have been applied in terms of contractor and subcontractor compliance with the provisions of this ordinance;
6. Provide assistance in technical and financial matters including:
  - a. Assistance in increasing the ability of CSBEs to compete effectively on contracts;
  - b. Conduct of seminars on contract management; and
  - c. Assistance in identifying and solving problems on projects.
7. Review and investigate reports of noncompliance, and make the appropriate recommendations to the County Manager as to penalties to be invoked; and
8. Prepare an annual report for the Board of County Commissioners on the results of the CSBE Program.
9. Prepare quarterly reports for the advisory board on the results of the CSBE Program.
10. DBD shall assign a CSBE coordinator to each county department issuing capital construction contracts whose responsibility shall be to seek out contracting opportunities for CSBEs and serve as liaison between DBD and the department.

(9) Notwithstanding the requirements of this Section, the Mayor or his designee is hereby expressly authorized and directed to establish an expedited process for the creation, review and approval of measures relating to Economic Stimulus Projects subject to Section 2-8.2.7 of this Code. Such process shall be set forth in an administrative order.

(Ord. No. 97-52, § 1, 5-20-97; Ord. No. 97-158, § 1, 9-23-97; Ord. No. 99-31, § 1, 3-18-99; Ord. No. 00-17, § 1, 2-8-00; Ord. No. 01-65, § 1, 3-20-01; Ord. No. 01-116, § 1, 7-10-01; Ord. No. 01-158, § 1, 9-25-01; Ord. No. 02-29, § 1, 2-26-02; Ord. No. 03-121, § 1, 5-6-03; Ord. No. 05-119, § 1, 7-7-05; Ord.

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No. 07-16, § 1, 2-6-07; Ord. No. 08-40, § 1, 4-8-08; Ord. No. 08-92, § 3, 7-17-08; Ord. No. 09-41, § 1, 6-2-09)

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**COMMUNITY SMALL BUSINESS ENTERPRISE (CSBE) PROGRAM  
ADVISORY BOARD MEETING MINUTES  
November 16, 2009**

**Board Members Present:** Rick Derrer, Ismailia Rashid, Bob Baer, Charles Nielson, Kurt Dyer and John Siegle

**Members Absent:** Elsie Hamler, Charlie Johnson, Hector Paredes, Frank Telfort

**Staff Present:** Alice Hidalgo-Gato, Shanise McIntyre, Harold Goldson, Patrice King, Yolanda Bielovucic, and Laurie Johnson from the Department of Small Business Development (SBD)

**Others Present:** Eloise Gonzalez, Ronald Frazier, Philip Zerrigon (Tower OHL Group, Inc.), Clara Santana and Eddie Dominguez (Southeastern Engineering), Johnathan Lewis (Black Box Network Svc's), Kxa Rashid (Rashid's Enterprises), Frank Fonseca (Leadex Corp), Juan Campos (MCM)

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**I. WELCOME/INTRODUCTIONS**

The meeting convened at 1:05 p.m.

**II. CONSTRUCTION MANAGEMENT QUARTERLY REPORTING:**

The following reports were presented. Handouts were provided for each project:

- Project No. Project No. RFP MDAD-04-01, Telecommunications & Network Mgmt.
- Project No. 9722 A/B, South Miami Dade Cultural Center  
Project No. S-806 (A), S. District Wastewater Treatment Plant HLD
- Project No. MIA -702-R-2, MIA North Terminal APM System
- Project No. A05-FIRE-Con ESP, Fire Rescue Training Facility

The following report was scheduled on the agenda but not presented and will be rescheduled for a future meeting:

- Project No. S-811, S. District Wastewater Treatment Plant HLD - Todd Palmatier

**III. APPROVAL OF MEETING MINUTES**

The September 21, 2009 and October 19, 2009 were approved as written.

**IV. CSBE UTILIZATION REPORTS, Patrice King**

(Handout Provided) Ms. King reported that for the period October 1, 2009 through October 31, 2009, there were seven (7) projects approved for award totaling \$54,171,623. Of the \$54 million, four (4) projects have CSBE measures equal to \$4,345,643 or 8%. Of the projects awarded this period, CSBE firms are participating as prime and/or subcontractors (with or without measures) for a dollar value of \$4,339,043 or 8%.

\$145,643 was awarded through Prime Set Asides and \$4,193,400 went to subcontractors through goals and trade-set asides. There were no CSBE firms awarded open market (non set-aside) projects.

Federally Funded Projects not eligible for application of CSBE measures: There were a total of seven (7) projects approved for award totaling \$1,405,056. Of the \$1.4 million, five (5) projects have DBE measures totaling \$117,682 or 8.4%

7040 Miscellaneous Construction Contract: Seven (7) projects valued \$5,000 and above were awarded as CSBE set-asides for a total of \$3,901,097.

Economic Stimulus Projects (ESP): There were no Economic Stimulus Projects approved for award during this period.

Ms. King read the report on the CSBE/Stimulus breakdown by Minority/Gender status and 7040 breakdown by Minority/Gender status.

**V. CERTIFICATION UPDATE:**

Ms. Laurie Johnson presented the following information:

	31-Oct.-2009	Fiscal to Date
<b>Total Certified CSBE Firms</b>	759	
New Applications Received:	36	
New Applications Under Review:	34	
Applications Approved (new & recerts):	50	
Renewal Applications Received:		
Renewals Under Review:		
Denied *	0	
Graduated **	0	

\*Not Local/Qualifier Not Owner/PNW/Size Standard

\*\*Exceed Size Standards

**VI. SURETY BOND/FINANCIAL ASSISTANCE PROGRAM**

(Handout Provided) Mr. Harold Goldson presented the following information:

**Bonding Assistance**

	1 <sup>st</sup> Quarter Oct - Dec 09
Firms Assisted: No Applications Submitted	16
Applications Received	6
Applications Approved	1
Value of Approved Applications	\$250,000
Applications Denied	3

**Loan Program**

	1 <sup>st</sup> Quarter Oct - Dec 09
Firms Assisted: No Applications Submitted	0
Applications Received	0
Applications Approved	0
Value of Approved Applications	0
Applications Denied	0

**Accounting Reimbursement Program**

	1 <sup>st</sup> Quarter Oct - Dec 09
Firms Assisted: No Applications Submitted	0
Applications Received	2
Applications Approved	2
Value of Approved Applications	1,685
Applications Denied	0

**VII. HOT ITEMS**

The Board was provided with updates for the assignments on the Hot Items list.

**VIII. OLD BUSINESS**

**A. CSBE Advisory Board Membership**

Ms. Penelope Townsley, Director of the Department of Small Business Development (SBD) provided an update to the Board regarding the CSBE Advisory Board Membership. In response to the Clerk of the Board's notification that eleven (11) of the fifteen (15) members were term limited, staff reviewed the organizations that appoint the members and found that two (2) of the organizations, Association of Women Architects and Engineers and the Black Business Association, are no longer active corporations and two (2) organizations, Air Conditioning and Refrigeration Association, Inc. and Association of Black Architects & Engineers, had never been

incorporated. As a result those four organizations will be removed from the appointing organizations that make up the board. Based on these changes the Board will have eleven (11) members. Currently there is one (1) vacancy and ten (10) filled positions of which eight (8) are affected by term limits.

Ms. Townsley further explained that the Clerk of the Board advised that the existing term limited members may continue to serve until a new appointment is made from their respective organization. Ms. Townsley advised that the Board should have been provided a copy of the legislation that Chairman Moss is proposing which would allow a waiver of the term limits by a 2/3 vote of the Board of County Commissioners. The first reading of the proposed legislation is scheduled for Tuesday, November 17, 2009 and it is scheduled for Public Hearing on December 9, 2009. Should the legislation pass, then the board may request a waiver of those term limited members. Vice Chairman Derrer asked if the board should attend the Public Hearing on December 9, 2009. Ms. Townsley replied that it would be advisable to attend, if the Board has concerns. However, she does not anticipate any issues with the passing of the legislation and indicated it would be beneficial if some board members attend the hearing to put forth their issues on the record.

Vice Chairman Derrer asked if the Board will consider waivers on an individual basis. Director Townsley responded that she assumes that since the majority of the board members have been term limited, that they should represent themselves collectively. Vice Chairman Derrer suggested that on behalf of the board, a letter should be written to make a request that all board members receive a waiver. Ms. Townsley explained that SBD will be reaching out to the organizations advising them of the status and seeking recommendations for appointment. Vice Chairmen Derrer asked if the four organizations that are no longer recognized have recourse. Ms. Townsley responded that those organizations will be removed from the list of appointing organizations through an amendment to the Code, unless the organizations are reinstated or established. Mr. Ron Frazier stated that he represents one of those organizations that no longer exists and asked if his appointment is currently valid. Ms. Townsley responded that his appointment is not valid at this time.

Mr. Frazier asked if the Board can recommend replacement organizations to the Department or the Board of County Commissioner. Ms. Townsley responded that the Board has the authority to make such recommendations and any such recommendations will be provided to the Commissioner working on the amendment. Vice Chairman Derrer recommended that Eloise Gonzalez, Ron Frazier and Randy Pierson send a letter with regards to their recommendations for replacements for the amendment to the ordinance to allow these organizations to substitute the originally selected organizations that represent the community interest that the board serves. Ms.

Townsley restated that the CSBE Advisory Board is now an eleven (11) member board with one (1) vacancy. Also, Ms. Townsley indicated that the success of the CSBE program is the collaboration of the majority of the large firms and the small firms working together and realizing and embracing the intent of the program. Ms. Townsley's vision is to continue foster that goal, but in terms of representing the program on a larger scale. She believes there have been issues that have impacted SBD significantly that should have be brought to the attention of the County Commission as a whole and as SBD moves forward she would hope that SBD would get that kind of support from the CSBE Advisory Board to impress upon the County Commission the importance of SBD, the CSBE program that the department administers as well as the goals SBD is striving to achieve.

#### **B. 2010 Sunset Review Report**

Vice Chairman Derrer made a motion to approve the 2010 Sunset Review Report. The motion was seconded and approved unanimously by the Board.

#### **C. Request from SBE Advisory Board for a Joint Meeting**

The Board was informed that the SBE Advisory Board had requested to have a joint meeting with the CSBE Advisory Board on a quarterly basis in a retreat setting where board members can discuss the challenges they are facing in this tough economy. The SBE Advisory Board also expressed an interest in having a pre-meeting in order to determine discussion topics, so the retreat can be as productive as possible. Board Member John Siegle made a motion to deny the request which was seconded by Board Member Bob Baer. The motion was approved by a majority of the Board. Board member Ismailia Rashid made a motion to have a meeting with the SBE Advisory Board which died for lack of a second.

### **IX. NEW BUSINESS**

#### **Bonding Assistance**

Board Member Charles Nielson expressed concerns about the ability of CSBE contractors to obtain bonding. He indicated that a solution that is currently being utilized on Federal Small Business Administration (SBA) programs is to allow larger companies to provide bonding and financial to smaller firms participating on federally funded projects through a small or disadvantaged business program. The larger company does not do any of the work, but mentors the smaller firm, supplies the bond and any financial and management assistance needed for a fee. They are not involved in any construction work. Due to the current economy large contractors have extensive amounts of surety credit and finances that are not being utilized because there is no work. Under the SBA Programs this practice is called seg-way contracting. Mr. Nielson wanted to know if this type of relationship is allowed under the CSBE Program. Ms.

Hidalgo-Gato informed Mr. Nielson that staff is scheduling a meeting with the SBD Director to review and discuss this idea. Ms. Townsley added that the idea is not new to the department and that one of the department's concerns will be instances of fronting and pass throughs. Currently, SBD's mentor protégé component of the CSBE program is not structured in that manner. Ms. Townsley stated again that this issue will be discussed at a department level; she also recommends that this is something that the CSBE Advisory Board can review and recommend on as well. A subcommittee was formed to review this issue further. The members appointed to the subcommittee are Charles Nielson (Chair), Ismailia Rashid, and Kurt Dyer.

#### Availability of work for Level II CSBEs

Mr. Frank Fonseca, President of Leadex Corporation a Level II CSBE, complained to the Board that as a result of the change in CSBE size standards and contracting participation levels his firm is no longer eligible to bid on contracts valued less \$2 million. His problem is that most of his experience is on projects valued at \$1 million or less. His firm does over 100 projects a year and the projects have never been over \$1 million. Mr. Fonseca also added that as a result of his past work experience he may not be considered qualified to work on larger projects as is evidenced by a recent denial by the City of Miami for a \$1.6 million project due to lack of experience in project of that size. Board member Ismailia Rashid made a motion to amend the CSBE code to allow General Contractors to bid down to \$50,000. After a discussion by the Board the motion was denied. Ms. Laurie Johnson, SBD Division Manager, provided the Board with historical information pertaining to the reasons the amendment that provided specialty trade contractors, i.e. fencing, painting and plumbing, the ability to bid down to \$50,000 excluded general contractors (GC). She explained that when the miscellaneous construction contract started almost 10 years ago, Level II and III specialty trade contractors were limited to contracts valued at \$750,000 and above, and there were a limited number of specialty trade contracts being issued at that value. As such, Level IIs and IIIs were not receiving any work. Based on that history and reviewing the specialty trade contractors over a period of time and seeing that the Level IIs and IIIs were eliminated, the review was done and the amendment came to the contract to allow the \$50,000 and above for Level IIs and IIIs. GCs were not overlooked but rather were not in need of this consideration as they were receiving work. Ms. Dorothy Brown-Alfaro president of Jador International Corp. also complained to the Board there is not enough work available for CSBEs in the \$50,000 and up range. Ms. Brown further explained that she is experiencing that there is more work for companies who are able to perform on contracts valued at \$200,000 and above.

#### Selection of New Chairperson and Vice Chairperson

As a result of the recent changes in membership the Board reviewed its Chairman and Vice Chairman positions. Board Member Bob Baer made a motion to appoint Rick

Derrer as Acting Chairman. The motion was seconded by John Siegle and approved by the Board. Another motion was made by Mr. Baer to appoint Ismailia Rashid as acting vice chairperson. The motion was seconded by John Siegle and approved by the Board.

MCC Contract at Miami-Dade Aviation Department

Mr. Ron Frazier reminded the Board that he had been working with the Miami-Dade Aviation Department on the new MCC project. The Board appointed him to continue to represent them in MCC negotiations with the Airport.

Commissioner Jordan's Resolution concerning CSBE contract provisions

The Board reviewed Commissioner Jordan's resolution directing the County Manager to include additional subcontractor provisions in all future contracts with CSBE Program requirements, where applicable, unless waived by the Board of County Commissioners. The Board's main concerns were with Sections a, b, d and f. In regards to Section (d), Board Member Bob Baer asked if the County was going to reduce the retainage to the primes or would the primes need to bear the financial burden. In response Board Member John Siegle pointed out that language in the last line of section (d) stated the funds should be released to the CSBE "regardless of whether the prime contractor has received payment from the County" Board Member Baer commented that based on that language primes would be expected to disburse money regardless of whether payment was rendered by the County. Board Member Ismailia Rashid commented that she is interested in fairness, and asked if the language could be amended so the County can release the money to the prime of that amount. Vice Chairman Derrer responded that only Commissioner Jordan could amend the proposed legislation. Board Member Rashid asked if the Board would be willing to make a motion in support of the Resolution if the language was amended to allow the prime to bill for the retainage and disburse to the CSBE once it is received. Vice Chairman Derrer indicated that there was still an issue with the language concerning the bonding. Board Member Charles Nielson commented that the Resolution is not going to help the CSBE program but instead will hurt it and suggested that the objectionable language be rewritten. Vice Chairman Derrer commented that when the program was created the intent was to not dictate business terms to the firms that participated. He further stated that the CSBE Program is a requirement for utilization and the remaining terms should follow a normal business flow. Moreover, SBD does not have staff to monitor whether this issue is working or not and it is creating another level of government involvement in this program. Board Member Rashid commented that CSBE Ordinance should be amended to add language that the County will not require bonding on jobs less the \$200,000, and that if a prime is going require bonding that it must inform the CSBE in writing during the bidding process. The majority of the Board expressed disagreement with the language proposed in the Resolution. They were informed that it will be presented to the Board of County Commissioners for a final vote on December 1, 2009

and was already reviewed at the committee level. As result, Vice Chairman Derrer requested for SBD to request a meeting with Commissioner Jordan to discuss the amendment.

**ADJOURNMENT**

Having no further business, the meeting was adjourned at 2:49 p.m.