IMFR

MEMORANDUM Agenda Item No. 1(E)1 Substitute

TO: Honorable Chairman Joe A. Martinez and Members, Board of County Commissioners

DATE: April 12, 2011

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

SUBJECT: Ordinance pertaining to the Community Business Enterprise ("CBE-A/E") Program for architectural, landscape architectural, engineering, and surveying and mapping professional services; amending Section 2-10.4.01 of the Code of Miami-Dade County, Florida; providing severability, inclusion in the Code, and an effective date

This substitute item differs from the original version as stated on the County Manager's memo.

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Barbara J. Jordan.

R. A. Cuevas, Jr.
County Attorney

RAC/cp

Memorandum

MIAMI-DADE COUNTY

Date: May 3, 2011

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: Alina T. Hudak
County Manager

Subject: Ordinance Amending Section 2-10.4.01 of the Code of Miami-Dade County, Relating to the Community Business Enterprise Program for the Purchase of Professional Architectural, Landscape Architectural, Engineering, or Surveying and Mapping Services

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This substitute differs from the original in that it includes language allowing for adjustments to size standards based on the local Consumer Price Index for All Urban Consumers (CPI-U) or other appropriate inflation measures as may be applied across all industries. In addition, the Appeals section has been changed to provide for a Hearing Officer to make findings and recommendations, and the Mayor to make a final decision, which is appealable to Circuit Court. This change makes the appellate remedy the same, irrespective of the party appealing the final decision. Finally, this substitute modifies the Administrative Penalties Section to include all penalties for violations of or noncompliance with this section and its implementing order, proposals(s), and/or competitive selection documents which had been improperly included under the Appeals Section.

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the attached ordinance amending Section 2-10.4.01 of the Code of Miami-Dade County, relating to the Community Business Enterprise (CBE–A/E) Program for the purchase of professional architectural, landscape architectural, engineering, or surveying and mapping services.

Scope

The impact of the proposed ordinance is countywide in nature.

Fiscal Impact/Funding Source

The accompanying ordinance will have an estimated fiscal impact of $2,000 annually attributed to the cost of appeal hearings of certification denial, decertification and determinations of non-compliance with program requirements. This fiscal impact may be off-set by recovery of administrative cost from unsuccessful appellants. Upon appeal, firms are required to submit a non-refundable filing fee of $250 and if unsuccessful, incur the costs of the appeal. Prior Board legislation established the utilization of Hearing Officers for appeal of certification denial, decertification and determinations of non-compliance with the Community Small Business Enterprise (CSBE) program.

Track Record/Monitor

The Department of Small Business Development (SBD) is responsible for administering this program.

Background

In December 2009, certification functions for the County's Small and Disadvantaged Business Programs were transferred from the Department of Small Business Development (SBD) to the Department of Procurement Management (DPM). These include the Small Business Enterprise, Community Small Business Enterprise, Community Business Enterprise, Disadvantaged Business Enterprise, and Local Developing Business programs. Increases in the volume of both new applications and recertifications have created a backlog. DPM and SBD have conducted extensive reviews of each of these programs, in consultation with stakeholders and certified firms, resulting in legislative amendments to improve the certification process and customer service; streamline operational processes; enhance opportunities to local small businesses; and allow for overall effectiveness with reduced resources. Subsequently, in October 2010 the certification functions transferred back to SBD.

The proposed amendments have been reviewed with members of the Board of County Commissioners and/or their staffs, Small Business Advisory Boards, and other small business programs stakeholders. Specific amendments recommended in the proposed ordinance are as follows:

Certification Amendments

1. Authorizes the County Mayor or designee to establish the frequency and administrative procedures for certification renewal by Implementing Order approved by the Board of County Commissioners.

2. Changes the measure utilized to adjust the CBE/AE size limits from the Consumer Price Index to the local Consumer Price Index for All Urban Consumers (CPI-U) or other appropriate inflation measures as may be applied across all industries.

3. Allows CBE-A/E firms to be certified in other technical categories for which it has received Technical Certification pursuant to Section 2-10.4 of the Code of Miami-Dade County and State of Florida registration requirements through a non-owner qualifier. Currently, the applicant qualifier of a certified CBE-A/E firm must own at least 25% of the certified firm's issued stock or have at least a 25% ownership interest in the certified firm. The proposed amendment will allow CBE-A/Es to be certified in all technical categories approved with Miami-Dade County and also registered with the State of Florida.

4. Allows any CBE-A/E that has graduated from the program to complete any currently awarded agreements and remain eligible to be awarded agreements as prime or subconsultants for proposal(s) submitted prior to notice of graduation. CBE-A/Es who graduate will not be eligible to receive any new agreements under the CBE-A/E program.

5. Clarifies and simplifies the definition of affiliation.

Program Amendments

1. Changes the name of the Department of Business Development to the Department of Small Business Development.

2. Establishes Tier 1 and Tier 2 Set-Asides

   Currently set-asides are reserved for competition solely among first tier CBE-A/Es of a given prime County agreement for architectural, landscape architectural, engineering, or surveying and mapping professional services.

   It is proposed that Tier 1 and Tier 2 CBE-A/E set-asides be established. Tier 1 set-asides shall be reserved for competition solely among Tier 1 CBE-A/E prime consultants and Tier 1 and/or Tier 2 CBE-A/E subconsultants on a County agreement for architectural, landscape architectural, engineering, or surveying and mapping services where the estimated cost of professional service fees are $1,000,000 or less. Tier 2 set-asides shall be reserved for competition solely among Tier 2 CBE-A/E prime consultants and Tier 1 and/or Tier 2 CBE-A/E subconsultants on a prime County agreement for architectural, landscape architectural, engineering, or surveying and mapping services where the estimated cost of professional service fees are $1,000,001 or greater. Tier 1 CBE-A/E primes may bid (up) on Tier 2 projects; however, Tier 2 CBE-A/E primes are prohibited from bidding (down) on Tier 1 projects.

3. Clarification of CBE-A/E Size Limits

   Currently, CBE-A/E means a firm providing architectural, landscape architectural, engineering, or surveying and mapping professional services, including a design-build firm, whose three year average annual gross revenues do not exceed two million dollars ($2,000,000) for all first tier CBE-A/Es, four million five hundred thousand ($4,500,000.00) for second tier CBE-A/Es in the case of architectural services, or six million ($6,000,000.00) for second tier CBE-A/Es in the case of landscape architectural services, engineering, and surveying and mapping services.

   It is proposed that the CBE-A/E definition be amended to further clarify the contracting participation levels for first and second tier CBE-A/Es as follows:

   a. Tier 1 CBE-A/Es in the case of architectural, landscape architectural, engineering, or surveying and mapping services – 3 year average annual gross revenues of $0 to $2,000,000
   b. Tier 2 CBE-A/Es in the case of architectural services – 3 year average annual gross revenues of $2,000,001 to $4,500,000
   c. Tier 2 CBE-A/Es in the case of landscape architectural, engineering, or surveying and mapping services – 3 year average annual gross revenues of $2,000,001 to $6,000,000

4. Currently, only 2nd Tier CBE-A/E Prime firms may fulfill 100% of sub-consultant goals with their own forces. It is proposed that all CBE-A/E Prime firms be allowed to fulfill up to 100% of sub-consultant goals with their own forces.

5. It is proposed that the Review Committee definition and process be amended to model the Expedited Review Committee definition and process established to review projects under the Economic Stimulus Plan (ESP). Currently, the Review Committee meets bi-weekly to review all projects that have been analyzed by SBD for the application of contract measures. The proposed process will establish a standing Review Committee that will only meet to review contracts where disagreements exist regarding the appropriate contract measure between SBD and the contracting departments and when public input requires deliberation regarding the measure/goal recommendations.

6. Appeal of Certification Denial, Decertification and Noncompliance Determinations

   Prior Board action replaced the Review Committee with certified Administrative Hearing Officers as the responsible body for hearing appeals of certification denials, decertification and non-compliance with the Community Small Business Enterprise (CSBE) Program. To establish consistency among the small business programs it is proposed that the appeals process be amended to reflect that any firm that is denied certification, decertified or issued a determination of non-compliance with the requirements of the CBE-A/E Ordinance or its Implementing Order appeal such action to the County Mayor or designee by submitting a written request to the County Mayor or designee along with a nonrefundable filing fee of $250 within 30 days of issuance of the notice. All appeals of certification denial, decertification or non-compliance determinations shall be heard by administrative hearing officers that include retired judges who are licensed and admitted to practice law in the State of Florida, or arbitrators or mediators certified by the Eleventh Judicial Circuit or State Bar Association. Appointees will be acquainted with Implementing Order 3-32 and the provisions of Section 2-10.4.01, Miami-Dade County Code, as amended, applicable to the particular violations to be heard.

7. It is proposed that language be added that allows penalties and sanctions to be imposed by the County Mayor or designee upon contractors that fail to comply with approved small business measures. In the case of a goal deficit, the County Mayor or designee may order a penalty amount to be withheld from the contractor for such noncompliance as follows: for the first deficit, a penalty in an amount equal to 10% of the amount thereof; for the second deficit, a penalty in an amount equal to 20% thereof; for the third and successive deficits, a penalty in an amount equal to 30% thereof. A fourth violation and finding of noncompliance, shall constitute a default of the subject contract and may be cause for suspension or termination in accordance with the contract's terms and debarment in accordance with the debarment procedures of the County. Monies received from payment of penalties imposed hereunder shall be deposited in a separate account and shall be utilized solely to defray SBD's costs of administering the program.

Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez and Members, Board of County Commissioners

DATE: May 3, 2011

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

SUBJECT: Agenda Item No.

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 Agenda Item No.
Veto _____
Override _____

ORDINANCE NO. _____

ORDINANCE PERTAINING TO THE COMMUNITY BUSINESS ENTERPRISE ("CBE-A/E") PROGRAM FOR ARCHITECTURAL, LANDSCAPE ARCHITECTURAL, ENGINEERING, AND SURVEYING AND MAPPING PROFESSIONAL SERVICES; AMENDING SECTION 2-10.4.01 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Section 2-10.4.01 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows[1]:

Sec. 2-10.4.01. Community Business Enterprise Program for Architectural, Landscape Architectural, Engineering, and Surveying and Mapping Professional Services.

* * *

(2) Definitions. For Purposes of this section:

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

B. *Available or availability* means to have, prior to proposal submission, the ability to provide professional services under an agreement or subconsultant agreement by having:

(1) Reasonably estimated, uncommitted capacity and expertise;
(2) All licenses, permits, registrations, insurances and certifications;
(3) The ability to obtain bonding that is reasonably required to perform the agreement or subconsultant agreement consistent with normal industry practice; and

[1] Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

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(4) The ability to otherwise meet all the proposal specifications.

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

D. *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.

>>E<<[[~~I~~]].*CBE-A/E Objective* means the objective of assuring that not less than 10 percent of the County's total annual expenditures for professional architectural, landscape architectural, engineering, and surveying and mapping services, are expended with CBE-A/Es certified under this section, for projects specific and multiple project contracts. The foregoing CBE-A/E objective may be increased by subsequent resolution of the Board of County Commissioners, adopted after recommendation for an increase by the >>County Mayor or designee<< [[~~CBE—A/E Advisory Board~~]].

>>F<<[[~~J~~]].*CBE-A/E Program* is the Community Business Enterprise Program for the Architectural, Engineering, Landscape Architectural, Surveying and Mapping Professionals.

>>G<<[[~~E~~]].*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.

>>H<<[[~~F~~]].*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:

1. The evaluation of the amount of work subconsulted;

2. Normal industry practices;

3. The skills, qualifications, or expertise of the firm to perform the work;

4. Whether the firm's own personnel perform, manage, and/or supervise the work involved; and other relevant factors.

>>I<<[[~~G~~]].*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 dollars ($2,000,000.00) for all [[~~first~~]] >>T<<[[t]]ier >>1<< CBE-A/Es, four million five hundred thousand dollars ($4,500,000.00) for [[~~second~~]]>>T<<[[t]]ier >>2<< CBE-A/Es in the case of architectural services, or six million dollars ($6,000,000.00) for [[~~second~~]] >>T<<[[t]]ier >>2<< CBE-A/Es in the case of landscape architectural services, engineering, and surveying and mapping services. A CBE-A/E will graduate out of the program once it has exceeded the [[~~second~~]] >>T<<[[t]]ier CBE-A/E size limits based on its three-year average annual gross revenues. As part of the certification process, CBE-A/Es must go through a technical certification process, which will be used to determine which of the technical certification categories the CBE-A/E will be placed in. A firm's eligibility to participate in the CBE-A/E program shall be determined 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. Representations as to gross revenues shall be subject to audit. >>The Contracting Participation Levels are as follows:

i. Tier 1 CBE-A/Es in the case of architectural, landscape architectural, engineering, or surveying and mapping services – 3 year average annual gross revenues of $0 to $2,000,000.

ii. Tier 2 CBE-A/Es in the case of architectural services – 3 year average annual gross revenues of $2,000,001 to $4,500,000.

iii. Tier 2 CBE-A/Es in the case of landscape architectural services, engineering, or surveying and mapping services – 3 year average annual gross revenues of $2,000,001 to $6,000,000.<<

The County Mayor or [[~~his~~]] designee shall be authorized to >>adjust<<[[~~increase~~]] the CBE-A/E size limits every five (5) years >>at his/her discretion<<[2] based on the >>local<< Consumer Price Index >>for All Urban Consumers (CPI-U)<< calculated by the U.S. Department of Commerce >>or other appropriate tool of inflation measures<< as applied to Miami-Dade County for the preceding five (5) years. The first indexing adjustment shall occur for the 2013-2014 calendar year using the Consumer Price Index

[2] The differences between the substitute and the original item are indicated as follows: words double stricken through and/or [[double bracketed]] shall be deleted, words double underlined and/or >>double arrowed<< constitute the amendment proposed.

figures provided for the calendar year ended December 31, 2012, and every five (5) years thereafter. The County Mayor or [[~~his~~]] designee shall advise the Board of any such [[~~increase~~]] >>adjustment<<.

>>J<<[[~~H~~]].*Construction* means the building, renovating, retrofitting, rehabbing, restoration, painting, altering, or repairing of a public improvement.

>>K<<[[~~Q~~]].*Continuing contract* shall mean the term "continuing contract" as defined in section 2-10.4(1)(f).

>>L<<[[~~K~~]].*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.

>>M<<[[~~L~~]].*Design-build contract* means a single contract with a design-build firm for the design and construction of a public construction project.

>>N<<[[~~M~~]].*Design-build firm* means a partnership, corporation, or other legal entity which:

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

    a. 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

    b. 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.

2. An individual corporation or other legal entity in compliance with the following two requirements:

    a. 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

b. 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.

>>O<<[[~~N~~]]. *Firm* means any individual, firm, partnership, corporation, association, >>joint venture<< or other legal entity permitted by law to practice architecture, engineering, landscape architecture, design-build, and land surveying and mapping services.

>>P<<[[~~O~~]]. *Graduation* means the CBE-A/E has exceeded the specific size limits stated for the Program and thus [[~~will~~]]>>may<< no longer be eligible for participation in the Program.

>>Q<<[[~~P~~]]. *Joint venture* means an association of two or more CBE-A/Es. 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 to the ordinance from which this section derives.

R. *Multiple Projects Contract* is a contract for a "project" which constitutes a grouping of minor or substantially similar construction, rehabilitation or renovation activities as defined in section 2-10.4(1)(e)(1) and (2).

[[~~S. *Net worth* for the purposes of the size limits established in this section is defined as total assets minus total liabilities, of owners.~~]]

>>S<<[[~~T~~]]. *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.

>>T<<[[~~U. *Professional services* mean those services within the scope of the practice of architecture, engineering, landscape architecture, land surveying and mapping, as defined by the laws of Florida~~]]. >>*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.

U<<[[~~V~~]]. *Project Specific awards* are >>contracts<< [[~~projects~~]] 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.

>>V<<[[~~W~~]].*Prompt Payment.* It is the intent of the County 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. 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, or the Public Health Trust that are a CBE-A/E contract set-aside or which contain a set-aside or subconsultant goal shall be promptly reviewed and payment made by the County or Trust on those amounts not in dispute with >>in<< fourteen (14) calendar days of receipt of such billing by the County, or the Trust.

2. The Department of Small Business Development may investigate reported instances of late payments to CBE-A/Es. The County Ma>>yor or designee<< [[~~nager~~]] shall establish an administrative procedure for the resolution of written complaints pertaining to underpayment of professional services.

[[~~X. *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.~~]]

>>W<<[[~~Y~~]]. *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, letters of interest, letter of participation or offer to perform the agreement.

>>X<<[[~~Z~~]]. *Proposer* means any firm that submits a proposal to provide professional services.

>>Y<<[[~~AA~~]]. *Qualifier* means the individual who qualifie>>s<<[[~~d~~]] the firm >>professional<< license holder as required by Florida Statute.

>>Z<<[[~~BB~~]]. *Review Committee* or *RC* means the committee established by the County Ma>>yor<<[[~~nager~~]] >>or designee<< to review proposed projects for the application of contract

measures >>where SBD and the contracting department have not established consensus and when public input requires deliberation regarding the measure/goal recommendation. The RC will make recommendations to the Mayor or designee.<<

[[~~CC. *Review Committee Process* the County Manager] or his or her designee shall establish an administrative procedure for the review of each proposed County agreement to which this section applies, including the establishment of a committee to recommend whether CBE-A/E measures [[provided in this section should be applied]]~~].

>>AA<<[[~~DD~~]].*SBD* means the Department of Small Business Development[[~~, or successor agency~~]].

>>BB<<[[~~GG~~]]. *Subconsultant goal* means a proportion of a prime agreement value stated as a percentage to be subconsulted to [[~~first~~]] >>Tier 1<< and [[~~second~~]] >>T<<[[t]]ier >>2<< CBE-A/Es to perform a commercially useful function.

>>CC<<[[~~EE~~]].*Suspension* means temporary debarment for a period not to exceed two (2) years.

[[~~FF. *Set-aside* means reservation for competition solely among first tier CBE-A/E-A/Es of a given prime County agreement for architectural, landscape architectural, engineering, or surveying and mapping professional services.~~]]

>>DD<<[[~~HH~~]].*Technical certification* means a certification approved by the Miami-Dade County Technical Certification Committee to allow a firm to submit proposals on, and receive award of, County agreements for architectural, engineering, landscape architecture, or surveying and mapping services. Firms may be certified in several different technical certification categories.

>>EE. Tier 1 Set-Aside means reservation for competition solely among Tier 1 CBE-A/E prime consultants and Tier 1 and/or Tier 2 CBE-A/E subconsultants of a given prime County agreement for architectural, landscape architectural, engineering, or surveying and mapping professional services when the estimated cost of professional service fees is $1,000,000 or less. Tier 2 CBE-A/Es may not compete for Tier 1 CBE-A/E set-asides as prime consultants.

FF. Tier 2 Set-Aside means reservation for competition solely among Tier 1 and/or Tier 2 CBE-A/E prime consultants and Tier 1 and/or Tier 2 CBE-A/E subconsultants of a given prime County agreement for architectural, landscape architectural, engineering,

or surveying and mapping professional services when the estimated cost of professional service fees are $1,000,001 or greater. Tier 1 CBE-A/Es may compete for Tier 2 CBE-A/E set-asides as prime consultants.<<

* * *

(3) Program Components:

* * *

B. *Miami-Dade County Community Business Enterprise (CBE-A/E) Program for Architectural, Landscape Architectural, Engineering, and Surveying and Mapping Professional Services:*

1. *Agreement Set-Asides:* The County Commission, or Public Health Trust may determine it is in its best interest to set-aside a prime County agreement for architectural, landscape architectural, engineering, or surveying and mapping professional services when determined, prior to proposal advertisement, that there are at least three (3) [[~~first~~]] >>Tier 1 and/or<< >>T<<[[t]]ier >>2<< CBE-A/Es available. On a set aside agreement, the successful proposer must be a certified [[~~first~~]] >>Tier 1 and/or<< >>T<<[[t]]ier >>2<< CBE-A/E; one hundred (100) percent of the total estimated value of professional services of the agreement must be performed by either the successful proposer, or the successful proposer and other certified [[~~first~~]] >>Tier 1 and/or<< >>T<<[[t]]ier >>2<< CBE-A/Es.

* * *

2. Subconsulting Goals

* * *

Proposal documents shall include documentation demonstrating the basis for the subconsultant goal established in the contract. Any proposer may challenge or protest the goal by submitting to SBD or the Contracting Officer no later than ten (10) business days prior to the scheduled proposal submission date the reasons for such a challenge or protest in writing. Challenges or protests to a CBE-A/E goal by proposers after that time,or based on reasons not provided in writing within the time frame stated above, shall not be considered by the County Commission. A successful prime proposer or joint venture certified as a [[~~second tier~~]] CBE-A/E may perform up to one hundred

(100) percent of a CBE-A/E subconsultant goal with its own forces provided that the Letter of Agreement, or equivalent, as filed with the proposal submission identifies such prime proposer or joint venture as performing such work

>>3. Graduation: Upon review, any CBE-A/E that exceeds the Tier 2 CBE-A/E size limits established by this section shall be graduated from the CBE-A/E program upon notification by SBD. These firms shall be allowed to complete any currently awarded agreements and remain eligible to be awarded agreements as primes or subconsultants for proposal(s) submitted prior to notice of graduation. However, the graduated firm will not be eligible to receive any new agreements under the CBE-A/E program.<<

(4) *Certification Requirements:* The County [[~~Manager~~]] >>Mayor<< or [[~~his~~]] designee shall implement eligibility criteria and >>administrative<< procedures for firms to be certified as CBE-A/Es based on regulations outlined in this section. Firms exceeding size limits established hereunder and under Appendix A of the ordinance from which this section derives are not eligible for measures or participation in these programs.

1. The Department of Small Business Development >>(SBD)<< shall maintain and publish at least monthly an updated list of CBE-A/Es.

2. >>SBD<< [[~~The Department of Small Business Development~~]] shall not certify an applicant, shall not recertify a CBE-A/E, and shall decertify a CBE-A/E that fails to comply with the criteria or procedures for obtaining or maintaining certification. >>SBD<< [[~~The Department of Small Business Development~~]] shall have authority to suspend the certification of a CBE-A/E during any appeal of a [[~~de~~]]certification decision.

3. Applicants and certified CBE-A/Es must be properly licensed to conduct business >>with the State of Florida and<< in Miami-Dade County >>and<<, 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. A qualifier can only qualify one CBE-A/E >>firm<<[[~~at a time~~]].

4. The >>applicant<< qualifier of the certified CBE-A/E firm must own at least twenty five (25) percent of the certified firm's issued stock or have at least a twenty-five (25) percent ownership interest in the certified firm. >>A CBE-A/E firm may be certified in other technical categories for which the firm has received Technical

Certification in accordance with Section 2-l0.4 of the Miami-Dade County Code, through a non-owner qualifier.<<

5. >>The County Mayor or designee shall establish the frequency and administrative procedures for certification renewal by Implementing Order approved by the Board of County Commissioners.<< Certification [[~~shall be renewed annually, and~~]] must be in effect at the time of proposal submittal. For successful proposers, certification must be maintained [[~~from the time of proposal submittal~~]] throughout >>the selection process and contract award<< [[~~the duration of the agreement~~]]. With the exception of provisions previously described for graduation from the CBE-A/E program, loss of CBE-A/E certification will lead to removal of the firm from continued participation in the CBE-A/E program. CBE-A/Es experiencing changes in >>address or<< ownership shall notify >>SBD<< [[~~the County Manager or his or her designee~~]] within thirty (30) days of the effective date of such changes.

* * *

8. >>SBD<<[[~~The Department of Small Business Development~~]] may require applicants and CBE-A/Es to submit information regarding their business operations, including but not limited to a breakdown of the applicant's or CBE-A/E's ownership, gross annual sales and/or workforce; however, the race, national origin, gender, shall not be used in the consideration.

* * *

(6) Administrative penalties. For violation of or noncompliance with this section or its implementing [[~~administrative~~]] order, proposal(s), and/or competitive selection documents, the County [[~~Manager~~]] >>Mayor<< or [[~~his or her~~]] designee may impose >>penalties that include but are not limited to the following:<<

>>1.T<<[[~~t~~]]he loss of eligibility to be certified as a CBE-A/E for a specified period of time, not to exceed three (3) years, for an applicant or a CBE-A/E, its individual officers, its shareholders with significant interests, and its affiliated businesses.

>>2. If the determination of the County Mayor or designee is that the contractor or subcontractor failed to comply and that such failure was pervasive, the Mayor or designee may order that the contract work be suspended or terminated, and that the non-complying contractor or subcontractor and the principal owners and/or qualifying agent thereof be prohibited from bidding on or otherwise participating in County construction contracts for a period not exceed three (3) years.

3. If the determination of the County Mayor or designee is that the contractor or subcontractor failed to comply and that such failure was limited to isolated instances and was not pervasive, the County Mayor or designee may, in the case of a goal deficit, order a penalty amount to be withheld from the contractor for such noncompliance as follows: for the first deficit, a penalty in an amount equal to 10% of the amount thereof; for the second deficit, a penalty in an amount equal to 20% thereof; for the third and successive deficits, a penalty in an amount equal to 30% thereof. A fourth violation and finding of noncompliance, shall constitute a default of the subject contract and may be cause for suspension or termination in accordance with the contract's terms and debarment in accordance with the debarment procedures of the County. Monies received from payment of penalties imposed hereunder shall be deposited in a separate account and shall be utilized solely to defray SBD's costs of administering Section 10-33.02 of the Code of Miami-Dade County.

4. If the required payment is not made within thirty (30) days of the administrative hearing or final resolution of any appeal there from, the non-complying contractor or subcontractor and the principal owner(s) and qualifying agent(s) thereof shall be prohibited from bidding on or otherwise participating in County construction contracts for a period not to exceed three (3) years.<<

>>(7) Appeals.

1. 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 Mayor or designee by submitting a written request to the County Mayor or designee 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 Mayor or designee 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.

2. Upon completion of the administrative hearing, the hearing officer shall<< >>transmit his/her findings of facts, conclusions and recommendations together with a transcript of all evidence taken before him/her and all exhibits received by him/her, to the Mayor or designee, who (i) may sustain, reverse or modify the hearing officer's recommendations and (ii) shall render a final decision, in writing.<< [[~~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~~]] >>determination<< >>of the<<[[~~hearing officer or the Board of County Commissioners~~]] >>Mayor<< >>may be reviewed by an appropriate court in the manner provided in the Florida Rules of Appellate Procedure.

3. The prevailing party shall not incur any additional expenses, fees or penalties. The unsuccessful appellant shall be responsible for all additional fees, costs and penalties associated with the appeal.<<

[[~~4. If the determination of the County Mayor or designee is that the contractor or subcontractor failed to comply and that such failure was pervasive, the Mayor or designee may order that the contract work be suspended or terminated, and that the non-complying contractor or subcontractor and the principal owners and/or qualifying agent thereof be prohibited from bidding on or otherwise participating in County construction contracts for a period not exceed three (3) years.~~

~~5. If the determination of the County Mayor or designee is that the contractor or subcontractor failed to comply and that such failure was limited to isolated instances and was not pervasive, the County Mayor or designee may, in the case of a goal deficit, order a penalty amount to be withheld from the contractor for such noncompliance as follows: for the first deficit, a penalty in an amount equal to 10% of the amount thereof; for the second deficit, a penalty in an amount equal to 20% thereof; for the third and successive deficits, a penalty in an amount equal to 30% thereof. A fourth violation and finding of noncompliance, shall constitute a default of the subject contract and may be cause for suspension or termination in accordance with the contract's terms and debarment in accordance with the debarment procedures of the County. Monies received from payment of penalties imposed hereunder shall be deposited in a separate account and shall be utilized solely to defray SBD's costs of administering Section 10-33.02 of the Code of Miami-Dade County.~~

~~6. If the required payment is not made within thirty (30) days of the administrative hearing or final resolution of any appeal there from, the non-complying contractor or subcontractor and the principal owner(s) and qualifying agent(s) thereof shall be prohibited from bidding on or otherwise participating in County construction contracts for a period not to exceed three (3) years.~~]]

[[~~(7)~~]]>>(8)<< *County responsibilities.* The Department of >>Small<< Business Development (or other County department designated by the County Ma>>yor<<[[~~nager~~]]) shall:

Section 2. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 3. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article", or other appropriate word.

Section 4. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon override

PASSED AND ADOPTED:

Approved by County Attorney
as to form and legal sufficiency.

Prepared by:

dsh

David Stephen Hope